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The Constitution, the Elite and the Monarchy's Crisis in Lesotho

Nqosa Leuta Mahao

Introduction

The recreation of the monarchy by statute in independent Lesotho was in political and social terms a breathtaking development. This endeavour gave birth to an institution alien to the traditional schema of political discourse where the notion of a monarch without effective powers was unknown. Experience over the last thirty years of experimenting with this constitutional arrangement provides ample proof that neither King Moshoeshoe II nor the political elite fully accepted the sacrosanctity of this arrangement. This has created a particular dilemma for the monarchy. For although the monarchy is proclaimed as a symbol of Basotho's national unity, it has been at the centre of controversies. Like leaders of political parties it tends to be seen as just another contestant for political power. For its part this arises out of the need to re-claim the authority it lost when it was made constitutional. Because of this proclivity and the perception that it is just one of the many forces vying for power, it has often not only suffered in esteem but has also had its fair share in the tribulations which characterise post-colonial Lesotho politics. The 1994 royal political intervention which purported to displace the BCP Government was but the latest in a series of flash points which for the good or worse throw into sharp relief the adventures which the monarchy can be drawn into. On the other hand earlier flash points betray the vulnerability of the institution. In 1966-7, former King Moshoeshoe II was placed under house arrest and restricted in movement and association by the Government of the late Chief Leabua Jonathan. Four years later, he was sent into involuntary exile by the same Government. The same fate was meted to him in 1990 by a Military Junta which had taken the reigns of power since 1986. He was dethroned while he was still in exile. These cumulative humiliations attest to an institution which is beset by spasmodic crisis.

This article is concerned with an analysis of the source and nature of this crisis. It argues that the August 17, 1994 royal intervention was but an episode in the continuing constitutional/institutional crisis in post-colonial Lesotho. It intends to depict this single event within the larger canvass of power struggles which bedevil the development of settled institutions of state and established patterns of accession to leading offices of power. In particular it focuses on the monarchy, its role in these processes and its turbulent interface with the modern elite in the ensuing tussles. It applies the notion of crisis in relation to the monarchy to explain the predicament of a political institution which is no longer able to define its own place within the state structure on its own terms. This predicament is further compounded by the fact that those who define its role, the modern political elites, use the monarchy as a pawn in their power games. They undermine it when they are in office or draw it into their power adventures when they are out of office. The concept of crisis is also used to describe the situation of marginalisation which in spite of whatever the institution does, appears to be growing and irreversible.

The first section is a brief background which seeks to expose the historical and social genesis of this crisis. The second looks at the type of monarchy which was established on the eve of Independence. It focuses on how rather than deliver favourable results the endeavours of Moshoeshoe II to fight for increased powers plunged the monarchy into a series of setbacks. The third section analyses the relationship between the monarchy and the military Government between 1986 and 1990. It captures the sad note on which this alliance ended. The final section discusses the August 17, 1994 royal intervention. It locates this episode within the political and constitutional conditions whose principal thrust was the increasing emasculation of the powers of the monarchy and an attempt by the political elite to exclude Moshoeshoe II from the throne once and for all.

Decolonisation and the Genesis of the Monarchical Crisis

The Basotho monarchy was in the twilight of its political power before colonialism. The monarchy was the highest tier of chieftainship and replicated the same powers, albeit with more authority, extensive esteem, responsibility, territory and people under its jurisdiction. In all the African societies of Southern Africa, government patterns were the same. Thus, Schapera's observation that a Tswana chief was simultaneously a ruler, judge, law-maker, repository of wealth, priest

and magician of people applied with equal force to Basotho chiefs.¹ During colonial rule the Paramount Chiefs, as the Monarchs were styled, were proclaimed in the Laws of Lerotholi to have "full power and authority" over every African resident in Lesotho in accordance with Basotho law and custom.² But they were junior partners to the Resident Commissioners in the colonial state apparatus. The Resident Commissioner's authority and powers overrode the authority and powers of the Paramount Chief. The introduction of the office of Prime Minister and the Westminster constitutional model at independence has gone further than re-affirming this colonial arrangement. In it, while the monarchs retain their formal pre-eminence and precedence over all citizens and institutions, the authority and powers that once went with this status is in fact exercised by a Prime Minister.

It is tempting to argue that this development is a result of the imposition of the Westminster model on the Basotho. Partly this is so. But the imposition would not have succeeded if it were not aided by social and political developments organically occurring within the Basotho society itself. Historically, this development must be understood in the context of the emergence and increasing social and political assertiveness of a new class, the *petit bourgeoisie*, engendered by the modern political economy of Lesotho. By the turn of the nineteenth century missionaries of various Christian denominations, particularly the Paris Evangelical Missionary Society (PEMS) later renamed the Lesotho Evangelical Church (LEC), the Roman Catholic Church (RCC) and the Anglican Church (LAC) had established a modest range of schools in colonial Lesotho. From these schools emerged an educated coterie consisting of teachers, ministers of religion, government clerks and interpreters and businessmen. This was a new class of individuals known by the Basotho as *bahlalefi* or *matsoelapele* (the educated ones or the progressive ones) who "enjoyed a greater degree of political and economic independence from the chieftainship than did most Basotho."³

By 1907 this *petit bourgeoisie*, having grown into a sizeable lot, established the *Lekhotla La Tsoelopele*, better known in most

¹ I. Schapera, *A Handbook of Tswana Law and Custom* (Frank Cars, 1934) p.62.

² See Section 1, Laws of Lerotholi.

³ S.T. Gill, *A Short History of Lesotho*, (Morija, 1993), p.164.

historical chronicles by its English name, the Basutoland Progressive Association (BPA). The BPA was a political platform agitating for the reform of the colonial system so that its members could be afforded a greater role in the political and economic affairs of the colony. It reserved its sharpest attacks on the abuse of power by the chiefs.⁴ Around 1919 another movement formed by the lower stratum of the petit bourgeoisie, migrant workers and peasants, the *Lekhotla La Bafo* (LLB) was launched. The LLB is rightly regarded as the fore-runner of the anti-colonial movement in Lesotho. It played a significant role in rallying Basotho opposition to colonial rule for nearly four subsequent decades.⁵ Its politics contrasted sharply with those of the BPA which sought recognition from, and accommodation for its members within the colonial state. However, for a number of reasons beyond the scope of this paper the LLB's appeal and capacity to effectively galvanise the populace against colonial rule was limited.

The formation of the Basutoland African Congress (BAC) in 1952 laid the ground for popular anti-colonial politics. Significantly it also marked the entry of the dominant stratum of the petit bourgeois into the main stream politics of protest, which by the beginning of the 1960s, became a vehicle of decolonisation. Initially the BAC galvanised all sectors of the Basotho, the intelligentsia, traders, chiefs and workers. These social forces were brought together by their concern over an apparent British-Boer collusion to hand over Lesotho to South Africa. This platform made the BAC a truly broad movement in character. But it also significantly marked the beginning of a shift in the leadership of national politics away from the traditional elite, the chieftainship, to the modern elite, the petit bourgeoisie, which asserted itself at the fore of the movement. Bardill and Cobbe have correctly noted that in the character of its leadership the BAC resembled the BPA (it was petit bourgeoisie) while its blend of politics resembled that of the LLB (anti-colonial).⁶ The transformation of the BAC to the Basutoland Congress Party (BCP) in 1959, the formation of the Marematlou Party (MTP) in 1957 and the Basotho National Party (BNP) in 1958 were landmarks in the collapse of broad-based politics in Lesotho. This development was also a testimony of the fragmentation of the modern elite into several

⁴ J.E. Bardill and J.H. Cobbe, *Lesotho: The Dilemmas of Dependence in Southern Africa*, (England, 1985), p.31.

⁵ R. Edgar, *Prophets with Honour*, (Johannesburg, 1985), p.3.

⁶ J. Bardill and J.H. Cobbe, *op.cit.*, p.32.

political camps based on various nuances of petit bourgeois ideology. On the eve of independence and after, these camps or parties had turned on each other in enervating struggles for the capture of the state. Their creations were also destined to impact directly on the tribulations of the monarchy in the succeeding years.

More significantly, it was the advent of this class on the political scene and its ascendancy over others which was responsible for the adoption of the Westminster constitutional model in Lesotho. Thus, more than being a consequence of external imposition, the authority of the monarchy was dealt a fatal blow as part and parcel of this class asserting itself politically. It achieved this by forging the decolonisation movement under its own political leadership and hegemony. There are a number of explanations why this happened, but two of them emerge quite distinctly. Firstly, it is important to appreciate that at the time the decolonisation movement was gathering momentum the monarchy was itself part and parcel of the colonial state apparatus. This position defined the limits of its competence. Logically, it was not competent to actively lead the decolonisation process which, in fact, was subversive of the established order the monarchy was under duty to protect. This ensured the leadership of this process for the modern elite.

Secondly, the incumbent monarch, the Regent Chieftainess 'Mantsebo Seeiso, was singularly ill-fitted for the challenges of the 1950's when this process gathered pace. Due to her political and administrative weakness, divergent forces found room to assert their own visions of the future of the country. "Various groups of commoners and factions of chiefs seized the opportunity to advance their own political interests through the National Council to the detriment of the monarchy."⁷ That she could not dare even modest efforts to assert her authority over these developments, and was probably bewildered by them, possibly explains the formation of the MTP, a fore-runner of the MFP by Chief Seephephe Matete in 1957. With the support of senior chiefs, the MTP became instrumental to the decision of the young Crown Prince, Bereng Seeiso, to prematurely terminate his education at Oxford and return to Lesotho with the aim of laying a claim on the throne. They felt the urgent need for him to assume the throne so that he could "influence the constitutional developments that were potentially to

⁷ R.F. Weisfelder, *The Basotho Monarchy: A Spent Force or a Dynamic Political Factor*, (Ohio, 1972), p.50.

affect his future status as a king."⁸ But by the time of his investiture in March 1960, when he took the name Moshoeshoe II, a new Constitution, the *Basutoland Order, 1959*, which drew inspiration from the view that the "Paramount Chief should become increasingly a constitutional ruler" was already fully operational.⁹ The marginalisation of the monarchy was already in an irreversible gear.

Moshoeshoe further oversaw the process of drawing the Independence Constitution and its immediate predecessor from an aloof pedestal already defined for him by the *Basutoland Order, 1959*. The role of the monarchy was to be further re-defined in a context where he could play no active part. Much of his efforts have been engaged in the last thirty years in desperate attempts to reverse the results of this process. But the efforts, as shall be seen in this paper, have often lead the institution of the monarchy into even deeper crises.

These developments in Lesotho contrast sharply with the events in Swaziland, one of the three formally so-called High Commission Territories. In that country the Westminster model which was favoured by the emergent petit bourgeoisie and the British was put at bay by the political out-manoeuvring of these forces by King Sobhuza II. Firstly, the monarch had already been in power for over forty years before Independence in 1968 and had provided a strong continuous grip especially over the comparatively more conservative and culturally animated rural population. In contrast, the petit bourgeoisie only began to organise politically under the Ngwane National Liberatory Congress (NNLC) barely a few years before independence. Secondly, with the launch of his own political party, the Imbokodvo National Movement (INM), the King denied the petit bourgeoisie the support of the peasantry. This was conclusively demonstrated in the elections to the Swazi National Council (SNC) in 1964, where the INM garnered 85 per cent of the vote thus, badly trouncing the NNCL. Having consolidated its overwhelming control over the SNC, the monarchical INM then used this institution to reject the constitution proposed by the British and favoured by the petit bourgeoisie. The Independence Constitution was finally drawn by a commission composed exclusively of members of the INM and their European allies in the United Swaziland Association

⁸ LBBJ Machobane, *Government and Change in Lesotho, 1800-1966* (Macmillan, 1990), p.271.

⁹ Report on Constitutional Reform and Chieftainship Affairs (Maseru, 1958) p.42.

(USA). The resultant document reflected this alignment. Booth highlights this fact thus:

The document was adapted from the British parliamentary model, but under its provisions the Swazi king was to be no Westminster-style constitutional monarch with little actual power. One-fifth of the thirty-member Assembly were to be his nominees; the remaining twenty-four were to be elected by universal franchise from eight three-member constituencies. Those constituencies were weighted toward the rural sector, where the king's political strength was centred. He was also to choose half of the twelve-member Senate, the upper house of Parliament, which could delay but not block legislation. The king would appoint as well the chief justice and the prime minister, the latter on the basis of a parliamentary majority. The prime minister, along with the rest of the cabinet, served in an advisory capacity to the ngwenyama (king).¹⁰

It is apparent therefore; that the outcome of the Swaziland Constitution was, as it were the case in Lesotho, a product of the successful strategic positioning of a particular class in the political landscape. This class was the royalty. Domestic historical factors aided its emergence as the triumphant force. In Lesotho these domestic factors had favoured the triumph of the petit bourgeoisie. I turn now to an analysis of the powers acceded to the monarchy by a constitution which was hatched under the hegemony of the petit bourgeoisie in Lesotho and the consequences suffered by Moshoeshoe II in his efforts to reverse the political emasculation of the institution.

The Independence Constitution and a Quasi-Constitutional Monarchy

The definition of the post-colonial institutions of the state and the delineation of their powers was assigned to a Constitutional Commission established in 1962 by Motlotlehi (as the King was officially styled) on the request of the Basutoland National Council (BNC). Among its terms of reference the Commission was expressly charged with defining the constitutional position of the Paramount Chief in a responsible form of Government.¹¹

This process was significantly dominated by the modern elite who lead

¹⁰ A.R. Booth, *Swaziland: Tradition and Change in a Southern African Kingdom*, (England, 1983), p.68.

¹¹ Report of the Basutoland Constitutional Commission (Maseru, 1963), p.22.

political parties represented in the BNC.¹² Although ostensibly, the principles which would underpin the proposed Constitution were distilled from evidence tendered by ordinary Basotho at public hearings, in reality they were fashioned mainly from trade-offs made *inter se* by members of the Commission. Government was to be evolved around the concept that a Cabinet nominated by a Prime Minister would exercise "direct and undivided responsibility for the entire administration of the country."¹³ Logically this concept had a direct bearing on the role and functions of the monarch. For him the Commissioners proposed that he should be a Constitutional Monarch and Head of State. It further proposed that if the concept that he would be Constitutional Monarch was accepted then, "he should enjoy sovereign immunities, be exempt from impeachment proceedings, and have an adequate Civil List charged on the Consolidated Revenue Fund."¹⁴ It was these ideas which informed the Lesotho Independence Constitution.

If the British monarchy is taken as a typical model of a constitutional monarch, then there were powers vested in the Lesotho monarchy which distinguished it from the former. An analysis of Motlotlehis's powers illuminates these differences. His powers as defined by the nature of his functions could be grouped into four categories. Firstly, there were those powers which were transplanted from Basotho political tradition which were left in his province of authority. These involved his direct authority over chiefs and land. These powers were left in him, perhaps because they were of no immediate interest to the new elite, but more likely because their removal was considered to be too sensitive at the time. The Constitution did not, however, completely rule out the possibility of removing his direct authority over the chieftainship. Section 76 (2) (h) provided a right for the Parliament to enact a law on this matter as it might see fit. Another significant category of powers related to the exercise of free choice in the appointment of one member of his Privy Council, three members of the National Planning Board and, eleven members of the Senate.¹⁵

¹² Of the thirteen members of the Commission eight were representatives of the BCP, the BNP, the MTP and the Basutoland Freedom Party.

¹³ Minutes of the Constitutional Commission dated 3/ 6/ 1963.

¹⁴ Report of the Basutoland Constitutional Commission, *supra*. p38.

¹⁵ The Constitution of Lesotho, 1966 Sections 80 (1) (b), 90 (1) and 41.

However the case, *C D Molapo etal V C. B. Seeiso (NO) etal*, has illuminated an important principle that it was not the intention of the law-giver that the nominated Senators would be the King's agents in the Senate.¹⁶

Another category of functions consisted of a rubric of 'formal powers.' In the exercise of these functions, his judgement was to be guided by certain constitutional rules or conventions developed at Westminster. The functions included the appointment of the Prime Minister and his dismissal and the dissolution of Parliament.¹⁷ Otherwise in the performance of the rest of other functions, the King was constitutionally obliged to act in accordance with the advice of the Cabinet /the Prime Minister who as suggested by the Constitutional Commission ought to exercise 'direct and undivided responsibility for the entire administration of the country.' The meaning of the word 'advice' in this context is very instructive. As Gilmour says "(t)he Sovereign can only act on the advice of her ministers and always has to accept that advice."¹⁸ This is, in fact, a deferential way of saying that the Sovereign is under duty to execute the will of the Cabinet. In practice the Cabinet executes its own will in the name of the Sovereign.

What emerges above therefore is a hybrid monarchy - one which was in different degrees both political and constitutional. Unlike at Westminster, the Lesotho King was granted some scope of influence in the economic management of the country. Control over land and influence via proxies in the Planning Board, if not in practice most certainly symbolically, created space for such influence. In the same vein, his powers to appoint non-*ex officio* Senators and his authority over chiefs also gave him some symbolic, albeit limited, clout in the political-administrative arena. Above all the Constitution intentionally refrained from envisaging the possibility for the King's dethronement in line with the Constitutional Commission's proposal that he should not be subject to impeachment. These peculiar characteristics were otherwise superimposed on an edifice which was largely Westminster. This created, therefore, a constitutional monarchy *sue generis*.

¹⁶ 1963 - 66 H.C.T.L.R. p 150.

¹⁷ The Constitution of Lesotho, 1966 sections 72 and 68.

¹⁸ I. Gilmour, *The Body Politic*, (London, 1969), p.318.

After his ascent to the throne in 1960, Moshoeshe II played a restrained role by confining his political activities to the scope conferred on his office by the 1959 Constitution. That he was not happy about the terms of the proposed Independence Constitution was, however, apparent. Chiefs, and more significantly the Marematlou Freedom Party (MFP), which had taken upon itself to speak on his behalf, were often the conduits through which his views reached the public. Around April 1966, he made a comprehensive critique of the Government's constitutional proposals. In the critique, he indicated among others, that he would be happier with the Scandinavian model of monarchy and specifically demanded that the powers to declare a state of emergency, over external affairs, defence and internal security should be vested in his office.¹⁹

It was the political circumstances brought about particularly by the ill-fortunes of the BCP in the 1965 elections which saw the King's descent into the public arena to stake a claim for substantial powers. In the first place the leaders of the BCP proved themselves bad losers in refusing to accept the verdict of the electorate in the elections.²⁰ Secondly, by somersaulting from some of the key principles which prior to the elections they most vociferously insisted should be included in the proposed Constitution, they were prepared to go to any length as spoilers. The question of the King's powers was one of those the BCP displayed an unusual *volte face* about. When it had sensed that it had good prospects of winning the elections and thus of forming government, the BCP had advocated for a complete exclusion of the monarch from the exercise of power. However after losing the elections the BCP leader, Mr Mokhehle, argued that powers over defence, external affairs, internal security and the public service should vest in the King. He proposed that these powers should be exercised by the King on the advice of a National Security Council (NSC) which would consist of the King or his nominee, the Prime Minister, a nominee of the Opposition parties, a retired judge and the Commissioner of Police.²¹

By shifting its position thus, the BCP sought to woo both the King and

¹⁹ Nketu, Vol. 2, No 15, 1966.

²⁰ The BCP Annual Conference held in December 1965 blamed BNP victory in the elections mainly on external interference.

²¹ Basutoland Parliamentary Debates April 18 - May 11, 1966 p232.

the MFP to enter into a destabilisation alliance against the BNP Government. Indeed the campaigns to destabilise the BNP by the King, the BCP and the MFP commenced in June 1966 just before the Independence Conference which was scheduled for that month in London. These campaigns involved large meetings at which the Constitution was routinely denounced for depriving the King a say in government. Moshoeshe II allowed himself to play the role of a decoy for this campaign. This was without doubt a risky adventure because he was under a constitutional duty either to support his Government or at least not to go public about differences he had with it. In making public pronouncements which opposed his Government on nationally important issues such as the Constitution, he was unquestionably repudiating that duty.

It is quite unlikely that in being involved in these activities Moshoeshe II was not aware of the risks involved nor was he convinced of the genuine intentions of the BCP. But he probably drew comfort from two prospects: Firstly, he would have drawn comfort from the fact that his dethronement was not possible since it was not envisaged in the Constitution. Secondly, it seems also that he thought that these campaigns would help the monarchy to re-locate itself at the centre of mass mobilisation. He thought, perhaps, that in this way it would regain the political initiatives which it had lost to the new elite in the 1950s.

If the initial public meetings were intended to arouse public disaffection towards the Government and the Constitution, the peaceful intentions of a "prayer meeting" which was to take place on top of Thaba Bosiu on December 27, 1966 are debatable. Leeman seems to substantiate allegations made by the BNP Government at the time that the meeting was to be used as a launching pad for the seizure of Government.²² Having previously banned the meeting and been defied by its organisers, the Government dispersed its attenders with the full brutality of the police force. Placed under house arrest and made to sign a document empowering the Government to deem him to have abdicated if he should again involve himself in politics, the King suffered his first humiliation at the hands of the Government.²³

²² B. Leeman, *Lesotho and the Struggle for Azania*, Vol.3, (University of Azania, 1985), pp.1-2.

²³ The text of this so-called Agreement was published in *Nketu*, Vol 13, No 1, 1967.

In 1970, the BNP government again demonstrated its vindictiveness towards Moshoeshoe for these flirtations with the Opposition. Having lost elections to the BCP in that year, the government decided to send him into exile when senior chiefs declined to endorse its plan to have him dethroned.²⁴ Upon his return from exile later in that year, the Independence Constitution that had granted him some scope of political influence, offered him protection against dethronement and against which he had held such strong views, had itself been abrogated. Henceforth, until the end of BNP rule his role was governed by a decree, *the Office of King Order No 51, 1970*. Under this Order he reigned at the leave of the Prime Minister (unelected for that matter) who could deem him to have abdicated if he was of the opinion that the King had violated his oath of affirmation.²⁵ As an institution, the monarchy was worse off than in 1965 and personally Moshoeshoe II had been through abuses he would not then have thought possible.

A Political Monarch by leave of a Military Junta

The January 1986 military coup d'etat against Chief Jonathan created circumstances uniquely favourable to the monarchy and the rest of the traditional elite. In the first place the new military Government was inexorably hostile to the modern political elite as illustrated in its regular denunciation of all political parties whose activities it hastily also proscribed.²⁶ Secondly, having come to office through a seizure of power, it desperately needed a legitimizing force. Thirdly, it suffered a dearth of administrative competence and experience. All these factors made an alliance with Moshoeshoe II an irresistible proposition. Like the military establishment, he not only distrusted politicians but also held them in disdain. He also had the legitimacy which the regime lacked and the acumen whose guidance it also sought.

Lesotho Order Nos 1 and 2, 1986, promulgated by the military, vested both executive and legislative authority in the King.²⁷ However, another clause stipulated that in the exercise of these powers the King

²⁴ B.M. Khaketla, *Lesotho 1970*, (Great Britain, 1972), p.258.

²⁵ Section 10 of the Office of King Order, No 51, 1970.

²⁶ This was done by a decree, the Suppression of Political Activities Order, No 4, 1986.

²⁷ section 4 (2)

shall act on the advice of the Military Council.²⁸ For public consumption, however, Government spokespersons always spoke as if the latter clause did not exist. They seemed to want to promote a perception that the King was the *de facto* and *de jure* ultimate source of executive and legislative decisions. For his part, Moshoeshoe did little to discourage this perception. But read together, the clauses did not signify a departure from the standard Westminster constitutional arrangement whereby the Sovereign is in theory vested with executive powers while these powers *de facto* repose in the cabinet. To students of Westminster, it was clear that these Orders had not in fact, changed the relationship between the Head of State and the Head of Government in which the former reigns while the latter rules.

Notwithstanding this clear legal position, however, the paradox was that Moshoeshoe liberated himself from the control of the military regime and even tentatively exercised some authority. The latter was best signified by the fact that some of the ministers of Government were his personal appointees.²⁹ His public pronouncements on official state fora also reflected his own known personal views which were often at odds with those of the military junta. It seemed, therefore, that he was more than an honorific agent of the Military Council. He even tried to influence political and constitutional developments from this very tenuous foot-hold within the government. While activities of this nature were in conflict with Lesotho Order Nos 1 and 2, they were nevertheless fully congruent with the image of the monarchy the Military Government itself was keen to craft. It may not be idle speculation that the Military Government encouraged such an overtly political role for the King in the forlorn hope that his and its own long term objectives were mutually inclusive.

Differences and power struggles among members of the Military Council once again opened questions of the actual legal relationship between the King and the Military Council. This occurred when General Lekhanya, as the Chairman of the Military Council, attempted to invoke his powers under the Lesotho Order and the King seemed to question his motives. A clause in the Lesotho Order No 2 conferred upon

²⁸ section 6.

²⁹ LBBJ Machobane, "Perceptions on the Constitutional Future for the Kingdom of Lesotho", *Journal of Commonwealth and Comparative Politics*, Vol. XXVI, No. 2, July, 1988, p. 193.

Major General Lekhanya powers to appoint other members of the Military Council.³⁰ In February, 1990 Lekhanya went to see the King with the news that he had decided to make changes to the composition of the Military Council and that certain incumbent members had been relieved of their positions. Those removed actually belonged to a faction within the Council well known for their strong royalist allegiances and among them, Thaabe and Sekhobe Letsie were in fact the King's relatives. Moshoeshe II declined to endorse the changes on the ground that Lekhanya had not furnished him with sufficient justification for effecting them.³¹ An altercation ensued between the two for a few days. Probably uncertain of whether the King had a right in law to be satisfied about the initiatives of the Chairman, Lekhanya's faction hastily enacted *the Lesotho Order, No4 1990* which repealed *the Lesotho Order, 1986* and vested both legislative and executive powers in the Military Council.

The breach between the King on the one hand and the Military Council on the other and their respective civilian minister allies grew more acrimonious and became public. In April 1990, the King was involuntarily sent into exile in England. A few months later in November, Lekhanya read before the military-instituted Constituent Assembly a litany of what he said were violations of duty by the King. In consequence of these charges, he said, the Military Council had decided to promulgate a decree deposing the King.³² This decree, *Office of King Order, No 14, 1990* provided that:

The person holding the office of King immediately before the coming into operation of this Order shall cease to be King and Head of State on the coming into operation of this Order.³³

Within days, Moshoeshe's eldest son and heir apparent, Crown Prince Mohato, was foisted by the military junta on the throne under the title of King Letsie III. Once again Moshoeshe had been drawn into a political marriage with the new elite in the hope that such a marriage

³⁰ Section 4 (2) (b).

³¹ This is revealed in a letter King Moshoeshe wrote to Major General Lekhanya on February 21, 1990.

³² The text of the speech was reproduced in the *Moeletsi Oa Basotho*, No 2836, November 18, 1990.

³³ section 12, Office of King Order, No 14, 1990.

would revitalise the monarchy and restore its political authority. Again, the consequences had exposed him personally to worse humiliation than he had endured under Jonathan and the monarchy itself been visited by more ill-fate.

A Royal Coup D'etat?

The August 17, 1994 dismissal of the BCP Government by King Letsie was a sequel to the long-drawn saga discussed above. The apparent disregard of the constitutional rights of the King by the Government formed its immediate background. But the action itself raised more questions about the King's powers than it answered. And yet, it was the 1993 constitutional settlement that foreshadowed the larger background to Letsie's intervention. This settlement, in so far as it affected the monarchy, was a calculated carry-over of the nearly thirty years of power struggles between the throne and the modern elite. It was contrived by the political/military elite as a final solution to the problem of the monarchy. It is necessary for the purpose of a clearer perspective of the issues which were at stake to understand both the context and the content of the settlement in so far as it related to the monarchy.

The political context in which *the Constitution of Lesotho, 1993* was developed bears both similarities and contrasts with the context within which the 1966 Constitution was developed. As already stated, the monarch was a marginal spectator to the process leading to the formulation of the earlier Constitution. But the process was conducted at his formal initiation and it continued to the end to enjoy his formal patronage. His interests were looked after in the Constitutional Commission by two representatives who consulted with him on a regular basis.³⁴ It owed to this representation in particular, as well as to the prestige the institution still commanded in the national political psyche, that the resultant Constitution made an effort to be sensitive to the King's interests as discussed earlier.

In contrast, the process leading to the adoption of the 1993 Constitution happened when Moshoeshe II had himself been exiled and, while it was in motion he was dethroned. His son, King Letsie III, had been foisted on the throne by the Military Government. To all intents and purposes Letsie was an honorific hostage of the military regime

³⁴ These were Chiefs N. Phakiso and R. G. Lerotholi.

and was hardly regarded by it. Neither him nor his father could even remotely influence the constitution-making process.

Secondly, this development took place at a time when the prestige of the Monarchy was at its lowest ebb because of Moshoeshe's involvement with the oppressive military regime between 1986 and 1990. Thirdly, with the exception of those politicians associated with the MFP, many of whom had fallen from grace with Moshoeshe, the rest of the political elite had even less sympathy for the institution. Among those associated with the BNP, Chief Retselisitsoe Sekhonyana was a senior Minister in the Government when Moshoeshe was exiled and dethroned and he would most certainly have had a hand in these episodes. The BCP's K. Maope was literally the architect of the Constitution in his capacity as Minister of Constitutional and Parliamentary Affairs. More than any one, the Constitution reflected his own vision of the settlement. This context impacted, in the most direct way, on the content of the Constitution, as shall emerge below.

Firstly, key among the powers which the 1966 Constitution had left as the residual prerogatives of the Monarch was his right to step in and directly exercise the reigns of power in his own right in those rare and special circumstances when "there was no government." Theoretically, this could occur when there was no Prime Minister in office to advise him. Gilmour (*supra*: 319) states the operative principle under such circumstances when he says that "when the office (the Prime Minister's) is vacant there is nobody whose constitutional advice he (the King) must follow." The possibility of there being no Prime Minister and no one to immediately replace him was envisaged by section 68 (4) (c) of the 1966 Constitution. Other instances in terms of which the residual prerogatives of the King could come into play will become apparent later in the paper.

In the 1993 Constitution these residual prerogative powers were revoked by the institutionalisation of an organ called the Council of State.³⁵ On the surface this body, save for its numeral size, was a substitution of the defunct Privy Council which had been established by the 1966 Constitution. In fact, however, the Council of State is effectively a new innovation. *De facto* and *de jure* its opinion substitutes the King's personal opinion and discretion. This becomes clear if it is re-

³⁵ This body is established in terms of section 95.

membered that there were certain functions which in their exercise under the 1966 Constitution the King was permitted to exercise his own personal judgement informed only by appropriate conventions applicable at Westminster. Among these powers are the all-important functions relating to the appointment of the Prime Minister and his removal, and his right to accept or decline the Prime Minister's advice to dissolve Parliament. In the 1993 Constitution the King only exercises these functions on the advice of the Council of State.³⁶ He no longer has the absolute discretion to appoint the eleven non ex-officio members of the Senate. The Council of State has to advise him on the discharge of this function. The complete take over of any residual powers of the King by the Council of State is further captured by section 91 (2) and (5). This clause stipulates that if the King were required to act on its advice and he failed to do so, the Council of State may itself do the act and that act would be deemed to have been done by the King. It further ousts the jurisdiction of the courts from questioning the validity of such an act.

Thus, in sharp contrast with the 1966 Constitution, the office of King was stripped of all semblance of the limited residual powers by the 1993 Constitution. In many respects the Council of State was the *de facto* appointed successor to those powers whittled away from the King. In a certain sense this body was, save for its name, the re-invention of the National Security Council which was advocated by Mr Mokhehle during the 1966 debacle. Yet in another sense it was different from the latter in that then the National Security Council was a tool conceived to whittle away substantial powers from the Cabinet and ostensibly enhance the role of the King. In contrast the Council of State takes away the remaining powers of the King and substantially extends the influence and role of the Prime Minister who is its member and alternate chairperson in the absence of the King.

Secondly, while the 1966 Constitution had drawn inspiration from the naive conclusion that since the Monarchy would act on the advice of the Cabinet, there was no sense in which he could do anything that might dictate his involuntary abdication, the 1993 Constitution shifts to the other extreme. The latter Constitution not only envisages the King's forced abdication, but makes it open to political manipulation. It provides that if in the opinion of the Prime Minister, the King has

³⁶ sections 87 (2), (5) and 83.

failed to subscribe oath or having subscribed it, he fails to abide by its terms or is unable to perform his functions, he (the Prime Minister) can report the matter to Parliament. The two Houses of Parliament could then each declare by resolution that the King should vacate office. If, however, the resolutions of the two Houses should differ, it is the resolution of the National Assembly that should prevail.³⁷ It is noteworthy that such a resolution has effect even if passed by simple majority. Thus, by these provisions individual monarchs will from now occupy the throne at the grace of Prime Ministers because the latter will always necessarily control the majority of the members of the National Assembly.

Thirdly, the 1993 Constitution was also designed to be a legal statement *finale* of the exclusion of deposed Moshoeshoe II from the throne. For although several mediations had agreed that as soon as the political situation in Lesotho had been normalised through democratic elections the issue of the re-instatement of Moshoeshoe would be revisited with the view to also normalise the throne, conspiracy among the elite, both within and without the Government, sought to make that development impossible. This was deliberately carried out by inclusion of a clause towards the end of the Constitution providing that:

The person holding the office of King under the Office of King Order 1990 immediately before the coming into operation of this Constitution shall, subject to the provisions of this Constitution, continue to hold that office (...)³⁸

This clause was intended to serve no other purpose other than to write Letsie III into the Constitution and thereby make it impossible even for the courts of law to entertain his father's claim to the throne. In the absence of legal avenues, Moshoeshoe could only kowtow to the tender mercy of whoever of the political elite was the Prime Minister to beg for his re-installation. Incidentally it was the conduct of the BCP Government stemming from such pleas from Moshoeshoe which set in train a chain of events which, together with interventions of disgruntled elements of the political elite, triggered Letsie's intervention of August 17. To appreciate this development it is necessary to locate it in the context of another clause in the Constitution.

³⁷ section 53 (3).

³⁸ Section 157 (1).

One of the rights reserved in the Crown both at Westminster and which survived in the Lesotho Constitution 1993 is the provision that the King shall be consulted and informed in all matters of government. Clause 92 is explicitly peremptory about this right. It reads:

The King shall have the right to be consulted by the Prime Minister and other Ministers on all matters relating to the government of Lesotho and the Prime Minister shall keep him fully informed concerning the general conduct of the government of Lesotho and shall furnish him with such information as he may request in respect of any particular matter relating to the government of Lesotho.

In spelling out this right the Constitution essentially re-affirmed a well-known principle at Westminster which ensures that the Head of State in whose name the affairs of the state are conducted is reasonably intimate with what is happening. From the right to be consulted springs, as the 1962 Constitutional Commission noted, two consequential rights, namely, the right to encourage and the right to warn.³⁹ In a properly working system this right is an institutional mechanism through which the Head of State can have substantial influence in the conduct of government notwithstanding his *de facto* separation from the *locus* of power. Because of the non-partisan position of the Head of State and often because he would have had a longer experience on account of the permanence of his tenure of office, he provides, as Gilmour puts it, "a valuable and disinterested, as well as utterly discreet, confidant for a Prime Minister."⁴⁰

By their nature, the Prime Minister's constitutional duty to inform the King and the latter's right to be informed and consulted being matters which take place behind the veil of the protocol between the two highest authorities of the state are beyond the purview of the public domain. Thus, the full extent to which Prime Minister Mokhehle honoured or failed to honour this constitutional duty is only known by himself and King Letsie III. That there were systematic transgressions of this constitutional duty, however, was revealed to a delegation of the Non-Governmental Organisations Crisis Committee (NGOCC) by King Letsie at the meeting at the Royal Palace during the crisis. Letsie explained that he was being denied critical information relating to

³⁹ Report of the Basutoland Constitutional Commission, *supra*, p39

⁴⁰ I. Gilmour, *op.cit.*, p.317.

government, often even on request from his office. A straw that broke the camel's back, he said, came when he learned while on holiday in South Africa in July 1994, that the Prime Minister had instituted a Commission of Inquiry to look into the character of the deposed King Moshoeshoe II, his father. He said that the Prime Minister had not taken him into confidence on the matter.⁴¹

A letter written by Letsie III to Prime Minister Mokhehle dated August 4, 1994 confirms the veracity of allegations he made to the NGOCC. In the letter, Letsie protests that the Prime Minister had established a Commission of Enquiry on King Moshoeshoe II. He expresses his "deepest dismay at not being consulted" on the matter. He stresses the fact that the issue of the monarchy, and in particular the reinstatement of Moshoeshoe II, was an issue of great national importance and one which directly affected and concerned him as a result of which it was desirable, necessary and imperative that there should have been consultation.⁴²

Since the Prime Minister's constitutional duty to inform and consult the King does not dictate the meeting of minds between the two of them on the subject of consultation, it may be asked why the Government chose to flout the Constitution in this manner. A superficial analysis of this development might tend to locate this phenomenon within the context of the less than cordial relation between King Letsie III and Prime Minister Mokhehle. While this could be a factor, there seem to be other reasons underlying the behaviour. It must be remembered that it was not only Letsie and his father who were mounting pressure on the Government on the issue of Moshoeshoe's reinstatement. The Secretary General of the Commonwealth, Chief Emeka Anyaoku, as well as the Presidents of Zimbabwe and Botswana were also exerting pressure on the Government to resolve the issue.⁴³ Mokhehle seems to have decided to relieve himself of this pressures by choosing a route that would give appearances of

⁴¹ Meeting between King Letsie III with the delegation of the NGOCC at the Royal Palace in Maseru, August 28, 1994.

⁴² Letter from H. M. King Letsie III addressed to Prime Minister N. Mokhehle dated August 4, 1994.

⁴³ A report of Presidents R. Mugabe and Q. Masire after a fact-finding visit to Maseru on February 11-12, 1994 had been specific in urging that King Moshoeshoe be reinstated to the throne unconditionally.

addressing the matter, but which would result in the embarrassment of Moshoeshoe, Letsie and the entire royalty.

The terms and composition of the Commission were particularly revealing of his real intentions. The Commission was supposed to enquire into Moshoeshoe's relationship with Governments since 1966 until when he was deposed. This was the manifestation of the highest degree of hypocrisy because in 1966 Mokhehle was himself a partner and senior accomplice in Moshoeshoe's activities of destabilising the Government. Members of the Commission included some political personalities such as Mr A. C. Manyeli, leader of the National Independence Party (NIP), and better known for his personal vituperations against Moshoeshoe for much of his political career.⁴⁴ It was apparent that the Commission was neither instituted in good faith nor was it intended to find a solution acceptable to either Letsie or his father. Letsie's letter (*supra*) reflected both the hurt and indignity the royalty felt subjected to by the institution of this Commission. Thus it is highly likely that because of the ill motives underlying the institution of the enquiry, Mokhehle decided not to consult Letsie.

But the extra-ordinary intervention was made possible because elements of the political elite had once again recognised that the monarchy can be a useful instrument in their bid for power in a similar manner to the Moshoeshoe-BCP-MFP alliance in the aftermath of the 1965 elections. Apparently contacts between Chief Sekhonyana and his erstwhile nemesis, the deposed King and the leaders of the Security Forces (who also faced a threat of an inquiry and possible invasion from outside) began in this climate. It appears that both Letsie and Moshoeshoe were being promised that the monarchy's sanctity and salvation rested within the alliance with those who had gone to the unprecedented length of dethroning Moshoeshoe only a few years earlier. Two days before the royal intervention a motley alliance of the BNP, monarchists and others disgruntled by BCP (mis)rule presented a petition to King Letsie at the Royal Palace. The petition called upon him to dismiss the Government.⁴⁵ Significantly, the petitioners were spearheaded by Chief Retselisitsoe Sekhonyana and General Metsing Lekhanya, both of whom had barely four years earlier orchestrated the dethronement of King Moshoeshoe II. Sekhonyana was the president

⁴⁴ See Legal Notice No 81, 1994.

⁴⁵ Petition presented to King Letsie on August 15, 1994.

of the BNP and both he and Lekhanya were candidates in the 1993 elections in which the BNP received a crushing defeat at the hands of the BCP. Instead of accepting defeat, and some would say, take the honourable option of resigning the leadership of the party, Sekhonyana had refused to accept the results, declined nomination to the Senate and began to scout for alliances to undermine the BCP Government.

During the early morning hours of Wednesday 17 August, Letsie made an announcement on Radio Lesotho which proclaimed that Section 85 Chapter VII, Chapter VI, Sections 87 to 97 inclusive, Sections 158 and 159 of the Constitution of Lesotho had been suspended and that the Government of Prime Minister Ntsu Mokhehle and Parliament had been dissolved. The King also announced that a provisional government representative of the people would be established.⁴⁶ A letter dated the previous day apparently sent to Prime Minister Mokhehle informed him that he had been relieved of his responsibilities as Prime Minister with immediate effect.⁴⁷ From the point of view of constitutional government the pertinent question relating to these developments is whether the King had powers to dismiss the Government and suspend key aspects of the Constitution as he did.

A large body of authorities are inclined to uphold the view that at Westminster the Queen possesses the residual prerogative to intervene and dismiss the government in very special circumstances. That residual prerogative, says Gilmour,⁴⁸ resides in the Sovereign personally as opposed to the Crown. In other words, its exercise does not need the advice of the Ministers and is in fact, autonomous and to the exclusion of the advice. What is important about this residual prerogative power is that it springs from the role of the Sovereign as the protector of the constitution. It can only be invoked in emergency situations when the constitution itself is or has been endangered. "Only if the whole fabric of the constitution were threatened," stresses Gilmour, "would the Sovereign be right to intervene."⁴⁹ But what situations could be regarded as pernicious to the entire fabric of the

⁴⁶ Statement made by H.M. King Letsie III on Radio Lesotho, August 17, 1994.

⁴⁷ Letter addressed by King Letsie III to Prime Minister N. Mokhehle dated August 16, 1994.

⁴⁸ I. Gilmour, *op.cit.*, p.321.

⁴⁹ I. Gilmour *ibid.*

constitution?

A general consensus among experts of Westminster suggests that it would be right for the Sovereign to intervene only when the government in office seeks in peacetime to prolong the existence of Parliament beyond the statutory period of five years.⁵⁰ S/he could also intervene if a party in power abandoned the parliamentary tradition and opted for a dictatorship.⁵¹ It has further been amplified that "(t)he contingent powers of the Crown may only be used to prevent unconstitutional action and to preserve the constitution. Their use at any other time would be unconstitutional, and instead of the constitution being preserved the monarchy would be destroyed."⁵²

Assuming this analysis clearly indicates the difficulty of providing a clear and authoritative answer on the question whether the actions of King Letsie III of August 17, compatibility between Westminster and the Lesotho Constitution, if the two Constitutions were fully identical it could well be argued that the Government's infringements against the Constitution warranted the intervention, because as Gilmour warns "(t)he monarchy remains 'constitutional' only so long as the government does."⁵³ On the other hand, it is arguable whether non-compliance with the duty to inform and consult the King would have warranted measures which are as far-reaching as the suspension of important aspects of the Constitution. It seems that Westminster experts lay emphasis on the fact that the magnitude of the government's infringements is of the nature as to undermine cardinal aspects of the constitutional system. It is plainly controversial whether the infringement of section 92 of the Lesotho Constitution can be granted that status.

But even assuming that violations of section 92 were considered of such grave measure as to endanger the Constitution - for example it could be said that failure to inform and consult the King undermines one of the pillars of the Constitution, that is the Sovereign - the circumstances which on that occasion surrounded the invocation of the

⁵⁰ V. Bogdanor, *Multi-party Politics and the Constitution*, (London, 1983), p.87.

⁵¹ I. Gilmour, *op.cit.*

⁵² I. Gilmour, *ibid.*

⁵³ I. Gilmour, *ibid.*

residual prerogative power in all likelihood delegitimised its use. By its nature this prerogative power is controversial because it necessarily pits the Sovereign against one set of politicians for which he may be accused of political partisanship. The danger is therefore always eminent even in situations where the Sovereign's act is motivated by the best of intentions. Bogdanor elaborates that "...if the Sovereign comes to be accused of partisanship, she could be embroiled in the kind of political controversy which could prove perilous to the institution of constitutional monarchy."⁵⁴ We can therefore draw the following conclusion from this analysis: The fact that Letsie dissolved the BCP Government consequent upon a petition from a partisan group and in his declaration cited that petition as the basis of his intervention risked plunging the monarchy in the sort of controversy it soon found itself embroiled in.

In any case, however, the exercise of residual powers is, as already demonstrated above, one area where the 1993 Lesotho Constitution is not identical with the Westminster constitution. Whatever residual prerogative vests in the King in Lesotho under the Constitution can only be exercised on the advice of the Council of State. As indicated earlier, this advice covers the entire ground related to the appointment and dismissal of the Prime Minister and the dissolution of Parliament. No evidence exists to suggest that the Council of State gave such an advice to Letsie prior to his dismissal of the Government. Secondly, neither does the Constitution envisage the suspension of any of its clauses outside the normal process of amendment by the authorised organ, the Parliament. On these grounds there is only one conclusion that can be drawn about the intervention: It was unconstitutional and as such amounted to a *coup d'etat*.

Conclusion

Three issues emerge quite clearly from this discussion. In the first place it is self-evident that the legal instruments which locate state power relations between the Head of State and the Head of Government in Lesotho since the eve of independence have centralised power in the latter and his Cabinet and marginalised the role of the former to a ceremonial figure-head. This is true irrespective of whether it was the formal constitutions of 1966 and 1993 or decrees which had

⁵⁴ V. Bogdanor, *op.cit.*, p.89.

constitutional status instituted during authoritarian regimes between 1970 and 1993. This is not necessarily an evil development and in the context of bourgeois liberal democracy which attaches sacrosanct premium to the electivity, accountability and responsibility of high political offices, it is self-evidently a progressive constitutional evolution. Of course it falls outside the scope of this paper whether bourgeois liberal democracy is necessarily, logically and in all respects superior to the traditional system of governance, which was apparently preferred by Moshoeshe II, and whether the latter system can be adapted to the needs of a society not any longer organised around semi-communal-cum-feudal subsistence economy.

And yet it is utterly false that the struggles with and against the monarchy have been first and foremost between an anachronistic institution armed with an atavistic agenda on the one hand and the forces of bourgeois liberal democracy on the other, as many a scholar would have us believe. The fallacy of this presumption is rendered apparent by the fact that neither the Jonathan civilian nor the Lekhanya/Ramaema military dictatorships between 1970 and 1993 could make claims to democracy in whatever form, let alone bourgeois liberal democracy. Nor should the behaviour of the BCP before the 1965 elections when this party strongly advocated for a strict constitutional monarchy only to turn around to campaign for more powers for the monarchy when it had lost elections be accepted as consistent with any notion of democracy. Secondly, it is often easily forgotten that with regard to socio-economic issues and in the international political arena Moshoeshe II, a social-democrat of sorts, was a moderniser who projected a more progressive outlook than anyone of the regimes that the country has experienced until now. The only imperative conclusion that can be drawn from this analysis is that very much of the trajectory of tribulations which the country has traversed through in the last thirty years or so has had little to do with the issue of democracy, constitutional rule and modernisation being the central driving motives on the part of the political class, namely, the monarchy and the modern elite. It is quite clear that these struggles have been concerned with the determination of the heirs to the former Lesotho colonial (e)state. The developments leading to independence seem to have won this struggle for the modern petit bourgeoisie as a corporate class and set in train the enervating preoccupation of the monarchy to reverse this state of affairs.

There is the second point which would have emerged from this acc-

ount. This is the fact that given its acute streak of opportunism, the *petit bourgeoisie* bears principal responsibility for failing to abide by its own constitutional contrivance that the monarchy must be above politics. It is doubtful whether in 1966 and between 1986 and 1990 Moshoeshe II would have had the courage and means to descend into the political arena were he not goaded into these adventures by the leaders of the BCP and the Military-civilian bureaucracy, respectively. The same observation applies to Letsie III's adventure in 1994 in which the leaders of the BNP were clearly the instigators. Thus, in the struggles against one another, camps within the modern elite have always found in a monarchy — fighting a desperate rear-guard battle to regain power — a readily willing instrument for their own objectives. This disposition on the part of this class is the primary obstacle to the stability and conclusive entrenchment of constitutional monarchy in the national political psyche.

Thirdly and finally, the consequences of these adventures on the part of the monarchy have tended to hurt the institution's self-esteem more than its allies of convenience, the politicians, who appear to be immune from political embarrassments. These adventures have only caused Moshoeshe a series of humiliations, including his removal from the throne for five years. They have resulted in the political class taking advantage of the monarchy's indiscretions to further gerrymander the constitutional order to marginalise the institution from the centre of political power more than before. In this regard, Letsie III's intervention in 1994 was unique in its consequences. It succeeded to secure him his apparently limited objective of reinstating his father to the throne. Secondly, his personal position and the status of the monarchy emerged from this episode unaffected. In view of the provisions of the current Lesotho Constitution, which place the incumbency of the King at the mercy of the National Assembly, it is obvious that only the sympathy and understanding of the reasons for his unconstitutional actions by the interlocutor Presidents of the neighbouring countries saved him.⁵⁵ It is doubtful whether similar actions in different circumstances would not have resulted in his dethronement.

⁵⁵ He was rescued by 'the Understanding of Measures for the Restoration of Constitutional Order in Lesotho' brokered by Presidents R. Mugabe, Q. Masire and N. Mandela which exempted the application of the provisions of the Constitution on him for his act of removing the Government by unconstitutional means.

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