



# Multi-stakeholders call for a constituent forum to lead reforms



Development for Peace Education  
NTLAFALO: THUTO KHOTSO LE BOITJARO



1 Oak Tree Garden  
Qoaling Road, Old  
Europa  
Private Bag A483  
Maseru 100  
Lesotho



(+266) 2232 6855



dpecord0@gmail.com



[www.dpe.org.ls](http://www.dpe.org.ls)

## By DPE Communications

At the closure of the 2018 NGO week, a multi-stakeholder gathering called for the establishment of an all-encompassing structure named Constituent Forum which shall sit periodically through scheduled sessions to safeguard and shepherd the national reforms process.

This call came out as the peak of the closure of the Lesotho Council of Non-Governmental Organisations (LCN) organised NGO week.

Titled; **“EMBRACING PROGRESS MADE, SAFEGUARDING AND SHEPHERDING THE PROCESS”**, *Participatory, inclusive, non-elitist, people-driven reforms*” the call was presented by the Development for Peace Education National Coordinator Sofonea Shale.

Exploring the current state of the reforms process, in his presentation Shale forecast on the challenges and gaps which he says are dominantly overlooked and urgently need to be addressed.

Shale’s argument was that after the plenary II of the National Dialogue Planning Committee (NDPC), there would be no one taking care of the work that would have been done.

His question remained; “the NDPC would have run its course, who will

then take care of the work that would have been done?"

He signalise "undue government influence and inability to secure adequate majority to change constitution at the end of reforms dialogue in terms of Section 85 which in detail talks about alteration of the constitution."



Shale says that between now and May 2019 Lesotho is guaranteed attention of Chair of SADC Facilitation team former Chief Justice Dikgang Moseneke and suggests all-encompassing structure named Constituent Forum to be established.

Emphasising legalisation of the Constituent Forum, he also added that such a Constituent forum sitting periodically on scheduled sessions to safeguard and shepherd the reforms process: Chair, technical committees on thematic areas of reforms".

He adds that this legislation of the constituent forum would, if the Civil society proposal is allowed, need "passing of a Lesotho Reforms Act forthwith that (i) legislates Constituent Forum and (ii) subjects all sections of constitution to public scrutiny and provide that they shall stand as Basotho would have decided through defined reforms processes and or Referendum".

He said the Civil Society proposes that moving from here there would be a need for a discussion of the features and powers of the Constituent Forum which he adds would need to be endorsed by the



Leaders Forum.

He adds that there is a need to allow consultations and Plenary II to proceed as planned with the NDPC in place albeit broadened consultations.

“There is a need to legislate Referendum Act in a manner that speaks to the civil society proposal and also enact Lesotho Reforms Act that should clarify the following: (i) Constituent Forum (ii) Reforms process guarantor (iii) Modalities (iv) Reference (v) Dispute resolution mechanism,” Shale said.

Citing His Majesty King Letsie III on the occasion of the opening of the multi stakeholder national dialogue plenary I, Shale said through this civil society proposal Basotho should see reforms as their own and necessary process not as an imposition from Southern African Development Community or elsewhere.

Shale said in the post National Dialogues period, “we recognise that this process has actually healed some wounds and marked the turning of a new leaf and the antagonism that existed has subsided” among political actors and members of the public.

This, he said, calls for civil society to applaud the country’s leadership as it has given a “breath of life to the hope that was waning among the public”.


He also lauded the NDPC which he said has also done a good job in bringing a diverse participation and managing such a big forum in reference to the multi-stakeholder national dialogue plenary I.

But, he registered the civil society concerns over representation of all sectors of the society saying “we have constantly been bothering the NDPC on ensuring that all sectors of the society are represented in the multi-stakeholder National Dialogue take part in the process”.

He said after national dialogue it will be consultations and then plenary II of the national dialogue, but proposes “can’t we extend the avenues of soliciting citizens voices?”

Shale poses the quest around the consultations and stresses a need for a wider scope for consultations with Basotho to cultivate ownership of the national reforms.

“Can the consultations be extended beyond districts, community councils, villages to the sectoral consultations, public debates and or dialogues sessions?”



“There is a need to widen the scope of the consultation and the plenaries so that other avenues for making contributions are opened to allow wider participation.

“Some people are writers and they are not in Lesotho and they would like to participate in the process.

“There are some who may not know how to read and write but through use of television and drama they can air their views easily and communicate their desires,” said Shale.

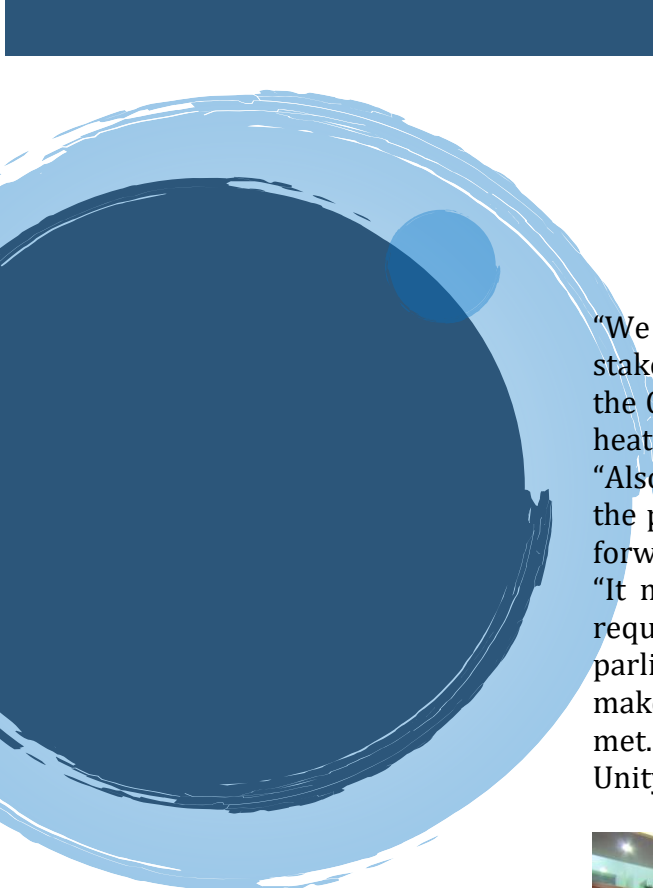


Shale further adds that the Civil Society recognises the fact that the national reforms are intended for the country future and as thus there is a need for wider engagement and participation of the youth in the processes of the national reforms.

“There are also youths. If the reforms are meant for the future, would it not be necessary for the scope to be widened for the youths to take part in the reforms process?” said Shale.

Shale, presenting more nuanced details of the civil society fears said the two key challenges that shall be docking the country as the nation progresses towards the multi stakeholder national dialogue plenary II.





“We see two challenges on the route towards Plenary II of the Multi-stakeholder national Dialogue. If it is not clear in the post Plenary II, the Government may take over the reforms process and then stir up heated opposition and contest.

“Also government may be tempted to also pick and choose which of the proposed reforms issues should be part of the documents going forward and this may stir up a lot of public outcry.

“It may happen that issues raised may concern the constitutional requirements for two thirds majority and if it is not clear, then in parliament the opposition parties may hold the process ransom and make demands. Like their various demands which have not yet been met. For example there is still a demand for a Government of National Unity” said Shale.



Shale argues it is the forgoing scenarios which could be posed by both government or by opposition that worries the civil society movement in the country and brings fears that “there shall be a situation where the people would be held ransom”.

It is on the basis of this premise that Shale adds that the civil society demands that the country must have a conversation about what should transpire in the post multi-stakeholder national dialogue time. Shale further adds that the civil society wonders “Should we trust the politicians whether in Government or in Opposition?”.

He adds that if the post multi-stakeholder national dialogue plenary II is left unclear, both opposition and government may have their own ways of doing things if things with their best interest the determining factor.



He continues that the opportunity that exists for Lesotho is that there seems to be a spirit that we are under a microscope of SADC facilitator Justice Moseneke and people believe that during this time things shall work well.

“So, we suspect that if this time comes to pass, maybe after elections Moseneke would be appointed a minister after the coming South African elections. We may get to a scenario where we would need to get a big push again to move forward and out of a gridlock.

“We would like us to speak and have a conversation now while the environment is still favourable.

Commenting from the floor, the White Horse party Leader Mohau Thakaso notes that there are various sectors within the country and all sectors have political interests of their own and he adds that when these sectors representatives are elected to Parliament they tend to forget about all the demands and needs of the sectors they represent.

“We’ve had very educated leaders and some have been professors. Above the presentation, please let the politicians do their political work. Let’s leave the parliament do its work and avoid the embarrassment of the past 52 years.

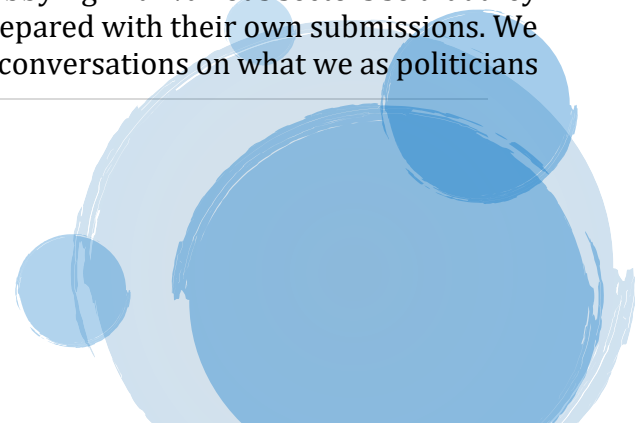
“Politicians cannot be sued until he is out of office. Then when he is out of office, you can take him to task over their wrong doing. We can point crystal clear examples. What is clear is that our beautiful laws are dormant and they do not work and so do our institutions.


“During the multi-stakeholder national dialogue, I was at the breakaway where we focused on the Judiciary, and the former sports Minister (Mahali Phamotse) made a truthful statement that the opposition and government have their own judges, and I concur that it is true and no one can change that,” said Thakaso.

On another note, the Lesotho People’s Congress represented by Moipone Piti raised concerns about the Civil Society’s proposal for the establishment of the constituent forum.

“It is known that there are various proposals from various sectors of the society that have their own proposals on what these structures you are talking about should look like.

“We should have done more lobbying with various sectors so that they also come to this gathering prepared with their own submissions. We should have been given prior conversations on what we as politicians





are proposing on this.

“We should be coming up with submission on what kind of experts, especially on the inclusion of experts should we have in mind. How should these experts be appointed or be hired to advice the constituent forum or whatever name it shall have,” said Moipone.

For his part, Dr Fako Likoti representing the Democratic Congress said he applauded the civil society’s proposal presentation by Shale. Likoti further said he takes that there is a dire need for conducive environment for reforms to take place.

“There are people who continuously flee the country and also there are people who are still outside the country and its necessary to include these in the proposals,” said Likoti.



Professor Nqosa Mahao, National University of Lesotho Vice Chancellor and brother to slain army commander Maaparankoe Mahao, said the civil society’s proposal presented by Shale was perfectly structured but raised reservations that “one needs to caution the civil society”.

“On the two challenges/dangers... the above one is on undue government influence...you could have chosen a more partial wording.



“You are demonising the government and your ceasing to be a neutral umpire and we know that the opposition is doing all it can to influence or impose its undue influence over the process already,” said Mahao. Mahao argues that in other situations where there democratic elections have been held, the parliament is reconstituted into a constituent assembly.

He adds the question is why civil society is proposing to destruct those who have been duly appointed to make laws, including the remaking of the constitution by the people.

“At the beginning you spoke about inclusivity which I applaud. Reflecting on the National Leaders forum we just had. Exactly how was it inclusive?

“We have been thrust into the reforms because of incidents that happened and the international community said embark on the reforms.

“Key stakeholders were not included in the multi-stakeholder National reforms dialogue plenary I, I am not imputing the responsibility on you. But as civil society are you comfortable going ahead with the process and the forums without or minus the victims of the atrocities?

“Are you going to advice that we review and include the victims to take the front seat? I foresee the need for the victims to take the front seat of the process of the reforms process,” said Mahao.

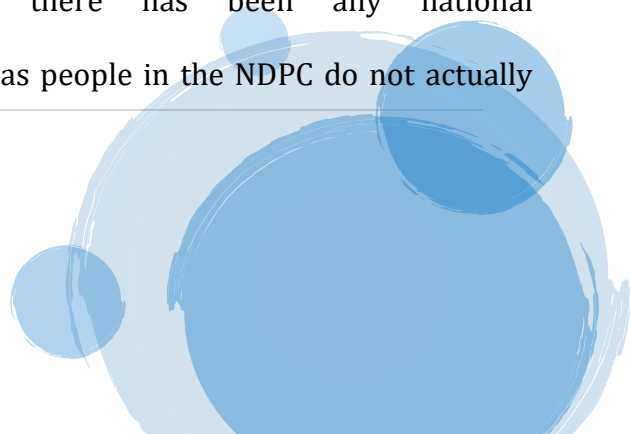
The Areka Covenant Front For Development (Baena) leader, Paul Masiu commended the DPE for organising the forum over the proposed Constituent forum.

But, Masiu making a follow up on Piti’s sentiments said the interest to have a structure appeared in the communique of SADC and one felt there is a need for another meeting to take place and have a conversation on this issues of the structures to take over the work in the post NDPC term.


“One felt that there is an opinion that the NDPC shall go ahead. But it was said that we’d agree on the implementation mechanism in the Plenary II.

“But these NDPC, we have learned has already started to take submissions even before there has been any national pronouncements made.

“We also have the same fear as people in the NDPC do not actually







report back to their sectors. We still have legal structures...like Government that is legally elected.

“But even though there is government, when the people are the one driving the process and need to own the process and the product, we may have government but we should remember it has its own political party’s interests emanating from its manifesto. So we need to be clear on what type of terms of reference shall this constituent forum have? The question is who shall be the members of or part of the constituency forum,” said Masiu.

Masiu further asked “what would happen if President Cyril Ramaphosa was to redeploy Moseneke?

“I would say we should call this body the Forum Authority of Lesotho. I know that people prefer not to mention IPA (Interim Political Authority), which was made up of only politicians, but we should come up with a structure that shall be legally constituted by a law of parliament like the IPA was and have it very inclusive of all sectors,” said Masiu.

Commenting on the civil society’s proposal the All Basotho Convention Mabote constituency legislator Fako Moshoeshoe asked the civil society “are we reforming or is this a coup? I say this in line with what I heard being said in the proposal. Please teach or make me understand”.

In response, Shale engaged the floor saying the civil society is making its own proposal as part of the NGO Week celebration and adds in the first three days civic groups get to have opportune time to have a conversation about things like this as a sector.

“This shall strengthen our views on issues of interest and we decided to bring everything together and talk to one another.

“There were already views that we should talk about this issues and have a conversation about this,” said Shale.

Responding to Mahao’s questions, Shale said apologised that the civil society proposal gave an impression that it is thumping nose to an elected government.

“We are not belittling government. The issue is that incumbency is accompanied by its own arrogance. It is true that beautiful things in this country have been destroyed by arrogance of incumbency.



“Another important issue I wanted to touch on is that we are not trying to discard parliament, but if we were we’d be talking about section 85 of the constitution. We are actually saying how best we can strengthen the parliament to deliver on this reforms work.

“The truth of the matter is that, in most cases, you find that we are at a time when our democratically elected leaders are now being whipped into line by their peers from other countries,” said Shale.

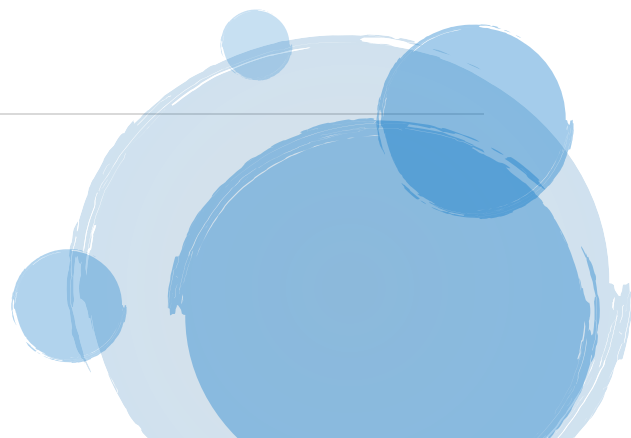
Shale told the gathering that *Ntate* Lenka, argues that soldiers in Zimbabwe captured state power and pronounced that there is no coup, and the world should stay away.

He adds that in the past, when the country’s constitution was being tested, Sidney Mofomali was told he should put the constitution down and let the regional peers make decisions, a decision that “we hear was recently made on how our country should be governed”.

He noted that civil society is not necessarily saying parliament would be cast aside.

“On issues dealing with the judiciary, the law provides that there is a need for two thirds and referendum...double entrenched. This, we are saying experts should help us to ensure things run smoothly,” said Shale.

He notes that in the past, DPE, attempted to advocate for inclusion of the Victims when talking to those who are victims and adds that there is no problem for the victims to be given a role to play in the reforms process.





On the other hand, the LCN's Executive Director Seabata Motsamai, allayed fears by Moshoeshe saying "on *Ntate Fako's* question of whether we are reforming or staging a revolution... we are still in the spirit of the reforms and we cannot and are not in any way on a cause for a revolution.

"We need to come together and stand together and support each other for the reforms to go ahead smoothly".

Motsamai said the country should go to a referendum over reforms as the last solution and not follow the constitutional dictates which if tested could lead to the divide nation failing to forge ahead due to failure to explore all other avenues that bring unity.

"The Prime Minister mentioned the need for the reforms not to be turned into a political battle field and be held ransom. We should make sure we are able to resolve any gridlock through various structures. And if we strive to have such, we would have smooth reforms.

"With your thoughts, we invited you to help us built on this proposal. If we are saying, we should not have undue influence of government; we are saying there should not have a spirit of use of numerical supremacy in parliament used to win any issues.



“There is a need for a conducive environment and ensure all things can happen easily and all shortcomings are resolved without hurdles,” said Motsamai.

Responding to questions raised over the inclusion of victims of atrocities, the Transformation Resource Centre’s Director Tsikoane Peshoane said these victims and their families have had a large role to play in the journey that the country is undertaking to reform its governance systems.

“It was a huge mistake that we have not included them in this process. We also have no time to address the grievances of these victims, which is a huge mistake that needs to be rectified.

*“Leihlo ha le ipulule...(An eye cannot blow itself). It is all antagonism between government and opposition on various issues of the reforms. We do understand and hear the reasons shared by both the government and the opposition.*

“All concerns and interests, as they have raised them should be part of the conversation we are all having. But if we do not have such a Constituent Forum, we will take a lot of time with gridlocks between government and opposition constantly.

“There is a need for this Constituent Forum as it shall push for the conducive environment to exist such that the reforms process shall continue smoothly,” said Tsikoane.

The All Basotho Convention Deputy Spokesperson Major General Sam Makoro weighed in on the proposed constituent forum.

He noted the constituent forum could be too large to operate smoothly.

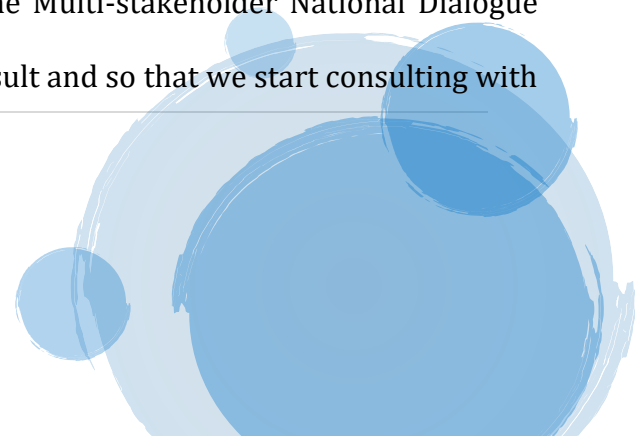
Representing political parties outside parliament, Pelele Letsoela of the Basotho Democratic National Party protested that the civil society’s proposal feels like holding political parties ransom.

“You are selling NGOs’ proposal to us knowing that we also have our own proposals that do not necessarily clash with your proposals.

“In 2015, we had various consultations of these issues. In 2017, we ended coming up with a manageable list that we talked about.

“We talk about a custodian of the National Reforms process. This body shall be a liaison between the Multi-stakeholder National Dialogue and the Parliament.

“We need to go back and consult and so that we start consulting with







our constituents and with government and show it what we have in mind. So that when we get to the National leaders forum or the National Dialogue we can easily agree on issues and size of the body we have in mine,” said Letsoela.

He further adds that in the past, the IPA structure was built and then Prime Minister suggested the name be Interim such that both parliament and government do not feel threatened by the existence of this structure.

Stating the Democratic Congress’s stand point, the Official Leader of Opposition Mathibeli Mokhothu applauded the proposal by the civil society.

Mokhothu showed the need for leaders to have frank conversations and come shoulder to shoulder and engage one another in dialogue frequently.

“We should come to a point where opposition and government can meet and have frank discussions before going to the forum where we can make agree and know where we differ.

“So that we do not go to the open forum to disagree like people did at the Multi-stakeholder National Dialogue on the proposal for a Truth and Reconciliation Commission and need for national healing.

“We cannot afford to make patch work on these constitution, we should look at it from chapter one to the last chapter. We need to have a constitution that shall strengthen our economy and independence of our country,” said Mokhothu.

He also made emphasis that the reforms process needs to be safeguarded from the instability of coalition government.

“We should safe guard the process from the unstable governments, opposition, parliament and let it remain a people’s process. We should be clear what the role of the parliament shall be when we get to the parliament.

“We’ve recently seen when the parliament discarded and re organised agreed agreements and introducing own thoughts into the agreements arguing its government. We do not have a problem with the constituent forum or authority.

“NDPC consultations to the people should be approved by the National Leaders forum so that the NDPC shall not go to the people with things that we as the leaders have not approved,” said Mokhothu.





Giving the Independent Electoral Commission's view, commissioner 'Mamosebi Pholo said the commission applauds the civil society's proposal adding "it was appearing as though we were travelling in the dark".

"Even though people differ on opinions, some argue LCN and DPE are holding them ransom, but this to me is just the beginning of the reforms process. What legal document is guiding us on these reforms? "There is a need for this reforms Act. My question is... looking at the reforms process from the beginning; there has not been anyone who mentions anything about electoral reforms.

"I foresee a situation whereby we may need to go to electoral reforms after this whole process is completed. We've already identified need for reforms in the electoral laws and I believe we need to also consider that as we consider laws that need reforms. This is food for thought.

"We foresaw the need for a referendum and we already have a draft referendum law which people who make up the law committee within the IEC know about," said Pholo.

Making a comeback Moshoeshoe showed his appreciation and applaud to the civil society over its proposed structure.

"Are there any political risks that could befall us that need to also be managed. For instance going to elections before May 2019 due to major political events are some of the possible things in this country.

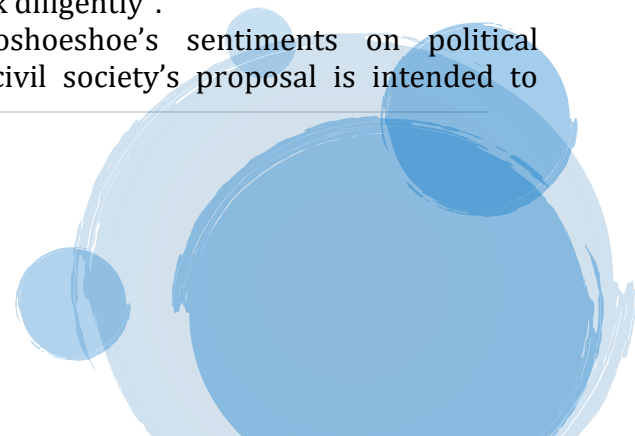
"Don't we think there is a need to go into the constitution and suspend some of the powers within the constitution of the politicians to make sure that we do not have political events that may threaten and suspend this reforms process," said Moshoeshoe.

Boi Mohapi of the Catholic Commission for Justice and Peace said this is the beginning of the reforms process.

Mohapi said: "We have a very wide representation here and we cannot per say say who is who in here. But we have invited widely. I've heard many of the speakers agree to the thought but the structure and the terms of reference would be fine-tuned when the proposal goes to other higher stages.

"There is no doubt that Basotho experts can be appointed to assist the country to undertake this task diligently".

Motsamai corroborated Moshoeshoe's sentiments on political instability adding that the civil society's proposal is intended to





mitigate the political risks and agrees that political risks do exist. Motsamai further added “If there gets to be parliamentary instability we would as a country need to ensure we protect this process. Even if there comes a change of government we should not worry about the government discarding/ disowning the process when it comes into office”.

Motsamai argued this is safeguarding the process is necessary due to the unpredictable nature of parliamentarians.

“If the political parties cannot be steady on what kind of architecture do they want to see the country have then we will always have a problem.

“Yes there is a need for sectoral conversations on all things and their livelihood and whether it is viable to have political parties or not.

“We do also need to know about the registration and registry of political parties and such things could be clear what the IEC should work and regulation of parties and all things like party funding and need to safeguard possible corruption linked to party funding.

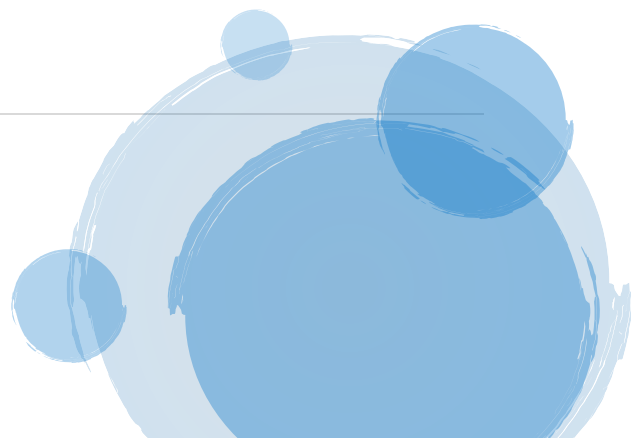
Wrapping up, Shale said it has been agreed on a structure that shall shepherd the process and this other structure.

“We may actually agree that when we next meet, we would agree on what is our take about the shape of the structure and so that when we meet at National Leaders forum we have a clear agreement in issues.

“We have a challenge as a country that we do not agree on issues but there are no talks about issues and hear one another’s views. It would be important to have the conversations often and build consensus,” said Shale.

On the lost electoral reforms, Shale said all has not been lost.

“If we agree to expand the mode of having consultations beyond going to the districts and planery II so that we can get the submission even from the IEC so that we can actually have more inputs,” said Shale in conclusion.





Powered by:



**Brot**  
für die Welt

