

EISA Pre-Election Assessment Mission Report



**KINGDOM OF LESOTHO
08-12 December 2014**

LIST OF ABBREVIATIONS

AABC	All Basotho Convention
ACP	Alliance of Congress Parties
ACF	Areka Covenant Front for Development
ADC	All Democratic Corporation
AG	Attorney General
AUM	Africa Unity Movement
BAC	Basutoland African Congress
BBDP	Basotho Batho Democratic Party
BCP	Basutoland Congress Party
BDF	Botswana Defence Force
BDNP	Basotho Democratic National Party
BDRP	Broadcasting Dispute Resolution Panel
BNP	Basotho National Party
CCL	Christian Council of Lesotho
CSOs	Civil Society Organisations
DC	Democratic Congress
DPE	Development for Peace Education
DPP	Director of Public Prosecutions
EMB	Electoral Management Body
EISA	Electoral Institute for Sustainable Democracy in Africa
IEC	Independent Electoral Commission
FPTP	First Past the Post (FPTP)
KBP	Kopanang Basotho Party
LCA	Lesotho Communications Authority
LCD	Lesotho Congress for Democracy
LCN	Lesotho Councils of Non-governmental Organisations
LDF	Lesotho Defence Force
LEP	Lesotho Education Party
LMPS	Lesotho Mounted Police Service
LPC	Lesotho Peoples Congress
LMM	Lekhotla La Mekhoa Le Meetlo
LTV	Lesotho Television
LWP	Lesotho Workers Party
MFP	Marematlou Freedom Party
MPLCs	Multiparty Liaison Committees
MSA	Maseru Security Accord
MOU	Memorandum of Understanding
NDP	National Democratic Party
NGO	Non-Governmental Organisation
NIP	National Independent Party
NLFP	New Lesotho Freedom Party
NPP	National Progressive Party
MP	Member of Parliament
NUL	National University of Lesotho
PD	Progressive Democrats
PEMMO	Principles for Election Management, Monitoring and Observation
PFD	Popular Front for Democracy
PR	Proportional Representation
RCL	Reformed Congress of Lesotho
SADC	Southern African Development Community
SAPS	South African Police Service (SAPS)
SANDF	South African National Defence Force
SSD	Lekhotla la Senkatana
TRC	Transformation Resource Centre
UN	United Nations
UNDP	United Nations Development Programme
UP	United Party
WHP	White Horse Party

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EXECUTIVE SUMMARY

The Electoral Institute for Sustainable Democracy in Africa (EISA), deployed a two person Pre-Election Assessment Mission (PAM) to Lesotho from 08 December to 12 December 2014. The overall objective of the Mission was to assess the political and electoral environment ahead of the forthcoming February 2015 Parliamentary elections. The Mission assessed whether or not there are conducive conditions existing for the conduct of credible elections in line with regional and international norms such as the African Charter on Democracy Elections and Governance; the Principles for Election Management, Monitoring and Observation (PEMMO); SADC Principles and Guidelines for Democratic Elections. The Mission also looked at the state of readiness of the Independent Electoral Commission (IEC), political parties, CSOs and other stakeholders for the forthcoming election. It also looked at the progress made by the Southern African Development Community (SADC) mediation in preparation for the elections. Findings of the Mission will be used by EISA as it prepares to deploy its Observer Mission to Lesotho for the elections.

During its stay in Lesotho, the Mission met with all the key stakeholders in the electoral process, including the SADC Mediation Team in Maseru as well as the traditional institution of the College of Chiefs (See Appendix 1). The main findings of the Mission and analysis of its implications for the electoral process are that the 2015 elections will take place against the background of political instability and security uncertainty. While the elections calendar had been issued already, there are doubts on the credibility of the voters' roll and that the Independent Electoral Commission (IEC) had not yet received funds for the elections.

2. HISTORICAL BACKGROUND AND CONTEXT OF THE 2015 ELECTIONS

The history of the Kingdom of Lesotho's politics and elections is characterised by periods of conflict with

a number of democratic gains, often followed by reversals. For instance, after organising successful pre-independence multiparty elections in 1965, the country became a one party state five years later in 1970. This was followed by military dictatorship from 1986 to 1993. The rebirth of multiparty politics in 1993 was short lived as a democratically elected Basutoland Congress Party (BCP) government was overthrown in 1994 by the King, only to be reinstated in the same year through Southern African Development Community (SADC) mediation¹. The BCP government was however overthrown for the second time in 1997 by its own leader who formed a new party in parliament, the Lesotho Congress for Democracy (LCD) and declared himself as Prime Minister. The LCD went on to win the 1998 election, but its election victory was fiercely challenged by opposition parties leading to a near civil war, which was only averted after the intervention of SADC armed forces².

After political dialogue among political players, Lesotho changed its electoral system from first-past-the-post (FPTP) to a mixed-member proportional representation system (MMP) in 2002. The new electoral system was introduced to address election related conflicts, which had plagued the country since independence. For the first time the country enjoyed relative peace and political stability after the 2002 elections with a more inclusive parliament as a result of the compensatory nature of the MMP system. However, the benefits of the electoral reform were reversed during the 2007 elections when the two main political parties – the LCD and the newly formed All Basotho Convention (ABC) - modified the MMP system into a mixed member parallel model system thereby gaining unfair advantage in the allocation of seats. These systems will be explained in the next chapter of this report. This modification of the electoral system resulted in a five-year political stalemate over the allocation of parliamentary seats. After an unsuccessful intervention by SADC, the then ruling LCD and opposition parties agreed to a civil society-led mediation that culminated in the reforms ahead of the 2012 elections³.

¹ There BCP government was overthrown mainly as a result of its refusal to reinstate King Moshoeshoe II who had been exiled by the military in 1990. The military had installed his son Letsie III as king and differences between Letsie III and the BCP government over the return of his father from exile and reinstatement to the throne was the basis for his overthrowing the government.

² The SADC armed forces comprised of Botswana Defence Force (BDF) and the South African National Defence Force (SANDF)

³ The CSOs mediation process was led by the Christian Council of Lesotho (CCL) and the Lesotho Council of Non-governmental organisations (LCN) with SADC playing a supporting role.

2.1 The 2012 Elections and their Aftermath

The 2012 elections were preceded by extensive constitutional and electoral reforms aimed at preventing disputes around seat allocation during the 2007 elections as a result of the modified electoral system. The elections also took place shortly after the split of the ruling LCD giving rise to the Democratic Congress (DC).

The LCD leader, who was also the Prime Minister, Mr. Pakalitha Mosisili, had left the LCD to form the DC, which usurped power through the defection of 44 LCD

members to the DC, thus making the former ruling party the opposition. Although the DC won the highest number of constituencies (48 out of 80), it did not attain the requisite majority of 50% plus one of the total number of seats which is required to form government (see table 1 below). Government was therefore formed by a coalition between the ABC, Basotho National Party (BNP) and LCD which were clearly “punishing” the DC for its “hijacking” of power and relegating the LCD to opposition on the eve of elections.

Table 1: Lesotho 2012 General Election Results and Seat Allocation

Party	Total party votes	FPTP Seats won by party	Party's Compensatory Seats	Total Number of Seats	% Party Votes	% Seats won
ABC	138 917	26	4	30	25	25
ADC	1 933	0	0	0	0	0
ACFD/BAENA	1 227	0	0	0	0	0
AUM	724	0	0	0	0	0
BBDP	2 440	0	1	1	0	1
BCP	2 531	0	1	1	0	1
BDNP	3 433	0	1	1	1	1
BNP	23 788	0	5	5	4	4
DC	218 366	41	7	48	40	40
KHOEETSA/ PFD	11 166	1	2	3	2	3
LCD	121 076	12	14	26	22	22
LPC	5 021	0	1	1	1	1
LMM	1 691	0	0	0	0	0
LWP	2 408	0	1	1	0	0
MFP	3 300	0	1	1	1	1
NIP	6 880	0	2	2	1	2
SSD	1 081	0	0	0	0	0
WHP	252	0	0	0	0	0

Independent Candidates

Party	Total party votes	FPTP Seats won by party	Party's Compensatory Seats	Total Number of Seats	% Party Votes	% Seats won
Ntjatsane # 5	979	0	0	0	0	0
Molati # 10	515	0	0	0	0	0
Leoma #11	531	0	0	0	0	0
Mokone # 15	230	0	0	0	0	0
Bopa # 19	635	0	0	0	0	0
Maqelepo # 27	160	0	0	0	0	0
Kotel-Molaoa # 33	726	0	0	0	0	0
Khomari # 48	1 692	0	0	0	0	0
Ranooe # 49	34	0	0	0	0	0
Total votes	551 726	80	40	120	100	100

Source: Lesotho Independent Electoral Commission 2012

Failure of elections to produce a clear winner and the subsequent formation of a coalition government was unprecedented in Lesotho's electoral history. Despite a deal between the ABC, BNP and LCD to form a government, all was not well in the coalition.

2.2 The Coalition Politics and Collapse of Government

The most notable single development which did not only lead to the collapse of the coalition government, but also put Lesotho's democratic credentials to test was the political crisis triggered by King Letsie III's dissolution of Parliament on 10 June 2014 on the advice of the Prime Minister Thomas Thabane. Dissolution of Parliament happened at a time opposition parties, joined by the LCD, were planning to cast a vote of no confidence against Prime Minister Thabane. Prior to this development, a number of factors signaled the potential failure of the ABC/BNP/LCD coalition. These include: differences in ideological orientation and political agenda; lack of trust between the coalition partners, particularly between the ABC and LCD, as well as the Prime Minister's anti-corruption campaign.

Coalitions are, by nature a, complicated arrangement and usually encounter problems if member parties do not share a similar ideology. The coalition in Lesotho experienced this problem, as it was not based on ideology but instead was bound together by other political interests. Consequently, the three parties hastily coalesced with the view to keeping the DC away from power, but forgot to attend to equally fundamental aspects of coalition politics, which are drawing a memorandum of understanding (MOU) between its members, prior to the formation of the coalition, to provide guiding principles for the sustainability of the coalition and establishing a coalition management structure, including a dispute resolution mechanism⁴. This was a fundamental mistake, particularly given the history between the coalition partners. Whereas the coalition provided an opportunity for the BNP to revive it from its political abyss since 1986 when it was overthrown by the military, it instead created a challenge for the ABC and LCD, which were "strange bedfellows" given that six years before the coalition, the ABC split from the LCD

following an internal leadership conflict. From 2006 until the formation of the coalition in 2012, the ABC and LCD were political rivals. In other words, the coalition was from the beginning a marriage of convenience between these two political rivals. It was to be expected therefore that there would be lack of trust between them.

Decision-making within the coalition became a complicated process particularly between the ABC and LCD. Most decisions made by the Prime Minister did not go down well with the LCD, which held the Deputy Premiership and lamented the lack of consultation before crucial decisions such as the removal from office of the Police Commissioner, the Director of Public Prosecutions, the Attorney General and other senior government officials. The three parties had shared the various government ministries amongst themselves, but, as indicated above, without a common understanding on how the coalition was to be managed. While the LCD expected the Prime Minister to be more open to consultation with coalition members, the Prime Minister, on the other hand, was of the opinion that he was acting within the boundaries of the law and needed no further permission to carry out his constitutional mandate.

The other major factor, which led to the coalition's failure, was the Prime Minister's anti-corruption crusade under which corruption charges were filed against the former ruling DC and LCD officials. Affected officials included the DC Deputy leader, Mr. Monyane Moleleki, who was Minister of Natural Resources and, whose trial has been delayed mainly due to his ill health; the Minister of Energy, Meteorology and Water Affairs, Mr. Timothy Thahane, who was appointed under the LCD in the new coalition government together with some senior government officials has also been charged with embezzling state funds. All the aforesaid were removed from office pending their court cases. Clear cracks in the coalition government emerged when the LCD leader, Mr. Mothejoa Metsing, who is also the Deputy Prime Minister, was also charged with corruption. Similar to the other affected officials, he has claimed that the charges were a political conspiracy and he has lodged a counter lawsuit at the High Court challenging the

⁴ The MOU between these parties was actually signed after they had coalesced.

constitutionality of investigations against him. These conflicts were the major factor that has led to the two parties launching a motion of no-confidence against the Prime Minister.

The EISA Pre-election Assessment Mission gathered from its consultations that as a result of the stalemate between the coalition partners, particularly between the Prime Minister and his Deputy, the rule of law in Lesotho was fast being eroded. There were cases where some government officials including cabinet ministers refused their dismissal claiming it was unlawful⁵. For the LCD, the actions of the Prime Minister were interpreted as arbitrary decisions, while the Prime Minister viewed his actions regarding appointments, dismissals and cabinet reshuffle as part of his constitutional mandate.

Within the context of a polarised coalition government, the security crises precipitated by clashes between the Lesotho Defence Force (LDF) and the Lesotho Mounted Police Service (LMPS) dealt the last blow to the coalition government. The two institutions had taken sides in the political divide, with the LDF seen as supporting the LCD, DC and their allies, while the Police were seen as supportive of the Prime Minister and ABC as well as the BNP. This political divide manifested itself on 27 January 2014 when the residences of the Police Commissioner, Mr. Khothatso Tšoana (who had just been appointed) and the Prime Minister's partner were bombed. As part of the police investigations, eight members of the Defence Force were to be questioned, however they refused to attend. The LDF Commander, Lieutenant General Tlali Kamoli was reported to have refused to hand over the soldiers when requested to do so by the Police Commissioner in a formal letter of request dated 14 April 2014.

Around the same time, the army was holding a trial against one of its senior officers, Brigadier Maaparankoe Mahao, on charges of behaving in a manner unbecoming of an army officer. The Brigadier was suspended on 15 January 2014 for reprimanding an army commander, Captain Tefo Hashatsi, for holding a meeting with soldiers under his command informing them of a rumour about

the Prime Minister's intention to remove the Army Commander, Lieutenant General Tlali Kamoli, from office. This captain had, according to Brigadier Mahao, declared that he would defend the army general and sought to influence his subordinates to pledge the same. In his capacity as the Minister of Defence, the Prime Minister had attempted to stop the Court Marshall against the Brigadier on 27 February 2014, but was defied by the Army Commander. These and other factors contributed to the break in relations between the Prime Minister and the Army Commander.

On 29 August 2014 the King, on the advice of the Prime Minister, dismissed the LDF Commander replacing him with Brigadier Maaparankoe Mahao, who was at the same time promoted to the position of Lieutenant General, despite the fact that he was still facing charges in the Court Marshall. The army commander refused to step down and vowed to fight his removal as he deemed it unconstitutional. An armed group suspected to be members of the LDF Special Forces, also attacked the newly appointed Commander's house the night before he assumed his new job. The rise in tensions between the LDF and LMPS reached boiling point, when the former stormed the LMPS Headquarters on 30 August 2014, killing one police officer during a gun fire exchange, and invaded the Maseru Central and Mabote Mabote police stations and seized documents and some police weapons. All radio stations in the country were frozen during these attacks.

The Prime Minister, the Minister of Gender and the leader of the BNP fled the country to seek refuge in South Africa claiming there was a military coup attempt. They returned to Lesotho after the intervention of SADC led by the South African President Jacob Zuma. On return to Lesotho, and as part of the guarantees of the safety and the security of the Prime Minister, the security of the BNP leader and the Police Commissioner were taken over by the South African Police Service (SAPS) VIP protection unit.

⁵ The Army Commander, Lieutenant General Kamoli refused to vacate his office claiming that his dismissal was illegal. The Minister of Communications also refused to vacate his office, further compounding tensions between the Prime Minister and the LCD. The Director of Public Prosecutions (DPP), Mr. Leaba Thetsane and the Attorney General (AG) Mr. Tšokolo Makhetho were also dismissed but refused to vacate their office. Some of these officials were later forcibly removed but returned back to office after lodging successful court injunctions to set aside their dismissal.

The South African Deputy President, Cyril Ramaphosa, was appointed by SADC in September 2014 to mediate between the two conflicting groups, namely the ABC and BNP, on the one hand, and the opposition led by the DC and LCD. His mandate was to facilitate a dialogue between the parties involved in the conflict. Following the commencement of the SADC mediation, the planned vote of no confidence by the opposition against the Prime Minister was averted. The belligerents signed the Maseru Declaration⁶ on 2 October 2014, which committed the Prime Minister to re-opening parliament for two purposes, namely to debate and pass the budget and to plan for the elections⁷. After this, parliament would be dissolved. Parliament was duly re-opened on 17 October 2014. However, none of the agreed parliament agenda items were discussed, as one side of the political spectrum tried to sneak in a

motion of no confidence. The MPs also got bogged down in discussions about their benefits. The unintended consequence of the eminent dissolution of parliament was that the MPs term of office and therefore their benefits would be cut short by more than two years. In view of the eminent responsibility to pay back loans over a limited period of time, MPs requested an exgratia salary award to cover the remainder of their tenure⁸. This request was not granted and individual MPs had to bear sole responsibility to pay back the loans⁹. Parliament was dissolved on 5 December 2014 and elections were announced to be held on 28 February 2014.

3. THE LEGAL FRAMEWORK

1.3. The Constitution and Electoral framework:

The Constitution of Lesotho enshrines civil liberties

Table 2: Lesotho 2014 Political crisis: Important Dates

Date	Event
10 June	Dissolution of Parliament
29 August	Removal of Lieutenant General Tlali Kamoli as Army Commander and his replacement with newly promoted Lieutenant General Maaparankoe Mahao
30 August	LDF attack on LMPS stations resulting in the death of a policeman
30 August	Prime Minister Tom Thabane, the BNP Leader and Minister of Gender, Thesele Maseribae as well as some senior government officials flee Lesotho to South Africa
01 September	President Zuma's meeting with coalition leaders in Pretoria
02 September	Prime Minister Thabane returned to Lesotho with some of the government officials who had fled with him. He was escorted by the South African Police Service
18 September	Deputy President Cyril Ramphosa's first visit to Lesotho as SADC appointed mediator
02 October	Signing of the Maseru Declaration which committed conflicting parties to reopening of parliament to discuss budget and prepare for elections in February 2015
17 October	Parliament re-opened
24 October	Signing of the Maseru Security Accord which marked an end to hostilities between the security agencies
05 December	Parliament dissolved
09 December	Election Calendar issued by the IEC
11 December	Army and the Police sign an MOU to work together and rebuild trust
11 December	Political parties sign a pledge under SADC facilitation to good conduct and promotion of peace in the run up to, during and after polling day.

⁶ <http://www.sabc.co.za/news/a/403cc60045b002779bf49b90ca3f4715/Maseru-Declaration-to-take-the-country-forward--Ramaphosa-20140210> (accessed 15-1-2014)

⁷ During the initial stages of the negotiations, the "government" (ABC and BNP minus LCD) proposed a five month period for the preparation of the elections but the LCD, DC and their allies rebutted that insisting on holding of elections as soon as possible. They preferred the elections to be in January 2015.

⁸ The MPs are entitled to interest free loans of up to M500,000.00 which they repay over the period of 5 years when they are in parliament. Realising that they would be left to service the loans without earning a salary, the MPs requested government to give them an exgratia salary award for the remaining period they were to serve as MPs.

⁹ The law in Lesotho provides for an exgratia which is a payment given to people (including some civil servants) who do not qualify for the normal benefits which are usually enjoyed by civil servants. Civil servants may get this in recognition of their outstanding performance or if they retire early and government realises that they may not qualify for the full benefits under the public service. The MPs earn about M350,000 per annum.

and places the people of Lesotho as the cardinal source of power. The Constitution also provides for the establishment of a statutory body, the Independent Electoral Commission (IEC), to manage the conduct of democratic elections. In this regard and in keeping with the provisions of the Constitution, and in conformity with international best practices, Lesotho has also enacted a number of laws and regulations guiding election management and administration. These are:

- **The National Assembly Electoral Act 2011: for the conduct of elections for Members of Parliament**
- **Local Government Elections Amendment Act 2011: for the conduct of elections for local councillors**

The Constitution of Lesotho gives the Electoral Commission the following functions:

- (a) to ensure that elections are held regularly and that every election or referendum held is free and fair;
- (b) to organise, conduct and supervise elections in an impartial and independent manner;
- (c) to delimit the boundaries of constituencies;
- (d) to supervise and control the registration of electors;
- (e) to compile a general register of electors and constituency registers of electors for the several constituencies and to maintain them up to date;
- (f) to promote knowledge of sound democratic electoral processes;
- (g) to register political parties;
- (h) to ascertain, publish and declare the results of elections and referenda;
- (i) to adjudicate complaints of alleged irregularities in any aspect of the electoral or referenda process at any stage other than in an election petition.

The IEC was established in 1997 and has three Commissioners supported by a Directorate. The Commissioners are mainly responsible for policy-making and oversight. Each Commissioner is appointed by the King to serve a maximum of two three-year terms. In appointing the IEC, the King is advised by the State Council and selects the prospective commissioners from a list of no fewer than five names. The current Commissioners were recruited through an intensive public interview process presided over by an independent recruitment

agency. The current members of the Commission are shown in table 3 below:

Table 3: IEC Lesotho Commissioners

Commissioners	Position
Justice Mahapela Lehohla	Chairperson
Mrs. Mamosebi Pholo	Commissioner
Dr. Makase Nyepetsi	Commissioner

The IEC Directorate comprises civil servants and is headed by the Director Elections who is also a civil servant. Although the staff are legally under the employ of the Ministry of Public Service, they are technically appointed by the IEC because it conducts an open recruitment process and submits names of selected candidates to the Ministry of Public Service for formal appointment. The IEC has been without a substantive Director of Elections since 2009 when the Director retired. His deputy acted in that position and successfully presided over the 2012 elections. He has however recently been suspended following the loss of voter registration kits, including laptops, through theft. An Acting Director of Elections has since been appointed. The IEC had also advertised a vacancy for the position of Director of Elections prior to the suspension of the Acting Director.

3.2 The electoral system

Lesotho uses a Mixed Member Proportional (MMP) electoral system for the parliamentary elections and first-past-the-post electoral system (FPTP) for local government elections. Under the MMP system, which is a combination of a proportional representation electoral system (PR) and the First-Past-The-Post (FPTP), the 120 National Assembly (NA) seats are allocated along an 80:40 ratio, where 80 seats are contested on a FPTP basis within constituencies, while 40 seats are allocated to political parties in proportion to the number of votes they receive. Thus, Lesotho's electoral system translates votes into 80 constituency seats (Constituency vote) and 40 party-based seats (party vote). When voting, voters use only one ballot paper which is then first used to determine the winner in a constituency and secondly to determine the PR seats.

The seats are allocated as per the formula in table 4 below.

Table 4: The MMP seat allocation formula

Step One	Total valid votes cast is divided by total number of legislative seats = Quota of votes
Step two	Party votes divided by Quota of votes = Party Quota
Step three	Subtract the summation of Party Quotas from the total number of legislative seats
Step four	Any remaining vacant seats are allocated in the order of the parties with highest decimal fraction arising from the calculation done in step three above
Step five	Subtract constituency seats won by each party from the total number of seats won by the party to get the party's compensatory seats.
Step six	Summation of the compensatory seats to ensure that the total tallies with the stipulated number of PR seats.

Source: IEC 2001

3.3 Party and campaign finance:

The legal framework in Lesotho allows for private and public funding of parties and their campaigns. All parties registered contesting an election are eligible for public campaign funding. In terms of the National Assembly Electoral Act 2011, any funds received by a political party registered with the Commission in terms of Section 71 for contesting elections-

May be used only to defray expenses incurred in contesting elections, including the propagation of the political parties or candidates' views and elector education.

May not be used to-

- (i) Defray personal expenditure not related to contesting elections;
- (ii) Pay a fee, reward, benefit or remuneration to any candidate or officer of a political party;
- (iii) Reward any elector in order to vote or to vote in a certain manner; and

- (iv) Directly or indirectly invest in any business or property.

Political parties are legally required to open a separate bank account for the consolidated fund and report annually on the administration and management of the fund. This requires financial statements to be submitted for audit by the Independent Electoral Commission for the financial year.

The Electoral Act also allows for private funding of parties which could include funding, which the parties get from their rank and file membership fees, corporate contributions and donations from members in and outside the country, including foreign funding, but requires that amounts exceeding M200,000 should be disclosed. This provision is limited to funding of parties during elections. The law does not place any ceilings on the amount of money parties may receive from donors. There are also no spending limits for parties' campaigns. Lack of regulation of funding of parties beyond the election period creates a risk of undue influence of money in the country's politics.

3.4. Election Management

In October 2014 the IEC was directed to prepare for elections to be held in February 2014. In this regard, the IEC drew a list of urgent needs and areas of support in order for it to fulfil the required task. Critical areas in which it required urgent technical and financial support are:

- Election logistics
- Voter education
- Communication systems
- Election Risk Management systems
- Results Management systems
- IT support including audit of the voters register and;
- Coordination of election observation

The first challenge facing the IEC is financial. Previous elections were funded by the Government of Lesotho (GoL) with support from development partners. Given that the elections being planned for February 2014 are a snap election, none of the development partners were ready to make financial contributions

to the election budget. SADC had indicated that it will contribute to the election budget but there has not been a formal meeting between SADC and the IEC in this regard at the time of the Mission's visit to Lesotho. In the meantime, the IEC has prepared a budget amounting to M220,000,000.00 and submitted it to Government, and also applied for a government waiver in order to fast-track the procurement process. This government waiver is critical given that most of the required election materials such as ballot papers, are not produced locally but have to be ordered from South Africa. Ballot papers will only be ordered after the completion of the nomination process.

The other challenge with the IEC is in regard to its capacity, both in terms of personnel and technical expertise. The IEC reported that it had about 200 permanent staff across the country, whereas it needed to have more than 4,000 staff to run a successful election and the challenge for the IEC is that temporary staff will only be hired and trained when funds are available. The second capacity problem is the fact that all the three Commissioners are new and have never managed a full-scale election before. They have only presided over the parliamentary by-elections in 2 constituencies as well as about 27 local government by-elections. Consulted stakeholders, particularly political leaders, indicated that previously the contract period of the Commissioners were such that they were staggered to ensure that one of the serving Commissioners was retained.

The consulted stakeholders expressed cautious optimism about the ability of the IEC to successfully run the February 2015 elections, following the suspension of the Acting Director of Elections on 20 November 2014. The Head of Outreach, Mrs. Pontšo Matate, has been appointed as Acting Director of Elections. Despite the above-mentioned challenges, the Pre-Election Assessment Team found that at the time of the Mission, the IEC had complied with all the legal and procedural requirements in preparing for the elections.

In terms of financial support to the electoral process, the United Nations (UN) and other international agencies will not be making financial contributions to the IEC budget given that they were not ready to support elections before 2017, the time the next elections were scheduled to take place. The UNDP has however indicated that it will provide technical support to the IEC on the following specific areas:

- Public outreach
- Voter education
- Election logistics
- Coordination of observers

The UNDP assigned a Logistics Expert and an Elections Expert to the IEC and will be appointing an Election Expert. Both will work fulltime with the IEC until after the elections. The Commonwealth has indicated that it will support the IEC with expertise on communication systems and IT. The IEC also indicated that it will receive technical support from the Independent Electoral Commission of South Africa on IT and results management. The EU is expected to contribute to the support for voter education, while SADC is expected to provide support on electoral risk management.

4. KEY FINDINGS ON THE PRE-ELECTION PHASE

Assessment of the Lesotho's readiness for the elections was carried out in the following areas: constituency delimitation, voter registration, political party registration, conflict management and nominations and voter education. These are looked at in the following section.

4.1. Constituency delimitation

Boundaries delimitation in Lesotho is guided by Section 67 of the Constitution and Section 153 of the National Assembly Electoral Act of 2011. The Electoral Act provides that the delimitation exercise should be participatory where the IEC should invite representations from the various sectors of the public and political parties. The IEC is bound by law to publish any proposed changes to the boundaries in the government gazette to give the public an opportunity to inspect and object if necessary.

The IEC is supposed to consider objections and, where it disagrees with such objections, has to furnish reasons to the objector/s. The IEC's decisions are reviewable by the High Court of Lesotho in the case of a dispute between the IEC and members of the public on the proposed boundaries.

The IEC informed the Pre-election Assessment Team that the constituency boundaries will remain the same for the 2015 elections. The law provides that the boundaries may be changed after 10 years and within a 12-month period following a population census. The boundaries were last reviewed in 2010. None of the consulted stakeholders had concerns over the current constituency boundaries.

4.2 Voter registration

Registration of voters in Lesotho is continuous. The method of registration is biometric, using computerised voter registration kits to capture biometric details of voters. The registration kits comprise of a finger print scanner, a digital camera and a laptop computer. The law provides that voter registration should only be suspended by the IEC during elections. The National Assembly Electoral Act of 2011 indicates that such a suspension shall be effective from the 8th day of the commencement of the election period and shall end 90 days after the last day of the election period unless the IEC decides to end the suspension earlier. Any new applications for registration during the election period are kept by the IEC, which will only process them after the lifting of the suspension period.

The voter registration for the 2015 elections will be in line with the legal provision, it will end on 14 December 2014. The IEC also indicated that it commenced with the cleaning of the voter register in October 2014 to remove the names of deceased persons and any duplicate registrations. Both were a major problems during the 2012 elections due to the fact that the IEC introduced new cameras thus many voters discarded their voters' cards and registered afresh in order to have new coloured photographs. The poor civil registry system resulted in large numbers of deceased persons remaining on the IEC voters' roll.

The National Assembly Electoral Act of 2011 provides that the IEC, through the office of the Director of Elections, shall prepare and display the list of registered voters 30 days in advance of the voting day. The public display of the voters' roll is done in two phases namely the provisional list and the final list. The former is subjected to public scrutiny so that any objections can be raised with the IEC in good time for correction. All sections of the population, including political parties, are entitled to access the voters' roll for inspection. The final list is produced after corrections on the provisional list. At the time of the Pre-election Assessment, the IEC was still registering people and the display of names has not yet been done. The first publication of the voters' roll will be on 22 to 28 December 2014. The final publication will be on 05 to 06 January 2015.

The IEC indicated that the registration was going well, albeit slowly, because it did not have the full capacity after some of its voter registration kits were broken, while others were vandalised and some computer laptops stolen. Prior to the theft, the IEC was in the process of repairing some of the broken registration kits with the view to having them operational as it prepared for the 2017 elections. The 2015 snap elections have therefore placed a lot of pressure on the IEC and overstretched its existing capacity to register voters in time.

The IEC expressed confidence that the stolen computers will not be used to illegally register voters as they are incomplete. In order to register, one needs to have a complete registration kit including the finger print device and the camera. However, some consulted stakeholders have expressed concern over the stolen machines saying they could be used to inflate the registration figures. They indicated that given the heightened competition among political parties, if whoever stole these machines is linked to a political party they could easily collude with IEC IT personnel to access and manipulate the IEC voter registration data.

4.3 Political party registration and candidate nomination

Political parties registration is two-fold; they have to be registered with the Registrar of Societies and then with

the IEC if they intend to contest elections. The Societies Act 1966 requires all organisations operating in Lesotho to be registered by the Registrar of Societies. However registration with the Registrar of Societies is not an automatic qualification to contest local government or parliamentary elections. In terms of the National Assembly Electoral Act of 2011, all parties intending to contest elections have to register with the IEC. Eligibility to register with the IEC is that a party should be voluntary and open to all citizens of Lesotho without discrimination. It should also have no less than 500 members who are registered with the IEC as voters. A party is also required to provide information regarding its membership requirements for its membership admission and fees, leadership selection, manner of decision-making, banking details and purposes for which its money may be used¹⁰.

Since the signing of the Maseru Accord, the IEC has refused registration of one party, the Progressive Democrats (PD) pending its compliance with the requirements of the law.

There are two sets of candidates for nominations: constituency and PR candidates. For most parties, individuals are nominated through party primary and constituency elections to contest the FPTP component of elections. The parties also draw a list of individuals to be submitted to the IEC for purposes of PR seats allocation. In terms of procedures to be followed the National Assembly Electoral Act 2011 provides that the nominees will only be accepted by the Returning Officer only accepts the nominees if they are nominated and seconded by persons who are accordingly registered with the Electoral Commission as voters. This means that the candidates who would have won primary elections within their parties still need to be formally nominated and seconded by duly registered voters appearing on the voters' roll, in order to be accepted as election candidates. According to Section 41 (3) of the Act, such nominations should be accompanied by an amount of M200 and a statement signed by the person consenting nomination. If the person is a candidate of a political

party, a certificate signed by the office-bearer of the party certifying that the person is the party's candidate for elections in the constituency, and a representation, which shall be in black and white, of the political party's symbol.

In the case of the nominations for the proportional representation, a political party intending to contest an election shall nominate and submit a list of nominated candidates to the Director of Elections. This list should include the names, electors' registration numbers, and addresses of at least 40 candidates but not more than 120. Parties must arrange the candidates in order of preference from top to bottom, with female or male candidate immediately followed by a candidate of the opposite sex, and include equal numbers of women and men.

The lists may also include any candidate who is nominated for elections for a constituency seat. The electoral law also requires that all lists should be accompanied by an undertaking from the Secretary General of the party committing the party to adhere to the electoral code of conduct. It further requires an undertaking from the Secretary General that the nominated individuals in the list are qualified to stand for elections and there should be a statement of consent from such individuals that they agree to be in the lists. Finally, the electoral law requires that a deposit in the amount of M8000.00 shall accompany all lists.

The law requires that the nomination process ends 30 days before the elections. Political parties had commenced with primary elections at the time of this Pre-election Assessment Mission.

4.4 Conflict Management

The IEC has opted to maintain the conflict management structures it created ahead of the 2012 election because they yielded positive results. These structures have since been revived and have started holding meetings with the Commission. The IEC had put in place various consultative structures to ensure ownership of the

¹⁰ The IEC is also empowered by the law to de-register a party if it finds out that such a party no longer complies with its terms of registration as set out in the National Assembly Electoral Act of 2011

electoral process by all stakeholders and also to serve as conflict management mechanisms given the country's history of election related conflict. These structures were:

- (a) **Party Leaders Forum:** a forum of leaders of all parties contesting elections which the IEC consults on matters which require decision-making on the electoral process. The Forum meets as and when necessary in-between elections and more frequently during election time.
- (b) **Party Delegates Forum:** a forum similar to the Multiparty Liaison Committees (MPLCs). Representatives of all parties registered with the IEC meet on a monthly basis with the Commission to be briefed on the electoral process. They in turn take the information to their parties. This has been a useful consultative forum as it ensures that every single development pertaining to the electoral process is communicated to the parties in time.
- (c) **Logistics Committee:** in an effort to ensure transparency during election time, the IEC has established the Logistics Committee which consists of representatives of parties nominated jointly by the parties to plan all election logistics with the Commission. The responsibilities of this Committee include, among others, ensuring that all election materials are bought, safely kept and distributed according to a plan jointly arrived at with the Commission. The Committee also witnesses the tendering process and procedures for all election materials and it also observes the printing of ballot papers and ensures their security in collaboration with the Commission and the LMPS.
- (d) **Data Committee:** the Data Committee is involved in the compilation of the voters' roll. It works with the Commission on the entire voter registration process and also on all voter registration complaints that may arise during the voter registration process.
- e) **Monitoring Committee:** a committee made up of representatives of the parties contesting elections whose role is to ensure that all election operations are carried out without problems. The committee jointly with the IEC deals with all challenges that appear during the electoral process.

4.5 Civic and voter education

The IEC had not embarked on voter education (VE) by the time of this Pre-election Assessment Mission owing to lack of funds as reported above. The IEC indicated that it is unable to enter into contracts until it receives funds. However, the IEC indicated that it had already invited civil society organisations to submit tenders to carry out VE. Submissions from the Lesotho Council of Non-Government (LCN), Transformation Resource Centre (TRC) and Development for Peace Education (DPE) were already being considered. The IEC indicated that its partnership with these organisations in 2012 was successful. The CSOs carried out civic and voter education while the IEC provided oversight.

4.6 The media

Lesotho has one state television, Lesotho Television (LTV), one state radio station, Radio Lesotho and plethora of private radio stations owned by business people and churches as shown in table below. There are weekly newspapers. Whereas the broadcast media is regulated under the Communications Act No. 4 of 2012, the print media is not regulated and is left to regulate itself. The Communications Act No. 4 of 2012 establishes a media regulating authority, the Lesotho Communications Authority (LCA) whose mandate is:).

- promotion, development, supervision and provision of efficient local, national, regional and international telecommunication services in Lesotho;
- promotion of network development, universal service and access to telecommunication services;
- ensuring the efficient and effective use of the radio frequency spectrum;
- promotion of the range and quality of telecommunication services and other consumer interests;
- promotion of efficient management and human resource development within the telecommunication sector;
- promotion of private ownership of telecommunication operations;
- promotion of sustainable and fair competition between telecommunication service providers;
- collection and dissemination of information for use by the industry, consumers and prospective investors;

- promotion of telecommunication services that will satisfy reasonable demands of least advantaged members of the communities for the provision of services such as emergency services, public call box services and directory information services;
- representing Government, in consultation with the Minister of Communications in international matters relating to telecommunications.

Besides the LCA, the Communications Act provides for the establishment of the Broadcasting Dispute Resolution Panel (BDRP). The BDRP is a body consisting of a Chairman and four (4) members who have the responsibility to prepare a broadcasting code of content, and to review and resolve all disputes regarding broadcast content. At the time of this Pre-election Assessment Mission, the BDRP drafted the Broadcasting Regulations 2014, which provide a regulatory framework for the conduct of the media in Lesotho. The regulations will not however be in force by February 2015 due to delays in their gazetting as a result of the current political situation, which has led to the dismissal of the Minister of Communications and subsequent disagreement over his status between the Prime Minister and the Deputy Prime Minister.

According to the Lesotho chapter of the Media Institute of Southern Africa (MISA), besides the usual traditional public or private print and electronic media, the social media is becoming popular and is very difficult to regulate by the LCA. The country does not yet have a law regulating social media such as Facebook and Twitter. These operate from private individual accounts and therefore difficult to control. Consequently, people breach media ethics and break the law on these social platforms without any repercussions. The same challenge applies to other online media which are also not necessarily based in Lesotho.

Table 3: Print and electronic media in Lesotho as at 31 December 2014

Media	Name	Comment
Television	Lesotho Television	State
Radio stations	Catholic Radio FM	Private
	Harvest FM	Private
	Lesotho Evangelical Church FM	Private
	MoAfrica FM	Private
	People's Choice FM	State
	Radio Lesotho	State
	Ultimate FM	private
	Tsenolo FM	Private
	Fill the Gap Ministries FM	Private
	Joy FM	Private
Mafeteng Community Radio		
Newspapers	Business Edge	Private
	Informative	Private
	Lesotho Times	Private
	Moeletsi Oa Basotho	Private
	Sunday Express	Private
	Lesotho Today	State
Lentsoe La Basotho	State	
Institutes	Media Institute of Southern Africa (MISA)	Regional
Agencies	Lesotho News Agency (LENA)	State

The public media in Lesotho, particularly Radio Lesotho, has been completely overshadowed by the private radio stations and has become largely ineffective. The pro-DC and LCD radio stations are linked to the state broadcast transmission towers and therefore have a wider reach similar to Radio Lesotho. The radio stations which are affiliated to the ABC and BNP are largely seen as elite radio stations and mainly appeal to listenership in the city of Maseru and neighbouring towns. Many stakeholders suggested that freedom of the press is assured in Lesotho. They however expressed concern over the lack of professionalism by the media, particularly the private partisan radio stations. Of the radio stations mentioned in table 3 above, Mo-Africa FM and Tsenolo FM are said to be highly pro-DC, LCD and other congress parties. Harvest FM and PC FM are on the other hand

pro-ABC and BNP. The mentioned political parties have acknowledged that they indeed get huge support and publicity from these radio stations.

These radio stations on each side of the political divide use inflammatory language which could trigger violence. Some of the journalists and people who host political talk show programmes on these radio stations are not career journalists and have never undergone any media training. The fact that most of the radio presenters are largely untrained has, according to MISA, resulted in a significant proportion of information on the radio being biased, unbalanced and unverified.

All stakeholders believe that there is a need for training of journalists on responsible reporting. The LCA and MISA have previously organised workshops to train both reporters and editors on their role in the electoral process as well as how to manage reporting in conflict situations. However, because of a high staff turnover given that most of the producers and editors are not real media professionals, the training has not yielded many results. The media in Lesotho has as a result failed to stick to ethical conduct as well as act as a watchdog to ensure democratic governance.

4.7 Civil society

Civil Society Organisations (CSOs) have been a critical pillar in stabilising Lesotho's political and electoral landscape. CSOs were at the centre of civic and voter education activities ahead of the 2012 elections. However, their tenders to the IEC to carry out voter education for the February 2015 elections had not yet been considered by the IEC at the time of this Mission, due to funding constraints.

The above notwithstanding, CSOs have continued to play their civic education role on a number of fronts. For instance, CSOs have conducted public gatherings around the country explaining to the people the contents of the Commonwealth Report on coalition politics following a study tour of the coalition party leaders, College of Chiefs and the IEC to New Zealand from whose system the Lesotho MMP electoral system derives. CSOs have also organised dialogues for the people to

discuss political developments concerning the coalition government and dissolution of Parliament. Although they were less involved in the political mediation, they met once with the SADC Mediator and South African Deputy President, Cyril Ramaphosa, and they were invited to be signatories to the political parties' code of conduct pledge as witnesses.

4.8 Gender and minority rights

Gender and minority rights are enshrined in the constitution of Lesotho and therefore participation of men and women, as well as other vulnerable groups in the electoral process, is guaranteed. One of the significant reforms in 2011 as far as gender is concerned is that the National Assembly Electoral Act introduced a requirement for political parties to ensure a 50% inclusion of women in their party lists. This meaningfully increased the number of women candidates for the 8th Parliament. The challenge though is that this 50% requirement is only limited to the PR component of the candidates and not the constituency ones. Nominations were still underway at the time of this Mission and it could not be established whether parties have indeed conformed to this legal requirement.

4.9 Security

It has been reported above that there have been tensions between the LDF and LMPS escalated by an alleged coup attempt by the LDF on 30 August 2014. All consulted stakeholders, including the IEC, cited the soured relations between these the LDF and LMPS as the single most real threat to the holding of successful elections in February 2015. Both the LDF and LMPS are critical to election operations in that the police provide security at all polling stations and centres while LDF provides logistical support flying election materials with its helicopters to inaccessible areas. LDF is also expected to provide operational support to LMPS in the event that there is threat to security beyond LMPS capacity on the day of elections.

Cognisant of the deteriorating relations between themselves and, following the departure of the substantive Commanders, the LDF and LMPS undertook a number of trust building measures. On 23 October

2014 the LDF and LMPS signed the Maseru Security Accord (MSA) under the facilitation of SADC to mark the end of hostilities. The other activities included a joint march where over 800 LDF and LMPS personnel participated in a show of unity on 9 December 2014. The two agencies also signed an MOU on 11 December 2014 in the presence of SADC and political parties in which they committed themselves to work together. Electoral stakeholders believe that the two Acting Commanders of the LDF and LMPS are genuinely seeking to end hostilities. However, a major concern is that members of the LDF Special Forces who are wanted by the police are still serving and going around with armoured cars in an act seen as intimidation by some stakeholders.

This Mission noted with concern that as at December 2014, the security protection of the Prime Minister, who is also the Minister of Defence and of Police, is provided by neither the LDF nor LMPS. The Prime Minister, the Minister of Gender and other government officials loyal to the Prime Minister were still protected by SAPS while the Deputy Prime Minister and Ministers loyal to him were protected by LDF members. This security arrangement is a clear sign of the magnitude of security problems in Lesotho. More importantly, it is bound to create coordination problems particularly during campaigns as the two securities do not take orders from the same command.

4.10 Election Campaigns

Political campaigns officially got into full swing following the proclamation of elections on Tuesday 9 December 2014. The ABC and BNP held joint public rallies while the DC, LCD and other parties held separate rallies. The Mission was informed by concerned stakeholders that there was abuse of state resources, such as vehicles, for campaigning. In one incident, the ABC Youth League was reported to have locked the Permanent Secretary of the Ministry of Health, Mr. Lefu Manyokole, out of his office after he allegedly refused to release his Ministry's cars for campaigning. The state media was also said to be manipulated by the LCD-appointed Minister, who embargoed coverage of some of the Prime Minister's activities. The Prime Minister confirmed that TV Lesotho and Radio Lesotho had been strictly instructed not to

cover him. The LCD on the other hand has dismissed this informing the Mission that the only thing which they have barred the state media from doing was to broadcast information, which seeks to divide the nation. For instance, they were prevented from broadcasting the dismissal of the Army Commander and the Minister of Communications.

APPENDICES

Appendix 1: List of stakeholders consulted

Stakeholder Category	Name	Disignation	Organisation
EMB	Advocate Mamosebi Pholo	Commissioner	IEC
International Agencies	Mr. Thabo Mosoeunyane	Governance Expert	UNDP
	Mr. Thabang Tlalajoe	Manager	UNDP
Government	Rt. Hon. Thomas Thabane	Prime Minister	
(ABC Leader)	Government of Lesotho		
	Hon. Mothejoa Metsing	Deputy Prime Minister	
(LCD Leader)	Government of Lesotho		
	Hon. Thesele 'Maseribane	Minister of Gender	
(BNP Leader)	Government of Lesotho		
Political Parties	Mr. Samonyane Ntsekele	Secretary General	ABC
	Hon. Joang Molapo	Deputy Leader	BNP
	Hon. Monyane Moleleki	Deputy Leader	DC
	Hon. Pelele Letsoela	Deputy Leader	BDNP
CSOs	Mr. Seabata Motsamai	Executive Director	LCN
	Mr. Sofonea Shale	Director	DPE
	Mr. Tšoeu Petlane	Director	TRC
Academic	Pro. Nqosa Mahao	Vice Chancellor	NUL (met at a seminar)
	Dr. Motlamelle Kapa	Lecturer	NUL
Media	Mr. Tsebo Matšasa	Director	MISA Lesotho
		Chairperson	BDRP

ABOUT EISA

INSTITUTIONAL BACKGROUND

EISA has since its inception in July 1996 established itself as a leading institution and influential player dealing with elections and democracy related issues in the African continent. It envisions an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment. The Institute's vision is executed by striving for excellence in the promotion of credible elections, citizen participation, and the strengthening of political institutions for sustainable democracy in Africa.

Having supported and/or observed over 70 electoral processes in Africa, EISA has extensive experience in formulating, structuring and implementing democratic and electoral initiatives. It has built an internationally recognised centre for policy, research and information and provides this service to electoral management bodies, political parties and civil society organisations in a variety of areas, such as voter and civic education and electoral assistance and observation. Besides its expanded geographical scope, the Institute has, for the past several years, been increasingly working in new in-between election areas along the electoral and parliamentary cycle, including constitution and law making processes, legislative strengthening, conflict management and transformation, political party development, the African Peer Review Mechanism (APRM) and local governance and decentralisation.

EISA provides assistance to inter-governmental institutions, like the African Union, and the Pan-African Parliament, to reinforce their capacity in the elections and democracy field. The Institute has just signed an MOU with the Economic Community of Central African States (ECCAS); the East African Community (EAC); and the Common Market for East and Southern Africa (COMESA). Within the framework of these recently signed memoranda, the Institute will also provide similar assistance respectively these intergovernmental institutions. Its MoU with the African Union was also renewed in 2014.

With its headquarters in Johannesburg (South Africa), EISA has had field offices across the African continent and currently has offices in Central African Republic, Democratic Republic of Congo, Kenya, Madagascar, Mali, Mozambique and Somalia, and a regional liaison office at the secretariat of the ECCAS in Libreville, Gabon.

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EISA has deployed continental witness missions for the past ten years including missions to Angola (2008), Botswana (1999, 2004, 2009), Central African Republic (2010, 2011), Democratic Republic of Congo (2005 referendum, 2006 elections), Egypt (2011, 2012, 2014), Ghana (2008, 2012), Guinea Conakry (2010), Lesotho (1998, 2002, 2007, 2012, 2015), Liberia (2011), Madagascar (2005, 2007, 2013), Malawi (1999, 2004, 2009), Mauritius (2000, 2005, 2010, 2014), Mozambique (1999, 2004, 2009, 2013, 2014), Namibia (1999, 2004, 2009), Senegal (2012), Seychelles (2011), South Africa (1999, 2004, 2009, 2014), Tanzania (2005, 2010), Uganda (2011), Zanzibar (2005, 2010), Zambia (2005, 2008, 2011, 2015), and Zimbabwe (2000, 2002, 2008), Reports on these missions can also be found on our website.



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