



Electoral Institute for Sustainable Democracy in Africa

# **EISA Pre-Election Assessment Mission Report**



**KINGDOM OF LESOTHO  
27 – 31 March 2017**

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## ACRONYMS AND ABBREVIATIONS

<b>ABC</b>	All Basotho Convention
<b>AD</b>	Alliance of Democrats
<b>BCP</b>	Basutoland Congress Party
<b>BNP</b>	Basotho National Party
<b>CCL</b>	Christian Council of Lesotho
<b>CSOs</b>	Civil Society Organisations
<b>DC</b>	Democratic Congress
<b>DPE</b>	Development for Peace Education
<b>EISA</b>	Electoral Institute for Sustainable Democracy in Africa
<b>EMB</b>	Electoral Management Body
<b>FPTP</b>	First Past the Post
<b>IEC</b>	Independent Electoral Commission
<b>LCD</b>	Lesotho Congress for Democracy
<b>LCN</b>	Lesotho Council of Non-Governmental Organisations
<b>LDF</b>	Lesotho Defence Force
<b>LMPS</b>	Lesotho Mounted Police Service
<b>LPC</b>	Lesotho People's Congress
<b>MEC</b>	Movement for Economic Change
<b>MFP</b>	Marematlou Freedom Party
<b>MP</b>	Member of Parliament
<b>MPs</b>	Members of Parliament
<b>NGO</b>	Non-Governmental Organisation
<b>NUL</b>	National University of Lesotho
<b>PEMMO</b>	Principles for Election Management, Monitoring and Observation
<b>PFD</b>	Popular Front for Democracy
<b>PR</b>	Proportional Representation
<b>RCL</b>	Reformed Congress of Lesotho
<b>SADC</b>	Southern African Development Community
<b>TRC</b>	Transformation Resource Centre
<b>UNDP</b>	United Nations Development Programme
<b>WHP</b>	White Horse Party

## 1. EXECUTIVE SUMMARY

The Electoral Institute for Sustainable Democracy in Africa (EISA) deployed a two-member Pre-Election Assessment Mission (PAM) to the Kingdom of Lesotho from 26 March to 31 March 2017. The Mission's objective was to assess the political environment in the Kingdom in the run-up to the parliamentary snap elections scheduled for 3 June 2017. The PAM made an assessment of whether the political environment was such that the Kingdom of Lesotho would be able to discharge a credible poll in keeping with international best practices as well as regional and international benchmarks on the conduct of elections. Such norms and standards include the African Charter on Democracy, Elections and Governance; the Revised SADC Principles and Guidelines for Democratic Elections; and the Principles on Election Management, Monitoring and Observation (PEMMO); among others. The PAM, which engaged the Independent Electoral Commission (IEC), political parties and civil society organisations (CSOs) (see Appendix 1), also assessed the state of readiness of these key stakeholders for the June 2017 elections. The findings of the PAM will inform the deployment by EISA of its Electoral Observer Mission for the forthcoming elections.

The main findings of the PAM are that the 2017 parliamentary elections in the Kingdom of Lesotho are being held within the context of political instability and a continuing security challenge. An election calendar was issued by the IEC in keeping with the electoral laws, which is itself challenging as it sets demanding deadlines for the discharge of certain obligations by the authorities. Given the elections calendar, the credibility of the voters roll was in issue. The IEC only received the funds it required during the period the PAM was in Maseru, just about two months away from the election date, raising questions on the adequacy of the time available to it for preparation of the polls.

This snap election was precipitated by a vote of no-confidence in the government of Prime Minister Pakalitha Mosisili, following which, on the advice of the Prime Minister, His Majesty the King dissolved Parliament and ordered fresh elections. This decision has met with mixed

reactions, with some of the opposition parties finding no reason for elections since they have the requisite parliamentary majority and are prepared to form the next government without resort to elections.

Despite a persistent security challenge and the constraints of time posed by a snap election, the Kingdom of Lesotho has in place a legal framework capable of discharging a credible poll.

## 2. HISTORICAL BACKGROUND AND CONTEXT OF THE 2017 ELECTIONS

Since independence in 1966 the political history of the Kingdom of Lesotho has been characterised by alternation of periods of conflict and stability, one-party state, multiparty politics, military coup and dictatorship and short-lived governments. Since the return to multiparty democracy in 1993, the context has also been characterised by alternating periods of democratic gains and reversals. As part of the political settlement after the 1998 elections, the Kingdom shifted from the first-past-the-post (FPTP) electoral system to a mixed-member proportional electoral system (MMP). It was anticipated that the new system would be the panacea to the electoral conflicts that appeared endemic in Lesotho. The electoral system was further modified into a mixed-member parallel system in 2007. The two main parties at the time, the Lesotho Congress for Democracy (LCD) and the newly formed All Basotho Convention (ABC), spearheaded the process of modifying the electoral system. The new system created a stalemate on seat allocation. The electoral system is further discussed in the next section of this report.

Party splits appear to be a recurrent feature of the Lesotho political landscape. On the eve of the 2012 polls, Prime Minister Pakalitha Mosisili left the LCD to form a new party, the Democratic Congress (DC). The defection of 44 Members of Parliament (MPs) from the then ruling party (LCD) to the DC rendered it an opposition party, as it lost its parliamentary majority in the process. In the ensuing polls the DC garnered 48 seats out of 120. This was inadequate to secure the party the right to form the government, as an absolute majority of votes (50%+1 votes) was required by law. A coalition comprising the ABC, the LCD and the Basotho National Party (BNP) formed the government after the 2012 elections. This was the first time an election in the Kingdom of Lesotho had failed to produce a clear winner capable of forming a government outside the context of a coalition. This

has however become a recurrent feature of Lesotho's elections, as shown in the results of the 2015 elections.

In 2014 dissension began to take root in the tripartite coalition of the ABC, BNP and LCD. Dissension arose from lack of trust among the coalition partners, ideological differences and the Prime Minister's anti-corruption drive, in which senior figures of the coalition were caught on the wrong side of the law. The framework for the coalition was also a challenge, as it amounted to a gentlemen's agreement, in the absence of a legally binding agreement to provide guiding principles for the partners. Within the coalition, the ABC held the premiership, deputised by the LCD. The latter challenged most of the decisions by the Prime Minister, including attempts to dismiss senior public officials and ministers from the coalition government.

On 10 June 2014 King Letsie III dissolved Parliament on the advice of Prime Minister Thomas Thabane, who feared that the opposition was angling towards a vote of no confidence in his government. At about the same time, Lesotho experienced a security crisis which triggered clashes between the Lesotho Defence Force (LDF) and the Lesotho Mounted Police Service (LMPS), with the two institutions taking sides in the political divide. The army was seen as supporting the LCD, DC and their allies, while the police was seen as supporting the Prime Minister and the ABC and the BNP. This crisis forced the Prime Minister to flee into exile until the intervention of the Southern African Development Community (SADC), which negotiated the Prime Minister's return and the conduct of the February 2015 polls.

As a result of the political and institutional crisis in the country since mid-2014, Lesotho was driven to a snap parliamentary election in 2015. The elections were held in a context of general public anxiety about the security situation. The SADC continued to play its role as facilitator of the political negotiations in the search for a viable solution to the crisis. The SADC also provided support for the security forces to ensure the maintenance of law and order in the country, thus creating an environment for peaceful elections. The Independent Electoral Commission (IEC) was officially notified to prepare for elections only four months before the February 2015 elections with funding challenges.

The 2015 elections, hotly contested as they were, did not produce an outright winner; parties were therefore compelled to go into negotiations for a

coalition government. Seven parties formed the coalition government that came to power in 2015, namely: Democratic Congress (DC), Lesotho Congress for Democracy (LCD), the Popular Front for Democracy (PFD), the Basotho National Party (BCP), the Lesotho People's Congress (LPC), Marematlou Freedom Party (MFP) and the National Independent Party.<sup>1</sup>

Table 1 below shows the results of the 2015 parliamentary elections (constituency seats):

**Table 1: Results of the 2015 elections in Lesotho**

Political Party	Constituency Sets Won	Compensatory seats	Final allocation
ABC	40	6	46
ADC	0	0	0
AUM	0	0	0
BEANA	0	0	0
BANC	0	0	0
BBDP	0	0	0
BCP	0	1	1
BDNP	0	0	0
BNP	1	6	7
CFM	0	0	0
DC	37	10	47
HDP	0	0	0
LCD	2	10	12
LMM	0	0	0
LPC	0	1	1
LWP	0	0	0
MFP	0	1	1
NIP	0	1	1
PD	0	0	0
PFD	0	2	2
RCL	0	2	2
TSD	0	0	0
WHP	0	0	0
TOTAL	80	40	120

Source: <http://www.iec.org.ls/election%20act/PR%20allocations.pdf>

<sup>1</sup> For coalition agreement, see [http://www.gov.ls/gov\\_webportal/important%20documents/the%20coalition%20agreement%20for%20stability%20and%20reform%2031%20march%202015/the%20coalition%20agreement%20for%20stability%20and%20reform%2031%20march%202015.pdf](http://www.gov.ls/gov_webportal/important%20documents/the%20coalition%20agreement%20for%20stability%20and%20reform%2031%20march%202015/the%20coalition%20agreement%20for%20stability%20and%20reform%2031%20march%202015.pdf)

The context ahead of the 2017 elections is no different in terms of party splits. The DC saw the formation of a new party – the Alliance of Democrats (AD), formed by a faction led by its deputy leader, Monyane Moleleki. Internal disputes within the DC led to the suspension of the deputy leader when he attempted to oust Prime Minister Pakalitha Mosisili from the premiership and the leadership of the DC. Moleleki's AD was launched on 29 January 2017. After its inauguration, the AD signed a pact with the ABC (led by the former Prime Minister, Thomas Thabane). Under the pact between the two opposition parties there was a move to pass a vote of no confidence in the Mosisili-led coalition government.

The LCD also experienced internal conflicts that gave rise to an eventual split led by its former Secretary General, Selbie Mochoboroane, who was also suspended from the party. Mochoboroane left the party to form the Movement for Economic Change (MEC). These fractures within the different parties that composed the coalition government led to its eventual collapse.

The 2017 polls were necessitated by the passing of a vote of no confidence in the government of Prime Minister Pakalitha Mosisili on 1 March 2017. As a result of the vote of no confidence, His Majesty the King Letsie III dissolved Parliament and called for parliamentary elections. The vote of no confidence came two years after the ousting of the former Prime Minister Thomas Thabane. This is the second snap parliamentary elections being held in Lesotho within a period of five years.

The country was scheduled to hold local government elections in 2017, but these had to be postponed because of the current political crisis. This is the second time that that the local elections have been postponed, as they were initially scheduled to be held in 2016, but were rescheduled to 2017 to allow for proper celebration of Lesotho's 50th independence anniversary.

### 3. ELECTORAL FRAMEWORK

#### 3.1 The constitutional and legal framework

The 1993 Constitution of Lesotho (as amended) sets out the basic principles for the protection of civil liberties such as the freedom of movement, of expression, of peaceful assembly, and of association. The other primary legal instruments guiding the conduct of elections in Lesotho are the National Assembly Electoral Act (2011) and the Local Government Elections Amendment (2011), which among other things provide for citizens' rights to vote and to stand in elections as MPs or local

councillors. The two laws provide an appropriate legal structure for the conduct of democratic elections in conformity with continental, regional and international benchmarks, standards and norms.

In its assessment of the legal framework, the EISA PAM noted that it provides the basis for the conduct of competitive elections in Lesotho. The National Assembly Electoral Act 2011 also provides for a Code of Conduct applicable to electoral stakeholders: political parties, the media and the incumbent government. It also provides dispute settlement mechanisms, including judicial ones for the electoral process. Furthermore, the Act also regulates organisations conducting electoral observation.

#### 3.2 The electoral system

The National Assembly (NA) of the Kingdom of Lesotho is elected by a mixed-member proportional (MMP) electoral system, which is a combination of the proportional representation (PR) and the first-past-the-post (FPTP) electoral systems. 80 out of the 120 members of the NA are elected on an FPTP basis within single-member constituencies and the other 40 members are elected on a PR basis. Voters use only one ballot paper, which is used to determine the winner in both electoral systems.

<b>Step One</b>	Total valid votes cast is divided by total number of legislative seats = Quota of votes
<b>Step two</b>	Party votes divided by Quota of votes = Party Quota
<b>Step three</b>	Subtract the summation of Party Quotas from the total number of legislative seats
<b>Step four</b>	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
<b>Step five</b>	Subtract constituency seats won by each party from the total number of seats won by the party to get the party's compensatory seats.
<b>Step six</b>	Summation of the compensatory seats to ensure that the total tallies with the stipulated number of PR seats.

*Compiled based on schedule 3 of the National Assembly Electoral Act 2011*

The EISA PAM noted with commendation that the law requires that the party list include equal numbers of women and men for the party list for the PR seats (section 47 (2) (C)). Though with some limitations, the MMP in Lesotho has been praised for its attempt to promote inclusiveness, representation and equality.

The PAM also noted that the current legal framework, specifically the electoral system, creates opportunities for the creation of loose coalitions that are not resilient. This in part explains the frequent collapse of coalition arrangements in the Kingdom of Lesotho. The EISA PAM considers that given the political and electoral history of the Kingdom, this is an aspect of the legal framework that requires reform.

### 3.3 Party and campaign finance

Sections 70-72 of the National Assembly Electoral Act 2011 make provision for regulation of party and campaign finance. The legal framework provides for state funding of campaigns and political parties. The allocation of funds for campaigns is based on the number of votes gained by political parties in the last elections; for parties that did not contest in the last election, allocation is based on the threshold required for registration with the IEC<sup>2</sup> (section 70 (4-5)). Parties are also entitled to the annual party funding, and allocation of the annual funding is based on the number of seats won by parties or independents in the National Assembly (section 71). The law provides for mandatory disclosure and accountability on state funding. Political parties are mandated to keep records of all transactions and provide the IEC with a financial statement and an annual report on the use of state funds for audit. The EISA PAM in its assessment of the criteria for state funding noted that it is fair as it applies across the board to all parties; it also promotes transparency and accountability of the process. Furthermore, provision of state funding for political parties contributes to equality of access to resources for all parties and candidates.

As at the time of its visit, the PAM was advised by the IEC that those political parties that were in compliance with the legal requirements<sup>3</sup> would be able to access what they were entitled to in terms of state funding.

The legal framework also allows for private donations to parties, which could include funding from national or foreign entities. Donations exceeding M200,000 during election period are subject to disclosure to the IEC. The EISA PAM noted that the law does not provide ceil-

ings on donations, nor does it provide spending limits on party campaign funds. This limited regulation of party and campaign funding beyond the election period creates a risk of undue influence of money in the Kingdom's politics, which could impact on the fairness of the electoral process.

### 3.4 Election management

The legal framework of the Kingdom of Lesotho provides for the establishment of an independent Electoral Management Body (EMB), the Independent Electoral Commission (IEC) and the Directorate of Elections. Established in 1997, under article 66 of the amended Constitution, the IEC is made up of three commissioners appointed by the King, on the advice of the State Council. The Directorate consists of civil servants and is headed by the Director of Elections. The tenure of the Commission is for six years and it is renewable once. The Commission is funded from the consolidated fund. The EISA PAM noted that the Commission is independent in terms of its appointment and funding as stipulated in the Constitution. It is also considered to have security of tenure, as its members can only be removed from office on the basis of their inability to perform their duties or based on a recommendation from a tribunal.

The 2017 elections will be conducted by the same Commission that conducted the 2015 elections. The current membership of the IEC is as follows: Justice Mahapela Lehohla (Chairperson), Advocate Mamosebi Pholo, and Dr Makase Nyapisi. Dr Letholetseng Ntsike is the Director of Elections. Her Deputy is Mr Mphasa Mokochane.

The IEC is responsible for policy-making and oversight, while the Directorate is responsible for the implementation of the functions of the IEC. The Commission is empowered to organise credible, fair and impartial National Assembly and local government elections as well as referenda.

The IEC's main responsibilities<sup>4</sup> include the following:

- registering electors;
- supervision of the preparation, publication and maintenance of a general register of electors;
- registering political parties;
- demarcating constituency boundaries; and
- conducting elections.

While some political parties sought to impugn the independence and professionalism of the IEC, the EISA PAM is of the considered view that given the requisite

<sup>2</sup>The threshold for party registration is 500 registered voters.

<sup>3</sup>See section 70(5) of the National Assembly Electoral Act 2011 for criteria for eligibility for state funding of parties.

<sup>4</sup>Section 66A of the Constitution (as amended).

resources, the Commission appears ready and capable of conducting a credible poll. This is explained in part by the ability of the Commission to discharge part of its obligations on the election calendar ahead of the allocation of funds by government. As at the time of the EISA PAM's visit none of the parties in government had raised legal challenges to question the Commission's integrity.

#### Challenges in the electoral framework

- Lack of regulation of funding of parties beyond the election period creates a risk of undue influence of money in the country's politics.
- Political and institutional crises that necessitated the snap elections were caused in part by inadequacies in the legal framework regarding the functioning of governing coalitions.

## 4 KEY FINDINGS ON THE PRE-ELECTION PHASE

The mission assessed the Kingdom's readiness for the 2017 snap parliamentary elections in the following areas: constituency delimitation, voter registration, political party registration, conflict management and nominations and voter education. The findings for each section are summarised below.

### 4.1 Constituency delimitation

Article 67 of the Constitution of the Kingdom of Lesotho provides for delimitation of constituencies for parliamentary elections and section 153 of the National Assembly Electoral Act sets the procedures for delimitation and change of constituency boundaries. The IEC is responsible for conducting boundary delimitation. Where any changes are proposed to the boundary delimitation, these must be publicised and gazetted to give the public an opportunity to inspect and raise any objections thereto considered in terms of the law.

At the moment, Lesotho is divided into 80 constituencies based on population density, among other factors. The legal framework stipulates that boundaries may alter every 10 years, ideally within 12 months following the population census. The PAM gathered that a national census was conducted in 2016, with the official report yet to be published. This leaves the IEC to organise the 2017 elections on the basis of the delimitation that was used for the 2015 elections, which was based on the 2010 delimitation exercise. The PAM was also informed that some stakeholders may have concerns about the propriety of current constituency boundaries. The fear

is that the current delimitation may ignore population growth and movement that has occurred since the last delimitation of constituencies in 2010.

The EISA PAM assessed the legal provisions for delimitation of constituencies as consistent with the principle of fair representation of the people of the Kingdom of Lesotho. The PAM was however of the view that failure to take cognisance of the recent population census even after the lapse of some seven years from the last delimitation may mean that the current constituency boundaries are anything but accurate. This tends to impact on the ensuing polls, as by law the geographical sizes of the constituencies must be guided by the population size in the constituencies.

### 4.2 Voter registration

Sections 6-7 of the National Assembly Electoral Act 2011 provides for the registration of eligible voters. To be eligible for registration, voters are required to be Basotho nationals who have attained the age of 18. Registration is not open to persons with dual citizenship, convicts serving death sentences imposed by a Lesotho court and persons convicted under the National Assembly Electoral Act, within a five-year period of the conviction.

Voter registration in the Kingdom of Lesotho is the responsibility of the IEC. In tandem with the electoral law and practice, the voter registration process in the Kingdom of Lesotho is biometric and open to monitoring by stakeholders, including political parties and civil society. Voter registration is continuous. However, the law provides for suspension during election periods. Voter registration applications received during the period of suspension can only be processed after the end of the suspension period. The voter registration period for the 2017 parliamentary elections was suspended on 19 March 2017 after persons who would turn 18 by the election date were given an opportunity to register. Those who had changed constituencies between 13 and 19 March were also transferred. Continuous voter registration will resume in June 2017.

Because of the constraints imposed by the calendar due to the very nature of a snap election, there were concerns that the seven-day period allocated for the registration of 17-year-old voters and transfers was insufficient. Limited funding available to the IEC for the exercise meant that it was unable to publicise widely and roll out the process to all corners of the country as expected by all stakeholders. The accessibility and inclusiveness of the process was raised as an issue by some of the stakeholders consulted by the PAM. It was

gathered that voters had to walk long distances to reach voter registration centres, which were installed only at district level. Although the extent of the lack of access and exclusion could not be determined, the potential of its impact does exist.

The IEC is obliged to display the voters list 30 days ahead of Election Day. It will display a provisional list, subject to public scrutiny and correction, and a final list, which will then form the voters roll for the elections. At the time of the PAM's visit, the IEC was still busy compiling the district provisional voters list to be sent back to district for inspection by the voters. The PAM noted that the Commission was behind the schedule as provided in the electoral calendar.<sup>5</sup> The PAM gathered from its consultations with the IEC that the delays in the completion of provisional lists were caused by electricity outages in most of the districts. Overall, the IEC was optimistic that that the voter registration had gone very well.

For the 2015 elections, 1 210 079 voters were registered.<sup>6</sup> The IEC publishes data on registered voters disaggregated by age and gender. This information is also made available on the IEC's website. The EISA PAM noted that the time allocated for the registration of those who would be eligible to vote, and those requiring transfers, although dictated by the exigencies of the snap polls, was inadequate to allow for a detailed update of the register.

### 4.3 Political party registration and candidate nomination

The legal framework provides for a two-pronged registration process for political parties. Political parties are required to first register with the Registrar of Societies in terms of the Societies Act of 1966. Secondly, where a party wishes to contest an election, it must register with the IEC pursuant to the National Assembly Electoral Act of 2011. To qualify for registration by the IEC, a party must be open to all citizens to join, and therefore must not be discriminatory, and must meet a 500-voter threshold, among other qualification criteria. Where a party ceases to hold these qualifications the IEC may also de-register the party.<sup>7</sup> In the opinion of the EISA PAM, the criteria for the registration of political parties guarantee the freedom of association of the citizens; they are also considered to be non-restrictive and non-discriminatory.

The legal framework provides for a transparent process for the registration of nomination of candidates by parties with the IEC. There are two sets on candidates for nominations: constituency and PR candidates. IEC only accepts party nominees that are seconded by registered voters. According to Section 41 (3) of the Electoral Act, such nominations should be accompanied by an amount of M200. For nominations for the proportional representation list, a political party intending to contest an election shall nominate and submit a list of nominated candidates to the Director of Elections. Parties are obliged to arrange the candidates in order of preference from top to bottom.

To promote equal gender representation, the 'Zebra System', in which candidates are listed based on their gender in an alternating manner, is adopted (for instance, a female must be followed by a male candidate and vice versa). The party lists may also include any candidate who is nominated for elections for a constituency seat. The electoral law requires that a deposit of M8000.00<sup>8</sup> shall accompany all lists. The nomination process ends 30 days before the elections. Political parties had commenced with primary elections at the time of this PAM.

For the 2017 elections, there are 30 registered parties registered with the IEC. A total of 1158 candidates are contesting on the party list, as shown in the provisional list published by the IEC; this includes 40 independent candidates.<sup>9</sup> For the 2017 elections, the DC and LCD have entered into a voting pact for the constituency elections to further strengthen the reach of both parties. A total of 1,372 constituency candidates (this includes 45 independent candidates) will contest the 2017 general elections.

**Table 2: Parties contesting the 2017 general elections and summary of candidates.**

	Political Party	Candidates on part list	Constituency candidates
1	ABC	40	80
2	AD	46	80
3	ADC		7
4	AUM		5
5	BEANA	42	63
6	BANC	40	26
7	BBDP	-	-

<sup>5</sup> See '2017 election activities' <http://www.iec.org.ls/>

<sup>6</sup> These were the voters who appeared on the register as of 10 February 2015; see <http://www.iec.org.ls/index.php/elections/documents/health-of-the-election-voters-register>

<sup>7</sup> See section 27 of the National Assembly Electoral Act 2011.

<sup>8</sup> About US \$600.24.

<sup>9</sup> <http://www.iec.org.ls/index.php/preliminary-pr-list>

8	BCP	50	76
9	BDNP	56	58
10	BNP	40	80
11	BTS	40	20
12	CFM	42	9
13	DC	42	55
14	DPL	40	72
15	HDP	42	31
16	LCD	40	24
17	LMM	40	51
18	LPC	50	63
19	LWP	62	44
20	MEC	40	80
21	MDM	42	40
22	MFP	40	64
23	NIP	40	75
24	PD		
25	PFD	42	79
26	RCL	40	76
27	SSD	40	19
28	TRU	42	25
29	TSD	40	15
30	WHP	40	10
31	Independent (Remakatse Sehlabaka)	40	45
	TOTAL	1158	1372

Source: <http://www.iec.org.ls/index.php/preliminary-pr-list>

#### 4.4 The media

Freedom of speech and media freedom are constitutionally protected in Lesotho. The Communications Media Act Number 4 of 2012 regulates the electronic media in the Kingdom of Lesotho. The Act establishes the Lesotho Communications Authority, which regulates electronic media. There is however no similar legal instrument or institution regulating the operations of the print media.

Neither the Constitution nor the Electoral Act has specific sections that direct the behaviour of the media during elections. However, the IEC has developed a code of conduct to guide the media personnel and media houses in *dos* and *don'ts* during elections.

There is only one television station in Lesotho – Lesotho National Broadcast Service (LNBS), which is state owned. The State also owns one radio station – Radio Lesotho. There are several private radio stations owned by individuals, corporates and faith-based organisations. All the newspapers in the Kingdom are weekly publications.

The PAM noted that for the 2017 elections, the public broadcaster provides a period of one hour for each party to feature on radio and TV.<sup>10</sup> Beyond the provision of the limited airtime to all parties, stakeholders across the political divide informed the PAM that the media in Lesotho is polarised, and identifies with political parties. The state media is purportedly pro-government, and gives limited space to the opposition. This was admitted by some of the stakeholders consulted by the PAM. In keeping with norms and standards that apply to the Kingdom, it must be stated that the failure of the public media to give equitable access to the opposition contravenes international obligations and negatively impacts on the fairness of the electoral process. Both the African Charter on Democracy, Elections and Governance and the Revised SADC Principles and Guidelines Governing Democratic Elections commit states to ensure fair use of public resources, including the media, for the conduct of credible elections. The EISA PAM noted that access to public media in Lesotho falls short of these principles.

The PAM gathered from its consultations that the media environment in the Kingdom of Lesotho is polarised and difficult. The social media, difficult as it is to regulate as it falls outside the ambit of the Communications Media Act, is quite vibrant, and is providing an alternative source of electoral information for the Basotho. Media ethics are a challenge in the Kingdom due to the non-regulation of social media and the print media. Ahead of the elections, there are also concerns about the security of media practitioners, following the fire that happened at the residence of a social media blogger, the shooting of a journalist in 2016, and the fleeing into exile of another journalist from the Kingdom.<sup>11</sup> There were also reports of closures of media houses by the authorities, which could potentially impact on information dissemination, and the capacity of parties to reach their audiences, given the alleged stranglehold of the government on the state media.

The issue of equal and equitable access to the media, and therefore to the voters, is a serious challenge for the forthcoming polls, as it was during the 2015 elections. This impacts on the ability of the people to make informed choices in the elections. Inflammatory language appears in vogue for some of the media houses, despite the risk that it could incite violence. MISA ad-

<sup>10</sup> [http://www.iec.org.ls/election%20act/ONCE%20OFF%20SCHEDULE%20FOR%20POLITICAL%20PARTIES%20radio%20and%20tv%20\(FINAL\)%20schedule.pdf](http://www.iec.org.ls/election%20act/ONCE%20OFF%20SCHEDULE%20FOR%20POLITICAL%20PARTIES%20radio%20and%20tv%20(FINAL)%20schedule.pdf)

<sup>11</sup> MISA Lesotho Chapter, Report on the State of the Media December 2016.

vised that it was carrying out various capacity-building programmes for journalists, producers and editors on responsible reporting. The impact of the programmes was diluted by editorial staff who took no part in these programmes and high staff turnover.

The legal framework enjoins government and its agencies to ensure that they make public facilities available to political parties registered with the IEC on the basis of equal charges for the use of such facilities.<sup>12</sup> There is no explicit provision for the allocation of free political propaganda broadcast time in the state media. The IEC is simply empowered to regulate the allocation of broadcast time to political parties, which allocation shall be done by arrangement with the relevant media houses.<sup>13</sup>

Electoral law makes provision for propaganda material to the extent that it provides for content issues as outlined in the National Assembly Electoral Act in very general terms. Guidelines published by the IEC, which it is submitted are more detailed and wider in coverage, would be more effective if they were part of the Code of Conduct contained in the Electoral Law. They are however simply guidelines that are not legally binding.<sup>14</sup>

#### 4.5 Civil society

Civil Society Organisations (CSOs) have been historically active in the politics of Lesotho, at times playing key mediation roles to resolve political conflicts. The IEC acknowledged the critical role of CSOs for purposes of providing civic and voter education and electoral observation. A number of CSOs were currently monitoring the political environment in the run-up to the 2017 elections.

The PAM was advised that CSOs in Lesotho have traditionally observed elections and were in the process of preparing themselves to observe the forthcoming elections. The accreditation of observers was yet to be finalised at the time of the PAM's visit to Lesotho. It appeared that the following CSOs deployed citizen observers in previous elections and were considering deploying during the 2017 elections: Lesotho Council of NGOs (LCNGO), Development for Peace Education (DPE), Transformation Resource Centre (TRC), Catholic Commission for Justice and Peace (CCJP) and Christian Council of Lesotho (CCL).

#### 4.6 Gender and minority rights

The Constitution of Lesotho protects gender and minority rights, thereby guaranteeing the right of all groups to freely participate in the electoral process. The Natio-

nal Assembly Electoral Act of 2011 introduced a requirement that party lists must ensure equal representation of men and women (i.e. a requirement that 50% of names submitted on party lists be women). The impact of this requirement is however limited by the fact that it only applies to the proportional representation component of the candidate nominations. Thus, overall, the Kingdom of Lesotho still falls short of its commitments under the SADC Protocol on Gender and Development, which required member states to achieve gender parity in decision-making positions by 2015. The current gender composition of the Lesotho Parliament is skewed in favour of men: of the 120 MPs in the two-chamber Parliament only 30 (25%) are women.<sup>15</sup>

Stakeholders contacted feared that there would be a drop in the representation of women in the coming elections given the fact that these elections are highly contested. To gain seats, parties tend to position a man in the first place on the list, allegedly because they are stronger and more likely to be voted for than women. Based on IEC disaggregated statistics on constituency candidates 416 women will contest the 2017 elections at the constituency level. This accounts for 30% of the total 1,372 constituency candidates.

In terms of women's participation, the PAM noted that in the 2015 elections women constituted 55.79% of the total number of registered voters.

With regard to the representation of youth, the PAM noted that the age limit (21 years) provided as the basis for qualification to contest in elections is conducive for young people to stand in elections. Furthermore, the age disaggregation of the 2015 voter register also showed that voters between the ages of 19 and 39 form the largest group of registered voters.<sup>16</sup>

<sup>12</sup> Section 65 of the National Assembly Electoral Act.

<sup>13</sup> See section 67 of the above Act.

<sup>14</sup> These were adopted in 2011 at a workshop organised by the Lesotho Communications Authority.

<sup>15</sup> See <http://www.ipu.org/pdf/publications/WIP2015-e.pdf> (Accessed 17 April 2017)

<sup>16</sup> <http://www.iec.org.ls/index.php/elections/documents/health-of-the-election-voters-register>

**Table 3: Gender disaggregated data on constituency candidates in the 2017 elections**

District	Constituency	Males	Females	Total
<b>Quthing</b>				
	Tele #64	11	3	73
	Moyeni #65	12	5	
	Sebapala #66	11	3	
	Mt.Moorosi #67	11	5	
	Qoali #68	9	3	
<b>Qacha's Nek</b>				
	Qacha's Nek #69	7	7	36
	Lebakeng #70	6	4	
	Tsoelike #71	8	4	
<b>Thaba-tseka</b>				
	Mantsonyane #72	12	3	76
	Thaba-Moea #73	12	2	
	Thaba-Tseka #74	9	7	
	Semena #75	10	5	
	Mashai #76	14	2	
<b>Maseru</b>				
	Motimposo #30	9	9	320
	Stadium-Area #31	12	6	
	Maseru #32	10	8	
	Thetsane #33	13	6	
	Qoaling #34	14	7	
	Lithoteng #35	12	8	
	Lithabaneng #36	14	6	
	Abia #37	14	4	
	Thaba-bosiu #38	14	6	
	Machache #39	11	10	
	Thaba-putsoa #40	10	5	
	Maama #41	12	6	
	Koro-koro #42	14	4	
	Qeme #43	11	6	
	Rothe #44	9	7	
	Matsieng #45	13	4	
	Makhaleng #46	11	2	
	Maletsunyane #47	12	1	

<b>Mafeteng</b>				
	Thaba-phechela #48	15	3	137
	Kolo #49	14	4	
	Matelile #50	13	2	
	Maliepetsane #51	10	6	
	Thabana-Morena #52	11	4	
	Likhoele #53	10	6	
	Qalabane #54	9	9	
	Mafeteng #55	14	7	
<b>Mohale's Hoek</b>				
	Taung #56	8	8	113
	Qhalasi #57	11	6	
	Mohale's Hoek #58	14	4	
	Mekaling #59	9	3	
	Qaqatu #60	9	2	
	Mpharane #61	8	6	
	Ketane #62	7	6	
	Hloahloeng #63	9	3	
<b>Leribe</b>				
	Maliba Mats'o #06	9	4	229
	Mphosong #07	10	8	
	Thaba Pats'oa #08	9	7	
	Mahobong #09	7	10	
	Pela Ts'oeu #10	11	5	
	Matlakeng #11	12	7	
	Leribe #12	14	4	
	Hlotse #13	12	4	
	Tsikoane #14	15	4	
	Maputsoe #15	12	9	
	Peka #17	16	3	
	Kolonyama #18	13	5	
	Likhetlane #16	12	7	
<b>Butha-buthe</b>				
	Mechachane #1	12	5	82
	Hololo #2	14	4	
	Motete #3	11	5	
	Qalo #4	11	5	
	Butha-Buthe #5	9	6	

Berea				
	Mosalemane #19	13	3	200
	Makhoroana #20	14	2	
	Bela-bela #21	18	1	
	Malimong #22	14	4	
	Khafung #23	15	5	
	Teya-teyaneng #24	17	2	
	Ts'oana-Makhulo #25	10	7	
	Thupa-kubu #26	16	4	
	Berea #27	11	7	
	Khubetsoana #28	13	6	
	Mabote #29	16	2	
Mokhotlong				
	Malingoaneng #77	13	3	61
	Senqu #78	7	7	
	Mokhotlong #79	12	4	
	Bobatsi #80	10	5	

#### Summary:

Total no. of male party candidates	926
Total no. of female party candidates	401
Total party candidates	1,327
Total no. of male independent candidates	30
Total no. of female independent candidates	15
Total no. of independent candidates	45
	<b>Total constituency candidates= 1,372</b>

compiled from: <http://www.iec.org.ls/index.php/preliminary-pr-list> and <http://www.iec.org.ls/Candidates2017/index.php>

#### 4.7 Civic and voter education

The IEC and its CSO partners are acknowledged by political parties across the political landscape for providing sound civic and voter education. At the time of the PAM visit voter education had not started, because the IEC had not yet received the requested funds from the treasury in order to fund the CSOs. CSOs such as the Lesotho Council of Non-Governmental Organisations (LCN), Transformation Resource Centre (TRC) and Development for Peace Education (DPE) had submitted their application for funding. The PAM gathered from its consultations with the IEC that it would consider the CSOs' tender to the IEC for the provision of funding for voter education for the delayed local government elections. The PAM was also advised that the process for the consideration of these tenders was at an advanced stage and

that it was likely that funds for voter education would be released soon. Voter education programmes are expected to commence on 11 April 2017. The IEC expressed its concern that funding constraints would limit the coverage of the voter education programmes.

Engagements by the PAM established that some stakeholders were concerned that the voter and civic education may be inadequate to equip voters to understand why they are being called to the polls only two years after the 2015 elections.

The EISA PAM noted that like the voter registration, voter and civic education should be continuous to cover all phases of the electoral cycle, as elections are not a single event.

#### 4.8 Security

Security of the ballot is provided by the Lesotho Mounted Police Service, which is mandated by law to provide security. The IEC is satisfied with the role that the LMPS plays and will play in relation to security of the electoral process.

Stakeholders consulted by the EISA PAM pointed to a chronic security deficit in the Kingdom of Lesotho, with a perception that the government is using state forces, both police and army, against the opposition. At the time of the PAM visit, armed personnel from the LDF and armoured personnel carriers were observed in Maseru. This in a country not at war could be perceived by some stakeholders as part of an intimidation campaign. Indeed, there were claims from some stakeholders about the use of the security sector in such intimidatory tactics.

The PAM also noted with concern reports that the former Prime Minister, Thomas Thabane of the ABC, who ordinarily would be entitled to government protection, had had his security personnel disarmed in a manner that was calculated to make him vulnerable. For a political figure coming back from political exile, this act on the part of the police was a matter for concern.

The perception of politically biased state security forces could impact on the credibility of elections, because both police and military are critical actors in the electoral process. The police service provides security for the polls, while the defence forces provide logistical support to the elections, providing for instance helicopter transport for IEC staff and voting materials to geographically remote areas of the mountainous country.

#### 4.9 Election campaigns

Section 58 of the National Assembly Electoral Act of 2011 regulates political campaigns. The campaign pe-

riod runs from the date the election date is proclaimed up to the period 24 hours before polling begins. Parties registered with the IEC are required to notify the local authority and the police of the venue, date and time for any proposed public campaign. A code of conduct for political parties is reinforced by section 64 of the National Assembly Electoral Act, 2011.

The campaign commenced in earnest pursuant to the proclamation of elections by the King on 10 March 2017. All political parties advised the PAM that campaigns are in full swing. There was concern in the ABC that the disarming of the former Premier's security guards was meant to reduce his capacity to conduct party campaigns, as he became vulnerable.

The PAM gathered from its consultations that there were allegations of abuse of state resources by the coalition partners in government. In particular it was alleged that government departmental ministry vehicles and personnel were being employed for political party campaigns. Though the EISA PAM did not observe these issues directly, it noted that should these allegations be true, it will impact on the level playing field for political parties contesting the 2017 parliamentary elections.

The legal framework provides for political party funding, as highlighted in the second chapter of this report. While those parties in the outgoing Parliament indicated that they were eligible for state funding, they advised the PAM during its visit that they had not yet received their portion of the funds. This may have been in part due to the fact that the IEC itself only received funds from government during the week commencing 27 March 2017. The parties would also have to account for those funds received in the previous period in order to access funds under the new financial year. In consequence, the possibility existed that the funds would have little impact on this election on account of them being disbursed late in the election cycle. If it was any consolation, this affected all the parties contesting the polls.

#### 4.10 Preparedness of the EMB

As highlighted in the election calendar,<sup>17</sup> IEC has been discharging its obligations according to the law. At the time of the PAM, the IEC was busy conducting its duties related to the conduct of these polls. It advised that because of its reputation among its suppliers, it was able to procure some of the services that it required on the basis of goodwill, as suppliers were confident that they would eventually be paid. Given the urgency of the matter, the government had also permitted the IEC to bypass some of the bureaucratic procurement regulatory procedures to ensure that the IEC could abide by the time-frames set in its election calendar.

There was general agreement among stakeholders that the IEC had the competence to discharge its duties. There were, though, misgivings by some of the political parties in the governing coalition about the commissioners in the IEC who it was said were linked to one of the opposition parties.

#### Key findings and challenges related to the pre-election phase

- There is general fear that the lack of updated constituency delimitation may ignore population growth and movement that has occurred since the last delimitation of constituencies in 2010.
- Because of the constraints provided by the calendar imposed by the very nature of a snap election, there were concerns that the seven-day period allocated for the registration of 17-year-old voters and transfers was insufficient. The limited funding available to the IEC meant that it was unable to publicise widely and roll out the process to all corners of the country as expected by all stakeholders. The result was that there may be potential voters who were excluded by the process.
- Stakeholders across the political divide informed the PAM that the media in Lesotho is polarised, and identifies with political parties. The state media was pro-government, and gave no space for the opposition.
- Stakeholders contacted feared a drop in the representation of women in the coming elections given the fact that these elections are highly contested.
- Engagements by the PAM established that some stakeholders were concerned that the voter and civic education may be inadequate to equip voters to understand why they were being called to vote only two years after the 2015 elections.
- Stakeholders engaged by the PAM pointed to a chronic security deficit in the Kingdom of Lesotho, with a perception that the government is using state forces, both police and army, against the opposition.
- There were allegations that the coalition partners in government were abusing state resources during electoral campaigning.
- The IEC gave assurances of its readiness to discharge its obligations according to the law; however, other stakeholders contacted are of the opinion that the tight schedule and limited funds may hinder the IEC efforts.

<sup>17</sup> Published in the Government Gazette on 10 March 2017

**APPENDIX 1: List of stakeholders consulted**

Stakeholder Category	Name	Organisation	Position
<b>EMB</b>	Dr. L A Ntsike	IEC	Director of Elections
<b>Political Parties</b>	Mr. Motloheloa Phooko	RCL	Deputy Leader
	Mr. Francis Thakaso	WHP	Party Leader
	Mr. Makhalanyane Seibati	PFD	Deputy General Secretary
	Mr. Mamohale Api	PFD	Member of the Executive Committee
	Mr. Reginald Tekateka	BNP	Secretary General
	Mr. Bokang Ramatsella	LPC	Secretary General
	Mr. Vincent M. Malebo	MFP	Party Leader
	Mr. Samonyane Ntsekele	ABC	Secretary General
	Hon. Minister Tlohang Sekhamane	DC	Deputy Secretary General & Minister of Finance
	Mrs. Tsepang Tsiba-Mose-na	MEC	Communications and Marketing Secretary
	Mr. Tieho Gilbert Mamasiamane	AD	Deputy Secretary General
Mr. Bokang Moleko	AD	Executive Secretary	
<b>Civil Society</b>	Mr. Seabata Motsamai	LCNGO	Executive Director
	Mr. Sofonea Shale	DPE	Director
	Mr. Tsikoane Peshoane	TRC	Programme Head for Social and Environmental Justice
	Mr. Booi Mohapi	CCJP	Executive Secretary
	Mr. Khosi E Makubakube	CCL	Secretary General
	Adv. Libakiso Matlho	WLSA	Country Director
<b>International Agencies</b>	Mr. Thabang Tlalajoe	UNDP	Programme Manager - Governance
<b>Academia</b>	Dr Hoolo Nyane	NUL	Lecturer
<b>Media</b>	Mr. Tsebo Matsasa	MISA	National Director

## 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 signed an MOU with the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); 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, Mozambique, Somalia, Zambia and Zimbabwe, and a regional liaison office at the secretariat of the ECCAS in Libreville, Gabon.

### Election observation activities

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, 2015), 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, 2016), Tanzania (2005, 2010), Uganda (2011, 2016), Zanzibar (2005, 2010), Zambia (2005, 2008, 2011, 2015, 2016), and Zimbabwe (2000, 2002, 2008), Reports on these missions can also be found on our website.



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#### **About EISA**

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#### **Our vision**

An African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment.

#### **Mission statement**

EISA strives for excellence in the promotion of credible elections, citizen participation, and the strengthening of political institutions for sustainable democracy in Africa.

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