



EISA ELECTION OBSERVATION MISSION TO THE 3 JUNE 2017 LEGISLATIVE ELECTIONS IN LESOTHO

Preliminary Statement

Maseru

5 June 2017

“It is the EISA Mission’s preliminary assessment of the conduct of the 3 June 2017 legislative elections in Lesotho that the process has been so far generally peaceful, and conducted in a professional and transparent manner, which allowed Basotho voters to express their will freely within a challenging and tension-filled political environment. Furthermore, the EISA Mission is of the opinion that the electoral process generally conformed to the laws of Lesotho and international, continental and sub-regional standards for credible elections. EISA will continue to observe the process until the tabulation and announcement of results are concluded, before making a final assessment.”

1. Introduction

The Electoral Institute for Sustainable Democracy in Africa (EISA) deployed an Election Observation Mission (EOM) to the 3 June 2017 legislative elections in the Kingdom of Lesotho. The Mission is comprised of 19 observers representing civil society and election management bodies from eleven African countries, and is led by His Excellency Rupiah B. Banda, former President of the Republic of Zambia, with Denis Kadima, EISA’s Executive Director, as the Deputy Mission Leader.

The EISA EOM began arriving in the country on 25 May following a pre-election assessment in March. The Mission will depart on 7 June.

The EISA Mission was briefed by the main political parties contesting the elections, the Independent Electoral Commission (IEC), the Lesotho Mounted Police Service (LMPS), and representatives of civil society before deploying its teams of observers to nine of Lesotho's ten districts, with the exception of Maseru's Hoek.

The Mission leadership also paid courtesy visits to His Majesty King Letsie III, His Excellency the Deputy Prime-Minister, Hon. Mothetjoa Metsing, and the Minister of Foreign Affairs and International Relations, Hon. Mamphono Khaketla.

In their areas of deployment, EISA observers witnessed the final election campaign activities, interacted with local stakeholders, and observed the delivery and receipt of materials at selected polling stations. All EISA observer teams were equipped with computer tablets that enabled them to collect and transmit election observation data to the Mission Coordination centre in Maseru in real time.

The EISA EOM's preliminary assessment of the electoral process is based on the Lesotho legal framework governing the electoral process as well as the principles and standards set out in the African Charter on Democracy, Elections and Governance, the Declaration of Principles for International Election Observation, and the Principles for Election Management, Monitoring and Observation (PEMMO).

This statement presents the EISA EOM's preliminary findings, conclusions and recommendations on the pre-election period and election day. It is issued while the tallying of results is on-going, and therefore reflects only the Mission's observations up to the conclusion of the counting process at polling station level. A final report covering the entire process will be issued by EISA within two months.

This statement underscores both good practices and shortcomings in the conduct of the 2017 legislative elections in Lesotho. The Mission believes however that these shortcomings did not disadvantage any contestant in particular.

2. Preliminary Findings

2.1 Political Environment and the Constitutional and Legal Framework

The 3 June 2017 legislative elections in Lesotho were precipitated by the 1st March vote of no confidence in Prime Minister Pakalitha Mosisili and the subsequent dissolution of Parliament by His Majesty King Letsie III on 6 March on the advice of the Prime Minister.

These are the second early legislative elections due to disagreements within ruling coalitions since the 2012 general elections.

The electoral system reforms, which introduced the compensatory Mixed Member Proportional model, have proven effective in addressing the past unfair representativeness of the First-Past-The Post system used until 2002. However, the phenomenon of governing coalitions, which emerged as a result of the new electoral system and the subsequent inability of any of the political parties to secure an absolute majority of parliamentary seats on its own (i.e. 61 seats), has exposed weaknesses in the legal framework in dealing with this new political reality.

Lesotho needs therefore to carry out an inclusive and transparent process of constitutional, legal and institutional reforms through broad-based dialogue among all political forces and civic stakeholders aimed at ensuring sustainable management of coalitions and stable governance. The EISA Mission is of the opinion that this cannot be achieved through legal reforms only, and will require serious commitment by political parties to transform the current political culture in the country.

The Mission took notice of and welcomes the pledge signed on 6 April 2017 committing Lesotho's political parties to an inclusive, participatory and comprehensive process to reform the Constitution, the Parliament, the Security sector, the Judiciary and the Public Service. For the long-term sustainability of such reforms, it is vital that the Basotho political and civic actors take ownership of the process, its substance and implementation.

In its assessment of the legal framework for the 2017 elections, the EISA Mission is of the opinion that it provides the basis for the conduct of competitive, transparent and credible elections in Lesotho.

2.2 Electoral Management

The EISA Mission noted the elevated status conferred by the Lesotho Constitution to the IEC and its members. Furthermore, the Mission notes that the IEC is independent in terms of its appointment and funding as stipulated in the Constitution.

The stakeholders consulted by the EISA Mission generally expressed confidence in the IEC's ability to manage the 2017 elections in a professional and impartial manner. The Mission was informed that the IEC received the necessary financial and material resources

to discharge its mandate for the 2017 elections, and that this contributed significantly to the good conduct of the process.

It is the opinion of the EISA Mission that, within this challenging political context, the IEC in preparing for the elections complied with all the legal and procedural requirements.

2.3 Voter Registration

The Mission further noted that persons who turned 18 years of age by the election date were given seven days to register before the suspension of voter registration on 19 March. Those voters who had changed constituencies were also given the opportunity to transfer to their new constituencies during the same period. Some stakeholders expressed concerns that the seven-day period allocated for the registration of 17-year-old voters and transfers might have been insufficient.

The IEC informed the EISA Mission that it had expunged the voters' roll of deceased voters and duplicate entries to strengthen the integrity and accuracy of the register. This is in line with the recommendations made by the EISA observer mission and others, after the 2015 elections.

2.4 Campaign Finance

The EISA Mission noted that the legal framework in Lesotho allows for public funding of registered parties and campaigns in line with international good practices. The Mission also noted that the Electoral Act requires that private donations exceeding M200,000 be disclosed. The law however does not place any ceilings on the amount of money political parties or candidates may receive from private sources for their campaigns, nor does it put any spending limits on the amounts party may spend on their electoral campaigns. The EISA Mission reiterates the view expressed in 2015 that such a gap in the legal framework may open up the electoral process to the undue influence of private money.

2.5 Electoral Campaign

The Mission was informed and observed with satisfaction that the electoral campaign was generally lively and peaceful, without major incidents of violence or intimidation. Leaders of opposition parties however indicated to the Mission that their security during the campaign was inadequate and that their physical integrity was vulnerable to attacks.

Stakeholders mentioned to the Mission that there were several documented instances of abuse of state resources by government coalition parties, and that there were attempts at manipulating the public media by government officials.

The Mission noted with satisfaction that all parties contesting the elections were allocated free airtime on the public TV and radio for the broadcast of their campaign messages. Some stakeholders were of the opinion that the allocated amount of time was not sufficient.

2.6 The Role of the Media

Many stakeholders, including media monitoring institutions, informed the Mission that freedom of the press is guaranteed and practiced in Lesotho. However, from its consultations, the Mission has gathered that the private media environment in Lesotho is highly polarised along party lines, which may compromise citizens' access to balanced and fair election coverage.

Opposition parties also claimed that the public media provided more coverage to the parties in the ruling coalition. The Mission was not in a position to verify these claims.

On the other hand, the Mission noted with satisfaction that radio stations used more moderate language during the campaign period compared to the 2015 electoral process. This contributed to creating a more tolerant electoral environment.

2.7 Conflict Management

The Mission notes with satisfaction the existence of electoral dispute management structures, such as the constituency and district level conflict management committees. These structures have promoted ownership of the electoral process by all stakeholders, and contributed to the low levels of violence in this electoral process.

According to the IEC, the contentious nature of the 2017 elections gave rise to an increase in the number of elections complaints, whose appeals have put a heavy burden on the High Court, which is not particularly suited to dispose of electoral disputes in a swift manner due to its own procedural rules.

2.8 Gender, Disabled Voters and Prisoners Voting Rights

The Mission notes with satisfaction that gender inclusion and the rights of minority groups are enshrined in the Constitution of Lesotho and therefore their participation in the electoral process is protected and guaranteed.

The requirement for political parties to include women and men in equal numbers and in alternate positions in their party lists for the PR seats have contributed to improving the representation of women in Parliament. However, as this requirement applies only to the proportional representation component of Parliament, women are still a significant minority among the constituency candidates. Thus, of the constituency candidates in the 2017 elections, only 30% were women, which does not represent an improvement on the 2015 elections.

The Mission is satisfied with the provision of voting templates for the visually impaired to allow these voters to make their electoral choice autonomously and in secret.

The Mission notes that the Lesotho electoral legislation provides for the right of prisoners to vote, which was duly implemented in 2015. The Mission was pleased to be informed and to note that prisoners were accorded an opportunity to exercise their constitutional right in these elections.

2.9 Civic and Voter Education

The Mission noted with satisfaction the efforts by the IEC to conduct civic and voter education in collaboration with local civil society organisations and international partners despite the tight election calendar.

The initiative to publish a compilation of the summarised versions of the different electoral manifestos for free distribution among voters throughout the country to assist them in making an informed choice on election day was particularly noteworthy to the Mission.

2.10 Civil Society and Citizen Observation

The EISA Mission acknowledges the role of civil society as a critical pillar in stabilising Lesotho's political and electoral landscape. The Mission was informed that, in addition to being engaged by the IEC to carry out voter education, CSOs were also involved in other stability-promoting initiatives throughout the country ahead of the elections.

As in past elections, CSOs were also involved in citizen election observation although on a much smaller scale than before.

2.11 Advance voting

The Mission notes with satisfaction that, in line with international best practices, members of the security forces and other essential services staff, who were scheduled to be on duty on election day, were allowed to register and vote during advance voting, which took place on 27 May.

2.12 Polling Day Observation

EISA teams observed election day procedures, including opening, voting, closing and counting, in a total of 88 polling stations, of which more than half were in rural areas, in the nine districts where they were deployed. This is a summary of their observations and is valid only for the polling stations observed by the EISA Observer Mission:

The atmosphere in and around polling stations was peaceful and orderly, without any campaign materials or activities. Security personnel, both police officers and police assistants, were present at all stations, and their presence was professional and discreet.

Party agents were able to monitor all phases of the process on election day. EISA observer teams noted an average of 12 party agents per polling station. The Mission is of the view that the strong party representation in the polling stations contributed to enhancing the transparency and credibility of election day procedures.

All the polling stations had all the necessary materials for election day operations to proceed normally.

The ballot boxes were appropriately sealed and remained so throughout the day until the start of the counting process. However, there were inconsistencies in the number of seals applied to the boxes, ranging from two to four. Presiding officers attributed these differences to the training received.

The presence of women at polling stations as voters, polling officials, party agents and citizen observers was noteworthy. Around 2/3 of polling officials, party agents and citizen observers in polling stations were women.

About 23% of visited polling stations were described as inaccessible to voters with disabilities, mostly because they had steps and no ramps for voters with mobility impairment.

Opening Procedures

The EISA teams observed opening procedures in 8 polling stations, of which 83% opened on time. Polling personnel were well-prepared and opening procedures were properly followed.

Voting Process

The EISA teams observed voting procedures in 88 polling stations.

The layout of most of the visited polling stations was adequate for an easy flow of voters and to ensure secrecy of the ballot. However, the need for voters to hand over the marked ballot paper to one polling official to have the top counterfoil removed from the ballot paper caused problems in the smooth flow of voters, and could potentially compromise the secrecy of the vote as it allows a person other than the voter to handle a marked ballot paper. The Mission also noticed that in most polling stations polling officials did not compare the serial numbers of both counterfoils as instructed, which defeated the purpose for which the second counterfoil was introduced. Furthermore, it is not clear to the EISA Mission whether a second counterfoil is needed as a control or security measure.

The voting process was conducted smoothly and efficiently and the average time for a voter to complete the full voting process was less than 3 minutes.

There were few instances of voters being turned away without voting because their names were not on the voters' roll.

All EISA observer teams assessed the voting process and the competence of polling station staff to be good or very good.

Closing and counting process

EISA teams observed closing and counting procedures in 8 polling stations. The teams reported that there were no queues at closing time in the stations visited, and that all polling stations closed on time.

EISA teams noted that in 3 of 8 polling stations where they observed closing and counting (polling station 7408A in the Thaba Tseka constituency in Thaba Tseka and polling stations 3106A and 3106B in the Stadium Area constituency in Maseru) the crucial ballot reconciliation process was not undertaken.

The EISA EOM noted with satisfaction that the IEC introduced more flexible criteria to determine the intention of the voters in the process of validating ballots. This ensured that the will of the voters was given due recognition, and made the counting process less contentious than in 2015.

3. Conclusion

It is the EISA Mission's preliminary assessment of the conduct of the 3 June 2017 legislative elections in Lesotho that the process has been so far generally peaceful, and conducted in a professional and transparent manner, which allowed Basotho voters to express their will freely within a challenging and tension-filled political environment. Furthermore, the EISA Mission is of the opinion that the electoral process generally conformed to the laws of Lesotho and international, continental and sub-regional standards for credible elections. EISA will continue to observe the process until the tabulation and announcement of results are concluded, before making a final assessment.

4. Recommendations

The EISA Election Observer Mission urges the political forces and other stakeholders to develop and implement consensual and inclusive constitutional, legal and other reforms regarding the functioning of governing coalitions and parliamentary stability, and to further guarantee security sector neutrality and impartiality, among others, as committed to by most political parties through the pledge signed on 6 April 2017.

Furthermore, based on the findings presented above, the EISA Election Observer Mission formulates the following recommendations:

To Parliament:

1. Recommends a review the electoral legislation to include provisions to further regulate private campaign funding, by introducing ceilings on private donations and campaign expenditures.
2. Recommends the creation of an electoral court to adjudicate electoral objections and complaints.
3. Reiterates its previous recommendation for the strengthening of the regulatory framework for the conduct of the media during elections

To political parties:

1. Reiterates its previous call for the strengthening of the role and visibility of women in politics, in particular within political parties to improve their prospects as party leaders and constituency candidates.

To the IEC:

1. Recommends the review of the requirement of two ballot paper counterfoils.
2. Recommends that training of polling station staff be improved to ensure:
 - a. Consistency in the application of ballot box seals; and
 - b. The strict implementation of the ballot reconciliation procedures.
3. Recommends the improvement of conditions to make polling stations fully accessible to voters with disabilities and to provide adequate lighting after sunset.

The EISA Election Observer Mission commends the people of Lesotho, the IEC, and the candidates for a peaceful and well-managed process. The Mission appeals to all stakeholders to maintain the same spirit of calm and peace that they have demonstrated so far, while the results are tabulated and announced and after the process is concluded.

Last but not least, the EISA Election Observer Mission would like to express its gratitude to the people and the authorities of the Kingdom of Lesotho, and the IEC in particular, for the warm welcome and for creating the conditions and atmosphere for the successful achievement of its objectives.