

## **Chapter One**

### **INTRODUCTION**

#### **INVITATION AND COMPOSITION OF THE EXPERT TEAM**

This report presents the observations, conclusions and recommendations of the Commonwealth Expert Team which was present in Lesotho for the Parliamentary Elections held on 17 February 2007.

The decision to send an Expert Team followed an invitation from the Independent Electoral Commission (IEC).

The Team consisted of:

*Ms Maryan Street MP  
New Zealand*

*Mr Sam Asimwe Rwakoojo  
Secretary  
Electoral Commission  
Uganda*

*Mr Peter Aling'o  
Deputy Executive Director  
Institute for Education in Democracy (IED)  
Kenya*

#### **Commonwealth Secretariat Staff Support Team**

*Prof Ade Adefuye  
Special Adviser & Head, Africa Section  
Political Affairs Division*

*Mr Linford Andrews  
Political Affairs Officer, Africa Section  
Political Affairs Division*

## Terms of Reference

The Terms of Reference of the Expert Team were as follows:

*"The Commonwealth Expert Team is established by the Commonwealth Secretary-General at the request of the Government and the Independent Electoral Commission (IEC) of Lesotho. It is to observe the preparations for the Parliamentary Elections on 17 February 2007, as well as the polling, counting, results process and the overall electoral environment. It is to consider the various factors impinging on the credibility of the electoral process as a whole and to determine in its own judgement whether conditions exist for a free expression of will by the electors and if the results of the elections reflect the wishes of the people.*

*The Expert Team is to act impartially and independently. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.*

*The Expert Team is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Lesotho, the Independent Electoral Commission, the leadership of the political parties taking part in the election and thereafter to all Commonwealth Governments."*

The members of the Team were invited in their individual capacities and it was made clear in advance by means of a circular to Commonwealth Governments and a press release (see **Annex A**) that the views they expressed regarding the elections would be their own and not those of their respective Governments or of the Commonwealth Secretariat. (The composition of the Group is set out in **Annex B**).

## ACTIVITIES OF THE EXPERT TEAM

The Expert Team arrived in Lesotho on 8 February 2007 and began work by holding a series of briefing meetings in the Lesotho Sun Hotel. A list of organisations consulted by the Team is at **Annex C**. The meetings enabled the Team to obtain information on the overall electoral environment, the electoral process and key issues of concern to various stakeholders. The Team was also provided with various

written briefing materials, including documentation on the electoral legislation, the Mixed Member Proportional System (MMP), and a Polling Station Procedures Manual.

During the period 9 – 14 February, the Team was briefed by the Independent Electoral Commission (IEC), representatives of various political parties, members of the diplomatic corps, other international observer missions, the media, civil society and the UNDP.

On Wednesday 14 February the Team attended a meeting for members of the diplomatic corps and international observer missions, co-ordinated by the UNDP Resident Representative, to exchange views on the preparations for the elections.

On Thursday 15 February members of the Team commenced their deployment. One member of the Team, Mr Sam Rwakoojo, visited the districts of Leribe, Butha-Buthe, Mokhotlong and Thaba-Tseka. Another Team member, Mr Peter Aling'o, travelled to Mafeteng, Mohale's Hoek, Quthing and Qacha's Nek. A third group, consisting of Ms Maryan Street MP and Prof Ade Adefuye, covered the districts of Maseru and Berea. One member of the Secretariat staff support team, Mr Linford Andrews, remained in Maseru. Their deployment afforded members of the Team to conduct a further assessment of the final preparations for the elections and the overall electoral environment. In this regard, they were able to visit district offices of the IEC, police stations and to interact with voters in all the districts they visited.

On Polling Day itself, 17 February, members of the Team were present at polling stations to observe their opening. They then visited as many stations during the day and observed the closing procedure. The Teams then observed the counting of votes, which was conducted at the polling stations soon after the closing of the polls.

The Teams were able to observe the count, and announcement of results, and the sealing of the ballots. During its deployment the Team visited 10 districts<sup>1</sup>, while on polling day the Team visited 40<sup>2</sup> polling stations across the country.

From 19 to 22 February the Expert Team prepared its report and attended a number of follow-up meetings. These included a number of press conferences, held by the SADC Electoral Observer Mission, the

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<sup>1</sup> The following districts were visited by the Team: Berea; Butha-Buthe; Leribe; Mafeteng; Maseru; Mohale's Hoek; Mokhotlong; Qacha's Nek; Quthing; and Thaba-Tseka.

<sup>2</sup> Each polling station visited consisted of a varying number of polling booths.

African Union Electoral Observer Mission and EISA, to deliver their preliminary statements on the elections, as well as a meeting coordinated by the UNDP Resident Representative for international observers and members of the diplomatic community to exchange views on the conduct of the elections on polling day.

Following the completion of its report the Team departed Lesotho on Friday 23 February 2007 and the report was then submitted to the Commonwealth Secretary-General in London.

## **Chapter Two**

### **POLITICAL BACKGROUND**

Following successive post election crises, arising from the inadequacy of the first-past-the post system (FPTP) during which the number of popular votes secured by political parties were not adequately reflected in parliamentary seats, the Commonwealth, SADC, and other partners, agreed to explore the possibility of creating a new system which would ensure the representation of all political groups in the political process.

The passage of the Electoral Registration Act of 2000 conferred on the IEC the right to determine the system of electoral registration. In March 2000 the Senate approved the fourth Amendment to the Constitution of Lesotho Bill 2000, by which a formula for representation in Parliament was adopted. It provided for a 120 member parliament, 80 of whom were to be elected on the first-past-the-post basis, and the remaining 40 on the basis of proportional representation. It was on this basis that the 2002 Parliamentary Elections were conducted. The post-election environment under the MMP system was relatively calm and established people's confidence in the workability of the MMP system. Confidence in the system was further reinforced by the successful conclusion of the Local Government Elections in April 2005.

The relatively peaceful political climate was disrupted by the announcement of a new political party, the All Basotho Convention (ABC), led by Mr Tom Thabane, the Minister of Communications, who had previously served as Minister of Foreign Affairs and Home Affairs. The defection of Mr Thabane, with 17 members of the LCD, on 13 October 2006 brought the total number of non-government MPs to 59 in the 120-seat National Assembly. Government found it difficult to work with a majority of two, more so as Mr Thabane quickly mustered support from among the youth and vocal elements. His political rallies were attracting a large crowd. Elections were normally due to take place in May 2007, but the Government seemed to have been uncomfortable with the growing number of supporters which Mr Thabane was attracting. The ruling LCD then decided to bring forward the election date.

In late November 2006, His Majesty King Letsie III, on the advice of Prime Minister Mosisili dissolved Parliament and announced that a new election would be held on 17 February 2007. The IEC was asked to

make the necessary arrangements. The IEC had been working towards a May 2007 election, but following contemporary political developments, it had geared itself for the possibility of a snap election.

The sudden nature of the election affected the period and process of voter registration. The IEC did not have the usual three month period required to register voters for the election. The registration period was therefore shortened, with the result that voters who were migrant workers and students based in South Africa, and some young people attaining the age of 18 could not register. Registration closed on 25<sup>th</sup> December 2006 with further revisions in January 2007. Opposition parties complained about the inadequacy of registration and viewed this as a ploy to disenfranchise their supporters, especially those of the ABC. The IEC did take some steps to minimise the possible effect of the shortened period of the voter registration, but this did not please the opposition parties. On the Election Day, however, the shortened registration period had little visible impact (*see Interim Report to the Secretary General at **Annex D***)

The Commonwealth Secretary-General paid a visit to Lesotho in December 2006 and met with representatives of all the registered 16 political parties, on election-related matters. Their main complaint was the inadequacy of the registration period and the alleged interference in IEC activities by the ruling LCD Government. Issues were raised on the extended tenure of the IEC chairman and the close relationship between the Director of Elections and leading members of the Cabinet and LCD party. Complaints were also raised about the timing of the release of election grants for political parties. The attempt by the major political parties, the LCD and ABC, to form alliances, was seen as attempts to defeat the inherent advantages of the MMP system. The particular case of the LCD alliance with the NIP and the manner in which the judiciary dealt with the case was seen as a clear manipulation by the ruling party of the new system in such a way as to defeat the main objective of the MMP. The matter evoked so much passion. The independence and integrity of the judiciary was called into question for the speed with which the matter was disposed in favour of the Government. The matter was raised at a meeting of political parties, IEC and international observers held just three days prior to the election.

The political parties need to be encouraged to consider the difference between forming alliances and clearly signalling potential coalition partners. The potential effect of the creation of alliances as expressed in this election could be to remove the advantages of MMP by

distorting proportionality. The IEC, politicians and officials of parliament need further education on the workings of MMP.

Campaigns by political parties, both door-to-door and political rallies, have been relatively free and unhindered. The IEC granted campaign permits in such a manner as to avoid possible clash of party supporters. There are also campaigns organised through the electronic and print media. Lesotho has several major weekly newspapers and electronic media include state owned Radio Lesotho and private radio stations such as Harvest Radio<sup>3</sup>.

In the lead-up to the elections, the IEC made efforts to ensure equal access to government-owned electronic and print media, by creating a media monitoring panel. But this was not satisfactory to the opposition. There were allegations of harassment by government agents of journalists, suspected to be hostile to the Government. The Chairman of the Media Institute of Southern Africa (MISA) personally complained to the Team of his personal harassment by government agents for his balanced reporting of the political situation. It should be mentioned, however, that the professional competence and objectivity of some of the practising journalists could not be ascertained. A day before the election, the independent newspaper, Public Eye, published its projection of the possible outcome of the election.

On Election Day, we were impressed by the enthusiasm of the people of Lesotho to exercise their democratic rights. Polling officials, many of whom spent the previous night in the polling stations, informed us that people began arriving at the stations two hours before the scheduled commencement of the polls. The long queues, especially in the morning hours, were peaceful and orderly. Security officials were visible but not intrusive. The polling staff performed efficiently and did a good job of assisting those voters, especially the elderly who seemed confused by the need to vote twice (constituency and party at the same time). It appeared as if the polling staff, some of whom took part in the 2002 Parliamentary and 2005 Local Government Elections, was quite conversant with the process and procedure. On the polling day, there was very little evidence of the negative impact of the snap election, and the inadequacy of the period of registration. The IEC, which was very honest and transparent in its account of the

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<sup>3</sup> Lesotho has one public newspaper called Leseli Ka Sepolesa and several private ones, including: Lentsoe La Basotho; Public Eye; Mopheme; Moeletsi oa Basotho; Leselinyana; Mara; and Mololi. Both Lesotho Television (LTV) and Radio Lesotho are government-owned. Private Radio stations include: PC FM; Harvest FM; CR FM; Jesus is the Answer FM; Joy FM; and TK FM.

preparations for the elections, correctly estimated that there would possibly be 2 – 4 of the projected 500 voters in the polling station whose photographs would not be in the voters' register. In most cases, this proved to be true. Nonetheless, the affected voters were allowed to exercise their franchise.

There were a few cases of people appearing in the wrong voting station or polling booth. The polling officials did a good job of assisting and directing them to the right place. Polling began and closed on schedule in most polling stations. We did not receive any reports of a deliberate attempt to defraud the process. The layout of polling stations was good and the secrecy of the ballot was assured. The counting and collation of ballots was efficient and transparent though painstaking.

But the process of voting took too long. It could not have been possible to complete the process had there been a 100 percent turnout. There was not enough voter education. Ministers made use of government vehicles during the campaign. There were allegations of a Minister trying to distribute computers in his constituency. The matter was brought to the attention of the Commonwealth Team and the incident was prevented. In spite of these and other imperfections, we believe that the voting process was smooth, and the entire electoral process was credible. The IEC deserves to be commended.



## **Chapter Three**

### **THE ELECTORAL FRAMEWORK**

#### **Background**

The Parliamentary Elections in Lesotho should have taken place in May 2007, but because of a number of factors including 18 LCD MPs crossing the floor and because the Constitution of the Kingdom allowed for the calling of snap elections, His Majesty King Letsie III called a snap election on the advice of the Prime Minister. The Constitution or any other law does not require consultations or input of the IEC and indeed it does not seem to have been consulted, but rather informed. The same law, however, mandates the IEC to conduct elections within 90 days after Parliament has been dissolved.

#### **The Constitution and other Electoral Laws**

The Constitution of the Kingdom of Lesotho came into force in April 1993 and was subsequently amended in 1996 and 1997. The Independent Electoral Commission (IEC) was established by the 1997 Amendment of the Constitution. This together with the National Assembly Election Act (1992) as amended in 2001 gives the IEC its powers and provides for its functions and mandate.

#### **Composition of the IEC**

The IEC is made up of three members: a Chairman plus two Commissioners. The IEC appoints the Director of Elections and other officers both at headquarters and in the districts as well as constituencies.

The IEC's functions include the organisation, conduct and supervision of elections, including the determination of a voter registration system, the conduct of voter education, the training of elections officials, voter registration, the registration of political parties, the demarcation of constituency boundaries, among others. These functions can however be influenced by the time frame the IEC has to prepare and conduct elections, as was the case this time around.

#### **The Electoral System**

Following the re-enactment of National Assembly Election (Amendment) Act (2001), the Mixed Member Proportional System

(MMP) was introduced into Lesotho politics and indeed it was successfully used in the 2002 elections. The success of these elections showed that it was a welcome change from the previous winner takes all (First Past the Post – FPP) system which was blamed for the turmoil and blood-shed in 1998. The same law brought into effect the Code of Conduct for Political Parties and Candidates. What is not in the law, however, and stands to be misused is the formation of alliances between political parties, their party membership as well as the composition of the party lists.

### **Voter Education**

IEC recruits and trains voter educators in constituencies. The training is conducted by Constituency Election Assistants in the districts and the trainers of trainers are hired on temporary terms although there is an intention of keeping the same group trainers so as to make their training effective. The Commission also recruited a number of NGOs to train specific groups, communities and constituencies. In addition there is also continuous information dissemination through radio and other media outlets. As will be noted later in this report, because of the shortage of time there were numerous complaints about the inadequacy of voter education. It should however be noted that voter education is not a responsibility of IEC alone. Other stakeholders including political parties should equally get involved in both voter and civic education.

### **Supply of Materials**

Election materials in Lesotho are of two types, i.e. secured and unsecured. The former refers to the more sensitive materials like ballot papers and indelible ink while the latter refers to the more generic materials like ballot boxes, booths and lamps (candles).

The budgeting system of the Kingdom of Lesotho is flexible enough to allow election funds be provided even in the shortest time like when snap elections are called, as in this case. The Ministry of Finance is allowed to provide funds from contingency funds to cover elections. In addition, the stringent government procurement requirements are relaxed when it comes to elections of this nature. Although the largest percentage of the election budget was covered by Government, adequate funds seem to have been provided to purchase both secured and unsecured materials in time for elections.

## **Nomination Procedures**

Nominations are provided for 30 days before polling. After parties have gone through their primaries and have nominated their flag bearers, the successful candidates are required to fill various forms with the IEC in their constituencies. A proposer and a seconder who are registered voters in the area are an essential part of this nomination process.

Constituency Returning Officers nominate the candidates using the registered party signs. The independent candidates are either required to choose a sign from those already provided by the Commission or provide one of their own but it should be scannable. There is a requirement of a R200 and R800 nomination deposit for individual candidates and party lists respectively. However, this is refundable if the individual or party gets ten percent or above.

## **Media**

Freedom of expression exists in Lesotho. There is a vibrant media which includes two weekly newspapers which are in English and Sesotho. There are no daily newspapers. But there are also a number of privately owned radio stations and one government radio and TV station. There is active interest in the coverage of the political/electoral process. A number of radio stations provided programmes where political party representatives came to the station and talked about their party's manifestos and handled call-ins. In talking to the members of the Media Institute of Southern Africa (MISA) members of the team were informed of some harassment by Government operatives of media practitioners who were deemed to be non-supportive of Government. It was also clear from talking to them and other political parties that whereas there was unfairness on the part of Government TV/radio stations on the coverage of LCD rallies earlier in the campaign, this was corrected after the intervention of the IEC.

We were also told that some of the reporters, although seasoned and have been practising journalism for a long time, were partisan and unprofessional in their reporting.

By election time, however, there were fewer complaints about media and there was general acceptance of the coverage as being fair and even handed.

## **Chapter Four**

### **THE POLL, COUNT AND RESULTS PROCESS**

The Team was divided into three groups which were deployed on 15<sup>th</sup> February to cover all the 10 districts in Lesotho and to observe the polling and counting of votes at the various polling stations in the 10 districts. One group was deployed to the Northern districts of Leribe, Butha-Buthe, Mokhotlong and Thaba-Tseka. Another group was deployed to the Southern districts of Mafeteng, Mahale's Hoek, Quthing and Qacha's Nek. The third group was deployed to the districts of Maseru and Berea. Therefore, the Team observed the polling in some of the polling stations in the ten districts. We observed counting in a representative sample of polling stations.

#### **Logistical arrangements for the Polling Day**

The groups visited the IEC offices in the districts and observed the level of preparedness, including the distribution of the polling equipment and materials. Overall, we were impressed with IEC's level of preparedness. The materials which were to be used for the polling on 17<sup>th</sup> February were distributed on 15<sup>th</sup> and 16<sup>th</sup> February to most of the polling stations in the districts in a generally efficient and transparent manner. This ensured that the materials were at the polling stations in the districts on time for the polling on 17<sup>th</sup> February, in most cases. In those cases where this did not occur we believe that no-one was disenfranchised as a result.

#### **Advance voting**

The observation also focused on the conduct of the advance voting which took place on 13<sup>th</sup> February at the offices of the Returning Officers in the districts. In total 900 voters had registered for advance voting. Those entitled to advance voting included IEC officials, candidates and their agents, the police officers designated to assist on the polling day, domestic observers, journalists, medical personnel and security personnel. The materials for the advance voting were distributed on 12<sup>th</sup> February. We observed advance voting within Maseru district and were satisfied with the manner in which it was conducted. Due care and diligence was also observed in the manner in which the ballot boxes with the advance votes were secured and kept awaiting the main poll on 17<sup>th</sup> February. In some centres the process was slow and a few people could not vote because their names were not on the register. Adequate security was however well maintained,

with the support of Police Officers, Police Assistants and party agents who were present.

We were generally satisfied with the manner in which the advance voting was conducted.

### **Venues for Polling**

Suitable venues to serve as polling stations, mainly consisting of public schools and public buildings had been identified. These were mainly the polling stations which had been used for the previous elections in 2002 and 2005, hence they were well known to the voters. In addition, the IEC used posters printed in the local Sesotho language to indicate the direction and location of the polling stations.

### **Polling Officials**

Each polling station had a Presiding Officer assisted by five polling officials, one of whom was an usher. In addition, the polling stations had at least one Police Officer and a Police Assistant to provide security and maintain law and order. The IEC had also made arrangements for one Official Witness to be present at the polling stations. IEC also ensured the presence of party agents at the polling stations by providing for their remuneration as required by law.

### **Polling materials**

In most of the polling stations which the groups visited, materials were found to be available and adequate. Generally, there was no complaint received from the polling officials and the party agents regarding the non-availability and inadequacy of polling equipment and materials.

### **Opening of the polling stations**

On the polling day, 17<sup>th</sup> February, the groups arrived at the polling stations before 7.00 am to observe their opening. The enthusiasm of the people of Lesotho to exercise their democratic right was clearly evidenced by the large number of voters who were already in the queue waiting for the polling stations to open in order to cast their votes. The procedures for opening were meticulously followed in the polling stations we visited. Indeed in most of the polling stations visited, the opening was done on schedule, at 7.00 am. We were impressed by the due diligence and vigilance which the polling officials exhibited in their work during the opening of the polling stations.

## **Voting process and procedure**

The polling officials were very conversant with the polling process and procedure. They painstakingly explained the process and procedure to the voters. As a result, the negative impact of the snap elections, including the short period for conducting voter education, was barely noticeable.

## **Performance of the Polling Officials**

We were impressed by the orderliness, calmness and patience of the both the polling officials and the voters. In our observation, the polling was conducted in an atmosphere of peace, with voters being able to exercise their franchise peacefully, freely and without any intimidation or hindrance. The polling officials were very cooperative and supportive and provided explanation and guidance to the voters and others in need. The polling officials and the security personnel provided help to the elderly, the physically disadvantaged, the expectant and lactating women voters. Though painstakingly slow, the polling was conducted professionally and transparently in the polling stations that we observed.

## **Party agents**

We were able to observe the presence of party agents in all the polling stations we visited. The party agents remained at the polling stations all throughout the polling until the time of closing and counting.

## **Status of the Voters Register/List**

There was no complaint received, including from the party agents, concerning the status of the Voters Registers. Although there were a few missing and blurred photographs in the register, all the voters whose names appeared in the register were allowed to vote using their voter registration cards, or passport or divers license or through identification by the Official Witness. Instances of voters being disenfranchised either because their names were not on the voters' list, or they had not correctly identified their polling station, were very few and far between.

## **The layout and facilities**

The layout and facilities at the polling stations we visited were found to be generally good and reasonably adequate. We also did not observe any intrusion or intimidation on the part of the security officers at the polling stations. On the contrary, the security officers were very helpful and supportive to the voters. As a result, we observed that the credibility of the ballot was indeed secured and the secrecy of the ballot assured in the polling stations we visited.

## **The voting procedures**

The voting procedures were efficiently and meticulously followed as prescribed in the IEC's Polling Stations Procedures Manual. Upon entry into the polling station, a voter would give his/her voter registration card to the first Polling Official who, using the card, would check the voter's name in the register and if found it would then be crossed out. The presence of ink on the voter's finger would also be checked. The voter would then proceed to the next Polling Official to be issued with a ballot paper for the constituency candidates. But before the ballot paper is issued, the voter's registration number in the voter's card would be recorded on the ballot paper counterfoil. The ballot paper together with the counterfoil would then be meticulously folded, stamped at the back then given to the voter. The voter would then be directed to the polling booth in order to put his/her mark on the ballot paper. Once the voter has put a mark on the ballot paper, the voter would then return the folded ballot paper to the same Polling Official who would tear off and keep the counterfoil. The voter would then be directed to the ballot box to cast the vote. The voter would then proceed to the next Polling Official for the finger to be dipped in indelible ink. Thereafter, the voter would proceed to the next Polling Official to be issued with the ballot paper for the party list. The same procedure described above would again be followed. Finally, the voter would leave the polling station.

We observed differences in the indelibility of the ink used to identify voters who had already cast their votes. The ink needs to be consistently indelible to avoid the possibility of multiple voting. Further, it appeared to us that the practice of inking voters' fingers in between the casting of the two ballots was inconvenient and slowed down the process. There was potential for spoiling the second ballot paper inadvertently with a recently inked finger.

The rate of processing a voter as described above took longer, between 5 to 10 minutes. This was largely due to the fact that the voting procedures had to be carefully explained at every stage to the voter and the ballots for the constituency candidates and party list had to be received and processed separately. It is obvious from the above that, had there been a 100 percent turnout, the period allotted for voting would have been insufficient.

### **Voters being deterred from voting and those assisted to vote**

We did not observe any person who was qualified to vote, including women, being deterred from voting. The elderly voters, the physically disadvantaged voters and others who required to be assisted in order to cast their vote were allowed to bring a person of their choice to assist them. In a few instances where they were unable to find a helper of their own choice, they were assisted by the Presiding Officers in the presence of party agents.

### **The Turnout**

Although in the morning there were longer queues in the polling stations that we visited, the queues reduced significantly as the day progressed. Indeed, by late afternoon, most of the polling stations that we visited did not have any voter in the queue. Overall, the voter turnout in the polling stations we visited was low.

### **Closing of the Poll**

Closing of the poll in the polling stations that we visited was done on schedule, at 5.00 pm. Nonetheless, the voters who were still on the queue at the time of closing were allowed to cast their vote. The procedures for closing the poll were observed and adhered to.

### **The count**

Counting of the votes took place immediately after the close of the poll. The counting was conducted at each of the polling booths in polling stations. In the polling stations we visited, counting was done using gas lamps and candle light as it was already dark. The counting went on for a long time because the votes had to be sorted out and displayed to the party agents, observers and other interested parties and thereafter counted, the results had to be tabulated, votes reconciled and the requisite forms and returns completed and countersigned by the party agents. After the count was completed and



results for the constituency candidates tabulated, the results were announced inside and outside the counting room. Thereafter, the votes for each candidate, the rejected votes, and the used and unused ballot books had to be sealed in envelopes and the seals countersigned by the party agents. The same process was repeated for the party list votes. The results, ballot books and papers, ballot boxes and related polling materials and equipment were then dispatched to the Constituency Returning Officers under Police security and escort.

### **Analysis of the count**

Although the counting process and the declaration of results at the polling stations took longer, we observed that they were done efficiently, accurately, transparently and in an orderly manner. The procedures were painstakingly and meticulously followed and adequate explanations given at every stage by the Presiding Officers. We did not receive any complaints from the party agents, observers and interested parties. Indeed, the party agents, observers and interested parties expressed satisfaction with the process and procedures for counting and declaration of the results at the polling stations we visited and did not raise any objection to the results. We were satisfied with the integrity of the count and declaration of the results.

### **Transmission and announcement of the final results**

The IEC put in place a three-pronged approach to the transmission and announcement of the results. This involved the announcement of the results at the polling stations and transmission of the same to the Constituency Returning Officers who also tabulated the results and announced them before transmitting them to the District Electoral Officer. The District Electoral Officer in turn transmitted the results to the IEC centre in Maseru where the results were finally announced. We however observed that the process of transmission and announcement of the results took longer. This is because the Presiding Officers were required to accompany the results and deliver them to the Constituency Returning Officers, yet this could not be done speedily due to transport problems and the mountainous terrain which required delivery of the results from the polling stations using helicopters. In addition, the Constituency Returning Officers had to wait for all the results from all the polling stations in the constituency before tabulating and announcing them and transmitting them to the District Electoral Officer.

## **Overall assessment**

Overall, we observed that the IEC conducted and managed the poll, the count and announcement of the results professionally, transparently and with integrity. The IEC also carried out its responsibilities in conformity with the Electoral Laws of Lesotho and good electoral practice. We were very impressed by the cooperation, commitment and dedication of the IEC Polling Staff, many of whom were young men and women.

## **MAJOR OBSERVATION: FIRST PAST THE POST (FPP) BEHAVIOUR IN A MIXED MEMBER PROPORTIONAL (MMP) ENVIRONMENT**

This election was the first time when, under the MMP system, there was an active contest among political parties. This arose largely from the emergence of the ABC (see chapter on *Political Background*). A major observation of this group is that attitudes and behaviours developed during the first past the post system was carried over to the MMP system. This was manifested in a number of ways. One of these was that there was undue emphasis on constituency seats, at the expense of the proper consideration of the function of the party list seats, which had the potential effect of skewing proportionality (see **Annex E**: Summary of final seat allocation). The emergence of the alliance system and the practice by which the major parties substituted alliance partners in their list of candidates who would enter parliament via the party vote (PR system) had the following implications:

- It forfeited a major party's place on the list ballot in exchange for a composite list of larger and smaller party candidates, something upon which party leaders need to reflect for the sake of the MMP system and for their own party's campaigning strategy in the future;
- It confused voters who were not sure who to vote for when they saw that their major party of choice was not listed on the party ballot paper;
- It gave a proportion of the vote to minor parties which would not have got so many votes had the major party partner not had their candidates' names appearing on the party list and in this way did not correctly reflect the true level of minor party support;
- At the same time, it had the effect of the major party contesting the constituency seats effectively "cannibalising" the seats won by the minor alliance party from the list ballot by an alliance arrangement with the minor party;
- Because there is no provision for the possibility of an "overhang" in Parliament (i.e. more than the 120 seats currently in Parliament, resulting from a party winning more constituency seats than its proportion of the party vote would justify), proportionality is distorted if a party wins more constituency seats than its list ballot entitled it to, as also happened in 2002;

- This is usually corrected by adjusting the application of the PR formula used, but the fact remains that LCD technically have won more seats than its proportion of the list voted entitled it to, having not contested the list ballot as LCD;
- This process of decoy lists as outlined above, together with no provision for an overhang of members in Parliament, runs the risk of undermining the MMP system by not reflecting the true level of support for each party among voters;
- It is possible that very small parties, which get the required number of votes for a seat in Parliament, would be excluded from Parliament because a major party won sufficient constituency seats to consume places in Parliament earned via a party list vote. If a major party does not contest the list ballot, then every constituency seat they win is effectively an overhang seat because there is no proportion of the party vote to generate that level of representation. Those seats are won by a First Past the Post method and proportionality is distorted accordingly;
- This manipulation of the list ballot goes counter to the very rationale of MMP – to establish the maximum pluralist representation in Parliament in order to represent accurately the varying interests of as many people as possible;
- In the past in Lesotho, one party has won all but one of the constituency seats, so it is not hard to see why there was an undue emphasis on the constituency seats. This year however, another major player (ABC) emerged, making the alliance tactic, or decoy listing, a risky strategy for the major political parties themselves, because they could not guarantee they would win a majority of constituency seats, and a potential threat to proportionality;
- The practice of having members of a major party run on a minor party's list has to be seen as a legal tactic but one which is unhelpful for the electorate. Advertising to the electorate in advance the potential coalition partners a major party might envisage engaging with after an election in order to form a Government is a more common way of signalling to voters what the shape of a future coalition government might look like. Alliances can usefully be entered into after every party's proportion of the vote is established. That provides a more transparent and accurate reflection of the voting wishes of the people;
- It is likely that the emergence of the ABC in this election will cause political parties to look again at how they campaign next time. The MMP system is predicated on the pre-eminence of the party vote to establish proportionality in Parliament. It will

become clear that parties need to contest the party vote as a priority. Any constituency seats won by parties will be deducted from their proportion of seats gained via the party vote;

- It is our view that the next General Election in Lesotho will not see this behaviour again. Political parties and leaders will reflect on the breaking of the complete hegemony of LCD even though it has emerged as a majority government this time. It is clear that voters too will reflect on what has happened and alter their voting behaviour, especially if the parties campaign differently and all parties contest the party ballot;
- Political parties need to reflect on the difference between coalition partners (partners in Government), support partners (parties in Parliament who reserve the right to oppose Government and its coalition partners but who would not bring down a Government) and alliances (the merging of one party into another, running on a single ticket or under a common name e.g. ACP). Each of these permutations can be legitimately applied within the MMP system and indeed within MMP Government, but the running of decoy lists is none of these options;
- It is our sincere wish that such consideration of the immediate and future practice of MMP in Lesotho will be conducted peacefully and reasonably among all party leaders and supporters.

## **Chapter Five**

### **CONCLUSIONS**

It is our impression that the conditions did exist for the people of Lesotho to freely express their will. In spite of the politically charged atmosphere arising from the emergence of the ABC and internal strife within other political parties e.g. BNP, the environment remained conducive to the conduct of a credible election. The act of bringing the election date forward affected the IEC's preparations. But we noticed that the IEC made every effort to limit the negative impact of the snap election and were considerably successful. As noted in the earlier chapters the polling and the counting were well conducted. We believe that overall, this was a credible election.

- We wish to congratulate the people of Lesotho for the peaceful, patient and orderly way in which they conducted themselves on Election Day. The heavy turnout in the morning was not marred by disruption;
- We therefore wish to congratulate the IEC for its strenuous efforts to ensure that the register of voters was as complete as it could be and that people were trained and competent in their roles on Election Day. The IEC's willingness to discuss their difficulties and shortcomings, as well as their many successes, was greatly appreciated by the Commonwealth Expert Team. Their efforts have been characterised by integrity, transparency, competence and thoroughness;
- We believe that this transparency also characterised the tenor of the elections in Lesotho;
- We were concerned at first-hand reports of intimidation of the media by political agents and note that these events must be curtailed and prevented in order to maintain an independent and free media in Lesotho;
- We were aware of some irregularities in the appearance of voters' names on the register of voters which resulted in some people being unable to vote on Election Day but we are satisfied that these omissions or irregularities were very few and not of such a scale as to render the result of the election challengeable.

If there are disputes about disenfranchisement, multiple voting or voting in other people's names, these should be pursued through judicial processes available;

- We were surprised at the low turnout which eventuated, given the level of excitement about the election which we observed in the days prior to Election Day. We have no particular explanation for this;
- We note the extensive efforts undertaken to ensure that the logistics of Election Day were comprehensive and efficient. There were some discrepancies in start times at some polling booths because of the late delivery of materials, and in some places materials were not always adequate (e.g.: lighting arrangements for counting after dark). But we remain confident that these did not compromise the access of people to polling stations, the secrecy of the ballot or the security of the ballot papers, both before and after voting;
- We wish also to note and commend the Royal Lesotho Police Force for their discreet, efficient and helpful presence at polling stations. The use of Police Assistants also worked well and we were very pleased to see the level of help provided to voters by the Police and the Assistants.

Overall, we were satisfied with the conduct of these elections.

## RECOMMENDATIONS

### *Recommendations of Commonwealth Observer Group – Lesotho 2002*

In their report on the first MMP election in Lesotho in 2002, the Commonwealth Observer Group made a number of recommendations. In the following table, we note the 2002 recommendations and any actions taken or not taken in 2007, from our own observations:

2002 COG Recommendations	2007 Actions Noted
<ul style="list-style-type: none"> <li>• The use of government resources by incumbent parties</li> <li>• Attention to materials used in voter registration</li> <li>• Shortening of the time between the close of voter registration and the election</li> <li>• Ballot paper colours, materials produced in English and Sesotho, secure and timely delivery of supplies to polling stations, counting methodology, training for polling officials and improvement of conditions under which polling officials work</li> <li>• Circulation in advance of voter register to polling stations</li> <li>• Providing both constituency and party ballot papers simultaneously to speed up the voting process</li> <li>• Simplification of terminology relating to spoilt, rejected or informal ballot papers</li> <li>• Reviewing the process of display of ballot papers to interested parties during the count to speed up this part of the counting process</li> <li>• Constituencies being able to communicate their results directly to the IEC HQ instead of routing them through the District Office</li> <li>• When voting in any area needs to be extended beyond polling day, IEC HQ should not release results in other constituencies.</li> </ul>	<ul style="list-style-type: none"> <li>• This remains an issue</li> <li>• The quality of photos remains an issue for improvement</li> <li>• This issue was pre-empted by the calling of a snap election</li> <li>• Ballot papers remain in 2 colours, both languages were used, supplies were mostly delivered in time, counting methodology was clear in the manual, training was excellent, conditions were adequate in most instances</li> <li>• Registers, even for specific polling booths, were circulated in advance – excellent practice</li> <li>• This was not done – process remains extremely slow</li> <li>• Terminology was clear enough for proper decisions to be made reasonably promptly</li> <li>• If a review has been done, this was not altered - process remains extremely slow</li> <li>• This was not done – there remains a 3 step results process: polling station to district to IEC HQ</li> <li>• This action was not required in 2007 – no extension of voting time was necessary</li> </ul>



## *Recommendations: 2007 Parliamentary Elections*

### **Accountability:**

We heard numerous complaints regarding the lack of accountability of MPs to the people. In our view there are two key elements which could improve this:

- Greater responsibility taken by MPs for their accountability back to their electors;
- Treatment of List (PR) MPs on equal terms as constituency MPs, and not as second-class MPs.

In order to achieve this outcome, we recommend:

- that the Lesotho Parliament consider introducing a resource allocation to List (PR) MPs comparable to that of constituency MPs. This would allow List (PR) MPs to be deployed by parties in areas where their party vote was high but not sufficient to win a seat, so allowing a vehicle for accountability to those people who did vote for them. There is a range of ways in which List (PR) MPs might be deployed, including serving particular constituencies within the population (e.g.: women, people with disabilities, business interest, etc.). Through such mechanisms as these, the role of List (PR) MPs can be developed, enhancing accountability back to the electors and building confidence in the political process and political representatives. But resources are required in order for this to occur. Such resources need to be properly allocated and accounted for.

### **Media access in campaigns:**

We noted some complaints by some people regarding equal access to media time during the campaign period. This improved after the intervention of the IEC.

We would recommend:

- that Parliament establishes a broadcast allocation formula for free-to-air time at the beginning and end of campaigns, and a maximum broadcast expenditure limit for each party, based on an agreed formula. This would be state funded and transparent.
- that Parliament considers ways of protecting and maintaining the independence of a free media in Lesotho. This would include the state-run radio station or any other state funded media outlets.

## **Funding of political campaigns:**

We recommend in the interests of fairness and transparency that Parliament consider the following:

- Limits on campaign expenditure during a fixed period of campaigning (e.g.: within 3 months prior to Election Day);
- Disclosure of all campaign expenditure within a fixed period after Election day;
- Disclosure of all donations to political parties over a certain threshold;
- Anti-treating laws (i.e. prohibition on gifts from candidates to organisations or electors which could reasonably be construed as vote-buying);
- A system of auditing campaign expenditure carried out by an official independent of Parliament such as an Auditor-General.

## **Political Parties:**

We recommend that:

- The registration of political parties be examined and regulated to ensure that the 500 people who seek to register a party are on the electoral register and also do not appear on more than one application for registration of a party.
- Consideration be given to control of party-hopping practices by MPs which could distort proportionality in Parliament (e.g.: if a List MP leaves their party they should also leave Parliament because they only arrived in parliament by virtue of the party list.).

## **IEC:**

We recommend that:

- The IEC investigate methods of speeding up the process of casting and counting votes;
- The practice of dipping the finger in indelible ink should be the last step in the voting process prior to the voter leaving the polling booth, in order to facilitate a smoother process;
- The ink used to identify voters who had cast their vote needs to be consistently indelible to avoid the possibility of multiple voting;

- The IEC should develop a well-articulated strategy for voter education which should be done in collaboration with civil society organisations including the faith based organisations;
- The policy of continuous voter registration should be implemented actively as part of a voter education strategy.

### **Commonwealth:**

We recommend that:

- the capability of the IEC be further enhanced by exchanges with the New Zealand Electoral Commission, supported by the Commonwealth and the Governments of both countries. Given the almost identical nature of the electoral system, the small population base in both countries and the existence of some difficult terrain in both countries, there may be valuable lessons gained in sharing processes and resources. One such exchange could usefully occur when New Zealand goes to the polls again in 2008. A visit from the Lesotho IEC around the time of the New Zealand election could be very valuable and timely for instituting any changes within Lesotho, given their next election will not be until early 2012.