

CHAPTER 2

The Electoral Framework and Preparations for the Election

The Constitution

The Constitution of Lesotho came into force on 2 April 1993 and was amended in 1996 and 1997. The 1997 amendments established an Independent Electoral Commission and empowered Parliament to make laws relating to the registration of electors, the conduct of elections, the powers, duties and functions of the Electoral Commission and the registration and regulation of political parties. The Second Amendment to the Constitution Act, 1997 also increased the size of the National Assembly to 80 (elected on a first-past-the-post system) and made provision for the functions of the former Constituency Delimitation Commission to be performed by the Electoral Commission.

Following the 1998 National Assembly elections the Constitution was further amended to provide that Parliament should consist of the 80 members elected to represent constituencies under section 57 and an additional 40 members elected to represent parties on the basis of proportional representation. The new provision was enacted to give effect to the recommendations of the IPA made pursuant to its mandate.

The Electoral Laws

The National Assembly Election Act 1992 remains the principal legislation dealing with the conduct of elections in Lesotho. It was substantially amended by the National Assembly Election (No. 1) (Amendment) Act 2001. This piece of legislation is significant in that it amends the Electoral Code of Conduct and establishes a Tribunal to hear complaints of breaches of the Code, requires parties and candidates to take special measures to facilitate participation in the electoral process by women, the disabled and youth and implements the constitutional amendments which introduced proportional representation.

The IPA expressed concern that its recommendations on a new Electoral Code of Conduct were not entirely accepted by Parliament. The recommended Code had dealt specifically with the use by a ruling party of the resources of the state during campaigning and for election purposes. The Group was advised that this provision was not enacted by Parliament. Most of the political parties that briefed the Group shared the concern of the IPA. The Group strongly supports the view of the IPA that government resources not be used unfairly in an electoral campaign by the incumbent party or parties.

.....
*The Observer Group
“strongly supports the view
of the IPA that government
resources not be used
unfairly in an electoral
campaign by the incumbent
party or parties”*
.....

The New Electoral System/Proportional Representation

The adoption of a mixed system of first-past-the-post and proportional representation seats for the election of the National Assembly followed the recommendations of the IPA.

.....
“We believe, on the basis of the comments made to us, that the MMP system will assist the establishment of meaningful democracy in Lesotho and has the capacity to inhibit the inherent tendency of political parties in Lesotho to split and thus to foster instability.” . . . The political parties to whom the Observer Group spoke all expressed satisfaction with this system of representation and with the work of the IPA
.....

These recommendations and the development of the new mixed member proportional system (MMP) arose out of the failure of the previous first-past-the-post electoral system which did not reflect the actual electoral support for the various parties, particularly the smaller parties, and hence failed to enhance democratic governance in Lesotho. We believe, on the basis of the comments made to us, that the MMP system will assist the establishment of meaningful democracy in Lesotho and has the capacity to inhibit the inherent tendency of political parties in Lesotho to split and thus to foster instability.

The political parties to whom the Group spoke all expressed satisfaction with this system of representation and with the work of the IPA.

The allocation of seats in accordance with the principle of proportional representation is provided for in section 92A and Schedule 5 to the National Assembly Election Act. Simply described, the total number of votes cast for political parties are divided by 120 (being the number of seats in the National Assembly) or by such lesser number as represents the number of constituencies in which elections were conducted plus 40 (being the number of proportional representation seats available for distribution among the parties). In this election the distribution formula had to be slightly modified as prescribed by Schedule 5 of the Act. This was because two candidates died between the close of nominations and polling day and because of the high number of constituency seats won by one of the parties.

The Independent Electoral Commission (IEC)

A new Independent Electoral Commission was sworn into office in April 2001 to replace the 1998 IEC following the rejection of the results of the 1998 General Election by a number of political parties and the ensuing political uprisings. The IEC, which derives its powers and functions from the Constitution and the National Assembly Election Act 1992, operates independently of Government and is only answerable to the Parliament. It is made up of a Chairperson and two other members. The King, on the advice of the Council of State, appoints all three for a renewable term of six years. The Constitution and the National Assembly Election Act require that the Commission and its members perform their functions impartially and independently, in good faith, and without fear or favour, or prejudice. The Constitution guarantees security of tenure for Commissioners who may only be removed from office by the King on the recommendation of a judicial tribunal for inability to exercise their office or for misconduct.

The IEC is responsible for the organisation, conduct and supervision of elections including the determination of a voter registration system, preparation of the voters' register, registration of political parties, demarcation of electoral boundaries, monitoring of legislation relating to elections and referenda and voter education.

The current Chairperson is Mr Leshele Thoahlane, a former diplomat and senior civil servant; while the two Commissioners are Mr Mokhele Likate, a former senior civil servant, and Mr Mafole Sematlane, a management consultant. The current team at the helm of the IEC would appear to enjoy widespread acceptance and is regarded in many circles as being 'most competent and professional for the task at hand'.

Mr Khothatso Ralitsie, who has served as Director of Elections since 1997, heads the Commission's Secretariat. As Director, he has the statutory responsibility for the preparation of the register of electors. He is assisted by a deputy director of elections (responsible for electoral operations) and other heads of departments responsible for among others things, information technology, voter education, administration and finance.

All staff members of the IEC except the Director are employees of the Commission. The Director, who is the Commission's chief executive officer, is a civil servant seconded from Government to the IEC. This arrangement has drawn criticism from some political party leaders, who argued that the relationship between the Director of Elections and Government compromised the independence of the Commission. We wish to emphasise, however, that we were provided with no evidence in support of such criticism. We were impressed with the transparency brought to its operations by the IEC and with the substantial efforts made by this body to involve all stakeholders in the development and administration of the electoral process.

The Group gained the overall impression during its briefings with parties and others that the IEC had endeared itself to stakeholders because of its open management style and approach. It was generally perceived to be transparent and efficient with parties, donors and other stakeholders being consulted on a regular basis through the establishment of committees dealing with logistics, the law, voter education, co-ordination, data collection and management, security and the media.

Registration of Electors

The qualifications for an elector to be registered for a particular constituency are that the person must be a citizen of Lesotho, have attained the age of 18 years, and qualify as a resident. A person may register in a constituency where he/she originates from, ordinarily resides, or is in employment. Those who are not entitled to register are persons who are under allegiance to any foreign power or state, have been declared to be of unsound mind under the laws of Lesotho, and prisoners under sentence of death imposed by a court in Lesotho, or convicted of an offence under certain sections of the Electoral Act. Prisoners convicted of other offences are entitled to vote.

The IEC established a new general voter registration system during 2001. This followed protracted negotiations with the IPA on the best mode for voter registration to rectify the shortcomings in the 1998 elections. Prior to this, the IEC and the IPA had been at loggerheads over whether or not to use the automatic fingerprint identification system during the 2001 voter registration. This impasse was resolved when Parliament passed a law that vested all powers to determine the framework for voter registration in the IEC. The IPA strongly felt that its powers regarding voter registration were somehow curtailed by this legislation.

The IEC and IPA however agreed, as a compromise, on the use of indelible ink during registration and the appointment of party agents to monitor the registration process. It was further agreed that voter fingerprints would still be taken during registration and would be digitised to facilitate comparison in the event of objection to or challenge by a voter. The voter list would contain the

.....
The Observer Group gained the overall impression during its briefings with parties and others that the IEC had endeared itself to stakeholders because of its open management style and approach
.....

name and a photograph of each voter. Although not supporting the idea the IEC also agreed, upon the insistence of the IPA, to issue laminated voter registration cards containing a photograph of voters. This meant that voters would only need to produce their voter cards in order to be allowed to vote. The Commission's original idea was to produce a voter register that contained voter photographs and for voters to vote without producing registration cards.

Registration of voters was conducted from 13 August to 9 September 2001. A voter education effort was undertaken to encourage voter registration.

The voter cards were issued after the two rounds of voters' register display in December 2001 and January 2002, respectively. The voter cards were distributed to the various registration centres in April 2002 and voters who had not collected their voter cards before election day were allowed to do so on polling day. Voters who were away from places of registration were also allowed by the IEC to have relatives collect their cards.

Altogether, 832,000 voters were registered during the national registration campaign. This represents about 83 per cent of those eligible according to IEC estimates.

As a consequence of the aftermath of the 1998 elections, the IEC went to great pains to ensure that the new registration system guaranteed minimal duplicate registration and improved security.

The process adopted by the IEC and which was observed by a member of the Group over a period of months, involves a number of security features and safeguards, all of which are designed to ensure that the final voters' list provided a legitimate and broadly acceptable basis for the conduct of this General Election.

Incorporated in the steps to avoid malpractice in the registration process, was the staining of an applicant's index finger with indelible ink, the use of monitors from political parties and official witnesses, such as a chief or his appointee, at all registration centres.

The IEC invested heavily in the development of a computerised database for the collection and retrieval of information on all registrants. The data collected by the IEC during registration was captured into the computer database and included the electors' personal details (name, address, sex, date of birth, identity number), and photographs, fingerprints and signatures. These biographical details were scanned and digitally recorded (stored) in order to facilitate comparison with other applicants in the event of an objection being made regarding duplication or other fraudulent activity.

The handling of the forms at the IEC Head Office in Maseru was done in a secure environment and only a limited number of authorised personnel were permitted access to the processing area.

The optical mark recognition scanning process used by the IEC allowed the speedy recording of data contained on the forms. However, the success of the system depended heavily on the accuracy and visibility of the marks shaded in on the forms by the registration officials. While the majority of forms were scanned without difficulty, some were rejected as a consequence of officials using the wrong village codes or because of missing marks in some fields.

Although most of the political parties we met expressed satisfaction with the voter registration process, they were concerned about the poor quality of the pictures on both the voter cards and the final voter registers.

As a result of the Commonwealth's observation of the voter registration process and of this Group's observations and its examination of IEC preparations for the development of the voter register, the Group has come to the conclusion that the IEC system for voter registration was credible and effective and the computerised database and the digitisation of the photographs, fingerprints and signatures of registrants provided for the effective comparison of data in the event of objections or challenges based on alleged duplication.

The Group was further of the opinion that the voters' lists which contained the names and photographs of electors, along with the issuing of a photographic identification card prior to polling went a long way to minimise multiple registration or any other fraudulent activity during the registration period. The security applied to the processing and handling of the registration forms by the IEC at its headquarters in Maseru was of a high order and reflected the seriousness of the IEC in ensuring the integrity of the process. The training of the registration officials appeared to have been effective, given the performance of the officials observed at registration centres. The locations of the registration centres were such as to provide equitable access for most voters.

Information about the location of registration centres was widely publicised and the evidence suggested that the population at large was aware of the registration process being under way. The supply of essential materials, such as cameras and the batteries for the camera flashes and UV-lamps, to the registration centres left much to be desired and should in future enjoy high level attention.

Some parties felt that registration needed to take place in South Africa because of the large number of Lesotho citizens working there. The IEC argued that this would compromise the integrity of registration due to the absence of 'checks and balances' such as party agents. However, to address this issue, the IEC visited various mining sites in that country to encourage Lesotho citizens to return home to register.

The Group further felt that given the fact the IEC inevitably had to reopen registration in February 2002 for those Basotho who turned 18 years between then and election day, it would have been judicious to have extended this facility to all voters who had not registered last year. We were concerned that registration had closed approximately eight months before elections and suggest that consideration be given to shortening this timeframe for future elections.

The Observer Group "has come to the conclusion that the IEC system for voter registration was credible and effective" . . . but there was concern that "registration had closed approximately eight months before elections and the Group suggests that consideration be given to shortening this timeframe for future elections"

Political Parties

Parties are registered in accordance with regulations contained in Chapter 4 (Registration of Political Parties) of the National Assembly Election Act 1992. Parties and candidates are obliged to conduct themselves in accordance with the provisions of a Code of Conduct contained in Schedule 4 to the Act. There are 19 registered political parties. They are the ruling Lesotho Congress for Democracy (LCD), Basotho National Party (BNP), Lesotho People's Congress (LPC), Maramatlou Freedom Party (MFP), Sefate Democratic Union (SDU), Basutoland Congress Party (BCP), National Progressive Party (NPP), Popular Front for Democracy (PFD), Kopanang Basotho Party (KBP), Lesotho Labour Party/United Democratic Party Alliance (LLP/UDP Alliance), Christian

Democratic Party (CDP), Lesotho Educational Party (LEP), National Independent Party (NIP), United Party (UP), New Lesotho Freedom Party (NLFP), Social Democratic Party (SDP), National Democratic Party (NDP), Lesotho Workers Party (LWP) and the Basutoland African Congress (BAC).

Party Funding

The Government of Lesotho made available to the IEC a sum of M380,000 for party funding. Following consultation with the political parties, the IEC made available an amount of M10,000 to each registered party and a further sum to each party in an amount proportional to the number of validly nominated candidates from the party. Each of the parties to whom we spoke had received the initial payments made under this system.

Parties that did not contest the proportional representation seats were not eligible to receive additional funding under the IEC guidelines. This led to complaints by the SDP but the Group noted that this party had disengaged from IEC activities and had therefore not been a party to the consultations that resulted in general acceptance of the formula adopted for the disbursement of the available funds.

Voter Education

.....
Voter education was given particular prominence by the IEC because of the introduction of the new MMP system and was conducted in conjunction with the Lesotho Council of NGOs from February 2002
.....

Voter education was given particular prominence by the IEC because of the introduction of the new MMP system and was conducted in conjunction with the Lesotho Council of NGOs from February 2002. Two hundred voter educators were based around the country, and ran workshops and roadshows to inform the public about the new voting system. The roadshows, which travelled around the country during May, featured musical performances and poems interspersed with messages explaining MMP, how and where to vote and who was entitled to vote. Other voter education activities included dissemination of posters and the production of radio and television messages, including a video on the importance of this election – which included messages from political parties, the media and other key players.

It is of note that the IEC made a particular effort to reach out to ‘special needs’ voters. Two person teams were appointed in each district to identify people living with disabilities and conduct tailor-made voter education. However, this project arguably began too late to have a significant effect since many special needs people had not actually registered as voters.

While in rural areas traditional leaders worked together with IEC officials to promote the new electoral system, it appeared that in towns it was harder to reach the populace. We were told that in urban areas the attendance at voter education workshops had been restricted to people who belonged to local NGOs and the churches. Voter educators met by the Advance Team also mentioned that apathy was a problem amongst the electorate, and that they often had to go around individual houses knocking on doors and exhorting people to attend the workshops.

Several parties and groups met by the Commonwealth Observer Group complained that voter education had been inadequate, and that they had been obliged to explain the new system to their supporters at rallies. Some parties

felt that the IEC had placed too much emphasis on the calculations that went into the proportional representation system when they felt that what was needed was simply to explain how to vote. Other people felt that voters might not understand the benefit of having two votes. The impact of the voter education programme remains to be assessed at the time of writing as one key indicator – the percentage of spoilt ballots – had not been ascertained.

Training

Polling station officials were recruited in February on three-month contracts via their constituency office. Applicants were vetted by candidates as well as by the constituency election officials. We were informed that the conventional option of utilising civil servants and teachers for these posts was not exercised because political parties had cast doubt on their impartiality. Official witnesses were mainly local chiefs or nominees of chiefs, and in the absence of a person possessing the relevant registration card the official witness verification of identity would be deemed acceptable.

The IEC conducted training of polling officials in two stages – beginning with three-day workshops for presiding officers that took place in early May. The Advance Team was able to observe the culmination of training for presiding officers in several districts around the country and noted that the question and answer assessment at the end of the training covered, *inter alia*, the voting process, how to determine a spoilt ballot, and how to explain the voting process to voters. However, the training did not appear to cover any explanation of the forms that the presiding officer would need to complete as part of the reconciliation of ballots. Training for polling station officials followed the training of presiding officers. We noted that training of polling station officials was conducted in Sesotho but that the procedures manuals were written solely in English.

The IEC was also responsible for the training of party agents and official witnesses, who received their training from 20 to 22 May. The role of party agents is to represent the interests of candidates and parties, to see that electoral laws are observed, and to verify and validate registration, the poll, the



TRAINING . . . election officials being trained by the Independent Electoral Commission (IEC) before the election. The IEC was also responsible for the training of party agents and official witnesses (mainly local chiefs or their nominees)

count and the integrity of the documentation at the polling station. The IEC further provided funds to the police for the briefing of police officials on their electoral duties.

Funding of Party Agents

It is of note that party agents at both voter registration and on polling day were paid directly by the IEC. In many countries political parties are responsible for funding their party agents, but the IEC told us that in the interest of encouraging political party involvement and consultation at all stages of the process, and since it had paid for party agents to observe voter registration, it had decided to fund the party agents directly. By doing so political parties would be able to have agents present at virtually all polling stations. The lack of effective internal party accounting procedures meant that it was not viable to channel the money through the parties themselves.

While funding so many party agents throughout the country was a drain on the resources of the IEC, the Group strongly supported the use of agents as an essential part of the promotion of transparency in the electoral process.

Although the process seemed to have worked well, the Group felt that there was a need for the IEC to revisit the arrangement whereby party agents, who must monitor the IEC work, were paid by the IEC. In our opinion, this might in the long run compromise the independence of party agents as watchdogs over the electoral process.

Nominations

Sections 49 and 49B of the National Election Assembly Act 1992 set out the requirements as to nominations of candidates for constituency and proportional representation seats. An application was made by the LCD to the High Court for an order that the period allowed for nominations be extended. This application was granted and nominations duly closed on 25 April 2002. Some 770 candidates from 19 parties were nominated for the 40 party seats; approximately 120 of these were women. There were 1,085 constituency nominees. The LCD and BNP fielded candidates in all constituencies contested. The LPC and BAC contested most constituencies and the smaller parties fielded between 71 and 21 candidates each. There were several court cases relating to internal party disputes over selection of candidates and because of the potential for this delaying the printing of ballot papers the IEC decided to print alternative sets of ballot papers.

Relations between the Government and the IPA have not always been cordial due to different interpretations of the role of the IPA in the 1999 Agreement. Relations were further strained by the Government's insistence that any member of the IPA who wished to seek nomination as a candidate in the forthcoming election should first resign from the IPA, as they were holding public office and could not therefore be candidates in an election at the same time. The issue was resolved, partly through Commonwealth mediation, by the parties nominating new members of the IPA who were not going to stand for elections. Not all IPA members who had to resign were replaced. Three of the

original 24 members remained and seven were replaced. The IPA on the eve of the election had only 10 members.

Supply of Materials

Section 56 of the National Assembly Election Act 1992 provides that the Director of Elections shall ensure that every returning officer is provided with sufficient quantities of specified equipment to enable polling at each polling station within the constituency “to be conducted in an effective and efficient manner”. The Advance Observer was able to observe the arrangements being made for transportation of materials to polling stations. Non-sensitive materials such as furniture, polling booths and lamps had been sent from Maseru to district centres about a week in advance of the election, while security-sensitive material such as ballot papers, official seals and indelible ink was sent to district warehouses a couple of days before the election and guarded by IEC staff and police until they were sent to polling stations. Party agents were entitled to watch over these sensitive items up to and during their transfer to polling stations, and we observed several party agents outside district warehouses watching over the materials night and day. Arrangements were made to transport material to remote locations by military helicopter and then, if necessary, by donkey.

Election Observers

Chapter 8A of the National Assembly Election Act deals with election observation. It establishes the role of observers and requires the IEC to co-operate with observers. The IEC may invite observers from named international organisations, including the Commonwealth Secretariat, NGOs constituted and operating in Lesotho, foreign governments and it may invite individual observers.

There were 252 foreign observers present comprising nationals from 44 countries.

The United Nations Electoral Assistance Secretariat established an office to co-ordinate international observers, provide an information kit including applicable laws, maps, polling sites, procedures, local information, etc., and assisted in matters such as accreditation of international observers, briefings, and, where requested, facilitated deployment of international observers to polling stations. At the conclusion of voting this office facilitated a meeting of heads of observer groups where observations were shared.

In line with established practice, while a Commonwealth Observer Group liaises and, where practicable and appropriate, co-ordinates with other observers, it maintains its independence and hence we undertook responsibility for all our own arrangements. The Chairperson had cordial contact with the leaders of other observer groups on an almost daily basis.

The IEC facilitated the training of 250 local monitors from the Lesotho Council of NGOs which was also assisted by partial funding from the United Kingdom. The Christian Council of Lesotho also fielded a significant number of observers.

.....
*There were 252 foreign
observers . . . the IEC
facilitated the training of
250 local monitors*
.....