

# **Lesotho Parliamentary Elections**

26 May 2012

Report of the  
Commonwealth Observer Group

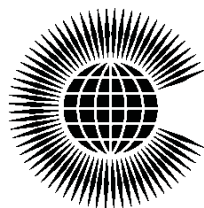


Commonwealth Secretariat

# **Report of the Commonwealth Observer Group**

## **LESOTHO PARLIAMENTARY ELECTIONS**

26 May 2012



**COMMONWEALTH SECRETARIAT**

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# Letter of Transmittal



## Commonwealth Observer Group Lesotho Parliamentary Elections 26 May 2012

31 May 2012

Dear Secretary-General

The Commonwealth Observer Group has completed its final report of its observations of Lesotho's Parliamentary Elections held on 26 May 2012 and we are pleased to submit it to you.

These elections were the third held under the Mixed Member Proportion (MMP) system. The elections were peaceful and conducted in a credible, transparent and professional manner.

It was encouraging that during the election campaign many of the key benchmarks for democratic elections were met, including freedom of assembly, association and movement.

From our observations, while we note the improvements that have been made since the 2007 Parliamentary Elections to address some shortcomings, we acknowledge that the MMP system is evolving and that further adjustments may be necessary in the future as Lesotho consolidates its democracy. We have made recommendations to this effect and trust they will be received in the constructive spirit in which they are intended.

We are pleased that, hitherto, all political parties, their supporters and other stakeholders in the Lesotho electoral process have continued to show restraint and magnanimity in upholding their pre-election commitments to peace. It is our fervent hope that the peaceful tenor of the electoral process thus far will continue to prevail as the post-election transition phase reaches its conclusion.

We wish to express our gratitude for the support provided to our Group by the Commonwealth Secretariat Staff Team.

We would like to thank you for this opportunity to observe these elections, which has been an enriching experience for our Group. We depart Lesotho with the hope that we have made a positive contribution to the democratic process in Lesotho and the Commonwealth's ongoing engagement here.

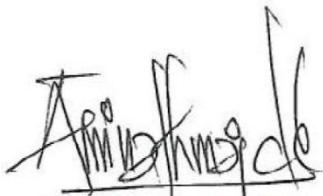
  
**Dr Bakili Muluzi**  
Chairperson



**Mr Orin Gordon**



**Mr Med S K Kaggwa**



**Ms Aminath Majdha**



**Mr Aloisious Nthenda**



**Dr Rajen Prasad MP**



**Mrs Rina Ray**

# Chapter 1

## Introduction

Following an invitation from the Minister of Foreign Affairs and International Relations of the Kingdom of Lesotho, the Commonwealth Secretary-General, Mr Kamalesh Sharma, constituted an Observer Group for the 26 May 2012 Parliamentary Elections. In line with usual practice, the Secretary-General sent an Assessment Mission to Lesotho to assess the prevailing situation as well as the pre-electoral environment, prior to his final decision on whether to constitute a Commonwealth Observer Group. The Assessment Team was in the country from 2 to 5 April 2012.

The Commonwealth Observer Group was led by HE Dr Bakili Muluzi, former President of the Republic of Malawi, and comprised seven eminent persons. The Observer Group was supported by a four-person staff team from the Commonwealth Secretariat. A full list of members is at [Annex 1](#).

### Terms of reference

*'The Group is established by the Commonwealth Secretary-General at the invitation of the Minister of Foreign Affairs and International Relations of Lesotho. The Group is to consider the various factors impinging on the credibility of the electoral process as a whole.*

*It will determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which the country has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.*

*The Group 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 Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Lesotho, the Independent Electoral Commission, and leaders of political parties, and thereafter to all Commonwealth Governments.'*

### Activities

The Observer Group was present in Lesotho from 19 May 2012. During four days of briefings, the Group met with the Independent Electoral Commission (IEC), political party representatives, the Acting Commissioner of Police, civil society groups, women's groups, youth representatives, media, the diplomatic community, and national and, regional and



international observer missions.

An Arrival Statement was issued on 21 May 2012 (see [Annex 2](#)). The Observer Group was deployed from 24 to 27 May 2012 and covered the districts of Butha-Buthe, Leribe, Mafeteng, Maseru, Mohale's Hoek, Qacha's Nek, Quthing and Thaba-Tseka (see [Annex 3](#)).

On deployment, teams met the District Administrators, local electoral officials, the local police as well as other national and international observers and members of the public to build up a comprehensive picture of the conduct of the process. Given concerns about the security situation and the post-election transition arrangements, the Chairperson also met the Prime Minister of Lesotho, the Commander of the Defence Force and the Acting Commissioner of Police, and issued several statements on behalf of the Observer Group, including a pre-election statement on Friday 25 May 2012 (see [Annex 4](#)), followed by pre-election and post-Election Day Joint Appeals with other international observer missions (see [Annex 5](#)).

On the basis of the Group's initial findings and recommendations, the Chairperson issued an Interim Statement on Tuesday 29 May 2012 (see [Annex 6](#)). The Group's Final Report was completed in Maseru prior to departure and transmitted to the Commonwealth Secretary-General on 1 June 2012. A departure statement was issued by the Chairperson of the Observer Group on 1 June 2012 (see [Annex 7](#)).

## Chapter 2

### Political Background

#### **The Mixed Member Proportional System (MMP)**

Since Lesotho's independence, a number of post-election crises have arisen, due to the inadequacy of the First-Past-The-Post system (FPTP) in reflecting the number of popular votes secured by political parties in the allocation of parliamentary seats. Following the unrest and political crisis after the 1998 Parliamentary Elections, when opposition parties rejected the victory by the Lesotho Congress for Democracy (LCD), the Commonwealth, SADC, and other partners, agreed to provide support to Lesotho in exploring the possibility of creating a new system which would ensure the representation of all political groups in the political process.

The Commonwealth worked closely with other international partners in facilitating and implementing an agreement between the Government and the political opposition. Support was provided to the Interim Political Authority (IPA) which was established to deal with the crisis and electoral reform, including the strengthening of the Independent Electoral Commission (IEC), and reform of the system of political representation.

In July 2000, the Secretary-General appointed a senior Secretariat official as his representative to facilitate dialogue, with a view to promoting agreement on two major issues: the voter registration system and the formula for representation in Parliament.

In light of an extensive capacity building programme and support provided by the Commonwealth and UNDP, the IPA developed a voter register that enjoyed the confidence of major stakeholders. 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, 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 Mixed Member Proportional (MMP) system was relatively calm and established people's confidence in the workability of the MMP system. The LCD under Dr Mosisili won the election, winning 77 out of 120 contested seats in the Lower House, and obtaining 54.6 per cent per cent of total votes cast. A Commonwealth Observer Group (COG), led by Sir James Mitchell KCMG, former Prime Minister of St Vincent and the Grenadines, concluded that 'the conditions existed for a free expression of will of the voters of Lesotho. Where we observed the process, the atmosphere was peaceful, the voters were

able to cast their votes freely and the secrecy of the ballot was assured’.

The COG also concluded that, in the lead up to the election, there was wide support for the MMP system of representation.

Confidence in the system was further reinforced by the successful conclusion of the first post-independence Local Government Elections in April 2005. In these elections, Lesotho adopted a quota system that reserved one-third of electoral divisions for women candidates. It resulted in women constituting 53 per cent of the victorious candidates.

On 13 October 2006, a new political party, the All Basotho Convention (ABC), led by Mr Tom Thabane (then Minister of Communications) emerged, when he and 17 other members of the Lesotho Congress for Democracy (LCD) crossed the floor, bringing the total number of non-government MPs to 59 in the 120-seat National Assembly. As a result of this development, the government decided to bring forward the election date.

The defections to the ABC instantly made it the third largest party in the lower house, the National Assembly – behind the LCD and the Basotho National Party (BNP) the main opposition – and reduced the ruling party's representation to only 61 out of 120 seats.

In November 2006 a faction of the BNP also formed a new party, the Basotho Democratic National Party (BDNP), together with four other BNP MPs (out of a total of 21). A group of smaller opposition parties also came together the same month and announced the formation of a united front, the Alliance of Congress Parties (ACP), which included the Lesotho Peoples’ Congress (LPC), the Basotho African Congress (BAC) and a faction of the Basotho Congress Party (BCP). The stated intention of the ACP was to reunite the numerous parties that had broken away from the BCP in recent years, ultimately merging into one party, although ironically the official BCP had declined the offer to join the alliance.

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. Though the IEC had been working towards a May 2007 election, 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.

Due to the floor crossing and emergence of the ABC, the 2007 Parliamentary Elections held on 17 February were highly competitive.

In the election, the two larger parties, the ruling LCD and the main opposition party, ABC,

made arrangements with smaller parties whereby the larger parties contested only the constituencies and the smaller parties submitted only party lists for the compensatory seats; these lists then included members of the larger party. The understanding was that the smaller partner's supporters would vote for the larger partner's candidates on the constituency ballots; in exchange the larger partner's supporters would vote for the smaller partner on the party ballots.

In effect, the LCD fielded constituency candidates, while the National Independent Party (NIP) included LCD members on the NIP party list. The outcome of all this was that the LCD won 61 constituency seats and the NIP was allocated 21 compensatory seats giving the alliance 82 seats in the National Assembly, or 68.3 per cent of the seats.

The ABC made a similar arrangement with the much smaller Lesotho Workers Party (LWP). The outcome in this case was that the ABC won 17 constituency seats and the LWP was allocated 10 compensatory seats giving the alliance 27 seats in the National Assembly, 22.5 per cent of the seats.

As a result, in the 2007 Parliamentary Elections, the LCD and ABC obtained no party votes, while the NIP and the LWP performed far better than they had in the 2002 election.

A major observation of the Commonwealth Expert Team (CET) which observed the Parliamentary Elections was that the FPTP mindset 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 effect of distorting the proportionality of seats allocated in parliament. This distortion subsequently dominated the political landscape in Lesotho and the relationship amongst political parties.

### **Mediation efforts**

SADC pursued mediation to resolve the situation. A SADC Eminent Persons Mission visited Lesotho in August 2008 to consult with stakeholders on a revised road map for Lesotho dialogue.

During this period, an assassination attempt on Prime Minister Mosisili took place in April 2009. A Commission of Inquiry on this matter was subsequently conducted. It produced a report entitled Attacks on the Makoanyane Military Base, State House and against the residents of Maseru, which was released in April 2010. A number of recommendations were made, including that the security of the Prime Minister should be the direct responsibility of the Commander of the Armed Forces.

Ongoing negotiations to resolve the dispute stalled in July 2009, after Sir Ketumile Masire resigned as the SADC-appointed mediator. Mandated at a subsequent SADC summit to follow up on Sir Ketumile's report, the SADC 'Troika' of foreign ministers from Mozambique, Swaziland and Zambia visited Lesotho in late October 2009. In early 2010, SADC tentatively

resumed its efforts to help to resolve the dispute. A visit of the SADC Troika (Mozambique, Swaziland and Zambia) took place in February 2010, during which an attempt was made to relaunch the political dialogue.

The SADC Troika announced that it would grant its support to the Christian Council of Lesotho (CCL) in its role as the mediator in the post-electoral political dialogue. The Troika also agreed to appoint, with immediate effect, a Team of Facilitators to assist the CCL in this mediation to provide technical support and to facilitate the communication with the relevant SADC structures. Thereafter, both the SADC Team of facilitators and CCL would bring together the stakeholders to agree, through an all-inclusive and participatory process on a roadmap comprising a list of major contentious issues and how to handle them, including, among others, the allocation of responsibilities for what to be done among the different stakeholders. The roadmap also agreed on a timeframe to review both the Constitution and the Electoral Law.

Although relations between the ABC and LWP strengthened to the extent that LWP leader, Macaefa Billy, was appointed Secretary-General of the ABC, the ABC announced that it was terminating its alliance with the Lesotho Workers' Party (LWP) in July 2010.

In mid-November 2010 the LCD held preliminary discussions with other political parties regarding possible changes to the electoral system in advance of the 2012 elections. The talks were convened by the IEC and attended by all parties except the ABC, which refused to work with the IEC because of its alleged bias towards the ruling party. The LCD had by then accepted the need to modify the system.

During the discussion the LCD tabled a proposal suggesting, among other things, that voters should cast only a single vote to indicate preferences for both constituency and proportional representation components. This change, along with other electoral reforms, were introduced in a National Assembly Electoral Act, enacted in August 2011.

Local Government Elections were conducted in October 2011 after an earlier postponement. The IEC was criticised for its conduct of these elections, with allegations that there were many organisational and logistical shortcomings.

The Commonwealth Secretariat provided technical support for the delimitation of electoral boundaries for the local elections. The Secretary of the Independent Electoral Commission (IEC) of Botswana, Mr TGGG Seeletso, provided the expertise for the exercise.

Two rival factions emerged during youth league elections in the LCD. An anticipated cabinet reshuffle subsequently occurred in mid-October 2011, with the first changes since the 2007 election and the biggest shake-up since Dr Mosisili became prime minister in 1998. All the major positions were won by supporters of Mr Monyane Moleleki, the Minister for Natural Resources. The other faction was led by Mr Mothejoa Metsing, the LCD Secretary-General and Minister of Communications.

## **Formation of the Democratic Congress (DC)**

Protracted differences and factionalism within the LCD led to a split in the LCD. This resulted in the Prime Minister and 44 MPs breaking away to form a new party, the Democratic Congress (DC), in February 2012. There was a vote of confidence in the National Assembly on 29 February 2012, which was won by Dr Mosisili's group, with the support of some members of the opposition. Parliament was dissolved on 15 March 2012 and fresh elections were called.

Several political parties expressed concerns about the process and the legitimacy of the caretaker government following the dissolution of parliament on 15 March 2012, as the Speaker, and not the King, declared the DC as the caretaker government.

## **Political parties contesting the 2012 Parliamentary Elections**

A total of 18 political parties were registered to contest the 2012 Parliamentary Elections:

1. All Basotho Convention (ABC)
2. Areka Covenant Front For Development (ACDF)
3. All Democratic Corporation (ADC)
4. African Unity Movement (AUM)
5. Basotho Batho Democratic Party (BBDP)
6. Basutholand Congress Party (BCP)
7. Basotho Democratic National Party (BDNP)
8. Basotho National Party (BNP)
9. Democratic Congress (DC)
10. Lesotho Congress for Democracy (LCD)
11. Lekhotla La Mekhoa le Meetlo (LMM)
12. Lesotho People's Congress (LPC)
13. Lesotho Workers Party (LWP)
14. Marematlou Freedom Party (MFP)
15. National Independent Party (NIP)
16. Popular Front for Democracy (PFD)
17. Lekhotla La Senkatana (SSD)
18. The White Horse Party (WHP)

## Chapter 3

# The Electoral Framework and Administration

### The Constitution

The Constitution of Lesotho came into force on 2 April 1993 and was amended in 1996 and 1997.

The Constitution protects basic civil liberties, including freedom of speech, association, and the press; freedom of peaceful assembly; and freedom of religion. It also provides for the separation of powers among the three branches of Government, the Executive, the Legislature and the Judiciary.

### The National Assembly Electoral Act (2011)

The National Assembly Electoral Act (2011)<sup>1</sup> is the principal legislation dealing with the conduct of elections in Lesotho.

The Act covers the method of registration of voters, registration of political parties, nomination of candidates, conduct of election campaigns, conduct of elections at polling stations and counting of votes as well as election petitions.

The Act also includes an Electoral Code of Conduct, which outlines the responsibilities and guidelines for the behaviour of all key stakeholders, including the IEC itself and political parties.

### The electoral system

The Kingdom of Lesotho uses a Mixed Member Proportional (MMP) model consisting of a combination of First Past the Post (FPTP) and Proportional Representation (PR) systems. The Senate in March 2000 approved the fourth Amendment to the Constitution by which a formula for representation in Parliament was adopted. Subsequent negotiations (brokered by SADC with support from the UNDP and Commonwealth Secretariat) led to the adoption of the MMP system of parliamentary representation. Under this system, 80 of the seats are allocated in single member constituencies, where the winner takes all, under the First – Past – the Post system. The other 40 seats are distributed by proportional representation on a party list system – which provides compensatory seats to correct the imbalances of first-past-the-post.

It is the Group's observation that the electoral system still poses challenges which the next government will need to address. In its preference for a single vote, in our view the system

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<sup>1</sup> Hereafter referred to as 'the Electoral Act'

<sup>2</sup> The Council of State is a body made up of the Prime Minister, the Speaker of the National

has introduced some unintended consequences, especially for smaller parties and independent candidates. The major issue arises from the requirement that parties field candidates in constituency seats, to avail themselves of votes for proportional representation seats. It is far more difficult for smaller parties and independent candidates to acquire the financial and other resources to field candidates in more than a handful of seats. It seems to us that the MMP system is designed to ensure parliament reflects the people and the will of the people. This is a challenge for the next parliament of Lesotho.

MMP works successfully when the proportionality determined by voters is not disturbed by Members of Parliament changing parties or crossing the floor. It may be time for the next parliament to visit this question and make appropriate amendments to stop practices that alter the proportionality determined by the electorate. The Commonwealth Observer Group feels strongly that this issue should be urgently addressed because it is fundamental to Lesotho's MMP system.

A new feature in the Electoral Act is that the proportional representation list has to be a zebra list, wherein, the names of a man and a woman are alternatively presented. The intention of the zebra list is to increase the number of women in parliament.

The law now caters for campaign funds and political party funds to political parties.

### **Independent Electoral Commission (IEC)**

The 1997 amendments to the Constitution established an Independent Electoral Commission (IEC) and empowered the IEC to have overall responsibility for administering the National Assembly Elections including the registration of political parties, voter registration, voter education, undertaking constituency boundary delimitation, training election officials and the conduct and supervision of elections.

The IEC is comprised of a Chairperson who has held, currently holds or is qualified to hold, high judicial office and two other members who either possess the same qualifications as the Chairperson, or who have considerable experience or competence in administration or in the conduct of public affairs. The appointment is made by the King on the advice of the Council of State.<sup>2</sup> The Council of State solicits candidates from the all registered political parties. IEC members are not allowed to be office-bearers of a political party, a member of a local authority nor in public office, other than a Judge of the High Court or the Court of Appeal.

The Director of Elections is the executive arm of the IEC and is appointed by it in consultation with the Public Service Commission. The Director is directly answerable to the IEC.

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<sup>2</sup> The Council of State is a body made up of the Prime Minister, the Speaker of the National Assembly, the Attorney General, two judges, the Commander of the Defence Force, the Commissioner of Police, a Principal Chief, a member of the legal profession and a representative of the Opposition.



Section 136 of the Electoral Act provides for measures to safeguard the independence of the IEC. These include the requirement for members and officers of the Commission to perform their functions impartially and independently; that members of the Commission shall not be eligible for nomination or appointment to any other public office; that they may not give support to or oppose any political party or candidate participating in the elections; and that they may not place in jeopardy the credibility, impartiality or integrity of the Commission.

That the IEC refers legal matters through the Attorney General, who is also a member of the Council of State, and secures its funding in accordance with Section 147 of the Electoral Act through the Minister of Law and Constitutional Affairs, has caused some concern that the IEC may not be truly independent.

The Commonwealth Observer Group believes that the IEC should be substantially strengthened and made responsible directly to Parliament which should also set its budget. The IEC should be led by a single full-time independent Commissioner who is appointed with the agreement of both sides of the House. The Commissioner should be responsible for all the activities of the IEC including staff, work programme and reporting. These measures we believe will position the IEC to meet its critical role of conducting credible and transparent elections, and be a trusted institution in Lesotho's constitutional arrangements.

### **Elections to the National Assembly**

The Constitution and Electoral Act provides that candidates shall be qualified to be elected as a member of the National Assembly if s/he:

- is a citizen of Lesotho; and
- is registered in some constituency as an elector in elections to the National Assembly and is not disqualified from voting in such elections; and
- is able to speak and, unless incapacitated by blindness or any other physical cause, to read and write either Sesotho or English well enough to take an active part in the proceedings of the National Assembly.
- Is not disqualified under Section 59 of the Constitution nor for any reasons as provided for in Section 40(2) of the Electoral Act.

### **Voter eligibility and voter registration**

The Electoral Act provides that in order for an elector to be registered, s/he must be a citizen of Lesotho, who has attained the age of 18 years.

A person is not qualified to vote if s/he:

- acknowledges allegiance, obedience or adherence to a foreign power or state;
- is under the sentence of death imposed by a Lesotho court;
- has been convicted of an offence
  - Under Parts 1 to 3 of Chapter 11, except sections 156 and 160;
  - And 5 years have not elapsed from the date of conviction

- Is declared to be of unsound mind under the laws of Lesotho.

The Electoral Act stipulates that voter registration is compulsory by law and is a continuous process. With a view to motivating voter registration, the IEC carried out extensive voter education and facilitated numerous mobile stations which issued instant voter identification cards. The IEC indicates that it was able to register about 1.1 million voters.

Every good election starts with a reliable voter register and the integrity of the current voter register remains a concern to us. We raised these concerns with the IEC and we note some of the challenges they faced to clean the voter register. These challenges include removing deceased persons, and identifying and removing duplicates in sufficient time before the voter register was published in the gazette.

The compulsory registration of deaths through the Ministry of Home Affairs is a recent legal requirement. The IEC developed a rural verification mechanism with the support of local Chiefs to confirm the identity of registered voters and eliminate deceased persons from the voter register. It is the view of the Observer Group that the verification mechanism to identify deceased persons should be more robust.

Concerns about the registration of underage persons were raised with us. The second report of the monitoring committee indicates that 47 cases were reported, 7 cases were confirmed and their registrations cancelled.

As stipulated in the Electoral Act, the IEC also undertook the delimitation of boundaries. The IEC informed our Group that the delimitation of boundaries was prompted by demographic shifts which altered the size of the constituencies thus necessitating bulk transfers of the electorate. We note the efforts of IEC to conduct extensive consultations and workshops with communities and political parties prior to the delimitation process in 2010. We are nevertheless of the view that the next Parliament should consider clarifying the criteria used for boundary delimitation within the Electoral Act.

Despite the laudable efforts of the IEC to produce a clean and reliable register, more work needs to be done to improve it prior to the next election. We sought, and received, assurances from the IEC, that there was little chance of double voting. There were only a handful of voters who turned up to vote and could not cast their vote for any reason in the polling stations we observed.

We understand that the voter register serves several purposes, including the delimitation of electoral boundaries, identifying where a voter is registered and as a major tool for party organisers. Given this, it is critical that the IEC gives priority to a clean and reliable voter register for the next elections. We believe they now have sufficient experience to further improve the quality of the voter register and remove any doubts concerning its integrity. A reliable voter register will also provide a credible perspective on voter turnout.

## **Voter education**

The IEC utilised an extensive voter education programme which started with the process of boundary delimitation in 2010 and continued until Election Day. They partnered several civil society organisations to implement voter education throughout the ten districts. Civil society organisations deployed educators throughout the country who employed several methodologies including house-to-house, public gatherings and activities, workshops, leaflets, and candidate debates.

On Election Day, both voters and electoral officials showed themselves to be well versed in the procedural requirements of the voting process. Voters too, seemed to have understood the steps to voting, without the need for polling officials to talk them through the steps on the day.

It is the view of the Group that voter education is not solely the business of the IEC, but the responsibility of all key national institutions in Lesotho. We are also of the view that voters should also be made aware of the reasons and criteria used for bulk transfers between constituencies. Considering that there is a high level of suspicion among the electorate about the electoral system, we recommend that the IEC provides better clarity regarding the delimitation of boundaries.

## **Advance voting**

The Electoral Act provides for advance voting for a limited group of individuals generally engaged in official duties as follows:

1. A public officer employed in the service of the Government of Lesotho in another country;
2. A dependent or an employee to a person mentioned above;
3. A public officer who will be outside Lesotho on official duty on Election Day;
4. A candidate or agent;
5. A person carrying out election duty;
6. A person performing the functions of election observer, journalist, medical personnel, or security personnel on the day of election.

We were able to observe advance voting in Maseru. The process observed did not greatly vary to our observations on Election Day. Generally, we found that a small number (fewer than a hundred people) were expected to cast their vote at the advance polling stations. Most of the registrants for early voting were police officials and military officials.

Currently, advance voting is available in special circumstances to a small number of people. We are aware that some people were unable to be in their constituencies on Election Day and therefore could not exercise their franchise. In many other jurisdictions internationally, this problem is addressed by making advance voting available over a longer period. We recommend the next parliament considers this option to ensure that voters who will be out

of their constituencies on Election Day can cast their vote easily.

### **Electoral code of conduct**

The Electoral Code of Conduct<sup>3</sup> promotes conditions conducive to the conduct of credible and transparent elections, adherence to democratic principles of tolerance, and a climate wherein political parties can operate without fear, coercion, intimidation or reprisals. All registered political parties and candidates nominated for election must commit themselves to the Code.

If a political party registered with the IEC contravenes the Code, it is liable to one or more, or a combination of, sanctions as specified in the Electoral Act, Section 122(5).

We find that while the Electoral Act empowers the IEC to take actions against violations of the Electoral Code of Conduct, the vagueness of the Act in specifying the appropriate sanctions for specific violations, leaves unnecessary room to question the weight of any sanction that the IEC might apply.

### **Conflict resolution mechanisms**

The Electoral Act caters for alternative dispute resolution mechanisms. On receiving a written complaint concerning the contravention of the Code of Conduct, the Director of Elections refers the complaint for determination by a tribunal appointed by the IEC to hear and determine such complaints. The IEC informed us that the tribunal has heard three cases in the run up to the 2012 election. There is also a Panel that hears complaints about the use of government resources. The IEC informed our group that this Panel had thus far heard two cases on the alleged use of government vehicles for campaigning.

We were also briefed by the IEC on the Commonwealth-sponsored conciliation and alternative dispute resolution mechanisms that have been a recent addition to the electoral process. We are aware that this system is designed to resolve disputes locally and reduce the number of complaints brought to the tribunal. This mechanism was trialled in the period leading up to the 2012 election and we look forward to reports from the IEC on its effectiveness.

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<sup>3</sup> Schedule 2, National Assembly Electoral Act (2011)

## Chapter 4

### Election Campaign and Media

The Commonwealth Observer Group observed a few campaign rallies towards the end of the campaign period<sup>4</sup>.

The Group noticed that there were few billboards and posters and few signs of banners, bunting, streamers. In visual terms, the Lesotho elections appeared to be low key in Maseru, the capital. However various stakeholders told the Group that, particularly in the rural areas, political parties used traditional house-to-house methods of campaigning.

The final Sunday before the vote, the group witnessed large and peaceful rallies, which were characterised by songs, dances and, lively performances, and with the parties emphasising their striking and distinctive campaign colours.

We were also pleased to see supporters of opposing parties passing each other on the streets peacefully and without incident and in some cases displaying a positive and good-natured spirit.

Political parties competed for the attention of the media, in terms of traditional coverage and reporting, time allocated for party political broadcasts, and airtime bought by the parties to use in the way they deemed most effective in getting their messages out.

The opposition parties said that their capability to transport their party supporters to rallies was significantly hampered, as the incumbent party had hired all the available buses and denied the applications of opposition parties to hire buses from South Africa, as had been allowed in previous elections. However the governing party denied this accusation, saying that they followed normal commercial practice.

The election campaign was generally peaceful. Only a small number of isolated incidents were brought to our attention. It should be noted that these incidents were not organised and persistent. However, the incident in the industrial area Ha Thetsane in the capital, Maseru, on 19 April 2012, in which the Prime Minister's convoy was pelted with stones was an unfortunate occurrence.

The Lesotho Defence Force told us that this incident was sufficiently alarming to them to cause them to increase their visibility, and issue a statement calling upon voters for a peaceful election. The unfortunate tenor of that statement was of concern to political parties, civil society groups and the people of Lesotho, and increased discussions about the role of the military in the election.

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<sup>4</sup> The official campaign period commenced the day when parliament dissolved (15 March 2012) and was due to end 24 hours prior to Election Day.

The Group received the assurances of the military that they would remain independent and play their role in ensuring a peaceful election.

The role of the military in the election was raised with us by several stakeholders. Their concern was their presence around the Prime Minister gave the impression that their influence was greater than providing protection. We note that this is provided for in the Constitution with respect to providing security. This impression becomes material during an election campaign as it influences voter perception.

We believe this matter needs addressing by the next parliament. In many other jurisdictions protection for the Prime Minister and other VIPs is provided by an independent Very Very Important Protection Unit (VVIP) or a similar body. We believe that this option should be considered by the next parliament. The Police and Defence Force could always provide backup for the VVIP Unit when extraordinary needs arise.

### **Electoral code of conduct**

Chapter Five of the Electoral Act provides guidelines for the conduct of the campaigns. It includes elements providing for the right to campaign, equal treatment of political parties and candidates, freedom of information and expression, freedom of assembly and prohibitions during the campaign period.

The Electoral Act also clearly lays out the electoral offences, and lays down a detailed process by which an aggrieved party may lodge a complaint.

The Group lauds the spirit in which all 18 political parties which contested the election signed an electoral pledge a month before the election, committing them to honouring the Constitution and laws of Lesotho and to observing the Electoral Code of Conduct.

In our meetings with the political parties, they informed us of complaints they had lodged regarding unbalanced coverage of the parties by state radio and television. They also formally raised as a complaint, the accusation that the governing party had hired all the buses and denied their supporters an opportunity to attend their rallies.

On 16 April 2012, the IEC received a written complaint from the LCD accusing the DC of seizing some of its property when they broke away in February 2012. In its decision, the IEC Tribunal said that the 'DC has in effect hampered the rights and freedoms of LCD enshrined in Schedule 2 paragraph 4(f) of the Electoral Code of Conduct'.

It accordingly barred DC from campaigning in 19 Constituencies, between 16 and 22 May 2012, where DC had been accused of removing LCD property.

The Group commends the efforts of the IEC to enforce adherence to the Code.

The opposition parties approved of the IEC's response to the complaint about airtime, but were critical of the electoral body for not ruling against the DC on the question of whether the governing party had unfairly denied them access to transportation on the final Sunday of political rallies.

However, we find that while the Electoral Act empowers the IEC to take actions against violations of the Electoral Code of Conduct, it does not specify clearly the sanctions for breach of the Code.

### **Media coverage**

There are a variety of media outlets operating in Lesotho, both public and private. Since 1998 when the government opened up the media sector to independent media houses, there has been growth in the private media, particularly radio, although the state electronic media continue to dominate coverage in all areas of the country.

By virtue of being geographically surrounded by South Africa, citizens also enjoy wider media access. South Africa's daily newspapers and radio and television channels are freely available in Lesotho. A few citizens also have access to satellite television and internet based media.

Radio Lesotho and Lesotho Television (LTV) are both owned and controlled by the state.

Radio Lesotho gives national coverage, unlike all the other private radio stations whose coverage is limited to the urban areas.

Lesotho has 18 newspapers and periodicals, none of which are dailies. The print media consist of various newspapers in the Sesotho language and four English-language weekly newspapers – Lesotho Times, The Survivor, The Public Eye and Friday Flyer – which are mostly free from editorial control by the government.

Section 67 of the Electoral Act provides guidelines for state media to ensure equitable coverage to all registered political parties participating in the elections.

In our view, it is not uncommon for media in any election to be accused of bias. Nor is it uncommon for state media, particularly broadcasters, to be accused of favouring government rallies, utterances and activities during an election campaign. A major complaint from most of the stakeholders we met was that the state media – the Lesotho Broadcasting Services (both radio and television) did not offer equal airtime to all the political parties that participated in these elections, but instead devoted a disproportionate level of coverage to the incumbent ruling party. If true, this is contrary to the requirements of the Electoral Code of Conduct. However the opposition parties and civil society said there was an improvement in media coverage in this campaign compared to previous elections.

State media provided wider coverage of the country than private ones did. Radio was the most accessible medium, with about 90 per cent of the country able to receive LBS signals. TV ownership was less widespread outside the capital Maseru and the other major towns, and programming was dominated by offerings from South Africa, and other foreign sources. The media association representatives we met told us that newspaper circulation did not extend much beyond the capital.

The IEC secured on behalf of all 18 parties, one hour of airtime to fully articulate their positions and policies. In addition, the parties could buy advertising time.

With its near nationwide coverage, LBS state radio occupied a special position of responsibility at election time. However despite giving it credit for being less partisan than in the past, the majority of stakeholders felt that it did not meet its responsibilities to provide the impartial and politically wide ranging national service it ought to have done.

LBS did not clearly identify the airtime bought by the political parties, for example using labels such as 'The following is a paid political advertisement by the X political party'. Some people concluded from this that the station was favouring the governing party.

For a satisfactorily equitable allocation of air time for future elections, the state media need to plan more meticulously, using a well thought-out and easy to explain rationing/quota system to measure the weight of the coverage of political rallies. They should make clear to the political parties and the public, that they are operating a system of fair and equitable allocation of airtime to all the parties.

In any election campaign it is expected that the media will be fair to all parties. It is also expected that the media will be equally robust in covering the government and the opposition. LBS may have generated greater confidence in its objectivity through more considered forward planning of the election events it would cover, and more careful execution of its election coverage.

The IEC managed to shift perceptions of bias towards the governing party, in part by arranging for equal airtime for all the parties. The Group hopes that for future elections the LBS would take steps towards creating a broadcast schedule that clearly promotes more equitable coverage of the parties.

There is great need for more training of journalists on how to effectively report and cover elections. The Commonwealth and other partners could be of help in this area.

Generally, the media gave substantial space and airtime to issues raised by candidates and their parties. Private media devoted much of their attention to opposition parties. The print media were particularly robust in reporting the issues.

We commend the role played by the Media Institute for Southern Africa, Lesotho Chapter, for organising training workshops for journalists on how to responsibly cover the elections,



as well as carrying out media monitoring. However they need to do more work to encourage more professional, balanced and non-partisan reporting.

The IEC commended the work of the media, in voter education, and as we note elsewhere in this report, the voters seemed to have a significant knowledge of voting processes and procedures on Election Day.

## Chapter 5

### Voting, Counting, and Results

The Kingdom of Lesotho is divided into 10 electoral districts each managed by a District Electoral Officer who generally is also the Returning Officer for the area. Each District comprises a number of constituencies, each with a number of polling stations. Each polling station is managed by a Voting Station Manager and four staff members.

According to the 2006 census the total number of people on the voter register was just over 1.1 million out of a population of approximately 1.9 million. In the 2012 elections a total of 551,726 people voted<sup>5</sup>. Throughout the country there were 2,746 polling stations each with around 600 voters.

Prior to Election Day the IEC had appointed staff for each District and Polling Station and had dispatched a standard package of materials for each polling station through the District Returning Officers. The materials were received in the presence of the police, polling station manager and party agents. The security of the materials was assured by the presence of these groups from the time of delivery to when voting started.

On Election Day the polling stations were set up in a fairly standard format to be ready for the commencement of voting. Polling station venues were generally local schools or similar facilities. While the venue for some polling stations were barely adequate for the large number of people that had to be accommodated, generally those located in schools were adequate for the purpose. Polling stations had to accommodate five staff, an agent of each political party or independent contesting the electorate and an official witness.

The entire procedure for Election Day was fully laid out in the IEC's Voting and Counting Manual. In particular it included activities to be conducted in the setting up of the polling station, details of the polling procedure and the roles of each official in the polling station, procedures for spoiled ballot papers, use of official witnesses and enabling disabled people to cast their votes. Voting Station Managers were also supplied with appropriate forms to record major activities and milestones on Election Day.

Polling stations were open from 0700 to 1700 hours. Procedures to allow those already in the queue to vote despite the closing time were also in place to ensure no one who arrived before 1700 hours would be precluded from casting their votes.

The voting procedure on Election Day was as follows:

- Voters presented themselves to the first voting officer to have their identity checked and registrations confirmed against the voter register and have their names crossed

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<sup>5</sup> As provided by the official website of the IEC.

off. The names of voters were called out so that observers, especially Party Agents, could identify who was voting.

- A second voting officer checked for any evidence of the presence of indelible ink and the application of indelible ink on the left index finger.
- A third voting officer issued the ballot paper after having first recorded the elector's registration number and stamped the ballot in the prescribed manner.
- The voter returned to the officer after having completed his or her vote to have the officer remove the counterfoil from the ballot paper.
- The voter then cast his or her ballot in the ballot box before leaving the polling station.

Other notable features of the voting procedure were the procedures to be followed when a ballot paper was spoilt, the role of the official witness, the role of the police officer and how to assist a disabled person cast a vote.

The fifth member of the polling station staff was the Deputy Station Manager who relieved the Voting Station Manager and assisted in the counting of votes.

Procedures for the counting of votes were similarly well laid out in the Voting and Counting Manual which covered the sealing of the ballot box, reconciliation of the number of ballots issued, breaking of the seal on the ballot boxes, checking and counting of the votes cast, deciding on invalid votes, checking the vote count and announcing the results. The final step in the process was the packing up of the materials used on Election Day.

The Group observed the voting and counting at Leribe, Maseru, Mohale's Hoek, Qacha's Nek and Thaba Tseka. A large number of Polling Stations were visited in these Districts on Election Day, where elections proceeded in a peaceful and calm manner. We observed, in addition to the presence of older voters, participation by large numbers of women and youth not only as voters but also as polling staff and party agents. We also noted the enthusiasm to vote, the early arrival at polling centres and the extraordinary lengths to which some voters had to go to cast their ballot on Election Day.

Overall the IEC managed the entire electoral process competently, especially the logistics of Election Day. We saw the benefits of the IEC's work in preparing voters, its door-to-door strategy and general voter education on the smooth running of Election Day.

Commonwealth observers noted that in most areas voting proceeded well. We did not identify significant matters that would have materially affected the outcome of these elections. The Group followed the count at polling stations and the tabulation of results in a number of Districts. Overall the procedure of counting was conducted systematically by polling officials.

Saturday 26 May 2012 was a fine day throughout Lesotho. The winter season brought its own challenges for voters. Shorter days meant that Election Day started and finished in darkness and this created a number of difficulties for the staff of polling stations as well as for voters. Summer would have posed fewer challenges and would have added to the comfort of voters. In our observation the challenges were more significant in rural areas and the highlands.

While polling booths were set up in a fairly standard format we believe more attention needed to be given to guaranteeing voters could cast their votes in secrecy. For instance the act of filling in their preference should not be compromised in any way. The voter should not be in full view of those present in the polling station and a good measure of privacy needs to be maintained. Any suspicion that voters might introduce other material into the process ought to be managed by greater vigilance on the part of the Voting Station Manager and the Deputy Polling Station Manager.

The Group received some reports that not all of the standard materials that should have been included in the polling station kit were always provided. Perhaps the most serious was a report from one polling station that some pages were missing from the voter register. While this was rectified in quick time, we believe that each polling station needs to be provided with a complete roll with colour photographs for voters to check their eligibility to vote at that station.

The Group was impressed with the focus on transparency that placed a priority on ensuring party agents were satisfied at each step of the process. Each step was clearly explained to them by the Voting Station Manager or the Deputy, their attention was drawn to each aspect of the voting process, and a priority was placed on gaining their confidence in the process.

Almost all of the polling stations we visited seemed to be over-supplied with polling booths as it was rare for a queue to form inside the station. Thus some of the booths provided were not used at all. Voters were processed one at a time, and entry into the station was controlled at the door, usually by the police or police assistants. This temporary delegation worked very effectively and we congratulate the IEC and the Police for this policy and thank those who fulfilled this role admirably.

Queues formed early on polling day at many of the stations, but these were reasonably efficiently processed. Voters were well directed to the appropriate polling station. Officials were very polite and courteous and respectful of the importance of voting. Police officers were particularly helpful and prepared to do whatever was necessary to facilitate voting and to keeping the process efficient.

Every good election starts with a reliable voter register. The integrity of the current register remains a concern for us. Despite the laudable effort of the IEC to produce a clean and reliable register, more work needs to be done to improve it prior to the next elections.

Technologies are now available in Lesotho to compile a modern register which would include biometric data. We believe priority should be given to this task as it is our firm belief that it will enhance the credibility of elections and give voters greater confidence.

This is even more important as we believe the voter register serves several purposes including the delimitation of electoral boundaries and identifying where a voter is registered. It also serves as a major tool for party organisers.

Given that it is critical that the IEC gives priority to a clean and reliable voter register for the next elections, we believe the IEC now has sufficient experience to further improve the quality of the voter register and remove any doubts about its integrity.

Only a small number of irregularities were brought to our attention. Polling station staff members were well schooled in the model and followed it diligently. In some cases the Voting Station Manager introduced a slightly modified process but nothing that compromised the integrity of the ballot. In their anxiety to get everything right polling station staff were sometimes unnecessarily slow and laborious. It seemed to us that they needed to find a better balance between speed, accuracy and reliability.

We believe there is one procedure that potentially compromises the secrecy of the ballot. This is the final step before the vote is cast in the ballot box. In returning to the polling station staff member for tearing the final counterfoil the system has introduced the risk of another person being able to view a person's vote. This risk is even greater because it was possible to see through the ballot paper as a felt tip pen was used. This should be fixed as a matter of urgency.

We did not receive any complaints of difficulties for people with disabilities in casting their vote. We were aware that procedures were in place to meet the needs of those who were visually impaired but we were advised by IEC that their resources did not enable them to extend this to those with other disabilities. We did notice some elderly and disabled people in polling booths and that due attention was paid to their needs. The IEC should work on processes that will enable any person with a disability to exercise their franchise because this is a basic human right.

Party agents were stoic in fulfilling their roles on Election Day. They dutifully and attentively followed procedures, participated responsibly when necessary and generally were a credit to their parties. They stayed in the polling station for long periods and saw the process to its conclusion without deserting their posts. Even greater credit is due to them as they also stood vigil over the ballot box after the materials were delivered and through to the completion of counting.

The Group also visited advance polling stations on the 19 May, a week before Election Day. We note that this privilege is reserved for a limited number of people. While there were no issues of concern to us about advanced voting procedures we believe this facility should be used more widely to ensure those who are unavoidably outside their electorates on Election

Day do not lose their franchise. We believe every effort should be made by the IEC to make it easy for constituents to cast their votes. In many jurisdictions internationally this problem is addressed by making advance voting available over a longer period and with few restrictions. We believe this should be considered by the IEC and Parliament well before the next elections.

The Group followed the counting at polling stations and the tabulation of results in a number of Districts. Overall the counting procedure was concluded systematically by polling officials. However, at times the process was laborious and painstakingly slow. Officials were not as confident of this step on Election Day as they were of the process of casting a vote. This may be a consequence of training emphasis or some tentativeness when it comes to this crucial step. We believe IEC should review this step and adjust procedures to ensure the final count is crisp and businesslike.

We were able to follow the process closely up to the point where the results were tabulated for each district. We appreciate that the country has some inaccessible places and it takes time to bring these results together in a timely fashion. We know results were transmitted to the National Tally Centre in Maseru where final results were declared. The results were announced on 29 May 2012.

For the reasons stated above our overall assessment is that the 2012 elections are credible. We congratulate the people of Lesotho for demonstrating faith in the principles of democracy.

## Chapter 6

### Conclusions and Recommendations

The 26 May 2012 election was conducted in a credible and transparent manner and in accordance with the Constitution as well as the National Assembly Electoral Act (2011) of the Kingdom of Lesotho. This was the third election conducted under the Mixed Member Proportional System (MMP) in Lesotho. It represents an important step in the evolving electoral system of the Kingdom. As Lesotho consolidates its democracy no doubt further adjustments to its electoral model will be necessary.

The citizens of Lesotho have made their decision and it is now for the elected parliamentarians to make that work for the positive development of their country. Since no one Party controls a majority in Parliament the leaders of Parties in the new Parliament are now required to thoughtfully construct a coalition government that will have the confidence of the citizens of Lesotho and which will endure over the next term parliamentary term. It will inevitably require concessions to be made by all sides.

With this result Lesotho has entered another phase in its evolutionary democracy. This phase calls for a new kind of leadership based on negotiation, consensus building, transparency, and inclusion. The citizens of Lesotho have elected to Parliament a diverse group of people and a number of new faces and Parties. They collectively represent those who have the confidence of the people.

There is space in this Parliament for strong Government as well as a strong Opposition. It does enable the contest of ideas on what is good for the future of Lesotho and most of all it will require Parliamentarians to work hard to retain the confidence of the people. These are some of the challenges posed by the citizens of Lesotho for the new Parliament and all concerned must rise up to meet those challenges.

Despite some shortcomings the elections enabled citizens to freely express their political preferences. The right of the people to peacefully assemble at polling stations around the country and cast their votes for whomever they preferred was not compromised. In this regard the IEC is to be commended on its management of the entire electoral process, in particular the logistics of Election Day. Their extensive efforts on voter education, including its door-to-door strategy, yielded enormous benefits on Election Day. People understood, it seems, the importance of the occasion and how to exercise their franchise.

In our view further attention could be paid to increasing voter participation in future elections. This responsibility rests equally with the electoral system and politicians. The latter could provide citizens with good reasons to encourage them to exercise their franchise and the former must put in place an effective system that makes it easy for people to turn up at the polls on Election Day.

With respect to the electoral system this election represents another step in a hybrid MMP system in that voters were only given one vote for a constituent MP and it was assumed that this also represents their choice of a Party that should govern. The merits of that may be debated as the system matures and as Lesotho gains greater experience of the MMP environment.

The Group is aware that every good election starts with a reliable voter register. While there was little or no chance of anyone double voting in this election this is not the standard by which the voter register must be judged. The voter register serves several important purposes which form part of the system in which all citizens can have faith. The register is the primary tool for delimiting electoral boundaries, identifying where a person will vote and is a major tool for political parties.

If the voter register is not clean, accurate and as up to date as possible, electorate boundaries will be compromised. The situation could be further compromised by the option to register in a particular area even though a voter now lives in another area. While this is permissive it potentially distorts the size of electoral districts if significant numbers actually live elsewhere and avail themselves of services there including access to their MPs. Some thought needs to be given in the future to making where you live an additional criterion, other than age and citizenship, for being on a particular voter register.

It is critical therefore that the IEC start its work now on procuring a clean and reliable electoral register for the next elections. We believe the IEC has sufficient experience to further improve the voter register so it can be relied upon for the multiple purposes to which it is put.

The current procedures followed in polling stations on Election Day potentially compromise the secrecy of the ballot. This occurs because of the final step in the current process that requires the voter to present his ballot for the counterfoil to be removed before it is placed in the ballot box. We see little reason for this step. Together with greater efforts to ensure ballots cannot be inadvertently read by others (because of the thickness of the voting paper which allows the check mark to be visible from the other side) and the positioning of the screens will improve the requirement that ballots be cast in secret.

Voting Station Managers went to inordinate lengths to ensure the counting of the votes was accurate and transparent. While this appreciably slowed the counting there was no doubt that the process followed and the inclusion of Party Agents in the process gave confidence that accurate vote counting was a priority and therefore the results credible.

The Group was not aware of any incidence of voter fraud or intimidation on Election Day.

Security arrangements on Election Day were in the hands of the police. No instances of security breaches were brought to our attention. The process was peaceful and the atmosphere calm.



It is not uncommon for media in any election to be accused of bias. Most of the stakeholders we met noted an improvement in media coverage of the campaign compared to previous elections. There are some issues to be addressed for future elections regarding the amount of time state media gives to the ruling party in terms of coverage. At the same time private media might also need to look at how they gave much of their attention to Opposition Parties. It will also be important for media to develop a method of stating clearly which broadcasts are provided under the allocation of time to parties and which ones are purchased by political parties.

The print media were particularly robust in reporting election issues. We commend the role played by the Media Institute for Southern Africa, Lesotho Chapter, for organising training workshops for journalists on how to responsibly cover the elections, as well as carrying out media monitoring. The IEC should utilise the results of this monitoring exercise and other reflections to consider how the Electoral Code of Conduct might need to be strengthened for future elections.

The election campaign was generally peaceful. Some incidents of robust challenges of candidates at rallies occurred but we see this as part of modern campaigning and are not particularly concerned about the development. One constant matter raised with the Group was around the use of government vehicles for election purposes other than for transporting Ministers. We urge the IEC to revisit this question and strengthen the Electoral Code of Conduct as necessary so that the rules are very clear for the next elections.

A final important matter that we believe should be addressed is the impact of military presence around the Prime Minister. In our discussions with key stakeholders prior to the election they raised their concern about the presence of the military around the Prime Minister. They believed this created an atmosphere of unnecessary heightened military presence and potentially had the impact on voter perception of undue military influence.

The current practice is for the Prime Minister's security to be provided by the military. If security for the Prime Minister, the Leader of the Opposition and other VIPs was provided, when necessary, by an independent and civilian VVIP Unit, this would eliminate the unintended consequences of having military around the Prime Minister and others all the time. We believe some thought should be given to this matter by the next government.

The overall conclusion of the Commonwealth Observer Group is that while several matters identified in this report need attention for the next election none of these shortcomings materially affected the credibility and transparency of the election process and of the results. This gives us confidence in asking political parties to accept the results and work with the hand the electorate has dealt it.

The Group was part of an extensive and elaborate election observation process that is now common in elections in African states. We independently met with many stakeholder groups which included political parties, those responsible for the conduct of the elections, police,

military and media. We were always courteously received, enabled to conduct our observations, given whatever information we required and facilitated in many other ways. We believe this process signals the importance of democracy and our collective commitment to it, adds to the credibility of the results of the election, signals to other countries that what has transpired was credible and transparent and attests to the results as the will of the people. This is a further reason for our request that elected members now work with the results for the better governance of Lesotho.

## **Recommendations**

### **The electoral framework and administration**

- That the next Parliament urgently develops policies and procedures to stop the actions of members that affect the proportionality of Parliament because it is fundamental to Lesotho's MMP system.
- That the Parliament substantially strengthens the IEC by having the Chair directly responsible to Parliament.
- That the Parliament reviews governance arrangements in the Commission and enables Commissioners to have total responsibility over all activities of the IEC.
- That the IEC produces a clean and reliable register, prior to the next election and that the process be started immediately.
- That the IEC informs the public about transfers between electorates.
- That the IEC provides clarity regarding the delimitation of boundaries.
- That the next Parliament considers making advance voting available over a longer period to ensure voters who will be out of their constituencies on Election Day, can cast their votes easily.
- That the IEC more effectively utilises the sanctions available to it when breaches of the Electoral Code of Conduct are substantiated and where sanctions are considered not to be appropriate, it recommends amendments to the National Assembly Electoral Act, 2011.

### **Election campaign and media**

- That Parliament reviews the role of the military in providing protection for the Prime Minister and others, and considers establishing a Very Very Important Persons Protection Unit (VVIP).
- That the IEC should enforce the Electoral Code strictly.

- That state radio and TV follow guidelines set out in the electoral code, and give clear and equitable airtime to all the political parties.
- That state radio and TV clearly demarcate paid-for airtime from free airtime, so that the political parties and the public can be confident that no one party is being given an unfair advantage in coverage.
- That all media and non-media bodies that monitor media performance and regulation, discuss the codification of a clearly established code of practice, and its continued implementation by all media houses. The Media Institute of Southern Africa, Lesotho Chapter, and other actors, could initiate this process.
- That the media and civil society bodies that monitor media performance and regulation, partner the Commonwealth and other bodies to further raise the standards around reporting at election time. The Commonwealth could consider initiating this undertaking.

### **Voting, counting and results**

- That where possible, elections are held outside the winter.
- That the IEC reviews the layout of polling booths to guarantee that voters can cast their votes in secrecy.
- That the IEC guarantees that all standard materials are provided to each polling station.
- That the IEC provides a complete voter register with colour photographs for each polling station.
- That the IEC considers using biometric data when compiling the voter register.
- That the IEC reviews the voting processes to ensure a better balance between speed, accuracy and reliability.
- That the IEC reviews the need for a voter returning to the polling station staff member for tearing the final counterfoil to avoid the risk of the secrecy of the ballot being compromised.
- That the IEC develops processes to enable people with disabilities to cast their votes.

# Annex 1

## Biographies of COG Members

### **HE Dr Bakili Muluzi (Malawi) – Chair**

Dr Bakili Muluzi graduated from Thisted College of Technical Education, Denmark, and Huddersfield College of Education in the United Kingdom. He became Principal of Nasawa Technical Training College. He was elected to Parliament in 1973 and served in several Cabinet Ministerial Positions of Youth and Sports, Education, Transport and Communications, Minister in the President's Office and Secretary General of the Malawi Congress Party. Whilst serving as a Member of Parliament he also served as Secretary of the Commonwealth Parliamentary Association (CPA) Malawi branch.

Dr Muluzi was the first democratically elected President of the Republic of Malawi and served between 1994 to 2004.

Dr Muluzi served as Chairperson of the Southern African Development Community (SADC). He also served as Chairperson of the Common Market for Eastern and Southern Africa. Whilst serving in these positions he got involved in peacekeeping missions in Democratic Republic of Congo, Angola, Burundi, Zimbabwe, Sudan, and Uganda.

### **Mrs Rina Ray (India)**

Mrs Rina Ray graduated with a First Class First in Political Science (Honours) and joined the Indian Administrative Service in 1984.

As a member of India's premier civil service, she has worked in different areas including Finance, Health, Urban Development, Women & Child Development, Culture, Tourism, Rural Development and Planning.

Mrs Ray is presently working as Chief Electoral Officer, Delhi. She has initiated steps to encourage young people to enrol and to vote. Online enrolment has been introduced through the website [ceodelhi.nic.in](http://ceodelhi.nic.in) and this has proved to be a big success. Mrs. Ray is an amateur astronomer and a voracious reader. She has taken a Masters Degree in Sociology and is currently doing a Diploma in Child Rights Laws.

### **Mr Aloisious A C Nthenda (Malawi)**

Aloisious Nthenda has for the past 15 years worked with civil society organisations and communities in Malawi and Southern Africa (SADC region) in the field of human rights, democracy, elections and governance. He has organised, supervised, monitored and observed elections in Africa and the United Kingdom. He was a member of the first ever team of election observers for the 2010 UK elections. He is an Election and Governance Expert. He is the Executive Chairman for Malawi Electoral Support Network (MESN) and SADC Electoral Support Network (SADC ESN).

**Aminath Majdha (Maldives)**

Aminath Majdha is Assistant Director (Head of Voter Registration Section) Elections Commission of Maldives. Ms Majdha has been working in the Elections Commission of Maldives since 2004, and has been managing the voters' roll since 2009. She is a semi-accredited BRIDGE facilitator.

**Dr Rajendra Prasad MP (New Zealand)**

Dr Prasad is currently serving his second term in Parliament and is the Labour Party spokesperson for Ethnic Affairs and Associate Spokesperson for Social Development and Employment.

Dr Rajen Prasad is a former Associate Professor in Social Policy and Social Work from Massey University. He was New Zealand's Race Relations Conciliator and Human Rights Commissioner from 1996 to 2001 and served in 2003/4 as a Member of the Residence Review Board. He was the founding Chief Commissioner of the Families Commission from 2004 to 2008.

**Mr Med S K Kaggwa (Uganda)**

Mr Kaggwa is the Chairperson of the Uganda Human Rights Commission since 2009. He is also a Commissioner and a Special Rapporteur on Prisons and Places of Detention at the African Commission on Human and People's Rights based in Banjul, The Gambia. He is also an Expert on the OIC Independent Human Rights Commission, Jeddah, Saudi Arabia. He is a Senator and Vice Chairman of Kayambogo University Council. He previously worked as a Member of the East African Legislative Assembly, Arusha, Tanzania, a Member of Parliament in Uganda, a Minister of State in the President's office, a Member of the Constituent Assembly, a Constitutional Commissioner, a Councillor at Makerere University Council, a Board Secretary with Uganda Revenue Authority, a Bank Secretary with the Libyan Arab Foreign Bank, a practising Lawyer and a Lecturer at the Law Development Centre (Bar School).

**Mr Orin Gordon (United Kingdom)**

Orin Gordon is a media and communications consultant based in London. Originally from Guyana, he's been a radio and TV studio broadcaster, field reporter, newsroom manager and writer for more than 20 years. Most of this time was spent with the BBC World Service, covering the big stories including 9/11, Obama's election, the 2008 financial crisis, and war zone reporting of Haiti for 10 years. He's written for publications such as The Guardian and Wisden Cricketer.

As a communications consultant, he provides services in communications strategy, planning, project management, change management, communications management consulting – internal and external communications, radio and TV journalism training and coaching of executives and corporate media teams.

He's a keen amateur photographer, runner and squash player.

**Commonwealth Secretariat Staff Team**

Mr Linford Andrews, Political Affairs Officer, Political Affairs Division – Team Leader

Mr Julius Mucunguzi, Communications Officer, Communications & Public Affairs Division

Dr Tres-Ann Kremer, Political Affairs Officer, Political Affairs Division

Mrs Madonna Lynch, Administrative Assistant, Political Affairs Division

## **Annex 2**

### **Arrival Statement by Dr Bakili Muluzi**



#### **Commonwealth Observer Group Lesotho Parliamentary Elections, 26 May 2012**

#### **ARRIVAL STATEMENT BY FORMER PRESIDENT OF THE REPUBLIC OF MALAWI DR BAKILI MULUZI, CHAIRPERSON OF THE COMMONWEALTH OBSERVER GROUP**

We are delighted to be here in Lesotho to observe the forthcoming National Assembly elections scheduled for 26 May 2012. I am honoured to have been requested by Commonwealth Secretary-General, Kamlesh Sharma, to lead a team of distinguished Commonwealth citizens on this mission.

The presence of this Commonwealth Observer Group follows the invitation from the Government of Lesotho, and an Assessment Team which was here last month. The Assessment Team established that there was broad support for, and that conditions existed for, the presence of a Commonwealth Observer Group in the country to observe the elections.

The Commonwealth attaches great importance to the conduct of credible and peaceful elections as a means of giving citizens an opportunity to choose their leaders and to hold them accountable. We are here because we believe firmly that observing elections contributes to strengthening the democratic process. Our presence here is meant to promote and uphold that belief.

Observing elections is one of the many ways the Commonwealth works with member countries to deepen democracy. It complements other initiatives such as the establishment of a Commonwealth Electoral Network, which brings together members of election institutions to discuss and promote best practice, to share experiences and to create support mechanisms. The Independent Electoral Commission of Lesotho is a member of this network. The Commonwealth also organises workshops for governing and opposition political parties to enable them to discuss their roles, rights and responsibilities.

The Commonwealth has supported Lesotho through many of its previous elections and we are pleased to do so again as the country continues to consolidate its multiparty democracy.

The Observers come from across the Commonwealth and are supported by a staff team from the Commonwealth Secretariat.

These elections are crucially important for the people of Lesotho as they elect their representatives; it is imperative that the electoral process is transparent, fair, violence-free and credible.

Our task is to observe and report on relevant aspects of the organisation and conduct of the elections and also on the environment in which the elections are held. The Group will consider all the factors impinging on the credibility of the electoral process as a whole, and assess whether the elections have been conducted according to the standards for democratic elections to which Lesotho has committed itself, with reference to its own election-related legislation as well as relevant regional, Commonwealth and other international commitments.

We will consider, among other things, whether conditions exist for free and competitive elections; the Independent Electoral Commission is independent and effective; the voter register provides for universal suffrage; state institutions and public media are impartial; there is a level playing field in the campaign and that the campaign is free of violence; voters are free to express their will; and, the results process is transparent.

In conducting our duties and undertaking our assessment, we will be impartial, objective and independent. Commonwealth Observers are present here in their individual capacities as experienced Commonwealth citizens. We hope that our presence in Lesotho will help to further strengthen the democratic process in the country.

In the coming days, we will meet a wide range of stakeholders. We met the Independent Electoral Commission earlier today, and will also meet representatives of political parties, civil society, the police and media, as well as the diplomatic community. We will also meet with representatives of other observer groups, with which we will coordinate closely.

Prior to Election Day, Commonwealth teams will deploy to a variety of locations around the country to observe the voting, counting and results processes.

We appeal to all stakeholders to play their due role to ensure a credible and peaceful process, before, during and after elections. This is particularly important given the unfortunate events that transpired after the 2007 elections.

We hope that the IEC will continue to set the example by displaying integrity, impartiality and technical competence. We look to the political parties to respect the Electoral Code of Conduct, to focus on the issues and to reject violence. The media and civil society need to



be diligent custodians of democracy. And finally, we look to the people of Lesotho to show the way by participating in large numbers in the democratic process and choosing freely and fairly those who will govern them.

Maseru, Monday 21 May 2012

*Note to Editors*

For media enquiries, please contact Mr Julius Mucunguzi, Media Officer, at +266 57408412 or [j.mucunguzi@commonwealth.int](mailto:j.mucunguzi@commonwealth.int)

# Annex 3

## Deployment Plan

### Lesotho 2012 Parliamentary Elections

<b>TEAM/DISTRICTS</b>	<b>OBSERVERS</b>
1. Maseru/Berea/Mafeteng	H.E. Dr Bakili Muluzi (Chair) Mr Linford Andrews Mr Julius Mucunguzi Mrs Madonna Lynch
2. Qacha's Nek	Mr Aloisious Nthenda
3. Quthing / Mohale's Hoek	Mr Orin Gordon Dr Tres-Ann Kremer
4. Leribe / Butha-Buthe	Mrs Rina Ray Mr Med S K Kaggwa
5. Thaba-Tseka	Dr Rajendra Prasad Ms Aminath Majdha

## **Annex 4**

### **Pre-Election Statement by Dr Bakili Muluzi**



#### **Observer Group Chair calls on all stakeholders to ensure Lesotho polling day goes smoothly**

*25 May 2012*

#### **Statement by Dr Bakili Muluzi, Former President of the Republic of Malawi and Chair of the Commonwealth Observer Group for the 2012 Lesotho Parliamentary Elections**

As the people of Lesotho go to the polls on Saturday 26 May 2012, I would like, on behalf of the Commonwealth Observer Group which I am leading, to call upon all stakeholders in the electoral process to play their roles with due diligence to ensure that the process on polling day, the counting, the announcement of results and events thereafter go smoothly without incident.

Since we arrived in the country on 19 May 2012, our Group has met a cross section of interested parties in these elections, and heard about the preparations and concerns that could impinge on the credibility of the elections.

We subsequently raised these concerns with our interlocutors, notably, the Independent Electoral Commission, political parties, civil society, the army and the police, and received assurances that the will of the people to choose their leaders will be guaranteed and respected. We take these assurances as a good gesture, conveyed in good faith and a demonstration of the commitment of the stakeholders to democracy.

In our experience, the polling day itself often goes without incident. It is the counting, tabulation and the aftermath of the announcement of results that often raises concern. It is in this light that I call upon all political party leaders and their supporters to show restraint and magnanimity as the results process unfolds in the days following the poll.

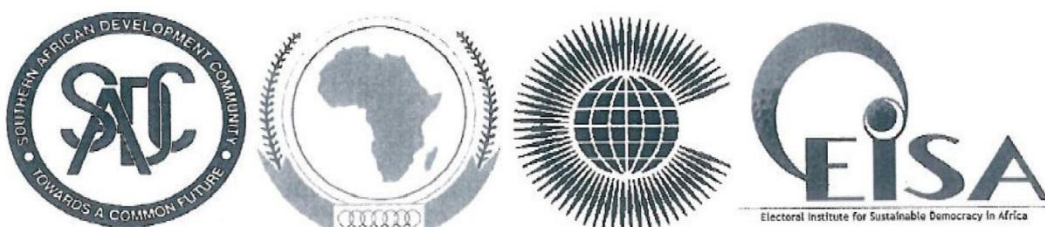
We appeal to everyone involved in the election process to respect the laws of the land and the Constitution, and to do the Kingdom of Lesotho, Africa and the Commonwealth proud by conducting a credible election that meets the standards to which the country has subscribed.

I have often said that we chose democracy for ourselves in Africa and the Commonwealth – we therefore must live and adhere to its tenets. Democracy, rule of law, respect for human rights including the right to vote and to choose leaders freely without intimidation and violence, are some of the core values and principles of the Commonwealth. There is no better occasion to uphold them than during elections. The people must be confident that their vote will count and that there will be freedom, peace and calm after voting.

*Media Enquiries: Julius Mucunguzi, Communications Officer, Tel: +266 5740 8412, email: [j.mucunguzi@commonwealth.int](mailto:j.mucunguzi@commonwealth.int)*

## Annex 5

### Pre-Election and Post-Election Day Joint Appeals with other International Observer Missions

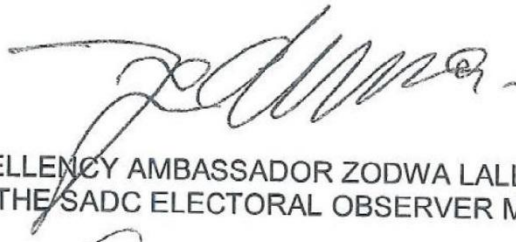


#### Joint Appeal by SADC, AU, Commonwealth and EISA Election Observer Missions on the eve of the 2012 Lesotho Parliamentary Elections

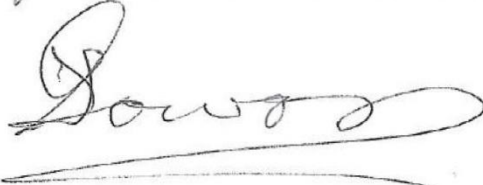
Maseru, 25 May 2012

1. On Africa Day, within the spirit of the African Union's "Make Peace Happen" Campaign, and on the eve of the 2012 Parliamentary Elections in Lesotho, we, the Election Observer Missions of SADC, AU, Commonwealth and EISA, are delighted to have been invited by the Government, the Independent Electoral Commission and the People of Lesotho to observe and support the electoral process and the consolidation of democracy in Lesotho.
2. We call on all Basotho electors to exercise their democratic right and civic duty and participate massively and peacefully in tomorrow's elections.
3. Having met with all relevant stakeholders and having listened to their views about the process, we call on all stakeholders to ensure that the electoral process is brought to its conclusion in a peaceful manner, and in conformity with the Constitution and other laws of Lesotho, as well other regional, continental and international instruments and standards to which Lesotho has subscribed.
4. We urge all stakeholders to accept the outcome of the elections in the interest of peace, brotherhood, national interest and for the good of Africa.

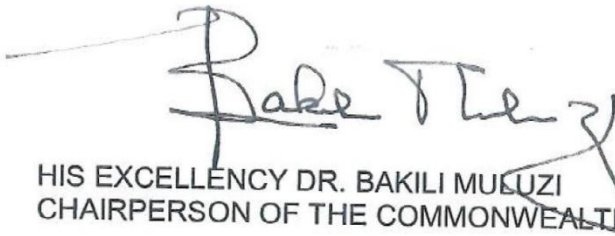
Four handwritten signatures in black ink are visible. The first is a large, stylized signature. The second is a smaller, more compact signature. The third is a signature that appears to be 'ZU'. The fourth is a signature that looks like 'R. D.' or similar.



HER EXCELLENCY AMBASSADOR ZODWA LALLIE  
HEAD OF THE SADC ELECTORAL OBSERVER MISSION



HIS EXCELLENCY GENERAL DR. YAKUBU GOWON  
MISSION LEADER OF THE AU ELECTORAL OBSERVER MISSION



HIS EXCELLENCY DR. BAKILI MULUZI  
CHAIRPERSON OF THE COMMONWEALTH OBSERVER GROUP



HIS EXCELLENCY DR. RUPIAH BANDA  
MISSION LEADER OF THE EISA ELECTORAL OBSERVER MISSION



## **Joint Press Release by SADC, AU, Commonwealth and EISA Election Observer Missions on the 2012 Lesotho Parliamentary Elections**

Maseru, 27 May 2012

The Election Observer Missions of SADC, AU, Commonwealth and EISA to the 2012 Lesotho Parliamentary Elections, headed by Her Excellency Ambassador Zodwa Lallie, His Excellency General Dr. Yakubu Gowon, His Excellency Dr. Bakili Muluzi, and His Excellency Mr. Rupiah Banda, respectively, have observed the voting and counting processes in all ten districts of the country, and are currently following the tallying of results at constituency level.

We are delighted that the voting and counting took place in an atmosphere of peace and tranquility, and that the Basotho electors demonstrated commendable enthusiasm for, and strong commitment to their democratic process by turning out in significant numbers to cast their vote in a peaceful manner.

We would like to commend the Independent Electoral Commission of Lesotho for the professional and efficient manner in which they managed the entire electoral process, in particular the logistics of voting day.

We noted with satisfaction the outstanding and dedicated participation and performance of women and youth as electoral officials and party agents in the polling stations.

We call on all the stakeholders of the Lesotho electoral process to await the conclusion of the process with the same spirit of national unity, peace and solidarity.

We further urge all stakeholders to accept the outcome of the elections with serenity, and in full respect for the Constitution of Lesotho and the democratic process. A special responsibility lies with the political leaders of Lesotho to continue to abide by their pre-election commitments to peace.

Each of the four Election Observer Missions will release its individual preliminary statement on the 2012 Lesotho Parliamentary Elections in the coming days.

## **Annex 6**

### **Interim Statement by Dr Bakili Muluzi**



**COMMONWEALTH OBSERVER GROUP  
LESOTHO 2012 PARLIAMENTARY ELECTIONS  
INTERIM STATEMENT**

**DR BAKILI MULUZI  
CHAIRPERSON OF THE COMMONWEALTH OBSERVER GROUP**

**'A peaceful Election Day in the evolving electoral system of Lesotho  
– a maturing democracy'**

Following an invitation from the Government of the Kingdom of Lesotho, the Commonwealth Secretary-General, Mr Kamallesh Sharma, constituted an Observer Group, which has been present in the Kingdom since 19 May 2012. I have been honoured to have been asked to Chair the Group. During our time here, we have met the Independent Electoral Commission, representatives of political parties, civil society, media, the police, the defence force, the diplomatic community as well as other international and national observers.

Over the election period, Commonwealth teams were based in Maseru, Leribe, Mohale's Hoek, Qacha's Nek and Thaba-Tseka. Our teams observed the voting, counting and results' aggregation and also met with electoral officials, national and international observers and other stakeholders at the District level in order to build a fuller picture regarding the conduct of the process. This is an interim statement and it is issued prior to the formal declaration of election results. We will issue a Final Report containing our conclusions on the entire process at a later stage.

#### **Key findings**

- The 26 May 2012 Parliamentary Elections in Lesotho were the third elections conducted under the Mixed Member Proportional (MMP) system. We acknowledge the MMP electoral system is still evolving in Lesotho. We note the changes made after the 2007 elections, to address some of the shortcomings. As Lesotho consolidates its democracy, no doubt further adjustments to the electoral model may be necessary.



- Election Day proceeded in a peaceful and calm manner. In addition to the participation of older voters, we were particularly impressed by the large numbers of women and youth who participated in the electoral process, not only as voters, but also as polling staff and party agents.
- The elections were competitive, and basic freedoms of association, assembly and movement were not compromised. We laud the spirit in which all 18 political parties which contested these elections signed an electoral pledge on 27 April 2012, committing them to honour the Constitution and laws of Lesotho; to observe the Electoral Code of Conduct; and to accept the outcome of the 2012 Elections.
- The election campaign was generally peaceful. However, a small number of isolated incidents were brought to our attention, but nothing organised and persistent. In a robust campaign, some challenging of candidates is to be expected and its rare appearance did not create a sense that parties' campaigns were being extensively disrupted. Some parties also raised a small number of issues with us, the most significant of which pertained to the state of the voter register, the use of government vehicles for election purposes other than for transporting ministers and breaches of the Electoral Code of Conduct. We will bring these matters to the attention of the IEC, so that they can be resolved before the next election.
- We were also alerted by many of the parties we consulted to a statement made by the Commander of the Defence Force, informing voters of his call for the peaceful conduct of elections. While we do not question the motives of the Defence Force, it is our view that the tenor of the press statement raised some concern. Another matter raised with us related to the effective management of the post-election transition process. As Chairperson of the Commonwealth Observer Group, I was sufficiently concerned about these matters that I undertook proactively to speak not only to political parties and civil society organisations, but also to the Defence Force and the police about these concerns. They assured us of their intention to do everything to make the elections peaceful.
- As Chairperson, I was also proactive in having discussions with leaders of political parties about the post-election transition phase. I was made aware that the current Constitution needs some refinement to address this point. I was assured that all stakeholders agreed to conduct themselves in the spirit of the Constitution and for the good of the people of Lesotho. We took these assurances as a good gesture, conveyed in good faith and a firm demonstration of the commitment of all stakeholders to democracy. We are pleased to note that, up to this point, our call – along with that of our fellow international observer missions – has been heeded.
- I am aware of the support of the Christian Council of Lesotho for the Electoral Code of Conduct. They have similar concerns to us regarding the transitional arrangements and had met the leaders of all political parties to encourage them to ensure a smooth

transition. I also met with the Council and commend them for their work in this area.

- It is not uncommon for media in any election to be accused of bias. Most of the stakeholders we met noted an improvement in media coverage for this campaign, compared to previous elections. One main complaint, though, was that the state media — the Lesotho Broadcasting Services (both radio and television) did not offer equal airtime to all the political parties that participated in these elections, but instead devoted a disproportionate level of coverage to the incumbent ruling party. This was contrary to the requirements of the Electoral Code of Conduct. In contrast, private media devoted much of their attention to opposition parties. The media devoted substantial space and airtime to issues raised by candidates and their parties. The print media were particularly robust in reporting the issues. We commend the role played by the Media Institute for Southern Africa, Lesotho Chapter for organising training workshops for journalists on how to responsibly cover the elections, as well as carrying out media monitoring, although more work needs to be done on training in this area.
- We would like to commend the Independent Electoral Commission of Lesotho on its management of the entire electoral process, in particular the logistics of Election Day. We were advised of the extensive efforts of the IEC on voter education, including its door-to-door strategy. We saw the benefits of this in our observations of voting processes on Election Day.
- Every good election starts with a reliable voter register. The integrity of the current voter register remains a concern to us. Despite the laudable efforts of the IEC to produce a clean and reliable register, more work needs to be done to improve it prior to the next election. We sought, and received, assurances from the IEC, that there was little chance of double voting. In our observation of Election Day, there were only a handful of voters who turned up to vote and could not cast their vote for any reason.
- We understand that the voter register serves several purposes, including the delimitation of electoral boundaries, identifying where a voter is registered and as a major tool for party organisers. Given this, it is critical that the IEC give priority to a clean and reliable voter register for the next elections. We believe it now has sufficient experience to further improve the quality of the voter register and remove any doubts concerning its integrity.
- On the day of the election, voting and counting took place in a calm, peaceful atmosphere. We note the enthusiasm of voters to vote, their early arrival at polling centres and the extraordinary lengths to which some had to go to cast their ballot on Election Day.
- The electoral system still poses challenges which the next government will need to address. In its preference for a single vote, in our view the system has introduced

some unintended consequences, especially for smaller parties and independent candidates. The major issue arises from the requirement that parties field candidates in constituency seats, to avail themselves of votes for proportional representation seats. It is far more difficult for smaller parties and independent candidates to acquire the financial and other resources to field candidates in more than a handful of seats. It seems to us that the MMP system is designed to ensure parliament reflects the people and the will of the people. This is a challenge for the next parliament of Lesotho.

- The second challenge contained in the current electoral system concerns the ease or difficulty with which citizens can cast their vote. Currently, advance voting is available in special circumstances to a small number of people. We are aware that some people were unable to be in their constituencies on Election Day and therefore could not exercise their franchise. In many other jurisdictions internationally, this problem is addressed by making advance voting available over a longer period. We recommend the next parliament consider this option to ensure voters who will be out of their constituencies on Election Day, can cast their vote easily.
- Commonwealth observers reported that in most areas the voting process proceeded well. We did not identify significant matters that would have materially affected the outcome of these elections. In most instances, the opening and closing of polling stations occurred on time. However, there were a number of matters that would need to be addressed before the next elections. These include the inconsistency in the process in all polling stations, the secrecy of the ballot cast, provision of all materials required in a polling station on Election Day and a reliable, colour version of the voter register in each polling station for any voter to consult.
- We focus on the secrecy of the ballot to ensure that voters place their completed ballots in the ballot box directly, without having to present it to another official for any reason. In our view, the current process risks compromising their secrecy.
- Our teams followed the count at polling stations and the tabulation in a number of Districts. Overall, the procedure of counting was conducted systematically by polling officials. This did slow down the time it took to complete the count and we urge the IEC to look at efficiencies which would make this a quicker process. Further adjustments to current procedures may be required, on which we will make recommendations in our Final Report.
- We were briefed on the Commonwealth-sponsored conciliation and alternative dispute resolution mechanisms that have been a recent addition to the electoral process. We are aware that this system is designed to resolve disputes locally when they occur. We are aware that this is currently being trialled and we look forward to reports on its effectiveness.

## **Conclusion**

- It is the view of the Commonwealth Observer Group that this election was conducted in a credible, transparent and professional manner. We congratulate the people of Lesotho for demonstrating faith in the principles of democracy. Despite the various shortcomings we have highlighted, they did not materially affect the conduct of the elections.
- As the results process reaches its crucial finalisation phase, we hope that the peaceful tenor of the electoral process thus far will continue to prevail. We reiterate our call on all political parties, their supporters and other stakeholders in the Lesotho electoral process to continue to show restraint and magnanimity and to uphold their pre-election commitments to peace with the same spirit of national unity, peace and solidarity. We believe the people of the Kingdom of Lesotho deserve that from their elected representatives.
- The Commonwealth will remain engaged with the people of Lesotho in the journey to consolidate their democracy.
- We continue to follow the process and our Final Report containing our conclusions and recommendations will be made public in a few weeks.
- It was a special honour for me and my team to be in Lesotho at this important time and we thank you for your hospitality. We trust that our work will contribute to the continuance of democracy and good governance in the future.

Maseru, 29 May 2012

For media enquiries, please contact Mr Julius Mucunguzi at +266 574 08412 or [j.mucunguzi@commonwealth.int](mailto:j.mucunguzi@commonwealth.int)

## **Annex 7**

### **Departure Statement by Dr Bakili Muluzi**



#### **Commonwealth Observer Group Chair's departure statement following Lesotho elections**

1 June 2012

Since 19 May 2012 when the Commonwealth Observer Group, which I am delighted to have been leading, arrived in the Kingdom of Lesotho, our main objective has been to make a contribution to the strengthening of democracy in the country through observing the electoral process — before, during and after the polls.

I mentioned during our Arrival and Interim statements that an election is a process, and often the election day goes without incident, but it is usually the post-election period which raises issues.

The people of Lesotho went to the polls on 26 May 2012 and made their will known through the ballot. But from the results announced, it is clear no single political party garnered enough seats to form a government alone. This, as we all know, calls for the formation of a coalition government in the coming days. This is most critical, as it is a new terrain for the country.

I have constantly emphasised the need for a smooth, peaceful and credible transition. The first step is the election of a Speaker in the new parliament. This is the first time the parliament has to deal with a situation where no one party has an absolute majority and therefore a coalition of parties will form the next government.

The party or parties that have a majority will need to be tested by the Speaker when parliament resumes.

I have asked the stakeholders, particularly the political party leaders, to guarantee that parties will be given an opportunity to nominate a speaker if they wish. This process needs to be fair and impartial to all parties.

Once all nominees are identified parliament can then vote for the Speaker who has the

confidence of the majority of the elected representatives. There must be no attempt to frustrate this process by any procedural means.

I depart the Kingdom of Lesotho with the fervent hope that the assurances stakeholders gave that the transition process will be credible will be followed through, so that the will of the people is respected — and thereby consolidating the democratic gains the Kingdom has made to date.

Though the Commonwealth Observer Group now departs, I wish to reassure the people of Lesotho of the Commonwealth's ongoing engagement and readiness to support Lesotho as it continues on this path.

Maseru, Lesotho, 1 June 2012

For media enquiries, please contact Julius Mucunguzi, Commonwealth Secretariat Press Officer, on +26657408412 or email: [j.mucunguzi@commonwealth.int](mailto:j.mucunguzi@commonwealth.int).

