

The Lesotho General Elections



The Commonwealth

IEC
National Assembly Elections
Ballot Box
Ordinary Vote

Constituency Name	WITBHEANENS	40
Voting Station Name	LEBIE PRINKE	4004/1A
Voting Station Manager	...	07/OCTOBER/2022

The Lesotho General Elections



The Commonwealth

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Map of Lesotho



Contents

Map of Lesotho	iii
Letter of Transmittal	vii
Acronyms and Abbreviations	ix
Executive Summary	xi
1. Introduction	1
Invitation	1
Terms of Reference	1
Activities	1
2. Political Landscape	3
1965–1970	3
1986–1993 (military coup)	3
1993–1998	4
Coalition governments	4
2015–2017	4
Political parties	5
Financial constraints	6
National reform process updates	6
3. The Electoral Framework and Electoral Administration	7
Electoral legal framework	7
The voting (electoral) system	7
Boundary delimitation	8
Political party registration	9
Candidate nomination	9
Suffrage and voter registration	10
Civic and voter education	11
Electoral offences and electoral disputes	12
August 2022 Amendment to the Electoral Act	13

4. Participation and Inclusion	15
Women	15
Youth	16
Disability	17
Civil society	18
5. Campaign and the Media	19
The campaign	19
Campaign issues	19
Campaign financing	19
The media	20
Key issues	20
6. Voting, Counting and Results Process	22
Background	22
Pre-poll preparations	22
Key polling procedures	22
Advance voting	23
COG deployment	23
Polling officials, party agents and observers	23
Voting process	24
Adherence to procedures	24
Voter lists	24
Closing and counting procedures	25
Tabulation (tallying) of results	26
Voter participation and results	26
Annex I. Biographies of Chair and Observers	28
Annex II. Arrival Statement	31
Annex III. Deployment Plan	33
Annex IV. Interim Statement	34
Annex V. 2017 COG Recommendations – Status of Implementation	38

Letter of Transmittal

**Commonwealth Observer Group
General Elections of the Kingdom of Lesotho
12 October 2022**

Dear Secretary-General,

I am pleased to forward to you the final report of the Commonwealth Observer Group you constituted to observe the General Elections in the Kingdom of Lesotho on 7 October 2022.

It was an honour and a privilege to chair this group of eminent persons, experts in their own rights, from six different Commonwealth countries, and to witness these historic elections in Lesotho.

We are grateful for the warm hospitality bestowed upon us and the generosity we received from all the stakeholders we engaged with, and indeed the Basotho people, during our time in country. Before the elections, we had the opportunity to be briefed by the Independent Electoral Commission (IEC); the Head of State and the Head of Government; leaders of the various political parties; and representatives of civil society organisations and legal associations such as the Lesotho Council of Non-Governmental Organisations, the Lesotho Youth Federation, the Lesotho National Women's Council and the Law Society of Lesotho. We also met with media representatives, senior government officials, the Commissioner of the Lesotho Mounted Police and members of the Commonwealth diplomatic community in Maseru, among others.

The observers were deployed across nine districts of the Kingdom, and went to about 50 polling stations, where they undertook pre-election day, advance voting, election day and post-election day engagements with district stakeholders. This report is informed by extensive consultations with national stakeholders, regional and international observer groups, and our observation of all aspects of the election process during the period of our deployment.

We observed that the pre-election environment was calm and peaceful, with political campaigns and rallies undertaken amid a festive and jubilatory environment. We recognise the efforts of some civil society associations and groups to facilitate voter education despite short and constrained timelines, in order to encourage the populace to vote. We applaud the party agents and polling staff who contributed to the conducive atmosphere witnessed at the polls through their collaborative efforts.

Although voter turnout, at approximately 38 per cent, was lower than in the last elections, in 2017 (47 per cent), we applaud the patience and the determination of the voters who did come out to exercise their civic rights and did so patiently in an orderly manner, at an early hour, in inclement weather and sometimes in challenging mountainous terrain.

There were, however, some challenges and areas of concerns, notably issues with the voters' roll and the boundary delimitation exercise. Some polling stations lacked final copies of the roll, and a few voters could not find their name or had to go to another constituency to vote. There was little adherence to COVID-19 protocols by IEC staff, party agents and voters. The IEC's budgetary constraint was evident in the failure to provide polling staff with adequate uniforms and identifications, as well as materials such as solar mechanisms to aid in tallying the results after sunset.

Despite some challenges and shortcomings, though, we were encouraged by the reassuring and unobtrusive presence of the security forces in helping enable an atmosphere of tranquillity and order.

We are inspired by the will of the Basotho to continue to use elections and democratic means as an instrument for change. We hope that the process of national reform that commenced in 2019 will continue

and be prioritised by the incoming administration, to enable the Basotho people to have the stability, consistency and accountability they wish to see in their governance, economy and society.

I wish to take this opportunity to express my thanks to all the observers and convey the Group's appreciation to the Commonwealth Secretariat staff, who provided invaluable support to the mission.

I wish the Basotho people courage, will and perseverance in the coming days to help them strengthen the capacities of their institutions and make Lesotho a mountainous jewel of Southern Africa.

God Bless Lesotho.



HE Danny Faure

Former President of Seychelles

Chair of the Commonwealth Observer Group to the Kingdom of Lesotho

Observers' Signatures



Hon Justice Amraphael Mbogholi Msagha



Blessing Tunoh Asso



Hon Jacqueline Muhongayire



Terry Dale Ince



Paul O'Grady



Boniface Cheembe

Acronyms and Abbreviations

ABC	All Basotho Convention
AD	Alliance of Democrats
AU	African Union
BAP	Basotho Action Party
BCP	Basutoland Congress Party
BNP	Basotho National Party
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COL	Commonwealth of Learning
COG	Commonwealth Observer Group
CPRD	Convention of the Rights of Persons with Disabilities
CSO	civil society organisation
CVE	civic and voter education
DC	Democratic Congress
EU	European Union
FPTP	first past the post
ICCPR	International Covenant on Civil and Political Rights
ICRMW	International Convention on the Rights of Migrant Workers
IEC	Independent Electoral Commission
LCD	Lesotho Congress for Democracy
LCN	Lesotho Council of Non-Governmental Organisations
LENA	Lesotho News Agency
LNBS	Lesotho National Broadcasting Service
LNCW	Lesotho National Council of Women
LNFOOD	Lesotho National Federation of Organisations of the Disabled
LPC	Lesotho's People's Congress
LTV	Lesotho Television
MEC	Movement for Economic Change
MFP	Marematlou Freedom Party

MMP	mixed member proportional
MP	Member of Parliament
MRU	Mobile Registration Unit
NGO	non-governmental organisation
NIP	National Independent Party
NRA	National Reform Authority
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Cooperation in Europe
PEAM	Pre-Election Assessment Mission
PFD	Popular Front for Democracy
PWD	person with disability
RFP	Revolution for Prosperity
SADC	Southern African Development Community
UFC	United for Change

Executive Summary

The Commonwealth Secretary-General deployed a Commonwealth Observer Group (COG or 'the Group') to observe the 7 October 2022 general elections in Lesotho. The COG was deployed from 29 September to 13 October 2022. The deployment was preceded by a Pre-Election Assessment Mission (PEAM) conducted by the Commonwealth Secretariat in July 2022.

In accordance with its Terms of Reference, the COG met with a broad range of stakeholders, including from the Independent Electoral Commission (IEC) of Lesotho; Lesotho's National Reforms Authority (NRA); political parties; civil society organisations (CSOs), including women, youth and disability advocacy groups; the police; and the media.

Lesotho's electoral framework provides a reasonably comprehensive basis for the conduct of democratic electoral processes. However, the elections took place against the backdrop of an ongoing national reform process, launched in 2019. The Group encourages the government to prioritise consultations on these constitutional reforms to promote a stable political framework. It is noted that the IEC is empowered to adopt Regulations to supplement the main pieces of legislation governing elections, including the Constitution and the Electoral Act. It is recommended that the IEC exercise this privilege, as the adoption of Regulations could be conducive to a more detailed electoral framework.

The Group commended the IEC for its independence and impartiality. It noted that the IEC's effective collaboration with civil society groups had enhanced the democratic process. However, newer political parties raised concerns, claiming that the IEC's persistent financial shortcomings had restricted their campaigning capacity and contributed to delayed guidance. Constituency boundary disputes added another layer of uncertainty, following a court ruling ordering the IEC to redraw the constituency boundaries after challenges to the legality of the initial delimitation order. The lateness of the ruling posed challenges to pre-election preparations and the dissemination of information to voters about the change. Moreover, the Group noted that the incorrect allocation of four parliamentary seats and a subsequent request for a Constitutional Court amendment affected the IEC's credibility.

The rights of women, youth and persons with disabilities (PWDs) are guaranteed in Lesotho's national legal and electoral framework. Lesotho has also acceded to a range of regional and international human rights instruments that complement the provisions in national law. However, marginalised groups were underrepresented in this election. CSOs highlighted the considerable challenges that PWDs faced in the electoral process, including inadequate voting facilities and assistance. Women remain underrepresented in positions of political leadership, and the IEC reported low voter turnout among youth, despite their increased participation in political campaigns and rallies before the polls. The Group encourages Lesotho's government and the IEC to strengthen civic and voter education among marginalised groups and to include the needs of these groups in their programmes.

The Group's overall assessment was that the elections took place in an atmosphere of peace and calm before, during and after the polls. This was the result of commitments the IEC and political parties had made to promote conditions conducive to a free and democratic electoral process, including adherence to a binding Code of Conduct annexed to the Electoral Act.

The election and the polling process were transparent and efficient. Nevertheless, all electoral processes have room for improvement and can be further strengthened. In carrying out our mandate, we therefore offer recommendations in this report for consideration by electoral stakeholders in Lesotho. These recommendations are offered in a positive spirit with the aim of enhancing democratic and electoral processes.

We wish to commend the people of Lesotho for attending the polls to exercise their political choices on election day. We also congratulate the IEC and polling staff, political party representatives, CSOs, the media and the security forces for their respective roles in ensuring peaceful elections in the country.

Recommendations

Electoral framework and election administration

- Given that the right to seek election is a fundamental human right, any limitations on this right should be based on objective and reasonable criteria, pursue a legitimate aim, be proportionate and be set out in the Constitution rather than in primary legislation.
- The IEC and other stakeholders raised difficulties related to funding, commenting that budgetary limitations had affected their ability to dispense and implement their responsibilities as an electoral body. Therefore, a key recommendation is that the IEC needs adequate and timely funding to support its work, according to the relevant provision in the Constitution.
- The removal of voting rights from persons with psychosocial and intellectual disabilities (in Lesotho law termed as being of 'unsound mind') is at odds with the Convention on the Rights of Persons with Disabilities (CRPD). Lesotho may thus wish to review this restriction.
- Given that the right to vote is a fundamental human right, as for the right to seek election, any limitations on this right should be based on objective and reasonable criteria, pursue a legitimate aim, be proportionate and be set out in the Constitution rather than in primary legislation.
- The IEC should ensure that eligible electors are registered according to the provisions of the law that is in force at the time.
- The omission of an eligible candidate or the inclusion of an ineligible candidate on the ballot paper could result in the annulment of an election. Therefore, serious consideration should be given to developing a calendar for nomination and appeals, to ensure that all legal disputes are adjudicated before election day, and ideally before the ballot is printed.
- The IEC and the legislator should review the voter registration procedures contained within the Electoral Act with a view to instituting a reliable system of registration to ensure voting rights. If a new register is created, care should be taken to ensure accuracy and that the register accounts for and includes all Basotho who are eligible to vote according to the Constitution.
- In furtherance to the principles of transparency and certainty, the IEC should give serious consideration to publishing its decisions and other information of public interest on its website.

Participation and inclusion

Women's political participation

- The IEC should undertake gender-specific voter education on overcoming barriers to political participation at all levels.
- The IEC should create and encourage private/public collaborations that provide mentorship opportunities for women's leadership development.
- The IEC should encourage political parties to strengthen their candidate development programmes using gender-sensitive training.
- Political parties should consider strengthening the capacities of existing and aspiring women politicians to develop and apply a gender-sensitive lens to their work.

Youth political participation

- The IEC should thoroughly examine the reasons for the under-registration of electors aged between 18 and 24 years and take steps to support an increase in the registration of youth.

- The IEC and the government may consider undertaking youth-targeted civic and voter education to ensure the effective participation of this group in democratic and governance processes.
- The government and political parties may consider youth-specific mainstreaming across their structures to ensure the effective engagement of young people.
- The National Assembly may wish to consider expanding voting eligibility (advance voting) to ensure greater youth participation in elections.
- The IEC may consider a thorough audit of the voters' roll to ensure that young people are included and represented.

Persons with disabilities

- The IEC may consider strengthening civic and voter education for PWDs to enhance their participation in the electoral and governance processes of the country.
- The IEC should consider identifying and designating voting locations that cater to the needs of PWDs. In addition, the government may also consider building locations that meet the requirements of PWDs.
- The IEC should mainstream the rights and needs of PWDs in its programmatic development and delivery.

Civil society organisations

- The IEC should ensure adequate and timely distribution of funds to carry out civic and voter education.
- The IEC is encouraged to implement its standard operating procedures to ensure timeframes of at least two months for civic and voter education training.
- The IEC is encouraged to strengthen the capacity of and provide adequate resources to CSOs to observe elections in all constituencies.

Campaign and media

- Government should take steps to update and strengthen laws relating to the regulation and transparency of campaign financing, such as defining legitimate campaign expenditures and introducing spending limits.
- An effective regulatory framework for the media should be set up to ensure the practice of good media ethics and professionalism. Such a regulatory body should also include a complaints mechanism through which members of the public who are aggrieved by journalists and media organisations can seek redress.
- A code of conduct for the media should also be adopted in consultation with stakeholders to guide journalists on practising universally accepted standards of journalism, to safeguard professionalism and to preserve the sanctity of the profession.
- The COG urges the IEC and media organisations to build capacity in the media sector and improve the skills of media practitioners, especially in the area of reporting on elections.
- The state-owned Lesotho National Broadcasting Service and the state-owned newspaper *Lentsoe la Basotho* should be separated from the government. They should operate as autonomous bodies and be governed by an independent board of directors.
- The government could invest in digital infrastructure and encourage the IEC, political parties and politicians to make use of social media as an option to communicate their messaging.
- The government could extend the coverage of the national media into rural areas and provide an enabling environment to allow private radio stations to flourish.

- The new National Assembly is encouraged to prioritise the promulgation of laws that will enhance access to information.

Voting, counting and results process

- Consideration could be given to reviewing polling procedures to avoid the handling of marked ballots by polling staff.
- To facilitate the identification of the candidate and party of the voter's choice, the IEC could consider printing ballot papers in colour, particularly if a large number of parties field candidates.
- The IEC should consider engaging with groups representing the interests of PWDs with the aim of developing an action plan to improve access to the election process for these electors. The government should strive to progressively improve access to public infrastructure temporarily used as polling premises. The government could start by conducting an audit of polling premises and making proposals to the legislature to allow reasonable accommodations and the adoption of standard polling procedures for electors living with disability.
- If a large number of parties continue to field candidates, necessitating larger-than-usual ballot papers, the IEC may need to consider redesigning ballot booths to preserve secrecy and using larger ballot boxes to ensure capacity. In addition, the IEC could consider increasing the number of booths with the aim of speeding up the voting process.
- To reduce the number of invalid votes, the IEC could consider redesigning the ballot to make it clear where voters should place their mark and enhancing civic education on how to use the ballot paper.

1. Introduction

Invitation

The Secretary-General deployed a Commonwealth Observer Group (COG) to Lesotho's 2022 general elections at the invitation of the Independent Electoral Commission (IEC) from 29 September to 13 October 2022.

A Pre-Election Assessment Mission (PEAM) was conducted in July 2022. The PEAM met with a wide range of stakeholders during the visit to the Kingdom of Lesotho. These included those from the IEC, the National Reform Authority (NRA), political parties, civil society organisations (CSOs), the media, the Ministry of Foreign Affairs, the Commissioner of Police and High Commissions. It was on the basis of the PEAM's findings and report that the Secretary-General deployed the COG.

Terms of Reference

The Terms of Reference for the Group were as follows:

The Group is established by the Commonwealth Secretary-General at the invitation of the IEC of the Kingdom of Lesotho. The Group is to consider the various factors impinging on the credibility of the electoral process as a whole.

The Group 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 as well as relevant Commonwealth, regional and other international norms, and 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 share it with the Government of the Kingdom of Lesotho, the IEC and leaders of political parties, and then Commonwealth member governments; thereafter, it will be made public.

Activities

The COG arrived in Lesotho on 29 September 2022 and departed on 13 October 2022. The Group held several briefing sessions with a cross-section of stakeholders in Lesotho. These included representatives of the IEC; the NRA; political parties (All Basotho Convention – ABC, Alliance of Democrats – AD, Lesotho Congress for Democracy – LCD, Movement for Economic Change – MEC, Revolution for Prosperity – RFP, United for Change – UFC); CSOs (Lesotho Council of Non-Governmental Organisations – LCN, Transformation Resource Centre, Lesotho Law Society); women's groups (Lesotho National Council of Women – LNCW); youth groups (Lesotho Youth Federation); and groups representing persons with disabilities (PWD) (Lesotho National Federation of Organisations of the Disabled – LNFOD). The Group also met with the Commissioner of Police, Holomo Molibeli, and the media (Media Institute of Southern Africa, Lesotho Broadcasting Services, People's Choice FM).

The Chair of the COG made an Arrival Statement on 4 October 2022 (**Annex II**). Members of the Group were then deployed from 5 to 9 October to nine districts of Lesotho (see **Annex III** for full details on the deployment). During the deployment, the Group observed the electoral process, advance voting

(30 September), the environment in the immediate lead-up to polling, all aspects of the electoral process on voting day (Friday 7 October) and the counting of ballots and declaration of results. In doing so, Group members met with district electoral officials, district police officials, polling and returning officials, voters and international observers.

The Chair of the COG made courtesy calls to His Majesty King Letsie III, the Right Honourable Prime Minister Dr Moeketsi Majoro and leaders of other international election observer missions, including those of the Southern African Development Community (SADC), the African Union (AU) and the European Union (EU).

On the basis of the Group's findings, the Chair issued an Interim Statement (**Annex IV**) on Sunday 9 October 2022, highlighting the Group's preliminary findings and observations. The Group's final report was written and agreed to before the Group left Lesotho on 13 October 2022 and was thereafter transmitted to the Commonwealth Secretary-General.

2. Political Landscape

Lesotho is a landlocked mountainous kingdom with a population of 2.2 million, surrounded entirely by the Republic of South Africa. It is a constitutional monarchy with a parliamentary democracy. The King is the Head of State and the executive powers are vested in the Prime Minister, who is the Head of Government and is constitutionally the leader of the political party or the coalition of political parties with the majority.¹

Although there are minority groups like the Xhosa and the Baphuti on its southern borders with South Africa, Lesotho is considered ethnically and linguistically homogeneous, lacking any religious or ethnic tensions. Its political landscape has, however, been marred by instability, power struggles, failed coalition governments, military dictatorships, a lack of clearly established frameworks for power-sharing and challenges to the legitimacy of its sovereignty and democratic state. Since independence from Britain in 1966, Lesotho has undergone a variety of governance models, from multiparty democracy to one-party rule, military coups d'état and, most recently, coalition government. A first past the post (FPTP) system in place from 1965 to 1998 saw the rise of one-party rule.

Though there have been some periods of stability in between the different governance models, these have been fleeting. Most of Lesotho's governments in the past decade have not served their full five-year terms, and the political atmosphere has been characterised by cults of personality within party leaderships, infighting, abuse of political powers and patronage, to the detriment of the country's economic development and social stability.

The year 1998 marked a turning point in Lesotho's election history, for many reasons. The post-election violence was unprecedented, and it led to a subsequent change from the FPTP system, or winner takes all, to mixed member proportional (MMP) representation, which has been used since the 2002 elections to date. It also led to electoral reforms, which included the creation of the IEC, an amendment to the Constitution to allow 18-year-olds to vote and an increase in the number of seats in the National Assembly from 80 to 120, with 40 allocated through proportional representation.

To enable a proper understanding of the contemporary political landscape of Lesotho, it is important to explore the country's electoral history since independence.

1965–1970

The first elections held after the establishment of the new Constitution were just before independence, in 1965. The Basotho National Party (BNP), under the leadership of Leabua Jonathan, won with 31 seats over Basutoland Congress Party (BCP) under the leadership of Ntsu Mokehle. The BNP ruled until the next election cycle in 1970, when it lost to the BCP, but the BNP, under Prime Minister Leabua Jonathan, did not accept the results. He declared a state of emergency, dissolved the Parliament and suspended the Constitution. He placed the then-King of Lesotho, King Moshoeshoe II, under house arrest and later forced him into exile for his unwillingness to conform to the role of a titular figure head. This was to be the first of many historical abuses of political power that Lesotho would undergo.

1986–1993 (military coup)

Prime Minister Jonathan's government was deposed in a coup d'état in 1986 by Major General Metsing Lekhanya. This would be the first of a number of coup d'états (with later attempts in 1994 and 2014). Though Major General Lekhanya was later displaced by junior officers in 1990, the military was in power until 1993. Military rule was marked by human rights violations and the suspension of electoral democracy and political activities. This was a turbulent time in the Kingdom's history, as King Moshoeshoe II had fallen out of favour with the military junta and his role was relegated to that of a ceremonial head. He went into exile and his son, King Letsie III, was appointed as the new King.

¹ The Constitution can be found at https://adsdatabase.ohchr.org/IssueLibrary/LESOTHO_Constitution.pdf

1993–1998

Lesotho held its third general elections in 1993, in which the BCP won 65 seats to form the new government. There was friction between King Letsie III, who was trying to negotiate with the BCP to have his father reinstated on the throne. With the backing of the military, King Letsie III appointed a temporary government. This move was regarded as a threat to the Kingdom's Constitution and democracy, and CSOs demonstrated and protested the move. King Moshoeshoe II was eventually reinstated until his death in a car accident in 1996, which saw King Letsie III return to the throne, until the present day. The 1993 Constitutional Amendment (Article 44) included a prohibition of the King from engaging in politics and relegated the monarch's role to a ceremonial one, which is still the case to date.

The BCP splintered in 1997, with Ntsu Mokhehle, as the Prime Minister, forming a new party called the Lesotho Congress for Democracy (LCD) and going on to win the 1998 elections, thereby relegating BCP to an opposition party. Intra-party conflict and increased prevalence of personality-centred political parties were the result of personal squabbles as opposed to ideological differences. Prime Minister Mokhehle created the LCD in an attempt to outmanoeuvre his internal opponents – 'the Maporesha' – led by the BCP's deputy leader, Molapo Qhobela, who were seeking to remove him from party leadership.

The adoption of MMP in 1998 was a defining moment in Lesotho's politics. This system was expected to ensure better political representation, accountability and inclusiveness in the legislature. However, one challenge was that political parties with more seats formed tactical alliances with parties with fewer seats to increase their proportional representation in Parliament. The smaller parties, in turn, saw themselves as 'kingmakers' and tried to leverage this in return for favours and patronage. The MMP model meant no one party had a clear majority and translated into a move away from single party-dominated politics to the formation of coalition governments.

Coalition governments

In the 2012 elections, the All-Basotho Convention (ABC), the LCD and the BNP managed to form a coalition with the support of smaller parties that bolstered them up. With this support, the ABC formed a government with Thomas Thabane as the Prime Minister. The support of the smaller parties was fleeting, however, because of in-party fighting, and some joined the then-opposition, the Democratic Congress (DC) party.

The alliance fell apart by 2014 and did not last the five-year tenure. There was a foiled military coup in 2014, and Prime Minister Thabane sent the military to the streets of Maseru to quell demonstrations. As a result of this period of violence, SADC had to step in to restore peace. Snap elections were called in February 2015.

2015–2017

A second coalition government, comprising seven political parties (the DC, the LCD, the BCP, the Marematlou Freedom Party – MFP, the National Independent Party – NIP, the Popular Front for Democracy – PFD and the Lesotho's People's Congress – LPC), led by Prime Minister Pakalitha Mosisili, came into power in 2015. This was a period of political insecurity, crisis and violence, which saw Thomas Thabane fleeing into exile with two other opposition leaders, who feared their lives were in danger. There were arbitrary arrests of members of the Lesotho Defence Force and the death of one of its commanders, while other members of the forces went into exile. SADC once again had to intervene with a peacekeeping force, to pave the way for a return to democracy through yet another snap election in 2017.

The self-imposed exile of Thomas Thabane was short-lived: he came back in 2017 to participate in the elections and continued as the new Prime Minister in a four-party coalition, which remained in power until October 2022. He was removed from power in 2020 as a result of allegations of involvement in the murder of his ex-wife, which prompted the coalition to withdraw their support from him and install the Minister of Finance, Moeketsi Majoro, as the new Prime Minister. The murder case against Thabane and his current wife was dismissed in June 2022 for lack of evidence.

The formation of coalition governments in Lesotho entailed several challenges, which led to the collapse of successive governments and the holding of elections in 2012, 2015 and 2017 (Lesotho held three general elections in the space of five years). Overall, there have been a total of eight elections since the country's

return to multi-party rule in 1993. This has meant that none of the governments during this period has delivered on its mandate, which has had a negative impact on institutional effectiveness, government continuity, national stability and overall development. Coalition governments, in and of themselves, have not been the issue; rather, the unstable coalition government structure, the continued splintering of political parties and the absence of majority support for existing political parties have contributed to the instability that Lesotho has experienced. The use of the security apparatus for political agendas has not helped, creating mistrust in the military and police and the perception that they serve the party in power rather than the country at large.

Floor-crossing post-election and a lack of resolution mechanisms or solid agreements on how to govern within a coalition have also been factors in the failures of successive coalitions. This was the impetus for citizens and several international partners, including the Commonwealth, the EU and SADC, to call for constitutional and electoral reforms. In 2019, the country committed to undertaking comprehensive national reforms led by the NRA, a statutory body established in 2020. The NRA was responsible for managing, co-ordinating and leading the implementation of multi-sector reforms across seven thematic areas: constitutional, parliamentary, justice, security, public service, economy and the media. The Commonwealth Secretariat deployed three experts to support the constitutional, parliamentary and governance reforms. The objective of the NRA was to strengthen institutional capacity, create checks and balances and separation of powers (particularly between the judiciary and the executive) and ensure accountability, transparency and a system of meritocracy in the public service.

Political parties

There are 65 political parties registered with the IEC, about 40 more than in the last election in 2017 (see **Annex V** for the full list). Some of the stakeholders consulted during the PEAM raised concerns about the number of registered political parties, with the IEC noting that the situation had a direct bearing on its state of readiness to deliver the elections in 2022. The IEC was equally concerned that, given the significantly reduced budget for the 2022 elections against the steep rise in the number of political parties registered, it was unable to provide campaign funding to the latter. Under the National Assembly Electoral Act 2011 Article 70 (4) and (5), hereafter the Electoral Act,² the IEC is mandated to provide election-related funding to all parties participating in the election; this, according to some stakeholders, has been an incentive and reason for the proliferation of parties in the run-up to the 2022 elections. As with previous elections, there are no distinct ideologies or manifestos separating the parties. Most of the parties are offshoots of previous parties – for example the LCD is a splinter from the BCP and the DC a splinter from the LCD. New parties of note include the Revolution for Prosperity (RFP), founded in March 2022 and led by a Mosotho businessman, Sam Metakane, and the Basotho Action Party (BAP), established on 23 April 2021 by former Justice Minister and ABC Deputy Leader Nqosa Mahao.

Some analysts regarded Sam Metakane, pre-voting day, to be a front-runner in the elections. The RFP made headlines not only because it had the first trans and gender non-conforming candidate in Lesotho, Sheriff Mothopeng,³ raising hopes that the human rights of LGBTI+ people would be part of its campaign focus, but also because it was a new party that did not seem to have any roots in the old political order: most of its executives are from the business world, including a former chief justice, a former central bank governor and a former journalist in state television. These people resonated with the populace because of their focus on economic growth and meritocracy and their message to do away with corruption and bring efficiency into the machinery of government.

The 7 October 2022 general elections in Lesotho were the 10th to be held since 1965 to elect the members of the National Assembly. The 2017 elections had been characterised by mistrust among political stakeholders, disregard for the rule of law and politicisation of state institutions. The elections had also been

² www.eisa.org/pdf/les2011electoralcode.pdf

³ Stewart, C (2022) 'In a First for Lesotho, Trans Candidate Seeks Seat in Parliament'. Erasing 76 Crimes, 25 August. <https://76crimes.com/2022/08/25/in-a-first-for-lesotho-trans-candidate-seeks-seat-in-parliament/>

preceded by four successive unstable coalition governments. The IEC announced on 10 October that the RFP had won 56 of the 119 confirmed seats and declared Sam Metakane the new Prime Minister of Lesotho, although the party was five seats short of a clear majority.

Financial constraints

Concerns were raised about the IEC's ability to hold elections given insufficient funds. The budget-related challenges included the following:

- There was an increase in the number of political parties contesting the elections. Only 27 parties contested the election in 2017; this figure for 2022 was 65 and the electoral body's budget was therefore stretched.
- There was an increase in the cost of printing ballot papers, as they were printed in South Africa.
- In the 2022 elections, the IEC requested a budget of M498 million to enable it to hold both the National Assembly and local government elections. However, the government approved only M261.5 million, of which a first tranche of M92.7 million was released. Of the M498 million requested, the IEC had budgeted M320 million for the National Assembly elections.

National reform process updates

The elections took place against the backdrop of the national reform process that was launched in 2019. Several stakeholders expressed concerns about the failure by the 10th Parliament to pass the 11th Amendment to the Constitution of Lesotho (hereafter the Omnibus Bill). The Omnibus Bill was introduced to bring about stability in Lesotho. The proposed reforms included managing floor-crossing in the National Assembly, enhancing the separation of powers and safeguarding the independence of institutions, the professionalisation of the civil service and the clarification of the role of civilian authorities in the control of the security sector. The abuse of parliamentary floor-crossing has contributed to political instability in Lesotho. The Omnibus Bill also sought to limit the powers of the Prime Minister to prorogue Parliament. This issue has created divisions among politicians in the past, with prime ministers proroguing parliaments in a manner that has seemed arbitrary and without consensus from other parties. Most importantly, the Bill limited the tenure of office of the Prime Minister to two terms only.

In August 2022, a few weeks after Parliament was dissolved, King Letsie III recalled Parliament to focus on passing this reform legislation. The recall was announced following Prime Minister Moeketsi Majoro's declaration of a state of emergency to pass the two bills, amending the Constitution and the Electoral Act. According to the Constitution, the Parliament can be recalled after dissolution under only two premises: war or a state of emergency. Majoro chose the latter as the basis for a recall. The decision to recall Parliament was challenged and both the High Court and the Court of Appeal decided that the parliamentary recall was unconstitutional, resulting in the collapse of the reform process.

There was broad agreement among stakeholders that failure to conclude the reforms was unfortunate and that the government arising from the 2022 elections would need to prioritise them to provide the country with a stable political and executive framework.

3. The Electoral Framework and Electoral Administration

Electoral legal framework

The Constitution and the Electoral Act are the main pieces of legislation governing elections in Lesotho. A binding Code of Conduct is annexed to the Electoral Act, the objective of which is to '*promote conditions conducive to the conduct of free and fair elections and a climate of democratic tolerance, in which political parties' activity may take place without fear or coercion, intimidation or reprisals.*'⁴

A variety of other acts may be applicable to the IEC's work, and the Commission is empowered to adopt regulations elaborating electoral procedures. Overall, the legislation provides a reasonably comprehensive framework to conduct electoral processes, although the adoptions of regulations would add a useful level of additional detail.

The current IEC was installed on 14 December 2020. The mandate of the previous Commission expired on 1 June 2019, meaning that Lesotho was without an electoral commission for a period of one year, six months and 13 days. The prolonged vacancy left the IEC less time to fulfil its mandated tasks in advance of the 2022 elections.

The IEC is a collegial body; Article 66B(1) of the Constitution states: '*every decision of the Commission shall, as far as possible, be by consensus.*' While the IEC has taken a number of decisions, these have not been posted on its website.

In general, COG interlocutors expressed confidence in the independence, impartiality and effectiveness of the IEC. The COG is grateful for the IEC's willingness to meet the group and its openness in answering its questions and providing information. Nevertheless, some parties, particularly new parties, informed the COG that they found guidance provided by the IEC to be insufficient and late.

The COG also commends the tirelessness and dedication of the IEC's area electoral officers, returning officers and other electoral officials in the performance of their responsibilities.

The voting (electoral) system

The Constitution establishes the electoral system, while legislation elaborates on the specific features and implementation of the system.⁵ The Parliament is composed of the National Assembly, elected every five years, and the Senate, composed of 22 principal chiefs who wield considerable authority in rural areas and whose membership is hereditary, along with 11 other senators appointed by the King and acting on the advice of the Council of State.

Since 2002, National Assembly elections have taken place using a variant of the MMP system. This electoral system, as used in Lesotho, combines the single mandate constituency system with a proportional representation system, using a single ballot.

In total, 120 National Assembly seats are elected, with 80 constituency seats contested by individual candidates using the FPTP (plurality) system. In line with international standards,⁶ a constituency candidate may be nominated by a political party or stand as a non-party (independent) candidate. The other 40 seats are allocated to parties in a manner that aims to achieve proportionality at the level of the National Assembly – that is, a proportional representation of the 120-seat National Assembly. Unlike in the mixed-

⁴ The Code of Conduct appears as Schedule 2.

⁵ Articles 56 and 57.

⁶ Article 25 of the International Covenant on Civil and Political Rights (ICCPR). www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

parallel electoral system, parties that win a high number of single mandate constituencies may not receive any of the additional 40 mandates. Instead, these are allocated to other parties such that its overall share of seats corresponds, as closely as possible, to its share of the countrywide vote. In this sense, the system 'compensates' parties that would, given the possible disproportionate outcome of the FPTP system, not be fairly represented in Parliament.

From 2002 to 2012, the vote was conducted using two ballots. However, this enabled the allocation formula (for the 40 seats) to be distorted, such as through tactical registration of candidates as independents or through forging an arrangement with a smaller party and encouraging their supporters to split their constituency and proportional votes tactically. This can lead to a National Assembly that is formed in a manner at odds with the objective of the MMP system – that is, a composition of the National Assembly that reflects parties' proportional share of the vote. Instability may arise where an electoral system does not deliver outcomes that are easily understandable to voters and contestants.

For the 2012 general elections and in all subsequent elections, Lesotho has used a single-ballot MMP system, such that a vote for a party candidate is considered also as a vote for the party nominating the candidate. While this MMP system may carry certain advantages, not least in ensuring pluralism in the National Assembly, it also has certain drawbacks, not least potential delays in the formation of the National Assembly in the event of annulment of one or more constituency results. Furthermore, a party that does not field a candidate in a single mandate constituency will not benefit from votes that would otherwise contribute to a party's national tally.

Lesotho has established gender quotas through its legislation by implementing the zipper system, in which political parties alternate between men and women in their electoral candidate lists resulting in up to 50 per cent female representation for that party. Gender quotas are implemented only for the single/lower house of Parliament and at the sub-national level.⁷

Boundary delimitation

The Constitution assigns the IEC with the sole mandate to delimit election constituency boundaries.⁸ The Constitution also fixes the number of constituency seats at 80.⁹ In conducting the delimitation, the IEC should ensure that, 'All constituencies shall contain as nearly equal numbers of inhabitants of or above the age of eighteen years as appears to the Commission to be reasonably practicable ...' This provision is in line with international norms aimed at ensuring the equality of the vote.¹⁰

Under the Constitution, and in line with international practice, the IEC is permitted to depart from the principle that constituencies shall have nearly equal numbers to such extent as it considers expedient to take account of population density and the need to ensure the adequate representation of sparsely populated rural areas; means of communication (transport links); geographical features; communities of interest; and the boundaries of existing administrative areas. However, the IEC may establish constituencies only where 'the number of inhabitants, of or above the age of twenty-one years, shall not exceed or fall short of the population quota by more than ten per cent.'

The Group was informed by the IEC that some political parties had notified the Commission of their intention to challenge the legality of any boundary review. Conversely, the IEC was informed by other political parties that inaction on delimiting constituency boundaries would also be challenged.

The IEC commenced consultations on the delimitation of boundaries in September 2021 and completed the process in October 2021.¹¹ Afterwards, the IEC invited political parties and voters to make representations on the proposed new boundaries.¹² The IEC published the Delimitation Order on 13 April 2022.¹³

⁷ International IDEA Gender Quotas Database. www.idea.int/data-tools/data/gender-quotas-database

⁸ Article 67.

⁹ Article 57(1c(i)).

¹⁰ ICCPR Article 25.

¹¹ Legal Notice No.109 of 2021.

¹² Legal Notice No.140 of 2021.

¹³ Legal Notice No. 37 of 2022 (Constituency Delimitation Order).

The DC and others filed a constitutional challenge to the Delimitation Order, on the grounds that the time window in which the boundary review should have been conducted had expired.¹⁴ On 6 August 2022, 17 days after the proclamation of elections, the High Court upheld the IEC's authority to delimit constituencies during the period in which it had done so as the time period in which Lesotho did not have a sitting IEC should be subtracted from the constitutionally established timeframe during which the process should have been undertaken. However, despite the late juncture, the Court found that 'going ahead to hold elections before the constituencies are corrected, will be tantamount to conducting elections on the basis of legally flawed constituencies thereby desecrating the Constitution.' Consequently, the Court found that the IEC's Delimitation Order was unconstitutional and directed the IEC to redraw the constituency boundaries for the 20 constituencies. The Court's ruling clearly established that constituency boundaries must respect the permissible 10 per cent deviation from the quota even if the constituency boundaries crossed administrative district boundaries or resulted in parts of a constituency being accessible only from an adjacent constituency or splitting a community of interest. The IEC redrew the constituency boundaries to comply with the Court's ruling.

While the Court's emphasis on the equality of the vote sets an important legal precedent, the lateness of the Court's ruling added another layer of uncertainty to the IEC's and parties' pre-electoral preparations, and potential challenges to informing voters of the changes. Unless it is unavoidable, it is good practice not to change constituency boundaries after an election has been called.

Political party registration

The Constitution provides for freedom of association in line with international norms. Discrimination *inter alia* on political grounds is constitutionally proscribed.

Lesotho does not have a specific law on the registration, regulation and functioning of political parties. Instead, this is covered under the Electoral Act and the 1966 Societies Act. The Electoral Act provides that any political party that wishes to contest an election must register with the IEC, and the Commission has registered 65 political parties, of which about 40 have been founded since the 2017 elections.

The Electoral Act provides a reasonable framework for the registration of political parties. Membership in a political party is voluntary and is open to all citizens of Lesotho without discrimination. Parties are required to adopt a unique name and symbol that conform to prescribed limitations; to have adopted a party constitution (statute) that conforms to prescribed minimum requirements; and to have a paid-up membership of at least 500 electors.¹⁵ A political party registered with the IEC is required to facilitate full participation by women, youth and PWDs in political activities on the basis of equality.

The large number of parties contesting the elections influenced the organisation and financing of the process, for example the size of the ballot and the legal requirement to provide public finance to contribute to the funding of parties' campaigns.

Candidate nomination

Section 40 of the Election Act 2011 provides for the nomination of candidates. National Assembly candidates are nominated by way of filling a nomination form endorsed by a proposer and a seconder – the candidate, the proposer and the seconder must be registered electors in the constituency – and through payment of a deposit of M200.

A returning officer has a statutory duty conferred by Section 41 (3) and (4) of the Act to ensure compliance with all requirements, and the announcement of nominated candidates in the prescribed manner.

Section 42 of the Act also provides for objections to the nomination of candidates and the procedure thereto. The objections are lodged before the IEC in a prescribed manner for consideration and a decision is made within five days; the parties to the dispute are informed in writing.

¹⁴ See Article 67(3) of the Constitution.

¹⁵ Section 24.

A person aggrieved by the decision of the IEC is required to appeal to the High Court, which shall hear and determine the appeal expeditiously and give its decision at least two days before the date set for the announcement of nominations.

The law also provides guidance for instances where a candidate dies before voting day, where only one candidate is nominated and where two or more candidates are nominated for elections; such situations are the responsibility of the Director of Elections.

Under proportional representation, political parties submit a party list to the Director of Elections and comply with the requirements set out in the Act under Section 47.

Under Section 40 (2) of the Act the following persons are not eligible to be elected as members of the National Assembly, if at the date of nomination such a person:

- Is a member of the Commission, a member of the Commission's staff or an electoral officer;
- Is a member of the Defence Force, the Police Service, the National Security Service or the Correctional Service; or
- Holds, or is acting in, a public office.

While the prohibition on electoral staff serving in the police, military and security service personnel pursues a legitimate and reasonable aim, the prohibition of the broad category of public officers appears to be less justifiable, particularly if applied to public sector workers and temporary or contract staff in government offices.

The IEC informed the COG that 2,560 candidates were registered across the 80 constituencies. Candidates were nominated by 52 parties and three alliances, while 26 candidates were self-nominated (independent) candidates. Only four parties contested all 80 constituency seats. The constituency with the highest number of candidates was Abia in Maseru municipality, with 41 candidates. The final list of proportional representation candidates was published on 5 October 2022. The wide array of parties and candidates ensured that the election was competitive and offered voters a broad electoral choice.

Suffrage and voter registration

Under Article 57 of the Constitution, 'every person who (a) is a citizen of Lesotho; and (b) has attained the age of eighteen years; and (c) possesses such qualifications as to residence as may be prescribed by Parliament, is eligible to be registered as an elector.' However, no person may be registered as an elector if he or she has an allegiance, obedience or adherence to any foreign power or state; is under sentence of death; is, under any law in force in Lesotho, adjudged or otherwise declared to be of unsound mind. Persons who have been convicted of an electoral offence connected with the election of members of the National Assembly forfeits their electoral rights for five years.

Parliament may provide that a person who holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of an election in any constituency shall not be qualified to vote in that election in that constituency.

The registration and control of voter registration is carried out under the supervision of the Director of Elections. In Lesotho, the registration of electors takes place on a continual basis – subject to periods of closure close to elections – and the register of electors serves as a permanent record of eligible electors.

The Electoral Act obliges everyone who qualifies as an elector to be registered to vote,¹⁶ but voting is not obligatory. Section 6 of the Act requires that registration applications be accompanied by (1) documentary proof of the applicant's identity; or (2) a sworn declaration by another elector confirming the applicant's identity. Section 7 provides that, if the Director of Elections is satisfied that the applicant has met the qualifications for registration, *inter alia* he or she must enter the elector's details in the Register of Electors

¹⁶ Sections 4 and 5.

and issue the elector with an identification number and with an elector's registration card. Citizens may be registered as electors in their constituency of origin (birth), where they ordinarily reside or where they work and are entitled to transfer their registration.

The COG was informed that a new electronic system of registering voters had been put in place, through the Mobile Registration Unit (MRU), instituted in June 2022. This new process involves capturing the elector's biometric data and personal details. The new system is linked to the elector's national ID card and a registration number is issued rather than, as previously, a voter's card.

Significantly, the new system requires electors to be in possession of an ID card in order to register as an elector, notwithstanding the provisions of the Electoral Act, which allow other forms of ID to be used. The provisions of the Electoral Act concerning voter registration were amended in late August 2022, retroactively aligning legislation with practice (see sub-section below). However, following the annulment of the amendments, the former legal provisions came back into legal force. Under this law, citizens may verify their eligibility and identity through (1) a passport, (2) a driver's licence or (3) a baptism certificate.

In the run-up to the election, several political parties and media outlets aired concerns regarding the accuracy of the voter register, pointing out the potentially high number of duplicates and of sequential entries with almost identical data (near duplicates); the presence on the register of deceased persons; inaccuracies in register entries; and the IEC's slowness in updating the register to reflect requests to transfer from one constituency to another. However, the COG understands that no concerns were raised regarding the inclusion of ineligible persons. The IEC strenuously defended the accuracy of the register.

The IEC published the register of electors according to the legal deadline, 30 days before election day, and provided political parties with a redacted version. It also uploaded all polling station extracts of the register on its website and put in place a portal to allow electors to check their entries. In an apparent effort to gain time to further clean the register, the IEC extended the scrutiny and corrections period until 30 September 2022, whereupon the final register of electors and constituency and voting station lists were published, and updated versions given to political parties. This is very close to election day, and the COG noted that some party agents were working from older versions of the register, causing a degree of confusion.

According to the IEC, the final register as of 30 September 2022 contained the entries for 1,383,844 electors, of whom 767,158 were women and 616,868 men. According to data provided by the IEC to international observers, there were only 75,694 electors registered between the ages of 20 and 24 (inclusive), whereas population data and projections suggest there may be approximately 200,000+ eligible citizens in this age bracket. The 18–19 age bracket also appears to be significantly underrepresented as registered electors.

The details of the many Basotho working outside Lesotho, notably in South Africa, are included in the register of electors. However, notwithstanding Articles 42 of the International Convention on the Rights of Migrant Workers (ICRMW),¹⁷ the Electoral Act does not provide for the special electoral needs of migrant workers. With the exception of voting by diplomats, out-of-country voting is not foreseen in legislation.

Errors in the register of electors, lack of aggregated data on young electors in particular and the inclusion of a potentially large number of electors in the diaspora in the register means that a 'low' turnout figure may be subject to misinterpretation.

Civic and voter education

The Constitution assigns the IEC responsibility to promote knowledge of sound democratic electoral processes – that is, for civic and voter education (CVE). The Electoral Act directs the IEC 'to establish and maintain liaison and co-operation with... interested civic groups.'

¹⁷ *Inter alia*, Article 42 of the ICRMW provides that 'States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.'

The COG was informed that the Commission conducted civic and voter education in June 2022 through radio, engaging CSOs and training police officers and traditional chiefs. Subsequently, the IEC invited civic groups to apply to conduct outreach to implement the IEC's CVE programme during August 2022. Seventeen CSOs/non-governmental organisations (NGOs) responded, of which 16 were contracted to implement the IEC's CVE programme, including those with expert knowledge of specific target groups. In addition to Sesotho, CVE materials were available in two minority languages, Xhosa and Phuti.

While initially the IEC had intended to roll out its CVE programme in August 2022, the Commission acknowledged that the CVE was rolled out very late, with activity starting only in mid-September 2022, barely three weeks before election day. This presented serious challenges to the IEC's CSO partners and inevitably affected electors' awareness of the electoral process, particularly in remote constituencies.

Ostensibly, the delay in roll-out was caused by a shortage of funds, although late changes to key aspects of the electoral legal framework may also have caused uncertainty on the content of the CVE campaign. One CSO met by the COG also commented that it had not been consulted or otherwise involved in the preparation of material or CVE 'messaging' and was regarded by the IEC as a service provider rather than a partner able to add value on content.

Electoral offences and electoral disputes

The Electoral Act provides in Chapter 8 Section 122 and Schedule 2 an Electoral Code of Conduct that is binding on all political parties and their candidates and supporters. The Code of Conduct sets out several election offences – corrupt and illegal practices for which transgressors may be prosecuted.

Chapter 9 of the Constitution confers upon the High Court exclusive jurisdiction to hear and determine electoral disputes. A petition may be filed by the IEC, the Attorney General, a political party, a candidate or a voter.

A petition must be filed within 30 days of the declaration of election results and determined by way of a final order within 30 days from the last day of hearing. All petitions are heard in open court.

Disputes that reach the court relate to the following, among others:

- The validity or otherwise of the election of any person as a member of the National Assembly;
- Whether or not the seat of any member of the National Assembly has become vacant; or
- Whether a proportional representation seat has been properly allocated.

The IEC informed the COG that 24 complaints on candidate nominations were filed, including 14 objections concerning inter-party issues, six filings on candidates who were rejected for other reasons and four petitions filed with the High Court, mostly related to candidates still being employed as public officials. The COG was informed that some disputes were lodged close to the election date such that some remained unresolved as of voting day, in particular regarding the eligibility of a few nominated candidates who were determined to be public officials.

In addition, political parties' internal dispute resolution mechanisms are wanting. A case in point is what happened in Mohale's Hoek Constituency No. 61, where two officials from the same party issued certificates to two different candidates for the same seat. It later transpired that the first candidate's certificate was issued by a party official who had been replaced but refused to vacate office while the second candidate's certificate was issued by the party official who was supposed to have taken over. The IEC upheld the nomination of the second candidate. The first candidate appealed to the High Court, which reversed the decision of the Commission. By the time the appeal was determined, the ballot papers had been printed. The IEC had to paste over the name of the second candidate and have the name of the first candidate on the ballot paper.

August 2022 Amendment to the Electoral Act

Amendments to the Electoral Act were tabled in the reconvened Parliament in August 2022. The Amendment Bill modified a number of provisions, mostly related to the registration of electors. Other issues covered by the Act included introducing additional grounds for cancelling the registration of a political party; introducing a 0.5 per cent threshold to receive any of the 40 compensatory proportional representation mandates; extending the right to vote during advance elections to Basotho residents outside of Lesotho subject to proof of residence outside of Lesotho, and to party agents; not requiring electors to be in possession of an elector's card in order to vote; delegating powers held by the IEC to the electoral tribunal and allowing the tribunal to set any penalty; and tasking diplomatic missions with registering electors outside of Lesotho. The entry into force of the provisions regarding the registration of diaspora electors and the representation threshold were deferred pending a decision by the (responsible) Minister.

The scope of the Bill was extended significantly through parliamentary amendments. These included:

- Raising the number of party members required for registration of the party from 500 to 5,000;
- Dispensing with the requirement that party lists nominate equal numbers of men and women, with the candidates arranged in order of preference with a female or male candidate immediately followed by a candidate of the opposite sex,¹⁸ and replacing this with a system whereby candidates who have lost in an election can nevertheless still gain a parliamentary seat on the basis of 'best loser' with the exception of losing party leaders, who shall receive the first party seat. This allocation method is applied 'regardless of gender';
- Regulating floor-crossing by MPs elected from constituencies so that floor-crossing is permitted, except after the Parliament is three years into its mandate, where it will result in a by-election. A member who is elected through proportional representation shall not cross the floor or vacate the seat if he or she renounces membership of the party.

The Bill, as amended by Parliament, was approved during the reconvening of Parliament and for a few weeks had legal force until the Court found the Acts adopted during this period to be unconstitutional, whereupon they were annulled and the legal framework, including for elections, reverted to its previous form.

While the Act was annulled, the COG notes that the adoption of far-reaching changes to the system of voter registration, the documents required to prove voter identity and the actual electoral system at such a late juncture – indeed, while the election is underway – is at odds with international good practice and caused significant uncertainty among stakeholders and electors.

Recommendations

- Given that the right to seek election is a fundamental human right, it may be advisable to include all restrictions on the right in the Constitution rather than in primary legislation.
- The removal of voting rights from persons with psychosocial and intellectual disabilities (in Lesotho law termed as being of 'unsound mind') is at odds with the CRPD. Lesotho may thus wish to reconsider this restriction.
- Given that the right to seek election is a fundamental human right, any limitations on this right should be based on objective and reasonable criteria, pursue a legitimate aim, be proportionate and be set out in the Constitution rather than in primary legislation.
- The IEC should ensure that eligible electors are registered according to the provisions of the law that is in force at the time.

¹⁸ Section 47 (1) and (2).

- The IEC and the legislator should review the voter registration procedures contained in the Electoral Act with a view to instituting a reliable system of registration to ensure voting rights. If a new register is created, care should be taken to avoid de-registering those Basotho who are resident abroad and included in the current register.
- The IEC should thoroughly examine the reasons for the under-registration of electors aged between 18 and 24 years and take steps to increase the registration of youth.
- The omission of an eligible candidate or the inclusion of an ineligible candidate on the ballot paper could result in the annulment of an election. Therefore, serious consideration should be given to developing a calendar for nomination and appeals that ensures that all legal disputes are adjudicated before election day, and ideally before the ballot is printed.
- Constitutional safeguards are established to prevent significant amendment to electoral legislation after an election has been called; it is recommended to avoid doing so within six months of an election.
- The IEC could consider establishing a formal structure to interface with CSOs to better develop its CVE plans and content as well as policies aimed at ensuring the electoral participation of women, youth, PWDs and other groups that may have specific information and other needs. This is in line with the emerging view that the right to participate in public affairs encompasses the right of citizens to be consulted on issues that affect them.
- Lesotho could consider amending its Constitution to ensure continuity in the functioning of its electoral authority to avoid a situation where elections may be required but an electoral authority has not been installed in office.

4. Participation and Inclusion

Women

Lesotho's national legal framework recognises and guarantees the equal right of women, youth and PWDs to participate in the election process. In addition to guaranteeing freedom from discrimination and equality before the law, in Articles 18 and 19, respectively, Lesotho's Constitution guarantees the rights of these groups to participate in government. Article 20 provides that:

(1) Every citizen of Lesotho shall enjoy the right (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; [and] (b) to vote or to stand for election at periodic elections under this Constitution under a system of universal and equal suffrage and secret ballot.

Section 30 of the Electoral Act of 2011 further provides that:

- (1) A political party registered with the Commission shall –*
- (a) facilitate the full participation by women, youth and disabled persons in political activities on the basis of equality;*
 - (b) ensure free access by women, youth and disabled persons to public political meetings, facilities and venues...*

Women are underrepresented in Lesotho's National Assembly and other political decision-making structures. Section 30 of the Electoral Act was passed to address this. Section 47 of the Act additionally provides for gender parity in the proportional representation election by stipulating that the list of nominated candidates submitted by political parties should '*(b) arrange the candidates in order of preference from top to bottom, with a female or male candidate immediately followed by a candidate of the opposite sex; and (c) include equal numbers of women and men.*'

Lesotho is also party to the following regional and international human rights instruments that complement the provisions in national law:

- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol);
- The SADC Protocol on Gender and Development;
- The African Charter on Democracy, Elections and Governance;
- The African Youth Charter;
- The Convention on the Rights of Persons with Disabilities (CRPD).

According to the latest figures reported by the IEC, women constitute 55 per cent of registered voters. While the LNCW reported an increased interest from women registering as candidates for election to political office, IEC officials indicated that, of the 2,560 nominees, only 876 (or 34 per cent) were women.

The COG noted the following:

- The majority of poll station workers and IEC officials were women.
- The majority of party agents and officials were women.
- The majority of security officers (police officials) present at polling stations were women.
- The majority of in-person voters were women.

The COG noted that, despite gender-specific legislation and the increased representation of women as poll workers, party agents and security officials, this has not translated into increased representation of women at political decision-making levels. Of 121 of seats in the National Assembly, 32 (26 per cent) are currently held by women.¹⁹

Recommendations

- The IEC should undertake gender-specific voter education on overcoming barriers to political participation at all levels.
- The IEC should create and encourage private/public collaborations that provide mentorship opportunities for women's leadership development.
- The IEC should encourage political parties to strengthen their candidate development programmes using gender-sensitive training.
- Political parties should consider strengthening the capacities of existing and aspirant women politicians to develop and apply a gender-sensitive lens to their work.

Youth

Lesotho has one of the most youthful populations in Africa. The Lesotho Ministry of Gender, Youth, Sports and Recreation defines youth as persons between the ages of 18 and 35. Using this official definition, the latest IEC figures indicate that young people comprise 34 per cent of registered voters. However, young people in Lesotho face considerable challenges, including high levels of unemployment (33.68 per cent),²⁰ violent crime, sexual and gender-based violence, and poverty.

The legal framework of Lesotho provides for the participation of youth in the democratic and governance processes of the country. Article 30 of the Constitution provides that:

(1) Every citizen of Lesotho shall enjoy the right (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; [and] (b) to vote or to stand for election at periodic elections under this Constitution under a system of universal and equal suffrage and secret ballot.

In addition, Section 30 of the Electoral Act further provides that:

- (1) A political party registered with the Commission shall –*
- (a) facilitate the full participation by women, youth and disabled persons in political activities on the basis of equality;*
 - (b) ensure free access by women, youth and disabled persons to public political meetings, facilities, and venues...*

Lesotho is also a signatory to regional and international instruments that equally support youth participation in the democracy and governance process of the country. These include:

- The African Charter on Democracy, Elections and Governance;
- The African Youth Charter.

The COG noted the participation of young people at political campaign rallies held by the various political parties.

The COG also noted the following:

- There was high attendance of young people in political campaign activities (like rallies, party meetings, etc).

¹⁹ International IDEA Gender Quotas Database.

²⁰ LCN (2022) 'Lesotho Council of NGOs Interim Observation Statement'. www.gov.ls/download/10th-october-2022-lesotho-council-of-ngos-lcn-interim-observation-mission-statement/

- Party political campaign policies and literature (like manifestos) did not speak to the specific needs of young people.
- Voter registration processes were not targeted at young people.
- Voter turnout among youth was low, despite high levels of representation as poll workers, party agents and security officials.

The COG noted that participation by young people in the elections was limited to attendance at campaign rallies; work as IEC polling staff; participation as police support in various polling stations; and some participation in CVE. This limited participation may relate to the delay in the roll-out of CVE. The COG also noted the high level of youth representation in all forms of media (television, radio and online) in Lesotho.

Recommendations

- The IEC and the government may consider undertaking youth-targeted CVE for their effective participation in democratic and governance processes.
- The government and political parties may consider youth-specific mainstreaming across their structures to ensure the effective engagement of young people.
- The government may consider expanding voting eligibility (advance voting) to ensure larger youth participation in elections.
- The IEC may consider a thorough audit of the voters' roll to ensure young people are thoroughly included and represented.

Disability

Articles 18 and 19 of the Lesotho Constitution guarantee freedom from discrimination and equality before the law. Article 30 further provides that:

(1) Every citizen of Lesotho shall enjoy the right (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; [and] (b) to vote or to stand for election at periodic elections under this Constitution under a system of universal and equal suffrage and secret ballot.

Section 30 of the Electoral Act provides that:

- (1) *A political party registered with the Commission shall –*
- (a) *facilitate the full participation by women, youth and disabled persons in political activities on the basis of equality;*
 - (b) *ensure free access by women, youth and disabled persons to public political meetings, facilities, and venues...*

Lesotho is also party to the following regional and international human rights instruments that complement the provisions in national law:

- The African Charter on Democracy, Elections and Governance;
- The Convention on the Rights of Persons with Disabilities (CRPD).

However, the COG noted the following.

- The IEC does not collect data on the number of PWDs who have registered to vote.
- LNFOD indicated that there remained considerable challenges to the participation of PWDs in electoral processes, both as candidates and as voters.
- Challenges faced by PWDs include lack of adequate voter education, voting facilities and voting assistance.

Recommendations

- The IEC may consider strengthening CVE for PWDs to enhance their participation in the electoral and governance processes of the country.
- The IEC should consider identifying and designating voting locations that cater to the needs of PWDs. In addition, the government may consider building locations that meet the requirements of PWDs.
- The IEC should mainstream the rights and needs of PWDs in its programmatic development and delivery.

Civil society

The COG notes that Lesotho enjoys and encourages active non-partisan civil society engagement, which creates an environment for positive collaboration with the IEC. This collaboration has enabled CSOs to engage directly with electors by providing civic and voter education. CSOs were also actively engaged in NRA processes that sought to bring about reforms to the democracy and governance processes of Lesotho, thereby creating a conducive political environment.

In particular, the COG notes the successful Candidate Forum and National Political Parties Debate Forum, co-hosted by the LNCW and Transformation Resource Centre to educate voters on candidates' manifestos. These initiatives provided for a conducive environment for active citizen engagement and education in preparation for the elections. CSOs indicated that a limited number of observers would be deployed in constituencies.

However, the COG noted the following.

- CSOs were given only a six-week timeframe for CVE.
- CSOs experienced a culture of increased violence and political volatility.
- CSOs informed the COG that failure to pass the Omnibus Bill created political and electoral uncertainty in relation to civil society support and engagement.
- Funding from the IEC for CVE was delayed.
- CSOs had limited capacity to observe elections.

Recommendations

- The IEC should ensure adequate and timely distribution of funds to address CVE.
- The IEC is encouraged to implement its standard operating procedures to ensure timeframes of two months for CVE training.
- The IEC is encouraged to strengthen the capacity of and provide adequate resources to CSOs to observe elections in all constituencies.

5. Campaign and the Media

The campaign

Campaigning in the Kingdom of Lesotho is mainly regulated by the Electoral Act, whose Section 59 states, *'A political party registered with the Commission is entitled to conduct election campaigns to enable it to disseminate its intended policies to electors for discussion and consideration.'*

Campaigns for the 2022 elections started from the day of the announcement of the election date on 20 July 2022. The campaign ended 24 hours before polls opened – and no campaigning material was distributed by any of the parties at voting stations – in accordance with Section 60 of the Electoral Act: *'A political party registered with the Commission may only campaign in public from the day on which the notice contemplated is published and until 24 hours before voting begins on the election day.'*

The COG noted that campaigning was generally peaceful. Political parties and candidates were able to carry out their campaign activities freely without harassment or interference. COVID-related restrictions had been considerably relaxed by the time of the election, so candidates and parties were able to hold rallies.

The COG witnessed the final rallies of some of the parties and noted that they were generally peaceful and festive, and characterised by road blockages but no reports of violence. Election campaign materials of different political parties, such as flyers, posters and mobile billboards, were widely distributed and clearly displayed – especially in the capital Maseru. However, this was not the case in most of the districts and constituencies observed by the Group.

The Electoral Act permits political parties and their candidates to hold rallies and to print, publish or use electronic media to publicise their manifestos and messaging, on condition that the content of the news is determined by that news medium; *'for books, pamphlets, leaflets, magazines, or newspapers, it shall identify itself in the publication'*²¹

The COG received complaints about pre-election vote-buying by some parties; however, no formal complaints were lodged with the authorities.

According to the Electoral Act:

The government shall collaborate with the IEC to allocate time on radio and television during which political parties may be allowed to speak or appear in campaigning for elections and the Commission shall determine the allocation of time to each political party.

Political parties and candidates informed the COG that they were satisfied with the performance of state-owned media.

Campaign issues

Campaign messages were centred around the issues of reform, anti-corruption, economic and infrastructural development, unemployment (especially among young people), education and water management.

Campaign financing

The IEC is the only body responsible for campaign finance in Lesotho. Its lack of financial resources has made it challenging for it to perform this function optimally.

Lesotho's Electoral Act provides for registered parties to raise donations from any person or organisation in or outside Lesotho. Stakeholders who briefed the COG regarding private funding of political parties were of the view that this had the potential to compromise the level playing field because the funds would not be evenly distributed, and also put the country at risk of foreign interference.

²¹ Section 68, Electoral Act.

This also means there are no spending limits for either political parties or candidates, nor is there a definition of what constitutes a campaign expense. A party can spend as much as it wants on campaigns, as long as it 'discloses' donations exceeding M200,000 to the Commission within seven days of receipt – but we note that no such disclosure has been made since 2012.

The Electoral Act also provides for registered political parties to be entitled to funding from the Consolidated Fund for the purpose of campaigning and the payment of party agents. The IEC allocated the campaign funds in proportion to past election results, or in proportion to the minimum number of paying members required to form a party. This means the disbursed funds did not level the playing field between smaller and larger parties.

Political parties and candidates who briefed the COG further said they did not receive such monies on time: the IEC started to disburse these funds a few weeks, and in some cases a few days, before the elections.

The media

Twenty-two years since the establishment of the only national television broadcaster of Lesotho, the media industry still remains small in scale, fragmented and heavily dependent on funding from the government. The diversification of the media landscape over the years has not done much to change this state of affairs. This is not without consequences: partisanship and affiliation, high operational costs, low literacy and low readership rates have become common.

The sector currently comprises 30 licensed broadcast stations, including three television stations and 27 radio stations. Radio is the most popular news medium in Lesotho with regard to outreach and accessibility. The print media sector consists of 10²² newspapers (one of them state-owned) and three magazines.

Lesotho's national television station, Lesotho Television (LTV), owned by the Lesotho National Broadcasting Service (LNBS), is run by the state, with its operations depending largely on the government of the day. LTV is constantly accused of bias towards government policies, agendas and priorities. There has been little growth in television broadcasting in Lesotho and this area lacks the resources to ensure editorial independence.

There has been a steady rise in the use of social media regardless of limited access to the internet and infrastructure for connectivity. Meta (Facebook) is considered the most used internet-based media, ahead of other social media platforms like Instagram and Twitter as well as web and blog sites. This explains the workshop jointly organised by the IEC and the Facebook team to leverage traffic and counter disinformation.

Notwithstanding the above, the media in general provided fair, transparent and equitable coverage of the general elections in 2022. The COG observed gender mainstreaming and inclusivity of vulnerable groups. It also contributed towards transparency through live coverage of announcements of results, regular updates and informative interviews.

The consensus is also that the state-owned media has been fair in its reportage and equitable in its coverage of the elections.

The private media has also led on issues, particularly questioning the IEC on its general conduct and highlighting the issues of the voters' roll.

Key issues

Although state-owned media allocated equal opportunities to all registered political parties to pass on their messaging, those who did not have sufficient funds were at a disadvantage in the private media, where the source of funding influenced content on private radio stations. This is attributed to high operational costs and a weak private sector, which creates a dependency on single-source funding and advertising revenue. This jeopardised the editorial independence of the media and their operational autonomy, leading to biased content.

²² Reporters without Borders (nd) 'Lesotho'. <https://rsf.org/en/country/lesotho>

Journalists who work for state-owned media organisations are intimidated by the government and censored through an oath of secrecy.²³ This impedes their ability as journalists to hold the government accountable and to report accurately and truthfully on policy issues.

The media sector is suffering from a shortage of skilled and qualified personnel, as a result of low wages. This creates a lack of capacity, beyond political headlines, to generate and write diversified content on issues of importance to national development. Some stakeholders in the media sector in Lesotho mentioned the absence of informed and nuanced analysis of political issues, beyond mere reporting on campaigns, hampering the ability of journalists and media practitioners to provide critical content that enhances and contributes to voters' education and knowledge.

The COG noted that efforts were made with regard to CVE through the national media and other media platforms. However, access to the national media in rural areas is limited.

The absence of a legal framework that gives effect to the right to freely access information, coupled with the oath of secrecy, makes it difficult for journalists to exercise oversight of government and institutions.

Although the right to freedom of expression is protected under Article 14 (1) of the Constitution, freedom of the media is not explicitly protected.

The COG observed the absence of an electoral code of conduct for the media. The IEC's Electoral Code of Conduct (Section 122) does not include guidelines for the conduct of the media during elections.

The COG was informed that electors were exposed to misinformation and cyberbullying on social media platforms during election. We recognise the effort of the IEC in curbing misinformation through the workshop that was held in collaboration with Meta (Facebook).

Recommendations

- The government should take steps to update and strengthen laws relating to the regulation and transparency of campaign financing, such as defining legitimate campaign expenditures and introducing spending limits.
- An effective regulatory regime for the media should be set up to ensure practice of good media ethics and professionalism. Such a regulatory body should also include a complaints mechanism through which members of the public who are aggrieved by journalists and media organisations can seek redress.
- A code of conduct for the media should be adopted in consultation with stakeholders to guide journalists on practising universally accepted standards of journalism, safeguarding professionalism and preserving the sanctity of the profession.
- The COG urges the IEC and media organisations to build capacity in the media sector and improve the skills of media practitioners, especially in the area of reporting on elections.
- The state-owned LNBS and state-owned newspaper *Lentsoe la Basotho* should be separated from the government. They should operate as autonomous bodies and be governed by an independent board of directors.
- We urge the government to invest in digital infrastructure and encourage the IEC, political parties and politicians to make use of social media to communicate their messaging.
- We also urge the government to extend the coverage of the national media into rural areas and provide an enabling environment to allow private radio stations to flourish.
- We urge the new National Assembly to prioritise the promulgation of laws that ensure access to information.
- In furtherance to the principles of transparency and certainty, the IEC should give serious consideration to publishing its decisions and other information of public interest on its website.

²³ African Media Barometer 2018.

6. Voting, Counting and Results Process

Background

The IEC appointed a returning officer in each of Lesotho's 80 constituencies as well as an area electoral officer in each of Lesotho's 10 districts. The Commission established 3,154 voting centres; these can host one or multiple voting stations. Each voting station was staffed by five or six electoral officers headed by a voting station manager. On average, some 500 electors were registered at each voting station. Official witnesses²⁴ were also present to attest to the identity of electors who lacked an official identity document.

Contesting candidates and their nominating political party were each entitled to nominate an agent to scrutinise polling at voting stations and electoral activities that occurred at the IEC's constituency and district offices, such as receipt of material and tallying of results.

While the electoral system has two components – single-mandate constituency (candidates) and compensatory-proportional (party list) – voting takes place using a single ballot paper. The relatively high number of contestants meant a larger-than-usual ballot paper was necessary.

Pre-poll preparations

The IEC organised training for polling officials and procedure manuals were available in voting centres. However, the COG was informed that training was conducted relatively late; in one district, more than 70 per cent of polling officials were first timers.

Polling material was distributed to IEC constituency offices in advance of election day. In difficult-to-access areas, material was delivered by helicopter, sometimes several days in advance. In constituency Lebakeng, in Qacha's Nek district, when high wind prevented the delivery of material by helicopter, the area electoral officer arranged for the materials to be delivered by horse and porters.

To guarantee integrity, after delivery and prior to election day, sensitive material was stored securely at local IEC offices and voting stations, under police guard. In most cases, polling material was distributed to voting centres the day before the election. Some COG members reported that, in a few instances, polling material had been received late at night on 6 October (a day before the election).

Key polling procedures

Voting takes place between 07:00 and 17:00. The legislation includes provisions aimed at ensuring the integrity of the polling process, including the application of indelible ink to voters' fingers (to prevent double voting), the stamping of ballot papers with a unique polling station stamp and two ballot counterfoils. Ballot boxes are sealed with numbered tags that cannot be removed unless cut.

According to Section 82 of the Electoral Act, if an elector is to be able to vote, their name must be included in the electors' register for the voting station and the elector must be in possession of an elector's registration card, issued at the point of registration. An elector who does not have an elector's registration card can still vote if able to provide proof of identity in the form of a passport, a driver's licence or verification by an official witness. The IEC, with the consent of the political parties, also allowed the national ID card to serve this purpose.

²⁴ Official witnesses are often those who hold positions of traditional authority, such as local chiefs.

Upon establishing that the voter is included in the register, polling officials verify the identity of the voter and a polling official announces the name of the voter. This allows party agents to track who has voted using a copy of the voters' list in their possession. The voter's registration number is then written on a counterfoil in the book of ballots. Subsequently, a polling official verifies that there is no trace of ink on the voter's fingers and applies indelible ink to the finger. A ballot is detached from the book of ballots, folded and stamped. A polling official then explains the voting procedure to the elector and issues the ballot. The voter makes his or her choice in the privacy of a voting booth and refolds the ballot paper. The voter returns to a polling official who removes the second counterfoil from the ballot. The voter then deposits his or her vote in the ballot box.

The COG found that the voting procedures, if followed, contributed to the integrity of the voting process. However, the need to detach the second counterfoil requires handling of marked ballots by a polling official, which could affect the secrecy of the vote.

Voting stations were provided with a standard form enabling a candidate or party agent, or an elector, should they wish, to file a complaint regarding any aspect of the polling process. This provision is commendable in that it enables complaints to be filed via an easy and straightforward procedure.

Advance voting

Key public officials who would be on duty on election day, such as police officers, were entitled to apply to cast their votes early. Advance voting took place on 30 September. The IEC established two advance voting polling stations in each district. One voting station was established for persons whose registration was at a voting station located in the constituency and one was established for persons whose registration was in another constituency in the district. In the second case, this required polling officials to manage ballot papers from a number of different constituencies. Special registers of electors were compiled, listing those whose applications had been approved.

After the completion of the advance vote, the ballots for constituencies outside the constituency of voting were secured in special envelopes and, through the IEC, were forwarded to the relevant constituency. To preserve the secrecy of the ballot, these votes were mixed with votes cast at a designated voting station in the respective constituency. The IEC informed the COG that approximately 3,000 votes were cast in advance.

COG deployment

COG observer teams were present early on 7 October to witness the setting-up of voting stations and the start of voting. All teams reported that polling stations visited opened on time. During the voting phase, COG members observed proceedings at 44 voting stations, in various constituencies located in nine of Lesotho's 10 districts. The COG observed voting by prisoners at the Qacha's Nek and Butha-Buthe prisons. The COG also observed counting in six voting stations and the tallying of results in five districts on 8 October 2022.

Polling officials, party agents and observers

All voting stations were staffed by the appropriate number of polling officials. Party agents were present in large numbers at all stations visited, thereby contributing to the high level of transparency. Police were present at all stations visited and, with few exceptions, they were stationed outside voting centres and their presence was discreet. The large majority of voting station managers, polling officials and party agents were women, and youth were reasonably well represented as officials and agents. Many female police officers were on duty at voting stations.

The COG did not observe the presence of any unauthorised persons or any interference in the polling process. Party agents were able to raise issues they felt were noteworthy with polling officials and, in general, polling officials sought to explain their decisions and actions to party agents.

International and citizen observers were accredited in large numbers. In addition to the COG, observers from SADC, the AU and the EU were visible over the election period. The COG was informed that 500 citizen observers had been accredited by the IEC, with the majority deployed by the LCN and the Catholic Commission for Justice and Peace.

Voting process

All COG members reported a calm and peaceful atmosphere and described the orderly manner in which polling took place.

In some stations visited by the COG, the processing of voters was slow and consequently queues formed. In most cases, these were not unduly long and, in general, voters were patient. Elderly voters and others in need were permitted to vote without queuing. Some voters appeared to have difficulty in identifying the candidate (or party) of their choice on the ballot paper and in identifying the box in which they should place their mark.

The IEC did not establish any specific measures at voting centres to mitigate SARS/COVID-19 risks posed by the holding of an election, notably the concentration of persons in confined spaces, such as crowded outdoor tents, which did not allow for the 6 metres distance rule to safeguard against COVID-19. The wearing of masks by those present at voting stations was voluntary rather than mandatory and hand sanitiser was not made available.

COG members observed voting by PWDs. In the Group's opinion, most polling stations visited would not have been accessible for PWDs. To assist sight-impaired electors to vote independently, braille ballot sleeves were available at some polling stations, although the COG did not observe voting by persons who may have had need of these. The height of the voting booths may have presented a difficulty for voters who use wheelchairs.

Adherence to procedures

The polling process was conducted transparently. Polling officials were diligent in following the correct procedures, notably in checking voters' entries on the electoral registers, checking voters' identity documents, looking for and applying indelible ink to voters' fingers and stamping the reverse of the ballots. Nevertheless, minor inconsistencies, such as when the reverse of the ballot paper was stamped, were noted, although the COG does not consider that these had any effect on the integrity of the process. The largely uniform application of procedures and approaches towards voters indicated the impartiality of polling officials.

In general, the layout of voting centres and placement of voting booths was conducive to a secret ballot. However, in smaller stations, on occasions the voting booth was too close to party agents and polling officials. The length of the ballot coupled with the design of the voting booth meant that, in these stations, it was possible to see whether a voter had marked his or her ballot towards the top, middle or bottom. The size of the ballot coupled with the modest size of the ballot box meant that, by the afternoon, the ballot boxes were nearly full, and voters who voted later in the day often struggled to force their ballot into the ballot box. The problem would have been magnified had electors voted in larger numbers.

Voter lists

At almost all voting centres visited, COG members were informed that the names of some eligible voters did not appear in the register of electors received by the polling officials from the IEC. It was reported to the COG that in the three constituencies in Qacha's Nek district, out of some 49,000 registered voters, the names of 25,000 did not appear on the registers of electors. Electors had to find other means of establishing their identity and eligibility to vote. Less than 48 hours to election day, it was reported that the IEC was still struggling to correct the register entries of approximately 700 people.

In response to the omission of a name from the register of electors at a specific voting station, polling officials sought to identify if the elector was eligible to vote at that voting station, and if not at which voting station the elector was registered. Returning officers and the IEC district offices assisted polling officials and voters to identify the location at which electors were registered to vote. However, in some areas, power outages and poor telecommunication coverage impeded communications and verification.

In some cases, electors' names were recorded at other voting stations; in other cases, their names appeared in provisional (or previous) registers and they were allowed to vote. However, in a small number of cases, electors who thought that they were properly registered were unable to cast a ballot.

The late change to some constituency boundaries also caused confusion among voters regarding their assigned voting place. Villages that had been reassigned to a different constituency had seen their voting centre change from the place where villagers had voted in previous elections. For example, in Mokhotlong constituency, it was reported to the COG that 28 voters were *de facto* unable to vote because they presented themselves at their old rather than their assigned polling station, which was located in Qhoali several miles away. Such incidents may indicate a lack of proper communication between IEC officials and the inhabitants of settlements whose polling locations had changed.

Despite the inclusion of numerous deceased persons in the register of electors and duplicate entries, the COG did not observe and was not made aware of any attempts at impersonation or double voting.

Closing and counting procedures

All polling stations observed by the COG closed on time at 17:00. At this point, the polling station manager closed the ballot box opening and sealed it. Prior to opening the ballot boxes, polling officials reconciled the number of ballot papers issued against the number of electors who had been marked as having voted on the certified copy of the electors' register. This number should also correspond to the number of detached ballot counterfoils.

After the ballot box was opened, polling officials removed each ballot from the box, one at a time, and verified that each ballot had a stamp on its reverse side. They then verified that the number of ballots in the box corresponded to the number of registered electors who had been recorded as voting. In accordance with procedures, polling officials then determined the votes for each candidate and party, placing the votes into separate piles and keeping a tally of the running totals. Each vote was announced aloud, and the ballot paper was shown to the party agents, allowing them to register an objection should they wish.

After all votes were counted, the voting station manager entered the results and other data into the official results record. The voting station manager then signed the form and invited party and candidate agents to also sign the record. After this process was completed, a copy of the results record was posted outside the voting centre. Sensitive materials, including the votes and the register of electors, were placed in the ballot box and sealed and then transported to the office of the constituency returning officer.

In some COG observations, the completion of procedures prior to opening the ballot box was protracted; the box was rarely opened within an hour of the close of the poll and on one occasion it happened more than two and a half hours after the close of the poll. Polling officials prioritised transparency and adherence to correct procedures over speed, and the counting of votes took several hours, with most stations only completing the vote count at 21:00–22:00. The need to complete the results sheets and pack the materials meant that many voting centres were still working late into the night despite the relatively modest number of votes to be counted at each station.

The ballot design, in particular the blank space underneath the second column of candidates, appeared to cause some voters confusion. While the intention of the voter was clear, the ballots were correctly determined as invalid as the marks were outside the box and instead placed in the blank part of the ballot below the second column listing the candidates and their parties.

In Qacha's Nek constituency, the voting station manager decided not to invalidate three ballot papers that were not stamped on the reverse. This decision was taken after consultation with party agents. While the effort to avoid invalidating otherwise valid votes is understandable, the decision is clearly against the applicable provisions of the Electoral Act.

Tabulation (tallying) of results

On the night of the election and the day after the election, polling officials delivered the results and balloting material to the constituency returning officer. Party agents were present at the tabulation centres to observe proceedings. Upon receipt of the material from a voting centre, the returning officer read aloud the votes received by each candidate and party and entered the totals into a paper table of results, which was displayed prominently. In lowland and urban areas, this process proceeded relatively quickly. Polling results and materials from some mountainous areas required transportation by helicopter or horse, meaning slow receipt of results. Although somewhat slow, COG assessed the tabulation process as being transparent, and the Group recognised the dedication of returning officers, some of whom worked continuously from before the opening of polls on 7 October 2022 to the receipt of the last voting station result late on 8 October 2022.

The COG in one constituency noted that several ballot boxes containing ballots and other sensitive material were delivered without the required seals. While this is a serious procedural omission that should be addressed through proper training, it was not raised with the COG as an issue by party agents who were present at the tabulation centre and there was no indication of this being anything more serious than a procedural oversight.

Voter participation and results

The IEC began to officially announce the first election results on 8 October 2022. The announcement of results continued until the final result was announced at 15:00 on 10 October 2022. The tallying process at constituency level and the announcement of results by the IEC were transparent, with the announcement being aired live on state TV and results being uploaded quickly onto the IEC's website.

According to the official results, out of the 1,383,844 registered voters, only 37.7 percent participated, the lowest turnout in the history of the Lesotho election. However, this figure needs to be seen in the context of inaccuracies in the register of electors (duplicate entries and the presence of deceased persons on the register) and the high number of Basotho who work and reside in South Africa but who are registered to vote at stations in Lesotho as the legislation does not provide for out-of-country voting.

The following official results were announced by the IEC:

Party	Constituencies (80) won	Compensatory mandates	Total Seats won
RFP	57	0	57
DC	18	11	29
ABC	0	8	8
BAP	0	6	6
AD	2	3	5
MEC	1	3	4
LCD	0	3	3
SR	1	1	2
BNP	0	1	1
PFD	0	1	1
MPS	0	1	1
BCM	0	1	1
HOPE	0	1	1
NIP	1	0	1

One constituency in Maseru (No. 32, Stadium Area) was initially announced as having seen a 'failed election' owing to the death of a candidate after nominations closed and prior to election day. Instead, voting for parties took place in that constituency on 7 October, enabling parties' share of the vote to be determined and hence their share of the 40 compensatory mandates. A by-election was later held on 9 December 2022 to determine the Stadium constituency MP, with the results declared on 17 December 2022.²⁵ The IEC announced Mrs Mampho Alina Tjabane from the RFP as the winner, with 1,611 votes.

Recommendations

- Consideration could be given to reviewing polling procedures to avoid the handling of marked ballots by polling staff.
- To facilitate the identification of the candidate and party of the voter's choice, the IEC could consider printing ballot papers in colour, particularly if a large number of parties field candidates.
- The IEC should consider engaging with groups representing the interests of PWDs with the aim of developing an action plan to improve access to the election process for these electors, while the government should strive to progressively improve access to public infrastructure that is temporarily used as polling premises. The action plan may include an audit of polling premises and making proposals to the legislature to allow reasonable accommodations to standard polling procedures for electors living with a disability.
- If the number of parties that field candidates continues to be large, necessitating larger-than-usual ballot papers, the IEC may need to consider redesigning ballot booths to preserve secrecy and using larger ballot boxes to ensure capacity. In addition, the IEC could consider increasing the number of booths with the aim of speeding up the voting process.
- To reduce the number of invalid votes, the IEC could consider a redesign of the ballot to make it clear where voters should place their mark.

²⁵ LENA (2022) 'RFP Wins Elections at Stadium Area'. www.gov.ls/rfp-wins-elections-at-stadium-area/

Annex I. Biographies of Chair and Observers

Chair

H.E. Danny Faure (Seychelles)

Mr Faure was elected the fourth President of Seychelles on 16 October 2016. He was Head of Government and held the ministerial portfolios of Defence, Public Administration and Legal Affairs. In addition, in February 2020, at the start of the global COVID-19 pandemic, he held the portfolio of Health. Earlier, Mr Faure was Vice-President of the Republic of Seychelles, holding ministerial portfolios for Finance and Trade, Public Administration, and Information and Communication Technology.

As a young man, Mr Faure worked with the Seychelles People's Progressive Front. He became the Chair of its Youth Wing and was elected as a member of the Central Committee of the Party. In June 2009, he was appointed Secretary General of the Party. With the return of multi-party democracy to Seychelles in 1993, Mr Faure was appointed Leader of Government Business of the majority party in the National Assembly, a post he served in for five years, from 1993 to 1998.

Mr Faure was appointed Minister of Education on 28 March 1998. He was instrumental in putting forward the idea of a virtual university for small states of the Commonwealth in the Ministers of Education Forum and the Commonwealth Parliamentary Conference held in Halifax, Canada. He also served on the Board of the Commonwealth of Learning (COL) from 2014 to 2016; one of his initiatives was support to COL on the Blue Economy for Small Island States.

Mr Faure is currently Patron and Chair of the Danny Faure Foundation, which was launch on 8 June 2021. He is also a member of the Eminent and Distinguished Persons Advisory Panel of the Eastern and Southern African Trade and Development Bank.

Observers

Boniface Cheembe (Zambia)

Mr Cheembe is a democracy and governance civil activist, lecturer, researcher, consultant and peacebuilder currently working as Executive Director for a Zambia-based NGO whose mandate is to promote peace and democracy in Zambia and the Southern African region, called the Southern African Centre for the Constructive Resolution of Disputes. He holds a BA from the University of Zambia with a major in Political Science and a minor in Development Studies and a BSS from Stockholm University in Sweden. He also holds an MA degree, attained as a Fulbright Scholar, from Eastern Mennonite University in Harrisonburg, Virginia, in the United States of America, with a concentration on Conflict Transformation. He has vast experience in election observation and holds several portfolios, which include Chair of the Common Market for Eastern and Southern Africa Programme on Peace and Security, as well as Civil Society National Chapter Chair and Regional Vice Chair for the International Conference of the Great Lakes Region CSO Forum.

Terry Dale Ince (Trinidad and Tobago)

Ms Ince is a development specialist, social entrepreneur and human rights advocate/activist. She is the founder and convener of the CEDAW Committee of Trinidad and Tobago, a United Nations Economic and Social Council-accredited volunteer NGO incorporated under the 1995 Companies Act of Trinidad and Tobago, focused on advocacy, education and public awareness on and for the sustainable implementation of the principles of CEDAW. Using a collaborative approach, the NGO uses the recommendations advanced at state periodic reviews to ensure compliance within a national and human rights context. She

is also Managing Director of TDI and Associates, a change and development management consulting practice that integrates the principles of change management into daily practice for behaviour change. Prior to joining the civil society sector, Terry enjoyed a career in business and technology, where she managed territories in the private and public sectors while contributing her skills and knowledge to NGOs in developed and developing countries and underserved communities.

Hon. Justice Amraphael Mbogholi Msagha (Kenya)

Justice Msagha is a retired Judge of the Court of Appeal, Kenya. He was appointed Judge of the High Court on 27 May 1987. He holds Bachelor of Laws (Honours) degree from the University of Dar es Salaam, Tanzania, and a Diploma in Law from Kenya School of Law. He was admitted as an Advocate of the High Court of Kenya in 1978 and was in private practice until his appointment to the Bench. Justice Msagha has served as the Presiding Judge in the High Court Stations of Kakamega, Bungoma and Mombasa. In addition, Justice Msagha has been the Presiding Judge of the Criminal Division, the Family Division, the Environment and Land Division (before the establishment of the Environment and Land Court) and the Civil Division.

Justice Msagha has also performed relief duties in the High Courts of Busia, Eldoret, Nakuru and Nyeri. He chaired the Taskforce Committee that developed and published the Sentencing Policy Regulations. He also chaired the Judiciary Committee on Elections leading to the 2017 general elections. In the process, he interacted with stakeholders including Ambassadors, Heads of Missions, the Independent Electoral and Boundaries Commission, the Law Society of Kenya, the Registrar of Political Parties, the Political Parties Disputes Tribunal, CSOs, the media and the Kenyan private sector.

Justice Msagha has handled many election petitions, including the Presidential Election Petition in 1997 – Kibaki v Moi – and the Nairobi Governor Election Petition in 2017. Justice Msagha is also a certified mediator. He has also been a member of the International Association of Refugee Law Judges.

Hon. Jacqueline Muhongayire (Rwanda)

Hon. Muhongayire is a former Rwandan senator and a former member of the Pan-African Parliament and the East African Legislative Assembly. She has over 25 years of public service experience. She served as Minister of the East African Community in the Rwandan government and as Deputy Speaker of Parliament. She was one of 12 women founders of the Rwandese Women Parliamentary Forum and she is a member of numerous women's organisations. At national, regional and continental level, she has been chair of various parliamentary committees.

She is passionate about gender equality, women's empowerment and women in decision-making. She has contributed to the promotion of social welfare and appropriate mechanisms for equal opportunity and social justice. During the post-genocide period in Rwanda, she contributed to the reconstruction of the country and the adoption of a gender-sensitive and inclusive Constitution, ensuring various pieces of legislation used a gender lens. Hon. Muhongayire hold a Master's degree in Business Administration in Project Management from the Maastricht University School of Management.

Paul O'Grady (United Kingdom)

Mr O'Grady has worked on electoral and democracy issues for almost 30 years, consulting for various international organisations including the United Nations, the EU, the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the AU, the Commonwealth, Westminster Foundation for Democracy, the Carter Centre and the International Foundation for Electoral System. During the 1990s, he served on United Nations and OSCE peacekeeping missions in Mozambique, Angola and Kosovo. He has participated in over 30 OSCE/ODIHR election missions in various positions, including as Head of Mission, Deputy Head of Mission Election Analyst and Political Analyst.

In 2005, he co-founded Democracy Reporting International, serving as Deputy Chair (until 2009) and Co-Director (until 2013). More recently, he has worked with election commissions in Africa and the Middle East to advance legal and regulatory reforms. Between 2015 and 2018, he worked with the AU to strengthen its election observation methodology and establish a training programme for observers and experts. He

has contributed to a number of election observation handbooks and guides, reviewed electoral laws and published opinion pieces in the international media. In 2015, he founded Article 21, a consultancy company specialising in electoral processes, legislative reform and advocacy.

Blessing Tunoh-Asso (Nigeria)

Born in Yola, Adamawa state, Nigeria, Ms Tunoh-Asso is a conflict-sensitive journalist and editor with a passion for solution-driven storytelling. In 2016, she received the Nigerian Chief of Army Staff's Award of Excellence and Courage as a correspondent for Nigeria's biggest private media brand, Channels Television. She is also a recipient of an award for 'Outstanding Performance in Conflict Reporting' for her coverage of the northeast insurgency.

Ms Tunoh-Asso is a member of the 2021 cohort of the Report Women fellowship, an affiliate of the Wole Soyinka Centre for Investigative Journalism. With 15 years of post-university experience, she has worked in the print, broadcast and now the new media as a media entrepreneur. She is the founder and CEO of BONE Communications, a digital cum consulting media brand with which she has continued to pursue her passion for women-centred, inclusive and public service journalism while providing mentorship for younger journalists. In recognition of her brand's work, she recently earned a badge from the Public Complaints Commission as an advocate for social justice. She holds a BA in Mass Communication from the University of Maiduguri and a Master's degree in Humanitarian and Refugee Studies from the same school.

Annex II. Arrival Statement

Lesotho General Elections

Arrival Statement

His Excellency Danny Faure

Former President of Seychelles

Chairperson of The Commonwealth Observer Group

The Commonwealth Secretary-General, The Rt Hon. Patricia Scotland KC has invited me to chair the Commonwealth Observer Group for Lesotho's General Elections.

As an African and former president of Seychelles, I consider this an incredible honour.

I am leading a group of six other eminent persons, appointed from across all regions of the Commonwealth, with a breadth of experience spanning the social and political spectrum, from civil society, media, electoral management and the legal space. We are here, at the invitation of the Independent Electoral and Boundaries Commission of Lesotho, ahead of the elections scheduled to hold on Friday 7th of October.

We are tasked with observing the electoral process, to act impartially and independently, as we assess the pre-election environment, the conduct of elections itself on polling day, and importantly, the post-election period. The mandate placed on our shoulders are ones we take seriously and earnestly.

The significance of elections in a democracy cannot be over-emphasized. More importantly the significant of *this* election to the people of Lesotho, the Southern Africa region, Africa as a continent, and the whole of the Commonwealth cannot be underscored.

Our planned briefings with relevant stakeholders have already started and we have met with the representatives of the media and civil society organizations, and we plan to have other wide-ranging, updates from the IEBC, political parties, security, citizen observers, and women's and youth groups.

Our group will be split into small teams and will be deployed to several locations across the country to observe the preparations ahead of the polling period. They're also mandated to meet with political parties, security agencies, election officials, and other stakeholders in their respective locations.

On the polling day, we will observe the opening, voting, closing, counting, and results management processes.

Our mandate is to observe, and not to interfere with, the process but to give a more detailed and substantive account of our observations of the whole electoral process on Sunday 9th of October when we will issue a statement on our preliminary findings.

After that, a final report will then be prepared and submitted to the Commonwealth Secretary-General, and subsequently shared with the government of Lesotho, relevant stakeholders, and the public.

The Commonwealth has been in constant engagement with Lesotho, a valuable member, for many years, supporting the country's democracy efforts through legislative drafting and other Constitutional issues.

The Commonwealth Secretary-General Patricia Scotland KC also issued a statement calling for peace. I join her in echoing these sentiments.

We urge all stakeholders and voters, to commit to doing the same, consistent with the Commonwealth's values and principles.

On behalf of the Group, I would like to thank the people of Lesotho for their hospitality and for allowing us to be a part of this process.

The Commonwealth Observer Group members are:

- **Chairperson:** H.E. Danny Faure, former President of **Seychelles**
- Ms Blessings Tunoh Assom, Editor, Channels TV, **Nigeria**
- Hon. Jacqueline Mohongayire, former Senator, **Rwanda**
- Ms Terry Dale Ince, CEDAW, Gender and Human Rights Advocate, **Trinidad and Tobago**
- Mr Paul O'Grady, Executive Director, Article 21 and former Deputy Head of OSCE Elections Missions, **United Kingdom**
- Mr Boniface Cheembe, Executive Director, Southern African Centre for the Constructive Resolution of Disputes (SACCORD), **Zambia**

Annex III. Deployment Plan

Lesotho General Elections

7 October 2022

Deployment 5–9 October 2022

LOCATION	TEAMS	CONTACTS
Maseru/Berea/Mafeteng	Chair – H.E. Danny Faure Staff Team Leader: Abiola Sunmonu Communications Officer: Temi Kalejaiye Admin/Logistics: Madonna Lynch	Avani Lesotho Hotel
Qacha's Nek	Terry Dale Ince Abubakar Abdullahi	New Central Hotel
Leribe/Butha-Buthe	Boniface Cheembe Segametsi Mothibatsela	Mountain View Hotel
Quthing / Mohale's Hoek	Hon. Justice Amraphael Mbogholi Msagha Hon. Jacqueline Muhongayire	Fuleng Guest House
Thaba-Tseka	Paul O'Grady Blessing Tunoh-Asso Gary Rhoda	Motherland Guesthouse

Annex IV. Interim Statement



Interim Statement by
His Excellency Danny Faure
Former President of Seychelles
Chairperson of the Commonwealth Observer Group
Kingdom of Lesotho's General Election
9 October 2022

Dumela and Good morning ladies and gentlemen.

I am honoured and privileged to present the interim statement of the Commonwealth Observer Group for the 2022 Lesotho General Elections. This is just based on our initial findings and does not constitute the final report, which we will make publicly available, at a later date when the electoral process has also formally been completed.

Our group came at the invitation of the Independent Electoral Commission. The group was then constituted by the Commonwealth Secretary-General, the Rt Hon. Patricia Scotland KC.

The Commonwealth and Lesotho have enjoyed a very good relationship over the years and the Commonwealth has taken part in elections observations in Lesotho since 2002. This year, in fact, marks the 20th anniversary of the Commonwealth's election observation mission in Lesotho. It is a milestone that demonstrates the longstanding relationship between the kingdom and the Commonwealth and the commitment of both to democratic principles.

We are pleased by the calm and peaceful atmosphere in which the elections took place. The Basotho people exercised their electoral choices in a peaceful manner, taking their time to queue and follow due process and procedure in electing their next National Assembly representatives.

I would like to seize this opportunity to commend and recognize the work of the IEC, the Security forces, Civil Society organisations, and Faith-based groups in working together to prepare electorates for this election, in light of budgetary constraints, time, and capacity limitations.

I also want to acknowledge the hospitality of the Basotho people and the warm welcome my team has received from Maseru to the mountainous hinterlands of this vast and beautiful kingdom. From IEC staff to voters and party agents, our team was given free access to watch and observe the undertakings, unobtrusively.

Arrival & Group Make Up

Our team arrived in Maseru on 27 September, with members consisting of various eminent persons, experts in their own rights in the field of politics, law, elections, civil society, gender rights, and the media. It is a gender-balanced group, with observers from Kenya, Nigeria, Rwanda, Seychelles, Trinidad and Tobago, Zambia, and the UK, representing almost all the regions of the Commonwealth.

We have heard the views of diverse stakeholders, from senior government officials to political party representatives, civil society groups, and other NGOs representing youth, women, and people with

disabilities, as well as the security forces, so as to get a well-rounded perspective of Lesotho and its socio-political atmosphere in the lead up to the elections. I have been encouraged by the openness and frankness of our discussions with various stakeholders, including the IEC who provided us with a good picture and assessment of public sentiment regarding the elections and beyond.

Our group went to about 50 polling stations in almost all the 10 districts of the Kingdom. We met with voters, polling officials, party agents, and other observers and observed the opening, voting, closing and tabulation phases.

Our interactions have been engaging and fruitful. They helped us get a better understanding and appreciation of the electoral process and the public's engagement with the electoral framework and their hopes and aspirations moving forward.

Key Findings

I will now present the key findings of the group and will begin by highlighting the positive aspects of the elections.

The Group notes that the media in Lesotho is still growing, and the consensus is that the media, most especially state-owned media, has been fair in its reportage and equitable in its coverage of the election particularly.

We commend the private media for leading on issues, particularly questioning IEC on its general conduct, and highlighting the issues of the voter roll.

We acknowledge the active participation of women and youth as polling staff and party agents. Their commitment and dedication to their role were evident in their preparedness to work together in transparency and the long hours they spent in preparing the polling stations and tallying the results.

We recognize the efforts of some civil society associations and groups to facilitate voter education despite a short and constrained timeline, in order to encourage the populace to vote and support them in understanding the procedures.

We also commend the IEC's policies to facilitate assisted voting to PWDs, seniors, and other groups in prioritizing or assisting them in order to make their votes count too.

We applaud the patience and determination of the voters who did come out, to exercise their civic rights and do so patiently in lines up, at early hours of the day, in inclement weather, and in sometimes challenging mountainous terrains.

We acknowledge the IEC's commitment to following procedures by starting the voting process, for the most part on time by 7 am or slightly after 7 am and allowing those in line by 5 pm to vote as per the IEC's policies.

We also note and commend the IEC for clear signage and identifications of voting centres and visibility of IEC police assistance to support crowd control.

We applaud the party agents and polling staff who contributed to the conducive atmosphere witnessed at the poll due to their collaborative efforts.

And finally, congratulations to the IEC on the transparent way in which the election results were tabulated and announced.

Notwithstanding the positives noted, as independent observers, it is our duty to also indicate challenges and identify some of the instances that impact transparency, credibility, and smooth operation of the elections.

We do this with the express aim of supporting the IEC to identify opportunities for improvement and to strengthen future electoral processes in Lesotho.

Some of the key issues of concern that we observed include the following:

Areas of Concern:

1. **Issues with Voter's Roll:**
 - Some polling stations and party agents did not have final copies of the voter's roll even on election day. Some voters could not find their names on the rolls and some were directed to other constituencies due to boundary delimitation exercises that changed their voting stations
 - Some information like dates of births on some voter's ID cards did not correspond to the information on the voter's roll.
2. **Lack of Adequate Materials and Identifications for IEC Staff:**
 - IEC should ensure that the ballot boxes and booths are appropriate for larger ballot papers.
 - Some polling stations did not have electricity or solar capabilities, so IEC polling staff were required to use candlelight to tally results into the night.
 - Some staff were not provided with adequate materials to sleep in the polling stations overnight or food provisions.
3. **Lack of adherence to COVID-19 protocols:** Despite signage about the wearing of masks, there was little adherence to COVID protocols by IEC staff, party agents, and voters.

Notwithstanding the shortcomings and resource constraints, and minor procedural cases, this did not in our view, impact the overall outcome and credibility of the elections.

Recommendations

Our final report will detail a comprehensive set of recommendations to address the above challenges identified. These would likely include:

1. The IEC and the legislator should review the procedures for compilation of the voter register to better ensure its reliability in particular as regards, duplicates, removal of deceased persons, and inclusion of youth. Finalising the voters' roll at an earlier point in the process would enable an electronic copy to be issued to parties further in advance.
2. The Independent Electoral Commission and all relevant stakeholders to review the reports of all elections monitoring groups for the 2022 general elections and develop an action plan to better prepare for the 2023 district elections and future general elections.
3. National Reforms process and electoral reforms as part of this process, to be prioritized and given a new lease with the next administration so as to streamline processes and create a more stable governance framework
4. The IEC should partner and consult with key stakeholders and civil society organisations to undertake and support voter's education and prepare citizens to monitor elections well in advance of future elections.
5. We urge the incoming government to invest in digital infrastructure and encourage IEC, political parties, and politicians including the electorate to make use of social media to communicate their messaging.
6. The Government to release sufficient funding to the IEC, to effectively carry out its duties over the electoral cycle.
7. Civic education should be an ongoing process and not only done in the lead up to an election. Appropriate budget resources should be made available to IEC and all stakeholders to action and implement.

I would like to conclude by once again, congratulating and lauding the Basotho people for their commitment to undertaking their civic rights in an atmosphere of peace and calm.

Our hope is that the process of national reform that had already started will continue and be prioritized with the incoming administration so the Basotho people will have the stability, consistency, and progress they wish to see in their governance, economy and society.

On behalf of the team and the Commonwealth, we wish to reiterate the commitment of the international community in supporting the Basotho in the reform and reconciliation process and continue to make the Kingdom a place of pride, inclusivity, and prosperity for all Basotho.

As we prepare to depart in the coming days, from this beautiful mountain kingdom, we are inspired by the will of the Basotho to make this country greater than it already is and we will stand in solidarity with you as you continue on this journey.

On behalf of our team and myself, I want to say a heartfelt REA LEBOHA to you all for your kindness and hospitality.

God Bless Lesotho.

The Commonwealth Observer Group Members are:

- **H.E. Danny Faure - Chairperson** Former President of Seychelles
- **Justice Mbogholi Amraphael Msagha** Retired Judge, Kenya
- **Ms Blessings Tunoh Asso** Former editor, Channels TV, Nigeria
- **Hon. Jacqueline Mohongayire** Former Senator, Rwanda
- **Ms Terry Dale Ince** CEDAW, Gender and Human Rights Advocate, Trinidad and Tobago
- **Mr Paul O'Grady** Executive Director, Article 21 and former Deputy Head of OSCE Elections Missions, United Kingdom
- **Mr Boniface Cheembe** Executive Director, Southern African Centre for the Constructive Resolution of Disputes (SACCORD), Zambia

Annex V. 2017 COG Recommendations – Status of Implementation

Lesotho General Elections 2017

Status of 2017 COG Recommendations as of October 2022

The 2017 Lesotho COG Report can be accessed [here](#)

Summary:

• Total Recommendations	17
• Fully Implemented	1
• Mostly Implemented	2
• Partially Implemented	3
• Not Implemented	5
• Not Yet Determined or N/A	6

No.	2017 Recommendation	Type of Recommendation	Status of Implementation	Comments
Media				
1	Undertake a process of review and reform of media-related legislation with a view to addressing existing restrictions and creating an enabling environment for the operation of the sector, including in respect to access to information and protection of media freedom.	Legal/Regulatory	Not Implemented	
2	To ensure greater and more equitable access, undertake a process of transforming the state broadcaster into a public broadcaster.	Legal/Regulatory	Not Implemented	
3	Continue to implement training and other development initiatives for media practitioners to enhance their practice of professional standards in reporting, including on effective reporting of political and election issues.	Technical	Not Implemented	
4	Establish a self-regulatory mechanism for the media.	Regulatory	Not Implemented	
Electoral System				
5	Review the electoral system, and in particular the consideration of introducing a threshold (e.g. between 2 and 5 per cent), below which parties would not gain proportional representation seats in the National Assembly unless they separately won one or more constituency seats. If parties gain a total number of votes that is above the threshold, they can still win proportional representation seats even if they have not won any constituency seats.	Legal	Partial	

(Continued)

No.	2017 Recommendation	Type of Recommendation	Status of Implementation	Comments
Electoral Procedures				
6	The IEC should provide adequate lighting in voting stations at all future elections.	Administrative	No Data	
7	The IEC should keep the electoral register under continuing review, so that the welcome achievements in cleaning the register in advance of the 3 June 2017 elections are sustained.	Legal/Regulatory	Mostly	
8	The IEC should review voting and counting procedures to identify opportunities to make changes that will streamline and simplify procedures without reducing the important benefits of transparency and openness that were observed. In particular, the IEC should review the arrangements for removing the top counterfoil from ballot papers after they have been marked, with a view to making changes that will ensure that marked ballots are not handled by anyone other than the voter before they are placed in the ballot box.	Regulatory Administrative	Not Implemented	
9	The IEC should ensure that the language used on all election stationery and forms can be easily understood by all.	Administrative	No Data	
10	The IEC should improve access to voting stations and all other phases of the electoral process for persons with disabilities, both physical and intellectual.	Administrative/Legal	Partial	
11	The IEC should continue its impressive efforts in training voting station staff and all others present at voting stations and continue to mount comprehensive civic and voter education programmes.	Administrative/Technical	Partial	Civic and voter education programmes were implemented as well as training for voting station staff; however, observers were informed by stakeholders that the timing was too short.

(Continued)

No.	2017 Recommendation	Type of Recommendation	Status of Implementation	Comments
12	The civic and education programme should include instruction on the voting process and an explanation of the electoral system.	Technical/Administrative	Mostly	Observers in their interactions with stakeholders noted that civic education and instruction were undertaken; however, the timing and scope were limited.
13	The IEC should conduct and share a comprehensive analysis and research on the low voter turnout.	Administrative	No Data	The turnout for the 2022 elections was 37 per cent, which was lower than in 2017 (48 per cent). This low turnout could be attributed to several factors; however, there is as yet no indication of whether the IEC will be conducting a research and analysis on this.
14	The IEC and the Lesotho Mounted Police Service should continue the practice of deploying police assistants to support the electoral process.	Administrative	Fully	Police and police assistants were deployed at polling stations to support the electoral process
15	In the context of an election it is especially important that, if the military is to be deployed, this should be only after careful consideration and in consultation with the IEC.	Administrative	No Data	No army was observed by the Group at the polling stations visited.
Participation of Women, Youth and Persons with Disabilities				
16	The IEC, national gender machinery, civil society and political parties should implement national awareness-raising and capacity-building campaigns to promote the meaningful participation of women, youth and persons with disabilities in all aspects of the electoral process.	Legal/Regulatory/Technical	No Data	The Observer team did not witness any awareness campaigns or materials to promote meaningful participation of women, youth and people with disabilities.
17	Political parties should promote participation of women, youth and persons with disabilities at all levels within the party, including providing them equitable opportunities to represent the party as candidates in national elections.	Legal/Regulatory	No Data	Anecdotes were provided by the parties on how they promote participation of women, youth and people with disabilities through proportional representation. Observers were unable to verify this through party policies or manifestoes.

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