



PRELIMINARY STATEMENT

Lesotho National Assembly elections well run despite financial shortcomings, legal uncertainty and uneven playing field for contestants

Maseru, 9 October 2022

This preliminary statement of the EU election observation mission (EU EOM) is delivered before the completion of the entire electoral process. Critical stages remain, including the tabulation of results and the adjudication of petitions. The EU EOM is now only in a position to comment on observation undertaken to date, and will later publish a final report, including full analysis and recommendations for electoral reform. The EU EOM may also make additional statements on election-related matters as and when it considers it appropriate.

Summary

The Independent Electoral Commission professionally conducted a well organised election day, with a moderate voter turn-out. Election preparations, especially the voter registration and voter education process were negatively affected by financial limitations. Fundamental freedoms were largely respected, with media constrained by limited resources, interference in editorial independence, as well as problematic legislation. A vast choice of political parties competed in a peaceful but uneven campaign, due to largely unregulated campaign finance lacking transparency and oversight. The strengthening of the representation of women, accessibility for persons with disabilities, and establishing a Human Rights Commission remain to be addressed.

- The legal framework for the 2022 National Assembly elections, comprising the 1993 Constitution and the 2011 Electoral Act, remains unchanged. Uncertainty regarding the applicable electoral legal framework few weeks before the elections posed challenges to the Independent Electoral Commission (IEC), candidates, and voters.
- The IEC was able to conduct most of its activities according to the electoral calendar, notwithstanding the persistent financial shortcomings and legal uncertainties. The performance of the election administrators at district and constituency level was professional, the staff were committed to the work regardless of the difficult situation. By law, the IEC has the power to issue regulations to further interpret and regulate the electoral process, but in practice these are neither formalised nor published.
- The lack of a comprehensive and efficient approach to improving the quality of the voter register affected public trust in its accuracy. In an effort to find an alternative solution to enhance the accuracy of the voter register, the IEC decided to extend the period for public scrutiny and corrections from 12 August to 30 September. The IEC respected the legal deadline for certification of the voter list and its distribution to political parties. The final voter list contained 1,383,844 voters, 767,158 women and 616,868 men.

- The candidates' registration was organised in a transparent and inclusive manner, however, the legal uncertainty on the conditions to stand for election during candidates' registration for Proportional Representation lists put additional time pressure on parties and candidates.
- Fundamental freedoms of association and assembly were respected. The campaign was peaceful, low key in the rural areas, and vibrant in the capital city, especially during the last weekend before election day. Unlimited campaign spending contributed to an uneven playing field between parties and candidates. The difference in visibility between the more popular parties and those with fewer resources was widely observed by the EU EOM. Social media did not play a key role in shaping the political debate. The content of messages remained respectful in tone.
- Lesotho Television provided free of charge advertising time for contesting political parties in accordance with the law. The interference into editorial independence of commercial broadcasters resulted in a lack of independent information and the blurring of editorial and paid for content. Commercial broadcasters displayed bias towards certain political parties in their news coverage, and these violations of legal provisions were not addressed by the regulator.
- The election dispute resolution system comprehensively covers all aspects of the election process. Nevertheless, it lacks specific procedures, deadlines, and criteria for nomination of members of the Electoral Tribunal.
- The EU EOM observed polling in all 80 constituencies within the 10 districts of Lesotho. Election day was well organised and conducted in a peaceful atmosphere. Opening and voting were professionally managed by the IEC staff. The counting process was evaluated as very good with some minor procedural mistakes which did not impact the results. Tabulation was conducted manually at the constituency level. The EU EOM observed in total the voting process in 302 polling stations. While party and candidates' agents were present in 89 per cent of the observed polling stations, citizen-led election observers were only present in 15 per cent of the cases.

The European Union Election Observation Mission (EU EOM) has been present in Lesotho since 27 August 2022 following an invitation by the Government of the Kingdom of Lesotho. The Mission is led by Chief Observer Ignazio Corrao, Member of the European Parliament (MEP), from Italy. In total, the EU EOM deployed 87 observers from all EU Member States, Norway and Switzerland across all ten districts to assess the whole electoral process against international obligations and commitments that Lesotho has made regarding democratic elections as well as the laws of Lesotho.

A delegation of the European Parliament, headed by MEP Leopoldo López Gil, also joined the Mission and fully endorses this Statement. On election day, observers visited over 302 polling stations in all 80 constituencies of Lesotho to observe voting and counting. Over the course of the Mission, the EU EOM met with over 600 interlocutors from state authorities and independent agencies, members of the judiciary, 23 political parties, candidates, civil society organisations (CSOs), and representatives of the media. The EU EOM remains in country to observe post-election developments, and will publish a final report containing detailed recommendations in principle within two months of the conclusion of the electoral process. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation endorsed at the United Nations in October 2005.

Preliminary Findings

BACKGROUND

On 7 October 2022 the Kingdom of Lesotho held its 11th legislative polls to elect the 120 members of its National Assembly. The Parliament is composed of the National Assembly, elected every five years following a mixed member proportional electoral system, and the Senate, composed of 22 Principal Chiefs and 11 Senators appointed by the King. Of the 120 National Assembly seats, 80 are elected in single member constituencies with a First-Past-the-Post (FPTP) system and 40 are elected with a Proportional Representation (PR) system.

Lesotho experienced several disputed election outcomes in the past. Since 1993, the country held seven competitive elections, five of which have been followed by episodes of regional diplomacy or military intervention by the Southern African Development Community (SADC). Frequent Government changes, floor crossing and snap elections have created electoral fatigue resulting in a steady decrease in election turnout since 2012. Party allegiance is very volatile, and a continuous proliferation of political parties has contributed to a further fragmentation of the political landscape. Out of the 65 political parties registered by the IEC, 56 participated in these elections. The outgoing coalition government consisted of the All Basotho Convention (ABC) and the Democratic Congress (DC), in an alignment with seven smaller parties. In March 2022, a new political party, the Revolution For Prosperity (RFP), founded by a wealthy businessman, entered an arena traditionally dominated by parties with significantly fewer financial resources.

LEGAL FRAMEWORK

Uncertainty regarding the applicable legal framework in the lead-up to elections as well as pending court cases regarding candidates' nomination affected the electoral preparation.

Following landmark Courts' decisions, the elections were held according to the 2011 National Assembly Electoral Act with no amendments introduced. The legal framework provides overall an adequate basis for the conduct of democratic and credible elections. Lesotho is a party to all core human rights treaties with the exception of the second optional protocol of the International Covenant on Civil and Political Rights (ICCPR). The 1993 Constitution (amended multiple times and lastly in 2020) contains provisions for protection of fundamental freedoms and against discrimination. However, the Parliament has not been enacting the necessary legislation to implement those overarching provisions in defence of fundamental rights. Although provided by the Constitution, and as advocated by the 2020 Report of the Universal Periodic Review, the country has yet to establish a Human Rights Commission.

The Electoral Act includes all provisions for legitimate elections and a Code of Conduct for political parties, party and campaign finance regulations, electoral disputes and electoral offences. However, access to the text of enacted legislation and Courts' decisions remains inadequate as relevant websites are not regularly updated. Moreover, constitutional amendments are not systematically consolidated in the original text rendering consultation difficult.

A long-standing legal reform was approved by a recalled Parliament during a state of emergency, which resulted in the enactment of a 10th Amendment of the Constitution and an Amended

Electoral Act. Both the declaration of the state of emergency and the recalling of Parliament were challenged in front of the High Court, along with the validity of the two approved Acts. On 19 September, the Appeal Court upheld the High Court decision stating the declaration of the state of emergency and the recalling of Parliament unconstitutional. As a result, the 10th Amendment and the Amended Electoral Acts were repealed. Stability and certainty of laws is a highly respected principle in international electoral practice. Uncertainty in the applicable electoral legal framework less than three weeks before the elections is not recommended.

Implementation of the 2021 Persons with Disability Equity Act which includes the establishment of a Persons with Disability Advisory Council, an advisory body to the Government, did not take place. The exercise of political rights of persons with disabilities is not fully guaranteed.

ELECTION ADMINISTRATION

Despite the legal uncertainty and financial shortcomings, the IEC conducted most of its activities according to the election calendar.

The IEC is an independent constitutional body with a vast range of responsibilities including voter registration, constituency delimitation, party registration and finance. Despite the persistent financial shortcomings and legal uncertainty, the IEC was able to conduct most of its activities according to the electoral calendar. The budget allocated for this election was insufficient and did not take into consideration the IEC's financial needs in the context of a significantly increased number of contestants. In addition, the IEC received its funding late in the process, in weekly instalments, which also impacted negatively on the election preparations and made the implementation of the planned essential activities such as voter education and the transportation of election materials very difficult.

The IEC provided the public with information posted exclusively on its Facebook page, mostly related to voter education messages and announcements. Meetings are informal and meeting minutes are not public. Moreover, the IEC lacks procedures and a mechanism to formally determine and declare its decisions. While the IEC has the legal power to make regulations and interpretation into rules of procedures on various aspects of the election process, in practice they are neither formalised nor published, reducing the clarity and transparency of the IEC's work.

The performance of the election administrators at district and constituency level was professional. The staff were committed to the work despite the difficult situation. Many interlocutors expressed general trust in local election administrations but also doubted the capacity of the IEC to deliver, particularly in the rural areas. Some constituencies struggled with the difficult environment and long distances, lack of electricity and no access to the internet. Many Returning Officers had to work without basic office equipment and insufficient communication tools to liaise efficiently with stakeholders and IEC district offices.

Polling staff was recruited on time and the IEC demonstrated competence in delivering the training. However, due to financial constraints, many observed training sessions were conducted in overcrowded and inadequate locations with insufficient training materials. Voter education was one of the areas that was most affected by the financial shortcomings, as it was reduced from three months to three weeks ahead of the elections. Most of the interlocutors considered the voter education for these

elections to be insufficient especially for certain categories of voters such as youth and persons with disabilities.

VOTER REGISTRATION

Trust in the voter register was affected by a lack of a comprehensive approach to improve its accuracy.

Voter registration is compulsory but there is no legal obligation to vote. All Basotho citizens 18 years of age on the day of the elections and above are eligible to vote; except those sentenced to death and those who committed certain electoral offences. In addition, persons declared to be of “unsound mind” by a Court cannot vote, contrary to international standards.

The accuracy of the voter register has been questioned by many interlocutors referring to possible names of deceased persons and reported errors in voters’ data. To improve the quality of the voter register the IEC had initially planned to link it to the civil register. This proved impossible to do prior to the elections due to the large volume of data to be processed. In an effort to find an alternative solution to improve the accuracy of the voter register, the IEC decided to extend the period for public scrutiny and corrections from 12 August to 30 September.

The IEC respected the legal obligation to publish the certified voter register and shared it with registered political parties no later than 30 days before the elections. The voter list contained 1,383,844 voters, 767,158 women and 616,868 men. Closer to election day, allegations of errors and inaccuracies in the voters’ list were expressed in the media. The IEC denied the allegations and threatened anyone spreading inaccurate information with civil action.

Following a High Court decision in May 2022, the IEC was ordered to redraft 20 out of the 80 constituencies, as they did not meet the population quota prescribed by the Constitution. This led to some voters being confused about the location of their polling station.

REGISTRATION OF CANDIDATES

An inclusive candidate registration amidst legal instability.

The registration of candidates was organised in two phases: first for the 80 FPTP seats and second for the 40 PR seats. The process was organised in a transparent and inclusive manner, however, the legal changes of the conditions to stand for election during the candidate registration period for PR lists put additional time pressure on parties and candidates. The list of candidates for PR seats was not published by the IEC prior to elections. Parties mostly used primaries, interviews, and centralised nominations by national executive committees to select their candidates. Out of the 65 registered political parties, 56 parties successfully nominated 2,360 candidates for the 80 FPTP seats and could also nominate same candidates for the PR lists. The IEC published the list of candidates for FPTP seats in its 80 constituency offices and provided candidates a three-day correction period to verify information, but no consolidated list was published online. Few contestants appealed to the Court, which compelled the IEC to replace or remove candidates less than two weeks before election day.

CAMPAIGN ENVIRONMENT AND CAMPAIGN FINANCE

A peaceful campaign with lack of transparency of campaign finance, no spending caps, and use of State resources.

The legal framework for campaigning overall respects freedoms of assembly and expression. Campaigning is allowed from the day of the publication of the date of the elections until 24 hours before election day. The official campaign lasts for more than 2.5 months, stretching the limited financial capacities of most political parties and independent candidates. In fact, parties with financial resources start to campaign long before that, without sanction. The EU EOM identified some cases of political parties campaigning on social media during the silence period.

Fundamental freedoms of association and assembly were respected. The campaign was peaceful and generally low key in rural areas, contrasting with the vibrant campaign run in the capital city, especially in the last weekend before election day. Parties were campaigning using mostly door to door canvassing and small meetings, coverage by major media was too expensive for most parties, and only those with access to resources could organise rallies. The EU EOM observed no animosity and even a playful atmosphere among campaigning political parties, however, the RFP was sometimes the target of negative campaigning in rallies and verbal attacks from opposing politicians. There are acknowledged links between some political parties and *famo* music groups, which have grown into organised gangs, and their participation in campaign events raised concerns about their influence on elected officials.

Most campaign messages concerned economic development, agriculture, salaries, education, water management, infrastructure and the fight against corruption. The EU EOM observed no specific measures to make information for voters accessible to persons with disabilities. The EU EOM saw several instances of the use of government vehicles for campaigning, which is legal for Ministers and “other officials” but contrary to international good practice.

The IEC is the sole oversight body for campaign and party finance. Its lack of financial and human resources coupled with the high number of registered parties made it extremely challenging to perform this function. There is a legal requirement for political parties and independent candidates to declare to the IEC any donation exceeding LSL 200,000 (EUR 11,500), but no declaration has been made since 2012. Foreign funding for campaign purposes, authorised by law, puts the country at risk of foreign influence, and is not in line with international good practice for democratic elections.

Public campaign funding was allocated by the IEC in proportion to past election results, or in proportion to the minimum number of paying members required to form a party. The IEC started to provide these funds several months after campaigning started and only a few weeks before the elections. The limited disbursed amounts did not level the playing field between parties with unequal financial resources, especially for the smallest ones and independent candidates. The absence of limits to campaign contributions and spending, resulted in a significant advantage for RFP, which created an uneven playing field.

MEDIA

The lack of financial sustainability of commercial media jeopardised editorial independence and resulted in the blurring of editorial and paid for content.

Access to information is constrained by just half of the population having access to electricity. Radio Lesotho has the widest geographical coverage, while Lesotho Television (LTV) remains the only TV station in the country. Both are run by the Lesotho National Broadcasting Services (LNBS), which are part of the Ministry of Communications. In addition, 18 commercial and 6 community radio stations are licensed, and some 10 newspapers published weekly with a poor online presence.

In a limited advertising market, the media outlets lack financial sustainability. This undermines editorial autonomy and the purpose of media to hold political power accountable. EU EOM interlocutors reported interference into editorial independence by media owners, who are at times political actors, and advertisers. Information on individuals controlling media outlets and media's sources of financing lack transparency. In addition, insufficient wages and low level of professional training render journalists accepting payment in return for favourable coverage. Paid for coverage, not recognisable as such, is widespread. Thus, the public perceives radio stations, the most popular media, to be aligned with political parties. Newspapers provide more fact-checked news and in-depth information, however, delayed.

In 2018, the Constitutional Court declared criminal defamation to be unconstitutional, in line with international and regional commitments. However, the IEC reminded on Facebook about the provisions in the Electoral Act criminalising defamation punishable with imprisonment. While several other laws include provisions unduly restricting the right to freedom of expression, journalists did not report that these were used to *de facto* restrict media freedom.

The Lesotho Communications Authority (LCA) and the Broadcasting Disputes Resolution Panel (BDRP) are tasked with the implementation of legal requirements on “accurate, balanced, credible, impartial and fair” news coverage. No monitoring reports were published, nor decisions taken on the implementation of the law by the LCA during the election period. No campaign related complaints were filed. The independence of the LCA's and the BDRP's board members is compromised by their direct appointment by the Minister. The BDRP's current members' term expired without timely nomination of new ones at the end of August.

In line with the Electoral Act, the IEC allocated 1.5 hours of free political advertising on state TV and on radio to each contesting political party, broadcast from 10 September to 5 October in alphabetical order. In addition, contestants are entitled to news coverage on State media. Independent candidates are not entitled to free airtime or news coverage by law. The EU EOM media monitoring from 5 September to 5 October included one TV and nine radio stations, as well as three newspapers. The LTV devoted 31, 18, 9, 9 and 6 per cent of its prime-time coverage to the ABC, RFP, DC, Basotho Action Party (BAP), and Lesotho Congress for Democracy (LCD) respectively, while 12 other parties received less coverage. All news was broadcast in either a positive or a neutral tone. Commercial radio stations displayed clear bias in their news coverage, while the overall amount of news was limited. MoAfrica devoted 61 per cent to the DC, while the RFP, independent candidates and the ABC received 20, 6 and 4 per cent respectively. 52 per cent

of RFP's coverage was in a negative tone. People's Choice FM favoured the DC (28 per cent) and ABC (27 per cent), while Tsenolo FM favoured BAP with 51 per cent news coverage.

The national Civil Society Organisation (CSO), the Transformation Resource Centre (TRC), in cooperation with LNBS, held "national" debates on 21 and 28 September. Participating parties were selected by online vote. The debates were broadcast live on TV, by Radio Lesotho, commercial radio stations and Facebook. They provided a welcomed platform for contestants to address selected issues and to be challenged by voters.

SOCIAL MEDIA AND DIGITAL RIGHTS

Respectful and calm social media campaign, in absence of fact-checking initiatives.

The internet penetration in Lesotho is limited to 52 per cent of the population, mostly in urban areas. Mobile broadband coverage is the primary means for people to get online. Facebook was the main platform for political parties to campaign online and to communicate updates. Twitter was only used by a small group of political parties, candidates and journalists. Interlocutors expressed the need for greater digital and social media literacy.

The Election Act does not contain specific provisions for online campaigning. The 2012 Communications Act establishes that "audio, video or any content distributed through the internet may be licensed or regulated as broadcasting", contrary to international standards. This, in practice, includes content distributed on social media. The Constitution protects the right to privacy, and the 2011 Data Protection Act sets out requirements for data protection. However, the Act is not enforced as the regulatory body - the Data Protection Commission - is yet to be established.

The EU EOM identified 154 pages and 126 groups on Facebook linked to political parties, of which only a few were managed directly by the parties. Currently, none of the social media accounts of political parties, candidates or state institutions display the blue verification badge marking their accounts as authentic. This limited voters' ability to identify official sources of information and make well-informed decisions. The tone of political actors' online campaign was overall respectful and calm. Since 29 August the EU EOM analysed over 500 posts from political actors and non-contestants Facebook pages and groups containing mostly positive and neutral messages. Social media was used to showcase rallies, announce upcoming events, and disseminate campaign messages. Movement for Economic Change (MEC) was the most active political party sharing posts and videos on Facebook, followed by DC, BAP and RFP. RFP used Facebook Live and Twitter the most.

Lesotho lacks fact-checking initiatives. The EU EOM monitored 40 anonymous Facebook pages operating as media/news outlets which are not official media. These pages, largely followed by the youth, disseminated unverified and at times misleading content.

CIVIL SOCIETY AND INTERNATIONAL OBSERVATION

The legislation provides for election observation by citizen and international observers. For these elections the IEC issued a public invitation to election observers. Contrary to past practice, CSOs involved in voter education activities were not eligible to be accredited as observers. The most prominent CSO, the umbrella organisation the Lesotho Council of NGOs, aimed to deploy 359

accredited observers, but their difficulties to secure funding for their observation activities reduced their observers to less than 250. The African Union, SADC, the SADC Electoral Commissions Forum (ECF), the Commonwealth, and the Brenthurst Foundation deployed international short-term election observation missions.

PARTICIPATION OF WOMEN

Existing special measures are insufficient for enhancing women's representation in politics.

The outgoing Parliament had initially only 23.3 percent of women's representation falling short of the 50 per cent of AU and SADC commitments. The outgoing Government was composed of 27 men and 7 women Ministers. The 2011 Electoral Act requirement for an alternation of men and women on the candidates' lists for proportional representation, called "zebra" system, has not yielded the desired outcome as women are often not placed in the top position of the lists. Most women candidates have difficulties to pass the parties' internal selection processes to become candidates. A total of 837 women were nominated for FPTP seats, accounting for 35.5 per cent of candidates. Out of the 56 parties in this election only 11 were led by a woman.

VOTING, COUNTING AND TABULATION

Election day was conducted in a peaceful atmosphere with well organised and professionally managed opening, voting and counting.

The polling station staff conducted opening, voting and counting in a professional and impartial manner throughout the election day. Despite the large number of party agents present at polling stations (PSs) the process was orderly and calm. The PSs observed by the EU EOM opened mostly on time. The transparency of the opening process was assessed as very good in 24 out of 37 PSs observed and party agents could monitor the process without restrictions.

The EU EOM observed voting in 302 polling stations. In total 99 per cent of observed voting was assessed as very good or good. During the voting, the atmosphere was quiet with only moderate voter turn-out in all visited PSs. While party and candidates' agents were present in 89 per cent of the PSs observed, citizen-led election observers were only present in 15 per cent of the cases. Some 42 per cent of observed polling stations were considered as not accessible for voters with reduced mobility, while the layout inside PSs was suitable for voters with reduced mobility in 74 per cent of the cases. The polling process had limited special measures for persons with disabilities to facilitate unassisted voting. Throughout the day, EU EOM observers reported of 13 per cent of observed PSs as being overcrowded. The layout of the polling station and the position of the voting booths was not adequate to guarantee the secrecy of the vote in 18 per cent of the PSs observed.

EU EOM observers reported various cases of voters whose name could not be found on the voter list or who were not aware of the location of their polling station. These cases were noticed mostly in constituencies with recently revised boundaries. The polling staff referred all observed cases to the constituency officers to follow up and identify their polling stations. In a press conference on election day, the IEC confirmed few cases of eligible voters' names not found on the voter register.

Closing and counting of votes were conducted in a calm atmosphere. Observers and party agents were able to observe the process without restriction in all cases. Minor procedural mistakes which did not impact the process were reported mainly in relation to the reconciliation process. The overall assessment of the counting was evaluated as good and very good in all polling stations observed. However, polling staff appeared very tired towards the end of counting and partly stayed at the PSs overnight to await the transfer of PS results to the constituency tally centres in the early morning hours.

The initial plan of the IEC to transmit the tally results from each constituency to the National Results Centre in Maseru had to be changed, due to the lack of necessary equipment. The election results from the constituencies were transported in person by IEC staff to the district electoral offices, which transmitted them electronically to the national IEC tabulation centre.

ELECTORAL DISPUTE RESOLUTION

A dispute resolution system covering all phases of the electoral process but lacking specification of procedures, deadlines, and right of appeal for Code of Conduct violations.

The Electoral Act provides for a comprehensive framework for election dispute resolution during all phases of the electoral process, with competence of the IEC and the High Court. The Act does not establish specific qualifications for membership, a clear procedure, deadlines, and a second level of redress by a Court. The Tribunal also lacked transparency and access to information about hearings and decisions. The Tribunal or the IEC can impose sanctions for vote-buying and abuse of state resources ranging from a formal warning to party de-registration. Party de-registration can be appealed to the High Court and has recently not been implemented. This is an excessive sanction and lacks the criteria of objectivity and reasonability required by international standards and SADC commitments for the right to stand.

The IEC has competence on candidate nomination with possibility of appealing to the High Court. Few cases were still pending in the High Court and in the Court of Appeal before the deadline for the publication of candidates. The protracted process and late Courts' decisions went beyond the legal deadline.

The High Court has first and last jurisdiction for election results with inclusive legal standing and access to Courts for all concerned persons. The Electoral Act sets long deadlines of 30 days for both submission and adjudication of petitions. This timeframe is against international good practice.

An electronic version of this Preliminary Statement is available on the Mission website:
eomlesotho2022.eu. For further information, please contact:
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