



EISA ELECTION OBSERVER MISSION TO THE 28 FEBRUARY 2015 LEGISLATIVE ELECTIONS IN LESOTHO

Preliminary Statement on the Pre-Election Period and Election Day

Maseru

2 March 2015

“In its preliminary assessment of the context and conduct of the 28 February 2015 legislative elections in Lesotho, the EISA Observer Mission concludes that the process has been so far peaceful. It was conducted, in a manner that generally allowed the Basotho voters to express freely their will, and in general conformity with the laws of Lesotho and international, continental and sub-regional standards for credible elections. EISA will continue to observe the process until the tabulation and announcement of results are concluded, before making a final assessment of the process.”

1. Introduction

The Electoral Institute for Sustainable Democracy in Africa (EISA) deployed an Election Observer Mission to the 28 February 2015 legislative elections in Lesotho. The mission is comprised of 18 observers drawn from eight countries, and is led by Advocate Pansy Tlakula, Commissioner of the African Commission on Human and People’s Rights and former Chairperson of the Independent Electoral Commission of South Africa, with Denis Kadima, EISA’s Executive Director, as the Deputy Mission Leader.

The EISA Mission began arriving in the country on 19 February after conducting a pre-election assessment mission in December 2014, and will depart on 3 March.

The EISA Mission was briefed by the main political parties contesting the election, the IEC, the Lesotho Mounted Police Service (LMPS), and representatives from civil society before deploying its observers to nine of Lesotho’s ten districts, with the exception of Maseru. The Mission leadership also paid a courtesy call on His Excellency, the Prime-Minister, Hon. Thomas Thabane.

In their areas of deployment, EISA observers witnessed the final election campaign activities as well as the delivery and receipt of materials at some polling stations. They also interacted with local stakeholders including local authorities, the IEC, political parties, the Police, civil society, and the media. All EISA observer teams were equipped with computer tablets that enabled them to collect and transmit election observation data in real time.

EISA's preliminary assessment of the electoral process was based on the Lesotho legal framework governing the electoral process as well as the principles and standards set out in the African Charter on Democracy, Elections and Governance, the African Union Declaration on the Principles Governing Democratic Elections in Africa, the International Principles for International Observation of Elections, and its respective Code of Conduct, the Principles for Election Management, Monitoring and Observation (PEMMO).

This statement presents EISA's preliminary findings, recommendations and conclusions on the pre-election period and election day. It is issued while the tallying of results at constituency results centres is still on-going, and therefore reflects only the Mission's observations up to the conclusion of the counting process at polling station level. A final report covering the entire process will be issued by EISA within a few weeks.

This Statement identifies both best practices and shortcomings in the conduct of the elections. The Mission strongly believes that these shortcomings did not disadvantage any contestant in particular.

2. Preliminary Findings

2.1 Political and Security Environment

The 28 February 2015 legislative elections in Lesotho were the result of the political and institutional crisis faced by the country since mid-2014. The crisis was precipitated by the break-up of the three-party coalition government following deep disagreements among coalition partners, an attempt at a no-confidence vote in the government, and the prorogation of Parliament to avoid it. The political crisis was compounded further by institutional disputes between some members of Executive and the Lesotho Defence Force (LDF) leadership, which led to incidents of violence and the involvement of the Police in these disputes.

The Mission is cognisant of the effect of factors that led to the crisis on the prevailing pre-election political environment, with the ensuing re-arrangement of political alliances and palpable public anxiety about the security situation.

The Mission appreciates the important role of SADC as facilitator of the process in the search for a viable solution to the crisis and in providing support for the security and maintenance of law and order in the country in this period, both of which contributed to creating an environment for peaceful elections.

2.2 Constitutional and Legal Framework

The Constitution of Lesotho enshrines civil liberties requisite for democratic elections. The Constitution also provides for an independent and professional statutory body – the Independent Electoral Commission (IEC) – empowered to manage the conduct of elections.

The Mission however noted that the political and institutional crises that necessitated the snap elections were caused in part by inadequacies in the legal framework regarding the functioning of governing coalitions and institutional relations between different branches of government.

2.3 Electoral Management

The IEC was officially notified to prepare for elections only four months before February 2015. The current Commissioners are holding their positions for the first time, and as they were appointed in 2013, had not managed a full-scale national election before. The Mission noted with some concern that the IEC has been without a substantive Director of Elections since 2009.

The Mission was informed that the IEC also faced funding challenges, with the M220 million it received falling short of the Commission's M300 million budget to run these elections as efficiently as envisioned.

The stakeholders consulted by the Mission generally expressed confidence in the impartiality and ability of the IEC to successfully manage the elections. However, some concerns were relayed to the Mission about the manner in which the Commissioners were appointed, and the lack of consultation between the IEC and stakeholders on issues related to the use of technology.

It is the opinion of the EISA Mission that, within the challenging political context and in spite of the above-mentioned challenges, the IEC has complied with all the legal and procedural requirements in preparing for the elections. The Mission is also of the opinion that the IEC conducted the election largely in line with sub-regional, continental and international standards.

2.4 Voter Registration

The EISA Mission noted that voter registration in Lesotho is continuous using the biometric methodology. Voters were able to register and verify their details prior to the election, in line with the country's legal provisions. Some stakeholders however raised concerns about the short timeframe provided for the re-registration of voters, who moved to new areas of residence.

The IEC also indicated that it conducted a review of the voters' register to remove the names of deceased persons and double entries. The Mission however received several complaints from stakeholders that names of deceased voters still remained on the voters' roll.

The Mission noted that the total number of registered voters represents 110% of the voting age population, according to the 2015 population census projections. This may justify the calls for the further review of the voters' roll.

2.5 Campaign Finance

The Mission noted that the legal framework in Lesotho allows for public funding of registered parties and campaigns in line with international best practices. In this regard, the IEC made M4 million available to all parties contesting in the 2015 elections. All parties consulted by the EISA EOM were satisfied with the formula for allocation of funds and the timeline for disbursement.

The Mission also noted that the Electoral Act allows for private funding of parties, and requires that amounts exceeding M200,000 should be disclosed. The law however does not place any ceilings on the amount of money parties may receive from private sources, nor does it put any spending limits on party campaigns. The EISA Mission notes that such a gap in the legal framework may open up the electoral process to the undue influence of private money.

2.6 Electoral Campaign

The Mission was informed and observed with satisfaction that the electoral campaign was generally lively and peaceful, without major incidents of violence or intimidation.

However, concerned stakeholders mentioned that there were instances of abuse of state resources, especially vehicles, by all three coalition parties, and that there were attempts at manipulating public media by some government officials.

The Mission noted with satisfaction that all parties contesting the elections were allocated airtime on the public TV and radio for the broadcast of their campaign messages, and that stakeholders consulted by the Missions were generally happy with the time allocated to them.

2.7 The Role of the Media

Many stakeholders, including media monitoring institutions, informed the Mission that freedom of the press is guaranteed and practiced in Lesotho. However, they expressed concerns over the open partisanship of some media outlets, particularly the private radio stations. According to these reports, these radio stations used inflammatory language, which has the potential to trigger electoral violence.

2.8 Conflict Management

The Mission notes with satisfaction that the conflict management structures, such as the Party Leaders Forum and the Party Delegates Forum, created by the IEC ahead of the 2012 elections were maintained during the 2015 elections because they yielded positive results in the past. In line with international best practices, these consultative structures promote

ownership of the electoral process by all stakeholders, while aiming for a violence-free electoral process.

2.9 Gender, Disabled Voters and Prisoners Voting Rights

The Mission notes with satisfaction that gender inclusion and the rights of minority groups are enshrined in the Constitution of Lesotho and therefore their participation in the electoral process is guaranteed.

The Mission hails the reforms that require political parties to ensure the inclusion of women and men in equal numbers and in alternate positions in their party lists. However, as this requirement applies only to the proportional representation component of Parliament, women are still a significant minority among the constituency candidates. Of the 1,116 constituency candidates in the 2015 elections, only 30% were women.

The Mission is also satisfied with the provision of voting templates for the visually impaired to allow these voters to make their electoral choice autonomously.

The Mission was concerned by the initial uncertainty about prisoner voting, but is satisfied that the matter was satisfactorily resolved and prisoners were allowed to exercise their legal right to vote.

2.10 Security

All consulted stakeholders cited the tense relations between the LDF and LMPS on one hand and between the LDF and certain political forces on the other; as a threat to the holding of successful elections on 28 February and particularly to the post-election period.

The Mission was encouraged by the trust building measures and agreements entered into between the LDF and the LMPS, under the facilitation of SADC, committing them to working together and enabling the electoral process to proceed unhindered and in a peaceful environment.

The Mission however acknowledges that the uncertainty about the security environment may have had influenced on the level of voters' participation in process.

2.11 Civil Society

The EISA Mission acknowledges the role of civil society as a critical pillar in stabilising Lesotho's political and electoral landscape. The Mission was informed that, in addition to five NGOs being engaged by the IEC to carry out voter education, CSOs were also involved in other public education campaigns throughout the country. CSOs were also involved in election observation.

2.12 Advance voting

The Mission notes with satisfaction that, in line with international best practices, members of the Police force and other essential services staff, who were scheduled to be on duty on election day, were allowed to register for advance voting that took place on 21 February.

The advance voting process was however marred by delays due to confusion over security marks, which looked like voting marks on the ballot papers in some constituencies. The Mission is satisfied with the measures taken by the IEC to ensure that such problems would not arise on election day.

The Mission was also deeply concerned by the lack of clarity, as late as on the eve of election day, on whether military personnel who were confined to the barracks would be able to exercise their constitutional right to vote, and if so how and where. As the majority of the military forces had no role to play on election day, they were not entitled to apply for advance voting. The Mission also notes the decision by the IEC not to accept a request for bloc voting by the military in specific constituencies. It was the IEC's view that they should cast their ballots in the constituencies where they were registered just like the other voters.

2.13 Polling Day Observation

EISA teams observed election day procedures, including opening, voting, closing and counting, in a total of 67 polling stations, of which more than half were in rural areas, in the nine districts where they were deployed. This is a summary of their observations and relates only to the polling stations observed by the EISA Observer Mission:

The atmosphere in and around all observed polling stations was peaceful and orderly, without any campaign materials or activities. Security personnel, both police officers and police assistants, were present at all stations, and their presence was professional and discreet, with the exception of a polling station in the Maseru constituency, where the behaviour of one armed police officer was described as intrusive and intimidating.

Party agents were able to monitor all phases of the process on election day. EISA observer teams noted an average of 12 party agents per polling station. The Mission is of the view that the remarkable party representation in the polling stations contributed to enhancing the transparency of election day processes. The Mission noted that party agents were provided with a copy of the voters' roll, which contributed to increasing the level of transparency and confidence in the process.

All the polling stations had all the necessary materials for election day operations to proceed normally, with the exception of 9%, which did not have templates for visually-impaired voters.

The ballot boxes were appropriately sealed and remained so throughout the day until the start of the counting process. However, there were inconsistencies in the number of seals applied to the boxes, ranging from two to four.

The presence of women at polling stations as voters, polling officials, party agents and citizen observers was noteworthy. Three-quarters of polling officials, 69% of party agents, and 56% of citizen observers in polling stations visited by EISA observers were women.

The EISA Mission also noted the low representation of citizen observers in the polling stations visited. The Mission wishes to reiterate the importance of citizen observers as a confidence building mechanism and also an indicator of citizen participation in the process.

About 13% of visited polling stations were described as inaccessible to voters with disabilities.

Opening Procedures

The EISA teams observed opening procedures in eight polling stations. All observed polling stations opened on time, polling personnel were well-prepared and procedures were generally properly followed.

Voting Process

The EISA teams observed voting procedures in 67 polling stations.

In the Butha-Buthe constituency, at least three polling stations had ballot paper booklets where candidates from two contesting parties were missing. The Mission commends the IEC for promptly responding to this issue, upon being informed by the respective station managers, by having extra ballot books from nearby stations transferred to replace the defective ones.

In two-thirds of the cases of assisted voting observed by the EISA teams, assistance was provided by polling officials. The EISA EOM notes that this was not in line with the provisions of the electoral legislation, on assistance to voters.

The Mission is concerned by the process of writing the voters' details on the ballot paper counterfoil, which could affect the secrecy of the ballot.

The layout of most of the visited polling stations was adequate for an easy flow of voters and to ensure secrecy of the ballot.

The voting process was conducted smoothly and efficiently and the average time for a voter to complete the full voting process was 3 minutes. There were a few instances of voters being turned away for being at the wrong polling station within the correct polling centre, or because their names were not on the voters' roll.

All EISA observer teams assessed the voting process and the competence of polling station staff to be good or very good.

The EISA Mission notes that, contrary to international best practices, in Lesotho any mark made by a voter outside the blank square on the right-hand side of the ballot paper would render the ballot invalid, even if the mark clearly indicates the intention of the voter. This strict procedure has the potential to disenfranchise clear and legitimate choices made by voters.

Closing and counting process

The EISA teams observed closing and counting procedures in eight polling stations. The teams noted that there were no queues at closing time in the stations visited. All observed polling stations closed on time and the stipulated closing and counting procedures were generally followed. The teams however noted that most polling stations had poor lighting for the final stages of the counting process that took place after sunset.

In some polling stations, EISA observers noted that there was inadequate communication between polling officials and party agents during the ballot reconciliation process to keep party agents informed about that aspect of the closing process.

The Mission was impressed by the very low number of rejected ballots at the observed polling stations, which was indicative of the fact that Basotho voters have a remarkable knowledge of the voting process.

All EISA observer teams assessed the closing and counting process and the competence of polling station staff to be good.

3. Conclusion

In its preliminary assessment of the context and conduct of the 28 February 2015 legislative elections in Lesotho, the EISA Observer Mission concludes that the process has been so far peaceful. It was conducted, in a manner that generally allowed the Basotho voters to express freely their will, and in general conformity with the laws of Lesotho and international, continental and sub-regional standards for credible elections. EISA will continue to observe the process until the tabulation and announcement of results are concluded, before making a final assessment of the process.

4. Recommendations

Based on the findings presented above, the EISA Election Observer Mission presents the following recommendations:

1. Implement consensual constitutional and legal reforms regarding the functioning of governing coalitions and the institutional relations between different branches of government and between the Executive and the security forces.
2. The government should consider undertaking security sector reforms to further strengthen the sector and guarantee its neutrality.

3. IEC should consider undertaking a comprehensive review of the voters' roll to ensure that all deceased voters and double entries are eliminated and improve the process through which the IEC receives data about deceased voters
4. Review the electoral legislation to include provisions to further regulate private campaign funding, by introducing ceilings on private donations and campaign expenditures
5. Strengthen the legal controls over the use of state resources for electoral campaigns
6. Introduce a code of conduct for the media during elections
7. Strengthen the role and visibility of women in politics, in particular within political parties to improve their prospects as constituency candidates.
8. Strengthen quality control mechanisms related to the printing of ballot papers to avoid situations where candidates are omitted from the ballot, or security features can be mistaken for voting marks.
9. Allow for greater flexibility in the interpretation of voter's intention on the ballot paper in line with international best practices.
10. Review election day procedures to ensure:
 - a. consistency in the application of ballot box seals;
 - b. that assistance to voters is provided only in strict accordance with the law; and
 - c. improved communication between polling staff and party agents during the vote reconciliation process.
11. Improve the conditions of polling stations in order to make them fully accessible to voters with disabilities and to provide adequate lighting after sunset

The EISA Election Observer Mission commends the people of Lesotho, the IEC, and the candidates for a peaceful and well-managed process. The Mission appeals to all to maintain the same spirit of serenity and peace that they have demonstrated so far, while the results are tabulated and announced and after the process is concluded. Furthermore, the EISA Mission urges all candidates to respect the verdict of the polls and resort only to legally provided mechanisms to resolve any disputes about the outcome of the elections.

Last but not least, the EISA Election Observer Mission would like to thank the people and the authorities of the Kingdom of Lesotho, and the IEC in particular, for the warm welcome and for creating the conditions and atmosphere for the successful completion of our task.