

THE CHALLENGE OF POLITICAL LEGITIMACY POSED BY THE 2007 GENERAL ELECTION

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ABSTRACT

The placing of electoral democracy at the top of the SADC agenda is steadily beginning to pay dividends – Swaziland is the only country in Southern Africa which does not hold democratic elections. Since democratisation in 1993 Lesotho has held four elections. This paper considers the 2007 election, discussing the electoral process and the subsequent challenges to its legitimacy. The argument advanced is that conflict and contested election outcomes threaten the legitimacy of elected authorities and tend also to threaten the stability of the country's political system. The institutionalisation of political conflict resolution based on dialogue and tolerance seems to be the preferred way to tackle these problems. Lesotho must embark on deliberate transformation to strengthen the institutions of democracy in order to accommodate emerging political attitudes.

INTRODUCTION

Post-colonial Southern Africa has made significant strides in transforming from unelected governments and war to electoral politics, peace, and security. The transition in the Democratic Republic of Congo (DRC) marked by the recent elections rekindled hope that Southern African leaders can successfully guide the region towards the stability needed for development.

All countries in the region, except Swaziland, have elected governments and no country is at war either with its neighbour(s) or internally. Despite this remarkable progress, however, the region is far from peaceful. In several countries election results have been challenged, in some cases with resultant violence and fierce political tension. Even where election results are accepted elements of discontent are expressed in one way or another.

Lesotho's experience is no different; in fact, it has become the norm for the country's elections to be followed by disputes. Election related disputes deny

Southern African Development Community (SADC) countries the leadership consensus necessary to realise various development plans at both national and regional levels. It is, therefore, important to analyse critically issues surrounding electoral processes, not only to get to the core of the problem but also to come up with recommendations which inform the agenda of democratisation. This paper seeks to analyse Lesotho's 2007 electoral process in the context of three Cs, namely, Conflict, Competition and Cooperation. It also seeks to answer two questions:

- Did the 2007 electoral process offer Basotho voters a free choice?
- Has the process given legitimacy to the incumbent government?

As its title suggests, the paper does not deal with well-known facts about the election, instead it analyses the electoral process and outcomes in order to contribute meaningfully to the robust debate aimed at improving the situation.

CONCEPTUAL FRAMEWORK

Election process refers to activities which give the electorate the opportunity to choose those who will govern it. These activities are guided by the political system enshrined in the laws and are dependent on the general political and economic atmosphere within which elections take place.

Legislation, together with the conduct of participants, determines whether or not elections are free and fair. While the essence of elections is contest, what is less obvious is whether that contest is a competition or a conflict. Whatever the case, cooperation is the best form of interaction in any election. Familiar though conflict is, it is assigned different meanings in different contexts by different parties. On the one hand it is an incompatibility of aims, goals, or interests of opposing parties, on the other, it refers to an injury, damage, frustration and destruction inflicted on other parties. While conflict is about struggle over who gets what, it is not inherently negative. When the attempts by party A to achieve its goals hinder or minimise the chances of party B conflict exists and it is a matter of choice whether that conflict is resolved violently or amicably.

Competition, on the other hand, refers to a form of conflict in which parties seek to improve their relative positions – it is positive conflict in contrast to negative conflict, where winning is synonymous with eliminating or damaging the opponent. In competition the aim of each party is to improve its image and performance. The net effect, therefore, may be an improvement in the quality of product delivered to the consumer. In elections competition may therefore result in political developments which address a country's socio-economic problems.

How and why does an electoral contest eventually become either a competition or a conflict? The skewed possession and control of resources may shift

an electoral process into a conflictual encounter. What is at stake is not only high office and its attendant benefits but also the relative advantages of the contestants.

Institutional and legal arrangements governing the electoral process should be set with the intention of enhancing cooperation among stakeholders and making the process competitive rather than conflictual. In many countries elections have resulted in substantial loss of innocent lives, damaged property, heightened political tension and deepening economic crises. This has certainly been the case in Lesotho – with 1998 marking the peak of violence. The capacity of institutions to promote competition, manage conflict, and enhance cooperation has been a key issue in all election related disputes.

Peaceful elections are rare in Southern Africa and the absence of observable violence is not the only criterion for judging whether or not an election has been peaceful. Peace can be differentiated into negative peace, referring to absence of war; positive peace, a condition in which social and economic justice and wellbeing are ensured for all; and internal peace, referring to a condition of inner harmony in the individual.

Analyses of electoral processes may, therefore, be naïve and serve a very limited purpose if they are based on observable violence alone. Violence has two dimensions – direct and structural. The former refers to physical injury or the threat thereof, while the latter is about laws, structures, norms, and practices that inflict damage by depravity or denial. It is critical to examine the laws and institutions governing the electoral process to establish whether they are capable of managing conflict and transforming it into competition. In other words, are existing laws, practices and institutions facilitating cooperation; are they discouraging or promoting violence in its all forms? It is these elements that determine whether an election process is peaceful and the outcome perceived as credible.

International standards for the conduct of elections, which should be incorporated into national legislation, seek to promote harmony and enhance the cooperation necessary for free and fair elections. Within this conceptual context this paper analyses the electoral process and outcome of the 2007 general election in Lesotho.

CONTEXTUAL FRAMEWORK

Post-colonial Lesotho, like many African countries, has grappled with the challenges of democratisation in the context of traditional society and of harmonising traditional and modern leadership. Lesotho, with its limited economic base, continues to experience divisions of privilege and inequality of capital and other productive assets within its society, a factor that has a significant impact on both the process of elections and the way the results are perceived.

Table 1¹
Responses to Elections in Lesotho

Election period	Verdict	Response
1965	BNP* 31, BCP* 25, MFP* 4	Three court cases, one dismissed by the court, election reruns ordered in two cases
1970	BCP 36, BNP 23, MFP 1. BNP seizes power and declares state of emergency	BNP, BCP, MFP and UDP* leaders declare results null and void; political violence and instability follow
1985	BNP returned unopposed	Only BNP regards the process as legitimate
1993	BCP wins all 65 constituencies	28 cases filed, all dismissed by court though not pursued to finality by petitioner (the BNP)
1998	LCD* wins 79 and loses 1 constituency to the BNP	Court cases superseded by Langa Commission of Inquiry
2002	LCD wins 79 seats, other parties 9	9 cases, all dismissed by court. Petitioners do not pursue them to finality.
2007	LCD wins 62 seats, other parties 11	6 cases dismissed by court while the controversial seats allocation case is pending.

Source: Mohau 1998; High Court records 1993, 2002-7

*BCP Basotho Congress Party; BNP Basotho National Party; LCD Lesotho Congress for Democracy; MFP Marematlou Freedom Party; UDP United Democratic Party

Since the country's first election the losing parties have been unable to accept defeat and the intensity of resistance has deepened when losing parties have been left out of Parliament completely.

Each election in Lesotho has been followed by court cases and other challenges to its legitimacy but, as Table 1 indicates, in more than 40 challenges since 1965 the court ordered reruns of only two elections, the remainder of the cases being dismissed, few of them on their merits. A number of petitioners either withdrew or abandoned their cases. As a result the cases have proved of little value to the development of the electoral process.

Why would petitioners seek to withdraw cases they filed so enthusiastically? Can it be true that losing parties institute cases as a face-saving strategy or is the reason for the withdrawal diminishing hope and confidence in the judicial system?

1 As a result of the destruction of some High Court records during the political turmoil of 1998 details of the petitions of 1993 and 1998 are unavailable.

Part of the answer may be found in the 1998 post-election political turmoil and its effect on electoral politics in Lesotho.

Since 1965 opposition parties have questioned the legitimacy of the incumbent government. Their objections have been expressed in various ways, all of which have had a negative impact on the stability of the kingdom. The 1994 intra-military cross fire, the displacement of the BCP government by the king, and the 1998 military intervention by South Africa, later joined by Botswana at the invitation of the government, are examples of the effects of post-election disputes.

Despite this history little has been done to engage in institutional development to build a strong foundation for democracy. The 1998 crisis, which marked the climax of political instability in the country, led to the establishment of an Interim Political Authority (IPA). This body, the product of a diplomatic peace process brokered by South Africa, consisted of all the parties that had contested the election. The achievement of the IPA was the introduction of the mixed member proportional (MMP) electoral model. The 2002 election, in which the MMP model was used for the first time, was the least controversial election to date, despite a few objections. This success, however, was short lived.

THE 2007 ELECTORAL PROCESS AND ITS OUTCOME

The Pre-election Phase

The first controversial issue in the period before the 2007 election was an amendment to the Constitution extending the term of office of the two Independent Electoral Commission (IEC) commissioners from three to five years. Party leaders wanted both commissioners to leave office, but the government proposed releasing one and keeping the other to provide continuity. The government position prevailed and the opposition parties regarded the move as the first attempt to compromise the fairness of the election. The polarisation of government and opposition on this matter shook voter confidence in the electoral management authority.

The pre-election period was preceded by some intractable intra-party battles, which led to several acts of violence and intimidation.

- The shooting of the foreign affairs minister on his return from his party's annual conference. The minister described this as an inside job, although the party's secretary general denied that any party members were connected with the act.
- A petrol bomb and a letter containing a death threat were placed at the gate of a leader of a BNP faction disillusioned with its leadership.

- The cold-blooded murder of a former BNP deputy leader and MP at his gate only hours after the leader of the BNP and other senior party members had been suspended from Parliament for what was termed un-parliamentary conduct. Although some have accused the BNP of the attack, to date no perpetrators have been identified.

These violent incidents raised eyebrows as the election approached. It seemed as though instead of ballots the country was headed for more bullets. The struggle within the large parties increased and it seemed the centre would not hold. The result was that the main parties disintegrated into splinter parties with the split in the ruling LCD giving rise to the All Basotho Convention (ABC), the BNP split producing the Basotho National Democratic Party (BNDP), and the Basutoland African Congress (BAC) spawning the Basutoland African National Congress (BANC), although too late to contest the election.

These breakaways led to a fiercely contested snap election after the ABC placed enormous pressure on the LCD, necessitating the early dissolution of Parliament and putting all the parties under severe pressure. The IEC's institutional capacity was stretched to the limit, which made voter registration, in particular, a challenge – cameras malfunctioned, opening times at registration centres were irregular, and IEC clerks failed to carry out their tasks effectively.

The preliminary voters' roll produced for public scrutiny did not arrive at the centres on the scheduled days, which caused considerable inconvenience. When the roll was finally displayed many names, particularly those of newly registered voters, were missing, some did not have photographs appended, and many other errors were detected.

At the time it was clear that the IEC was overwhelmed and neither the commission nor the parties was able to sort out the confusion or restore confidence that the election would be well conducted.

The behaviour of the parties was far from acceptable, with fermenting anger between and among parties expressed in harsh and at times vulgar and inflammatory utterances by party leaders. Although all parties subscribed to the code of conduct intended to promote a climate of tolerance and political activity without fear, intimidation, and violence, they did not follow its dictates.

The most significant development before the election was the establishment of electoral pacts, notably between the ABC and the Lesotho Workers' Party (LWP), the LCD and the National Independence Party (NIP) and the Basutoland African Congress, the Lesotho Peoples' Congress and one faction of the BCP.

Because these alliances determined how the parties participated in the elections and this approach had a major impact on the application of the electoral model, it is appropriate to examine them closely.

Table 2
Interpretation of Pre-2007 Electoral Pacts

Pact	Description	Effect on MMP
ABC/LWP	Parties agreed that the ABC would field 79 candidates in constituencies and not submit a party list while the LWP would field one constituency candidate and submit a party list containing names of ABC members. A MoU was signed but the IEC was not informed. The ABC leader appeared on the LWP list.	The compensatory function of the model was deliberately disabled and turned into a parallel system.
LCD/NIP	Parties agreed the LCD would field 80 constituency candidates and not submit a party list while the NIP would submit a party list that included LCD members. A MoU was signed but the IEC was not informed. LCD members appeared on the NIP list.	The compensatory function of the model was deliberately disabled and turned into a parallel system.
BAC/LCP/Mahat ammoho a Poelano	Parties agreed to tackle election as a collective. The coalition was registered at the law office of the Alliance of Congress Parties and the IEC was notified.	Preserved the nature of MMP.

The first two pacts undermined the electoral model as the bigger parties, the LCD and the ABC, used the smaller parties, the NIP and the LWP, to secure proportional representation (PR) seats without reference to the number of seats they won in the constituency race, bypassing the compensatory mechanism which is at the heart of Lesotho's MMP system and making the whole allocation questionable. Leaders of the LCD, the ABC, and several other members of the parties appeared on the lists of the two smaller parties.

The LCD won 62 constituencies while its alliance won 21, effectively giving the party 83 seats. The ABC won 17 constituencies and the alliance 10, effectively giving the party 27 seats. While the LCD and the ABC are equally culpable in the assassination of the model, the LCD is the government and governments born of a disputed allocation suffer from crises of legitimacy. Members of the LCD, including the party's treasurer, who entered Parliament through the NIP list, and who, in terms of the law, are deemed to be members of the NIP, serve in the LCD government. Although the LCD commands the necessary majority to rule on its own, its cooperation with the NIP makes the description of Lesotho's government as a coalition inescapable. The presence of ABC and LCD leaders on the party lists of their partners was in the nature of an insurance policy. If they lost in their constituencies the leaders would still make it to Parliament. It is surprising that those parties which deliberately structured alliances that undermined the compensatory element of the MMP, with its broad national benefit, ensured they would be compensated, with the benefit limited to their leaders.

Another important point is the way the Popular Front for Democracy (PFD) approached the election. All but one of its candidates stood as independents – the one who did not had registered by default as a party candidate. Effectively this also undermines the model in that the PFD's PR seats would be allocated without reference to any constituency seats these 'independent candidates' won. They would then join the party by crossing the floor after the election.

The first challenge to the legitimacy of the LCD/ NIP pact was launched by the leader of the NIP, veteran politician Ntate Anthony Clovis Manyeli, whose name did not appear on the list the NIP submitted, while that of the leader of LCD did. Manyeli won the High Court case challenging the party list the NIP had submitted to the IEC but lost on appeal. Although he has not abandoned his fight, it remains, at this point, only a political battle.

It must be noted that the situation within the NIP, particularly between its leader and its National Executive Committee, has been detrimental to the country's political stability. Unless mediation is facilitated between the parties involved the NIP will be unstable and will remain a political test case for distortion of the electoral model, the definition of leader of the opposition, the problems inherent in the formation of coalitions, and a number of other post-election uncertainties.

Proceedings before the nomination court, which involved supporters of all the parties, were peaceful, enthusiastic, and colourful. Anticipating potential tensions the United Nations Development Programme (UNDP) and the IEC held a conference on tolerance which allowed political leaders to focus on what participants in the election needed to do to ensure that the process was peaceful. Among the participants were security organs.

Despite the provisions of the electoral law giving all parties equal access to state radio and television during the election campaign only the leader of the ruling party featured on state-owned radio and television news and current affairs programmes until a media liaison committee established by the IEC intervened. Both print and electronic media worked closely with the IEC to disseminate information, including voter education. Non-state radio stations, however, were inclined to give coverage to opposition parties.

The failure of the media to give time to candidates they consider to be non-viable deprives voters of the opportunity to hear stimulating debate and is detrimental to democracy in that it curtails the free and informed participation of the electorate.

In Lesotho parties are not financed from a consolidated fund, so they are forced to find their own ways to finance their daily functions. The electoral law provides that a party that receives a donation of more than M20 000 for an election campaign must declare it. Although it is believed that parties receive external assistance no single political party has declared such assistance to the IEC.²

In 2007 the government provided a campaign fund of M250 000, which the IEC administered. This arrangement was a government decision and not a provision of any law. Again this fund was limited to funding party campaigns. Only ten parties met the minimum requirements set by the parties themselves for access to the fund. The major criterion was that a party should have submitted a PR party list. Each party must pay M8000 upfront when it submits its list. M200 was made available to each constituency candidate but smaller parties which were not able to raise the M8000 needed for submission of a party list had no access to the campaign fund. The question of campaign funding is crucial, giving rise, as it does, to a great deal of the anger that culminates in a refusal to accept election results

Although it is important to regulate campaign funding such regulations must not be used to inhibit access to funding. Relatively well resourced parties like the ABC and the LCD had an advantage over those like the Kopnang Basotho Party,

² According to the IEC's deputy director some parties took money in 2002 but failed to use it for their campaigns. In order to prevent this, the parties agreed that only parties which submitted party lists would receive funding.

the United Party, and the Lesotho Education Party, which received no funding as they had not submitted party lists.

As pointed out elsewhere, incumbency gives the ruling party an unfair advantage and the fact that in addition to this advantage the ruling party also has access to the campaign fund appears to be a form of structural violence, with the law used to improve the position of one party to the detriment of others. This imbalance makes it extremely difficult, if not impossible, for a poorly resourced opposition to mount a massive campaign to unseat an unpopular but well resourced party.

The rushed pre-election period in 2007 also affected the voter education carried out by the IEC and various non-governmental organisations (NGOs) and many voters went to the polls without fully understanding the coalitions and their implications.

The Election Phase

Election day went off peacefully, with no reports of intimidation. There were sufficient polling stations to enable an even distribution of voters. The voting procedures ensured the secrecy of the ballot and illiterate voters and those with disabilities were allowed to have people of their choice helping them.

In some centres voting started late because election materials had not been received and there were reports of insufficient materials in some centres. Names of some registered voters were missing from the voters' roll altogether, others, which appeared in the copies of party agents, did not appear in that of the presiding officers. In the latter cases those who went to the district offices were given certificates allowing them to vote.

Counting was done in the presence of party agents and observers. Since 1993 electoral staff have tried to complete the counting and submit the results from polling stations to the constituency centres on the same day, thus facilitating the speedy release of results. In 2007, however, it appeared that the process was deliberately delayed, with results only being delivered on the following day – a negative development which potentially threatens the security of the process.

The Post-Election Phase

The post-election phase is the most important stage of the electoral process, including, as it does, the announcement of the results. In Lesotho this is a transparent and inclusive process. After counting, results are announced at the polling station and then sent to the constituency office. After computation of the results from polling stations the constituency results are determined, announced,

and sent to the district office, then to the Results Coordination Committee in Maseru, where they are handed to the commissioners.

This process minimises the chances of commissioners handling the results in the absence of the committee.

Table 3
Allocation of Parliamentary Seats 2007

Party	Constituency	Total votes	Compensatory seats	Final allocation
Alliance of Congress Parties	1	20 263	1	2
All Basotho Convention	17	–	0	17
Basotho Batho Democratic Party	0	8 474	1	1
Basutoland Congress Party	0	9 823	1	1
Basotho Democratic National Party	0	8 783	1	1
Basotho National Party	0	29 965	3	3
Lesotho Congress for Democracy	61	–	0	61
Lesotho Workers Party	0	107 463	10	10
Marematlou Freedom Party	0	9 129	1	1
National Independent Party	0	229 602	21	21
New Lesotho Freedom Party	0	3 984	0	0
Popular Front for Democracy	0	15 477	1	1
Total	79	442 963	40	119

Source: Independent Electoral Commission

There is little consensus about exactly how many seats each party won. Some people maintain that the ABC should be considered together with the LWP and the LCD with the NIP because they contested as a collective, not as separate entities. This disagreement is part of the broader debate about whether MMP was properly applied in the 2007 general election. It is argued that the pre-election pacts made it impossible for the model to be applied.

Although almost all the observer missions (from the Commonwealth, SADC, SADC Parliamentary Forum, EISA, the AU, and the Lesotho Council of NGOs)

applauded the conduct of the election some concerns were raised, the major one being that the MMP model is under siege and must be rescued. This issue remains unresolved despite the intervention of the former president of Botswana, Sir Ketumile Masire, sent by SADC to meet political leaders, churches, NGOs and government.

The election of the Speaker and her deputy from among the LCD MPs was seen by some as an erosion of necessary checks and balances and of the autonomy of the position of Speaker. Others disagreed, arguing that it is quite possible for the Speaker to be objective, despite her party affiliations.

The attempt by a coalition of parties – the ABC, LWP, BNP, and MFP – to have the leader of the ABC recognised as the official leader of the opposition in terms of the Members of Parliament Salaries Act was scotched by the Speaker, adding further tension to the already hostile post-election situation. The Speaker is demanding that the coalition be registered before it can be recognised as the official opposition.

Since neither the Constitution nor the relevant Act contains the definition of a coalition, this is yet another conflict that will have to be resolved either through talks or by the courts.

THE OUTCOME OF THE 2007 GENERAL ELECTION

The 2007 election, like all post-independence elections apart from that of 2002, generated conflicts for the resolution of which institutional capacity is insufficient. As Duvenhage argues, when political dynamics surpass the capacity of the political institutions intended to manage them instability and anarchy will ensue, culminating in political decay.

The snap election placed the institutional capacity of the IEC under serious stress, pressured political parties, and curtailed the capacity of NGOs to reach out to the community, a situation which has created tension among the participants and has placed the IEC under attack. This inability to resolve misunderstandings has meant that Lesotho's elections have become more about conflict and less about competition, with the aim being to eliminate rather than challenge opposing parties.

The question posed by this paper was whether the 2007 general election gave voters a free choice and legitimated government. With confidence it can be said that the answer to the first is 'Yes'. But in light of the circumstances it is hard to be positive about the second. Since February 2007 Lesotho's government has been viewed as being a coalition government in disguise. The controversy surrounding the allocation of seats may only be adequately addressed through political dialogue.

CONCLUSION AND RECOMMENDATIONS

The pre-election phase of the election, the first snap election in Lesotho's history, challenged the institutions charged with election management, democracy and governance. It was marked by a number of violent incidents and by conflict between the political parties and the government over key issues, including the expiry of the term of office of the commissioners.

The formation of various electoral pacts prior to the election had both positive and negative impacts on electoral politics in the country. The positive impact was that some parties with similar policies came together to tackle elections as an entity, following formal procedures to establish alliances and registering the alliance with the IEC. The negative impact was that some alliances were formed solely to undermine the MMP system, thus resulting in controversy over the allocation of seats and the legitimacy of government.

Although election day was peaceful, the disharmony that had characterised the pre-election period resurfaced immediately after the election in relation to the contested allocation of seats.

Demonstrations and stay-aways were staged by the opposition, the involvement of the military, and the Speaker's refusal to grant a coalition of opposition parties the status of official leadership of the opposition have clouded the post-election period and the mediation process brokered by SADC and led by Sir Ketumile Masire to resolve the question of allocation of seats has been halted by the ongoing court cases.

In order to resolve the question of legitimacy and other ancillary problems in Lesotho the following recommendations are made:

- The seats allocation issue must be taken up by experts, with a view to resolving it, thereby preserving the MMP model. In the interests of the model, which may be deformed by court judgements, it is recommended that government and the opposition parties reach a compromise position in which government commits to genuine dialogue and pledges to facilitate legislation which will safeguard the model. The opposition must accept that the outcome of any deliberations will not affect the current allocation. This would mean that the 2007 allocation would merely serve as a case study.
- Party coalitions of a size laid down by law should be granted the status of official opposition.
- If Lesotho is to use the lessons learned from the pre- and post-election conflict of 2007 to build a reputable electoral process, transformation is a necessity. Political parties must institutionalise democracy within

their own structures and create structures to deal constructively with conflict.

- The capacity of the IEC to deliver a snap election must be reviewed.
- Political institutions must be created to accommodate and grow with the changing political attitudes of the people of Lesotho. The country cannot afford to suppress increasing political participation by using established institutions of governance. Unless the institutions are open to and accommodative of change the forces of change will see them as obstacles and will find ways to remove them. This negative development will cause instability and, eventually, political decay. The collapse of systems in failed states like Zimbabwe is basically a failure of political leadership to manage change.

There is no doubt that the understanding among the Basotho of democracy and how it should work is growing rapidly. It is preferable to embark on institutional transformation than to engage in praetorian politics in which, in order to achieve normality, there has to be military engagement.

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