

EDITORIAL

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INTRODUCTORY BACKGROUND

The study of elections can be mundane as it involves studying a routine political process. Elections are an institutionalised democratic process: they are bound to happen at a particular time, which is designated by law. Since elections are normal democratic processes, the animating question often is: what arouses scholarly curiosity in them? In other words, why should scholars be concerned about routine processes instead of the substance of democracy itself? In any event, people are much more concerned about the substantive dividends of democracy itself, and not much about its processes (Aka 2002). Therefore, studying any particular election demands much circumspection. Care should be taken not to exaggerate the role of elections in the broader democratic project; but, at the same time, the value of elections to the democratic project cannot be discounted. Hence, it is always a tenuous balancing exercise. Although elections often evoke interest and generate fanfare, they are regular political rituals that are often disconnected or do not necessarily contribute to the more significant democratic project. Elections have many deficiencies: they are sometimes used to legitimise authoritarianism; they can be rigged; they can mislead the electorate that they are bringing change; and they have failed to resolve substantive issues related to reforming systemic problems confronting countries, such as economic bottlenecks and constitutional deficiencies.

In some instances, elections have been held regularly and successfully in pseudo-democratic countries where repression and violations of civil liberties are entrenched. As Diamond (2002, p. 29) observes, '[i]n regimes where elections are largely an authoritarian façade, the ruling or dominant party wins almost all the seats'.

On the other hand, elections tenaciously cling to the bulwarks of any well-meaning democracy. They have far-reaching ramifications for the substance and sustenance of democracies. Democracies are inconceivable without elections as they are the most democratic means of transferring power from one ruler to another. As Deshpande (2019, p. 261) notes, '[a]lthough they are largely about procedural aspects of democracy, elections signify a lot more of the substantial

democratic aspirations, particularly in democracies of the South'. Elections are inextricably linked to the other substantive aspects of democracies. As Diamond (2002, p. 21) notes, democracy requires not only free, fair and competitive elections, it also requires 'the freedoms that make them truly meaningful (such as freedom of organisation and freedom of expression), alternative sources of information, and institutions to ensure that government policies depend on the votes and preferences of citizens'.

Against this backdrop, the legislative elections held in Lesotho on 7 October 2022 are being studied in a dedicated special issue. These elections occupy a unique space in the chequered electoral history of the country. They are the seventh elections to be held since the country returned to electoral politics in 1993. This means that, on average, the country has been able to hold elections every five years for a continuous period. This is laudable considering the fact that at one point in the country's history there was an interregnum of 23 years (from 1970 to 1993) without credible elections, representing a lull in electoral politics.

The fact that the country has been able to hold elections regularly since 1993 indicates a commitment to electoral politics. Indeed, the period of coalition politics that started in 2012 has been tumultuous for electoral politics in the country ('Nyane & Kapa 2021). The country held four elections in just ten years – between 2012 and 2022 – because of the high turnover in coalition governments, resulting in early dissolutions of Parliament and, ultimately, elections. That is an unusually high frequency of elections. Under normal circumstances, countries hold two elections in ten years.

Furthermore, the 2022 elections were the fifth since the country introduced watershed changes to the electoral system in 2002. In 2002, the country transited from the first-past-the-post (FPTP) model to the mixed member proportional (MMP) model. These changes had profound implications for the political party system in the country. The zenith of those implications is that the country is now trapped in coalition politics: a far-fetched phenomenon under the pure constituency-based electoral system. Like all elections since 2012, the 2022 elections were inconclusive: no single party won an outright majority to form the government. Political parties had to engage in horse-trading to form a coalition government.

KEY HIGHLIGHTS OF THE 2022 ELECTIONS

Aborted Constitutional and Electoral Reforms

The 2022 elections were greatly anticipated both locally and internationally. They were supposed to be the first to be held under the new, thorough-going reforms to the political system, including changes to elections and election management.

The country had been grappling with these reforms since 2012 because it was widely believed that most of the political challenges that have beset the country in recent history are attributable to a poorly-designed political system. Hence, the country started an ambitious reform project, seeking to make profound changes in areas such as Parliament, the executive, elections, the judiciary, security, and the public service, to mention just a few.

The reforms encountered endless headwinds under successive governments. The reforms were conducted under the auspices of the Southern African Development Community (SADC) and were supported financially by other international partners including the United Nations Development Programme (UNDP), the European Union (EU) and the Commonwealth of Nations. Other countries, such as the USA and South Africa, have a keen interest in the reforms. The USA had even made implementing reforms in the country a condition for the new multimillion-dollar second compact under the Millennium Challenge Corporation (Moyo 2020). When Parliament was dissolved at midnight on 13 July 2022, it had not yet finished enacting the Tenth Amendment to the Constitution Bill. The much-anticipated reforms Bill was then aborted. The Prime Minister, perhaps out of embarrassment, labelled that colossal failure ‘a state of emergency’ just so that Parliament could be recalled from dissolution to pass the Bill. Parliament was indeed recalled from dissolution under the flawed constitutional pretext that the failure to pass the reforms Bill was an emergency. The recalled Parliament purportedly passed the Tenth Amendment to the Constitution, as well as other laws such as the National Assembly Electoral (Amendment) Act, 2022.

The recall of Parliament was successfully challenged in the High Court in *Boloetse and Another v His Majesty the King and Others* (2022). The High Court noted that the failure of the tenth Parliament to pass the two Bills was not a public emergency ‘that threatens the life of the nation’, as provided for in the Constitution. The Court of Appeal confirmed the judgment of the High Court. There was indeed concern throughout society about whether the characteristic election-related disputes would mar the election (Louw-Vaudran 2022). Fortunately, there were no major post-election disputes, and the post-election environment is relatively calm. The work of implementing reforms has been an intractable task for the new government, despite its public pronouncement that the reforms programme was on its priority list for the first 100 days in office.

Performance of the Election Management Body (the IEC)

The IEC has been under the spotlight in every election in Lesotho for a variety of reasons, including how it manages registration, the demarcation of constituencies, logistics management on election day, election-related dispute resolution, and the

allocation of seats. The 2022 elections were no exception. What made matters even more complicated for the IEC was that the 2022 elections were held under the stewardship of a relatively new set of commissioners after a long hiatus without commissioners. The chairperson and two commissioners were appointed in December 2020, scarcely two years ahead of the elections. Their work was already cut out when they were sworn in. When the new IEC commissioners entered office, the controversial constituency review process was already underway as it had started in earnest in 2018.

Their first litmus test was, therefore, the review of constituency delimitation. The process of reviewing constituencies is always fraught with controversy: political parties often view the process with suspicion because it invariably reconfigures supposed and real electoral strongholds. The IEC only completed the process in 2022 (Legal Notice No. 7 of 2022). The delimitation was challenged by the Democratic Congress (DC) – then the second biggest partner in the coalition government – on the basis that the new delimitation was tantamount to gerrymandering. The DC alleged that by decreasing the number of rural constituencies and increasing the number of urban constituencies, the IEC deliberately weakened the DC's supposed rural stronghold. The DC felt so strongly about its argument that it even brought the matter to court (*Democratic Congress and Another v Independent Electoral Commission and Other* (2022)).

The court found that 20 out of 80 constituencies violated the parity principle stipulated in the Constitution, and consequently ordered the IEC to rectify the error. The judgment was handed down on 8 August 2022, barely two months before the elections. The primary concern was whether the IEC could delimit those constituencies without affecting all other constituencies. The decision sent shockwaves across the country because the rectification had implications for the entire review, only two months before the elections. The IEC rectified the error, and the 20 constituencies were regularised without needing to review all the other constituencies.

The performance of the IEC also came under the spotlight when it committed a monumental error in allocating proportional representation (PR) seats. It miscalculated the PR seats, resulting in the misallocation of four seats; this mistake tainted the integrity of the IEC and cast doubt on its ability to manage elections. The IEC had to go to court to revisit the calculation of the seats, and the court permitted the IEC to reallocate the seats.

The Debut of the Revolution for Prosperity (RFP)

The formation and registration of political parties is a common feature of every pre-election period in Lesotho. In 2022 there were a record 65 registered political

parties. One of the new kids on the block was the Revolution for Prosperity (RFP), which was formed barely seven months before the elections. Its debut was significant, not just because it subsequently won the most votes and consequently the most seats in Parliament, but also because it had a major impact on the political landscape and the typology of the political party system in the country.

The RFP disrupted the established party system in two fundamental respects. First, the pattern in Lesotho's political landscape has been that new parties, formed before elections, that either went on to win elections or became strong opposition parties, were breakaways from ruling parties. In the post-1993 political history, the pattern started in 1997 with the formation of the Lesotho Congress for Democracy (LCD) as a breakaway of the then-ruling Basotho Congress Party (BCP). The LCD went on to win the 1998 elections by a landslide. In 2006, the All Basotho Convention (ABC) was formed as a breakaway from the LCD. The following year, in the 2007 elections, ABC posed a formidable challenge to the LCD.

Similarly, in 2012 then Prime Minister Mosisili defected from the LCD to form the Democratic Congress (DC). In the 2012 elections, the ABC became the ruling party through a coalition. Therefore, it is a fairly established pattern in Lesotho's party system that all main political parties are splinters from the party that was once in government. The ABC and the DC, which have hitherto dominated the political space in the country, are both breakaway parties from the LCD.

The formation of the RFP, which went on to win the most votes and seats in the National Assembly, broke with this pattern. The party was formed by the businessman Sam Matekane and others who were not prominent members of pre-existing political parties. Hence, the RFP is not a breakaway party of any of the major parties in Lesotho. Although the new political party won 57 out of the 79 constituencies contested on election day, and 39% of the popular vote, it fell short of an outright majority. It was forced to form a governing coalition with two other smaller parties: the Alliance of Democrats (AD) and the Movement for Economic Change (MEC).

Secondly, since the advent of coalition politics in 2012, two political parties, the ABC and the DC, have dominated the political landscape. They have taken turns in leading a coalition government. Even in 2022, the Afrobarometer survey had predicted that the DC would easily replace the ABC and win a majority in the election (Zihlangu 2022), with the ABC projected to be the second strongest party. This has been the pattern since 2012: the two parties have alternated in dominating the political scene in the country. The debut of the RFP disrupted this pattern. It not only won the most votes and seats, but it also left the two former political hegemony profusely bruised. Uncharacteristically, the ABC did not win a single constituency and was reduced to eight PR seats in the National Assembly and only 7% of the popular vote. The DC was relatively resilient. It received almost

25% of the popular vote: a small drop from its 2017 performance. But when one looks at the number of voters in 2017, the party was elected by 150 000 voters. In 2022 its popular vote dropped to 128 000, which translates into a huge 20% decline in voters between two successive elections. Hence, the impact of the RFP has been immense.

CONCLUSION

The 2022 elections will go down in history as one of the most important elections in the country. They are the first elections since 2012 that were held after a full five-year cycle. In 2020, the coalition government led by Prime Minister Thomas Thabane, then leader of the ABC, collapsed due to the all-too-familiar spectre of intra-party feuds in the ABC. However, that did not lead to the dissolution of Parliament and early elections. A new coalition government was formed between the ABC and the DC, then the largest parties in Parliament. This is a testament to the fact that there is some progress in consolidating coalition politics, although the progress is minimal. The aborted reforms could have taken the improvement to the next level, as it was expected that most of the triggers for premature dissolutions of Parliament, such as uncontrolled parliamentary defections (floor-crossing), continuous motions of no confidence, and the processes of transition and formation of government would be addressed.

This is the first election since 1993 in which a party that is not a direct breakaway from a pre-existing political party has won a majority, although not an outright majority. This speaks to the rapidly changing political landscape. In the past, the party system in Lesotho was characterised by 'dominant parties': a party system typology in which one or two political parties dominate the political space for a continued period (Bogaards 2004). This typology seems to have been disrupted in the 2022 elections. It remains to be seen whether the RFP will be the new 'dominant party' in the system in the future.

Furthermore, the 2022 elections attest to the fact that the country still has intractable problems with election management. The IEC's failure to demarcate constituencies in terms of the Constitution, the voters' roll riddled with errors, and the embarrassing 'mistake' in the allocation of PR seats are but a few examples of the deep-seated problem of election management in the country. This is concerning because one of the historic causes of political instability in the country has been the poor management of key electoral processes. In 1998 the country went up in flames as a result of, amongst other things, poor management of the voters' roll. Fortunately, in 2022 the post-election discontent did not degenerate into typical violence. The 2022 elections have only laid bare a problem that seems intractable and severe.

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