



INNOVATIONS FOR SUCCESSFUL SOCIETIES

MANAGING A NEW MODEL FOR ELECTIONS: LESOTHO, 1998-2011

SYNOPSIS

After the 1998 parliamentary elections resulted in violent riots and a foreign military intervention, Lesotho's leading political parties negotiated a new electoral model that increased the competitiveness of small parties. For the 2002 elections, the newly empowered Independent Electoral Commission worked to reform voter registration, educate voters about the new system, increase transparency, and build relationships of trust with political parties and the public. Careful, inclusive planning resulted in a peaceful election. Although the legislature did not change hands, opposition parties gained new representation and all parties accepted the fairness of the results. However, the next election in 2007 exposed unanticipated weaknesses in the electoral rules and led to renewed controversy. The electoral commission's slow, acquiescent response to these challenges undermined its reputation for competence. The contrast between the commission's performance in the 2002 and 2007 elections illuminates the difficulties faced in managing elections when the rules are untested, the stakes are high, and the parties are eager to exploit any advantage.

Gabriel Kuris drafted this case study based on initial work by Amy Mawson and on interviews conducted by Mawson in Maseru, Lesotho, in February 2010. Case published August 2011.

INTRODUCTION

Lesotho's first three decades after its independence from Britain in 1966 were punctuated by coups, mutinies, violent protests and police crackdowns. The monarchy, the military and political parties struggled for power. This instability persisted after a new constitution in 1993 established a constitutional monarchy with free elections. The May 1998 elections prompted violence on an unprecedented scale: riots, arson, and looting forcefully ended by a

bloody foreign military intervention. By the time tensions eased in October of that year, more than 100 people had died, several hundred had been injured, and four-fifths of the commercial infrastructure in Lesotho's capital of Maseru lay in ruins.¹

Eighteen months later, three newly appointed electoral commissioners—Abel Leshele Thoahlane, Mokhele Rantsie Likate and Mafole Sematlane—met to plan new elections. None had any prior experience in electoral administration.

Thoahlane, the new chairman of the Independent Electoral Commission (IEC), was a former finance minister and ambassador to the United States, with experience in law and labor affairs. Likate, a former registrar at the National University, held a master's degree in public administration. Sematlane had been a teacher, policeman, management consultant and football coach.

After years of internationally-mediated negotiations finally produced a new electoral model, the commissioners set to work reforming almost every step of the process, including voter registration, voter education, the operations of polling stations, and the reporting of results. To assuage skepticism, the commissioners met periodically with party leaders and openly communicated to the public through newspapers and call-in radio shows.

In May 2002, the commission's efforts, combined with the redesign of rules, resulted in a resoundingly successful election, with high turnout and glowing reports by international observers. While the ruling party held onto power, its share of the National Assembly declined to 66% from 99% as opposition parties proved their competitiveness. All parties peacefully accepted the election results and none filed any serious complaints. The election ushered in a period of calm and stability. "We had never had a longer period of peace in the country," said Sekhonyana Bereng, a governance officer for the United Nations Development Programme (UNDP) at the time. "Everybody heaved a big sigh of relief that things were working finally."

The calm ended in late 2006, when a political crisis resulted in an early election that caught the nation—and the electoral commission—by surprise. Rushing to prepare for the 2007 elections on time, the commission experienced technical problems with voter registration that angered the electorate. Its communications with the parties and the public failed to project openness and confidence. Most

significantly, the commissioners chose a passive, hands-off approach to a controversial new electoral tactic called "informal alliances" that led opposition supporters to reject election results as illegitimate. Once again, protestors took to the streets and the electoral commission suffered a share of the blame. The commissioners resolved to take a more aggressive role in managing political tensions in future elections.

This case is a tale of two elections. First, it describes the steps Lesotho's electoral commission took to move from the violent aftermath of the 1998 elections to peaceful and successful elections in 2002. In addition to operating a complex and untested electoral system, the newly appointed commissioners faced logistical challenges, political discord and voter distrust. They overcame these challenges by conducting a public education campaign, overhauling the voter registration process, building relationships with the parties, and earning trust through communication and transparency. Unfortunately, the commission was less attentive to these factors in the rush to prepare for the 2007 "snap election," shaking public faith in the institution. Ultimately, these difficulties show Lesotho's risks and rewards in implementing a new electoral model, Africa's first mixed-member proportional system. While this system more fairly represented the will of the people and reduced electoral violence, it was not a panacea.

THE CHALLENGE

Although conflict had marred many of Lesotho's elections, the scale of the 1998 violence was unprecedented. The most contentious issue concerned the election rules for the National Assembly, Lesotho's primary legislative chamber. Although nearly 40% of voters supported an opposition candidate, the governing Lesotho Congress for Democracy (LCD) won all but one of the 80 seats in the Assembly. This disconnect was due to Lesotho's "first past the post" electoral system, inherited from Britain, which

disadvantaged opposition parties for two reasons. First, opposition parties lacked concentrated pockets of supporters in this small, ethnically homogenous country. Second, opposition parties tended to split the non-LCD vote within each constituency, allowing LCD candidates to win by plurality.

Opposition supporters believed that structural factors alone could not explain the LCD's clean sweep of Assembly seats, and they accused the government of manipulating the results. Their suspicions centered on the IEC, created in 1997 to replace the chief electoral officer, who served under the prime minister and was not seen as neutral. Although independent teams of international monitors had validated the election as largely free and fair, rumors of electoral fraud persisted.

Opposition protests started small and peaceful but grew into violent clashes that paralyzed Lesotho's main cities. By September, discontent had spread to the army. The senior military leaders were LCD political appointees, while the junior officers and soldiers were mainly affiliated with the opposition Basotho National Party, which had held power from the nullified 1970 elections until a military coup in 1986. Junior officers mutinied against their superiors and declined to engage protestors in the streets. At the government's request, the Southern African Development Community (SADC) sent troops from South Africa and Botswana to restore order. Inflaming historic tensions between Lesotho and South Africa, the military intervention provoked still more violence. Before the country could be brought back under control, widespread looting and destruction had ravaged the capital and two nearby towns.

All parties saw the need for electoral reform. Although the LCD had a majority of popular support and overwhelming control of the legislature, it felt tremendous domestic and international pressure to compromise with opposition parties and minimize future electoral

violence. As a landlocked enclave wholly surrounded by South Africa, Lesotho depended on good relations with its powerful neighbor, whose security forces still patrolled Maseru's streets.

In October 1998, the SADC, with support from the UNDP and the Commonwealth, an association of 54 countries that promotes democracy and development, began to broker negotiations among the leaders of Lesotho's political parties. The talks resulted in the November 1998 creation of the Interim Political Authority (IPA), a transitional body consisting of two members from each of the 12 parties that competed in the 1998 elections.² Over the next two and half years, the opposition-dominated IPA and the LCD-dominated Assembly fought over the shape of a new electoral system. International consultants, most notably Danish political scientist Jørgen Elklit, provided technical advice.

The opposition parties desired a "mixed-member proportional" system based on a German model. Under this system, voters cast one ballot for an individual representative within their constituency and another ballot for a national party. Single-member seats would go to candidates who won a plurality within the constituency, as before. The second ballot paper, with party choices, would be used to allocate new proportional-representation (PR) seats. These seats would compensate parties whose national popular vote exceeded the percentage of single-member constituencies they won. For example, a party that won 20% of the national vote but no individual constituencies would receive enough PR seats to bring its representation up to 20% in the legislature. This system permitted voters to directly elect local representatives while allowing small, diffuse parties to compete at the national level.

The incumbent LCD party, however, favored a "parallel mixed-member system," under which some seats are directly elected through single-member districts, while other seats are

proportionally allocated based on the national popular vote. This system, used in countries such as Senegal, would be simpler than the mixed-member proportional model but would produce a less proportional result. For example, a party winning 20% of the national vote but no individual constituencies would be awarded 20% of the proportionally allocated seats only, instead of enough compensatory seats to constitute 20% of the whole legislature.

In October 1999, the IPA appointed an Arbitration Tribunal chaired by Judge Julian Browde of the Appeal Court to break the deadlock. The Arbitration Tribunal initially ruled that the Assembly should contain 65 constituency seats and 65 PR compensatory seats, but both sides rejected the reconfiguration of the 80 existing constituencies as impractical. The IPA then proposed adding 50 PR compensatory seats to the 80 existing constituencies. The LCD responded with a counteroffer of 30 PR seats. In December 1999, the Arbitration Tribunal sided with the IPA but left unclear how the seats would be allocated.

Finally, under intense pressure from the SADC as well as domestic civil society groups, the LCD agreed to a compromise: 40 PR compensatory seats would augment the assembly's 80 single-member constituencies, bringing the total to 120. "They had to accept the 80/40 [seat allocation] screaming and kicking," said Khabele Matlosa, an electoral expert from Lesotho who was director of programs at the Electoral Institute of Southern Africa. "It was not their own choice." The IPA and National Assembly adopted the final legislation in March 2001.

Under the new system, voters would mark two ballots, one for an individual local candidate and one for a national party to determine the allocation of compensatory seats. With only half as many PR seats as single-member constituencies, the composition of the legislature was unlikely to reflect the national vote share of each party accurately. However, opposition

parties viewed it as much more proportional than the previous system. Thus, Lesotho became the first country in Africa and the eighth in the world to adopt a "mixed-member proportional" system.

The next election, which had already twice been postponed from the original date agreed when the IPA was established, was set for May 2002, giving the electoral commission only 13 months to prepare. After paying severance packages to the previous commissioners, whose six-year terms had not yet elapsed, covering their salaries for the remainder of their terms of office,³ the IPA moved to appoint Thoahlane, Likate and Sematlane to the commission.

The commission's internal operations clearly required attention. In the aftermath of the violence, the SADC had appointed Pius Langa, then president of the South African Constitutional Court, to lead an inquiry into the conduct of the 1998 election. The report was inconclusive, finding no hard evidence "that the elections were rigged, or that fraud is excluded." While the report acknowledged the difficulties the IEC faced in election preparations, it criticized the commission unsparingly, saying that "much of the electoral matter supplied to us by the IEC was in a chaotic state" and that "the integrity of the documents has been compromised by reason of the IEC's failure, for whatever reason, to comply with the relevant laws and regulations." Such statements by an impartial foreign judge reinforced perceptions of bias or incompetence among the electoral commission.⁴

FRAMING A RESPONSE

From the outset, the new commissioners understood the need to rebuild public trust. "We came in specifically with that agenda," Likate explained, because after the 1998 elections "the opposition political parties had managed to really give a very strong perception within the public that things had not gone right, particularly among their supporters."

The commissioners' first meeting focused

almost exclusively on the issue of trust and transparency. “We emphasized that it was going to be very, very important that we try as much as possible to be open about the things that we do and to continuously engage the political parties and all stakeholders in discussion, to build trust,” Likate said.

One of the primary sources of voter distrust was the voter registration list, which opposition parties believed to be riddled with errors, omissions and phantom voters. Prior to the 1998 elections, administrative problems with the voter registration process had undermined the entire exercise, explained Mphasa Mokhochane, who was then deputy director of elections. Newly registered voters received voter cards only to find their names missing from the list on election day because the commission’s registration field agents had not properly filed the paperwork. Thus, a major task for the electoral commission was to assemble a new voter registry from scratch.

The commission also planned an education campaign to reach out to new voters and re-engage disenchanted ones. The commission had to explain the new electoral system—unique, untested and complicated—to the public. Many outside commentators expressed doubts that the two-ballot process would be understood or accepted by Lesotho’s relatively poor, uneducated electorate.

The commissioners also had to secure the cooperation of the political parties, including those that had sharply criticized the commission after the 1998 elections. Although the opposition-dominated IPA appointed the new commissioners, some members of the opposition questioned whether the three were capable of being truly independent of the government that provided their paychecks.

In short, the new IEC commissioners faced daunting challenges. They had to prepare for a national election that would be carefully scrutinized by domestic and international monitors. They had to educate voters about a

new, untested system. And they had to overcome a legacy of popular resentment against the commission, however justified this was.

GETTING DOWN TO WORK

After identifying key tasks and consulting about options, the commissioners began to work on voter registration, improving relationships with parties and securing public trust.

Registration

The team first turned its attention to registration, aiming to bolster voter confidence by making voter lists publically available in time to hold the election on schedule. As mandated by the IPA, the electoral commission discarded the 1998 voter list and registered all voters anew.

Disagreements quickly arose over the feasibility of measures to prevent voter fraud. Initially, the opposition members who dominated the IPA insisted on introducing complex and expensive fingerprint technology, an approach that the electoral commission considered impractical. “We really engaged the IPA very, very closely on that,” Likate said. Despite extensive discussions, the election commission failed to persuade the IPA that fingerprint technology would prove too hard to manage.

Finally, with support from the UNDP, the electoral commission invited Danville Walker, the election director of Jamaica, to address party representatives in the IPA in September 2000. Walker had introduced the same fingerprint technology in Jamaica, where it had proven difficult to implement. “He was able to demonstrate that [the technology]’s not necessarily that reliable and that it can be very costly,” Likate said. Bereng of the UNDP recalled that Walker “said you can’t have it both ways. You can’t have fingerprint technology and have an election after a short period of preparation.”

Following Walker’s intervention, the parties agreed to scale back the fingerprint proposal.

Citizens would have their fingerprints taken while registering to vote, but the election commission would use this data only if needed to deal with specific concerns of fraud rather than provide it systematically to all polling stations. As part of the registration process, citizens would receive voter registration cards printed with their fingerprints, photographs and signatures. Voters had to show these cards at the polls in order to cast a ballot.⁵

Voter registration took place initially from 13 August to 9 September 2001. To meet unexpected demand, the electoral commission extended the process until the end of September. The first database of voters was produced in October, with 830,000 voters registered out of a total population of just over two million. A second round of registration in February 2002 focused on 17-year-olds who would be eligible to vote by election day.⁶

In order to reach the maximum number of voters, the electoral commission adopted a flexible approach. For example, they asked traditional chiefs to exert their authority to encourage registration among the many laborers who worked across the border in South African mines and could not be reached by mainstream channels. An observation mission from the SADC commended the electoral commission for the prevalence of women and unemployed youths among registration officers, “a positive point which other countries in SADC might wish to consider.”⁷ In addition to providing jobs for these vulnerable populations, this step encouraged voter participation by women and youths.

Building relationships with the parties

Throughout election preparations, the commission remained focused on building trust and confidence. Bereng said commissioners “talked very closely [with the parties], so that they agreed every step of the way.” He explained that the commission used these conversations not only to clarify policies but also to seek input and

suggestions, which “was greatly appreciated by the political parties.”

One convenient forum for this dialogue was the IPA. “Virtually all of our plans we shared with them,” Likate said. In early 2001, the commission set up a series of consultative committees to create formal, independent channels for dialogue with the parties. According to Likate, “the idea of setting up these consultative committees caused a lot of excitement within the IPA.” The most important, the party delegates’ committee, served as a forum for regular quarterly meetings between parties and the electoral commission, with more frequent meetings as election day approached. Eight other committees focused on law, data management, civic and voter education, media relations, conflict management, logistics, security and election coordination. According to Mokhochane, deputy director of elections at the time, the most active committees dealt with logistics, security and election coordination.

The electoral commission conducted its relations with the political parties mainly through the consultative committees. Occasionally, however, parties wanted to meet directly with the commission. The electoral commission usually agreed, as long as the process remained transparent. “We would not see them clandestinely,” Likate recalled. “We would record these consultations and share the record with other parties.”

Building public trust

The commissioners were keen to rebuild the trust of the public as well as the parties. To inspire confidence and to familiarize voters with the new system, the commission launched a voter education drive in February 2002. The multimedia campaign had elements in print, radio and television. Posters in Sesotho and English, Lesotho’s two national languages, were displayed countrywide. As the elections neared, the commissioners participated in call-in radio

programs, answering voter questions. Likate said that earning public trust helped the commission to keep parties in check. "Seeing there was a lot of public endorsement for our activities, it would have been very difficult for the political parties to seem to take a different line," he said.

In its voter education campaigns, the commission tried to use media consistent with local culture or public preferences. For example, it enlisted the Marotholi Traveling Theatre Group to produce an informative election drama to stage in local communities. It also held a number of traditional public gatherings, called *pitsos* in Sesotho, conducted by local leaders. With funding from international donors, civil society organizations and church groups held their own voter education campaigns. Learning from past efforts, they attracted interest through music concerts and football matches. The SADC observation mission lauded Lesotho's voter education efforts, although it found them overly concentrated in urban areas.⁸

To increase confidence in the vote-counting process, the electoral commission took a few basic measures. First, voters' fingers were marked at the polls with indelible ink to prevent double voting. Polling officials guided voters from identity confirmation to each of the two ballots required by the new electoral system, to expedite the process and minimize confusion and opportunities for fraud. As a common-sense safeguard, all ballot boxes were transparent.

As a more high-tech boost for transparency, the commission created a computerized Election Results Center funded by the European Union. At this center, vote tallies were projected on a wall as soon as the numbers came in, allowing parties, monitors and media representatives to track the results instantaneously. The results were also broadcast live on Radio Lesotho and posted on the commission's website. The widespread and swift dissemination of results limited opportunities for fraud and reduced the chance of credible post-election fraud accusations that had

inflamed tempers in 1998. "It continued the principle of transparency of the IEC," Likate said.

Positive results

Teams from diverse international organizations monitored the May 2002 elections. Besides the SADC Parliamentary Forum and the Commonwealth, both of which had begun monitoring election preparations in August 2001, observers included the Organization of African Unity and various diplomatic missions coordinated by the U.N. Electoral Assistance Secretariat. All observers declared the May 2002 elections free, fair and transparent.

A post-election report by two scholars commended the polling staff that the electoral commission recruited from local communities: "It was evident to observers that they had been extremely well trained; they showed enormous patience in explaining the voting procedure, and took immense care in directing voters through each step."⁹ The SADC observation mission found polling stations to be generally well staffed and adequately equipped, although sometimes poorly lit. While SADC observers recommended more polling stations in rural communities, they found that "the average time taken to reach most urban and peri-urban sites was 20 minutes."¹⁰

These commendations validated the move to the mixed-member system and demonstrated the electoral commission's capacity to run a successful election. Voter turnout, at 67%, was lower than in 1998 but still high by historical standards. The commission viewed the solid turnout as evidence that it had managed to restore the trust of the electorate. The incumbent LCD party again won all constituencies but one. However, this time the 40 compensatory PR seats were divided among nine opposition parties, with 21 awarded to the Basotho National Party.¹¹ Thus, the LCD's governing majority shrank to 79 out of 120 (66%) from 79 out of 80 (99%). Although this seat share still did not match the LCD's actual vote share of 57.7%, the opposition parties had gained

significant power in the legislature.¹²

The electoral commission's hard work to build the trust of the public and the political parties helped yield solid support after the 2002 elections. In contrast to 1998, there were few public accusations of malfeasance or mistakes by the commission. "The IEC enjoyed the highest popularity [after] the 2002 general election," Bereng asserted. This popularity slowly helped build legitimacy for the commission. According to Matlosa, the IEC was "beginning to gain respect and beginning to prove to all that if you want to run a credible and transparent election that enjoys ... [the] public trust of all the actors, you really need an independent electoral commission. There's no doubt about it."

The Basotho National Party was the only major political organization to challenge the integrity of the results, and it pursued its complaint peacefully through the courts before eventually dropping it. The 2002 elections appeared to herald a period of relative peace and stability in Lesotho, providing a welcome break from the political turbulence the country had experienced throughout the 1990s.

Although neither the LCD nor the opposition parties were entirely satisfied with it, the mixed-member proportional model survived its first test in the 2002 elections. "It worked marvelously," said Matlosa, from the Electoral Institute of Southern Africa. "The electorates seemed excited about the new model. At some point we thought it was too complicated for [voters] but they managed to vote perfectly well under the circumstances, and, of course, ... civil society together with the IEC were able to undertake a bit of voter education."

Bereng, who was a UNDP officer at the time, also remembered a positive public reaction to the 2002 elections. "There was quite a bit of satisfaction and happiness with the inclusiveness that had been brought about by the [mixed-member proportional system], and the wider representation of the people in Parliament," he

said. "People were quite ecstatic about the model, and we thought maybe we had found something in Lesotho that we could export to the rest of Africa, to show that we may be small, ... but nevertheless there is something useful that we could export beyond diamonds and water."

OVERCOMING OBSTACLES

A series of events in late 2006 tipped the country back into crisis. In October, a dispute within the ruling LCD caused 18 of its Assembly members to leave and form a new party, the All Basotho Congress (ABC). The LCD now held only a slim legislative majority.

At first, opposition leaders celebrated this development, viewing it as an opportunity to challenge the weakened LCD. However, LCD leaders found their own upside to the crisis, using it to justify a call for new elections. Parliament dissolved on 14 November 2006, with national elections scheduled for 17 February 2007, three months earlier than expected.

The LCD's decision to call the early "snap election" was constitutionally sound and consistent with other parliamentary systems. However, it was unprecedented in Lesotho and caught the other parties off guard. The tight timetable forced campaigns to ramp up quickly during the usually quiet holiday season. "We went to the 2007 elections as an angry and anxious nation," Thoahlane said.

The opposition parties were not the only ones stunned by the LCD's gambit. The electoral commission had been preoccupied by leadership transfers, as commissioners Likate and Sematlane had been replaced by Malefestaane Nkhahle and Limakatso Mokhothu in July 2006 and June 2003 respectively. The commissioners had been counting on more time to prepare for the next election. "We were not ready," conceded Nkhahle, "the voters list was really in a mess." Mokhothu agreed. "I know people will say an electoral-management body should always be ready to run an election any time," she said, "but

for us it was the first time that we were slapped with a snap election. So that caught us by surprise, and definitely that affected our plans.”

Registration woes

The commission’s voter registration efforts were in disarray. The information-technology department had not updated registration information as it arrived from the field. Although the commission’s data manager had launched a new effort in June 2006 to accelerate the registration process, this effort was based on the assumption that a new registration drive would take place over six months, rather than three. After Parliament called new elections in mid-November, the IEC had to set a voter registration deadline for early December, giving citizens just two weeks to sign up. Since Lesotho has a relatively young population and many of these youths were studying in South Africa, this tight schedule was especially problematic.

“The system got completely choked,” Thoahlane said. The volume of data overloaded the electoral commission’s computer system. “Even the computers decided [they had] had enough,” said Mokhothu, “and because it was Christmas break, our technicians who are usually on stand-by were in different places enjoying a Christmas holiday.” Mokhothu was candid about the consequences of the commission’s procrastination: “I think the culture of the people here is to do things at the last minute. So we were overwhelmed with the number of new registrants.”

According to Mokhochane, then deputy director of elections, the computer problems could be traced to the way the registration data were captured. The registration form had two parts, one containing information about the voter and another with the voter’s photograph. When the registration forms were entered into the database at the commission’s headquarters, different machines scanned these two parts. The photo scanner was much slower than the other,

complicating efforts to merge the two sets of information in the database. In addition, inadequate filing systems resulted in the loss of many completed voter registration forms. At one point the IT section could not account for more than 9,000 forms.

Besides the compressed timetable to prepare for elections, the snap election required voter registration and other administrative preparations to proceed during the holiday season. An observation mission by the Electoral Institute of Southern Africa (EISA) found that “the elections would have proceeded better if the setting of dates had taken account of the holiday season” because “key activities took place around the Christmas and New Year period and thus limited public participation as well as the responsiveness of service providers.”¹³

Unsurprisingly, the provisional voter registry that the electoral commission displayed at the end of December 2006 was riddled with errors. It contained the names of 30,000 dead people and none of the new voters who had registered in the last-minute registration drive. The absence of the new registrants was particularly troubling for the emergent ABC party, which had split from the LCD and depended upon young voters’ support.

Thoahlane called David Mathieson, an information-technology expert from Electoral Reform International Services, a British nonprofit consultancy, who had helped the electoral commission in 2002. With just three days’ notice, Mathieson agreed to come to Lesotho during the first two weeks of January and work on the voter registry. The commission’s IT manager offered his resignation but was persuaded to stay on and work with the consultant. When Mathieson arrived, the IT section started working 24 hours a day in eight-hour shifts, inputting data for 100,000 new voters. “It was a lot of donkey work,” Nkhahle said.

The commission produced a fresh provisional voter registry for inspection in mid-January. But a new problem emerged when the commission

opened a special registration period in January, originally intended for 17-year-olds who would come of age before the election, to others who had not registered in time. A flood of new registration forms added to the backlog. “We didn’t anticipate so many [youths] would be interested in elections, because traditionally they are not,” Mokhothu said. Because many of these young voters attended school in South Africa and returned home only for the Christmas holiday, it was difficult for them to complete the voter registration process and receive voter IDs.

Ultimately, the IEC produced an official registry of 916,240 voters out of an estimated potential electorate of 2.4 million citizens, blaming haste and technical problems for the shortfall. The commission admitted to discrepancies in many of the listings, such as approximately 10,000 entries that lacked photographs. While the commission allowed voters without voter cards to vote if vouched for by an official witness, those whose names were not on the official registry could not cast ballots.¹⁴ On election day, complaints from such voters flooded the commission. “The phone was ringing the whole day,” Mokhothu recalled.

Party alliances

The hallmark of the 2007 elections was the emergence of a new and controversial campaign tactic: the “informal party alliance.” These alliances were tacit agreements between two national parties by which one party agreed to compete seriously only for constituency-based seats, the other for proportional seats. After the election, the allies voted in tandem, effectively pooling their power. Such alliances allowed parties to game the mixed-member proportional model, which awarded compensatory seats to parties that performed well nationally but won few constituencies. The election law was silent on this tactic, which its drafters had not contemplated.

Both the ruling LCD party and the new ABC party took advantage of this loophole by

entering into tacit pre-election alliances with smaller parties. The LCD officially ran only for the 80 constituency seats and did not submit a party list for the PR seats. Its small ally, the National Independent Party (NIP), ran only for the 40 PR seats and no constituency seats. Likewise, 10 ABC party members appeared on the party list of the Lesotho Workers’ Party’s (LWP).

While not illegal, these alliances were blasted by other parties as unfair and contrary to the spirit of the system. Critics were especially incensed that the NIP’s list contained candidates who had been prominent LCD members just three months earlier, including the prime minister and several cabinet members. Opposition parties saw the LCD/NIP alliance as a flagrant attempt to undermine the new system. Essentially, the LCD and its offshoot, the ABC, had subverted the mixed-member proportional model into something like the parallel proportional system that they had advocated before the 2002 election.

Before the election, the informal alliances were an open secret in the streets of Maseru. Bereng recalled, “Long before these alliances were formed, we heard, you know, through the grapevine. ... And if we hear it on the street, no doubt the [electoral commission] must have heard. And if they heard, no doubt they must have had occasion to reflect on this, to anticipate what might happen, to see what corrective measures might be taken.” Media commentators suggested that anyone looking at the NIP and LWP lists would have recognized the names of prominent members of the LCD and ABC parties, respectively.

The electoral commissioners acknowledged that they had heard rumors of the alliances ahead of the elections and had raised the issue months before the election. Thoahlane called a meeting around the middle of December 2006 to discuss the issue with the parties. During that meeting, he made it clear that the electoral commission was not going to assume responsibility for policing the

parties' ethical choices. "Gentlemen," Thoahlane recalled telling the assembled delegates, "I have said time and time again that you are the custodians of the model."

Bereng also remembered the meeting: "That's what he told them. He said, 'You—you are placing me in a difficult situation. You are the guardians of the model yourselves. Now, you go yourselves to manipulate, and you blame me for not having stopped you. What do you expect me to do? Plan and run an election and also ensure that you behave as adults, as ethically as you are supposed to? And if you don't, then it is not your fault, but mine?'"

The commissioners, on the advice of lawyers, decided that the electoral commission did not have any legal basis to oppose the informal alliances because the law covered only formal alliances. Thoahlane said, "The law was basically weak in its framing." Khabele Matlosa, director of research at EISA, agreed, saying, "Legally there was nothing untoward about the process ... but politically and in terms of managing the electoral process, there was a lot wrong." Matlosa suggested that, although the electoral commission had no legal authority to take action, it could have called a press conference and at least told the public what the parties were doing. In the rush to hold elections on time, the commission's efforts at public communication suffered.

ASSESSING RESULTS

Voter turnout in the 2007 election fell to 50% from 67% in 2002, and observers attributed the decline partly to diminished enthusiasm and partly to confusion over the voter registry. The SADC mission reported witnessing "incidences where voters were unable to vote due to incomplete or incorrect details on the voters roll." Nevertheless, all international election observers validated the election as procedurally free and fair. Some noted improvements from the 2002 election, such as a better distribution of polling stations and the use of independent auditors to

verify vote counts.¹⁵

The results of the 2007 election gave the incumbent LCD party 61 out of 80 constituency seats.¹⁶ With such a big majority, the LCD was not awarded any PR seats; however, its informal ally, the NIP, won 21 out of 40. In total, the alliance had 82 out of 120 seats, a slight uptick from the 79 seats (all constituency-based) that the LCD won in 2007. Likewise, the ABC party won 17 constituency seats but no PR seats. Its ally, the LWP, won 10 PR seats, bringing the alliance's total to 27. The remaining seats were split between six other parties.

The informal-alliance strategy paid clear dividends. Without their informal alliance, the LCD and NIP would have together held only 62 seats, a bare governing majority, rather than over two-thirds of the Assembly seats. In such a scenario, the ABC/LWP alliance would have actually gained two additional seats, with the rest distributed among smaller parties.¹⁷

Because of this difference, disgruntled opposition parties immediately challenged the results. They demanded that the informal alliances be treated as single parties rather than separate entities, reducing their allotment of PR seats accordingly. They compared the LCD and ABC's informal alliances to the official alliance three parties had made in 2007, running as the Alliance of Congress Parties under one party symbol. The LCD and ABC argued that their informal alliances were distinct from formal alliances and not subject to the same electoral rules.

The Marematlou Freedom Party, a small party that had doubled its vote share between 2002 and 2007 but was allocated only one PR seat in both elections, sued over this issue. Lesotho's high court declined to rule on the case, citing technical reasons. Both sides claimed this ambiguous legal result validated their position.

In mid-March, five parties, including the ABC, staged a parliamentary sit-in during the swearing-in ceremony of new Assembly members.

They also called a three-day general strike. The capital was paralyzed for two days before the SADC and the Commonwealth agreed to mediate, appointing Sir Ketumile Masire, a former prime minister of Botswana, as chief mediator.

In June 2007, Masire began work, and the government implemented a curfew to avert worsening political violence. After six mediation missions to Lesotho over two years, Masire submitted his final report in July 2009, saying he could no longer mediate the disagreement because of the “approach to the matter now taken by the Government of Lesotho.” He also asserted that the party alliances should not have been allowed, as they distorted the mixed-member model. He dismissed the LCD’s argument that the high court’s silence constituted tacit approval of the alliances, saying the court had “decided not to decide.”

The Christian Council of Lesotho, an organization of the country’s most important religious leaders, stepped in to continue mediation between the political parties. Finally, in April 2011, after two years of negotiations jointly mediated by the SADC and the Christian Council, the parties finally agreed upon a new electoral reform package, including the 2011 National Assembly Electoral Bill and the Sixth Constitutional Amendment. The reforms included clearer election laws and a ban on informal alliances in political campaigns. While opposition leaders called for further reforms, the legislation paved the way for future elections, expected in February 2012. However, this drawn-out, indecisive process demoralized Lesotho’s electorate and cast a shadow over the electoral commission, undoing much of the domestic and international goodwill the commission earned from the 2002 elections.

REFLECTIONS

Lesotho’s Independent Electoral Commission came under severe criticism from

parties and observers in the wake of the 2007 election, especially over the fractious issue of informal party alliances. The opposition parties believed the electoral commission deserved blame for approving party lists that clearly aimed to circumvent the intent of the mixed-member proportional model and risked causing post-election strife. The electoral commissioners believed they were made into scapegoats for the shortcomings of the law itself.

The most obvious lesson from the tactical use of informal party alliances was the importance of crafting electoral laws that anticipate such attempts by parties to test the limits of the rules. “Any country that adopts a new model must assess how complicated that model is,” Limakatso Mokhothu said. Abel Leshele Thoahlane, the commission’s long-time chairman, lamented that “if the law was very, very clear and very specific, it would make the life of the [IEC] easier.”

Mokhothu conceded that the commissioners might have acted differently if they had better understood the electoral impact of the alliances. “The greatest challenge was the alliances. They were a new phenomenon,” she said. “So when the issue of alliances first came up, if we had sat down around a table and said, ‘The implications on the model, politically, will be A, B, C, D,’ life would be very different. We wouldn’t be dealing with a court case around allocation of seats and this protracted conflict.” Unfortunately, she added, the compressed electoral timetable and the voter registration glitches prevented the commission from devoting attention to this issue.

The issue might have been resolved if the commissioners had maintained the strong, open relationship with the political parties they created before the 2002 elections. The consultative committees set up in 2001 to facilitate this dialogue still existed, but the chaotic pre-election period reduced the frequency of bilateral and informal meetings. “Normally we want to engage political parties,” Mokhothu explained. “But because of the snap election ... they had to be out

there campaigning.” The commissioners were also preoccupied with their own problems. “This “was a loss for IEC and the politicians,” Mokhothu said. Without this relationship, party delegates on the committees did not always share significant information with the commission.

Looking back on the technical problems experienced before the 2007 election, the commissioners admitted that better contingency planning would have prevented the commission from being caught unprepared. “It’s not as if people were starting things from zero,” said former commissioner Mokhele Rantsie Likate. “It was expected that the elections would be coming in 2007 anyway.” Sekhonyana Bereng of the UNDP agreed that “by February, when the election was held, the IEC should have been at a very high state of readiness.”

The commission could have more efficiently allocated its limited resources by conducting more work during the long period between elections. For example, the Electoral Institute of Southern Africa’s election observation mission recommended that “civic and voter education should be continuous” rather than only pursued before elections. EISA also suggested that “the IEC’s electoral lists should be continuously updated to avoid system overload at election time.” By making some of its processes continuous rather than sporadic, the IEC could shift some of its workload to its less busy periods between elections.¹⁸ The Southern African Development Community observation mission also suggested a continuous process for updating the voter registry, as well as a comprehensive “long-term strategy on voter education” developed in coordination with political parties, civil society and the media.¹⁹

Even after problems with voter registration became apparent, the commission might have been able to mitigate the crisis through better public communication. As in 1998, the public criticism targeting the commission was often based on rumors and insinuation. If the

commissioners communicated more candidly with the public before the election about difficulties they faced and the steps they were taking to resolve them, they might have deflated these rumors. An observation mission from the National Democratic Institute, a U.S.-based nonprofit organization, recommended that the IEC develop “a comprehensive professional communication strategy which provides accurate and timely information and emphasizes the use of a variety of media to reach all citizens. . . . This can help to build public confidence in the impartiality of the electoral process and the professionalism of the IEC itself.”²⁰

Rushed election preparations also frustrated the commission’s attempts to develop its own technical capacity. Mokhothu blamed the commission’s reliance on emergency external assistance. “We don’t really seem to be moving quickly to have our own capacity,” she said. “We kind of relaxed, because we had many consultants helping us, so we didn’t take the issues onboard ourselves.” When consultant David Mathieson was brought in as an international expert, Mokhothu explained, the urgency of the situation prevented him from passing on his expertise for future use. “Under such circumstances, he’s not really concerned about knowledge transfer, and we are not concerned about knowledge transfer,” she said. “We are just worried about getting it right so that we deliver elections.”

The renewed challenges of the 2007 election served as a timely indicator that while changing Lesotho’s electoral model had helped level the playing field between parties, many problems remained entrenched. Mphasa Mokhochane, who in early 2010 was the electoral commission’s acting director of elections, suggested one such issue was that Lesotho’s anemic private sector made the generous salaries of Assembly members irresistible. Khabele Matlosa, director of research at EISA, agreed: “Given Lesotho’s economic situation, [politicians] know that there are no other avenues for them outside Parliament and

outside the Cabinet.”

With such high stakes, it is unsurprising that Lesotho’s parties pulled no punches in their electoral battles. But as these contests degenerated into lawsuits, strikes and ultimately violence, the competition became distinctly unhealthy. Mokhothu said the commission had learned that it could not take a passive role in the face of such conflict. “We haven’t really come up with a strategy of how to be preemptive [when] the outcome may create physical violence,” she said. “I think we need to have a strategy around that but we don’t have [one] as yet.”

Matlosa argued that by adopting a more proactive role in conflict management, the

electoral commission might gain public legitimacy and head off inter-party disputes before they become full-blown national crises. “One of the ways in which the [electoral commission] needs to redeem itself and prove to the public that they are still a credible institution [is through] dispute resolution mechanisms,” he said. “There’s a saying that prevention is better than a cure. I would go that route actually to suggest that the [commission] needs to do much, much, much more before elections—even more than during and after elections—to build a robust and effective institutional mechanism to deal with election related conflicts.”

¹ U.S. Department of State, Bureau of Democracy, Human Rights and Labor. *Lesotho: Country Reports on Human Rights Practices*, 23 February 2001. Available at <http://www.state.gov/g/drl/rls/hrrpt/2000/af/index.cfm?docid=843> (accessed August 5, 2011).

² *Interim Political Authority Act of 1998*, Act 16, Art. 2, Sec. 4.

³ SADC Parliamentary Forum, *Lesotho 2002 Election Observation Mission Report*, 12. Available at <http://www.sadcpf.org/index.php?disp=keydocuments&sec=7> (accessed August 5, 2011).

⁴ *Report of the Commission of Enquiry into the Conduct and Results of the Lesotho General Elections Held in May 1998*, 9 September 1998, Ch. 7. Available at <http://cs.nul.ls/~mofana/LangaReport.htm#Conclusion> (accessed August 5, 2011).

⁵ SADC Parliamentary Forum, *Lesotho 2002 Election Observation Mission Report*, 14.

⁶ SADC Parliamentary Forum, *Lesotho 2002 Election Observation Mission Report*, 14.

⁷ SADC Parliamentary Forum, *Lesotho 2002 Election Observation Mission Report*, 15.

⁸ SADC Parliamentary Forum, *Lesotho 2002 Election Observation Mission Report*, 17.

⁹ Roger Southall and Roddy Fox, “The General Election in Lesotho, May 2002: Adapting to MMP,” *Electoral Studies*, 23, 2004: 545-571.

¹⁰ SADC Parliamentary Forum, *Lesotho 2002 Election Observation Mission Report*, 16.

¹¹ Although the LCD won nearly 55% of the PR vote, the system barred them from receiving any PR seats because of their disproportionate gain of constituency-based seats.

¹² Two constituencies were vacant at the time of elections, but later won by the LCD.

¹³ EISA, *EISA Regional Observer Mission to Lesotho 2007 National Assembly Elections Interim statement*, 19 February 2007. Available at <http://www.eisa.org.za/EISA/pr20070219.htm> (accessed August 5, 2011).

¹⁴ SADC Parliamentary Forum, *Interim Statement on 2007 Lesotho Parliamentary Elections*, 17 February 2007.

¹⁵ SADC Parliamentary Forum, *Interim Statement on 2007 Lesotho Parliamentary Elections*, 17 February 2007.

¹⁶ An LCD victory in a by-election in June 2007 increased their margin to 62.

¹⁷ EISA, *Lesotho: Conflict over National Assembly seat allocation in 2007*, October 2007. Available at <http://www.eisa.org.za/WEP/les2007results1.htm> (accessed August 5, 2011).

¹⁸ EISA, *Lesotho: Conflict over National Assembly seat allocation in 2007*, October 2007.

¹⁹ SADC Parliamentary Forum, *Interim Statement on 2007 Lesotho Parliamentary Elections*, 17 February 2007.

²⁰ National Democratic Institute, *Statement of the NDI Pre-Election Delegation to Lesotho’s 2007 Elections*, 25 January 2007, 8.

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