Evaluation

of the

Lesotho 2012 National Assembly Elections

March 2013

Maseru, Lesotho

Stephen Beale
Evaluation Consultant
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### Acronyms

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<tr>
<td>ABC</td>
<td>All Basotho Convention</td>
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<tr>
<td>AFIS</td>
<td>Automated Fingerprint Identification System</td>
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<td>AU</td>
<td>African Union</td>
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<td>BCP</td>
<td>Basotholand Congress Party</td>
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<td>BNP</td>
<td>Basotho National Party</td>
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<td>CCL</td>
<td>Christian Council of Lesotho</td>
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<td>CDGG</td>
<td>Consolidating Democracy and Good Governance</td>
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<td>CSO</td>
<td>Civil Society Organisation</td>
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<td>ECF-SADC</td>
<td>Electoral Commissioners Forum – SADC</td>
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<td>EISA</td>
<td>Electoral Institute for Sustainable Democracy in Africa</td>
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<td>EMB</td>
<td>Electoral Management Body</td>
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<td>FPTP</td>
<td>First-Past-the-Post</td>
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<td>GoL</td>
<td>Government of Lesotho</td>
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<td>IEC</td>
<td>Independent Electoral Commission</td>
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<td>IPA</td>
<td>Interim Political Authority</td>
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<td>IT</td>
<td>Information Technology</td>
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<td>LCD</td>
<td>Lesotho Congress for Democracy</td>
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<td>LCN</td>
<td>Lesotho Council of Non-Governmental Organisations</td>
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<td>MISA</td>
<td>Media Institute of Southern Africa</td>
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<td>MMP</td>
<td>Mixed Member Proportional</td>
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<td>NAM</td>
<td>Needs Assessment Mission</td>
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<td>Proportional Representation</td>
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<td>Transformation Resource Centre</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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1.0. Acknowledgements

The consultant would like to thank the United Nations Development Programme (UNDP) in Lesotho for its invaluable support in facilitating this evaluation. In particular, thanks are extended to Mr. Thabo Mosoeunyane, Governance Specialist and Mr. Thabang Tlalajoe, Consolidation of Democracy and Good Governance (CDGG) Project Manager for their guidance, advice and assistance. The consultant would also like to acknowledge the cooperation and assistance of the Independent Electoral Commission (IEC) of Lesotho for facilitating meetings and providing transportation during the evaluation. Specifically, the consultant would like to thank the IEC chairperson, Ms. Limakatso Mokhothu, Commissioner Johnson Fako Likoti, Director Mphasa Mokhochane and Ms. Pontso Matete, Executive Manager, Election Operations.
2.0. Executive Summary

On 26 May 2012 Lesotho held its 5th National Assembly Elections since the reintroduction of multi-party democracy in 1993. International and local observers praised the IEC for conducting peaceful, credible and generally sound elections. A consensus was reached by observer groups that the will of Basotho had been freely expressed.

Lesotho has made progress in consolidating democratic governance in the last decade by evolving from a “winner take all” political mentality to a more equitable, proportional electoral system that provides a Parliamentary platform for opposition parties to engage in national debate and policy formulation. The electoral process has been progressively strengthened by increasing the capacity, transparency and accountability of the IEC, leading to national elections in 2012 that resulted in broad acceptance of the outcome and a peaceful transition of political power.

While the overall legal framework for elections in Lesotho is not flawless, it provides an acceptably sound foundation for the IEC to conduct its mandate in an independent and “fearless” manner - the basis for building trust, integrity and confidence in the electoral cycle. The process of selecting Commission members is central to this ideal standard. Additionally, some aspects of electoral legislation require clarification, alignment and amendment, a process that the IEC is encouraged to lead.

Notwithstanding the success of the 2012 elections, the IEC continues to face various challenges, including organizational capacity constraints and a perception among some stakeholders that the Commission lacks independence from the government. This perception has been reinforced by perennial criticism from political parties regarding the conduct of previous elections and institutional linkages between the IEC and government ministries. A recent restructuring process has, however, resulted in the IEC becoming legally autonomous, giving the organization increased institutional independence and responsibility.

The IEC Secretariat continues to face challenges of organizational capacity in administration, operational planning and information technology (IT) expertise. Such constraints have inevitably impacted on the ability of the IEC to deliver technically perfect elections, a high order for any electoral management body (EMB), regardless of its capacity. The IEC has historically faced
criticism over the accuracy of the voters’ register, the procedure of making changes to constituency boundaries, political party registration and election results management.

The functions and responsibilities of Commission members has recently become a topic of discussion among a number of stakeholders, including political parties and civil society organizations. The roles of Commissioners to develop policy guidelines and provide administrative support and management oversight has at times blurred the lines of responsibility and accountability within the IEC Secretariat, which may have impacted on the quality, efficiency and effectiveness of the electoral process. While Commission members have played central roles in fostering political party dialogue, facilitating conflict prevention mechanisms and developing voter education strategies, some key stakeholders have questioned the ongoing need for retaining Commissioners on a full time basis. While there may be a justification for reviewing the terms and status of Commissioner appointments, any fundamental departure from the status quo will require a thorough analysis of the impact that such changes will have on the future of elections in Lesotho.

While independence and transparency of the IEC are crucial aspects of electoral integrity, a robust system of checks and balances is required for any publically funded institution. The IEC may be operationally independent and manage its own finances, however, it does not have a claim to unfettered autonomy. A balance is therefore required between increasing the independence of the IEC while ensuring that sufficient scrutiny and oversight is provided.

Consideration should therefore be given to making the IEC directly accountable to Parliament and appointing an oversight committee to monitor its activities. Parliament can play an important role in providing fiduciary and regulatory oversight of the IEC and therefore increase accountability, transparency and integrity of the electoral process.

The support of the UNDP and development partners undoubtedly contributed to a transparent, credible and inclusive electoral process. UNDP assistance was furthermore crucial for IEC institutional strengthening, technical assistance and voter education. To consolidate these improvements, continued UNDP and donor intervention is recommended for ongoing support of the IEC and the electoral cycle, including exploring modalities for Parliamentary oversight, civic
education, stakeholder relations, legal reform and IEC governance and organizational development.

### 3.0. Evaluation Context

In 2010 the IEC requested the UNDP Lesotho Country Office for support of the 2012 National Assembly elections. A Needs Assessment Mission (NAM) was subsequently commissioned in August 2010 by the UN. Following the recommendations of the NAM a multi-faceted project in support of the 2012 elections was developed. Donors, UNDP and national stakeholders agreed that the project should be informed by the findings and recommendations of both the NAM report and the evaluation of the 2009 Deepening Democracy Project (2006-2009), a previous UNDP intervention supporting governance in Lesotho. As some activities which had been planned under the Deepening Democracy Project were not implemented due to the 2007 snap elections and post-election political deadlock, the UNDP, Irish Aid and the IEC developed a new action plan (AP) within the framework of the ongoing Consolidating Democracy and Good Governance (CDGG) programme in Lesotho, a four-year programme commencing in 2009 with funding from Irish Aid and the UNDP\(^1\). The CDGG is designed to institutionalize and deepen democracy and good governance through improved electoral processes, effective functioning of Parliament and enhanced promotion of human rights.

The current CDGG action plan supports the IEC, civil society and the media on issues of institutional strengthening, electoral dialogue, legal reform and civic and voter education to promote transparent, credible and participative electoral processes. The AP has been carried out through a national implementation modality (NIM) with UNDP country office support.

The AP supports the IEC in the areas of institutional strengthening, electoral dialogue and mediation, legal reform and civic and voter education with a view to promoting transparent, credible and participative electoral processes. In addition, the programme intends to foster participation of marginalized and vulnerable groups in the electoral process. The IEC capacity strengthening aspect of the CDGG included logistical support for the 2012 elections, technical assistance for demarcation of electoral divisions, financial and technical assistance for

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\(^1\) The US Embassy provided funds for election purposes only. Following the 2012 elections, USAID provided funds for post-elections support.
registration of voters and updating of the voters’ roll, media monitoring and training, international election observation support and voter education training of IEC staff and CSOs.

While a comprehensive assessment of the electoral component of the CDGG is beyond the scope of this evaluation, the consultant received positive feedback from the IEC as well as other programme partners, the media, political parties and civil society. The IEC in particular benefited from the support of a logistics advisor who provided technical assistance and mentoring during the electoral period. Election observation missions praised the success of the 2012 elections and were particularly impressed with polling day operations and logistics. All project beneficiaries concurred that the support provided by UNDP and donors for the election cycle was effective and relevant.

**Recommendation:** An external evaluation of the CDGG is conducted, based on standard UNDP criteria, to capture the successes and challenges of the programme. This will inform the UNDP of any strategic changes in objectives that may be required as well as any modification to activity plans and budget allocations for any extension of the CDGG.

### 4.0. Scope of the Evaluation

This evaluation was conducted over a four week period in February and March 2013. The primary scope of the evaluation is to review the capacity of the IEC to carry out its mandate and functions as provided for in the country’s Constitution and electoral legislation and to suggest areas of reform and improvements to the current electoral framework which govern the IEC’s mandate, functions and powers.

The consultant’s terms of reference\(^2\) (TOR) specify two broad areas to be assessed, the electoral legal and operational frameworks. Regarding the legal framework, the consultant was tasked with the following assignment: review the relevance, adequacy and effectiveness of the legal framework to guide the IEC in the execution of its mandate; assess the clarity of the legal architecture and the IEC’s position within this framework; determine whether the existing framework contributes to credible and legitimate elections and whether the exiting regime is conducive for the existence of an independent and impartial electoral management body (EMB).

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\(^2\) Annex 3.
In assessing the operational framework the consultant has undertaken a holistic review of the 2012 elections, including whether the IEC observed its mandate; the effectiveness of civic and voter education; the IEC’s relationship with its major stakeholders; issues of independence, accountability and transparency; IEC internal communication and IEC funding mechanisms.

Given the broad terms of reference for this evaluation, the consultant has refined the scope of work to address fundamental structural and systemic issues affecting IEC institutional and operational matters. In regards to the legal framework a comprehensive review of electoral legislation is beyond the scope of this evaluation, however, the consultant has indicated various examples of gaps, inconsistencies and ambiguities within the electoral legislation that may require the attention of the IEC and Parliament. The IEC is therefore encouraged to take the lead in conducting a participatory review of current electoral legislation.

5.0. Methodology

The evaluation methodology followed an inclusive, participatory approach based on standard UNDP guidelines. The consultant met with primary stakeholders and discussed relevant issues as required in the terms of reference. A qualitative methodology was primarily used to conduct the evaluation, including a desk review, key informant interviews and consultations with stakeholders and focus group discussions. Interviews were typically open-ended discussions with electoral stakeholders and included, but were not limited to: IEC Commission members (current and former), IEC Secretariat staff, Members of Parliament; political party representatives and government officials; civil society organizations; media organizations and representatives; development partners and the UNDP Lesotho Country Office (annex 1).

5.1. Methodology Challenges

The consultant faced some minor challenges in arranging meetings with key informants, notably senior political party representatives and government officials. The IEC Commissioners and Secretariat staff were cooperative and helpful, however, due to the recent restructuring process not all staff were freely available for discussions, nonetheless the consultant was able to meet the majority of IEC key informants. The consultant wishes to acknowledge the unfortunate passing of IEC Commissioner Malefetsane Nkalahle in January 2013.
6.0. Background

Lesotho is a Parliamentary, Constitutional monarchy with the King as head of state. The country has a bicameral Parliament consisting of two houses, the National Assembly with 120 members who are elected by a mixed member proportional (MMP) system and a senate with 33 members, 22 of whom are hereditary principal chiefs while 11 are appointed by the King on the advice of the Prime Minister. The country’s government is led by the Prime Minister who holds executive power and heads a cabinet. National elections are conducted every five years; the first post-independence local elections were held in 2005 and are also conducted every five years.

Since negotiating independence from Britain in 1966 Lesotho has faced considerable challenges in consolidating parliamentary democracy, including single-party domination, coups, authoritarian and military rule, electoral violence and political instability. On the eve of independence in 1966, the Basotho National Party (BNP) become the country’s first democratically elected government. Electoral violence in 1970 resulted in the Constitution being suspended and Lesotho was thereafter ruled by a succession of single-party and military regimes. In 1993 the army transferred authority to a democratically elected government.

The highly contested 1998 elections are considered by many as the nadir in Lesotho’s democratic history. The election resulted in the newly formed Lesotho Congress for Democracy (LCD) winning 79 of 80 first-past-the-post (FPTP) Parliamentary seats, even though the opposition won a significant percentage of the popular vote. As a consequence of this “winner-take-all” outcome, political violence and social unrest engulfed Lesotho and resulted in considerable loss of life and widespread damage and looting. Due to the ensuing instability the LCD requested SADC intervention, hence the governments of South Africa and Botswana intervened militarily and diplomatically. Political commentators and experts have subsequently concurred that one of the underlying causes of the 1998 electoral violence was the FPTP electoral system in practice since Lesotho’s independence. To exacerbate matters, the then ruling BCP split on the eve of the election and formed the LCD, thus contributing to post-electoral tension and violence.

Following the SADC intervention in 1998, the “Interim Political Authority” (composed of political party representatives) was established to address the root causes of political instability in Lesotho and suggest ways to level the playing field. One of the outcomes of these negotiations
was the adoption of a mixed-member-proportional (MMP) electoral system that combined elements of FPTP and proportional representation (PR). Under the new system the number of Parliamentary seats was increased from 80 to 120, out of which 80 would be FPTP seats and 40 PR.

In 2002 the IEC conducted elections using the new MMP system, which was seen as a litmus-test following the political violence in 1998. Considerable national, regional and international support was provided during the run-up to the elections to avert a repeat of 1998. The 2002 polls were generally well run and peaceful and resulted in the major opposition party gaining Parliamentary representation (the BNP complained of irregularities but eventually claimed their seats). Observers and stakeholders praised the IEC for fostering a transparent and consultative election process that included political parties in all stages of the electoral cycle. The MMP system was therefore considered a success by most stakeholders. Following the election Lesotho continued to develop a culture of political tolerance with the emergence of new parties and alliances, including: the All Basotho Convention (ABC) and the Basotho Democratic National Party (BDNP) and the Alliance of Congress Parties (ACP) consisting of the Lesotho Peoples' Congress, the Basutoland African Congress and the Basotho Congress Party.

The second general election using the MMP system was held in May 2007. Despite the unusual circumstances of the IEC conducting a “snap election”, international and local observers concurred that the elections, while highly contested, generally met international standards. The resulting seat allocation process, however, proved controversial and brought into question the integrity of political parties and exposed the vulnerability of the MMP system. Exploiting a loophole in the electoral act, the LCD established an informal alliance with a minor political party. The ABC followed suit in what one commentator termed “a double marriage of convenience”. LCD and ABC party leaders and candidates therefore appeared on the PR lists of the minor parties, even though the alliances were not formerly recognized by the IEC. The LCD was returned to power amid controversy over the seat allocation process. According to the Commonwealth Observer Mission the manipulation of the system resulted in a distortion of the results and undermined the intended spirit of the MMP model.

Subsequent SADC attempts to resolve the ensuing political unrest stalled in 2009 when Sir Ketumile Masire resigned as the appointed mediator. A local initiative led by the Christian
Council of Lesotho (CCL) and the Lesotho Council of NGOs (LCN) then took the lead as mediators with UNDP and SADC support. In November 2010 the LCD held preliminary discussions with other political parties regarding changes to the electoral system in advance of the 2012 elections. Following protracted discussions an agreement was reached by the largest parties that voters would cast a single ballot that would simultaneously indicate their preference for constituency and proportional representation components of the MMP system.

In February 2012 the LCD split following internal differences and factionalism. This resulted in the Prime Minister and 44 MPs breaking away to form a new party, the Democratic Congress (DC). This was followed by a controversial “vote of non-confidence” in the National Assembly on 29 February 2012, which was won by the DC with the support of some members of the opposition. Parliament was dissolved on 15 March 2012 and fresh elections were called.

**7.0. Independent Electoral Commission of Lesotho**

Prior to 1997 elections in Lesotho were administered by the Chief Electoral Office, a government position within the Ministry of Law. Following a national dialogue influenced by an Africa-wide trend of electoral reform, the Independent Electoral Commission of Lesotho was established in 1997 and has since conducted national elections in 1993, 1998, 2002, 2007 and 2012, and local elections in 2005 and 2011. Numerous by-elections have also been held.

Constitutionally the IEC has three full time Commission members, one being a chairperson; all members are appointed by the King on the advice of the Council of State. Commissioners serve an initial term of 5 years, which may be renewed for one additional term. The IEC Secretariat is managed by a Director of Elections who is appointed by the Commission. For the financial year 2013/14 the IEC plans to employ 75 staff at its headquarters in Maseru and 152 staff in 10

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3 Political parties signed an agreement on amending the National Assembly Elections Bill on 9th March 2011 at the UN House, Maseru.

4 The Council of State assists the King in the discharge of his functions and to exercise such other functions as are conferred by the Constitution. The Council of State consists of (a) the Prime Minister; (b) the Speaker of the National Assembly; (c) two judges or former judges of the High Court or Court of Appeal appointed by the King on the advice of the Chief Justice; (d) the Attorney-General; (e) the Commander of the Defence Force; (f) the Commissioner of Police; (g) a Principal Chief nominated by the College of Chiefs; (h) two members of the National Assembly appointed by the Speaker from among the members of the opposition party or parties; (i) not more than three persons appointed by the King on the advice of the Prime Minister, by virtue of their special expertise, skill or experience.
districts and 80 constituency offices. During elections the IEC employs approximately 18,000 temporary polling staff.

The IEC receives financing from the government budget through the Consolidated Fund, upon the approval of Parliament. The IEC has a legal obligation to submit annual financial statements and election and referendum reports to Parliament through the Minister of Law and Constitutional Affairs. The minister also represents the IEC in the government cabinet and speaks on behalf of the IEC in Parliament.

The powers, duties and functions of the Commission are prescribed in the National Assembly Electoral Act (2011): these include: (a) to establish and maintain liaison and co-operation with political parties and civic groups; (b) undertake and promote research into electoral matters; (c) continuously review legislation and other matters relating to elections and referenda and to make appropriate documentations; (d) promote knowledge of sound electoral practices and processes through the media and other appropriate and effective means; (e) develop and promote the development of electoral expertise and technology in all spheres of government; (f) divide Lesotho into electoral areas and to publish the areas in the Gazette; (g) register electors; (h) prepare and maintain a register; (i) prepare and maintain an elector’s register for each constituency; (j) appoint electoral officers, consultants and other persons and specify their functions; (k) establish committees to assist or advise it in the performance of its functions; (l) make regulations; (m) appoint persons to conciliate a complaint concerning a contravention of the Code; (n) appoint a tribunal to hear and determine complaints concerning the contravention of the Code; (o) discharge such other functions as conferred upon the Commission under this Act or any other Law.

8.0. National Assembly Elections 2012

As a basis for assessing the Lesotho 2012 National Assembly Elections, the consultant has referred to a variety of international and regional norms and standards that reflect what are commonly accepted as credible elections (often referred to as “free and fair” elections). Such

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5 The Consolidated Fund consists of all revenues raised for the purpose of government (Constitution, section 110).
international and regional standards are contained in, among others, the 1948 Universal Declaration of Human rights, the African Union’s Declaration on the Principles Governing Democratic Elections in Africa, the Declaration of Principles on International Election Observation, the Principles for Election Management, Monitoring and Observation (PEMMO) and the SADC Principles and Guidelines Governing Democratic Elections. The conclusions and recommendations of this evaluation have been informed by the reports of election observation missions and interviews with primary respondents, including the IEC, political parties and independent candidates, government officials, civil society organizations, NGOs, the UNDP, diplomatic missions and the media.

The 26th May 2012 National Assembly elections were observed by 12 international missions and 7 national observer groups. In conducting this evaluation, the consultant reviewed all observer reports and interviewed representatives of the national observer groups, a variety of civil society representatives, NGOs and faith based organizations. While appreciating the importance of the international observer reports, the consultant recognized the limited duration of their missions and was therefore cognizant of the significant local knowledge and insight that national groups brought to the election observation process.

According to all election observer reports the 2012 elections generally complied with international and regional standards and norms. The AU deemed the elections “peaceful, free, fair and credible” while the Electoral Commissioners Forum of SADC (ECF-SADC) declared that the elections were conducted in accordance with the Constitution and relevant electoral laws of Lesotho. The Commonwealth Mission declared that the election was conducted in a credible, transparent and professional manner and concluded that the IEC managed the entire electoral process competently, especially the logistics of Election Day.

National election observer groups were generally unanimous in their praise of the election process. The Lesotho Council of NGOs (LCN) concluded that Lesotho had “passed the test for free and credible elections and had reached a new watermark in the country’s democratization process”. The Transformation Resource Centre (TRC) commented that the May 2012 election
had not only heralded a peaceful and democratic change of government but had also demonstrated that Lesotho has the potential to nurture and consolidate democracy.\(^7\)

In conducting this evaluation the consultant noted significant improvements to the electoral process and legal framework from previous elections in Lesotho. This included, but was not limited to:

- an electoral code of conduct was embedded in the electoral act;
- the electoral act contained a provision for campaign and political party funding;
- political party leaders signed a pledge and held dialogues on political tolerance.
- an enhanced dispute resolution mechanism and complaints tribunal;
- a “zebra” PR list was introduced (a party list that includes alternating male and female candidates);
- parties required to officially register alliances with the IEC and use one symbol
- increased requirements for internal party democracy for registered parties
- political party monitoring committee to oversee the work of the IEC;
- increased transparency and enhanced stakeholder participation;
- improved and more balanced media reporting on the election;
- improved election logistics, resulting in a generally well organized election;
- participation of civil society organizations in delivering electoral and voter education.

Given the sensitive nature of elections, the selection of temporary polling station officials can often influence public perception; in many countries government employees (such as teachers) are recruited as polling day staff, while elsewhere EMBs consciously hire non-state employees to dispel any suspicions of bias favoring the government. As a sign of increasing political maturity in Lesotho, the IEC recruited more than 18,000 teachers as polling day staff for the 2012 election with negligible complaints.

Notwithstanding the success of the 2012 polls, various legal, organizational, technical, procedural and gender issues and challenges were noted, including but not limited to:

\(^7\) Work for Justice; Vol.30 no.02; July 2012.
8.1.1. Voters’ Register

Political parties have challenged the integrity of the voters’ register during previous elections in Lesotho. This resulted in the IEC adopting a continuous voter registration process, combined with biometric technology\(^8\) for the 2002 election. With biometric and digital solutions continually improving the IEC has kept pace with current technology and adopted a new registration system for the 2012 elections. This posed a challenge for the IEC as numerous people reapplied in order to receive a new voters’ card. While the IEC endeavoured to remove multiple registrants the system is ultimately as good as the quality of data. As some of the fingerprints captured in 2002 were of poor quality the system was unable to detect all multiple registrants. There were also issues with the registration machines in terms of transportability, energy use and maintenance.

The register also contained a large number of deceased voters. The registration of deaths through the Ministry of Home Affairs, with assistance of the chiefs, has only recently become compulsory by law. To complement this, the IEC established a rural verification mechanism whereby the traditional leaders confirmed the identity of the registered voter as well as removing deceased voters from the register. Due to the arbitrary nature of this process, the IEC ran the risk of removing the wrong person from the voters’ register.

In the run-up to the 2012 elections the total number of registered voters was 1,127,908. A number of election observer reports indicated that this figure appeared too high for a population of 1.8 million people. An inflated voters’ register not only impacts on the integrity of the electoral process but also poses a problem for accurately assessing voter turnout. This is a particular challenge for the IEC as an accurate voters’ register is vital for budgetary and operational planning, boundary delimitation and credibility. The consultant was informed that prior to the election political parties concurred that a complete re-registration exercise was required. The consultant understands that this decision may now have been reconsidered due to the cost implications and proposed plans for a national identification card.

**Recommendation:** If a re-registration exercise is not conducted, the IEC may wish to commission a sample survey of the existing voters’ register. A representative, random sample

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\(^8\) An Automated Fingerprint Identification System (AFIS) that captured fingerprints and photographs.
survey of the voters’ register (say 2% to 5%) would provide the IEC with a statistical basis to assess its accuracy and develop a suitable response. This should be conducted by a credible, independent organization.

8.1.2. Legal Issues

Prior to the 2012 election a legal case was filed in the high court regarding submission of PR party lists by an independent constituency candidate. Section 47 of the act requires parties to submit PR lists to the IEC, but the law is silent on this requirement under part 4 of the act – Nomination of Candidates: Constituency Candidates. The IEC based its decision that independent candidates must submit a PR list on the definition of a political party, as contained in the electoral act (2011): “a political party means an association whose primary purpose is to contest elections for members of the National Assembly, but for purposes of proportional representation elections includes an independent candidate”.

The court ruled in favour of the applicant who subsequently contested the elections without submitting a list. This created some confusion during the election as at least 55 independent candidates submitted PR lists, while others did not. Some key respondents have commented that the IEC’s interpretation of the act is detrimental to independent candidates.

Recommendation: Based on the outcome of the court case the electoral act will require clarification: a clear interpretation of a political party and independent candidate in relation to PR lists and clarification of Part 4, section 42 to provide constituency with section 47 (7) of the National Assembly Electoral Act, 2011.

8.1.3. Single Ballot

The law stipulates one ballot for both the FPTP and PR components of the MMP model, a departure from the two ballot system used previously. While in general this was considered a positive step that simplifies the voting process there are some unintended consequences, especially for smaller parties and independent candidates. The issue arises from the requirement that both independents and parties must field candidates in constituency seats in order to benefit from the proportional representation element of the MMP system, hence requiring small parties and independent candidates to acquire the financial means and other resources to field candidates.
in more than a handful of constituencies. Under the single ballot system voters are furthermore unable to cast their ballots strategically by splitting their votes between candidates and/or parties. This not only favours the larger parties but may also reduce the number of smaller parties.

The adoption of the single ballot, nonetheless, addressed the contentious issue from the previous election when political parties formed unregistered alliances. The fact that the main political parties all agreed to this amendment, with support facilitated by UNDP, contributed to a peaceful 2012 election.

8.1.4. Party Alliances

Due to the controversy surrounding the manipulation of the MMP model by the major political parties in 2007 the electoral act (2011) stipulates that all parties which form alliances should register with the IEC if they intend to contest elections under such alliances\(^9\). The relevant section of the law also states that any alliance shall contest the elections with one symbol. Section 47(7) refers to an alliance submitting a joint list of constituency (FPTP) candidates and a joint list for the PR element of MMP.

8.1.5. Campaign and Party Funding

The electoral act (2011) includes new legislation for political party and campaign funding. For the latter, political parties registered with the IEC may raise donations from any person or organization in, or outside, of Lesotho (section 70/1). Any source of funding or donation exceeding M200,000 shall be disclosed to the IEC by the treasurer of the political party concerned. Registered political parties shall be entitled to funding from the Consolidated Fund for the purpose of campaigning and payment of party agents\(^10\). The formula for allocating funds to political parties is based on the number of votes gained in the last elections; in respect of registered parties which did not participate in the last election, funding shall be based on the threshold requirement for registration with the IEC; in the case of an alliance, funding shall be allocated to each political party. For political party funding, a party that participated in the elections shall be entitled to funding from the Consolidated Fund on an annual basis depending on the number of seats it has in the National Assembly.

\(^9\) National Assembly Electoral Act (2011) Section 47(7)
\(^10\) While this is prescribed in law, the consultant was informed that the IEC paid party agents directly in 2012.
The IEC is mandated to determine the actual monetary levels and/or ceiling for campaign and political party funding. One political party interviewed by the consultant was concerned with the criteria for determining the monetary levels and felt that a more transparent and equitable approach was required. Provisions may include limits on contributions in order to "level the campaign playing field", taking into account geographic, demographic and material costs. Such powers rest with the IEC which is legislated to determine these provisions; the IEC is also obliged to consider such factors as fiscal prudence, budgetary constraints and political party requirements.

The legal requirements for accountability of funds provided to political parties is clearly stated in section 72 of the electoral act. For the most part the section is sufficiently robust, notably the powers vested in the IEC Director to investigate any alleged contravention of the law. The following issues may, however, require some discussion:

- political parties are only required to account for funds received from the Consolidated Fund, thereby exempting any accountability for donations and funding from sources inside or outside of Lesotho (section 70(2) simply requires disclosure of donations greater than M200,000, a condition that can legally be avoided if donations are less than the prescribed ceiling, or theoretically are in-kind donations).
- While the IEC Director has the power to investigate any alleged contravention of the political party funding law, the law is silent on the requirement for political parties to have their accounts audited. According to best-practice political organizations receiving public funds should be required to undergo an annual audit, and such accounts should be put in the public domain.

**Recommendation:** A review of the political party funding regulations and mechanism for determining financial allocations is undertaken and legislation proposed for making external financial audits of political parties compulsory, and thereafter made available for public scrutiny.

8.1.6. Participation of women, youth and persons with disabilities

The introduction of legislation in 2011 to mitigate discrimination by political parties on the grounds of gender, disability or youth (Electoral Act Section 30) is a welcome addition to
Lesotho’s election legal framework. Furthermore, the adoption of a “zebra” list has resulted in near gender equity for Members of Parliament elected under PR\(^{11}\). The same principle of equality, however, does not apply for constituency seats. The proportion of men elected under the FPTP component remains disproportionally high, thus resulting in 26% overall representation of women in the National Assembly, a decrease from 2007. The previous SADC recommendation for female parliamentary representation is 30%, a target that has now been raised to 50% in the Protocol on Gender and Development. While Lesotho has made progress in gender equality, notably with 58%B women elected in local elections in 2011 (the highest in SADC) there remain complex social, cultural, political, economic, electoral and legal obstacles that continue to pose challenges for aspiring female Parliamentary representatives in Lesotho. Such inequality is a result of, among others, the electoral model, gender quotas (legislated or voluntary), political will and inadequate compliance with regional recommendations.

**Recommendation: Gender inequality in the Lesotho National Assembly constitutes an imbalance that political parties, Parliament, the IEC and civil society are encouraged to address prior to the 2017 elections, either through legislation or voluntarily.**

**8.1.7. Parliamentary Floor-crossing**

While floor-crossing is legally permitted in Lesotho (for FPTP members only) and is arguably responsible for the current political landscape, concerns were raised by primary respondents about the negative impact floor crossing has on political party structures and representative democracy. Many commentators opine that Lesotho’s MMP system works best when the proportionality determined by voters is not disturbed by elected representatives changing parties or crossing the floor.

**Recommendation: As the IEC is legally mandated to promote knowledge of sound democratic electoral processes, the Commission may wish to objectively examine the perennial pattern of**

\(^{11}\) A potential loophole exists in the zebra list system if a woman declines her seat, which may then go to the next person on the list, regardless of gender. In other jurisdictions this system has been open to manipulation as women are placed on the list only to step down in favour of a male candidate after election.

\(^{12}\) Since the election in 2011 this percentage has dropped to approximately 51%. 

floor-crossing and encourage Parliament to consider appropriate amendments to curb practices that alter the proportionality of results determined by the electorate.

8.1.8. Dispute Resolution Mechanism and Electoral Code of Conduct

For the 2012 elections the IEC established various alternative dispute resolution mechanisms to deal with complaints arising from the interpretation of the Electoral Act and Electoral Code of Conduct. Local conciliators were identified and trained in electoral conflict management and dispute resolution techniques and procedures. District dispute resolution committees were simultaneously established throughout the country. A national tribunal was also established to deal with all matters and disputes referred to it by the IEC. The tribunal, chaired by a senior constitutional lawyer, was convened on an ad-hoc basis and was active for a six month period around the elections. The tribunal dealt with approximately 20 cases.

The establishment of alternative electoral dispute resolution mechanisms is considered good international practice. The consultant understands that the mechanism for Lesotho was well publicized and no legitimate complaints regarding the proceedings of the tribunal were made; hearings were conducted in public thus enhancing the credibility and transparency of the process.

While the dispute resolution tribunal successfully addressed cases brought before it, the consultant concurs with the conclusions of various observer groups that the Electoral Act could be more specific in prescribing appropriate sanctions for violations of the Electoral Code of Conduct. The vagueness of the act leaves unnecessary room to question the weight of any sanction that the IEC might apply.

Recommendation: sanctions referred to in the Electoral Act should be clearly articulated and outlined in reference to specific violations of the Electoral Code of Conduct. The tribunal appointed to adjudicate any alleged violations should be provided with comprehensive terms of reference, international guidelines and training, if necessary, to assist with recommendations for breaches of the code of conduct. Such guidelines are best fleshed out within the IEC legal committee and in consultations with political parties. An on-line data base (preferably on the IEC website and hard copies distributed to registered political parties) of all electoral complaints and adjudications is suggested.
8.1.8. Additional issues

- Complaints regarding boundary demarcation and individual and bulk transfers.
- The secrecy of the vote. This issue concerns the counterfoil that is removed by a polling official after the voter has marked his/her ballot, a process that potentially compromises the secrecy of the vote\(^\text{13}\).
- State media imbalance; state radio and TV providing unfair advantage to some parties.
- Private media imbalance: independent media allegations of bias towards some parties.
- No minimum age for a candidate has been prescribed under the law except that he/she should of voting age (18). In many countries a higher age is prescribed for candidates (often 25).
- Advance voting: insufficient time allocated; eligibility for advance voting should be widened to include additional groups, such as workers, students in South Africa.
- Role of the security forces: a statement released by the army prior to the election regarding security resulted in some confusion over the army’s role during the election.
- The role of the IEC in deregistering parties in the run up to the election was a contentious issue. The IEC investigated political parties with a view to deregistering parties and reducing their proliferation. The IECs registration of the newly formed DC party was also queried by political parties.

8.2.0. Voter Education Programme

A “civic and voter education” programme for the 2012 elections was carried out throughout Lesotho by five civil society organizations (CSOs) in partnership with the IEC. The IEC contracted the following national organizations to sensitize voters on the electoral process: the Economic Justice Network (EJNL), the Lesotho Council of NGOs (LCN), Campaign for Education Forum (CEF), Transformation Resource Centre (TRC) and Federation of Women Lawyers (FIDA). The main objective of engaging these organizations was to enhance knowledge and understanding of the electoral process, reach all categories of voters, including women,

\(^{13}\) This has been a controversy in Lesotho ever since political parties insisted on this procedure to safeguard against voting irregularities.
youth and minority groups to encourage widespread participation in the electoral process. The strategies used for educating the electorate included door to door canvassing, public meetings and social media, in the latter case targeting youth. According to reports received from the implementing partners approximately 420,000\(^\text{14}\) people were reached during a 40 day period prior to the election. Members of political party youth leagues were also trained by the IEC to provide voter and election education.

The consultant was informed that a baseline survey against which to assess or measure the impact of the IEC/CSO voter and civic education programme was not conducted, the consultant also learned that the IEC did not have the resources or staff to monitor or evaluate the work of the CSOs.

While observer reports were generally positive regarding the IEC voter education programme and praised the participation of CSOs, various constraints and challenges were noted. In discussions with various key informants the following issues were raised:

- The 40 days allocated for voter education was insufficient
- The voter education programme was visible primarily in urban areas
- Political parties were not informed about VE events, hence could not attend
- Alleged cases of CSO trainers being politically biased and anti-government
- Voter education sessions were too brief and contained too much information
- Lack of interest in written materials, even though there were learning aids
- Trainers were not sufficiently familiar with the materials
- Events were poorly attended, especially by youth
- Rural people were too busy working in the fields to attend events
- Lack of civic education between elections

Notwithstanding these challenges, election observers noted that voters were reasonably aware of their rights and obligations and polling day procedures were generally followed correctly. A reduction in the number of spoiled ballots from the previous election was a positive development and indicated an improved awareness of the voting process.

\(^{14}\) The consultant is unable to confirm this figure.
**Recommendation:** for future voter education programmes the IEC is encouraged to commission a baseline survey to assess the level of knowledge regarding the rights and responsibilities of voters and awareness of the electoral process. This will generate data that can be used as indicators against which programme achievements can be measured. The IEC is also advised to establish a monitoring and evaluation (M&E) framework and quality assurance methodology for future voter education programmes.

The voter turnout for the 2012 elections was approximately 50.4%\(^{15}\), a slight improvement over the previous national election turnout of 49%. Nonetheless, over the last four decades there has been a general decline in voter turnout, and while easy blame apathy the causes of this trend are complex. The declining voter turnout suggests that a significant number of people are excluding themselves from the process; this calls for an analysis of the reasons why people choose not to participate in elections and/or factors that discourage them from doing so. Based on the outcome of this analysis the IEC will be in a better position to respond with an appropriate strategy.

**Recommendation:** The IEC, with support from UNDP, commission an analysis of the voter turnout for the 2012 elections looking systematically at political, economic, social, cultural, demographic and psychological aspects affecting voter turnout. This should include the possibility of gathering disaggregated voter data. At present there is no data on the gender and age of those who voted. The study should recommend a civic and voter education outreach strategy to address the declining turnout.

### 8.2.1. IEC Mandate for Voter and Civic Education

The IEC’s legal mandate for voter and civic education is not explicitly stated in the electoral act. Section 135(d) refers generally to the “promotion of knowledge of sound electoral practices and processes through the media and other appropriate and effective means”. Under previous electoral legislation the IEC had a specific mandate to promote voter and civic education. The consultant was informed by the IEC that the dilution of the IEC’s mandate was not an intentional policy decision. While the electoral law provides the IEC with the latitude to promote voter and

\(^{15}\) This percentage is based on the 2012 voters’ register which is known to contain the names of deceased voters and multiple registrants, hence the actual voter turnout may be higher.
civic education, the lack of a specific legal mandate has implications on the responsibilities of the Commission, its interpretation of the law and commitment from IEC staff.

While there is a general consensus among senior IEC officials regarding the objectives of voter and electoral education for the 2012 election, there was less agreement on the responsibilities of staff regarding civic education and to what extent the IEC should be involved in the promotion of wider issues of democratization, governance, gender and human rights. The role of the IEC in promoting civic education on a continuous, on-going basis has been frequently discussed over the years and continues to be raised by the CSO and NGO community. An initiative to launch a national civic education programme, supported by the UNDP and donors following the 2007 elections, failed to gain traction.

Recommendation: The IEC, with UNDP support, is urged to explore the concept of developing a national framework for civic education that will potentially be rolled out between elections; partners could include the Ministry of Education, CSOs and NGOs, local authorities, women and youth organizations, traditional chiefs, the media and political parties.

8.3.0. Elections 2012 - Conclusions

Based on an extensive desk review and interviews conducted during the course of this evaluation the consultant generally concurs with the conclusions of the observer missions and key informants that the 2012 National Assembly elections met international standards and the results reflected the will of Basotho. While there were various legal, technical and procedural challenges, most notably with boundary delimitation and the integrity of the voters’ register, these constraints did not significantly affect the outcome of the election. Nonetheless, the IEC, Parliament and political parties are encouraged to consider the recommendations of the observation missions as well as those contained herewith.

The support of the UNDP and development partners undoubtedly contributed to a transparent, credible and inclusive electoral processes, particularly in promoting political dialogue and tolerance. UNDP support was furthermore crucial for IEC institutional strengthening, technical assistance and voter education.
9.0. Legal Framework for Elections

The Constitution of Lesotho sets out the basic principles for the protection of citizens’ freedom of movement, expression, assembly and association. Section 20 specifically provides for citizens’ rights to vote and/or to stand for periodic elections through a system of universal and equal suffrage. The primary legal instrument is the National Assembly Electoral Act (2011) which replaced the previous electoral act of 1992. The act, among other provisions, upholds the right of citizens to vote and stand for elections during periodic elections under a mixed member proportional system and allows the IEC to register political parties.\(^\text{16}\)

While the IEC is empowered to develop regulations and instructions for any aspect of the electoral process, the Commission has historically embedded regulations in electoral legislation itself. There are, nonetheless, various gaps, omissions, ambiguities and inconsistencies in the act that has led to some confusion and legal challenges. The consultant understands that the IEC is currently developing a set of draft electoral regulations and instructions, intended to be an integral part of the electoral legal framework.

One of the primary responsibilities of the IEC is to make recommendations for electoral reform, including amendments to relevant laws and acts. The IEC commenced a review of electoral legislation in 2003 which culminated with the enactment of National Assembly Elections Act, (2011), an improvement over the 1992 act. Among other amendments, the new act includes two important provisions for election campaign funding and political party funding.

While there are some gaps and inconsistencies, the legal framework under which the IEC is established and operates is sufficiently structured and clear for the Commission to execute its mandate. The Constitution ensures the independence of the Commission while the act provides an adequate legal regime for the IEC to deliver credible elections that can potentially meet international standards.

**Recommendation:** To avoid the potential for inconsistencies and contradictions with the primary Electoral Act (2011), the IEC is encouraged to lead a systematic review of the act and

\(^{16}\) National Assembly Electoral Act, 2011
all existing legislature and ensure that a harmonized set of electoral regulations and instructions is drafted. If the IEC lacks the capacity to conduct this exercise in a timely manner then technical assistance from the UNDP may be considered.

10.0. IEC Accountability and Institutional Links

In assessing the ability of the IEC to carry out its mandate for conducting elections, it is important to appreciate the extent to which the Commission is legally and operationally linked to government. In doing so the consultant compared the Lesotho IEC with regional and global EMBs.

There are three broad categories of EMBs found in 214 countries where elections are held regularly; in order of popularity these include: independent EMBs\(^\text{17}\) (55%), government EMBs (26%) and mixed EMBs (14%). The benchmark or standard by which EMBs are often measured is the degree of autonomy from government and the executive branch and whether the EMB receives and manages its own budget.

10.1. IEC Institutional Link to Government

The IEC is legally accountable to the Minister of Law and Constitutional Affairs. In discussions with the IEC this relationship was described largely as a formality that links the IEC to the cabinet, the executive and Parliament. The IEC has a legal obligation to submit annual financial statements and election and referendum reports to Parliament through the Minister of Law and Constitutional Affairs. The minister also represents the IEC within the government cabinet. Procedurally, the IEC is represented to the minister through a governmental principal secretary. If required, the minister speaks on behalf of the IEC in Parliament.

Since its establishment the IEC has relied on the Ministry of Public Service and the Public Service Commission for human resource support, including staff secondment and payroll and pension disbursements. For the past decade, however, the IEC has been performing many of these processes in-house, with minimal government involvement. The IEC human resource department prepares job descriptions, advertises posts, interviews candidates and makes the final

\(^{17}\) Some examples of independent EMBs include South Africa, Kenya, Australia, Liberia and Ghana.
hiring selection. Conditions of employment, remuneration levels, benefits, etc. are based on government standards.

The IEC’s historical reliance on the Ministry of Public Service and adherence to government procedures for procurement and tendering, has contributed to the perception that the IEC lacks complete independence\textsuperscript{18}. The current restructuring process of the IEC, however, has the potential to influence this perception (see Restructuring of the IEC below).

\textbf{10.2. IEC Budget}

The IEC prepares two budgets, an annual budget for running and overhead costs and a periodical budget for non-recurrent spending such as elections, voter registration, referendum, etc. The budget is shared with the Ministry of Finance to determine the availability of funds and thereafter submitted to the Ministry of Law and Constitutional Affairs; the budget is subsequently presented to the cabinet budget committee which may exercise its prerogative to trim certain expenditure. Following this process the budget is submitted to Parliament for approval, at which time the IEC may be requested to explain or justify certain items. The IEC subsequently receives allocations from the Consolidated Fund and thereafter exercises control of the budget free of any day-to-day government involvement.

Historically the IEC has received adequate budgetary allocations from Parliament. The fact that the IEC prepares its own budget and government involvement in IEC spending is limited augers well for its financial independence. The consultant was furthermore informed that the IEC has recently been allocated a separate heading in the national budget.

The legal linkage to government notwithstanding, the IEC to a large extent enjoys administrative independence and financial autonomy. While the structural link to the Ministry of Law and Constitutional Affairs has perhaps contributed to the perception that the IEC lacks complete independence, this type of relationship is common in countries where independent EMBs exist and does not necessarily compromise the autonomy of the IEC.
**Recommendation:** Regardless of its operational independence, the IEC must still interact with Parliament on various issues such as electoral legislation and budget allocations. In this regard a good practice is the establishment of a multi-party Parliamentary committee such as a “joint standing committee on electoral matters” to deal with IEC matters, as is the practice in Australia. If structured appropriately, the IEC Director, who is the chief executive, could represent the Commission in front of this body.

11.0. Restructuring of the IEC

In line with international best practice, the IEC embarked on an institutional restructuring strategy in 2001 to increase functional and operational independence from the government. This involved recruiting consultants to assist with developing human resource and financial procedures, propose a new organizational structure, conduct a skills audit, develop a performance management system and draft job profiles. For the ensuing 10 years this process continued on an ad-hoc basis while the IEC focussed on continuous voter registration, national and local elections and periodical by-elections. In 2011/12 the process gained traction with the UNDP recruiting a consultant to assist with completing the restructuring. This involved implementation of the programme and development of a strategic and human resources plan to align with the new structure.

The IEC has subsequently adopted a new institutional framework including an organizational structure, organogram, job descriptions, salary levels and benefits structure. All IEC staff were compelled to internally reapply for their positions, resulting in a number of long-serving IEC staff deciding not to remain. All staff had the option of requesting a transfer from the IEC to a ministry/government office or early retirement, which a number opted for. Section 149 (amended) of the National Assembly Act (2011) prescribed that by the end of March 2013 the IEC would have transferred staff from the Public Service to its direct management. In late 2012

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19 Section 144 (1) of the electoral act states that the Director shall be appointed by the Commission “in consultation with the Public Service Commission”. While this may be a mere formality the IEC may wish to clarify this condition.
an act of Parliament was promulgated giving the IEC a new juridical persona and self-management status.

While this process has for the most part been completed, IEC internal governance, especially the functional relationship between the Commission members and the Director and Secretariat is a grey area that needs to be clarified. This is a challenge that the IEC must clearly define in order to establish parameters between their roles. Although the Constitution and electoral act may identify particular functions and responsibilities, their roles from time to time become blurred. Managing the relationship between the Commissioners and the Secretariat requires clear lines of responsibility and reporting. This aspect of electoral management needs to be addressed within the context that the IEC works and within the confines of the legal framework.

**Recommendation: Clear governance relationships and responsibilities for Commissioners and the Director/Secretariat need to be developed keeping in mind the Constitutional mandate of the IEC and the legal responsibilities of the Director.**

### 12.0. IEC “Fearless Independence”

An internationally recognized definition or standard of an independent EMB is provided by International IDEA.

*The independent model of electoral management exists in countries where elections are organized and managed by an EMB which is institutionally independent and autonomous of the executive branch of government and has, or manages, its own budget. Under the independent model the EMB is not accountable to a government ministry or department, however, it may be accountable to the legislature, the judiciary or the head of state”*. 

In reference to an EMB, the term “independent” is open to a variety of interpretations and depending on the specific context can have different meanings and implications. Independence can be interpreted in two primary ways, that of institutional and structural autonomy from the government, and that of “fearless independence” where EMB decisions and actions are not inappropriately influenced by the executive, government, political parties or partisan interests. The first definition of independence is functional, the second pertains to an ideal standard. When
the two are linked the result is commonly believed to be the most effective type of EMB to ensure trust, integrity and fairness in electoral management and decision making.

In assessing the IEC’s Constitutional mandate to organize elections, the consultant compared the legal framework and organizational structure of the Lesotho IEC with regional and global EMBs. As a means to objectively determine whether the existing legal and administrative regime of Lesotho provides adequately for the existence of an independent, impartial and credible EMB, the consultant referred to international principles, including but not limited to, the ECF-SADC guidelines on EMB independence\(^\text{20}\), which reflects international standards and criteria.

The legal framework provides the foundation for the IEC to operate in an independent and impartial manner. The Constitution of Lesotho (66C) states that:

“the Electoral Commission shall not, in the performance of its functions, be subject to the direction or control of any person or authority”.

Section 134 of the Lesotho National Assembly Electoral Act (2011) furthermore refers to a member of the Commission subscribing to an oath of office (Schedule 4) affirming that they will “truly perform the functions of Chairperson/Member of the Independent Electoral Commission in accordance with the Constitution and the laws of the Kingdom of Lesotho without fear of favour, affection of ill-will”. This section of the law, however, is to some extent dependent on the selection of suitably qualified Commission members; as such the potential for the ideal standard of “fearless independence” is enshrined in the electoral legal framework of Lesotho.

The legal framework outlines the general procedure for the appointment and re-appointment of Commission members for a maximum of two terms of five years in office and provides the procedure for removal of Commission members in the event of inability to exercise the functions of his/her office. The legal framework does not explicitly provide for continuity and institutional memory by staggering the terms of office of Commission members, nor does it state the official procedure in the event of a Commission vacancy. There is also no mention of a succession policy from Commissioner to Chairperson.

13.0. Commission Members

The appointment of suitably qualified and politically neutral commission members is central to the process of building trust and integrity in an EMB and the electoral process.

The Constitution of Lesotho states that the IEC shall have three members, being persons of high moral character and proven integrity, appointed by the King on the advice of the Council of State. Persons appointed as Commission members should either qualify to hold a high judicial office or should possess considerable experience and demonstrated competence in the administration of public affairs. In the case of the chairperson, a list of 3 candidates is submitted to the Council of State, for the other 2 members a list of 5 candidates is submitted. There is no apparent legal requirement for Commission members to be appointed in a staggered fashion, thus allowing for institutional memory and overlap, although this appears to have been the de-facto practice. The law also sets out the term of office of Commission members (5 years) and the procedure for the removal of a Commissioner from office, upon the recommendation of a tribunal appointed by the King. The law does not indicate the procedure for renewing a Commission member’s term in office. A provision in the Constitution (as amended in 2001) gives the government and registered political parties the right to jointly participate in nominating Commission members. This is to take place by a process agreed to by the parties. The entire nomination and appointment process is meant to be completed within 30 days according to legislation.

The most recent appointment to the Commission occurred in 2008. The consultant understands that an advertisement was placed in the media inviting nominations. An ad-hoc Parliamentary group was thereafter assembled to conduct a screening process. A short list of candidates was then submitted to the Council of State and subsequently the King appointed the Commissioner.

According to one key respondent, IEC Commission members are “essentially appointed at the pleasure of the Council of State”. The prerogative of the Council of State in the recommendation of Commission members was similarly raised by other respondents, one of whom opined that “objective criteria” should be the guiding principle in the selection process.

Once Commission members have served an initial tenure of 5 years they are eligible for an additional term. A closer look at legislation, however, reveals that the law is silent on the re-
appointment procedure. Section 66(7) simply states that a member of the election commission
shall hold office for a term not exceeding 5 years and his/her appointment may be renewed for
only one further term not exceeding 5 years\footnote{The Second Amendment to the Constitution Act, 1997, Section 66(7).}. The consultant understands that the
recommendation to renew a Commission member for a second term is at the discretion of the
Council of State.

While the law provides a procedure for the removal of a Commissioner for misbehaviour or
incapacitation, the appropriate section is silent on guidelines for determining what constitutes
perceived “misbehaviour”. Under the existing procedure the King appoints a tribunal that
recommends whether a Commissioner is suspended or released from duty.

**Recommendation:** A discussion is facilitated by UNDP among political parties regarding the
procedure for appointing and renewing Commission members. The following “good practice”
is suggested: vacant Commissioner posts are publicly advertised with clear and objective
criteria, qualifications and experience. A search committee comprised of, inter alia, political
parties, civil society representatives, academics, etc., should be tasked with objectively
screening and grading all candidates\footnote{Such functions in South Africa are performed by "a panel of representatives from the other institutions supporting democracy."}. At this juncture, a gender quota for Commission
members may also be considered. This process should include interviews that are open to the
public\footnote{A variation on this theme could involve appointing a professional, independent recruitment agency, selected
through a competitive bidding process, to source suitably qualified candidates prior to public hearings/interviews.}.

**Recommendation:** As this process deserves sufficient time, the current 30 days period is
amended to a minimum of 60 days.

**Recommendation:** To inform and/or complement the Council of State’s recommendation, a bi-
partisan Parliamentary advisory committee is considered by MPs. Such a committee could be
responsible for affirming the short list of Commission member candidates but may also be
entrusted to recommend Commission members. Parliament may also be considered as the sole
body responsible for appointing Commission members.
**Recommendation:** the procedure for suspending or removing Commissioners is similarly discussed by political parties with the intention to develop guidelines to ensure that vigorous, objective criteria is applied. Given the sensitivity of such action, it may be appropriate to consider empowering Parliament to conduct a procedure based on the grounds of proven misbehaviour or incapacitation when considering suspension or removal of a Commission member.\(^{24}\)

### 13.1. Commission Members: Status and Tenure

In conducting this evaluation the consultant listened to the views of political party leaders, civil society and NGO representatives, the media, the donor community, government officials, Members of Parliament and the public. Various opinions and suggestions regarding the structure and corporate governance of the IEC were presented, often regarding the functions and responsibilities of IEC Commissioners. A consensus emerged that a dialogue was warranted regarding the status and tenure of Commission members and whether they should be retained on a full time basis, a part time basis or a combination of both.

In assessing the suitability of full or part time Commission members, the IEC mandate and the current duties and responsibilities of Commission members should be considered. Given that the IEC is currently completing a restructuring process it may be an opportune time to assess whether the *status quo* is maintained or an alternative dispensation is more appropriate. As there is no prescribed best practice in this regard, the most suitable arrangement for Lesotho should be based on current electoral, administrative and political circumstances that take into consideration the views of all stakeholders.

While not explicitly stated in law, IEC members are currently full time. During previous election cycles in Lesotho Commission members have been functionally involved in various aspects of the planning and management of elections, including voter registration, logistics and operations, media relations, conflict prevention and voter education. Due to the contentious history of elections in Lesotho Commissioners have in addition played a vital role in political party liaison and dialogue; the nature of their full time positions therefore contributed to timely consultations.

\(^{24}\) In Canada, for example, the chief electoral officer can only be removed from office by the Governor General after a joint request following a majority vote by the House of Commons and Senate.
and rapid decision making. Since 2001 the IEC has adopted continuous voter registration and from 2005 has conducted local government elections. On-going legal reform and periodical by-elections also keep Commission members engaged. Regional and international obligations, including ECF-SADC and AU observer missions, furthermore keep Commission members actively involved and exposed to international electoral practice (both best and worst) that can potentially have an enduring and positive impact on electoral policy formulation in Lesotho.

The advantages of full time Commission membership must, however, be weighed against the costs involved in retaining their services between elections when there are fewer requirements for their expertise. Consideration must also be given to the relationship between full time Commission members and the IEC Secretariat. Historically, the lack of clear internal IEC governance structures and policy guidelines has resulted in blurred lines of responsibility, leading to confusion and despondency within the Secretariat and occasions when responsibilities have been abrogated.

The lack of professional and organizational capacity within the Secretariat has also been the justification for retaining three full time Commissioners. This situation has resulted in occasions when Commission members have misinterpreted or overstepped their oversight roles and responsibilities.

Although currently being finalized, the new IEC restructuring process includes governance roles and responsibilities that have the potential to clarify the systemically blurred relations between Commission members, the Director and the Secretariat. These provisions, however, will have to be harmonized with the existing electoral act and Constitution to avoid any contradictions or misconception of the powers of Commission members and Secretariat staff.

Throughout the SADC region and globally there are numerous examples of EMBs that have adopted full time commissioner membership, part time membership, or a combination of both. South Africa and Germany have opted for full time members while Tanzania retains part time members; Ghana and Guyana have adopted a combination of a full time executive commissioner and part time members. Canada has one full time chief electoral officer. Some of these examples are party-based election commissions while others are expert-based.
While a comparative analysis of Lesotho with other countries may be useful, any decision on whether Commissioners should be full time or part time should ultimately be based on the particular electoral, administrative and political circumstances currently existing in the country. A number of key respondents have suggested that Lesotho has matured politically since 1998 to warrant a review of the tenure and mandate of Commission members, while others believe that the evolving political landscape warrants a continuation of the status quo. A number of interviewees opined that a review and evaluation of the current structure is required, however, highlighted the importance of contextualising the prevailing electoral and political conditions in Lesotho before embarking on a radical departure from the existing structure.

**Recommendation:** Parliament, political parties and other stakeholders to discuss the current status of IEC Commissioner membership and tenure. A UNDP facilitated, expert-led seminar with regional and/or international EMBs presenting their experiences may be beneficial to highlight the advantages and disadvantages of the various modalities. Discussion points may include:

- the optimum number of EMB commission members and their tenure;
- the initial appointment criteria and re-appointment process;
- the duties, roles and responsibilities of Commission members;
- IEC Commission members duties vs. Secretariat responsibilities
- party-based vs. expert-based EMB members;
- full time vs. part time appointments;
- combination full time executive Commissioner and/or part time members;
- the feasibility of full time Commission members during elections only.

Regardless of the outcome of this discussion, any departure from the status quo requires a thorough evaluation of the impact that such fundamental changes will have on the future of elections in Lesotho.

14.0. **IEC Relations with Stakeholders**

The IEC’s primary stakeholders include political parties, independent candidates, Members of Parliament, the executive branch of government, CSOs and NGOs, the media, domestic and international election observers, development partners and the donor community. The IEC has historically made concerted efforts to develop and maintain positive and constructive
relationships with primary stakeholders and has generally endeavoured to fulfil its legal mandate to “establish and maintain liaison and cooperation with political parties registered with the Commission and other interested civic groups”.

During the 2002 elections the IEC introduced consultative committees that focused on essential areas of the electoral cycle, including political party liaison, logistics and operations, voter education, conflict prevention, election observation and IT. These committees served various practical purposes but were essentially viewed as a means for building confidence in the electoral process and increasing transparency. When stakeholders are given a voice in decision making they will be more likely to support the electoral process. This tradition continued during subsequent elections with varying degrees of success, however, some stakeholders were more engaged than others. A good practice that the IEC has adopted is to keep a record of all consultative meetings and share minutes with stakeholders, regardless of whether they attended.

While the IEC can be credited with steadily improving stakeholder relations, disputes over election results in Lesotho are a habitual occurrence with opposition parties often accusing the IEC of lacking independence from the government of the day. Due to the level of mistrust the IEC has in the past been under attack from opposition party leaders and is frequently criticized for its allegedly biased decisions and actions. This has fuelled the perception that the Commission is divided by political interests and has resulted in some Commission members and Secretariat staff being labeled as politically biased. The technical capacity of the IEC staff has also influenced stakeholder perception, for example when human errors and anomalies occur on the voters’ register political parties are quick to allege deliberate mismanagement and politically motivated interference.

In the run-up to the 2012 elections, however, stakeholder perception shifted in the favour of the IEC through a concerted effort of participatory consultations with political parties, civil society, the media and other stakeholders that increased transparency and confidence. Furthermore, a political party monitoring mechanism was introduced for the 2011 local government elections and repeated for the 2012 general elections that contributed to an improved perception of the
IEC. This resulted in the Elections Monitoring Committee (comprised of all major parties) declaring that the 2012 general elections were free, fair, and accessible and represented the will of the people of Lesotho\textsuperscript{25}.

The IEC’s formal relationship with the executive branch of government is through the Minister of Law and Constitutional Affairs, who represents the IEC in the cabinet and in Parliament. The IEC budget request is channelled through the ministry to the cabinet and thereafter forwarded to Parliament for approval. In the event of an upcoming election the executive branch of government consults with the IEC to determine its state of readiness in order to advise the King on proclaiming an election date.

The IEC’s efforts to exert its independence and demonstrate its commitment to stakeholder accountability and transparency are crucial for public trust in the electoral process. The existing legal framework is sufficiently robust for the IEC to exert its powers as an independent EMB and dispel any misconceptions that stakeholders may have regarding its integrity. This was demonstrated during the 2012 elections through frequent stakeholder engagement that built trust and confidence in the election process. The IEC is therefore urged to continue with similar confidence building measures, including treating stakeholders equitably so that none are unfairly advantaged or disadvantaged by Commission decisions or actions; this can be achieved by the IEC demonstrating the highest standard of ethics, impartiality and integrity.

The consultant understands that a communications specialist was engaged by UNDP to assist in media relations and communication to enhance the public image and perception of the IEC. While such interventions are undoubtedly worthwhile the IEC is encouraged to fully implement the strategy and recommendations of the communications specialist.

\textbf{Recommendation:} IEC accountability and transparency, both in decision making and financial management, will be enhanced if sufficient monitoring and oversight is applied. This can be accomplished in a number of ways. The formal involvement of political parties in monitoring the activities of the IEC during election events is an appropriate response and one

\textsuperscript{25} Final Report of the 2012 Elections Monitoring Committee: 04/06/2012
that should be considered in the future. An additional response is to introduce a Parliamentary oversight role.

15.0. Parliamentary Oversight

While independence and accountability of an EMB are crucial aspects of electoral integrity, a system of checks and balances is required for any institution that is answerable to the public and receives state funding. While the IEC may be operationally independent it does not have the right to unfettered power, however, at the same time accountability has to have limits to guarantee the IEC’s independence. Therefore a balance is required between increasing the power and authority of the IEC while ensuring that sufficient scrutiny is in place.

**Recommendation:** A new or existing Parliamentary committee could be appointed to provide oversight of the IEC. This could include rigorous scrutiny of IEC accounts and financial statements (in coordination with the Public Accounts Committee) and could determine the content and frequency of IEC reports on electoral events, legal amendments and research for example. Such reports should be available for public scrutiny on the Parliament and/or IEC website. Members of the oversight committee may also be invited to attend interviews for Commissioner appointments and senior IEC Secretariat staff. Clear written rules governing Parliamentary scrutiny could be drafted in consultation with the National Assembly, civil society organizations, NGOs and election experts. These could include Parliamentary visits to the IEC. Such oversight however should not extend to giving instructions or interfering with the mandate of the IEC.

16.0. National Dialogue on Electoral Reform

Lesotho has historically addressed electoral reform on an ad-hoc, piecemeal basis, often precipitated by political crisis or electoral violence. This has resulted in an iterative approach to amending electoral legislation, developing codes of conduct, designing conflict prevention mechanisms and other reforms intended to enhance the credibility and integrity of the electoral process. In meetings with key informants, the consultant heard the views of a wide cross-section of stakeholders who believed that a structured, systematic review of the broader electoral and democratic environment in Lesotho was required in order to reach a common understanding and consensus on what reforms were required.
**Recommendation:** The UNDP facilitate an expert-led national dialogue on electoral and democratic reform that explores relevant issues relating to, inter alia:

- **Electoral Reform:** Legal framework; boundary delimitation; voters’ register; electoral model; codes of conduct; conflict mitigation;

- **IEC:** Mandate, powers and duties; Parliamentary oversight; Commission members’ tenure and status; budget allocation; stakeholder relations; political party monitoring;

- **Synchronized elections:** holding local and national elections together;

- **Political Parties:** internal governance and structures; formal alliances; Parliamentary procedures; Parliamentary floor crossing; codes of conduct; intra-party dialogue;

- **Civic Education:** national framework for civic education; voter turnout;

- **Participation of women, youth and disadvantaged groups:** FPTP quotas, political party membership.

**17.0. Conclusion**

While political tension and disputes have historically characterised elections in Lesotho, the increase of political tolerance and decline of electoral violence since 1998 is a promising indication that political parties are committed to waging their battles in the courts, in the media and in the public arena rather than in the streets. The acceptance of the 2012 election results exemplified the political maturity of party leaders, their supporters and stakeholders.

The electoral framework has evolved over the last number of decades into an acceptable basis for the IEC to potentially carry out its mandate in an independent manner. While the electoral legislation is not flawless it has improved in an ad-hoc, iterative manner that strives to addresses the concerns of political parties and other stakeholders. This is a work in progress that will require a structured approach with extensive dialogue and support.

The independence of the IEC nonetheless remains a controversial issue in Lesotho, despite the success of the 2012 elections and subsequent change of political power. Much of this stems from the perception that the IEC has historically been unfairly linked to the government of the day, a
perception fuelled by opposition parties following electoral defeats. The integrity of an EMB will be questioned less often if the organization is perceived to be “fearlessly independent”, impervious to political influence and accountable to the public. With the appropriate legal amendment, the IEC has the potential for this standard to be attained.

An appropriate mechanism should therefore be considered for Parliamentary oversight, either through an existing portfolio committee or a new body specifically for the IEC. This can increase the accountability and transparency of the IEC and ideally enhance confidence in the electoral process.

The UNDP and development partners contributed to a transparent, credible and inclusive electoral processes, notably in promoting political dialogue, IEC institutional strengthening, technical assistance and voter education. To consolidate these improvements, continued UNDP and donor intervention is recommended for ongoing support of the electoral cycle, including the promotion of Parliamentary oversight, stakeholder relations, legal reform, civic education and IEC internal governance and organizational development.
Annex 1: Interviews and Meetings

**Parliament / Prime Minister’s Office / Political Parties:**

Hon. Lekhetho Rakuoane: Deputy Speaker of the National Assembly

Hon. Mothejoa Metsing: Party Leader LCD

Hon. P. Letsoela: Member of Parliament

Hon. Kelebone Maope: Party Leader LPC

Hon. Thesele Maseribane: Party Leader BNP

Mr. N. Sekhonyana Bereng: Prime Minister’s Office

Mr. Ralechate Mokose: Secretary General DC

**Independent Electoral Commission of Lesotho:**

Ms. Limakatso Mokhothu: Chairperson

Mr. Johnson Fako Likoti: Commissioner

Mr. Leshele Thoahlane – former chairman

Mr. Mphasa Mokhochane: Director

Ms. Pontso Matete: Executive Manager, Election Operations

Mr. Moteka Mohale: Legal Officer

Mr. Kotsi Mohau: Logistics Officer

Mr. Kotsoana Motsie: Executive Manager

Ms. Penier Hloele: Resource Centre Head

Ms. Malefa Mosala: Human Resources Manager
Civil Society, NGOs, Media, Legal Profession

Mr. Sakoane Sakoane: Former Chair of the Elections Dispute Resolution Tribunal

Mr. Thabang Molchathali: Christian Council of Lesotho

Mr. Hoollo ‘Nyane: Transformation Resource Centre

Mr. Tsikoane Peshoane: Transformation Resource Centre

Mr. Caleb Nchafatso Sello: Political analyst

Mr. Liau Motoko – Programmes Director: LCN

Mr. Sebata Motsamai: Director LCN

Mr. Tsebo Mats’sasa: National Director MISA, Lesotho

Ms. Thusoana Ntlama, Director FIDA

Ms. Tankiso Motioi, Legal Aid Officer, FIDA

Embassies

Mr. Charles Perego: Political Officer, Embassy of the United States of America

Mr. Retselisitsoe D. Moea, Political Specialist, Embassy of the United States of America

Ms. Olivia Gumbo, Programme Advisor, Embassy of Ireland, Irish Aid

Mr. Siyabonga Ponco: 1st Secretary: Political – South African High Commission

UNDP

Karla Robin Hershey: Resident Representative

Thabo Mosoeunyana: Governance Specialist

Thabang Tlalajoe: Project Manager CDGG

Patrice Lucid: UNV Elections and Parliamentary Affairs Officer
Annex 2

**Documents Reviewed and References**


*Consolidation Democratic Governance in Southern Africa: Lesotho (2006) EISA.*


*ECF-SADC Election Observation Report, Lesotho National Assembly Elections (26 May 2012).*

*EISA Election Observation Mission to the Lesotho Parliamentary Elections Report (26 May 2012).*


Elections Support Project Document (September 2011). UNDP Lesotho

Electoral Needs Assessment Report: Lesotho (August 2010), UNEAD; Lesotho


Evaluation Report for National Assembly Elections, Irish Aid; UNDP. (January 2012). Lesotho


*From Military Rule to Multiparty Democracy, Political Reforms and Challenges in Lesotho (2003); EISA.*

Implementing the APRM Views of Civil Society, Lesotho Report (September 2011).

Lesotho IEC Implementaiton Plan, Griffin Zabala (22 February 2013), Lesotho


Redeployment Strategic Planning and Buisnees Planning Close Out Report (February 2013) IEC/UNDP; Griffin Zabala; Lesotho.


SADC Council of NGOs; Report on the 2012 National Assembly Elections (26 May 2012)


Annex 3: Terms of Reference

IEC CONSULTANT FOR EVALUATION OF THE LESOTHO 2012 NATIONAL ASSEMBLY ELECTIONS

**Location:** Maseru, LESOTHO

**Application Deadline:** 22-Dec-12

**Type of Contract:** Individual Contract

**Post Level:** International Consultant

**Languages Required:** English

**Starting Date:** 21-Jan-2013

**Duration of Initial Contract:** 20 Days

**Expected Duration of Assignment:** 25 Days

**Background**

The history of elections in Lesotho over the past decade has been bedeviled with controversy. Confusion around the 1998 elections brought rioting in several cities and led to military intervention to quell disturbances by South Africa and Botswana under the Southern African Development Community (SADC) auspices. The 2002 election was comparatively peaceful and the outcomes fully accepted, following major revisions in the electoral laws between 1998 and 2000. The circumstances of the 2007 national election, combined with some remaining ambiguity in the new laws, however, led to disputes around the outcome of that national election. A prolonged effort by SADC to mediate ended in failure when former President Masire of Botswana declared an impasse and withdrew as a mediator in early 2009. However a concerted “home team” mediation effort led by the Heads of Churches of Lesotho brought consensus in 2011 on key changes in the electoral laws. This set the stage for National Elections in 2012. Parliament was dissolve on March 15, 2012, and one of Lesotho’s most hotly contested election periods was officially launched.

The then-ruling Lesotho Congress for Democracy split on the eve of the election, throwing the anticipated outcomes into question. The then-Prime Minister formed his own new party, the Democratic Congress. A lack of service delivery and perceived corruption and nepotism in the Mosisili regime had for some time eroded public support for the LCD. The split in the party reflected further trouble, a prolonged contest for leadership and succession contest within the LCD.

The election was held on May 26, 2012 and all parties including national and international observers agreed that it was “free and fair. But no one party won enough votes to form a government on its own. The formation of the tripartite-coalition government was an unprecedented situation for Lesotho where no clear winner emerged in the 2012 National
On June 8th, Hon. Thomas Thabane of the All Basotho Convention (ABC) succeeded Pakalitha Mosisili of the Democratic Congress (DC) as the Prime Minister. Thabane came into power in a coalition arrangement he formed with the Lesotho Congress for Democracy (LCD) and Basotho National Party (BNP). The trio, command a 61 seat majority in Parliament while the DC remains the largest opposition with 48 seats. The country has now moved from a single party majority government to a fragile coalition government, made up of three political parties who joined in a coalition to form a majority in Parliament.

Lesotho lacks clear procedural and legal framework associated with it since, there is no actual precedent in Lesotho on which to rely to make a coalition succeed, beyond addressing the legal and procedural issues. The success of this coalition government will require a unique response, one that hopefully will lead to a best practice, based on reconciliation and mediation. The procedures put in place in response to this first coalition government will impact how future coalitions are perceived and governed in Lesotho, and generally contribute positively to the stability of the country.

### Duties and Responsibilities

The 2012 evaluations/audit aims to assess the capacity of the Lesotho Independent Electoral Commission (IEC) to carry out its mandate and functions as provided for in the country’s Constitution and the Electoral Act and to suggest areas of reform of and improvements to the current legislative and administrative frameworks which govern the IEC’s mandate, powers and functions.

The evaluation will cover the following broad areas:

#### Legal Framework

- Assess the relevance, adequacy and effectiveness of the legal framework in place to guide the IEC in the execution of its mandate (the Constitution, Electoral Act and other legal instruments relevant to the Commission’s work).
- Assess the clarity of the legal framework, with particular emphasis on the nature of the Commission’s mandate
- Assess the adequacy of the functioning of the IEC and its Secretariat in terms of the stipulations contained in the Constitution of Lesotho.
- Propose changes to the existing legal framework
- Review the relevant provisions of the Constitution, the Electoral Act, and other legal instruments, including international and regional instruments applicable to Lesotho, to determine whether they contribute to the conduct of free, fair, credible, and legitimate elections in the country
- Determine whether or not the existing legal and administrative regime provides adequately for the existence of an independent, impartial and credible electoral management body (EMB) capable of delivering elections with incontrovertible outcomes

#### Operational Framework

- Assess the state of preparedness of the IEC for the 2012 general elections.
• Evaluate whether, in preparing for the 2012 elections, the IEC observed its mandate in terms of the existing legal framework.
• Assess the relevance, adequacy and effectiveness of the IEC Civic and Voter Education programmes.
• Assess the Commission’s relationships with its major stakeholders. This assessment should give priority to the relationship with the executive and will specifically endeavour to suggest effective ways for the Commission to balance its independence with its commitment to stakeholder accountability and transparency.
• Assess how best to foster effective communication and liaison between the Commission and the secretariat.
• Assess the adequacy of the IEC’s financing and the effectiveness of current funding mechanisms.

Competencies

- Experience in organisation evaluation and restructuring processes
- Strong analytical skills
- Critical thinking
- Good interpersonal skills
- Excellent communication skills
- Proven track record in the assessment of organizational training, change management and development needs.

Required Skills and Experience

Education:

- Masters Degree in Political Science, Masters in International Relations, Masters in Public Administration, Masters in Law or related field.

Experience:

- Understanding and knowledge of Elections Management Bodies (EMBs) will be an added advantage
- Must have a minimum of 7 years of relevant work experience.

Language Requirements:

- Fluency in written and spoken English.