

PRELIMINARY STATEMENT • JUNE 2017

# The Brenthurst Foundation: Electoral Observation Mission to the Kingdom of Lesotho

*General Election, 3 June 2017*

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Strengthening Africa's  
economic performance





## Introduction and Background

1. The Brenthurst Foundation ('the Foundation') was established in 2005 as an independent non-government institution working to strengthen Africa's economic performance. The Foundation provides policy advice at the invitation of African governments, convenes meetings, seminars and conferences to facilitate engagement between leaders and experts, and undertakes in-depth research to address Africa's most pressing political and economic challenges.
2. It is a core belief of the Foundation that democracy is crucial to development in Africa, and that free and fair elections are a necessary condition for truly democratic governance. In line with this view, the Foundation applied to the Independent Electoral Commission of Lesotho ('the IEC') for accreditation of an election observation mission ('EOM') to monitor the National Assembly Elections of 3 June 2017, and received approval in May 2017.
3. The Brenthurst EOM was led by Dr Terence McNamee, Deputy Director of the Brenthurst Foundation, and comprised three members in total. The remaining two members of the team were Ms Nchimunya Hamukoma and Mr Saul Musker. Dr McNamee attended the official observer briefing of the IEC in Maseru on Wednesday 24 May. Thereafter, all three members of the team were present in Lesotho for four days, from Friday, 2 June until Monday, 5 June.
4. The National Assembly Elections of Saturday, 3 June were announced in March following a successful motion of no confidence in then-Prime Minister Pakalitha Mosisili. They were the third national elections to be held in five years, following similar elections in 2012 and 2015. A total of 1 374 candidates contested the election from 28 parties, with voting taking place at 1 575 voting stations in 80 constituencies

across 10 districts. Of 1 253 541 registered voters, a total of 579 666 cast a ballot, representing a voter turnout of 46.24 per cent.

5. Incumbent Prime Minister Mosisili ran as leader of the Democratic Congress (DC) party, with former Prime Minister Thomas Thabane of the All-Basotho Convention as his principal challenger. Other major parties included the Lesotho Congress for Democracy (LCD), led by Mothetjoa Metsing, and the Alliance of Democrats (AD), led by Monyane Moleleki.
6. At approximately 17:00pm on Tuesday, 6 June 2017, the official results of the election were released by the IEC. The final tally of votes for the four largest parties was as follows:

Party	Total Votes	Constituency Seats	Compensatory Seats	Total Seats
All-Basotho Convention (ABC)	235 729	47	1	48
Democratic Congress (DC)	150 172	26	4	30
Lesotho Congress for Democracy (LCD)	52 052	1	10	11
Alliance of Democrats (AD)	42 686	1	8	9
Others	99 027	5	17	19

7. This report contains the detailed observations of the Brenthurst EOM on the conduct of the election, including the period preceding voting day, the voting and counting processes themselves, and the release of results. On the basis of these observations, it offers concrete suggestions for future elections and for the political and electoral system as a whole.

## Guiding Principles and Observation Methodology

1. The Brenthurst EOM was guided by applicable local legislation, including the Constitution of Lesotho and the National Assembly Electoral Act 2011. In addition, it considered international guidelines such as the AU Declaration on the Principles Governing Democratic Elections in Africa and the SADC Principles and Guidelines Governing Democratic Elections. Finally, the Declaration of Principles for International Election Observation informed the work of the mission.
2. In summary, the key principles of the Brenthurst EOM are that an election should be *universal, equal, fair, secret, free, transparent* and *accountable*. In this regard, the 2010 statement of the OSCE Office for Democratic Institutions and Human Rights is instructive:

*'A genuine election is a political competition that takes place in an environment characterised by political pluralism, confidence, transparency and accountability. It provides voters with an informed choice between distinct political alternatives. Such an election presupposes respect for fundamental freedoms: expression and information; association; assembly and movement; adherence to the rule of law, including access to effective remedy; the right to freely establish political parties and compete for public office on a level playing field; non-discrimination and equal rights for all citizens; freedom from intimidation and pressure; and a range of other fundamental human rights and freedoms.'*

3. As a comparatively small team, the Brenthurst EOM was limited in its scope. The primary focus of the mission was on election day itself, and its immediate prelude and aftermath. Beyond this, the observations of the mission are based on the accounts of key stakeholders; media and documentary analysis; and limited interactions with voters and IEC staff.

4. On election day, Saturday, 3 June, the team visited a total of thirteen voting stations between 06:00am and 21:00pm. These were spread across four constituencies in three districts. Prior to arrival, a detailed analysis of voting data from the previous two elections in 2012 and 2015 was conducted, with a 'marginality score' given to each of the 80 constituencies in Lesotho. This score was a measure of how close the previous elections were in each constituency, adjusted for changes to the political parties contesting the election. Constituencies were ranked according to their score, and the two most marginal constituencies – Tsoana-Makhulo in Berea District and Kolonyama in Leribe district – were selected for observation. In addition, one voting station in Teya-Teyaneng District and one in Maseru District were identified for balance.
5. Based on this methodology, the following 13 stations were visited during the course of the day (in chronological order):
  - 5.1. Sefika High School, Stadium Area Constituency
  - 5.2. Koali Primary School, Tsoana-Makhulo Constituency
  - 5.3. Mothebesoane A.C.L., Tsoana-Makhulo Constituency
  - 5.4. Tsoana-Makhulo, Tsoana-Makhulo Constituency
  - 5.5. Sefikeng Primary School, Tsoana-Makhulo Constituency
  - 5.6. Ha Telu-Khunoana, Tsoana-Makhulo Constituency
  - 5.7. Tseetsana, Teya-Teyaneng Constituency
  - 5.8. Hamateka Moreng, Teya-Teyaneng Constituency
  - 5.9. Kolonyama Primary School, Kolonyama Constituency
  - 5.10. Moranang, Kolonyama Constituency
  - 5.11. Ha Matala, Kolonyama Constituency
  - 5.12. Little Flower Primary School, Kolonyama Constituency
  - 5.13. Tlatinyane Primary School, Kolonyama Constituency



4. Several minor shortcomings were noted by the team in the IEC's processes before and after election day, including:
  - 4.1. Security at the IEC Head Office in Maseru was insufficient. Domestic and international observers were not properly scrutinised prior to the distribution of accreditation materials and access permits, and were not asked for official identification. While this did not appear to cause any security breaches, the potential for confusion and/or improper accreditation in the future should be addressed.
  - 4.2. While the information provided to observers was generally comprehensive and of a high quality, the exact locations of voting stations was not available prior to election day. Maps indicating these and other key facilities would be useful in preventing unnecessary delays and in facilitating observation on election day.
5. The period preceding election day was generally free from reports of violence or intimidation, and appears to have been conducted peacefully and without major incident. This allowed the various campaigns to reach voters without obstruction and to carry out their activities as they wished to.
6. Various stakeholders raised particular concerns, however, regarding the role of state media in covering the campaign process. A live debate between the rival candidates, attended by six of the major competing political parties, was supposed to be broadcast by the state-controlled Lesotho TV, but this planned broadcast was cancelled at the last minute for unspecified reasons. Such a decision had the effect of (a) denying a large number of voters the opportunity to witness the debate and receive information regarding the candidates and their platforms, and (b) reinforcing existing perceptions of bias within the state media. In future, the IEC should play a more active role in ensuring that equal and comprehensive coverage is provided by the state-controlled print

and broadcast media, and appropriate sanctions should be determined if this is not the case.

## Voting and Counting

1. On election day, the Brenthurst EOM observed voting at 13 stations in four districts. The team was split into two vehicles in order to observe a greater number of stations. Voting proceeded in a generally peaceful and orderly manner with no major disturbances. The IEC provided professional services across all of the polling stations observed.
2. Voter turnout was low. By mid-day none of the stations observed had served more than one third of their registered voters. A final voter turnout of 46.24 per cent indicates a troubling lack of engagement in the electoral system by a majority of registered voters, which threatens the legitimacy of the result. This is a major concern which must be addressed in future elections.
3. There was a large number of party agents visible in all of the stations observed. This created an atmosphere of openness and encouraged citizens to be part of the process. In addition, most (and, in some cases, all) of the party agents were women, indicating a high level of women's participation and interest in the process.
4. One significant area of concern was the presence of armed Lesotho Defence Force (LDF) soldiers at many polling stations. Though there was no indication that these soldiers sought to interfere directly with the voting or counting process, or that they were the source of any disturbances, their presence at stations was seen as disconcerting by voters and those working at the polling stations. Given the history of military intervention in politics in Lesotho, it is conceivable that a visible presence at or near polling stations may have had the effect of intimidating or deterring voters. It was clear, furthermore, that there was no major threat to

the security of the election and that the military's presence was unneeded.

5. Opening of one polling station was observed at Sefika High School in Maseru District. Voting opened on time without any disturbances or long queues. IEC representatives in each room seemed fairly knowledgeable of voting procedures and were helpful to the voters present. Some of the ballot boxes, however, were inadequately labelled and sealed at the start of voting, although this was soon rectified by sealing and makeshift labelling the boxes.
6. Throughout the day, IEC officials displayed commendable levels of professionalism. Most of the voting stations had clear signage with the IEC banner visible from the road. Voting stations had a large number of authorised people in each room, mostly due to the number of party representatives present, which averaged 15. In certain voting stations, there was not sufficient space to accommodate the observers present. Nonetheless, voting stations were typically neatly ordered in such a way as to allow all those present to view the entirety of the voting process without compromising the secrecy of the vote. Lines outside the stations were orderly for the most part without overcrowding or any sign of tension or frustration. All of the voting stations observed received sufficient ballots and equipment for the number of registered voters. There were a number of women involved in the voting process, either as IEC officials or, as mentioned above, as party representatives.
7. Voting processes were duly performed at all stations observed. However, the following minor discrepancies and irregularities were noted:
  - 7.1. At certain stations, the team observed an inconsistency in the application of indelible ink; in some cases ink was applied before voting had been completed, and in other cases after.
  - 7.2. Elderly voters experienced some trouble voting. In some stations procedures had been developed to support elderly voters whilst other stations seemed ill-equipped and were not sufficiently sympathetic to voters for not understanding or being able to complete the process.
  - 7.3. Party agents were visible at all stations visited. However, in some cases, the voting station managers did not keep a written record of the identities of the agents or what party they represented.
  - 7.4. Hourly report forms were not available at a number of stations, and makeshift forms were used in their stead. District officials indicated that they had not received a sufficient number of these forms to distribute.
  - 7.5. A voter appeared twice on the voter's roll at Sefika High School voting station. The IEC officials on duty were unsure of the appropriate procedure to follow, but allowed the voter to cast one ballot.
  - 7.6. The team observed one loosely-sealed ballot box at Ha Telu-Khunoana station, where the plastic ties were not fully closed at each side.
  - 7.7. At the Tseetsana voting station, several unauthorised persons were observed in the voting station. In one instance, a police officer entered the room where voting was underway and remained inside for several minutes. In a second instance, a candidate of the Democratic Congress Party entered the voting station and conferred with a party agent. Although their presence was unauthorised, neither person interfered with the conduct of voting.
  - 7.8. Little Flower Primary School voting station was an anomaly in that several procedures were not properly followed. These included:
    - a. The station had no or insufficient signage indicating its location;
    - b. Stipulated voter identification procedures were not consistently adhered to, including a failure to properly scrutinise voters without identification using the chief witness present; and

- c. Voters in possession of a voter identification card but registered at a different voting station were in four cases allowed to vote.
- 7.9. A group of men, one of whom was wearing unauthorised IEC apparel, was observed consuming alcohol and loitering just outside the entrance of the Ha Matala station. While they were not seen to interfere with the voting process or to interact with any voter, their presence may have caused concern amongst voters and officials.
  8. The discrepancies mentioned above were anomalies in an otherwise, orderly, professional and transparent process, and did not represent a pattern.
  9. Polling station closing and counting was observed at Sefika High School. Voting closed on time at 17:00pm and no voters were waiting to cast their ballot at the time of closing. All due process was followed and IEC representatives seemed to have a good understanding of the necessary procedures.
  10. Vote counting commenced immediately after the station closed. All those present at the close of the station remained for the vote count. As a result, a number of party agents were present for the counting process, which helped to maintain transparency and fairness. Votes were counted openly and each ballot paper was shown to all present before the votes were tallied to a particular party.
  11. On completion of counting votes were placed in clearly labelled tamper-proof envelopes. Disputes were resolved in an orderly fashion through consultation, with particular emphasis given to the involvement of party agents. Some of the IEC officials faced challenges in filling out the final protocol forms which resulted in some confusion and delays.
  12. Police and military personnel remained present during counting and in one case were observed actively watching the counting process through the window of a polling station. However, there was no explicit interference with the counting process.

13. On the whole, voting and counting processes were conducted in a free and fair manner, generally adhering to protocol, by well-trained and professional officials. This resulted in an election that was both credible and transparent.

## Announcement of Results and Post-Election Period

1. The receipt, tabulation and announcement of official results was generally transparent and accurate, and adhered to regional and international standards. There were no disputes regarding the final vote tally from each constituency, and the calculation and allocation of seats in the National Assembly was performed swiftly and correctly.
2. Nonetheless, several minor problems were noted in the communication of results to observers and political party officials:
  - 2.1. Communication regarding the progress of reporting from the various constituencies and district offices was insufficient, and it was unclear at any given stage how many constituencies had reported final results and how many remained outstanding. More complete information regarding the schedule of results announcements and delays should in future be provided, to reduce speculation and frustration.
  - 2.2. As most information regarding results was communicated in SeSotho, international observers and journalists could not understand some potentially important content. To prevent this language barrier, translation into English should be provided.
  - 2.3. The behaviour and manner of the Master of Ceremonies at the IEC Results Centre (name unknown) was not commensurate with the gravity or the formality of the election process.
  - 2.4. The final allocation of seats in the National Assembly was scheduled for release at 15:30pm on Tuesday, 6 June, but was only announced one-and-a-half



hours later at 17:00pm. This delay has the potential to create tension and frustration amongst political party officials and the public, and such expectations should not be created if they cannot be properly met.

- 2.5. While results were being announced at the IEC Results Centre, no up-to-date information was being made available online via social media platforms or the IEC official website. This information was only made available online more than a week after the announcement of results. Public accessibility to official results is crucial, and must be improved.

## Reflections on the Quality and Impact of Election Observation Missions

1. The election observation missions present varied in their levels of preparedness. On the eve of the election at least one mission had yet to determine which polling stations they would visit, and seemed to have a limited understanding of the various voting stations, constituencies and districts.
2. On election day, the Brenthurst EOM was fortunate enough to engage with a more established election observation mission at the first polling station observed. The experience of watching an established mission at the start of the day helped to set an example of the best practice of observation. We would recommend that similar newly-formed missions engage with other missions present, and even be paired with more established partners at the start of election day in order to learn from them.
3. In addition, the Brenthurst EOM came across several stations that had been visited by a number of observers during the day. Whilst this was indicative of the large number of observers present in the country, it did raise a concern about the coverage of polling stations. In future, it may be beneficial to election observation missions to engage more systematically

with one another prior to election day, and to share information in order to limit duplication and increase the number of polling stations observed. There is great benefit to be had from increased collaboration and coordination in these efforts.

## Overall Observations and Key Findings

1. On the whole, the election of 3 June 2017 was universal, equal, fair, secret, free, transparent and accountable, and met the standards of both the AU Declaration on the Principles Governing Democratic Elections in Africa and the SADC Principles and Guidelines Governing Democratic Elections. In the view of the Brenthurst EOM, its outcome is credible.
2. IEC core staff and voting station officials were highly competent and well-prepared, and it was clear to observers that the IEC enjoys a high level of trust from the public and from candidates and political parties.
3. Various stakeholders raised concerns about a bias towards the ruling party in state-controlled media, evidenced by the failure to broadcast a live debate between political party leaders prior to the election. It is crucial that all candidates are given appropriate coverage without bias or favour in order to ensure a level playing field during the campaign.
4. Voter turnout was lower than expected, at below 50 per cent, and such a low rate of participation threatens the credibility of the government's mandate. This challenge must be confronted directly in preparation for future elections.
5. The presence of armed Lesotho Defence Force (LDF) soldiers at or near polling stations had the potential effect of intimidating voters, and was not necessary or helpful to the conduct of the election.
6. Although minor irregularities were observed during the voting process, these were anomalies in an otherwise orderly and transparent process. There is no reason to doubt the validity of the official results.

## Recommendations

1. Although the conduct of the election was generally of a high standard, certain improvements could be made in preparation for future elections, including changes to national legislation. The following specific recommendations would ensure the credibility of elections, as well as the stability of the political system:
  - 1.1. Clearer stipulations should be issued by the IEC regarding the coverage of election campaigns by private and state-owned media, including regarding the broadcast of debates on television and radio;
  - 1.2. Section 5 of the Lesotho Defence Forces Act should be amended to prevent the military from engaging in operations that deviate from its core mandate, or from performing tasks that other institutions are capable of, and provision made for the military to be confined to barracks during an election unless exceptional circumstances demand otherwise;
  - 1.3. A detailed study should be commissioned to determine the reasons for low voter turnout. There was clearly no substantive basis upon which the IEC set and promoted a target of 85 per cent voter turnout. An appropriate strategy to tackle voter apathy and increase civic engagement needs to be designed urgently;
  - 1.4. The National Assembly Electoral Act should be amended to introduce a minimum threshold for party representation in Parliament of at least 2 per cent of the overall national vote, excluding constituency seats, as well as a higher number of required signatories to compete as a political party; and
  - 1.5. Guidelines should be included in the National Assembly Electoral Act for the formation of a coalition government should no single party win an outright majority in Parliament, including clear timelines and a framework for power-sharing.