

The Chairperson of SADC

The Commission of Enquiry into the Conduct and Results of the Lesotho General Elections held in May 1998, hereby presents its report signed at Johannesburg, on this the 9th day of September 1998.

in witness whereof

Justice Pius Langa/

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Chairperson, South Africa

Adv. Mojanjane Gumbi

Member, South Africa

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Mr. Theo Nkone

Member, South Africa

Ms. Tshidi Mokgabudi

Member, South Africa

Mr. Edwin Letsididi

Member, Botswana

Member, Botswana

Mrs Barulaganye Machaeha

Member, Botswana

Mrs Alicia Ramaribjana

Mr. Tobaiwa Mudede

Member, Botswana

Member, Zimbabwe

MWQLKL

Mr. Simon Muchemenye/

NKWHenry Machin'

Member, Zimbabwe

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Member, Zimbabwe

provisions of the Constitution and any other Law.

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to delimit the boundaries of constituencies in accordance with the provisions of the Constitution and any other Law.

to supervise and control the registration of electors.

to compile a general register of electors and constituency registers of electors and to maintain and keep them up to date.

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to promote knowledge and sound democratic electoral processes.

In term of Section 66D(1) of the Constitution, Parliament is obliged to provide funds to enable the Commission to perform its functions effectively. The [EC is accountable to Parliament; in practice, the Minister of Law and Constitutional Affairs provides the link with the-legislature and pilots any legislation that pertains to the IEC and its functions and powers.

### 2.3 Preparation for Elections

The [EC assumed office in September 1997 and therefore had eight months to prepare for the general ~ elections. The constitutional amendments that established the IEC were accompanied by amendments to the Electoral Law itself. Their effect was to create new tasks and responsibilities for the IEC, such as voter registration, delimitation of constituencies and voter education. The voting age was lowered from 21 to 18 years thus increasing the number of people who were eligible to vote. The number of constituencies was also increased from 65 to 80.

### 2.4W

Section 11(1) of the National Assembly Elections Order 1992 provides that a person who is a citizen of Lesotho who has attained the age of 18 years shall, unless disqualified under section 57 of the Constitution to register as such, apply to be registered as an elector for the constituency where he:

a polling officer, whose responsibilities included checking for the indelible ink markings to ensure that there were no duplications in voting;

a polling officer whose duty was to mark voters with ink;

a security officer to keep peace and order;

an official witness who was a person appointed to identify those voters who did not possess the official identification documents. These persons were usually chiefs of the respective areas.

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The official close of polling was at 17h00 except that those voters who were already in the precinct were allowed to vote. We were informed that in some remote areas, polling was extended until the following day. In each polling station, the counting of ballots commenced immediately after the close of the polling. The usual formalities applied, namely, the inspection and the sealing of the ballot boxes at the beginning of the poll and their placement in full view of everybody during the voting; the opening of the ballot boxes and the sorting and counting of the ballot papers. The votes cast for each candidate at each polling station were to be recorded on form A45, which is completed by the presiding officer. There is provision on the form for the signature of the presiding officer and party agents. The procedure was that the respective votes cast for each candidate as reflected on the form should be immediately announced as local results by the presiding officer and then transmitted to the returning officer at constituency level. The returning officer adds up the total number of votes cast for each candidate, completes form A47 which reflects the total votes for each candidate and announces the constituency-level results. The constituency results are then transmitted to the IEC headquarters from where the consolidated results would be announced.

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The National Assembly Order requires that once the votes are counted the

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Annexure A

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Abbreviation

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B.N.P.

B.C.P.

L.C.D

N.P.P.

P.F.D.

K.B.P.

LLP/UDP

L.E.P.

C.D.P.

N.I.P.

Full-Name

Registration Date

DD/MM/YY

Marematlou Freedom Party

Sefate Democratic Union

Basotho National Party

Lekhotla La Mahatammoho

(Basutoland Congress Party)

Lesotho Congress for Democracy

National Progressive Party

Khoeetsa ea Sechaba

Kopanang Basotho Party

Lesotho Labour Party/United Democratic

Party Alliance

Lesotho Educational Party

Christian Democratic Party

National Independent Party

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13/01/98

15/01/98

21/01/98

02/02/98

06/02/98

19/02/98

06/03/98

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06/04/98

06/04/98

06/04/98

Full-Name

Mokhantso Matanki

Moeletsi Samuel Mohlomyane

Linakane Tsekeli N.  
861650 Flora Selloane  
Mara Lepekola  
Thelingoane Thabo Nyamane  
Sethabathaba Tefelo V.  
Ntoi John Molaka  
Lethoba Solomon M.  
Mokotla Makhiba C.  
Makhetha Bernard Chere

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representatives of the political parties. Considering that it was the first time in the history of Lesotho that elections were run by an IEC, and that the time to prepare for elections was not adequate, it is clear that the IEC had to contend with considerable problems in establishing itself. There exists at present, a worrying lack of trust between the opposition parties and the Chairperson of the IEC.

#### 6.5mm:

The regression analysis puts forward as problems what turn out to be uncontroversial facts: notably that in a first past the post electoral system, a party may get more votes than its competitors in a constituency, and thus win it, without achieving more than 50% of the vote in that constituency; and that in areas where the vote for a winning party is highest, the combined vote of its competitors will be lowest.

#### 6.6 Proemement Qf Ballot Papers

The Commission was not presented with any evidence that extra ballot papers were procured in South Africa. This allegation was not pursued and nothing further needs be further said about it.

#### 6.7 Trmspoi-ing Qf Electoral Material

No legal requirement that members of the security forces who acted as escorts be seconded to the IEC. There was, therefore, no irregularity found in this regard;

#### 6.8 Bemoyal of First Diregtor of Elections

The Commission was not in a position to institute an enquiry in respect of this matter. It is apparently being dealt with elsewhere.

#### 6.9 Kolonyama and Mohokare Incidents

These incidents are still under investigation by the police. The Commission did not find any conclusive evidence of irregularities, falling within its terms

The IEC response was that the matter was an administrative issue which had no relationship whatsoever to the results of the election. They reported that the matter was currently under investigation and that political parties will be kept informed.

The Commission was not in a position to take this matter further. It was not clear that the issue had a direct bearing on the conduct of the elections.

#### 5.9 Elections material abandoned by the LEQ

The opposition parties alleged that they found documents relating to the elections abandoned on the banks of the Mohokare river in Qachaâ\200\231s Nek. Some of the documents appeared to have been burnt. The police were called and they recovered the documents together with some fragments of burnt material. The parties wanted to know the outcome of the IEC investigation into this matter. The Commission was given copies of the documents which were given to the police. They appeared to be short lists of names. An examination of the documents could not reveal their origin or significance.

The IEC confirmed that it was aware of this matter. The police investigation into the matter was proceeding. The IEC stated that it had instructed all its officers to either shred or burn unwanted documents. It may be that some officers did not follow this instruction to the letter.

A further related incident was that original completed registration forms were found on the banks of the Kolonyama river.

The IEC again confirmed that it was aware of this incident. An IEC vehicle which was transporting registration documents had been hijacked. The police are continuing with the investigation of this matter. The IEC had recovered approximately 200 original voter registration application forms. The applicants' details were captured, which means that they were not disenfranchised. The balance of the forms were duplicates. The IEC vehicle has still not been recovered.

#### 5.10 The

role in the

independence

of the

election process.

The opposition parties complained that the IEC's relationship with Government was too close for it to maintain its expected impartiality and independence from influence by the Government. It was said that this impacted on their impartiality and independence. The IEC denied the

birth dates.

The IEC stated that political parties were kept fully informed of every aspect of the registration process and were invited to send their representatives to each registration centre to monitor the registration process. Besides the IEC officials and the representatives of the political parties an official Witness<sup>235</sup> was present at each registration centre. The function of the official witness was to identify applicants for registration who did not have documentary evidence of identity such as passports etc. The official witnesses were also supposed to satisfy themselves as to the age qualification of the applicant. In any event, according to the IEC, most of the population of Lesotho do not know their dates of birth.

The evidence at our disposal suggests that the voting register indeed displays an unusual distribution of the day-and-month of birth.

It would take a lengthy investigation going beyond the documents, to establish the causes of this phenomenon. The phenomenon is not of material interest until it can be shown that it somehow enabled the casting of duplicate or ghost<sup>231</sup> votes.

### 5.3 Persons not entitled to vote

The opposition parties alleged that persons who were not entitled to vote because they did not have proper identification were allowed to vote contrary to section 75(1A) of the National Assembly Election Order. If this was a procedure followed generally, we are unable to state that it would have influenced the elections one way or another. We make no comment on its legality, but there is nothing to indicate that it was not a bona fide error if To support their concern the parties had on 16 May 1998 such it was.

addressed a letter to the IEC about one voter who had<sup>230</sup> been awarded three This was according to the opposition, contrary to the law voter cards.

because in terms of the law such person had to produce both a voter registration card and an identification in the form of a passport or driver's<sup>231</sup> license.

The IEC occupies a crucial position in a democracy and it is essential that it should enjoy the confidence of the community, regardless of political persuasion. This confidence appears to have been, rightly or wrongly, eroded. It is important that measures be taken to restore it. We would hope that the



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15.

were used to store ballot papers.

It was also observed that the IEC's organisational problems and record keeping left a lot to be desired.

Among the 66 constituencies that were recounted it was observed that a number of constituencies had sealed white plastic bags and envelopes contained therein, thus conforming to the expected requirements.

The result of the recount is set out in Annexure C.

The Commission did not have sufficient time and resources to audit the marked voters' lists.

It is further noted that the marked lists were not found in sealed envelopes as was the case with some of the electoral material. This

... further put a question mark on the integrity of such marked voters' lists.

## 5.2 Manipulation of Birth Dates

The opposition parties employed the services of a firm of forensic investigators, called OF&A (from South Africa) to do a detailed analysis of the entire voters' lists. OF&A received the entire voters list but found the data for constituencies 11-15 could not be read on the disk.

They did a detailed analysis of the day of birth for all the constituencies.

Their findings show that there are a very high number of voters with the 01

January as their date of birth.

Their data and analysis showed that :

For all constituencies, on average, a far higher number of voters were born during the first half of the month than on the days after the 15th of the month. Thus their interpretation that the dates of birth were manipulated in one way or the other.

Only the month of September displays a constant variance from the average. Thus their opinion that this may be as a result of seasonal influences.

The number of people who do not know the day and month of birth are too high (12.8%) compared to the national average (3.7% per 1996 national census).

Throughout the voters roll an unexplainable higher (on average double) number of voters were born on specific days. Besides New-Year's and

### 3.2 W

3.2.1 The Commission undertook a recount of the votes cast on August 29, 30 and 31 and on 1 September 1998. Access to the ballot papers and other electoral materials was facilitated in part by an amendment to the electoral law which was passed by the Lesotho Parliament while the Commission was conducting the enquiry. The counting exercise was preceded by a Visit to the IEC offices by the Commission on 28 August to inspect the storage of the electoral materials that would be the subject of the audit.

3.2.2 On the first two days, 200 students from two South African universities, the University of the North (Qwaqwa) and the University of the Orange Free State, assisted the Commission in this process. By agreement among all the parties concerned, 100 members of the South African National Defence Force (SANDF) were then utilised to help on the last two days.

### ' 4. ALLEGATIONS OF IRREGULARITIES

On the first day of the plenary sittings, the representatives of the objecting opposition parties presented the enquiry with ten points which formed the basis of their allegations that the elections had been rigged. These are set out hereunder.

4.1 It was alleged that the results which were announced could not be reconciled with the number of people who presented themselves for voting. This was a reference to the fact that an electoral officer draws a line across the name and particulars of each elector at the time of voting. The marked voters' lists should, therefore, provide confirmation of the total number of voters who have voted at a given polling station. The suspicion was that some candidates, presumably the winning ones, received higher polls as a result of fraudulent addition of votes. No specific accusation of fraud was directed at any particular person.



Annexure A.

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Abbreviation

Full-Name

Registration

Date

DD/MM/YY

M.F.P.  
S.D.U.  
B.N.P.  
B.C.P.

L.C.D  
N.P.P.  
P.F.D.  
K.B.P.  
LLP/UDP

L.E.P.  
C.D.P.  
N.I.P.

Marematlou Freedom Party  
Sefate Democratic Union  
Basotho National Party  
Lekhotla La Mahatammoho

(Basutoland Congress Party)  
Lesotho Congress for Democracy  
National Progressive Party  
Khoeetsa ea Sechaba  
Kopanang Basotho Party  
Lesotho Labour Party/United  
Democratic Party Alliance  
Lesotho Educational Party  
Chn'stian Democratic Party  
National Independent Party

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13/01/98  
15/01/98  
21/01/98

02/02/98  
06/02/98  
19/02/98  
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01/04/98

06/04/98  
06/04/98  
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cFull-Name

Mokhantso Matanki  
Moeletsi Samuel Mohlominyane  
Linakane Tsekeli N.  
861650 Flora Selloane  
Mara Lepekola  
Thelingoane Thabo Nyamane  
Sethabathaba Tefelo V.  
Ntoi John Molaka  
Lethoba Solomon M.  
Mokotla Makhiba C.  
Makhetha Bernard Chere

ballot papers should be put in sealed envelopes for each candidate. The marked voters' lists also have to be sealed. The seals are required to be signed by the presiding officer and party agents.

### 3. METHODOLOGY

The enquiry was organised in two stages which will be referred to as the first and second stage. Representatives of the political parties observed the entire process. An interim report was compiled and submitted to the Chairperson of SADC on 26 August 1998.

#### 3.1

The first stage

##### 3.1.1

The aggrieved parties were invited to submit written submissions, together with any supporting documents. This was necessary for the purpose of defining the ambit of the enquiry.

##### 3.1.2

The Independent Electoral Commission (IEC) as well as any other party wishing to do so were invited to respond to the complaints tabled by way of a summarised written presentation.

##### 3.1.3

Plenary sessions were held on the 15, 16, 17, 21 and 22 August 1998. At these sessions, political parties and the IEC were given the opportunity to expand orally on the written representations. Other participants put questions to the presenters. A large conference hall was used and this enabled interested parties and their supporters to attend in considerable numbers. The media was however excluded from these sessions.

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##### 3.1.4

Participants were allowed to use experts in their presentations as well as in questioning those who were presenting.

##### 3.1.5

All documents presented to the enquiry were made available to other participants.

##### 3.1.6

The Commission also inspected some IEC documents and facilities at the IEC offices.

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originates or  
ordinarily resides or  
is in employment.

The National Assembly Elections Order introduced a new registration procedure which requires a person applying for registration to be issued with a voter's card which bears the applicant's photograph and signature. This made it necessary for the IEC to embark on a new voter-registration exercise which lasted for seven weeks commencing on 5 January 1998 in approximately 1200 registration centres. The provisional registers were published for public inspection to allow for amendments and corrections. Consistent with the intention that the process should be as open and transparent as possible, political parties were invited to participate. Chiefs and party agents often attended at registration centres to ensure that only those people who were qualified to vote were allowed to register. Final voters' lists were thereafter compiled to serve as base documents for the running of elections. Supplementary lists were subsequently prepared to accommodate those corrections and additions which had not been included in the final voters lists.

## 2.5 Voting procedures

Section 70 of the National Assembly Election Order 1992 provides for polling for general elections to be conducted in all constituencies on the day/days fixed for elections under section 48(1). Approximately 2300 polling stations were established throughout the Kingdom and a personnel complement of approximately 11500 was deployed for the purpose. Each polling station was ordinarily staffed by 6 officers as follows:

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a presiding officer, the person in overall control of the polling station and responsible for the smooth-running of the voting process;

a deputy presiding officer, who would normally be assigned the duty of checking the voters list;

4.2 It was alleged that an inspection of the national voter's list shows an unnatural pattern in the distribution of dates of birth. In their view, dates of birth were manipulated. This meant that fictitious persons, referred to as phantom voters, were placed on the voter's lists in order to increase the number of people who would vote for a particular party.

4.3 Persons who were not entitled to vote because they did not have proper identification records were allowed to vote, contrary to Section 75 (1A) of the National Assembly Election Order. It was contended that the regulation made at the instance of the IEC to the effect that persons whose names did not appear on the voter's lists should be allowed to vote if they produced only a voter registration card was contrary to the law which requires both a voter registration card and some other form of identification.

4.4 It was alleged that the [BC was very uncooperative in its dealings with the opposition parties. The parties were forced to approach the courts on matters which should have been resolved without resorting to litigation.

4.5 The opposition parties presented a statistical study which allegedly shows that the outcome of the elections could not be what it purports to be. Mr. Njenga conducted a standard regression test which purports to demonstrate that there is no correlation between the voting patterns and the election results.

4.6 It was alleged that extra ballot papers, from a different supplier, were obtained by the IEC for clandestine use. Official ballot papers were procured from Canada but the fraudulent additions were obtained from a South African firm. These could only have been for use by the so-called phantom voters.

4.7 Military Intelligence structures were used to transport electoral materials from Maseru to the districts without those officers having been seconded to the IEC, as required by law.

4.8 The first Director of Elections was removed from his post allegedly because he refused to condone irregularities.

4.9 The parties wanted to know the results of an IEC investigation into two incidents where electoral material was found abandoned. One incident was on the banks of the Kolonyama river, the other near the Mohokare river.



The Commission, during the second stage of the investigation, conducted a re-count of the votes cast in 66 constituencies. The other 14 constituencies' ballot papers could not be accessed as a result of a High Court decision. The result of the re-count is set out in Annexure C. The material presented to the Commission by the IEC for recounting was not in good condition. Some of the concerns with the state of the material included the following:

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Generally, about 95% of all the white plastic bags submitted were opened, and an attempt to reseal them in some instances had been made. IEC staff were asked to explain; they stated that they were opened to access certain documents needed for auditing purposes. The IEC also explained that they had to open envelopes in order to search for A45's which were inadvertently sealed with ballot papers. Some envelopes with ballot paper cast and counterfoils had broken seals.

Some envelopes were sealed but had no signatures of either the Presiding Officer or Party Agents. However, a number of envelopes were sealed and signed by either the Presiding Officer alone or Presiding Officer and Political Party-agents.

There were envelopes with seals which were broken and had been re-sealed.

Some envelopes were sealed with masking tape whereas others were merely closed without a seal.

In some cases there were ballot paper envelopes which contained ballot papers but were not closed. There was no indication of any attempt to close them, let alone seal them.

In some instances, the white plastic bags contained ballot papers only. There were also cases where the name of the constituency labelled on the white plastic bag did not correspond with the contents.

In some cases there were ballot paper envelopes of different constituencies in one plastic bag.

In certain cases white plastic bags submitted contained election material used during election but did not contain any ballot papers, i.e. used or unused. This was a negligible occurrence.

It was observed that in some instances, ballot papers in some metal boxes were not sealed in envelopes at all whilst others were sealed in official envelopes.

In other cases there were empty envelopes with particulars of polling stations written on them.

In some constituencies, green canvas bags, which could not be sealed

Christmas days, they noted that the following days had unexplainable a high number of birth days:

DAY OF MONTH

MONTH  
NUMBER

02  
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In their view the above inexplicable irregularities occur in an  
inexplicable specific pattern throughout the entire voters list.. I  
t is the  
oppositions submission that it is not possible at all that the above  
patten could have occurred naturally. They therefore concluded that  
the voters lists that were compiled for the 1998 elections are not a  
legitimate and accurate document

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The opposition parties allegation, therefore, is that nonexistent

people were added on to the voters lists and assigned i-\201ctitious

contention that there was an unduly close relationship with Government. It was explained that the IEC, being a statutory body derives its funding from funds voted for it by Parliament.

As such, the Minister of Law and Constitutional Affairs has to present their budgetary requirements to Parliament as the IEC has no other form of representation in Parliament though it reports direct to Parliament. The Chairman declared that this relationship did not compromise their independence and impartiality.

Another complaint was that the IEC employed the services of a lawyer who was previously employed by Government in other matters thus bringing into question their independence and impartiality. The IEC responded by saying that it saw no conflict of interests as it believed that it was entitled to the best legal representation. However the Commission denied being represented in Court by the same lawyer who represented the Government in the current 1998 election petitions.

## 6. FINDINGS

Considering the electoral process set out above, a person or persons who wanted to commit fraud would have had to do all or some of the following:

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register non-existent persons on the voters lists, distributed over all or most of the 80 constituencies and 2 300 polling stations;

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keep a record of the number of 'phantom voters' that would have been allocated to each polling station to ensure that sufficient voting material is supplied to cater for the additional voters;

ensure that on voting day there are people, who at the very least must look 18 years or older, to appear and vote at the polling stations, alternatively, find a way to put sheets of marked extra ballot papers into the ballot boxes at different polling stations;

ensure that all these people are somehow not marked with the indelible ink used, or find the necessary chemicals to remove the ink, a process we were informed is very difficult;

all these processes have to be carried out in the presence of at least 15 electoral staff members and, in most cases, party agents from different political parties.

We proceed to deal with specific findings.

#### 6.1 Reconciliation of results

The evidence and counter evidence of the opposition auditors and IEC auditors does not provide conclusive proof that the announced results and the actual results are correct or rigged.

Both the IEC and the opposition party auditors confirm that they cannot give an opinion on the results until they are in a position to get more information.

There are discrepancies between the total on the A45s and the announced results, which are captured in the A47s. These totals should in the normal course correspond. The Commission found the explanation given by the IEC in respect of the discrepancy to be implausible. It is improbable that returning officers would all make additions errors. The IEC also failed to explain why the Commission was not given all the A45 forms.

#### 6.2 Manipulated Birth Dates

It was not possible to establish the reasons why the voter's lists display an unusual distribution of the day-and-month of birth.

#### 6.3 WW2

Presiding officers were informed, both in their manuals and by special circular dated 20 May 1998, that persons whose names do not appear on the voters lists could only be allowed to vote if they produced both their voter registration cards and suitable identification. We found no proof of irregularities in this regard.

If Regulation 10 had the effect of permitting people who did not have sufficient identification to register as voters, there is no evidence that its effect would have favoured any party.

#### 6.4 IEC Intransigence

It appears that at times there were some difficulties between the IEC staff and

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All supplementary voters' lists were not certified as required by SS6(1)(d) of the National Assembly Election Order No 10 of 1992. A number of sheets containing names of persons entered in pen and marked as having voted, showed up on the voters lists of several polling stations audited.

26 Form A45's seem to have been written by one person though signed by different persons. Some of these documents were not signed and some did not have an [EC stamp.

2 Form A45's were completed for a polling station in one constituency, reflecting the same results but on different dates.

In their response, the auditors engaged by the IEC stated that they had themselves been unable to conduct a proper audit because they could not obtain a complete set of authorised electoral lists for the majority of constituencies.

The opposition parties presented a report that suggests that in constituency 36 (ABIA) they were supplied with 16 marked voters' lists of which 8 were completely unmarked. This is in contrast with the IEC auditors who were given 15 marked voters' lists with one missing. It is the opposition's allegation that the IEC officials could have marked the unmarked voters lists before giving them to Deloitte & Touche, in a fraudulent attempt to reconcile the numbers. The [EC rejected this allegation.

The IEC provided the Commission with all the A45's in their possession. The Commission added up the numbers on A45's and compared them with numbers reflected in the A47 forms. In many cases the numbers derived from adding the A45's were different from the A47 forms. (See Annexure B) The results of the Commission matched those of the IEC in respect of 39 constituencies.

On noting these differences the team approached the IEC with their interim figures and asked whether the IEC could explain the differences. The [EC explained that the discrepancies may be the result of wrong addition, or the fact that, despite being told otherwise, not all A45's were given to the Commission.

[EC auditors had also found inconsistencies in respect of Constituency 67.

4.10 Concern was expressed about the apparent close relationship between the Government and the IEC, including the fact, as alleged, that they shared the services of the same law firm. The concern was that the relationship impacts on the impartiality and independence of the IEC.

4.11. The following additional allegations surfaced during the plenary sessions. Some arose as a result of a presentation made to the Commission by the LCD.

4.11.1 Some voters lists were not signed as required by the law and could therefore not be considered valid.

4.11.2 Some A45 and A47 forms were not signed by the appropriate officials, which, it was argued, renders them invalid.

4.11.3 In the Qaqatu constituency, 26 out of the 36 A45 forms emanating from the different polling stations, seem to have been completed in one handwriting. The procedure is for the forms to be completed by each presiding officer at each polling station.

4.11.4 Double Registration. The attention of the IEC had been drawn to cases of double registration in at least six (6) constituencies. There was no response from the IEC or any indication whether or not investigations had been instituted and what disciplinary action, if any, had been taken.

4.11.5 Indelible ink.

Allegations that some people could have voted more than once were further heightened by the fact that in some cases wrong ink was used.

4.11.6 Participation of party agents. The Electoral law allows for participation of party agents throughout the process. This includes taking part in meetings to discuss the affairs of the IEC, registration of voters, the voting process itself and its finalisation. There were however, serious complaints that party agents had been marginalised by the IEC and its staff who refused to co-operate with them.

4.11.7 Stolen Cameras. The opposition alleged that 6 cameras were stolen from the IEC and there were strong suspicions that they may have been used to make duplicate registration cards to enable the so-called phantom voters to enter the lists. The IEC confirmed that 2 and not 6 cameras were

7.4 There are small discrepancies between the results of the recount and those announced by the EEC. There is not much significance in the difference in numbers themselves. The appearance of tempering with the ballot boxes and temper bags and the misling of the electoral matter, however detract from what would ordinarily have been a decisive exercise.

7.5 We are of the view that the manner in which the records have been kept does nothing to engender confidence in the ability of the IEC, who admittedly had an extremely difficult task with limited time and resources.

The problems faced by the IEC need to be put in context. In the IEC's own response to numerous complaints and criticisms, they enumerated the following problems they had to contend with: First, they were the very first IEC that was ever instituted in Lesotho, they therefore did not get guidance from any predecessor. They were also given a very short time to prepare for the election. As part of their establishment, new responsibilities were also assigned to them, for example:-

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They had to start a new registration system of voters  
they had to do delimitation of borders which increased the  
number of constituencies from 65 to 80  
they had to cater for additional number of voters due to the  
lowering of the voting age from 21 to 18  
they had to do voter education for both the electoral officers and  
the electorate themselves  
they had to depend on temporarily employed officers due to the  
magnitude of the exercise  
they had logistical constraints such as computer breakdowns,  
lack of space, poor facilities at polling stations and others

7.6 It is to be noted that the combined opposition votes is approximately 39 percent to the LCD's approximately 61 percent whereas the state of the parties in Parliament is 79 to 1. That, of course is a consequence of a first past the post electoral system. The position has not been helped by the proliferation of opposition parties and independent candidates. It is possible, although this was not expressed, that there could be an underlying sense of grievance that 39 percent of the voting population are without their own representation in Parliament.

7.7 In considering the way forward, we feel it would be appropriate to



## 7. GENERAL REMARKS

7.1 There are two categories of complaints. The first relates to factual issues which may be proved by appropriate evidence of the behaviour and conduct of officials of the IEC both during preparations for the elections and during the conduct of the elections themselves. The second is concerned with documentary evidence such as ballot books, ballot papers, voters' lists, control forms such as the A45's, A46's and A47 and so on. The plenary hearings went some way towards ventilating some of the issues in relation to both categories. It became clear, however, that a comprehensive audit of the elections was not possible with the resources at our disposal in the fourteen days' period initially fixed in the terms of reference. Arising out of the recommendations in the interim report, the mandate of the IG was extended to enable the IG to do a re-count of the votes. Arrangements were made for 200 students from two Universities in South Africa to assist in the counting, in the hope that the process would be completed in two days. The time estimate was over-optimistic. In the event, further arrangements had to be made and 100 members of the SANDF had to be brought to complete the re-count after a further two days. The counting process therefore took a matter of 4 days. The Commission had expressed the desirability of sufficient time and resources and complete access to all the ballot boxes. Elsewhere it had been stated that the estimated time for the process could be one month. In the end, the IG neither had the time nor sufficient resources to complete the process in two days. The position was however further complicated by the fact that the electoral material in respect of 14 constituencies could not be accessed as there were petitions pending before the High Court in Lesotho. It was made clear in a judgment of the Court, delivered on 4/9/1998 that an amendment to the electoral law which had made it possible for the IG to examine some of the documents did not extend to the electoral matter in respect of which petitions were currently pending, in spite of an attempt by the petitioners to withdraw the relevant petitions. The IG has therefore not been able to take into account the electoral matter emanating from those 14 constituencies in respect of which the Court was approached, presumably because the petitioners thought they contained the most demonstrable irregularities.

7.2 With regard to the first category, statements made during plenary by the opposition group were largely denied by the IEC officials. It was hoped that access to electoral documents might lend some support to the allegations or refute them. It did neither. As detailed elsewhere, much of the electoral

political leadership will do everything necessary to ensure the development of an efficient electoral institution which will be one of the guarantees of the integrity of the electoral process.

#### 5.4 IEC Intransigence

It was alleged that party agents were denied access to registration forms as well as Vital documents at polling stations by presiding officers. Even where the IEC chairman had given them authority officers on the ground refused them access because they had to get permission from district officers. Access was also denied to computerised information on tapes. Party agents were also expelled from the IEC offices when they were examining documents. On the whole, it was alleged that the IEC staff were very uncooperative and intransigent.

The IEC chairman responded that although reasonable access was allowed, it had been necessary to employ reasonable measures to ensure the security of electoral matter. He denied that officers were very intransigent as stated by opposition parties. It was pointed out that at times the IEC had problems of computer breakdowns and were therefore unable to supply the required information on the spot.

On the allegation that people were expelled from the offices where they were examining documents, the IEC's attitude was that there were times when space was needed to enable them to work and retrieve information required by the Court.

#### 5.5 the Multiple Regression Test.

The specification of the regression model is only partly defined as only some of the variates are properly defined. The dependent variable and the co-variates are not mentioned. It is difficult, therefore to assess the appropriateness of the model which should have been the foundation on which the allegations of irregularity are built.

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The Commission found the patterns in the data and the correlations among variables which are said to be unusual are in fact to be expected.

#### 5.6 Procurement of Ballot Papers,

Proper and thorough training be given to election personnel. It is also necessary that contesting candidates and their agents fully understand and appreciate the processes of conducting elections.

#### 8.5 Logistics

It is important that a comprehensive inventory is prepared and equipment be acquired and distributed in good time for the Election Day. Shortages of stationery and equipment should be avoided as it has an adverse effect on the successful conduct of any election.

#### 8.6 Post Election Management of Election Material

It is essential that voters lists, ballot papers cast, ballot paper counterfoils and unused ballot paper books; all the attendant completed electoral forms be fully accounted for, properly labelled and sealed in secure containers such as ballot boxes. These must then be stored at a secure central point where they can only be accessed as provided for by the law.

8.7 The kingdom of Lesotho may wish to examine the wisdom of using one or other electoral system.

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#### CONCLUSION

When the Commission arrived in Lesotho to commence its work, there was palpable political tension in the country. Leaders of the respective political parties and of government have, to their credit however, succeeded to contain the situation of unrest and the enquiry was able to proceed with its work. We have been impressed by the level of cooperation and commitment to the process displayed by all the parties and we believe this augurs well for the future.

The Commission is grateful for the logistical assistance it received from the High Commissioner of South Africa to the Kingdom of Lesotho.

The Commission is also indebted to the volunteer students, as well as members of SANDF, for their invaluable assistance during the recount of votes.

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REPORT OF THE COMMISSION OF  
ENQUIRY INTO THE CONDUCT AND RESULTS  
OF THE LESOTHO GENERAL ELECTION  
HELD IN MAY 1998

1 . INTRODUCTION

The Kingdom of Lesotho held its second general election on 23 May 1998, pursuant to a proclamation by the King made in terms of section 48(2) of the National Assembly Election Order 1992.

79 of the 80 constituencies were contested in May 1998 by 13 political parties and 11 independent candidates (see Annexure A ). The election in the 80th constituency was conducted on 1 August 1998, having been deferred from May because of the death of one of the candidates.

The state of the parties in the National Assembly as a result of the elections is as follows:

- > Lesotho Congress for Democracy (LCD) 79 constituencies;
- > Basotho National Party (BNP) 1 constituency.

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Soon after the May elections, allegations were made that the conduct of the elections was fraught with serious irregularities which, in some cases, amounted to fraud. Specific complaints ranged from objections regarding:

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the registration process and the compilation of the voters' lists;

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alleged inequalities during voting; and  
the handling of electoral materials.

Apart from a number of petitions which have been lodged with the court,  
protests, demonstrations and a situation of relative unrest ensued. The  
Government of the Republic of South Africa was requested to assist in  
finding a solution to the political impasse presenting itself in the country.

On 10 August 1998 the Deputy President of the Republic of South Africa met  
with representatives of the LCD and of three opposition parties, the Basotho  
National Party (BNP), the Basotho Congress Party (BCP) and the  
Marematlou Freedom Party (MFP). That meeting agreed on the appointment  
of a group of experts, comprising representatives from three countries of the  
Southern African Development Community (SADC), namely Botswana,  
South Africa and Zimbabwe, to investigate the allegations made. A ten-  
member investigating group (IG) was constituted, four being from South  
Africa and three each from Botswana and Zimbabwe.

An observer from the Organisation of African Unity and two from the  
Commonwealth have been in attendance at the enquiry.

The IG's terms of reference were:

To inquire into all matters relating to the alleged  
inequalities in respect of the 1998 national elections in  
Lesotho, including, but not restricted to

alleged fraudulent acts in the compilation of the voters roll

alleged irregularities in the demarcation process

alleged irregularities in the counting of votes

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any irregularities in the reconciliation of votes cast with the  
voters roll

It was alleged that the IEC procured additional ballot papers from a company in South Africa. Their contention was that these were going to be used for phantom voters.

The IEC response was that they knew nothing about the rumour and that they categorically deny it. They challenged those who made the allegations to submit proof of such to the IG.

In the ensuing discussion the opposition parties were unable to substantiate the rumour and eventually decided not to pursue the allegation.

The limited investigation carried out by the Commission was not conclusive with regard to this issue.

#### 5.7 Transportation of electoral material,

The enquiry was informed that members of the security forces had to be formally seconded to the IEC before they could perform any election tasks. It was alleged that, contrary to this understanding, members of the Military Intelligence were used to transport election material without such official seconding.

The IEC responded by stating that all electoral material was carried in IEC vehicles driven by IEC staff. Members of the security forces were asked to escort the vehicles. The IEC denied that there was a legal requirement that these escorts be seconded to the IEC.

#### 5.8 Removal of the 1st Director of Elections,

The opposition parties asked the IEC the circumstances under which the 1st Director of Elections was removed from his post. While initially it appeared as if only clarification was sought, the opposition parties later made a strong allegation that the Director was removed because he refused to condone irregularities and further that he was removed to pave way for one official who is related to somebody important in the government. They complained further that the suspension was too long as it was almost six months since his suspension. They offered to bring the Director before the Commission so that he could testify to these events.

of reference, in this matter.

#### 6.10 Relationship Between the i-20loyemment and the IEQ

The EC has in the past used a law i-20lrm that was also used by the LCD. We found nothing irregular in this respect. The IEC also has to relate to parliament through a Cabinet member. The Minister responsible for the IEC would, therefore, need to interact with the IEC on a regular basis.

#### 6.11 i-20leneral ggomplaints

6.11.1 The panel noted that it was irregular for ofi-20lcial documents like the supplementary list not to be signed by the Director of Elections. With regard to the additional names of people who were added by hand the Commission found that it could not be any irregularity because section 71(2) allows people whose names do not appear on the list but can produce evidence of proof of registration and identity should be allowed to vote.

6.11.2 The Commission also noted that there were some A45â\200\231s and A47â\200\231s which were not signed.

This was attributed to human error. The Commission voiced their concern as such errors could bring to question the legality of the results at such stations. This was however not considered to be an irregularity that could aï-20lect the outcome of the election.

6.11.3 The issue of one hand-wn'ting on all the A45â\200\231s from Qaqatu was viewed with concern. We have requested an explanation from the IEC; at the time of preparation of this report, none had been forthcoming. This is a matter which warrants further investigation.

6.11.4 The Commission noted these recorded in paragraph 4.11.8 accusations with concern but was satisï-20led by the action which was taken by the IEC, which aï-20ler consultation with the parties, put a stop to the problem.

6.11.5 The allegation contained in 4.11.9 was made after the formal hearings had been completed. It was agreed that the opposition representatives could inspect the relevant documents together with ofi-20lcers of the IEC to establish the identity and number of the relevant lists.

matter supplied to us by the IEC was in a chaotic state. The major findings, with regard to the state in which we found the material, are listed in paragraph 5.1. The state of the material is such that no reliable conclusions can be drawn from it. We view the fact that seals of containers which were supposed to be intact had been broken, and packages left open, in a particularly serious light. This includes containers with material such as ballot papers, used ballot books and counterfoils; containers which, as the law stood when the enquiry commenced, needed a court order for anyone to have access to. There were other problems: there was the fact that in some cases material from one polling station was found to be mixed with that from another, that the tamper proof bags did not consistently contain material from one polling station, or all the material from a particular polling station. These and other inconsistencies detracted seriously from the integrity of the material we had to audit, as a reliable pointer to the fairness of the election. We are however unable to state positively that the manner in which the documentation was kept and exhibited to us points only to fraudulent conduct on the part of anyone. More specifically, we are unable to draw the conclusion from the documentation either that the elections were rigged, or that fraud is excluded. We can only state that in our view, the integrity of the documents has been compromised by reason of the IEC's failure, for whatever reason, to comply with the relevant laws and regulations.

7.3 Since the reliability of the documentation is open to doubt, it is our view that the original completed forms A45 were probably the most reliable guide as to the number of votes cast for each candidate. In the nature of things, they would be the most contemporaneous record of the voting and the counting at some 2,300 polling stations, in the presence of party agents and observers. This fact is of course tempered by the circumstance that the A45's themselves are not beyond criticism. We have recorded these defects elsewhere, including the fact that we could not be certain that we had obtained all the relevant A45's because of the poor state of record-keeping. Before the actual re-count took place the result of our limited comparison of the A45 totals with the information on the A47's revealed a large number of discrepancies. In 34 constituencies totals from the polling stations (A45's) were less by more than a thousand votes, than the constituency level figures (A47's). The IEC answer to this disturbing trend is that errors would have been made in the calculations, the implication being that there was no deliberate inflation of numbers at constituency level. The IEC makes the point also that in some cases we had not been supplied with all the A45 forms which we had requested.

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stolen, one of which had been recovered. There was nothing special about the cameras; any Polaroid camera could be used to perpetrate the fraud alleged.

4.11.8 The opposition parties alleged that the IEC may have tampered with voterâ\200\231s lists after the elections. We were informed that the auditors for the opposition parties were handed what purported to be used voterâ\200\231s lists for constituency number 36. On perusing the list they found that of the lists in respect of 8 polling stations in that constituency had not been marked off, indicating that there had been no voters at those polling stations. Subsequently, the same voterâ\200\231s lists were handed over by ofï-\201cials of the IEC to their own auditors. According to the record of the latter auditors, only one and not eight of the voterâ\200\231s lists had no cancellations. This suggested that the voterâ\200\231s lists had been manipulated aï-\201er they had been seen by the auditors of the opposition parties and before they were handed over to the IEC auditors.

4.11.9 The LCD alleged that the BNP had been collecting voter registration cards from people, and noting the registration number in a register, thereby interfering with their right to vote for a candidate of their choice. The BNP alleged, in turn, that the LCD was doing the same and that they paid people to vote for them

## 5. DISCUSSION OF THE ALLEGATIONS

The overall allegation was that there was widespread fraud during the 1998 elections. The opposition parties were however not able to put their finger conclusively, on exactly how and at what point the fraud could have taken place. There was speculation, however based on the discrepancies which were discovered by the auditors who carried out limited inspection for the respective parties.

We proceed to discuss the specific allegations made.

### 5.1 The 01-: R 1

People Who Presented Themselves for Voting

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The opposition parties presented the Commission with a report prepared by their auditors in respect of 31 constituencies. That report, according to them, shows that the total number of people who voted in each constituency, as reflected by markings on the voters list, is far less than the sum total of announced results for each party in the same constituency.

The auditor for the opposition parties, checked the announced results on behalf of the opposition parties. He could not complete his assignment because the IEC failed to afford him access to all documentation which he required to carry it out. He compared the used voters lists with the results announced in the 31 constituencies that he was able to audit. He recorded his findings as follows.

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The voting lists for certain polling stations were missing. The IEC informed them that these voters lists booklets were inadvertently sealed in the envelopes containing the ballot papers, which can only be accessed through a court order.

There were large differences between the announced results and the number of people who presented themselves for voting as indicated in the marked voters' lists for the 31 constituencies.

He could not gain access to the ballot account forms (A46).



any acts of vandalism in respect of electoral materials

2. To make recommendations to SADC, through its Chairperson, on possible solutions to the impasse; within fourteen days of the initiation of the inquiry.â\200\235

## 2. THE ELECTION PROCESS IN LESOTHO

### 2.1 The elethraI system,

The law governing elections in Lesotho is the National Assembly Election Order 1992. Lesotho has adopted a multi-party democratic system of government with national elections being run every i-\201ve years. The i-\201rst elections under this arrangement were in 1993. Elections are run on. a i-\201rst past the post constituency system.

### 2.2 lb: Independent Elegtgxal QQmmissiQn.

Section 66(1) of the Lesotho Constitution as amended in 1997 provides for the establishment of an Independent Electoral Commission. Section 66C provides for the independence of the IEC and states that it shall not, in the performance of its functions, be subject to the direction or control of any person or authority. The powers, duties and functions of the [EC are set out in section 66A and include:

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to ensure that elections to the National Assembly and Local Authorities are held regularly and that every election or referendum held is free and fair.

to organise, conduct and supervise in an impartial and independent manner elections of the National Assembly and referenda under the

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5. Discussion of the Allegations

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7. General Remarks

8. Recommendations

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A - List of political parties and independent candidates

B - Comparison of A45 and A47 forms

C - Recount of votes by Commission .

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mention the following: it has been suggested that a new general election . should be held on the basis that the irregularities cast doubt on the fairness of the 1998 elections. We are unable to state that the invalidity of the elections has been conclusively established. We point out, however, that some of the apparent irregularities and discrepancies are sufficiently serious concerns. We cannot however postulate that the result does not reflect the will of the Lesotho electorate. We merely point out that the means for checking this has been compromised and created much room for doubt.

7.8 We point out that on our calculations, based on information in the A45 forms, winning margins about 8 constituencies were less than a thousand. The BNP seems, for instance, on the same basis, to have won two rather than one only constituency. A table indicating the closeness of the results and particulars of the constituencies apparently won by the BNP is annexed marked B. We hasten to add that this relates to a constituency the ballot papers of which we did not have access to. We were therefore not in possession of material to enable us to check.

## 8 RECOMMENDATIONS

The Commission makes the following recommendations.

8.1 The IEC occupies a crucial position in a democracy and it is essential that it should enjoy the confidence of the community, regardless of political persuasion. This confidence appears to have been, rightly or wrongly, eroded. It is important that measures be taken to restore it. We would hope that the political leadership will do everything necessary to ensure the development of an efficient electoral institution which will be one of the guarantees of the integrity of the electoral process.

### 8.2 Financial Resources

It is important the institution which is charged with the running of elections have access to sufficient resources.

### 8.3 The Law

It is imperative that the IEC with its officers must strictly adhere to the laws governing the conduct of elections.

### 8.4 Training

Proper and thorough training be given to election personnel. It is also necessary that contesting candidates and their agents fully understand and appreciate the processes of conducting elections.

#### 8.5 Logistics

It is important that a comprehensive inventory is prepared and equipment be acquired and distributed in good time for the Election Day. Shortages of stationery and equipment should be avoided as it has an adverse effect on the successful conduct of any election.

#### 8.6 Post Election Management of Election Material

It is essential that voters lists, ballot papers cast, ballot paper counterfoils and unused ballot paper books; all the attendant completed electoral forms be fully accounted for, properly labelled and sealed in secure containers such as ballot boxes. These must then be stored at a secure central point where they can only be accessed as provided for by the law.

8.7 The kingdom of Lesotho may wish to examine the wisdom of using one or other electoral system.

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#### CONCLUSION

When the Commission arrived in Lesotho to commence its work, there was palpable political tension in the country. Leaders of the respective political parties and of government have, to their credit however, succeeded to contain the situation of unrest and the enquiry was able to proceed with its work. We have been impressed by the level of cooperation and commitment to the process displayed by all the parties and we believe this augurs well for the future.

The Commission is grateful for the logistical assistance it received from the High Commissioner of South Africa to the Kingdom of Lesotho.

The Commission is also indebted to the volunteer students, as well as members of SANDF, for their invaluable assistance during the recount of votes.

7.4 There are small discrepancies between the results of the recount and those announced by the EEC. There is not much significance in the difference in numbers themselves. The appearance of tempering with the ballot boxes and temper bags and the misfiling of the electoral matter, however detract from what would ordinarily have been a decisive exercise.

7.5 We are of the view that the manner in which the records have been kept does nothing to engender confidence in the ability of the IEC, who admittedly had an extremely difficult task with limited time and resources.

The problems faced by the IEC need to be put in context. In the IEC's own response to numerous complaints and criticisms, they enumerated the following problems they had to contend with: First, they were the very first IEC that was ever instituted in Lesotho, they therefore did not get guidance from any predecessor. They were also given a very short time to prepare for the election. As part of their establishment, new responsibilities were also assigned to them, for example:

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They had to start a new registration system of voters  
they had to do delimitation of borders which increased the  
number of constituencies from 65 to 80  
they had to cater for additional number of voters due to the  
lowering of the voting age from 21 to 18  
they had to do voter education for both the electoral officers and  
the electorate themselves  
they had to depend on temporarily employed officers due to the  
magnitude of the exercise  
they had logistical constraints such as computer breakdowns,  
lack of space, poor facilities at polling stations and others

7.6 It is to be noted that the combined opposition votes is approximately 39 percent to the LCD's approximately 61 percent whereas the state of the parties in Parliament is 79 to 1. That, of course is a consequence of a first past the post electoral system. The position has not been helped by the proliferation of opposition parties and independent candidates. It is possible, although this was not expressed, that there could be an underlying sense of grievance that 39 percent of the voting population are without their own representation in Parliament.

7.7 In considering the way forward, we feel it would be appropriate to

political leadership will do everything necessary to ensure the development ' of an efficient electoral institution which will be one of the guarantees of the integrity of the electoral process.

#### 5.4 IEC Intransigence

IT was alleged that party agents were denied access to registration forms as well as Vital documents at polling stations by presiding officers. Even where the IEC chairman had given them authority officers on the ground refused them access because they had to get permission from district officers. Access was also denied to computerised information on tapes. Party agents were also expelled from the IEC offices when they were examining documents. On the whole, it was alleged that the IEC staff were very uncooperative and intransigent.

The IEC chairman responded that although reasonable access was allowed, it had been necessary to employ reasonable measures to ensure the security of electoral matter. He denied that officers were very intransigent as stated by opposition parties. It was pointed out that at times the IEC had problems of computer breakdowns and were therefore unable to supply the required information on the spot.

On the allegation that people were expelled from the offices where they were examining documents, the IEC's attitude was that there were times when space was needed to enable them to work and retrieve information required by the Court.

#### 5.5 the Multiple Regression Test.

The specification of the regression model is only partly defined as only some of the variates are properly defined. The dependent variable and the co-variates are not mentioned. is difficult, therefore to assess the appropriateness of the model which should have been the foundation on which the allegations of irregularity are built.

It

The Commission found the patterns in the data and the correlations among variables which are said to be unusual are in fact to be expected.

#### 5.6 Procurement of Ballot Papers,

## 7. GENERAL REMARKS

7.1 There are two categories of complaints. The first relates to factual issues which may be proved by appropriate evidence of the behaviour and conduct of officials of the IEC both during preparations for the elections and during the conduct of the elections themselves. The second is concerned with documentary evidence such as ballot books, ballot papers, voters' lists, control forms such as the A45's, A46's and A47 and so on. The plenary hearings went some way towards ventilating some of the issues in relation to both categories. It became clear, however, that a comprehensive audit of the elections was not possible with the resources at our disposal in the fourteen days' period initially fixed in the terms of reference. Arising out of the recommendations in the interim report, the mandate of the IG was extended to enable the IG to do a re-count of the votes. Arrangements were made for 200 students from two Universities in South Africa to assist in the counting, in the hope that the process would be completed in two days. The time estimate was over-optimistic. In the event, further arrangements had to be made and 100 members of the SANDF had to be brought to complete the re-count after a further two days. The counting process therefore took a matter of 4 days. The Commission had expressed the desirability of sufficient time and resources and complete access to all the ballot boxes. Elsewhere it had been stated that the estimated time for the process could be one month. In the end, the IG neither had the time nor sufficient resources to complete the process in two days. The position was however further complicated by the fact that the electoral material in respect of 14 constituencies could not be accessed as there were petitions pending before the High Court in Lesotho. It was made clear in a judgment of the Court, delivered on 4/9/1998 that an amendment to the electoral law which had made it possible for the IG to examine some of the documents did not extend to the electoral matter in respect of which petitions were currently pending, in spite of an attempt by the petitioners to withdraw the relevant petitions. The IG has therefore not been able to take into account the electoral matter emanating from those 14 constituencies in respect of which the Court was approached, presumably because the petitioners thought they contained the most demonstrable irregularities.

7.2 With regard to the first category, statements made during plenary by the opposition group were largely denied by the IEC officials. It was hoped that access to electoral documents might lend some support to the allegations or refute them. It did neither. As detailed elsewhere, much of the electoral

4.10 Concern was expressed about the apparent close relationship between the Government and the IEC, including the fact, as alleged, that they shared the services of the same law firm. The concern was that the relationship impacts on the impartiality and independence of the IEC.

4.11. The following additional allegations surfaced during the plenary sessions. Some arose as a result of a presentation made to the Commission by the LCD.

4.11.1 Some voters lists were not signed as required by the law and could therefore not be considered valid.

4.11.2 Some A45 and A47 forms were not signed by the appropriate officials, which, it was argued, renders them invalid.

4.11.3 In the Qaqatu constituency, 26 out of the 36 A45 forms emanating from the different polling stations, seem to have been completed in one handwriting. The procedure is for the forms to be completed by each presiding officer at each polling station.

4.11.4 Double Registration. The attention of the IEC had been drawn to cases of double registration in at least six (6) constituencies. There was no response from the IEC or any indication whether or not investigations had been instituted and what disciplinary action, if any, had been taken.

4.11.5 Indelible ink.

Allegations that some people could have voted more than once were further heightened by the fact that in some cases wrong ink was used.

4.11.6 Participation of party agents. The Electoral law allows for participation of party agents throughout the process. This includes taking part in meetings to discuss the affairs of the IEC, registration of voters, the voting process itself and its finalisation. There were however, serious complaints that party agents had been marginalised by the IEC and its staff who refused to co-operate with them.

4.11.7 Stolen Cameras. The opposition alleged that 6 cameras were stolen from the IEC and there were strong suspicions that they may have been used to make duplicate registration cards to enable the so-called phantom voters to enter the lists. The IEC confirmed that 2 and not 6 cameras were



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All supplementary voters' lists were not certified as required by SS6(1)(d) of the National Assembly Election Order No 10 of 1992. A number of sheets containing names of persons entered in pen and marked as having voted, showed up on the voters lists of several polling stations audited.

26 Form A45's seem to have been written by one person though signed by different persons. Some of these documents were not signed and some did not have an [EC stamp.

2 Form A45's were completed for a polling station in one constituency, reflecting the same results but on different dates.

In their response, the auditors engaged by the IEC stated that they had themselves been unable to conduct a proper audit because they could not obtain a complete set of authorised electoral lists for the majority of constituencies.

The opposition parties presented a report that suggests that in constituency 36 (ABIA) they were supplied with 16 marked voters' lists of which 8 were completely unmarked. This is in contrast with the IEC auditors who were given 15 marked voters' lists with one missing. It is the opposition's allegation that the IEC officials could have marked the unmarked voters lists before giving them to Deloitte & Touche, in a fraudulent attempt to reconcile the numbers. The [EC rejected this allegation.

The IEC provided the Commission with all the A45's in their possession. The Commission added up the numbers on A45's and compared them with numbers reflected in the A47 forms. In many cases the numbers derived from adding the A45's were different from the A47 forms. (See Annexure B) The results of the Commission matched those of the IEC in respect of 39 constituencies.

On noting these differences the team approached the IEC with their interim findings and asked whether the IEC could explain the differences. The [EC explained that the discrepancies may be the result of wrong addition, or the fact that, despite being told otherwise, not all A45's were given to the Commission.

[EC auditors had also found inconsistencies in respect of Constituency 67.

mention the following: it has been suggested that a new general election . should be held on the basis that the irregularities cast doubt on the fairness of the 1998 elections. We are unable to state that the invalidity of the elections has been conclusively established. We point out, however, that some of the apparent irregularities and discrepancies are sufficiently serious concerns. We cannot however postulate that the result does not reflect the will of the Lesotho electorate. We merely point out that the means for checking this has been compromised and created much room for doubt.

7.8 We point out that on our calculations, based on information in the A45 forms, winning margins about 8 constituencies were less than a thousand. The BNP seems, for instance, on the same basis, to have won two rather than one only constituency. A table indicating the closeness of the results and particulars of the constituencies apparently won by the BNP is annexed marked B. We hasten to add that this relates to a constituency the ballot papers of which we did not have access to. We were therefore not in possession of material to enable us to check.

## 8 RECOMMENDATIONS

The Commission makes the following recommendations.

8.1 The IEC occupies a crucial position in a democracy and it is essential that it should enjoy the confidence of the community, regardless of political persuasion. This confidence appears to have been, rightly or wrongly, eroded. It is important that measures be taken to restore it. We would hope that the political leadership will do everything necessary to ensure the development of an efficient electoral institution which will be one of the guarantees of the integrity of the electoral process.

### 8.2 Financial Resources

It is important the institution which is charged with the running of elections have access to sufficient resources.

### 8.3 The Law

It is imperative that the IEC with its officers must strictly adhere to the laws governing the conduct of elections.

### 8.4 Training

## INDEX

### ITEM

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o The Election process in Lesotho

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8. Recommendations

## ANNEXURES

A - List of political parties and independent candidates

B - Comparison of A45 and A47 forms

C - Recount of votes by Commission .

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any acts of vandalism in respect of electoral materials

2. To make recommendations to SADC, through its Chairperson, on possible solutions to the impasse; within fourteen days of the initiation of the inquiry.â\200\235

## 2. THE ELECTION PROCESS IN LESOTHO

### 2.1 The elethraI system,

The law governing elections in Lesotho is the National Assembly Election Order 1992. Lesotho has adopted a multi-party democratic system of government with national elections being run every i-\201ve years. The i-\201rst elections under this arrangement were in 1993. Elections are run on. a i-\201rst past the post constituency system.

### 2.2 lb: Independent Elegtgxal QQmmissiQn.

Section 66(1) of the Lesotho Constitution as amended in 1997 provides for the establishment of an Independent Electoral Commission. Section 66C provides for the independence of the IEC and states that it shall not, in the performance of its functions, be subject to the direction or control of any person or authority. The powers, duties and functions of the [EC are set out in section 66A and include:

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to ensure that elections to the National Assembly and Local Authorities are held regularly and that every election or referendum held is free and fair.

to organise, conduct and supervise in an impartial and independent manner elections of the National Assembly and referenda under the

## 5. DISCUSSION OF THE ALLEGATIONS

The overall allegation was that there was widespread fraud during the 1998 elections. The opposition parties were however not able to put their finger conclusively, on exactly how and at what point the fraud could have taken place. There was speculation, however based on the discrepancies which were discovered by the auditors who carried out limited inspection for the respective parties.

We proceed to discuss the specific allegations made.

### 5.1 The 01-: R 1

People Who Presented Themselves for Voting

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The opposition parties presented the Commission with a report prepared by their auditors in respect of 31 constituencies. That report, according to them, shows that the total number of people who voted in each constituency, as reflected by markings on the voters list, is far less than the sum total of announced results for each party in the same constituency.

The auditor for the opposition parties, checked the announced results on behalf of the opposition parties. He could not complete his assignment because the IEC failed to afford him access to all documentation which he required to carry it out. He compared the used voters lists with the results announced in the 31 constituencies that he was able to audit. He recorded his findings as follows.

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The voting lists for certain polling stations were missing. The IEC informed them that these voters lists booklets were inadvertently sealed in the envelopes containing the ballot papers, which can only be accessed through a court order.

There were large differences between the announced results and the number of people who presented themselves for voting as indicated in the marked voters' lists for the 31 constituencies.

He could not gain access to the ballot account forms (A46).

stolen, one of which had been recovered. There was nothing special about the cameras; any Polaroid camera could be used to perpetrate the fraud alleged.

4.11.8 The opposition parties alleged that the IEC may have tampered with voterâ\200\231s lists after the elections. We were informed that the auditors for the opposition parties were handed what purported to be used voterâ\200\231s lists for constituency number 36. On perusing the list they found that of the lists in respect of 8 polling stations in that constituency had not been marked off, indicating that there had been no voters at those polling stations. Subsequently, the same voterâ\200\231s lists were handed over by ofï-\201cials of the IEC to their own auditors. According to the record of the latter auditors, only one and not eight of the voterâ\200\231s lists had no cancellations. This suggested that the voterâ\200\231s lists had been manipulated aï-\201er they had been seen by the auditors of the opposition parties and before they were handed over to the IEC auditors.

4.11.9 The LCD alleged that the BNP had been collecting voter registration cards from people, and noting the registration number in a register, thereby interfering with their right to vote for a candidate of their choice. The BNP alleged, in turn, that the LCD was doing the same and that they paid people to vote for them

of reference, in this matter.

#### 6.10 Relationship Between the i-20loyemment and the IEQ

The EC has in the past used a law i-20lrm that was also used by the LCD. We found nothing irregular in this respect. The IEC also has to relate to parliament through a Cabinet member. The Minister responsible for the IEC would, therefore, need to interact with the IEC on a regular basis.

#### 6.11 i-20leneral ggomplaints

6.11.1 The panel noted that it was irregular for ofi-20lcial documents like the supplementary list not to be signed by the Director of Elections. With regard to the additional names of people who were added by hand the Commission found that it could not be any irregularity because section 71(2) allows people whose names do not appear on the list but can produce evidence of proof of registration and identity should be allowed to vote.

6.11.2 The Commission also noted that there were some A45â\200\231s and A47â\200\231s which were not signed.

This was attributed to human error. The Commission voiced their concern as such errors could bring to question the legality of the results at such stations. This was however not considered to be an irregularity that could aï-20lect the outcome of the election.

6.11.3 The issue of one hand-wn'ting on all the A45â\200\231s from Qagatu was viewed with concern. We have requested an explanation from the IEC; at the time of preparation of this report, none had been forthcoming. This is a matter which warrants further investigation.

6.11.4 The Commission noted these recorded in paragraph 4.11.8 accusations with concern but was satisï-20led by the action which was taken by the IEC, which aï-20ler consultation with the parties, put a stop to the problem.

6.11.5 The allegation contained in 4.11.9 was made after the formal hearings had been completed. It was agreed that the opposition representatives could inspect the relevant documents together with ofi-20lcers of the IEC to establish the identity and number of the relevant lists.

It was alleged that the IEC procured additional ballot papers from a company in South Africa. Their contention was that these were going to be used for phantom voters.

The IEC response was that they knew nothing about the rumour and that they categorically deny it. They challenged those who made the allegations to submit proof of such to the IG.

In the ensuing discussion the opposition parties were unable to substantiate the rumour and eventually decided not to pursue the allegation.

The limited investigation carried out by the Commission was not conclusive with regard to this issue.

#### 5.7 Transportation of electoral material,

The enquiry was informed that members of the security forces had to be formally seconded to the IEC before they could perform any election tasks. It was alleged that, contrary to this understanding, members of the Military Intelligence were used to transport election material without such official seconding.

The IEC responded by stating that all electoral material was carried in IEC vehicles driven by IEC staff. Members of the security forces were asked to escort the vehicles. The IEC denied that there was a legal requirement that these escorts be seconded to the IEC.

#### 5.8 Removal of the 1st Director of Elections,

The opposition parties asked the IEC the circumstances under which the 1st Director of Elections was removed from his post. While initially it appeared as if only clarification was sought, the opposition parties later made a strong allegation that the Director was removed because he refused to condone irregularities and further that he was removed to pave way for one official who is related to somebody important in the government. They complained further that the suspension was too long as it was almost six months since his suspension. They offered to bring the Director before the Commission so that he could testify to these events.



matter supplied to us by the IEC was in a chaotic state. The major findings, with regard to the state in which we found the material, are listed in paragraph 5.1. The state of the material is such that no reliable conclusions can be drawn from it. We view the fact that seals of containers which were supposed to be intact had been broken, and packages left open, in a particularly serious light. This includes containers with material such as ballot papers, used ballot books and counterfoils; containers which, as the law stood when the enquiry commenced, needed a court order for anyone to have access to. There were other problems: there was the fact that in some cases material from one polling station was found to be mixed with that from another, that the tamper proof bags did not consistently contain material from one polling station, or all the material from a particular polling station. These and other inconsistencies detracted seriously from the integrity of the material we had to audit, as a reliable pointer to the fairness of the election. We are however unable to state positively that the manner in which the documentation was kept and exhibited to us points only to fraudulent conduct on the part of anyone. More specifically, we are unable to draw the conclusion from the documentation either that the elections were rigged, or that fraud is excluded. We can only state that in our view, the integrity of the documents has been compromised by reason of the IEC's failure, for whatever reason, to comply with the relevant laws and regulations.

7.3 Since the reliability of the documentation is open to doubt, it is our view that the original completed forms A45 were probably the most reliable guide as to the number of votes cast for each candidate. In the nature of things, they would be the most contemporaneous record of the voting and the counting at some 2,300 polling stations, in the presence of party agents and observers. This fact is of course tempered by the circumstance that the A45's themselves are not beyond criticism. We have recorded these defects elsewhere, including the fact that we could not be certain that we had obtained all the relevant A45's because of the poor state of record-keeping. Before the actual re-count took place the result of our limited comparison of the A45 totals with the information on the A47's revealed a large number of discrepancies. In 34 constituencies totals from the polling stations (A45's) were less by more than a thousand votes, than the constituency level figures (A47's). The IEC answer to this disturbing trend is that errors would have been made in the calculations, the implication being that there was no deliberate inflation of numbers at constituency level. The IEC makes the point also that in some cases we had not been supplied with all the A45 forms which we had requested.

birth dates.

The IEC stated that political parties were kept fully informed of every aspect of the registration process and were invited to send their representatives to each registration centre to monitor the registration process. Besides the IEC officials and the representatives of the political parties an official Witness was present at each registration centre. The function of the official witness was to identify applicants for registration who did not have documentary evidence of identity such as passports etc. The official witnesses were also supposed to satisfy themselves as to the age qualification of the applicant. In any event, according to the IEC, most of the population of Lesotho do not know their dates of birth.

The evidence at our disposal suggests that the voting register indeed displays an unusual distribution of the day-and-month of birth.

It would take a lengthy investigation going beyond the documents, to establish the causes of this phenomenon. The phenomenon is not of material interest until it can be shown that it somehow enabled the casting of duplicate or ghost votes.

### 5.3 Persons not entitled to vote

The opposition parties alleged that persons who were not entitled to vote because they did not have proper identification were allowed to vote contrary to section 75(1A) of the National Assembly Election Order. If this was a procedure followed generally, we are unable to state that it would have influenced the elections one way or another. We make no comment on its legality, but there is nothing to indicate that it was not a bona fide error if To support their concern the parties had on 16 May 1998 such it was.

addressed a letter to the IEC about one voter who had been awarded three This was according to the opposition, contrary to the law voter cards.

because in terms of the law such person had to produce both a voter registration card and an identification in the form of a passport or driver's license.

The IEC occupies a crucial position in a democracy and it is essential that it should enjoy the confidence of the community, regardless of political persuasion. This confidence appears to have been, rightly or wrongly, eroded. It is important that measures be taken to restore it. We would hope that the

## 3.2 W

3.2.1 The Commission undertook a recount of the votes cast on August 29, 30 and 31 and on 1 September 1998. Access to the ballot papers and other electoral materials was facilitated in part by an amendment to the electoral law which was passed by the Lesotho Parliament while the Commission was conducting the enquiry. The counting exercise was preceded by a Visit to the IEC offices by the Commission on 28 August to inspect the storage of the electoral materials that would be the subject of the audit.

3.2.2 On the first two days, 200 students from two South African universities, the University of the North (Qwaqwa) and the University of the Orange Free State, assisted the Commission in this process. By agreement among all the parties concerned, 100 members of the South African National Defence Force (SANDF) were then utilised to help on the last two days.

## ' 4. ALLEGATIONS OF IRREGULARITIES

On the first day of the plenary sittings, the representatives of the objecting opposition parties presented the enquiry with ten points which formed the basis of their allegations that the elections had been rigged. These are set out hereunder.

4.1 It was alleged that the results which were announced could not be reconciled with the number of people who presented themselves for voting. This was a reference to the fact that an electoral officer draws a line across the name and particulars of each elector at the time of voting. The marked voters' lists should, therefore, provide confirmation of the total number of voters who have voted at a given polling station. The suspicion was that some candidates, presumably the winning ones, received higher polls as a result of fraudulent addition of votes. No specific accusation of fraud was directed at any particular person.

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were used to store ballot papers.

It was also observed that the IEC's organisational problems and record keeping left a lot to be desired.

Among the 66 constituencies that were recounted it was observed that a number of constituencies had sealed white plastic bags and envelopes contained therein, thus conforming to the expected requirements.

The result of the recount is set out in Annexure C.

The Commission did not have sufficient time and resources to audit the marked voters' lists.

It is further noted that the marked lists were not found in sealed envelopes as was the case with some of the electoral material. This

... further put a question mark on the integrity of such marked voters' lists.

## 5.2 Manipulation of Birth Dates

The opposition parties employed the services of a firm of forensic investigators, called OF&A (from South Africa) to do a detailed analysis of the entire voters' lists. OF&A received the entire voters list but found the data for constituencies 11-15 could not be read on the disk.

They did a detailed analysis of the day of birth for all the constituencies.

Their findings show that there are a very high number of voters with the 01

January as their date of birth.

Their data and analysis showed that :

For all constituencies, on average, a far higher number of voters were born during the first half of the month than on the days after the 15th of the month. Thus their interpretation that the dates of birth were manipulated in one way or the other.

Only the month of September displays a constant variance from the average. Thus their opinion that this may be as a result of seasonal influences.

The number of people who do not know the day and month of birth are too high (12.8%) compared to the national average (3.7% per 1996 national census).

Throughout the voters roll an unexplainable higher (on average double) number of voters were born on specific days. Besides New-Year's and

The IEC response was that the matter was an administrative issue which had no relationship whatsoever to the results of the election. They reported that the matter was currently under investigation and that political parties will be kept informed.

The Commission was not in a position to take this matter further. It was not clear that the issue had a direct bearing on the conduct of the elections.

#### 5.9 Elections material abandoned by the LEQ

The opposition parties alleged that they found documents relating to the elections abandoned on the banks of the Mohokare river in Qachaâ\200\231s Nek. Some of the documents appeared to have been burnt. The police were called and they recovered the documents together with some fragments of burnt material. The parties wanted to know the outcome of the IEC investigation into this matter. The Commission was given copies of the documents which were given to the police. They appeared to be short lists of names. An examination of the documents could not reveal their origin or significance.

The IEC confirmed that it was aware of this matter. The police investigation into the matter was proceeding. The IEC stated that it had instructed all its officers to either shred or burn unwanted documents. It may be that some officers did not follow this instruction to the letter.

A further related incident was that original completed registration forms were found on the banks of the Kolonyama river.

The IEC again confirmed that it was aware of this incident. An IEC vehicle which was transporting registration documents had been hijacked. The police are continuing with the investigation of this matter. The IEC had recovered approximately 200 original voter registration application forms. The applicants' details were captured, which means that they were not disenfranchised. The balance of the forms were duplicates. The IEC vehicle has still not been recovered.

#### 5.10 The

role in the

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country.

The opposition parties complained that the IEC's relationship with Government was too close for it to maintain its expected impartiality and independence from influence by the Government. It was said that this impacted on their impartiality and independence. The IEC denied the

representatives of the political parties. Considering that it was the first time in the history of Lesotho that elections were run by an IEC, and that the time to prepare for elections was not adequate, it is clear that the IEC had to contend with considerable problems in establishing itself. There exists at present, a worrying lack of trust between the opposition parties and the Chairperson of the IEC.

#### 6.5mm:

The regression analysis puts forward as problems what turn out to be uncontroversial facts: notably that in a first past the post electoral system, a party may get more votes than its competitors in a constituency, and thus win it, without achieving more than 50% of the vote in that constituency; and that in areas where the vote for a winning party is highest, the combined vote of its competitors will be lowest.

#### 6.6 Proemement Qf Ballot Papers

The Commission was not presented with any evidence that extra ballot papers were procured in South Africa. This allegation was not pursued and nothing further needs be further said about it.

#### 6.7 Trmspoi-ing Qf Electoral Material

No legal requirement that members of the security forces who acted as escorts be seconded to the IEC. There was, therefore, no irregularity found in this regard;

#### 6.8 Bemoyal of First Diregtor of Elections

The Commission was not in a position to institute an enquiry in respect of this matter. It is apparently being dealt with elsewhere.

#### 6.9 Kolonyama and Mohokare Incidents

These incidents are still under investigation by the police. The Commission did not find any conclusive evidence of irregularities, falling within its terms

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Annexure A

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Abbreviation

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N.P.P.

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LLP/UDP

L.E.P.

C.D.P.

N.I.P.

Full-Name

Registration Date

DD/MM/YY

Marematlou Freedom Party

Sefate Democratic Union

Basotho National Party

Lekhotla La Mahatammoho

(Basutoland Congress Party)

Lesotho Congress for Democracy

National Progressive Party

Khoeetsa ea Sechaba

Kopanang Basotho Party

Lesotho Labour Party/United Democratic

Party Alliance

Lesotho Educational Party

Christian Democratic Party

National Independent Party

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02/02/98

06/02/98

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06/03/98

01/04/98

06/04/98

06/04/98

06/04/98

Full-Name

Mokhantso Matanki

Moeletsi Samuel Mohlominyane

Linakane Tsekeli N.

861650 Flora Selloane

Mara Lepekola

Thelingoane Thabo Nyamane

Sethabathaba Tefelo V.

Ntoi John Molaka

Lethoba Solomon M.  
Mokotla Makhiba C.  
Makhetha Bernard Chere

provisions of the Constitution and any other Law.

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to delimit the boundaries of constituencies in accordance with the provisions of the Constitution and any other Law.

to supervise and control the registration of electors.

to compile a general register of electors and constituency registers of electors and to maintain and keep them up to date.

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to promote knowledge and sound democratic electoral processes.

In term of Section 66D(1) of the Constitution, Parliament is obliged to provide funds to enable the Commission to perform its functions effectively. The [EC is accountable to Parliament; in practice, the Minister of Law and Constitutional Affairs provides the link with the-legislature and pilots any legislation that pertains to the IEC and its functions and powers.

### 2.3 Preparation for Elections

The [EC assumed office in September 1997 and therefore had eight months to prepare for the general ~ elections. The constitutional amendments that established the IEC were accompanied by amendments to the Electoral Law itself. Their effect was to create new tasks and responsibilities for the IEC, such as voter registration, delimitation of constituencies and voter education. The voting age was lowered from 21 to 18 years thus increasing the number of people who were eligible to vote. The number of constituencies was also increased from 65 to 80.

### 2.4W

Section 11(1) of the National Assembly Elections Order 1992 provides that a person who is a citizen of Lesotho who has attained the age of 18 years shall, unless disqualified under section 57 of the Constitution to register as such, apply to be registered as an elector for the constituency where he:

The Chairperson of SADC

The Commission of Enquiry into the Conduct and Results of the Lesotho General Elections held in May 1998, hereby presents its report signed at Johannesburg, on this the 9th day of September 1998.

in witness whereof

Justice Pius Langa/

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Chairperson, South Africa

Adv. Mojalele Gumbi

Member, South Africa

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Mr. Theo Nkomo

Member, South Africa

Ms. Tshidi Mokgabudi

Member, South Africa

Mr. Edwin Letsididi

Member, Botswana

Member, Botswana

Mrs Barulaganye Machaeha

Member, Botswana

Mrs Alicia Ramaribjane

Mr. Tobaiwa Mudede

Member, Botswana

Member, Zimbabwe

MWQLKL

Mr. Simon Muchemenye/

NKWHenry Machin'

Member, Zimbabwe

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Member, Zimbabwe

a polling officer, whose responsibilities included checking for the indelible ink markings to ensure that there were no duplications in voting;

a polling officer whose duty was to mark voters with ink;

a security officer to keep peace and order;

an official witness who was a person appointed to identify those voters who did not possess the official identification documents. These persons were usually chiefs of the respective areas.

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The official close of polling was at 17h00 except that those voters who were already in the precinct were allowed to vote. We were informed that in some remote areas, polling was extended until the following day. In each polling station, the counting of ballots commenced immediately after the close of the polling. The usual formalities applied, namely, the inspection and the sealing of the ballot boxes at the beginning of the poll and their placement in full view of everybody during the voting; the opening of the ballot boxes and the sorting and counting of the ballot papers. The votes cast for each candidate at each polling station were to be recorded on form A45, which is completed by the presiding officer. There is provision on the form for the signature of the presiding officer and party agents. The procedure was that the respective votes cast for each candidate as reflected on the form should be immediately announced as local results by the presiding officer and then transmitted to the returning officer at constituency level. The returning officer adds up the total number of votes cast for each candidate, completes form A47 which reflects the total votes for each candidate and announces the constituency-level results. The constituency results are then transmitted to the IEC headquarters from where the consolidated results would be announced.

2.7W

The National Assembly Order requires that once the votes are counted the



all these processes have to be carried out in the presence of at least 15 electoral staff members and, in most cases, party agents from different political parties.

We proceed to deal with specific findings.

#### 6.1 Reconciliation of results

The evidence and counter evidence of the opposition auditors and IEC auditors does not provide conclusive proof that the announced results and the actual results are correct or rigged.

Both the IEC and the opposition party auditors confirm that they cannot give an opinion on the results until they are in a position to get more information.

There are discrepancies between the total on the A45s and the announced results, which are captured in the A47s. These totals should in the normal course correspond. The Commission found the explanation given by the IEC in respect of the discrepancy to be implausible. It is improbable that returning officers would all make additions errors. The IEC also failed to explain why the Commission was not given all the A45 forms.

#### 6.2 Manipulated Birth Dates

It was not possible to establish the reasons why the voter's lists display an unusual distribution of the day-and-month of birth.

#### 6.3 WW2

Presiding officers were informed, both in their manuals and by special circular dated 20 May 1998, that persons whose names do not appear on the voters lists could only be allowed to vote if they produced both their voter registration cards and suitable identification. We found no proof of irregularities in this regard.

If Regulation 10 had the effect of permitting people who did not have sufficient identification to register as voters, there is no evidence that its effect would have favoured any party.

#### 6.4 IEC Intransigence

It appears that at times there were some difficulties between the IEC staff and

contention that there was an unduly close relationship with Government. It was explained that the IEC, being a statutory body derives its funding from funds voted for it by Parliament.

As such, the Minister of Law and Constitutional Affairs has to present their budgetary requirements to Parliament as the IEC has no other form of representation in Parliament though it reports direct to Parliament. The Chairman declared that this relationship did not compromise their independence and impartiality.

Another complaint was that the IEC employed the services of a lawyer who was previously employed by Government in other matters thus bringing into question their independence and impartiality. The IEC responded by saying that it saw no conflict of interests as it believed that it was entitled to the best legal representation. However the Commission denied being represented in Court by the same lawyer who represented the Government in the current 1998 election petitions.

## 6. FINDINGS

Considering the electoral process set out above, a person or persons who wanted to commit fraud would have had to do all or some of the following:

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register non-existent persons on the voters lists, distributed over all or most of the 80 constituencies and 2 300 polling stations;

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keep a record of the number of phantom voters that would have been allocated to each polling station to ensure that sufficient voting material is supplied to cater for the additional voters;

ensure that on voting day there are people, who at the very least must look 18 years or older, to appear and vote at the polling stations, alternatively, find a way to put sheets of marked extra ballot papers into the ballot boxes at different polling stations;

ensure that all these people are somehow not marked with the indelible ink used, or find the necessary chemicals to remove the ink, a process we were informed is very difficult;

The Commission, during the second stage of the investigation, conducted a re-count of the votes cast in 66 constituencies. The other 14 constituencies' ballot papers could not be accessed as a result of a High Court decision. The result of the re-count is set out in Annexure C. The material presented to the Commission by the IEC for recounting was not in good condition. Some of the concerns with the state of the material included the following:

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Generally, about 95% of all the white plastic bags submitted were opened, and an attempt to reseal them in some instances had been made. IEC staff were asked to explain; they stated that they were opened to access certain documents needed for auditing purposes. The IEC also explained that they had to open envelopes in order to search for A45's which were inadvertently sealed with ballot papers. Some envelopes with ballot paper cast and counterfoils had broken seals.

Some envelopes were sealed but had no signatures of either the Presiding Officer or Party Agents. However, a number of envelopes were sealed and signed by either the Presiding Officer alone or Presiding Officer and Political Party-agents.

There were envelopes with seals which were broken and had been re-sealed.

Some envelopes were sealed with masking tape whereas others were merely closed without a seal.

In some cases there were ballot paper envelopes which contained ballot papers but were not closed. There was no indication of any attempt to close them, let alone seal them.

In some instances, the white plastic bags contained ballot papers only. There were also cases where the name of the constituency labelled on the white plastic bag did not correspond with the contents.

In some cases there were ballot paper envelopes of different constituencies in one plastic bag.

In certain cases white plastic bags submitted contained election material used during election but did not contain any ballot papers, i.e. used or unused. This was a negligible occurrence.

It was observed that in some instances, ballot papers in some metal boxes were not sealed in envelopes at all whilst others were sealed in official envelopes.

In other cases there were empty envelopes with particulars of polling stations written on them.

In some constituencies, green canvas bags, which could not be sealed

4.2 It was alleged that an inspection of the national voter's list shows an unnatural pattern in the distribution of dates of birth. In their view, dates of birth were manipulated. This meant that fictitious persons, referred to as phantom voters, were placed on the voter's lists in order to increase the number of people who would vote for a particular party.

4.3 Persons who were not entitled to vote because they did not have proper identification records were allowed to vote, contrary to Section 75 (1A) of the National Assembly Election Order. It was contended that the regulation made at the instance of the IEC to the effect that persons whose names did not appear on the voter's lists should be allowed to vote if they produced only a voter registration card was contrary to the law which requires both a voter registration card and some other form of identification.

4.4 It was alleged that the [BC was very uncooperative in its dealings with the opposition parties. The parties were forced to approach the courts on matters which should have been resolved without resorting to litigation.

4.5 The opposition parties presented a statistical study which allegedly shows that the outcome of the elections could not be what it purports to be. Mr. Njenga conducted a standard regression test which purports to demonstrate that there is no correlation between the voting patterns and the election results.

4.6 It was alleged that extra ballot papers, from a different supplier, were obtained by the IEC for clandestine use. Official ballot papers were procured from Canada but the fraudulent additions were obtained from a South African firm. These could only have been for use by the so-called phantom voters.

4.7 Military Intelligence structures were used to transport electoral materials from Maseru to the districts without those officers having been seconded to the IEC, as required by law.

4.8 The first Director of Elections was removed from his post allegedly because he refused to condone irregularities.

4.9 The parties wanted to know the results of an IEC investigation into two incidents where electoral material was found abandoned. One incident was on the banks of the Kolonyama river, the other near the Mohokare river.

Christmas days, they noted that the following days had unexplainable a high number of birth days:

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In their view the above inexplicable irregularities occur in an inexplicable specific pattern throughout the entire voters list.. It is the oppositions submission that it is not possible at all that the above pattern could have occurred naturally. They therefore concluded that the voters lists that were compiled for the 1998 elections are not a legitimate and accurate document

The opposition parties allegation, therefore, is that nonexistent people were added on to the voters lists and assigned fictitious



ballot papers should be put in sealed envelopes for each candidate. The marked voters' lists also have to be sealed. The seals are required to be signed by the presiding officer and party agents.

### 3. METHODOLOGY

The enquiry was organised in two stages which will be referred to as the first and second stage. Representatives of the political parties observed the entire process. An interim report was compiled and submitted to the Chairperson of SADC on 26 August 1998.

#### 3.1

The first stage

##### 3.1.1

The aggrieved parties were invited to submit written submissions, together with any supporting documents. This was necessary for the purpose of defining the ambit of the enquiry.

##### 3.1.2

The Independent Electoral Commission (IEC) as well as any other party wishing to do so were invited to respond to the complaints tabled by way of a summarised written presentation.

##### 3.1.3

Plenary sessions were held on the 15, 16, 17, 21 and 22 August 1998. At these sessions, political parties and the IEC were given the opportunity to expand orally on the written representations. Other participants put questions to the presenters. A large conference hall was used and this enabled interested parties and their supporters to attend in considerable numbers. The media was however excluded from these sessions.

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##### 3.1.4

Participants were allowed to use experts in their presentations as well as in questioning those who were presenting.

##### 3.1.5

All documents presented to the enquiry were made available to other participants.

##### 3.1.6

The Commission also inspected some IEC documents and facilities at the IEC offices.

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The National Assembly Elections Order introduced a new registration procedure which requires a person applying for registration to be issued with a voter's card which bears the applicant's photograph and signature. This made it necessary for the IEC to embark on a new voter-registration exercise which lasted for seven weeks commencing on 5 January 1998 in approximately 1200 registration centres. The provisional registers were published for public inspection to allow for amendments and corrections. Consistent with the intention that the process should be as open and transparent as possible, political parties were invited to participate. Chiefs and party agents often attended at registration centres to ensure that only those people who were qualified to vote were allowed to register. Final voters' lists were thereafter compiled to serve as base documents for the running of elections. Supplementary lists were subsequently prepared to accommodate those corrections and additions which had not been included in the final voters lists.

## 2.5 Voting procedures

Section 70 of the National Assembly Election Order 1992 provides for polling for general elections to be conducted in all constituencies on the day/days fixed for elections under section 48(1). Approximately 2300 polling stations were established throughout the Kingdom and a personnel complement of approximately 11500 was deployed for the purpose. Each polling station was ordinarily staffed by 6 officers as follows:

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a presiding officer, the person in overall control of the polling station and responsible for the smooth-running of the voting process;

a deputy presiding officer, who would normally be assigned the duty of checking the voters list;



Annexure A.

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Abbreviation

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Registration

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N.P.P.  
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LLP/UDP

L.E.P.  
C.D.P.  
N.I.P.

Marematlou Freedom Party  
Sefate Democratic Union  
Basotho National Party  
Lekhotla La Mahatammoho

(Basutoland Congress Party)  
Lesotho Congress for Democracy  
National Progressive Party  
Khoeetsa ea Sechaba  
Kopanang Basotho Party  
Lesotho Labour Party/United  
Democratic Party Alliance  
Lesotho Educational Party  
Chn'stian Democratic Party  
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cFull-Name

Mokhantso Matanki  
Moeletsi Samuel Mohlominyane  
Linakane Tsekeli N.  
861650 Flora Selloane  
Mara Lepekola  
Thelingoane Thabo Nyamane  
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alleged inequalities during voting; and  
the handling of electoral materials.

Apart from a number of petitions which have been lodged with the court,  
protests, demonstrations and a situation of relative unrest ensued. The  
Government of the Republic of South Africa was requested to assist in  
finding a solution to the political impasse presenting itself in the country.

On 10 August 1998 the Deputy President of the Republic of South Africa met  
with representatives of the LCD and of three opposition parties, the Basotho  
National Party (BNP), the Basotho Congress Party (BCP) and the  
Mamafalane Freedom Party (MFP). That meeting agreed on the appointment  
of a group of experts, comprising representatives from three countries of the  
Southern African Development Community (SADC), namely Botswana,  
South Africa and Zimbabwe, to investigate the allegations made. A ten-  
member investigating group (IG) was constituted, four being from South  
Africa and three each from Botswana and Zimbabwe.

An observer from the Organisation of African Unity and two from the  
Commonwealth have been in attendance at the enquiry.

The IG's terms of reference were:

To inquire into all matters relating to the alleged  
inequalities in respect of the 1998 national elections in  
Lesotho, including, but not restricted to

alleged fraudulent acts in the compilation of the voters roll

alleged irregularities in the demarcation process

alleged irregularities in the counting of votes

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any irregularities in the reconciliation of votes cast with the  
voters roll

REPORT OF THE COMMISSION OF  
ENQUIRY INTO THE CONDUCT AND RESULTS  
OF THE LESOTHO GENERAL ELECTION  
HELD IN MAY 1998

1 . INTRODUCTION

The Kingdom of Lesotho held its second general election on 23 May 1998, pursuant to a proclamation by the King made in terms of section 48(2) of the National Assembly Election Order 1992.

79 of the 80 constituencies were contested in May 1998 by 13 political parties and 11 independent candidates (see Annexure A ). The election in the 80th constituency was conducted on 1 August 1998, having been deferred from May because of the death of one of the candidates.

The state of the parties in the National Assembly as a result of the elections is as follows:

- > Lesotho Congress for Democracy (LCD) 79 constituencies;
- > Basotho National Party (BNP) 1 constituency.

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Soon after the May elections, allegations were made that the conduct of the elections was fraught with serious irregularities which, in some cases, amounted to fraud. Specific complaints ranged from objections regarding:

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the registration process and the compilation of the voters' lists;

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