

# **DEVELOPMENT FOR PEACE EDUCATION**

## **BUILDING CONSTITUTIONAL CONSENSUS**

### **Seminar Report**

**act:onaid**

End poverty together



**June 2012**

## Table of Contents

	Page
1.0 Context.....	4
2.0 Workshop objectives.....	4
3.0 Seminar’s Proceedings.....	5
4.0 Session II: How far are preparations?.....	5
5.0 Session III: What are possible election outcome? – Scenario Building.....	7
6.0 Session IV: Understanding constitutional challenges of Hung Parliament: generating options for a working arrangement.....	7
7.0 Session V: Issues Emerging from Session III.....	9
7.1 Way forward.....	9
8.0 Session VI: Leaders and voters.....	10
9.0 Closing Remarks.....	10
10.0 Seminar Lessons and Way forward.....	11

## **Acknowledgments**

DPE is indebted to Action Aid International Lesotho for the support to this seminar. It is through its financial assistance that the Seminar was held. The interest demonstrated by the Head of Action Aid International Lesotho Office 'M'e Frieda Kabaso is highly appreciated. This could not have borne the fruits had it not been because of commitment of her team 'M'e Mookho Ramasike and Ntate Chris Mhone. They have guided the DPE team to the finer detail of how things should be done. The involvement of Action Aid team in the local civil society work on governance issues in the persons of 'M'e Mookho and 'M'e Limpho presents such a good opportunity for the office to be on the ground. United Nations Development Programme-Head of Governance Ntate Thabo Mosoeunyane has been supportive to the idea of holding the seminar and availed himself for discussion on key matters of its planning. UNDP is acknowledged again for the contribution in the payment of honorarium of presenters. DPE wishes to express its gratitude to Professor Nqosa Mahao for having made such a huge contribution. This is indeed an act of comradeship. Many thanks to presenters and discussants as well as participants and the political parties.

## 1.0 Context

The Lesotho parliament is composed of two houses, the National Assembly, which has 120 elected members (80+40) of Parliament based on the Mixed Member Proportional (MMP), and the Senate that is composed of 33 members, 22 of whom are hereditary Principal Chiefs and the other 11 nominated by the King on the advice of the Council of State. The role of the Council is to advise and assist the King in the discharge of his functions as spelled by the constitution. In the previous General Elections, Lesotho has experienced post-elections tensions that included violent conflict. Since 1965, the first elections for the modern parliament Lesotho have had challenges related to the elections. Lesotho has had a long history of political conflict. Considering the contentions over elections in 1970, 1993, 1998, 2002 and 2007, the manner in which they have been expressed and dealt with, it is wise for different sectors in particular civil society to given elections and conflict a high priority.

Lesotho is set to hold General Elections on 26<sup>th</sup> May 2012. There are trends that show that the contestation of this election is very close and as a result, there is a possibility that Lesotho would have a Hung Parliament. This forecasting is based on the projection that none of the three main political parties running is likely to enjoy the absolute majority. Since the constitution of Lesotho is does not provide a clearly defined time bound procedure on the manner in which such a situation should be handled, the Seminar was organised.

Based on the principle of popular participation, Development for Peace Education (DPE) in partnership with Action Aid International Lesotho (AAIL) organised a Seminar on ***Building Constitutional Consensus on the Constructive and Peaceful Handling of Challenges of Hung Parliament***. The Seminar was a contribution to the role of civil society in enhancing democratic governance in the country where citizens are free to determine their destination through elected representatives. Democratic governance further enhances popular participation by requiring that citizens should engage governance institutions through dialogue in addressing societal needs and human rights. By organising this Seminar, DPE and Action Aid envisaged that dialogue over other means be chosen by the leaders to resolve tensions and challenges related to elections in Lesotho. The Seminar was attended by 81 people, 53 of which were males and 28 females. Participants were drawn from 13 of the 18 political parties contesting 2012 elections, 11 civil society organisations and 7 of the 8 communities where DPE operates in the country.

## 2.0 Seminar Objectives

In the light of the deficiency of constitutional clarity and the strong desire that party leaders should be able to prepare for the worst case scenario, the general objective of the Seminar was to unpack the Hung Parliament and the possible ways of dealing with it. Over and above this overarching objective, the Seminar also set to achieve the following specific objectives;

- (i) To provide a platform to deliberate on the potential areas of conflict surrounding 2012 General Elections as a result of possible scenario of a Hung Parliament and build consensus on how that could be best and peacefully handled ;
- (ii) To ease the tension among elections stakeholders and build trust and sense of cooperation among them in the run up to the 2012 polls;
- (iii) To establish conflict handling and dialogue facilitation mechanism for the 2012 General Elections even after the polls;

### **3.0 Seminar's Proceedings**

The first Session of the Seminar was the official opening by the DPE chairperson. The objective of the Session was to give participants an over view of the Seminar with a view of sharing DPE understanding on the need to have peaceful elections in Lesotho and identifying strategic role for civil society organisations in facilitating dialogue on potential challenges to peaceful elections. The chairperson outlined the role of DPE in development and the important work of the organisation in empowering the poor communities. She also indicated that DPE is present in many rural areas with the aim of complementing the Government in its efforts of development. She concluded by wishing everybody fruitful dialogue that would ease the pre and post-election tensions and conflict.

#### **4.0 Session II: How Far are Preparations?**

The objectives of this session were to understand from the different actors what are the impressions about the preparations for 2012 General Elections and also to solicit a voice of encouragement from the civil society, academia, development partners, media political parties and IEC to Basotho to go for peaceful election. The first presentation was led by Mrs Ntsoaki Matobo-National Animator DPE who indicated that civil society organisations went into partnership with IEC to deliver the electoral education in all constituencies. She further stated that registration process went well though there had been few challenges with regard to transfer of voters. It was noted that there were also under-aged registered children and this issue was raised with IEC and Political Parties Monitoring Committee. The Monitoring Committee has been charged with the responsibility of resolving elections related conflict. It was concluded that generally electoral process starting with registration, electoral education and campaign went well and can be the cornerstone for free, fair and accessible elections.

The second presenter was Dr. 'Mamoeketsi Ntho, a Lecturer at the National University of Lesotho who indicated that the assessment for the voter preparedness should include the acceptance of general elections results. She further indicated that the electoral process should be bench marked against the following issues:-

- Electoral law
- Independent IEC
- Administrative Procedures
- Voters rights and obligations
- Participation of women

Dr. Ntho indicated that women groups were targeted with electoral education and this was considered as a good move which should be continued in the post 2012 elections. She further appreciated the efforts made by political parties and IEC to adopt the Zebra approach to the development of the PR Party List. However, she noted that she has observed that in the constituencies the number of women contesting the 2012 general election remains low. This she said should be addressed lest the Zebra approach is misinterpreted and therefore abused to weaken the effort to encourage women to contest the constituencies.

The third presentation was led by Mr. Tsebo Matšasa who indicated that MISA had established the Media Committee whose main responsibility is to monitor media reporting for the coming general elections. He noted that some of the media houses did a good job while others were not reporting well. Specifically, the discussions reflected on the performance of the state media and noted that the ruling party Democratic Congress (DC) had more airtime than other political parties who are contesting the 2012 general elections. It was noted that media is a very powerful instrument and should not take sides when reporting. It was concluded that the role played by the media was encouraging and forms good foundation for free and fair election in Lesotho.

On behalf of other political parties who were present in the dialogue, Morena Thesele Maseribane, the Leader of Basotho National Party (BNP) presented the political parties views on the progress made so far in preparation for the coming general elections. He indicated that by virtue of his position as chairperson of Political Parties Task Team working with Independent Electoral Commission (IEC). The Task Team is charged with responsibility of receiving issues related to political parties and creates a platform for their resolution. It was also indicated that the Task Team works closely with the IEC and Monitoring Team. It was reported that opposition parties and care-taker government had been in dialogue sessions facilitated by the Heads of Churches. He indicated that issues that were resolved included the high presence of military in Maseru districts which appeared to intimidate the general public.

In his presentation, Morena Thesele Maseribane indicated that there were concerns raised by the other political parties and some of those concerns were resolved. The example given was the case where the Advance Voting had to be repeated in Kolonyama after it was reported that ballot papers used were more than the people who actually came through the voting station. It was also indicated that there were issues in relation to registration of voters, transfers of voters and issuing of passports to under-children to register. He further indicated that political parties' leaders met with Commissioner of Police to discuss issues related to internal security of the country. Morena Maseribane concluded by indicating that political parties had signed Declaration that commits them to peaceful elections and acceptance of elections results. He indicated that at least there is general appreciation amongst political parties that there is a base for the free and fair elections.

The Independent Electoral Commission (IEC) made the fifth presentation in the dialogue. It was represented by Advocate Mohale who informed the Seminar that there are about one million (1m) voters registered with IEC. He indicated that voters were allowed to inspect their names in the voters' roll and he also indicated that IEC supported civil society in delivering electoral education in the country. He appreciated that there are some challenges with regard to registration of voters. He further indicated that IEC trained reconciliatory teams in every constituency to deal with issues related to dispute and complaints by the candidates. This is meant to minimize complains that are usually sent to the national office. He concluded by indicating that election materials had been delivered to all constituencies and ready to be delivered to the polling stations. He stated that IEC is ready for the delivery of free, fair and accessible elections on the 26<sup>th</sup> May 2012.

The UNDP made the sixth presentation which was led by Mr. Thabo Mosoeunyane. He provided a background of IEC and UNDP relations. He mentioned that in July 2010, UNDP supported a Needs Assessment Mission that assessed the needs of IEC for the coming general elections. It was on the basis of this Needs Assessment it was decided that IEC should be given the support for the Election Observation Coordinator and Logistics. He noted that the Needs Assessment recommended the organisational

development for the IEC. It was indicated that UNDP has played a critical role in supporting Heads of Churches led mediation efforts as a way of helping Basotho to resolve their differences peacefully. The support for the Heads of Churches has resulted in the signing of the Declaration by all political parties contesting 2012 General Elections. The Declaration encourages all political contesting elections to abide by the election results.

### **5.0 Session III: What are Possible Election Outcomes? Scenario Building**

The objective of this session was meant to critically look at the contest among parties and provide intelligent guess or predication on the nature of parliament likely to be borne of such contentious elections. The first presenter was Mr. Amohelang Letsie, a Lecturer at the national University of Lesotho who indicated that the 2012 election campaign shows that the contestation is very close for DC, LCD and ABC. He indicated that this is based on the rallies, old performance in elections, manifestos and party growth patterns. These observations, Letsie said they mean that big parties may need to negotiate with small parties for the purposes of forming a government. It was stated that under this arrangement, the small parties would be in a position to influence policies. On the issue of vulnerability of coalition governments, Mr. Letsie indicated that any government has its own challenges whether is a one party or coalition government. He emphasised that parties to be in government should deliver services to the electorates. He concluded by indicating that the issue of coalition in Lesotho politics is a difficult approach though possible.

Advocate Lekhetho Rakuoane, Leader of Popular Front for Democracy who was very brief on his presentation indicated that the expectation is that the voter turnout might be at 600,000 from 430,000 of 2007 general elections. He indicated that since parties and IEC agreed on one ballot paper, the voting will reflect the actual pattern of the voters support. He concluded by indicating that political parties are ready to experience politics of coalitions for the first time in Lesotho.

In his presentation Mr. Mabusetsa Lenka, Human Rights Commissioner at LNC provided the background of Lesotho's politics. He indicated that electorate in Lesotho live on safety nets in the form of food packages that are given by the government and this might influence them to go and vote for the current ruling party which is DC. According to Mr. Lenka's prediction, DC will lead and be in government with BNP. The LCD and ABC were predicted to be the second and the third respectively in the race. He warned that there might be dissatisfaction from the voters if DC remains in power and he appeals to civil society organisations to be vigilant. He concluded by indicating that the dialogue processes that were aimed at easing elections tensions in the country had yielded benefits for Lesotho

### **6.0 Session IV: Understanding Constitutional Challenges of Hung Parliament: Generating Options for Working Arrangement**

The objective of this Session was to understand potential constitutional challenges of the Hung Parliament, potential implications and the alternative (best practices) constructive ways of dealing with the challenges. The Constitutional expert Prof Nqosa Mahao (LLD) Dean: Faculty of Commerce, Law & Management at the University of Witwatersrand was the guest presenter for the seminar. Professor highlighted that the constitution of Lesotho required a party or coalition forming a government to have the percentage of seats which is 50 plus of the 120 seats in parliament and this can be translated into at least 61 seats of the National Assembly. Professor Mahao explained that Lesotho will be faced with some challenges if there is no party that would emerge with outright majority, since the Constitution of Lesotho is not explicit enough to

address such situation. He indicated that in the case of absence of a party that would command the majority of the parliament, the country would have a *hung parliament*.

One challenge which the constitution does not provide for is time limit for the negotiation among parties and MPs for the purposes of formation of government. Since the King should have a Prime Minister at any particular moment, the incumbent Prime Minister may remain in office as negotiations continue. This may have serious implications for political stability particularly if the party of the incumbent Prime Minister has equal or lesser chances of forming government compared to other parties. Looking at the constitutional limitations on this point, Lesotho has the chance to end-up having a scenario similar to Belgium or Greece. Professor Mahao however provided the Seminar with different possible approaches:

- 6.1 The King invites the leading party from the general elections results to form a government. This option he called *E sena e suthelana* literally translated as one will get her turn after one has had one. This party should be given a specified number of days to form government and if it fails the second majority party be given opportunity with the same number of days until it has been proven that no one is able to form government then a rerun be called;
- 6.2 Parties with necessary majority in union sign MoU and present themselves to the King and the Council of State demonstrating that they have sufficient majority. This option he called *Masia-siane* literally translated as the early bird catches the worm. This means that any coalition of parties that will appear first to be commanding necessary majority be given opportunity.

There were on this presentation the discussants:

Advocate Kelebone Maope MP, KC

Ntate Maope is one of the fathers of Lesotho constitution who remains active in the efforts to understand it and find ways of improving it. He gave a background to Lesotho's politics where he indicated that in the past the King and Prime Minister were not working well (1970, 1993). It was indicated that the relationship between the two offices had improved. The collapse of the apartheid regime in 1994 is considered as a success for Lesotho and this has changed the way Lesotho was handling its politics. However, he noted that Lesotho has progressed though she remained a market for South African economy. Advocate Maope concurred with Professor Mahao and indicated that the Constitution of Lesotho is well written in terms of being a legal framework but there is a need to make supporting laws to give full effect of the articles of the Constitution. He concluded by indicating that he would support the move for building coalition government which is based on programmes.

Judge Semapo Peete

He made a presentation where he indicated that there had been split of political parties since the return of democracy in Lesotho. He indicated that this had been a worrying factor for the nation. He said that he believe on government of national unity rather than the one party democracy. He stated that government of national unity promotes tolerance in diversified context. He indicated that it will be good if a Constitutional Amendment Commission can be established for Lesotho to review the Constitution. He appealed to parliamentarians to review the Standing Orders of the parliament. He concluded by arguing that Lesotho needs some legal reforms and politicians that would in parliament in the coming 8<sup>th</sup> parliament should give this urgent attention.

Advocate 'Mabolae Mohase

She stated that civil society organisations have been the watch dogs of the democratic dispensation in Lesotho. She emphasised that the role of civil society organisations was critical since 2007 where they facilitate the dialogue amongst the political parties. She indicated this was done in partnership with Heads of Churches. Advocate Mohase argued that there a need to clearly have common interpretation of the Constitution of Lesotho, particularly those sections that are relevant to the formation of government. She concluded by recalling that there was a breakfast meeting held by Lesotho Council of NGOs (LCN) where parties agreed that the issue that is discussed in the seminar was important. She said that this initiative is a response of civil society to that need and committed civil society that it will remain vigilant and make contribution in building a strong democracy for Lesotho.

### **7.0 Session V: Issues Emerging from Session III**

The objective of this session was to build consensus on the constructive and peaceful handling of challenges of hung parliament. In recognition of the reality that the Council of State does have regulations to guide its operations despite several recommendations to have them, the following possibilities were raised as the avenues to explore further;

- 7.1 The Council of State be advised to make on regulations in anticipation of the hung parliament and effort to avert conflict that may go with current constitutional uncertainties;
- 7.2 Possibility of minority government exists but that would be the most unstable government;
- 7.3 All parties agree before elections and sign a commitment that they will in their endeavours to deal with any eventuality in the post election period be guided by the desire to have peaceful settlement even where the constitution does not provide clear guidelines;
- 7.4 Since the Speaker will be in office until another one could have been elected, the role played by this office in terms of establishment of the government should be closely monitored as it has potential to cause controversial situation as it has done before.

### **In conclusion of this matter the following way forward was proposed;**

In the short term civil society should monitor the situation closely and keep in touch with political leaders to ensure that the political situation does not go beyond dialogue. In particular civil society should

- Explore further the options in 6 above in the light of the issues raised in 7 and provide a necessary guide to the nation to avert violent political conflict which may result from inappropriate handling of the otherwise volatile and sensitive situation;
- Bring on board the Heads of Churches so that the civil society efforts and those they Heads are doing will complement each other;
- Encourage political parties to involve their executive committees when negotiating any cooperation that may lead to coalition government;

- Find ways of providing necessary public education and guidance so that people understand fully the challenges which could be brought by the Hung Parliament and how the lack of clarity of the constitution on the matter may complicate the situation. The constitutionality of coalition government and other issues be explained to the people to understand.

In the medium and long term civil society should advocate for the clarity of this issue in the constitution and provisions of the procedural clarity on the issues such as constructive motion of confidence.

## **8.0 Session VI: Political Party Campaign Session**

The objective of this session was to afford a space for political parties and independent candidates to present their elections manifestoes and also to interact with voters. The following parties made presentations; LCD,BNP,DC,AUM,SSD,BCP,LPC,WHP,BNDP,LMM,LWP,AREKA and 2 Independent Candidates.

During this session, political parties were able to present their manifestoes and the participants asked them questions. On the overall, political parties have same concerns such as poverty, unemployment and Lesotho-South Africa relations. Other common issues were promotion of safety nets for the aged and vulnerable groups of the society and institutional reforms. The session was concluded by identifying key issues that would form part of the service delivery agenda post May 26, General Elections and these are:-

- Review with the aim of coming up with a conducive investment policy for Basotho and foreigners;
- Improvement of education sector particularly in the areas of financing and quality (from Primary to tertiary);
- Creation of employment for both literate and illiterate people in the country;
- Creation of policies and institutions that would enhance integrity and good governance in the country (fighting of corruption and nepotism);
- Improvement of capabilities of foreign missions.

## **9.0 Closing Remarks**

Mr. Robert Likhang a member ActionAid International Lesotho Executive Committee made the closing remarks. He stated that DPE and AAIL are in partnership that has to translate into the improvement of the lives of people. He indicated that election is competition and political parties need votes from individuals and DPE Seminar is meant to support that the process so that it becomes peaceful. He indicated that Basotho are tired of political conflicts of the past and they would be happy to have peaceful elections and the post elections period. Since the Seminar created a platform for sharing knowledge and ideas, it empowered the nation for the great moment it is facing in few days to come. He thanked Professor Mahao, the discussants and other presenters for having found time to deliberate on peace for Lesotho. He concluded by passing a vote of thanks to DPE to be a vigilant partner that has made ActionAid Lesotho proud to contribute in such an important event. He wished Basotho peaceful elections and said that his organisation

is committed to making contribution in the manner that it could in the efforts that are geared towards making lives of Basotho better.

## **10.0 SEMINAR LESSONS AND WAYFORWARD**

The Seminar has been applauded by the political parties which found it to be a necessary platform that unlocked a dilemma that Basotho would face. The general feeling of participants was that the Seminar has raised significant issues for peaceful post-elections period. Hon Kelebone Maope of the Lesotho People's Congress said "I think this dialogue was a necessary because people were speculating...when things of this significance are only speculated and people do not engage they may cause more damage... But I think what has been more important about this seminar is that it better prepared us to deal with any eventuality". Organisers of the Seminar were commented for their vigilance as people thought that the manner in which hung parliament would be held had potential for conflict. One veteran in the civil society who has been key in the NGO mediation work in the 1990s had this to say to DPE "You cannot image the relevance of this seminar and the significance in the current tight election campaign.....I wish it was made at least two weeks ahead of elections so that between it and the election its outcome is publicised widely....I am telling you, you saved this country. The Seminar also enhanced civil society profile in the governance issues and the command of respect among politicians. One politician, Hon Lekhetho Rakuoane said after the Seminar "As politicians we will hear from you what you think should be the next move after you would have consolidated the recommendations and the options raised here..."

Civil Organisations were involved in the running of the Seminar as either resource persons or facilitators of various sessions. This made the event not DPE-Action Aid but rather a civil society piece. On evaluation of the Seminar civil society organisation under the auspices of Lesotho Council of NGOs (LCN) found the options generated as valuable and resolved that the sector should remain seized with the situation but allow politicians a space to play politics. The prediction of DPE of the possibility of hung parliament was precise and indeed Lesotho eventually had a coalition government.

CSOs further resolved to embark on public awareness in the media space to explain the complicated elements of elections and constitution which people were interested in but lacked clarity i.e. seats allocation, formation of government, contestations over the hung parliament etc. Public response has been overwhelming; people appreciated the effort of NGOs to explain the situation and guide the nation. DPE Executive Committee in its review meeting on the 15<sup>th</sup> July 2012 applauded the DPE team for leading such a high profile occasion and played a significant role in leading civil society in the controversial constitutional debate immediately before and after elections. DPE team has been charged by the Executive Committee to take this work further and find ways of promoting constitutional dialogue with a purpose of helping Basotho understand it and begin to identify gaps to be filled and shortfalls to be improved.