

Working Towards a Sustainable Democracy in Lesotho

Some Guidelines for a Robust
Election Process



The Commonwealth

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**Working Towards a Sustainable Democracy in Lesotho:
Some Guidelines for a Robust Election Process**

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The Commonwealth

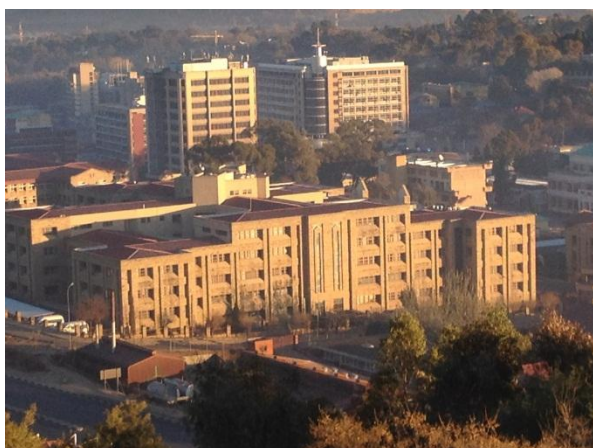
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Introduction

These guidelines have been developed by the Commonwealth to enhance the level of awareness amongst citizens of the election process in general and of coalition governments in a Mixed Member Proportional (MMP) System in particular. It has particular relevance as the Kingdom of Lesotho prepares for another election having now experienced a coalition government for two and a half years. The guidelines focus on the process from when a political party decides to contest the elections to the conclusion of the government formation process.

The Commonwealth has been engaged in Lesotho continuously since the 2012 elections. It has worked collaboratively with political parties in Lesotho to strengthen governance in a coalition environment. It has partnered with many other organisations in this process. The Commonwealth believes Lesotho stands to take full advantage of the learnings from its first coalition government with the upcoming elections. These guidelines are designed to assist all key players to participate in a robust election process and to form a government that reflects the wishes of the people and which carries out the mandate on which it was elected.



These guidelines are designed to assist all key players to participate in a robust election process and then to form a government that reflects the wishes of the people and which carries out the mandate on which it was elected

These guidelines will be of interest to members of the voting public who wish to be better informed about the whole process from when an election is called to when the new government forms. Familiarity with the processes at each stage will be useful to those wanting to be more engaged in the election campaign by asking questions of candidates and political parties about their policies and how they intend to address particular issues.

It will also be of interest to civil society organisations that work to enhance voter information about the democratic process and their part in deciding who should be the government for the next five years. The guidelines will be of interest to political parties as they form and position themselves to maximise their votes in the upcoming elections.



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Finally the guidelines will be of interest to candidates for parliament and political party operatives as a checklist of the various stages they go through preparing for the elections, campaigning during the elections, and the options they have as they contemplate their part in the government formation process.

It is anticipated that the media will take the opportunity to publicise the various aspects of the guidelines, and for the general public to be prepared for robust discussions as they participate in the three-month election process.

The guidelines also draw on the consultations that the Commonwealth Special Envoy to Lesotho has had with various socio-political stakeholders in Lesotho over the past 20 months. It also benefits from the Commonwealth organised study tour of Members of Parliament and senior officials from Lesotho to New Zealand which contributed to deepening understanding of government under a Mixed Member Proportion (MMP) system in Lesotho. The UNDP also provided some assistance for the visit to New Zealand.

A Maturing Democracy

As a democracy matures:

- Citizens become fully informed about the importance of their vote.
- Voters become aware of the policy prescriptions being put forward by competing political parties to solicit their support.
- During election campaign voters seek opportunities to question candidates and parties and garner information from other sources as a prelude to making decisions on which party to support.
- Citizens become aware of how the electoral system works and how their votes will affect the outcome of the elections.
- Elected representatives accept the decision of the voters and the resulting government delivers on their policy promises during their term and generally manage the country effectively in the interests of all citizens.

Mature democracies, amongst other things, depend on effective political parties, relevant policies to address the needs of the country, an effective bureaucracy to implement the government's programme, a vigilant Opposition, an independent judiciary, an effective parliament where citizens can participate fully, and a free press that exposes government when they deviate from their promises and when they fail to effectively address the issues of the day.

More often than not, Mixed Member Proportional (MMP) electoral systems produce coalition governments of various types. This can take a range of different forms including where parties of nearly equal size form a coalition that commands the support of a majority in Parliament to one large party supported by one or more smaller parties to form the majority. A party with enough seats to govern on its own can also form coalitions. This happens in the interests of future stability and a desire to work more closely with a party with which close relationships exist.



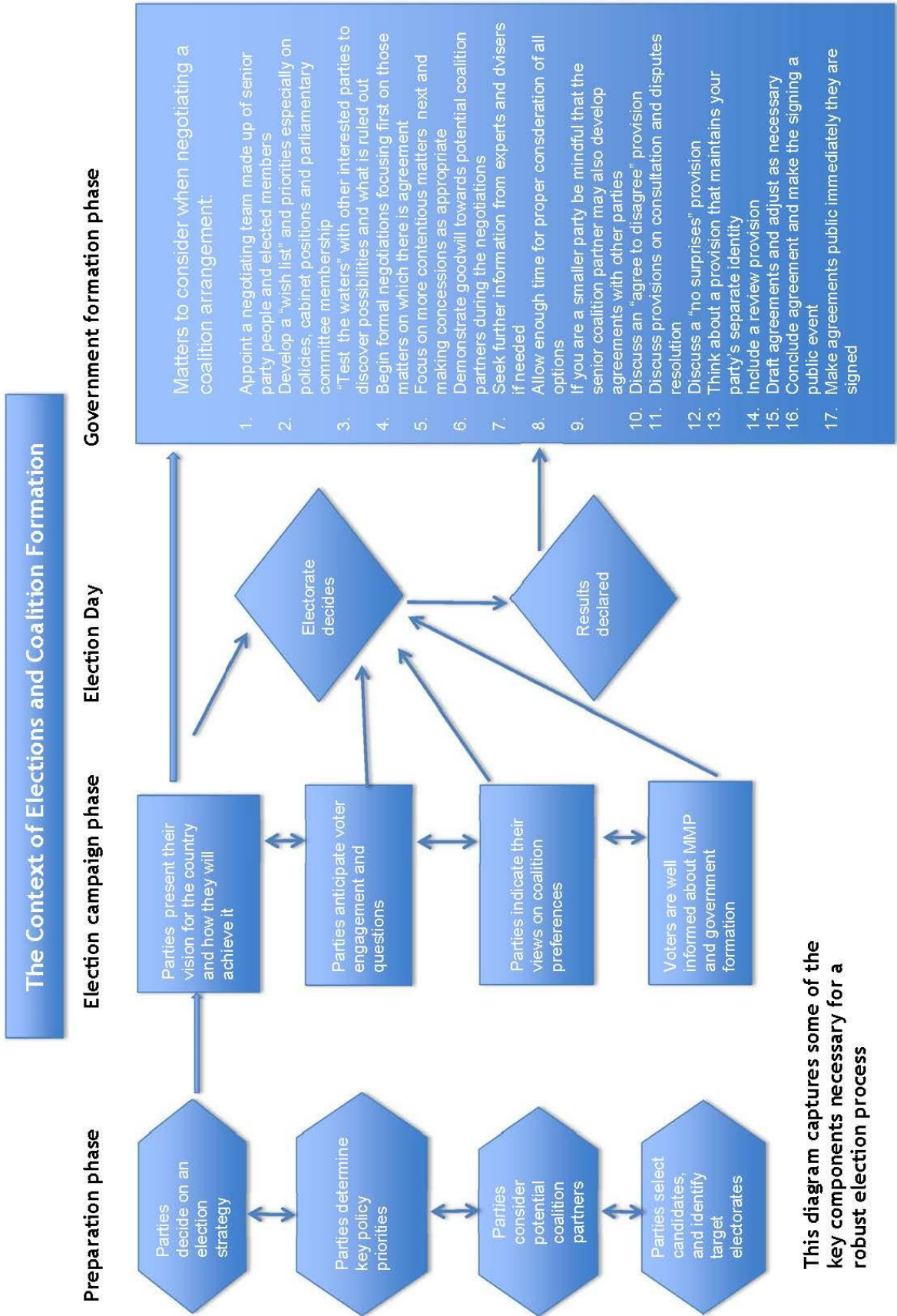
Mature democracies, amongst other things, depend on effective political parties, relevant policies to address the needs of the country, an effective bureaucracy, a vigilant Opposition, an effective parliament, an independent judiciary and a free press

Mature MMP systems have produced stable governments and parliaments that have been representative of the population at large in terms of gender, ethnicity, economic status, disability and age. In some cases, citizens have embraced the results of an MMP political system and eschewed the “winner take all” aspect of a “first past the post system”.

Wherever a country has adopted an MMP system there has inevitably been a period of adjustment. Lesotho has had its first coalition government since 2012 and the upcoming elections gives it another opportunity to fine tune the various aspects of this system and thereby progress its maturity and respect for the will of the people.

This guidelines document is intended as a reference tool for political parties, citizens, civil society, the governance bureaucracy and aspiring politicians whose informed participation is essential for Lesotho to develop into a mature and stable democracy in sub Saharan Africa.

In what follows, this document reflects on the nature and role of political parties, components of a robust election campaign, free and fair elections and the government formation process with particular emphasis on coalition formation.



This diagram captures some of the key components necessary for a robust election process

Lesotho's Parliamentary System

The Mixed Member Proportional Electoral System (MMP) is designed to produce a parliament in which the parliamentary strength of a party is proportional to the support it received at the election.

The hybrid Lesotho MMP model does not set a minimum percentage of the votes cast that a party has to receive before it qualifies for a PR seat. Consequently a party can gain parliamentary representation with a relatively small percentage of the total votes cast. In the 2012 election this was about 0.44% of the total votes cast.

In 2012, 18 parties and some independents contested the elections. Twelve parties were successful. Of these four parties gained constituency and PR seats while eight gained PR seats only. Of the successful parties without a constituency seat, one had five seats, one had two seats and six were single member parties. It is expected that the 2015 elections will be contested by upwards of 20 political parties.

Lesotho therefore has a history of multiple parties contesting the elections and it is possible for very small parties to win PR seats in parliament. Despite the fact that some independents do contest the elections, the Political Party is the most common unit of organisation in Lesotho's electoral system and during the elections.

Political Parties as a Critical Dimension in a Democratic System

The National Democratic Institute (www.ndi.org) states: "Political parties are an essential component of democracy. By competing in elections and mobilising citizens behind particular visions of society as well as through their performance in the legislature, parties offer citizens meaningful choices in governance, avenues for political participation and opportunities to shape their country's future".

Political parties:

- Are central to any democracy.
- Is where likeminded people develop and express their aspirations for their country.
- Are the vehicles through which people with a common vision for society exert pressure on the political system to achieve that vision.
- Help translate citizen concerns to the national context.
- Develop solutions to common problems and progress them through the parliamentary and public service systems.
- Build consensus amongst opposing groups to address community concerns
- Develop and train political leaders for now and the future.
- Shape public policy and drive it to implementation through the bureaucracy and the private sector.
- Present conflicting viewpoints on policy prescriptions and debate them in a principled manner to provide new insights and workable compromises.
- In Opposition, present as an alternative government thus pressurising incumbents to better address public issues (www.ndi.org).



Political parties are an essential component of democracy. They offer citizens meaningful choices in governance, avenues for political participation and opportunities to shape their country's future

The Context of Elections and Coalition Formation

These guidelines focus primarily on the process that is triggered when an election is called. These stages include:

- a) An intensive process of final planning and strategizing.
- b) The election campaign.
- c) Election Day.
- d) Government formation process.

Some of the key elements of these stages are discussed in the sections that follow. Rather than being exhaustive, the sections are reminders of some of the major issues that ought to be discussed and settled primarily by political parties contesting the elections during that phase.

Preparation for an election campaign

Political parties are usually established around a set of values, democratic principles and a vision for the country. They are properly instituted organisations that are normally required to be registered with the Electoral Commission for the purpose of contesting elections. They are also required to meet other criteria such as maintaining a minimum number of members, be required to furnish returns on donations received, and have rules for the democratic participation of members in selecting candidates for election, approving party policy and election of office bearers.

How a party is organised and run is usually a good guide to how it will govern if elected. Parties with open and inclusive processes for policy formation, election of office bearers and selection of candidates take these processes with them into government. A party with a keen eye on growing membership and good management at every level of the organisation endears itself to electors.

Political parties are usually established around a set of values, democratic principles and a vision for the country

It is at election time that political parties are in sharp focus while putting forward their policy prescription for the nation. The calling of an election instils discipline on devising an election strategy, developing a set of policy priorities for the campaign, selecting candidates, taking care of funding, publicity and related campaign matters as well as getting their supporters to the polls on voting day.

How a party is organised and run is usually a good guide to how it will govern if elected

During the preparation phase for an election campaign political parties will need to address at least the following matters:

1. Deciding on an election strategy:

Party strategists determine how the campaign is to be conducted, which national challenges to place before the electorate, which major policies to prioritise, which of their achievements and which Opposition's weaknesses to highlight. At this planning stage the party also considers election funding, preparing campaign material, campaigning targets, slogans, messaging and how to get supporters to polling stations on Election Day.

2. Determining key policy priorities:

A party will prioritise particular policies on the basis of its analysis of the national landscape, understanding of community expectations and the dictates of its values and principles. Its key campaign messages will also be informed by its election strategy.

3. Consider potential coalition partners:

In an MMP system a party needs to consider its stance on declaring its potential coalition partners prior to the election or to adopt a "wait and see" approach where coalition options are only considered after all votes have been counted. Both options have merit and the final decision will be a matter of strategy.

4. Select candidates, identify target electorates and undertake training:

Under normal circumstances a party selects its candidates and establishes its PR list well before an election. This process would have been conducted according to party rules and processes.

In an MMP environment, whether or not a party decides to contest all electorates, and whether or not it considers reaching political accommodation with other parties that are potential coalition partners are strategic matters. Sometimes political accommodation with a potential coalition partner is reached as a strategic manoeuvre to enhance the chances of winning a seat. Sometimes a seat is "gifted" to a potential coalition partner by asking supporters to vote for that party. There are some risks in this type of accommodation as

there is an element of manipulation involved. However, there is nothing illegal in this type of accommodation.

The need for discipline also requires parties to consider the need for training of those who will take a leading role in the campaign.

The Election Campaign

“Competitive campaigns offer voters a meaningful choice among the different contestants for public office, tying elections more effectively to citizens’ interests” (The National Democratic Institute www.ndi.org).

It is during the election campaign that the real contest of ideas amongst political parties surface. Political parties place choices before the electorate as citizens get more focused on what is in their own interests and who would best deliver for them.

How a political party conducts its election campaign is a reflection of its preparation, its analysis of the mood of the nation and it’s reading of where the electorate is expecting change. A party’s fortunes can be expected to reflect how it has listened to voters concerns and ideas and the extent to which it has developed solutions that are attractive to them.

The personality of a political candidate will always be a factor in the choices that voters make. Charismatic individuals can sway public opinion but the ability to cultivate this characteristic is not something that is gifted to everyone. However what political candidates can demonstrate is how they articulate a vision for the nation, how they explain their policy prescriptions and how they respond to questions and debates.



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The election campaign is the stage on which candidates and political parties display their passion for their country, articulate their understanding of what needs to change, and explain how their policy prescriptions have the best chance of taking the country forward.

It is on this stage that candidates and political parties defend their policies and programmes if they were the government in the last parliament and point to their achievements, while contrasting this

with what their political opponents are proposing. Conversely those who were previously in Opposition point to the failings of the incumbent government while highlighting their alternative vision and policies for the country.

An election campaign represents a finite period of time during which parties organise gatherings of voters to “rally” around for the purpose of explaining policies, answering questions and garnering support. Political meetings can take a number of different forms but they are essentially designed for parties and candidates to do the following:

1. Present their vision for the country and explain their policies to achieve that vision

All of the preparatory work done by political parties and candidates now comes into sharp focus. The key aspects of the prescription are chunked into digestible bites for the audience to hear, understand and internalise. The presentation of these policies are sharpened to stimulate the interests of the voters and get them thinking about the possibilities if they were implemented by the next government.

Inevitably political campaigning will enter into contentious matters to do with the performance of particular parties or candidates. These will have to be addressed by the candidates and the political parties but even here voters will want to know how candidates will undertake their role in the next parliament and they will want to be given good reason why they should vote for the particular candidate or party.

2. Anticipate voter engagement and questions

Voter support is the essential ingredient in any democracy. Without that support a party will never be in government. This requires candidates to anticipate questions from voters during the campaign and to be prepared to answer them in a manner that shows respect and demonstrates the seriousness with which the question is taken.

The preparation and training that parties provide for candidates will pay off when voters are taken seriously and when answers demonstrate the vision a party has for the country and its citizens.

3. Indicate coalition preferences

In a MMP environment possible coalition partners will be in the minds of voters. They may ask what are a political party’s preferences or intentions. Parties would have developed firm positions during their preparation phase and these positions should be clearly stated. If a party’s position is that it won’t decide its coalition partners until after the voters have made their decision then that is a legitimate position. Parties should be prepared to explain their decision.

While a party may not have made a decision about which party might be their coalition partners, it may have decided which party it will not go into coalition with. Parties should be prepared to declare these intentions if asked during the election campaign.

4. Ensure voters are well informed about MMP and government formation

Coalition governance is still a new phenomenon in Lesotho. However what would most likely have registered with voters is the possibility of wider representation in parliament. The nature of coalition politics is likely to be of interest to voters during the campaign and candidates should anticipate being called on to explain how the system works, what is the process of government formation, and how coalition partners will collaborate to achieve their policy agreements.

Election Day

The election campaign ends a day before the elections to allow voting to be free from any outside influence. Polling Day is a “politics free” zone so that voters are not at any risk of being influenced in their decision. On Election Day the focus is on the organisation by the Independent Electoral Commission (IEC) of voting and coalition of results. The provisional results announced on polling day begin the period of government formation.



Polling Day is a “politics free” zone

Government Formation Process

As polling day draws closer most political parties will begin to contemplate their position regarding coalition partners. This process essentially started when parties identified their vision, perhaps in a manifesto. This statement would have given rise to particular issues the party promised to target in government and the particular policies it would implement.

During the election campaign the party would have given some indication of how it would proceed during the coalition negotiation process. It may have identified potential coalition partners or it may

have said it would wait until after voters had made their decision. These commitments now shape the party's approach to coalition negotiations.

Section 82(1)(b) of the Lesotho Constitution requires the National Assembly to meet no later than 14 days after the holding of a general election. This requirement means that the coalition, if one is needed to determine which party holds a majority in parliament, must be completed inside the 14-day period.

This does not allow a lot of time to conclude the coalition negotiation process in order to create a majority in parliament. In the interests of stability, certainty and clarity, it is important to have all aspects of the coalition agreement satisfactorily completed before the 14-day period is up. For this reason, political parties should be readying their coalition negotiation teams and points for negotiation before the election is completed.

The MMP system is founded on the principle that governments are formed by agreements of willing parties to join their elected numbers and create or support a majority in parliament. This is agreed to in return for the ability to lead and influence in government in a manner consistent with a party's values and the commitments it made to the electorate.



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Coalition negotiation is a disciplined process. Concessions and agreements are hammered out on a principled basis emanating from the commitments parties made during the elections and their overall goals for the country. The ability of a party to give and receive concessions is directly related to its numerical strength in parliament.

There are several different models for coalition governments. One model is where the parties agreeing to form a coalition negotiate one programme for the government that is all encompassing. Individual parties negotiate to get their policies into the programme and once accepted it becomes the coalition government's programme. These agreements are often very detailed and include the legislative programme to be adopted. Parties also negotiate Cabinet and parliamentary committee positions and also give confidence and supply guarantees.

Another model that applies are situations when one party has by far the largest number of seats that is supplemented by a smaller party or parties which help it to get a majority in return for certain policy concessions and Cabinet and committee positions. In these circumstances usually the large party has separate coalition agreements with each coalition partner and makes carefully negotiated policy concessions, Cabinet and committee appointments. This is done to secure votes on confidence and supply and also on legislation proposed by the larger party.

It is usual when negotiating coalition agreements for the parties to seek advice from experts as well as party officials. This injects a sense of reality to the exercise and enables an eye to be kept on budgetary and legal constraints that may apply to the matters being negotiated.

Parties will also need to keep in mind that their bargaining power in coalition negotiations will be dependent on the level of success they achieved at the elections.

Coalition agreements also usually include clauses on coalition management, dispute resolution, agree to disagree provisions, and the right to propose legislation that may not be supported by the coalition partner but which may be supported by the Opposition.

When completed, the coalition agreement is written down and after diligent checking, is signed off by all parties to the agreement. It is then immediately made public so that there is total transparency about the new government and its programme of work.

All coalition agreements rely on the trust and goodwill of the parties to it. The most important factors that contribute to the stability of coalition governments are the relationship amongst the coalition leaders and their ability to solve problems as soon as they occur.

Any disciplined and principled process works better when there is a signpost of the series of logical steps that the parties should take. The following is such a signpost.



A sustainable democracy is only possible when elected representatives maintain the confidence of the people, when governments respect the wishes of the electorate, when there is an improvement in the lives of all citizens

Negotiating a Coalition Partnership:

Here are some of the more important matters to consider when negotiating a coalition partnership:

1. Appoint a negotiating team made up of senior party people and elected members.
2. Develop a “wish list” and priorities especially on policies, cabinet positions and parliamentary committee membership.
3. “Test the waters” with other interested parties to discover possibilities and what is ruled out.
4. Begin formal negotiations focusing first on those matters on which there is agreement.
5. Focus on more contentious matters next and making concessions as appropriate.
6. Demonstrate goodwill towards potential coalition partners during the negotiations.
7. Seek further information from experts and advisers if needed.
8. Allow enough time for proper consideration of all options.
9. If you are a smaller party be mindful that the senior coalition partner may also develop agreements with other parties.
10. Discuss an “agree to disagree” provision.
11. Discuss provisions on consultation and dispute resolution.
12. Discuss a “no surprises” provision.
13. Think about a provision that maintains your party’s separate identity.
14. Include a review provision.
15. Draft agreements and adjust as necessary.
16. Conclude agreement and make the signing a public event.
17. Make agreements public immediately they are signed. Models of coalition agreements

Coalition Agreements

There are many different types of written coalition agreements. What is agreed to should be compatible with the personalities of the leaders of consenting parties, the numerical contribution of their parties to the coalition, and the need for clarity.

THE COMMON FEATURES OF COALITION AGREEMENTS INCLUDE:

- A statement of purpose, or objective with a headline agreement that the party agrees to provide confidence and supply on the basis of the agreement.
- Some statement of philosophy or values (especially amongst parties that have some common or highly compatible principles or values).
- Some statement about parties maintaining their separate identities.
- A statement on how the parties will cooperate with each other.
- A statement enabling the major party to enter into agreements with other parties.
- What consultative arrangements have been agreed to.
- How the coalition will be managed by the leaders of the parties.
- A statement on good faith and no surprises.
- What policy concessions or agreements have been made.
- What will be the government's legislative programme.
- What Cabinet positions have been agreed to (both in and outside Cabinet).
- What Select Committee positions have been agreed to.
- A statement on collective Cabinet responsibility.
- A statement on confidence and supply.
- An agreement on procedural motions.
- An agree-to-disagree provision.

Postscript

A sustainable democracy earns the respect of its citizens and the international community. Such a democracy is considered as a role model by other societies and an enabler of strong democratic values and institutions.

These guidelines are by no means exhaustive. Political parties and individual candidates for election will add other dimensions that should be considered. Those who read the guidelines are invited to keep in mind that a robust election process is a prelude to a sustainable democracy and both are necessary conditions for the development of a Lesotho in which all citizens prosper.

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