#### IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

#### **HELD AT BRAAMFONTEIN**

**CASE NO: CCT245/21** 

In the application of:

**INKATHA FREEDOM PARTY (IFP)** 

Applicant for leave to intervene

(alternatively admission as amicus curiae)

In the matter between:

**ELECTORAL COMMISSION OF SOUTH AFRICA** 

**Applicant** 

and

MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

First Respondent

MEC RESPONSIBLE IN THE PROVINCIAL GOVERNMENT OF THE EASTERN CAPE

Second Respondent

MEC RESPONSIBLE IN THE PROVINCIAL GOVERNMENT OF FREE STATE

Third Respondent

MEC RESPONSIBLE IN THE PROVINCIAL

GOVERNMENT OF GAUTENG Fourth Respondent

MEC RESPONSIBLE IN THE PROVINCIAL

GOVERNMENT OF KWAZULU-NATAL Fifth Respondent

MEC RESPONSIBLE IN THE PROVINCIAL

GOVERNMENT OF LIMPOPO Sixth Respondent

MEC RESPONSIBLE IN THE PROVINCIAL

GOVERNMENT OF MPUMALANGA Seventh Respondent

MEC RESPONSIBLE IN THE PROVINCIAL

GOVERNMENT OF THE NORTHERN CAPE	Eighth Respondent
MEC RESPONSIBLE IN THE PROVINCIAL GOVERNMENT OF THE NORTH WEST	Ninth Respondent
MEC RESPONSIBLE IN THE PROVINCIAL GOVERNMENT OF THE WESTERN CAPE	Tenth Respondent
THE SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION	Eleventh Respondent

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GOVERNMENT OF THE NORTHERN CAPE

MEC RESPONSIBLE IN THE PROVINCIAL
GOVERNMENT OF THE NORTH WEST

MEC RESPONSIBLE IN THE PROVINCIAL
GOVERNMENT OF THE WESTERN CAPE

Tenth Respondent

THE SOUTH AFRICAN LOCAL GOVERNMENT
ASSOCIATION

Eleventh Respondent

#### NOTICE OF MOTION

PLEASE TAKE NOTICE THAT the INKATHA FREEDOM PARTY ("the Applicant") hereby makes application to the Constitutional Court for an Order in the following terms:

The Applicant is granted leave to intervene as a Respondent in the above matter;

Alternatively

That the Applicant is granted leave to intervene as an *amicus curiae* in the above matter;

- The Applicant is granted the right to submit written submissions in this matter and to advance oral argument at the hearing of this matter.
- That any party opposing this application is ordered to pay the Applicant's costs, including the costs of two counsel where employed.
- 5 Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the affidavit of VELENKOSINI FIKI HLABISA together with annexures, will be used in support of this application.

**TAKE NOTICE FURTHER THAT** the Applicant has appointed as its attorneys of record **LOURENS DE KLERK** attorneys, at the address which appears below as the address at which it will accept service of all process in these proceedings.

### KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY

DATED at DURBAN on this 10 day of AUGUST 2021

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AND TO: MOETEI KANYANE INC

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11th Respondent

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MEC RESPONSIBLE IN THE PROVINCIAL GOVERNMENT OF LIMPOPO

Sixth Respondent

MEC RESPONSIBLE IN THE PROVINCIAL GOVERNMENT OF MPUMALANGA		Seventh Respondent		
	EC RESPONSIBLE IN THE PROVINCIAL OVERNMENT OF THE NORTHERN CAPE	Eighth Respondent		
MEC RESPONSIBLE IN THE PROVINCIAL GOVERNMENT OF THE NORTH WEST  MEC RESPONSIBLE IN THE PROVINCIAL GOVERNMENT OF THE WESTERN CAPE  Tenth Respondent				
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### I, VELENKOSINI FIKI HLABISA, do hereby state under oath:

- I am the President of the Inkatha Freedom Party ("IFP"), the Applicant for Leave to Intervene as a Respondent in the above application, alternatively to be admitted as an *amicus curiae*.
- 2 I am duly authorised to depose to this affidavit on behalf of the IFP.
- The facts and allegations contained herein are within my personal knowledge unless the contrary appears from the context thereof. Such facts and allegations are to the best of my knowledge and belief true and correct.
- Where I make legal submissions I do so on the advice of the IFP's legal representatives whose advice I accept as being true and correct.
- I depose to this affidavit in support of the IFP's application in terms of Rule 8 of the Constitutional Court Rules for leave to intervene, alternatively in terms of Rule 10 for admission as an *amicus curiae* in the above matter before this Court, brought by the Electoral Commission of South Africa ("the Electoral Commission") which

concerns the postponement of the 2021 Local Government Elections.

- As I explain below, the IFP has a direct and substantial interest in this critically important issue. Such interest is acknowledged by the Electoral Commission in paragraph 23 of its founding affidavit.
- In joining this application, the IFP wishes to open the doors of discussion and cooperation between the Electoral Commission and the various other political parties regarding the most effective and practical methods to achieve a postponement of the 2021 Local Government Elections without infringing on the rights of any South African.
- 8 The continued structure of this affidavit is as follows:
  - 8.1 <u>First</u>, I address the issue of who the IFP is, describing its continued involvement in the paradigm of South African politics. This foreshadows my description of its direct and substantial interests in the issues raised in the application before the court;

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- 8.2 Second, I address the IFP's direct and substantial interest in these proceedings. In summary, the IFP submits that the postponement of the local government elections is of vital importance to ensuring that the local government election process, when it does occur, is both free and fair;
- 8.3 Third, I address the IFP's application to be admitted as amicus curiae. I will demonstrate the IFP's interest in the proceedings which underpin this application;
- 8.4 Fourth, I address the IFP's position in these proceedings.

  The IFP agrees with the Electoral Commission that the
  2021 Local Government Elections need to be postponed.

  The IFP will voice its concerns regarding the outcome
  should the elections not be postponed. It will further offer
  what it considers to be a practical solution to be
  considered in conjunction with the relief sought by the
  Electoral Commission;
- 8.5 <u>Fifth, I shall address the interests of justice which the IFP</u> submits require that it should be granted leave to intervene in this application.



8.6 <u>Sixth</u>, I shall provide the concluding remarks to the application for intervention.

### A ABOUT THE IFP

- The IFP is a registered political party with representatives in all spheres of government. It is mandated to serve the people of South Africa and to do so in the spirit of Ubuntu/Botho.
- The IFP is one of the larger political parties in National Assembly and plays a pivotal role in the provincial and local government, particularly KwaZulu-Natal. I annex a copy of the IFP's Constitution as annexure "IFP1".
- The IFP has been an active role-player within the South African political paradigm for approximately 41 years.

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## B THE IFP'S DIRECT AND SUBSTANTIAL INTEREST IN THESE PROCEEDINGS

- In this application, the Electoral Commission seeks relief aimed *inter*alia at postponing the 2021 Local Government Elections due to concerns relating to the Covid-19 pandemic.
- 13 The Electoral Commission seeks by way of relief, inter alia:
  - 13.1 to have a declaratory order granted so that it may hold the Local Government Elections outside of the 90-day period required by section 159(2) of the Constitution and section 24 of the Local Government: Municipal Structures Act 17 of 1998;
  - that it be directed to hold the forthcoming elections beforeFebruary 2022;
  - 13.3 as an alternative an order declaring that the failure to hold the Local Government Elections within a 90-day period as aforementioned is unconstitutional and invalid;

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- that such declaration of invalidity is suspended and that the Electoral Commission is directed to hold the forthcoming elections before 20 February 2022.
- The IFP supports and endorses the relief which is sought by the Electoral Commission.
- It reiterates the foundational importance that such process must be both "free" and "fair", which cannot be achieved in the current climate of the Covid19 pandemic.
- A process which compels the citizens of the country to participate in the Local Government Elections under the current shadow of a Covid-19 pandemic, undermines the credibility of the elective process making it neither free nor fair.
- The continuation of an election during the Covid19 pandemic unreasonably compels citizens of this country to choose between the right of their own bodily integrity, health and safety and their right to vote in an election

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The IFP has a direct interest in ensuring that the Local Government Elections are free and fair elections. It has a direct and substantial interest in any decision which this Court may make in this application.

Indeed, such interest is expressly recognised by the Electoral Commission at paragraph 23 of its founding affidavit wherein it states:

"Multiple stakeholders and political parties have an interest in the matter many of whom engaged with the enquiry". The Commission recognises that virtually every South African has a direct interest in this application."

Despite recognising this interest, the Electoral Commission states that it would not be practical to join each political party as a respondent in the matter and that it would make the application papers accessible to members of the public together with the Intervention Rules of this Honourable Court.

Thus, the Electoral Commission recognises that each political party concerned, having regard to their application, can decide whether they wish to seek to intervene in these proceedings and recognises that they have the direct and substantial interest to do so.

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Accordingly, I submit that the IFP has passed the threshold contemplated in Rule 8 of the Rules of Court and should be granted

leave to intervene as a further respondent in the above application.

### C. APPLICATION TO BE ADMITTED AS AMICUS CURIAE

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23 In the alternative to the intervention application, the IFP seeks leave to intervene as an amicus curiae in terms of Rule 10 of the Rules of this Honourable Court.

24 The IFP, whilst agreeing with the Electoral Commission, has further and important submissions which may be of use to this Court in determining the issues which have been presented to it if the IFP is allowed to advance argument to the above Honourable Court.

- 25 Under this heading I shall address the following issues as is required in terms of Rule 10(6):
  - 25.1 The IFP's interest in the proceedings;
  - 25.2 An outline of the IFP's submissions which I submit differ from those already presented to the Court;

25.3 Interests of justice.

### D. THE IFP'S INTEREST IN THE PROCEEDINGS

- As I have already stated, the IFP is a registered political party which participates in all spheres of government. It robustly contests numerous elections at both municipal, provincial and national government levels.
- I annex a summary of the ballots issued by the Electoral Commission and which sets out the votes received by parties in KwaZulu-Natal during the 2016 Local Government Elections as annexure "IFP2".
- The Electoral Commission's result summary demonstrates that the IFP received 20.22% of the valid votes in KwaZulu-Natal during the 2016 Local Government Elections.
- The summary also demonstrates that the IFP received the second highest number of votes in KwaZulu-Natal after the African National Congress.

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- The IFP is the official opposition to the ANC in the province of Kwa-Zulu Natal.
- I annex the Electoral Commission's result summary (nationally) for the 2016 Local Government Elections as annexure "IFP3". The result summary demonstrates that the IFP received 4.73% of the votes nationally for that election.
- Nationally, the IFP was only surpassed by the ANC, the Democratic Alliance and the Economic Freedom Fighters. Nationally, the IFP was the fourth most prominent political party during 2016 Local Government Elections.
- At the heart of a democratic voting process is the right to free and fair elections. Such right can only be upheld when the voting process is untainted and where each citizen's decision to participate or refrain from participating in the voting process is not influenced by the consideration of whether they are willing to accept the risk to their health by contracting the coronavirus in order to exercise their right to vote.

- Section 19(2) of the Constitution provides that every citizen has "the right to free, fair and regular elections for any legislative body established in terms of the Constitution".
- The Covid-19 pandemic has already forced the Government and Courts to grapple with issues relating to matters which have had a significant impact on their citizens' daily lives, such as laws relating to the limitation of citizens' movements, their right of association, their right to education and their right to practice their religions.
- One of the main objectives of an electoral process in order for same to be free and fair is to deliver reliable electoral results.
- The credibility of an electoral process underscored by it being "free" and "fair" is achieved through the broad participation of the public.

  This generally requires a significant turnout of the citizens in the country and participation across all segments of society.
- Though it is this multi-factored process which gives the legitimacy to the results emanating from that election process, the process of casting a vote is simple.

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- A member of the public arrives at a polling station to cast a vote, stands in line to cast their vote, joins other persons in that line, shares pens and electronic devices and shares the space with other persons.
- In 2016 approximately 16 million people embarked on this process on one day across the Republic.
- This traditional process cannot be achieved in the same way during a global pandemic. Even the most unassuming leg of the process described above, standing in line, exposes the voter to the possibility of contracting the virus.
- The ability for voters to socially distance in these circumstances (or for the Electoral Commission or political parties to enforce this) is well-nigh impossible.
- In the same vein, other safety protocols cannot realistically be imposed at every polling station in the Republic in the short time available whether that involves enforcing the obligation to wear a mask or sanitising each pen that is used in marking ballots, and so on.

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- It is impossible for political parties and other interested persons to ensure that the citizens of the country, particularly those who wish to vote for them, are able to safely navigate the pandemic and vote for the political party of their choosing, without any fear of contracting the virus.
- It is impossible for political parties, especially the smaller political parties, to ensure that all of their voters who would have ordinarily have turned out to vote in their favour, rather than stay away because of a fear of contracting the virus.
- The Coronavirus is a significant factor which influences the determination of whether the 2021 Local Government Electoral process, if it continues, is truly free and fair.
- It is a factor which undermines the results of the process by depriving those who would ordinarily vote, of an opportunity to vote. It affects the credibility of the process.
- The IFP has in the past voiced concerns and objections to the continuation of the 2022 Local Government Elections under the current Covid-19 pandemic. I annex as "IFP4" an article published

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on 8 June 2021 entitled "IFP calls for postponement of Local Govt Elections".

- In such article, whilst the IFP records that it is prepared to compete in the Local Government Elections, it further voices its concerns:
  - 49.1 about exposing citizens to the virus through the Local Government Election process;
  - about undermining the free and fairness of the process by compelling citizens to make the choice themselves as to whether they would want to expose themselves to infection and cast their vote;
  - whether the process is truly free and fair when citizens who are in isolation (not even being infected) cannot participate in the voting process.
- The pandemic is a unique and exceptional circumstance and its latest, Delta variant is even more transmissible. The pandemic is best compared with the Republic being engaged in a war on its own territory and thus conventional methods maintaining peoples' constitutional rights cannot be adhered to.

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- In such exceptional circumstances, the Electoral Commission supported by the IFP is entitled to come to this Court and ask exceptional relief.
- The IFP has an interest in participating in the process before this Court which it contends should result in the granting of such exceptional relief.

# THE IFP'S POSITION IN THE PROCEEDINGS: THE LOCAL GOVERNMENT ELECTIONS MUST BE POSTPONED

- The IFP aligns itself with the submissions made by the Electoral Commission insofar as proposals to postpone the Local Government Elections.
- The IFP however submits that practically, the Local Government Elections should be postponed to a date beyond 20 February 2022.

  I shall deal with is reasons for such a recommendation in further on in this affidavit.
- I annex a copy of the written submissions delivered by the IFP to

  Justice Moseneke during the preparation of his report as annexure

  "IFP5". In its written submissions, the IFP highlighted all factors

which it submits impact on the question of whether the elections can continue or should be postponed, being:

- The ability of political parties to comply with the IEC's requirements;
- The ability of political parties to campaign under the shadow of a Covid-19 pandemic;
- The impact of the pandemic on the elections;
- The obligation to protect the democratic right to vote which is infringed upon during the pandemic.
- The IFP acknowledges that this court is confronted with considering those factors together with the countervailing issues that a postponement of an election creates and that such relief carries with it the following concerns:
  - The country is exposed to the risks of citizens losing the opportunity to replace local representatives in government for a short period of time;

- Local government leaders may extend their term of office without consulting the public or getting major consensus of all major political parties and this may undermine confidence in the process;
- There may be no opportunity to immediately bring about a change in policy direction where government leaders who have been criticised, now extend their mandate because of the Coronavirus crisis.
- Alternative dates may not be feasible because of other risks.
- These concerns, the IFP submits, pale in comparison to the impact which a continued election would have on the electoral democratic process.
- The influence of the virus on the election results undermines the process of a free and fair election. The result is driven not by the will of the people but rather by the overall fear of contracting a virus and the question of who has been vaccinated against the virus and who has not.

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- Turnout may decline especially amongst groups more likely to be affected by the disease. The IFP submits that the significant and potential effect which the virus would have on turnout at the polls would undermine the credibility of the electoral process.
- Political parties cannot campaign or at least effectively campaign during this period. As a result of the virus, the current regulations of movement impact on assembly and severely restrict the size of public gatherings. There is a limitation on the freedom of association in order to limit the extent to which the virus spreads.
- Whilst these limitations on movement and association are permissible in order to prevent the spread of the virus, they have a significant impact on:
  - every political party's ability to campaign;
  - every citizen's right to participate in a political campaign.
- Section 19(1)(a) of the Constitution endows every citizen with a right to participate in the activities of their political party.

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- 63 Section 19(1)(c) of the Constitution guarantees every citizen the right to campaign for a political party or a cause.
- Under the current regulations, the IFP and its members, together with every citizen who associates him or herself with the IFP are effectively limited, if not precluded, from campaigning or participating in the activities of the IFP.
- This, we submit, undermines the credibility of a Local Government Election under the current Covid-19 pandemic.
- There is invariably an absolute, if not significant, limitation on the ability of citizens to engage in public debate. Public debate between citizens and their local government representatives prior to election informs citizens of the type of persons for whom they are to vote.
- The embargo which the restriction of movement and association placed on people during the pandemic, removes the space for public debate to occur. This, we submit, equally undermines the credibility of the electoral process.
- The Covid-19 pandemic creates unequal political participation. It creates the room for opposition parties to be undermined as



Government uses emergency restrictions to repress opposing candidates. This risk is inherent in the process which calls for a 2021 Local Government Election. It also limits the rights of voters who do not have the same access to technology or the ability to engage with candidates or their parties in a virtual setting as opposed to those who economically and geographically are able to do so.

I annex an article published on 24 February 2021 headed "EFF demands political activity be allowed for parties to prepare for local elections" as annexure "IFP6". In the article, the following is recorded as a complaint made by the EFF to the President:

"These lockdown regulations prohibit a political party from engaging in programmes and activities to hold government accountable for its actions and further prohibit the campaigning of political programmes and activities in preparation for this year's local government elections [which are likely to take place in November]"

- Thus, the fear that the regulations impede on effective political activities is a reality.
- Restrictions on political activities are only justifiable where same do not have any impact and could not have any impact on the results of a democratic electoral process.

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- Where the electoral process is to continue, either the embargo on political gatherings must be lifted or the election must be deferred until such political campaigning can effectively be undertaken.
- Both the above restrictions and electoral process cannot continue in unison. One must give way to the other.
- In the current climate, the IFP submits that the election must give way to the continuance of the above restrictions. The restrictions seek to protect the lives of people especially as the country is in the grip of the third wave of the pandemic. It is pointless having an election at the cost of human lives. It is contrary to the national interest.
- On 26 May 2020, the European Commission for Democracy through
  Law (the Venice Commission) published a report which addressed
  the issues which should be taken into account when deciding
  whether to hold or postpone elections during a Covid-19 state of
  emergency. A copy of such report is annexed as annexure "IFP7".
- Chapter 19 of the report sets out a range of factors which must be taken into account when deciding to hold or postpone elections during a state of emergency. The IFP submits that these factors are

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important and must also be taken into consideration in the Court deciding whether to:

- 76.1 grant the relief sought by the Electoral Commission and further
- 76.2 determining the ambit of the report which must be delivered by the Electoral Commission in terms of the Order sought.
- Some of the factors which the Court must take into account (having regard to Chapter 19 of the Venice Commission report) are:
  - the prevention of abuses by political parties when engaging in discussions regarding the postponement;
  - an analysis on the impact on campaigning possibilities if there is no postponement;
  - 77.3 campaign costs in the event that the electoral campaign has already commenced;

- 77.4 the legitimacy of postponed elections;
- 77.5 the public opinion regarding how the pandemic has been dealt with;
- alternative voting methods such as postal votes, ballot box and voting by internet.
- Having regard to the Electoral Commission's founding affidavit, the following emerges:
  - 78.1 There are currently 25,741,615 registered voters;
  - 78.2 The Population Register has 40,263,709 citizens who are registered to vote;
  - 78.3 Therefore, only 64% of voters are registered (para 98.5.4).
  - Approximately 400,000 to 600,000 persons would have registered to vote for the first time in the upcoming Local Government Elections (para 98.5.6);

- 78.5 There will be no registration of new voters before the upcoming Local Government Elections;
- Therefore, between 400,000 and 600,000 persons are definitely not going to be able vote in the upcoming election and are therefore disenfranchised.
- At that level, the credibility of any election held in October 2021 is already undermined. It is not fair. It will occur to the deliberate exclusion of 400,000 to 600,000 citizens. There is no way to determine in favour of which political party those 400,000 to 600,000 individuals would vote.
- In municipalities where the voting results in a "hung" municipality, a small number of voters could constitute swing votes.
- Thus, if the elections are to be held in October 2021, even the absence of a mere 400,000 to 600,000 voters in terms of the number of votes cast nationally can impact on the question of whether the results truly reflect the will of the people in an affected area.
- A democratic electoral process means that the political party in charge of a municipality is voted into that position by the majority of

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the people in the area who wish that party to act as their representative in that municipality. This cannot be accomplished where citizens are excluded from the voting process.

- The Electoral Commission describes how the Local Government Elections are likely to be a super spreader event (para 154 166 of the report). In order to contextualise this, the total voter turnout during the 2016 Government Elections was 15,290,820 people.
- The risk to life during a Local Government Election in October 2021 is incalculable. Even if the voter turnout is halved, the effects of such an election process during 2021 would have far-reaching and significant consequences.
- The IFP does not believe that any rational respondent would oppose the relief deferring the election until a date when it is safer for there to be public participation *en masse*, especially where it is likely to draw the participation of approximately 15 million people.
- The IFP points out that people are not permitted to congregate in stadia to watch sporting events live because of the risk if 15,000 or 20,000 people together in one venue is an unacceptable risk, surely then the congregation of many thousands of people in myriad

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locations throughout the Republic cannot be contemplated in the current circumstances.

- To offer 15 million citizens the right to vote against the risk that they may contract the Covid-19 virus is tantamount to asking them to decide to vote with a loaded firearm pointed at them.
- Academically citizens will always retain their right to vote but, practically, no rational citizen is going to embark upon a voting process when they are risking their lives to do so.
- Against that description of events the IFP submits that the voting process will be neither fair nor free.
- The IFP understands that in agreeing with the Electoral Commission, we are called upon to put aside our political views. The relief is aimed at the greater good of the people of the country, not the politicians or their political parties.
- The request to the Court that the elections be postponed should be supported by all political parties who should not be governed at this time by political ambition.

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- In the light of the current climate, the obligation by Government to ensure that the elections are safe, free and fair, cannot be met.
- It is impossible as is demonstrated in the founding affidavit, for the elections to be fair where there is an exclusion of 600,000 voters for the election to be free when citizens are given the choice to either pick between their lives or their right to vote.
- Therefore, the IFP supports the decision to suspend the obligation to convene the elections in October 2021.

#### F. IFP'S SUGGESTION ON THE PROPOSED REVISED TIMETABLE

- The IFP submits that until the infection rate has reduced or a significant number of people have been vaccinated, the timetable for the elections as proposed by the Electoral Commission needs to be revised in order to allow for an extended delay of the election.
- Practically, the IFP submits that it is impossible for the elections to be held before February 2022.

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- Practically, whilst the mechanisms to convene the elections might be able employed, there is no way to guarantee that, at the time that the elections are to be convened, this country will not be in a fourth or subsequent wave of the virus.
- In his report, Justice Moseneke describes why he suggests February 2022 as the date for the new elections (paras 294 300). In summary, he states that:
  - 98.1 The elections must be deferred <u>only once</u> and to the nearest possible date;
  - 98.2 The purpose of deferring the elections (whilst unwelcome) is a necessity "in exceptional circumstances that pose a real, direct and collective threat to our lives, bodily and psychological wellbeing and, might we add, to our livelihoods";
- The February 2022 date allows for budgets to be tabled in April 2022 and approved before the start of the new financial year on 1 July 2022.

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- With no guarantee that the pandemic infection rate will minimise, the IFP suggests that there can be no objection to the suggested date of February 2022 being extended to 26 May 2022.
- This merely adds on three months to the suggested date in the Commission's report.
- During the added three months, the benefit to be achieved is that the vaccine rollout would be given more time to reach more people thereby reducing the potential infection rate or threat to life at any election and the budgets which are required to be adopted before 1 July 2022 can be adopted.
- As the Electoral Commission correctly states in paragraph 265, Municipal Councils retain competence to function from the time that its term expires until a newly elected Council is declared to be elected.
- As the report suggests, there should only be one deferment and in arriving at such date, there needs to be absolute certainty that the deferment achieves its objective. The objective of the deferment is to hold the Local Government Elections in a space which is safe for each citizen of the country.

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- A four-month delay from October 2021 to February 2022 is insufficient time to properly assess and make arrangements for a safe election. Thus the IFP suggest that the revised date for the elections be 26 May 2022.
- Equally, the IFP would suggest that the elections be held over three days so as to minimise the number of people being called upon to vote on any particular day.
- The financial implications of holding an election over a period greater than a single day must be considered by the Electoral Commission so that it can properly assess what financial implications need to be considered.
- Accordingly, the IFP approves of the process suggested by the Electoral Commission in paragraph 233 of its founding affidavit, save for an alteration of paragraph 233.8 to read that:

"The voting date will be 26 May 2022".

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#### G. INTERESTS OF JUSTICE

- I am advised and submit that it is the interests of justice to grant the IFP leave to intervene in this application either as a party or as amicus curiae.
- I respectfully submit that it is evident that the IFP's submissions are substantially different to those which are to be advanced, or likely to be advanced by other parties in this application.
- The IFP undertakes not to unnecessarily repeat submissions of other parties. I submit that the IFP's submissions will be of assistance to this Court.
- In light of the short notice which has been given to the IFP relating to this application, the other parties were not contacted and, as such, I am unable to advise as to whether they have any objection to the intervention.

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#### H. <u>CONCLUSION</u>

Having regard to all of the above I respectfully request the above Honourable Court to grant the Order as sought in paragraph 1, alternatively paragraphs 2 and 3 as foreshadowed in the notice of motion prefixed hereto.

VELENKOSINI FIKI HLABISA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at on this the day of day of 2021, and that the Regulations contained in Government Notice R. 1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS

Full names:

Address: Capacity:

#### **ROBIN TOPPING**

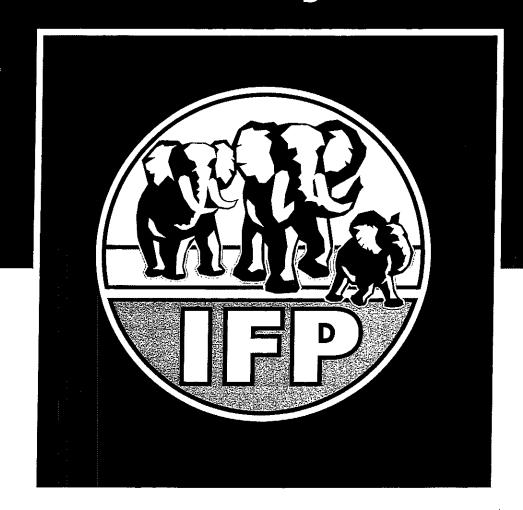
C/O THORPE AND HANDS INC.
4th FLOOR
6 DURBAN CLUB PLACE
DURBAN

COMMISSIONER OF OATHS PRACTISING ATTORNEY

Date:....

"IFP1"

#### Inkatha Freedom Party



Constitution

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As amended by the 2012 General Conference 

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TATEMENT OF BELIEF REAMBLE

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YOUTH BRIGADE

ORGANISATION OF THE PARTY AT BRANCH, CONSTITUENCY. DISTRICT AND PROVINCIAL LEVEL

GENERAL CONFERENCE

FINANCIAL PROVISIONS

ø.

MISCELLANEOUS

DISCIPLINARY PROCEDURE RULES



# CONSTITUTION OF INKATHA FREEDOM PARTY

(Hereinafter referred to as the Party)

#### PREAMBLE

EMBRACING the principles of African humanism otherwise known as maintained to promote and protect human dignity, personal growth and uBuntu/Botho and accepting that governments are instituted and fulfilment, and the individual pursuit of happiness;

'n

INSPIRED by a political and constitutional vision that promotes and protects political, economic, social and cultural pluralism in an open society; က်

BOUND by an unwavering and uncompromising political commitment to opportunity, and reconciled society with democratic safeguards for foster the establishment of a truly open, free, libertarian, equalall people regarded both as individuals and as members of the social

RECOGNISING the need to harness the great resources of the unemployment, disease, ignorance, insecurity, homelessness and moral country to fight the real enemies of the people, namely: poverty, hunger,

4.

DESIRING to ensure a fair distribution of the wealth of the country for the benefit of all its people, by means of political and economic structures that encourage free enterprise and create wealth, while promoting social justice and social responsibility and solidarity throughout the country and within our communities, families and workplaces; ij

WISHING to give our Party a type of internal organisation which reflects PLEDGING our Party to ensure the maintenance of a stable, peaceful society in which all people can pursue their individual and collective our pluralist, federalist, democratic and non-authoritarian ideals; and happiness, and realise their potential without fear or favour,

ORE, SHARING A COMMON BELIEF AND VI GONSTITUTION AND WE PROGLAIM AND GIVETO OUR

## STATEMENT OF BELIEF

- We believe that the political stability and economic prosperity of our society must be founded on a humanistic culture of respect for the peoplo, regarded both as individuals and as members of the social and cultural formations to which they belong.
- 2. We believe in equality before the law, and in the intrinsic value of the rule of law as the cornerstone of a free and just society under the law. We are committed to eradicating the rule of man and substituting it with the rule of law. We believe in advanced constitutionalism and in the need for a justiciable, rigid and supreme constitution. We believe in the absolute integrity and impartiality of government's institutions and in the separation between Party and State and between private and public interests.
- We believe that social justice is the main goal of organised societies. We believe that the achievement of social justice must express the value of the freedom of our people and promote the long-term social and economic development of our society as a whole, as well as the personal growth and development of our people. We believe that promoting social justice is both a collective and individual responsibility. Therefore, we believe in effective and real equal access to all available social, economic and political opportunities, and we reject any form of communism and autocratic populism.
- We believe that it is the duty of all governments to uplift society as a whole, paying special attention to the under-privileged and the victims of apartheid, while removing all social and economic hindrances preventing individuals from developing to the maximum their abilities and potential.
- We believe that individual and collective rights are the foundation of society, and that all human rights must be protected, made justiciable and entrenched in the constitution with respect to all relations under the control of government. We also believe that an advanced culture of human rights protection must be developed to redress not only old and well-known forms of abuse, but also to prevent new forms of abuse of the people by the actions of government and organisations which exercise control or power over the people.
- We believe in the value of pluralism as a political philosophy which promotes freedom, and as a technique of structuring government and governance in a diverse society.

- 7. We believe that political pluralism in our country must be protected and promoted by means of strong federalism, protection of political minorities, a parliamentary system of government, the practice of directand participatory democracy, accountability of political representatives, and efficient, transparent and good government and public administration.
- 8. We believe that social and cultural pluralism must be protected and that to this end the integrity, preeminence and role of civil society must be constitutionally entrenched to ensure that it is government which serves society and not vice versa. We believe in the autonomy of social and cultural formations, ranging from family structures and traditional organisations to universities, professional associations, trade unions and associations of all types which shall be free from government control and interference.
- 9. We believe that the self-identification of individuals within a particular social and cultural milleu is essential to their identity as South Africans, and that culture, religion, morality and societal organisation belong to the people and shall never become a business of government.
- 10. We believe in a libertarian political culture of tolerance and non-violence which promotes the direct empowerment of the people, communities and social and cultural formations with the regulation and administration of their own interests, and which rejects all forms of authoritarianism, paternalism and centralism.
- on the pelieve in economic pluralism based on a system of free-market enterprise which ensures that the resources and the wealth of our country belong, and are made accessible to all the people, and therefore, we also believe that government shall not directly participate in economic enterprises or activities in all cases in which the private sector can provide the required product or service.
- 2. We believe that the role and scope of government must be limited to ensure the protection of corresponding areas of individual and collective freedom, ilberty and autonomy.
- 13. We believe therefore that the final transition from an unjust society to a just society will be a difficult one. We are committed to developing a culture of reconciliation, human respect and the promotion of personal growth, so as to redress the historical human and spiritual costs suffered by the people of our country because of apartheid and some stages of the liberation struggle.

- 14. We believe in a free and open society based on respect and tolerance, in which men and women may pursue their happiness, nourish their values and appreciate the spiritual intangibles which make life a unique experience and a divine gift. We believe in the right and duty of any new generation to move the world forward in developing new ideas and challenging past social conventions, dogmas and superstitions.
- 15. We believe that South Africa faces one of the greatest challenges ever posed to a country, and which will be won only if all South Africans join hands to free all the people from the slavery of poverty, ignorance, and social and cultural segregation, while respecting their individual and collective rights and diversity, and preserving the long-term viability of the economy by promoting a culture of excellence and individual reward for industriousness and achievement.
- 16. We believe in the value of the culture of self-help and self-reliance as the engine through which each building block of our society may participate in improving South Africa, and call for an all-inclusive and perpetual revolution of goodwill which empowers people of goodwill in their families, workplaces, communities and relvant levels of government, to improve on their immediate social and economic conditions.
- We believe that it is the inalienable right and duty of the people to stand up at any time to fight for that which is right and against that which is wrong, and we believe that this is the fundamental and unchangeable mission statement of the Inkatha Freedom Party.

### CHAPTER I

# THE AIMS AND OBJECTIVES OF THE PARTY

- To promote and encourage the development of the people spiritually, economically, educationally and politically.
- 1.2 To eradicate all forms of corruption, exploitation and intimidation of man by man, fighting and opposing the ancient as well as the modern evils of government and all forms of social injustice.
- 3 To bring about the transformation of our society and system of government to ensure the long-term protection of political, economic, social and cultural pluralism.

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- 1.4 To ensure equal and effective access to all available social, economic and political opportunities and equal treatment for all people in all walks of life.
  - 1.5 To co-operate with any movement or organisation acting for the improvement of the conditions of the people.
- 1.6 To strive towards the elimination from our society of all forms of discrimination based on race, origin sex colour or society.
  - nation based on race, origin, sex, colour or creed,

    1.7 To protect, encourage and promote free trade, commerce, industry and agriculture, along with the consequential of the consequential of the industry and
- agriculture, along with the conservation and rational use of natural resources.

  1.8 To encourage all citizens to actively participate in all sectors of the economy and social life, and to promote the concept of participatory democracy with respect to the activities of any government.
  - 1.9 To maintain and entrench a justiciable Bill of Rights reflecting the highest standards of individual and collective human rights' protection.
    - 1.10 To foster a consciousness of patriotism and a strong sense of national unity in diversity based on a common loyalty to our land.
      - 1.11 To propagate among our people the spirit of self-help and self-reliance.
- 1.12 To co-operate locally and internationally with all parties and organisations working for international peace and a world-wide open society based on the complete eradication of all forms of national and international oppression and on the recognition of cultural and national diversities.
  - 1.13 To promote and support worthy customs and cultures of all South Africans, protecting the plural nature of our society.
- 1.14 To give effect to the principles approved from time to time by the appropriate organs of the Party.
- 1.15 To carry out any other activities which, in the opinion of the Party, are conducive to the attainment of the aims and objectives of the Party.

### CHAPTER II

# MEMBERSHIP - DUTIES, OBLIGATIONS AND RIGHTS

#### Membership

2.1 Membership of the Party shall be voluntary and open to all South African citizens who fully subscribe to the Preamble, Statement of Belief and accept the aims and objectives and rules of the Party.

- An application for membership shall be submitted orally or in writing to the appropriate Party official at specified offices of the Party and it should specify the ward in which he or she intends to perform his/her political activity. 2.2
- Membership shall be conferred to an applicant upon payment of a calendar year commencing on the 1st July and ending on 30th June of each year. This will apply even where a member subscribes after January prescribed subscription fee and shall odinarily be valid for one (1) unless payment has been made for a specified period. 2.3
- honorary and life membership. The National Council shall formulate regulations governing the various categories and privileges applicable 2,4 There shall be various categories of membership including affiliated,
- only after serving for a period not shorter than twelve (12) months as an A member shall be eligible to occupy an official position in the structure ordinary member unless the relevant structure is newly established. 2.5
- Members shall be eighteen years of age or older and subscribe to the conditions of membership. 2.6
- Council on the basis of proposals to it from the Treasurer-General after Membership fees shall be determined from time to time by the National consultation with the Finance Committee. 2.7

### **Duties and Obligations**

- Every member shall be obliged to promote the unity of the Party at all times and on all levels and shall refrain from any activity that creates disunity, sectarianism and disruption of the services of the Party.
- Every member shall swear to uphold the principles and policies of the Party as enshrined in this Constitution and shall pledge himself/herself to voluntarily join expecting nothing in return by way of personal gain and/ or position. 2.9
- 2.10 Every member shall conduct himself/herself in a manner which is not prejudicial to the interest of the Party.

Rights 2.11 Every member shall ordinarily be obliged to attend and participate in all meetings and programmes where he/she was properly invited by an authorised Party structure, to which he/she shall be entitled to do so hy virtue of his/her position or office.

A member of the Party shall enjoy the following rights: 2.12

to elect and to be elected to any office of the Party at any level, provided it does not conflict with (h) and (i) below; 9

to elect and to be elected to any Committee of the Party at all levels, provided it does not conflict with (h) and (i) below; <u>ල</u>

to criticise any shortcomings in the Party at its meetings when there are due reasons and grounds;

to attend in person meetings of the Party that discuss and pass 豆

to request the Committee of the Party at all levels up to and including decisions on his/her activities and work; ø

the National Council to consider any questions or petitions;

to freely take part in discussions on the work and policies of the Ξ

a member may stand for and hold any position in the Party <u>ত</u>

save that one may not simultaneously hold more than one office bearer position, i.e. one derived from a direct election from a Party structure. Positions held in an ex officio capacity or held by virtue of one's office or as a Member of the National Council or as nominated by the National Council are exempt from this rule;

A Party office bearer may also hold office in government save that one may not simultaneously be a member of an Executive a Constituency and an office bearer of a corresponding local Municipality or a member of an Executive Committee of a District and an office bearer of a corresponding District/Metropolitan Municipality; and Ξ

An office bearer of the Party at Constituency and District levels may not be allowed to be an employee of a corresponding Municipality.

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### CHAPTER III

ORGANISATION OF THE PARTY

Party Structures
3.1 The Party is a juristic person, which, subject to this Constitution, shall have the power to sue and be sued in its name. Subject to this Constitution, each Province is a distinct juristic person responsible for its activities in respect of which it may sue and be sued in its name.

The Party shall be organised in National, Provincial, District, Constituency and Branch structures, each of which shall be primarily responsible for its own organisation and administration. 3.2

The Party's organisation shall be based on a differentiation between the roles, offices and functions which are political and those which are administrative, provided that: 3.3

- from fulfilling their duty to contribute to the administration of the this shall not preclude those involved in political activities and roles a
  - both administration shall respect and promote the principle that Party structures are to serve and support all relevant Party leaders and constituencies equally and without favour, bias or prejudice Ω
- a Local Municipality, a District the a Province the territory of a Province, provided that within the area of a Metropolitan Municipality the Party may elect to establish more There shall be one or more Branch in each Ward of a Local Municipality. In Traditional areas a Branch shall comprise the area of the Induna's/Headman's Ward. In the suburbs and the rest of the country polling stations or sections of a township could be cosidered in the demarcation of Branches in the Ward. A Constituency shall territory of a District Municipality or Metropolitan Municipality, and Constituencies for practical and political considerations as approved by the Secretary-General and the National Council. comprise the territory of 3.4
- Branches shall report to the relevant Constituency, Constituencies to the District, and the Districts to the Province. At least on a quarterly basis each Province shall send a report to the President, the Secretary-General and the National Organiser on its administration and organisation which District, Constituency and Branch organisation and administration shall be primarily accountable to, and report within Provincial structures. shall also include information obtained from Districts and Constituencies. 3,5
- 3.6 Any elected Committee/Officer of the Party shall remain in office for a reasonable period after the expiry of their term to allow for the next election to take place.
- structure shall have the power of co-opting a person among its members to fill the vacancy in an acting capacity subject to ratification by a Branch meeting or the corresponding council, provided that no more than half of the original Committee shall be co-optees, provided that this section Should a vacancy occur in any Party structure by reason of death, resignation, expulsion, incapacitation or any other cause, such does not apply to office bearers at National level. 3.7
- develop general criteria to ensure that membership fees and nationally available resources are directly made available to the Province in consultation with the Finance Committee, the National Council shall which they have been raised or to which they pertain, provided that: Treasurer-General of the 3.8 On the recommendation

- organisation and and/or ordinary Party members who possess the relevant skills predetermined resources shall be devolved on an annual basis to support its structure to the national and expertise; <u></u>
- the national structure may direct special resources towards one or more Province for purposes of equalisation or political promotion in that Province; and Ω
- that membership fees and nationally available resources are made available to each District in which they have been raised, subject to in administering its available resources each Province shall ensure the two foregoing subsections which, mutatis mutandis, shall apply to the Provinces. <u>ල</u>
- consecutive meetings of a particular structure without a written apology shall 3.9 Any committee member who absents him/herself from three (3) automatically forfeit membership of that structure.

## National Finance Committee

- 3.10 There shall be a National Finance Committee of the Party which shall consist of the following:
- no fewer than seven members appointed by the National Council from among its members;
  - Treasurers of each Province;
  - National Treasurer of the Women's Brigade; 区区
    - National Treasurer of the Youth Brigade; 医鱼鱼
      - Treasurer-General; and
- Secretary-General.

# Functions of the National Finance Committee

- 3.11 The National Finance Committee shall be accountable to the National Council and its functions shall include the following:
- [a] formulation of policy with regards to revenue and expenditure of the Party's funds;
- ensuring that there is equity and fairness in the distribution of resources among and between various structures and organs of the
- formulation of broad guidelines to govern fundraising activities at all levels of the Party; <u>ු</u>
- monitoring adherence by all structures and organs of the Party to agreed policy and guidelines with regards to financial matters; D
- ensuring adherence by all structures and organs of the Party to high standards of financial management; <u>@</u>

to act as a clearing house for all investment business and financial proposals and advise the National Council accordingly; and Ξ

- to meet on a regular basis and to submit reports to the National Council at least on a quarterly basis. 5
- Each level of Party organisation may inspect and make recommendations with respect to any organisational, administrative and financial matter related to a structure immediately below it.
- National and Provincial organs of the Party shall be fiscally and financially autonomous. Districts and Constituencies shall follow fiscal and financial guidelines as determined by the Province concerned, 3.13

# 'olitical Oversight Committee and its Functions

- which shall consist of not less than ten (10) members and no more than fifteen (15) members who are knowledgeable about Party policies and The National Council shall establish a Political Oversight Committee governance matters.
- The Political Oversight Committee shall:
- the Party, political office bearers and public representatives and provide political oversights over Party members, appointeds of all three levels of government; <u></u>
  - ensure that where applicable IFP Members, office bearers. appointees and public representatives fulfil their respective responsibilities and obligations to the Party; and where appropulate to institutions of government and ultimately, to the electorate; and 回
    - assist and stimulate the Party in holding its representative: accountable to it and the electorate for their performance and <u>ල</u>
- Members, office bearers, appointees and public representatives have extensive responsibilities and obligations to the Party; and when appropriate to institutions of government and ultimately, to the public: the electorate. The Party accordingly has a clear obligation and mandia to hold its representatives accountable to it for their performance an
- ensure that the Party representatives function at an optimal to In the exercise of its mandate the Political Oversight Committee shall: and within the political culture of the Party; <u>e</u> .17
  - liaise with the IEC on the deployment and removal of  $\mathcal{P}_{\mathrm{tr}}$ representatives at all tevels of the government;

[c] investigate alleged breaches of code of conduct and infringements the performance of their responsibilities, and to refer these to of any law or regulation by the Party's public representatives in disciplinary processes where necessary;

- ල ල
- (after consultation with relevant stakeholders) as political office bearers implement disciplinary decisions from various disciplinary tribunals; deploy members to various Party structure and nominate candidates
  - attend to any other matters of political relevance that may be referred and senior managers at all three levels of government; and Ξ
    - to it by the Party President, Deputy President or Secretary-General. Political Oversight Committee shall report to the National Council. 3,18

## National Deployment Committee

- The National Council shall establish a National Deployment.Committee which shall consist of seven (7) members to be appointed by the National Council from among members of the Party as follows:
  - Chairperson and Deputy Chairperson;
    - Secretary and Deputy Secretary; and
    - Three (3) additional members, ල ල
- The National Deployment Committee shall: 3.20
- [a] draft proposals to constitute effective deployment policy at all levels
  - develop mechanisms to ensure that this policy is optimally and
- among other things, ensure that the policy focuses on human draft the Party's cadre development policy and deployment strategy; education about the IFP's organisational culture, performance resource development coordination, guidelines for deployment, ত্রত

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- develop guidelines for the assessment of performance of the Party's public representatives provided that those who fail the test **®**
- when deemed necessary, recommend there deployment of members Ξ
  - of Parliament to Local Government and vice versa so that Parliament make such recommendations to the Political Oversight Committee, is not misconstrued to be a higher level of deployment; and the National Executive Committee and the National Council. <u>\_</u>

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The National Deployment Committee shall hold meetings, at least, once per quarter, and the quorum at such meetings shall be four members provided that the Chairperson or Deputy Chairperson and the Secretary or Deputy 3.21

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of five (5) years and may be re-appointed, and vacancies occurring in the Members of the National Deployment Committee shall serve for a period committee shall be filled by the National Council. 3.23

# Bodies not provided for in this Constitution

- Each of the individual or collegial offices provided for in this Constitution may establish any other individual or collegial, political or administrative office provided that such new office:
- may not exercise any power or prerogative which under this Constitution does not belong to the office which established it;
- shall serve at the pleasure of, and shall report and be fully accountable to the office which established it. Ω

## Policy Formulation and Portfolios

- Policy formulation shall be the result of co-operation between the but shall remain sufficiently general with respect to provincial affairs that they can be implemented in each Province so as to adjust them to the National and Provincial levels. National policies shall bind each Province, specific needs and policy aspirations of that Province.
- Any reasonable and legitimate doubt between National and Provincial competence in a policy matter should be solved in favour of the preeminence of National policy, provided that any doubt between National and Provincial competence in an administrative, organisational or financial matter should be solved in favour of provincial autonomy.
- The National and each Provincial Council shall establish standing committees divided on the basis of subject matter competence (Portfolios) which, inter alia, are to report to the President, the Deputy President, the National Chairperson and the Secretary-General. The Portfolios shall have:
- the primary responsibility of formulating policy recommendations on topics of their competence; and [60]
- the responsibility of directing, conducting and monitoring the Party's activities related to the implementation of Party policies connected with their competencies. Ω



General, each Portfolio shall seek to co-ordinate its activities with IFP study groups in the National or Provincial Parliaments, as the case may be, as well as with fora and research groups established within the Party or withinaffiliatedorganisations. Whenpossible, all Portfoliosrelated to a same 3.28 Under the co-ordination and direction of the President and the Secretarysubject matter shall have joint meetings and programmes under the direction of an elected Chairperson who shall preferably and ordinarily beamember of the parliamentary study group. The Portfolios shall include, but shall not be limited to the following subject matters, some of which, when required, may be grouped into one Portfolio:

Party Organisation and Development

National Security

Justice and Constitutional Affairs, including the Party's constitutional matters ပြ

Publicity and Information 5

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Finance, Fiscal and Budgetary Matters 

Housing and Human Settlements Local Government

Rural and Community Development

Social Welfare

Education and Skills Development

Health Ξ

Sports and Recreation Arts and Culture

Agriculture and Land Affairs o

Tourism, Conservation, and Environmental Affairs

Labour Relations and Trade Unionism Women's Affairs

Youth Affairs

Senior Citizens

Moral Regeneration

Foreign Relations

Defence

Ethics and Party Discipline raditional Affairs

Science and Technology

Water Affairs and Forestry Prisons

Public Service and Administration

Roads and Transport

### CHAPTER IV

# THE NATIONAL COUNCIL AND ITS FUNCTION

### National Council

- 4.1 There shall be National Council of the Party, which shall consist of no more than one hundred (100) members, seventy six (76) of whom shall be elected by Party Structures.
- Of the seventy six (76) elected members, forty (40) of them shall be directly elected at an elective General Conference by duly appointed delegates and shall comprise six (6) National Office Bearers and thirty four (34) committee members as follows; 4.2
  - President of the Party;
- Deputy President of the Party;  $\Box$ 
  - National Chairperson; ပြ
- Deputy National Chairperson; ō
  - Secretary-General; 0
- Deputy Secretary-General; and
- Thirty four (34) committee members to be directly elected in the Annual General Conference according to the formula to be determined by National Council and which ensures geographical spread across provinces weighted according to the numerical strength of membership in each province.
- Of the seventy six (76) elected members, thirty six (36) shall have been elected by Party Structures outside the Annual General Conference as 4.3
  - A Chairperson and Secretary of each of the nine (9) Provincial <u>a</u>
    - Executive Committees thus totalling eighteen (18) members; 豆
- A National Executive Committee of the Women's Brigade thus totalling nine (9) members; and
  - A National Executive Committee of the Youth Brigade thus totalling nine (9) members. 豆
- The remaining twenty four (24) members shall be appointed by the Party President in order to, among others, make available to the National Council special talents, expertise and abilities the Party may need.
- The term of the National Council shall be three (3) years. Vacancies shall be filled in terms of this section and only for the balance of the term of 4.5



## National Executive Committee

- 4.6 There shall be an Executive Committee of the National Council which shall consist of the following members:
  - President of the Party;
- Deputy President of the Party; ည်
  - National Chairperson;
- Deputy National Chairperson;
  - Secretary-General; <u>ө</u> =
- Deputy Secretary-General;
  - Treasurer-General; 厉도
- Administrative Secretary;
  - National Organiser; ESZ
- National Chairperson of the Women's Brigade;
  - National Secretary of the Women's Brigade;
- National Chairperson of the Youth Brigade;
- Vational Secretary of the Youth Brigade; and
- 4.7 The term of office of the National Executive Committee shall coincide witi Three (3) persons to be appointed by the President, that of the office bearers.

# Functions of the National Executive Committee

- 4.8 The National Executive Committee shall:
- Aftend to the day to day logistic and operational matters of the Party
  - Implement Party policies and resolutions as passed by the Vational Council and/or the Annual General Conferences; Q
- Assist the President and the Secretary-General in the day to day management of the Party; and Ç
- and such decisions shall be brought to the following Nationa Take policy decisions between sessions of the National Council Council meeting for ratification. 豆

# Election of Office Bearers at National Level

- commence three (3) months before the elective conference, to afforc The election process of all office bearers at national level shall candidates time to canvass support for their election.
- with Branches which are in good standing and which shall nominate ¿ candidate for each of the following positions at a Branch Conference All Party structures shall participate in the nomination process starting convened for this purpose: 4.10
- National Executive Committee: 4.11
- President and Deputy President; National Chairperson and Deputy and Deputy Secretary National Chairperson; Secretary-General General.



# 4.12 Women's Brigade National Executive:

National Chairperson and Deputy National Chairperson; National Secretary and Deputy National Secretary; National Treasurer and Deputy National Treasurer; National Publicity Secretary and Deputy National Publicity Secretary.

# 13 Youth Brigade National Executive:

National Chairperson and Deputy National Chairperson; National Secretary and Deputy National Secretary; National Treasurer and Deputy National Publicity Secretary and Deputy Secretary and Deputy Secretary.

- 14 Elected Branch Nominees shall then be forwarded to relevant Constituency Councils for further processing. The said Constituency Councils shall reserve the right to add one (or more) nominee(s) of their own. By a process of voting and elimination each Constituency Council shall elect one candidate which shall be forwarded to a relevant District Council.
- 15 Upon receipt of all nominees from all Constituencies which are in good standing each District Council shall reserve the right to add one (or more) nominee(s) of their own. By a process of voting and elimination each District Council which is in good standing shall elect one candidate which shall be forwarded to a relevant Provincial Council.
- Upon receipt of all nominees from all District Councils each Provincial Council shall reserve the right to add one (or more) nominee(s) of their own. By a process of voting and elimination each Provincial Council which is in good standing shall elect one candidate which shall be forwarded to the National Council.
- 4.17 Upon receipt of all nominees from all Provinces which are in good standing the National Council shall reserve the right to add one (or more) nominee(s) before deciding by a process of voting and elimination how many nominee(s) will be presented to the elective general conference for the purpose of electing the relevant office bearer. Such election shall be by means of a secret ballot.
- 4.18 In the structures of the Party (except in the Women's Brigade) it is \\\ imperative that one third of the nominees shall be female candidates.

#### Term of Office

4.19 The term of office of the President shall be five (5) years.

- 4.20 The term of office of the National Chairperson and Deputy National Chairperson shall be five (5) years.
- 4.21 The term of office of the Secretary-General and Deputy Secretary-General shall be five (5) years.

## Election of Treasurer-General

- 4.22 The Treasurer-General shall be elected by the National Council.,
- 4.23 The term of office of the Treasurer-General shall be five (5) years.

# Resignation of a member of the National Council

- 4.24 The President of the Party may, by writing under his/her hand addressed to the National Chairperson, indicate his/her intention to resign from office, giving reasons therefore for submission to the National Council.
  - writing under his/her hand addressed to the President) may by writing under his/her hand addressed to the President or Secretary-General give notice of his/her intention to resign from office giving reasons therefore, and such notice shall be put on the agenda of the next meeting of the National Council. A Provincial Chairperson or representative shall notify the National Council that his/her resignation has been accepted by the Provincial Council or a special committee thereof.
- 4.26 In the event of a member of the National Council (other than the President) ceasing to hold office because of resignation, incapacitation, death or other cause, the National Council shall cause the vacancy to be filled by an acting member until the next election, provided that the filling of the position held by a Provincial Chairperson or representative shall be made by the Provincial Council concerned, or by the National Council on a temporary basis only pending a meeting of the Provincial Council.

## Functioning of the National Council

The National Council shall meet at such time and place as determined by the President, the National Chairperson or, when so requested by twenty (20) members of the Council, by the Secretary-General. Notice of meetings of the National Council shall be given in the form and manner determined by the Secretary-General, subject to the power of the National Council to determine the date of its next meeting in lieu of notice.



The National Council shall be validly constituted when at least half of its properly elected or appointed members are in attendance at the 4.28

declared opening of its meeting. Subject to this Constitution, the National Council shall adoptresolutions with the support of the majority of its members

# Powers and Functions of the National Council

4.29 The National Council shall:

implement the policies of the Party at national level and provide <u></u>

co-ordination of provincial policies; 0

General Conference for implementation at national level or by the programme policies of the Party as formulated by the Annual Provinces autonomously;

exercise final control over all Officials; 回回

control or regulate activities and the disciplining of all officials at to Provincial, District, Constituency, Branch or other levels of National Headquarters, and make recommendations in this respect

summon regular or extraordinary meetings of the National Council <u>@</u>

assume responsibility for the proper maintenance of financial records at National Headquarters, and ensure that such responsibility is fulfilled by the Provinces, and, when necessary under the circumstances, by District, Constituency, Branch and or General Conferences in accordance with the standing orders; other levels of the Party; Ξ

employ a firm of registered accountants to audit the financial statements kept at National Headquarters. [6]

appoint agents to perform administrative and financial functions on 2

select members of the Party to undertake visits to other countries  $\equiv$ 

make all members of the National Council responsible for the Constituencies of the Party as shall be allocated to them by the National Council and ensure that such members report progress to of Provinces, organisational efficiency on behalf of the Party;  $\equiv$ 

develop the policies of the Party, informing and controlling the activities of the Party's representatives in the national Parliament and Cabinet, and lialse closely and regularly with the IFP  $\Xi$ 

solicit and receive reports from the Party's representatives in the national Parliament and Cabinet;

[m] select and propose candidates to Parliament, provided that the recommendation of the relevant District or Constituency shall first be obtained in respect of Constituency candidates; and

promote the objects, ideals and interests of the Party or to help it in take any action or make any resolution which is designed the attainment thereof. Ξ

### National Headquarters

4.30 The members of the National Council shall be the principal officials of the Party at National Headquarters.

4.31 The activities and organisation of the Party shall be supervised from National Headquarters of the Party.

### **Duties of the President**

The President of the Party shall:

be the principal officer of the Party and, when present, preside over meetings of the National Council

be the principal spokesperson of the Party on national and international affairs; 亘

have the power to convene meetings of the National Council;

have the power to give instructions to any official of the Party on any matter affecting the Party; 回回

any organisational, administrative or political matter relating to the have the power to receive any grievance or complaint related to Party from members and non-members and may assign with or without recommendation such grievance or complaint to any officials or office of the Party at any level for report to the President or to any Party structure for resolution; 

specified function for and on behalf of the President or the empower any member of the Party to exercise any power or Secretary-General, or the National Council; 三

have the power of appointing ad hoc and/or standing committees on any matter whatsoever; and 6

member of the Party and, at his/her discretion, to suspend or temporarily replace any other national office bearer, subject to the have the power to promote any disciplinary action against any ratification of the National Council. 三

## **Duties of the Deputy President**

The Deputy President shalf:

assist and actively support the President in the execution of his/ her functions;

[b] deputise for the President whenever the President is absent from office or is incapacitated;

and (ALT) resonance construction

- [c] chair meetings of the National Council, national conferences and rallies of the Party as directed by the President;
  - [d] carry out any duties of the Party as directed by the President; and [e] in the event of the President's resignation or death the Deput
- i) in the event of the President's resignation or death the Deputy President shall assume the position of President of the Party for the remaining period of the relevant term.

# Duties of the National Chairperson and the Deputy National Chairperson

- 4.34 The National Chairperson:
- [a] may chair meetings of the National Council, National Conferences and rallies of the Party as directed by the President;
- [b] may act as President in the absence or incapacitation of both the President of the Party and the Deputy President; and
  - [c] shall carry out any duties of the Party as directed by the President of the Party.
- 4.35 The Deputy National Chairperson shall assist the National Chairperson in the performance of his/her duties and shall perform any other duties delegated to him/her by the President, the Deputy President, the Secretary-General, the National Council and the National Executive Committee.

# Duties of the Secretary-General and Deputy Secretary-General

- 4.36 The Secretary-General shall:
- [a] be the Chief Executive Officer of the Party in charge of co-ordination of all the political structures of the Party and of controlling the political offices of the Party at National level;
  - [b] promote the formulation and oversee the implementation of the policies of the Party;
- [c] communicate inter alia with the Provincial, District and other officials of the Party in connection with the affairs of the Party and prepare and present to the National Council the proposed annual budget of the Party;
- [d] have the power to direct and control all national structures and employees of the Party;
- [e] have the power to give instructions on any matter affecting the Party to any official of the Party, and to ask for reports and information from any Party official or Party structure, excluding the President of the Party and the National Chairperson;
- [f] exercise any other powers and prerogatives as directed by the President; and
- [g] suspend for a period or dissolve a Branch, Constituency, District or Provincial committee in consultation with the National Executive Committee based on the reports of the corresponding



Council, whereupon any property of the dissolved structure shall be temporarily in the custody of the structure immediately above it, which shall return such property to the corresponding Branch, Constituency, District or Provincial structure as the case may be, at the end of the suspension or, in the event of dissolution, to the newly elected corresponding Committee.

4.37 The Deputy Secretary-General shall assist the Secretary-General in the performance of his/her duties and shall perform any other duties delegated to him/her by the President, the Secretary-General and the National Council.

## **Duties of the Treasurer-General**

- 4.38 The Treasurer-General shall:
- [a] be the Chief Accounting Officer of the finances and assets of the
- [b] report to the President of the Party, the National Finance Committee and to the National Council;
- [c] administer and supervise the finances of the Party, including fundraising, budgeting and spending;
- [d] the Treasurer-General may, in conjunction with the relevant Provincial Executive Committee, review the financial administration of any Province; and
- [e] chair the Fundraising Committee and be responsible for raising funds for the Party.

## **Duties of the Administrative Secretary**

- 4.39 There shall be an Administrative Secretary who shall be appointed by the National Council as a full-time employee of the Party based at Head Office. The Administrative Secretary shall:
  - ia) be the Chief Administrative Officer of the Party at National Head Office in charge of day to day administration of the Party;
- [b] have the power to direct and control all field offices and employees of the Party;
- [c] exercise any other duties as directed by the President, Secretary-General and the National Council; and
- [d] Shall be an ex officio member of the National Council and the National Executive Committee.

## **Duties of the National Organiser**

- 4.40 There shall be a National Organiser appointed by the National Council in consultation with the Secretary-General as a full-time employee of the Party in the office of the Secretary-General.
  - [a] He or she will attend to the organisation and mobilisation of Party structures;

of the the National Organiser shall be an ex officio member National Council and National Executive Committee; and <u>ල</u>

the National Organiser shall oversee and supervise the work of all other Organisers at lower levels of the Party.

### CHAPTER V

### **WOMEN'S BRIGADE**

### The Women's Brigade

- 5.1 There shall be established a Women's Brigade of the Party, comprising all female members of the Party from the age of 18 years and above, and which shall fall under the auspices of the President.
  - Subject to this Constitution, the Women's Brigade shall be entitled to organisational autonomy. 5.2
- Province, District, Constituency, Branches and of the Women's Brigade shall be established at various Conferences of the Women's Brigade to function side by side with the main Province, District, Constituency, Branches of the Party described in Chapter VII. 5.3

# National Executive Committee of the Women's Brigade

- There shall be a National Executive Committee of the Women's Brigade to be composed of:
  - The National Chairperson and Deputy National Chairperson; <u>e</u> <u>G</u>
    - The National Secretary and Deputy National Secretary;
      - The National Treasurer and Deputy National Treasurer; <u>ල</u> ල
- The National Publicity Secretary and Deputy National Publicity Secretary; and
- The National Women's Brigade Organiser appointed by the National Executive Committee of the Women's Brigade as full time employee to serve as ex officio member without voting rights, ø
  - The term of office of the National Executive Committee shall be five (5) 5.5

## Duties and Functions of the Women's Brigade National Executive Committee 5.6

- The Women's Brigade National Executive Committee shall: æ
- Play an instructive role in the mobilisation of women and in the upbringing of children in values and objectives of the Party;
  - Perform the specific function of identifying, analysing, developing and advocating women's issues, including promoting an awareness of such issues in the Party and in the country; Ω.
    - Generate projects to realize objectives of the Women's Brigade;

Spearhead the promotion of self-help and self-reliance prgrammes including establishment of co-operatives and NGOs in conjunction with the Inkatha Development Office (IDO); 豆

- Promote programmes aimed at inculcating family values, social cohesion and moral regeneration of society; <u>e</u>
- development aimed at empowering the women folk of the Party to fight poverty, disease and ignorance and to promote the general Formulate and execute programmes of socio-economic welfare of their communities; 三
  - participation in the mainstream economic activities, politics and Devise strategies and programmes to promote women's governance of the country;
    - Act with the advice of the President or the National Council of the Women's Brigade and in accordance with approved policy; Ξ
- Select and propose candidates in local government elections; and  $\equiv \equiv$
- Have power to investigate acts of their members which violate provisions of this Constitution and refer findings to the Political Oversight Committee for purposes of disciplinary inquiry.

# Duties of the National Chairperson Women's Brigade

- The Women's Brigade Chairperson shall
- be the principal spokesperson of the Women's Brigade; <u>ල</u> ල
- have the power to convene meetings of the National Council and National Executive Committee of the Women's Brigade;
- be the principal officer of the Women's Brigade and shall preside over meetings of the National Council, Annual Conferences and rallies of the Women's Brigade;  $\overline{\mathbb{C}}$ 
  - supervise the activities of the Women's Brigade at all levels, together with the National Executive Committee of the Women's 豆
- have power to give instructions to any official of the Women's Brigade on any matter affecting the Women's Brigade; <u>e</u>
- have power to receive any grievance or complaint relating to any organisational, administrative or political matter relating to the Women's Brigade from members or non-members and may assign with or without recommendation such grievance or complaint to any official or office of the Women's Brigade at any level for report to the National Chairperson of the Women's Brigade or to any Women's Brigade structure for resolution; Ξ
  - formulate and execute plans for the activities of the women; 回回
- present monthly reports to the President, the National Council and the National Executive Committee of the Party; as well as to National Council of the Women's Brigade;



- have the power of appointing ad hoc and/or standing committees on any matter affecting the Women's Brigade; and Ξ  $\equiv$
- power or specified function on behalf of the President, the Deputy President, the Secretary-General and the National Council empower any member of the Women's Brigade to exercise any of the Women's Brigade,

# Duties of the Deputy National Chairperson of the Women's Brigade

As requested by the Chairperson, the Deputy National Chairperson of the responsibilities when the National Chairperson of the Women's Brigade Women's Brigade shall assist the National Chairperson in the discharge of her functions and responsibilities, and shall assume such functions and is unable to discharge them because of absence, incapacity or other

# Duties of the National Secretary of the Women's Brigade

- The National Secretary of the Women's Brigade shall:
- promote and oversee the implementation of the policies of the <u>a</u>
  - Women's Brigade in accordance with the general policies of the Party; interact with the provincial, district and constituency structures of the Women's Brigade, and oversee their activities;
- keep all the records, books of account and other documents pertaining to her office; and ပ
- carry out any instruction pertaining to the general welfare of the Women's Brigade, issuing from the National Chairperson of the Women's Brigade, the President and the Secretary-General subject to this Constitution. Ī

# Duties of the Deputy National Secretary of the Women's Brigade

5.10 The Deputy National Secretary of the Women's Brigade shall assist the National Secretary of the Women's Brigade in the discharge of her functions and shall assume such functions when the National Secretary is absent from office,

# Duties of the National Treasurer of the Women's Brigade

- 5.11 Under the control of the Treasurer-General the National Treasurer of the Women's Brigade shall:
  - [a] conduct the Women's Brigade fund raising activities;
    - administer the finances of the Women's Brigade; and 9
      - hold its own assets and resources.

# Duties of the Deputy National Treasurer of the Women's Brigade

The Deputy National Treasurer of the Women's Brigade shall assist the National Treasurer of the Women's Brigade in the performance of her duties and shall assume the position of National Treasurer when the latter is absent from office.

5.13 The National Publicity Secretary of the Women's Brigade shall publicise the Women's Brigade activities within all structures nationally as well as between the Women's Brigade and other relevant communities, Duties of the National Publicity Secretary of the Women's Brigade

Duties of the Deputy National Publicity Secretary of the Women's Brigade

5.14 The Deputy National Publicity Secretary of the Women's Brigade shall duties and shall assume the position of National Publicity Secretary of the assist the National Publicity Secretary in the performance of her Women's Brigade when the latter is absent from office.

# National Conference of the Women's Brigade

- 5.15 A National Conference of the Women's Brigade shall be held once every five (5) years.
- The National Chairperson of the Women's Brigade in consultation with the President may summon a Special National Conference which shall have the same powers as the National Conference of the Women's Brigade. 5.16
- The National Conference of the Women's Brigade shall be held in accordance with the regulations of the Party and in accordance with instructions issued by the President in consultation with the National Council or the National Executive Committee with regard to place, time and procedure of the Conference. 5,17
- Delegates to the National Conference of the Women's Brigade who must be members of the Party shall be as follows: <u></u> 5.18
  - enjoy full delegate status while male members shall enjoy observer All members of the National Council provided that only women shall status only;
- Two (2) delegates (or their alternates) from each Women's Brigade Branch; <u>a</u>
  - The Executive Committee of each Women's Brigade Constituency; The Executive Committee of each Women's Brigade District;
    - The Executive Committee of each Women's Brigade Province;
  - The National Executive Committee of the Women's Brigade; and <u>್ರಾಕ್ಟ್ರಾ</u>
- provided that all women representatives shall enjoy full delegate Party Caucus office bearers in all three spheres of government status while male public representatives shall enjoy observer
- The National Conference of the Women's Brigade shall be empowered to consider, review or change any policy of the Party pertaining to women's affairs, provided that this is in harmony with the overall policy of the entire 5.19



- 5.20 Voting at the National Conference shall be by secret ballot,
- The programme of the National Conference shall be prepared by the National Executive Committee of the Women's Brigade. Each Province or District shall have the right to table matters for discussion and resolution by the National Conference of the Women's Brigade.

National Council of the Women's Brigade

- There shall be a National Women's Council of the Women's Brigade to be
  - Members of the National Executive Committee of the Women's
    - Provincial Committees of the Women's Brigade; 9
      - District Chairpersons of the Women's Brigade; ত্র
- District Secretaries of the Women's Brigade; and 回回
- All female Party Caucus office bearers in all three spheres of
  - The National Council of the Women's Brigade shall meet as determined by the National Chairperson of the Women's Brigade in consultation with her Executive Committee or at the request of not less than seven (7) members

- Duties and functions of the National Council of the Women's Brigade 5.24 The National Council of the Women's Brigade shall:
- develop policies of the Women's Brigade subject to this Constitution and in accordance with the general Party policies;
- Monitor and control activities of office bearers of all structures of <u>@</u>
  - the Women's Brigade nationally; <u>ල</u>
- appoint officials to perform administrative functions of the Women's formulate Women's Brigade programmes and monitor their implementation by the National Executive of the Women's Brigade at 힏

#### YOUTH BRIGADE CHAPTER VI

- There shall be established a Youth Brigade of the Party which shall fall 6.1
- The Youth Brigade shall consist of 6.2
- people between the ages of 18 and 35 who shall join by paying 上力 ์เซ

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- people under the age of 18 years who shall join by paying a reduced q
  - no person above the age of thirty-three [33] shall be eligible to any ပ
- Subject to this Constitution, the Youth Brigade shall be entitled to 6.3
- Province, District, Constituency and Branch Committees of the Youth Brigade shall be established at specific conferences of the structures of the Youth Brigade to function side by side with the main Province, District, Constituency and Branches of the Party as described in Chapter VII. 6.4

National Executive committee of the Youth Brigade

There shall be a National Executive Committee of the Youth Brigade whose composition shall be as follows:

- The National Chairperson and Deputy National Chairperson;
  - The National Secretary and Deputy National Secretary; <u>ල</u>
    - The National Treasurer and Deputy National Treasurer; <u>©</u> <u>©</u>
- The National Organiser of the Youth Brigade appointed by The Publicity Secretary and Deputy National Treasurer; and
- National Executive Committee of the Youth Brigade to serve as Ex Officio members without voting rights.
- The term of office of the National Executive Committee of the Youth Brigade shall be five [5] years. 9.9

Duties and functions of the Youth Brigade National Executive Committee

- play a vanguard role of upholding and consolidating the existing The National Executive Committee of the Youth Brigade shall:
  - policies and gains of the Party;
    - be the training ground for future leaders; ල ල
- be the forum for political education and nurturing of the youth in the
  - fundamental values and philosophy of the Party; <u>@</u> @
- spearhead mobilisation of the youth to recruit members of the Party; spearhead the promotion of aims and objectives of the Party among
  - formulate developmental and entrepreneurial programmes for the benefit of its members and the youth in general;  $\equiv$ 
    - embark on programmes that encourage youth to obtain education [6]
- inculcate patriotism, good citizenship, self-restraint and discipline and skills that will make them productive citizens of the country; Ξ

- promote the spirit of volunteerism, self-help and self-reliance among its members and the youth in general; Ξ
  - select and propose candidates in local government elections; 三至
- conceptualise and implement programmes aimed at discouraging youth from indulging in substance abuse and anti-social behaviour; develop programmes directed at the care and rehabilitation of street children and homeless children with the aim of integrating them into the mainstream of society;
  - [n] formulate, and where possible, implement policies for the development general welfare of the youth in harmony with the carry out any instructions as directed by the President of the Party; overall policies of the Party; and Ξ 0
- have power to investigate acts of their members which violate provisions of this Constitution and refer findings to the Political Oversight Committee for purposes of disciplinary inquiry.

Duties and functions of the National Chairperson and Deputy National Chairperson of the Youth Brigade

The National Chairperson of the Youth Brigade shall:

be the National spokesperson of the Youth Brigade; 回回

have the power to convene meetings of the National Council and National Executive Committee of the Youth Brigade;  $\Xi$ 

meetings of the National Council; National Conferences and rallies be the principal officer of the Youth Brigade and shall preside over of the Youth Brigade;

supervise the activities of the Youth Brigade at all levels, together with the National Executive Committee of the Youth Brigade; ᅙ

have the power to give instructions to any official of the Youth ø

formulate and execute plans for the activities of the youth in Brigade on any matter affecting the Youth Brigade;

the National Council and the National Executive Committee of the present monthly reports to the President, the Secretary-General, Party; as well as to the National Council of the Youth Brigade; 0

have power of appointing ad hoc and/or standing committees on 三

empower any member of the Youth Brigade to exercise any power any matter affecting the Youth Brigade;

or specified function on behalf of the President, the Secretary organisational, administrative or political matter relating to the Youth Brigade from members or non-members and may assign have power to receive any grievance or complaint relating to any General and the National Council of the Youth Brigade; and  $\equiv$ 

with or without recommendation such grievance or complaint to any official or office of the Youth Brigade at any level for report to the National Chairperson of the Youth Brigade or to any Youth Brigade's structure for resolution. As requested by the Chairperson, the Deputy Chairperson shall assist the Chairperson in the discharge of his/her functions and responsibilities, and shall assume such functions and responsibilities when the Chairperson is unable to discharge them because of absence, incapacitation or other

# Duties of the National Secretary of the Youth Brigade

- 6.10 The National Secretary of the Youth Brigade shall:
- promote and oversee the implementation of the policies of the
- Youth Brigade in accordance with the general policies of the Party; interact with the provincial, district and constituency structures of the Youth Brigade, and oversee their activities; <u>a</u>
  - keep all the records, books of account and other documents pertaining to his/her office; and ල
    - carry out any instruction pertaining to the general welfare of the Youth Brigade, issuing from the National Chairperson of the Youth Brigade, the President and the Secretary-General subject to this Constitution. 豆

# Duties of the Deputy National Secretary of the Youth Brigade

6.11 The Deputy National Secretary of the Youth Brigade shall assist the National Secretary of the Youth Brigade in the discharge of his/her functions and shall assume such functions when the National Secretary is absent from office,

# Duties of the National Treasurer of the Youth Brigade

- 6.12 Under the control of the Treasurer-General the National Treasurer of the Youth Brigade shall:
  - [a] conduct the Youth Brigade fund raising activities;
    - administer the finances of the Youth Brigade; hold its own assets and resources. <u>ত</u> ত

# Duties of the Deputy National Treasurer of the Youth Brigade

assume the position of National Treasurer when the latter is absent from 6.13 The Deputy National Treasurer of the Youth Brigade shall assist the National Treasurer of the Youth Brigade in the performance of his/her duties and shall



Duties of the National Publicity Secretary of the Youth Brigade

6.14 The National Publicity Secretary of the Youth Brigade shall publicise the Youth Brigade activities within all structures nationally as well as between the Youth Brigade and other relevant communities.

6.15 The Deputy National Publicity Secretary of the Youth Brigade shall assist the National Publicity Secretary in the performance of his/her duties and shall assume the position of National Publicity Secretary of the Youth Duties of the Deputy National Publicity Secretary of the Youth Brigade Brigade when the latter is absent from office,

National Conference of the Youth Brigade

6.16 A National Conference of the Youth Brigade shall be held once in every

The National Chairperson of the Youth Brigade in consultation with the President may summon a Special National Conference which shall have the same powers as the National Conference of the Youth Brigade.

The National Conference of the Youth Brigade shall be held in accordance with the regulations of the Party and in accordance with instructions issued by the President in consultation with the National Council of the Youth Brigade with regard to place, time and procedure of

Delegates to the National Conference of the Youth Brigade who must be members of the Party shall be as follows; 6,19

[a] All members of the National Council provided that only the youth shall enjoy delegate status while members above 35 years of

age shall enjoy observer status only;

Two (2) delegates, specifically the Chairperson and Secretary (or their alternates), from each Youth Brigade Branch; Ξ

The Executive Committee of each Youth Brigade Constituency;

The Executive Committee of each Youth Brigade District;

The Executive Committee of each Youth Brigade Province; 百百三

enjoy observer status only, except those who shall be thirty five The National Executive Committee of the Youth Brigade; who shall (35) years of age or younger; and Ö

Party Caucus office bearers in all three spheres of government provided that all youth representatives shall enjoy full delegate status, while caucus above thirty five (35) years of age shall enjoy

6.20 The National Conference of the Youth Brigade shall be empowere consider, review or change any policy of the Party pertaining to y affairs, provided that the outcome shall be in harmony with the ov Party policy.

Voting at the National Conference shall be by secret ballot. 6.21

President, together with the National Executive Committee of the Y The programme of the National Conference shall be prepared by National Chairperson of the Youth Brigade, in consultation with Brigade taking into account proposals received from the Provinces Districts. Each Province or District shall have the right to table matter discussion and resolution by Conference.

National Council of the Youth Brigade

There shall be a National Youth Council of the Youth Brigade w composition shall be as follows:

[a] Members of the National Executive Committee of the Youth Brigal Provincial Youth Brigade Committees: Provincial Youth Brigade Committees;

District Chairpersons of the Youth Brigade;

District Secretaries of the Youth Brigade; and 回回回

all Party Caucus office bearers in all three spheres of governmer who are members of the Youth Brigade.

The National Council of the Youth Brigade shall perform the follow Duties and functions of the National Council of the Youth Brigade

[a] develop policies of the Youth Brigade subject to this Constitution ar accordance with the general Party policies;

monitor and control activities of office bearers of all structure the Youth Brigade on its behalf; Ω

appoint officials to perform administrative functions of the  $\gamma_{\rm c}$ formulate Youth Brigade programmes and implementation by the National Executive Committee. Brigade on its behalf; and <u>ල</u> ō

CHAPTER VII

ORGANISATION OF THE PARTY AT BRANCH, CONSTITUENCY, DISTRICT AND PROVINCAL LEVEL

General

A Party structure is required to comply with provisions relating to establishment and composition as set out below. However, the Party: establish ad hoc Branch, Constituency, District and Provincial Committ in a manner which derogates from these provisions if and when deer appropriate by the National Council.



Ad hoc Committees are required to comply with all other provisions pertaining to their equivalent duly constituted structures.

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### THE BRANCH

#### **Establishment**

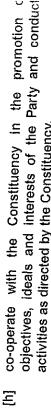
- There shall be one or more Branches in each voting District of a Local Municipality. A Branch shall comprise a minimum of one hundred and fifty (150) members, save that in respect of individual cases motivated by the Secretary-General National Council may accept a lower figure of at east 50% of the prescribed figure.
- the Constituency (or the authorised structure), while compliance with the The formation and annual renewal of every Branch shall be facilitated by inaugural procedures is the responsibility of the National Organiser. 7.4
- The Secretary-General shall issue an annual certificate of Registration to each duly established Branch. 7.5

## The Branch Executive Committee

- There shall be an Executive Committee for each Branch elected annually by secret ballot of the members. The Executive shall comprise: 9.7
  - the Chairperson; a
- the Deputy Chairperson; C
  - the Secretary;  $\overline{\mathbf{c}}$
- the Deputy Secretary;  $\overline{\mathbf{p}}$ 
  - Φ
- the Treasurer;
  - the Deputy Treasurer;
- the Deputy Publicity Secretary; and the Publicity Secretary;
- up to three (3) additional members to be co-opted by the Executive Committee in order to, among others make available to the Executive Committee special talents, expertise and abilities. 医原足虫

# Functions of the Branch and its Executive Committee

- The Branch through is Executive Committee shall:
  - organise members of the Party; Ø
    - recruit new members; 回
- raise funds for the Party by obtaining members' subscriptions; <u>ত</u> ত
- raise funds and secure assistance in kind for the Branch to facilitate its normal operations and especially to assist with its elections responsibilities;
  - encourage members of the Party to engage in local political, social, economic and community issues, projects and programmes; Θ
- in times of elections to structure itself as an election committee to secure the electoral success of the Party and its candidates;  $\Xi$ 
  - select and propose candidates in local government elections; and ල



activities as directed by the Constituency.

### Accountability

- The Branch Executive Committee is accountable to the membership Branch to whom it reports at plenary meetings of the Branch.
- The Executive Committee shall meet at least once a month a quo one half of the members (including the co-opted members). The E plenary meeting comprising all members shall meet at least once a qu a quorum is one third of the members. A special meeting may be  $c_{ec{arepsilon}}$ 7.9
- A Branch is also subject to the political leadership of the constituenc deemed necessary - a quorum is one half of the members, expected to participate in the constituency programmes. 7.10

# Duties of members of the Executive Committee

- 7.11 The Branch Chairperson shall:
  - lead the Branch; ලු ලු
- drive the implementation of programmes giving expression functions of the Branch and its Executive Committee;
- preside over all meetings of the Branch and of the Exe Committee; <u>ල</u>
  - determine dates of meetings of the Branch and Executive Com 豆鱼鱼
- mobilise members in support of Party activities and objective
  - act as principal spokesperson of the Branch.
- Branch Secretary hall: 7.12
- keep all books of account, documents and other things pert to his/her office;
  - conduct the correspondence of the Branch;
  - call members to meetings of the Branch or its Executive Comr 回回回画
    - prepare the agenda of such meetings;
- write and keep minutes of such meetings and forward copies ti
  - to the Constituency Secretary within seven (7) days; Ξ
- write and forward to the Constituency Secretary by the exp the term of office each year, a report of the activities ( Branch since being inaugurated or renewed; and
  - compile a monthly membership return and forward to the Constituency Secretary each month. ō
- The Branch Treasurer shall: 7.13
- collect membership dues and remits to the Party in the pres manner; ā
- manage and account for other funds and or goods raised or rec for the use of the Branch;



issue receipts for all monies collected and received by himself/ ပ

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- keep and issue membership cards;
- be responsible for all Branch property; and 回回田
- compile and submit to the Constituency Treasurer each month, a monthly financial return.
- The Branch Publicity Secretary shall:
- publicise the Party's activities within the Branch; and
- publicise the Branch's activities to the community and the Party.
- 7.15 In respect of each office above, the Deputy shall assist the main committee member and in his/her temporary absence, act in his/her stead.

### THE CONSTITUENCY

### **Establishment**

- 7.16 There shall be a Constituency structure for each local Municipality or agreed of the wards in such a Municipality. Subject to the approval of the National Organiser in consultation with the Secretary-General, Branches within the area of a local Municipality or Branches within a cluster of wards within a subdivision of a Metropolitan Municipality, consisting of at least 50%+7Metro, may establish a Constituency.
- 7.17 The political structures of a Constituency comprise the annual Constituency Conference and the Constituency Executive Committee.

## The Constituency Conference

- 7.18 The Constituency shall hold a Conference each year.
- Delegates to the Constituency Annual Conference comprise:
  - the Constituency Executive Committee;
    - the Executive Committee of each Branch;  $\Box$
- three (3) representatives of the Women's Brigade component of each Branch; ပ
- three (3) representatives of the Youth Brigade component of each 豆
- members of the National and Provincial Legislatures who are registered as voters in the Constituency; <u>@</u>
- Councillors of the District (or Metropolitan) Municipality who are registered as votes in the Constituency; and Ξ
  - Councillors of the local Municipality. <u>\_</u>

The Constituency Conference shall: 7.20

- receive and consider reports from the Constituency Executive Committee; <u>a</u>
  - receive and consider reports from the Branches; 回回回
- (every three (3) years) elect members of the Constituency Executive receive and consider governance reports; Committee;
  - develop and implement Constituency programmes; ē <del>e</del> ē
    - adopt resolutions;
- implement and promote the decisions of the Annual General Conference, the National Council, the National Executive Committee; the Provincial Executive Committee and of the District Executive Committee; and
- consider recommendations referred to by the National Council, National Executive Committee, the President and the Secretary-

# The Constituency Executive Committee

- 7.21 The Constituency Committee shall be elected by the secret ballot every three (3) years at the Elective Constituency Conference.
  - The Constituency Committee shall comprise: 7.22
    - the Chairperson;
- the Deputy Chairperson;
  - the Secretary;
- the Deputy Secretary; σ
  - the Treasurer;
- the Deputy Treasurer
- the Publicity Secretary;
- the Deputy Publicity Secretary;
- © E DE E
- the Chairperson and Secretary of the Women's Brigade Constituency Executive;
- the Chairperson and Secretary of the Youth Brigade Constituency  $\equiv$ 
  - Executive; and 区
- three (3) other members selected by the rest of the Constituency Executive to provide the Executive with required skills.

## Functions of the Constituency and its Executive Committee 7.23 The Constituency through its Executive Committee shall:

- organise and mobilise members of the Party through their Branches ð
  - and promote the recruitment of new membership; <u>@</u>
- in consultation with the renty connections, and hold Councillors accountable for their compliance with such policy; in consultation with the Party's municipal caucus, develop local

in consultation with the Party's Municipal Caucus, direct the activities of Councillors in respect of the political work of Councillors outside of Council; <u>ට</u> <u>ত</u>

ALD.

raise funds and secure assistance in kind for the Constituency to facilitate its normal operations and especially to assist with its

elections responsibilities; <u>@</u>

political, social, economic and community issues, projects and encourage members and structures of the Party to engage in local

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in times of elections to structure itself as an election committee to secure the electoral success of the Party and its candidates; ច

select and propose candidates in elections in accordance with 卫

ideals and interests of the Party in accordance with the Constitution co-operate with the District in the promotion of the objectives, and the rules of the Party and conduct such activities as directed

Accountability

The Executive Committee is accountable to the membership of the Constituency to whom it reports at an Annual Conference,

The Executive Committee shall meet at least once a month - a quorum is 7.25

A Constituency is also subject to the political leadership of a District it is expected to participate in District programmes. 7.26

Duties of the members of the Constituency Executive Committee

The Constituency Chairperson shall:

lead the Constituency; ට න

drive the implementation of programmes giving expression to the

functions of the Constituency and its Executive Committee; preside over all meetings of the Executive Committee; <u>ම</u> ලිව

preside over the Annual General Conference;

ensure the determination dates of meetings of the Executive Committee and of the Annual Conference of the Constituency;

mobilise members in support of Party activities and objectives; and act as principal spokesperson of the Constituency, 

The Constituency Secretary shall:-

keep all books of accounts, documents and other things pertaining <u></u>

act as chief executive officer of the Party within the Constituency, including the supervision of Party offices; 2

conduct the correspondence of the Constituency; ට ට

- convene meetings of the Executive Committee and invite del to the Annual General Conference;
  - prepare the agendas of the meetings; ⊕ ⊊
- write and keep minutes of the meetings and forward copies t

to the District Secretary within seven (7) days; <u>a</u>

write and forward quarterly reports to the District Secretary activities of the Constituency; and

compile a monthly membership return and forward same t District Secretary each month. Ξ

The Constituency Treasurer shall: 7.29

Ø

manage and account for funds and or goods raised or receive the use of the Constituency;

issue receipts for all monies collected and received by him/her be responsible for all Constituency property; and 回回回

compile and submit to the District Treasurer each month, a  $\mathfrak{m}_{\mathcal{C}}$ financial return.

The Constituency Publicity Secretary shall: 7.30

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publicise the Constituency activities to the community and the publicise the Party's activities within Constituency; and <u>a</u>

committee member and in his/ her temporary absence, act in his/her arepsilonIn respect of each office above, the Deputy shall assist the prir 7.31

### THE DISTRICT

#### **Establishment**

Metropolitan Municipality, consisting of at least 50% + 1 of municipalities in the District. Subject to the approval of the Nai There shall be a District structure for each District Municipali Organiser in consultation with the Secretary-General, Constitue within the area of a District Municipality may establish a District.

The District shall establish Headquarters from which it should opera

### The District Conference

7.34 The District shall hold a Conference each year.

7.35 Delegates to the Annual District Conference comprise; the District Executive; <u>a</u> <u>D</u>

each Constituency Executive Committee;

five (5) delegates per Branch provided that such delegation will include also members from the Women's and Youth Brigades;

<u>ු</u>

Secretary frames where stands with an experience of

- the District Women's Brigade Executive;
- the District Youth Brigade Executive; 三重三
- members of the National and Provincial Legislatures who are registered as voters in the District; and
  - all Councillors of the Local Municipalities and of the District (or Metropolitan) Municipality, [6]

# Duties and Responsibilities of the District Conference

The District Conference shall;

receive and consider reports from the District Executive Committee; <u></u>

receive and consider reports from the Constituencies; Ω ပ

receive and consider governance reports from Districts and Local Municipalities;

formulate policies within their area of competence provided they are b

(every three (3) years) elect members of the District Executive in harmony with other policies of the other structures of the Party; Committee; œ,

Develop and implement District Programmes; and

Formulate resolutions, 三回

## The District Executive Committee

7.37 The District Executive Committee shall be elected by secret ballot every three (3) years at an elective District Conference.

The District Executive Committee shall comprise: 7.38.

the Chairperson; e e

the Deputy Chairperson; 

the Secretary;

the Deputy Secretary; ਰ

the Deputy Treasurer; the Treasurer; œ.

the Publicity Secretary;

the Deputy Publicity Secretary; 三回三

the District Chairperson of the Women's Brigade;

the District Secretary of the Women's Brigade;

the District Chairperson of the Youth Brigade;

the District Secretary of the Youth Brigade; and

three (3) other members selected by the rest of the District Executive from under-represented constituencies or to provide the Executive with required skills.

7.39 The District through its Executive Committee shall: Functions of the District and its Executive Committee

organise and mobilise members of the Party through the ē

Constituencies and promote the recruitment of new membership; 9

in consultation with the Party's Municipal Caucus, develop Distric or Metropolitan Municipal governance policy for Councillors, and hold Councillors accountable for their compliance with such policy;

in consultation with the Party's District Municipal Caucus, direct the activities of the Councillors in respect of the political work of Councillors outside of Council; <u>ට</u>

raise funds and secure assistance in kind for the District to facilitate Ī

its normal operations and especially to assist with its elections responsibilities;

encourage members and structures of the Party to engage in local political, social, economic and community issues, projects and <u>@</u>

in times of elections to structure itself as an election committee to

Ξ

secure the electoral success of the Party and its candidates;

select and propose candidates in elections in accordance with Party ල

co-operate with the Province in the promotion of the objectives, ideals and interests of the Party in accordance with the Constitutions and the rules of the Party and conduct such activities as directed by the Province;

implement and promote the decisions of the General Conference, the National Council, the National Executive Committee, the Provincial Conference, Provincial Council and of the Provincial Executive Committee; and ≘

National Executive Committee, the President and the Secretaryconsider recommendations referred to it by the National Council, 5

7.40 In the absence of one or more functional Constituencies, a District shall assume the functions of such Constituencies.

### Accountability

The District Executive Committee is accountable to the membership of the 741

District to whom it reports at the Annual Conference. 7.42

The District Executive Committee shall meet at least once a month a quorum is one half of the members, 7.43

A District is also subject to the political leadership of a Province. It is expected to participate in Provincial Programmes.



Duties of Members of the District Executive Committee 7.44 The District Chairperson shall:

lead the District;

drive the implementation of programmes giving expression to the functions of the District and its Executive Committee; වු න

preside over all meetings of the Executive Committee; 三三

preside over the Annual District Conference;

determine dates of meetings of the Executive Committee and of the Annual Conference; <u>e</u>

mobilise members in support of Party activities and objectives; and

act as principal spokesperson of the District. 三豆

The District Secretary shall: 7.45

keep all books of account, documents and other things pertaining to his/her office; ල

act as chief executive officer of the Party within the District, including the supervision of Party offices; Ω

conduct the correspondence of the District; ල ල

call members to meetings of the Executive Committee and invite delegates to the Annual District Conference;

prepare the agendas of meetings; <u>e</u> <u>e</u>

write and keep minutes of meetings and forward copies thereof to the Provincial Secretary within seven (7) days;

write and forward to the Provincial quarterly reports on the activities of the District; and <u>[</u>

compile a monthly membership return and forward to the Provincial Secretary each month. Ξ

7.46 The District Treasurer shall:

manage and account for funds or goods raised or received for the use of the District; <u></u>

issue receipts for all monies collected and received by him/herself;

be responsible for all District property; and 医远距

compile and submit to the Provincial Treasurer each month, a monthly financial return.

The District Publicity Secretary shall: 7.47

publicise the Party's activities within the District; and <u>e</u> e

publicise the District's activities to the community and Party.

7.48 In respect of each office above, the Deputy shall assist the principal committee member and in his/her temporary absence, act in his/her stead.

### THE PROVINCE

### Establishment

7.49 There shall be a Provincial structure for each province of the country, consisting of at least 50% + 1 of the Districts of such a Province. Subject to the approval of the National Organiser in consultation with the Secretary-General, Districts within the area of a Province, may establish a Province.

The political structures of a Province comprise the Annual Provincial the Provincial Council and the Provincial Executive Conference, Committee,

The Province shall establish Headquarters from which it should operate. 7.51

## The Provincial Conference

The Province shall hold a Conference each year.

Delegates to the Annual Provincial Conference comprise: 7.53

members of the Provincial Council; ರ <u>ರ ಶ</u>

each District Executive;

three (3) delegates from each Branch. each Constituency Executive; and

Duties and Powers of the Provincial Conference

### The Provincial Conference shall: 7.54

receive and consider reports from the Provincial Executive Committee; ල ල

receive and consider reports from the Districts and/or Constituencies;

(every three (3) years) elect members of the Provincial Executive receive and consider governance reports; Committee; 回回

develop and implement provincial programmes; 

adopt resolutions;

implement and promote the decisions of the General Conference,

National Executive Committee, the President and the Secretaryconsider recommendations referred to it by the National Council, the National Council and the National Executive Committee; and General. Ξ

### The Provincial Council

The Province shall establish a Provincial Council comprising:

the Provincial Executive Committee; ටු න

the Provincial Executive of the Women's Brigade;

the Provincial Executive of the Youth Brigade; the District Chairpersons and Secretaries; <u>ode</u>e

the Constituency Chairpersons and Secretaries;

the National Council members residing within the Province; and

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- the Members of Parliament and Councillors residing within the Ø
- The Provincial Council shall meet at such time and place as the Provincial Chairperson shall determine or at the request of not less than seven (7) members, 7.56
- The quorum at meetings shall be one half of the membership provided Provincial Deputy Chairperson or someone acting on behalf of one of that one of the members present shall be the Provincial Chairperson, 7.57

Duties and powers of the Provincial Council

7.58 The Provincial Council shall serve as the agent of Conference between meetings of the Conference.

The Provincial Executive Committee

- 7.59 The Provincial Executive Committee shall be elected by secret ballot every three (3) years at an elective Provincial Conference.
  - The Executive Committee shall comprise: 7.60
    - the Chairperson;
- the Deputy Chairperson;
  - the Secretary;
- the Deputy Secretary;
  - the Treasurer; **6**
- the Publicity Secretary; the Deputy Treasurer;
- the Deputy Publicity Secretary; 징도
- the Provincial Chairperson of the Women's Brigade; the Provincial Secretary of the Women's Brigade; **EEZ** 

  - the Provincial Chairperson of the Youth Brigade; the Provincial Secretary of the Youth Brigade;
- Executive from under-represented constituencies or to provide the Executive with required skills, three (3) other members selected by the rest of the Provincial ΞΞ

Functions of the Province and its Executive Committee

- The Province through its Executive Committee shall:
- organise and mobilise members of the Party through their Districts and promote the recruitment of new membership; æ
  - in consultation with the Party's Provincial Caucus, develop provincial governance policy, and hold Members of Provincial <u>a</u>
    - in consultation with the Party's Provincial Caucus, direct the activities of Members of Provincial Legislatures in respect of the political work Legislatures accountable for the compliance with such policy; of Councillors outside of the legislature; <u>ত</u>

- raise finds and secure assistance in kind for the Province to facilitate its normal operations and especially to assist with its election responsibilities; Ē
- political, social, economic and community issues, projects and encourage members and structures of the Party to engage in local ē
- in times of elections to structure itself as an election committee to secure the electoral success of the Party and its candidates; 宝
- select and prose candidates in elections in accordance with Party policy; and
- co-operate with the National Council in the promotion of the objectives, ideals and interests of the Party in accordance with the Constitution and the rules of the Party and conduct such activities as directed by the National Council and National Executive Committee. Ξ
- In the absence of one or more functional Districts, a Province shall assume the functions of such Districts. 7.62

#### Accountability

- 7.63 The Provincial Executive Committee is accountable to the Provincial Council, Provincial Conference and the National Council.
- The Provincial Executive Committee shall meet at least monthly a quorum is one half of the members.
- A Province is also subject to the political leadership of the National Council. It is expected to participate in National Council programmes.
- dismissed by the National Executive Committee in consultation with and Committee which shall return such property to the Provincial Executive A Provincial Executive Committee may be suspended for a period or with concurrence of the National Council, whereupon any property of the province shall be temporarily in the custody of the National Executive Committee at the end of the suspension or, in the event of dismissal, to the newly-elected committee.
- The Province subject to the approval of the National Executive Committee shall suspend or dissolve a District, Constituency or Branch Committee, whereuponany property of such District, Constituen cyor Branch, respectively, shall be temporarily in the custody of the Provincial Executive Committee which shall return such property to the District, Constituency or Branch as the case may be, at the end of suspension or, in the event of dismissal, to the newly elected committee. 7.67

## Duties of members of the Provincial Executive Committee 7.68 The Provincial Chairperson shall;

lead the Province; œ, <u>a</u>

- drive the implementation of programmes giving expression to the functions of the province and its Executive Committee;
  - preside over all meetings of the Executive Committee and Provincial Council; ပ
- preside over the Annual General Conference; <u>D</u> 0
- determine dates of meetings of the Executive Committee and of the Annual Conference;
  - mobilise members in support of Party activities and objectives; and act as principal spokesperson of the Party within the Province. 三回
- Provincial Secretary shall: The 7,69

keep all books of account, documents and other things pertaining to his/her office; В

- act as chief executive officer of the Party within the Province, including the supervision of Party offices and the Party structures within the Province; a
  - conduct the correspondence of the Province; 回回
- call members to meetings of the Executive Committee and invite delegates to the Annual General Conference;
  - prepare the agendas of meetings; <u>=</u>
- write and keep minutes of meetings and forward copies thereof to the National Executive Committee within seven (7) days; and
- of each year, a report on the activities of the province during the write and forward to the National Executive Committee at the end preceding year. <u>[</u>
- 7.70 The Provincial Treasurer shall:
- maintain a bank account in accordance with prescripts of the Party; <u>e</u> <u>o</u>
- manage and account for funds and or goods raised or received for the use of the Province;
  - issue receipts for all monies collected and received by him/herself; ලු ලු ල
    - be responsible for all Provincial property; and
- compile and submit to the Treasurer-General each month, a monthly financial return.
- The Provincial Publicity Secretary shall: 7.71
- publicise the Party's activities within the structures of the Party within the Province, <u>න</u>



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### The Provincial Women's Brigade Chairperson shall: 7.72

- in consultation with the Provincial Women's Brigade Executive Committee call meetings, rallies or conferences or organise events, to strengthen the Women's Brigade; <u></u>
  - deal with correspondence regarding the Women's Brigade; and
- perform all duties necessary to enhance the prestige of the Party in the Province and improve the structure of the Party.
- 7.73 The Provincial Youth Brigade Chairperson shall:
- Provincial Executive Committee, call meetings, rallies or conferences or organise events, in consultation with the Youth Brigade to strengthen the Youth Brigade; Ø
  - deal with correspondence regarding the Youth Brigade; and 回回
- perform all duties necessary to enhance the prestige of the Party in the Province and improve the structure of the Party.
- 7.74 In respect of each office above, the Deputy shall assist the principle committee member and in his/her temporary absence, act in his/her stead.

### CHAPTER VII

# NATIONAL GENERAL CONFERENCE

- A National General Conference of the Party shall be held once every five 8.1
- This provision shall also apply to other National Conferences including the Conferences of the Women's Brigade and the Youth Brigade. 8.2
- National Conferences shall be staggered so that only one conference shall be held in a single year. 8.3
- conferences shall be considered such as a policy conference and a To ensure that no year passes without a conference being held other programmatic conference to fill the period of five (5) years. 8.4
- The President, in consultation with the National Council, may summon an Extraordinary General Conference, which shall have the same powers as the Annual General Conference, 8.5

59

- The National General Conference shall be held in accordance with the conventions of the Party and in accordance with instructions issued by the President in consultation with the National Council with regard to place, time and procedure of the Conference. 8
- Delegates to the National General Conference of the Party, who must be members of the Party, shall be as follows: 8.7
  - Two (2) delegates (or their alternates) from each Branch; В
    - the Executive Committee of each Constituency; <u>ුට</u>
      - the Executive Committee of each District; ₫
        - the Executive Committee of each Province;
        - all members of the National Council;
- the National Executive Committee of the Youth Brigade;
- all Party Caucus office bearers in all three spheres of government. the National Executive Committee of the Women's Brigade; and
- Voting at the Annual General Conference shall be by secret ballot or by such other method as the President may recommend and the Conference 8.8
- The programme for the National General Conference shall be prepared by the National Council. 8.9
- The Annual General Conference of the Party shall be empowered to consider, review or change any policy of the Party. 8.10

### CHAPTER IX

## FINANCIAL PROVISIONS

- The Party's funds shall be derived from: 9.1
- monies received from membership subscriptions; <u>ම</u> <u>ම</u>
- grants, loans, donations or levies which the Party may receive from time to time; and
  - any other method of raising funds within the general provisions of this Constitution. <u>ට</u>
- The income and property of the Party shall be applied solely towards paying the expenses of the Party incurred in the furtherance of its aims and objectives, and no part thereof shall be distributed amongst the members as a dividend or share of profits or otherwise whatsoever. 9.2
- The Party shall utilise its funds solely in the furtherance of its aims and objectives, and shall invest such excess funds as it may have in the manner directed by the National and Provincial Councils. 6

7.1

- Expenditure of the Party shall be approved by the appropriate, constitutionally authorised structure or office. 9.4
- The Party shall not be responsible for any llabilities incurred by any Province, District or other Party structure, none of which shall have the quasi-contracts and delict, unless they are specifically authorised to do power to bind the Party in any financial respect, including inter alia contracts, so on an ad hoc basis. Provinces may assume rights and liabilities in their own name. Subject to the provisions of this Constitution, Provinces may determine the financial status of, and relations with, and the financial responsibility of the District structures and other subordinate Party structures. 9.5
- Republic of South Africa, as the members shall in general meeting dissolved and there remains after satisfaction of its liabilities, any assets but shall be transferred to such other society or association in the decide, which is exempt from Income Tax and which is engaged in If for any reason the Party is wound up, liquidated or in any way whatsoever, the same shall not be distributed amongst the members, or promotes activities of a cultural nature, 9.6
- dissolved and there remains after satisfaction of its liabilities, any assets If for any reason a Province is wound up, liquidated or in any way whatsoever, the same shall not be distributed amongst the members, but shall be transferred to the Party's National Headquarters. 9.7
- The Party shall operate different banking accounts for the National and Districts, Constituencies and Branches may operate their respective banking Provincial organisational and administrative levels - provided that accounts on authorisation of the Province concerned, All banking accounts are to be held with any commercial bank, and cheques drawn on the Party's banking accounts shall be signed by at least two of three authorised officials of the Party. 9
- The Party's financial year shall be the twelve month period beginning on 1 January in each year, <u>ග</u>
- The Party's National and Provincial accounts shall be audited annually by independent qualified auditors. 9.10
- The audited accounts of the Party at National and Provincial levels, provided that provincial audited accounts are to be submitted to the together with the Auditor's Report, shall be presented to the National Council, 9.11

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Provincial Council concerned for prior approval. A Province may elect to integrate its finances with those of National Headquarters and be audited as a part of the national structure of the Party.

)

There shall be paid out of the Party's funds of each of the Party's administrative and organisational levels concerned, the following expenses: [<del>]</del> 9.12

allowances and salaries of the staff and full-time officials of the Party; 9

fravelling allowances;

purchase of office furniture, stationery and other useful equipment; [3]

educational and business grants and other grants; D

expenses of meetings and conferences; **e** 

legal fees for litigation when sanctioned by the National Council; 三回三

audit fees; and

any other expenditure as shall be approved by the National Council.

#### MISCELLANEOUS CHAPTER X

### Standing Orders

10.1 Standing Orders may be made by the National Council in respect of any subject for the purpose of facilitating the implementation of the provisions of this Constitution, Standing Orders made by the National Council shall be submitted to the next Annual General Conference for ratification, and those of a Provincial Executive to the Provincial Conference. Standing Orders shall have force and effect subject to this provided that the relevant Council may amend or rescind them subject to Constitution, and may be amended, rescinded or altered as provided for herein, ratification at the subsequent relevant Conference. 10,3

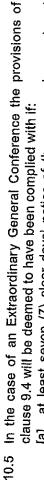
# Amendment of the Constitution and Rules

10.4 This Constitution may be amended by a General Conference of the Party provided that;

a notice of the proposed amendment has been circulated to Members of the National Council not less than one month before the meeting of the National Council; and Ø

σ the proposed amendment is subsequently approved by two-thirds majority at the Annual General Conference of the Party. 匫





at least seven (7) clear days' notice of the proposed amendment is given to Members of the National Council; and

at least twenty-four hours' notice is given to the delegates to the General Conference, ā

Subject to the provisions of this Constitution, the National Council, the Provincial Councils or any District, Constituency and Branch Committees of the Party and all other units of the Party shall be bound by this Constitution and all amendments thereto. 10.6

### General Provisions

10.7 The Party may make rules and regulations designed to educate members of the Party in matters relating to Party policy, the policy of the national interest. For this purpose the National Council may issue from time to time detailed regulations for the operation of the Economic and Political Committee of each District. The National Council may arrange seminars in Districts and Provinces to strengthen the work of Political and Economic Committees, and provide external travel grants to leading Party officials to visit places of interest matters other and Government, international affairs domestically and in foreign countries.

### CHAPTER XI

# DISCIPLINARY PROCEDURE RULES

#### Discipline

- 11.1 Discipline in the Party shall be strictly enforced by Disciplinary Committees responsible for discipline at the following levels:
  - Constituency;
    - District;
- Province; and
- National Council. 回回回回
- There shall be a pool of Judicial Commission panelists of the Party who will be selected by the National Council for purposes of deploying them to various disciplinary committee hearings as the occasion arises. 11.2

- 11.3
- such as a sheriff for the service of documents and attorney or advocate as All the structures in 10.1 will have the right to employ qualified professionals to assist them in the execution of their disciplinary functions
- Party members who appear before a disciplinary or appeal committee will be entitled to legal representation at their own cost, 11.4
- Where public representatives are involved, decisions of a disciplinary committee shall be enforced by the Political Oversight Committee. 11.5
- maintaining and enforcing discipline in the Branches and Constituencies and shall have disciplinary powers over Party representatives in local municipalities. Appeals from the Constituency Disciplinary Committee shall lie with the District Appeal Committee. A Constituency Disciplinary Committee shall consist of five (5) members to be drawn from the pool of panelists by the Constituency Executive Committee where one of the five shall be Constituency Disciplinary Committee shall be responsible designated the Chairperson by the said Committee,
- The District Disciplinary Committee shall be responsible for maintaining and enforcing discipline in the District and shall ensure that Party representatives in District Municipalities, are carrying out their functions properly. Appeals from a District Disciplinary Committee shall lie with the Provincial Appeals Committee. A District Disciptinary Committee shall consist of five (5) panelists to be drawn from the pool of panelists by the District Executive Committee where one of the five shall be designated Chairperson by the said Committee. 11.7
- enforcing discipline in the Provinces, and shall hear appeals against first instance decisions taken by the District Disciplinary Committees. A Provincial Disciplinary Committees shall be responsible for maintaining and Provincial Disciplinary Committee shall consist of five (5) members to be drawn from the pool of panelists by the Provincial Executive Committee where one of the five shall be designated Chairperson by the said Committee. 1.8
- The National Council shall appoint a National Disciplinary Committee and the National Appeal Committee shall hear appeals against first be responsible for maintaining and enforcing discipline at national level and a separate National Appeal Committee each consisting of five (5) members and five (5) alternates. The National Disciplinary Committee shall instance decisions taken by Provincial Disciplinary Committees. 11.9

- 11.10 Notwithstanding anything else in this Constitution in its absolute discretion by resolution adopted by two-thirds of its members present, and after having received a report on the relevant facts and heard the affected Member, the National Council may impose any disciplinary sanction against such Member, including but not limited to his/her immediate expulsion from the Party or may revoke or commute any sanction imposed by any Disciplinary Committee.
- appellant shall have only a single right to appeal. Appeals from the An Appeal Committee shall hear appeals from a Disciplinary Committee only when leave to appeal is granted by the Disciplinary Committee. Any Districts lie with the Provincial Appeal Committee; from the Provinces with the National Appeal Committee and appeals against decisions of the National Disciplinary Committee lie with the National Appeal Committee.
- Appeal Committees shall be composed in exactly the same manner as Appeal Committees according to the provisions of this chapter but if one or two members are not present on any day of the hearing, this will not Disciplinary Committees. It will be mandatory to constitute Disciplinary/ invalidate the proceedings provided that decisions are adopted by least two thirds majority. 11.12
- 11.13 An Appeal Committee and a Disciplinary Committee of the first instance the nature and validity of the grounds for appeal. In the same vein an shall have discretion to grant or reject leave to appeal depending on appellant who is adversely affected by the rejection of his/her application shall have the right to apply to a higher structure for leave to appeal.
- 11.14 A higher Party structure shall have jurisdiction to hear all disciplinary cases that fall within the jurisdiction of lower Party structures.
- 11.15 Decisions of the Disciplinary and/or Appeal Committees shall come into effect immediately, or, where the respondent was tried in absentia after he or she has been informed of such decision, and an application of appeal shall not suspend the enforcement of such decisions.

### Time-Limit for Appeals

11.16 Appeals against a decision of the Disciplinary Committee must be in writing and lodged with the relevant Disciplinary Committee within fourteen (14) days from the date that leave to appeal was granted. The Appeal Committee shall have discretion to hear any appeal where such appeal was not lodged within the prescribed time.

- 11.17 The Disciplinary Committee shall forward to the Appellate Committee a copy of the typed record of the proceedings and the full reasons for the Disciplinary Committee's decision with the written application for appeal and at the same time shall make available a copy thereto to the Appellant. The appeal shall be based solely on these documents unless the Appeal Committee deems it necessary to lead further evidence.
- 11.18 If the leave to appeal is refused by a Disciplinary Committee of the first instance, a petition shall be lodged to the Appeal Committee within fourteen (14) days of such refusal.
- appeal for hearing and, upon giving the parties no less than seven days 11.19 The appropriate Chairperson of a Disciplinary Committee may from time failing to comply with the provisions of these Rules, a Chairperson of a Committee may, notwithstanding such failure, set down the case or the written notice, proceed to hear the appeal or the case and make such to time adjourn the hearing or appeal and may extend the time for doing anything in terms of this section. In the event of either party to the appeal decision thereon as it may, if the circumstances of the case seem just.

# **Disciplinary Rules**

- 11.20 These Rules may be cited as Disciplinary Rules of the Party,
- 11.21 All the members of the Party are subject to these Rules and any member who commits an offence against the Party is liable to disciplinary action as provided in the Rules.
- 11.22 Offences against the Party include:
- [a] violation of the Constitution of the Party, including but not limited acting in an official capacity to which a member is not either elected to assuming any title of office not provided for in this Constitution, or appointed as provided in this Constitution;
- breach of any rules or regulations of the Party;
- acting in a manner likely to bring the name of the Party into disrepute, ridicule and/or contempt; 回回
- disobeying relevant rulings, directions, orders or instructions of any organ of the Party; ਰ
- being in a state of drunkenness at a Party meeting in the case of an ordinary member of the Party and in the case of an official of the Party being in a state of drunkenness on any public occasion; ĕ



- being party to any fraudulent or dishonest practice which tends to embarrass or disgrace the Party, or participating in any act of bribery 三
- giving out any confidential information of the Party without the proper authorisation of the Party to do so; ල
  - carrying on false information or propaganda which tends to injure the reputation of the Party or any of its officials;
- defaming the Party or any of its officials at any meeting of the Party;
- giving false information to any organ of the Party or any of its officials with intent to deceive or mislead; ==
- defrauding the Party or any of its officials;
- deliberate irregularities in attendance at meetings of the Party; ZEE
- to the discharge of his/her functions as a member or official of matter which in the opinion of the National Council is an attack on the Party or an attack on a member or official of the Party in relation publishing or causing to be published, orally or in writing, any
- collecting funds in the name of the Party without issuing proper receipts or without authority from the Treasurer-General; Ξ
- violating of the provisions of a code of conduct applicable to elected political representatives by virtue of their position or adopted by resolution of two-thirds of the members present of National Council; ϳ
- impeding the work or activities of the Party;
- promotes division within the ranks of the Party;
- acts in collaboration with another political organisation or individual in a manner which is contrary to the achievements of the aims and objectives of the Party; ᅙᅙᇎ
- undermining or impeding the functioning of the structures of the Party at any level; and 3
- participating in any organised factional activity which threatens the unity of the Party, or lobbying based on factionalism and which goes beyond the recognised norms of canvassing or free debate. Ξ
- 11.23 The sanction on a disciplinary action will be in accordance with the the offence and the related standard of care shall be determined also with regard to the position held by the member within the Party structures, requiring compliance with the strictest duty of care and Party discipline seriousness of the offence of which the member is guilty. The gravity of for member of legislatures and cabinets.

11.24 The sanction on a disciplinary action may be any one or more of the following:

caution and/or reprimand; 

censure;

payment of a fine;

dismissal from office;

debarring from holding office;

suspension from membership and/or office;

expulsion from the Party;

dismissal from any elected office held by the member within the structures of the Party; or SEZEGE

any other sanction which is deemed commensurate with the gravity of the offence provided that dismissal from office and/or expulsion from the Party shall not be enforced before it is ratified by the National Executive Committee. Ξ

11.25 National Headquarters shall keep records of disciplinary actions taken by he Party and the National Council shall be notified of all such actions.

re-admit him/her. The President and/or the National Council may, however, penitence by him/her to the President, the National Council may decide to 11,26 An expelled member may be re-admitted into the Party if on a petition of reserve such decision for the Annual General Conference.

Disciplinary Committee has dealt with the matter and laid its 11.27 Any member of the Party charged with a criminal act or accused of fraudulent behaviour or profiteering shall have the privileges of his/her membership automatically suspended until such time as the National recommendations before the National Council.

# National Conferences Schedule

# Past Conferences

National Women's Brigade Conference (Elective) National Youth Brigade Conference (Elective) National General Conference (Elective) 2011 2012

National Policy Conference

National Women's Brigade Conference (Elective) National Youth Brigade Conference (Elective) 2015 2014

2016

National General Conference (Elective) National Programmatic Conference 2017

National Policy Conference 2018

National Women's Brigade Conference (Elective) 2019

National Youth Brigade Conference (Elective) 2020

National Programmatic Conference 2021

National General Conference (Elective) 2022

"Ifps."



# **Results Summary - All Ballots**

Printed on: 2016/08/11 16:49:53

Electoral Event:

Municipality: Province:

Voting District:

LOCAL GOVERNMENT ELECTION 2016

All Municipalities KwaZulu-Natal

All Wards **All Voting Districts** 

0.15%	13,215	0.03 %	648	0.19%	12,567	0.18%	5,958	0.20 %	6,609	AL JAMA-AH
0.11 %	9,521			0.15 %	9,521	0.17 %	5,559	0.12%	3,962	AFRICAN PEOPLE'S CONVENTION
57.79 %	4,976,765	58.73 %	1,247,987	57.48 %	3,728,778	58,95 %	1,906,159	56,02 %	1,822,619	AFRICAN NATIONAL CONGRESS
0.15%	12,655	0.32 %	6,777	0.09 %	5,778	0.10%	3,372	0.07 %	2,406	AFRICAN MANTUNGWA
1.05 %	90,617	1.43 %	30,370	0.93 %	60,247	1.18 %	38,037	0.68 %	22,210	AFRICAN INDEPENDENT
0.28 %	24,255	0.26 %	5,470	0.29 %	18,785	0.29 %	9,432	0.29 %	9,353	AFRICAN CHRISTIAN DEMOCRATIC PARTY
0.04 %	3,350	0.06 %	1,182	0.03 %	2,168	0.03 %	1,069	0.03 %	1,099	ACADEMIC CONGRESS UNION
% Total Valld Votes	r-186 ila 86 iligi.	%Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valld Votes	Total Valid Votes	
(a)(c/401// <sub>2</sub> )			Die 40%	# PR)	Tota (Ward-#		무지		Ward	Parly Name

Party Name	Ward		PR		Total (Ward)	ital I +- PR)	Dic 40%	JV/6	Total - All Ballots (Ward + PR + DC 40%)	-pe 40%)
	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valld Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes
ALLIED MOVEMENT FOR CHANGE	2,297	0.07 %	1,966	0.06%	4,263	0.07 %		1	4,263	0,05 %
AZANIAN PEOPLE'S ORGANISATION	1,963	0.06 %	2,142	0.07 %	4,106	0.06 %	2,290	0.11%	6,395	0.07 %
CHRISTIAN DEMOCRATIC PARTY	27	0,00%	215	0.01 %	242	0,00 %		Ł	242	0.00 %
CONGRESS OF THE PEOPLE	4,702	0.14 %	5,486	0.17%	10,188	0.16 %	387	0.02 %	10,576	0.12 %
DEMOCRATIC ALLIANCE	484,849	14.90 %	498,927	15.43 %	983,776	15,16 %	195,728	9.21 %	1,179,504	13,70 %
DEMOCRATIC LIBERAL CONGRESS	6,810	0.21 %	4,893	0.15%	11,703	0.18 %	192	0.01 %	11,895	0.14%
ECONOMIC FREEDOM FIGHTERS	109,932	3,38 %	114,531	3.54 %	224,463	3.46 %	74,426	3.50 %	298,889	3.47 %
INDEPENDENT	144,586	4.44 %	E		144,586	2.23 %			144,586	1.68 %
INDEPENDENT PEOPLE'S PARTY	944	0.03 %	1,498	0.05 %	2,442	0.04 %			2,442	0.03 %
INDEPENDENT RATEPAYERS ASSOCIATION OF SA	537	0.02 %	439	0.01 %	976	0,02 %			976	0.01 %
INKATHA FREEDOM PARTY	595,549	18,30 %	597,306	18.47 %	1,192,855	18,39 %	548,660	25.82 %	1,741,515	20,22 %
ISITHUNZI SOM-AFRIKA ECONO FIGHTERS	84	0.00 %	906	0.03 %	990	0.02 %		2000	990	0.01 %
KINGDOM GOVERNANCE MOVEMENT	43	0.00%	(51	0.00 %	194	0.00 %		RAD (SA) (SA) (SA) (SA) (SA) (SA) (SA) (SA)	194	0.00 %
MINORITIES OF SOUTH AFRICA	3,870	0.12%	3,018	0.09 %	6,888	0.11%			6,888	0.08%

Page: 2 of 4

Party Name	Ward		PR		To:: Ward	otal d + PR)	b.C. 40%		Total - All Ballots (Ward + PR + DC 40%)	ଇଥାଉଛ (୭.୯ 4.0%)
	Total Valid Votes	% Total Valid Votes	Total Valld Votes	% Total Valid Votes	Total Valid Votes	% Total. Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes
MINORITY FRONT	7,533	0.23 %	5,874	0.18 %	13,407	0.21 %		1	13,407	0.16 %
NATIONAL DEMOCRATIC	976	0.03 %	1,061	0.03 %	2,037	0.03 %	1,107	0.05 %	3,144	0.04 %
NATIONAL FREEDOM PARTY	2,203	0.07 %	3,021	0.09 %	5,224	0.08 %	E.	The state of the s	5,224	0.06%
NATIONAL PEOPLES	969	0.03 %	721	0.02 %	1,690	0.03 %	1,049	0.05%	2,739	0.03 %
PAN AFRICANIST CONGRESS OF AZANIA	865	0.03 %	1,346	0.04 %	2,211	0.03 %			2,211	0,03 %
PEOPLES ALLIANCE	190	0.01 %	519	0.02 %	709	0.01 %			709	0.01 %
PEOPLE'S REVOLUTIONARY	2,514	0.08 %	3,846	0.12%	6,360	0,10 %	2,178	0.10 %	8,538	0.10 %
ROYAL LOYAL PROGRESS	1,950	0.06 %	1,937	0.06 %	3,887	% 90.0	1,744	0.08 %	5,631	0.07 %
SOUTH AFRICAN POLITICAL PARTY	18	0.00%	328	0.01 %	346	0.01 %			346	0.00 %
STRENGTH OF HUMANITY	320	0,01 %	392	0.01%	712	0.01 %		1	712	0.01%
THE PROMISE OF FREEDOM	35	0.00%	263	0.01 %	298	0.00%			298	0.00%
TRULY ALLIANCE	4,452	0.14 %	6 4,686	6 0.14 %	9,138	0.14.%	0	1	9,138	0.11%
UBUMBANO LWESIZWE SABANGONI	งเ 346	0.01 %	6 354	4 0.01 %	6 700	0.01%	304	0.01 %	1,004	
INITED DEMOCRATIC MOVEMENT	734	0.02 %	% 2.075	5 0.06 %	<sub>6</sub> 2,809	9 0,04 %			2,809	0,03 %

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Total Voter Turnout	Tiotal Votes Cast	Total Spoilt Votes	Total Valld Votes	ZULU ROYAL PROPERTY	VRYHEIDSFRONT PLUS	UNITED RESI	UNITED PEOPLES PARTY		밁
Hulanouli	Cass	Votes	o(es	. PROPERTY	ONT PLUS	UNITED RESIDENTS FRONT	LES PARTY		Parly Name
	3,314,785	97,036	3,253,749	0	4,050	270	1,873	Total Valid Votes	Ward
			7,001,00 %	0.00%	0.12 %	0.01 %	0.06 %	% Total Valid Votes	
	3,308,189	741017	8/2/3/6/7/2	L	4,274	342	1,469	Total Vallid Votes	P.R
			100,00 %		0,13 %	0.01 %	0.05 %	% Total Valid Votes	
3,363,296	6,622,974	725,663	6,487,321	0	8,324	612	3,342	Total Valid Votes	Total (Ward + PR)
			100,00 %		0.13 %	0.01 %	0.05 %	% Total Valid Votes	3(a) d + PR)
	2,1763,1113	48/22/2	2,124,891	ı	4,392		1	Total Valld Votes	DC 40%
			100,00 %	ı	0.21 %		1	% Total Valid Votes	
	8,796,087	188/87/5	8,612,212	0	12,716	612	3,342	Total Valid Votes	(Ward + PR + DC 40%)
			7.00.00.7%		0.15 %	0,01 %	0.04 %	% Total Valid Votes	H DE 40%)

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# Results Summary - All Ballots

Printed on: 2016/08/11 16:49:53

Electoral Event:

Province: Municipality:

Voting District:

LOCAL GOVERNMENT ELECTION 2016

All Provinces All Municipalities

All Wards All Voting Districts

Party Name	Ward	TG	[HK		To: (Ward	+ PR)	[0](4.4))//	109%	Total - All Ballots (Ward + PR + DC 40%	Eallots + DC 40%)
	Total Valld Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid	% Total Valid	Total Vaild	% Total Valid
ABAHLALI BEMZANSI ORGANISATION	158	0.00%	222	0.00 %	380	0.00%	368	0.00 %	748	0.00 %
ABANTU DEMOCRATIC REVOLUTION	323	0.00%	361	0.00 %	684	0.00 %	<b>B</b>		684	0.00%
ACADEMIC CONGRESS UNION	4,318	0.03 %	4,164	0.03 %	8,482	0.03 %	1,182	0.01 %	9,664	0.03 %
ACTIVE MOVEMENT FOR CHANGE	223	0.00%	333	0.00 %	556	0.00 %		1	556	0.00%
ACTIVE UNITED FRONT	1,026	0.01 %	989	0.01 %	2,015	0.01 %	1		2,015	0.01 %
ADVIESKANTOOR	409	0.00%	431	0.00%	840	0.00%	# # # # # # # # # # # # # # # # # # #		840	0.00%
AFRICA MUSLIM PARTY	1,692	0,01 %	1,571	0.01 %	3,263	0.01 %	1		3.263	0.01 %



0.01 %	4,260		I	0,01 %	4,260	0,03 %	3,753	0.00%	507	AGENCY FOR NEW AGENDA
0.01 %	5,493	0.02 %	1,549	0.01 %	3,944	0.02 %	2,508	0.01 %	1,436	AGANG SOUTH AFRICA
0,00%	246	•	E	0.00%	246	0,00%	96	0.00%	150	AFRICAN POWER MOVEMENT
0.02 %	6,546	0.02 %	1,338	0.02 %	5,208	0.02 %	2,463	0.02 %	2,745	AFRICAN PEOPLE'S SOCIALIST PARTY
0.22 %	84,571	0.22 %	19,002	0.22 %	65,569	0.27 %	40,750	0.17 %	24,819	AFRICAN PEOPLE'S CONVENTION
0.00 %	262		1	0.00 %	262	0.00 %	204	0.00%	58	AFRICAN PEACE PARTY
55.68 %	21,446,302	61.79 %	5,347,113	53.91%	16,099,189	54.48 %	8,121,466	53.34 %	7,977,723	AFRICAN NATIONAL CONGRESS
0.03 %	12,555	0.08 %	6,777	0.02 %	5,778	0.02 %	3,372	0.02 %	2,406	AFRICAN MANTUNGWA COMMUNITY
0.00%	1,290	1	E	0.00%	1,290	0.01 %	786	0.00%	504	AFRICAN MANDATE CONGRESS
0.00 %	25	1	-	0.00%	35		1	0.00%	35	AFRICAN LIBERATION PARTY
0.87 %	333,753	1.15 %	99,397	0.78%	234,356	0.98%	145,818	0.59 %	88,538	AFRICAN INDEPENDENT CONGRESS
0.00%	642	T.	1	0,00%	642	0.00%	315	0.00%	327	AFRICAN FREEDOM SALVATION
0.39 %	150,966	0.31 %	26,536	0,42%	124,430	0.42 %	62,454	0.41 %	61,976	AFRICAN CHRISTIAN DEMOCRATIC PARTY
0.00%	1,215	· F	-1	0,00%		0,00 %	654	0,00%	561	AFRICAN CHRISTIAN ALLIANCE- AFRIKANER CHRISTEN ALLIANSIE
% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valld Votes							
D(C 410%)	(Ward + PR + D6 40%)		Blevany,	HATER)	(Ward)		TEX	G	DEAN	early warms
Billiots				(a)			1710		, William	The state of the s

7. F. Page: 2 of 16

396 0.00 % 9,115 0.02 % 413 0.00 %				)						
		0.00%	219	0.00 %	194	0.00 %	333	0.00 %	61	ASISIKIMENI COMMUNITY DEVELOPMENT AND ADVICE MOVEMENT
		0.04 %	3,119	0.02 %	5,996	0.02 %	3,048	0.02 %	2,948	ARE AGENG AFRIKA
		1	ı	0.00 %	396	0.00 %	166	0.00 %	230	ANSWER FOR COMMUNITY
1,229 0.00%				0.00 %	1,229	0.01 %	942	0.00%	287	ALTERNATIVE DEMOCRATS
167 0.00 %			-	0.00 %	167	0.00%	62	0.00 %	105	ALTERNATIVE AFRICAN ALLEGIANCE
4,263 0.01 %	4	1	l .	0.01 %	4,263	0.01 %	1,966	0.02 %	2,297	ALLIED MOVEMENT FOR CHANGE
1,779 0.00%		; ; ; ; ;	1	0.01 %	1,779	0.01 %	867	0.01 %	912	ALLIANCE OF DEMOCRATIC CONGRESS
2,708 0.01 %	δ.	0.01%	799	0.01%	1,909	0.01 %	942	0.01 %	967	ALLIANCE FOR DEMOCRATIC FREEDOM
6,054 0.02 %	6,0	And the second s	1	0.02 %	6,054	0.02 %	2,638	0.02 %	3,416	ALL UNEMPLOYMENT LABOUR ALLIANCE
770 0.00%	170	1	ı	0.01 %	1,770	0.00 %	685	0.01%	1,085	AL SHURA PARTY
386 0.10 %	36,886	0.01 %	648	0.12%	36,238	0,12 %	17,220	0.13%	19,018	AL JAMA-AH
212 0.00 %	1,212	The second secon		0.00 %	1,212	0.00 %	671	0.00%	541	AGENDA TO CITIZENRY GOVERNORS
% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valld Votes	Total Valld Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valld Votes	
(Ward + PR + DC 40%)	(Marda	076	late 40%	aid (FPR)	(Wlard			d	Ward	Party Name

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			i i i i i i i i i i i i i i i i i i i	0.00 %	87	000%	57	0.00 %	30	CHRISTIAN UNITED MOVEMENT S.A
n nn %	922	0.00 %	314	0.00 %	808	0.00 %	324	0.00 %	284	CHRISTIAN DEMOCRATS
0.01 %	4,605		The second secon	0.02 %	4,605	0.01 %	2,204	0.02 %	2,401	CHRISTIAN DEMOCRATIC PARTY
0,01%	4,473	0.00 %	361	0.01 %	4,112	0.01 %	2,100	0.01 %	2,012	CAPE PARTY/ KAAPSE PARTY
0.02 %	6,459	-		0,02 %	6,459	0,02 %	3,386	0.02 %	3,073	CAPE MUSLIM CONGRESS
0,19 %	73,468	0.28 %	23,987	0.17%	49,481	0.17 %	24,889	0.16 %	24,592	BUSHBUCKRIDGE RESIDENTS ASSOCIATION
0.00%	790	1	1	0.00%	790	0.00%	406	0.00%	384	BUILDING A COHESIVE SOCIETY
0.03 %	11,467	0.04 %	3,654	0.03 %	7,813	0.03 %	3,872	0.03 %	3,941	BREEDEVALLEI ONAFHANKLIK
0.00 %	504		:	0.00 %	504	0.00 %	288	0.00%	216	BOTSHABELO UNEMPLOYED MOVEMENT
0.00 %	1,195		1	0.00 %	1,195	0.00%	565	0.00%	630	BOTHO COMMUNITY MOVEMENT
0.03 %	9,632	0.04 %	3,508	0.02 %	6,124	0.02 %	3,424	0.02 %	2,700	BOLSHEVIKS PARTY OF SOUTH AFRICA
0.00 %	1 1 1			0.00%	100	0.00 %	62	0.00 %	51	BITOU INDEPENDENT PARTY
0.00 %	88	1	-	0.00 %	88	0.00 %	89	0.00 %	30	BADIRA MMOGO FREEDOM PARTY
0.07 %	28,052	0.09 %	8,122	0.07 %	19,930	0.07 %	10,122	0.07 %	9,808	AZANIAN PEOPLE'S ORGANISATION
% Total Valid Votes	Total Valld Votes	% Total Valid Votes	Total Valid Votes	% Total Valld Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	
Elliote			De 40%	)(a) (4:1518)	(Ward		) 		Ward	Party Name

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	The state of the s		-					-		
0.02 %	7,521			0.03 %	7,521	0.02 %	3,472	0.03 %	4,049	DEMOCRATIC INDEPENDENT
0.00.76	0.00		And the second s	0.00 %	819	0.00 %	421	0.00 %	398	DEMOCRATIC COMMUNITY MOVEMENT
0.00 %	576			0,00%	576	0.00 %	264	0,00 %	312	DEMOCRATIC ASSOCIATION OF WITZENBERG INDEPENDENCE
24.57 %	9,462,163	16.52 %	1,429,869	26,90 %	8,032,294	27.02 %	4,028,087	26.77 %	4,004,207	DEMOCRATIC ALLIANCE
0,00%	372		1	0,00%	312	0.00%	177	0.00%	135	D'ALMEDIA CIVIC ASSOCIATION
0.47 %	181,489	0.59 %	51,137	0.44 %	130,352	0.45 %	67,777	0.42 %	62,575	CONGRESS OF THE PEOPLE
0.00 %	466			0.00 %	466	0,00%	197	0.00%	269	COMMUNITY PARTY
0.00%	289		1	0,00 %	289	0.00%	127	0.00 %	162	COMMUNITY CONGRESS
0,00 %	1,014			0.00 %	1074	0.00 %	496	0.00 %	518	COMMUNITY AND WORKERS ALLIANCE
U,UU %	970	, q		0.00 %	970	0.00 %	498	0.00 %	472	COLOURED VOICE
	8,000	0.03 %	2,907	0,02 %	5,629	0.02 %	2,810	0.02 %	2,819	CIVIC WARRIORS OF MARULENG
	5, 5, 9, 9, 6 5, 7, 7, 7, 7, 7, 7, 7, 7, 7, 7, 7, 7, 7,			0.02 %	5,916	0.02 %	2,869	0,02 %	3,047	CIVIC VOICE
) () ()	10,200	0.07 %	5,960	0.04 %	12,273	0,05 %	7,167	0.03 %	5,106	CIVIC INDEPENDENT
0.00 %	1,198	0.01 %	826	0,00 %	372	0.00 %	310	0.00 %	62	CIVIC ALLIANCE OF SOUTH AFRICA
% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valld Votes	% Total Valid Votes	Total Välld Votes	
	Contracting Section (Inches	<b>F</b>		Tauer)	(Marcial		- III		Ward	Party Name
A NOW			10(0, 4)0%		Jioliali		1			

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LIBERAL CONGRESS   6,840   0.05 %   4,863   0.001 %   1,1417   0.001 %   0.001 %   1,226,949   0.00 %   1,226,94	0.00 %	189		1	0.00%	189	0.00%	104	0.00%	85	LIANTAM ONTWIKKEI INGS FORUM
Total Wild Valid V			1				0,00%		0.00%	98	GOURIKWA KHOISAN
Total   %.Total   %.Tota	0,00	3	0.00 %				0,00 %		0.00 %	93	GEORGE INDEPENDENT RATEPAYERS FORUM
Total Valid Valid Valid Valid Votes Vote		614	C.		and the second second		0.00%	198	0.00 %	116	GAMAGARA COMMUNITY FORUM
Total valid vali	0.23	86,667	0.34 %		0.19%	57,487	0.19 %	28,849	0.19 %	28,638	FORUM 4 SERVICE DELIVERY
Total Valid Valid Valid Votes   Votes Votes Votes   Votes Votes Votes   Votes Vote	<b>0,00</b>	1,827	0.01 %	599	0.00 %	1,228	0.00 %	543	0.00%	685	FEDERATION OF DEMOCRATS
Ward         Ward         OR Total Valid Va		782			0.00 %	782	0.00 %	338	0.00%	444	EKURHULENI COMMUNITY MOVEMENT
Ward         PR Ward Valid Valid Voltes         (Ward FDR) Ward Voltes         (Ward FDR) Ward Valid Voltes         (Ward FDR) Ward Voltes         (Ward FDR)	0.00	Č		1	0.00 %	78	0.00 %	26	0.00%	52	ECONOMIC GROWTH ORGANISATION
Ward         PR Walld Valid Votes         (Ward FR)	) [0 ) (2	3,202,093	8./3%	755,431	8.19 %	2,446,662	8.24 %	1,228,949	8,14 %	1,217,713	ECONOMIC FREEDOM FIGHTERS
Ward Valid Va	U:U4 %	16,478	0.06 %	5,519	0.04 %	10,959	0.04 %	5,629	0.04 %	5,330	DIKWANKWETLA PARTY OF SOUTH AFRICA
Ward   PR   Ward		#JU0 <b>4</b>	0.02 %	1,417	0.01 %	2,647	0.01 %	1,247	0.01 %	1,400	DIENSLEWERINGS PARTY
Ward         PR         Ward FR)         Ward	21				0,01%		0.01 %	1,910	0.01 %	1,910	DIE FORUM
Total % Total Valid Valid Valid Valid Valid Votes Vote	0.01%	3.820					0,0	5	0.01 %	1,352	ASSOCIATION
Ward PR)  Ward P	0,01 %	3,887	0.02 %	1,418	0.01%	2.469	0.01 %	4 117	204.0/		THOOPINTIO NEW OWIC
Ward Valid Votes Votes Votes Votes Votes (Wards FR)	0.03 %	11,895	0.00 %	192	0.04 %	11,703	0.03 %	4,893	0.05%	6,810	EMOCRATIC LIBERAL CONGRESS
Ward + Fig. (Ward + Fig.)	% Total Valid Votes		% Total Valid Votes		% Total Valid Votes	Total Valld Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	1 (1) (1) (2) (1) (1)	
		Wald of EX.			18R)	(Mard) &		민준	Unit (	Ward	Party Name

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								:		ORGANISASIE
				0.00 %	6 872	0,00%	% 394	3 0.00 %	478	KAAP AGULHAS CIVIC
0.00%	877	A section of the sect	Control of the second sequences are set of the second sequences and the second		980	0.01 %	6 906	0.00 %	84	ISITHUNZI SOM-AFRIKA ECONO
0.00%	990	and the contract of the contra		23%					1,200	CONGRESS
0.01 %	4,834	0.02 %	1,657	0.01 %	3,177	0.01 %	1.977	0 01 %	4 200	TONAL DEVELATION
	1,020,000	ar ign. Samuelan and San	554,558	4,25 %	1,268,808	4.27 %	636,674	4.23 %	632,134	INKATHA FREEDOM PARTY
473%	2 CC			0,000	298	0.00%	216	0.00%	82	INGUBO YESKHETHU PARTY
0.00%	298									INDEPENDENT SPORT PARTY
0.00%	161	t	1	0.00%	161	0.00 %	122	0.00%	30	ASSOCIATION OF SA
0.00	9,82/	0.01 %	629	0.03%	9,198	0.02 %	3,348	0.04 %	5,850	INDEPENDENT RATEPAYERS
O D3 %	\$\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	1	1	0.01 %	2,442	0.01 %	1,498	0.01 %	944	INDEPENDENT PEOPLE'S PARTY
n n1 %	3			0.00 %	372	0.00 %	149	0.00%	223	INDEPENDENT PARTY
0.00 %	372			2				0.01 /8	2,707	INDEPENDENT COUNCILLORS
0.02 %	6,234	0.02 %	2,097	0.01 %	4,137	0.01 %	9 036	0.04 %		ORGANISATION OF SOUTH AFRICA
		0,10 /0	13,/63	0.10 %	30,479	0.10 %	15,239	0.10 %	15,240	INDEPENDENT CIVIC
0.11%	14 249	2480			1 1 1		The state of the s	2.28 %	341,214	INDEPENDENT
0.89 %	341,214		1	- - - - - -				0,00,0	464	MOVEMENT
0.00%	886		<b>.</b>	0,00%	886	0.00 %	A20			PARTY
U.UU.%	602	0.00 %	413	0.00%	189	0.00 %	145	0,00%	44	HIS LORDSHIP TO SAVE AND LEAD
Valid Votes		# 2000 W	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total '9 Valid Votes	% Total Valid Votes	Total Valid Votes	

World   PR   Walled   Walled					and a		0.00 %	6 146	0.00%	143	I EBALENG COMMUNIST PARTY
Total Valid Vali	11.000	289	1		i.						LEADERSHIT FORUM
Total Valid Valid Voices   Total Valid Voices   Total Valid Valid Voices   Total Voices   Total Valid Voices	0,00		0.00 %				0.00%			355	
Total Volta	9		0,01.70			1,6	0,01 %		0.01 %	838	LANGERBERG INDEPENDENT
PARTY   171   0.00 %   167   0.00 %   338   0.00 %   0.01 %   1.563   0.01 %   167   0.00 %   1.663   0.00 %   1.663   0.00 %   1.663   0.00 %   1.663   0.00 %   1.663   0.00 %   1.663   0.00 %   0.0	0.01	9				761	0.00 %	337	0.00%	424	LAND CLAIMS FIGHTERS
Total Valid Valid Votes   Votes Votes   Votes Votes   Votes Votes   Votes Votes   Votes   Votes Votes   Votes Votes   Votes Votes   Votes Votes   Votes Votes   Votes Votes Votes   Votes Vote	0.00	761			0,00 %	338	0,00 %	167	0.00%	171	KOUKAMMA INDEPENDENT PARTY
Total Ward   PR   Ward   Valid Valid Valid Valid Votes	0.00	33 33 36	-		J.UU 70	1,038	0.00%	503	0.00 %	535	KNYSNA UNITY CONGRESS
Ward   PR	0.00	1,563	0.01 %	ָת מ	% O.00.0	262	0.00 %	211	0.00 %	51	KINGDOM GOVERNANCE MOVEMENT
Ward   PR	0.00 9	262		7,00	0.02 %	5,083	0.02 %	2,806	0.02 %	2,277	KHOISAN REVOLUTION
Ward         PR         (Ward+-PR)	0.02 %	7,684	0.03 %	) ) ) 1	0.00 %	1,067	0.00%	692	0.00 %	375	KHOISAN KINGDOM AND ALL PEOPLE
Ward   PAR   Ward   W	0.00 %	1.067			0,000 %	524	0.00 %	245	0.00 %	279	KHAI-MA ONAFHANKLIKE KANDIDATE KOALISIE
Ward   PR   Ward   PR   Ward   PR   Ward   PR   PR   Ward   PR   PR   PR   PR   PR   PR   PR   P	0.00 %	524				2,400	0.01 %	1,219	0.01 %	1,274	KGATELOPELE COMMUNITY FORUM
Ward   PR   Ward   PR   Ward   PR   Ward   PR   DC   Ward   Ward   PR   DC   DC   Ward   PR   DC   Ward   PR   DC   DC   Ward   PR   DC   DC   DC   DC   DC   DC   DC   D	0.01 %	2,493	1	Agramatic 20 and 100 a	o na %	3	2	**************************************			ROO ONTWIKKELINGS PARTY
Ward         PRevenue         (Ward + PR)         (Wa	0.00%	284		I .	0.00 %	284	0.00 %	221	0.00 %	<u>م</u>	
Total Valid Valid Votes	3	9,009	0.02 %	1,807	0.01 %	3,582	0.01 %	1,823	0.01 %	1,759	ROO GEMEENSKAP PARTY
Ward PR (Ward + PR)  Total % Total Valid Valid Valid Votes Votes Votes Votes Votes (Ward + PR + DG)  Ward + PR + DG (Ward + PR)  (Ward	0.01%	F 300	0.01 %	1,001	0.01 %	1,624	0.01 %	799	0.01 %	825	KAROO DEMOCRATIC FORCE
Ward PR (Ward + PR) DC 40%	Valld Votes	Š N	<b>?</b>	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	_		% Total Valid Votes	i della Se della della Se della della	% Total Valld Votes		
こうかん かんしょう かんしん こうしょう かんしん	CTOtal	Vand + PR + D		n(c 40%		100 March 1985		PR		Ward	Party Name

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	/					1				ASSOCIATION
0.010	3,409	3 0.01 %	6 1,253	0.01 %	2,206	0.01 %	6 1,096	0.01 %	1,110	MOGALAKWENA RESIDENTS
			1	0:04 %	13,407	0.04 %	5,874	0.05 %	7,533	MINORITY FRONT
	30 AOZ	The second secon	1		6,888	0,02%	3,018	0.03 %	3,870	MINORITIES OF SOUTH AFRICA
	6.888 6.888		2,200		4,409	0,02 %	2,246	0.01 %	2,163	METSIMAHOLO COMMUNITY ASSOCIATION
0.02 %	6678	0.03 %			020	0.00 %	203	0,00%	124	MERAFONG CIVIC ASSOCIATION
0.00%	576	0.00%	249	0 00 %	3 3				2 2 3 4 5	MARULENG COMMONITY OF COMM
0.00 %	234			0,00%	234	0.00%	120	0,00%	114	AAD III ENG COMMINITY FORUM
	2,8,2	0.01 %	1,067	0.01 %	1,908	0.01 %	1,030	0.01 %	878	MALETSWAI CIVIC ASSOCIATION
	4.2			0.00%	429	0,00%	274	0.00%	155	MALAMULELE COMMUNITY ASSOCIATION
0 00 %	) On			0.01 %	2,710	0.01 %	1,056	0,01%	1,654	LOCAL PEOPLE'S PARTY
0.01 %	0.17	W. 157 (1971)				0,00.0	606	0.00%	634	LIMPOPO RESIDENTS ASSOCIATION
0.00 %	1,240	1	1	000%	4 040	200				
U.UU %	170	0.00%	69	0.00 %	100	0.00%	65	0.00%	36	I BERATORS PARTY
) )	98/		-	0.00 %	992	0.00 %	512	0.00 %	480	LEPELLE-NKUMPI DEVELOPMENT PARTY
0.00	3		C C	0.00%	520	0.00 %	312	0.00%	208	LEIHLO LA SETJHABA RAINBOW
0.00 %	1.086	0.01%	71 00 00	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \				0.0 / /8	868	ORGANIZATION
0.01 %	2,446	0.01 %	788	0.01 %	1,658	0.01 %	799	0.01 %	orto -	
% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valld Votes	% Total Valid Votes	Total Valld Votes	%Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	
	Waltier			(4 PR)	(Ward +)		PR		Ward	Party Name
			ine any	3	Jinyott,	a)				

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Party Name	Ward	general and a second	10 10 10 10 10 10 10 10 10 10 10 10 10 1		(Ward)	((a)   4 PR)	Dc. 40%		(Ward 3 PR + DC 40%)	(B) C (VAV)
	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valld Votes	Total Valid Votes	% Total Valid Votes	Total Valid Votes	% Total Valid Votes
MOOKGOPHONG PARTY	393	0.00 %	360	0.00%	753	0,00 %	t		753	0,00 %
MOVEMEANT OF GOD	37	0.00 %	102	0.00 %	139	0.00 %	159	0.00 %	298	0.00 %
MOVEMENT DEMOCRATIC PARTY	25	0.00%	79	0.00 %	104	0.00 %	ı	I.	104	0,00 %
MPUMALANGA PARTY	889	0.01 %	874	0.01 %	1,763	0.01 %	1	1	1,763	0.00 %
MTHATHA RATEPAYERS AND RESIDENTS ASSOCIATION	4,520	0.03 %	4,143	0.03 %	8,663	0.03 %	1	r.	8,663	0.02 %
MUSINA MUTALE UNIFIED FRONT	148	0.00%	134	0.00%	282	0,00 %	201	0,00%	483	0,00%
NASIONAAL DEMOKRATIESE PARTY/NATIONAL DEMOCRATIC PARTY	210	0,00 %	133	0.00 %	343	0.00 %	298	0.00 %	641	0.00 %
NATIONAL DEMOCRATIC CONVENTION	976	0.01 %	1,061	0.01 %	2,037	0.01 %	1,107	0.01 %	3,144	0.01 %
NATIONAL FREEDOM PARTY	2,203	0.01 %	3,021	0.02 %	5,224	0,02 %	£		5,224	0.01 %
NATIONAL INDEPENDENT PARTY	1,287	0.01 %	1,112	0.01%	2,399	0.01 %	1,256	0.01 %	3,655	0,01 %
NATIONAL PARTY SOUTH AFRICA	1,988	0.01 %	2,296	0.02 %	4,284	0.01 %			4,284	0.01 %
NATIONAL PEOPLES AMBASSADORS	969	0.01 %	721	0.00 %	1,690	0,01%	1,049	0.01 %	2,739	0.01 %
NATIONAL DEODI E'S DARTY	812	0.01%	449	0.00%	1,261	0.00%		Service Reco	1,261	0.00%

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World   PR   Work   PR   Work   PR   Work   PR   Work   PR   Work   Wo		<u>-</u>	!e								PLAASLIKE BESORGUE INVOICES
Wild			en grysterere i f					kulunggalding (1999) ku		2,449	
Total Valid   Valid Va							-			2,666	PEOPLE'S REVOLUTIONARY MOVEMENT
Valid Valid Valid Votes Vote				277						5,079	PEOPLE'S DEMOCRATIC MOVEMENT
Total			0.00 %						0,00 %	326	PEOPLE'S CIVIC ORGANISATION
Ward   Ward   Wall   Wallid	0.00	4 4/0	0 00 00				0.01 %		0.00 %	274	PEOPLES ALLIANCE
World   PR   Word   PR   World	0,00	1.510	0 00 %				0.00 %	736	0.00%	713	PATRIOTIC ASSOCIATION OF SOUTH AFRICA
Ward	0.00	1.449	1			21,520	0.07 %	11,011	0.07 %	10,314	PATRIOTIC ALLIANCE
Ward   PR   PR   PR   Ward   PR   Ward   PR   Ward   PR   Ward   PR   PR   PR   Ward   PR   PR   PR   PR   Ward   PR   PR   PR   PR   PR   PR   PR   P	0.06	22.233	0.01%	ana		1,846	0.01 %	1,328	0.00 %	518	PAN AFRICANIST MOVEMENT
Ward   PR   Ward - Valid	0.00	1 846	9	870'01	0.19 %	57,974	0.20 %	29,799	0.19%	28,175	PAN AFRICANIST CONGRESS OF AZANIA
Ward   PR	0.19	74 603	040%	1000	0.01 %	1,736	0.01 %	973	0.01%	763	PAN AFRICAN SOCIALIST MOVEMENT OF AZANIA
Ward   PR   Ward	) )	A 700		1	0.00 %	403	0.00 %	230	0.00 %	173	PALMRIDGE COMMUNITY FORUM
Valid   Vali	n 00 (	Moa					0,01 %	466	0.01 %	794	OPERATION KHANYISA MOVEMENT
Ward   PR	0.00 %	1,789	į.	1	o 0 %	4 780	202				EW GENERALIZATION
Total % Total Valid Valid Votes Votes Votes Votes Votes Votes 0.01% 622 0.00% 1,794 0.01% 750 0.01% (Watch Perk) (Watch Pe	0.00%	494	1	ji	0.00%	494	0.00%	197	0.00%	297	NEW DENIEDATION DARTY
Total Valid Valid Votes Votes Votes Votes Votes	0.01 %	2,544	0.01 %	750	0.01 %	1,794	0.00 %	622	0.01 %	1,172	NATIONALIST COLOURED PARTY OF SOLITH AFRICA
Ward PR (Ward H PR)	% Total Valid Votes		% Total Valid Votes		% Total Valid Votes	Total Valid Votes	%Total Valid Votes	Total Valid Votes	% Total Valld Votes	Total Valid Votes	
IOM	aic 40%)	Ward + PR +		<b>DC 40%</b>		Maid +		무R		Ward	Party Name

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Total Valid Vali	Page: 12 of	F							1		SIZAAE OMMULIERE SEESTES
Total Valid Vali			-				0,00%	Andrew Service and Service		27(	CINTAL IMMAH NATION
Total Valid Vali	<del>55</del> 9		A STATE OF THE PARTY OF THE PAR	And the second section in the second	د کند د کند د دار					149	SINGUKUKHANYA KWEZWE CHRISTIAN PARTY
Total Valid Vali	98	Ň		<u> </u>			0 00 %				
Total Valid Valid Valid Votes   Votes Votes Votes   Votes Votes Votes Votes Votes   Votes Vote			1			4,0	0.02 %	and the second		1,755	SINDAWONYE PROGRESSIVE
Total Valid Vali							0,00 %		0,00%	142	SERVICE TO OUR PEOPLE'S PARTY
Total Valid Vali	Samuel Samuel Samuel Clarific Samuel Samuel Clarific Samuel Samue	2	1				0,00%	Severa have been	0,00 %	287	SERVICE FOR ALL
Total Valid Vali			0.01 %			807	200				ERVICE DELIVERY ORGANISATION
Total Valid Vali	and annual section of the section of	29	1	ı	in the state of th	292	0.00%	177	0 00 %	A	KHONHONE OCIOCIFI
Total Valid Vali				711		879	0.00 %	608	0.00%	271	TONGRESS
Total Valid Vali		1,65	0.01 %	770			0.02 %	2,566	0.02 %	2,546	SAVE TSANTSABANE COALITION
Total Valid Vali		7,794	0.03 %	2,682	0.02 %	<del>5</del> 112	2		1		ALLIANCE
Total Valid Vali			U.U.1 %	578	0.00 %	1,133	0.00%	499	0.00%	634	MOVEMENT CALDANIA BAY RESIDENTS
PARTY         2,132         0.01%         2,137         0.01%         1,937         0.01%         3.887         0.01%         3.887         0.01%         1,744         Valid V		771	0 0 4 %		0.01%	1,8/9	0.01 %	930	0.01 %	949	SAKHISIZWE PROGRESSIVE
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# IFP calls for postponement of local govt elections

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IFF Franciscou Valenkoe Hlabisa

Chante Schatz, News24

The IFP has called for the local government elections to be delayed.

The party says that Covid-19 is a threat to the proposed 2021 polls.

Party president Velenkosi Hlabisa said, despite the uncertainty, they were still ready should elections go ahead.

The inkatha Freedom Party (IFP) has called for the upcoming local government elections to be postponed, saying it would be too risky given the Covid-19 pandemic.

"We simply cannot risk plunging the country deeper into crisis. If infection rates soar, a harder lockdown will be inevitable, and the consequences for our economy could be irreparable. This is why the IFP has been calling for the postponement of these elections," IFP president Velenkosi Hlabisa said on Tuesday.

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He said that, while his party was well prepared for elections, they felt that the risks outweighed the needs of a democratic process.

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Hlabisa said, since lockdown Level 2 was announced in response to the third wave of infections, numbers had only gone up.

"Since that announcement, infection levels have continued to climb and there is no doubt that an increasing number of lives will be lost in coming months.

"This is a devastating reality, but it is further complicated by the fact that our country is scheduled to hold local government elections just four months from now."

# ALSO READ | IFP meets on postponing local government elections

He highlighted that, at the end of July, the Electoral Commission of South Africa (IEC) would know the outcome of the inquiry led by former deputy chief justice Dikgang Moseneke, into the possibility of holding free and fair elections under present conditions.

"One of the overriding difficulties is predicting what the situation will be four months from now. Will we still be at lockdown Level 2, or will matters have worsened? The second difficulty is that the IEC may have the capacity to provide hand sanitizer and take temperatures at every voting station, but that by itself cannot counteract irresponsible human behaviour.

"We know that some people do not wear masks consistently and properly. Just take a walk through the streets outside and count the number of people you see wearing their masks below their chins. If those same people, all on one day, use public transport and queue at voting stations, this virus will be highly mobile."



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HRS 26

26 MINS

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- Yes, children need to catch up
- No, the third wave is more serious and children are getting sick too
- A rotational timetable should be combined with online learning

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Sign in Subscribe News23 | Careers24 | Property24 | Autotrader | Superbalist | OLX @kaveels WATCH: @IFPinParliament President view Velenkosi Hlabisa says his party is gearing up to take on the @ANCKZN @MYANC in the next elections. @News24 @TeamNews24 **①** 1:48 PM - Jun 8, 2021 Hlabisa questioned how those self-isolating could participate in the democratic processes afforded to them in the Constitution. "And how will those self-isolating, whether due to infection or close contact, be able to vote? The chances are, they will leave their homes and potentially spread the virus. Preventing them from voting would be an infringement on their democratic rights. CURRENCIES COMMODITIES JEE INDEXES \*We simply cannot risk plunging the country deeper into crisis. If infection rates soar, a harder lockdown will be +0.2% 14.64 Rand - Dollar inevitable, and the consequences for our economy could be irreparable." **-**00 € 20.32 Rand - Pound +0.0% 17.22 Ready Rand - Euro Hiabisa said, despite calling for a postponement of -0.0% 10.77 Rand - Aus dollar elections, the IFP was ready for them should they take 10.2% 0.13 Rand - Yen place. All USE data delayed by at least 15 minutes "In fact, based on by-election results, we appear to be the only opposition party on an upward trajectory. This makes sense, because in the present circumstances of the national crisis, citizens are desperate for a voice of reason and a leadership of integrity. The IFP's strengths Feel Good are coming to bear in this difficult time." LETTER | Not all taxi drivers He said they were aiming to win municipalities in are bad guys, this one is a hero even when I smashed... KwaZulu-Natal. "We have a tremendous opportunity to increase our 29 Jul support in these elections and take over leadership in a News24 wants your Feel

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number of municipalities in KZN. We are ready to do

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that, but politics cannot take precedence over the need

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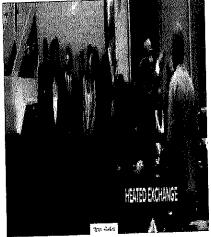
Kamala Herris



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Hlabisa said that, whether the elections were later this year or even next year, they would win municipalities from the ANC.

"We have identified them and our programmes on the ground are in good shape, and we know we will win those municipalities. We will take wards from the ANC. In 2024, we are taking back KZN. This plan has been in action for quite a long time."

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# SUBMISSION OF THE INKATHA FREEDOM PARTY

# TO THE INQUIRY INTO

# ENSURING FREE AND FAIR LOCAL GOVERNMENT ELECTIONS DURING COVID-19

18 June 2021

Justice Dikgang Moseneke Chairperson

Tugela House
1303 Heuwel Road
Centurion, 0157

Via email freeandfair@elections.org.za

# INTRODUCTION

The IFP appreciates this opportunity to make a presentation on the feasibility of holding Local Government Elections on 27 October 2021.

It is our submission that, despite the Electoral Commission's proclamation of electoral preparedness, maintaining the date of 27 October 2021 will compromise free and fair elections due to current applications of the Disaster Management Act and the reality of life in our communities.

Ensuring that elections are free and fair requires more than mere preparedness of the election machinery. It demands that political parties and candidates are able to campaign, and that the electorate is able to make informed decisions. Above all, voters must be free to vote without fear and without lives being threatened.

# CONSTRAINTS ON FREE AND FAIR ELECTIONS

We wish to point out the following constraints to holding free and fair elections on 27 October this year –

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# Ability of political parties to comply with IEC requirements

Established political parties, such as the Inkatha Freedom Party, have internal party guidelines on candidate selection for public representatives. For us this requires branches to meet and nominate candidates for wards and proportional representation in their various municipalities.

Given the Alert Level 3 limitations on the number of people that can meet, which - as from 15 June 2021 - is 50 people indoors and 100 people outdoors with social distancing, our ability to select candidates is severely constrained.

To enable candidate selection the only solution would be to use virtual technology, which in real life applications has its limitations. This will advantage parties with core support amongst higher income urban communities, as accessibility to modern technology is not restricted, whilst parties with their core support in lower income and rural areas will be disadvantaged, as the cost and accessibility of technology is limited.

# Ability of political parties to campaign

To ensure that elections are free and fair, all contesting political parties must be able to campaign and present their values, beliefs and manifestos to potential voters. Again, as previously stated, given the limitations of personal interaction this will advantage parties and voters in higher income urban communities. It is our assertion that forcing this election date will impact on the freedom of choice and ability to make that choice in our economically disadvantaged and rural electorates.

#### Impact on Elections 3.

Current government messaging focusses on staying away from closed or crowded spaces and staying at home as much as possible. During voter registration and on the election day, voters will be expected to do the exact opposite. Given the current situation in our country, voter turnout may prove to be so low that this election could not be considered a fair democratic process.

Alternatively, we can use the example of American voters who voted before elections to limit the number of people going to voting stations on election day. In South Africa, we do not have mail-in voting or voting at the polling station in days leading up to the election; but we

do have Special Votes. Will provision be made for voters who wish to limit their potential exposure to Covid-19 to cast Special Votes?

According to the IEC, there are currently 25,742,038 voters in South Africa and in the 2016 Local Government Elections 15,205,936 ward votes and 15,189,423 proportional representation votes were cast. If approximately half of potential voters are to make use of these Special Votes, can the IEC give assurances that they have the mechanisms in place to send out officers and collect more than 7 million Special Votes? It must also be pointed out that electoral fraud is frequently identified in the process of Special Votes, as logistically this process is more vulnerable than ordinary voting.

# Protecting the democratic right to vote

It would be unconstitutional to disenfranchise voters due their Covid-19 status. However, aside from Special Votes, only voters who are physically able to get to a voting station can cast their ballot. This means that Covid-19 positive hospital patients will not be able to vote. Neither will those who are positive and in self-quarantine. In addition, anyone who has had close contact with a positive case and is self-isolating will not be able to vote, without potentially risking lives.

We are effectively asking our citizens to choose between protecting lives and voting. Undeniably, there will be cases of infection from people travelling and congregating to vote. While it cannot be quantified, there *will* be resultant loss of life if elections are held on 27 October 2021.

# CONSTITUTIONAL REQUIREMENTS

The IFP submits that by implementing the Disaster Management Act 57 of 2002, the Government has limited human rights as enshrined in our Bill of Rights, specifically freedom of movement and the right to assembly. Given the circumstances and the seriousness of the Covid-19 pandemic and the need to take drastic measures to ensure the safety of our people, we have supported this declaration of a State of Disaster. But any election conducted during this State of Disaster, while human rights are limited, cannot be free nor fair.

# CONDITIONS FOR THE HOLDING OF FREE AND FAIR ELECTIONS

We submit that in order for free and fair elections to be held, the following criteria must first be met –

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- 1. The State of Disaster must be lifted and there must be no restrictions on the ability of the people of our country to move about or congregate;
- 2. The infection and mortality rate in South Africa must have decreased consistently over a period of time and scientific projections should indicate further declines;
- 3. At least 60% of our population must have been vaccinated.

We urge the Inquiry to recommend that the IEC act on Section 21 of the Electoral Act 73 of

"The Commission may request the person who called an election to postpone the voting day for that election, provided the Commission is satisfied that:-

- a) The postponement is necessary for ensuring a free and fair election; and
- b) The voting day for the election will still fall within the period as required by the Constitution or national or provincial legislation thereunder."

With regard to sub-section (b) it is our belief that when our Constitution was written the intent was to ensure that democracy reigns supreme. Given the reality of our current lives we as the Inkatha Freedom Party put the safety and security of our people before all else - we choose life.

There cannot be free and fair elections during a State of Disaster and when voters fear exercising their right to vote. It is essential, therefore, that the 2021 Local Government Elections be postponed.

We ask of this Inquiry to have the courage and commitment to put the lives of our people first. The principle of democratic elections is meaningless when the exercise of that principle places lives in jeopardy.



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# EFF demands political activity be allowed for parties to prepare for local elections

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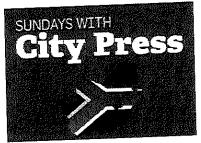
The EFF has sent a legal letter to President Cyril Ramaphosa's office demanding that the lockdown regulations should be relaxed to allow political gatherings in compliance with all Covid-19 protocols and restrictions.

The letter, from Ian Levitt Attorney's and Conveyancers, was sent on Monday.



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The party highlighted that the current regulations constituted an unjustified limitation to sections 17 and 19 political rights guaranteed by the Constitution.

# Read: EFF calls for postponement of local government elections and suspends its political activities

"These lockdown regulations prohibit a political party from engaging in programmes and activities to hold government accountable for its actions and furthermore prohibit the campaigning of political programmes and activities in preparation of this year's local government elections [which are likely to take place in November]," reads the letter.

The prohibition of political gatherings is illogical and irrational, specifically when one can gather at a public beach or swimming pool, but are criminalised when they gather to challenge government, to protest or assemble peacefully.

EFF

The red berets believe that allowing social activities cannot be more important than political rights.

"One scrutinises the balance of the lockdown regulations which allow for gatherings in restaurants, large workspaces, faith-based institutions, museums, heaches.

"The prohibition of political gatherings is illogical and irrational, specifically when one can gather at a public beach or swimming pool, but are criminalised when they gather to challenge government, to protest or assemble peacefully."

The EFF gave Ramaphosa until Friday to respond to its demand.

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In a statement on Sunday, the party threatened to go to court it did not get a positive response.

"Refusal to do so will necessitate that we take additional steps, including approaching the courts to challenge the constitutionality of closing the political space," the statement said.

Early this month, the president said the ban on political gatherings would remain under the relaxed lockdown level 3 restrictions.

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Strasbourg, 26 May 2020

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# EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)

RESPECT FOR DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW DURING STATES OF EMERGENCY -REFLECTIONS

by

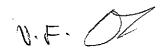
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#### I Introduction

- 1. The fight against the Covid-19 pandemic has led many countries to resort to emergency powers. The enormous extent of the challenge posed by the pandemic requires great democratic resilience in order to avoid that emergency powers curtail fundamental rights and conflict with the rule of law. On the other hand, States are expected to anticipate the relevant dangers, be proactive and take any measures they deem appropriate in advance, by application of the "precautionary principle".1
- 2. The Venice Commission has previously studied states of emergency and has produced both general reports and country-specific opinions on both constitutional provisions and emergency legislation. A compilation of the Commission's works in this area provides guidance into the Commission's specific findings (CDL-PI(2020)003). The Commission has also launched an Observatory of the state of implementation of declarations of states of emergency and of emergency legislation in Venice Commission member-states.
- Reflection on the challenges posed by states of emergency continues. This report should be seen as a contribution to such reflection. It is based on the observation of the current states of emergency but can be applicable mutatis mutandis to any situation of emergency.
- 4. It should be said at the outset that identifying best practices in this area is not simple: the current experience shows that even states with very similar constitutional models, such as Sweden and Finland, can have quite different ways of dealing with emergencies. It seems evident that history and cultural factors play an important role in this context.<sup>2</sup>

#### II. Reflections

# A. State of emergency: definition and substantive requirements

5. A state of emergency is a - temporary - situation in which exceptional powers are granted to the executive and exceptional rules apply in response to and with a view to overcoming an extraordinary situation posing a fundamental threat to a country. Examples include natural disasters, civil unrest, epidemics, massive terrorist attacks, economic crisis, war and military threats. The existence of the state of emergency is premised on the dichotomy between the norm(alcy) and the exception. A necessary precondition for declaring a state of emergency should therefore be that the powers provided by normal legislation do not suffice for overcoming the emergency. The ultimate goal of any state of emergency should be for the State to overcome the emergency and return to a situation of normalcy.

# B. Principles governing the state of emergency

6. The only legitimate aim and legitimate ground for adoption of emergency measures is to help the State overcome an exceptional situation. It is the nature, severity and duration of this exceptional situation which determines the type, extent and duration of the measures that the State may lawfully resort to. Emergency measures should respect certain general principles which aim to minimize the damage to fundamental rights, democracy and rule of law. The

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<sup>&</sup>lt;sup>1</sup> See e.g. the order given by the French Conseil d'Etat to the Prime minister and to the Minister of Health in respect of the extent of the emergency measures: <a href="https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-22-mars-2020-demande-de-confinement-total">https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-22-mars-2020-demande-de-confinement-total</a>

<sup>2020-</sup>demande-de-confinement-total.

<sup>2</sup> See, e.g. Jonsson Cornell, Anna, Salminen, Emergency laws in comparative constitutional law, German Law Journal, 2019, 233-249. For national examples, see amongst others <a href="https://verfassungsblog.de/category/debates/covid-19-and-states-of-emergency-debates/">https://verfassungsblog.de/category/debates/covid-19-and-states-of-emergency-debates/</a>.

measures are thus subject to the triple, general conditions of necessity, proportionality and temporariness.

The assessment of the three conditions is not a once-for-ever issue. As the situation changes over time, the measures should reflect these changes (they may become stricter, if the situation gets worse, they have to become less strict, if the situation gets better).3

# a. Overarching principle of the Rule of law

- The existence of the state of emergency is premised on the dichotomous view between the norm(alcy) and the exception. According to the so-called sovereignty approach, the state of emergency lies outside the legal regulation and is not subject to it. According to the so-called rule of law approach, the state of emergency is itself a legal institution, which is subject to legal regulation, though the rules applicable to it might be somewhat different from those applicable in times of normalcy. Current international law as well as virtually all national legal orders adhere to the latter approach.
- The Venice Commission has stated in this respect that "[t]he concept of emergency rule is founded on the assumption that in certain situations of political, military and economic emergency, the system of limitations of constitutional government has to give way before the increased power of the executive. However, even in a state of public emergency the fundamental principle of the rule of law must prevail. 4 The rule of law consists of several aspects which are all of eminent importance and have to be maintained in an integral way. These elements are the legality principle, separation of powers, division of powers, human rights, the State monopoly of force, public and independent administration of justice, protection of privacy, right to vote, freedom of access to political power, democratic participation in and supervision on public decision making, transparency of government, freedom of expression, association and assembly, rights of minorities as well as the majority rule in political decision making.<sup>5</sup> The rule of law further means that governmental agencies must operate within the framework of law, and their actions must be subject to review by independent courts. The legal security of individuals must be guaranteed.6

#### b. Necessity

Under the condition of necessity (direct link), only measures which are necessary to help the State overcome the exceptional situation may be justified. The general purpose of emergency measures is overcoming the emergency and returning to 'normalcy'. This entails that the state of emergency must be terminated immediately after the emergency has passed and the powers established by normal legislation suffice for coping with the situation.

### c. Proportionality

Under the condition of proportionality, States may not resort to measures that would be obviously disproportionate to the legitimate aim (in terms of their severity or the geographical

<sup>4</sup> CDL-AD(2011)049, Opinion on the draft law on the legal regime of the state of emergency of Armenia,

<sup>&</sup>lt;sup>3</sup> Srov. "Las autoridades deben evaluar permanentemente la necesidad de mantener la vigencia de cada una de las medidas temporales de suspensión o restricción adoptadas." CIDH, Resolución No. 1/2020, Pandemia y Derechos Humanos en Las Américas, el 10 de abril de 2020, para 29.

<sup>5</sup> CDL-AD(2006)015, Opinion on the Protection of Human Rights in Emergency Situations, § 34.

<sup>&</sup>lt;sup>6</sup> CDL-AD(2011)049, Opinion on the draft law on the legal regime of the state of emergency of Armenia, § 44.

area covered by the emergency measures). If they have a choice between several measures, they should choose the ones which are less radical.

12. The principles of necessity and proportionality are relevant not only to the extent that emergency measures limit and may even derogate from not only constitutional fundamental rights, but also human rights enshrined in the European Convention on Human Rights (hereinafter ECHR) and the UN International Covenant on Civil and Political Rights (hereinafter ICCPR.) They are pertinent even as restrictions on emergency measures which do not have such effects.

#### d. Temporariness

- 13. Under the condition of temporariness, emergency measures may only be in place for the time the State experiences the exceptional situation. They must be terminated once the exceptional situation is over. They should therefore not have permanent effects. Emergency decrees or other emergency measures should not be (ab)used to introduce permanent changes in legislation or administration. In principle, amendments to the constitution should not be made during states of emergency.
  - e. Effective (parliamentary and judicial) scrutiny
- 14. It is essential that both the declaration and possible prolongation of the state of emergency, on the one hand, and the activation and application of emergency powers on the other hand be subject to effective parliamentary and judicial control.
  - f. Predictability of emergency legislation
- 15. The emergency regime should preferably be laid down in the Constitution, and in more detail in a separate law, preferably an organic or constitutional law. The latter should be adopted by parliament in advance, during normal times, in the ordinary procedure. In order to avoid excesses and time-pressures, even emergency decrees and other emergency measures should, to the extent possible, be drafted in advance.
  - g. Loyal co-operation among state institutions
- 16. As a state of emergency involves derogations from the ordinary rules on distribution of powers, it is important, for the crisis management to be effective and coordinated and for the sake of equality and fairness of treatment of all citizens, that all state, regional and local institutions and bodies respect the principle of loyal cooperation and mutual respect between them.

# C. Grounds for declaring a state of emergency

- 17. A necessary precondition for declaring a state of emergency should be that the powers provided by normal legislation do not suffice for handling the situation.
- 18. The regulation of the grounds for declaring a state of emergency is primarily the task of domestic law. Each country has its own definition of the circumstances that might give rise to a state of emergency. International law, however, imposes certain limits on this regulation. These limits stem from international treaties, especially human rights treaties, international customary law and general principles of international law (common legal institutions present in legal orders across the world). Although relatively wide discretion (margin of appreciation) is left to States in

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this area, this discretion is not unfettered. There is no close list of exceptional situations, which may trigger the declaration of the state of emergency. If, however, emergency measures entail derogation from human rights, then the exceptional situation needs to meet the definition of "public emergency which threatens the life of a nation" (Article 4 ICCPR and Article 15 ECHR).

- So far, States have mostly invoked ongoing armed conflicts, massive terrorist attacks, natural disasters and, more recently, pandemics, to justify such derogatory measures.
- 20. Since the state of emergency is designed for exceptional situations, it should only be applied in case of threats which are truly exceptional (and short-term). It should not, conversely, be applied in case of threats that, however unfortunate and dramatic, are endemic to modern societies and can never be fully eradicated (common crime, sporadic terrorist attacks etc.). The line between the two scenarios, however, cannot be drawn in abstracto.
- 21. While the idea behind the declaration of a state of emergency is a dichotomy between normalcy and the exception, in practice there can be a spectrum between the powers used in the ordinary situation and those used in an emergency. All states can be assumed to already have statutes dealing with public health and epidemics, which grant extensive powers to the government, which may or may not be further delegated to health authorities, to take drastic measures of containment (issue quarantines etc.). Ordinary disease containment powers in some states can be extensive, so that the need for declaring a state of emergency may be lower. The distinction between ordinary and emergency legislation, however, should not be watered down (see para. 33 below).

# D. Declaration of state of emergency

- 22. Two types of emergency powers exist: <u>constitutional</u> and <u>extra-constitutional</u>. In the first case emergency powers are based on the (written) constitution or on an organic or ordinary law enacted with accordance with the constitution; the state officially proclaims a state of emergency (in one of the forms foreseen by national law) and, usually, enacts emergency measures. In the latter case, executive authorities act and are considered to be entitled to act in an emergency on the basis of unwritten (constitutional) principles in order to overcome the emergency; the state enacts emergency measures without officially proclaiming a state of emergency.
- 23. The first form of state of emergency may be considered a <u>de jure</u> one, the second a <u>de facto</u> one. The latter form does not necessarily constitute a violation of international law. The absence of a formal declaration may however preclude States from resorting to certain measures (e.g. under the ICCPR, a derogation from human rights can only take place "/i/n time of public emergency /.../ the existence of which is officially proclaimed", Article 4(1)).
- 24. A system of de jure constitutional emergency powers can provide better guarantees for fundamental rights, democracy and the rule of law, and better serve the principle of legal certainty, deriving therefrom. In its 1995 Report on *Emergency Powers*, the Venice Commission expressed a preference for the de jure form, recommending that "/d/e facto state of emergency should be avoided, and emergency rule should be officially declared".<sup>7</sup>
- 25. The declaration of state of emergency is subject to the rules enshrined in the domestic legal order. The rules must be clear, accessible and prospective (available in advance).
- 26. Within the system of written emergency powers, the basic provisions on the state of emergency and on emergency powers should be included in the Constitution, including a clear

<sup>&</sup>lt;sup>7</sup> Venice Commission, CDL-STD(1995)012, Emergency Powers, 1995, p. 30.

indication of which rights can be suspended and which rights do not permit derogation and should be respected in all circumstances.3 The Venice Commission has previously indicated that "/t/he emergency situations capable of giving rise to the declaration of states of emergency should clearly be defined and delimited by the constitution".9 This is necessary because emergency powers usually restrict basic constitutional principles, such as fundamental rights, democracy and the rule of law. It is up to each State to decide whether one or several emergency regimes will be recognized. If several emergency regimes exist, the differences between them (causes, levels of parliamentary oversight, levels of powers to the government, available emergency measures) should be clearly set in the legal rule. The State should always opt for the least radical regime available in the given circumstances.

- If the emergency concerns only a particular territory, the declaration should include a territorial limitation.
- The declaration should indicate the grounds for the state of emergency and enlist the exceptional powers which can be resorted to. The measures which will subsequently be authorized do not need to be enlisted in a single legal act and, obviously, they may change over time. There should be an explanatory report attached to the original declaration as well as to any legal act introducing emergency measure, that should specify the factual and legal grounds on which the measures are enacted.
- The emergency regime should be laid down in more detail in a separate law, preferably an organic law, if the constitutional system includes such a level. 10 The law should include provisions on the exceptional circumstances where a state of emergency can be declared; proclamation of a state of emergency; activation of the use of emergency powers; application of emergency powers; parliamentary control of proclaiming and terminating a state of emergency and of legal regulations issued by the executive during such a state; judicial control of specific emergency measures.
- It is important that the law on the regime of a state of emergency is adopted in advance, during normal times. Such a law usually covers various kinds of emergency and includes provisions on powers which are relevant only in certain kinds of emergency. Therefore, it is crucial that in the declaration of the state of emergency or in a separate decree, also to be submitted to Parliament for approval, the powers are enumerated which can be applied in the emergency. The same goes for their territorial scope of application. Again, the principle of necessity requires that emergency powers can only be activated for such measures which are considered necessary for overcoming the emergency but fall outside the powers established by normal legislation.
- Not only should the law on the regime of emergency states be adopted under normal conditions. In order to avoid excesses and time-pressures, even emergency decrees and other emergency measures should, to the extent possible, be drafted in advance. This allows for a proper, unhurried, discussion of the balances which should be drawn between competing interests.
- Nonetheless, it may not be excluded that an emergency presents unpredictable challenges. For example, many states have felt the need and chosen to legislate especially for the situation caused by the Corona-virus epidemic, including several states which provide, either

<sup>8</sup> Venice Commission, CDL-STD(1995)012, Emergency Powers, 1995.

<sup>&</sup>lt;sup>9</sup> Venice Commission, CDL-STD(1995)012, Emergency Powers, 1995, p. 30.

<sup>&</sup>lt;sup>10</sup> CDL-AD(2015)037, First Opinion on the Draft Amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia,§ 93.

in their constitution or in ordinary legislation, for wide-ranging emergency measures. 11 This seems to indicate that few, if any states, have felt that their existing emergency laws are adequate for the present emergency, and have chosen to create a new type of special emergency law, or have complemented their existing laws dealing with infectious diseases with additional powers. The peacetime threat to the nation which can assumed to be the "standard" trigger for emergency powers is "widespread civil unrest". One shared feature between this threat and the present epidemic is the need to restrict public assemblies. However, the present epidemic poses different threats, and so requires different powers. <sup>12</sup> In the majority of European states drastic measures have been taken, aimed at limiting the spread of the disease, such as quarantine of large areas where the infection is presumed to be widespread, restricting access to localities where sections of the population are known to be at special risk (old people's care homes etc.), closure of schools and universities, closing parks and other public areas, closing private businesses or limiting their opening hours. These drastic measures have in turn triggered an economic crisis, which in turn has required other emergency powers (financial measures etc.). The normal method for dealing with an economic crisis - various ways to stimulate the economy - is not available because such measures would tend to undermine the health and safety measures aimed at limiting the spread of the disease. The emergency is thus a "complex" emergency (consisting of different threats) and so requiring additional types of measures not usual in the civil unrest situation.

33. Framing ordinary legislation on infectious diseases (or other emergencies) so flexibly as to be able to cover all the possible measures necessary to deal with a pandemic (or threat) on the scale of the present Corona-pandemic carries the danger of bringing about a long-lasting or even permanent emergency. The Venice Commission has warned against this danger.<sup>13</sup>

# E. Declaration, activation and application of emergency powers

34. The legal regime of a state of emergency should make a distinction between the <u>activation</u> and the <u>application</u> of emergency powers. Activation only entails that certain emergency measures can in general be taken if the concrete situation so necessarily requires, and application, in turn, means that the measure is taken. The distinction is important because the principles of necessity and proportionality are specified differently in these two stages. If declaration of a state of emergency and activation of emergency powers are separated, these principles should be respected in three contexts: first, in declaring, prolonging and terminating the state of emergency; secondly, in activating particular emergency powers; and thirdly, in applying these powers.

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Eg, on March 23, 2020, the French legislature adopted a law allowing the executive branch to declare a state of emergency for health-related crises. This law adds several provisions to the nation's Public Health Code, allowing the executive to declare a "state of health emergency" (état d'urgence sanitaire). The Norwegian parliament chose not to trigger a state of emergency, but instead adopted a special law allowing the government to derogate, by means of ordinances, from the requirements of a large number of other laws.

<sup>&</sup>lt;sup>12</sup> CDL-AD(2017)005, Turkey - Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017, para. 73: "The differentiation of different kinds of states of emergency is a common solution in many countries, and a positive one: different types of states of emergency need the utilisation of different means."

means."

13 Turkey - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016, CDL-AD(2016)037, "the longer the emergency regime lasts, the further the state is likely to move away from the objective criteria that may have validated the use of emergency powers in the first place. The longer the situation persists, the lesser justification there is for treating a situation as exceptional in nature with the consequence that it cannot be addressed by application of normal legal tools" (para. 41).

35. A <u>declaration of a state of emergency</u> should precede the activation and use of emergency powers. This holds also for emergencies which fall outside the scope of Art. 15 ECHR and Art. 4 ICCPR.

### F. Competence to declare

36. The declaration of the state of emergency may be issued by parliament or by the executive. In the latter case, it should be subject to immediate parliamentary approval. The primary option should be declaration by parliament or a declaration by the Executive which does not enter into force before approval by Parliament. However, in particularly urgent cases, immediate entry into force could be allowed. Yet, even then, the declaration should be immediately submitted to parliament which can repeal it. It should not be possible for the Executive to extend the state of emergency beyond a certain time period without the involvement of the parliament.

# G. Kinds and scope of the emergency measures

- 37. Public emergency situations involve both derogations from normal human rights standards and alterations in the distribution of functions and powers among the different organs of the State.
  - a. Human Rights protection
    - Exceptions
- 38. The state of emergency may involve restrictions upon human rights. Such restrictions are foreseen in human rights treaties and, since most States have their own internal bills of rights, shall also be enshrined in the domestic legal order. There are three main instruments that human rights law uses, to accommodate exceptional situations.
- 39. The first instrument is exception to human rights. The exceptions exclude from the scope of human rights certain actions taken in time of emergency. For instance, Article 4(3) ECHR stipulates that the prohibition of forced and compulsory labour, enshrined in Article 4(2) does not extend to "any service exacted in case of an emergency or calamity threatening the life or well-being of the community" (par. c)).
- 40. The second instrument is *limitation* to human rights. Limitations are restrictions imposed on non-absolute human rights, such as the right to freedom of expression, the right to freedom of association or the right to private and family life. The legitimate aim of protection of health is contained in Article 5 paragraph 1e, paragraph 2 of Articles 8 to 11 ECHR and Article 2 paragraph 3 of Protocol No 4 to the ECHR. These limitations are subject to a triple test of legality (are prescribed by law), legitimacy (pursue a legitimate aim) and necessity (are needed to reach the aim and proportionate to it).
- 41. The third instrument is *derogation*. Derogations are temporary suspensions of certain human rights guarantees. <sup>15</sup> The possibility to derogate is conditioned on the situation of "public emergency which threatens the life of the nation" (Article 4(1) ICCPR) or a similar extremely

14 See also CDL-AD(2006)015, Opinion on the Protection of Human Rights in Emergency Situations, Opinion No. 359/2005, 4 April 2006.

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<sup>&</sup>lt;sup>15</sup> See also Higgins, Rosalyn, Derogations Under Human Rights Treaties, *British Yearbook of International Law*, Vol. 48, 1976-77, pp. 281-320; Cowell, Frederick, Sovereignty and the Question of Derogation: An Analysis of Article 15 of the ECHR and the Absence of a Derogation Clause in the ACHPR, *Birbeck Law Review*, Vol. 1, 2013, pp. 135-162.

serious situation.<sup>16</sup> Implied derogation is not possible.<sup>17</sup> Measures of derogation have to meet the condition of proportionality. States may thus only derogate "to the extent strictly required by the exigencies of the situation" (Article 4(1) ICCPR). The 'extent' refers to the severity of measures, the geographical area they cover and the period for which they stay in place.<sup>18</sup> The measures, moreover, must not involve discrimination<sup>19</sup> and/or be inconsistent with other obligations arising under international law, e.g. obligation under international humanitarian law or international refugee law. Derogation may be used with respect any human rights except for those that are considered non-derogable. The common core of non-derogable right comprises the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery or servitude, and the right to be free from retroactive application of penal laws.<sup>20</sup> Fundamental judicial guarantees are also increasingly seen as non-derogable.<sup>21</sup> Derogations also entail procedural obligations (notification to the depository of the relevant human rights treaties) that should make external oversight easier.<sup>22</sup>

- 42. Derogation is not always necessary. As indicated above, the ECHR provides for the possibility to restrict several rights on account of protection of health (Article 5 provides for an explicit ground to detain people due to infectious diseases). Other rights contain more general grounds for restriction, and the European Court of Human Rights (hereinafter ECtHR) takes account of the context when interpreting the extent of rights. Refraining from making a derogation may convey the message that a crisis may be handled without resorting to exceptional powers; on the other hand, a derogation may give a clear indication that certain exceptional measures are truly exceptional and do not "make the law". As the Secretary General of the Council of Europe has stressed, "[i]t is for each state to assess whether the measures it adopts warrant such a derogation, depending on the nature and extent of restrictions applied to the rights and freedoms protected by the Convention. The possibility for states to do so is an important feature of the system, permitting the continued application of the Convention and its supervisory machinery even in the most critical times.<sup>24</sup>
- 43. States have a margin of discretion to assess whether a public emergency exists and whether derogations are needed. It is for the national authorities to assess, in view of the seriousness of the situation and taking account of all the relevant factors, if and when there is a

<sup>&</sup>lt;sup>16</sup> The ECHR speaks about "war or other public emergency threatening the life of the nation" (Article 15(1).

<sup>&</sup>lt;sup>17</sup> See Cyprus v. Turkey, 4 October 1983, Report of the European Commission on Human Rights.

<sup>18</sup> The UN Human Rights Committee specifies that "/t/his requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency". UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), General Comment 29, States of Emergency (article 4), 31 August 2001, para 4.

<sup>&</sup>lt;sup>19</sup> The prohibition of discrimination features explicitly in the ICCPR. It is not mentioned in Article 15 of the ECHR but has been read into it by the ECtHR (see ECtHR, *A. and Others v. the United Kingdom*, Application No. 3455/05, Grand Chamber, 19 February 2009, para 190).

<sup>&</sup>lt;sup>20</sup> The catalogue in the ECHR is limited to these four rights. The catalogue in the ICCPR adds the right not to be imprisoned on the grounds of inability to fulfil a contractual obligation, the right to recognition as a person before the law, the right to freedom of thought, conscience and religion and, for State Parties to the 1989 Second Protocol to the ICCPR, the prohibition of the death penalty.

<sup>&</sup>lt;sup>21</sup> In its General Comment No. 32, the UN Human Rights Committee held that "/t/he guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of nonderogable rights". UN Doc. CCPR/C/GC/32 (2007), General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para 6.

<sup>&</sup>lt;sup>22</sup> Notifications under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

<sup>&</sup>lt;sup>23</sup> Hassan v. the United Kingdom, 16 September 2014 (Grand Chamber).

 $<sup>^{24}</sup>$  Secretary General, Information Document: Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, SG/Inf(2020)11

public emergency threatening the existence of the nation and if a state of emergency needs to be declared to combat it. Likewise, it is for the state authorities to decide on the nature and extent of the derogations needed to overcome the emergency. However, although states have a wide margin of discretion in this area, their powers are not unlimited, and the European Court of Human Rights exercises some supervision over these powers.<sup>25</sup>

- Certain groups of individuals might be particularly vulnerable to human rights abuses in times of emergency. These include journalists or bloggers, minorities (particularly those that might be somehow associated with the exceptional situation), human rights defenders and whistle-blowers and members of political opposition. It is important to make sure that members of these vulnerable groups are not specially targeted (de jure or de facto) by emergency measures. At the same time, proactive measures should be taken to grant access to information to the population.
- In addition to providing for grounds for restrictions of human rights in order to protect public health, it should be recalled that "Article 2 [ECHR] requires the State to take appropriate steps to safeguard the lives of those within its jurisdiction (see L.C.B. v. the United Kingdom, cited above, § 36, and the decision in Powell, cited above); in the public-health sphere, these positive obligations require States to make regulations compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives.26
  - ii. Human Rights likely to be affected by the state of emergency
- Under states of emergency, and in particular during a pandemic like the present one, the enjoyment of human rights may be affected in numerous areas of law.
- The rights of freedom of assembly, freedom of movement and detention are on a sliding scale.27 Property rights will be affected in a number of ways. Central or local government may have powers to take over and use public or private land to provide for emergency housing, field hospitals etc.28 As noted, temporary expropriations of essential resources may have to occur and temporary blockages on export/import.<sup>29</sup> Powers may be taken to close privately owned areas (shopping centres, sporting facilities) to discourage people congregating. 30
- As regards the most common human rights restriction, that is, on freedom of movement, in a quarantine the focus is usually on keeping infected, or possibly infected, people in a small area; certain territorial areas or regions may be temporarily closed down. Covid-19 is a high threat to older people, and certain other risk groups, and the focus has partially shifted to keeping these non-infected people isolated from potentially infected people. The demographics in states varies,

<sup>&</sup>lt;sup>25</sup> CDL-AD(2016)010, Turkey - Opinion on the Legal Framework governing Curfews, § 67.

<sup>&</sup>lt;sup>26</sup> ECtHR, Lambert v. France judgment of the ECtHR (5.6.2015) with further references.

<sup>&</sup>lt;sup>27</sup> ECtHR, Austin and others v UK, [GC], Nos. 39692/09, 40713/09 and 41008/09, 15 March 2012. The applicants had been "kettled" in small street, without access to toilets, for between 4-7 hours.

<sup>&</sup>lt;sup>28</sup> Eg in the US, upon a governor's request, the president may—for a ten-day period before a major disaster or emergency declaration—direct the Department of Defense (DoD) to use its resources "for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property" (42 U.S.C. 5170b (c)(1)). After a major disaster, the president may call upon the DoD as a "federal agency" to provide "general federal assistance" under Sec. 5170a or "essential assistance" under Sec. 5170b.

<sup>&</sup>lt;sup>29</sup> For EU states, there are important issues here relating to free movement of goods.

<sup>30</sup> Such powers have been taken in eg Sweden and France. In Norway, to avoid overloading health care in rural areas, the government prohibited (with certain exceptions) people from using their one's own holiday homes, where these were situated in another local authority area than the one where the person was legally resident (which obviously raises an issue under ECHR Article 8, even if it can be justified).

but all European states have a relatively large populations of old people. « Old people curfews » are conceivable, although whatever age is taken as the threshold is likely to be arbitrary. Introducing such a curfew will be politically very difficult of course (compared to curfews for younger teenagers, who do not have the vote).

- The historical evidence is that during emergencies the abuse of human rights is the greatest.31 The question arises as to whether there is any basis at all for limiting freedom of expression. This concerns in particular the problem of spreading of (false) rumours on social media.32 It can be that offences which might apply in ordinary times, or during the declaration of a state of emergency, can be used in such circumstances, e.g. deliberately inducing panic in the public. An argument could be that if making a bomb hoax is punishable, even to be seen as terrorism, then deliberately spreading an « epidemic » hoax can also be. Existing powers to require internet service providers to remove « offensive » content might also be employed to restrict access to grossly misleading information. Obviously, such powers and offences have a great potential for abuse by authoritarian governments, a point recognised by the governments of 16 EU member states in the statement they have issued on the rule of law during the crisis.33
- In an emergency context, however, restricting freedom of expression would deprive the public of an essential check on the increased executive powers. The need to gather, circulate and discuss information on the threat (the virus) and to enable public debates on legitimate differences of expert opinions, for example on the best containment strategies,34 strengthens the need for a free "market place of ideas". Free, accurate, responsible and timely reports on all aspects of the crisis cannot but help the public decide for itself and monitor the actions of the government. Responsible journalism may counter fake news that aim at spreading panic.
- Requirements of <u>public service</u> may be introduced (see A4 ECHR); the increased needs of the health services can probably be met by volunteers, but there may in very extreme situations be a need to require citizens to perform public service.
- As concerns data protection/surveillance (Article 8 ECHR), it has been pointed out that "data protection can in no manner be an obstacle to saving lives and that the applicable principles always allow for a balancing of the interests at stake. In accordance with Convention 108+ it is crucial, that even in particularly difficult situations, data protection principles are respected and therefore it is ensured that data subjects are made aware of the processing of personal data related to them; processing of personal data is carried out only if necessary and proportionate to the explicit, specified and legitimate purpose pursued; an impact assessment is carried out before the processing is started; privacy by design is ensured and appropriate measures are adopted to protect the security of data, in particular when related to special categories of data such as health related data; data subjects are entitled to exercise their rights."35 Metadata has been used to

<sup>12,</sup> of democracy. technique and Science http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1995)012-e Powers. 32 On Sunday, (22 March), Bulgarian President Rumen Radev vetoed proposed amendments to the penal code that would have imposed a fine of more than €5,000 and jail terms of up to three years for

spreading "false information" about an epidemic, fearing the consequences for free speech. (https://www.euractiv.com/section/justice-home-affairs/news/coronavirus-derogations-from-humanrights-send-wrong-signal-say).

https://www.regeringen.se/artiklar/2020/04/gemensamt-uttalande-rule-of-law-in-the-context-of-thecovid-19-crisis/

The Swedish and Dutch governments, for example, have chosen quite different containment strategies than other governments in Europe.

<sup>35</sup> See Joint Statement on the right to data protection in the context of the COVID-19 pandemic by Alessandra Pierucci, Chair of the Committee of Convention 108 and Jean-Philippe Walter, Data Protection Commissioner of the Council of Europe, 30 March 2020, https://www.coe.int/en/web/dataprotection/statement-by-alessandra-pierucci-and-jean-philippe-walter

follow people on a general, i.e. aggregated level.36 Where the data is aggregated and anonymized this will not raise a personal data issue. However, use of metadata on an individual level will, e.g. use of metadata to catch quarantine/isolation evaders.

- In respect of employment law, it may be necessary to change the conditions of work, for example by relaxing some conditions (such as the requirements to produce medical certificates in order to receive unemployment or sick leave benefits). Exceptions from maximum working hours may be allowed. Governments may decide temporary subsidization of businesses.
- Similarly, governments may decide to relax conditions under social security law, such as the requirements to report for work, to produce medical certificates in order to receive benefits, under health and safety law, relaxing controls on working practices, equipment and premises approval procedures. Regulations regarding the storage of dead bodies and burial requirements may have to be relaxed as well (e.g. UK Coronavirus Act 2020).
- Civil law, and particularly tort law, will require derogations, for example for indemnifying people for acting outside of their authority, when this was necessary for the public good, suspending the duty to fulfil certain contracts (e.g. to export medical technology to other states).
- In the area of financial/tax law, temporary tax relief may be provided for businesses. 56.
- In the area of education, important measures are likely to be necessary: closure of schools, colleges and universities; requirements to switch to remote teaching; provision of 57. education for children of essential workers.
- Governments may also decide to prohibit religious ceremonies or impose limitations or conditions on their celebration.
  - b. Distribution of powers
- The declaration of the state of emergency often entails horizontal and vertical transfers of 59. competences and powers.
- The types of measure likely to be necessary in a pandemic emergency will depend upon a number of factors. Totally new powers are unlikely to be necessary. Rather the issue is which organ of the state should have competence to issue such measures. Most states provide basic rules in their constitutions, or as a result of case law of constitutional courts, dealing with delegation of norm-issuing competence, as well as the division of power between central, regional and local authorities. Of course, relevant here is not simply the formal legal division of power but the question of the practical control over resources. Another factor is what flexibility is built into the normal legislation. The larger the area which is regulated in a state (public sector, regulated private sector) and the more detailed the level of regulation, the more regulations which will probably need to be relaxed or changed. For example, de-regulation processes in many states have led to health services now partly being provided by private companies. Powers may thus have to be taken over such companies, expropriating equipment or allocating the use of their resources (personnel etc) in public hospitals.
- Dealing with a state of emergency necessitates, perhaps even more than in ordinary times, respect by all state, regional and local institutions and bodies of the principle of loyal cooperation and mutual respect between them.

<sup>36</sup> https://www.google.com/covid19/mobility/

- Delegation of legislative power from the legislature to the executive i.
- During the state of emergency, the executive may, temporarily, exercise certain powers that would be otherwise reserved to the legislative. The exercise has to have a clear and prospective legal basis.
- Rules setting out limits on delegation of norm-giving competence are commonplace in constitutions. These can be federal-state, presidential-parliamentary, but also governmentaladministrative, governmental-local/regional authority. The Rule of law Checklist, 1.4.i, provides for the supremacy of the legislature. The constitutions of certain states permit, under relatively narrowly defined circumstances, the government to legislate by governmental decree.37 Other states constitutions explicitly forbid this.38 In its 2019 Checklist on the Relationship Between The Parliamentary Majority and the Opposition In A Democracy, the Venice Commission expressed scepticism with respect to the idea a general legislative power being given to the executive directly by the Constitution. It stressed that "/a/t the least, such powers should be limited in time and in scope /... / and may only be used for good reasons, such as a state of emergency /... /, and should be phased out as quickly as possible".39
- The power of the executive to issue legislative acts in times of emergency should be limited both in terms of content and of time: such acts should only relate to issues related to the exceptional situation and they should not remain in force beyond the state of emergency (unless confirmed and prolonged by the legislative). Appropriate "sunset clauses" should also include clear time limits on the duration of these exceptional measures. The Commission has also criticized the excessive resort to legislative decrees which have the force of law, when this becomes, in practice, a means of circumventing the legislature.40
- The benchmark of the Rule of Law checklist on supremacy of the legislature further provides that when legislative power is delegated by Parliament to the executive, the objectives, contents, and scope of the delegation of power should be explicitly defined in a legislative act (RoL checklist1.4.iii). As is noted in the commentary (para 49), "[u]nlimited powers of the executive are, de jure or de facto, a central feature of absolutist and dictatorial systems. Modern constitutionalism has been built against such systems and therefore ensures the supremacy of the legislature".
- In devising its rules on delegation of power, each state balances different factors. The most important of these is democratic legitimacy (of the parliament, but also of elected local authorities). In a democratic state, general norms which cause a significant impingement on human freedom, and which affect large groups of people or the whole population, require the imprimatur of the people's representatives, the legislature. For a "deliberative democracy" the legitimation process is in the discussion in itself, not simply the authoritative "stamping" that the legislature provides when it transforms a government legislative proposal into a law. A legislative proposal should provide a well-prepared basis for the parliament to adopt a law. The proposal should be well drafted (technically speaking). The procedure in parliament should follow a clear and predictable pattern (no unexpected procedural manoeuvres etc).

<sup>&</sup>lt;sup>37</sup> E.g. Estonia, Italy and Georgia. See Timea Drinóczi, Legislative Process, in U. Karpen, H. Xanthaki (eds) Legislation in Europe: A Comprehensive Guide for Scholars and Practitioners, Portland, Hart Publishing, 2017, p. 38.

<sup>38</sup> Ibid., Drinóczi mentions the Czech republic and Bulgaria.

<sup>&</sup>lt;sup>39</sup> CDL-AD(2019)019, Parameters On The Relationship Between The Parliamentary Majority And The Opposition In A Democracy: A Checklist, Opinion No. 845/2016, 24 June 2019, paras 119-121.

<sup>&</sup>lt;sup>40</sup> See e.g. CDL-AD(2019)014, Opinion on Romanian Emergency Ordinances Geo No. 7 And Geo No. 12 Amending the Laws of Justice.

- To maintain the technical legal quality, but also to examine the question whether the proposal will, in fact, help solve the problem it is supposed to deal with, certain states provide for the possibility to trigger abstract constitutional review before the constitutional court. Other states provide for independent, expert legal input to the legislative process in the form of a non-binding opinion from a group of judges.41 Whether or not a state has such a mechanism, all states should, at some point in the legislative process, have a stage where the question is posed whether the proposed norms are likely to solve, ameliorate or at the very least not exacerbate the problem which they are designed to solve. Thus, if there is not a dedicated mechanism in the legislative process, then the parliament at least should have available to it, or the possibility of commissioning, an expert objective analysis of the problem and the possible solutions.42
- Where such an independent mechanism exists as part of the legislative process it tends to apply only for laws, not government ordinances. Delegating norm-issuing power to the government means that these quality-control mechanisms no longer apply.
- Expert competence is an important factor which affects the delegation issue and this can argue against an issue only being capable of being regulated by the legislature. Expert competence is usually to be found in the administrative agencies of the state, although in states with large government departments, it can also exist there. Thus, where expert competence is particularly important, delegation to government departments, or sub-delegation to administrative agencies, can be justified. Obviously, the views of medical experts should weigh very heavily when it comes to issuing norms designed to deal with a pandemic. Expert advice is, or should be, formulated on the basis of scientific knowledge, and proven experience. Another related factor is the need for speed. This too can argue against an issue only being capable of being regulated by the legislature which applies, or at least should apply, a relatively slow deliberative process.
- A pandemic which risks great loss of life requires good decision-making (rational, capable of dealing with the problem, providing for a rational use of available resources), but also quick decision-making. The speed factor thus applies with greater, or much greater force, in an emergency where the situation can change rapidly. Concentration of decision-making power in the government, or a single government minister, usually creates a greater potential for speed; there is obviously less, or even no, need to consult, to debate, to build a consensus.
- The dangers of this power concentration are equally obvious. The values behind the other factors set out above (democratic legitimacy etc.) risk being damaged. There are various implications. A solution which combines respect for the supremacy of the legislature with the need for speed and decisive action is to provide that all government ordinances issued under delegated powers are speedily (or within a specified period of days) put before the legislature either for approval, or to give it an opportunity to disapprove these. Such a parliamentary power must be framed to allow it not to approve, or disapprove of, specific provisions of an ordinance, rather than an «all or nothing » approach to the ordinance as a whole. This in turn means that the parliament must obviously continue to sit: dissolution of the parliament should not be possible during the state of emergency. If the mandate of the parliament expires in the course of the state of emergency and if it is not possible to hold regular elections, the mandate should be extended till the end of the state of emergency.<sup>43</sup> The legal consequences of disapproval/refusal to approve

<sup>&</sup>lt;sup>41</sup> E.g. the Dutch Raad van state, <a href="https://www.raadvanstate.nl">https://www.raadvanstate.nl</a> or the Swedish lagradet.

<sup>&</sup>lt;sup>42</sup> RoL Checklist 1.5.v. « Where appropriate, are impact assessments made before adopting legislation (e.g. on the human rights and budgetary impact of laws » See also OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264238770-en which requires inter alia that regulations serve clearly identified policy goals, and are effective in achieving those goals.

43 CDL-STD(1995)012, Emergency Powers "This implies a continuity of parliamentary life during the

period of emergency. For that reason, some constitutions explicitly state that the legislature cannot be dissolved during the exercise of emergency powers."

must also be spelled out.<sup>44</sup> Where the government relies heavily on its medical experts in issuing measures, which will usually be the rational approach in a pandemic, the parliament might consider organizing hearings with these, and other independent experts, to obtain as full a picture as possible of the problems and their possible solutions.

# ii. Other institutional changes

- 72. Other institutional changes may also take place during a state of emergency, for instance the transfer of certain police powers to the military authorities or the establishment of military tribunals and the transfer of certain competences from ordinary courts to these tribunals. Such institutional changes should be foreseen by the domestic legislation but should be limited to military crisis and to the armed forces; if the military is involved in enforcing curfews or quarantine measures, it should subordinated to civilian authorities.
- 73. The central government will usually have control over the military, usually including the power to "federalize" local defence units. Such rules fall within the subject of military aid of the civil power and/or legislation on natural disasters.<sup>45</sup>
- 74. Central control over regional or local public health care may asserted in order to redistribute resources. This is controversial where the central resources are less than the local resources, and so bottlenecks arise, or decisions are not made on an expert basis.
  - Restrictions imposed by the Executive on the functioning of elected bodies and courts
- 75. In the state of emergency, the functioning of parliament, <sup>46</sup> local self-governing bodies and also courts, including constitutional courts may be hampered by the general restrictions imposed during the state of emergency by the executive. <sup>47</sup> Such restrictions need to meet the criteria of

<sup>44</sup> CDL-AD(2009)024, Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine, "The Verkhovna Rada has to approve the decrees introducing martial law or a state of emergency. But it is not explained what are the consequences if the Verkhovna Rada declines to approve them. It seems advisable to grant to the President only a power of "first reaction" and to clarify that such a decree loses its validity if it is not approved by the Verkhovna Rada" (para 72).

<sup>45</sup> E.g. the US Congress, after wide spreading looting in the wake of Hurricane Katarina in September 2006 modified Section 334 of the Insurrection Act of 1807 to authorize the president to use armed forces to disperse "to restore public order and enforce the laws of the United States when, as a result of natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, the president determines that domestic violence has occurred to such an extent that the constituted authorities of the state or possession are incapable of maintaining public order to suppress in any state, any insurrection, domestic violence, unlawful combination or conspiracy".

In France, for example, the Conference of presidents of the National Assembly, in agreement with the government, decided to reduce the parliamentary activity to the control of the urgent and essential texts linked with the Coronavirus-COVID19 crisis and to the control of the acts of the executive through the questions on current issues (QAG): <a href="http://www2.assemblee-the-nationale-fr/static/presse/communique-presse-presidence-170320.pdf">http://www2.assemblee-the-nationale-fr/static/presse/communique-presse-presidence-170320.pdf</a>. Article 115e of the German nationale fr/static/presse/communique-presse-presidence-170320.pdf. Article 115e of the German Basic Law [Joint Committee] provides: (1) If, during a state of defence, the Joint Committee by a two-thirds majority of the votes cast, which shall include at least a majority of its members, determines that insurmountable obstacles prevent the timely convening of the Bundestag or that the Bundestag cannot muster a quorum, the Joint Committee shall occupy the position of both the Bundestag and the Bundesrat and shall exercise their powers as a single body. (2) This Basic Law may neither be amended nor abrogated nor suspended in whole or in part by a law enacted by the Joint Committee. The Joint Committee shall have no power to enact laws pursuant to the second sentence of paragraph (1) of Article 23, paragraph (1) of Article 24 or Article 29.

<sup>47</sup> In France, for example, the Prime Minister tabled on 18 March 2020 a draft "organic law to face the Covid-19 epidemic", proposing to suspend until 30 June 2020 the three-month deadline for the Council of State and the Court of Cassation to submit priority issues of constitutionality ("questions prioritaires

necessity, proportionality and temporariness and they should never completely prevent the relevant organs from exercising their constitutional functions.

Parliament should by all means continue to meet and function during the emergency, if necessary under previously adopted special rules, which could provide, for instance, that only a small number of MPs should be physically present (selected from every party, voting on behalf of the entire parliamentary group); voting over the internet could also be provided.48

## H. Procedure of adoption of emergency measures

The procedure of adoption of emergency measures should be inclusive for civil society, either before the proposal reaches the parliament or simultaneously as the proposal is discussed in the parliament. In both cases, sufficient time has to be made available.<sup>49</sup> The Commission has criticized on several occasions the adoption of legislation without a proper opportunity for discussion in either the parliament or civil society.50

### I. Duration of the state of emergency

The declaration of the state of emergency should be always issued for a specific period 78. of time, which moreover should not be excessively long, and should be terminated before the expiry of the period if the emergency has been overcome and exceptional measures are no longer necessary. Declarations with no specific time limit, including those whose suspension is made conditional upon overcoming the exceptional situation, should not be considered as lawful.51 At the same time, it is possible to prolong the declaration for so long as it is necessary to overcome the exceptional situation. However, as the Venice Commission has previously held "the longer the emergency regime lasts, the further the state is likely to move away from the objective criteria that may have validated the use of emergency powers in the first place. The longer the situation persists, the lesser justification there is for treating a situation as exceptional in nature with the consequence that it cannot be addressed by application of normal legal tools".52 The prolongation of the state of emergency should not enter into force before parliamentary approval. In addition, there should be an obligation to terminate the state of emergency immediately upon overcoming the emergency; this means that the state of emergency has to be terminated as soon as the emergency can be addressed by the ordinary legal mechanisms, even though at that moment some restrictions might still be necessary, on a smaller scale.

de constitutionnalité") to the Conseil Constitutionnel, and the three-month deadline for the latter to decide it, on account of the impossibility for these courts to hold collegiate meetings. The Prime Minister sought the opinion of the Conseil Constitutionnel which by decision n° 2020-799 DC of 26 Mars 2020 ruled that the organic law is constitutional, noting in particular that it "does not call into question the exercise of this remedy, nor does it prohibit the ruling on a priority issue of constitutionality during this period". Organic law no. 2020-365 was promulgated on 30 March 2020.

<sup>48</sup> In France for example the number of MPs, government representatives and staff allowed to be present in the hemicycle has been limited ("format restraint") by decision of the National Assembly in a manner allowing for respect for sanitary requirements and representation of political sensitivities. Seats for MPs are allocated in a proportional manner to the number of members of each group.

<sup>49</sup> See RoL Checklist 1.5.iv. 50 see e.g. Venice Commission/ODIHR, CDL-AD(2018)013, Joint Opinion on the Provisions of the So-Called "Stop Soros" Draft Legislative Package which directly affect NGOs (Hungary), Venice Commission CDL-AD(2016)026 Opinion on the Act on the Constitutional Tribunal (Poland).

<sup>&</sup>lt;sup>51</sup> See also SG/Inf(2020)11, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 7 April 2020, para 2.2.

<sup>52</sup> CDL-AD(2016)037-e, Opinion on Emergency Decree Laws N°s 667-676 adopted following the failed coup of 15 July 2016, Opinion No. 865/2016, 12 December 2016, par 41.

# J. Control of the declaration and prolongation of the state of emergency and of emergency measures

Because the regime of emergency powers affects democracy, fundamental and human rights, as well as the rule of law, control of the declaration and prolongation of the state of emergency, as well as of activation and application of emergency powers is vital. Both parliamentary and judicial control should be possible: parliamentary scrutiny if the decision is issued by the executive and judicial review if it is issued by the parliament or the executive.

### a. Parliamentary oversight

- Legislative control over the acts and actions of emergency rule authorities and special 80. procedures for such control are important for the realisation of the rule of law and democracy.
- Parliament should be able to exercise control in different stages: declaration, prolongation and termination of a state of emergency, activation of emergency powers; application of emergency powers. As regards the latter, emergency decrees where the executive has used legislative powers which under normal conditions belong to parliamentary legislator, should be immediately submitted to Parliament which should be able to repeal them.
- Parliaments should have the power to review the state of emergency at regular intervals and to suspend it as necessary. Furthermore, the post hoc general accountability powers of Parliament, i.e. the right to conduct inquiries and investigations on the execution of Emergency Powers, are extremely important for assessing government behaviour.53
- The legislature could also make plain its intention, after the emergency has come to an end, to subject all government measures adopted to deal with the pandemic to deep scrutiny, in order to see whether there has been compliance with the principles of necessity and proportionality. This scrutiny, and possible criticism or other more-far reaching parliamentary measures of accountability should bear in mind the state of medical and other knowledge at the time.54 Granting a type of national "margin of appreciation" in this way, means that the legislature is not being "wise after the fact" at the same time as it maintains its supremacy over government. An open declaration that post-hoc scrutiny will happen can hopefully have the effect of deterring major overreactions on the part of government.
- Participation of the opposition in the approval of the declaration of the state of emergency, and/or through ex post scrutiny of the emergency decrees or any extension of the period of emergency should be ensured. A qualified majority could be required for the prolongation of the state of emergency beyond the original period. All political parties should be involved in the discussion before a possible decision to postpone elections (see below).

### b. Judicial power

- Next to Parliament, the judicial system plays a crucial role in the control of the executive's prerogatives during states of emergencies, taking decisions on the legality of a declaration of a state of emergency as well as reviewing the legality of specific emergency measures.
- Judicial control of the declaration of state of emergency may be limited to the control of the procedural aspects of the declaration. If, however, emergency measures involve derogations from human rights, the substantive grounds for the state of emergency shall be subject to judicial review as well.



<sup>&</sup>lt;sup>53</sup> CDL-AD(2008)004, Report on the Democratic Control of the Armed Forces, § 252.

<sup>54</sup> CDL-AD(2008)004, Report on the Democratic Control of the Armed Forces: "the post hoc general accountability powers of Parliament, i.e. the right to conduct inquiries and investigations on the execution of Emergency Powers are extremely important for assessing government behaviour".

- Judicial review over the acts of the emergency rule authorities, notably decisions on application of emergency powers, as opposed to the declaration itself, should always be possible. Decisions taken by the emergency rule authorities are typical unilateral administrative acts and actions and for this reason they should be reviewed by courts. 55 Even if certain decisions were immediately executable, ex post judicial review should be allowed. The judicial system must provide individuals with effective recourse in the event that government officials violate their human rights. Courts should exercise control so that the derogatory measures do not – either in general or in specific cases - exceed the boundaries of legality and the limits of what is strictly required to deal with the emergency situation,58 and do not infringe non-derogable rights. The right to take proceedings before a court on questions related to the lawfulness of emergency measures must be safeguarded through the independence of the judiciary.<sup>57</sup> Meaningful judicial review of emergency measures by independent courts renders it necessary for the government to provide convincing justification of how these measures comply with the necessity and proportionality principles.
- Judicial review should be carried out preferably by the Constitutional Court, in countries 88. where it exists, or the Supreme Court, a special Chamber of which must have the power to order interim measures, upon request of either a substantial number of minority MPs or the Head of State. Ordinary courts and administrative courts should review relevant decisions.<sup>58</sup>
- Moreover, the judicial system must continue to ensure the right to fair trial. The functioning of the judiciary should not be restricted except when absolutely necessary or when the functioning is factually impossible.
  - c. Oversight by the Ombudsman or National Human Rights Institutions
- Through their mandate to promote and protect human rights,<sup>59</sup> Ombudsman institutions, in countries where they exist, and National Human Rights institutions<sup>60</sup> may contribute crucially to flag human rights issues during emergency times and assist citizens affected by emergency measures. They may therefore effectively complement parliamentary and judicial control.
  - d. Monitoring by the media
- In addition to parliamentary and judicial control, control by free media is essential. The principles of necessity and proportionality require special attention in activating and applying measures which affect the freedom of media (see above).

### K. Elections under states of emergency

In ordinary circumstances, elections must be held periodically. Article 3 of the First Additional Protocol to the ECHR provides for a fundamental right to participate in free elections at reasonable intervals in the choice of the legislature. Article 25 (b) ICCPR provides for a fundamental right to take part in periodic elections. Postponement is a restriction to the periodicity



<sup>&</sup>lt;sup>55</sup> CDL-STD(1995)012, Emergency Powers - Science and technique of democracy No. 12 (1995), p. 29.

<sup>56</sup> See as examples:

https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2020/bvg20-025.html https://gjk-ks.org/en/decisions-from-the-review-sessions-held-on-30-and-31-of-march-2020/ http://www.raadvanstate.be/?page=news&lang=fr

https://prishtinainsight.com/government-decision-restricting-movement-ruled-unconstitutional/

<sup>&</sup>lt;sup>57</sup> CDL-AD(2008)004, Report on the Democratic Control of the Armed Forces, § 253.

<sup>58</sup> CDL-AD(2015)037, First Opinion on the Draft Amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia, § 118.

<sup>59</sup> CDL-AD(2019)005, Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles").

<sup>60</sup> http://ennhri.org/news-and-blog/covid-19-how-are-nhris-in-europe-responding/

of elections and has to be foreseen in the law, be necessary in the concrete circumstances and be proportionate.

- According to the ECtHR case-law, Article 3 of the First Additional Protocol to the ECHR is in principle not applicable to elections for local authorities. 61 The right to participate in periodic local or regional elections is protected by the European Charter for Local Self-Government as well by national constitutions. A restriction of that right must be in accordance with the principles of legality, proportionality and necessity, as well.
- In addition to elections held due to the end of legislative period, some situation can lead to early elections. In some countries, early elections have to be held in case the parliament is unable to establish a government or adopt the state budget for a longer period. There are possibilities to hold early elections in other cases such as request by the government or by the president. Thus, the decision to hold early elections may be due to the inability of cooperation between parliamentary parties or on a wider margin of appreciation containing political motives. The aforementioned fundamental right to request the elections to be held periodically is not restricted in case of early elections. Still, the necessity to have early elections may result from the inability of the parliament to fulfil its tasks, including the absence of government.
- Article 15 ECHR as well as Article 4 ICCPR allow a derogation from the obligations to guarantee most of the fundamental rights, including electoral rights, in time of war or other public emergency threatening the life of the nation" or "in time of public emergency which threatens the life of the nation". Such circumstances may relate to war or other ongoing armed conflicts, high level terrorist attacks, natural disasters or epidemic.
- In these circumstances, the fairness of the elections might be doubtful. In order for the elections to be in accordance with the main principles stated in the Code of Good Practice in Electoral Matters<sup>62</sup> – universal, equal, free, secret and direct suffrage –, it must be possible not only to give a vote, but also to have open and fair electoral campaigning. A genuine campaign and real public debate are just as important for democratic elections as the opportunity to vote. The Venice Commission has previously stressed that "[t]he holding of democratic elections and hence the very existence of democracy are impossible without respect for human rights, particularly the freedom of expression and of the press and the freedom of assembly and association for political purposes, including the creation of political parties. Respect for these freedoms is vital particularly during election campaigns. Restrictions on these fundamental rights must comply with the European Convention on Human Rights and, more generally, with the requirement that they have a basis in law, are in the general interest and respect the principle of proportionality".63 There is a risk that fundamental electoral principles will be undermined during a state of emergency, in particular the principle of equality of opportunity and freedom of voters to form an opinion. Similarly, it is axiomatic that derogation from individuals' civil and political rights creates a risk that the results are not democratic. 64
- There is no general principle to avoid elections during the state of emergency and postpone them until the situation is ordinary, normal again. 65 In many states, the Constitution explicitly forbids dissolution of parliament during a state of war (state of martial law) or a state of

<sup>61</sup> ECtHR, Cherepkov v. Russia (dec.), no. 51501/99, 25 January 2000.

<sup>&</sup>lt;sup>62</sup> CDL-AD(2002)023-rev2-cor., Code of Good Practice in Electoral Matters: Guidelines (19 October

<sup>&</sup>lt;sup>63</sup> CDL-AD(2002)023-rev2-cor., Code of Good Practice in Electoral Matters: Guidelines (19 October 2002), § 60.

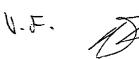
<sup>64</sup> CDL-AD(2017)005, § 34.

<sup>65</sup> Elections have been held in several States during the Covid-19 pandemic: http://www.electionguide.org/.

emergency.<sup>66</sup> Under several constitutions an extraordinary situation will postpone, or provide an opportunity to postpone upcoming elections, for example by extending the term of parliament (Croatia, Italy, Germany, Greece, Poland, Lithuania, Slovenia, Spain, Hungary and Canada). Similarly, a situation of emergency may prohibit the dissolution of parliament (Germany, Spain, Portugal, Poland, Hungary, Russia). In Turkey, a declared state of war causes elections to be postponed (Article 78 of the Constitution).<sup>67</sup> In Estonia, the parliament, the President, and representative bodies of local authorities may not be elected, nor may their authority be terminated during a state of emergency or a state of war. If the term of office of the parliament, the President or representative bodies of local authorities should expire during a state of emergency or a state of war or within three months after the termination of a state of emergency or a state of war, that term is extended. In these cases, new elections are called within three months following the termination of the state of emergency or the state of war.<sup>68</sup>

- 98. The postponement of elections should be provided in law. In case an emergency law is missing, and the postponement is not provided, the factual situation may require postponement of elections, especially if the free movement or access to information is widely limited. The Code of Good Practice in Electoral Matters suggests that the electoral law should not be amended one year prior to the elections, except in technical matters. This principle should not be interpreted in a way forbidding the parliament to provide even during the state of emergency a legal ground for the postponement of elections, if this provision is missing. One cannot ask for elections to be organised in a situation where it is impossible in practice only due to the fact that the law has not foreseen the possibility for the postponement early enough.
- 99. As the emergency situation is exceptional, it can be assumed that the main concerns among the society may significantly differ from those issues the discussions should be concentrated to in order to elect the legislative body for the whole legislative period. Thus, even if the campaigning may be possible during the state of emergency, the postponement of elections can lead to a more thorough debate necessary to have free and fair elections later.
- 100. Suspension of electoral rights is only permitted to the extent required by the situation and the suspension must therefore meet a proportionality test. <sup>69</sup> The decision on the postponement of elections has to be based on specific circumstances and may lead to different outcomes depending on the exceptional circumstances (either armed or other high level violent conflicts between groups of society; epidemic or pandemic; natural disasters). Different circumstances have different impact on other fundamental rights and freedoms, level of fear and the extent of factual plurality in the society. A pluralistic and democratic discussion is more easily possible in case of natural disasters or pandemic; as a rule, democratic elections are excluded in case of armed conflict.
- 101. A wide list of issues has to be taken into account when deciding on the postponement of elections. The first of these issues is that, as indicated earlier, there is a large scope for abuse. A state of emergency may be promulgated or prolonged, and even not declared, based on partisan political reasons, rather than the objective needs of the situation. This may be due to the concentration of power in the hands of the government in general, but also to avoid predictable election results not supporting the outgoing government or incumbent candidates. In case the upcoming elections could change the balance in the parliament, the political parties in power may be motivated to call the situation an emergency and postpone the elections only to avoid the loss of power.

<sup>&</sup>lt;sup>69</sup> See, e.g. CDL-AD(2015)036, referring to the Congress' Recommendation 375 (2015), paragraph 19(vi). See also Congress' Report on Criteria for standing in local and regional elections, G/2015(28)7FINAL, 26 March 2015.



<sup>66</sup> CDL-AD(2007)037, § 14.

<sup>67</sup> CDL-AD(2017)005, § 31.

<sup>68</sup> Article 131 of Estonian Constitution.

102. A list of measures against such abuse has to be provided. 70

- a. There should be judicial control by a national independent and impartial court, ideally by the constitutional court, if such exists. In case of derogation from the ECHR based on Article 15 of the Convention, the ECtHR is empowered to assess the situation in the country and necessity to make a declaration on the derogation of the human rights, including electoral rights. The proportionality test would guarantee that the restrictions on electoral rights are in accordance with Rule of Law. However, the ECtHR, because of the local remedies rule, is likely to be seized of a relevant case only many months or even years after the event.
- b. All political parties and other stakeholders should be involved in the discussion before the postponement of elections or, if the circumstances allow, also before the promulgation of state of emergency.
- c. The postponement of elections may be limited in time by law, providing for the elections taking place even during the state of emergency if it lasts for long time, e.g. over a year.
- d. A qualified majority in the parliament may be required to decide on the postponement of elections, to guarantee that there is at least a wide agreement on the postponement in the society, if not a consensus.
- 103. The second issue concerns how the factual situation impacts upon campaign possibilities and the means for campaigning used commonly in the country in question for this type of elections. During a state of emergency, door-to-door campaigning or public rallies may be subject to severe limitations. It has to be assessed for how far it is possible to compensate for this by means of public or private media or the use of Internet, including social media. If the campaigning in the country in question is done mainly through social media, TV, radio and newspapers, the limitation of campaigning in the form of rallies or demonstrations may be less important. The role of traditional electronic media (radio and television) is also increased in this type of situation: special attention should be paid to the duty of neutrality of the authorities, as well as to the obligation of broadcasters to cover election campaigns in a fair, balanced and impartial manner in their overall programme services, in conformity with CM/Rec(2007)15 Recommendation of the Committee of Ministers to member states on measures concerning media coverage of election campaigns. A particular issue indeed arises if government-controlled public media are in a dominant position. Especially in nationwide elections the use of new technologies is becoming more and more prevalent compared to rallies.
- 104. The third issue concerns campaign costs. If the electoral campaign had already started before the extraordinary circumstances occurred, the candidates and political parties may already have spent considerable sums on their campaign activities. If this is so, then, rather than postponing the elections, and so requiring the candidates to begin campaigning from the beginning again, it might be better to continue the electoral processes (if possible) to avoid further negative effects and monetary duties for the stakeholders.
- 105. Fourth, if the first round of elections is already held and the extraordinary circumstances occur before the second round of elections, it may mean that the candidates have already finished their campaigning or paid for it. Support for politicians, particularly those in office, may rise or fall dramatically depending on how well they are seen as dealing with the crisis. The postponement of second round of the elections could thus mean if the second round would be postponed for many months that the candidates in the second round would have less public support compared to other politicians. In such circumstances, the legitimacy of the second round held months after the first-round elections could be discredited with a need to repeat a large part of the campaign activities. Other, upcoming politicians would be excluded from these electoral processes even if the opinion polls showed a higher level of support for them. The legitimacy of such electoral processes would be undermined. The same can be the case for electoral

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<sup>&</sup>lt;sup>70</sup> CDL-AD(2007)007, § 42.

processes such as the presidential elections in the United States, where the candidates are elected in different states during a relatively short time and a stop in the process for months would undermine the results in general.

- A fifth issue concerns security of election management staff and members of election commissions, including during election day and vote counting.<sup>71</sup> The exceptional circumstances may put the EMBs in danger. It has to be taken into account how far the electoral procedures can be automated, e.g. by use of machine counting of ballot papers or voting by voting machines. Internet voting, if provided, would lead to the presence of election management bodies' staff in a much lesser extent. If the exceptional circumstances are related to only a small part of the country, the dangers to the electoral management's well-being is limited.
- Sixth, different voting modalities like postal voting, mobile ballot boxes and voting by Internet have to be taken into account. Where voters are able to vote without going to the polling stations, elections can be held without high risks in election day. 72 It is possible to prolong the voting time from one election day to several days, if the risks can thereby be reduced However, this may cause problems for the security of the ballot boxes and higher level of risks for the election management bodies.
- If Internet voting has been only one of many possible means for voting, the exclusion of other means can lead to an active participation in elections by those who are used to voting by the Internet but not for people who are not so used to voting by internet, mainly elderly voters. This may have an impact on the election results. In practice, during ordinary circumstances the political preferences of those voting by Internet and by other means tends to differ, even if providing Internet voting as one voting option does not change the election results.73 However, if only voting by Internet would be allowed, voters from vulnerable groups and elderly people are not as likely to participate and so the election results would tend towards political parties supported by higher and upper middle class voters.
- Proxy voting within a clear legal framework could offer a further option for older people and vulnerable groups to participate in an election without being required to visit a polling station.
- It is possible to provide for exceptional voting modalities during a state of emergency. 110. Once again, the best solution would be to provide these modalities in the electoral law in advance, during ordinary circumstances. Usually, voting modalities do not have a strong impact on the election results. Thus, making a change of the election code as regards voting modalities less than one year before elections may possibly be in accordance with the Code of Good Practice in Electoral Matters if it is necessary for, or contributes to, fair elections. All the principles governing elections cannot be followed at the same level as in normal times (e.g. free elections and periodicity of elections). However, such late amendments may only be in accordance with best European practices if the principle of free suffrage is guaranteed in its core elements and such special means are in accordance with the requirements stipulated in the Code of Good Practice in Electoral Matters, I.3.2 and other documents, e.g. Recommendation CM/Rec(2017)5 of the Committee of Ministers to member States on standards for e-voting.

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Developments over Ten Years (2005-2015).

<sup>&</sup>lt;sup>71</sup> See for example IFES, "Guidelines and Recommendations for Electoral Activities During the COVID-19 Pandemic", listing some possible mitigating actions to counter the Risks of Holding in-Person https://www.ifes.org/sites/default/files/quidelines and recommendations for electoral activities duri

<sup>72</sup> See Robert Krimmer, David Duenas-Cid and Iuliia Krivonosova (2020), New methodology for calculating cost-efficiency of different ways of voting: is internet voting cheaper?, Public Money & <sup>73</sup> See Mihkel Solvak, Kristjan Vassil (2016), E-voting in Estonia: Technological Diffusion and Other

- 111. If exceptional or limited means of voting are provided, the state institutions have to arrange voters' training in the media and the social media in order for the voters to know how to take up the options they otherwise do not use.
- 112. Seventh, turnout is likely to be lower where the elections are held during an emergency situation.<sup>74</sup> Most often, elderly people or most vulnerable groups of voters (either in the armed conflicts or emergencies due to pandemics or natural disasters) are the groups of voters who do not participate as actively as otherwise. Thus, the EMBs have to arrange special means of participation for those vulnerable groups such as mobile ballot boxes, drive-in polling stations or Internet voting via most widely used hardware.
- 113. If there are turnout requirements, factual or legal limitations on the free movement within the country or on the possibilities for out-of-country voting have to be taken into account, as the situation may lead to invalidity of the election results.
- 114. Eighth, organizing elections during a state of emergency may be financially more difficult for the state institutions than postponing the elections, as some special arrangements are probably necessary due to security reasons. During a state of emergency, state finances have to be used to the maximum extent to combat the extraordinary circumstances and administration of elections might be a luxury.
- 115. Where elections are held during the state of emergency, some procedural modifications may be necessary, such as prolongation of different deadlines, including for vote counting, or waiving the requirements for candidate nomination such as the requirement to collect support signatures (if this is not possible online). As explained earlier, the best option would be to provide such procedural modifications in election code in abstracto beforehand, but late amendments to the electoral legislation applicable only for concrete elections do not necessarily go against the European principles of electoral law.
- 11. Where the elections are not postponed, it will probably lead not only to a lower turnout, by also entail difficulties to monitor the conduct of the election, especially by the international sevel of possible fraud and manipulation of election results can increase greatly. However, where the election management bodies have a long tradition of independence and online observation possibilities are available, the fairness of the election is easier to guarantee.
- 117. The government and other electoral stakeholders may encounter a number of difficulties in combatting misinformation or fake news. Such misinformation and fake news often spread at a higher level during state of emergency compared to the extent during ordinary situations. Special attention has to be paid to this problem when the elections are held during a state of emergency.
- 118. There is no general rule which state institution should be competent to decide the postponement of elections. In many countries, it is constitutionally provided that elections are not held during a state of emergency. Where this is left to the discretion of an institution, the decision whether or not to hold elections may be either for the parliament, the president, the government or a higher level election commission. Due to the importance of the issue, it is recommended that such a decision be taken by the parliament. In any case, a provision either in the constitution or organic law (e.g. electoral law) foreseeing a postponement should be included. If the postponement concerns only part of the country or it the elections are to be postponed only for a short period (less than two months), a decision can be made by the election administration or the government. Where, by contrast, a postponement is for more than six months, this should be

decided by the legislative body. One option is to require a qualified majority in the parliament for the longer postponements of elections. However a state may choose to deal with the issue, only one institution should be competent to decide on the matter. Different stakeholders, including political parties, election management bodies and experts (e.g. in pandemic, health authorities)

- If the elections are postponed, the legitimacy of the parliament is to some extent limited. Thus, the parliament should abstain from adopting amendments to the constitution, organic laws or other important reforms under political debate which are not necessary to return to the normal
- Due to the difficulties to guarantee free campaigning and public debate on reforms with a longer effect, referendums, especially constitutional referendums, should be postponed until the end of the state of emergency. Holding referendums would go against European standards enshrined in the Code of Good Practice on Referendums.75

### III. Conclusion

- Rule of law-compliant emergency powers have important in-built guarantees against abuse: the principles of necessity, of proportionality and of temporariness. Respect of these principles must be subject to effective, non-partisan parliamentary control and to meaningful judicial control by independent courts. 122.
- The dichotomy between normalcy and exception which is at the basis of a declaration of the state of emergency does not necessarily entail and does not need to entail a dichotomy between effective action against the emergency and democratic constitutionalism, or between protection of publichealth and the rule of law.

<sup>75</sup> CDL-AD(2007)008rev-car.