

IN THE CONSTITUTIONAL COURT

CASE NO: CCT245/21

In the matter between:

ELECTORAL COMMISSION OF SOUTH AFRICA

Applicant

and

**MINISTER OF COOPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**

First Respondent

**MEC RESPONSIBLE FOR LOCAL GOVERNMENT
IN THE PROVINCIAL GOVERNMENT OF
THE EASTERN CAPE**

Second Respondent

**MEC RESPONSIBLE FOR LOCAL GOVERNMENT
IN THE PROVINCIAL GOVERNMENT OF
THE FREE STATE**

Third Respondent

**MEC RESPONSIBLE FOR LOCAL GOVERNMENT
IN THE PROVINCIAL GOVERNMENT OF GAUTENG**

Fourth Respondent

**MEC RESPONSIBLE FOR LOCAL GOVERNMENT
IN THE PROVINCIAL GOVERNMENT OF
KWAZULU-NATAL**

Fifth Respondent

**MEC RESPONSIBLE FOR LOCAL GOVERNMENT
IN THE PROVINCIAL GOVERNMENT OF LIMPOPO**

Sixth Respondent

**MEC RESPONSIBLE FOR LOCAL GOVERNMENT
IN THE PROVINCIAL GOVERNMENT OF
MPUMALANGA**

Seventh Respondent

**MEC RESPONSIBLE FOR LOCAL GOVERNMENT
IN THE PROVINCIAL GOVERNMENT OF
THE NORTHERN CAPE**

Eighth Respondent

**MEC RESPONSIBLE FOR LOCAL GOVERNMENT
IN THE PROVINCIAL GOVERNMENT OF
THE NORTH-WEST**

Ninth Respondent



**MEC RESPONSIBLE FOR LOCAL GOVERNMENT
IN THE PROVINCIAL GOVERNMENT OF
THE WESTERN CAPE**

Tenth Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT
ASSOCIATION**

Eleventh Respondent

INKATHA FREEDOM PARTY

First Intervening Party

FORUM FOR SERVICE DELIVERY

Second Intervening Party

MANAKA INDEPENDENT NEW DEAL

Third Intervening Party

DEMOCRATIC ALLIANCE

Fourth Intervening Party

THE AFRICAN NATIONAL CONGRESS

Fifth Intervening Party

AFRICAN TRANSFORMATION MOVEMENT

Sixth Intervening Party

**COUNCIL FOR THE ADVANCEMENT OF
THE SOUTH AFRICAN CONSTITUTION**

First Amicus Curiae

**THE SOUTH AFRICAN INSTITUTE OF
RACE RELATIONS**

Second Amicus Curiae

AFRIFORUM NPC

Third Amicus Curiae

FREEDOM UNDER LAW

Fourth Amicus Curiae

REPLYING AFFIDAVIT

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I, the undersigned,

VUMA GLENTON MASHININI

do hereby make oath and state that:

- 1 I am the Chairperson of the Electoral Commission of South Africa ("the Commission"), duly appointed as such as contemplated in section 8(1) of the Electoral Commission Act 51 of 1996 ("the Commission Act"). I depose to this replying affidavit on the Commission's behalf.
- 2 I deposed to the founding affidavit, on behalf of the Commission, dated 4 August 2021 ("**the founding affidavit**"). Unless expressly indicated otherwise, I adopt the definitions used in the founding affidavit.
- 3 The facts in this affidavit fall within my personal knowledge, save where the context indicates otherwise, and are true and correct to the best of my knowledge.
- 4 Where I make legal submissions, I rely on the advice of the Commission's legal representatives, whose advice I believe to be correct.

INTRODUCTION AND OVERVIEW

5 When lodging its application for urgent direct access to this Court, the Commission acknowledged that virtually every South African has a direct interest in the application, as do multiple stakeholders and political parties. It was, however, not practical to cite as respondents and serve on every person who has such an interest. The Commission therefore set out at paragraph 23 of the founding affidavit, the steps it would take to inform political parties and the general public of the application and the requirements for intervening in this Court as a respondent or amicus curiae.

6 I confirm that the Commission fulfilled the proposed steps.

7 On 6 August 2021, this Court issued directives for the further conduct of this matter. Answers were to be filed by Wednesday 11 August 2021 and the Commission was permitted to file a reply by Friday 13 August 2021. The Commission uploaded the directive onto its website, where the Commission's papers were similarly uploaded for public access. The Commission also emailed the directive to all the political parties for which it has email details, and to which it had emailed the founding papers in this application.

8 At the time of deposing to this affidavit, the Commission has received the following responses:

8.1 Applications seeking leave to intervene as respondents from:

8.1.1 The Inkatha Freedom Party ("IFP");

- 8.1.2 Forum 4 Service Delivery (“F4SD”);
- 8.1.3 Makana Independent New Deal (“MIND”);
- 8.1.4 Democratic Alliance (“DA”);
- 8.1.5 African National Congress (“ANC”); and
- 8.1.6 African Transformation Movement (“ATM”).

8.2 Applications seeking leave to intervene as amicus curiae from:

- 8.2.1 Council for the Advancement of the South African Constitution (“CASAC”);
- 8.2.2 South African Institute of Race Relations;
- 8.2.3 AfriForum NPC; and
- 8.2.4 Freedom Under Law.

9 The Commission consents to all applications to intervene as respondents or amicus curiae. The Commission does not object to any party filing written submission or making oral submissions as directed by this Court.

10 In addition to the parties above, certain political parties who have not sought leave to intervene have addressed correspondence to the Commission and expressed their views. These views are varied – some support a postponement, and others oppose it. This correspondence can be made available to the Court if necessary.

- 11 The first respondent, the Minister of Cooperative Governance and Traditional Affairs filed a notice to abide together with a short explanatory affidavit. The State Attorney, Cape Town has indicated that the tenth respondent, the MEC for Local Government in the Western Cape, is opposing the relief sought and will file an answering affidavit and application for condonation on 16 August 2021. There has been no response from the remainder of cited respondents.

- 12 Given the urgency of this matter and the timelines set out in the directive, it is not possible to address each parties' response individually nor to respond to each and every submission made. To the extent an allegation is not admitted in this replying affidavit and does not accord with what is stated in the founding affidavit it should be taken to be denied.

- 13 I intend addressing the main contentions which converge between the amici and intervening parties on a thematic basis in the following order:
 - 13.1 First, I acknowledge that this is a contested political issue on which parties hold differing views.

 - 13.2 Second, I address arguments against this Court's jurisdiction to determine the matter under either of the Commission's causes of action.

 - 13.3 Third, I address the standard of free and fair elections.

 - 13.4 Fourth, I address the factual arguments challenging the Commission's reliance on the doctrine of impossibility, claiming it was foreseeable and self-made.

13.5 Fifth, I address the reliance on competing scientific opinions.

13.6 Finally, I address the practicalities of the various proposals for the local government elections to proceed in October 2021.

CONTESTED POLITICAL ISSUE

14 This is a highly contested political issue. Various political parties have varying views and proposals.

14.1 The IFP and the ANC support the relief sought by the Commission. However, both parties support postponement to a date beyond February 2022. In support of this stance, the IFP and the ANC list a number of key election related activities that will be compromised should the October 2021 date be carried through. They stress:

14.1.1 The fact that voter registration has not taken place. They emphasise the postponement of the Commission's registration weekend and the parties' own registration drives;

14.1.2 The ability of political parties to comply with the Commission's requirements. This includes conducting party specific processes for the selection of candidates;

14.1.3 Political parties' abilities to campaign under the various alert levels (including, meetings, rallies or gatherings, door-to-door campaigns etc);

14.1.4 The impact on voter turnout.

14.1.5 The ANC further highlights that internet or social media campaigns, while available, would not be accessible for the vast majority of voters.

14.2 The DA, MIND, F4SD and ATM on the other hand oppose the relief sought by the Commission. They contend that the local government elections should not be postponed, or that if it should be postponed this cannot occur by means of this court application.

14.3 The DA and MIND, for example, insist that the elections can be held on 27 October 2021. In support of this stance, these parties submit that:

14.3.1 Tighter restrictions can be introduced to curb infections, including: amending the Electoral Code of Conduct to include Covid-19 restrictions; introduce heavier restrictions on gatherings; provide permits for those that need to move around.

14.3.2 MIND is of the view that a registration weekend is not a requirement. The DA on the other hand submits it is a constitutional requirement.

14.3.3 These parties are satisfied that campaigning can continue through electronic and social media platforms. There is a suggestion that the state can negotiate data free access for those that would otherwise not afford data.

14.4 While other political parties are yet to intervene, it is not disputed that the October 2021 timetable was unanimously rejected by the National Party Liaison Committee at a meeting on 2 August 2021. Parties expressed that they would essentially be required to truncate processes that ordinarily take much longer.

JURISDICTION

The constitutionality of the order

15 The Commission does not approach this Court seeking leave to violate or mischievously amend the Constitution, as is suggested by some amici and intervening parties. Instead, the Commission recognizing the conundrum it is facing and its inability to comply with the competing constitutional demands, seeks guidance from this Court on how to best accommodate these demands.

16 In these circumstances, it is unfortunate that public comments by the DA have sought to impugn the Commission's bona fides and integrity.

16.1 In a statement dated 5 August 2021, Mr Steenhuisen, the DA's leader, claimed that "a Covid-affected calendar and the technicalities around the voters' roll are merely a smokescreen for the real reason for wanting to delay the elections: the ANC's fear of voters." He went further, contending that the IEC was "complicit in helping the ANC evade electoral accountability". I attach the statement marked "RA1".

16.2 These remarks are deeply regrettable. The Commission appointed a person of the highest integrity and standing in Justice Moseneke. It held a public, inclusive and rigorous process to determine the freeness and fairness of elections in October 2021. It approaches this Court premised on Justice Moseneke's findings, and because of the genuinely difficult and unprecedented position confronting it and the country. There is no basis at all to suggest that the Commission – and, by implication, Justice Moseneke – is doing the ANC's bidding. Indeed, the DA appears to overlook the fact that the ANC was initially opposed to a postponement of the local government elections.

17 As explained in the founding affidavit, the Commission finds itself in an unprecedented predicament. It is unable to comply with three Constitutional demands simultaneously.

17.1 The first demand is that the Commission is required to hold regular elections. The Constitution, in section 159(2) requires that the local government elections must be held within 90 days of the expiry of the municipal councils' five-year term of office.

17.2 The second demand is that the Commission must hold elections that are free and fair. This means, inter alia, that every person who is entitled to vote has the opportunity to do so and faces no unreasonable restrictions or burdens; that political parties and candidates have the ability to compete on equal terms, and without undue hindrance or obstacle; that every adult citizen can freely contest elections and seek public office - through canvassing,

advertising and the like; and that voters have access to reliable information about parties and candidates.

17.3 The third demand is that the Commission must organise elections in a manner that respects, protects, promotes and fulfils constitutional rights to life, physical and psychological integrity and access to healthcare.

18 It is denied that an order of this Court would be unconstitutional. This Court is not being asked to violate a constitutional right, but rather to balance competing constitutional rights which are placed at odds in the present circumstances.

19 This Court is called upon to assist in striking a balance between these demands under extra ordinary circumstances. The Court is required to consider the application of the common law principle to constitutional requirements, namely, that the law does not require one to comply with that which is impossible. In the alternative, the Commission seeks both declaratory and mandatory orders engaging section 172 of the Constitution.

The power to grant the primary relief relating to impossibility

20 As previously articulated, the Report by Justice Moseneke considers the Covid-19 pandemic, the declaration of a national state of disaster and the Regulations put in place, and the risks posed by conducting local government election activities while there is not sufficient immunity among the general population. Justice Moseneke's conclusion is that the local government elections cannot be held in October 2021 in a manner that is free and fair and without infringing the

rights to life, bodily and psychological integrity and access to healthcare. Having considered and concurred with this view, the Commission accepts that it is faced with serious and insurmountable difficulties in holding constitutionally compliant local government elections on 27 October 2021.

21 In the first instance, the primary relief sought by the Commission is premised on the doctrine of impossibility. The Commission approaches this Court to declare that it is objectively impossible for the Commission to hold constitutionally compliant local government elections within the 90-day period prescribed by section 159(2) of the Constitution. Constitutionally compliant elections being made up of the three constitutional demands articulated above.

22 In the answering affidavits, some of the amici and intervening parties suggest that the impossibility was either foreseeable or self-created. They argue that a party should not benefit from self-made impossibility. While I accept this is so, I deny that the Commission foresaw or created the impossibility. In fact, the Commission acted in good faith and reasonably, as the facts in the founding affidavit demonstrate and as I set out in further detail below.

23 An order recognising the impossibility of securing the rights to free, fair and safe elections in October 2021 and balancing the protection of these rights against the right to regular elections would give effect to the Constitution, rather than being unconstitutional.

24 The power to grant the alternative relief relating to section 172 of the Constitution

25 If the Court does not grant the primary relief relating to impossibility, the Commission accepts that holding the local government elections outside the period set by section 159(2) would be unconstitutional. This Court would be required to declare the Commission's conduct unconstitutional and invalid in terms of section 172(1)(b).

26 A common thread through many of the amici and intervening parties' arguments is that relief under section 172 is inapposite because it is anticipatory in nature.

27 The Commission accepts that this proactive approach is novel. However, it cannot be correct that when dealing with an issue of such great importance, the Commission must proceed and fail and, only then, approach this Court for forgiveness.

28 Some parties appear to be suggesting that the Commission should simply proceed with the elections scheduled for 27 October 2021, see what happens and then approach the Court thereafter if needs be. I submit that this is not tenable.

28.1 If the Commission were to simply proceed with the local government elections scheduled for 27 October 2021, it would be doing so in the context of great uncertainty, and in the face of a learned and comprehensively considered view of Justice Moseneke that those elections will not be free and fair, and will infringe the rights to life, physical and psychological integrity and access to healthcare.

28.2 The IFP in its intervening application has already raised the possibility of challenging the constitutionality of the local government elections if the Commission proceeds with the October 2021 date.

28.3 Were the Commission, or any interested party, to come to the Court on this basis, *after* the October local government elections have taken place, it will significantly and irreparably impair electoral democracy and disrupt the normal functioning of the resultant municipal councils. This would be far more unsettling, more costly, and no less politically contentious than any relief proposed in this application. In addition, there could be no remedy for the infringement of the right to life and physical integrity.

29 Other parties appear to suggest that it would be constitutionally preferable for the Commission to fold its hands, not organize the elections and then approach the Court – rather than proactively approaching the Court as has been done.

29.1 I submit that this contention is not correct.

29.2 On the other hand, if the Commission does not organise the local government elections for 27 October 2021, on the basis that they will not be constitutionally compliant, the Commission would be taking the law into its own hands.

29.3 The Commission has no desire to do so simply on the purported basis that this Court can only grant just and equitable relief for an alleged violation of the Constitution after the fact.

30 The Commission is not asking this Court to predict the future, as some parties allege. The Commission has put before the court the submissions from Justice Moseneke's Report that, if held in October, the local government elections will not be free and fair and will infringe the right to life and physical and psychological integrity and access to healthcare. If the local government elections are not held in October this too will infringe on citizens' rights to regular elections. The Commission, this Court and the country are presented with facts which demonstrate that constitutionally compliant local government elections in October 2021 are not possible.

31 For this reason, the Commission approaches this Court for guidance. This is done particularly in recognition of the importance of the issues and the implications on our democracy and democratic processes.

32 Furthermore, even if this Court were to accept the proposition that section 172 relief can only be granted after the breach has occurred, this would not be the end of the Commission's alternative relief.

32.1 Assuming, for the sake of argument, that the doctrine of impossibility does not apply, then the failure to ensure constitutionally compliant elections could be argued to have already commenced.

32.2 For example, the DA submits that it arises from the Commission's failure to hold a voter registration weekend, alternatively, from the Minister's proclamation of the election date without a voter registration weekend having taken place.

32.3 If this is so, the issue of suspending the invalidity of an anticipatory breach of the constitutional does not arise. On the DA's own argument, the breach has already occurred.

33 Lastly, I emphasise that even if this Court were to conclude that the reason that constitutionally-compliant elections cannot be held in October 2021 is the fault of the Commission (which I firmly deny is the case), the section 172 relief would still be permissible and appropriate. It would then be the unconstitutional conduct of the Commission which had caused the inability to hold constitutionally-compliant local government elections in October 2021 and this conduct would need to be declared invalid and remedied. That is precisely what section 172 of the Constitution envisages.

34 The Commission maintains that it is in this Court's power to grant the relief sought under section 172.

THE STANDARD OF FREE AND FAIR ELECTIONS

35 The Commission is criticised for applying a standard for free and fair elections that is measured against normal, non-pandemic times. Parties argue that the standard to be applied is the specific context in which an election is taking place. Currently that context is the Covid-19 pandemic and the resulting increased health risks and decreased voting rights.

36 However, this argument is as fraught with "slippery slope" pitfalls as those directed towards the Commission's submissions on impossibility. There must at

some point be a line as to when elections are free and fair and when they are not. If they will not be free and fair, this Court must declare that to be so, whatever remedy it may choose to give or not.

37 There is a suggestion from two of the intervening parties that South Africans expose themselves to risk of infection of Covid-19 every day through daily activities. Thus, the argument goes, there is no more risk that South Africans will be assuming by voting.

37.1 First, this is not borne out by comparative election examples where voter turnout resulted in infection spikes, meaning higher infection rates than had resulted through daily activities.¹

37.2 Second, as set out in Justice Moseneke's Report and the founding affidavit, medical experts pointed to specific activities that pose an additional risk when elections take place.²

37.3 Third, the comparison of exposure risks when doing daily activities with that of voting is fallacious. And the implication that the Commission can, through the October 2021 local government elections, add to the risks without proper regard to competing demands is reckless. If the Commission accepts that it is exposing the population to a risk of infection by holding the local government elections, then this consideration must be balanced against the risk of deferring those elections beyond its stipulated time period. It is not

¹ See the report of Justice Moseneke dealing with Brazil, India and the USA at p 183 – 187, paras 145 – 156.

² See the report of Justice Moseneke at p 74, paras 154 – 156 and p 231, paras 284 – 286.

appropriate to require South African citizens to assume this risk to their health and lives in order to exercise their constitutional right to vote, without first balancing these considerations.

38 Next, some intervening parties argue that the risks posed can be sufficiently ameliorated by recourse to online campaigns. President Trump supporters, we are told, attended rallies and got Covid; President Biden campaigned on social media and ultimately won the election. The comparison to the South African context is quite inapposite and needs only to be stated to be rejected.

39 There is also an argument made that the limitation on electoral rights and political activities, whether it be registering, campaigning or participating in public debate should be considered justifiable in the circumstances. Everyone faces these limitations and therefore the playing field, while restricted, is nonetheless level.

40 But the Commission, and this Court, cannot close its eyes to the fact that this limitation will not be borne by all equally. Smaller parties, those without the budget and technical resources to establish online, phone, print, or broadcasting campaigns, will be disadvantaged. Moreover, voters without access or with lesser access to these mediums – which in South Africa means mainly poorer voters and disproportionately black voters – will similarly be disadvantaged in being unable to register or engage in the political debate.

41 CASAC's submissions to Justice Moseneke's Inquiry, attached as "LN3" to CASAC's affidavit, recognised this hurdle, which still remains:

“Since March 2020, the spread of Covid-19 has engendered a number of restrictions on personal freedoms in the interest of limiting the impact and transmission of the disease. These restrictions include limits on large gatherings and explicit limits on political activity under most levels of the national state of disaster regulations. Some political parties have understandably questioned the validity and fairness of elections held in this environment, given that their capacity to campaign is constrained. While these parties do have recourse to the non-physical media of political communication (radio, television, posters, social media platforms, pamphleteering and so on), this form of campaigning is costly and disadvantageous to parties lacking resources. In addition, local election campaigns usually include a significant portion of local political activism, given that voters’ decisions are often informed by direct local concerns (as well as national political preferences).”

42 For this reason, CASAC’s submission emphasized that the minimum guaranteed freedoms required for campaigning should “at the very least obtain for 3 months prior to the elections”.

43 Even health wise, there is no simple equivalent between people and provinces. As recently as 12 August 2021 the statistics from the Department of Health record that 7, 249, 045 individuals have been vaccinated and of that 3, 958, 231 individuals are fully vaccinated. This equates to 12.12% of the population and 6.6% of the population respectively. But the statistics show that this level of vaccination is not equally matched across the provinces. Mpumalanga for example has vaccination coverage of 7.79% while the Western Cape has a vaccination coverage of 16.04%. It is likely the percentage of coverage varies similarly within different areas within a province. A copy of the statistics are attached marked “RA2”.

44 There are clearly people who will be asked to bear a greater limitation of their electoral rights and to shoulder a greater risk of infection. They deserve the consideration of this Court.

IMPOSSIBILITY

45 The Commission has presented the basis on which Justice Moseneke determined that the local government elections, if held in October 2021, will not be free and fair and would unduly infringe on the right to health and safety of the voters, the electoral staff, the political campaigners and the general public lacking community immunity. The Commission submits on this basis that it is impossible to hold constitutionally compliant elections.

46 I submit that the Commission has demonstrated objective impossibility. This is also supported by the challenges to free and fair local government elections highlighted by the IFP and the ANC.

47 In response, various parties have accused the Commission of either foreseeing or creating this impossibility. This is raised as a challenge to the Commission's reliance on the doctrine of impossibility. I first address the foreseeability argument and then the argument on self-created impossibility.

It was not foreseeable until it arose

48 It is alleged that as far back as March 2020, the Commission should have foreseen that the Covid-19 pandemic posed a risk to holding free and fair local government elections before 1 November 2021.

49 I deny that this is so. The suggestion that seems to be made now, with the benefit of hindsight, is that the trajectory and effect of the Covid-19 pandemic was predictable.

50 But this is plainly wrong. When Covid-19 first reached South Africa in March 2020, there was no sense at all that this would be a pandemic that would affect the daily lives of ordinary South Africans for at least two years. On the contrary, at the time it was dealt with as being a crisis that would afflict us for a matter of weeks – as demonstrated by the initial two-week lockdown, later extended by a few further weeks, all in order to flatten the curve to reduce the number of daily infections. At that stage there was no public knowledge that we would face repeated “waves” of infections, of the development of variants and their impact and so on.

51 In any event, even if the present situation regarding the local government elections had been foreseen in March 2020 (which it was not), it is difficult to understand what the political parties contend the Commission could have done to prevent the present situation. Thus, if even if the Commission should have foreseen in March 2020 (or December 2020) that it would be impossible to hold constitutionally-compliant local government elections 17 months later (or 10 months later), then the impossibility arose then too.

52 Reference to foreseeability arising from the presence of the Covid-19 virus is too simplistic. It is not alleged at what stage the Commission should have foreseen the emergence of the Beta variant and resultant second wave. It is not alleged when the Commission should have foreseen each lockdown Alert Level

would be in place and what it would prohibit, for example that the adjusted alert level 3 restrictions put in place at the end of 2020 would prohibit political gatherings. It is not alleged when the Commission should have foreseen the emergence of the Delta variant and the resultant third wave. Each of these factors have compounded to prevent constitutionally compliant local government elections.

Self-created

53 The Commission has been accused of not acting to ensure elections could take place within the stipulated time period, despite the presence of the Covid-19 pandemic. The question then arises as to what the Commission should have done to ensure elections take place freely and fairly in October 2021. This can only be considered in respect of factors within the Commission's control. Such as, registering voters, ensuring the safety of electoral staff and voters, and the Commission's administrative functions under the election timetable. The Commission cannot control how or when campaigning or nomination of candidate activities are conducted by political parties in the run up to the local government elections. Both of these factors underpin a free and fair election. The Commission also cannot control the public health response to the Covid-19 pandemic, the hospital capacity and the vaccine roll out, all of which underpin the rights to life, physical and psychological integrity and access to health care.

54 I acknowledge that voter registration is under the Commission's control. The Chief Electoral Officer addressed the reason for planning for only one voter registration weekend before the October 2021 local government elections, in

his written submissions to the Inquiry under the heading "G. FUNDING". A copy of these submissions are attached to Mr Mamabolo's confirmatory affidavit to the founding affidavit. The submission records the following from paragraphs 115 to 122:

- 54.1 The Commission's 2021/2022 baseline budget was cut by R164, 7 million.
- 54.2 The principal casualty of these budget cuts has been the cancellation of one of the two registration weekend which customarily take place prior to an election.
- 54.3 These budget cuts could not have come at a worse time. The COVID-19 pandemic has resulted in additional unbudgeted costs such as personal protective equipment ("PPE") for voting officials and other protective aids to ensure that interaction between voters, personnel and stationery and equipment are kept to a bare minimum and which all have a financial implication which will be added to an already limited pool of financial resources.
- 54.4 In this regard, the procurement cost of PPE for the voter registration weekend is R40, 111, 570.00, while the cost of PPE for voting day is estimated at R89, 238, 794.00, resulting in estimated PPEtotal expenditure of R129, 350, 364.00.
- 54.5 The R174, 7 million budget cut was more than what the Commission could absorb by simply cancelling the second registration weekend. In addition, the Commission has to put the appointment of Democracy

Education Fieldworkers on hold, while the contract term of other expansion staff categories had been reduced to seven months to absorb the full budget cut. There were no funds remaining to fund PPE in 2021/22, with the result that PPE procurement remains unfunded at this stage.

54.6 As it does each year, the Commission submitted its MTEF annual database and narrative to the National Treasury on 31 August 2020, which *inter alia* detailed the negative impact the budget cuts would have on the Commission's ability to execute its responsibilities and mandate. The Commission's concerns in respect of the budget cuts were again addressed during a virtual meeting it held with National Treasury on 16 September 2020.

54.7 On 15 February 2021 the Commission alerted the National Treasury that it intends to apply for further funding through the 2022 Adjustment Estimates process. This matter will form the subject of a bilateral meeting scheduled with National Treasury for 30 June 2021.

54.8 Assuming that the Commission will receive approval from the National Treasury to retain and roll-over all its cash surpluses from 2020/21, PPE procurement is currently the only unfunded project for the forthcoming elections. However, should the approval not be granted to retain the full surplus, additional funding pressures may arise.

54.9 Customarily two days prior to voting day in general elections are set aside for special votes, one for home visits and another for special votes to be cast at the voting station. One of the suggestions put forth

in the Commission's consultations with stakeholders was to extend special voting days to three to lighten congestion. Such an extension would have cost implications for the Commission's already strained budget. It would require an estimated additional R66,000,000.00 comprising R45,000,000.00 to cover electoral staff subsistence, R20,000,000.00 for voting station rental and infrastructure, and R1,000,000.00 for materials, which would bring the total cost of unfunded projects to R195,350,364.

55 As set out above, the Commission was limited to holding one voter registration weekend in the local government election year because of budget constraints. Even this reduction did not cover enough of the shortfall, which meant the Commission did not have funds to acquire the necessary PPE to hold a registration weekend. This was the case as at 4 June 2021 when the Commission filed its written submissions to the Inquiry. I submit that it was entirely reasonable for the Commission to not hold a voter registration weekend before this date.

56 The Commission thereafter planned for a voter registration weekend on 17 and 18 July 2021. This though was then postponed because of the third wave. I submit that it was entirely reasonable for the Commission not to hold a voter registration weekend in the midst of the third wave, while daily infections and hospital admission remained high and the country remained under adjusted alert level 4 lockdown.

57 The voter registration weekend was rescheduled to take place 6 days from the end of the Adjusted Alert Level 4 restrictions (being 25 July 2021) on 31 July and 1 August 2021. Before this occurred, the Report was published on 20 July 2021 in which Justice Moseneke concluded that the forthcoming local government elections cannot be held in October 2021 in a manner that is free and fair and without infringing the rights to life, bodily and psychological integrity and access to healthcare. The Report recommended that should the Commission accept and seek to implement the outcome of the Inquiry it must approach, with deliberate speed, a court of competent jurisdiction to seek a just and equitable order to defer the local government elections to not later than the month of February 2022 and on such terms the court may grant.

58 The country remained in the third wave at the time the Report was published, with some provinces, such as the Western Cape, still reaching their peak. The Commission was mindful of the above factors when it postponed the scheduled voter registration weekend on 23 July 2021.

59 On 3 August 2021 the Minister proclaimed the election date. Following this proclamation, holding a voter registration weekend would not have resolved the problem. New voters could not be placed on the roll absent a legislative amendment or order of this Court.

60 The Commission is criticised for not presenting alternative ways in which it has sought (and failed) to fulfil its constitutional obligation. This is not true. The Report records that the Commission has explained that it created an online registration system for eligible voters, but that this is not easily accessible for

much of the population. The Chief Electoral Officer (“CEO”), submitted to the Inquiry that the Commission considered an alternative proposal of adding an extra day to the special vote days preceding the election, but that the Commission had no budget to expend the extra cost.

61 Beyond these constraints, the CEO’s submissions made it clear that the Commission had undertaken the necessary steps in preparing for the October 2021 election date. This was recorded in the Report. Allegations to the contrary are without foundation and are a clear misreading of both the Report and Commission’s written submission.

62 The steps that the Commission had undertaken in preparation for the October 2021 local government elections date are set out in the Commission’s submission to the Moseneke Inquiry dated 4 June 2021, attached to the founding papers as “FA2.1”. Among the annexures to that submission were two further documents:

62.1 a draft election timetable for the October 2021 elections (as things stood at the time), which I attach marked “**RA3**”; and

62.2 a PowerPoint presentation summarising the Commission’s readiness for the elections, titled “*Preparations for the 2021 Local Government Elections*”, which I attach marked “**RA4**”.

63 In summary, by the date of the Commission’s submission to the Moseneke Inquiry (4 June 2021), the Commission had taken the following steps in preparation for an election in October 2021:

- 63.1 The Commission had taken steps to ensure a conducive legislative environment for the holding of elections, including by piloting (via the Minister of Home Affairs), the Electoral Laws Amendment Bill, 2020, which was passed by the National Assembly as the Electoral Laws Amendment Act, 2021, and assented to by the President. It also caused draft amendments to the various affected regulations to be prepared.
- 63.2 It had completed the process of ward and voting district delimitation in preparation for the election. The final ward boundaries were provided to the Commission by the Municipal Demarcation Board in September 2020 and December 2020. The purpose of such delimitation is, *inter alia*, to align voting district boundaries to municipal and ward boundaries, to ensure that voters have reasonable access to voting stations and do not vote more than once, and to facilitate consultation with political parties on the configuration of voting district boundaries and the location of voting stations.
- 63.3 It had commenced a process of voter registration. It initially scheduled and began preparing for a voter registration weekend on 17 and 18 July 2021 to enable eligible voters to register to vote and registered voters to check and update their registration details. When this date proved impossible, it was postponed to the last weekend in July. The Commission had also made significant strides in cleaning up the voters' roll so as to ensure that voters are registered in the correct



wards where they are ordinarily resident and nowhere else. It launched online voter registration in mid-July 2021.

63.4 It had commenced the process of assessing voting sites and concluding lease agreements at the 23 151 voting sites nationally. It intended to conclude this process on 30 June 2021, for an election in October 2021. As at the date of its submission to the Moseneke Inquiry, the Commission had concluded more than 9 000 lease agreements.

63.5 It had procured and prepared for the distribution of electoral materials for the scheduled registration weekend and voting day. It had created a comprehensive Bill of Materials, and at the date of the submission to the Inquiry most of the materials were in hand or were due to be delivered to the Commission imminently.

63.6 It had prepared for outreach and awareness building, and had commenced stakeholder engagements. It provided a table of its stakeholder engagement plan from April 2021 onwards.

63.7 It had commenced the production of voter education materials, including short videos to be posted on social media platforms, which were expected to be completed between the end of June and the end of August. It had also arranged for radio slots to advertise the elections and educate the public.

- 63.8 It had planned an election launch event as a hybrid event with a limited number attending in person and the remainder attending through virtual platforms.
- 63.9 It was in the process of recruiting and training electoral staff, including municipal electoral officers, as well as more than 50 000 voting officers for the scheduled registration weekend. It had conducted training sessions in late May and June, and intended to do further training of registration staff until mid-July 2021.
- 63.10 It had procured 40 000 new voter management devices to support electronic voter registration and voters' roll management at voting stations; 7 000 of which had been delivered by the date of the submission.
- 63.11 It had held ongoing consultations with political parties represented on the National Party Liaison Committee since September 2020 on the question of whether the conditions were conducive to holding free and fair elections.
- 63.12 It had registered 605 political parties on an ongoing basis.
- 64 In addition, the Commission had compiled a Covid-19 protocol - titled "Voting in the time of COVID-19: Voting Procedures to Minimise Contagion at the Voting Stations" – in consultation with the National Party Liaison Committee, to ensure that elections could be held in as safe and healthy a manner as possible. The protocol was annexed to the Commission's submission to the Inquiry, and is attached marked "RA5".

65 Based on these various steps, Justice Moseneke correctly remarked that “The Commission has assured the Inquiry that all preparatory steps are on track to be completed on schedule and will be in place for the voter registration weekend and for the conduct of the local government elections in October this year.”

66 The suggestion that the Commission failed to prepare adequately for an election in October 2021 is thus entirely unfounded.

67 Furthermore, it is not correct to claim that the Commission’s conduct has resulted in the impossibility it now faces. Ensuring free and fair elections require multiple factors. For this reason, even if the Commission had found additional ways of safely registering eligible voters during the course of this year, it would not solve the problem. The constraints placed on party nominations and candidate submissions, and the effect on campaigning and public participation in political activities would have remained. So too would the health risks posed by these electoral related activities.

68 The Commission denies that it was remis in not seeking a postponement of the local government elections sooner. But even if it was remis, this should not be conflated with an allegation that this is the cause of the impossibility.

COMPETING SCIENTIFIC OPINIONS

69 Various amici and intervening parties refer to the evidence presented to the Inquiry and recorded in the Report. Specifically, this Court is asked to have

regard to the submissions made by Professor Karim regarding the likelihood that October 2021 will be a period of low transmission and the possibility that new Covid-19 variants may have emerged by March 2022. Professor Karim confirms the prediction that October 2021 will be a period of low transmissions in his most recent projections, which are attached hereto marked "RA6".

70 Justice Moseneke accepted this proposition and concluded that October 2021 would likely be a period of low transmission. He also acknowledged that the risk of a fourth wave and new variants remained after October 2021. However, these factors did not dissuade Justice Moseneke from his view that it is not reasonably possible or likely that the local government elections scheduled for the month of October 2021 will be held in a free and fair manner. Justice Moseneke concluded that the real difference will be made by community immunity through vaccination. He accepted the expert medical opinion that wide-scale vaccination is the primary means by which hospitalisations and death can be prevented.

71 As I set out in paragraph 219 of the founding affidavit, on the advice of three medical experts, Professor Silal, Dr Miot and Dr Moultrie, Justice Moseneke concluded that the more people who are vaccinated at the time of holding the local government elections, the more lives will be saved, and that the country would be better protected by the end of February 2022, because more people would have been vaccinated by then. For this reason, while the Covid-19 pandemic trajectory beyond October 2021 is not certain, the experts advised "on any scenario, the country will be better off" once more people of voting age

are vaccinated. A similar position was taken by the Director-General of the Department of Health and by Dr Abdullah.

72 Some of the parties seek to contend that the progress made in the vaccination roll-out thus far is enough to allow the elections to proceed in October 2021. They argue that the threat of serious infection, hospitalization and death is reduced by the vaccine, which has already been offered to the most vulnerable portion of the population and will soon be offered to all adults.

72.1 But this is quite wrong, as is demonstrated by a consideration of how many people are fully vaccinated thus far.

72.2 According to the Department of Health's statistics, as at 12 August 2021:

72.2.1 The number of people over 60 who have been fully vaccinated is 1,965,513 out of a total population of 5,505,482 – that is only 35.7%.

72.2.2 The number of people between 50 and 59 who have been fully vaccinated is 585,168 out of a total population of 4,817,217 – that is only 12.1%.

72.2.3 The number of people over 18 who have been fully vaccinated is 3,956,279 out of a total population of 39,798,201 – that is only 9.9%.

72.3 I attach the relevant statistics as marked "RA7" to "RA9".

- 72.4 Therefore, whether one looks at only at the most vulnerable age groups over-50s or the entire voting population over over-18s, it is clear that a very substantial majority of South Africans are not yet fully vaccinated.
- 72.5 This is to be contrasted with the aim of the inter-Ministerial Committee – reiterated publicly earlier today – of fully vaccinating 70% of adult South Africans by December 2021. That would be 28 million fully vaccinated South Africans – as opposed to the current figure of less than 4 million.
- 72.6 Debates about whether or not this produces true community immunity are, for present purposes, besides the point. The point is that holding the local government elections in 2022 rather than in October 2021 will mean that many millions more South Africans will have received the protection that the vaccinations afford against serious illness and death.
- 72.7 This is particularly important because the majority of the over-50 population who have not yet received vaccinations are likely the same South Africans who are least able to access registration and campaigning via electronic means – that is predominantly poor black South Africans, many living in rural areas. They should not be put at risk by holding elections in October 2021.
- 73 Similarly, debates about whether February 2022 is the ideal time to hold the elections miss the point. The relief sought by the Commission is sought

because constitutionally compliant local government elections cannot and should not be held in October 2021. Whether these elections should be held in February 2022 (as the relief sought by the Commission envisages) or in March or April 2022 (as the IFP and ANC suggest), the critical point is that they cannot and should not be held in October 2021. The supervisory relief sought by the Commission as part of both its primary and alternative relief caters for any future uncertainty regarding the best time to hold the elections in early 2022.

74 Finally, as I set out, in the founding affidavit and in this reply, the standard for free and fair elections is not limited to the ability to cast your vote safely on election day, although that is undoubtedly a consideration.

74.1 Free and fair elections require various political activities from registration, to candidate nominations procedures and campaigning. Low transmission in October 2021 does not solve the problem that these activities have been prevented by the third wave and the lockdown Regulations.

74.2 The scheduled local government election date is just ten weeks away.

74.3 While some provinces, for example Gauteng, appear to have passed the worst of the third wave, this is not true of the majority of provinces or the country as a whole. Provinces such as KwaZulu-Natal, the Eastern Cape and Western Cape are all still in the midst of their third wave and are at or close to the peak.

74.4 For example, earlier today the Minister of Health stated publicly that although Covid-19 cases were down in Gauteng, South Africa is still

in its third wave. He explained that the position was like a relay race – as cases in one province go down, cases in another take over.

74.5 The Minister of Health also dealt with the current positivity rate (the proportion of Covid-19 tests returning positive) which is regarded as a critical indication of the state of the pandemic. He explained that while it had decreased from 35% in mid-July to between 19% and 20%, this is still high and the rate was not yet stable. For example, yesterday the positivity rate was 35%.

74.6 He explained that, in the circumstances, the Department of Health continues to believe that South Africa should stay at adjusted level 3 lockdown.

74.7 The same concerns about the ongoing third wave have been echoed by the Premier of the Western Cape, Alan Winde. He has publicly stated that the Western Cape is currently in the peak of its third wave, with a plateauing of new infections, hospital admissions and deaths and that there was not yet an indication of when it might begin to descend from the peak.

PROPOSED SOLUTIONS BY INTERVENING PARTIES AND AMICI

The DA's proposal

75 The DA proposes two solutions to the voter registration issue.

75.1 First, the Court can suspend the operation of section 6(1A) of the Municipal Electoral Act to allow a voter registration weekend to be held before the October 2021 election.

75.2 Second, there is no deadline, they submit, by when the local government elections must be proclaimed. The decision of the Minister to proclaim the elections even though voter registration week had not occurred, is unconstitutional and if declared invalid, a new date can be proclaimed which affords an opportunity for a registration weekend.

76 Accordingly, the DA seeks a declaration the Commission's failure to hold voter registration weekend for October 2021 election is unconstitutional and invalid. And that the Commission be directed to hold a voter registration weekend on either 27-29 August or 3-5 September 2021. Alternatively, declaring that the Minister's proclamation of the election date is unconstitutional and invalid and directing the Minister to proclaim a date after voter registration weekend.

77 The Commission is of the view that the proposed solutions are unsustainable for the following reasons:

77.1 Following this Court's judgments in *Kham* and *Mhlophe*, the Commission has institutionalised a period of inspection and objections to the voters' roll before it is certified. The period is part of the election timetable and runs between 5 August and 18 August. It is important that any interested person may raise an objection against the inclusion of a voter on a specific segment of the voters' roll and

thereby vindicate the right to free and fair elections. Adding persons to the voters' roll beyond the objection period will imperil the freeness and fairness of elections in certain localities.

77.2 In terms of the election timetable, the CEO must on 1 September 2021 certify the voters' roll or the municipality's segments of the voters' roll to be used in this election in terms of section 6(2) of the Electoral Act. The proposed registration event is too close to the date of certification of the voters' roll to enable the Commission to validate and quality assure the registration applications for compliance with section 6 of the Electoral Act and to attend to aberrations that may implicate the registration of voters arising from any of the 23 151 voting stations.

77.2.1 To illustrate the point. During one of the two registration weekends in a comparable local government election in 2016, the Commission interacted with 3 581 500 potential voters over a weekend.

77.2.2 Of those interactions 691 524 resulted in new registration (first time voters) and 1 166 000 re-registrations in different voting district (persons whose addresses may have changed) and 1 723 000 re-registrations in same voting district (persons who after inspecting the roll, confirmed their details to be correct).

77.3 If regard is had to the abovementioned figures, the voter registration weekend draws large numbers and requires resources. The

proposed registration event is therefore too close to the date of certification of the voters' roll to enable the Commission to validate and quality assure the registration applications for compliance with section 6 of the Electoral Act.

77.4 Nor can the certification date of the voters' roll be delayed. Following certification of the roll, the Commission must print unique segments of the voters' roll for the 23 151 voting districts and cause same to be delivered to each of the voting districts within a compressed window period. On the 27 October election timetable the period of printing is scheduled for between 03 to 06 September 2021 followed by a distribution period. Additionally, voters' roll segments must be printed for contesting parties and independent candidates in accordance with elections being contested. The printing must be preceded by a compliant open and transparent procurement process in accordance with the Public Finance Management Act (PFMA). The procurement process for voters' rolls made available to parties can only commence at the completion of the candidate certification period (7 September) and on receipt of requests from contesting parties and independent candidates.

77.5 Lastly, I note that the proposed voter registration weekend is after the close of candidate nomination which is on 23rd August. Therefore, persons who are not currently registered but intended to stand for elected office may register but their registration would be inconsequential because the window period for candidate nomination

would have closed. This is especially problematic given that section 19(3)(b) of the Constitution confers on every citizen the right to stand for public office. So to say to a person that you are registered to vote but may not stand as a candidate would be unconstitutional.

77.6 When the abovementioned factors are considered, it is clear that the DA's proposed solutions are unworkable.

78 Furthermore, the DA's proposed solutions are limited to the voter registration weekend. They do not address the many other challenges raised by the Commission and other intervening parties.

The IRR's proposal

79 The IRR submits that given that the Covid-19 waves are unpredictable and occur in different intensities, in different parts of the country, at different times, it would be much easier for the Commission to split up the work of running elections by establishing timetables in respect of each province depending on the wave. This will enable the Commission to start running the first set of elections before 1 November 2021 which would mean that the Electoral Commission will be in compliance or partial compliance with section 159(2) of the Constitution.

80 This proposal too is unsustainable.

80.1 First, section 24(2) of the Local Government: Municipal Structures Act states that an election of all municipalities must be set on a date. Our

law does not facilitate a staggered or holding of elections on varied dates.

80.2 Second, at a practical level, communication campaign for a staggered election, while theoretically possible, would likely create considerable confusion among the voting public. This is compounded by the fact that some resources have already been used in a communication campaign ahead of the decision to approach the Court. So, absent additional funding the Commission may be limited in its ability to mount and communicate a coherent differentiated campaign.

80.3 Third, in order to facilitate access to the voting process, voting days have always been declared public holidays in South Africa since the advent of democracy, extending this dispensation on staggered business will probably result in significant disruption to normal business activity.

The suggestion of a constitutional amendment

81 Various parties or amici suggest that the appropriate solution is for Parliament to resolve the problem of the October 2021 local government elections. Indeed, some go so far as to criticize the Commission for not having done so.

82 I emphasise that any suggestion of a Parliamentary solution should not overlook the fact that what is actually being proposed is a constitutional amendment. There would be no other legislative way of resolving the inability

of the Commission to hold free and fair local government elections in October 2021.

83 The suggestion that the Commission should have approached Parliament seeking to amend the Constitution is unfair and untenable. The Commission is a Chapter 9 institution. Its task is to give effect to and act within the confines of the Constitution – not to propose how the Constitution should be amended. Indeed, other Chapter 9 institutions have received searing criticism from the courts when they have suggested amendments to the Constitution.

84 Moreover, the Commission's view was that an amendment to the Constitution to deal with this issue was not appropriate or desirable.

84.1 Such an amendment would be more significant than another amendment of the Constitution. It would not only lengthen the permissible term of office of municipal councillors, but also extend the actual terms of office of the incumbent municipal councillors.

84.2 Any amendment by which an incumbent government entrenches and extends its own term of office is by its very nature undemocratic.

84.3 It should therefore not be a route adopted to deal with what is likely to be a once-off and extraordinary set of events.

84.4 Indeed, pursuing the constitutional amendment route would set a dangerous precedent that a government could choose to amend the Constitution to extend its own term of office. This is a considerably more dangerous precedent than the idea underlying the present

application, whereby this Court is to decide in the exercise of its independent judicial function, what the appropriate solution is to the impossibility of holding the local government elections in October 2021.

85 Quite apart from the undesirability of the amendment route and the precedent it would set, the Commission also took the view that securing the passage of such an amendment may well be unlikely.

85.1 It appears to be accepted by all – including those now criticising the Commission for failing to seek the amendment – that such an amendment would require a 75% majority.

85.2 But it was well-known to the Commission – before Justice Moseneke was even appointed – that various parties were vigorously opposed to any postponement of the local government elections. These included the DA, the Freedom Front Plus, the African Christian Democratic Party, COPE and the GOOD Party. This was made clear in discussions at the National Party Liaison Committee.

85.3 Given these parties between them hold 102 of the 400 seats in the National Assembly, the prospects of achieving the required 300 votes from the National Assembly for a constitutional amendment seemed most unlikely.

86 In all the circumstances, the Commission did not consider that it was appropriate or desirable for it to approach the National Assembly seeking a constitutional amendment.

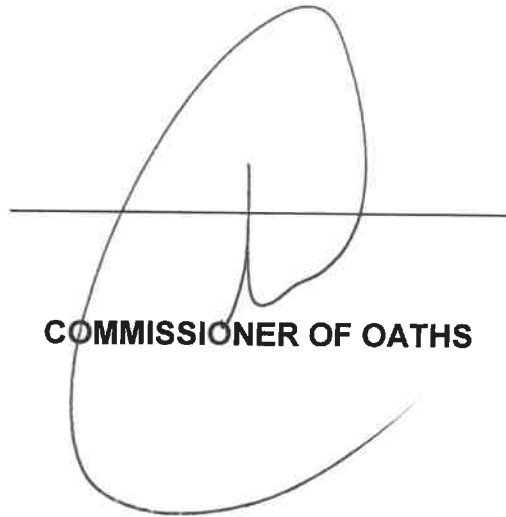
87 In any event, until the report of Justice Moseneke, the Commission had not taken a view on whether the holding of the local government elections in October 2021 would be possible or desirable. It was preparing, as it made clear to Justice Moseneke, the Commission was taking all steps to prepare for the elections to be held in October 2021.

CONCLUSION

88 In the circumstances, the Commission persists in seeking the relief set out in the Notice of Motion.


VUMA GLENTON MASHININI

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 both true and correct. This affidavit was signed and sworn to before me at **Centurion** on this the **13th** day of **August 2021**, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

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DA to oppose IEC's Constitutional Court application to postpone Local Government Elections

Issued by John Steenhuisen MP – Leader of the Democratic Alliance

05 Aug 2021 in News

Please find attached soundbite by John Steenhuisen MP.

Should the Independent Electoral Commission (IEC) persist with its application to the Constitutional Court to have the Local Government Elections postponed to February next year, the DA will ask to be joined as a party to their application so that we can put our views in front of the court and use our status as a respondent to fight for a timely election and voter registration.

Through our lawyers we have given the IEC a deadline of tomorrow, Friday 6 August, to agree to stick to their prescribed timeframe for holding the elections, and to insert a registration period ahead of the elections along with a mechanism to reopen the voter's roll in order to add new names. The roll was closed when the election date of 27 October was proclaimed by Cooperative Governance and Traditional Affairs Minister Nkosazana Dlamini-Zuma on 3 August.

Failure by the IEC to do so will leave us no choice but to defend our Constitution and the democratic rights of voters in court.

Our Constitution prescribes that Local Government Elections must take place within 90 days of the end of the five-year term of municipal councils. It is the IEC's job – their only job – to see to it that this happens. Even in a disrupted calendar there are other steps that can be taken to ensure that this fundamental democratic right is preserved before looking to change the Constitution.

The technicality of not being able to add names to the voter's roll after the proclamation of the election date – which has now taken place – can be overcome by temporarily suspending the operation of Section 6 of the Municipal Electoral Act, rather than attempting to amend the Constitution in order to delay elections. It is the Constitutional Court's duty to protect our Constitution, not change it.

By our calculations there could be as many as nine million eligible voters who are currently not registered or incorrectly registered. If the IEC does not afford them the opportunity to register or correct their registration, we cannot meet the threshold of a free and fair election. It is entirely possible to temporarily set aside Section 6 of the Act, hold a registration weekend by the end of August, and still hold the elections on the 27th of October.

We can and must conduct a safe registration period, adhering to all Covid protocols, just as we can and must conduct a safe election on 27 October. There is scientific consensus that this can be done, and indeed it has been done elsewhere in the world. This pandemic and the threat of Covid transmission will still be here, in some shape or form, for a long time to come. We cannot allow this to subvert our democratic process and deny voters their chance to hold their local governments to account.

Once you set a precedent of fiddling with constitutionally-mandated election timeframes, it can become a slippery slope towards a permanent subversion of democracy.

However, it is clear that a Covid-affected calendar and the technicalities around the voter's roll are merely a smokescreen for the real reason for wanting to delay the elections: the ANC's fear of voters. With our economy in turmoil, an unemployment rate of over 42%, an internal factional war that is fast splitting the party in two and the majority of ANC-

run municipalities on the brink of collapse, the party is simply not ready to face the justified anger of voters at the ballot box.

By postponing the elections, the IEC would be complicit in helping the ANC evade electoral accountability. The DA will not let that happen.

Publication Date 05 Aug 2021

Author John Steenhuisen MP




Category News



Direct Link

<https://www.da.org.za/2021/08/da-to-oppose-iecs-constitutional-court-application-to-postpone-local-government>



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"RA2"



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Navigation (Select a page from the
Cumulative Vaccinations One

Rollout Phase: ▼
Individuals Vaccinated

7,249,045
Individuals Vaccinated

3,958,231
Individuals Fully Vaccinated

Province	Individuals Vaccinated	Individuals Fully Vaccinated
Eastern Cape	956,201	497,958
Free State	388,203	206,112
Gauteng	1,814,296	914,467
KwaZulu-Natal	1,291,932	818,964
Limpopo	772,132	501,242
Mpumalanga	364,981	176,673
North West	385,154	203,131
Northern Cape	153,498	92,874
Western Cape	1,122,648	546,810
Total	7,249,045	3,958,231

Individuals Vaccinate

Province	Individuals Vaccinated
Gauteng	1,814,296
Western Cape	1,122,648
KwaZulu-Natal	1,291,932
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Mpumalanga	364,981
North West	385,154
Northern Cape	153,498
Eastern Cape	956,201
Free State	388,203
Western Cape	1,122,648

Daily Number of Individuals V

Date: Mar 2021, Apr 2021, May 2021, Jun 21

● Individuals Vaccinated 7 Day Rolling Average



Coverage

South African COVID-19
Vaccine Rollout Dashboard

Province, District, Sub-District

All

Age

All

Province	Total Population	Total Individuals Vaccinated	Vaccination Coverage	Insured (Self Reported) Population	Insured (Self Reported) Individuals Vaccinated	Insured (Self Reported) Coverage	Uninsured (Self Reported) Population	Uninsured (Self Reported) Individuals Vaccinated	Uninsured (Self Reported) Coverage
Eastern Cape	6,713,293	955,597	14.25%	659,479	189,507	28.74%	6,053,816	766,090	12.65%
Free State	2,900,268	388,095	13.38%	393,445	96,641	24.56%	2,506,831	291,454	11.63%
Gauteng	15,635,582	1,813,967	11.60%	3,633,572	796,802	21.93%	12,002,017	1,017,166	8.47%
KwaZulu-Natal	11,441,786	1,291,369	11.29%	1,278,669	377,519	29.52%	10,163,121	913,850	8.99%
Limpopo	6,039,043	770,814	12.76%	462,816	116,291	25.13%	5,576,222	654,523	11.74%
Mpumalanga	4,680,111	364,742	7.79%	555,091	75,459	13.59%	4,125,010	289,283	7.01%
North West	4,107,284	385,035	9.37%	481,208	105,126	21.85%	3,626,081	279,909	7.72%
Northern Cape	1,282,808	153,477	11.96%	178,413	35,650	19.98%	1,104,404	117,827	10.67%
Western Cape	6,997,476	1,122,471	16.04%	1,347,502	496,552	36.89%	5,649,970	625,919	11.08%
Total	59,797,651	7,245,567	12.12%	8,990,195	2,289,547	25.47%	50,807,480	4,956,021	9.75%

Data Sources: Population: As supplied to the National Department of Health; Electronic Vaccine Data System (EVDS). Please note that the 'Individuals Vaccinated' and 'Individuals Fully Vaccinated' figures will differ from the same figures on other pages because all vaccination records with undefined ages were excluded from this analysis because an undefined age cannot be assigned to a specific age group. Undefined ages can occur due to invalid date of births and the absence of valid ID numbers to derive the date of birth from.

"RA3"

Draft Election Timetable LGE 2021

Activity description	Planned Start	Planned End
TCR implementation PEO/MEO	Tuesday, 1 June 2021	Wednesday, 30 June 2021
REGISTRATION WEEKEND	Saturday, 17 July 2021	Sunday, 18 July 2021
PROCLAMATION DATE (86 DAY TIMETABLE)	Monday, 02 August 2021	Monday, 02 August 2021
Inspection v roll available for objections	Wednesday, 04 August 2021	Wednesday, 11 August 2021
Commission considers objections to inspection v roll	Thursday, 12 August 2021	Wednesday, 18 August 2021
Voting materials distributed to MEO	Thursday, 26 August 2021	Thursday, 09 September 2021
Final delivery of Voters Rolls to MEOs	Thursday, 26 August 2021	Monday, 27 September 2021
Cut off date for submission of candidate	Monday, 16 August 2021	Monday, 16 August 2021
Certify & publish voters roll	Wednesday, 01 September 2021	Wednesday, 01 September 2021
ROC Construction starts	Thursday, 02 September 2021	Thursday, 02 September 2021
Special votes application period	Friday, 03 September 2021	Friday, 17 September 2021
Cut-off parties/candidates to comply	Friday, 27 August 2021	Friday, 27 August 2021
Final lists of candidates compiled	Tuesday, 07 September 2021	Tuesday, 07 September 2021
Signing of Code of Conduct	Wednesday, 08 September 2021	Wednesday, 08 September 2021
Ballot Paper draw	Wednesday, 08 September 2021	Wednesday, 08 September 2021
Certificates issued to candidates	Monday, 13 September 2021	Monday, 13 September 2021
Ballot printing commences	Wednesday, 15 September 2021	Tuesday, 28 September 2021
Printing of election result forms complete	Friday, 08 October 2021	Friday, 08 October 2021

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Ballot distribution completed to MEO	Friday, 15 October 2021	Friday, 15 October 2021
VS Key&Access complete for Voting Day(s)	Friday, 15 October 2021	Friday, 15 October 2021
Launch of the National ROC	Wednesday, 20 October 2021	Wednesday, 20 October 2021
Nat and Prov ROCs operational	Wednesday, 20 October 2021	Wednesday, 20 October 2021
Special voting days	Monday, 25 October 2021	Tuesday, 26 October 2021
LGE2021 - VOTING DAY	Wednesday, 27 October 2021	Wednesday, 27 October 2021
Publish Election Results	Wednesday, 03 November 2021	Wednesday, 03 November 2021
Election of LC reps to the DCs	Wednesday, 03 November 2021	Wednesday, 17 November 2021
Payment of election staff completed	Wednesday, 03 November 2021	Sunday, 26 December 2021
Materials rollback to PEO sites	Monday, 08 November 2021	Thursday, 25 November 2021
VS Rentals payment completed	Wednesday, 03 November 2021	Thursday, 25 November 2021
Post-Election debriefing sessions complete	Monday, 27 December 2021	Monday, 24 January 2022

"RA4"

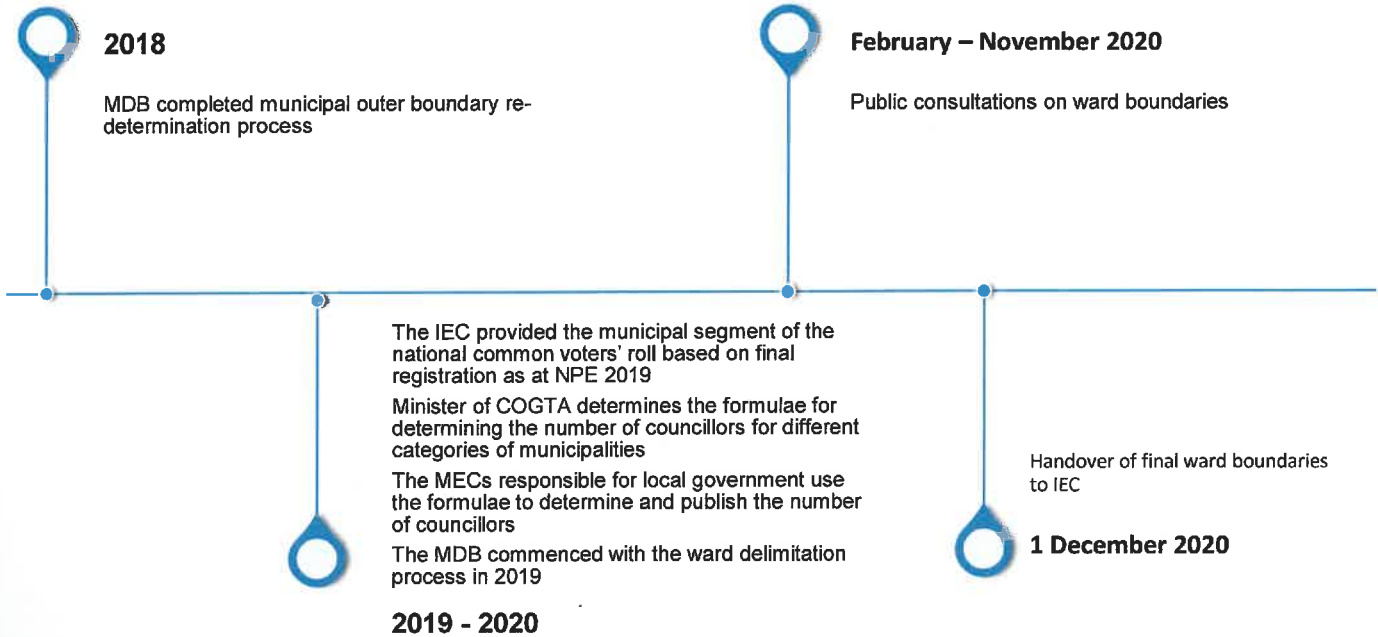
**Preparations for the
2021 Local Government
Elections**
May 2021



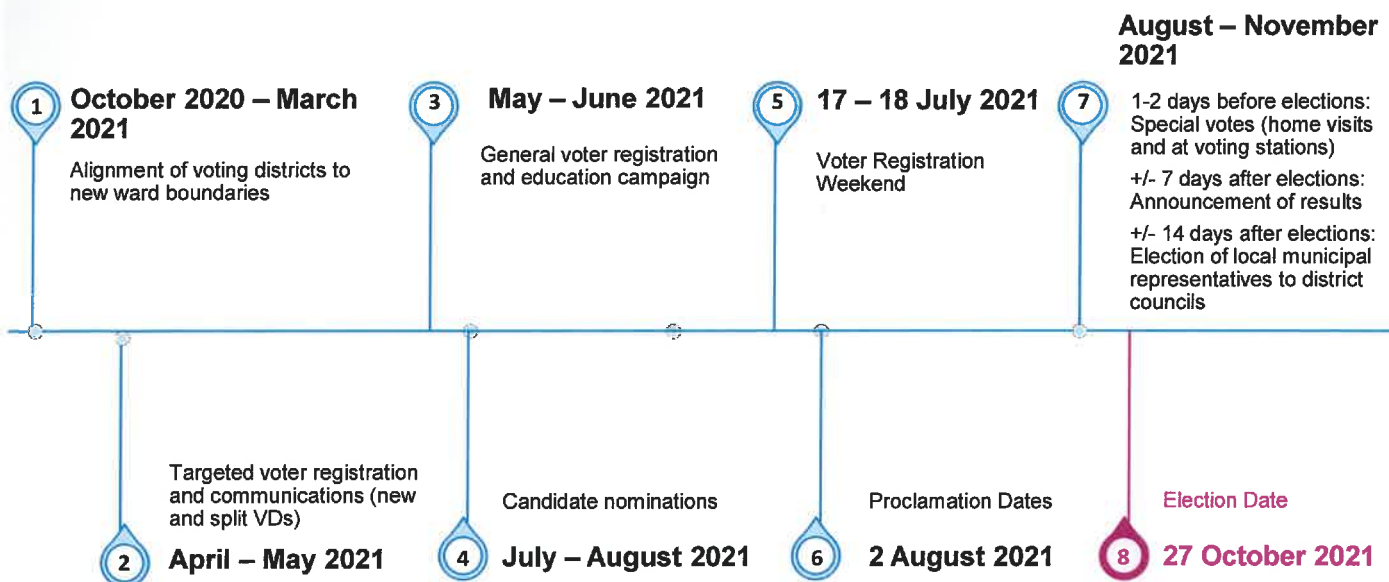
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The Road to LGE 2021



Provisional Timelines for LGE 2021



Free and Fair Elections

- Commission consulted with leaders of political parties, ministers of CoGta and Health
- Political leaders are diametrically opposed on whether the elections will be free and fair
- Commission decided to launch a process to undertake a systematic review of factors having a bearing on free and fair elections
 - Constitutional and legal framework
 - Ministry of Health
 - Ministry of Cogta
 - Political Parties
 - Health Experts
 - International experience
- Former Deputy Chief Justice has been appointed to undertake the enquiry
- Report to the Commission due on **23 July 2021**

Cessation of By-elections

- In terms of the extant Structures Act provisions, by-elections may not be held for vacancies arising from **1 May 2021**
- However, by-elections may still be held beyond this date if the vacancy arose before 1 May 2021
- The MEC for local government has to determine that the by-election must stand over until the general elections
- Last set of by-elections will be on 30 June 2021
- Eight (8) wards are affected



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Electoral System

- The current electoral system for local government is Mixed-Member Proportional
 - Ward councillors: 50 percent of council
 - Proportional councillors: 50 percent of council
- Voters in metropolitan municipalities will receive two ballot papers (ward and PR)
- Voters in local municipalities will receive three ballot papers (ward, PR for local council; PR for district council)



Status on Legislative Amendments

- The Municipal Structures Amendment Bill has now been passed by both houses of Parliament
 - Cessation of by-elections
 - MEC's proclaiming by-elections
 - MM must inform the MEC and Commission of vacancies
 - Councillors removed by MC in terms code of conduct providing two year cooling period
 - Following an election list of candidates may only be amended after the inaugural council meeting
 - Excessive seats
 - Placing time limits of 48 hours to supplement list, candidates Elected on multiple lists



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Status on Legislative Amendments

- The Electoral Laws Amendment Bill has also been passed by both houses of Parliament
 - Increasing the registration levels of political parties
 - Providing for a varied voting procedure for voters without addresses
 - Clarifying the effective date of the electoral code of conduct
 - Balancing the right to privacy of personal information and the right of freedom of expression in the publication of the voters' roll
 - Rationalizing the need for submission of an acceptance of nomination form
 - Removing the ballot paper statement from the Act. To be revised in the regulations



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Status on Legislative Amendments

a. Regulation on Registration of Political Parties

(Electoral Commission Act, 1996)

- Alignment to amendments in the Act i.r.o levels of registration i.e. National, Provincial, District/ Metropolitan
- Increase in number of signatures of supporters
- Increase in quantum of deposit for applications for registration
- Recognition of Party Leader as officer to communicate and make certain issues i.r.o changes in a party's particulars, e.g. logo or name, and deregistration

b. Regulation on Voter Registration (Electoral Act, 1998)

- Alignment to amendments in Act i.r.o provision of voters' roll to various parties and redaction of voters details and refusal to provide;
- Voter registration incl. Online self registration;
- Review of cost for purchase of voters roll;

Total Municipalities

- Number of municipalities remains unchanged from LGE 2016
 - 8 metropolitan municipalities
 - 205 local municipalities
 - 44 district municipalities



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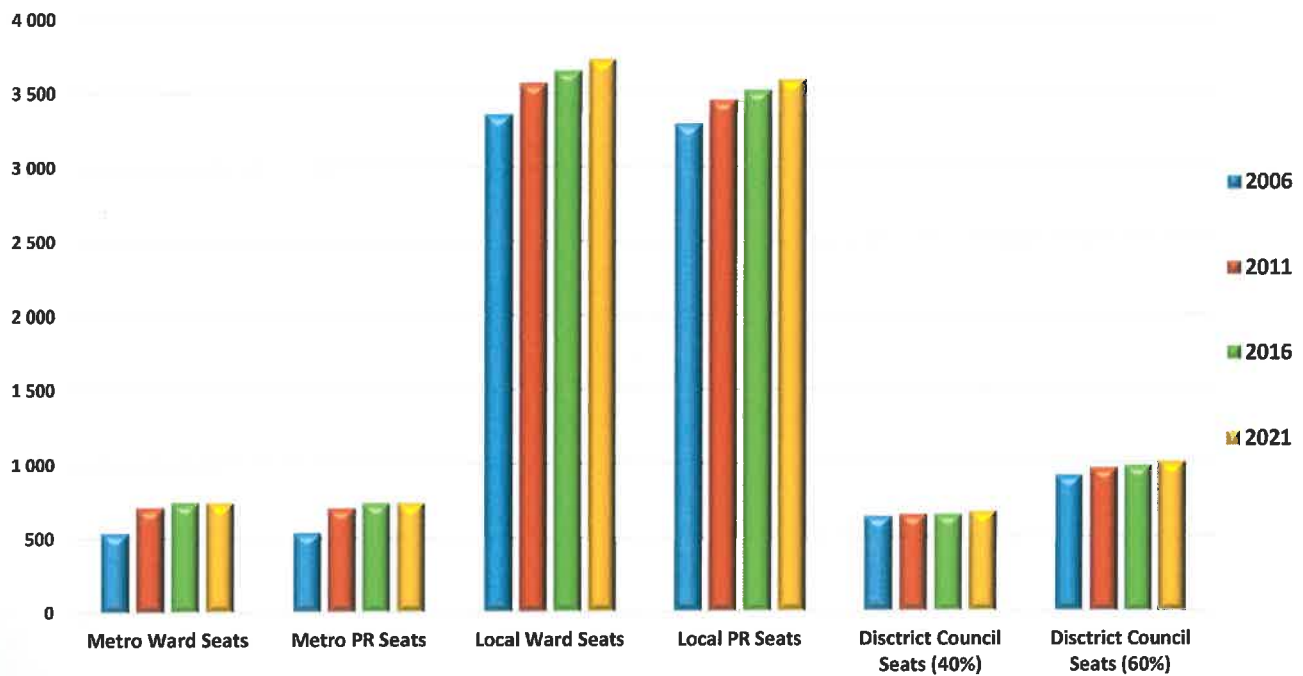
Total Seats & Councillors

- The number of councillors to be elected will increase slightly from 2016 to 2021

Seat Type	2006	2011	2016	2021*	% Increase: 2016 to 2021
Metro Ward Seats	538	709	740	742	0.3%
Metro PR Seats	536	706	738	740	0.3%
Local Ward Seats	3 357	3 568	3 652	3726	2.1%
Local PR Seats	3 289	3 451	3 516	3586	2.0%
Disctrict Council Seats (40%)	640	654	655	674	2.9%
Disctrict Council Seats (60%)	917	967	984	1010	2.6%
DMA Seats	20	-	-	-	
Total Seats	9 297	10 055	10 285	10478	1.9%
Total Councillors	8 380	9 088	9 301		



Available Seats and Councillors



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Ward Delimitation

- Following the handover of the list of ward boundaries by MDB in September and December 2020, the Electoral Commission is currently updating the VD delimitation in preparation for voter registration
- This phase of work includes:
 - update the delimitation of voting districts in accordance with recent population changes since NPE 2019
 - to adjust VDs that have been split by ward boundaries
 - to identify venues to be used as voting stations and
 - to consult with members of MPLCs on VD boundaries and choice of venues to be used as voting stations for LGE 2021
- This work is scheduled for completion by end of March 2021



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Final wards received from MDB by province

Province	Municipalities	MDB ward count 2021	Split voting districts
Eastern Cape	33	710	63
Free State	19	319	87
Gauteng	9	529	159
KwaZulu-Natal	44	901	162
Limpopo	22	568	45
Mpumalanga	17	400	247
North West	18	403	117
Northern Cape	26	232	72
Western Cape	25	406	171
Total	213	4 468	1 123

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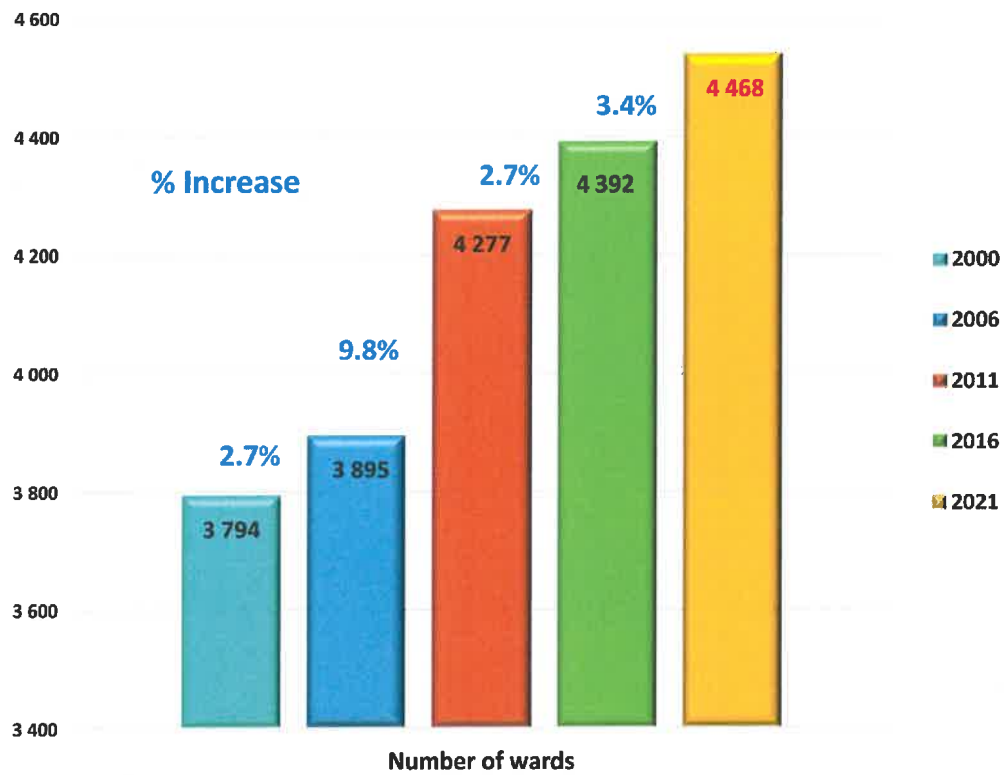
Number of Wards 2000 – 2021

Election	Number of wards	% Increase between elections
2000	3 794	-
2006	3 895	2.7%
2011	4 277	9.8%
2016	4 392	2.7%
2021*	4 468	1.8%

* Total number of wards for LGE 2021 may still vary



Number of Wards



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Voting District Delimitation

DELIMITATION PROGRESS

Province	Munic Count	2021 Ward Count	2021 VD Count	New VDs	Deleted VDs
Eastern Cape	33	710	4809	29	12
Free State	19	319	1564	42	7
Gauteng	9	529	2812	51	10
KwaZulu-Natal	44	901	4939	56	2
Mpumalanga	17	400	1788	18	2
Northern Cape	26	232	728	24	3
Limpopo	22	568	3187	36	6
North West	18	403	1743	17	7
Western Cape	25	406	1576	17	20
TOTAL	213	4 468	23 146	290	69

Voters' Roll Growth: 1999 - 2021

Election Year	Registered Voters (in millions)
1999	18.17
2000	18.47
2004	20.67
2006	21.05
2009	3.18
2011	23.33
2014	25.39
2016	26.33
2019	26.76
2021* (May)	25.78

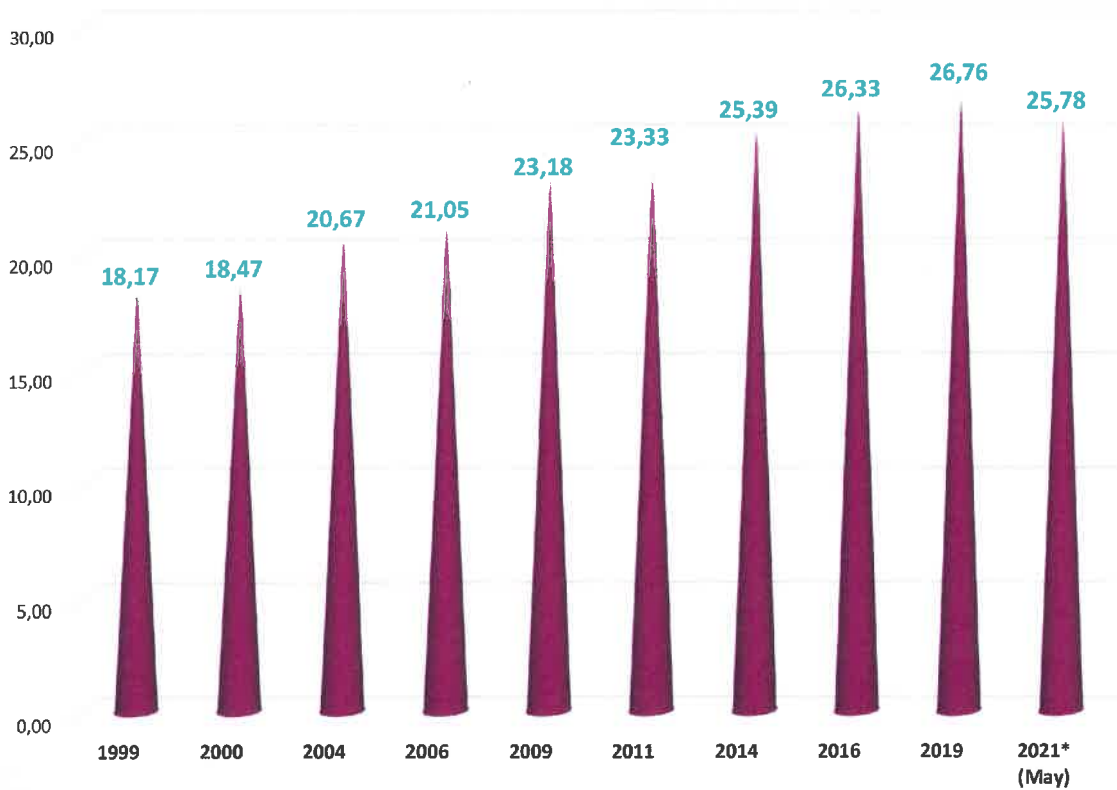
+47%

* The number of registered voters declines between general elections at an average rate of +/- 30 000 per month due to deaths. A nationwide voter registration campaign is planned ahead of LGE 2021



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Voters' Roll Growth: 1999 - 2021



Voters' Roll by Gender

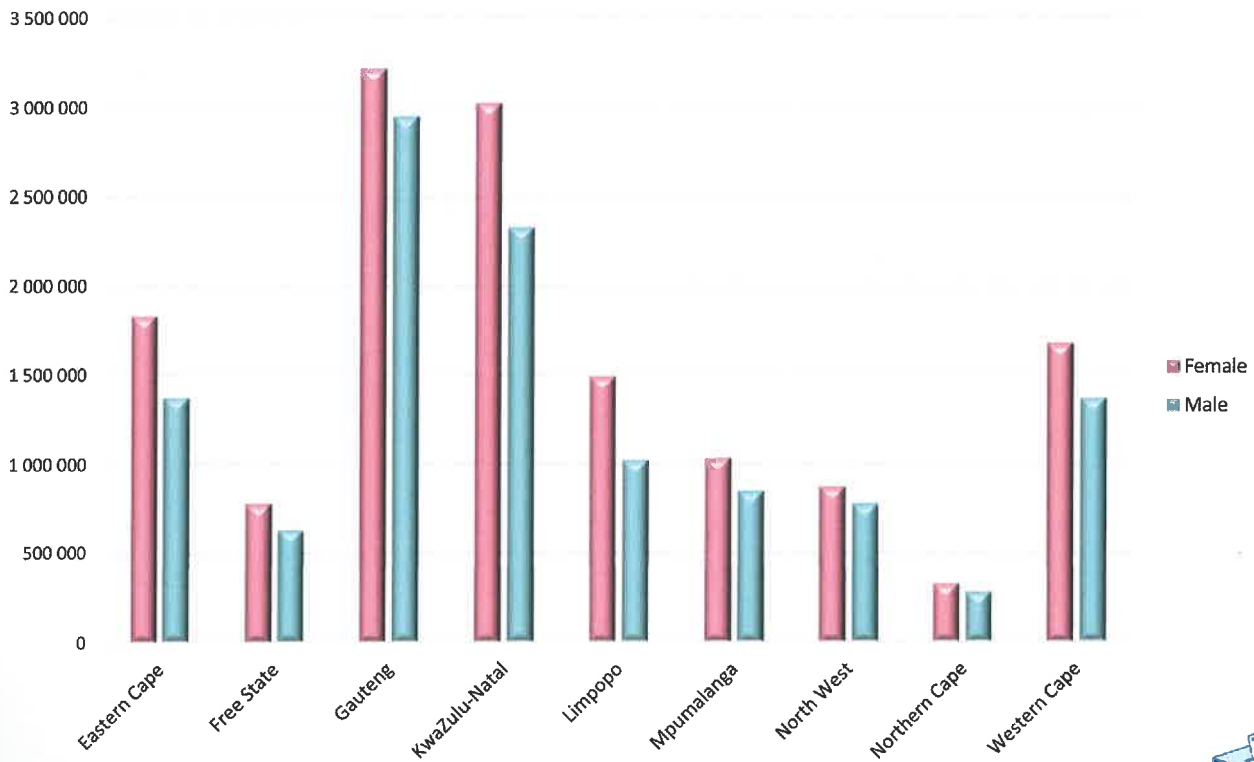
4 May 2021

Province	Female	Male	Total
Eastern Cape	1 831 257	1 369 613	3 200 870
Free State	776 479	626 189	1 402 668
Gauteng	3 215 764	2 948 519	6 164 283
KwaZulu-Natal	3 022 375	2 323 906	5 346 281
Limpopo	1 489 668	1 018 326	2 507 994
Mpumalanga	1 031 137	845 089	1 876 226
North West	868 981	773 005	1 641 986
Northern Cape	324 847	278 881	603 728
Western Cape	1 672 587	1 362 802	3 035 389
Total	14 233 095	11 546 330	25 779 425
Percentage	55%	45%	100%



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Voters' Roll by Gender 4 May 2021



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Voters' Roll by Age

4 May 2021

Province	Age Band								Total
	18-19	20-29	30-39	40-49	50-59	60-69	70-79	80+	
Eastern Cape	5 092	560 014	754 213	625 196	521 305	399 729	203 952	131 369	3 200 870
Free State	2 006	217 386	365 690	301 643	243 137	162 380	76 597	33 829	1 402 668
Gauteng	6 135	882 385	1 618 366	1 484 833	1 116 529	664 694	281 581	109 760	6 164 283
KwaZulu-Natal	9 956	1 139 446	1 468 552	1 057 114	769 644	511 565	263 925	126 079	5 346 281
Limpopo	7 615	443 798	639 141	512 959	391 413	261 939	148 885	102 244	2 507 994
Mpumalanga	3 515	334 947	533 119	397 158	297 166	184 896	82 460	42 965	1 876 226
North West	5 724	239 338	420 826	365 663	286 104	191 988	91 218	41 125	1 641 986
Northern Cape	1 279	98 063	154 025	134 211	105 264	67 465	30 607	12 814	603 728
Western Cape	3 490	405 342	717 049	709 164	579 425	365 223	179 908	75 788	3 035 389
Total	44 812	4 320 719	6 670 981	5 587 941	4 309 987	2 809 879	1 359 133	675 973	25 779 425
Percentage	0.2%	16.8%	25.9%	21.7%	16.7%	10.9%	5.3%	2.6%	100%

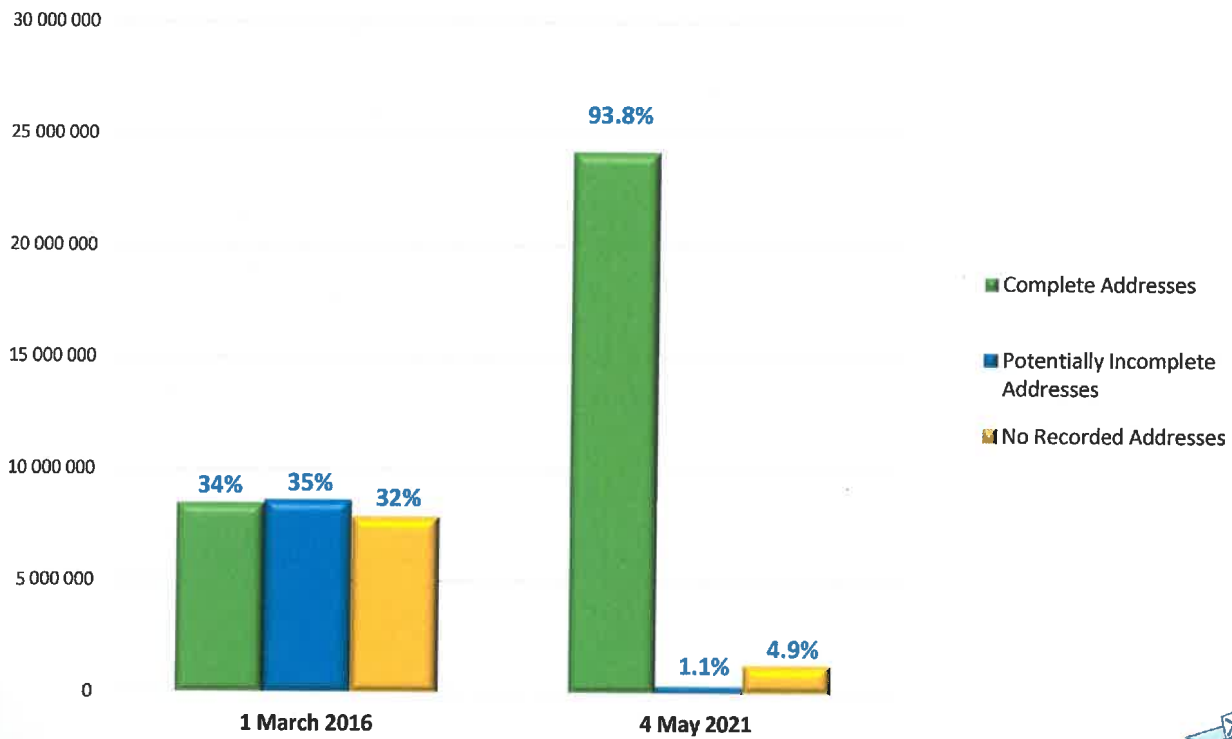
Status of Voters' Roll Addresses

Address Category	1 March 2016	%	4 May 2021	%
Complete Addresses	8 468 119	34%	24 210 484	93.8%
Potentially Incomplete Addresses	8 601 195	35%	272 180	1.1%
No Recorded Addresses	7 857 156	32%	1 253 130	4.9%
"REC AS" Addresses	-	-	66 568	0.3%
Total Registered Voters	24 926 470	100%	25 802 362	100%



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Voters' Roll Address Progress 2016 - 2021



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Voters' Roll Addresses by Province

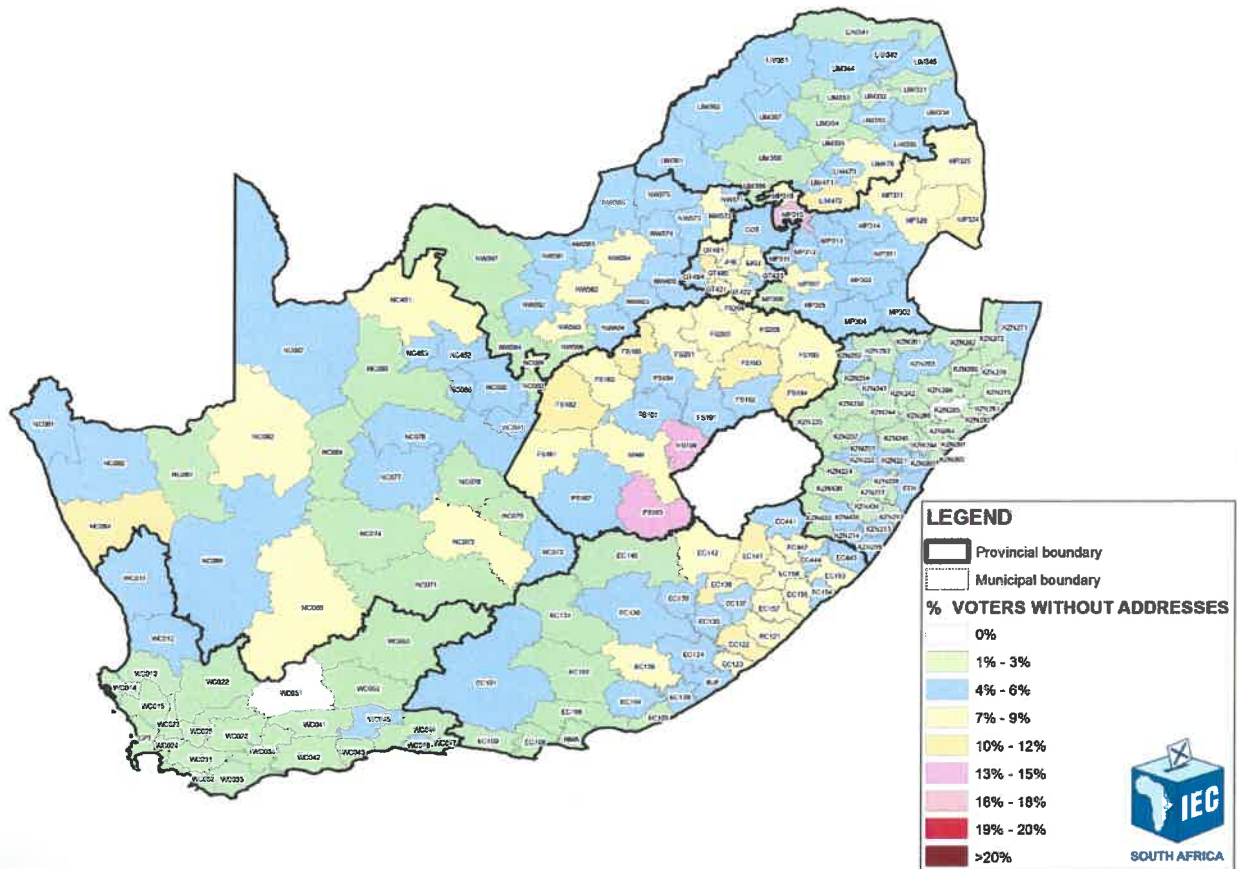
4 May 2021

Province	Complete Addresses	Potentially Incomplete Addresses	"REC-AS" Addresses	No Recorded Addresses	Total
Eastern Cape	2 963 811	59 871	17 012	160 176	3 200 870
Free State	1 281 812	10 877	3 529	106 450	1 402 668
Gauteng	5 703 789	42 401	9 688	408 405	6 164 283
KwaZulu-Natal	5 072 345	69 926	14 597	189 413	5 346 281
Limpopo	2 386 569	13 655	4 794	102 976	2 507 994
Mpumalanga	1 711 976	23 342	6 401	134 507	1 876 226
North West	1 550 739	13 127	2 291	75 829	1 641 986
Northern Cape	560 431	13 117	1 342	28 838	603 728
Western Cape	2 938 331	41 673	3 621	51 764	3 035 389
Total	24 169 803	287 989	63 275	1 258 358	25 779 425
Percentage	93.8%	1.1%	0.2%	4.9%	100%



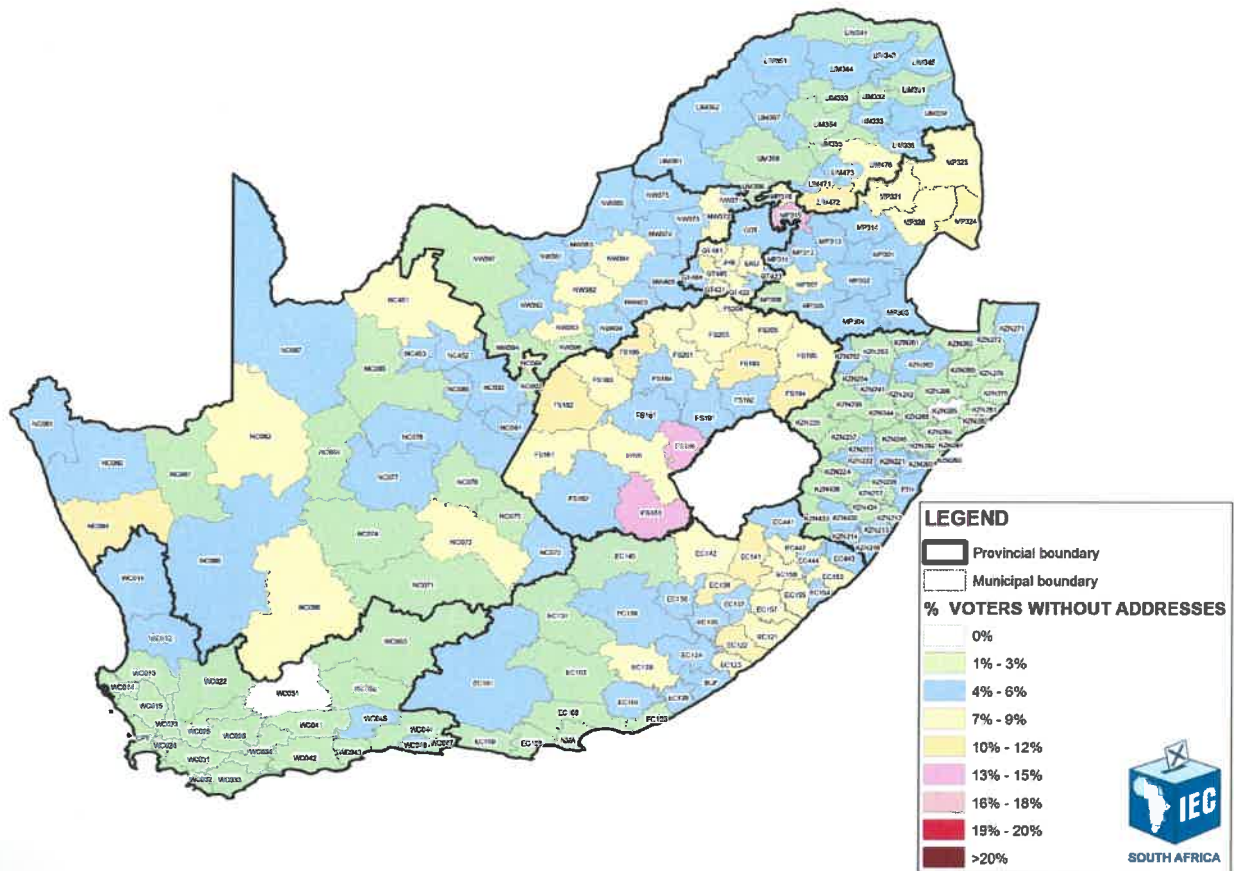
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No Recorded Addresses by Municipality 4 May 2021



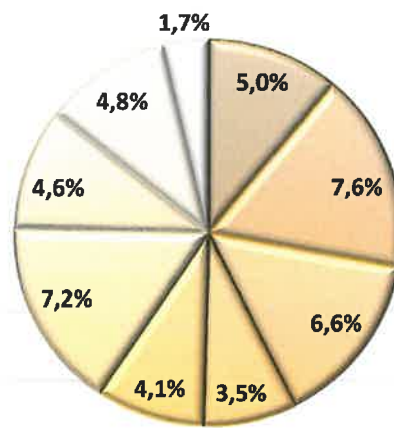
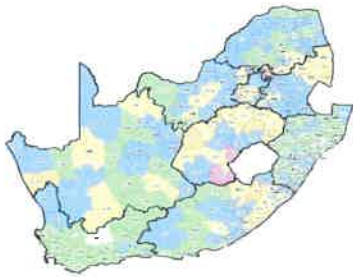
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No Recorded Addresses by Municipality 4 May 2021

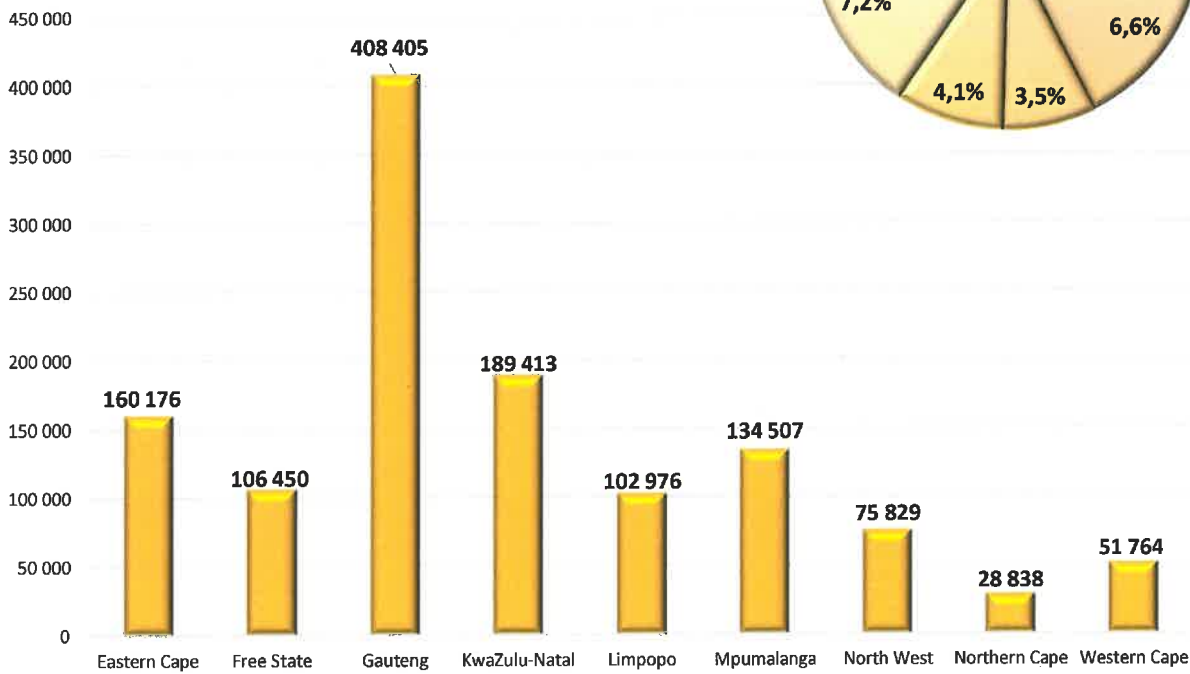


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No Recorded Addresses by Municipality 4 May 2021

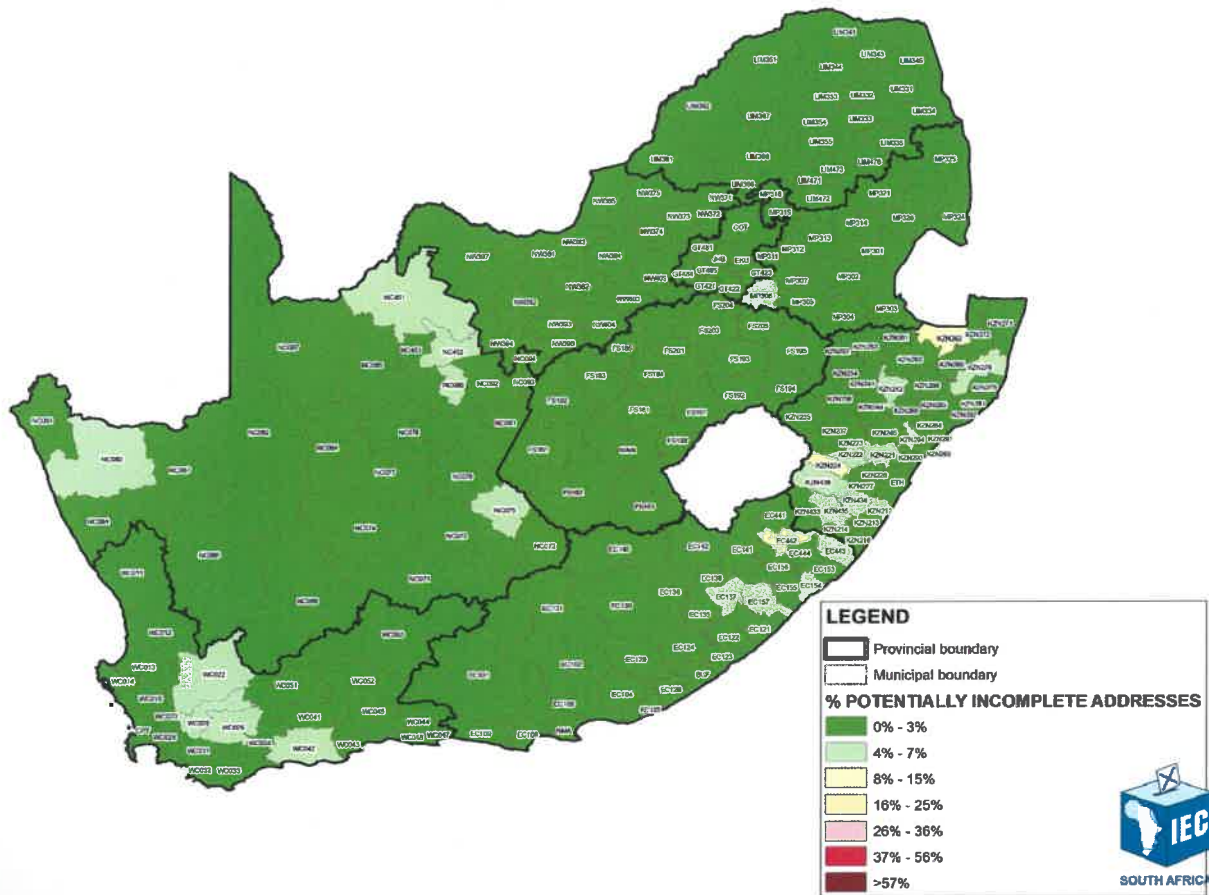


- Eastern Cape
- Free State
- Gauteng
- KwaZulu-Natal
- Limpopo
- Mpumalanga
- North West
- Northern Cape
- Western Cape



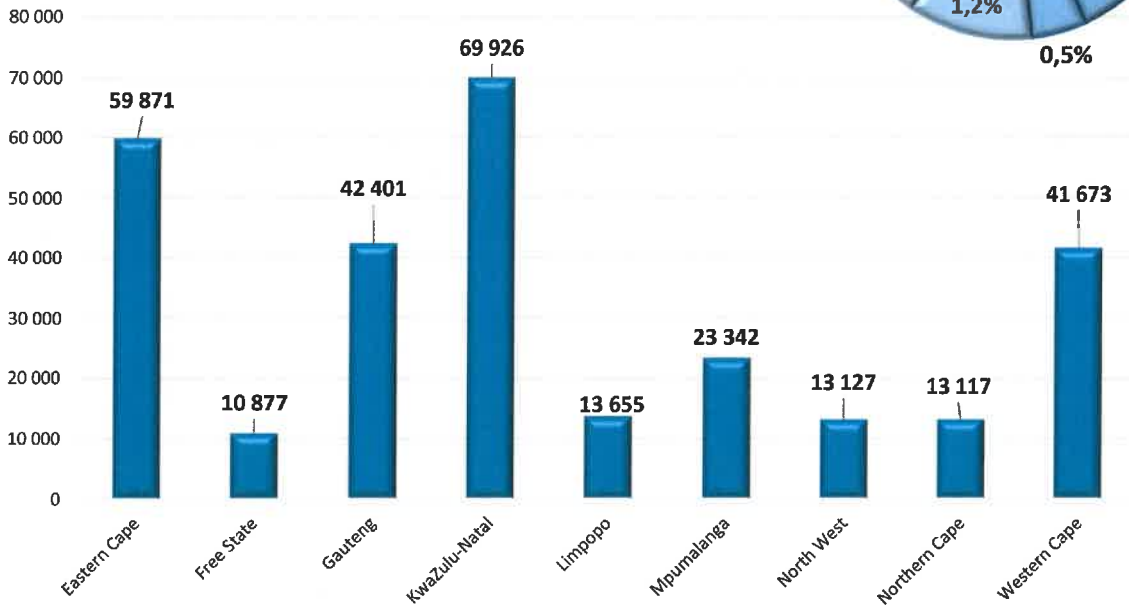
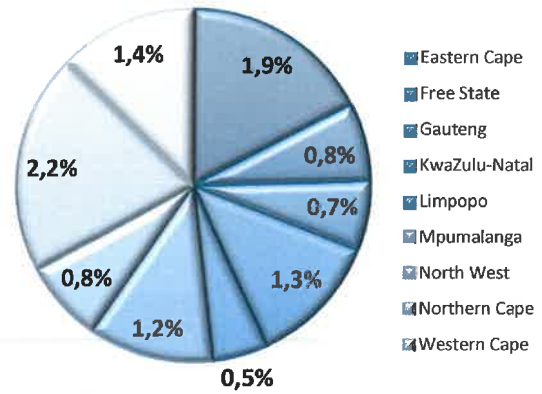
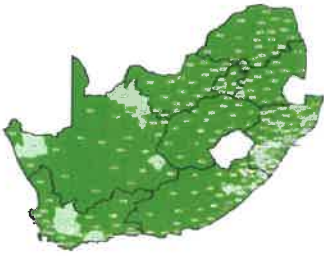
Potentially Incomplete Addresses

by Municipality 4 May 2021



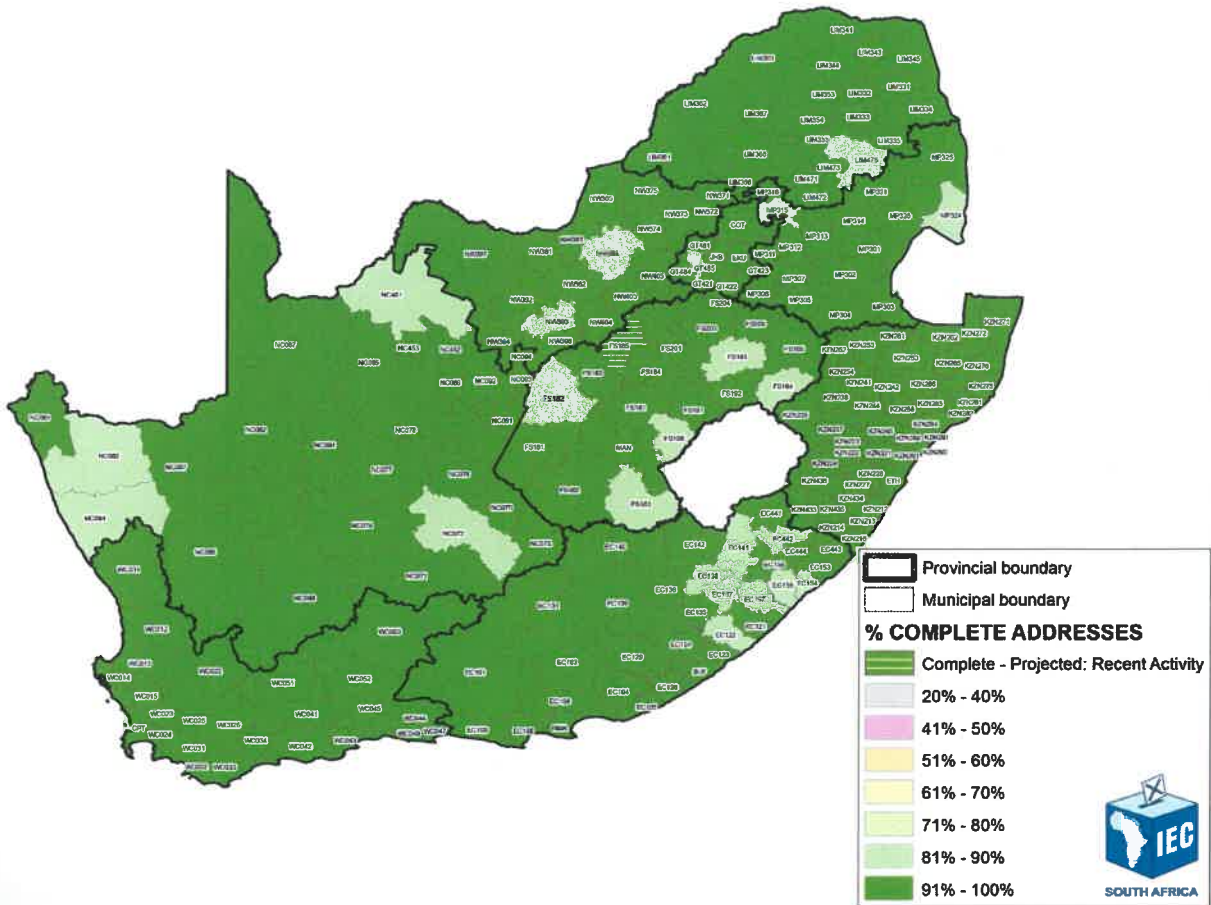
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Potentially Incomplete Addresses by Municipality 4 May 2021



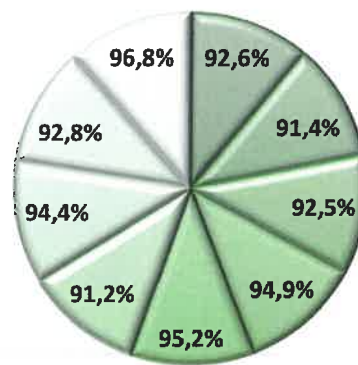
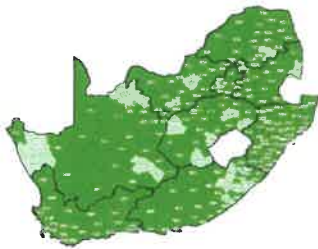
Complete Addresses

by Municipality 4 May 2021

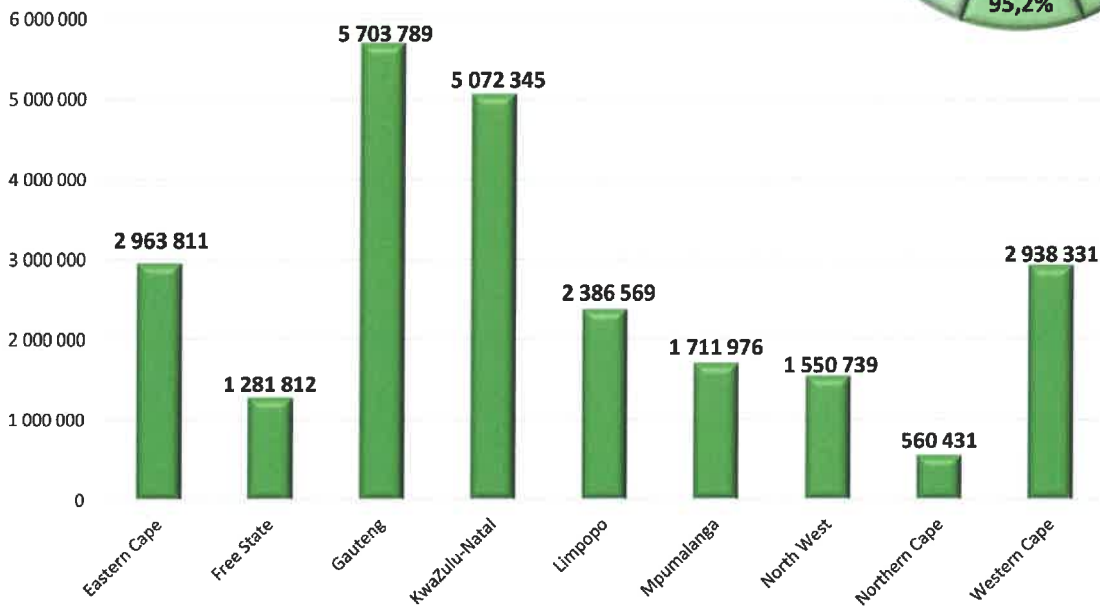


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Complete Addresses by Municipality 4 May 2021



- Eastern Cape
- Free State
- Gauteng
- KwaZulu-Natal
- Limpopo
- Mpumalanga
- North West
- Northern Cape
- Western Cape



Communication and Voter Education

- An informed electorate is a key success factor for free and fair elections
- The Electoral Commission embarks on heightened communication and voter education programmes ahead of elections to ensure the electorate is empowered with information relating to participation in elections including:
 - The importance of participation by each citizen
 - How to register and update voter registration information
 - Where and how to vote
- Other key areas of communications in the upcoming LGE 2021 will include:
 - COVID-19: Explaining the new COVID-19 protocols and how these will keep voters, election staff, observers, party agents and others safe
 - Disinformation: The rise of social media has also seen a rise in disinformation which has the potential to undermine the freeness and fairness of elections. Educating voters on the dangers of disinformation and how to spot it/report it.



Recruitment and Training

- The criteria for the recruitment of electoral staff developed in consultation with the NPLC
- Key consideration being to exclude persons that may be partisan (no-one who has held office in a political party may serve as an election official)
- Names of proposed presiding officers and deputies are presented to MPLCs for objection before they are confirmed.
- Approximately 58 000 electoral staff are recruited and trained for the registration events and +/- 207 000 for voting day
- National Registration Training Workshop completed
- Provincial Registration Training Workshop underway
- Training rollout to commence from 4 June 2021



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Key Innovations for LGE 2021

1. New **Voter Management Devices** are being procured ahead of LGE 2021 to replace “zip-zips”

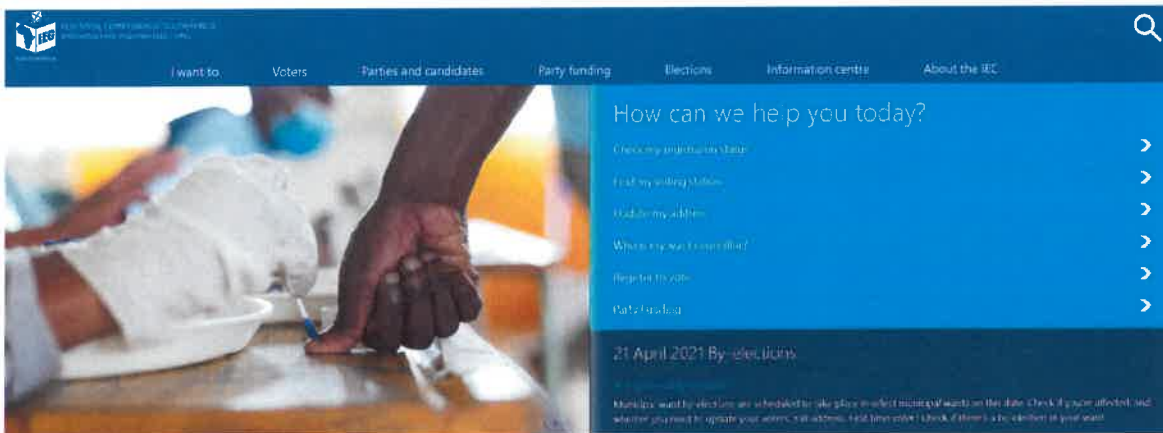
- New generation technology will allow for enhanced voter registration and monitoring of voter participation in real time. This includes:
 - The ability to capture an address or place of residence during **registration** and to verify the address against ward boundaries
 - To support other functions such as a **central voters’ roll (voter participation)**, **electoral staff attendance** and **ballot paper tracking**.



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Key Innovations for LGE 2021

2. A revamped **public website** for improved navigation and communications



3. A public **reporting app** for **disinformation** on social media in association with Media Monitoring Africa towards end of May which will form part of a larger Electoral Justice system



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Key Innovations for LGE 2021

4. Introduction of **e-Learning** modules for training of election staff
5. Introduction of **e-Recruitment** for internal staff appointments as well as those of electoral staff. Test scores will be received and incorporated from eLearning where relevant.
6. Enhancements to the **Online Candidate Nomination** system used successfully by parties during the previous two general elections and by-elections.
7. Introduction of a new and revamped **Voter Registration System**.
8. Introduction of an **Online Observer Application** system.



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Key Innovations for LGE 2021

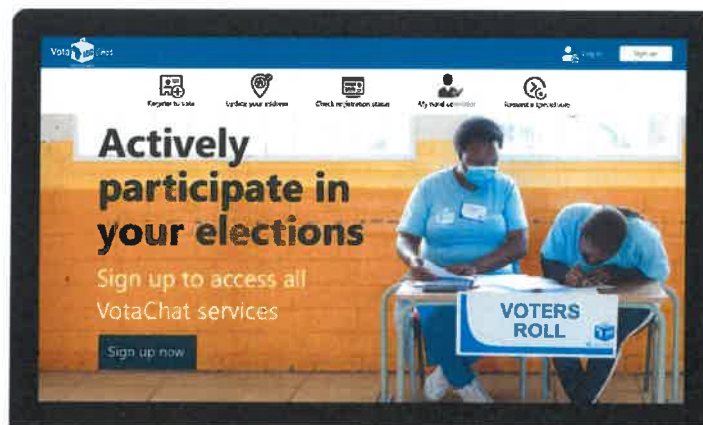
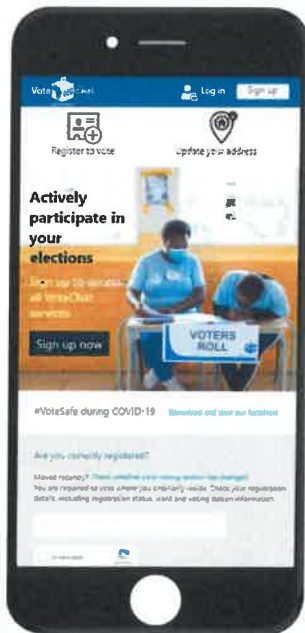
8. Introduction of an **internal dashboard** with information on key election systems and processes.



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Key Innovations for LGE 2021


9. Introduction of a progressive web app **VotaChat** portal towards the end of May which will enable online self-registration for voters. The portal will be available on any computer or mobile phone with a browser.



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COVID-19 Protocols for Elections

- In order to prevent the elections posing a risk to all participants, the Electoral Commission introduced a range of special COVID-19 prevention measures for by-elections in 2020
- These included:
 - Strict social distancing practices both outside and inside voting stations
 - The mandatory wearing of masks over nose and mouth of all persons within the boundaries of the voting station
 - The application of hand sanitisers to all persons entering and exiting the voting station
 - The replacement of the traditional indelible ink marker pens with an indelible ink liquid which will be applied from a bottle to the thumb of voters using cotton buds which will be disposed after each use
- Protective equipment including masks, gloves and face shields was procured for election staff for voting stations and for conducting home visits for those voters who are physically disabled, infirm or pregnant





Thank you

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VOTING IN THE TIME OF COVID-19: VOTING PROCEDURES TO MINIMISE CONTAGION AT VOTING STATIONS.

1. PURPOSE

The document sets out the measures to be implemented to combat the spread of COVID-19 during by-elections at the level of a voting station.

2. BACKGROUND

2.1 The World Health Organization (WHO) has confirmed Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-COV-2) as the causative agent of Coronavirus Disease 2019 (COVID-19) and has declared the disease a global pandemic. Since then, global and country specific measures have been implemented to contain the spread of the disease. What is currently known is that the disease is spread through respiratory droplets produced when an infected person coughs, sneezes, talks or shouts in a same way as other respiratory pathogens spread.

2.2 Acceptable methods to prevent the spread of COVID-19 are:

2.2.1 Maintaining social distancing by observing distance of at least 1 meter away from other persons.

2.2.2 Washing hands with soap and water for 20 seconds, or using alcohol-based hand sanitiser after contact with any person or after contact with frequently touched surfaces i.e., tabletops, pens, etc.

2.2.3 Coughing in the fold of the elbow or in a tissue which is thereafter discarded.

2.2.4 Avoiding touching eyes, nose and mouth with unwashed hands.

2.2.5 Creating hygienic environment:

- a) Surfaces that are frequently touched, pens, tabletops should be cleaned and disinfected frequently depending on the circumstance.
- b) People who feel ill should stay at home.

3. KEY CONSIDERATIONS INFORMING CONTAINMENT MEASURES

The opportunity for citizens to select public representatives within a legally defined timeframe, is a pillar of democratic values and standards. The selection process is a communal one, and communal events inherently bring people together - a process that is inimical to the informed advice for limiting the transmission of COVID-19.

The challenge is thus to facilitate the right of citizens to elect their public representative in a manner that does not increase the spread of COVID-19.

To this end the measures must:

- 3.1 Safeguard the right to representation: It is recognized that ward vacancies may not remain in perpetuity without diluting the rights of residents in that geographic area of representation. For as long as the vacancies exist residents in the affected wards are denied representation in the municipal council and their voice is lost in the policy making and decision-making processes of the municipality.
- 3.2 Promote procedures that are aimed at maintaining public health: This requires that practices must be institutionalized to ensure that voter registration points and voting stations do not become arenas of contagion.
- 3.3 Maintain the integrity and legitimacy of elections and their outcomes: This requires that actions must be undertaken to ensure that trust in the electoral process is not eroded and the acceptability of the outcomes is safeguarded. This is achieved by ensuring that adopted measures engender inclusiveness, equality and accountability.

- 3.4 Accord with and be moderated by the extant legal scheme: This is not an opportunity to rewrite the law. To that end, measures that are outside of the law are not considered or recommended.
- 3.5 Be well understood by electoral staff, voters, political contestants, observers and the media: This is achieved by reviewing training guides for electoral staff to update process at voting station; communication strategy to communicate amended procedures to voters and general public, briefing of Party Liaison Committees (PLCs) including party agents.

4. SPECIFIC MEASURES

4.1 Voting Procedure

- 4.1.1 Voters who have successfully applied to register to vote will be eligible to vote in elections provided the registered voter presents herself in person at the voting station on voting day and is able to provide a copy of her identity document or smart identity card or valid TIC to the voting official.
- 4.1.2 The queue walker needs to ensure that voters stand in the queue at a distance of at least one and a half meters apart. Adhesive tape or any other voting station specific measure should be used to aid and enforce the distance to be observed by voters in the queue.
- 4.1.3 Before entering the voting station door, the door controller should spray liquid hand sanitiser on both hands of each voter and explain to the voter the value and importance of the step. No voter may enter a voting station if the voter is not wearing a face mask or similar face cover, as per the regulations on lockdown measures stipulating that all people in public places need to cover their faces with a mask or similar.
- 4.1.4 The barcode of the identity document or card of the voter is scanned by a voters' roll officer using a PBSU to check whether, and in which, VD the voter is registered to vote and the sequence number of the voter on the roll. The voting official should take hold of the ID document (wearing

of disposable gloves by voting official will protect the official from virus contamination). The voter should adjust the face mask to enable the official to determine whether the voter is the person described in that identity document. In this regard care should be taken that the requisite distance is maintained, and that the voter observes proper guidelines on handling the face mask.

- 4.1.5 The name of the registered voter is marked off the voters' roll.
- 4.1.6 Before being handed the relevant ballot papers for the elections concerned, the back of the ballot papers is also stamped to authenticate the ballot papers.
- 4.1.7 The fingernail of the voter is marked by the inker voting official (who is wearing disposable rubber gloves) with indelible ink to indicate that the voter has voted in the election. Before marking the fingernail of the voter, the official must ensure that the thumb and nail are dry and there is no obvious residue of the hand sanitiser. The voter is asked to wait for at least five seconds at the inker table after applying ink to the nail. This is important to ensure that the bonding properties of the ink are not vitiated by the necessary use of hand sanitiser.
- 4.1.8 The voter marks the ballots in secret at the voting booth, folds the ballots and deposits the marked ballots in the ballot boxes before exiting the voting station. (Voters requiring assistance must be assisted in a manner that guarantees the secrecy of the vote to the maximum extent possible while still maintain social distancing). Ballot box controller wipes each pen (voters may be encouraged to bring own pens) with disposable wipes after each voter has voted.
- 4.1.9 Before exiting the voting station, the ballot box controller again sprays hand sanitiser on both hands of the voter. (This should assuage the concerns of use of inking pens and other risks emanating from touching surfaces in the voting station.)

4.1.10 Accredited political party agents, observers and the media are able to observe the voting process. This is an important part of ensuring the transparency of the voting process. Protocols on social distancing and sanitising of hands to apply to all party agents and observers that enter voting station. (These categories of persons must provide their own personal protective equipment.)

4.1.11 All voting officials should be seated or standing at least one and a half meters apart.

4.1.12 Officials must ensure that all voters inside of the voting station maintain a distance of one and a half meters apart at all times. (Use of demarcation tape to mark the floor surface is peremptory where the voting stations enables same.)

NB: The procedures apply to a registration station or voter registration point with the contextual changes.

4.2 Counting

Counting procedures remain unchanged. However, officials and party agents need to observe social distancing at all times, make use of a new set of rubber gloves for the count, as well as sanitise hands at the end of voting/start of counting, and at end of counting process – together with wiping of all surfaces prior and after use.

Also, careful roll back and disposal of voting materials needs to be followed

5. KEY RISK

Risk	Mitigation
A. Risk that traditional voting stations may not be availed by landlords owing to fear or misperceptions. Or voting stations may no longer be	Actively review affected voting stations ahead of by-elections to confirm availability and suitability.

<p>suitable given the imperative for social distancing.</p>	
<p>B. Political party activity outside of the boundary of voting stations must not be allowed to undermine the measures put in place to curb transmissions.</p>	<p>Obtain concurrence of PLCs to limit number of party agents to one where the voting station size and configuration does not allow for adequate social distancing of 1 and a half meters, notwithstanding section 39(1)(a) of MEA entitling two agents per party.</p> <p>Contestants are permitted to host temporary operating facilities outside voting stations provided that social distancing and related health safety protocols are implemented at such facilities.</p>
<p>C. Home visit may pose risk of infections to voters who may already have underlying medical conditions or are older adults.</p>	<p>Voting officials conducting home visits will wear face masks, face shields, gloves and will have sanitizers for their protection and the protection of voters.</p>
<p>D. Concerns over COVID-19 may impact rate of participation by voters and may also lead to withdrawal by voting station officials.</p>	<p>Communication and outreach focused on communities in affected wards to explain measures to protect voters from infections at voting stations. Similar interventions with persons being recruited as voting officials.</p>
<p>E. Possible exposure to liability claims from allegations of infection during an electoral event.</p>	<p>Corporate services is investigating this area for both voters and officials.</p>
<p>F. Indelible ink markers efficacy may be vitiated by use of hand sanitisers or may be perceived as points of</p>	<p>Review of literature and claims by ink manufacturers do not support the assertion that hand sanitisers may</p>

infection given that the tip is not sanitised.	<p>have a negative effect on the efficacy of the ink if properly applied.</p> <p>Indelible ink contains several chemicals including biocide. As there is no evidence yet that biocide in indelible ink will kill the coronavirus, cleaning hands before applying the ink is still the recommended precaution against infection.</p> <p>Different ink applicators are being considered to avoid use of a single applicator on multiple voters.</p>
G. Misinformation and Disinformation	Retain capacity to counter wrong information and proactively communicate.

6. IMPACT ON VOTING STATION PROVISIONING

The measures have implications for provisioning of voting stations. In fact, they introduce material categories that have hitherto, not been part of the material requirements in an electoral event.

6.1 Personal Protective Equipment

All voting officials are to be provided the following items:

- Disposable rubber gloves (X3 pairs per official) for each day of voting.
- Protective face masks and visors (x3 per official) for each day of voting.
- 1 face shield per official.

The level of protection is consistent with the “Guidelines on Personal Protective Equipment for Government Employees and the Public” issued on 6 April 2020.

6.2 Other protective aids

In addition, the following items should be supplied to each voting station:

- Bottles of liquid spray hand sanitiser (alcohol content of at least 70%). Quantities to be determined based on the number of registered voters per VD.
- Disposable sanitiser wipes (at least 70% alcohol based).
- Disposal bins with lids.
- Canisters with disinfectants to disinfect the voting station before opening and after close of voting station.
- Posters clarifying procedures.

7. WAY FORWARD

Members of the NPLC were requested to consider the proposed measures as well as the alert levels (including the Regulations on the National State of Disaster) and provide written submission. Parties were specifically asked to reflect on and provide views with respect to alert levels under which free and fair by-elections would be possible.

8. RESPONSE OF MEMBERS OF NPLC

<u>NPLC MEMBER</u>	<u>ISSUE RAISED</u>	<u>RESPONSE OF ELECTORAL COMMISSION</u>
African National Congress (ANC)	<ol style="list-style-type: none"> 1. Inking of finger of voter: not desirable to allow voters to ink own fingers. 2. Number of party agents inside voting stations: accept proposal to limit number of party agents per station to one per party where space does not allow for two agents per party per station. 	<ol style="list-style-type: none"> 1. Procedure has been amended to revert to status quo with voting official responsible for marking finger of voters. 2. Procedure amended to limit number of agents per party to one where size and configuration of

	<p>3. Party tables outside boundary of voting stations: prefer for party tables to be allowed with strict adherence to social distancing and related health safety measures.</p> <p>4. Safe disposal of materials: adequate provision of rubbish bins in voting stations to ensure safe disposal of waste materials used to prevent transmission of virus.</p>	<p>station does not permit adequate social distancing of one and a half meters. Two agents per party retained in voting stations allowing for adequate social distancing.</p> <p>3. Procedure amended to allow for party tables outside voting station boundary provided there is strict adherence to health safety measures.</p> <p>4. Procedure and BOM provides for rubbish bins at voting stations.</p> <p>5. Noted that submission does not specifically address the covid-19 alert level that would allow for free and fair elections.</p>
<p>African Transformation Movement (ATM)</p>	<p>By-elections should continue with strict adherence to set regulations and precautionary</p>	<p>Submission indicates that by-elections should continue provided there is strict adherence to</p>

	<p>measures to prevent spread of virus.</p>	<p>regulations and precautionary measures. However, submission does not specifically address the covid-19 alert level that would allow for free and fair elections.</p>
<p>Economic Freedom Fighters (EFF)</p>	<p>EFF is of the view that “the only level that is conducive to hold election is under the normal environment where there are no rising infections and a cure has been found [sic].”</p> <p>The EFF regards its submission as a “formal objection” to the report on voting in a time of covid-19.</p> <p>To support its view, the EFF argues that to participate effectively, and for elections to be free and fair, parties need to set up structures, conduct progress meetings, conduct door to door interactions with voters, conduct “mass work” (including transporting voters to voting stations) before special voting and voting day – and the such activities are a health risk in context of covid-19.</p> <p>Specific issues of concern:</p>	<p>Noted that the EFF is of view that by-elections should not proceed until the covid-19 pandemic is under control (“normal environment”).</p> <ol style="list-style-type: none"> 1. Cost of PPEs for use by party agents – the Electoral Commission is unable to budget for PPEs for political parties. 2. Facilities (water, toilets, lighting) at voting stations – point noted; focus on improving availability of facilities at voting stations especially in context of pandemic. 3. Indelible ink is one among a number of safeguard measures.

	<ol style="list-style-type: none"> 1. Cost of PPEs – concerned about the cost of PPEs on budget of party. 2. Availability of water, toilets and lighting at voting stations – concerned about the uneven supply of such facilities at voting stations. 3. Believe that alcohol-based sanitizer will remove the indelible ink marked on finger of voters. 4. Malfunctioning of zip-zip machines at voting stations to reconcile number of voters at stations. 5. Limitation of number of party agents at voting stations – concerned that limitation of number of party agents to one per party will not allow for effective oversight of procedures by voting officials. 6. Partnership between Department of Health and Electoral 	<ol style="list-style-type: none"> 4. A zip-zip machine is not a requirement for the conduct of elections. To the extent that they enhance efficiency in processing voters, the Electoral Commission is resolved to ensure effective use of the devices during by-elections. 5. Limit of one agent per party only at stations that do not allow for adequate social distancing. This should be the exception rather than the norm. 6. The use of thermometers is no longer part of the procedure. Therefore, the involvement of the Health Department is no longer necessary. 7. The Electoral Commission is legally responsible for the administration
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	<p>Commission at voting stations – concerned about the partiality of officials from Department of Health in deciding on eligibility of voters to vote after measuring body temperature of voters.</p> <p>7. Relationship between Electoral Commission and Coronavirus Command Centre and its powers during by-elections.</p> <p>8. Failure of voters, party agents and officials to adhere to social distancing requirements at voting stations and beyond owing to “election excitement” and political competition.</p> <p>9. Concerned that there is insufficient time to amend the legislation governing elections so as to incorporate covid-19 health safety measures.</p> <p>10. Deployment of SANDF personnel during by-elections – concern that use of SANDF personnel during by-elections</p>	<p>of free and fair elections. The legal powers of the Commission will not be handed over to the CCC during by-elections.</p> <p>8. Social distancing at voting stations – the presiding officer will be responsible for ensuring adherence to social distancing and related health safety measures inside the boundaries of voting stations, as well as by party representatives outside the boundary of voting stations insofar as this impacts on voting procedures. The PO may request the support of the SAPS to assist with adherence to health safety protocols in instances of transgression to ensure free and fair</p>
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	<p>would be “unconstitutional”.</p>	<p>elections, and the safety of all stakeholders.</p> <p>9. Health safety measures will not require an amendment to legislation or regulations since the voting procedures are not altered per se.</p> <p>10. SANDF personnel deployment during by-elections – more details and discussion required on the roles and responsibilities of SANDF personnel, and the objection of the EFF in this regard.</p>
<p>DEMOCRATIC ALLIANCE (DA)</p>	<ol style="list-style-type: none"> 1. Outline the procedure at the voting station if a voter’s body temperature is higher than 37,8 degrees Celsius. 2. IEC should provide more voting officials to supplement the role of the ballot box controller. 	<ol style="list-style-type: none"> 1. Temperature screening is no longer a requirement in keeping with regulations. 2. The Electoral Commission will review its staff allocation criteria to support the

	<p>3. Opposed to limitations on political party activity outside boundary of voting stations, and limitation on the number of party agents at voting stations.</p> <p>4. Argue that very strict protocols need to be adhered when conducting special vote home visits, including limiting the number of officials and party agents into homes.</p>	<p>application of the procedures.</p> <p>3. Amended to allow political party activity outside boundary of voting stations provided health safety protocols are observed. Two party agents per party permitted to observe voting inside voting stations that are able to accommodate physical distancing of voters, party agents and officials. Smaller voting stations to be limited to one party agent per party on a rotational basis.</p> <p>4. Home visit teams to be limited to two officials, with a limited number of party agents entering homes – on a rotation basis. Officials and agents must observe requirements for PPE use.</p>
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Holding elections during Covid-19?

Estimates of the epidemic trajectory for October & February

Salim S. Abdool Karim, FRS

Director: CAPRISA

CAPRISA Professor of Global Health, Columbia University

Adjunct Professor in Immunology and Infectious Diseases, Harvard University

Adjunct Professor of Medicine: Cornell University

Director: DSI-NRF CoE in HIV Prevention

Pro Vice-Chancellor (Research): University of KwaZulu-Natal

Associate: Ragon Institute of MGH, MIT and Harvard University



CAPRISA hosts a DST-NRF Centre of Excellence in HIV Prevention



CAPRISA is the UNAIDS Collaborating Centre for HIV Research and Policy



CAPRISA hosts a MRC HIV-TB Pathogenesis and Treatment Research Unit



MAILMAN SCHOOL of PUBLIC HEALTH



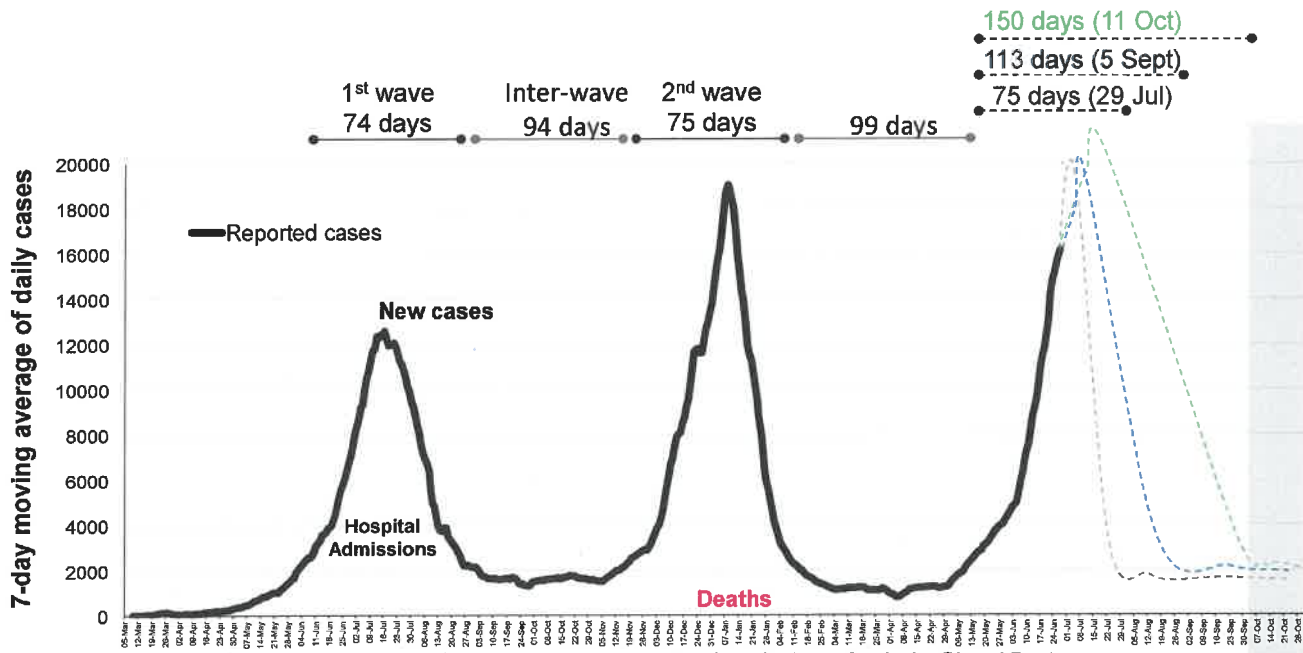
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Outline

- **On 1 July, the Covid19 epidemic trajectory for the Delta variant-driven 3rd wave was unclear and 3 potential scenarios were presented to the Moseneke commission (slide 3)**
- **Covid-19 case trends in the 3rd wave are now clearer (as at 5 August) and current estimates of the duration of the 3rd wave indicate that low transmission (<5 cases / 100,000 population) is likely to be reached between 19 August and 2 September (most likely ~26 August – slide 4)**
- **Based on past inter-wave periods, South Africa can reasonably expect to be in low transmission for 95-99 days from 26 August (i.e., until ~2 December – slide 6), which is similar to what I presented at the Commission (Slide 5)**

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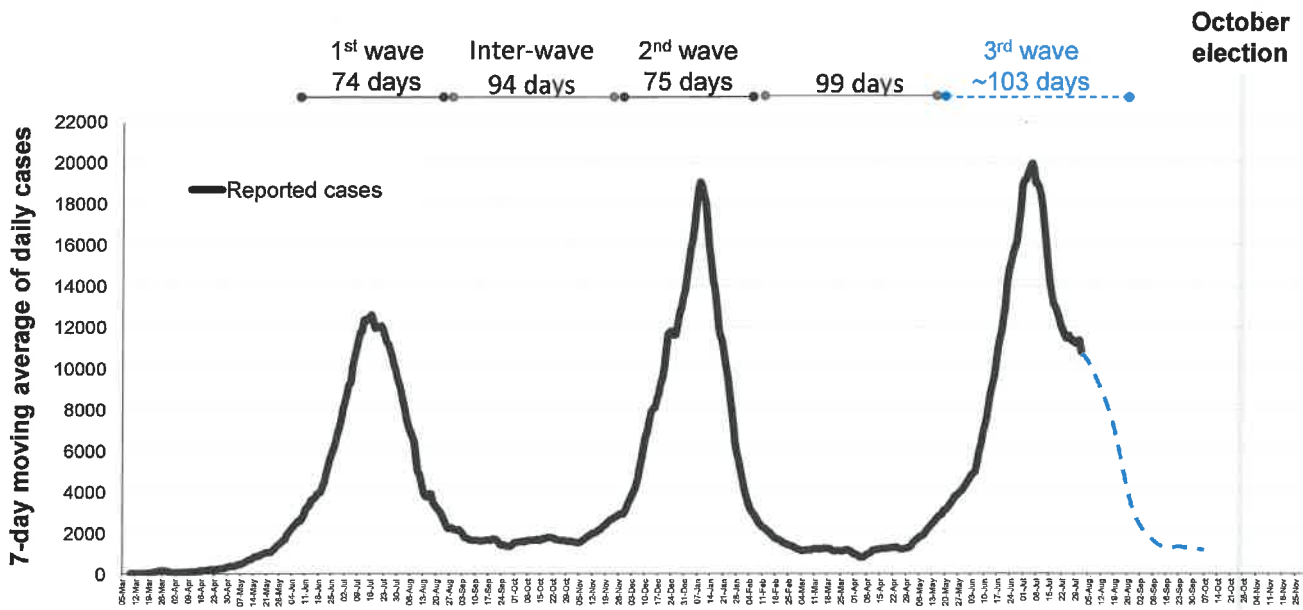
Original: Cases numbers in October? Estimations of end of 3rd wave, based on duration of 1st & 2nd waves



Note: New variant and other factors may change epidemic trajectory. Analysis: Cheryl Baxter

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Revised: Cases numbers in October? Estimations of end of 3rd wave, based on duration of 1st & 2nd waves

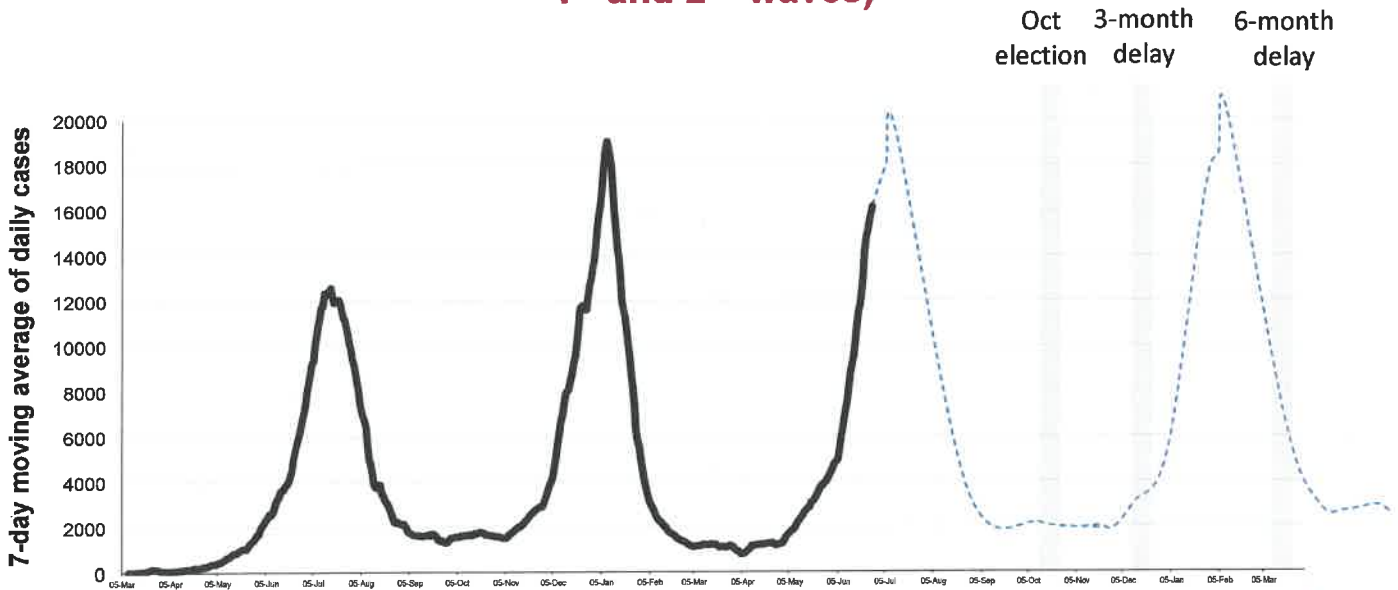


Note: New variants and other factors may change epidemic trajectory. These estimations are based on several assumptions and not on mathematical modelling



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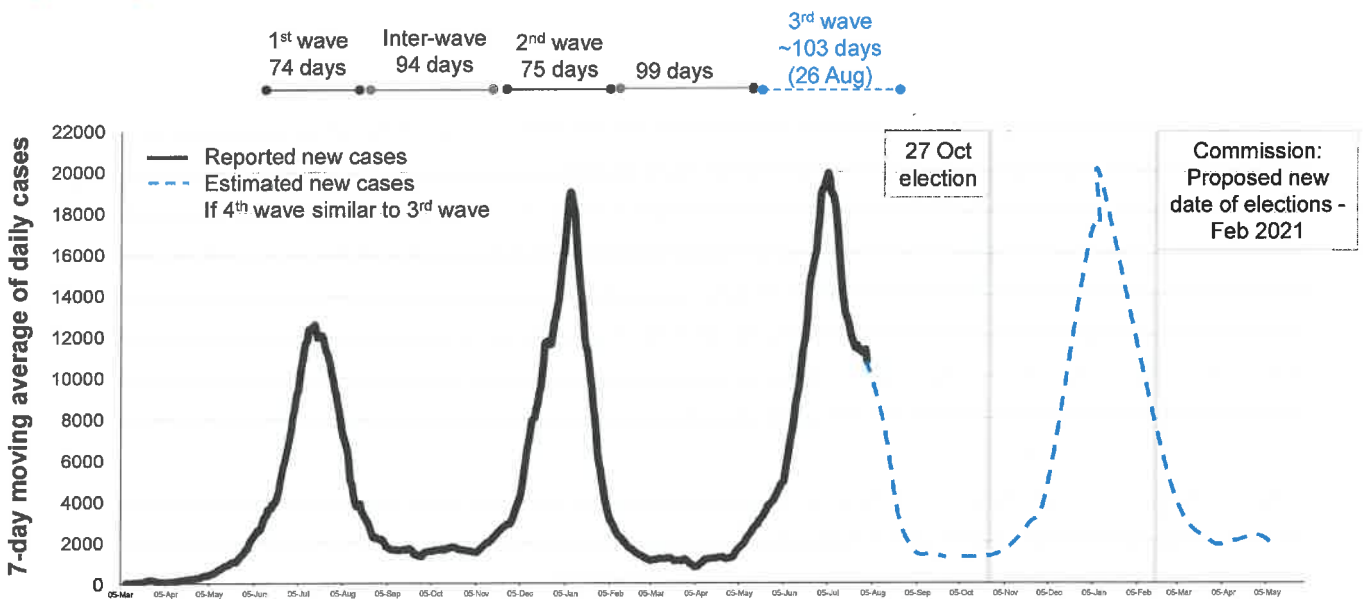
Original: estimated case numbers if elections delayed by 3 or 6 months (assuming 3rd wave is 1.5 x as long as 1st and 2nd waves)



Note: New variant and other factors may change epidemic trajectory. Analysis: Cheryl Baxter



Revised: estimated case numbers on current and proposed election date (assuming 4th wave has similar pattern)



Note: New variant and other factors may change epidemic trajectory. These estimations are based on several assumptions and not on mathematical modelling



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Outline

- **Current estimates depend on many assumptions, principally that there is likely to be a 4th wave, similar to past waves**
- **Since new variants like Delta are causing waves in highly vaccinated populations (e.g., UK), SA may experience a 4th wave in December despite vaccination coverage possibly reaching 40%. Likely advantage of higher vaccine coverage, provided new variants do not escape vaccine immunity, will be lower hospitalization and deaths in 4th wave**
- **Unwise to hold elections during SA's 4th wave, even if vaccination coverage is higher. Impact of elections on Covid-19 epidemic would be lowest if campaigning and voting occurs during low transmission**
- **For these reasons, the impact of the Covid-19 epidemic on the elections (and impact of elections on Covid-19) may be lower if campaigning and voting occurs between 1 September and 1 December**

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Individuals Vaccinated Cascade

South African COVID-19



Province, District, Sub-District

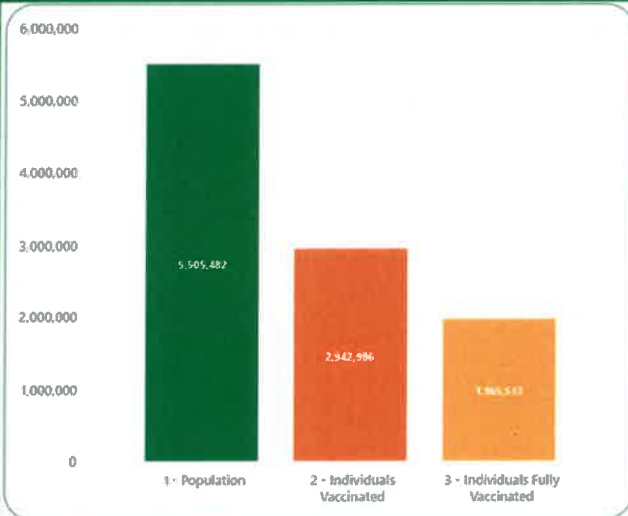
All

Age

60+

Select all

- 10-19
- 20-29
- 30-39
- 40-49
- 50-59
- 60+



Province	Population	Individuals Vaccinated	Percentage Individuals Vaccinated Out of Population	Individuals Fully Vaccinated	Percentage Individuals Fully Vaccinated Out of Population
Eastern Cape	778,894	444,790	57.11%	255,303	32.78%
Free State	268,220	157,380	58.60%	108,930	40.29%
Gauteng	1,342,689	631,754	47.05%	444,061	32.97%
KwaZulu-Natal	955,048	551,710	57.77%	400,551	41.94%
Limpopo	545,874	367,911	67.23%	230,401	42.21%
Mpumalanga	370,765	146,898	39.62%	74,683	20.14%
North West	652,932	156,061	23.90%	95,830	14.66%
Northern Cape	133,278	52,645	39.50%	31,339	23.51%
Western Cape	723,160	433,837	59.99%	304,415	42.10%
Total	5,505,482	2,942,986	53.46%	1,965,513	35.70%

Data Sources: Population - National Department of Health (derived from 2020 StatsSA mid-year population estimates) From age 18 years and above. Vaccinations - Electronic Vaccine Data System (EVDS). Please note that the 'Individuals Vaccinated' and 'Individuals Fully Vaccinated' figures will differ from the same figures on other pages because all vaccination records with undefined ages were excluded from this analysis because an undefined age cannot be assigned to a specific age group. Undefined ages can occur due to invalid date of birth and the absence of valid ID numbers to derive the date of birth from.



Individuals Vaccinated Cascade

South African COVID-19
Vaccine Rollout Dashboard

Province, District, Sub-District

All

Age

50-59

Select all

10-19

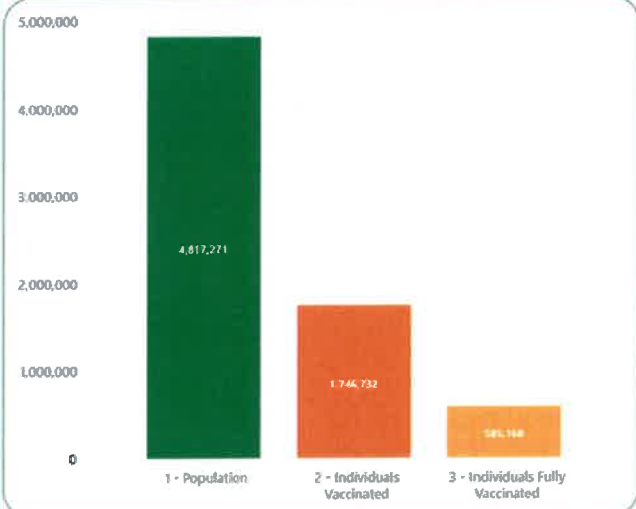
20-29

30-39

40-49

50-59

60+



Province	Population	Individuals Vaccinated	Percentage Individuals Vaccinated Out of Population	Individuals Fully Vaccinated	Percentage Individuals Fully Vaccinated Out of Population
Eastern Cape	517,545	236,735	45.74%	81,602	15.77%
Free State	286,087	94,662	33.09%	28,158	9.84%
Gauteng	1,330,500	436,530	32.81%	114,697	8.62%
KwaZulu-Natal	808,981	287,047	35.48%	122,873	15.19%
Limpopo	431,332	198,998	46.14%	94,900	22.00%
Mpumalanga	348,977	89,174	25.55%	31,804	9.13%
Northern West	382,679	88,305	23.08%	34,719	9.07%
Northern Cape	107,021	39,389	36.79%	17,864	16.69%
Western Cape	684,149	285,020	41.66%	58,492	8.55%
Total	4,817,271	1,746,732	36.26%	585,168	12.15%

Data Sources: Population - National Department of Health (Derived from 2020 StatsSA mid-year population estimates) From age 18 years and above. Vaccinations - Electronic Vaccine Data System (EVDS). Please note that the Individuals Vaccinated and Individuals Fully Vaccinated figures will differ from the same figures on other pages, because all vaccination records with undefined ages were excluded from this analysis because an undefined age cannot be assigned to a specific age group. Undefined ages can occur due to invalid date of birth and the absence of valid ID numbers to derive the date of birth from.



Individuals Vaccinated Cascade

South African COVID-19
Vaccine Rollout Dashboard

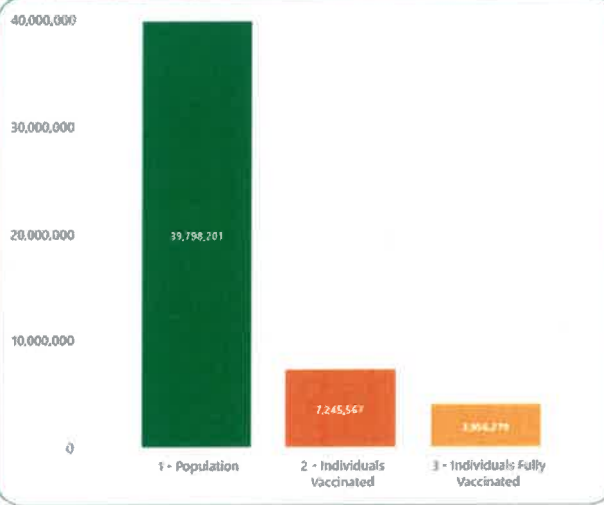
Province, District, Sub-District

All

Age

All

- Select all
- 0-19
- 20-29
- 30-39
- 40-49
- 50-59
- 60+



Province	Population	Individuals Vaccinated	Percentage Individuals Vaccinated Out of Population	Individuals Fully Vaccinated	Percentage Individuals Fully Vaccinated Out of Population
Eastern Cape	4,099,543	955,597	23.31%	497,695	12.14%
Free State	1,914,521	388,095	20.27%	206,043	10.76%
Gauteng	11,311,326	1,803,967	16.04%	914,260	8.08%
KwaZulu-Natal	7,219,795	1,291,369	17.89%	618,656	8.58%
Limpopo	1,695,801	770,814	45.46%	500,456	29.52%
Mpumalanga	3,039,520	364,742	12.00%	176,567	5.81%
North West	2,693,247	385,035	14.30%	203,062	7.54%
North Cape	847,545	153,477	18.11%	92,665	10.93%
Western Cape	4,976,903	1,122,471	22.55%	546,675	10.98%
Total	39,798,201	7,245,567	18.21%	3,956,279	9.94%

Data Sources: Population - National Department of Health (derived from 2020 StatsSA mid-year population estimates) From age 18 years and above. Vaccinations - Electronic Vaccine Data System (EVDS). Please note that the 'Individuals Vaccinated' and 'Individuals Fully Vaccinated' figures will differ from the same figures on other pages because all vaccination records with undefined ages were excluded from the analysis because an undefined age cannot be assigned to a specific age group. Undefined ages can occur due to invalid date of birth and the absence of valid ID numbers to derive the date of birth from.