



SOUTH AFRICA

Statement by Electoral Commission Chairperson Mr Glen Mashinini on the appointment of Justice Dikgang Moseneke to evaluate conditions conducive to free and fair elections

20 May 2021

Centurion – The Commission is pleased to announce that it has appointed former Deputy Chief Justice Dikgang Moseneke to lead a process to review whether the current conditions are conducive or not to the holding of free and fair elections later this year.

Through this process Justice Moseneke will undertake an urgent review of all the relevant factors which have a bearing on the holding of free, fair and safe elections in October.

These include the legal, socio-political, health, practical and any other relevant considerations.

The process will culminate in the submission of a report to the Commission during July to assist the Commission in evaluating all factors bearing influence on the possibility of free and fair 2021 Local Government Elections.

In addition to assessing the various factors, the report may also make recommendations of additional initiatives and measures to further fortify the credibility and safety of the elections.

The request to Justice Moseneke is in line with Section 14(4) of the Electoral Commission Act (51 of 1996):

The Commission may, if it deems it necessary, publish a report on the likelihood or otherwise that it will be able to ensure that any pending elections will be free and fair.

This legal process forms part of on-going engagements between the Commission and the leaders of political parties under the auspices of the National Political Party Liaison Committee.

The Commission has been engaging with political parties through the NPLC over the past two years as part of its preparations for Local Government Elections 2021.

More recently it has emerged that the various political parties are divided on whether the upcoming Local Government Elections can be free and fair within the context of the on-going COVID-19 pandemic.

While the majority of political parties believe that elections should proceed under the extant Constitutional provisions, some parties have raised concerns that restrictions on campaigning imposed by the national disaster regulations could undermine the freeness and fairness of the elections.

Preparations to host the Local Government Elections are at an advanced stage and the Commission is satisfied that it is possible to conduct successful elections within the current circumstances.

The Commission is also confident that the special COVID-19 protocols and measures to be put in place for the elections will provide adequate safeguards. These measures have been tested in over 150 by-elections conducted over the past six months.

Yesterday 40 by-elections were successfully conducted in 251 voting stations across six provinces involving more than 360 000 registered voters.

The measures also take into consideration the experiences of a number of other countries in conducting elections successfully during the pandemic.

These include (among others) elections conducted in South Korea, India, Kenya, Indonesia, Malawi and most recently the local government elections in the United Kingdom.

Despite the Commission's confidence, we are not oblivious to the uncertainties and unpredictability of the pandemic and the risks associated with hosting events which bring together large numbers of people.

We also understand that these circumstances will require political parties and candidates to adjust their traditional campaign strategies.

Under such abnormal conditions, the minimum requirements for what constitute free and fair conditions may be different from the standards we apply to during ordinary times.

The Commission wishes to benefit from an independent evaluation of all factors which have a bearing on the possibility or otherwise of a free and fair elections.

The Section 14(4) process allows us to go the extra mile as part of our Constitutional obligations to ensure free and fair elections.

We are all by now aware of the Constitutional constraints and the announcement by the Honourable President His Excellency Mr Cyril Ramaphosa that the elections are earmarked for 27 October 2021.

Among the most important milestones in the preparation for elections is the formal proclamation of the elections by the Minister of Cooperative Governance and Traditional Affairs Dr Nkosazana Dlamini-Zuma.

This triggers a series of electoral processes in terms of the law including the closing of the voters' roll and the opening of candidate nominations.

This proclamation must take place by early August in order to allow a minimum of 86 days for the Commission to undertake all its obligations in terms of the elections timetable.

In order to allow the Commission to benefit from the report it needs to be submitted by mid-July at the latest.

As part of the process, Justice Moseneke will consider submissions from various stakeholders including from:

- political parties represented within the National Political Party Liaison Committee;
- key electoral stakeholders including the administration of the Electoral Commission;

- health authorities, in particular matters related to the trajectory of the pandemic as well as efforts to manage, mitigate and reach community immunity through vaccinations endeavours; and
- the disaster management authorities including the Department of Cooperative Government and Traditional Affairs and other relevant government structures.

The Commission is extremely grateful to Justice Moseneke for agreeing to lead this process under these extremely tight timelines.

Along with his extensive experience on the Constitutional Court and as Deputy Chief Justice, Justice Moseneke is also the former Deputy Chairperson of the Independent Electoral Commission which conducted the first democratic elections in South Africa in 1994.

This gives him valuable insight and experience in the intricacies of conducting elections.

The Commission will provide support to Justice Moseneke necessary to carry out this work.

The Commission is acutely aware of the weight of its responsibility to find the correct balance between protecting our Constitutional democracy and protecting people's lives.

Under the current unprecedented circumstances, we should not shy away from using every tool at our disposal to make sure we meet these obligations.

Having a person of the calibre, reputation, experience and unquestionable integrity of Justice Moseneke to provide an independent review and analysis can only serve to enhance the decision-making of the Commission.

The Commission appeals to all political parties to assist Justice Moseneke in meeting the deliverables within the time constraints available.

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