



SOUTH AFRICA

Statement by Justice Dikgang Moseneke on accepting Electoral Commission request to evaluate conditions conducive to free and fair elections

20 May 2021

Centurion – It is with a keen sense of duty to support electoral democracy in South Africa that I have accepted the invitation from the Electoral Commission of South Africa 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.

Our Constitution provides clear guidance on a number of elements relating to our electoral democracy. These include:

1. In Chapter 1, Section 1 of the Founding Provisions provides for South Africa a system of universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of government to ensure accountability, responsiveness and openness
2. Under Section 19 (Political Rights) it provides that every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
3. The Constitution in Section 159 is also clear on a limitation of five years for the term of office municipal councils and provides for a new election to be held within 90 days of the expiry of that term.
4. Finally, the Constitution in Chapter 9 establishes and mandates the Electoral Commission to manage those elections and ensure they are free and fair.

Over the past 27 years since our first democratic elections we have seen our democracy mature and thrive through six National and provincial Elections and four Local Government Elections.

But today, as we prepare for our fifth Local Government Elections, our democracy and indeed all democracies around the world face an unprecedented threat from the COVID-19 pandemic.

The pandemic has affected almost every country, every person and every aspect of our lives over the past 16 months. Electoral democracy has not been spared. Almost 80 countries and territories have postponed elections over the past 18 months due to concerns over the pandemic while a further 118 countries opted to proceed with elections.

The responses of democracies around the world show that there is no right or wrong approach to this quandary. Nor can any decision be made in isolation from the particular circumstances and conditions prevalent within that country.

While our Constitution is silent on how exactly we should deal with such unforeseen circumstances it does provide overall guidance: that all elections must be free and fair. As such, the key consideration cannot only be whether the elections meet the timing prescripts but also whether they meet the prescripts of freeness and fairness.

Section 14(4) of the Electoral Commission Act (51 of 1996) provides a possibility wherein the Commission may publish a report on the likelihood or otherwise that it will be able to ensure any pending election will be free and fair.

When I was called upon by the Electoral Commission to take up this extraordinary assignment I could not ignore the importance of this undertaking within the context of our on-going journey to entrench and strengthen democracy in our country.

This is the first time in the history of our nascent democracy that we have faced such extraordinary circumstances. How we respond to these as a country will have far-reaching consequences for our democracy and for our people.

As one of the drafters of our Constitution and as one of the founder members of the Independent Electoral Commission in 1994, I am honoured to accept this project of national significance.

I am cognizant of the very short timeframes available due to the pressures exerted by the timeframe provided by the Constitution and electoral laws to conduct the Local Government Elections.

For this reason we must conduct a rapid but robust process to consider and assess all factors which may affect or influence the freeness and fairness of the upcoming elections.

To this end it is my intention by Monday 24 May to establish an office to facilitate this process. This office will reach out to key stakeholders within the electoral sphere to urgently submit reports on their views regarding the various factors. These will include:

- Political parties;
- Health authorities and experts;
- Disaster management authorities;
- Other electoral stakeholders

Details regarding the programme of work and contact information for this office will be published early next week.

I would like to thank the Commission for its faith in me to provide a report to assist it and other key decision-makers in the electoral process to make decisions which are well-informed and well-considered as they navigate these uncertain and challenging times.

ENDS