



The Case against Postponement of the 2021 Local Government Elections

*A Submission from the One South Africa
Movement to the Inquiry*

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Introductory Remarks

On the 27th April, 27 years ago, South Africa celebrated the advent of our democracy. The majority of the population, stripped of the basic human right to vote under an oppressive apartheid regime, was enfranchised. Images of the voting lines were broadcasted worldwide as South Africa heralded the dawn of a new era, an era of democratic governance.

Ever since, the foundational cornerstone of South Africa's democracy has been the occurrence of regular elections. The 5-year term of office is the single most important constitutional safeguard for democratic governance. Leaders were elected to public office with the explicit understanding that their tenure in that public office would expire in 5 years and 90 days. Any delay to the election process culminating this tenure constitutes a threat to democratic governance. The very legitimacy of the government in power comes into question: municipal councils would be operating without mandate from the public to do so. It is this mechanism that holds the governing parties and individuals to account, and gives power to the people to choose their leaders. More urgently than ever, the citizens of South Africa need to invoke this power: almost three decades into democracy, the state of local government is at crisis level, with municipalities across the country consistently failing to provide their constituencies with constitutionally guaranteed basic services.

However, not only must elections occur regularly; so too must they be free and fair. In light of the COVID-19 pandemic, free and fair elections should preserve both *human life* and *electoral integrity*. Accordingly, the question of a postponement of an election should be considered only if absolutely necessary for the preservation of these two priorities. As an electoral stakeholder, the One South Africa Movement (OSA) herewith makes a submission to the Inquiry into Ensuring Free and Fair Local Government Elections during COVID-19 (henceforth, the "Inquiry"). This submission will provide evidence for why such a postponement is not absolutely necessary, in terms of the preservation of both human life and electoral integrity. With the implementation of effective electoral interventions, the potential risks to human life and electoral integrity can be substantially mitigated.

With reference to the Inquiry's stated purpose, this submission will therefore conclude that it is highly likely that the Independent Electoral Commission (IEC) will be able to ensure that the forthcoming local government elections are free and fair, in light of the COVID-19

pandemic and the accompanying measures implemented by the government to curb the spread thereof. Indeed, the local government elections should proceed as scheduled on the 27th October this year.

Up front, an important caveat should be posited. This submission will consider a myriad of case studies to demonstrate the feasibility of hosting free and fair local government elections. Each of these countries hosted elections during the pandemic, but with their own individual circumstances and at different stages since the outbreak of COVID-19. Hence, the contextual framework of every country is different, including the extent of the virus' spread and the capacity of each country to respond in turn. As a result, this submission has for the most part only referenced countries that are of similar levels of development to South Africa, whose case studies will be therefore more suitable for comparison. Furthermore, this submission has gone to great lengths to consider each case study for its own merits, notwithstanding their unique contextual frameworks.

On the Matter of Human Life

Dangers to Human Life

Amid the COVID-19 pandemic, the free and fair local government elections envisioned for October this year must preserve human life. Indeed, as noted by its Chairperson Glen Mashinini, the IEC has a responsibility to balance democracy and protect the lives of voters.¹ An election, by its very nature, requires intense public interaction, and therefore may constitute a super-spreader event in the midst of a highly infectious disease. Much remains unknown with respect to COVID-19's pathologies, spread and mutations; there is no guarantee that the pandemic circumstances will be significantly better come October. Moreover, it is not merely the election day that may be a potential danger: the entire process, from voter registration and political parties campaigning, to voters submitting their ballots and ultimately the vote counting, has the potential to aggravate the spread of COVID-19.

However, OSA states with conviction that the implementation of effective electoral interventions over the course of the electoral period will mitigate the risks to human life to the point of insignificance. Not only is there a plethora of examples to follow from other countries' elections during the pandemic, but the IEC has also already had experience in hosting safe elections in South Africa, in the form of recent by-elections.

Some Perspective

Globally, almost 120 countries opted to hold national or subnational elections, in spite of the COVID-19 pandemic.² Conversely, just under 80 countries decided to postpone, indicating that the majority of countries worldwide opted to proceed with elections.³ Having said that, the predominant tendency *at the beginning of* the pandemic was to postpone elections without

¹ Bhengu, C POLL | Should the IEC postpone the local government elections set to take place in October? *TimesLIVE* (24 May 2021) Available at: <https://www.timeslive.co.za/politics/2021-05-24-poll-should-the-iec-postpone-the-local-government-elections-set-to-take-place-in-october> (accessed 24 May 2021).

² International Institute for Democracy and Electoral Assistance *Global Overview of COVID-19: Impact on Elections* (2021b) Available at: <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections> (accessed 24 May 2021).

³ *Id.*

setting a new date; notably, though, more than 70% of countries that did so then opted to host those postponed elections in the latter half of 2020.⁴

The perspective at a continental level presents an even more definitive picture: the majority of countries stuck to their polling schedules in 2020.⁵ Furthermore, every single African country that proceeded with its elections during the pandemic is economically worse-off than South Africa, correlating with a lower capacity to implement electoral interventions to protect citizens.⁶ Not only that, but a few of the countries in which these elections took place had ongoing significant political unrest, or even active conflict. Nonetheless, these countries recognised the essentiality of regular elections. The bottom line: the majority of South Africa's fellow African countries found safe and creative ways to hold elections during this pandemic.

Electoral Interventions for Consideration

This submission will now propose several electoral interventions that the IEC should consider for the 2021 local government elections. As will be demonstrated by a number of case studies, these electoral interventions will substantially mitigate the risks to human life that an election during the COVID-19 pandemic may present. In some cases, the IEC has already implemented a version of the proposed measures, and enhancements to the current measures are proposed. However, prior to the implementation of any of the suggested measures, a comprehensive risk assessment should be developed in coordination with public health authorities, to inform all interventions imposed.⁷

Experts have confirmed that the risk of transmission of COVID-19 decreases if officials enforce measures such as:

1. Effective social distancing (including queue management principles)

⁴ International Institute for Democracy and Electoral Assistance Chronological Analysis of COVID-19 on Elections *Voter Information, Communication & Education Network Quarterly Global Magazine* (2021a) at 36-7 Available at: http://voicenet.in/IC_Booklet/voice-jan-2021.pdf (accessed 24 May 2021).

⁵ Kuwonu, F Elections in Africa Go on amid COVID-19 *United Nations Africa Renewal* (4 January 2021) Available at: <https://www.un.org/africarenewal/magazine/january-2021/elections-africa-amid-covid> (accessed 26 May 2021).

⁶ Id.

⁷ International Foundation for Electoral Systems. Safeguarding Health Elections amidst COVID-19 *Voter Information, Communication & Education Network Quarterly Global Magazine* (2021c) (*IFES 2021c*) at 50-2 Available at: http://voicenet.in/IC_Booklet/voice-jan-2021.pdf (accessed 24 May 2021).

2. Frequent sanitisation and washing of hands with soap and water
3. Mask-wearing
4. Respiratory hygiene
5. Disinfection of public surfaces
6. Personal protective equipment (PPE) use by polling officials
7. Ventilation of electoral spaces (voting stations, IEC offices, etc.)
8. Checking of voters' temperatures
9. Use of plexiglass or other translucent shields for counters where polling officials and voters interact.⁸

Over the course of the recent by-elections, the IEC has already drawn up a list of procedures and guidelines for voter safety, including sanitisation, mask-wearing, social distancing/queue-management, PPE use by IEC officials, voters bringing their own pens, and safety protocols surrounding the inking of thumbnails.⁹ These existing measures should be upgraded and enhanced, in anticipation of the fact that local government elections will involve far more citizens in the electoral process than by-elections.

Additionally, other innovative health and safety interventions should be considered for usage, with which other countries have experienced success in their respective elections.

First, ventilation of voting stations/voter registration stations/IEC offices is essential. In the case of Ghana, voting centres were set up in open spaces, while Croatia merely ensured that all windows were open at polling stations.¹⁰ With the South African elections being in October,

⁸ Fakir, E 2021 Local Government Elections: To Be or Not to Be? *Polity* (1 April 2010) Available at: <https://www.polity.org.za/article/2021-local-government-elections-to-be-or-not-to-be-2021-03-30> (accessed 24 May 2021) and Voter Information, Communication & Education Network. International Experiences in Conducting Elections during COVID-19 *Voter Information, Communication & Education Network Quarterly Global Magazine* (2021) (VoICE) at 54 Available at: http://voicenet.in/IC_Booklet/voice-jan-2021.pdf (accessed 26 May 2021).

⁹ IEC Registering & Voting Safely During the Covid-19 Pandemic Available at: Registering and Voting Safely During the Covid-19 Pandemic Factsheet.pdf (elections.org.za) (accessed 09 July 2021).

¹⁰ Agbele, F & Ghadafi, S Managing Elections under Covid-19 Pandemic Conditions: The Case of Ghana. *Stockholm: International Institute for Democracy and Electoral Assistance* (26 May 2021) (*The case of Ghana*) at 11 Available at: <https://www.idea.int/sites/default/files/managing-elections-under-covid-19-pandemic-conditions-the-case-of-ghana.pdf> and VoICE above n 8 at 56.

the weather is favourable for stations to be set up outside and for doors and windows to be open for ventilation at indoor voting stations.

Second, innovative measures to eliminate the use of shared materials should be utilised. Suriname recognised the dangers of multiple people dipping their fingers in shared ink pots for the inking of thumbnails; instead, the country's electoral management body introduced cotton swabs to cover voters' fingers with ink.¹¹

Third, those voters running a high temperature should be redirected to a separate voting area. South Korea, whose recent elections were hailed as a model example of electoral safety amidst the pandemic, carried this out effectively, and this is preferable to the model used in Ghana, where those with a high temperature were turned away, effectively having their democratic right to vote denied.¹² In the South African context, this would amount to an unfair limitation of the right to vote as there are certainly less restrictive options to achieve the purpose of preserving human life. Indeed, this approach would compromise the quality of a free and fair election. Taiwan, on the other hand, allowed access to voters with a temperature, and merely provided them with masks to enter the polling stations; this is considered a riskier option to pursue.¹³

Fourth, the provision of sanitary items should be upgraded. Though masks are compulsory for use already in South Africa, it should not be assumed that all voters will be able to afford them, nor that the masks being used are of sufficient quality. Thus, masks should be made available at voting stations, voter-registration stations, and IEC offices, for individuals who arrive without masks, or for individuals whom IEC officials deem to have masks of inadequate quality (based on an initial impression). Mali went one step further and provided sanitary kits to all voters and polling staff; these kits included masks, handwashing facilities and hand-sanitising gel, and were highly effective as a public health preventive measure.¹⁴

¹¹ The case of Ghana above n 10 at 9.

¹² Id.

¹³ VoICE above n 8 at 59.

¹⁴ Gerenge, R. Managing Elections under COVID-19 Pandemic Conditions: The Case of Mali *Stockholm: International Institute for Democracy and Electoral Assistance (The case of Mali)* at 8-10 Available at: https://www.idea.int/sites/default/files/managing-elections-under-covid-19-pandemic-conditions-the-case-of-mali_en.pdf (accessed 26 May 2021).

Fifth, the risks to the IEC officials should be given strong consideration. Where IEC officials may be at higher risk, due to comorbidities, age, obesity or other factors, their interactions with voters should be minimised or eliminated entirely. Taiwan carried out pre-health assessments for its polling workers, which assisted in identifying individuals at greater risk.¹⁵

Sixth, vote staggering, or early voting, allows for an opportunity for eligible citizens to submit their votes prior to the actual election day. Already used by 25 countries since the start of the COVID-19 pandemic, this intervention constitutes an important means by which many countries have reduced the volume of voters on election day, whilst also increasing ballot security.¹⁶ South Africa is one of such countries, with the IEC having implemented a “special vote”, allowing registered voters who are unable to vote at their voting station on election day to apply to vote on a predetermined day *before* election day. Citizens are eligible for the special vote if they are unable to travel to their voting station due to physical infirmity, disability or pregnancy, or if they cannot vote at their voting station on election day.¹⁷ The implementation of the special vote by the IEC is commendable but should be considered for expansion given the effectiveness of vote staggering as a low-technology intervention.

- In South Korea, just over a quarter of those eligible voted in advance, some 12 million people. This number marked a sharp increase in early voting turnout compared to previous elections and helped significantly with reducing overcrowding on voting day.¹⁸

¹⁵ VoICE above n 8 at 59.

¹⁶ Heinmaa, A. & Kalandadze, N Special Voting Arrangements in Europe: Postal, Early and Mobile Voting. (Webinar Series Report) *Stockholm: International Institute for Democracy and Electoral Assistance* (2021) at 17 Available at: <https://www.idea.int/sites/default/files/publications/special-voting-arrangements-in-europe.pdf> (accessed 26 May 2021); IFES 2021c above n 7 at 57 and International Institute for Democracy and Electoral Assistance *Global Overview of COVID-19: Impact on Elections* (2021b) (*International IDEA 2021b*) Available at: <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections> (accessed 26 May 2021).

¹⁷ Independent Electoral Commission *About Special Vote* (2021a) (*IEC 2021a*) Available at: <https://www.elections.org.za/pw/SpecialVotes/About-Special-Vote> (accessed 26 May 2021).

¹⁸ Spinelli, A Managing Elections under the COVID-19 Pandemic: The Republic of Korea’s Crucial Test (Technical Paper 2/2020) *Stockholm: International Institute for Democracy and Electoral Assistance* (2020) Available at: <https://www.idea.int/sites/default/files/publications/managing-elections-during-pandemic-republic-korea-crucial-test.pdf> p4 (accessed 26 May 2021).

- In Ghana, 110 000 essential workers cast their vote a week in advance, to free up their assistance on the main elections day and thereby boost the observance of health protocols.¹⁹
- Elderly and high-risk voters were encouraged to vote earlier in the day in Singapore, whilst in the Indian state of Bihar, elections were conducted in three phases.²⁰

All-in-all, serious consideration needs to be given towards expanding the special vote to more parties (for instance, individuals at risk) and/or to spreading voters over different time periods (whether different slots in a given day, or over multiple days).²¹

Seventh, along with vote staggering, a simple measure to decrease overcrowding at voting stations is to increase the number of voting stations. A number of other countries have already augmented their tally of voting stations for mid-pandemic elections, including India, which added a colossal 33 803 polling stations for the elections of the state legislature in its Bihar state.²² Ghana, too, increased its total polling stations to over 38 000 countrywide for its national elections in December 2020.²³ South Africa currently has just over 23 000 voting stations countrywide, yet a population almost double that of Ghana. This puts into perspective the pressing need for more voting stations in South Africa, irrespective of the pandemic. The introduction of more voting stations will require more poll workers, who should be hired online where possible and preferably be low-risk individuals.²⁴

Eighth, is reducing the presence of both high-risk and infected individuals at voting stations. In pursuit of this objective, 5 countries have utilised proxy voting since the start of the pandemic, whereby a voting citizen may give authorisation to someone else to vote on their behalf.²⁵ Whilst proxy voting is not possible in South Africa, individuals eligible for the special

¹⁹ The case of Ghana above n 10 at 10.

²⁰ Arora, S Introduction *Voter Information, Communication & Education Network Quarterly Global Magazine* at 3-4 (2021) Available at: http://voicenet.in/IC_Booklet/voice-jan-2021.pdf (accessed 26 May 2021).

²¹ Fakir above n 8 and IFES 2021c above n 7 at 52.

²² Arora above n 20 at 3-4.

²³ The case of Ghana above n 10 at 11.

²⁴ IFES 2021c above n 7 at 51-2.

²⁵ International Institute for Democracy and Electoral Assistance *Global Overview of COVID-19: Impact on Elections* (2021b) (*International IDEA 2021b*) Available at: <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections> (accessed 26 May 2021).

vote may ask a family member or friend to submit the application form for that special vote on their behalf – a sort of ‘proxy application’ for the special vote.²⁶ Again, whilst this is a progressive measure, it is strongly suggested that this initiative is expanded. The IEC needs to deliberate the introduction of a proxy vote, as done in Croatia, where people infected with COVID-19 were allowed to vote by proxy, and could nominate a person of confidence (usually in their household) to cast their vote.²⁷

Ninth, mobile voting could be used to decrease the concentration of high-risk and infected individuals. Here, election officials take a mobile ballot box to a voter either at home or at an institution, an initiative already utilised by 28 countries since February last year.²⁸ The IEC already has a version of this in the form of the special vote *by home visit*, whereby those unable to travel to their voting station due to physical infirmity, disability or pregnancy can cast their special vote at their own homes when visited by voting officials.²⁹ This initiative proved highly effective in Croatia and South Korea, which both extended mobile voting to those in self-isolation due to COVID-19 infection or high risk.³⁰ However, voting turnout is the less important factor here – extension of home-voting provisions did not significantly increase turnout in either country – rather, the crux of the matter is the “emblematically guaranteed enfranchisement of vulnerable citizens directly affected by the pandemic”.³¹

There is, of course, the matter of the campaigning leading up to the 27th October. Rallies and events hosted by political parties may constitute super-spreader incidents, especially if health protocols are not properly observed. There are three aspects to this issue: firstly, whether to allow campaign events at all, secondly, if allowed, how many attendees to permit, and thirdly, if allowed, how to ensure COVID-19 precautions are observed. 17 countries worldwide outright banned political rallies or events since February last year, while 29 countries imposed

²⁶ IEC 2021a above n 17.

²⁷ VoICE above n 8 at 57.

²⁸ Heinmaa, A & Kalandadze, N Special Voting Arrangements in Europe: Postal, Early and Mobile Voting. (Webinar Series Report) *Stockholm: International Institute for Democracy and Electoral Assistance* (2020) at 23 Available at: <https://www.idea.int/sites/default/files/publications/special-voting-arrangements-in-europe.pdf> and International IDEA 2021b above n 25.

²⁹ IEC 2021a above n 17.

³⁰ Spinelli above n 18 at 4 and VoICE above n 8 at 56.

³¹ Spinelli above n 18 at 4.

limits on the number of participants at public gatherings.³² Ghana did not impose a limit on the number of people allowed to attend political campaign events, yet fascinatingly, the electoral period saw very few major rallies, which were instead replaced by smaller outdoor events and more frequent door-to-door canvassing.³³ On the contrary, gatherings of more than 50 were banned in Mali and Benin; in the latter, the government enforced that campaign messages should be disseminated largely by social media platforms, posters or via vehicles equipped with megaphones.³⁴ The state subsidised political parties for their media campaigns, which were supervised by a regulatory body.³⁵

At this point in time, it would be presumptuous to advise as to which policy South Africa should adopt on this matter. The decision will be dependent on the spread of the pandemic at the time of the event, the progress of the vaccination programme, the lockdown level, and many other factors. A comprehensive risk assessment should be conducted, with the ultimate priority being human life. What is certain, however, is that political parties should be briefed well in advance on the health precautions they should be observing if they are permitted to host public rallies and events.³⁶

A final comment on electoral interventions for the upcoming local government elections concerns the use of technology in registration and voting. The IEC has already announced it will be implementing an electronic voter registration system for these elections, which will specifically target young people who use smartphones and social media. Such a technological intervention is praiseworthy, and will be highly significant for the preservation of human life over the voter registration weekend. It has already been acknowledged that it is too early to embark on any form of electronic voting, and this submission recognises that such an intervention would be infeasible for implementation by the October elections. Rather, resources and time should be directed at all the aforementioned interventions.

³² International IDEA 2021b above n 25.

³³ The case of Ghana above n 10 at 9.

³⁴ The case of Mali above n 14 at 7 and VoICE above n 8 at 58.

³⁵ VoICE above n 8 at 58.

³⁶ IFES above n 7 at 51.

The Drawbacks:

Costs and Administration

Having proposed a number of electoral interventions that will significantly mitigate the risk to human life of holding an election during the COVID-19 pandemic, it is worthwhile to address a notable drawback for a number of these interventions. Electoral interventions of this nature will by nature be both expensive and administratively intensive. Whether it is sanitation, staffing, venues, transportation, infrastructure, or PPE, there will be costs, labour requirements and time attached to each.³⁷ This submission posits several responses on this matter.

Firstly, there is strong indication that many of these electoral interventions will not be inordinately expensive. The measures discussed above are for the most part low-technology solutions. Unlike more exclusive interventions that have been used elsewhere (for instance, mail-in voting, drive-by voting booths or specially ventilated tents), these solutions have a far smaller price tag. Furthermore, many of them build on existing programmes or initiatives conducted by the IEC. With smart and efficient implementation, it will be possible to keep costs to a minimum.

Secondly, the IEC has had ample time to prepare for these local government elections. Many interventions have already been implemented and trialled in recent by-elections, including enhanced health protocols and the special vote, whilst other interventions have already been placed on the agenda, such as the electronic voter registration and the public education campaign. Unlike the Mali elections, which took place days after their first-ever cases, or the Ghana elections, which took place in December 2020, South Africa's local government elections will occur more than a year-and-a-half after the first cases were detected in the country. Thus, not only has the IEC had time to prepare, but citizens too have become more aware of the pandemic and familiar with protocols to reduce the transmission of COVID-19. A core issue to address, come October, will be citizens' indifference towards the pandemic.

³⁷ Fakir above n 8 and Heinmaa above n 28 at 9.

Thirdly, the financial and administrative burden of holding free and fair elections is not for the IEC to bear alone. There have been numerous examples worldwide of incumbent governments investing in safeguarding elections. It was already noted that the Benin government subsidised political parties for their media campaigns. In Brazil, the state invested in public health and safety measures, whilst its armed forces provided logistical and security support, particularly in remote areas.³⁸ Great caution will need to be taken to ensure that state involvement does not have a bias to promote the electability of the ANC as the incumbent ruling party.³⁹ Tarouco is clear on this issue with reference to the Brazilian case study:

“Even a professional and independent electoral management body (EMB) cannot by itself assure public health and safety during the entire election cycle. Safe campaigning behaviour requires that unpopular measures be taken by governments, that are themselves stakeholders in the electoral process.”⁴⁰

Yet it is not only incumbent governments that should have a degree of involvement. Since the beginning of the pandemic, 46 countries have brought in international election observation missions to assist with monitoring the integrity of their elections.⁴¹ Should such an option be utilised in the South African context, such missions could also assist with supervising state involvement to avoid the aforementioned concerns. Indeed, South Africa should not hesitate to call on the intergovernmental organisations (IGOs) of which it is a member to assist with all aspects of this election.

In spite of the above responses, there is no refuting that these electoral interventions will incur financial and administrative costs. OSA asserts with certainty that the upholding of free and fair regular democratic elections, as the foundational cornerstones of democracy, is more than worth this additional cost. As discussed at the start of this submission, the ramifications of an electoral postponement will be most egregious. In addition, it is notable that many of these interventions are democratically important irrespective of the pandemic. It is of no surprise that

³⁸ Tarouco, G COVID-19 and the Brazilian 2020 Municipal Elections *Stockholm: International Institute for Democracy and Electoral Assistance* (2021) at 5 and 12 Available: <https://www.idea.int/sites/default/files/covid-19-and-the-brazilian-2020-municipal-elections.pdf> (accessed 26 May 2021).

³⁹ Id at 5.

⁴⁰ Id at 5.

⁴¹ International IDEA 2021b above n 25.

many interventions like vote staggering have been and will continue to be a norm in democracies across the world.

Uncertainty of Effectiveness

Regardless of all of the above, there remains the possibility that, after all these resources are spent, the electoral interventions are unsuccessful. Much is still unknown about the pathologies of COVID-19 and altering public behaviour to align with pandemic health protocols is a formidable task. Whilst there is no way to guarantee with certainty that electoral interventions will be effective, case studies of well-handled elections demonstrate conclusively that safe elections can indeed be held in the midst of the COVID-19 pandemic. Perhaps the epitome of these is South Korea, which reported *not a single new case* related to its April 2020 elections.⁴² Mali reported a slight increase in cases between the first and second round of its legislative elections, but there was no evidence of cases directly attributable to the conduct of elections.⁴³ This is a notable result considering that Mali was the second country in Africa to host elections during the pandemic, and hence had minimal time to prepare interventions.⁴⁴

Even more pertinent is evidence from the by-elections conducted here in South Africa. Remarkably, IEC officials have said on record that they were not aware of a single case of transmission of COVID-19 during the voting process.⁴⁵ Of course, local government elections will involve a far greater number of people, but Fakir notes that such elections occur in specific localities where voters are required to go to the voting stations at which they are registered; numbers can thus be effectively managed.⁴⁶ On top of all of this, it is likely that the vaccination programme will escalate exponentially over the course of the next few months, every day mitigating the threat of the pandemic.

⁴² Spinelli above n 18.

⁴³ The case for Mali above n 14 at 10.

⁴⁴ Id at 8.

⁴⁵ Fakir above n 8.

⁴⁶ Id.

On the Matter of Electoral Integrity

There is intentionally no accepted definition of the term “free and fair” elections. For an election to be categorised as free and fair, such assessment must be made in context and involves a value judgement. The following elements can be distilled as being fundamental to conduct of free and fair elections:⁴⁷

Voter participation: Every person who is entitled to vote should be permitted to vote and must be free to make their choices without fear or intimidation and no one who is not entitled to vote should be permitted to do so.

Accurate election results: A fair election is also one in which all voters have an equal opportunity to register, where all votes are counted, and where the announced results reflect the actual vote totals.

Territorialism: In so far as elections have a territorial component, as with municipal elections where candidates are in the first instance elected to represent wards, the registration of voters must be undertaken in such a way as to ensure that only voters in that particular area are registered and permitted to vote.

Political contestation: The Constitution protects not only the act of voting and the outcome of elections, but also the right to participation in elections as a candidate and to seek public office. This concerns the ability of candidates to ascertain who their electorate is and to canvass for support. This means that all registered political parties have an equal right to contest the elections, campaign for voter support and hold meetings and rallies. This gives them a fair chance to convince voters to vote for them.

More broadly, electoral integrity may be defined as “the realisation of principles in the conduct of elections that are necessary to support the broader realisation of democratic ideals”.⁴⁸ Such

⁴⁷ *Kham and Others v Electoral Commission and Another* [2015] ZACC 37; 2016 (2) BCLR 157 (CC); 2016 (2) SA 338 (CC) at para 34.

⁴⁸ James, T. & Alihodzic, S. When Is It Democratic to Postpone an Election? Elections During Natural Disasters, COVID-19, and Emergency Situations *Election Law Journal* (2020) 19(3):344-362. DOI: 10.1089/elj.2020.0642350) at 350.

principles include, but are not limited to: opportunities for deliberation, equality of participation, equality of contestation, electoral management quality, and institutionalisation of rules.⁴⁹ A violation of electoral integrity would therefore constitute anything that breaches these principles.

At the outset, it is important to acknowledge that an election that deviates from the status quo, is not necessarily an impediment on the freeness and fairness of the election. That determination must be made in the context of the global pandemic and its prevalence in each country. Some constraints to take note of in correlation with the above guiding principles:

Voter participation: Whilst none of the proposed measures specifically exclude eligible voters from registering to vote and voting, election fatigue will accompany the elections, as voters may become confused by new regulations and interventions, and consequently refrain from participating.⁵⁰ This may be compounded by the discriminatory effects of the pandemic, such as those in self-isolation requiring special votes by home visit to cast their ballot.⁵¹ Not to mention that the spread of disinformation concerning the pandemic, including COVID-19 disinformation and hate speech, presents a risk to many of the principles listed above; indeed, disinformation may actively be used in voter suppression tactics by various political actors.⁵²

Whilst voter turnout is a useful measure to assess the impact of the pandemic (and the subsequent electoral interventions) on electoral participation, it should not be overstated in importance given the unique situations in each country. Turnout numbers for elections held in 2020 indicated a decrease globally; voter turnout has increased in 30 countries around the world, but declined for 41.⁵³ In Benin, a lower voter turnout was reported that may be attributed in part to the lack of physical campaigning, while in Mali, a marginally lower turnout may be seen as a continuity of existent voter disaffection due to political instability in the country.⁵⁴

⁴⁹ Id.

⁵⁰ Fakir above n 8.

⁵¹ The case of Ghana above n 10 at 11.

⁵² International Foundation for Electoral Systems: Preserving Electoral Integrity during an Infodemic *Voter Information, Communication & Education Network Quarterly Global Magazine* (2021b) 4(2-3):38-40 (IFES 2021b) Available at: http://voicenet.in/IC_Booklet/voice-jan-2021.pdf (accessed 26 May 2021).

⁵³ Heinmaa above n 28 at 7 and International IDEA 2021b above n 25.

⁵⁴ The case of Mali above n 14 at 9 and VOICE above n 8 at 58.

What is most notable, however, is the immense increase in turnout that occurred in a host of countries. Ghana witnessed an 11% increase in turnout from its 2016 election, the third-highest turnout since 1996.⁵⁵ India's Bihar elections recorded a higher voter turnout than the previous elections, with a substantial increase in female participation.⁵⁶ The Taiwanese national elections achieved a 74.9% voter turnout, the highest since 2008, whilst South Korea's turnout was the highest recorded in the country since 1992, and the highest early voting turnout ever.⁵⁷

Thus, whilst on a global scale, voter turnouts have declined, a plethora of notable exceptions demonstrate that elections conducted with effective electoral interventions can in fact witness record-high turnouts. A brief look at the current trends in the political space in South Africa suggests that voter participation may in fact increase, irrespective of the pandemic or measures taken to mitigate it. Whereas voter turnout in national and provincial elections has been on the decline, IEC Chief Electoral Officer Sy Mamabolo reports that this phenomenon is not true for local government elections.⁵⁸ Fakir concurs, noting that local government elections are more community-based, and consequently people are likely to be more aware of for whom they are voting; this will be compounded by the fact that 20% more candidates are expected to run for office than in the 2016 local government elections (now including OSA-endorsed independent candidates and civic organisations).⁵⁹ Media coverage, too, may in fact increase for these elections, as political candidates make fuller use of social media as seen in the Ghanaian elections.⁶⁰

Accurate election results: The risk of electoral irregularities is another potential issue: in-person voting remains the “gold standard” of elections, and improperly implemented special voting arrangements may compromise the storage and safety of ballot materials, among other irregularities.⁶¹ The issue of potential irregularities, regardless of whether they actually come

⁵⁵ The case of Ghana above n 10 at 11.

⁵⁶ Arora above n 20 at 4.

⁵⁷ Heinmaa above n 28 at 7; Spinelli above n 18 at 4 and VoICE above n 8 at 58.

⁵⁸ Gerber, J. IEC to Implement Electronic Voter Registration System ahead of October's Elections *News24* (2021) Available at: <https://www.news24.com/news24/southafrica/news/iec-to-implement-electronic-voter-registration-system-ahead-of-octobers-elections-20210518> (accessed 26 May 2021).

⁵⁹ Fakir above n 8.

⁶⁰ The case of Ghana above n 10 at 10.

⁶¹ Fakir above n 8 and Heinmaa above n 28 at 9.

to be, may also be used by unelected candidates to challenge the legitimacy of the electoral process, casting doubt on the integrity of the local government elections and the elected candidates.⁶²

Political contestation: COVID-19-safe campaigning may be less effective – particularly with limits on in-person political rallies and events.⁶³ Where circumstances require upscaling of online campaigning, parties and candidates may not have sufficient resources to do so, and internet penetration is limited across South Africa.⁶⁴

A notable result of the ban on large gatherings in the case of Mali was strong disgruntlement on the side of the political parties and candidates.⁶⁵ This leads to a crucial point with regard to any electoral interventions imposed by the IEC: the importance of political consensus. The call for submissions like this one by the Inquiry is a praiseworthy example of the high premium that should be placed on consensus-building, on salient political issues amidst the pandemic. Successful elections under COVID-19 conditions are dependent not only on technical and operational safety measures, but also on political accord around the electoral process.⁶⁶ Such consensus-building must necessarily involve consultation with representatives of marginalised communities.⁶⁷

A prerequisite for political consensus on matters of public health is public education and communication on all measures and interventions. This is a constant priority, one that needs adequate investment on an ongoing basis, and is essential for ensuring voter confidence in the integrity of the electoral process.⁶⁸ Mamabolo has already announced that the IEC will conduct public education campaigns to assuage citizens and assure them that it is safe to come out and vote.⁶⁹ In both South Korea and India, the EMBs conducted extensive voter outreach initiatives

⁶² Fakir above n 8.

⁶³ International IDEA 2021b above n 25.

⁶⁴ The case of Mali above n 14 at 11.

⁶⁵ Id at 7.

⁶⁶ Id at 10.

⁶⁷ International Foundation for Electoral Systems. Inclusion & Meaningful Participation amidst COVID-19 *Voter Information, Communication & Education Network Quarterly Global Magazine* (2021a) 4(2-3):41-43 Available at: http://voicenet.in/IC_Booklet/voice-jan-2021.pdf at 42 and IFES 2021c above n 7 at 50.

⁶⁸ Heinmaa above n 28 at 9.

⁶⁹ Gerber above n 58.

that explained the measures taken to ensure voter safety; these initiatives should be emulated in South Africa and supplemented by design information campaigns on COVID-19 modes of transmission and best practices in health literacy.⁷⁰

Part and parcel of voter education is the prevention of the spread of disinformation. Modern-day technology has resulted in the threat of an “infodemic”, where the public struggles to find trustworthy sources and reliable guidance online.⁷¹ Counteracting disinformation entails frequent public education and an expansion of social media monitoring and oversight, as carried out effectively in South Korea.⁷² Such oversight must keep a careful eye out for disease-related disinformation and hate speech against at-risk and marginalised groups.

⁷⁰ Arora above n 20 at 3; Heinmaa above n 28 at 9; IFES 2021b above n 52 at 40, IFES 2021c above n 7 at 51 and Spinelli above n 18 at 5.

⁷¹ IFES 2021b above n 52 at 38.

⁷² Id at 39 and International IDEA above n 4 at 37.

Concluding Remarks

The underlying comfort that South Africans have enjoyed, in spite of all the corruption, mismanagement, governance shortfalls and service delivery failures, is that the citizens of this country have the power to hold their leaders accountable, through the casting of their ballots. For 27 years, South Africans have been able to count on this immutable fact, in the form of regular elections. And so too must they be able to depend on it now: citizens must be granted their democratic right to exercise their vote on the 27th October 2021.

This submission from the One South Africa Movement has made a comprehensive case against the postponement of the local government election. Based on global case studies, available resources and electoral interventions available, it is highly likely that the IEC will be able to ensure that these forthcoming elections are free and fair, regarding the preservation of both human life and electoral integrity.

There is no denying the risks associated with holding an election during the COVID-19 pandemic. It is of the essence, therefore, that the aforementioned electoral interventions are implemented in ways that are comprehensive and contextually adapted to South Africa. The research on this matter is clear:

“If [COVID-19 risk-mitigation efforts are] well executed, these measures can significantly mitigate the risk of virus transmission and reasonably reduce people’s fear of infection during the electoral processes, which otherwise could drastically reduce voter turnout and undermine the legitimacy of results”.⁷³

Government of the people, by the people, for the people.

⁷³ IFES above n 7 at 50.