



cooperative
governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA

SUBMISSION TO THE INQUIRY INTO ENSURING FREE AND FAIR LOCAL GOVERNMENT ELECTIONS DURING COVID-19

President Cyril Ramaphosa announced that the local government elections (LGE) will take place on Wednesday, 27 October 2021. The elections will be taking place whilst the country is burdened by the pressure of containing the spread of the COVID-19 pandemic which may compromise the implementation of free and fair elections if adequate measures are not put in place.

Having '*free*' elections means that all those entitled to vote have the right to be registered and to vote and must be free to make their choice. Having '*fair*' elections 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.

This submission to the inquiry into ensuring free and fair local government elections during COVID-19 deals with the following matters;

- (i) Legislative framework for the holding of LGE;
- (ii) Establishment of the Inter-Ministerial Committee on LGE;
- (iii) Regulatory interventions to contain the COVID-19 pandemic;
- (iv) Assessment of the current conditions under COVID-19 and its impact on the holding of free and fair LGE; and
- (v) Measures to be put in place to support the delivery of free and fair LGE.

1. LEGISLATIVE FRAMEWORK FOR THE HOLDING OF LOCAL GOVERNMENT ELECTIONS

Constitution of the Republic of South Africa, 1996

Section 159 of the Constitution regulates the terms of municipal councils as follows:

- Section 159(1) provides that the term of a municipal council “may be no more than 5 years, as determined by national legislation”.
- Section 159(2) provides that, when the term of a municipal council expires or if it is dissolved in terms of national legislation, an election must be held within 90 days.
- Section 159(3) provides that a municipal council remains competent to function until a newly elected council is elected.

Local Government: Municipal Structures Act No. 117 of 1998

The above provisions must be read with section 24 of the Local Government: Municipal Structures:

- Section 24(1) provides that the term of a municipal council is 5 years.
- Section 24(2) says that municipal elections must be held whenever necessary and in any event within 90 days of expiry of the term of a municipal council.

Having regard to the above, the next LGE must be held on any date from 4 August to 1 November 2021. If the LGE is not held between this period, then amendments to Section 159(1) of the Constitution and Section 24(1) of the Municipal Structures Act will be required.

2. ESTABLISHMENT OF THE INTER-MINISTERIAL COMMITTEE ON MUNICIPAL ELECTIONS

2.1 In keeping with past practice, Cabinet approved that the Inter-Ministerial Committee on Municipal Elections (“the IMC”) be established to oversee the arrangements for the preparations of the 2021 LGEs.

2.2 The IMC is convened by the Minister and consists of the following Ministries:

- Ministry of Home Affairs;
- Ministry of Justice and Correctional Services;
- Ministry of Finance;
- Ministry of Police;
- Ministry of State Security; and
- Ministry of Communications.

The Chairperson of the IEC, the President of the South African Local Government Association (“the SALGA”) and the Chairperson of the MDB are also part of the IMC on Municipal Elections.

- 2.3 The IMC has been meeting regularly to discuss various matters; the frequency of meetings will increase in the run-up to the LGE.
- 2.4 To ensure that the impact of COVID-19 is effectively monitored, the IMC will be expanded to also include the Minister of Health.

3. REGULATORY INTERVENTIONS TO CONTAIN THE COVID-19 PANDEMIC

- 3.1 The analysis that follows is based on contextualising these principles within the COVID-19 non-pharmaceutical¹ measures (i.e wearing of masks, maintaining social distancing, sanitisation, minimising the size of groups and screening) set out in the regulations made in terms of the Disaster Management Act No. 57 of 2002.
- 3.2 The wearing of masks, maintaining social distancing, sanitisation, minimising the size of groups and screening, currently in place under the Disaster Management Act and Regulations are aimed at preventing and combatting the spread of Covid-19.
- 3.3 The Minister, in terms of section 27(2) of the Disaster Management Act, published regulations in Government Notice No. R. 480 of 29 April 2020 as amended by Government Notices Nos.-
 - (i) R. 608 of 28 May 2020,
 - (ii) R. 714 of 25 June 2020,
 - (iii) R.763 of 12 July 2020,
 - (iv) R. 846 of 31 July 2020,
 - (v) R. 891 of 17 August 2020,
 - (vi) No. 999 of 18 September 2020,
 - (vii) No. 1011 of 20 September 2020,
 - (viii) No. 1053 of 1 October 2020,
 - (ix) No. 1104 of 21 October 2020,
 - (x) No. 1199 of 11 November 2020,
 - (xi) No. 1290 of 3 December 2020,
 - (xii) No. 1346 of 15 December 2020,
 - (xiii) No.1370 of 17 December 2020,

- (xiv) No. 1421 of 24 December 2020,
- (xv) No. 1423 of 29 December 2020,
- (xvi) No. 1435 of 29 December 2020,
- (xvii) R. 11 of 11 January 2021,
- (xviii) R. 69 of 1 February 2021,
- (xix) R. 92 of 13 February 2021,
- (xx) R. 93 of 13 February 2021,
- (xxi) R. 152 of 28 February 2021,
- (xxii) R. 284 of 30 March 2021, and
- (xxiii) No. 376 of 22 April 2021.

The abovementioned regulations aim to prevent and combat the spread of COVID-19 using the non-pharmaceutical measures indicated.

3.4 The non-pharmaceutical measures that are planned and are likely to be in place for the next 5 months to prevent and combat the spread of COVID-19 will in all likelihood be similar to those set out in the regulations and as analysed below, but some of these measures pertaining to gatherings, the movement of people, places and premises open to the public and the operation of sectors, may be relaxed or increased based on the infection risk prevailing at the time. There may, however, be unpredictable and unknown factors that may emerge in the period which may affect the election process.

3.5 The below table provides the constraints that these measures will likely impose on political activity and campaigning in the lead-up to the LGE:

General Provisions applicable during the state of disaster regardless of Alert Level in application:			
Measure	Brief description	Likely constraint	Proposal to be considered by NCCC
a) General measures to contain the spread of COVID-19	Provides for the wearing of face masks when in public and at work, employers to provide face masks, determine the floor space size and the number of people that may be on a premises, maintain social distancing in queues and in buildings, provide hand sanitisers, appointing a compliance officer,	Voter registration constrained by the disaster management regulations, eg. people over 60 and those with co-morbidities avoiding crowded places, people in isolation, quarantine and hospital etc.	Ensure that regulations do not impede the voter registration weekend(s) and allows the opportunity for people to register at their voting station and at other points. Increase special voting measures to allow more people to register to cast special votes for a longer period of time.

A. General Provisions applicable during the state of disaster regardless of Alert Level in application:			
Measure	Brief description	Likely constraint	Proposal to be considered by NCCC
	employers to promote physical distancing, restrict face to face meetings, provide measures for people with co-morbidities, provide measures for people above 60, courier services to provide for minimal personal contact.	<p>People may be constrained from the opportunity to vote due to:</p> <ul style="list-style-type: none"> ▪ covid measures such as the size of the gathering at the voting station, curfew, no wearing a mask etc. ▪ Avoiding voting stations due to a fear of being exposed to large crowds. ▪ Being quarantined, isolated or sick in hospital. 	<p>Increase special voting measures to allow more people to register to cast special votes for a longer period of time.</p> <p>Consider having the vote over more than one day with groups of people listed to vote in phases.</p> <p>Amend DM regulations that queuing at a voting station is not a gathering, curfew is brought in line with the hours of operation for the voting station plus providing for traveling time to and from the station.</p> <p>Not turning a person away from the voting station that do not wear a mask but provide such a person with a mask. Put appropriate measures in place to ensure that sanitization and social distancing measures already in place at all public places, do not impede voting.</p>
		Person without a mask cannot vote	<p>Provide masks.</p> <p>Extend early voting access in poll stations to avoid overcrowding.</p> <p>Procuring masks and single-use pencils to be provided to electors should they be necessary. Electors will also have the option to bring their own mask and pen or pencil.</p> <p>Election officer duly authorised to enforce covid 19 regulations at polling stations (wearing of masks).</p> <p>Single-use pens to be should they be necessary. Electors will also have the option to bring their own pen.</p>

A. General Provisions applicable during the state of disaster regardless of Alert Level in application:			
Measure	Brief description	Likely constraint	Proposal to be considered by NCCC
b) Refusal of medical examination, prophylaxis, treatment, isolation and quarantine	Provides measures for the refusal of medical examination, prophylaxis, treatment, isolation and quarantine of suspected and confirmed cases.	<p>People in isolation or quarantine during the registration period may not be able to register</p> <p>People in isolation or quarantine during on the day of the vote may not be able to vote.</p>	Increase registration and special voting measures to allow more people to register and to register to cast special votes for a longer period of time.
Isolation and quarantine of persons	Provide measures to isolate or quarantine of persons who is a clinical case or is reasonably suspected of being infected or who has been in contact with a person who is infected to be isolated or quarantined.	People in isolation or quarantine during the registration period may not be able to register and or vote.	Increase registration and special voting measures to allow more people to register and to register to cast special votes for a longer period of time.
d) Contact tracing	Provides measures to facilitate contract tracing.	None foreseen.	Voter's roll can be used to eliminate the need to register each person. Only temperature screening required.
e) Shelters and sites during national state of disaster	Provides for shelters and sites to be used by the state to quarantine and shelter people that cannot do so on their own.	None foreseen as these facilities have largely been closed.	Increase registration and special voting measures to allow more people to register and to register to cast special votes for a longer period of time.
f) Offences and penalties	Provides for offences and penalties.	The failure to adhere to COVID-19 regulations is an offence thus the continuous presence of police at polling station may scare off voters and may hamper free voting.	<p>Law enforcement visible at polling stations to enforce COVID-19 regulations where necessary and maintain order but ensure that there is no chilling effect on the right to vote due to the presence of law enforcement at or near polls.</p> <p>The election officer to be duly authorised to enforce covid 19 regulations at polling stations (wearing of masks, social distancing, screening, sanitisation).</p>

A. General Provisions applicable during the state of disaster regardless of Alert Level in application:			
Measure	Brief description	Likely constraint	Proposal to be considered by NCCC
			Political campaigning should be prohibited in vicinity of the voting station.

B. Alert Level² in application:			
Measure	Brief description	Likely constraint	Proposal to be considered by NCCC
g) Application of Alert Level	Provides for the application of a particular alert level which determines the chapter of the regulations applicable and the level of restrictions	The Alert level to be in place for the next five months will be based on the infection risk prevalent at the time.	The restrictions are similar to those set out above but some restrictive measures pertaining to gatherings, the movement of people, places and premises open to the public and the operation of sectors, may be relaxed or increased.
h) Compliance officers	Provides for all industries, businesses and entities to designate a COVID-19 Compliance Officer to oversee, plan, implement and adhere to various measures	None foreseen	The election officer must oversee, plan and implement the applicable regulations at the time. The regulations be amended to empower the election officer to be the compliance officer and to enforce the regulations as it relates to the voting station precinct.
i) Mandatory protocols when in a public place	Provides for the wearing of face masks in public and at work. A person will not be allowed to use, operate, perform any service on any form of public transport; enter or be in a building, place or premises, including government buildings, places or premises, used by the public to obtain goods or services; or be in any public open space, if he or she is not wearing a face mask. Seeks to a	Voters and officials to wear of face masks in public and at work	None
		People may be constrained from the opportunity to vote due to: <ul style="list-style-type: none"> ▪ covid measures such as the size of the gathering at the voting station, curfew, no wearing a 	Increase special voting measures to allow more people to register to cast special votes for a longer period of time. Consider having the vote over more than one day with groups of people listed to vote in phases. Amend DM regulations that queuing at

² Alert level 2 (Adjusted is in place)

B. Alert Level² in application:

Measure	Brief description	Likely constraint	Proposal to be considered by NCCC
	<p>maintain social distancing, determines the floor space size and the number of people that may be on a premises, maintain social distancing in ques and in buildings, provide hand sanitisers, appointing a compliance officer, employers to promote physical distancing, restrict face to face meetings, provide measures for people with co-morbidities, provide measures for people above 60, courier services to provide for minimal personal contact.</p>	<p>mask etc.</p> <ul style="list-style-type: none"> ▪ Avoiding voting stations due to a fear of being exposed to large crowds. ▪ Being quarantined, isolated or sick in hospital. <p>Person without a mask cannot vote</p>	<p>a voting station is not a gathering, curfew is brought in line with the hours of operation for the voting station plus providing for traveling time to and from the station.</p> <p>Not turning a person away from the voting station that do not wear a mask but provide such a person with a mask. Put appropriate measures in place to ensure that sanitization and social distancing measures already in place at all public places, do not impede voting</p> <p>Provide masks.</p> <p>Extend early voting access in poll stations to avoid overcrowding.</p> <p>Procuring masks and single-use pencils to be provided to electors should they be necessary. Electors will also have the option to bring their own mask and pen or pencil.</p> <p>Election officer duly authorised to enforce covid 19 regulations at polling stations (wearing of masks).</p> <p>Single-use pens to be should they be necessary. Voters will also have the option to bring their own pen.</p>
(p) Movement of persons	<p>Provides for the restriction of the movement of persons by instituting a curfew and setting up closure of establishments whether indoor or outdoor one hour before the curfew.</p>	<p>The movement of people to and from registration points and voting stations may be constrained by the curfew.</p>	<p>The NCCC to consider aligning the curfew to end at least 1 hour before the voting station and don't start at least 1 hour after the voting station close.</p>

B. Alert Level² in application:			
Measure	Brief description	Likely constraint	Proposal to be considered by NCCC
(q) Opening and closure of schools	Provides for the Minister of Basic Education to issue Directions to determine the dates on which schools may be opened or closed and any matter related to the management of schools in the basic education sector, to address, prevent and combat the spread of COVID-19 in all schools.	The use of school facilities as voting stations is well established. The impact of the Directions issued by the Minister on the use of school facilities for this purpose must be evaluated.	The Minister may consider amending the Directions if applicable that school facilities may be used as voting stations.
(r) Gatherings	Provides that every person, when attending a gathering and in order to limit exposure to COVID-19, must wear a face mask; adhere to all health protocols; maintain a distance of at least one and a half metres from each other; adhere to the curfew hours and adhere to any other health protocols and social distancing measures as provided for in directions issued by the relevant Cabinet member after consultation with the Minister of Health. Provides that an owner or operator of any indoor or outdoor facility where gatherings are held must display the certificate of occupancy which sets out the maximum number of persons the facility may hold. Provides that all faith-	Political party registration may be constrained.	IEC consider mechanisms to ensure that registration for the election is not constrained.
		Political parties cannot campaign due to gathering restrictions.	Consider measures to ensure that the impact of regulations on campaigning, eg rallies, protests, walkabouts etc are minimised.
		People may be constrained from the opportunity to vote due to covid measures such as size of gathering at the voting station, curfew, isolation, hospitalisation, quarantine etc.	Increase special voting measures Consider amendments to the regulations that queuing to vote is not a gathering, but one must maintain social distancing.
		Limitation of number of people at a voting station can deter people from exercising their right to vote.	Consider online voter registration options are available and accessible so that all voters without discrimination (for people with sensory and intellectual abilities) have an adequate opportunity and means to vote. Consider measures to allow people to conduct same day registration to vote, including those who may experience

B. Alert Level² in application:			
Measure	Brief description	Likely constraint	Proposal to be considered by NCCC
	<p>based, religious, social, political and cultural gatherings are permitted but limited to 100 persons or less for indoor venues and 250 persons or less for outdoor venues and if the venue is too small to hold the prescribed number of persons observing a distance of at least one and a half metres from each other, then not more than 50 percent of the capacity of the venue may be used, subject to strict adherence to all health protocols and social distancing measures.</p> <p>Provides that gatherings at a workplace for work purposes are allowed, subject to strict adherence to all health protocols and social distancing measures.</p>	<p>High number of address changes due to evictions or residence changes, for which the Covid-19 pandemic has put increasing numbers of people at risk (livelihood) of not exercising their right to vote</p>	<p>address changes.</p> <p>Extend early voting access in poll stations to avoid overcrowding.</p> <p>Consider increasing voting days.</p> <p>Consider creating special accommodations and priorities in queues (disabled, elderly, sick)</p> <p>Consider size of polling stations increased.</p>
(s) Public transport	Provides for the regulation of and health measures to be followed by public transport.	None foreseen as long as the functioning of public transport is in line with the operation of the curfew.	N/A.
(t) Offences and penalties".	Provides for offences and penalties.	The failure to adhere to COVID-19 regulations is an offence thus the continuous presence of police at polling station may scare off voters and may	Law enforcement visible at polling stations to enforce COVID-19 regulations where necessary and maintain order but ensure that there is no chilling effect on the right to vote due to the presence of law enforcement at or near polls.

B. Alert Level² in application:			
Measure	Brief description	Likely constraint	Proposal to be considered by NCCC
		hamper free voting.	<p>The election officer to be duly authorised to enforce covid 19 regulations at polling stations (wearing of masks, social distancing, screening, sanitisation).</p> <p>Political campaigning should be prohibited in vicinity of the voting station.</p>

4. ASSESSMENT OF THE CURRENT CONDITIONS UNDER COVID-19 AND ITS IMPACT ON THE HOLDING OF FREE AND FAIR ELECTIONS

4.1 The current conditions under the COVID-19 pandemic, in the view of DCOG, are conducive to holding free and fair local government elections during October 2021 as the current regulations,

(i) Do not,

- (a) prevent those that have the right to vote, to vote.
- (b) prevent those that have the right to vote, not to be registered.
- (c) prevent a person from voting to make their choice freely.
- (d) prevent all registered political parties to have an equal right to contest the elections.
- (e) prevent all registered political parties to campaign for voter support and hold meetings and rallies.
- (f) prevent all registered political parties to campaign.

(ii) Only slightly, limits the size of gatherings (meetings and rallies) of registered political parties.

4.2 DCOG also proposes that there must be due cognisance of the impact of other significant events, such as severe inclement weather.

5. MEASURES TO BE PUT IN PLACE TO SUPPORT THE DELIVERY OF FREE AND FAIR ELECTIONS

To ensure free and fair elections within the context of the COVID-19 pandemic, the following measures will be put in place by DCOG:

- 5.1 Development and implementation of the 2021 Local Government Elections Disaster Management Contingency Plan. The plan will take into consideration all prevalent hazards anticipated during the summer season, including COVID-19, and a multi-hazard planning approach through the summer seasonal contingency plans will be implemented. The plan will stipulate institutional structures that will monitor and report any incident before, during and after the elections.
- 5.2 DCOG, through the NDMC, will participate in the NATJOINTS and PDMCs will be required to participate in the PROVJOINTS to ensure the interface with the National and Provincial Disaster Operations Centres. Activation of the National Disaster Operations Centre which will interface with the National Joints Operations and Intelligence Structure which focuses much on security related matter whilst DCOG will be attending to non-security related matters.
- 5.3 DCOG will ensure well-coordinated and integrated planning with clear roles and responsibilities by all organs of state include civil society. The following disaster management planning imperatives will be outlined within the 2021 LGE Disaster Contingency plan:
 - Institutional arrangements;
 - Disaster risk assessments;
 - Preventative and preparedness measures;
 - Response and escalation measures;
 - Emergency communication; and
 - Roles and responsibilities of various organs of state.
- 5.4 Monitoring and reporting of municipal protests across the country, including compliance of COVID-19 Regulations and Protocols and query management in collaboration with the Provincial Disaster Management Centres.

- 5.5 Coordinate the dissemination of early warning alerts by the South African Weather Services, and also weekly and daily weather forecasts. This is to ensure early action by the organs of state and communities to ensure preparedness and timely response to hazardous events.

6. CONCLUSION AND RECOMMENDATION

The Inquiry into ensuring free and fair local government elections during COVID-19 is requested to note the contents of this submission, and it is recommended that the Inquiry considers the proposals contained herein.