



18 June 2021

Justice Dikgang Moseneke

Moseneke Report on Ensuring Free and Fair Elections during COVID

Freeandfair@elections.org.za

Re. Abantu Integrity Movement's (AIM) submission on the possibility of free and fair local government elections on the 27 October 2021

Dear Justice Moseneke

With reference to your investigation into the possibility of free and fair local government elections set to take place on the 27 October 2021, the challenges posed by the COVID-19 pandemic, and what measures can mitigate such risk, please find below our written submission. We also hereby request that we be granted the opportunity to submit an oral submission on the same.

We remain fundamentally opposed to the possible extension or harmonising of the Local Government Elections (LGE) scheduled for 27 October 2021.

We believe the IEC and the South African people have mitigated, and can mitigate, the risks involved in voting during a pandemic, as has been demonstrated by the numerous successful by-elections conducted during the pandemic.

We believe such an extension will serve no significant material benefit in reducing the COVID-19 risk of infection and will create greater hardship through extending the ongoing failure of "collapsed" local governments to deliver basic services.

It is important to note that regular elections are a constitutional right for all South African's eligible to vote, they are not conducted at the convenience of political parties. Elections are meant to serve the people, not political parties.

Please find below the specific reasons why we believe there is no case to be made for any form of an extension:

1. **South African voters are robust, no matter the prevailing conditions:** South African citizens are familiar with high-risk elections and have continued to vote despite such. This was demonstrated in South Africa's first democratic election in 1994 that occurred under very tense and high-risk conditions, yet close to 20 million people voted in that election.



2. **The IEC has declared itself ready and able:** By our count the IEC has successfully managed 192 by-elections over six rounds and across the breadth of South Africa since the first COVID-19 case was declared on the 05 March 2020. The COVID-19 lessons they have learnt during these by-elections rounds will inform their approach on the 27 October 2021.

3. **Globally, countries have continued, via adaptations, to vote during COVID-19:** The USA has just had over 150 million people vote across 50 states at the height of their pandemic on the 03 November 2020. In the first four months of this year alone 10 African countries have held successful presidential and parliamentary elections: Uganda, Somalia, Central African Republic, Niger, Ivory Coast, Republic of the Congo, Djibouti, Benin, Chad and Cape Verde. And in the same period 11 European countries held elections: Portugal, Lichtenstein, Spain, Kosovo, Switzerland, Germany, Holland, Bulgaria, Albania, United Kingdom and Cyprus.

4. **Local governments in South Africa are in a mandate-delivery crisis:** Given the general collapsed state of local government across South Africa, with particular reference to the Auditor-General's report, it is imperative that local residents be allowed to challenge the composition of Councils unable to fulfil their elected mandate. The cost of continued corrupt practices, rent-seeking and incompetence will have a cumulative negative impact on the majority of dysfunctional local authorities. Whatever potential health benefits are gained by a postponement will be negated and overwhelmed by the continued failure of local governments to deliver the most basic of services to their residents. It could be argued that the collapse of the local government state is a greater health and welfare risk to the South African populace than learning to live and function within a pandemic.

5. **Two proposals appear dominant in the call for extension, both are problematic:**
 - a. **A postponement of a few months:** what purpose would such an extension serve? All indications are that South Africa will be managing the COVID-19 pandemic into 2022/3 dependent on our slow vaccine roll-out and the ability of the virus to mutate. There are predictions from within the scientific community that we can expect fourth and even fifth waves. An extension cannot anticipate when the risk of COVID-19 will be at an end, if ever. Thus a postponement only makes sense if the end of the pandemic can be estimated with any reliability and accuracy – it cannot.. Importantly, it bears repeating, the IEC itself has not requested an extension. It also bears mentioning that if this third wave follows similar trends to the first and second waves, the peak will have passed by the time of the intended LGE date of the 27 October 2021 occurs
 - b. **A “harmonising” of all elections for 2024:** Combining all elections into one would be to the benefit of national-parliament represented parties, who can then run national campaigns off the basis of the personality of their leadership rather than answer to local priorities. It will therefore severely prejudice the attention to local issues and municipal parties who are local-issue focused. The multi-party drafters of the Constitution were deliberate in their splitting of national/provincial from local elections, a harmonising would reverse that intention. That cannot be in the interest of taking democracy to the people or resolving local issues.

6. **What COVID-19 mitigation purpose is served by a postponement that cannot be accomplished through precautionary measures?** So for instance, longer opening hours, special votes for senior citizens, a two-day voting period, strict implementation of COVID-19 protocols can in combination mitigate the risk of COVID-19 spread significantly. What added advantage does an extension offer? We can see none.
7. **The postponement would require a constitutional intervention of some type:** As per the Constitution's Section 159 (1) local government terms are restricted to five years. Section 159 (2) provides a further 90 days within which the election must occur. Given that the last LGE took place on the 03 August 2016, that puts the outer limit of the next LGE at the 01 November 2021. Any delay beyond that would require an amendment of the Constitution. Constitutional scholars appear to see two possibilities: the standard constitutional amendment process in Parliament should apply, or a special appeal to the Constitutional Court for an extension. Either of which may reasonably be expected to be challenged in the Constitutional Court itself, thereby creating further delay.
8. **Extension will set a dangerous precedent:** If such an extension is enforced via Parliament for COVID-19, it will set the precedent that elections can be suspended if a serious enough crisis exists. Nefarious parties may see an opportunity in that.
9. **Postponement will prejudice independents and local initiatives:** Elections are held in the interest of citizens not political parties, and those citizen's interest are better served by having a range of choices rather than being restricted to a binary choice. Independents and local initiatives have limited resources. A postponement is likely to stretch those resources beyond their capacity.
10. **Vested interest potentially drives the call to postpone:** The call to postpone has emanated from select political parties, not citizens, nor the IEC itself. Established parties, especially those whose popularity is on the decline or internal structures are in turmoil, stand to gain by extending the terms of their elected councillors and by not having to resolve internal disputes necessary to campaign. The fees councillors earn are tithed by parties and extending that (guaranteed) revenue source is in the party's interest as is the ongoing ability to influence decision-making at a local level.
11. **Restricting meetings/gatherings and other campaigning activities is to the advantage of the very parties arguing for an extension:** Newly established municipal-focused parties have to both establish their "brand" and build their campaign infrastructure in the run-up to 27 October 2020. Established parties already have such in place and can leverage this to their advantage – they have a remote "reach" advantage which will be amplified if meetings are restricted. In essence, though the same "remote" campaigning tools: social media (Face Book, Twitter, Instagram, YouTube, WhatsApp/Telegram and Websites), traditional media (print, radio and television), SMS, and e-mail (newsletter) correspondence are equally available to all parties, those with established remote campaigning infrastructure are at a significant advantage. Additionally, elected officials serving in key positions such as Mayor or MMC naturally benefit from voter recognition through their official position social media channels and traditional media reporting.

There is no doubt that COVID-19 poses a significant risk to the South African populace, but this risk needs to be balanced against the existing crisis at local government level that is not delivering against citizen's most basic needs. Which is the greater risk to the South African populace, COVID-19 or an ongoing collapsed local government?

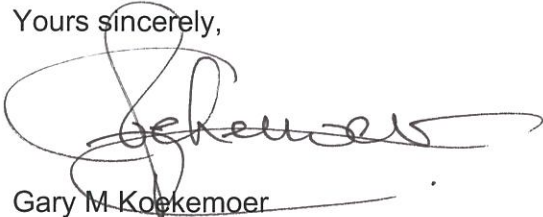
The IEC has shown itself capable of managing by-elections during the pandemic, which includes the effective campaigning and monitoring by political parties. We believe this capability could be enhanced by further adaptations. To that end we would strongly suggest that the following additional measures be considered:

1. Longer voting hours
2. Extend voting over two days
3. Enhancing special vote resources and capacity with the IEC and allowing COVID-19 high-risk individuals to vote via special votes prior to election day
4. Sanitation, temperature check's and social distancing measures installed at every voting station
5. An extensive IEC/Government communication strategy highlighting the risks and mitigation measures that will be in place
6. Declaring one of the voting days a public holiday
7. Exclusive voting hours for high-risk categories
8. Focused containment measures for localised COVID-19 "hot-spots"

Therefore we strongly call for the local government elections to be promulgated as per the President's indicated date of 27 October 2021 and that the IEC be provided with the necessary means to ensure the COVID-19 risk is adequately mitigated.

We repeat our request to make an oral submission along these lines and wish to stress that elections are meant to serve the people of South Africa, not political parties .

Yours sincerely,



Gary M Koekemoer

Secretary-General: Abantu Integrity Movement (AIM)