

To : The Honourable Justice Moseneke

[freeandfair@elections.org.za](mailto:freeandfair@elections.org.za)

Re: ActionSA:

Submissions in respect of Section 14(4) of the Electoral Commissions Act

Date : 18 June 2021

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## Introduction

1. ActionSA is a political party registered in terms of the Electoral Commissions Act 51 of 1996.
2. ActionSA is duly represented on the National Party Liaison Committee.
3. ActionSA has been extended the invitation to make submissions for purposes of the report to be prepared by His Honourable Justice Moseneke, to determine *inter alia*, the likelihood that the upcoming elections will be free and fair within the environment of the Covid-19 pandemic ("the Pandemic").
4. In this regard, ActionSA wishes to place the following on record:
  - 4.1. It is necessary to identify that the pandemic has wreaked havoc throughout our country, bringing tragedy and suffering to many South Africans, both as a result of the virus itself and the consequent economic fallout.
  - 4.2. Our government's response to the pandemic, has been found wanting in several areas of adequate or appropriate intervention, which has exacerbated the impact of the pandemic on both lives and livelihoods.
  - 4.3. Consideration must be given for the prevention of further avoidable loss of life from the pandemic.
5. Notwithstanding the above, regular elections are the very cornerstone of our democracy, as reflected in Chapter 1 of the Constitution of the Republic of South Africa.
6. Political discourse about possibly delaying the 2021 Local Government Elections, (which one may argue has played a role in the initiation of this process), is deeply concerning from a constitutional perspective.
7. It is common cause that South African politics have revealed - through countless acts of corruption and failed service delivery - a deficiency of accountability on the part of government

- both at national and municipal levels. Those responsible do not face the consequences of their actions. To the majority of voters, their only recourse is their vote, and the guarantee that political leaders need to garner their support every 5 years.
8. South Africa is not alone in meeting the dual challenges of holding elections and safeguarding the health of its citizens, with well over 75 countries holding general elections in 2020.
  9. It would be an elementary process to study these elections, from both an electoral and epidemiological point of view, and produce a best practice for how South Africa can run the 2021 Local Government Elections.
  10. It must be noted, from an epidemiological perspective, that rates of infection of Covid-19 are a product of human behaviour and, therefore, cannot be predicted with any level of accuracy for the near future.
  11. ActionSA is concerned about the process followed and/or proposed by the IEC, which will be more fully dealt with herein below.
  12. We shall now attempt to address each of the four questions posed to political parties, which are structured along the lines of the composition of criteria for “free and fair” elections:

*Whether the current conditions under the COVID-19 pandemic are conducive or not to the holding of free and fair local government elections during October 2022?*

13. The most critical component of free and fair elections must lie with the voter and, specifically, their level of confidence that they are able to exercise their democratic right to vote without risk of being infected.
14. In this regard, prevailing conditions may be relevant, but are of secondary importance to the conditions that will – in all likelihood – exist closer to the 27<sup>th</sup> of October 2021. It is these conditions that are relevant in determining the appropriate position.
15. Three factors would be central in the decision-making process for South Africans when weighing up whether they will cast their vote.
  - 15.1. The first factor is the prevailing level of infections in the country at a given point in time, with the understanding that public confidence to vote is inversely proportional to the level of infections in the country at the time. The consequence of this resides within the notion that there is a greater risk of infection, in an environment which has a higher

level of infection. It is self-evident that such a consideration lies outside of the control of the IEC.

15.2. The second factor is the level of vaccinations which will have been rolled out by the proposed date of the elections, with the understanding that the confidence to vote would be proportional to the level of vaccinations, especially amongst the most vulnerable categories of our society. In this regard government has presented plans to the PLC demonstrating how it will vaccinate 16 million South Africans by the end of October 2021, who constitute the majority of the population most vulnerable to serious cases of Covid-19.

15.3. The third is the sum of the measures taken by the IEC which would reduce the risk of infection, and the extent to which such measures are communicated with sufficient volume as to generate a high degree in public confidence that voters can exercise their right to vote safely. It is self-evident that such a consideration is entirely within the control of the IEC.

16. In relation to the 3<sup>rd</sup> factor communicated in point 14.3. *supra*, and in the absence of a level of infections that constitutes a 'wave' or 'peak', it is entirely within the control of the IEC to provide the environment for the elections to be free and fair from a voter confidence perspective.

*The constraints, if any, that the measures in place to prevent and combat the spread of COVID-19 have imposed or will likely impose on political activity and campaigning in the lead-up to the local government elections earmarked to be held in October 2021:*

17. There are, undoubtedly, limitations associated with campaigning for elections while the regulations continue to impose restrictions on political activity.

18. The Covid-19 pandemic has required of all businesses, organisations, households and individuals to adapt and conduct their affairs differently. Political parties should not use their positions of influence to create an exception for themselves.

19. South Africans have demonstrated their ability to adapt in exceptionally trying circumstances, and in every aspect of life. This is evident, by way of example, by the effective adjustments made to the administration of justice by our High Courts continuing electronically.

20. The only limitation being imposed politically, is a restriction of the size of events, requiring the adjustment of large rallies to be converted into many smaller gatherings. All other forms of activities and political communication continue as before.

21. We do not assert that such limitations would amount to a limitation on the free speech and the right to impart ideas, which are essential to any election campaign.

22. The reality, as confirmed by epidemiologists, is that Covid-19 will be prevalent for years beyond the 27<sup>th</sup> of October 2021. Given the plans of government to rollout the vaccine, there is simply no prospect of elections being delayed to a point in which restrictions in campaigning would not exist.

*The constraints, if any, that the measures in place to prevent and combat the spread of COVID-19 are likely to impose on the proper and effective monitoring, by political party agents and independent electoral monitoring bodies, of the freeness and fairness of the local government elections earmarked to be held in October 2021:*

23. In addressing the question of limitations imposed upon the monitoring of the elections, as a key component of free and fair elections, one must consider the different areas or processes of monitoring. This would mean monitoring of home visits, special votes at the voting stations, the election day itself, the count, and the operations at the respective results centres.

24. Home visits, as a part of the special votes, undoubtedly present the greatest challenge. This is due to individuals going from home to home to administer the voting. The monitoring of the home visits and special votes should not be problematic, and the health measures outlined by the IEC in this regard are appropriate.

25. In recent years, the IEC has adjusted its practices to place party agents and election monitors at a distance that does not crowd or intimidate a voter, and rotating party agents to observe different processes within the voting operation. This practice would ensure the appropriate social distancing is observed.

*In addition, you may make any other submissions that you deem necessary and appropriate, provided that they are in connection with the proper conduct of local government elections.*

26. The lack of leadership provided by the IEC in this period up until this point in time is of great concern to ActionSA.

27. At a time when the IEC should have led the discussion about free and fair elections within a Covid-19 pandemic environment, it has not provided leadership. Rather, it has seen political parties raising the issue with the IEC, and the IEC has responded with this Section 14(4) report process.

28. The consequence of this is a scenario in which the IEC is creating the very environment in which an election cannot be held freely and fairly because confidence of voters to vote would be directly proportional to the strength of measures proposed for the election, and the extent to which these measures were communicated.

29. Even the very process of this Section 14(4) report, is somewhat of a self-fulfilling prophecy. The IEC has not done what is necessary to generate confidence for voters to participate in the elections to create the environment suitable for free and fair elections. With no disrespect intended to the Honourable Justice Moseneke, the request for such a report appears, objectively viewed, as a precursor for an inevitable postponement of the elections in October 2021, in circumstances (having regard to the last year and rise and fall of infections) where the rate of infections will have fallen once again (owing to the summer months).
30. Until recently, the IEC has taken to saying that the by-elections which took place on 'super-Wednesday', were evidence of the measures they are proposing for the local government election. These by-elections generated record low levels of voter turnout, a worrying sign of voter confidence itself, and ought not to be regarded as yardsticks for a general election where turnout ranges from 55% to 65%.
31. Had the IEC demonstrated strong leadership on these matters, they would have produced a study of global elections to determine best practice, explored possible changes in the law or regulations, produced a set of measures constituting a best practice and communicated these measures widely. The sum of these activities would have generated levels of voter confidence that are, in all probability, not present currently.
32. In these respects, we contend that the IEC has foreseeably fallen short of its responsibilities and legal obligations. Should this process come to the same conclusion, it will be necessary for the commissioning of an investigation, by the appropriate body, into the cause of these failures.
33. ActionSA notes that our previously submitted proposals to ensure free and fair elections that are also safe within the Covid-19 context have been omitted from the IEC annexure labelled PSM 19. We append hereto, as **Annexure X1**, that which was submitted to the IEC.
34. The 2021 Local Government Elections can still take place to the constitutional standard of free and fair elections. However critical ActionSA is of the IEC, the current situation can be remedied through a decisive and proactive approach to both decision making and communication of such decisions.
35. Outside of a wave or peak of infections, the 2021 local government elections should proceed with the IEC taking every possible precaution and measure to protect South Africans, in ensuring their constitutional right to cast their votes.
36. South Africa has an accountability crisis in its political system. Nowhere is this more prevalent than at a local government level. Reports by institutions like the Auditor General have demonstrated, beyond any question, the crisis that exists at local government level in South Africa.

37. It is in this respect that this Section 14(4) report, the process involved therein, should place such regard first, and ensure that the IEC delivers on all necessary measures to safeguard Chapter 1 of the Constitution of the Republic of South Africa. This will ensure that no constitutional obligations are curtailed by any opportunistic reliance on the pandemic, but simultaneously ensuring the safeguards necessary, in light thereof.

DATED at JOHANNESBURG on this the 18<sup>th</sup> day of June 2021.

MICHAEL BEAUMONT  
National Chairman ActionSA  
(Electronically submitted and thus unsigned)