



14 June 2021

The Electoral Commission of South Africa (IEC)
Tugela House
1303 Heuwel Avenue
Centurion

ATTENTION: Justice Dikgang Moseneke

Dear Sir

ATM SUBMISSION OF INQUIRY ON FREENESS & FAIRNESS OF 2021 LGE

Your letter dated 07 June 2021 regarding the above-mentioned matter bears reference. Based on your letter, our understanding of your terms of reference are as follows:

- (a) Enquire into, make findings and report with recommendations on the likelihood that the IEC would be able to ensure that the forthcoming 2021 Local Government Elections (LGE) will be **free and fair**, in view of:-
- (i) the challenges posed by the Covid-19 pandemic; and
 - (ii) the measures promulgated by the government to curb the continued spread of the pandemic.
- (b) Indicate **additional measures** that the IEC may be required to implement in order to **realise free and fair elections** within the context of the of Covid-19 pandemic.

Based on the terms of reference for the inquiry from Electoral Commission of South Africa (IEC) mentioned above, the African Transformation Movement (ATM) would like to make the following submission:

The African Transformation Movement (ATM) is a Political Party represented in the National Assembly, and both in the Eastern Cape Legislature and KwaZulu-Natla

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Legislature. We have an interest in the forthcoming 2021 Local Government Elections (LGE) since we will be contesting elections in all the South African Wards, Metropolitan Municipalities, Local Municipalities and District Municipalities.

1. Free, Fair Elections and Good Governance: Carrier for Service Delivery

In a democracy such as ours in South Africa, **the power of law makers flows from the voting citizens, and lawmakers act as the citizens' proxies.** This delegation from voters to legislators gives the law its legitimacy or force. Correlatively, the obligation to obey the law flows from the fact that the law is made by and on behalf of the citizens. In sum, the obligation and the legitimacy of the law, and the obligation to obey the law flow directly from the right of every citizens to vote. As a practical matter, we require all within our country's boundaries to obey its laws, whether or not they vote. But this does not negate the vital symbolic, theoretical and practical connection between having a voice in making the laws and being obliged to obey it. This connection, inherited from social contract theory and enshrined in the Constitution, stands at the heart of our system of Constitutional Democracy.

The right of all citizens to vote, regardless of virtue or mental ability or other distinguishing features underpins the legitimacy of South African democracy and Parliament's claim to power. **A government that restricts the franchise to a select portion of citizens** is a government that weakens its ability to function as the legitimate representative of the excluded citizens, jeopardizes its claim to representative democracy and erodes the basis of its right to convict and punish law-brakers. This therefore means that the right **to elect legislators in a free and unimpaired fashion** is a bedrock of our political system.

Free and fair elections are necessary pre-condition and requirement for good governance. If therefore good governance is the goal for free and fair elections, elections must be processed towards attainment of this goal. In other words, elections should enable society not to get the leaders who enslave them but leaders whose character is prescribed by **Jesus Christ** in the Book of **Mathew 20:20-28** as follows:

“Among the heathen, kings are tyrants and each minor official lords it over those beneath him. But among you it is quite different. Anyone wanting to be a leader

among you must be your servant. And if you want to be right at the top, you must serve like a slave. Your attitude must be like My own, for I, the Messiah, did not come to be served, but to serve, and to give My life as a ransom for many”.

Mathew 20:20-28 lays down the basic law for developing values and principles for good governance and free and fair elections. This scriptural word articulates the dialectical relationship between the electorate and the persons they deploy to serve in public institutions. People elect into office servants and not tyrants who lord it over the electorate. The message is that democratic elections are a sacred selection of true and humble servants whose daily business is to better, and not betray, the lives of the people.

The challenges of abiding by this basic law is that most practitioners of politics and the political organizations consist of people who are not by words and deeds followers of the Word of God as propounded in the **Mathew 20:20-28**. They walk by sight and not by faith. Hence in elections they see opportunities for access to public status, employment and accumulation of wealth and not opportunity to provide selfless service, suffering and sacrifice. This is the context within which electoral competition rules and governance principles are often bended to serve personal and family interests.

South Africa is functioning as a democracy in which laws are established, which amongst others, provide for the right to vote and to be elected at **genuine periodic elections**. The rationale for genuine periodic election is on the understanding that the electorate take a risk of voting for electoral promises made by representatives with no guarantee of delivery. Once you increase this period, thereby making it not to be genuine, you are actually denying the electorate free expression of their will. **Right to elections delayed is actually right to elections denied**, thereby making elections not to be free and fair. We cannot allow the current Councillors to overstay the period given to them by the electorate, particularly given the high levels of corruption by our Councillors. It is not in anybody's interest to see the electorate taking law in their hands and engage in protest simply because law is not protecting them. For that matter postponing elections for more than the legislated period is unconstitutional.

It is true that Covid-19 pandemic is posing some challenges towards the freeness and fairness of these 2021 LGE, but those challenges are not insurmountable. A number of By-elections were successfully held during various levels of Covid-19 pandemic. Besides the most vulnerable group with respect to Covid-19 are queuing every month for their grants and there has never been complaints regarding the abnormal spread of Covid-19. It was the same situation in Post Offices where people were queuing to collect R350 SRD Grant. Also, on a daily basis workers queue for buses, taxis and trains going to work. When Covid-19 protocols are observed risk of contamination is minimised.

The ATM would therefore like to make the following submission to the Inquiry with respect to free and fair elections during 2021 LGE as influenced by Covid-19 pandemic:

- (a) Of all the key stakeholder during elections, voters are critical. Both the government and Political Parties are mere proxies that represent and get a mandate from the voters. The view of the voters is critical in this matter. If voters are ready for 2021 LGE, IEC is duty bound to ensure that they happen without compromising the health of the voters. As servants of the people the government and the Political Parties should assist communities to get what they want.
- (b) Tempering with the five-year election period is a very serious violation of the social contract between the people and the leadership. Change is healthy and it is a way of putting pressure on politicians to deliver their promises on time. Never delay elections!!!
- (c) By-elections held during various stages of Covid-19 lock down is a practical evidence that full blown Local Government Elections can be held as long as precautionary measures are observed. For that matter no one is sure when the Covid-19 will end. Maybe variant 4 and 5 are still to come. Half a loaf is better than what is not scientifically known.
- (d) Strict Covid-19 measures will teach people to observe these protocols more. This will be an opportunity for Political Parties to raise awareness to their constituencies about the importance of adhering to Covid-19 protocols. When they see their trusted leaders adhering to these set government measures and

respecting Covid-19 protocols they will follow suit in doing the same. When Political Parties do their campaigns, they even go to remote rural areas where there is no signal for a TV or radio. Some will be hearing for the first time about the dangers of Covid-19 and effective methods of protecting themselves against it. By this, what seems to be a disaster may be converted into an opportunity. Running away from the problem is not a best way of dealing with it.

- (e) The very Covid-19 pandemic has introduced not only a health problem but an economic problem. When dealing with the consequences of the Covid-19 pandemic the economy of the country which is currently on its knees need to be taken into consideration. One critical way of doing that is to ensure that people vote for the leaders of their choice and also give them a new mandate.

2. Additional Measures to Realise Free and Fair Elections

Over and above the existing measures promulgated by the government do deal with Covid-19 pandemic, ATM would like to recommend the following additional measures in order to realise free and fair elections:

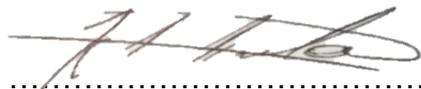
- (a) The scope of special votes should be extended to those people who are vulnerable to Covid-19, e.g., 60 years old and more, tested positive for Covid-19 pandemic, etc.
- (b) Means and ways should be developed to allow those who want to vote but are undergoing quarantine sessions due to Covid-19 pandemic.
- (c) The Electoral Commission of South Africa (IEC) must come up with extra measures to ensure that the Covid-19 pandemic protocols does not compromise the monitoring by Political Party Agents and independent electoral monitoring bodies in ensuring freeness and fairness of 2021 LGE.

3. Conclusion

- (a) In conclusion, we would like to register our interest, on behalf of constituency, that the 2021 Local Government Elections should be held as scheduled for 27 October 2021. This should be done with strict adherence to Covid-19 pandemic measures.

- (b) In addition to measures promulgated by the government, we would like the IEC to implement extra measures to deal with Covid-19 pandemic as outlined in 3(a),(b)&(c) above.
- (c) The Covid-19 pandemic might have compromised the election campaign for the Political Parties but that has happened to all Political Parties equally and there is unfairness imposed to some Political Parties while advantaging others. Voters are more important than the government and Political Parties who are proxies.
- (d) The ATM participated in a number of By-elections that took place during the period of the Covid-19 pandemic across the country. Our experience is that there was never any impeding element in monitoring that were imposed by the Covid-19 pandemic measures. Save to say that in general South African Elections are never free and fair. They favour more the Political Party that is already in power and to a lesser extent the bigger Political Parties with resources to do monitoring. Even the Presiding Officers generally do not take you seriously if you are a small Political Party. For instance, as the ATM, we raised a complaint with the IEC and the Electoral court in one By-election that we felt was not handled fairly by IEC officials but we never received a response from the Electoral Court since April 2019 to date.
- (e) As the ATM we would like to request the Inquiry to afford us an oral presentation to outline and emphasise our view on this matter.**

Yours in National Peace Revolution (NPR)



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Thandisizwe Khukula
ATM SECRETARY GENERAL