



PAC

Reg No. 13/1/2/26

PAN AFRICANIST CONGRESS OF AZANIA

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President

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JUSTICE DIKGANG MOSENEKE

Tugela House, 1303 Heuwel Avenue

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The Submission to the Moseneke Commission on the holding of Free and Fair Elections under the covid-19 environment.

1. The Pan Africanist Congress of Azania is a registered political party with the IEC. It has contested all the elections at all levels since 1994.
2. The Pan Africanist Congress of Azania is currently being prevented by the IEC to take part not only in the local government elections but on all the processes which are to do with the IEC. This situation always happens when any elections are to take place since 2014. The PAC is placed in a difficult and different position compared to all other political parties. The PAC is always only allowed to take part in elections in the last minutes. It is understood that the commission has held a meeting with all parties which are represented at national liaison party committee, the PAC was not invited therefore excluded.
3. The brief historical background to the exclusion of the PAC from election processes and the recent by elections.
4. During May 2013 the party expelled its then President Letlapa Mphahlele following the internal party processes. At the end of May 2013 Letlapa challenged his expulsion in the South Gauteng High Court and got the order reinstating him back to the party and the application for leave to appeal was noted which suspended the order by Justice Kgomo. During 2014 the appeal was granted to the full court of the South Gauteng High Court. During October 2015 the full court set aside Kgomo J judgement and upheld Letlapa Mphahlele expulsion by the party.

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5. Despite the full court judgement handed down by Lamont J the IEC adopted a political narrative that there was a disputed leadership in the PAC. This narrative was not just created but highly publicised by the IEC and the national broadcaster to the extent of it being true. During December 2016 the IEC through its Chairperson issued a letter which effectively preventing the PAC from participating in the 2016 Local Government Elections based on their narrative of disputed leadership of the PAC. The IEC were effectively questioning the judgement of the full court which was handed down on 9th October 2015.
6. At that time the PAC was prevented from participating in the 2016 elections based on their self-created narrative of disputed leadership and nothing else. During February 2016 the PAC approached the North Gauteng High Court seeking an order allowing it to participate in the 2016 Local Government Elections. The IEC opposed the application however the court ruled in favour of the PAC. There was an appeal against the order which failed and as a result the PAC was only allowed to participate in the Local Government Elections in the last minutes only given few hours to register.
7. The PAC has for a long time never tested free and fair elections because it was treated like a political party under IEC administration. While this commission has not been created to hear this kind of issues but the PAC believes it is important to bring it to the attention of the commission.
8. With regard to the free and fair elections, the PAC believe free and fair elections are sufficiently covered in the constitution. However the appointment of this commission is both confirmation and demonstration that something is not right. The commission is requested to investigate and uncover that which is wrong or not right. We also work on the basis that something was right before something happened. That which has happened and created this dilemma is covid 19 and its devastating impact on our people inclusive of our professionals and skills. This is also so in that millions of people shall be required to flood to the polls in one day or two to cast their votes.
9. Currently parties are not free to conduct the campaigns due to the existing restrictions. Voters and parties are not free to meet in the numbers they normally do because of the restrictions. The voters are not sure of their safety and health because nothing extra ordinary which reflects corona alerts to the polls has been communicated to the public. In practical terms it means IEC is expected to run normal elections when the situation is completely different.
10. The Commission headed by Judge Moseneke must establish whether the IEC will deliver free and fair elections in view of Covid 19 challenges. Outline measures to implement to deliver free and fair elections if elections were to take place. The Commission is now operational, it has made calls for all stakeholders to make submissions.
11. The Pan Africanist Congress of Azania is heeding the call. PAC is a registered political party with the IEC. All parties who participate in the elections are required by law to register with the IEC. Part of the requirement is an address, contact details and the contact person in that party. This is an elementary information which the Commission is aware of, the submission will deal with the importance of such later.



12. The Commission has since its establishment done the following:

12.1 Established an office.

12.2 Had an information session with parties represented in NPLC.

12.3 Set a time frame of submissions from all stakeholders.

13. We attach here for your ease of reference the many developments and Court judgements which the IEC has at all material times ignored in the furtherance of a narrative purporting that is some sort of leadership dispute within the PAC which we have to date denied to be the correct context of the PAC's internal affairs:

13.1 Mr Phillip Dlamini's supporting affidavit to intervene in the matter 12/2019 before the Electoral Court of South Africa.

13.2 SCA correspondence (2020).

13.3 Western Cape Division of the High Court judgement handed down by Pangarker AJ on 26 May 2021 (17896/2020).

13.4 Western Cape Division of the High Court judgement handed down by Pangarker AJ on 18 June 2021 (17896/2020-leave to appeal).

14. Conclusion, PAC is of the view that all lives matter. In the recent spike in Covid 19 infections, the single biggest contributor is public gatherings. The government has been forced to strengthen restrictions inclusive of gatherings. Elections are based on mass mobilisation of people before elections. Without this guarantee of freedom of movement and campaign the outcome cannot be considered to be free and or fair. The continued unlawful ban by IEC of PAC constitute an infringement on the rights enshrined in the constitution. To the PAC it not only constitutes an unfair practice by IEC but a violation of a right to exist as a political party. During the bi-elections which might be used as a learned experience, PAC was excluded for a sustained onslaught on her by IEC. The PAC is raising this conduct of IEC against her, because the Commission must also look into how stakeholder's treatment impact on free and fair elections.

15. For elections to be fair, there must be a fair process which must be adhered to. The disproportional allocation of resources including allocation of coverage makes mockery of fair elections. The IEC in its allocation of resources still refuses to equitably distribute to all parties. In the case of PAC there is no allocation to even speak of.

16. The PAC makes the following submissions:

16.1 Elections be postponed until the 3rd wave passes. It is now proven that between January-April there is a sharp decline in infections. That will be ideal time to conduct elections not in the middle of a spike in infections which will also complicate that by gatherings.



16.2 Look at how IEC selectively treats stakeholders differently. Currently the ruling party is in court with a suspended SG and President. IEC assumes an impartial role. With PAC they heard from street people about a meeting they had and they changed the contact person based on that. The Commission must locate the role of IEC in delivering a free and fair elections.

Regards



Narius Moloto
PAC President

