



Ratanang Letter Rain New Order Ministry

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INDEPENDENT ELECTORAL COMMISSION – FORMER DEPUTY CHIEF JUSTICE DIKGANG MOSENEKE TO INVESTIGATE WHETHER CONDITIONS FOR 2021 LOCAL GOVERNMENT ELECTIONS WILL BE FREE AND FAIR.

PURPOSE

1. Former Deputy Chief Justice Dikgang Moseneke has been tasked by the Independent Electoral Commission to lead a process to review whether the current conditions are conducive or not to the holding of free and fair elections on 27 October 2021.

BACKGROUND

2. During his department budget vote on 20 May 2021, the Minister of Finance Tito Mboweni told parliament that economic recovery will remain elusive as long as incompetent administration and poor financial management at municipalities remained unresolved. The Minister of Finance was speaking in the National Assembly while outlining the policy priorities and spending plans of the National Treasury for the 2021/2022 financial year.
3. The Minister of Finance Tito Mboweni used his speech to paint a grim picture of the state of financial management at municipal level, telling Members of Parliament that “political infighting and political interference” in administrative matters remained stumbling blocks.
4. The Minister of Finance reported that there were 63 municipalities in financial distress, with 40 embroiled in financial and service delivery crises, while 102 more had adopted budgets they were unable to finance. “He further said, for the first time in our democracy, the national executive has been

ordered by a high court to constitutionally intervene in the affairs of a municipality owing to a financial and service delivery failure.

5. He indicated that as he makes his submission before the National Assembly, he is both the Minister of Finance and also responsible for the Lekwa local municipality in Mpumalanga,” in reference to the council covering the town of Standerton. The government last week dissolved the Lekwa municipality after a successful court bid by chicken producer Astral Food over the municipality's failure to deliver basic services such as clean water, which affected the chicken maker's capacity to remain operational.

DISCUSSION

6. The former Deputy Chief Justice through this process will be undertaking an urgent review of all the relevant factors which have a bearing on the holding of free, fair, and safe elections in October and these factors include but not limited to legal, sociopolitical, health, practical, socioeconomic and any other relevant considerations. These factors would each be briefly discussed below and where possible evidence would be provided for each claim made and such evidence would drawn from various sourced. However, where it is not practically possible to provide such evidence due to the amount of time required to research and source, in such instances only broad statement which are common course would be made. The assumption would that such information is freely available on public media platforms such as internet, newspapers, social media etc.

COMMENTS BY THE MINISTER OF FINANCE

7. The comments by the Minister of Finance made in the background above with respect to the bad state of various municipalities across the country are worthy to be revisited as they provide insights into what the Covid-19 pandemic has laid bare which might ordinarily would have been hidden for a long time for public scrutiny. The Minister of Finance Tito Mboweni told parliament that economic recovery will remain elusive as long as incompetent administration and poor financial management at municipalities remained unresolved. The sentiments echoed by the Minister of Finance have also been highlighted by the Auditor-General almost on an annual basis in his report with respect to the performance of various municipalities.

2018/19 AUDIT OUTCOMES FOR LOCAL GOVERNMENT BY AUDITOR-GENERAL KIMI MAKWETU

8. The late Auditor-General Kimi Makwetu in his media release dated 01 July 2020 regarding the 2018/19 audit outcomes for local government painted a dark picture of municipal finances, administration, and governance. In that local government general report, the Auditor-General painted an undesirable picture of billions of rand in funds allocated to municipalities being managed “in ways that are contrary to the prescripts and recognised accounting disciplines”. He strongly cautioned that these administrative and governance lapses “make for very weak accountability and the consequent exposure to abuse of the public purse”.
9. In the same report the Auditor-General also commended a few municipalities whose diligence reflects the desirable story. Kimi Makwetu acknowledges the efforts of those municipalities that have worked hard to ensure that they not only received or maintained clean audits, but also tell a positive story of how they run their municipalities. The thirteen of these municipalities are in the Western Cape and

included Cape Winelands and West Coast district municipalities (*see report for names of these municipalities*).

10. The best practices at these municipalities included a stable leadership that is committed to a strong control environment and effective governance. Continuous monitoring of audit action plans in order to timeously address any audit findings and a proactive approach to dealing with emerging risks were also common features at these municipalities.

CONSIDERATION OF LEGAL AND LEGISLATION FACTORS

11. Section 159 of the Republic of South Africa, Act No.108 of 1996 states that with respect to Terms of Municipal Councils.

Section 159 (1) The term of a Municipal Council may be no more than five years as determined by national legislation.

Section 159 (2) If a Municipal Council is dissolved in terms of national legislation, or when its term expires, an election must be held within 90 days of the date that Council was dissolved or its term expired.

Section 159 (3) A Municipal Council, other than a Council that has been dissolved following an intervention in terms of section 139, remains competent to function from the time it is dissolved or its term expires, until the newly elected Council has been declared elected.

12. Electoral Act No. 73 of 1998, section 159 states in relation to “Terms of Municipal Councils”:

Section (1) The term of a Municipal Council may be no more than five years, as determined by national legislation.

Section (2) If a Municipal Council is dissolved in terms of national legislation, or when its terms expires, an election must be held within 90 days of the date that council was dissolved, or its term expired.

Section (3) A Municipal Council, other than a Council that has been dissolved following an intervention in terms of section 139, remains competent to function from the time it is dissolved, or its term expires, until the newly elected Council has been declared elected.

13. Electoral Act No. 73 of 1998 does not allow elections to be delayed or postponed beyond the 90-day period is provided for by the constitution.

CONSIDERATION OF HEALTH AND PHARMACEUTICAL FACTORS

14. Since the first Covid-19 case was report in South Africa on 5 March 2020, a total of over 1.6 million positive Covid-19 cases has been reported and almost over 56 000 deaths recorded during the same period. Several non-pharmaceutical interventions which include social-distancing, compulsory wearing of masks in public, hand sanitizing and lockdowns at various alert levels has been implemented by government to curb the spread of infections. These interventions have proved to be effective, and they will remain in use until 67 per cent of the population has been vaccinated.
15. Scientists predicts that the pandemic will be with us for a foreseeable future and therefore communities should learn to leave with the virus. All human activities including conducting elections should be planned with the pandemic in mind, thereby implementing measures to mitigate the risks associated with Covid-19.

CONSIDERATION OF SOCIO-ECONOMIC FACTORS

16. The Covid-19 pandemic has caused millions of South Africans households to lose their livelihoods and their jobs. Unemployment has increased and reached unprecedented levels as reported by STATS in its latest Labour Force report released on 01 June 2021. The official unemployment statistics now stands at 32.6 percent and the situation will remain as such for a foreseeable future.

RECOMMENDATION FOR OR AGAINST THE POSTMENT OF THE 27 OCTOBER 2021 LOCAL GOVERNMENT ELECTIONS

17. It is recommended that the elections go ahead as planned for reasons stated below.

- (a) The bad state of municipalities across the country our such that the postponement of the elections will worsen the situation and compromise service delivery in those municipalities.
- (b) Municipalities have a role in reducing unemployment and poverty in communities and therefore their continued existence should not be tempered by the postponement of elections.