

**NOTE OF MEETING BETWEEN THE COVID19 NEDLAC RAPID RESPONSE TASK
TEAM AND JUSTICE MOSENEKE
09 JUNE 2021**

1. Summary of Discussions

1.1. The Nedlac Executive Director welcomed Justice Dikgang Moseneke (Judge Moseneke) and indicated that the Nedlac social partners have prepared initial submissions as a response to the letter received from the Judge Moseneke in line with his appointed role to lead the inquiry into ensuring Free and Fair Local Government Elections during COVID19.

1.2. The meeting received opening remarks from Judge Moseneke which highlighted the following:

- Engaging the Nedlac social partners was an important platform to consider in the process of the IEC to hold free and fair elections, in which he had been asked to assist.
- A set of terms of reference were developed to understand the work of the IEC, and therefore an agreement was made that the Judge would continue to research to look into the ability to indeed hold free and fair elections
- The law and the constitution requires SA to hold regular elections after five years and 90 days. Therefore, there must be elections within that period.
- Elections must be free and fair as per law, and therefore the challenge faced by the COVID19 pandemic must be considered.
- There is contention between the health requirements in light of the pandemic and the legal and constitutional requirements.
- His terms of reference detail the need to indicate any additional measures for the IEC to implement should elections go ahead despite the pandemic.
- He has to lead the establishment of an office with a support team at an enquiry/research analytical level (research) and administrative level.
- His office has received many submissions which it is considering. Nedlac is, therefore, welcome to provide the same.
- There needs to be flexibility from the IEC in terms of the current challenges with the vaccines and the upcoming waves which may be projected for the period the elections would be held.

1.3. The social partners provided initial responses as follows:

Business:

- It thanked the Judge for the opportunity to engage.
- Acknowledged the critical importance of free and fair elections and the need for them to be held appropriately.
- It further acknowledged that the pandemic has been the most serious threat posed to both stability of society as well as the health of the nation and economy since 1994.
- Social partners have been engaging regularly to make sure that there is a sufficient balance between the need to curb the transition of the virus, which will be assisted by the rolling out of the vaccination programme and ensuring the stability in the economy.
- In addition, we need limit gatherings an essential element in curbing the spread of the virus.

- Recognised the changing interventions that affect how the virus spreads and is responded to.
- Nedlac social partners have continued to advocate for the call to limit the number of people in gatherings to 50 indoors and 100 outdoors, for both political and social, thus including the campaigns and elections.
- There are several protocols regulated in the context of the pandemic (mask-wearing and sanitation) which are being breached. Steps need to be taken to ensure adherence to these.
- The concern around the supply of vaccines needs significant attention to ensure the protection of all South Africans.

Community:

- The Nedlac Community Constituency represents a broad range of community-based sectors.
- Raised concern as to how free and fair the elections can be if the kinds of campaigns needed cannot be done.
- Therefore, are of the view that consideration should be given to postponing the event, with consistent monitoring based on the science and figures being produced to determine the period of postponement.
- Acknowledged the challenges faced by the IEC in observing the constitutional requirements.
- Need for consistency in each sector, as there are discrepancies between social gathering being restricted whereas political gathering may not carry the same restrictions.
- It however welcomed the possibility of different ways of running the elections, such as staggering voting days to avoid long queues.
- Municipal plans may be in limbo should the elections be postponed which may subsequently lead to further problems with service delivery.

Labour:

- Welcomed the opportunity to engage Judge Moseneke and would be making written submission as indicated in the letter to Nedlac.
- The constitution is sacrosanct, the five years and 90 days would therefore need to be considered.
- However, the bill of rights is also sacrosanct in the need to save lives, and therefore if there is a need to save lives, this may not be considered a constitutional crisis.
- Saving lives is essential and the discussion must be guided by science.
- Cases seen in countries such as the United States and India following elections needs to be considered.
- A realistic assessment of the vaccine rollout by October is projected at an estimate of 30/40%, which may not be sufficient to proceed.
- Campaigns may be suspended, however, when it comes to voting days in rural areas and informal areas there will always be long queues. It will be difficult to ensure social distancing.
- Nactu position was to postpone the elections. Cosatu is of the view that if elections continue it must be guided by health and science.
- The EFF argument to postpone to 2024 would be too extreme and would not be supported. Rather postpone to March 2022.

- The concern is as to whether the parties will be able to meet the electorate and communicate their messages in a restricted manner. Thus far these seem not to be met.
- The seeking of free and fair elections is therefore unachievable, especially if parties will not be able to communicate with citizens.
- The lack of detailed terms of engagement makes it difficult to ensure elections are free and fair for all citizen (elderly and sickly).

1.4. Judge Moseneke further responded to the submissions as follows:

- Acknowledged the inputs received from social partners
- It has invited some of the best scientists to give projections of the spread of the virus in October and months leading to October.
- There will be careful probing of determining where we are now and what risks are posed by congregating people in various months.
- The general stance is that we should go ahead, but want to be supported by the views of stakeholders and the science.
- Have invited all political parties (400 at local government level and 12 at national assembly level) to make submissions.
- There is a sharp division to postpone or not, with an additional debate of how far off to postpone.
- Acknowledge the submission of international cases from countries that postponed elections and those that went ahead to hold elections during this pandemic. Have engaged all aspects and there is a split of opinion.
- Careful evaluation will be undertaken to consider the measures to be considered.
- Will consider both the right to life and the political right, which are subject to a level of limitation, as these are never absolute.
- Limitations will be inevitable, where certain parties will be able to hold virtual or hybrid campaigns and rallies, and there will be those who will not be in the position to do the same. Therefore, the question is whether these limitations are tolerable under the constitution (free and fair elections).

1.5. In addition, the Judge posed the following question to the social partners:

- Whether Business was happy to have election proceed subject to adequate measures?
- Clarity on the prognosis of Business on the extent of the vaccination, and the need to speed up the vaccination to support the science?
- If a postponement was to be considered, is the view supported for the extended periods (2024) or that of a few months (2022)
- The extension of special votes would consider the elderly, was there a different view?
- Should the elections proceed, would parties with lessor means have a fair stake in the elections? And would there be a significant risk should elections proceed?

1.6. The social partners further responded to the questions posed by Judge Moseneke as follows:

- Business confirmed that it supported the proceeding of elections subject to appropriate protective measures being put in place, including enforcement of non-pharmaceutical measures.
- With regards to the vaccination programme, it undertook to share a presentation by B4SA in this regard.

- In context, the country is vaccinating 80k a day with the capacity to vaccinate 250k a day (both private and public) if a sufficient supply of vaccines was available (constraints with Johnson and Johnson and Pfizer vaccines).
- Therefore, by October as indicated by Labour, we would not have vaccinated enough people.
- Labour: indicated that there is a large number of citizens living with co-morbidities is large, which makes it difficult to cater for this special group, which would fall under special votes. The constraints of resources to ensure that significant capacity to cater for the special voters may be a challenge.
- Parties who will be able to run virtual campaigns will perpetuate the class divide as not all citizens will have equitable access.
- It did not encourage any form of a rally as even 50/100 people meeting up for rallies, may still not be safe.
- The livelihoods of citizens are to be protected, which may be difficult should the elections bring about another wave which forces a hard lockdown.
- Should not go to elections just because there must be a vote. The health of citizens must be prioritized. Therefore, call for a postponement is to provide sufficient time to consider how to fill the gaps.
- Postponement should be a tight timeframe, and should rather no later than March 2022 and not later.
- Free and fair elections in rural areas and townships are different to those in suburbs. Therefore, may be difficult to contain.
- Let us empower Constitutional Court to make the decision based on the consideration of saving lives and the data in a timeous manner.
- Acknowledged the condition of views but must be considered equally.
- Community: supported the need to go ahead with the consideration of science and health.
- Supported the reasonable postponement for early next year.
- Cautioned the bringing together of local government and national government elections at the same time.

2. Closure

- The Judge thanked all the social partners for the fruitful engagement which is highly vital to the democratic project.
- The point of resources is a fundamental matter that will be bared out in the report.
- Urged social partners to make written submission to further engage the submissions.
- Verbal submissions will also be received from scientists who will be further looking at the consideration of moving to March 2022 and whether it will be a better approach than October 2021.