

COSATU Submission:

**Ensuring Free And Fair
Local Elections During COVID**

18 June 2021



COSATU

Submitted to:

Justice Dikgang Moseneke

**On Behalf of the
Independent Electoral Commission**

Republic of South Africa

1. Introduction

The Independent Electoral Commission (IEC) has appointed Judge Dikgang Moseneke to investigate the possibilities of holding the 2021 local government elections in the midst of the pandemic and disaster management restrictions.

The question of whether to continue with local elections in October or for the IEC to submit a request to the Constitutional Court for permission to postpone them to early 2022 is an important matter for the entire country.

It speaks to the:

- Constitutional requirements to hold elections no later than 90 days of the 5th anniversary of the previous elections;
- Bill of Rights' call to government to preserve lives of all South Africans; and
- Need to hold local government accountable to the electorate.

The Central Executive Committee of the Congress of South African Trade Unions (COSATU) has discussed these matters and stated the need to abide by the Constitution, to hold local government accountable, to hold elections timeously whilst at the same to save lives and livelihoods.

There are pros and cons to proceeding with local elections in October or to requesting the Constitutional Court to condone a postponement.

2. Option A: Proceed with October 2021 Local Elections:

Pros include the needs to:

- Abide by very clear Constitutional requirements to hold elections within 90 days of the 5th anniversary of the last elections.
- Avoid undermining the Constitution and setting a precedent.
- Need to hold municipalities and political parties accountable.
- Need to replace corrupt and incompetent Mayors and councillors.
- Need to rebuild collapsing, corrupt and dysfunctional municipalities and restore basic services.
- Some countries have held their elections, e.g. America, India.

Cons include:

- It will undermine the Bill of Rights' very clear conjunction on the need to preserve lives above all else.
- It will undermine the need to save lives and livelihoods by minimising social interaction, the main vector of the pandemic.
- The vaccine roll out programme at its current rate will at best have vaccinated under 40% of the target population by the October election date and more realistically around 30% of the population.
 - To date only 5% of adults have been vaccinated. The current weekly vaccination rate is 1% of the target population. Government intends to double this to 2% a week.
 - Countless obstacles have been and continue to be experienced in the roll out.

- Pfizer vaccines require a second dose and all vaccines take about 3 weeks to reach full efficacy in the recipients' bodies.
- Elections by their nature are social events, e.g. from door to door, ward and community meetings, rallies and most critically on election day when more than 20 million persons will stand in long queues for hours, especially in townships and informal areas where voting stations are usually poorly prepared and resourced.
- Countries that held their elections such as the US and India have subsequently experienced infection surges that dwarfed South Africa's and overwhelmed their much larger healthcare infrastructure. South Africa's would likely collapse in such a scenario. Indian hospitals ran out of the most basic supplies e.g. beds, oxygen etc and were forced to choose which patients to save and which to let die. The US has a hybrid electoral model where more than 70 million could vote early or by post.
- A 4th wave at the level of the US or India infection rates would compel government to reinstate a level 5 or 4 lockdown which would devastate the economy. Government and the UIF do not have the resources to provide relief at the level done in 2020.
- Government e.g. Ministers, senior officials etc. become distracted by elections and struggle to multi-task, e.g. local elections would distract them from focusing on rolling out the vaccines, reinforcing health and safety measures and infrastructure and rebuilding the economy etc.

3. Option B: Request the IEC to apply for condonation to the Constitutional Court to postpone the 2021 Local Elections until the 1st quarter of 2022:

Pros include the needs to:

- Abide by the Bill of Rights' very clear requirement to save lives;
- This would not be a violation of the Constitution as what matters are its principles and not literal interpretations, e.g. what would be asked for is a simple delay of 4 months to allow vaccines to be rolled, to reach full efficacy and for the 67% plus population immunity level to be achieved and not a cancellation of the elections.
- Precedence exists. Local elections were postponed in the Western Cape in 1995 when government was not ready to proceed. More critically was that all local government by-elections were postponed in 2020 during the lockdown to save lives. The constitutional requirement principles and legal necessities are the same for by-elections, e.g. they must be held within 90 days of a vacancy being declared by the IEC.
- Allow government and society to focus on ensuring the rapid roll out of the vaccines to enable society and the economy to remerge.
- Avoid sparking an unmanageable surge that would collapse healthcare infrastructure, cause unnecessary deaths, provoke a harsh lockdown, shatter the economy, collapse companies and see millions lose wages, pensions and jobs.
- Avoid further depleting the UIF and fiscus and the consequences therein.

Cons include:

- What if government does not achieve the 67% vaccination target by early 2022?
- Will a precedent be created where unpopular politicians will seek to postpone elections they may lose and search for crises to cite?
- Will the value of the Constitution be eroded by politicians routinely amending the Constitution or simply ignoring it?

4. COSATU Recommendations

COSATU believes that honouring the Constitutional requirements to hold elections timeously and to safeguard lives are both fundamental obligations. However, no principle can be more important than protecting and preserving the lives of South Africans.

COSATU's first choice is to hold the 2021 local government elections timeously e.g. on the announced date in October 2021. However if this date is to remain it must be guided by science and health, not the political preferences of politicians.

If scientific and medical grounds can allow for local elections to be held safely and that this holding of elections in October will not place the lives of South Africans at risk or threaten the nation with a 4th and unmanageable wave, then they should proceed.

However if scientific and medical experts believe that holding local elections in October 2021 threatens the lives of South Africans and may spark a devastating 4th wave, then the elections must be postponed.

If they are to be postponed then it must be to a date no later than March 2022. Such a recommendation must be submitted by the IEC to the Constitutional Court for its guidance and condonation. It must be submitted by the IEC and not government which can be said to hold vested interests in such a decision.

Such an application must be made by the IEC to the Constitutional Court by no later than August to avoid delaying such an important constitutional matter, placing the Court in an untenable situation, to avoid plunging the nation into an avoidable constitutional crisis and to provide certainty to the public at large.

Kind regards,



Matthew Parks
Parliamentary Coordinator

Cell: 082 785 0687
Email: matthew@cosatu.org.za
6th Floor, Constitution House,
124 Adderley Street
Cape Town 8000, South Africa