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To: freeandfair; Moseneke, Dikgang; Kekana, Molebogeng; Kruyer, Catherine; Mahomed, Faathima

Cc: Marlise Richter; Fatima Hassan; Peter van Heusden; London, Leslie (Prof.)

Subject: Submission for the Inquiry into 'Ensuring Free and Fair Local Government Elections During COVID-19'



18 June 2021

Justice Dikgang Moseneke

Per email:

freeandfair@elections.org.za

CC: MosenekeD@elections.org.za

Dear Justice Moseneke

Submission for the Inquiry into 'Ensuring Free and Fair Local Government Elections During COVID-19'

Thank you for the invitation to make a submission on factors to consider on the hosting of local government elections due to be held in October 2021, during a pandemic.

A.) Background to the Health Justice Initiative and the People's Health Movement, South Africa:

1. The Health Justice Initiative (the 'HJI') is a dedicated public health and law initiative addressing the intersection between racial and gender inequality with a special focus on access to life saving diagnostics, treatment and vaccines for COVID-19, TB and HIV. It draws on the expertise of researchers in law, public policy, economics, and public health, as well as on universities and scientific experts in and outside of South Africa. The HJI works in partnership with other organisations that focus broadly on rights protections.
2. The PHM-SA is a Civil Society movement committed to realisation of the Right to Health for all in South Africa. It's mission is to improve the capacity of individuals and communities to realise their right to health and health care, and to advocate for a

Primary Health Care approach, as defined in the Declaration of Alma Ata. The Steering committee includes academics and researchers, community activists and representatives of social justice civil society organisations.

3. Our submission should not in any way be construed as support for or against the hosting of local government elections in October 2021. We believe that this must be a decision of the national government, based on expert input and advice, and subject (where applicable) to review by our courts because of the highly contentious and political nature of the issue at hand, in a pandemic.
4. We do however wish to state that if we are unable to hold a safe set of elections, that it will be difficult to consider that free and fair then. This is an issue that has recently played out in other parts of the world too, notably, India.
5. We also respectfully request the opportunity to make oral submissions, where we can share relevant data and information as well, as our written submission is very short due to time constraints.

B.) Consideration of the local elections within the context of COVID-19

6. We note the preparation of the IEC and its proposed mitigation of COVID-19 risks, as set out in its detailed submissions.^[1] We also note that the IEC has stated that it is confident that “[t]he efficacy of these measures was successfully tested during the Super Wednesday by-elections of 11 November 2020 and those held on 9 December 2020”^[2] and that they have been further refined for the purposes of the local government elections.

7. The Inquiry invited submissions addressing the following areas, which we will consider:
 - *Any information, details or data on or about the current state of the COVID-19 pandemic in South Africa*
 - *The projected trajectory of the COVID-19 pandemic in South Africa, and in particular during October 2021 when local government elections are earmarked to be held;*
 - *The nature, extent and features of the vaccination efforts being undertaken in South Africa;*
 - *When the vaccination efforts being undertaken in South Africa are likely to reach community immunity, and the likelihood of community immunity being reached by October 2021, when local government elections are earmarked to take place;*
 - *The risk that might be posed to the lives and health of people in South Africa if the local government elections were to proceed in October 2021;*
 - *Any additional measures that may be taken to reduce the risk posed to the lives and health of people in South Africa in the event that the local government elections were to take place during October 2021; and*
 - *Any epidemiological and statistical material and data that may be relevant to the enquiry whether the 2021 local government elections may be held in a free and fair manner.*

8. With the above in mind: South Africa is currently entering into its 3rd wave of COVID-19 infections. The first wave of COVID-19 peaked in the week starting 13 July 2020 (epiweek 29 of 2020), the second wave in the week of 11 January 2021 (epiweek 2 of 2021). While we cannot, with certainty, predict the trajectory of the pandemic going forward, it looks likely that the 3rd wave will have its peak within the next 3 to 5 weeks. In other words, the 25 week gap between peaks of the 1st and 2nd waves will be replicated between the 2nd and 3rd waves.
9. Thus far approximately 1,8 million vaccine doses have been administered in South Africa, the majority (approximately 1,3 million) being of the Pfizer vaccine which requires two doses. The current rate of vaccination is approximately 80,000 doses per day on week days or approximately 60,000 doses per day when the whole week is taken into account. While the President anticipates this rate doubling in the future, even if this is achieved, it would take well into 2022 for South Africa to achieve “herd immunity” from COVID-19 infection through vaccination.
10. Up until now South Africa’s vaccine rollout has been hampered by both evolution of the SARS-CoV-2 virus and the paltry supplies of vaccine available to the country (so-called “vaccine apartheid”). With major High Income Countries blocking a TRIPS waiver and not making resources (in knowledge and funds) available to scale up vaccine manufacturing, South Africans remain at risk of a fragile global vaccine supply chain. It is thus unrealistic to expect a significant speed-up of the current vaccination programme.
11. At the same time, increasingly concerning variants of SARS-CoV-2 continue to evolve, including the so-called delta variant (first noted in India) that is judged to be even more transmissible than the variant (beta) that currently makes up the majority of infections in South Africa. This variant might also be associated with increased disease severity and has been implicated in surges of infection in India, Uganda and the Democratic Republic of Congo.
12. Bearing all of the above in mind, South Africa risks a fourth wave of COVID-19 in the fourth quarter of 2021, possibly driven by spread of the delta variant (which is already driving other surges of infection on the continent). Increase in gatherings, especially those conducted indoors in venues with poor ventilation, increases the risk of this scenario.
13. In addition, South Africans are notably fatigued by a pandemic which has seen both terrible illness and death and also wrecked a huge toll on jobs and livelihoods. We note the withdrawal even of the R 350 Social Relief of Distress grant and the return to full occupancy of public transport and schools.
14. In other words, vaccination is not happening fast enough to blunt the impact of the pandemic in the population as a whole, and the appetite for supporting “non-

pharmaceutical interventions” seems to have waned, from the perspective of much of the population (forced to choose between health and income), from business and government.

15. In the specific context of an election, two types of threats have been identified:

- a. Increased risk of COVID-19 transmission due to electioneering activities
- b. Increased risk of COVID-19 transmission due to the conduct of the election itself

16. As has been clarified above, the period running up to the planned local government elections, planned for October 2021, will be a period during which the majority of the South African population remains unvaccinated and at risk of COVID-19. Having said that, however:

a. Risk communication with regards to COVID-19 in South Africa has been poor throughout the pandemic. The recent scandalous revelations with regards to money mis-spent on and by Digital Vibes contributes to this reality. The effects of this poor risk communication can be seen in haphazard wearing of masks by many in our population (with masks on chins and below noses commonplace). In addition, there is a clear emphasis on sanitization rather than ventilation as mitigation measures, despite the fact that transmission of COVID-19 through the air is much more common than through touch (i.e. “fomite” transmission).

b. Existing regulations with regards to limiting numbers in gatherings, physical distancing and the wearing of masks can serve to reduce the risks of election activities, especially if these activities are conducted outdoors. There is a real risk that in the enthusiasm of the pre-election period, political parties and their supporters might ignore regulations aimed at reducing disease transmission. In addition, electioneering also can contain elements of close interaction, for example door-to-door visits and operation of campaigning and voter registration tables. Finally, political parties have been implicated in spreading misinformation (for example about COVID-19 treatments and vaccines).

c. In addition to the risk from electioneering activities, the act of voting itself exposes voters to the risk of COVID-19 transmission. The submission from the IEC to the Moseneke Inquiry goes some way to address these risks but it remains silent on the question of ventilation. Gathering people indoors in a voting venue that is poorly ventilated exposes them and election workers and agents to risk of COVID-19 transmission even if physical distancing measures are followed. The guidelines are also unclear on steps to be taken if it becomes known that voters, officials or party agents were exposed to COVID-19 at a voting station.

17. We thus propose that:

a. Preparations for the local government election should include specific risk communication campaigns aimed at encouraging “good health” measures to reduce risk of COVID-19 transmission.

b. Specific measures should be put in place to ensure that political parties comply with measures aimed to reduce COVID-19 transmission and refrain from spreading misinformation.

c. The IEC guidelines on conduct of the election should be clearer on the need for good ventilation in all voting stations and should include more specific measures to guide procedures that would need to be implemented in the case of COVID-19 exposure. On this last point, inspiration can be drawn from existing occupation and health guidelines prepared by the National Institute of Occupational Health.

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[1] Available <https://www.elections.org.za/freeandfair/lge2021/Submissions-Received>, Accessed: 15 June 2021

[2] Para 109 of IEC Electoral Officer Submission to the Inquiry, available: [https://www.elections.org.za/freeandfair/IEC%20Submissions/IEC%20Submission%20to%20the%20Section%2014\(4\)%20Inquiry%20by%20Retired%20Deputy%20Chief%20Justice%20Moseneke.pdf](https://www.elections.org.za/freeandfair/IEC%20Submissions/IEC%20Submission%20to%20the%20Section%2014(4)%20Inquiry%20by%20Retired%20Deputy%20Chief%20Justice%20Moseneke.pdf)