



**SUBMISSION BY THE CHIEF ELECTORAL OFFICER TO THE MOSENEKE INQUIRY
INTO ENSURING FREE AND FAIR LOCAL GOVERNMENT ELECTIONS DURING THE
COVID-19 PANDEMIC**

TABLE OF CONTENTS

A. INTRODUCTION	3
B. LEGAL AUTHORITY FOR THE INQUIRY.....	4
D. HISTORICAL PARTICIPATION FIGURES.....	8
E. ELECTION READINESS.....	9
<i>Introduction.....</i>	<i>9</i>
<i>Legislative environment.....</i>	<i>10</i>
<i>Ward and Voting District Delimitation.....</i>	<i>11</i>
<i>Voter registration.....</i>	<i>12</i>
<i>Logistics.....</i>	<i>14</i>
<i>Outreach.....</i>	<i>15</i>
<i>Voter Education.....</i>	<i>17</i>
<i>Launch of the elections.....</i>	<i>18</i>
<i>Staffing arrangements.....</i>	<i>19</i>
<i>Technology.....</i>	<i>21</i>
<i>Party Liaison.....</i>	<i>23</i>
<i>Political Party Registration.....</i>	<i>23</i>
F. ANTI – COVID-19 MEASURES ADOPTED BY THE COMMISSION.....	24
G. FUNDING	29
H. CONCLUSION.....	30

A. INTRODUCTION

- 1 According to section 159(2) of the Constitution,¹ when the term of a municipal council expires, an election must be held within 90 days of the date that council's term expired. In terms of section 24(2) of the Local Government: Municipal Structures Act, 1998² ("Structures Act"), whenever necessary, the Minister responsible for local government ("Minister"), after consulting the Electoral Commission ("Commission"), must, by notice in the *Government Gazette*, call and set a date for an election of all municipal councils, which must be held within 90 days of the date of the expiry of the term of municipal councils.
- 2 Since the last general local government elections took place on 3 August 2016, the current term of all municipal councils in the Republic will terminate by effluxion of time on 3 August 2021, and general local government elections will have to be held by 1 November 2021 to elect new municipal councils.
- 3 The Constitution requires the Commission to manage elections of national, provincial and municipal legislative bodies in accordance with national legislation, to ensure that those elections are free and fair, and to declare the results of those elections within a period that must be prescribed by national legislation and that is as short as reasonably possible.³
- 4 On 21 April 2021, following consultations with the Minister and the executive branch of government, the President announced that the 2021 general local government elections will be held on 27 October 2021. It is expected that the Minister will formally call and set a date for the 2021 general local government elections by 2 August 2021.
- 5 In the discharge of its constitutional and legislative obligations to conduct the general local government elections by 1 November 2021, the Commission is at an advanced stage of preparation. This submission deals with the various facets of the Commission's preparations for the forthcoming elections.
- 6 For the first time since its establishment, the Commission is faced with the prospect of conducting general elections in the midst of a global pandemic. In late 2019, a novel coronavirus first detected in the People's Republic of China triggered a global outbreak of a severe respiratory disease

¹ Constitution of the Republic of South Africa, 1994.

² Act No. 117 of 1998

³ Section 190(1) of the Constitution

which has now been detected in 219 countries and territories internationally, including in South Africa. The virus has been named “SARS-CoV-2” and the disease it causes has been named “coronavirus disease 2019”, abbreviated as “COVID-19”.

- 7 Concerns have been expressed by some political parties represented on the party liaison committee in the national sphere of government (“NPLC”) that the forthcoming general elections may not be free and fair given the impact of the COVID-19 and the measures taken by the government in terms of the Disaster Management Act, 2002,⁴ to curb the continued spread of the pandemic.
- 8 Cognisant of its obligation to ensure that the elections are free and fair, the Commission has commissioned the Inquiry into Ensuring Free and Fair Local Government Elections During COVID-19 (“Inquiry”) led by Retired Deputy Chief Justice Dikgang Moseneke to:
- 8.1 enquire into, make findings, report on, and make recommendations concerning the likelihood that the Commission would be able to ensure that the forthcoming 2021 general local government elections will be free and fair, in view of (i) the challenges posed by the COVID-19 pandemic, and (ii) the measures promulgated by the government to curb the continued spread of the pandemic; and
- 8.2 indicate additional measures that the Commission may be required to implement in order to realise free and fair elections within the context of the COVID-19 pandemic.
- 9 In the context of the Inquiry, Retired Deputy Chief Justice Moseneke has requested the chief electoral officer to make submissions to the Inquiry regarding the Commission’s state of readiness for the forthcoming elections. This submission is made by the chief electoral officer in his capacity as the head of the administration of the Commission and its accounting officer,⁵ and the person vested with original legislative functions concerning the registration of parties,⁶ as well as the custodian of the national common voters’ roll⁷ and the Electoral Code of Conduct.⁸

B. LEGAL AUTHORITY FOR THE INQUIRY

- 10 This assignment is without precedent since the enactment of the Electoral Commission Act, 1996,⁹ as are the circumstances that have necessitated the conduct of the assignment. It is

⁴ Act No. 57 of 2002

⁵ See section 12(2) of the Electoral Commission Act

⁶ Sections 15 – 17 of the Electoral Commission Act

⁷ Section 5 of the Electoral Act, 73 of 1998

⁸ Section 77 of the Local Government: Municipal Electoral Act, 2000

⁹ Act No. 51 of 1996

intended to present the Commission with an independent and unvarnished picture of whether or not the forthcoming elections are likely to be free and fair. The intention is that the Commission will consider the resultant report for purposes of determining the likelihood of free and fair elections and publish the report (with or without its comments) in terms of section 14(4) of the Electoral Commission Act.

11 Section 14(4) of the Electoral Commission Act provides that:

“(4) The Commission may, if it deems it necessary, publish a report on the likelihood or otherwise that it will be able to ensure that any pending election will be free and fair.”

12 Section 14(4) contains no restrictions of who should prepare a report contemplated therein. It follows in my submission that the Commission is at large to decide who should prepare such a report, whether that person or persons are on the Commission’s staff establishment or not.

13 In addition, the Electoral Commission Act provides that the Commission must, for the purposes of the achievement of its objects and the performance of its functions acquire the necessary staff, whether by employment, secondment, appointment on contract or otherwise.¹⁰

14 In my respectful submission, there is clearly sufficient authority for the Commission to appoint a Judge discharged from active service to conduct the Inquiry and prepare the envisaged report.

C. STANDARD FOR FREE AND FAIR ELECTIONS

15 Free and fair elections are the lifeblood of democracy.¹¹ They allow people to select their leaders and then to hold them accountable.¹²

16 The Constitution requires the forthcoming general local government elections to be held by 1 November 2021. At the same time, it guarantees the right of every citizen to free, fair and regular elections for any legislative body established in terms of the Constitution.¹³

17 In New National Party,¹⁴ the Constitutional Court considered the intersection between the right to vote and the right to free and fair elections:

¹⁰ Section 5(2)(a)

¹¹ Donald J. Trump for President, Inc. and Others v Secretary Commonwealth of Pennsylvania and Others, available at <https://www2.ca3.uscourts.gov/opinarch/203371np.pdf>

¹² Steven L. Taylor, Matthew S. Shugart, Arend Lijphart, and Bernard Grofman, *A Different Democracy* (Yale University Press, 2014).

¹³ Section 19(2) of the Constitution

¹⁴ *New National Party of South Africa v Government of the Republic of South Africa and Others* 1999 (3) SA 191 (CC) (1999 (5) BCLR 489; [1999] ZACC 5) para 12.

“The right to vote is, of course, indispensable to and empty without, the right to free and fair elections; the latter gives content and meaning to the former. The right to free and fair elections underlines the importance of the exercise of the right to vote and the requirement that every election should be fair has implications for the way in which the right to vote can be given more substantive content and legitimately exercised.”

18 It follows in my submission that there is no binary choice between timeously holding the forthcoming general elections and ensuring that they are free and fair. The Constitution requires both, hence the need for this Inquiry.

19 In Kham,¹⁵ the Constitutional Court considered the meaning of free and fair elections in the context of municipal by-elections. The unanimous court, *per* Wallis AJ, held that:

“[34] There is no internationally accepted definition of the term ‘free and fair elections’. Whether any election can be so characterised must always be assessed in context. Ultimately it involves a value judgment. The following elements can be distilled as being of fundamental importance to the conduct of free and fair elections. First, every person who is entitled to vote should, if possible, be registered to do so. Second, no one who is not entitled to vote should be permitted to do so. Third, insofar as elections have a territorial component, as is the case with municipal elections where candidates are in the first instance elected to represent particular wards, the registration of voters must be undertaken in such a way as to ensure that only voters in that particular area (ward) are registered and permitted to vote. Fourth, the Constitution protects not only the act of voting and the outcome of elections, but also the right to participate in elections as a candidate and to seek public office.”

(references omitted)

20 The requirement that elections must be free and fair is a single requirement, not a conjunction of two separate and disparate elements.¹⁶ The expression “free and fair elections”:

“ . . . highlights both the freedom to participate in the electoral process and the ability of the political parties and candidates, both aligned and non-aligned, to compete with one another on relatively equal terms, so far as that can be achieved by the IEC. As to the former, from the perspective of a political party or an individual candidate seeking election in a municipal ward, it demands the freedom to canvass; to advertise; and to engage in the activities normal for a person seeking election. Phenomena like ‘no go’ areas; the denial of facilities for the conduct of meetings; disruption of meetings; the destruction of advertising material or the intimidation of candidates, workers or supporters, could all prevent an election from being categorised as free and fair.”

¹⁵ Kham and Others v Electoral Commission and Another 2016 (2) SA 338 (CC)

¹⁶ Kham, *supra*, para [86]

21 As regards the Commission's responsibility in this regard, the court in Kham held:

"[The Commission's] concern in modern parlance is to try to ensure a 'level playing field', in which all the participants can compete without any undue hindrance or obstacle occasioned by the manner in which the preparations for the election have been undertaken or the way in which the election has been conducted."¹⁷

22 From this it can be distilled that the enquiry into whether elections are or will be free and fair involves a multiplicity of factors, some of which are:

22.1 Every citizen who is entitled to vote should, if possible, be registered to do so,¹⁸ and no person who is not entitled to vote should be permitted to do so.

22.2 Insofar as elections have a territorial component, as is the case with municipal elections, the registration of voters must be undertaken in such a way as to ensure that only voters in that area are registered and permitted to vote.

22.3 Every eligible citizen should have the right to participate in elections as a candidate and to seek public office.

22.4 Political parties and candidates should be able to compete with one another on relatively equal terms.

22.5 Political parties and candidates should be free to canvass, to advertise, and to engage in the activities normal for a person seeking election.

22.6 Voters should have access to reliable information about the elections and the parties and candidates contesting the same and must be able to vote free from intimidation and similar hindrances.

22.7 The Commission should apply the relevant electoral laws to all participants without fear or favour and should ensure that all the participants can compete without any undue hindrance or obstacle occasioned by the manner in which the preparations for the election have been undertaken or the way in which the election has been conducted.

23 In what follows I address those issues identified in New National Party and Kham as being of fundamental importance to the conduct of free and fair elections, together with additional factors

¹⁷ At para [87]

¹⁸ See also August and Another v Electoral Commission and Others (CCT8/99) [1999] ZACC 3; 1999 (3) SA 1; 1999 (4) BCLR 363 (1 April 1999), para [16]

that are considered to be relevant to this enquiry. But first I lay the ground by examining historical voter participation figures over the past 20 years, which will provide some context.

D. HISTORICAL PARTICIPATION FIGURES

- 24 Voter participation in general elections has varied widely in the 20 years between the 1999 and the 2019 general elections for the National Assembly and provincial legislatures, as well as the general local government elections in between.
- 25 The graph below charts the voter participation statistics in the 1999, 2004, 2009, 2014 and 2019 general elections for the National Assembly and provincial legislatures. It shows that voter participation was at its highest during the 1999 general elections at 89% and, except for a slight surge in 2009, has declined steadily to 66% of the registered population in 2019, constituting a decline of 23% in the 20-year period. However, the average voter participation figures over that period are at 76.2% of the total number of registered voters, which can be considered to be relatively a high voter turnout.

National and Provincial Elections



- 26 However, the voter participation figures for general local government elections look markedly different. The graph below charts the voter participation statistics in the 16 years between the 2000 and 2016 general local government elections. It illustrates that the voter participation in the 2000 and 2006 general elections was at a low 48%, despite there being an increase in the number

of registered voters. The voter participation figures for 2011 increased by 9% to 57% and stayed the same for the 2016 general elections.

Local Government Elections



27 I attach hereto for further consideration the voter participation reports for the years 2000, 2004, 2006, 2009, 2011, 2014, 2016 and 2019, marked “**PSM1**” to “**PSM8**”, respectively, which will provide a breakdown of voter participation for each province.

E. ELECTION READINESS

Introduction

28 Preparations for general local government elections generally start quite some time before the end of the term for municipal councils, especially as these preparations are co-dependent on other institutions such as the Municipal Demarcation Board (“MDB”). This is required to ensure that the Commission is ready to conduct the elections should the Minister call the elections for the earliest possible date, in this case 4 August 2021.

29 The forthcoming general elections will elect proportional representation members of 213 municipal councils, i.e., 8 metropolitan councils, 205 local councils and 44 district councils, as well as 4, 468 ward councillors.

30 Because of the localised nature of general local government elections, the Commission will in effect be conducting 4, 725 separate elections made up of 8 proportional representation elections for the 8 metropolitan municipalities, 205 proportional representation elections for the local

municipalities, 44 proportional representation elections for the district municipalities and 4, 468 wards.

- 31 Accordingly, the process of preparing for general elections has “*a lot of moving parts*”, making it important to have a coherent plan for various activities. In this regard I annex hereto a copy of the Commission’s draft election timetable for the forthcoming elections, marked “**PSM9**”. Once the forthcoming elections have been formally called, the Commission will finalise and publish the election timetable in the *Government Gazette* as required by section 11(1) of the Local Government: Municipal Electoral Act, 2000¹⁹ (MEA).
- 32 I also annex hereto a high-level summary of the Commission’s readiness for the forthcoming elections, marked “**PSM10**”, being a PowerPoint presentation prepared by the Commission during May 2021 and titled “Preparations for the 2021 Local Government Elections”. In view thereof and in my capacity as the chief electoral officer, I am satisfied that the Commission has taken reasonable steps to ensure the delivery of free and fair elections and that the measures currently underway are on track for that purpose.

Legislative environment

- 33 The Constitution requires that the Commission administer elections in terms of national legislation. That legislation included the Electoral Commission Act, the Electoral Act, the Structures Act, the MEA and the various regulations promulgated in terms thereof.
- 34 In the discharge of its obligations to continually review electoral legislation and proposed electoral legislation and to make recommendations in connection therewith,²⁰ the Commission (via the Minister of Home Affairs) piloted the Electoral Laws Amendment Bill, 2020,²¹ through Parliament. The Bill has been passed as the Electoral Laws Amendment Act, 2021,²² and has been assented to by the President.
- 35 The purpose of the Electoral Laws Amendment Act, 2021 is to amend certain provisions of the electoral legislation referred to above in preparation for the forthcoming elections and the 2024 general elections for the National Assembly and provincial legislatures.

¹⁹ Act 27 of 2000

²⁰ Section 5(1)(j) of the Electoral Commission Act

²¹ B22-2020

²² Act No. 4 of 2021

36 In consequence of these legislative amendments, the Commission has also caused draft amendments to the various affected regulations to be prepared and these will be promulgated by the Commission as soon as the Electoral Laws Amendment Act, 2021 comes into force.

Ward and Voting District Delimitation

37 The Electoral Act, 1998,²³ requires the chief electoral officer to compile and maintain a national common voters' roll.²⁴ To facilitate this, the Commission delimits voting districts for the whole of the territory of the Republic.²⁵ The voting district delimitation process entails the creation of manageable geographic entities in order to facilitate registration and electoral processes. A voter is required to register to vote in a voting district within the ward in which she or he is ordinarily resident.²⁶ Each voting district is serviced by one voting station.²⁷ A registered voter will only find her or his name on the voting district segment of the voters' roll at which she or he applied to register to vote.

38 Voting district delimitation is undertaken to:

38.1 ensure that voters have reasonable access to voting stations and are not required to wait at their voting station for unreasonable periods of time to vote;

38.2 ensure that voters do not vote more than once in an election;

38.3 align voting district boundaries to both municipal and ward boundaries;

38.4 assist the Commission with elections staff and material planning; and

38.5 make it easier to consult with political parties on the configuration of the voting district boundaries and on the choice and location of voting stations.

39 Ahead of the 2021 general local government elections ("LGE 2021"), the MDB handed the final ward boundaries to be used for the elections to the Commission in two batches: the first batch in September 2020 and the second on 1 December 2020. As a result of the ward delimitation process, 1, 123 voting district boundaries were bisected by the 2021 ward boundaries and needed to be geographically aligned to the 2021 wards before the Commission would be in a position to undertake voter registration ahead of LGE 2021. In addition, the network of voting districts and

²³ Act No. 51 of 1996

²⁴ Section 5 of the Electoral Act

²⁵ Section 60(1) of the Electoral Act

²⁶ Section 8(3) of the Electoral Act

²⁷ Section 64(1) of the Electoral Act

voting stations was updated in accordance with changes to human settlements since the 2019 general elections for the National Assembly and provincial legislatures (“NPE 2019”).

- 40 The delimitation work was concluded following consultations with political parties in the municipal party liaison committees on the choice and location of voting stations as well as the configuration of the voting district. The consultations culminated in parties signing off on delimitation maps which are used to update the voting district data.
- 41 The table below summarises the outcome of the delimitation process.

DELIMITATION PROGRESS								
Province	Munic Count	2016 Ward Count	2020 VD Count	2021 Ward Count	2021 VD Count	New VDs	Deleted VDs	Ward Split VDs
Eastern Cape	33	705	4792	710	4809	29	12	63
Free State	19	309	1529	319	1564	42	7	86
Gauteng	9	529	2771	529	2816	55	10	159
KwaZulu-Natal	44	870	4885	901	4940	57	2	161
Mpumalanga	17	400	1772	400	1788	18	2	247
Northern Cape	26	204	707	232	728	24	3	72
Limpopo	22	566	3157	568	3186	36	7	45
North West	18	407	1733	403	1743	17	7	117
Western Cape	25	402	1579	406	1577	18	20	171
TOTAL	213	4392	22 925	4 468	23 151	296	70	1121

- 42 The salient points to be garnered from this table are that there are 76 more wards than the wards contested during the 2016 general local government elections and that the number of voting districts has increased from 22, 925 during the NPE 2019 to 23,151.

Voter registration

- 43 There are currently 25, 789, 566 registered voters whose names appear on the national common voters’ roll, of which 55.21% are female and the remaining 44.79 are male. This does not compare favourably with the number of citizens eligible to vote. According to the national population register, 40 263 709 citizens are eligible to vote, meaning that 25 789 566 of eligible voters are registered to vote.
- 44 According to section 6(1A) of the MEA, only a voter who applied for registration prior to the proclamation of an election date may vote in the election concerned. Accordingly, the elections will only be formally called after the registration weekend in order to afford eligible citizens maximum opportunity to register to vote or change their registration details. Given the steps that have to be taken prior to voting day, the elections must be proclaimed by not later than 2 August 2021.
- 45 By not later than a date stated in the timetable for an election, the chief electoral officer must certify the segments of the voters roll for the voting districts to be used in the election and make such segments available for inspection at the Commission’s head office, the office of the Commission’s provincial representative in the province in which the election will take place and

the office of the Commission's local representative in the municipality in which the election will take place.²⁸

- 46 Customarily, the Commission arranges two voter registration weekends before the date on which a general election is called. During these voter registration weekends the Commission opens all its voting stations across the country (which number 23, 151 for the forthcoming elections) to enable eligible citizens to apply to register to vote and for registered voters to check and/or update their registration details, including details of their respective places of ordinary residence where these have either changed or are not on record.
- 47 Due to budgetary constraints which are dealt with in more details below, the Commission is planning to hold only one (instead of the usual two) registration weekend prior to the elections, which is currently scheduled for 17 and 18 July 2021.
- 48 Once the elections have been called, the chief electoral officer must make a provisionally compiled voters' roll available for inspection between Wednesday, 4 August 2021 and Wednesday, 11 August 2021. Interested persons, including political parties, may lodge any objections in terms of section 15 of the Electoral Act in respect of the provisionally compiled voters' roll and the Commission will consider and decide these objections by Wednesday, 18 August 2021.
- 49 All reasonable measures to allow eligible voters to register as voters and to vote have been taken by the Commission. In addition, since the decision in *Mhlope*,²⁹ the Commission has made significant strides in cleaning up the voters' roll so as to ensure that voters are registered in the correct wards where they are ordinarily resident and nowhere else.

Voting Station Procurement

- 50 Voting stations provide an essential platform for the delivery of elections. They are a prism through which the voting public formulates perceptions about the performance of the Commission. 23, 151 voting stations will be in use over the registration weekend and on election day.
- 51 Fixed and permanent structures, especially schools, are preferred venues to serve as voting stations. In cases where permanent structures are not available to the Commission, temporary facilities such as tents or gazebos are arranged and erected to serve as voting stations.
- 52 Each of the 23, 151 voting stations will be inspected in advance of an electoral event to confirm the presence of key infrastructure and facilities, including electricity, telecommunications, water,

²⁸ Section 6(2) of the MEA

²⁹ Electoral Commission v Mhlope and Others 2016 (5) SA 1 (CC) (2016) (8) BCLR 987; [2016] ZACC 15)

sanitation, furniture and disability-friendly access. Following the assessment, lease agreements are generated and contracts concluded with individual landlords. The project to assess and conclude lease agreements was activated on 1 May and will conclude on 30 June 2021. The table below illustrates the progress that has been recorded.

2021 Reg weekend and LGE Voting Stations Breakdown										
Province	Voting Station Types			TOTAL Stations	Contracts Generated			Lease Captured		
	MOBILE (M)	PERMANENT (P)	TEMPORARY (T)	Grand Total	No	YES	Percentage Leases Generated	No	Yes	Percentage Leases Not Captured
Eastern Cape	8	4696	105	4809	17	4792	99,65%	3592	1217	74,69%
Free State		1407	157	1564	20	1544	98,72%	418	1146	26,73%
Gauteng		2551	265	2816	275	2541	90,23%	2538	278	90,13%
KwaZulu-Natal	7	4804	129	4940	837	4103	83,06%	3972	968	80,40%
Limpopo		3047	139	3186	30	3157	99,09%	1643	1544	51,57%
Mpumalanga	13	1709	66	1788	22	1766	98,77%	669	1119	37,42%
North West	1	1621	121	1743	2	1741	99,89%	16	1727	0,92%
Northern Cape	1	724	3	728	24	704	96,70%	209	519	28,71%
Western Cape		1547	30	1577	29	1548	98,16%	797	780	50,54%
Grand Total	30	22106	1015	23151	1256	21896	94,58%	13854	9298	59,84%

- 53 The voting station procurement project is on track to be concluded by the project deadline. As at the date of this submission, the Commission has concluded over 9 000 lease agreements in respect of voting stations.

Logistics

- 54 The Commission operates a computerised system known as the Logistics Information System (“LIS”). The LIS is the base that underpins the planning, monitoring, management and control of electoral materials in the Commission. A comprehensive Bill of Materials (“BoM”) is created for each electoral event. By registering the BoM on the LIS, detailed Material Requirement Plan (“MRP”) lists are produced to enable the accurate procurement, distribution and allocation of electoral materials per province, municipality and voting district.
- 55 The BoM has been finalised as part of preparations for the forthcoming elections. The table below illustrates the different electoral materials and indicates that most of the materials are in hand or will be delivered to the Commission imminently.

ES No	Item Description	Procurement status	Comment
ES230	Voting Station Arrow Signs	Delivery completed	
ES162	Document Storage Boxes	Delivery completed	
ES193	Box Files A4 SIZE	Delivery completed	
ES120	ID Stickers – Combo Pack	Delivery in progress	<i>To be completed on 04 June 21</i>
ES121	Stationery Packs	Delivery completed	
ES856	REC 1 Forms	Auction in progress	<i>Delivery scheduled for 15 June 21</i>
ES293	Label Rolls	In stock	
Other Materials			
ES212	Banners PVC	Delivery completed	
ES999	Voter Management Device	Delivery in progress	

ES900	Eziskan (Zip-zip) unit	In stock	
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- 56 The Commission's Logistics Department has already approved the BoM for the voter registration weekend and voting day (including the two special voting days). Copies of both BoMs are attached hereto, marked "**PSM11-A**" and "**PSM11-B**", respectively.
- 57 The Commission currently operates in a minimum of 213 municipal electoral offices, nine provincial offices and warehouses and the national office and warehouse in Pretoria.

Outreach

- 58 It is important to galvanise the nation and build awareness of the forthcoming elections to reach each and every eligible citizen and encourage them to register to vote and to vote on voting day. The mass media plays an integral role in this regard.
- 59 The Commission has historically commissioned a series of voter participation surveys from the Human Sciences Research Council ("HSRC"), the latest of which is dated 20 March 2019, i.e., just before the 2019 NPE. One of the areas explored in this survey was how members of the public receive information about the Commission and elections. The results of the survey indicate that 73% of respondents received this information via television, 57% via radio, 43% via newspapers and posters, and 23% through their contacts. The Commission has taken the results of the survey into account in deciding how to split its media placement budget in order to reach as many people as possible.
- 60 In this regard, the Commission has set aside a media placement budget of R34, 500, 000. 33% of this budget has been allocated to television placements, 22% to radio placements, 17% for outdoor advertising (including 184, 112 street-pole posters), 6% to print advertising and 19% to digital advertising, including social media.
- 61 Newer communication technologies have increased the possibilities for how people can send and receive information. Like many other persons and entities, the Commission has not been oblivious of the shift from traditional media to digital and social media as a source of news and information, especially among the youth who, as I indicate elsewhere, are disproportionately underrepresented on the national common voters' roll. In addition, as the COVID-19 protocols applied across the world have increasingly restricted people to their homes, digital and social media has gained increasing prominence. As society evolves, the Commission must keep step with developments and has had to adapt its Outreach strategy to take account of these developments, hence it has directed more of its media spend towards digital and social media platforms.
- 62 Stakeholders other than political parties consist of persons or groups who are directly or indirectly affected by the electoral and democracy project, as well as those who may have interests or stakes in a project and/or the ability to influence its outcome, either positively or negatively.
-

Stakeholders may include locally affected communities or individuals and their formal and informal representatives, national or local government authorities, politicians, labour unions, religious leaders, civil society organizations and groups with special interests like academics, business associations, organised labour, persons with disabilities, etc.

- 63 Key stakeholders can play a pivotal role to assist the Commission in strengthening electoral democracy and civic education programmes, and to entrench a culture of democracy and human rights. Sustainability and collective responsibility for entrenching constitutional democracy is promoted through fostering ongoing collaboration with stakeholders, diverse target audiences and partners. Sustainability causes programmes to continue for an extended period or without interruption; meeting the electoral and educational needs of the South African public in all its diversity, without putting at risk an election management body's capacity to continue meeting these needs.
- 64 Certain stakeholders and partners merit a special focus which include women, children, youth and Persons with Disabilities ("PWDs"), to mention a few. This will assist to institutionalise and track increasing access to the vote by those that are eligible from these groups.
- 65 Stakeholder engagements can happen at all functional spheres and levels of the organisation being the national, provincial and municipal levels. The three spheres of the Commission will engage with stakeholders within their jurisdiction for the outlined objectives and purpose. The national programme will outline the timing for the focus on a stakeholder for uniformity and high impact. Each sphere of the Commission meets with representatives at that level and the civic education activities may follow this priority for the broader membership of the stakeholder.
- 66 The table below illustrates the Commission's stakeholder consultation plan for the forthcoming elections and progress with these initiatives.

Stakeholder	Proposed Period/s	Status
Youth Engagement and Briefing sessions	April, May and June 2021	Conducted provincially and locally
Women formations briefing engagement	July 2021	Date to be confirmed
Disability Sector Briefing: Deaf	May 2021	The national briefing was conducted on 1 June 2021. The Commission's provincial offices are also engaging locally
Traditional Leaders Briefing	July 2021	Date to be confirmed but continuous at local level
Briefing with Agricultural Unions (farmers and workers)	Continuous	Agriculture Business Chamber met on 8 February 2021
CSOs, FBOs, NGOs, etc.	July 2021	Date to be confirmed
Organised labour and unions	May 2021	The national briefing was conducted on 1 June 2021. The Commission's provincial offices are also engaging locally

Business sector	Continuous	The Commission briefed NAFCOG on 23 January 2021, the Black Business Council on 18 February 2021 and the SACCI on 10 February 2021
Government departments	Continuous	Continuous engagement with COGTA, DoH, DBE, etc., at both national and provincial levels

Voter Education

67 The Electoral Commission Act requires the Commission to promote voter education.³⁰ The Commission takes a multi-modal approach to this function in an attempt to reach all eligible citizens across the country.

68 One of the voter education modalities employed by the Commission for the forthcoming elections is the production of short videos to be posted on social media platforms. The production of these videos is in process and is divided into three phases.

68.1 In the first phase, expected to be completed by 15 June 2021, the Commission will disseminate information on “How to register to vote”; this will be used to mobilise and encourage the youth to register to vote during the voter registration weekend planned for 17 and 18 July 2021.

68.2 The mainstay of the second phase will be the video on “Voting in Covid times” which is aimed at assuring voters of their safety during both registration and voting day or times. This video will briefly explain measures (set out below) taken by the Commission to ensure the safety of voters during registration and voting. The same phase will cover three other topics, i.e., “Implementation of VMDs”, “Electoral Fraud and Offences” and “Electoral Code of Conduct”. These videos will be ready by the end of June 2021 so that they are released before the voter registration weekend.

68.3 The third and final phase will concentrate on “Free and fair elections”, “Special Votes” and “Voting in local government elections”. These are planned to be ready by the end of July 2021.

69 The table below illustrates the delivery map for this video content.

Topics	Expected Delivery Date		
	End June 2021	End of July 2021	End of Aug 2021
Register to vote: Why it matters	✓		
Covid-19 Protocols		✓	
Implementation of VMD		✓	
Electoral Fraud and Offence		✓	
Electoral Code of Conduct		✓	
Free and Fair Elections			✓
Special Votes			✓

³⁰ Section 5(1)(k) of the Electoral Commission Act

Voting in LGE (to be updated as VMD progresses)			✓
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- 70 All of the above material is planned to be translated into other official languages so that they are accessible to the wider community.
- 71 In addition, the Commission's civic and democracy education ("CDE") project for the forthcoming elections has already commenced in some provinces with community radio programmes. The community radio programmes vary between 30 minutes to an hour at least, having a member of the Commission's staff as the guest presenter of the CDE content. The topics to be covered during these broadcasts include how to register to vote, free and fair elections, being a candidate in municipal elections, code of conduct for voters and contestants, special votes, voting and the establishment of municipal councils.
- 72 Thus far the Commission has arranged for 195 radio slots across all the provinces commencing on 1 May 2021. The table below illustrates the status as at 1 June 2021.

Province	Status 1 June 2021	Number of Radio Stations
Eastern Cape	Complete starts 1 June	29
Free State	Incomplete expected to start 15 June	15
Gauteng	Complete; started 1 May	28
KwaZulu-Natal	Complete started 1 April 2021	32
Limpopo	Incomplete expected to start 7 June	34
Mpumalanga	Complete; started 1 May	15
Northern Cape	Incomplete expected to start 15 June	7
North-West	Incomplete expected to start 15 June	13
Western Cape	Incomplete expected to start 15 June	22
Total		195

- 73 The community radio station programmes are expected to be live till end of October 2021 so that they cover all the important electoral phases.
- 74 These programmes are normally regional in an attempt to cover all the language groups and the fact that the Commission's research referred to above indicates that radio often have a larger listenership in the communities they serve, though some will have simulcast broadcasting for a variety of radio stations.

Launch of the elections

- 75 It has become customary for the Commission to host an election launch event ahead of general elections. The election launch event is part of the Commission's communication strategy. Its purpose is to unveil the logo for the elections and the communication message associated with it to the nation, as well as notify the public of the various communication campaigns they can anticipate in the build up to the 2021 general local government elections.

- 76 As part of the Commission's plans, the election launch event for the forthcoming elections will take place on 9 June 2021 at the Sandton Convention Centre.
- 77 Given the current restrictions on gatherings due to the Adjusted Alert Level 2 Regulations, this will be a hybrid event, with a limited number of persons physically present at the venue and the remainder of the attendees joining the event via virtual platforms. As is customary, the election launch is expected to be broadcast live on certain television channels and radio stations.

Staffing arrangements

- 78 Electoral staff is indispensable to the registration of voters and the administration of the actual voting, counting and collation of election results. They are the Commission's personal interface with registrants, voters, candidates, observers and agents.
- 79 When an election has been called, the Commission must appoint, for the area of the municipality in which the election will be held, an employee or other person as its representative for the purpose of the election.³¹ The local representative is also known as the Municipal Electoral Officer ("MEO"). In this regard the Commission has already activated its MEO expansion model. The details are set out in the table below:

Province	Current MEO Positions	Appointed MEO's	MEO Vacancies
Eastern Cape	33	29	4
Free State	19	12	7
Gauteng	9	8	1
KwaZulu-Natal	44	40	4
Limpopo	22	22	0
Mpumalanga	17	17	0
Northern Cape	26	22	4
North West	18	13	5
Western Cape	25	23	2
TOTAL	213	186	27

³¹ Section 12(1) of the MEA

- 80 On voting day, each voting station must be staffed by the presiding officer and deputy presiding officer appointed for that voting station, as well as the voting officers appointed for that voting station.³² The voting station layout attached to this submission indicates the usual roles and functions of different voting officers.
- 81 The Commission is in the process of recruiting 52, 090 voting officers for the forthcoming registration weekend. The provincial breakdown is set out in the table below.

Province	Number of electoral officers
Eastern Cape	10, 820
Free State	3, 519
Gauteng	6, 336
KwaZulu-Natal	11,115
Limpopo	7, 169
Mpumalanga	4, 023
Northern Cape	1, 638
North West	3, 922
Western Cape	3, 548

- 82 The Commission is on track to complete this undertaking by mid-June 2021, well in time for the registration weekend referred to elsewhere in this submission.
- 83 The Commission has conducted provincial train-the-trainer sessions between 21 May 2021 and 3 June 2021. The purpose of the sessions is to provide training for the Commission's staff who are responsible for training registration staff. The table below illustrates the provincial breakdown.

PROVINCIAL BOOTCAMPS					
Provinces	Date	Venue	NUMBER OF DELEGATES	IT SUPPORT	Training Support
EC	21-23 May	Mpekweni Resort, Port Alfred	100	Dakalo	Ndoweni
FS	31 May - 3 June	Khaya Ibhubezi, Parys	46	Linda	N/A
GP	26-28 May	Kievitskroon	120	Setfree	Ndoweni
KZN	26-28 May	Elangeni Hotel Durban	124	Shaun	N/A
LIM	24-26 May	Warmbaths Forever Resort Bela-Bela	93	Bokang	N/A
MP	24-26 May	Country Boutique Hotel, White River	60	Dolphin	Aaron

³² Section 44 of the MEA

NC	1-3 June	Protea Hotel Upington	55	Simphiwe	N/A
NW	24-26 May	Anew Hunters Rest - Rustenburg	52	Shimane	N/A
WC	26-28 May	Protea Hotel Breakwater Lodge	110	Nkongo	N/A

- 84 The training of registration staff is expected to commence on 4 June 2021 and conclude on 15 July 2021. The table below illustrates the provincial breakdown.

REGISTRATION TRAINING ROLL OUT		
Province	Start Date	End Date
Eastern Cape	04-Jun-21	14-Jul-21
Free State	15-Jun-21	03-Jul-21
Gauteng	07-Jun-21	09-Jul-21
KZN	07-Jun-21	07-Jul-21
LIM	12-Jun-21	15-Jul-21
MP	10-Jun-21	10-Jul-21
NC	14-Jun-21	11-Jul-21
NW	07-Jun-21	11-Jul-21
WC	07-Jun-21	11-Jul-21

- 85 The training programme for registration staff is on track to be completed well before the voter registration weekend of 17 and 18 July 2021.

Technology

- 86 One of the Commission's functions is to develop and promote the development of electoral expertise and technology in all spheres of government.³³
- 87 Due to the increasing movement of information to digital platforms, the Commission commissioned a complete redesign of its official website (www.elections.org.za) to conduce to easier navigation. The new and improved website went live on 1 May 2021 and contains information for voters, registrants, political parties and candidates, as well as information about elections.
- 88 The Commission is currently implementing technological innovation in respect of the new voter management devices which will be used for the first time in the upcoming elections.
- 89 Portable devices have been used at voting stations by the Commission to support the process of voter registration. Up to the present time this has taken the form of a Programmable Barcode

³³ Section 5(1)(i) of the Electoral Commission Act

Scanning Unit (“PBSU”) which scans and saves, to internal memory, the details contained in the barcode of the South African national identity document. The specific PBSU presently in use is the *eZiskan* unit, which was purpose-built for the Commission in 2007.

- 90 When in use at a voting station, the current PBSU records the barcode of a unique voting district map (thereby linking it to the specific voting station) and also scans and records the identity documents of voters. A receipt in the form of an adhesive label is printed by the PBSU at the time of the identity document scanning, to provide evidence of the transaction. The PBSU is subsequently transported to an office of the Commission, there it is connected to a computer, and the stored data is uploaded from the PBSU internal memory to the Commission’s voters’ roll database.
- 91 The current PBSU units are also used for voters’ roll management during voting, when all segments of the national voters’ roll are loaded onto the unit’s memory. When the unique voting station map and the identity barcode of a prospective voter are scanned, a report is printed to confirm the presence, or otherwise, of that person on the relevant voters’ roll segment, and the data is stored.
- 92 These current PBSU units (“zip-zip”), have now reached the end of their useful technological lifespan. In addition, the elementary approaches used to date are in the context of *Mhlope* and the elevated role of an address in free and fair elections inadequate to respond to current challenges and future purpose of a voter registration device. Nonetheless, the zip-zip will be retained as a risk mitigation measure and for use in emergency situations to support the voter registration weekend.
- 93 It is for these reasons that the Commission has procured 40, 000 new voter management devices (“VMDs”) to support electronic voter registration and voters’ roll management at voting stations on voting day. These new VMDs are in the form of a customised, portable rugged tablet format, with a built-in operating system. All 40, 000 VMDs are expected to be deployed during the voter registration weekend and on voting day. As on the date of the submission the Commission has taken delivery of approximately 7000 VMD units. The production is on schedule.
- 94 In addition to their capability to scan identity document barcodes, the VMDs are able to pinpoint, identify and record address locations of voters applying to register. They have sufficient on-board memory and storage for the necessary data logging and processing to permit the storage of the complete national voters roll details, substantial mapping data, data capturing during voter registration and voting activities and the transmission of that data in real-time mode to a central point.
- 95 Most importantly, the new VMDs have both WI-FI and mobile cellular modules, which will enable them to transmit voter registration and participation data to the Commission’s servers in real time.
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Party Liaison

- 96 One of the Commission's statutory functions is to establish and maintain liaison and co-operation with parties.³⁴ To this end the Commission has made the Regulations on Party Liaison Committees, 1998,³⁵ which establish a single party liaison committee in the national sphere with not more than two representatives from every registered party represented in the National Assembly, a provincial party liaison committee for each province and municipal party liaison committees for a single municipality or a group of municipalities.
- 97 Party liaison committees serve as vehicles for consultation and co-operation between the Commission and the represented parties on all electoral matters, aimed at the delivery of free and fair elections.³⁶
- 98 For this reason, the question whether the conditions are conducive to holding free and fair elections has been exercising the collective minds of the Commission and the parties represented on the NPLC. The Commission has also held ongoing consultations with political parties represented in the NPLC for no less than 12 months.
- 99 This is clear from minutes of meetings of the NPLC held on 17 September 2020, 3 December 2020, 4 January 2021, 18 February 2021, 18 March 2021, 15 April 2021 and 27 May 2021, copies of which are annexed hereto, marked "**PSM12**" to "**PSM18**", respectively.
- 100 As part of its ongoing consultations with political parties, the Commission held a pre-arranged meeting with the leaders of political parties represented in the NPLC on 22 April 2021. It was at this meeting that some leaders of the represented political parties fortified their concerns that the elections may not be free and fair for the reasons already related above.

Political Party Registration

- 101 In my capacity as chief electoral officer, I am empowered by section 15 of the Electoral Commission Act to consider applications for the registration of political parties and to duly register such political parties. The registration of political parties is a continuous process. Currently there are 605 political parties that have been registered. Of these, 287 political parties are registered on a national level and 318 political parties are registered on a municipal level that are distributed within the nine provinces as follows:

³⁴ Section 5(1)(g) of the Electoral Commission Act

³⁵ Published under GN R824 in GG 18978 of 19 June 1998

³⁶ Item 6 of the Regulations on Party Liaison Committees

Statistical Summary Report

As at 4 June 2021

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Province	Parties Registered
Nationally Registered	287
Eastern Cape	27
Free State	14
Gauteng	25
KwaZulu-Natal	27
Mpumalanga	25
Northern Cape	28
Limpopo	49
North West	29
Western Cape	94
Total Registered	605

102 The onus remains on political parties who wish to contest LGE 2021 to ensure that their application is lodged with the chief electoral officer timeously and that the political party is duly registered before the process for candidate nomination for LGE 2021 commences.

F. ANTI – COVID-19 MEASURES ADOPTED BY THE COMMISSION

Introduction

103 It is now well-established that people can contract COVID-19 from others who have the virus, even if the infected person is asymptomatic. According to the World Health Organisation (“WHO”), the virus can spread from person to person through respiratory droplet transmission, which occurs when a person is in close contact (within 1 metre) with an infected person who has respiratory symptoms (e.g. coughing or sneezing) or who is talking or singing; in these circumstances, respiratory droplets that include virus can reach the mouth, nose or eyes of a susceptible person and can result in infection.³⁷

Measures introduced by the government

104 On 15 March 2021, the Minister declared a national state of disaster in terms of section 27(1) of the Disaster Management Act as part of government’s measures to combat the global outbreak of COVID-19. Since then, the government has promulgated various regulations and directives

³⁷ Source: <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>

introducing various measures to combat the continued spread of the virus. The salient features, which have been common throughout the various alert levels, are:

- 104.1 The mandatory wearing of masks in public spaces.
- 104.2 Limitations on the number of persons who can be present at various gatherings.
- 104.3 Encouragement to take preventative steps to limit the transmission of the virus through:
 - 104.3.1 Frequent washing of hands with soap and water for at least 20 seconds or the use an alcohol-based hand sanitiser.
 - 104.3.2 Avoid touching one's eyes, nose, and mouth with unwashed hands.
 - 104.3.3 Avoid close contact with people who are sick.
 - 104.3.4 Stay at home when you are sick and try and keep a distance from others at home.
 - 104.3.5 Cover your cough or sneeze with a flexed elbow or a tissue, then throw the tissue in the bin.
 - 104.3.6 Clean and disinfect frequently touched objects and surfaces.³⁸
- 105 The above measures have been in place for over 15 months now and the population has become accustomed to implementing them, although there may be complacency at times from a small group of the population. In the majority, people have adhered to these measures as they are governed by law but also from having experienced the devastating impact of losing someone to the virus or knowing someone who has lost someone as a result to the virus.
- 106 In the initial stages of the outbreak and the lockdown, the Commission was constrained to approach the Electoral Court to authorise the postponement of scheduled by-elections beyond the period of 90 days from when each vacancy arose as contemplated in section 25(4) of the Structures Act.
- 107 Once the government adopted the risk adjusted strategy intended to ease the hard lockdown restrictions and the country was placed on Alert Level 1 from 21 September 2020,³⁹ the Commission took steps to urgently conduct all the by-elections that had been delayed in excess of the 90-day statutory period. This resulted in the largest number of by-elections that the Commission had ever conducted at once on 11 November 2020 (colloquially named "Super Wednesday") in which 95 wards were contested across 55 municipalities in all of South Africa's

³⁸ <https://sacoronavirus.co.za/information-about-the-virus-2/>

³⁹ See GN 998 in GG 43719 of 18 September 2020

provinces, using 455 voting stations. This followed by another set of by-elections on 9 December 2020.

108 In preparing for the Super Wednesday by-elections the Commission, in consultation with the NPLC, compiled COVID-19 voting protocols to ensure that not only free and fair elections are held, but that they are also held in a safe and healthy manner in order to ensure that voters and officials take the necessary precautions during the voting process to limit their risk of exposure to the virus. A copy of the document containing these protocols, titled "*Voting in the time of COVID-19: Voting Procedures to Minimise Contagion at the Voting Stations*" is annexed, marked "**PSM19**". The salient provisions of these voting protocols are that:

- 108.1 Registered voters would be allowed to cast their votes.
 - 108.2 The queue walker voting officer would ensure that voters stand in the queue at a distance of at least one and a half meters apart. Adhesive tape or any other voting station specific measure should be used to aid and enforce the distance to be observed by voters in the queue.
 - 108.3 Before entering the voting station door, the door controller should spray alcohol based liquid hand sanitiser on both hands of each voter and explain to the voter the value and importance of the step. No voter may enter a voting station if the voter is not wearing a face mask or similar face cover.
 - 108.4 The barcode of the identity document or card of the voter is scanned by the voters' roll officer to determine if the person is registered to vote at that voting station and their sequence number on the voters' on the roll. The voting official should wear disposable latex gloves when handling an ID document. The voter should adjust the face mask to enable the official to determine whether the voter is the person described in that identity document, while maintaining the requisite physical distancing.
 - 108.5 The name of the registered voter is marked off the voters' roll, the ballot paper is stamped on the back and handed to the voter.
 - 108.6 The voter's fingernail is marked by the inker voting official (who is wearing disposable rubber gloves) with indelible ink. The voter is asked to wait for at least five seconds at the inker table after applying ink to the nail. This is important to ensure that the bonding properties of the ink are not vitiated by the necessary use of hand sanitiser.
 - 108.7 The voter marks the ballots in secret at the voting booth, folds the ballots and deposits the marked ballots in the ballot boxes before exiting the voting station. The ballot box controller wipes each pen (voters may be encouraged to bring own pens) with disposable wipes after each voter has voted.
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- 108.8 Before exiting the voting station, the ballot box controller again sprays hand sanitiser on both hands of the voter. This is intended to assuage the concerns and risks emanating from touching surfaces in the voting station.
- 108.9 Accredited political party agents, observers and the media are able to observe the voting process. This is an important part of ensuring the transparency of the voting process. Protocols on social distancing and sanitising of hands to apply to all party agents and observers that enter voting station. These categories of persons must provide their own personal protective equipment.
- 108.10 All voting officials should be seated or standing at least one and a half meters apart and must ensure that all voters inside of the voting station always maintain a distance of one and a half meters apart.
- 109 The efficacy of these measures was successfully tested during the Super Wednesday by-elections of 11 November 2020 and those held on 9 December 2020, before the second wave of the pandemic in December 2020 forced an adjustment of the alert level to Alert Level 3, leading to the postponement of by-elections scheduled for January, February and March 2021.
- 110 These voting protocols have since been adjusted as new lessons are learnt, and the current protocols are:
- 110.1 In the morning before voting starts, the presiding officer must defog the voting station venue;
- 110.2 An hour prior to the commencement of voting the presiding officer must sanitise the voting station, including all tables, chairs and pens;
- 110.3 Voting officers will be provided with PPE for use at the voting station and during special vote home visits;
- 110.4 Voters are encouraged to bring their own pens for marking the ballot papers in order to avoid the sharing of pens. However, pens provided by the Commission will be sanitised after each single use;
- 110.5 The queue walker must ensure social distancing is kept at 1.5 meters apart. Adhesive tapes or any voting specific measures to be used to enforce social distancing. She must also ensure that all voters in the queue are wearing face masks and make regular checks along the queue and offer assistance where necessary;
- 110.6 The door controller must ensure that every voter entering the voting station is wearing a face mask, must sanitise each voter's hands prior to entering the station and upon exit, controls the access of voters into the voting station to limit the number of persons in the voting station at any given time, and checks the voter's identity document and directs the voter to the next step;
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- 110.7 The inker checks the ID of the voter for any stamp of that elections, whereafter the fingernail of the voter is marked without touching the voter using a disposable bud, which is immediately thereafter discarded in the disposable bag provided.
- 110.8 Protocols on social distancing and sanitising of hands applies to all party agents and observers that enter voting station.
- 110.9 Officials must ensure that all voters inside of the voting station maintain a distance of 1.5 metres apart at all times. Use of demarcation tape to mark the floor surface is peremptory where the voting stations enables same.
- 110.10 While counting procedures remain unchanged, officials and party agents need to observe social distancing at all times, make use of a new set of rubber gloves for the count, as well as sanitise hands at the end of voting/start of counting, and at end of counting process – together with wiping of all surfaces prior and after use.
- 110.11 Each party or candidate is allowed two agents per voting station and one party agent per home visit team. In the event where the voting station cannot accommodate two agents per party, the presiding officer, in consultation with the parties, must agree on one agent per party on a rotational basis.
- 111 These revised protocols appear from the PowerPoint presentation titled “By-Election Training” which has hitherto been used to train voting officials for by elections. The presentation is annexed, marked “**PSM20**”.
- 112 In addition to the above, we also attach hereto, marked “**PSM21**”, a schematic illustration of the voting station layout and the COVID-19 voting process which clearly illustrates the voting process from start to finish and indicates that:
- 112.1 the required social distance of 1.5 metres between voters at entry and exit of the voting station.
- 112.2 the position of the que walker and security relative to the voters in the queue.
- 112.3 the position and of agents, observers, presiding officers and other personnel within the voting station, all maintaining the required social distance of at least 1.5 metres.
- 112.4 The requirement that every person entering the voting station be sanitised and wears a mask.
- 113 Taking into consideration the measures to be applied during the LGE2021 as detailed above, I submit that all the reasonable measures have been taken in ensuring not only that a free and fair LGE2021 will be held but that they will be held in a manner that safeguards the health of all voters and personnel who will be in attendance, as long as they too are willing participates to adhere to the measures in place.
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114 In conclusion, the measures to be used are not out of the ordinary and if anything simply echo those that are currently regulated and/or were regulated under a different Alert-level under the Disaster Management Act over the past year, save for the measure where only 1 (one) party agent for each political party may be present where the voting station's size does not allow for 2 agents thereby compromising the social distance requirement of 1.5 meters.

G. FUNDING

115 The Commission has not been immune to the austerity measures adopted by the government in the past few years. The Commission's 2020/21 and 2021/22 baseline budgets were cut by R118, 4 million and R174, 7 million, respectively, during the 2021 Adjustment Budget and medium-term strategic framework ("MTEF") processes. This has required that the Commission "cut its coat according to its cloth" to conduct the forthcoming elections within its reduced budget. The principal casualty of these budget cuts has been the cancellation of one of the two registration weekends which customarily take place prior to an election.

116 These budget cuts could not have come at a worse time. The COVID-19 pandemic has resulted in additional unbudgeted costs such as personal protective equipment ("PPE") for voting officials and other protective aids to ensure that interaction between voters, personnel and stationery and equipment are kept to a bare minimum and which all have a financial implication which will be added to an already limited pool of financial resources.

117 In this regard, the procurement cost of PPE for the voter registration weekend is R40, 111, 570.00, while the cost of PPE for voting day is estimated at R89, 238, 794.00, resulting in estimated PPE total expenditure of R129, 350, 364.00. This procurement is in line with the "*Guidelines on Personal Protective Equipment for Government Employees and the Public*" published by the Gauteng Department of Health on 6 April 2020 annexed hereto, marked "PSM22".

118 The R174, 7 million budget cut was more than what the Commission could absorb by simply cancelling the second registration weekend. In addition, the Commission has to put the appointment of Democracy Education Fieldworkers on hold, while the contract term of other expansion staff categories have been reduced to seven months to absorb the full budget cut. There were no funds remaining to fund PPE in 2021/22, with the result that PPE procurement remains unfunded at this stage.

119 As it does each year, the Commission submitted its MTEF annual database and narrative to the National Treasury on 31 August 2020, which *inter alia* detailed the negative impact the budget cuts would have on the Commission's ability to execute its responsibilities and mandate. The Commission's concerns in respect of the budget cuts were again addressed during a virtual meeting it held with National Treasury on 16 September 2020.

- 120 On 15 February 2021 the Commission alerted the National Treasury that it intends to apply for further funding through the 2022 Adjustment Estimates process. This matter will form the subject of a bilateral meeting scheduled with National Treasury for 30 June 2021.
- 121 Assuming that the Commission will receive approval from the National Treasury to retain and roll-over all its cash surpluses from 2020/21, PPE procurement is currently the only unfunded project for the forthcoming elections. However, should the approval not be granted to retain the full surplus, additional funding pressures may arise.
- 122 Customarily two days prior to voting day in general elections are set aside for special votes, one for home visits and another for special votes to be cast at the voting station. One of the suggestions put forth in the Commission's consultations with stakeholders was to extend special voting days to three to lighten congestion. Such an extension would have cost implications for the Commission's already strained budget. It would require an estimated additional R66, 000, 000.00 comprising R45, 000, 000.00 to cover electoral staff subsistence, R20, 000, 000.00 for voting station rental and infrastructure, and R1, 000, 000.00 for materials, which would bring the total cost of unfunded projects to R195, 350, 364.

H. CONCLUSION

- 123 The submission has sought to illustrate that an election arises out of a confluence of a number of factors:
- 124 The first is that an election is a huge logistical undertaking. In this regard the submission has demonstrated that electoral supplies, logistics and infrastructure have been arranged and are or will be in place to support the voter registration weekend on 17 and 18 July as well as the election day in October.
- 125 The second is that an election process is a legally defined and regulated undertaking. The submission makes it clear that the necessary legal framework for the proper conduct of elections has been put in place, authorised by Parliament and assented to by the President. The regulations supporting the legal framework have also been drafted and consultation with the NPLC have commenced which will culminate in the Commission issuing amended regulations.
- 126 The third is that an election is an involved administrative enterprise. In this regard the submission has demonstrated the activities attendant to the recruitment and training of electoral staff to administer the registration activities as well as election day activities in 23 151 voting stations. Similarly, the submission has confirmed that the political boundaries have been determined by the MDB and the Commission has in turn aligned its election administrative boundaries to these new political boundaries for purposes of registering voters and administering elections.
- 127 Fourth and perhaps most importantly is that an election is about people. The submission has illustrated the measures that the Commission will employ to engage citizens in a changed
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environment. The first message is intended to reassure the eligible voters that their participation either in the registration drive or on voting day will not expose them to increased risk. This is achieved by the use of short video content explaining the measures implemented in voting stations to safeguard public health in the context of Covid-19. Secondly, is to continue to share information on the value of participation in elections and the mechanisms of such participation using non- traditional face to face platforms. In this regard the Commission has had to place reliance on social media, radio, digital platforms and television to compensate for limitations imposed by Covid-19 on contact and communal type platforms for information dissemination.

- 128 In spite of the constrained fiscal position of the state, and the associated budget cuts, the Commission has been able to reprioritise resources to support the delivery of elections. There are ongoing engagements with National Treasury on additional funding for Covid-19 induced and unforeseeable expenditure.
- 129 In the final analysis it is submitted that the Commission has made proper arrangements to honour the regularity of election impulse in the Constitution.
- 130 The inquiry should assist the Commission to arrive at a determination on whether the elections will meet the standard for freeness and fairness. In the event the trajectory of the pandemic turns for the worse, the Commission will probably approach a court of competent jurisdiction for authorisation to conduct the elections outside of the constitutionally prescribed timelines. Of necessity the period of postponement should be as short as reasonable possible to stave off further infections.
-