



## **Independent Communications Authority of South Africa**

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**Ref No: 11/2/1/3/2**

### **Justice Dikgang Moseneke**

Tugela House

1303 Heuwel Avenue

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0157

**Per email: [MosenekeD@elections.org.za](mailto:MosenekeD@elections.org.za)**

Dear Honourable Justice Moseneke,

### **RE: REPORT ON ENSURING FREE AND FAIR LOCAL GOVERNMENT ELECTIONS DURING COVID-19**

1. Your letter dated 29 June 2021 regarding the above matter refers.
2. The Independent Communications Authority of South Africa ("the Authority") notes the invitation by the Honorable Justice Moseneke for the Authority to make written and oral representation regarding the following issues:
  - 2.1. Whether there are any measures undertaken by the Authority to facilitate campaigning for the upcoming general local government elections;
  - 2.2. What access to broadcasting will political parties and independent

candidates have for the purposes of campaigning in the period leading up to the forthcoming local government elections.

3. The Authority advises that it published the Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011 in **Government Gazette No. 34086 of 8 March 2011** ("the Regulations").
4. The purpose of the Regulations is to prescribe the framework and guidelines under which Party Elections Broadcasts ("PEB(s)") and Political Advertisements ("PA(s)") should be conducted and carried by the broadcasting service licensee during the Municipal elections.
5. On 31 March 2021, the Authority published the amendments to the Regulations, in preparation for the 2021 Municipal elections, in **Government Gazette No. 44370**. A copy of the Regulations is attached herewith and marked **Annexure A**.

#### **Measures undertaken by the Authority to facilitate campaigning for the upcoming general local government elections**

6. In terms of regulations 4 and 6 of the Regulations, a party or independent candidate that seeks to broadcast a PEB and/or PA must submit such to a broadcasting service licensee ("BSL") within the prescribed time frames.
7. Regulation 5 of the Regulations provides that "*Air-time in respect of PEB(s) shall be allocated by the Authority to the registered political parties or registered independent candidates contesting the municipal elections on the basis of the respective principles set out in Schedule 1 of Annexure A of these regulations.*" Accordingly, the Authority allocates airtime, in terms of regulation 5 of the Regulations, once the date of the municipal elections has been proclaimed by the President of the Republic.

#### **Access political parties and independent candidates will have to broadcasting for the purposes of campaigning in the period leading up to the forthcoming local government elections.**

8. The Regulations oblige the Public Broadcasting Service Licensee ("the SABC")

to make available, every day and throughout the election broadcast period, ten (10) timeslots of fifty (50) seconds each for the broadcast of PEB, excluding the top and tail disclaimer. The Community and Commercial broadcasters may elect to broadcast PEBs and, if they elect to do so, they must comply with the Regulations. In order to ensure a fair and equitable distribution of PEBs, the Authority provides the duration and sequencing of PEBs.

9. The political parties and independent candidates will be allocated the above-mentioned PEB slots by the Authority, which will enable them to campaign for the upcoming elections throughout the broadcasting period.
10. In terms of regulations 4 and 6 of the Regulations, it is the responsibility of the political parties and independent candidates to pre-record the PEB and PA material as this is not the duty of the BSL. The recordings of the PEBs must be submitted to the broadcasters five (5) working days prior to the broadcast time thereof. The content must not contravene the provisions of the Constitution, Electronic Communications Act<sup>1</sup> ("the ECA"), Broadcasting Act<sup>2</sup>, and other related legislation. The material must also not provoke any unlawful, illegal, or criminal act or be perceived as condoning or lending support to any such act.
11. In addition to the PEB slots allocation, political parties and independent candidates can use PA provided for in the Regulations to access the electorate on the broadcasting services platform. All broadcasters can elect to broadcast PAs and the Authority does not prescribe the duration and sequencing of PAs, but the transaction is between the broadcaster and the political party or independent candidate.
12. The Regulations also include guidelines for the conduct of broadcasters during the election period and the following are some of the relevant guidelines:
  - 12.1. Broadcasters should be consistent in its treatment of contesting parties and of conflicting views;
  - 12.2. Broadcasters should recognize their obligation to the electorate to

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<sup>1</sup> Act No. 36 of 2005, as amended.

<sup>2</sup> Act No. 4 of 1999

provide a full and accurate record of events and developments;

- 12.3. Equitable treatment is unlikely to be achieved in a single programme but can be achieved in a series of programmes, therefore broadcasters should be consistent in its treatment of contesting parties and of conflicting views;
- 12.4. During the election period, broadcasters must recognize that government officials are in a position to use their incumbency to advance their electoral prospects and therefore broadcasters should regard with particular caution any statement or action by an official of an incumbent party;
- 12.5. In addition, broadcasters need to ensure that, during the election period, they do not afford the policies of incumbent political parties and independent candidates' greater legitimacy than they would afford those policies or actions if the party was not in government;
- 12.6. Non-participating political parties, independent candidates, and organisations affiliated to alliances should not be excluded from debates and news bulletins. However, they should not be included with such frequency that they distort the general principle of equity between registered, contesting political parties and independent candidates;
- 12.7. Broadcasters must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties and independent candidates equitably; and
- 12.8. Broadcasters must ensure that the political parties and independent candidates are given a reasonable opportunity to respond to criticism in the same programme, or to do so as soon as reasonably practicable thereafter.

### **Implementation of the Regulations**

13. As stated in paragraph 6 above, the election broadcast period and the allocation of the PEB slots can be allocated only once the registration of

political parties and independent candidates have been closed.

14. Therefore, the implementation of the Regulation is highly dependent on the proclamation of the election period and the final list of parties contesting the elections from the Independent Electoral Commission ("the IEC"). Similarly, PAs must only be broadcast during the election period and no later than forty-eight (48) hours before polling commences.
15. To that end, the total time available for political parties and independent candidates to campaign to the electorate on broadcasting services platforms is determined by the proclamation.
16. The Municipal Elections Party Elections Broadcasts and Political Advertisements Regulations, 2011 made provision for the allocation of four **(4)** times slots not exceeding two (2) minutes each day, with the 2016 amendment regulations providing eight **(8)** times slots of one (1) minute each for the PEB broadcast. The 2021 regulations amendments have taken into consideration the inclusion of independent candidates and the need for more PEB slots to be made available for political parties provides for ten **(10)** times slots not exceeding fifty (50) seconds.
17. The Authority has also in the 2021 amendment regulations increased the percentage allocation for Basic Allocation to 60% of the overall slots available in order to ensure that a large number of slots are available for all political parties and independent candidates and a lesser percentage to the other principles which require certain criteria to be met in order to be afforded slots in those categories.
18. However, it should be noted that the current restrictions on gathering will affect the onsite allocation of slots which is done through a fair and transparent process. The slot allocations are done through a "lottery system method" which is meant to ensure that all political parties and independent candidates have the same opportunity to pick any of the available slots during the allocation.
19. The Authority enlists the services of a data and system analytics service provider and temporary compliance officers in order to assist with the

monitoring and compliance of the municipal elections' broadcasts regulations.

20. As per Regulations 6 of the Regulations Governing Aspects of the Procedures of Complaints and Compliance Committee of the Independent Communications Authority of South Africa published 06 October 2010 gazette No 33609, elections related complaints may be dealt with on an urgent basis in order to ensure expeditious resolution of such complaints due to the time constraints during the election period.
21. The sooner the proclamation of the election day and the sooner the Authority receives a list of registered political parties and independent candidates from the IEC means that political parties and independent candidates will have increased opportunity to reach a greater electorate audience. Should a be made that elections must proceed during the Covid-19 pandemic, after consultation with the public broadcaster and other relevant stakeholders, the Authority will consider the following:
  - 21.1. Amending the ICT COVID-19 National Disaster Regulations, 2020 to prescribe further broadcasting relief measures relating to elections' broadcasts;
  - 21.2. Sec 57 (2) of the ECA, the Authority must determine the time to be made available to political parties for the purposes of subsection (1) including the duration and scheduling of party election broadcasts, taking into account the financial and programming implications for the broadcasting services in question.
22. In all processes, the Authority still upholds and advocates for the provisions made in the State of National Disaster Regulations. To this end, in June 2020, the Authority published the ICT Covid-19 National Disaster Regulations. The purpose of these Regulations is to prescribe minimum standards that Licensees must adhere to only during the subsistence of the National State Disaster in order to, among other things, enable implementation of measures that may be necessary to prevent an escalation of the National Disaster or to alleviate, contain, and minimize the effects of the National Disaster. The Authority's ICT Covid-19 regulations also serve to ensure that there is a continuation of the provision of services in the Republic.

23. The Authority is therefore ready for the upcoming elections and it is willing to assist in ensuring a free and fair election.

24. The Authority would like to thank the Inquiry for the opportunity to make written and oral representation and hereby confirms its availability to make oral representation on Friday, 2 July 2021.

Yours sincerely,



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**DR. KEABETSWE MODIMOENG**

**CHAIRPERSON**

**DATE: 01/07/2021**