

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

TO: Deputy Chief Justice Dikgang Moseneke

SUBJECT: ANC SUBMISSION ON CRITERIA TO DETERMINE FREE AND FAIR LOCAL ELECTIONS UNDER COVID-19 RESTRICTIONS

Date: 8th June 2021

INTRODUCTION:

The threat of Covid-19 lockdowns and future waves have forced us to consider under what conditions we may consider the possible postponement of local elections. The issue of setting clear criteria is very urgent and obviously of major concern to the ANC, other parties, the IEC, and government. Possible postponement must be discussed within the context of constitutionality, as well as the course of the pandemic, and the impact on the safety of voters, the ability of parties to campaign, and the IEC's plans for running safe elections.

Since November 2020, the IEC has held over 150 by-elections without any super-spreader events being recorded. All parties were able to campaign safely, visit voters at home, select candidates, and hold public and volunteer meetings, under strict Covid-19 regulations. The December 2020 by-elections were held during the rising second wave.

While by-elections were postponed in the first half of the pandemic during Level 5, 4 and 3 Lock-down, this was mostly done because of very stringent regulations limiting political party direct meetings with voters, banning of public gatherings and a curfew that limited movement in the evening. Globally governments and electoral authorities were very careful during the first four months of Covid-19 and the majority of elections were postponed.

As safety protocols developed and health authorities gained a better understanding of the pandemic, most countries from June 2020 held their elections as planned, with improved protocols to prevent infection. September 2020 was the only exception as a month in the second half of the year where more elections were postponed than held. Since then the vast majority of elections internationally, have been held on schedule.

Safe elections are certainly possible for voters, and the IEC and its staff, under Covid restrictions. This was demonstrated by more than 100 by-elections held since November in South Africa without any super-spreader events.

The issues should be unpacked further in terms of possible harm to political party activity, as well as the potential harm of a postponement for issues of governance.



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Some have called for the postponement of local elections until 2024 – effectively extending the local government term of office by three years. This is not allowed under our Constitution, and is not warranted due to Covid-19, as the pandemic will hopefully not be with us for that long.

The majority of parties in the National Party Liaison Committee agree that this would be unconstitutional, and agree that elections should go ahead, unless it is not possible due to a sharp increase in infection rates.

The debates on different electoral systems, the synchronization of elections, and accommodating independents, should be dealt with separately from the issue of holding elections under the Covid regulations. They need deeper discussion and public participation.

We are clear that it is neither desirable, nor possible, for government to extend its term of office without consulting voters. Our understanding is that postponing elections would require a constitutional amendment, supported by 75% of Parliament. It is never desirable to permanently amend the Constitution for a temporary problem. We believe that should Covid become much worse in terms of the infection and morbidity rates, the IEC would be best placed to approach the Constitutional Court for a limited postponement due to the impossibility of holding safe elections.

We will therefore take only two issues into account for our submission:

1. Under what conditions would it be impossible to safely hold elections, register voters and cast and count votes? What Covid conditions and what restrictions would make it unsafe or impossible to hold free and fair elections?
2. Will political activity and campaigning by parties be curtailed because of Covid restrictions? Would any party be disadvantaged to a greater extent than others, and will this impact on whether the elections are free and fair?

1. UNDER WHAT CONDITIONS WOULD IT BE IMPOSSIBLE TO HOLD ELECTIONS?

Elections can be held safely in a pandemic as has been proven in more than 70 countries that held elections under Covid (including SA with over 100 by-elections). Many countries postponed elections, but this occurred mostly in the first six months of the pandemic, when the scientific community was still uncertain about the modalities of Covid transmission. The vast majority of postponements were by a few months only.



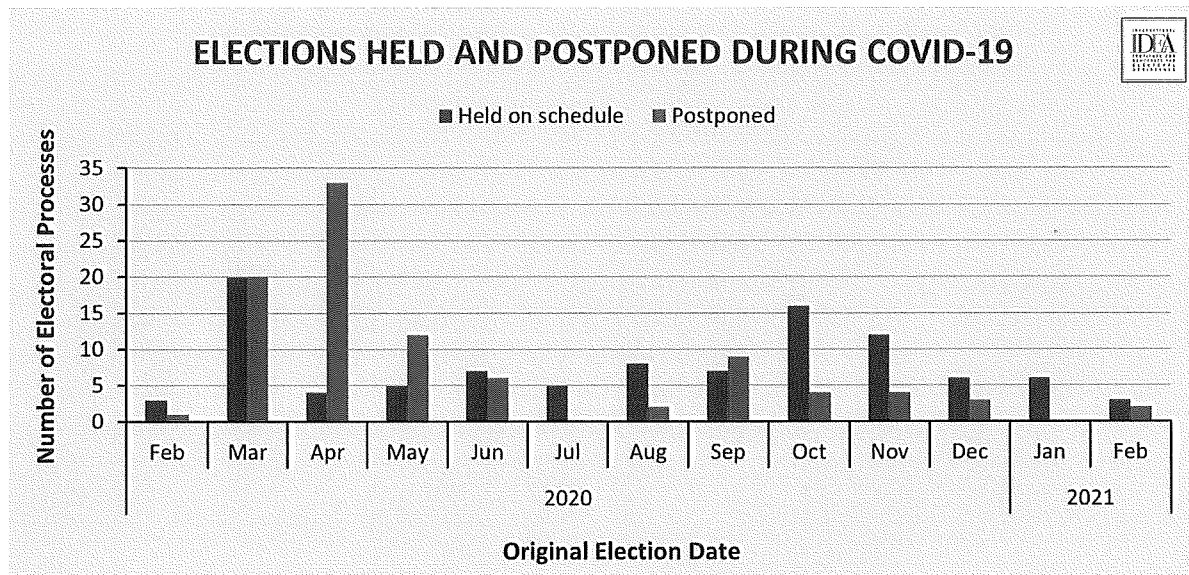
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The table below shows how many elections were held on schedule and postponed in 2020 and it is clear that most of the postponed elections were during the first five months when we understood little of the pandemic and mask-wearing was not mandatory in all countries.



In the graph above the blue towers show elections held on schedule, and red ones show the number postponed. It is clear that most postponements were between March and May 2020, and after that most countries safely held elections as scheduled.

In South Africa we have been wearing masks, limiting gatherings and enforcing social-distancing for more than a year, and we have effectively slowed down the spread. We are now vaccinating people and research on the population in general has also revealed a much higher level of immunity than expected.

Ideally, we should time elections to be promulgated towards the end of one wave and to take place before the next one. We are entering a possible third wave in June, based on previous waves, we should be exiting it in the next three months, and then expect a fourth wave closer to year end. These projections are based on the trajectories of the past and at this point there are no reliable predictive models that can tell us exactly what the course of the pandemic will be.

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The IEC needs about 80 -90 days between promulgation and election. Voter registration will take place on 17 and 18 July, but that is not as big a safety concern as elections, since the average throughput of voters per day is usually only about 50-100 voters per registration point - about 10% of what happens on Election Day.

There is nothing inherently dangerous in elections as voting happens in a very controlled environment that is much safer than shopping for groceries. Voting stations have:

- strict access and queue control,
- human capacity to enforce the wearing of masks and sanitizing,
- queuing mostly outside with distancing possible, and
- tested safety protocols to deal with touching ballots, IDs, pens and marking of fingers, and
- Trained staff equipped with PPE, trained to regularly sanitise the surfaces and pens.

The IEC has received expert advice on safety protocols for Election Day and is looking at extending special voting to de-densify voting. For example, there could be three special vote days with all people over 50-years of age, included as special voters. It could start on the Sunday before Election Day, then two days of home visits and further special votes, and an open election day on a public holiday on Wednesday 27 October. As the ANC we would strongly support this approach. Using a Sunday to extend special votes would also give more people who work on Election Day a greater chance to participate.

In conclusion, on the issue of impossibility, we believe the IEC should only consider approaching the Constitutional Court to postpone elections, if the Covid infection rate and hospitalization rate reach such dangerously high levels, that it makes it unsafe for voters to exercise their democratic right. A possible indicator to use would be that we are placed on lockdown levels 4 or 5, where non-essential activities are heavily restricted. Should that happen the IEC should apply for elections to be postponed by no more than four months.

2. WILL POLITICAL ACTIVITIES AND CAMPAIGNING BE CURTAILED TO AN EXTENT THAT ELECTIONS ARE NOT FREE OR FAIR?

Voter participation surveys done by the IEC and other entities over many elections have demonstrated that the majority of voters still get their information about political parties from radio and TV. All parties have access to interviews, news, debates and advertising as well as party electoral broadcasts on radio and TV. Increasingly social media such as Facebook, Twitter, WhatsApp and Instagram have also become popular campaign tools. None of these campaign methods will be curtailed by Covid restrictions.

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Parties supplement their communication campaigns with direct voter contact to identify potential voters, and persuade doubtful voters. This is mostly done using door-to-door visits, telephone, emails and SMS. This is usually the set of campaign tools that reach the second most voters. It is only door-to-door work that would need special protocols from parties to ensure canvassers wear masks and practice social distancing and sanitizing.

Public meetings are usually the third most important campaign tool in terms of actual reach of voters. These range from the massive rallies favoured by some parties, to small gatherings of a few hundred voters outside around campaign trucks, to much smaller house or sectoral meetings. Only the massive rallies would be impacted under current Covid restrictions as meetings over 100 people indoors are restricted and gatherings over 250 people outdoors. These may well be relaxed before the intense campaign starts after promulgation. As it is, only rallies that would be banned. They will not necessarily impact on votes as they are mostly attended by very strong party supporters or members. Even if they do impact, at least all parties will be affected equally.

The main concern for the ANC is whether we can hold gatherings and safely organize a campaign that persuades and mobilises voters to register and vote on the scale required to give legitimacy to our democratically elected government. By-elections proved that we can. Turn-out was basically the same as in by-elections held in pre-Covid periods. We have learnt a lot from safely holding by-election campaigns and believe that as all parties will be subjected to similar constraints, it will not impact on free and fair elections.

Campaign finance and the difficulty of raising funds have been raised by some parties as a current constraint on free and fair elections. While we face similar challenges, we believe this is due to uncertainty among donors about the implications of the new Party Funding Act, and not a result of Covid. It should therefore not be considered as one of the criteria.

CONCLUSION

As the ANC, we see no need to postpone elections, unless the pandemic reaches much more critical proportions by October 2021. At that point we are happy to subject ourselves to a judgment call made by the IEC, that is informed by the best scientific advice available, and that is taken to the Constitutional Court for a final decision.

Should elections be deemed impossible, our preference would be for a postponement only until the beginning of December, and at the latest to the end of February 2022. We believe that voters have the right to elect a new government every five years and that this fundamental principle in our Constitution should not be tampered with unless there is no other option.

A handwritten signature in black ink is located in the bottom right corner of the page. The signature is stylized and appears to be the name of the Secretary General, E.S. Magashule.

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Yours sincerely,

A handwritten signature in black ink, which appears to read 'Jessie Duarte'. The signature is fluid and cursive.

Jessie Duarte
Deputy Secretary General
African National Congress