

COMMISSION ON FREE AND FAIR ELECTIONS DURING LOCAL GOVERNMENT ELECTIONS, 2021

CHAIRPERSON: THE HONOURABLE JUSTICE, DIKGANG MOSENEKE

AFRICAN TRANSFORMATION MOVEMENT

SUPPLEMENTARY SUBMISSIONS

INTRODUCTION

1. The Commission of inquiry, “**the Commission**”, has been established to check the freeness and fairness of local government elections earmarked to be held in October 2021.
2. Subsequent to the African Transformation Movement, “**ATM**”, submitting it’s submissions dated 14 June 2021, it has deem it fit and proper to supplement the aforesaid submissions.
3. It is to be noted that all South African citizens irrespective of their age have a right to vote. 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 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.

POSTPONEMENT OF THE ELECTIONS

4. Regard had to be to the fact that elections are not about a Political Party, or Independent Candidate, or Government, they are about communities coming together to determine the future of our country and their communities. At all material times the supremacy of the Constitution should prevail.
5. The Constitution does not provide for the postponement of the elections. There is no mechanism designed to regulate the postponement of the elections, this would require Constitutional amendment.
6. The Electoral Commission of South Africa “**the IEC**” would have to show the Constitutional Court that it has done everything within it’s power to hold free and fair elections. The IEC has had public measures in place which they tested during the Municipal by-elections held in November/December 2020, applied same in April/May 2021, at this point, there is no scientific evidence or otherwise to the effect that the by-elections became super-spreader events. There has not been complaints that the by-elections were not free and fair, the voter turnout was satisfactory in more than 65% average turn out.
7. The IEC has declared that it is ready for the elections. Postponing a vote could, however, mean that leaders and representatives who are not doing good job will remain in office for longer.

Citizens will be denied, temporally, their right to shape public policy - perhaps at exactly the moment they need to.
8. ATM urges the Honourable Commission to exercise a Judicial notice of the allegations of corruption reported on daily basis by all media houses,

the continued Service Delivery Protects and strikes, that demonstrates unwillingness of the people to persevere on no Service Delivery and maladministration. If the current municipal administration is not changed by vote, it means the Commission has endorsed corrupt rulers to remain in power, and the continued maladministration. People have signalled their need to change the current municipal administration by exercising the right to vote which is possible only if the elections scheduled for October 2021 go ahead.

9. Elections have been held during the Covid-19 pandemic in countries like USA, South Korea, Israel, France, Malawi, etc. South Africa cannot be an exception to that.

10. The Constitution of the Republic of South Africa, 1996(Act 108 of 1996), in clause 159 provides that:-

“the term of the Municipal Council may not be more than five (5) years”.

The postponement of the elections will be a conduct inconsistent with the Constitution, something which the ATM cannot leave unabated.

THE CURRENT COVID -19 PANDEMIC CONDITIONS ON FREE AND FAIR ELECTIONS

11. The advantage of Local Government Elections is that they happen in specific locality and so registered voters have to vote at voting stations where the number of voters can be managed. In most cases, people vote per Ward and the Ward has more than one voting stations (**voting district**)

12. The time for opening of voting stations may be extended to an earlier hour and closes at a later hour than is normal. The current lockdown Level 3 Regulations allows for gatherings limited to fifty (50) indoors and hundred (100) people outdoors, something possible for election purposes, the strict protocols with regard to sanitising, social distance to be followed, in fact, in Municipal Elections there are no long queues as compared to National and Provincial Elections.

13. The by-elections held in November/December 2020 and April/May 2021, have not been reported as super-spreader events. Some measures may be implemented. The IEC may be directed to develop health systems to limit the spread of Covid-19 Pandemic. There has not been evidence that during the by-elections Covid-19 health protocols were not followed or have posed threat to freeness and fairness of the elections.

EFFECT OF COVID-19 ON POLITICAL PARTY CAMPAIGNING

14. Local Government Elections consists of election of Ward Councillors, or Ward Councillor Candidates, this is done at a Political Party branch level, that requires a minimum number of attendance.

Campaigning by Political Parties is limited to a Ward level and not beyond that. The current Covid-19 Regulations make it possible for Political Party campaigning at Branch level and at Ward level at some instances with all the health protocols designed to limit the spread of the virus being followed. If Political Party campaigns are compromised it would be equal to all the Political Parties.

EFFECTS OF COVID-19 ON ELECTION MONITORING

15. It is not reasonably possible, or to be clear, there is no reasonable possibility of compromising of proper and effective monitoring by Political Party Agents and independent electoral monitoring bodies of freeness and fairness of the elections. Party Agents and the IEC officials constitute a manageable number with ability to observe the designed health protocols, risk of infection is not foreseeable.

16. It is re-iterated that ATM participated in a number of by-elections that took place during the pandemic. The ATM considered the by-elections to be free and fair as far as Covid-19 is concerned.

CONCLUSION

17. The ATM, acting in terms of the extended provisions of Section 38 of the Constitution, and further acting in public interest in terms of Section 38(d) and in the interests of its Members, in terms of Section 38(e) of the Constitution, 1996, recommends that the elections to go ahead as scheduled.



THANDISIZWE KHUKHULA
ATM SECRETARY GENERAL
17 JUNE 2021