



Home Affairs
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**SUBMISSION BY BLACK FIRST LAND FIRST TO THE MOSENEKE INQUIRY
INTO ENSURING FREE AND FAIR LOCAL GOVERNMENT ELECTIONS DURING THE
COVID-19 PANDEMIC**

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1. Introduction

I am Andile Mngxitama, the President of Black First Land First (BLF), and I am duly authorized to represent BLF regarding all matters relating to the subject matter of these submissions.

BLF is a Black Consciousness, Pan Afrikanist movement which embraces a Sankarist leadership ethos.

The Commission has instituted an “Inquiry into Ensuring Free and Fair Local Government Elections During COVID-19” to be led by retired Deputy Chief Justice Dikgang Moseneke to: “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 COVID19



pandemic, and (ii) the measures promulgated by the government to curb the continued spread of the pandemic; and 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.”

2. Legal basis for inquiry

While both the assignment since the Electoral Commission Act, 1996 was enacted, as well as the circumstances concerning the impact of Covid-19 on the forthcoming elections are unprecedented, there is nonetheless enough legal authority to conduct the enquiry.

The matter for consideration and reporting is whether or not the forthcoming LGE 2021 is likely to be free and fair.

The Commission will then consider the report in its determination of the likelihood of free and fair elections and publish the said report in line with section 14(4) of the Electoral Commission Act.

To this end Section 14(4) of the Electoral Commission Act makes the following provision:

“(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.”

It is correctly argued that this cannot be altered “by the president, by the IEC or even by the Constitutional Court”. Moreover that, “Judge Moseneke’s conclusion will be a recommendation to the IEC, which can thereafter consult with the national party liaison committee and ultimately with the president, but they cannot decide to postpone the elections.”

However the Covid-19 outbreak has seemingly cast the IEC’s mandate of Judge Moseneke as whether the pandemic could threaten the free and fair nature of the elections and to this end whether the elections should be postponed.

I have read the the submissions made by the chief electoral officer in response to Judge Moseneke’s request concerning the state of readiness of the Commission for the forthcoming LGE, and I am satisfied that the Commission is indeed ready.



3. New National Party and Kham: the standard for free and fair elections

As indicated above, in terms of the Constitution the forthcoming LGE must to be held by 1 November 2021. The Constitution further guarantees every citizen the right to free, fair and regular elections for any legislative body that has been established in accordance with the Constitution.

The issues identified by the Chief Electoral Officer in *New National Party v Government of the Republic of South Africa and Others* (CCT9/99) [1999] ZACC 5; 1999 (3) SA 191; 1999 (5) BCLR 489 (13 April 1999); and *Kham and Others v Electoral Commission and Another* [2015] ZACC 37, are taken as being of “key importance to the conduct of free and fair elections, together with additional factors that are considered to be relevant to this enquiry”

In *New National Party*, the Constitutional Court reflected on the relationship between the right to free and fair elections and the right to vote. It suggested that the both are so inextricably linked that they are one:

“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.”

The significance of free and fair elections in the circumstances of municipal by-elections was considered by the Constitutional Court in *Kham*. The court held that:

“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.”

Moreover, “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.”

Kham was clear about the Commission’s responsibility in this regard, namely:

“[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.”

Based on the authority of New National Party and Kham the chief electoral officer, correctly concludes that the enquiry whether elections are free and fair entails numerous factors, including:

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

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.

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

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

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

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.

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.”

4. Voter registration planning is on track

According to the IEC’s submission everything is on track for voter registration. The following is worth noting:

i. Of the 40 263 709 citizens who are eligible to vote, only 25 789 566 are registered to vote and are reflected on the national common voters’ roll.

ii. In terms of section 6(1A) of the Municipal Electoral Act 27 of 2000 (MEA), only citizens who applied for registration before an election date is proclaimed may vote in the relevant election.

iii. In compliance thereof, the elections will only be called consequent to the registration weekend so as to afford citizens the optimal opportunity to register to vote or to amend their registration details. The LGE 2021 is envisaged to be proclaimed by 2 August 2021 taking into account the process that needs to be before the voting day.

iv. Upon calling the elections, the chief electoral officer will make a provisional voters’ roll available for inspection between 4 August 2021 and 11 August 2021 at the National (IEC head office); as well as the provincial and municipal levels in which the elections will take place.

v. During the voter registration weekend, scheduled for 17 and 18 July 2021, the Commission has indicated that it will be opening all of its 23, 151 voting stations in the country. This suggests that 23, 151 voting stations will be utilised during the registration weekend and on the day of the election.

vi. To this end objections from interested parties to the provisionally compiled voters' roll may be lodged in terms of section 15 of the Electoral Act which the Commission must decide on



18 August 2021.

vii. The Commission has given the assurance that all the necessary measures to ensure that eligible voters register as voters and vote are in place, including making significant progress in sanitising the voters' roll to make sure that voters are registered in the correct wards.

5. The Voting Station Procurement processes are on track

The voting station procurement project to conclude lease agreements with relevant landlords was already triggered on 1 May 2021 and is expected to be finished by 30 June 2021. Much progress has been recorded by the Commission in this regard including concluding over 9 000 lease agreements. This process entails all of the 23, 151 voting stations being inspected before the electoral event to confirm that “key infrastructure and facilities, including electricity, telecommunications, water, sanitation, furniture and disability-friendly access” are in place. Provision is also made by the Commission to secure temporary facilities, where permanent ones are not available, like gazebos and tents to be utilised as voting stations.

6. Logistics are in place

The computerised system operated by the Commission, being the Logistics Information System (“LIS”), supports “the planning, monitoring, management and control of electoral materials in the Commission”. In this regards the system generates a detailed Bill of Materials (“BoM”) for each electoral event.

When the BoM is registered on the LIS, comprehensive Material Requirement Plan (“MRP”) lists are generated that will enable the “accurate procurement, distribution and allocation of electoral materials per province, municipality and voting district”.

The Commission has given the assurance that the BoM has been finalised for the LGE. Also, “most of the materials are in hand or will be delivered to the Commission imminently. Moreover, the “Commission’s Logistics Department has already approved the BoM for the voter registration weekend and voting day (including the two special voting days).”

7. Voter education preparations to ensure safety of voters during registration and voting

In compliance with the Electoral Commission Act the Commission has laid out a



comprehensive plan to further voter education. This includes the production of short videos for dissemination via social media platforms. The videos are envisaged to be launched in three phases, viz:

- i. By 15 June 2021: “How to register to vote”;
- ii. By 30 June 2021: “Voting in Covid times”; “Implementation of VMDs”; “Electoral Fraud and Offences” and “Electoral Code of Conduct”.
- iii. By 31 July 2021: “Free and fair elections”, “Special Votes” and “Voting in local government elections”.

It is instructive that the video “Voting in Covid times” explains mechanisms to “ensure the safety of voters during registration and voting”.

It is also pointed out that community radio station programmes covering all the significant electoral phases are expected to be broadcasted live until the end of October 2021. To this end the Commission has secured 195 radio slots, which started on 1 May 2021, to cover topics like “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”.

8. Required launch of the elections

The launch of the elections took place on 9 June 2021 at the Sandton Convention Centre. To comply with the restrictions on gatherings in terms of the Level 2 Regulations a limited number of people were physically present at the venue while the rest joined the event virtually. The election launch was broadcasted live on television and radio. D

9. International precedent for elections during the pandemic

The question of postponing the elections due to the spread of Covid-19 has become an international consideration. The following information of parliamentary elections in the time of Covid-19 pandemic as indicated in the international arena are noteworthy.

Over the period 21 February 2020 to 1 June 2021:

- i. “at least 78 countries and territories across the globe have decided to postpone national and subnational elections due to COVID-19, out of which at least 41 countries and territories have



decided to postpone national elections and referendums”;

ii. “at least 122 countries and territories have decided to hold national or subnational elections despite concerns related to COVID-19 of which at least 101 have held national elections or referendums;

iii. “at least, 53 countries and territories have held elections that were initially postponed due to concerns related to COVID-19 of which at least 28 have held national elections or referendums”.

On elections held during the COVID-19 outbreak

Instances of referendums and elections held during February last year include parliamentary elections in: “Iran (21 February 2020); local by-elections in Taiwan (22 February 2020); presidential election, Togo (22 February 2020); general elections, Slovakia (29 February 2020)”.

Instances of referendums and elections held during March last year include: “local elections in Queensland, Australia (29 March 2020); Parliamentary by-elections: Gaibandha-3, Bagerhat-4 & Dhaka-3 and number local government elections, Bangladesh (21 March 2020); parliamentary election rerun in 11 constituencies in Cameroon (22 March 2020); council election, Canada (26 March 2020); municipal elections in the Dominican Republic (15 March 2020); first round of local elections in France (15 March 2020); local elections in Bavaria, Germany (first round 16 March 2020 and second round 29 March 2020); Legislative elections and constitutional referendum in Guinea (22 March 2020); general elections in Guyana (2 March 2020); Seanad general election (partially indirect), Ireland (30-31 March 2020); legislative elections in Israel (2 March 2020); general elections in Mali (29 March 2020); local elections in Hâncesti, Moldova (15 March 2020); six by-elections in Poland (22 March 2020); local elections in Luzern, Switzerland (29 March 2020); kuomintang chairperson elections, Taiwan (7 March 2020); parliamentary elections, Tajikistan (1 March 2020); parliamentary by-elections in the single-mandate district No. 179 in the Kharkiv region, Ukraine (15 March 2020); primary elections in Arizona, Florida and Illinois, USA (17 March 2020); General elections in Vanuatu (19 March 2020)”.

Instances of referendums and elections held during April last year incorporate: “local by-elections and lower house by-election, Japan (April 2020); parliamentary elections in Kiribati*(14 April 2020); parliamentary elections (second round) in Mali (19 April 2020);



parliamentary elections in South Korea (15 April 2020); second round municipal elections in Geneva, Switzerland (4 April 2020) by postal voting only; democratic primary elections in Wisconsin, USA (7 April 2020); special congressional election, Maryland, USA (28 April 2020); primary elections* in Ohio, USA (28 April 2020)".

Instances of referendums and elections held during May last year include: "local elections in Benin (17 May 2020); Presidential elections in Burundi (20 May 2020); Biennial Election to the Maharashtra Legislative Councils by the members of Legislative Assembly (unopposed), India (21 May 2020); local government election, Cross River State, Nigeria (30 May 2020); general elections, Niue (30 May 2020); general elections in Suriname (25 May 2020)".

Instances of referendums and elections held during June last year include: "primary elections in 8 states and Washington D.C.*, USA (2 June 2020); Senate by-elections, Teplice, Czech Republic* (5-6 June and 13 June 2020); municipal recall vote, Taiwan (6 June 2020); National Assembly Elections, Saint Kitts and Nevis (6 June 2020), primary elections, Georgia, Nevada, North Dakota, South Carolina and West Virginia*, USA (9 June 2020); Rajya Sabha* (indirect), India (19 June 2020), Parliamentary, provincial and local elections*, Serbia (21 June 2020), Presidential elections, Kiribati (22 June 2020), Presidential election rerun, Malawi (23 June 2020), primary elections in 6 states, USA* (23 June 2020), Parliamentary elections, Mongolia (24 June 2020), Presidential elections, Iceland (27 June 2020), Styrian municipal elections, Austria* (28 June 2020), second round of local elections, France* (28 June 2020), Presidential elections, Poland* (28 June 2020), General elections, Anguilla, British overseas territory (29 July 2020)".

Instances of referendums and elections held during July last year include: "Constitutional nation-wide referendum, Russia* (1 July 2020); federal by-election, Eden-Monaro, New South Wales, Australia (4 July 2020); state assembly by-election, state of Pahang, Malaysia (4 July 2020); Parliamentary elections, Croatia (5 July 2020); gubernational elections, Tokyo, Japan (5 July 2020); Presidential and legislative elections elections, Dominican Republic* (5 July 2020); Municipal by-elections in Hassi El Ferid, Tunisia* (6 July 2020); Parliamentary elections, Singapore (10 July 2020); Second round Presidential elections, Poland* (12 July 2020) Regional elections in Euskadi/Basque and Galicia, Spain* (12 July 2020); Primary elections and runoffs in Texas, Alabama and Maine, USA* (14 July 2020); Parliamentary by-elections of Bogura-1 and Jashore-6 constituencies, Bangladesh* (14 July 2020); Parliamentary elections, North Macedonia* (15 July 2020), Parliamentary elections, Syria* (19 July 2020)".



Instances of referendums and elections held during August last year include: “Legislative Council election, Tasmania*, Australia (1 August 2020); Parliamentary elections, Sri Lanka* (5 August 2020), Nasarawa constituency by-election, Nigeria (8 August 2020), Primary elections, Puerto Rico* , territory of the USA (9 August 2020), Presidential election, Belarus (9 August 2020), General election, Trinidad and Tobago (10 August 2020), General elections, Autonomous Bougainville, Papua New Guinea* (12 August - 1 September 2020), Senate elections, first round, Egypt (11-12 August 2020), Special Interest Group Elections, Uganda* (11, 13, 17 August 2020), Primary elections, Florida and Wyoming*, USA (18 August 2020), State legislative elections, Northern Territory, Australia(22 August 2020), State of Perak, Malaysia (State Assembly by-election, 29 August 2020); Local snap elections for city council in Riga, Latvia* (29 August 2020), Parliamentary elections, Montenegro (30 August 2020) including local elections in Tivat*, National referendum, Liechtenstein (30 August 2020), Special elections for Yona Mayor, Guam*, territory of the United States, (30 August 2020).”

Instances of referendums and elections held during September last year include: “ Parliamentary elections, Jamaica (3 September 2020), local elections in Nucăreni and Tîrnova, Moldova* (6 September 2020), Senate elections, second round, Egypt (8-9 September 2020), Parliamentary elections, second round, Iran * (11 September 2020), Local elections, Russia, some local elections were held after being postponed in April and May 2020* (13 September 2020), Local elections, North-Rhine Westphalia, Germany (13 September 2020), Edo state election, Nigeria (19 September 2020), Regional elections and constitutional referendum, Italy* (20-21 September 2020), Referendum, Falkland Islands*, UK Overseas Territory (24 September 2020), State Assembly elections, Sabah, Malaysia (26 September 2020), Local election, Uruguay* (27 September 2020), Referendum, Switzerland* (27 September 2020), Local elections, Romania* (27 September 2020) State and local elections, Saxony and Brandenburg, Germany (27 September 2020), Local referendum, Malung-Sälen, Sweden* (27 September 2020), Senate election (indirect), France (27 September 2020), Rajasthan panchayat elections, India* (28 September 2020)”.

Instances of referendums and elections held during October last year include: “General elections, Bermuda, British Overseas Territory (1 October 2020), Regional and Senate elections, Czech Republic (2-3 October 2020), Local elections*, Slovakia (3 October 2020), Referendum, New Caledonia*, special collectivity of France (4 October 2020), Parliamentary elections, Kyrgyzstan (4 October 2020) General election, Guernsey*, self-governing British Crown Dependency (7 October 2020) Ondo state governorship elections, Nigeria (10 October 2020), Presidential elections, Tajikistan (11 October 2020), Parliamentary elections, Lithuania (11



October 2020), Turkish Cypriot leadership election, Northern Cyprus* (11 October 2020), General Election and Referendum New Zealand* (17 October 2020), Legislative elections, Australia Capital Territory, Australia (17 October 2020), Local elections in Coahuila, Mexico* (18 October 2020), Presidential election, Guinea (18 October 2020), General elections, Bolivia* (18 October 2020), Presidential elections, Seychelles (22-24 October), Local elections, Ukraine (25 October 2020) Municipal elections, Cape Verde (25 October 2020), Referendum, Chile* (25 October 2020), Saskatchewan provincial elections, Canada (26 October 2020), General elections, Tanzania (28 October 2020), Parliamentary elections, Georgia (31 October 2020), State elections Queensland, Australia (31 October 2020), Presidential election, Côte d'Ivoire (31 October 2020).”

Instances of referendums and elections held during November last year include: “Presidential election, Moldova (1 November 2020), Constitutional Referendum, Algeria (1 November 2020), General election, USA (3 November 2020), General election, Palau (3 November 2020), Gubernational, Puerto-Rico, a territory of the USA (4 November 2020), By-elections, Parliamentary elections, Egypt (24-25 October and 7-8 November 2020), The Gambia* (7 November 2020), Bihar legislative assembly elections, India (28 October, 3 and 7 November 2020), General elections, Myanmar (8 November 2020), Gubernational elections, American Samoa unincorporated territory of the USA (8 November 2020), Parliamentary elections, Jordan (10 November 2020), General elections, Belize (11 November 2020), By-elections, South Africa* (11 November 2020), Local elections, Bosnia and Herzegovina* (15 November 2020), Municipal elections, Brazil* (15 and 29 November 2020), Presidential election (second round), Moldova (15 November 2020), By-elections for Central Honiara and North East Guadalcanal Constituencies, Solomon Islands* (18 November 2020), General elections, Burkina Faso (22 November 2020), Regional Council and Local Authority elections, Namibia (25 November 2020), Municipal elections, Cordovan City, Río Cuarto, Argentina* (29 November 2020), Mayoral election in Podujeva, Kosovo* (29 November).”

Instances of referendums and elections held during December last year include: “Parliamentary elections, Kuwait (5 December 2020), Parliamentary elections, Romania (6 December 2020), Parliamentary elections, Venezuela (6 December 2020). By-elections in Bayelsa Central, Bayelsa West, Cross River North, Imo North, Lagos East and Plateau South senatorial districts, Nigeria* (5 December 2020), General election, Ghana (7 December 2020), Mid-term senatorial election and national referendum, Liberia* (8 December 2020), Regional elections, Indonesia* (9 December 2020), Local elections, Niger (13 December 2020), By-election, Kenya* (15 December 2020), Presidential and legislative election, Niger (27 December 2020),



Presidential and legislative election, Central African Republic (27 December 2020).”

Instances of referendums and elections held during January 2021 incorporate: “Georgia senate run-off elections, USA (5 January 2021), Presidential election, Kyrgyzstan (10 January 2021), Parliamentary election, Kazakhstan (10 January 2021), General elections, Uganda (14 January 2021), Local elections in Gram Panchayat, India* (15 January 2021), Presidential elections, Portugal (24 January 2021), House of Assembly elections, Tobago (25 January 2021)”

Instances of referendums and elections held during February 2021 incorporate: “Parliamentary elections, Lichtenstein (7 February), Presidential and Parliament elections, Ecuador (7 February 2020), Catalonia regional elections, Spain (14 February 2020), General elections, Turks and Caicos Islands, British Overseas Territory (19 February 2021), Laos (Parliament elections, 21 February 2021), Presidential elections, second round, Niger (21 February 2021), Parliamentary elections, El Salvador (28 February 2021).”

Instances of referendums and elections held during March 2021 incorporate: “Congress election, Micronesia (2 March 2021), Legislative elections, Côte d’Ivoire (6 March 2021), Palawan Plebiscite, the Philippines* (13 March 2021), State elections, Rheinland-Pfalz, Germany (14 March 2021), State elections, Baden-Württemberg, Germany(14 March 2021), Parliamentary elections, Curaçao, constituent country of the Netherlands (19 March 2021), House of Representatives elections, Netherlands (17-19 March 2021), Machakos Senate by election, Kenya (18 March 2021), Presidential elections, Republic of the Congo (21 March 2021), Parliament elections, Israel (23 March 2021)”

Instances of referendums and elections held during April 2021 incorporate: “Assembly elections in Assam, Kerala, Puducherry, Tamil Nadu, West Bengal, India (6 - 29 April 2021). Parliamentary elections, Bulgaria (4 April 2021), General elections, Samoa (9 April 2021) Local elections * and the constitutional referendum, Kyrgyzstan (11 April 2021), Presidential and Parliamentary elections, Peru (11 April 2021), Presidential elections, second round, Ecuador (11 April 2021), Parliamentary elections, Cape Verde (18 April 2021), Parliamentary elections, Albania (25 April 2021), Parliamentary by-elections, Japan (25 April 2021).”

Instances of referendums and elections held during May 2021 incorporate: Local, Mayoral* and Parliamentary elections, United Kingdom (6 May 2021), Election for the members of the Constitutional Convention, Chile* (15 and 16 May 2021), Sametinget, Sweden (16 May



2021), Parliament elections, Vietnam (23 May 2021), Presidential elections, Syria(26 May 2021), Parliamentary elections, Cyprus (30 May 2021), Parliamentary and local elections, Somaliland (31 May 2021)

Instances of referendums and elections held during June 2021 i incorporate: “Municipal Council elections, Latvia(5 June 2021), Legislative elections, Mexico (6 June 2021), Presidential runoff, Peru (6 June 2021), Saxon-Anhalt state elections, Germany (6 June 2021), Presidential election, Mongolia (9 June 2021), Parliament elections, Algeria (12 June 2021), Local elections, Finland* (14 June 2021)”

It must be pointed out that “[s]pecial health and safety measures were introduced for many of the above elections, except for Guyana, Kiribati, Niue, Slovakia, Tajikistan, Togo and Vanuatu. There were no reported COVID-19 cases in these countries according to WHO during the time of the election. All elections marked with an asterisk/star (*) were originally postponed”.

On future scheduled elections for June to September 2021

“Latvia (Municipal Councils, 5 June 2021); Mexico (legislative elections, 6 June 2021); Peru (President elections second round, 6 June 2021); Mongolia (Presidential elections, 9 June 2021); Algeria (Parliament elections, 12 June 2021); Iran (Presidential elections, City Councils and Village Councils, 18 June 2021); Armenia (Parliament elections, 20 June 2021); Ethiopia (Parliament elections, 21 June 2021) Gibraltar(Referendum, 24 June 2021); Morocco (Regional Councils and Municipal Councils, 23 June 2021), Aruba (Parliamentary elections, 25 June 2021), Bulgaria (Parliamentary elections, 11 July 2021); Moldova(Parliamentary elections, 11 July 2021); Slovenia (Referendum, 11 July 2021); Zambia (Presidential and Parliamentary elections, 12 August 2021); Australia (Northern Territory, Mayors, City Councils, Town Councils, Regional Councils and Shire Councils, 28 August 2021); Taiwan(Referendum, 28 August 2021); Norway (Parliamentary elections, 13 September 2021); Russia (Federal Subjects Legislatures, Municipal Heads, Municipal Councils, District Councils, Village Councils and Local Referendums, 19 September 2021); Iceland (Parliamentary elections, 25 September 2021); Germany (Federal election, 26 September 2021).”

10. Oral presentation at public hearing

As the BLF President I request to make an oral presentation on the subject matter during any public hearing scheduled for this purpose.



11.. Concluding remarks

The Commission “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”.

The Commission has further demonstrated that the necessary legal framework for properly conducting of elections is in place, and has been authorised by Parliament and agreed to by the President. Also, the supporting regulations to the legal framework have been drafted “and consultation with the NPLC have commenced which will culminate in the Commission issuing amended regulations”.

The Commission has also show that “the recruitment and training of electoral staff to administer the registration activities as well as election day activities in 23 151 voting stations” has been undertaken.

Likewise, the Commission has further confirmed that the Municipal Demarcation Board (MDB) has determined the political boundaries and it (Commission) has accordingly aligned “its election administrative boundaries to these new political boundaries for purposes of registering voters and administering elections”.

The Commission has demonstrated the measures that it will use to educate and prepare citizens to operate in a changed environment. To this end:

i. Its first message aims “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.”

ii. Its second message “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.”



It is encouraging that efforts are made to engage “National Treasury on additional funding for Covid-19 induced and unforeseeable expenditure”.

From the chief electoral officer’s submission it follows that the Commission has taken the necessary steps to ensure free and fair elections and that the process currently unfolding is on track for the timeous and free and fair delivery of the elections.

Coming back to Judge Moseneke’s mandate to consider whether Covid-19 would threaten the freeness and fairness of the election, the following are instructive:

- i. The expectations of a 3rd wave of Covid-19 and its impact on the running of the LGE is a suggested reason for the free and fair nature of the elections to be threatened.
- ii. However considering that the election is scheduled for 27 October (and the patterns of contraction and fatalities since the outbreak), there would be little chance that the 3rd wave will still be uncontrollable in the middle of Spring.
- iii. A further consideration is that the latest trends in local by-elections is the voter turnout of “between 30% and 40%” which is attributed to the effects of the pandemic on voter conduct. It is also true that “[t]hese voter turnout trends are however “normal” since 1995”; “[b]y-elections don’t solicit active voter involvement”; LGE “in general trail by almost 20% behind national and provincial elections’ voter turnout in South Africa”; and significantly, the “average voter turnout in 2016 was the highest ever, at 57%”.

There is accordingly no significant impact on voter turnout, that can be attributed to the pandemic.

Some political parties, like the Economic Freedom Fighters (EFF) are not ready for the LGE and are opportunistically using the pandemic as an excuse.

Since November 2020 the EFF has performed poorly in almost all of the 200 by-elections. It is now hopeful that securing a postponement might help them improve their chances of success. They want the LGE to be postponed to 2024 until the general elections..

Consider further that numerous municipal councils, if not most, require fresh mandates. In this regard many constitute coalition governments, which by necessity provides for voters to



change their preference when their term is over.

In terms of Section 159(2) of the Constitution, upon the term of a municipal council expiring, an election must be held within 90 days of that council's term ending. In line with section 24(2) of the Local Government: Municipal Structures Act, 1998 ("Structures Act"), when necessary, the Minister responsible for local government must following consultation with the Electoral Commission "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." To this end, "[s]ince 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".

It's indefensible to allow local governments a 8 years term until 2024.

The government should be loathe to allow a precedent to justify the postponement of elections on a regular basis.

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