



**SUBMISSION OF THE FREEDOM FRONT PLUS TO THE
INQUIRY INTO ENSURING FREE AND FAIR LOCAL
GOVERNMENT ELECTIONS DURING COVID-19**



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1. INTRODUCTION

On 7 June 2021, Judge Dikgang Moseneke as the Chairperson of the Inquiry, into ensuring free and fair Local Government Elections during COVID-19 invited political parties to make submissions.

The Freedom Front Plus, as the fifth largest party in Parliament and representation on all spheres of government and who will participate in the upcoming local government elections, hereby makes our submission in an endeavour to contribute to an outcome of this inquiry which will enhance the freedom and fairness of the upcoming elections.

2. DEFINITION OF FREE AND FAIR ELECTIONS

It is important to contextualize the term "free and fair elections".

The Civics Academy defines "free and fair elections" as follows:

"Elections are a central feature of democracy. For elections to express the will of the electorate, they must be 'free and fair'.

'Free' means that all those entitled to vote have the right to be registered and to vote and must be free to make their choice. In South Africa, every citizen over the age of 18 is entitled to vote. An election is considered 'free' when you can decide whether or not to vote and vote freely for the candidate or party of your choice without fear or intimidation. A 'free' election is also one where you are confident that who you vote for remains your secret.

'Fair' means that all registered political parties have an equal right to contest the elections, campaign for voter support and hold meetings and rallies. This gives them a fair chance to convince voters to vote for them. A fair election is also one in which all voters have an equal opportunity to register, where all



*votes are counted, and where the announced results reflect the actual vote totals."*¹

In its Declaration on the criteria for free and fair elections, the Inter-Parliamentary Council (IPU), of which the South African Parliament is a member, states:

"In any State, the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage.

Everyone has the right to join, or together with others to establish, a political party or organization for the purpose of competing in an election.

Everyone individually and together with others has the right:

- *To express political opinions without interference;*
- *To seek, receive and impart information and to make an informed choice;*
- *To move freely within the country in order to campaign for election;*
- *To campaign on an equal basis with other political parties, including the party forming the existing government.*

Every candidate for election and every political party shall have an equal opportunity of access to the media, particularly the mass communications media, in order to put forward their political views.

The above rights may only be subject to such restrictions of an exceptional nature which are in accordance with law and reasonably necessary in a democratic society in the interests of national security or public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others and provided they are consistent with States' obligations under international law. Permissible restrictions on candidature, the creation and activity of political parties and campaign rights shall not be applied so as to violate the principle of non-discrimination on grounds of race, colour, sex,

¹ What are free and fair elections? (Civics Academy. 2021.)

<https://www.civicsacademy.co.za/video/free-and-fair-elections/> Date of access: 15 Jun 2021.



language, religion, political or other opinion, national or social origin, property, birth or other status."²

3. LOCAL GOVERNMENT ELECTIONS DURING COVID-19

a. Free election

South African legislation such as the Constitution (1996) and other electoral laws ensure universal, equal and secret suffrage in the Local Government Elections.

The South African legislation is in line and complies in terms of the definition and requirements set by the Inter-Parliamentary Union (IPU), and as defined by the Civic Academy, an election is free when it is on the basis of universal, equal and secret suffrage.

Covid-19 has no effect on the universal, equal and secret suffrage rights in this legislation and will have no effect on whether the local government election will be free.

b. Fair election

In terms of the definition and criteria set by the Inter-parliamentary Union (IPU) and the Civics Academy, an election is fair when:

- i. all registered political parties have an equal right to contest the election

² Declaration on criteria for free and fair elections (Inter-Parliamentary Council. 1994. <file:///C:/Users/Iam/Documents/Documents/Declaration%20on%20Criteria%20for%20Free%20and%20Fair%20Elections%20-%20Inter-Parliamentary%20Union.html> Date of access: 16 Jun 2021.



- ii. all voters have an equal opportunity to register
- iii. to move freely within the country in order to campaign for voter support and hold meetings and rallies. This gives them a fair chance to convince voters to vote for them.
- iv. To campaign on an equal basis with other political parties, including the party forming the existing government.
- v. Every political party shall have an equal opportunity of access to the media, particularly the mass communications media, in order to put forward their political views.

What is of importance is that the IPU provides for restrictions on the above rights in terms of fair elections. Restrictions on the rights to ensure a fair election do not make an election unfair, but these restrictions must comply to set criteria. The criteria set by the IPU is:

- i. The above rights may only be subject to such restrictions of an exceptional nature which are in accordance with law and reasonably necessary in a democratic society in the interests of national security or public order, the protection of public health or morals or the protection of the rights and freedoms of others and provided they are consistent with States' obligations under international law.
- ii. Permissible restrictions on candidature, the creation and activity of political parties and campaign rights shall not be applied so as to violate the principle of non-discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status



c. Covid-19 restrictions and fair elections

On 30 January 2020, the Director-General of the World Health Organisation ("the WHO") declared the novel Coronavirus (COVID-19) outbreak a public health emergency of international concern.

Following this announcement, the Minister responsible for Cooperative Government and Traditional Affairs declared a National State of Disaster in terms of section 27 of the Disaster Management Act, 2002 (Act No. 57 of 2002) ("The Disaster Management Act"). Various sets of regulations were promulgated following the declaration of the national state of disaster, which imposed a national lockdown. These regulations have put some restrictions on ordinary citizens in terms of movement and normal daily activities.

These restrictions were of an exceptional nature which are in accordance with law and reasonably necessary in a democratic society in the interests of the protection of public health. The restrictions apply to all people in South Africa and do not discriminate on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Covid-19 restrictions are in compliance with the criteria set for restrictions on the rights of fair elections.



d. Current Covid-19 conditions on free and fair local government elections during October 2021

In their submission to the Moseneke inquiry into free and fair elections, the Chief Electoral Officer of the IEC has stated in the conclusion of the submission:

"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."³

The IEC has indicated its preparedness to conduct the local government elections as planned, upholding democratic election principles and complying with restrictions imposed by Covid-19 regulations at the moment.

Regulations and health protocols mitigating the spread of COVID-19 will likely place necessary restrictions on the ordinary activities permissible during campaigning. As long as any restrictions on campaigning are applied universally to all competing political parties and are reasonable, free and fair local government elections can still take place.

4. Potential impact of Covid-19 measures on political activity and campaigning in the lead-up to the local government elections

The biggest challenge for political parties will be campaigning within the restrictions of Covid-19 restrictions.

³ SUBMISSION BY THE CHIEF ELECTORAL OFFICER TO THE MOSENEKE INQUIRY INTO ENSURING FREE AND FAIR LOCAL GOVERNMENT ELECTIONS DURING THE COVID-19 PANDEMIC -2021



Political campaigning consists of mainly two categories. The one is in-person and the other virtual and online.

In-person campaigning includes activities such as public meetings and rallies, door-to-door campaigning, public events, distribution of pamphlets, etc.

Virtual and online campaigning includes television, print and social media campaigning in platforms like Facebook, Twitter, and various message groups like WhatsApp, Telegram, Signal etc. In addition, virtual meetings take place by means of Zoom, Teams etc.

Virtual and online communication makes information more accessible to inform the electorate about political parties' manifestos and policies.

The Covid-19 restrictions will impact in-person campaigning, but such campaigning can still take place although at a lower scale.

These restrictions on campaigning will not make the election unfair.

5. Potential impact of Covid-19 measures on proper and effective monitoring by political party agents and monitoring bodies on the local government elections

South African electoral legislation provides for monitoring bodies to monitor elections to ensure free and fair elections. These monitoring bodies includes local and international monitoring bodies.

The experience is that international monitoring bodies attend more to national elections than to local government elections.



The Covid-19 restrictions will have an impact on international monitoring bodies due to international travel. Local monitoring bodies should be encouraged to be more involved and avail more observers in the local government elections.

The number of party agents present at voting stations are limited in terms of legislation. Depending on the number of participating parties and independent candidates, the Covid-19 restrictions may impact the number of party agents present at the same time in a voting station.

It is however important that each political party is afforded at least one party agent at every polling station and for the duration of special votes (including home visits), the voting process and the counting process.

6. Participation in by-elections

The Electoral Commission (IEC) has conducted four by-elections for 175 municipal wards since the announcement of the National State of Disaster in March 2020. In all instances, the IEC ensured that the necessary health protocols were observed, and caution was exercised in protecting IEC staff and voters.

The Freedom Front Plus participated in these by-elections in various wards. The IEC has taken necessary measures to ensure that the health protocols to curb the virus are upheld during the elections. These protocols were also upheld during home visits for those voters who are physically disabled or qualified for a special vote.



The experience of the Freedom Front Plus was that it was possible to comply with the Covid-19 restrictions and have free and fair by-elections.

7. Recommendations

The Freedom Front Plus wishes to make the following recommendations to deal with Covid-19 restrictions and enhance participation in the local government elections whilst ensuring the safety of all role players in the election.

- i. Voter registration weekends should not be limited to one (17 & 18 July) opportunity but should include a second weekend.
- ii. The criteria to qualify for a special vote should be amended to include all voters sixty years and older and people with comorbidities.
- iii. The number of days for casting special votes should be increased to five days before the election date.
- iv. Voting hours on election day should be extended with two hours from 07h00 to 21h00.

8. Conclusion

The Freedom Front Plus believes that the criteria set for free and fair elections in terms of international standards can be maintained within the Covid-19 restrictions.



We support the continuation of the preparations by the Electoral Commission and political parties to ensure local government elections take place on 27 October 2021.