

ECONOMIC FREEDOM FIGHTERS SUBMISSION TO Justice Moseneke Inquiry on Free and Fair Local Government Elections during COVID: 02 July 2021

A. Introduction

1. Section 19 of the Constitution says, “**every citizen is free to make political choices, which includes the right— (a) to form a political party; (b) to participate in the activities of, or recruit members for, a political party; and (c) to campaign for a political party or cause**”.
2. To enable this important Constitutional Clause, Section 190(1) of the Constitution obliges the Independent Electoral Commission as an institution designated to strengthen constitutional democracy to do the following:
 - a. Manage elections of national, provincial, and municipal legislative bodies in accordance with national legislation.
 - b. Ensure that those elections are free and fair.**
3. We are here to make a submission that if the Local Government Elections scheduled for the 27th of October 2021 proceed under the current conditions, they will NOT BE FAIR, WILL NOT BE FREE AND WILL NOT BE HEALTHY.
4. **Proceeding with elections in October 2021 will violate section 190(1) of the CONSTITUTION, which stipulates that the INDEPENDENT ELECTORAL COMMISSION must “ENSURE THAT THOSE ELECTIONS ARE FREE AND FAIR”.**
5. **WE AS LEADERS OF POLITICAL PARTIES, OUR MEMBERS AND BRANCHES ALWAYS LIVE UNDER THE THREAT OF BEING ARRESTED FOR VIOLATING THE DISASTER MANAGEMENT ACT.**
6. **If the SAPS proceed with arresting EFF leaders for violating the Disaster Management Act, it means the entire leadership and membership of the EFF will be arrested because if elections proceed, we will have no choice but to call political gatherings.**
7. OUR SUBMISSION DEALS WITH THE FOLLOWING:
 - a. ELECTIONS IN 2021 WILL NOT BE FREE AND FAIR.
 - b. ELECTIONS IN 2021 WILL NOT PROTECT THE LIVES OF OUR PEOPLE.
 - c. POTSPONEMENT OF THE ELECTIONS.
8. We make this submission because we know that ELECTIONS are not just what happens on voting day but involves many physical activities and preparations which begin more than 12 months before the actual Voting day.

B. BACKGROUND

9. South Africa has a voting population of 39 million people (people above the age of 18) and only 25 million are on the voters roll.
10. In the 2019 General Elections, about 18 million people turned out to vote making this to be 45,7% of the total voting population and 65,9% of those registered to vote.
11. In the 2016 local government elections about 15 million people voted, making this to be 41% of the total voting population and 58% of those registered to vote.
12. In terms of the 2021 Local Government Elections, the Municipal Demarcation Board and IEC have demarcated 4468 Wards and 23 151 Voting Districts.
- 13. Any political party that seeks and intends to have an impact on any elections, must build an elections machinery capable enough to speak to all the 39 million potential voters, encouraging them to register and to vote.**
- 14. VOTER REGISTRATION IS IMPORTANT and in terms of the current schedule of elections, Voter Registration weekend is scheduled for the 17th to 18th July 2021 and the heavy lockdown regulations are until the 14th of July 2021.**
- 15. Political parties are constrained from running mass campaigns and mobilisation in all areas to encourage so many people, particularly the youth to go and register to vote, and with so many people excluded from voting, elections will not be free and fair.**
16. For effective elections purposes, the EFF establishes elections teams at VD level. This means that at VOTING DISTRICT LEVEL, there must be Volunteers of not less than 40 Ground Forces, who must meet every day and conduct physical campaigns in their Wards.
17. The Voting District Elections Task Force is made up of community activists who are required to:
 - a. Know each and every family in their street, voting district and ward.
 - b. Partake in community struggles and activities. This means that these activists will always be the first whenever there is a funeral or party or wedding in their community
 - c. Participate in the street, voting district and ward forums, civil society, committees and burial societies.
 - d. Always willing to listen to the concerns of the people and find solutions to help the people and should be available 24 hours.
 - e. Always available for genuine protests and mass actions in their street, voting district and ward as leaders and not hijack community struggles.
 - f. Always know the exact details of their community, including the number of people in their wards and the challenges the majority of the people are confronted with, starting with their street, voting district and ward.

- g. These activists are further required to engage in consistent person to person liaison with all voters in their voting districts, host community meetings, and conduct voter education campaigns for the communities in which they live. They must help communities to register to vote, and ensure that those without ID documents are assisted to go to Home Affairs and get those ID documents.
- 18. These community activists are required to regularly report to their regional leaders, who must regularly report to their provincial leaders, and these provincial leaders must also report to national leadership.
- 19. This process requires constant and consistent meetings of people. Further, the EFF hosts mass rallies, in order to communicate its election message to a wider group of people. All these require close human contact, and without these activities, the EFF will not be able to reach out to potential voters.
- 20. Rallies and community meetings constitute the core of our election programmes. Without the right to hold rallies and community meetings since last year, elections will not be free and fair.**
- 21. In the 2019 General Elections for instance, EFF President addressed a minimum of 5 community meetings per day attended by hundreds of people in spaces that will not be easy to achieve social distancing.**
- 22. Leaders inevitably have to speak to potential voters in larger crowds because speaking to them one by one will not have the same impact.**
- 23. Rallies and Community meetings are therefore essential and important and cannot be regulated in terms of the number of people who must attend because the larger the people in attendance, the better the chances of winning support from a larger number of potential voters.

C. ELECTIONS IN 2021 WILL NOT BE FREE AND FAIR.

- 24. The existing lockdown regulations forbid political gatherings, and this means that our branches will not be able to meet to select candidates and will not be able to introduce our candidates to the communities where they reside. This is not fair and violates section 190(1) of the Constitution.**
- 25. We know from internal research of our members that it is impossible to convene meetings via virtual platforms because majority of our members and supporters do not have the means such as smart phones and data. This is not fair and not free and a violation of the Constitution.**

26. Our leaders will not be able to interact with the people in community meetings and rallies, which constitute the core of our election programme.
27. The suggestion that we should rely on virtual technology is totally irrational and disadvantages us whose primary electorate is the poorest of the poor who cannot afford data and gadgets to communicate and be persuaded.
- 28. The ruling parties are given an unfair advantage because even the current ICASA broadcast regulations give more space to the already dominant political parties.**
- 29. Additional to the space given by ICASA, the ruling parties use government platforms to sing praises on their achievements and mislead our people into believing that they are the only alternative.**
30. Proceeding with elections when we are not allowed to meet and talk to our people is a violation of the Constitution.

D. ELECTIONS IN 2021 WILL NOT PROTECT THE LIVES OF OUR PEOPLE.

31. South Africa has seen close to 2 million infections and 59 000 deaths due to COVID-19, and government's response has been less than satisfactory.
32. More Lives will be lost, and this is how: South Africa is currently in the third wave of the pandemic which the President of the Republic said is highly infectious.
33. Less than 5 million people have been vaccinated and this means that the necessary herd immunity will not be achieved anytime soon.
- 34. There is already a prediction that the fourth wave will commence in October 2021.**
- 35. We know the limitations of government and its slow pace in vaccination, but we believe that if given until the end of 2021, there will be a sizeable number of vaccinations and therefore space to open political gatherings and work.**
- 36. If lockdowns and restrictions are scientific measures to contain the rapid spread of the virus, it will not be possible to have elections and still control the rapid spread of the virus.**
- 37. SECTION 11 OF THE CONSTITUTION SAYS, "EVERYONE HAS THE RIGHT TO LIFE". In State vs Makwanyana (death penalty case), Chief Justice Chaskalson said, "the most important of all human rights, and value that informs the interpretation of many, possibly all, other rights". ALL RIGHTS IN THE CONSTITUTION ARE subject to THE RIGHT TO LIFE.**

38. PROCEEDING WITH ELECTIONS UNDER THE CURRENT CIRCUMSTANCES WILL COMPROMISE THE RIGHT TO LIFE AND NO AMOUNT OF POLITICAL OPPORTUNISM AND EXPEDIENCY MUST COMPROMISE THIS RIGHT.

39. LET US NOT SUBJECT OUR PEOPLE TO DEATH BECAUSE WE WANT TO OCCUPY POSITIONS OF POWER IMMEDIATELY.

E. POTSPONEMENT OF THE ELECTIONS.

40. With the 1st LOCKDOWN in 2020, the EFF foresaw that there will not be a possibility of holding free, fair and healthy elections in 2021.

41. Our Central Command Team which the highest decision-making body adopted a resolution on the 12th of July 2020 to propose two things; the postponement of the 2021 Local Government Elections and merging of Local and National Elections into one which must be held every 5 years.

42. We publicly communicated our position and held bi-lateral engagements with the following political parties on these dates:

#	POLITICAL PARTY	DATE
1.	UNITED DEMOCRATIC MOVEMENT	19 JANUARY 2021
2.	AFRICAN TRANSFORMATION MOVEMENT	22 JANUARY 2021
3.	DEMOCRATIC ALLIANCE	17 FEBRUARY 2021
4.	INKATHA FREEDOM PARTY	23 FEBRUARY 2021
5.	NATIONAL FREEDOM PARTY	23 FEBRUARY 2021
6.	PAN AFRICANIST CONGRESS OF AZANIA	23 FEBRUARY 2021
7.	AL-JAMA-AH	23 FEBRUARY 2021
8.	AFRICAN NATIONAL CONGRESS	2 MARCH 2021

43. **In Parliament**, we consulted the Legal office to introduce a constitutional amendment bill to effect the necessary changes, and upon further consultation, we came to the conclusion that elections can be postponed without changing the constitution.

44. Those who argue that postponing elections will violate section 159 (1) which speaks of a term of 5 years are ignorant of the fact that proceeding with elections under the current circumstances will violate section 190(1) which prescribes that ELECTIONS MUST BE FREE and FAIR.

45. We have accepted that it is possible to postpone elections without changing the constitution because Section 21 of the Electoral Act deals with General postponement of elections. According to this section: **“The Commission may request the person who called an election to postpone the voting day for that election, provided the Commission is satisfied that - (a) the postponement is necessary for ensuring a free and fair election.”**

46. Section 8(1) of the Local Government Municipal Electoral Act, 2000. **“The Commission may request the Minister or, in the case of a by-election, the MEC, to postpone the voting day determined for an election if the Commission is satisfied that it is not reasonably possible to conduct a free and fair election on that day.”**
47. To substantiate the above the IEC used the aforementioned section to postpone 19 by-elections which were scheduled to take place in March/April and rescheduled them for November due to the COVID-19 restrictions. The postponement was approximately 244 days long, a number beyond the prescribed 90 days.
48. It is our strong conviction that there is no need to change the constitution because there is adequate legal and legislative basis to postpone the elections.

WAY FORWARD

49. The 2021 Local Government Elections must be postponed to April 2022, and the terms of the current Municipality Councils extended until then.
- 50. This IEC must approach the Constitutional Court on the basis of rationality to illustrate that it will not be possible to hold free and fair elections under the current conditions.**
- 51. If needs be, the relevant legislation and constitutional amendments must be effected because IT IS PRACTICALLY IMPOSSIBLE TO HOLD FREE AND FAIR ELECTIONS IN 2021 under LOCKDOWNS AND RESTRICTIONS AND THREATS OF ARRESTING POLITICAL LEADERS FOR VIOLATING THE DISASTER MANAGEMENT ACT.**