

## *Voting Rights Organisation of South Africa*

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Dear Justice Dikgang Moseneke

### **SUBMISSION ON WHETHER THE UPCOMING LOCAL GOVERNMENT ELECTIONS IN SOUTH AFRICA SCHEDULED FOR 27 OCTOBER 2021 SHOULD BE POSPONED DUE TO COVID-19 CONCERNS**

#### **1. INTRODUCTION**

When voters go to the polls their wish is that at the end of the process, most participants and observers alike should be able to agree or at least have some comfort that the elections were free and fair. This they do knowing very well that there is no such a thing as a perfect election. It is rare for all people to agree that everything in an election has gone well, especially in Africa. Sometimes, those who lost an election are quick to incite their followers by complaining about all kinds of issues. It is thrilling and encouraging that South Africa has held so many successful elections since 1994. However, there was no threat of Covid-19 in all these elections and the question confronting all of us today is whether it will be conducive to proceed with the planned local government elections in October 2021. Below is an analysis of what we consider to be free and fair elections followed by a conclusion of what our organisation considers to be the best route to take in the circumstances.

## **2. REQUIREMENTS OF A FREE AND FAIR ELECTION**

For an election to be considered free and fair and for results to be trusted, an election must minimally satisfy the following requirements:

### **2.1. Transparency**

Each step of the election process should be easily understood and open to scrutiny by all stakeholders (voters, political parties, observers and others). All results should be independently verifiable and auditable.

In our view the existence of Covid-19 will not affect the transparency of the election process in any way whatsoever. Observers assist in this regard and political parties and independent candidates are allowed to have people who represent them throughout the election process.

### **2.2. Privacy**

The choices that each voter makes should remain private both during and after the election.

The manner of voting which involves doing so in secret and being alone inside a voting booth will not change because of Covid-19. The secrecy of the vote will still be maintained.

### **2.3. Integrity**

Only eligible voters should be allowed to vote, and those votes must be protected from any alteration or exclusion.

The Independent Electoral Commission of South Africa (the IEC) uses the common voters roll to verify if a voter is properly registered in the relevant ward. Covid-19 has no bearing on this.

## **2.4. Affordability**

The election process must be affordable to governments, political parties and its citizens in order to maintain sovereignty.

In this context, government refers to the IEC and it is our understanding that the IEC has indicated that it is ready to conduct these elections. Citizens normally vote closer to their homes and generally incur minimal costs. Political parties require funds to campaign especially in the traditional way in the form of door-to-door and mass rallies. It has always been a challenge to raise sufficient funds for an election and surely this affordability issue will not have been caused by Covid-19.

## **2.5. Accessibility**

All eligible voters, regardless of location, group membership or disability, should have reasonable and equal opportunity to cast their ballot.

Indeed, in South Africa, efforts are made to have all voters cast their ballots such as the special votes. Covid-19 will not change this arrangement.

## **2.6. Campaigning freely**

Candidates must be allowed to campaign freely with no hindrance whatsoever. There must be no intimidation by others or no-go areas.

This appears to be the main issue why some political parties and people feel that there would be no free campaigning due to restrictions imposed as a result of Covid-19. This is true only with regard to traditional ways of campaigning which involve door-to-door and holding mass meetings and rallies. Other forms of campaigning that could be considered include:

- telephoning people.
- distributing leaflets and pamphlets.
- contacting local organisations.

- paying for press advertisements.
- providing a profile of one's background to the local paper.
- building a social media presence.
- giving interviews to local radio stations.
- preparing articles for local newspapers.
- using billboards, etc.

South Africans must understand that Covid-19 can be categorised as an act of God and all candidates are generally affected the same way. No candidate has an advantage over another because of the existence of Covid-19. New creative ways have to be found to deal with this challenge in order to reach the voters.

### **3. WEIGHTING THE PROS AND CONS OF POSTPONING THE 2021 LOCAL GOVERNMENT ELECTION**

Below is an analysis of the pros and the cons regarding the postponement of the elections.

#### **3.1. Reasons as to why the elections should not be postponed**

These elections should not be postponed due to the reasons indicated below:

##### ***3.1.1. Holding regular elections is a non-negotiable value of the Constitution***

Section 1 of the Constitution of the Republic of South Africa, 1996 (hereinafter the Constitution) indicates 'regular elections' as one of the founding values. In addition, section 19(2) further provides that every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution. Total compliance with these two sections is critical and key to ensuring that South Africa continues to be the kind of constitutional democracy that she is. These political rights are among the few in the Bill of

Rights that should not be limited in terms of section 36 of the Constitution willy-nilly.

The right to vote is very important and should not be taken away by anyone. Only a referendum can determine whether South Africans are for the postponement of the elections or not. Since there is no time and money to conduct such a referendum, the best route is to proceed with the elections.

Meanwhile, an attempt to amend or initiate legislation to effect a postponement will be a waste of resources. It is thus unnecessary and must be avoided at all costs. Participation in the elections is not mandatory for anyone, including political parties. Individuals and political parties who believe that it is unsafe to participate in the elections have a right to abstain, if they so wish. What is wrong is attempting to take a voter's right to make political choices at regular elections provided for in the Constitution. In 1994, some political parties, for instance, chose not to participate in the elections for whatever reason. It is not different today as those who do not want to trust the IEC about its readiness, are not obliged to participate. From the last election in 2019, an estimated 18 million voters did not participate, but we had an election that put the current elected and legitimate government in place.

### ***3.1.2. The readiness of the Independent Electoral Commission of South Africa (IEC)***

One of our proud chapter 9 institutions, the IEC, has proudly told South Africans that it is ready to conduct these elections despite the pandemic. It has outlined how it will deal with issues of safety and it is strange that some South Africans have expressed doubt on these. The IEC has never disappointed over the years and there is no reason to doubt its sincerity in this regard. It has conducted several by-elections during the pandemic and in its own words it has "gained experience that will come in handy during the

October local government elections”.

This means that the IEC has amassed the necessary resources to deal with Covid-19 challenges and will thus be able to provide sanitisers, ensure social distance, book venues and making sure that this election does not become a super spreader.

### ***3.1.3. The importance of local government***

There are numerous service delivery problems in most of the municipalities across the country. Some of these municipalities are under administration and others are just dysfunctional. The citizens have a right to exercise their vote to be able to decide who their new councillors should be. Depriving them of such an opportunity could exacerbate violent protests when services do not improve after October 2021.

An open and democratic society like South Africa that is based on human dignity, equality and freedom should shun an idea of extending the tenure of the current councillors and worse, allow our communities to be governed by unelected and illegitimate councillors after 27 October 2021. Local government is, arguably, the most important sphere of government as it is closest to the people. The many challenges that face communities are at this level where socio-economic rights are crucial. Postponing the elections will continue to hurt the most vulnerable in our society. An election gives hope to voters that perhaps change will come. Not allowing the elections to go ahead as planned and hiding behind Covid-19, amounts to condemning the poor and the vulnerable to permanent poverty and suffering.

### ***3.1.4. Successful Elections were held in other countries***

Covid-19 affected every community in the globe. However, there have been several countries in the world that held their elections during the pandemic.

Such countries include the United States, Togo, Malawi, Burundi, Ethiopia, Tanzania, etc. South Africa can learn from what these countries did and how they did it to be able to hold those elections. Based on this, South Africa can tailor-make the strategies employed elsewhere to suit our situation. Some of the countries that held the elections have far lesser resources compared to South Africa, but they managed to hold the elections. Thus, Covid-19 cannot be used as an excuse not to hold the elections.

#### **3.1.5. *The End of the Pandemic is unknown***

As citizens we must accept that the pandemic is an act of God. Currently, no one knows when it will end or become worse. Even the scientists have repeatedly advised that they are studying the patterns of the virus and are not sure of what will happen next. Postponing the elections by six (6) months or whatever period is no guarantee that things will be better in the next little while. Though the vaccination drive is slow and faced with all kinds of challenges, South Africans must be encouraged that something is being done about the pandemic that has affected the whole globe.

It is fascinating to note that despite Covid-19, people still go to work and do shopping. Learners attend school and life has not stopped. It would, therefore, be democratically incorrect to expect elections to be postponed. The solution to the pandemic is not to postpone the elections – it is to work together to find a way to navigate through this ‘new normal’. LIFE MUST CARRY ON.

#### **3.1.6. *Future waves could be more catastrophic***

If and when new Covid-19 waves come, infections could rise, and more deaths could occur if people do not adhere to the protocols. Relying on future waves that may possibly be accommodative to justify a postponement is unrealistic and tantamount to facing reality being blindfolded. The fact of the matter is: no one knows for sure how the pandemic will play itself out.

### ***3.1.7. Vaccination of majority of the population will take time***


Postponing the elections to enable more vaccination to happen may sound a good proposition. However, there is no guarantee that this will happen fast enough. Less than two million people in a population of more than fifty-five million have been vaccinated in a period of six months. At the current rate of vaccination, it would take more than ten years to give the country the “herd immunity” that some people feel we need to get before we can have elections. It would, therefore, be taking a gamble to postpone the elections based on something that cannot be guaranteed.

## **4. CONCLUSION AND RECOMMENDATION**

Our view as the Voting Rights Organisation of South Africa (VORIOSA) is that the upcoming local elections should not be postponed. They must go ahead as planned unless if there were to be a serious catastrophic and uncontrollable situation in September 2021, a month before the election. If that were to happen, the IEC and all relevant stakeholders could then at that time consider postponing the elections. This cannot be a decision taken at this stage. Postponing the elections now will be baseless and not supported by any real tested and scientific knowledge or data showing what will be happening in October 2021. We hold the view that it would be an unwise, unfair and unconstitutional decision to postpone these elections. The organiser of the elections, the IEC, is ready and willing to conduct the elections.

Based on the above, our organisation wishes to implore the Committee to take a position that the local government elections 2021 should proceed as planned.

Submitted by:



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