



HELENSUZMAN
FOUNDATION

SUBMISSION TO THE INQUIRY INTO ENSURING FREE AND FAIR LOCAL GOVERNMENT ELECTIONS DURING COVID-19

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ARE THE CURRENT CONDITIONS UNDER THE COVID-19 PANDEMIC CONDUCTIVE TO THE HOLDING OF FREE AND FAIR LOCAL GOVERNMENT ELECTIONS DURING OCTOBER 2021?

- There is no internationally accepted definition of the term 'free and fair election'. It must always be assessed in context.
- The question is whether the overall impact of the COVID-19 pandemic would affect political activity and campaigning, voter participation and the administrative aspects of the elections to the degree that the elections could not be viewed as being free and fair.
- If the holding of elections is not seen as carrying greater risk to voters than the risks that confront them in their daily activities, the freeness and fairness of elections would not be in doubt.



WHAT RISKS ARE POSED TO THE LIVES AND HEALTH OF PEOPLE IN SOUTH AFRICA IF THE LOCAL GOVERNMENT ELECTIONS WERE TO PROCEED IN OCTOBER 2021?

- There are many unknowns surrounding the virus and the risks posed by it, but it seems clear that it is impossible to exclude the risk of infection, in an absolute manner, where people are in relatively close contact.
- However, the weather conditions in October will most likely make it possible to have most election activities out of doors, which is commonly accepted to minimise any infection risk. This applies especially to queuing.
- The COVID-19 pandemic will be with us for some time to come, and since it is impossible to predict the timing and severity of subsequent waves of infection, a postponement of the elections for a specific period does not provide a solution.



WHAT ADDITIONAL MEASURES CAN BE PUT IN PLACE TO REDUCE THE RISK POSED IF THE LOCAL GOVERNMENT ELECTIONS WERE TO PROCEED IN OCTOBER 2021?

- The HSF submits that the IEC's comprehensive risk assessment and proposal for mitigation measures as set out in the IEC document "PSM19" would be adequate to deal with the risks of contagion.



THE CONSTRAINTS THAT THE PREVENTATIVE MEASURES HAVE IMPOSED OR WILL LIKELY IMPOSE ON POLITICAL ACTIVITY AND CAMPAIGNING IN THE LEAD-UP TO THE ELECTIONS

- Elections are a key aspect to any democratic society and the ability to campaign and partake in political activities are therefore fundamental elements to any democracy.
- The Constitutional Court has recognised the importance of the right to campaign for a political party or cause by finding that it was part and parcel of the term “free and fair election” and further that “it demands the freedom to canvass; to advertise; and to engage in the activities normal for a person seeking election.”
- Traditionally, political parties and candidates campaign in person. However, the COVID-19 restrictions will require a different approach and will require greater use of the following: virtual webinars, live streaming, emails, social media, SMSs. For those without access to online messages or viewing, the existing television or community radio services could be employed in a useful manner. In addition, the regulations do not prohibit in-person campaigning in its entirety. Walkthroughs, the use of vehicles, and door-to-door canvassing, whilst adhering to all health and safety protocols, are still possible.
- The consequences on campaigning, as a result of the COVID-19 restrictions imposed, will not materially negate the freeness and fairness of the local government elections in October 2021.



THE CONSTRAINTS THAT THE PREVENTATIVE MEASURES ARE LIKELY TO IMPOSE ON THE PROPER AND EFFECTIVE MONITORING OF THE FREENESS AND FAIRNESS OF THE ELECTIONS

- The IEC has acknowledged the need to 'facilitate the right of citizens to elect their public representative in a manner that does not increase the spread of COVID-19'.
- The containment measures announced by the IEC will present no material risk to the freeness and fairness of the elections.



WHAT LESSONS CAN BE DRAWN FROM THE EXPERIENCE OF THE BY-ELECTIONS WHICH THE ELECTORAL COMMISSION HAS CONDUCTED DURING THE PERIOD OF THE COVID-19 PANDEMIC?

- Similar turnouts in the 2019 and 2020 by-elections indicate that the presence of the epidemic did not reduce voter turnout in 2020.
- However, the turnout in May 2021 was 10% lower than six months earlier. Since both the 2020 and 2021 by-elections were held in lulls between waves of the epidemic, there are no grounds for believing that a varying intensity of the epidemic may have caused the weaker May turnout. It may just have been a lack of interest in electing representatives who would only serve for six months.
- We are not aware of COVID-19 and the measures taken to counter it, having any material influence on the holding of recent by-elections. We also wish to caution against regarding the poor May 2021 by-election turnout as an indication of what might happen in elections that take place later in 2021.



THE STATE OF MUNICIPAL GOVERNMENT AND THE IMPORTANCE OF LOCAL ELECTIONS

It is vital to realise that local government elections play a crucial role in improving the dire state of local government operations.

The state of municipal government has been highlighted in recent press reports on the breakdown in water, road maintenance and electricity provision in many municipal areas.

The extremely serious nature of the problem is also shown by the Auditor-General in her report to parliamentary committees exactly a week ago. In her presentation, she stated that:

- There is significant doubt that 27% of local government entities are able to continue as a going concern; and
- 46% of recoverable revenue is spent on salaries and council remuneration but only 2% of expenditure goes towards maintenance.

Any postponement of the elections may therefore lead to a further deterioration.



CONCLUSION

In light of the measures put in place by the IEC, the HSF does not have any material concerns as to the freeness and fairness of the forthcoming local government elections.

A postponement is therefore not necessary from the perspective of free and fair elections. In addition, any postponement will negatively affect the state of municipal administration.

However, in a potentially catastrophic COVID-19 situation, a postponement should not be ruled out. This would be the case given the current level 4 measures, in particular the ban on gatherings, coupled with an increasing public perception of the danger of infection. The remedy for the IEC would be to retain the right to postpone elections at short notice - this right could only be exercised as an extreme measure and would have to be done as an unavoidable decision in a last-minute emergency.

It is the HSF's submission that a postponement, in the current circumstances, would be appropriate, if the election were to be held in the next few weeks. It cannot be predicted now as to what the position will be on the scheduled date of the elections. However, if the current wave has passed and the situation is as it was a few weeks ago, we would not be in support of a postponement.