

EISA
ELECTION OBSERVER MISSION REPORT

SOUTH AFRICA



LOCAL GOVERNMENT ELECTIONS
3 AUGUST 2016



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EISA strives for excellence in the promotion of credible elections, participatory democracy, human rights culture, and the strengthening of governance institutions for the consolidation of democracy in Africa.

EISA Observer Mission Report, No. 52

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ACRONYMS AND ABBREVIATIONS

ACDP	African Christian Democratic Party
ANC	African National Congress
BEE	Black Economic Empowerment
COPE	Congress of the People
CSO	Civil Society Organisation
DA	Democratic Alliance
EC	Electoral Court
EFF	Economic Freedom Fighters
EISA	Electoral Institute for Sustainable Democracy in Africa
IEC	Independent Electoral Commission of South Africa
IFP	Inkatha Freedom Party
IMC	Inter Ministerial Committee
JOC	Joint Operations Command
MCGTA	Ministry of Cooperative Governance and Traditional Affairs
MDB	Municipal Demarcation Board
MEC	Member of Executive Council (MEC) for provincial governments
MEO	Municipal Electoral Office
NFP	National Freedom Party
ONCS	Online Nomination of Candidates System
PAC	Pan Africanist Congress of South Africa
PEO	Provincial Electoral Office
PLC	Party Liaison Committees
ROC	Results Operation Centre
SABC	South African Broadcasting Corporation
UBT	Universal Ballot Template
UDM	United Democratic Movement

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The deployment of the EISA Election Observation Mission (EOM) to the 2016 municipal elections in South Africa would not have materialised without the support of a number of people and institutions. EISA expresses its profound gratitude to all those who directly or indirectly contributed to the success of the Mission.

EISA is thankful to the Independent Electoral Commission (IEC) of South Africa for the invitation extended to the Electoral Institute to observe these elections. We are grateful to the IEC for its readiness to accredit EISA observers and brief them at national and provincial levels. We also appreciate the contribution to the success of the EISA EOM by provincial stakeholders, including political parties, civil society organisations (CSOs), and the media, who made themselves available to share their experiences with EISA observer teams in the selected provinces. Additionally, we extend our appreciation to citizen observer missions with whom we interacted, shared information and learnt from. The EISA Election Observation Mission is also grateful to the people of South Africa for their willingness to share their experiences.

EISA is grateful to Mr Denis Kadima, EISA Executive Director, who led the Observation Mission, for his leadership. EISA acknowledges the contribution of the EISA EOM members to the success of this initiative. Thanks to the EISA experts on the core team of the EOM and the Elections and Political Processes (EPP) team at the EISA head office for co-ordinating the Mission. Thanks to Belinda Moses for coordinating relations of the EISA EOM with the media. Thanks to Ms Belinda Musanhu for compiling this report.

EISA is grateful to the United States Department of State, without whose generous financial support the Mission would not have been possible. We are particularly thankful to the National Democratic Institute for International Affairs (NDI) for speedily making these funds available to us on behalf of the Department of State.

EXECUTIVE SUMMARY

The Electoral Institute for Sustainable Democracy in Africa (EISA) deployed a regional Election Observation Mission (EOM) to the 3 August 2016 Local Government Elections in South Africa following an invitation by the Independent Electoral Commission (IEC) of South Africa. Led by Mr Denis Kadima, the EISA Executive Director, the Mission comprised 14 short-term observers (STOs) drawn from civil society organisations (CSOs) from the African continent.

The Mission was deployed within the context of EISA's long-term efforts to support democratic consolidation in South Africa, which began with the creation of the organisation in 1996 and has continued with assessments of all successive electoral processes to date. In 2016 the assessment also involved local experts who gathered information and analysed events to produce the EISA South African Election Update 2016. This report provides an assessment of the 2016 Local Government Elections based on observation of the final stage of the pre-election phase, of the election phase and the early stage of the post-election phase and taking into account the political and administrative context in which the elections were conducted. The assessment of the elections is founded on the constitutional and legal framework governing local government elections in South Africa as well as international, continental and sub-regional norms and principles for democratic elections as stipulated in the Declaration of Principles for International Election Observation, the African Charter on Democracy, Elections and Governance, and the Principles for Election Management, Monitoring and Observation (PEMMO).

Members of the Mission arrived in South Africa on 27 July 2016. They underwent a briefing on international election observation methodology and the political and historical context of the 2016 elections on 28 and 29 July 2016. Prior to being deployed to selected provinces on 30 July 2016, EISA STOs partook in a technical briefing organised by the National IEC. On 30 July 2016, seven teams of short-term observers were deployed to six provinces, namely the Eastern Cape, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, and the Western Cape. As part of the observation methodology, the STOs consulted

with provincial electoral stakeholders including the IEC, political parties, media and civil society organisations (CSOs). The teams also observed the concluding phase of the election campaign process, the 'special voting' on 1-2 August 2016 as well as the voting and counting processes on 3 August 2016. In line with EISA election observation methodology, teams of STOs were equipped with smart computer tablets, which enabled them to gather and transmit election observation data in real time and which allowed for detailed statistical analysis of their findings on special voting and election day.

Against the backdrop of recurrent protests against poor service delivery and lack of councillor accountability, the spotlight was on the local government sphere more than ever. The 2016 polls were closely scrutinised within the context of internal fragmentation and successive reduction of electoral support for the governing African National Congress (ANC) party, the emergence and strengthening of opposition parties and the implications of increased opposition to the ANC, which has been in power since 1994 for national politics and future elections.

A Constitutional Court ruling on the voters' roll in the months before the elections led to uncertainty about whether elections would be held at all, before the court made another ruling that eventually enabled the conduct of the polls. These court rulings are explained below in section 1.3 of this report. The Mission noted that in preparation for the polls, the IEC produced an election timetable and organised two special voter registration weekends in order to maximise the opportunity for interested citizens to register to vote. Additionally the IEC introduced a Universal Ballot Template (UBT) to make voting more accessible to visually impaired voters and also introduced improvements in the nomination process by making it possible to submit and pay for candidate nomination online.

During the election campaign minor incidents of conflict between parties, such as defacement of posters and clashes, were recorded. These and other relatively minor infringements of the Electoral Code of Conduct were addressed through mediation and legal procedures. More seriously, however, alleged political assassinations particularly in the KwaZulu-Natal and Eastern Cape provinces marred the electoral campaign. Concerns remained also about the lack of legal provisions for election campaign finance monitoring and disclosure, particularly of private donations.

Provisions in the legislation make it possible for those that are physically challenged due to disability, pregnancy or old age and those absent from their voting stations on Election Day to exercise their right to vote through the 'special vote'. The two days allocated to special voting appeared excessive given the relatively small number of voters against the required resources and the amount of human, material and financial resources required for the two days. Additionally there were challenges with the application of special voting procedures by polling staff and the understanding of requirements for special voting amongst voters.

On Election Day, most polling stations opened on time and were accessible to all voters, with election materials available at opening and throughout the voting day. In some isolated areas voting was disrupted due to windy and rainy weather, which negatively impacted on temporary voting stations such as tents. There was adequate security at most polling stations, including extra security in areas that had been identified as hotspots during the election campaign. In some polling stations, however, identity book readers known as Zip-Zip machines did not always function properly. Inconsistencies were also observed in voting station layout. Voting stations closed on time, with voters still in the queue at 7 pm allowed to vote. Counting proceeded largely in accordance with procedures except in cases where officials were not familiar with the counting procedures. The Mission noted that the results were announced within the stipulated seven-day period and also that they were accepted by all the contesting parties and candidates.

It was the observation of the EISA EOM to the 2016 Local Government Elections in South Africa that the elections were conducted in a manner that was in line with the South African legal framework for municipal elections and international standards for credible elections. The Mission made recommendations to electoral stakeholders, which are detailed in section 6 of this report.

EISA'S APPROACH TO ELECTION OBSERVATION

As a leading institution and an influential player in the field of elections and democracy in Africa, EISA envisions a continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment. The Electoral Institute seeks to realise its Mission by strengthening electoral processes, good governance, human rights and democratic values.

The conduct of election assessments in selected African countries is at the core of EISA's democratic support interventions. To assess and to document electoral processes, EISA deploys international observers as a contribution to election integrity on the African continent.

Since its creation in South Africa in 1996, EISA has been involved in successive electoral processes in South Africa, including the deployment of election observation missions. Following an invitation by the Independent Electoral Commission (IEC), EISA deployed a short-term regional EOM to the 3 August 2016 Local Government Elections. The deployment of this Mission, the 6th of its kind in South Africa, complements EISA's ongoing longer-term electoral assessment efforts that involved local researchers engaged in the gathering of information to produce the EISA South African Election Update 2016.

From 27 July to 5 August 2016, EISA's 14 short-term observers (STOs) had the responsibility of observing the concluding phase of the election campaign process, the special voting as well as the polling, counting and post-polling processes. The Mission's assessment of the elections was premised on the constitutional and legal framework governing elections in the Republic of South Africa as well as international, continental and sub-regional norms, principles and standards on democratic elections as stipulated in the Declaration of Principles for International Election Observation, the African Charter on Democracy, Elections and Governance, and the Principles for Election Management, Monitoring and Observation (PEMMO).

EISA STOs were briefed on 28 and 29 July 2016 prior to their deployment to six provinces of the country on 30 July 2016. Seven teams of STOs observed special voting on 1 and 2 August 2016 and Election Day operations on 3 August 2016. The team of STOs was supported by a coordination team and a leadership team.

INTRODUCTION

The 2016 municipal elections were the fifth local government elections to be held in South Africa since the introduction of broad-based multiparty democracy in 1994. Previous local government elections had been held in 1995/1996, 2000, 2006, and 2011. Local government in South Africa constitutes one of the three spheres of the country's "cooperative governance" framework made up of the national government, the provincial governments and the municipal councils (local government).

As provided for in Chapter 3 Section 40 of the Constitution, the three spheres are "distinctive, interdependent and interrelated". Therefore local government in South Africa is not a function or an administrative arm of national or provincial government, though provincial or national governments may delegate certain functions to local government. Local government is responsible for the provision of a number of services, including electricity, water for household use, sewerage and sanitation, refuse and firefighting and municipal healthcare. There is no distinction between urban and rural government in South Africa¹.

There are three types of municipalities in South Africa:

A) Metropolitan municipalities

These are areas with a complex and diverse economy, which requires integrated development planning and strong social and economic linkages. These municipalities are for big cities. There are currently eight metropolitan municipalities in South Africa.

B) Local municipalities

These are local municipalities for towns and their surrounding rural areas. Most of South Africa falls under this category of municipalities. There are 205 local municipalities nationally.

¹ Buffalo City (formerly East London), Cape Town, Ekurhuleni (East Rand), eThekweni (Durban), Johannesburg, Mangaung (Bloemfontein), Nelson Mandela Bay (Port Elizabeth) and Tshwane (Pretoria)

C) District municipalities

District municipalities are responsible for the co-ordination of a number of local municipalities within a province. They are responsible for the provision of bulk public services. There are currently 44 district municipalities in South Africa.

The services provided by municipalities are those that impact most directly on the quality of life of citizens and therefore they are of significance to citizens and voters. Local government elections in South Africa drew special attention to a number of national crises besetting the country, including corruption, slow economic growth, rising unemployment and crime. It is, however, in the area of poor service delivery, housing and councillor accountability where public anger has been most visibly expressed. Since 2004 the country has been plagued by service delivery protests aimed at municipalities. According to Municipal IQ, an internet service that monitors and assesses municipalities in South Africa, the number of service delivery protests rose from 10 in 2004 to a peak of 191 in 2014 and 163 in 2015². There were 71 service delivery protests in the first four months of 2016 alone.

2 Municipal IQ Press Release. At http://www.municipaliq.co.za/index.php?site_page=article.php retrieved 23 September 2016.

1

Historical and Political Overview



I.1 History of Municipal Elections in South Africa 1995-2011

I.2 Political Background to 2016 Municipal Elections

I.3 The Electoral Commission and the Tlokwe Case

I.1 HISTORY OF MUNICIPAL ELECTIONS IN SOUTH AFRICA 1995-2011

Municipal elections were first held in post-independent South Africa in 1995 and 1996. They were held in November 1995 in most of the country and, due to demarcation disputes, in the Western Cape and KwaZulu-Natal in May 1996. The African National Congress (ANC) won 58% (6 032 seats), the National Party 18% (1 814 seats) and the Inkatha Freedom Party (IFP) 9% (754 seats).

In the 2000 municipal elections, the ANC received 64.8% of the vote, the emergent Democratic Alliance (DA) 16% and the IFP 7.6%. The next municipal elections took place on 1 March 2006. The ANC won the majority of the seats with 66.3%, an improvement on its performance in 2000. The DA won 14.8%, while the IFP took 8.1% of the votes. Municipal elections were held again on 18 May 2011. The results are presented in Table 1 below:

Table 1: Results of 2011 Municipal Elections

Party	Total Number of Valid Votes received	Percentage of Votes
African Christian Democratic Party (ACDP)	209 550	0.61
African National Congress (ANC)	22 004 381	63.65

Congress of the People (COPE)	807 099	2.33
Democratic Alliance (DA)	7 596 452	21.97
Independents	302 243	0.87
Inkatha Freedom Party (IFP)	1 360 340	3.94
Minority Front (MF)	114 153	0.33
National Freedom Party (NFP)	892 257	2.58
Pan Africanist Congress of Azania (PAC)	147 589	0.43
United Democratic Movement (UDM)	235 838	0.68
Vryheidsfront Plus	153 159	0.44
Other parties *	746 246	2.16
Total Number of votes cast		

* This includes the remaining 111 parties out of the total 121 parties that contested the elections, with many receiving marginal votes that were insufficient to garner any seats.

Source: Independent Electoral Commission website: <http://www.elections.org.za/content/LGEPublicReports/197/Detailed%20Results/National.pdf>, Retrieved 30 November 2016

1.2 POLITICAL BACKGROUND TO 2016 MUNICIPAL ELECTIONS

While South Africa is a multiparty democracy that currently has 534 registered political parties,³ the story of politics, particularly party politics, in South Africa since independence has been dominated by the ANC, which won the first national elections in 1994 with 62.65% of the vote. For much of the decade after, voter support remained with the ANC, with opposition largely concentrated geographically in the Western Cape for the DA and KwaZulu-Natal for the IFP. Many other parties were registered and participated in the political life of the country, but they commanded relatively minor support.

Service delivery protests beginning in 2004 were a major turning point in terms of the expression of public dissatisfaction with government. Given that most of the municipalities outside of the Western Cape and KwaZulu-Natal were controlled by the ANC, the protests would also be viewed as protests against the ANC and a litmus test of the party's avowed promise to improve

3 IEC website at <http://www.elections.org.za/content/Parties/Political-party-list/> retrieved 27 September 2016

living standards and quality of life for the previously disadvantaged black majority. The reticence of urban municipalities to acknowledge informal settlements and bring them into the urban planning framework also added to the perception of a divided society of haves and have-nots and increased public disaffection. However, poor service delivery at local government level was not the only problem area and source of public dissatisfaction with the governing party.

The government has been able to continue to improve the lives of many poor people through social security support such as the provision of social grants in both rural and urban areas, and through the Black Economic Empowerment (BEE) and Affirmative Action in the labour market. However, slow, low economic growth, rising unemployment and low wages have meant that economic transformation has been slower than anticipated. Perceptions that the government has been appeasing and compromising with 'big capital', avowedly to maintain economic growth and stability while ignoring corruption at the highest levels, have created public disillusionment.

The DA perceivably remained largely associated with the white population in the Western Cape and the IFP with the Zulu people in KwaZulu-Natal. Even though factionalism and tension had begun to develop in the ANC, it was not until the shock recall of President Thabo Mbeki in 2008 and the subsequent launching of the Congress of the People (COPE) led by former ANC leaders that serious fissures became evident. Although COPE ultimately failed to build on the initial momentum, it was an indicator that there were serious cohesion challenges within the ANC, which continued up to the 2014 National and Provincial Elections, the results of which are shown in Table 2 below.

Table 2: Results of 2014 National Assembly Elections

Party	Total Number of Valid Votes	Percentage of Votes
African Christian Democratic Party (ACDP)	104 039	0.57
African National Congress (ANC)	11 436 921	62.15
Congress of the People (COPE)	123 235	0.67
Democratic Alliance (DA)	4 091 584	22.23

Economic Freedom Fighters	1 169 259	6.35
Inkatha Freedom Party (IFP)	441 854	2.40
National Freedom Party (NFP)	288 742	1.57
Pan Africanist Congress of Azania (PAC)	37 784	0.21
United Democratic Movement (UDM)	184 636	1.00
Vryheidsfront Plus	165 715	0.90
Other Parties*	358728	1.95

* This represents an additional 19 parties, making a total of 29 parties that contested the 2014 National and Provincial Elections.

Source: Independent Electoral Commission website retrieved 1 December 2016
at <http://www.elections.org.za/content/Elections/Results/2014-National-and-Provincial-Elections--National-results>

Since the 2014 elections dissatisfaction with the government has solidified, with much of it centred on performance of government on social transformation, economic growth, employment creation and provision of public goods such as healthcare and electricity and basic education.

The nationwide 'FeesMustFall' campaign of 2015 by tertiary students also highlighted the dissatisfaction of the youth with the government not only about rising tuition fees but also about unemployment once they complete their education. This has coincided with the rise of the Economic Freedom Fighters (EFF), a party formed in 2013 by the former leader of the ANC Youth League (ANCYL), who was axed from the ANC. In the 2014 national and provincial elections the EFF gained 6.35% of the vote and 25 seats in the National Assembly, performing much better than many established political parties.

The election of 35-year-old Mmusi Maimane, a black politician from Soweto, as leader of the Democratic Alliance in 2015 was viewed as a significant move with regard to changing the party's appeal in terms of race, age, and geography. Maimane arguably raised the profile and support of the DA north of the Cape as the political party continued to move beyond its geographical enclave of the Western Cape and to gradually spread its wings in the rest of the country.

Thus one of the big questions before the 2016 local government elections was whether the evident dissatisfaction with the ANC would lead to an increase in support for the opposition, perhaps by black voters moving to the DA or by young voters moving to the EFF or any other political party. According to analysts,⁴ however, due to the complex racial, geographical and ethnic dynamics of the country, the most likely outcome was that dissatisfied ANC voters who could not bring themselves to vote for any other political party would simply stay away from the polls. This was significant given that by international standards, voter turnout in South Africa is high, with turnout in municipal elections higher even than for national elections in other countries. Voter turnout in the 2011 municipal elections was 57.6%, while in the National and Provincial Elections of 2014 it was 73.5%. Thus the 2016 elections stood as a signpost for the 2019 national and provincial elections, as political parties would be able to determine how much support they have and what work needs to be done for the National and Provincial Elections in 2019.

1.3 THE ELECTORAL COMMISSION AND THE TLOKWE CASE

In November 2015, the Constitutional Court ruled that by-elections conducted in Tlokwe municipality in December 2013 were not free and fair due to the fact that the voters' rolls given to candidates did not have full address details of voters. This was in violation of Section 16 (3) of the Electoral Act, which requires the Independent Electoral Commission (IEC) of South Africa to provide voters' rolls with addresses to political parties and candidates in order to allow them to canvass voters effectively.

By extension the judgement called into question the validity of the entire national voters' roll, which did not have complete address details for all the voters. This was due to the fact that the requirement for addresses came into effect following an amendment to the Act in 2003, when there were already over 18 million voters in the voters' roll. Arguably the IEC could have then begun a process of completely new registrations or collecting addresses from those voters where these details were incomplete.

The eight and half months between the judgement and the deadline for

4 'South African local elections: ANC at a crossroads' retrieved on 1 December 2016 at <http://aljazeera.com/news/2016/08/south-african-local-elections-ruling-anc-crossroad-160802101118941.html>

conducting the local government elections⁵ was not enough time for the entire voters' roll to be updated. After various appeals and counter appeals, and postponements of by-elections, all of which created uncertainty about whether the local government elections would proceed at all, the Constitutional Court ruled on 3 June 2016 that while the commission was immediately required to update the voters' roll for Tlokwe municipality in time for the August elections, it had 18 months to update the rest of the national voters' roll.

The effect of the case was that it called into question the efficiency and professionalism of the IEC, which has long been one of the most trusted public institutions in the country. Additionally, it happened at a time when the commission was still reeling from the resignation of its former chairperson and past CEO due to a tender scandal, as well as the controversy around the appointment of President Zuma's former Special Projects Advisor to replace her at the helm of the commission. This was criticised as being a step towards state (and ANC) capture of the election management body. Public confidence in the commission was negatively impacted and therefore the 2016 elections came at a time when the IEC was under scrutiny from both voters and political parties.

5 The deadline by which local government elections were to be held was 16 August 2016.

2

The Constitutional, Legal and Institutional Framework



- 2.1 Constitutional and Legal Framework
- 2.2 Election Management in South Africa
- 2.3 Electoral system
- 2.4 Regulation of political party and election campaign finance

2.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

2.1.1 The Constitution

The Constitution of South Africa (1996) establishes the country's constitutional democracy, with regular elections as one of the pillars of democracy in the Republic. Chapter 1 Section 1 (d) of the Constitution states that these elections are to be based on universal adult suffrage and a national common voters' roll. The Bill of Rights, which is found in Chapter 2 of the Constitution, includes civil and political rights relating to elections such as

- Freedom of Expression (including freedom of the media): Section 16
- Freedom of Assembly: Section 17
- Freedom of Association: Section 18

In Section 19, every citizen is given the right to free, fair and regular elections and the right to stand for office and to vote in secret in these elections. Chapter 7 of the Constitution covers local government and in Section 157 provides for the composition and election of municipal councils including in subsection 3 of the same, the provision that the composition of municipal councils should

reflect proportionality. The term of office in municipal councils may not be more than five years.

Chapter 9 of the Constitution establishes the Electoral Commission of South Africa as one of the state institutions supporting democracy. As such the IEC is independent and subject only to the Constitution and the law. It is also supposed to be impartial and perform its duties without fear or favour of anyone. Furthermore, the commission has a right to the assistance and protection of other state organs in order to ensure its independence, impartiality and effectiveness.

The extensive Bill of Rights in the Constitution demonstrates a commitment to protection of all human rights grounded on the principle of non-discrimination. Furthermore, the support and protections given to the Electoral Commission as a Chapter 9 institution show that there is a support system in place for the body to be able to conduct credible elections. Additionally, the requirement to report to the National Assembly of people's elected representatives enhances its accountability to a multi-partisan body, which enhances its ability to act impartially.

The EISA EOM found that the constitutional framework for elections in South Africa is line with international standards for elections, such as the holding of regular elections that promote a peaceful change of government through regular elections as provided for in Article 2(3) of the African Charter on Elections, Democracy and Good Governance. The framework also provides for a comprehensive legal framework that guarantees specifically the fundamental freedoms and civil and political liberties as espoused by the PEMMO.

2.1.2 Electoral Legislation

Local government elections in South Africa are governed by the following seven pieces of legislation:

The Electoral Act

The Electoral Act 73 of 1998 provides further regulations regarding the operation of national, provincial and municipal elections. The Electoral

Commission is given the responsibility of administering the Electoral Act and ensuring that key events in the election timetable are carried out in line with the Electoral Act.

The Electoral Commission Act 51 of 1996

This piece of legislation regulates the composition and tenure of the election commissioners, specific areas of responsibility for the commission and the administrative set-up of the commission.

Local Government: Municipal Electoral Act and Regulations

The Municipal Electoral Act 27 of 2000 as amended regulates the specific nature of municipal elections. The Act provides for the administration of political parties and candidates and all other related voting and counting issues. There are also Municipal Electoral Regulations, which have been published to support the Act. The Electoral Code of Conduct is contained in Schedule 1 of this Act.

Local Government: Municipal Structures Act

The Local Government: Municipal Structures Act 117 of 1998 deals with the establishment, management and functions of the various municipalities, as well as the calculation formulas for the conversion of votes into council seats. The Act provides for the qualifications for municipal councillor and the election of councillors using a mixed electoral system.

- Regulations on Party Liaison Committees, 1998
- Regulations for the Registration of Political Parties, 2004
- Regulations relating to activities permissible outside voting stations on voting day

2.1.3 Amendments ahead of the 2016 elections

The Local Government: Municipal Electoral Amendment Bill, 2015, gazetted in August 2015, amended the Municipal Electoral Act by providing for the electronic submission of candidate nomination documents, providing for different modalities for payment of electoral depositions and notification of all parties when a candidate has been nominated by more than one party. In its assessment of the amendments, the EISA EOM is of the view that the use

of technology in the nomination of candidates made it easier for prospective political parties and candidates to register by reducing the time and effort required to complete the task. According to the IEC the Online Candidate Nomination System was popular with political parties, with over half of the nominations being submitted online.⁶ Additionally, the provision on informing political parties where a person was nominated by more than one party is a positive, as it reduces fraud on the part of potential candidates.

2.2 ELECTION MANAGEMENT IN SOUTH AFRICA

The following institutions are involved in the management of local government elections in South Africa:

2.2.1 Demarcation of Municipal and Ward Boundaries and Delimitation of Voting Districts

- a) The Minister of Cooperative Governance and Traditional Affairs (CoGTA) – makes recommendations to the Municipal Demarcation Board (MDB) with regard to the number of municipalities that the country should have based on its assessment of the performance of the councils since the last election and the feasibility of the existing municipalities.
- b) Members of the executive councils of provincial governments (MECs) – apply formulas from the Minister of CoGTA to determine numbers of seats or councillors in the municipalities in their provinces.
- c) Municipal Demarcation Board⁷ – The MDB must determine outer municipal boundaries as well as using councillor numbers to determine the number and boundaries of wards in each municipality. This delimitation process involves public participation and consultation, where members of the public may object to the MDB's decisions.
- d) The Electoral Commission – Once all and any objections have been considered, the MDB hands over the final list of wards to the Electoral Commission for it to determine voting district locations

6 'Deadline looms for Election candidates' at <http://allafrica.com/stories/201606011316.html>, 'Increase in Independent candidates contesting candidates' at <http://www.news24.com/SouthAfrica/News/increase-in-independent-candidates-contesting-elections-iec-20160608> retrieved 1 December 2016.

7 The board is established by the Local Government Municipal Demarcation Act, 1998. It consists of nine board members, appointed by the President for a five-year term.

and boundaries where ward boundaries have been changed during the demarcation process.

The first batch of municipal ward boundaries was delivered to the Electoral Commission by the MDB on 27 August 2015. This was of the municipalities whose boundaries had not changed and was made up of 2 951 wards in 75% of the municipalities. The final batch of wards was delivered to the IEC on 15 December 2015. The number of municipalities changed from 278 to 257 and included 8 metropolitan councils that were unchanged from 2011, 205 local municipalities (from 226 in 2011) and 44 unchanged district municipalities.

This was in line with the request from the Co-operative Governance Minister that certain municipality boundaries be re-configured before the 2016 elections.⁸ A number of municipalities were amalgamated, as they were deemed to be unable to fulfil their constitutional obligations and were experiencing financial instability, maladministration and corruption.

The EISA EOM noted that there were objections to the demarcation process from several quarters. The DA filed suit against the MDB over demarcation decisions in some areas in the Eastern Cape, Free State, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape and North West. The party argued that the decisions were not procedural given the alleged partisanship by the MDB in favour of the ANC. Additionally the suit alleged that there was insufficient public engagement and consultation. However, it lost the case.⁹ Members of the public also objected most notably in Vuwani municipality in Limpopo Province, where residents protested against being merged with Malamulele municipality. Twenty schools were burnt during the protests. However, the MDB did not change any of its decisions, which led to it being accused of being partisan.

The EISA EOM is of the opinion that such decisions in future should involve as much public participation as possible in order to avoid accusations of bias and reduction of trust in the bodies involved in elections.

8 'Mixed feelings over own municipality for Malamulele' at <http://limpopomirror.co.za/articles/news/32016/2015-07-13/-mixed-feelings-over-own-municipality-for-malamulele>

9 'MDB responds to high court ruling on DA vs MDB court interdict' retrieved 27 September 2016. <http://www.demarcation.org.za/site/wp-content/uploads/2015/12/MEDIA-STATEMENT-MDB-responds-to-high-court-ruling-on-DA-vs-MDB-court-interdict.pdf>

2.2.2 Electoral Operations

The Independent Electoral Commission is the body charged with the management of all administrative aspects of the conduct of elections in South Africa. It is specifically responsible for the following:

- Registration of voters and the establishment and maintenance of a voters' roll,
- Preparation for elections,
- Delineation of voting districts and voting stations,
- Production of the voter materials,
- Recruitment, training and appointment of voting and counting staff and other personnel necessary to deliver credible elections,
- Promotion of voter education,
- Accreditation of observers, and
- Determination and declaration of final election results

Section 6 of the Electoral Commission Act, 51 of 1996, provides that the commission must be made up of five members, of whom one must be a judge. The commissioners are appointed by the President of the Republic after recommendations made by a panel that interviews the candidates. Chaired by the Chief Justice, the panel is made up of representatives of the Public Protector, the Commission on Gender Equality and the Human Rights Commission. After the confirmation of the candidate nomination by the National Assembly the appointment is then made.

Each Commissioner may serve for a term of seven years, which can be renewed once. The Commission in charge of the 2016 local government elections was made up of the following four male commissioners and one female commissioner:

- 1) Mr Glen Mashinini – Chairperson
- 2) Mr Terry Tselane – Vice Chairperson
- 3) Judge Thami Makhanya
- 4) Reverend Bongani Finca and
- 5) Ms Janet Love

The fact that the commission only has one female commissioner out of a total of five when women make up over half of the electorate is a source of

concern. It is a notable anomaly in a country with strong affirmative action practices in political parties and in the area of economic empowerment policy. The appointment as chairperson of the Electoral Commission of a former Special Projects Advisor to President Zuma was another cause for concern as it raised doubts about the independence and impartiality of the commission, as explained earlier.

The commission has a secretariat headed by a Chief Electoral Officer. In addition to staff at the national headquarters, the commission has provincial electoral offices in each of the nine provinces, which are each headed by a provincial electoral officer. Below the provincial electoral officers are also the municipal electoral offices (MEOs). In 2016 there were 266 local MEOs.

The EISA EOM noted that the appointment mechanisms for the Electoral Commission provide for sufficient consultation and oversight by the respected institution in order to promote the appointment of respected and professional individuals as envisaged in the Constitution. Additionally, decentralisation of the commission functions promotes efficiency and lessens the burden of managing the complex logistical arrangements for elections from a centralised location.

2.2.3 Election Dispute Resolution Mechanisms

The Electoral Commission Act in Chapter 5 establishes the Electoral Court as the highest authority on matters relating to elections. It has the same status as the Supreme Court and its decisions can only be overruled by the Constitutional Court. The Court makes rules, with regards to electoral disputes, complaints and breaches arising from the Electoral Code of Conduct. It also adjudicates legal disputes and appeals against the decisions of the Electoral Commission. It is composed of five members who are appointed by the President of the Republic on the recommendation of the Judicial Service Commission as follows:

- A chairperson, who is a judge of the Appellate Division of the Supreme Court;
- Two judges of the Supreme Court; and
- Two other members who are South African citizens.

At national, provincial and local level, the Electoral Commission co-ordinates Party Liaison Committees (PLCs). All registered parties are permitted to have two representatives on each PLC the purpose of which are to inform political parties on election arrangements, consult and advise the Electoral Commission on election arrangements, to mediate conflicts between political parties or between political parties and the Electoral Commission. The EISA EOM was informed and noted that during the elections the PLCs played an important role of providing key information to the electoral management authorities, but where appropriate also played a key role in mediating local-level violations of the law and the code of conduct.

2.3 ELECTORAL SYSTEM

Members of Municipal Councils in South Africa are elected through a combination of the First Past the Post (FPTP) electoral system and the Proportional Representation (PR) electoral system.

Members of local and metropolitan councils are elected using a mixed member electoral system, where the number of seats a political party or candidate has should match the total number of votes that they received. Each of the two kinds of councils has two types of seats: ward seats and PR seats. Candidates contest for ward seats using the FPTP system, where the candidate with the most votes wins. The rest of the seats are allocated using the PR system to political parties based on lists supplied by the parties as follows:

If there are 10 seats available in a municipality 5 ward seats and 5 proportional representation (PR) seats:

- Party A with 50% of the votes has a right to 50% of the seats, which is five seats. If Party A wins 4 wards it receives 1 PR to get the five seats that it is eligible for.
- If Party B with 30% of the vote is eligible for 30% of seats, which is 3 seats, wins 1 ward using the FPTP system it receives 2 PR seats to make it a total of 3 seats.
- If Party A gets 20% of the total votes cast in that council it gets 2 seats. Even if it does not win any wards outright, it receives 2 PR seats.

District municipality councils are made up of the local councils in their jurisdiction. Members of these councils are partly elected by voters through proportional representation and partly appointed by the councils of the constituent local municipalities. At election time for local councils that are part of a district council, voters also vote for another party list at the district level. The PR vote by voters makes up 40% of the members of the district councils, while 60% are appointed by the local councils.

Although the electoral system allows for independent candidates to contest the ward seats, they are not eligible for any proportional seats since the PR system is based on party lists. The EISA EOM is of the view that this system unfortunately brings with it the challenges of FPTP, where the elections for ward seats tend to have fewer women than for the PR seats, where parties can deliberately promote women through their positions on the list.

2.4 REGULATION OF POLITICAL PARTY AND ELECTION CAMPAIGN FINANCE

The public funding of political parties is governed by the Public Funding of Represented Political Parties Act of 1997 and the Public Funding of Represented Political Parties Regulations of 1998. The Represented Political Parties Fund, which is regulated by the Electoral Commission, makes annual disbursements to political parties that are represented in the national and/or provincial legislatures. The funding is given in proportion to the parties' proportion of seats in the legislatures. According to the Act, the money is to be used for "any purpose compatible with functioning as a political party in a modern democracy", including political and voter education. The parties are to account for the spending of the funds each year.

The funding promotes functioning of political parties, but there are some limitations. Firstly, because it funds parties that are already represented in Parliament it disadvantages new parties. Secondly, it is only for political parties that have seats in the national and provincial legislatures and not municipalities. Yet locally based political parties could very well be the ones that best represent the interests of the people at the local level. Although funding these parties at the local level would be very expensive, it would allow them to become better organised to represent the people locally. Additionally, private funding of political organisations is permitted. There

are no requirements for political parties to disclose the identity of their donors or the amount that is received via private funding and or how it was spent. There is also no set private funding ceiling.

In its assessment of political party and election campaign finance, the EISA EOM noted that while the public funding of parties is regulated, there are still gaps in the law regarding the regulation of private sources of funding for political parties. The Mission is of the view that this practice opens the door to the negative influence of money on elections, particularly as election campaigns become more competitive, and on politics more generally. Election donations may be used to influence the decision-making of politicians once they are in power at the expense of the electorate.

3

The Pre-Election Phase



- 3.1 Delimitation of voting districts
- 3.2 Voter registration and voters' roll
- 3.3 Political party registration and candidate nomination
- 3.4 Women's representation
- 3.5 Civic and voter education
- 3.6 Election campaigns
- 3.7 Media access and coverage
- 3.8 Preparedness of the Electoral Commission

3.1 DELIMITATION OF VOTING DISTRICTS

The Electoral Commission is responsible for determining voting district boundaries. A voting district is a geographical area drawn up to make the administration of elections more efficient. There is only one voting station in each voting district, and voters can register and vote only in the voting district where they live, as their names will appear only on the voters' roll for that district. This also minimises the possibility of multiple voting by one person. Voting districts are delimited to minimise voter inconvenience and to assist in logistical planning. Urban voting districts contain some 3 000 voters located within a radius of some 7.5 km of the voting station. Rural voting districts accommodate some 1 200 voters located within a radius of some 10 km of the voting station.

Where for example a pre-existing voting district is split, discussions are held between the Electoral Commission and relevant municipal electoral offices and political parties through the Party Liaison Committees, to agree on whether new voting districts should be created.

3.2 VOTER REGISTRATION AND VOTERS' ROLL

As per Chapter 1 of the Constitution, elections are to be based on a national common voters' roll, where citizens wishing to vote in elections may be registered in the area where they are resident in order to be able to vote there.

This is particularly important for municipal elections, as they require that citizens vote in the district and ward where they reside so they can elect a candidate who will best represent their interests.

A person can register to vote in a South African election if he or she is

- a) A South African citizen,
- b) At least 16 years old¹⁰
- c) Has a green, bar-coded identity document (ID), a smart card ID or valid temporary ID

Voter registration is continuous. Voters can register to vote at IEC offices at any point in the election cycle, but for every election the Electoral Commission holds special registration weekends in order to encourage people to register to vote. During these weekends voting stations are open for voters to register, to change their registration details, including addresses, or verify if their names are on the voters' roll.

Voters can verify if they are registered using the following methods:

- Sending a text message with their ID number to a specially designated telephone number
- Using the Electoral Commission's mobile app
- Checking their registration details online at the Electoral Commission website
- Checking at the voting station during voter registration weekends
- Checking at the local Electoral Commission office
- Calling the Electoral Commission's contact centre

For the 2016 elections, the IEC launched a communications and education campaign to encourage first-time voters to register for the elections.¹¹ Voter registration weekends were held on 5 and 6 March 2016 and again on 9 to 10 April 2016. In light of the Tlokwe judgement the commission also sent text messages to voters whose address details were incomplete to use the registration weekends to update their details. However, the commission was

10 A person can register as soon as he or she turns 16, but will be able to vote only if the election occurs after he or she has turned 18.

11 'Municipal Elections - Youth Opportunity to Reshape SA' retrieved 23 September 2016
<http://www.activateleadership.co.za/blog/2016-MUNICIPAL-ELECTIONS-YOUTH-OPPORTUNITY-TO-RESHAPE-SA>

able to source cell phone numbers for only 5.3 million of the 6.92 million voters for whom it did not have addresses. Therefore some of the voters did not receive the text messages. Voter registration continued until the 23 May 2016, when the election was proclaimed and the roll was closed by law. In Tlokwe itself, an update weekend was held on 9-10 July 2016 to allow residents to provide missing address details or to correct their address details on the voters' roll.

The final voters' roll for the 2016 elections had 26 333 353 voters, of which 14 465 896 (55%) were female, while 11 867 457 (45%) were male. This was an 11% increase from the previous local government elections in 2011 and 3.7% from the 2014 national and provincial elections, and represented 77% of the eligible citizens. The voters' roll grew by 42.5% since the first municipal elections in 2000.

The EISA EOM commends the electoral authorities for putting in place measures to maximise the opportunity for eligible citizens to register to vote, including the use of technology as well as providing the opportunity to register on a continuous basis. The Mission notes that this has resulted in a comparatively high proportion of eligible citizens registering to vote.

Table 3: Registered voters: 2016 Local Government Elections

Age	Female	Male	Total	% of total registered voters
18-19	278 272	228 289	506 561	1.92
20-29	3 122 802	2 653 797	5 776 599	21.94
30-39	3 373 081	3 062 254	6 435 335	24.44
40-49	2 799 636	2 468 351	5 267 987	20.00
50-59	2 246 966	1 782 626	4 029 592	15.30
60-69	1 430 877	1 055 687	2 486 564	9.44
70-79	769 866	450 258	1 220 124	4.63
80+	444 396	166 195	610 591	2.32
Total	14 465 896	11 867 457	26 333 353	

Source: IEC 2016 Observer Handbook

**Table 4: Increase in registered voters for Local Government Elections
2000-2016**

Year	Registered Voters
2000	18 476 516
2006	21 054 957
2011	23 655 046
2016	26 333 353

Source: Independent Electoral Commission '2016 Municipal Elections Handbook' '2016 Observer Handbook'.

3.3 POLITICAL PARTY REGISTRATION AND CANDIDATE NOMINATION

Political parties wishing to contest elections must register with the Electoral Commission. Where parties register at the national level, they can contest all elections at national, provincial and municipal level. However, political parties may also choose to register to contest elections at municipal level only. All parties must submit registration forms and a copy of the party's constitution, two sets of the party logo and the requisite documentation depending on the level they want to contest.¹²

Proportional Representation candidates must be nominated by a registered political party, while ward candidates must be nominated by a party registered to contest the municipality in question. Independent candidates can also contest but only for the ward seats. An aspiring independent candidate must be nominated by a person living in the municipality of the ward in question. She or he must also submit a form signed by the nominator. A person may contest as both a ward candidate and a PR candidate, but if they win the ward she or he must take up the ward seat. To stand candidates

¹² To contest at national level political parties pay R500 and require a deed of foundation signed by 500 registered voters as well a hard copy of the government gazette where notice of the registration appear. To register to contest a specific municipality parties require a deed of foundation signed by 100 registered voters, R200 registration fee per municipality and a copy of a notice placed in a local newspaper.

pay a deposit, which they lose if they fail to get 10% of the votes in the ward. There are additional requirements for nominating candidates.¹³

For the 2016 municipal elections, nominations opened on Tuesday 24 May 2016 and closed on 2 June 2016. Nominations were submitted by hand at local IEC offices for the municipality where candidates were contesting the elections or online via the Electoral Commission Online Candidate Nomination System (OCNS).

Although nominations closed on 2 June, the process of verification and submission of outstanding documents, and the revising of lists where candidates were on multiple lists or nominated different political parties ended on Friday 24 June 2016. Nomination certificates were issued to candidates on Friday 1 July, following which it was announced that 206 parties had successfully applied to contest the elections. There were 61 014 candidates, of whom 831 were independent candidates. This was an increase of 65% more parties and 12% more candidates over the previous municipal elections of 2011.

Some 8 350 candidates were disqualified. Of the candidates disqualified, the vast majority were disqualified for non-submission of documentation (46%), non-payment of deposit (38%) and not being registered voters in the municipality in which they wanted to contest (15%). The National Freedom Party (NFP), a splinter party of the IFP that had taken much of the vote from IFP in KZN in preceding elections, was disqualified for not paying its registration fees before the IEC deadline. The party took the matter to the Electoral Court, alleging firstly a legitimate mistake and later that its national treasurer did not pay a deposit to the IEC on time in order to sabotage the party in favour of its rival, the Inkatha Freedom Party. However, the IEC argued that whether or not the party was let down by its treasurer did not change the law that every party had to abide by. The court in turn ruled that

13 Including documentation confirming that the political party will abide by the code of conduct that the person is qualified to stand, that the person is willing to be nominated and the requisite election deposit. A person who wishes to contest as an independent ward candidate must be nominated by a person who resides in the municipality of that ward, and must submit a form signed by the nominator, a copy of the candidates ID and a form with signatures from at least 50 voters who appear in any one of the districts in that ward plus a R1000 deposit.

the electoral timetable requires strict compliance with its provisions and that there was no provision for extension of time periods.

In its assessment of political party and candidate nomination, the EISA EOM commends the electoral stakeholders in South Africa for making it possible for all interested parties and citizens to participate in elections – in particular, the possibility to be able to register to contest specific municipalities only. This maximises the element of local representation, as those local political parties know the concerns of the local areas best. Additionally, the amendments to the law which make it possible for political parties and candidates to apply for nomination and to pay nomination fees online makes the process less cumbersome for aspiring candidates. Capturing information online also makes it easier for the Electoral Commission in terms of data capture and data management. The high number of disqualified candidates, however, suggests that there is a need for more information to political parties and candidates about the requirements for candidature, such as being a registered voter or which documents to submit. The EISA EOM trusts that this element would be part of civic education and awareness in the future.

3.4 WOMEN'S REPRESENTATION

Women are generally well represented in politics and decision-making in South Africa. They hold key leadership positions in political parties. For example, Ms Baleka Mbete, the chairperson of the ANC and also the Speaker of the National Assembly, is a woman. Ms Helen Zille, who is the immediate past leader of the main opposition Democratic Alliance and current Premier of the Western Cape Province, and former leader of the opposition in Parliament Ms Lindiwe Mazibuko are both women.

South Africa does not have legislated quotas for women for national, provincial or local government. Instead the discretion has been left to political parties to promote leadership and candidature of women. Historically the ruling ANC has used quotas for women's representation on its party lists for all elections. Thus the proportion of women in Parliament has increased steadily, from 27.7% in 1994 to 44% in 2009 and to 40% in 2014, which can also be attributed to the PR electoral system that is in use for national assembly elections. In local government, at the time of the election, of the 4 810 proportional representation seats in the country, a total of 2 184 (45.4%)

were filled by women as opposed to 2 626 (55.6) men. Of the 4 277 ward councillors in South Africa, 1 413 (33%) were women compared to 2 864 (67%) men. The EISA EOM is of the view that the latter is reflective of the fact that the FPTP electoral system used for ward elections is more likely to entrench inequality than the PR, which can be a useful tool for redressing gender inequality.

Of the candidates who contested the 2016 elections 60% were male and 40% were female. However, gender parity was more nearly achieved on party PR lists, where the gender ratio was 52% male to 48% women. For ward candidates, it was 66% male versus 34% female, again reflective of the fact that the FPTP system by design disadvantages women. Of the 831 independent candidates, 86% were men and only 14% were female.¹⁴ Among the leading political parties, the ANC, which has traditionally applied a quota of 50% for its proportional representation lists, and EFF were closer to parity, with a nearly 50/50 split of candidates, while the DA, which does not use quotas, had only 36% who were female.¹⁵ Interestingly, none of these ratios was on par with the voter registration figures of 55% female to 45% male. It was also noted that participation of women in ward elections was lowest in the areas where there had been the most violence.¹⁶ Given that issues at local level affect most women directly in their roles as community leaders, homemakers, and household managers, the EISA EOM is of the opinion that consideration should be given to the introduction of quotas for women in local government through electoral system reforms. Political parties should also be encouraged to improve the representation of women in their structures as well as on their candidate lists.

In its assessment of women's participation and representation in election management, the EISA EOM noted that the two immediate past chairpersons of the Electoral Commission and the immediate past chief electoral officer were female. However, the current five-member Electoral Commission has only one female member, while only two of the nine provincial electoral officers at the time of the local government elections were female.

14 '200 political parties, 61 000 candidates to contest 2016 Municipal Elections'

<http://www.elections.org.za/content/About-Us/News/200-parties-61-000-candidates-to-contest-2016-Municipal-Elections/>

15 'Gender parity in candidates lists still elusive' at <http://www.dailymaverick.co.za/article/2016-07-31-lge-2016-gender-parity-in-candidate-lists-still-elusive#.V-mJZm-KTIU>

16 Ibid.

3.5 CIVIC AND VOTER EDUCATION

The IEC has the responsibility for providing voter education and can work with and accredit other organisations to assist in voter education. The Represented Political Parties Fund¹⁷ envisages that political parties will also engage in voter education. In fulfilment of this mandate the IEC firstly has a senior manager responsible for voter education at its head office. The IEC has a Civic and Democracy Education Division, which works to ensure that the citizenry is active and knowledgeable and that the electorate is well informed. During elections the commission engages temporary staff who directly engage with communities to deliver voter education. For the 2016 elections, the number of voter educators who were trained and deployed is detailed in Table 5 below.

**Table 5: Deployment of Personnel for Civic and Voter Education, 2016
Local Government Elections**

Province	Permanent Out-reach and Training Officers	Municipal Outreach Coordinators	Democracy Education Facilitators	Other
Eastern Cape	9	45	238	
Free State	6	24	105	
Gauteng	9	19	169	
KwaZulu-Natal	13	54	276	
Limpopo	5	26	181	
Mpumalanga	3	18	0	60 partnerships with traditional councils
North West	4	19	165	
Northern Cape	5	27	108	
Western Cape	7	28	134	
Total	61	260	1376	60

Source: IEC Observer Handbook 2016

¹⁷ The Represented Political Parties Fund makes annual disbursements to political parties that are represented in the national and/or provincial legislatures. The funding is given in proportion to the number of seats of political parties in the legislatures.

The EISA EOM commends this commitment to educating voters and noted also the use of social media such as Twitter and Facebook to keep voters informed about the elections as well as engaged with the electoral process. In its assessment of civic and voter education, the mission noted that at the time of special voting many voters did not have full information about the requirements for special voting, including the requirements and procedures for being on the approved list of special voters. Additionally, the Electoral Commission announced that 1.8% of the ballots were spoilt ballots.¹⁸ There is need for improved voter education on this and other aspects of the electoral process.

3.6 ELECTION CAMPAIGNS

Schedule 1 of the Municipal Electoral Act contains a Code of Conduct for parties and candidates contesting municipal elections. The purpose of the code is to ensure conditions conducive to free and fair elections by promoting tolerance of democratic political activity, free political campaigning and open debate. All parties and candidates contesting elections are expected to abide by the code, and commitment to the code is one of the requirements for nomination. Violations of the code can be taken before the Party Liaison Committees and where necessary to the Electoral Court. On 16 May 2016 leaders and representatives of the 13 political parties represented in Parliament committed themselves, their parties, candidates and members to abide by the provisions of the Electoral Code of Conduct during the 2016 municipal elections. The code was also signed by local parties in different parts of the country.

The electoral campaign was vibrant and colourful, with parties using all forms of media, including social media, to do what they could to influence public opinion and win the support of voters. In terms of messaging, the DA used Nelson Mandela's voice in its campaign, claiming that the opposition party best represented his legacy and the democratic principles that he fought for. The ANC complained bitterly about what it termed the DA's unscrupulousness.

18 'Chief Electoral Officer Mosotho Moepya on the announcement of results for 2016 Municipal Elections' At <http://www.elections.org.za/content/About-Us/News/Chief-Electoral-Officer-Mosotho-Moepya-on-the-announcement-of-results-for-2016-Municipal-Elections/> Retrieved 20 September 2016.

Incidents of party supporters pulling down the posters and campaign materials of their rivals and clashes at political meetings were reported. The IEC reported that 28 of these cases had been dealt with through the PLC and mediation. However, what was more of concern were the heightened levels of intra-party violence within the ruling party, which claimed the lives of over 20 people, most of them ANC candidates who died in the KwaZulu-Natal and Eastern Cape provinces in alleged political assassination during the election campaign. The assassinations were said to be caused by factionalism, whereby party supporters or other party members in certain areas were dissatisfied with the imposition of the candidates by the party leadership. Violence also occurred in Mpumalanga, in North West Province and in Gauteng Province, where in June 2016 supporters of the ANC in Tshwane (Pretoria) rioted in protest over the selection of the ANC mayoral candidates, as they alleged that their preferred candidate had not been chosen. Five people died and properties, buildings and vehicles were set alight during these protests.

Election security was one of the key areas of concern for the Inter-Ministerial Committee on the Local Government Elections, which was chaired by the Minister of Cooperative Governance and Traditional Affairs. A National Joint Operation and Intelligence Structure was convened and the sub-committee on elections coordinated safety and security planning for the election, while the Justice, Crime Prevention and Security Cluster (JCPS) in government engaged in various outreach activities to various municipalities in the country in a bid to ensure safe elections. Authorities identified hot spots, and on Election Day there was heightened security in the areas where violence and killings had taken place during the campaign.

3.7 MEDIA ACCESS AND COVERAGE

Freedom of expression, including freedom of the media, is provided for in Chapter 2 Section 16 of the Constitution. This provides for

- a) Freedom of the press and other media;
- b) Freedom to receive or impart information or ideas.

These freedoms are generally respected, and there is other legislation such as the Promotion of Access to Information Act, which promotes effective access to information.

The South African media is diverse, with many newspapers and radio stations, including privately owned and community radio stations. The public broadcaster, the South African Broadcasting Corporation (SABC), has the most coverage in terms of number of stations and languages. Several other privately owned broadcasters such as ENCA, African News Network⁷, and Eyewitness News provided significant coverage. Additionally, many South Africans are active on social media. However, according to Media Monitoring Africa¹⁹ during the local government elections, there were challenges with media coverage due to the fact that many newsroom staff were inexperienced or lacked enough information about municipalities and the electoral system used in the elections.

While over 200 parties contested the elections, coverage focused mostly on the five main political parties, with 88% focused on the ANC, DA, EFF, IFP and NFP. The other parties received the remaining 12% of coverage. In addition, most of the stories covered party politics and campaigning and not necessarily the human rights issues and service delivery matters, which are at the heart of local government elections. Effectively, the voice of citizens was missing from the press coverage of the elections. Additionally, gender issues²⁰ received only 0.02% of the coverage during the elections. Only two of the top twenty people accessed by the media were female. Independent candidates were 'invisible' in the election campaign, as there was virtually no coverage of their activities, yet a sizeable number of independents²¹ contested the elections.

In the view of the EISA EOM the election coverage was not equitable and was unevenly skewed towards the large political parties. By virtually ignoring minority parties, independent candidates and the issues that matter to the electorate, particularly in local elections, the media did not fulfil its role of assisting voters to make informed choices about the election.

19 'Who set the news agenda and how they got away with it during the 2016 municipal elections in South Africa?' EISA Election Update at <https://www.eisa.org.za/eu/eu2016media.htm> retrieved 15 September 2016.

20 The media's coverage of gender issues during elections was not on their agenda at <http://mg.co.za/article/2016-08-10-00-the-medias-coverage-of-gender-issues-during-elections-was-not-on-their-agenda>

21 'Who set the news agenda and how they got away with it during the 2016 municipal elections in South Africa?' EISA Election Update at <https://www.eisa.org.za/eu/eu2016media.htm> retrieved 15 September 2016.

During the election a decision was made by the SABC not to broadcast images of certain protests. This move was viewed as violating citizens' rights to information and as an attempt to shield the governing party from negative criticism, since many of the protests were driven by factionalism, with ANC supporters protesting or clashing over candidate selection by the party leadership. The Independent Communications Authority of SA (Icasa), which is a Chapter 9 institution regulating the media, ordered the SABC to withdraw the decision. The SABC initially chose not to abide by the ruling but later decided to. Additionally, eight journalists were dismissed by the corporation for voicing criticism of the directive but were later reinstated by the Labour Court. However, the fact that such a move was taken was a worrying development, as it potentially stifles citizens' constitutional right to information.

3.8 PREPAREDNESS OF THE ELECTORAL COMMISSION

The EISA EOM noted that the Electoral Commission published its 72-day election timetable on 24 May 2016 and adhered to this timetable throughout the process. The Mission noted also that the local government elections were a complex undertaking involving the application of different electoral systems and the production and dispatching of multiple unique ballots and other election materials. Moreover, due to the special voting process most polling stations in the country were functional for an effective three days, which was a great logistical undertaking given the resources that were required. Apart from isolated cases of complaints against the management of the processes the Electoral Commission acquitted itself well and managed to conduct the process in a professional and impartial manner. Of note was the use of technology and social media to make the process more accessible to voters and candidates.

The EISA EOM noted, however, that staff were not always well trained and that this resulted in some delays and confusion during the special voting and on Election Day, and that this is an area where the commission needs to improve, particularly as elections become more competitive and there is heightened suspicion and scrutiny of the election management body.

4

The Election Phase



4.1 Special Voting

4.2 Election Day – 3 August 2016

The election phase took place over three days from 1-3 August, beginning with two days of Special Voting, which took place from 1-2 August 2016 and Election Day on 3 August 2016. The EISA EOM noted that the majority of polling stations were open for all three days of voting and were manned by the same staff throughout. On the whole, electoral authorities were well prepared for voters to cast their ballots and for the count that proceeded thereafter. Polling locations received materials on time and voting mostly commenced and ended on time. There were challenges with the application of procedures for special voting and for the counting process. However, these did not have a negative impact on the overall conduct of the polls. Results were announced after three days and well within the seven-day period required for the announcement of results as provided for in the law.

4.1 SPECIAL VOTING

A special vote allows registered voters who cannot vote at their voting station on Election Day to apply to vote on a predetermined day before Election Day.

The special vote is available to anyone who

- Cannot travel to their voting station for health reasons, for example due to physical infirmity, disability or pregnancy;
- Is unable to travel to their voting station on voting day – for example, members of the armed forces or someone who is deployed on official election duty.

On the designated day voters can either visit the voting station, or, if they are infirm, election officials make a home visit, which allows them to vote from home. For the 2016 elections voters could apply using the official IEC election app, via text message, through the IEC website or by visiting their local IEC offices. Applications for special votes opened on Friday 10 June 2016 and closed on Friday 8 July 2016. Over 741 720 applications were received for special voting – more than three times the number received in 2011 and nearly twice the number of 2014. Of these applications, 719 225 were approved.²²

During special voting voters went through the process of getting their left thumbnails inked with indelible ink as well as receiving the relevant ballot papers and marking their ballots in secret. However, following the marking of the ballots they were placed in an unsealed envelope, which was placed in another envelope marked with the voter's ID number and voting district number.

Special voting took place on 1 and 2 August. In the areas where they were deployed EISA observers noted that there was confusion and inconsistency about the number of ballot boxes to be used in the polling station. The EISA EOM is of the opinion that the writing of voters' name on the second envelope where the ballots are is a good measure for accounting but could compromise secrecy of the ballot and lead to traceability of the voter's choice. Other problems were noted when voters arrived at polling stations to cast a special ballot when they had not even applied for the special vote or had not received confirmation that their special vote application had been approved. Some voters had received confirmation but were missing from the 'approved list' of special voters. There is need for improved awareness-raising for voters in terms of the requirements for special voting.

After the two-day observation the EISA EOM was not persuaded of the need for two days for special voting. While it allows all eligible voters to exercise their right, with two days of financial, human and material resources given to the exercise, it increases the cost per voter in comparison to the cost per 'normal' voter. Secondly, coming immediately before Election

22 'Special voting underway in 2016 Municipal Elections' at <http://www.elections.org.za/content/About-Us/News/Special-voting-underway-in-2016-Municipal-Elections/> retrieved 28 September 2016.

Day, when election officials have to handle the highest number of voters, it means that staff have already been working for two days before starting the actual Election Day. In addition, the same staff members had to continue with conducting voting on Election Day and dealing with the complex and challenging counting process after the close of polls. The EISA EOM commends the electoral stakeholders for putting in place special measures, which greatly enhanced the opportunity for certain categories of persons to vote and thereby extended the right to vote to as many citizens as possible. However, the issues highlighted above – namely, insufficient voter education, compromising of the secrecy of the vote and the cost burden of two days of special voting on the election budget – need to be considered. Also to be considered is the potential for mistakes by fatigued polling staff at the end of the election phase.

4.2 ELECTION DAY – 3 AUGUST 2016

4.2.1 Opening of the poll and voting process

The Electoral Commission established three kind of voting stations:

- Permanent stations: those placed in permanent immovable structures such as schools, churches libraries;
- Temporary stations: structures such as tents used in areas where there are no permanent structures suitable for use as stations;
- Mobile stations: these are stations moved from one area to another within the voting district.

In total, there were 22 612 voting stations, which was an increase from 20 859 in 2011 and 22 264 in 2014. Where there were many voters on the voters' roll, the voters' roll for the station was either split between different rooms at the voting stations or more than one site was created in the room where the building was large such as a hall. Occasionally this created confusion in terms of directing voters to the correct station, but in most instances the process was managed appropriately.

The layout of most voting stations protected the secrecy of the vote. However, there was inconsistent application of procedures particularly with regard to the number of ballot boxes to be available for voters to place their ballots in

after voting. Some had one and some had more than one. The use of one ballot box for different ballot papers is not in line with international standards, as it means that at counting time, there is need to separate the different process first before commencing the counting process.

Most voting stations opened at 7 am as per the legal requirements. Where they opened late, it was due to late arrival of election materials and poor preparation by polling staff. At most stations, the voting process proceeded well with enough voting materials throughout Election Day. However, problems were experienced with bad weather, especially in the Eastern Cape and KwaZulu-Natal, which caused delays in opening or in voting as stations were relocated. Voting was to end at 7 pm, but was extended in order to allow voters to cast their ballot at these stations. EISA observer teams also reported that in some instances the Zip-Zip machines used to scan voter identity documents did not function properly and would misidentify or wrongly categorise voters.

4.2.2 Polling staff, party/candidate agents and security forces and observers

The IEC reportedly recruited and trained over 177 000 election officials, over 70% of whom were women – and 40 000 of them under the age of 25.²³ All voting stations visited by EISA observer teams had sufficient voting staff to manage the voting process.

Each political party was permitted to deploy two agents per station, while independent candidates could deploy one candidate per station in order to represent the interests of their candidates or parties throughout the voting process. There was a visible presence of party and candidate agents in most polling stations visited by EISA observer teams, although most tended to be seated in only one part of the station and not distributed around key points in the station as envisaged in the polling station layout distributed by the IEC.

Security forces were present at all voting stations visited by EISA observer teams. In a few isolated cases, they were inside the stations, but in most

23 'Launch of National Results Operations Centre' retrieved 28 September 2016 at <http://www.elections.org.za/content/About-Us/News/Launch-of-the-National-Results-Operations-Centre-Speech-from-the-Chief-Electoral-Officer-Mr-Mostho-Moepya/>

the security forces, members of the South African Police Service, kept a very discreet presence and became visible only where it was necessary to intervene. While most stations had not more than three police officers, in areas where there was pre-election violence there was a heavier presence of police. In the interests of promoting credible elections, the Electoral Commission accredits organisations that intend to appoint election observers. Appointment as observers is provided for in sections 41 and 42 of the Local Government Municipal Elections Act, which provides the guidelines for accreditation as well as the code of conduct for the observers. The mission noted the presence of citizen observers at voting stations visited by its teams and commends the electoral authorities for opening the process to scrutiny in order to increase the transparency and credibility of the process. Although there were briefings of observers at the provincial level, the EISA EOM was informed of centralised distribution of materials²⁴ for observers by the IEC, which resulted in a delay for some observer groups in receiving and distributing the materials to their observers on the ground. The mission urges the election authorities to decentralise this process in order that delays do not negatively impact on the observation of elections.

4.2.3 The ballot paper and election materials

At 95% of the voting stations visited by members the ballot materials were available in sufficient quantities throughout Election Day. There was a total of 4 649 unique ballot papers for the 2016 Municipal Elections:

- 4 392 ward ballot papers
- 205 local council PR ballot papers
- 8 metro council PR ballot papers
- 44 district council ballot papers

Voters received two or three ballots depending on which kind of municipality they were voting for. In metropolitan councils, voters received two ballots – one for the ward candidate and one party/PR. In local councils, voters received three ballots – one for the ward candidate, one PR for the local council and one for the district council. The district council is made up of candidates directly elected by the third ballot and by councillors appointed by the local councils in the district council.

24 Including bibs and handbooks.

All political parties and candidates contesting the elections received a copy of the certified voters' roll, which they were permitted to use for election-related matters only. Parties are also permitted to set up stands or tables beyond the perimeter of the voting station so that they can assist their supporters to check if they are in the voters' roll. These tables are not supposed to impede access to the voting station. Additionally, there is the potential for these tables to be used to intimidate or coerce voters.

In light of the requirement for getting full address details from voters, the voting stations also had a desk where voters who needed to update or complete their address details could do so on Election Day.

4.2.4 Closing and counting processes

Most voting stations visited closed at 7 pm as per the procedures. In cases where there were voters in the queue at the time of closing, they were allowed to cast their vote. Stations at which voting had been extended due to poor weather conditions closed after all voters had been allowed to vote.

Counting started immediately after voting and continued until the early hours of 4 August 2016. For the purposes of counting the voting station became the counting station and the voting officials were now counting officials. EISA observer teams noted that counting was generally conducted in line with the procedures. There were, however, notable delays in a number of cases due to inadequate familiarity with procedures by the counting staff. Moreover, the use of a single ballot box for more than one ballot exacerbated the delays, as it required sorting of ballot papers per type of election before reconciliation and counting.

5

The Post-Election Phase



- 5.1 Aggregation of results
- 5.2 Complaints process and dispute resolution
- 5.3 Announcement of the results

5.1 AGGREGATION OF RESULTS

Once counting was completed the provisional results in the results sheets were given to the representatives of political parties and candidates and a copy displayed at the voting stations. If they so desired, observers were given the results sheet. From the voting stations, results sheets were transmitted to the municipal electoral offices and after verification and scanning to the central results system at provincial level. Each province established a results operation centre (ROC) where the results for the province would be worked out with the process certified and finalised at the national results operation centre in Pretoria. The National Results Centre for the 2016 elections was based at the Tshwane Events Centre. These centres were open to the media, observers and to representatives of contesting political parties and candidates so that they could observe the tabulation process, which greatly enhanced the transparency of the process. The EISA EOM commends the measure taken to ensure the accuracy of the results by engaging independent auditors to audit the election results. This increases trust in the results that are announced by the Commission and promotes acceptance of the final results.

5.2 COMPLAINTS PROCESS AND DISPUTE RESOLUTION

During the process of vote accounting and tabulation of results there is a possibility for candidates, voters and agents to complain if they observe anything that is not procedural or in violation of regulations during voting

and counting. The same may also protest the conduct of an election official that may compromise the credibility of the elections. However, should the person who made the complaint be dissatisfied with the counting officer's decision, he or she can then file objections to the Electoral Commission within two days of the Election Day. If the petitioner is still not satisfied with the decision of the IEC, he or she can approach the Electoral Court. The IEC received 49 objections in terms of the Section 65 of the Municipal Elections Act, all of which it responded to before the announcement of the results on 6 August 2016. However, the DA was not satisfied with the IEC response with regard to calculation and recording of votes in Ward 5 of Bitou Municipality in the Western Cape and applied to the Electoral Court, which ordered a recount. However, the recount revealed only minor discrepancies and the seat allocation was upheld. The EISA EOM appreciates the fact that the aggrieved party had the opportunity to appeal and to get a recount, which allowed everyone to satisfy themselves that the count had been accurate.

5.3 ANNOUNCEMENT OF THE RESULTS

Final election results were announced at the Tshwane Results Centre on 6 August 2016 within the seven-day legal deadline for announcing results.

Table 6: Results of 2016 Local Government Elections by Vote

Party	Total Number of Valid Voters	Percentage of the votes
African Christian Democratic Party (ACDP)	150 967	0.39
African Independent Congress	333 659	0.87
African National Congress (ANC)	21 450 311	55.68
Congress of the People (COPE)	181 508	0.47
Democratic Alliance (DA)	9 463 500	24.57
Economic Freedom Fighters	3 202 783	8.31
Forum for service delivery	86 667	0.22
Independents	341 030	0.89
Inkatha Freedom Party (IFP)	1 823 382	4.73
Pan Africanist Congress of Azania (PAC)	74 607	0.19
United Democratic Movement (UDM)	238 001	0.68

Vryheidsfront Plus	307 549	0.80
Others*	870 194	2.26

* This includes the 195 other parties who contested the elections.

Source: IEC Website: retrieved 1 December 2016

<http://www.elections.org.za/content/LGEPublicReports/402/Detailed%20Results/National.pdf>

Voter turnout at 58% was a slight increase on the 57.6% turnout in 2011. Of note was the political reconfiguration that took place as a result of the election outcome. Voter support for the ANC decreased by 8% from 63.65% in the previous municipal elections in 2011 to 55.68% in 2016. The DA gained a 2.6% increase in voter support from 21.97% in 2011 to 24.57% in 2016. The EFF, a newcomer in municipal elections, received 8.31% of voter support. Of further significance was the loss by the ANC of political control of major urban areas. The election also heralded a period of possible political instability, particularly in metropolitan areas where there were four 'hung' metro municipalities with no outright winner. The ANC retained Ekurhuleni through a coalition, while the DA gained control of Nelson Mandela Bay through a coalition, and formed minority governments in Johannesburg and Tshwane. How these will survive the next five years is now the question.

6

Conclusions and Recommendations



6.1 Conclusions

6.2 Recommendations

6.1 CONCLUSIONS

Following its observations, the EISA Election Observation Mission to the 2016 Local Government Elections found that the elections were conducted in a transparent, fair and credible manner in line with the South African constitutional and legal framework of elections as well as regional and international standards for credible elections. The EISA Mission commends the IEC for the efforts undertaken to continuously improve the management of elections for an inclusive, impartial and peaceful process and for the election results to be acceptable.

6.2 RECOMMENDATIONS

The EISA mission made the following recommendations to electoral stakeholders in South Africa with a view to the improvement of future electoral processes in South Africa.

To the Legislature:

- Consider legal reforms governing party funding to include disclosure and regulation of private sources of party and campaign funding;
- Consider the introduction of a quota system for representation of women in municipal councils;
- Consider the introduction of affirmative action measures to increase the number of female electoral commissioners.

To the Independent Electoral Commission:

- Review the number of days allocated for special voting and consider the possibility of conducting the process in one day;
- Improve the education and awareness of voters in terms of the requirements for applying for special voting;
- Undertake measures to strengthen the mechanisms of application for special voting;
- Consider reviewing the voting procedure for special voting and use of ballot envelopes with names and identification numbers of voters to minimise the potential of undermining secrecy of the ballot;
- Undertake measures to enhance training of voting staff on electoral procedures, particularly counting procedures;
- Undertake measures to improve the accuracy of data on the Zip-Zip machines in order to prevent the disenfranchisement of voters;
- Provide for the use of one ballot box for each type of election.

To political parties and candidates:

- Review internal procedures for candidate selection in order to enhance internal party democracy and reduce intra-party conflict;
- All parties to consider the introduction of quotas for the representation of women in political office.

To law enforcement agencies:

- Spare no effort in timeously arresting the instigators and executors of alleged political assassinations in order to discourage this undemocratic practice.

ANNEXURES

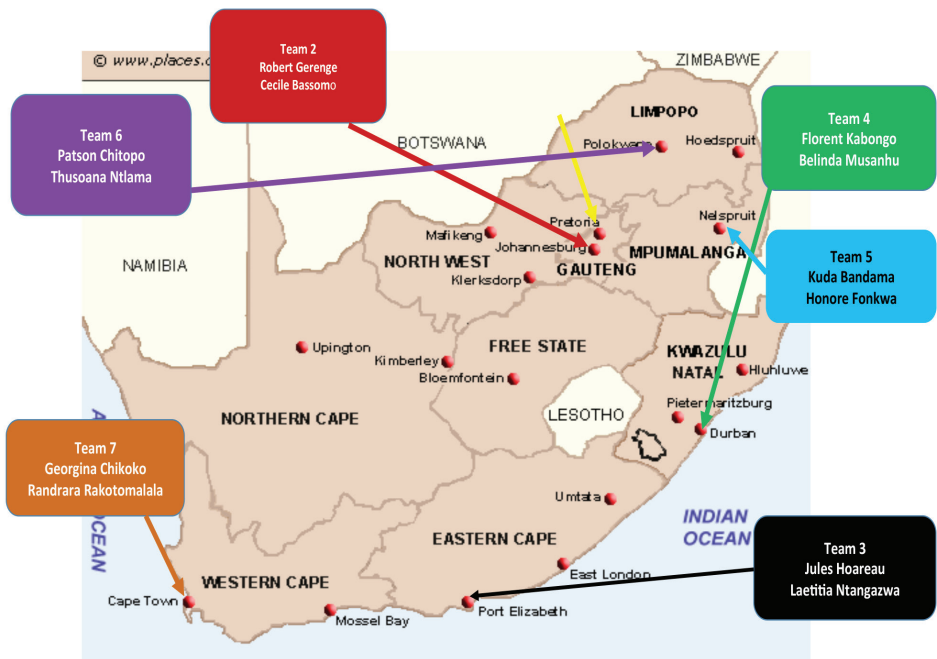
ANNEXURE I

EISA EOM DEPLOYMENT PLAN

Team no	Team members	Province	Metro/District Municipality
Team 1 (leadership)	Denis Kadima (Congolese) Nadia Zoubir (Algerian)	Gauteng	City of JHB Ekurhuleni Tshwane(metros) and Sedibeng, West Rand (districts)
Team 2 (technical team)	Cecile Bassomo (Cameroonian) Robert Gerenge (Zimbabwean) Noxolo Gwala (South African)	Gauteng	Johannesburg Metro
Team 3	Jules Hoareau (Seychellois) Laetitia Petro Ntangazwa (Tanzanian)	Eastern Cape PE	Nelson Mandela Bay, Buffalo City
Team 4	Florent Kabongo (Congolese) Belinda Musanhlu(Zimbabwean)	KZN Durban	Ethekwini
Team 5	Kuda Bandama (Zimbabwean) Honore Fonkwa (Cameroonian)	Mpumalanga Nelspruit	Secunda (Gert Sibande District Municipality) Nelspruit (Enhlanzeni district municipality) and Nkangala district
Team 6	Patson Chitopo (Zimbabwean) Thusoana Ntlama(Mosotho)	Limpopo	Waterberg, Sekhuk- hune, Vhembe, Mo- pani, Capricorn
Team 7	Georgina Chikok (Malawian) Randrara Rakotomalala (Malagasy)	Western Cape Cape Town	Cape Town

ANNEXURE 2

Deployment Map



ANNEXURE 3

Arrival Statement



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NPC (RF) registration number: 960008257/08

'The EISA Short Term Observers are deployed to contribute to an independent assessment of the integrity of the 2016 local government elections in the Republic of South Africa'

ARRIVAL STATEMENT OF THE EISA ELECTION OBSERVATION MISSION TO THE 2016 LOCAL GOVERNMENT ELECTIONS IN THE REPUBLIC OF SOUTH AFRICA

Pretoria, 28 July 2016

The Electoral Institute for Sustainable Democracy in Africa (EISA) announces the arrival of its election observation mission (EOM) in South Africa. Following an invitation by the Independent Electoral Commission of South Africa (IEC), the EISA EOM will observe the local government elections, scheduled to take place on 3 August 2016. Members of the EOM started arriving in Pretoria on 27 July 2016. The EISA Short Term Observers are deployed to contribute to an independent assessment of the integrity of the 2016 local government elections in the Republic of South Africa.

The Mission consists of 14 Short Term Observers (STOs). These observers are drawn from civil society organisations (CSOs) across the continent. The Mission is led by EISA's Executive Director. The Mission will make an impartial and independent assessment of the electoral process based on international standards and obligations stipulated in the African Charter on Democracy, Elections and Governance, the Principles for Election Management, Monitoring and Observation (PEMMO) and the Declaration of Principles for International Election Observation.

The EISA STOs are deployed to contribute to an independent assessment of the integrity of the electoral process through the observation of the pre-polling, Election Day and post-polling activities. The Mission will also ascertain whether the elections meet the international obligations subscribed to by South Africa and good election practices. EISA has been involved in the South African electoral process since 1999 when it deployed an election observation mission to the general election.

The STOs will be deployed to the following provinces: Gauteng, Eastern Cape, KwaZulu-Natal, Mpumalanga, Limpopo and Western Cape. During their deployment, STOs will consult with various electoral stakeholders including the IEC, political parties, media and CSOs. They will also observe the end of the campaign period, Election Day procedures and the immediate post-election period. Observers will capture their observations using smart tablets that allow real time transmission and analysis of data. STOs will remain in the country until 5 of August 2016. The elections and political processes team at the EISA head office will continue to monitor the post-election phase.

Patron: Sir Ketumile Masire (Botswana)

Board of Directors: Dr Christiana Thorpe (Chairperson) (Sierra Leone), Mr Denis Kadima (Executive Director), Dr Roukaya Kasenally (Mauritius), Professor Tom Lodge (United Kingdom), Justice Irene Mambilima (Zambia), Dr Nandini Patel (Malawi), Sheikh Abdul Carimo Nordine Sau (Mozambique), Professor John Stremlau (United States Of America), Ms Ilona Tip (South Africa)

ANNEXURE 4

Preliminary Statement



PRELIMINARY STATEMENT OF THE EISA ELECTION OBSERVATION MISSION TO THE 2016 LOCAL GOVERNMENT ELECTIONS IN THE REPUBLIC OF SOUTH AFRICA

Pretoria, 4 August 2016

‘The 2016 Local Government Elections were conducted in a transparent, fair and credible manner in line with the constitutional and legal framework of elections as well as regional and international electoral standards. The Mission urges all stakeholders to pursue values of political tolerance and to strongly castigate the surging malpractice of alleged political assassinations.’

I. INTRODUCTION

The Electoral Institute for Sustainable Democracy in Africa (EISA) deployed a regional election observation mission (EOM) to 3 August 2016 Local Government Elections in South Africa following an invitation by the Independent Electoral Commission (IEC). The Mission is led by Mr. Denis Kadima, the EISA Executive Director, and comprised 14 Short Term Observers (STOs) drawn from civil society organisations (CSOs) from the African continent.

The Mission’s assessment of the elections was premised on the constitutional and legal framework governing elections in the Republic of South Africa as well as international, continental and sub-regional norms, principles and standards on democratic elections as stipulated in the Declaration of Principles for International Election Observation, the African Charter on Democracy, Elections and Governance, and the Principles for Election Management, Monitoring and Observation (PEMMO). South Africa has

subscribed to this normative framework which is an expression of the country's commitment to democratic values and principles.

Since its creation in 1996, EISA has been involved in successive electoral processes in South Africa including the deployment of election observation missions. The Mission complements EISA's ongoing longer term electoral assessment efforts that involves local researchers engaged in the gathering of information to produce EISA South African Election Update 2016.

On 30 July 2016, EISA deployed seven teams of STOs to various provinces namely Gauteng, Eastern Cape, KwaZulu-Natal, Mpumalanga, Limpopo and Western Cape. As part of the observation methodology, the STOs consulted with various electoral stakeholders including the IEC, political parties, media and CSOs. They also observed the concluding phase of the election campaign process, the special voting on 1-2 August 2016 as well as the polling and counting processes on 3 August 2016. The STOs were equipped with computer tablets which enabled them to gather and transmit election observation data in real-time. This statement reflects the preliminary findings and recommendations of the Mission up to 4 August 2016. EISA will continue to monitor the post-election phase and produce a comprehensive report on the electoral process which will be rendered public in due course.

2.1 KEY PRELIMINARY FINDINGS

2.1 General Context

The Local Government Elections constitute a bedrock of accountable governance as citizens are able to influence local decision-making processes that directly impact on their daily lives in the community. The 2016 elections were deemed to be the most competitive with the highest number of candidates (61,014 in total) since the introduction of multi-party democracy in 1994 as South Africa continues to consolidate its democracy. They were also the first Local Government elections in which the "born-free" generation of citizens exercised their democratic choice of leaders in local governance. The political environment preceding the polls was relatively heightened by activities which characterised pluralism and contestations regarding policy and delivery of public services to the citizens. Similarly, the context was marked by the disqualification of one of the political parties and a few candidates.

The uncertainty regarding the conduct of 3 August 2016 Local Government Elections was assuaged by the Constitutional Court ruling of 3 June 2016. The ruling allowed the IEC to organise the polls as planned in light of a previous Electoral Court judgment which prevented the election management body from conducting by-elections in Tlokwe due to problems related to the lack of voters' physical addresses in the voters' register. The Constitutional Court ruling allowed the IEC to undertake this corrective measure on the voters' register within 18 months.

2.2 Electoral and Legal Reforms

The Mission noted that the IEC has commendably continued to engage in consultative electoral and legal reforms processes in a bid to improve the management of the electoral process. Key among these reforms include the introduction of the Universal Ballot Template to facilitate voting of the visually impaired voters. In addition, the IEC has introduced a procedure for enhancing the ability of voters to exercise their democratic right by granting voters the opportunity to be issued a new ballot paper in cases where they have made an error or changed their minds before dropping their ballot in the box. More so, the regulatory framework for processing candidate nominations has been improved by including the provision for electronic submission of candidate nomination documents, electronic payments of nomination fees, and notification of relevant parties and candidates of disqualification.

2.3 Election Campaign and Party Finance

The Mission noted that the campaign process was generally peaceful albeit vibrant. However, the run-up to the polls had incidents of violence including alleged political assassinations, particularly in the KwaZulu-Natal and Eastern Cape provinces, due to the increased intra-party competition. Such incidents are clearly a setback as the country strives to consolidate its democracy, and ran contrary to Bill of Rights enshrined in the Constitution, particularly the right to life, freedom and security of the person and political rights. Moreover, EISA observers were informed about destruction of campaign posters in some regions, in contrary to the provisions of the Code of Conduct. The Mission was informed about the IEC's record of 28 complaints of alleged violation of the Code of Conduct as of 2 August 2016. The majority of complaints have reportedly been addressed through mediation and legal process.

The Mission also noted that the regulatory framework governing party financing is the same as in the previous electoral processes. Whilst the public funding of parties is regulated, there still exists gap in the law regarding regulation of private sources of funding for parties. As electoral contest becomes increasingly competitive in South Africa, this regulatory gap may have a greater bearing on the negative influence of money in electoral politics with particular regard to electoral fair-play, and on politics more generally.

2.4 Polling Operations

Special Voting: EISA observers witnessed special voting in their areas of deployment. The EISA EOM commends the IEC for affording this opportunity to voters who found themselves in one of the following situations: physical infirmity, expectant women and registered voters who could not vote in their voting station on election day by virtue of being on duty as a member of security services in connection with the election; or serving as an officer in the elections concerned. Given the relatively low number of voters having applied for early vote, it was not clear to the EISA Mission why the Special Votes were not carried out in one single day instead of two days. The EISA teams observed a number of challenges. There were cases where EISA noted some confusion amongst polling staff with regard to the required number of ballot boxes and envelopes to be used. With regard to the envelopes, EISA noted that voters' names were written on the envelope B which contained envelope A which, in turn contained the marked ballot papers. This procedure carries the potential risk of traceability of the voters' choice, thereby impacting on the secrecy of special voting.

A number of voters also seemed to be lacking adequate information regarding the requirements for special voting. EISA noted that some voters showed up to vote without having gone through the application process to obtain approval for enlisting in special voting process as provided for in the election procedures. In other cases, there were notable technical challenges where some voter had applied for enlisting for Special Voting via SMS service but did not receive a confirmation by the IEC and in other instances where the voter received confirmation for enlisting but their names did not feature on the system. In view of these challenges, whilst there was a provision for these affected voters to still cast their votes on 3 August 2016, the EISA Mission cannot ascertain whether the affected voters eventually voted on the ordinary polling day.

Opening of the polls: On 03 August, most voting stations opened at 7 am as per the procedures. For the stations that opened late for reasons such as late arrival of election materials and inadequate preparation of the voting staff, polling usually started no later than 7:30 am. The EISA Mission was pleased to note that the large majority of voting stations were accessible to all categories of voters, including those living with physical infirmity.

Election Materials: EISA teams noted that election materials were available in adequate quantity in 95.1% of voting stations visited. For cases of stations which did not have sufficient materials the IEC undertook rapid measures to avail these materials in order to allow smooth voting process.

Voting Process: Generally, the voting process was carried out as per the procedures in stations visited by EISA teams. The layout of voting stations as well as commendably notable efforts for queue control by voting staff allowed the voting process to proceed smoothly. The voting process was transparent with the visible presence of agents of political parties and candidates. The secrecy of the ballot was preserved in all voting stations visited by EISA teams.

EISA teams noted cases of inconsistencies with regard to the number of ballot boxes used per voting station. Some stations used one ballot box while others used two. In places where EISA observed, there were also certain cases where the card reader commonly known as Zip Zip machines were dysfunctional which made the voting staff to resort to a manual process of identification of voters. More so, there were instances where a number of voters were turned away either because they presented themselves at the wrong voting stations; they were duly registered voters but the Zip Zip machine identified them as deceased or their names did not feature in the national population register.

Closing and counting process: Most voting stations visited closed at 7 pm as per the procedures. For cases where there were voters in the queue at the time of closing, they were allowed to cast their vote. Counting started immediately after voting and continued until the early hours of 4 August 2016. EISA teams noted that counting was generally conducted in line with the procedures. There were, however, notable delays in a number of cases due inadequate familiarity with procedures by the voting staff. More so, the

use of a single ballot box for more than one ballot augmented the delays in sorting of ballot papers per type of election before reconciliation and counting.

Election security: The polling operations were generally peaceful in all stations observed by EISA teams and did not witness any incident of violation of law and order. Security forces were visibly present until the close of election day operations and maintained a professional conduct. The EISA Mission noted that there were enhanced deployment of security personnel in various regions which were considered as hot spots in order to ensure a smooth voting process.

3. PRELIMINARY RECOMMENDATIONS

3.1 To Parliament

- Consider legal reforms governing party funding to include accountability of private sources of funding; and
- Consider establishing a regulatory framework for election campaign financing.

3.2 To the Independent Electoral Commission

- Review the number of days slated for special voting by assessing the possibility of conducting the process in one day;
- Undertake measures to strengthen the mechanisms of application for special voting;
- Consider reviewing the procedure of indicating the names and identification number of voters on envelope B during special voting in order to minimise the potential risk of undermining secrecy of the ballot;
- Undertake measures to enhance training of voting staff;
- Undertake measures to improve the accuracy of the voters' roll in order to prevent the disenfranchisement of voters;
- Improve training of voting staff on the reconciliation of ballot papers; and
- Provide for one ballot box per type of election.

3.3 To political parties and candidates

- Uphold the spirit and values of political tolerance and accommodation of diversity which are key for democratic consolidation; and

-
- Consider reviewing procedures for intra-party candidate selection for various elective posts as well as party policies in order to enhance internal democracy.

3.4 To law enforcement agencies

- Spare no efforts to timely arrest the instigators and executors of alleged political assassinations in order to discourage this undemocratic practice.

4. CONCLUSION

The 2016 local government elections are a milestone in the democratic consolidation of South Africa. The EISA Election Observation Mission concludes that the 2016 Local Government Elections were conducted in a transparent, fair and credible manner in line with the constitutional and legal framework of elections as well as regional and international electoral standards. The Mission urges all stakeholders to pursue values of political tolerance and to strongly castigate the surging malpractice of alleged political assassinations.

The EISA Mission commends the IEC for the efforts undertaken to continuously improve the management of elections in order to be inclusive, peaceful and transparent. The Mission also commends the security agencies for their efforts to maintain law and order throughout the electoral process. The EISA Mission encourages all stakeholders to engage in continued electoral reforms in order to improve the conduct of future elections in South Africa. As the results aggregation process is still ongoing, the EISA Mission therefore urges all electoral stakeholders to maintain peaceful conduct and explore established channels to resolve any dispute that may arise from the outcome of these elections.

ABOUT EISA



EISA was established on 28 June 1996 as the Electoral Institute for South Africa. EISA extended its area of work to the Southern African Development Community (SADC) region and changed its name to reflect its outreach to the SADC region on 15 December 2000. EISA undertook a further name change to reflect its extended geographic outreach to the entire African continent on 23 April 2010 when it registered the name “The Electoral Institute for the Sustainability of Democracy in Africa” and in 2011 amended its name to the “Electoral Institute Sustainable Democracy in Africa”. The acronym EISA has been used throughout.

EISA envisions an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment. It strives for excellence in the promotion of credible elections, citizen participation and the strengthening of political institutions for sustainable democracy in Africa.

EISA has deployed continental observer missions for the past ten years including missions to Angola (2008), Botswana (1999, 2004, 2009), Central African Republic (2010, 2011), Democratic Republic of Congo (2005 referendum, 2006 elections), Egypt (2011, 2012, 2014, 2015), Ghana (2008, 2012), Guinea Conakry (2010), Lesotho (1998, 2002, 2007, 2012, 2015), Liberia (2011), Madagascar (2005, 2007, 2013), Malawi (2004, 2009), Mauritius (2000, 2005, 2010), Mozambique (1999, 2004, 2009, 2013, 2014), Namibia (1999, 2004, 2009), Senegal (2012), Seychelles (2011), South Africa (1999, 2004, 2009, 2014), Tanzania (2005, 2010), Uganda (2011), Zanzibar (2005, 2010), Zambia (2005, 2008, 2011, 2015), and Zimbabwe (2000, 2002, 2008). Reports on these missions can also be found on its website www.eisa.org.za

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