

MODULE I
HOW THE ELECTIONS
WORK
2021
MUNICIPAL ELECTIONS

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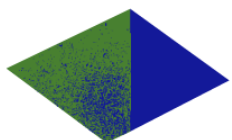
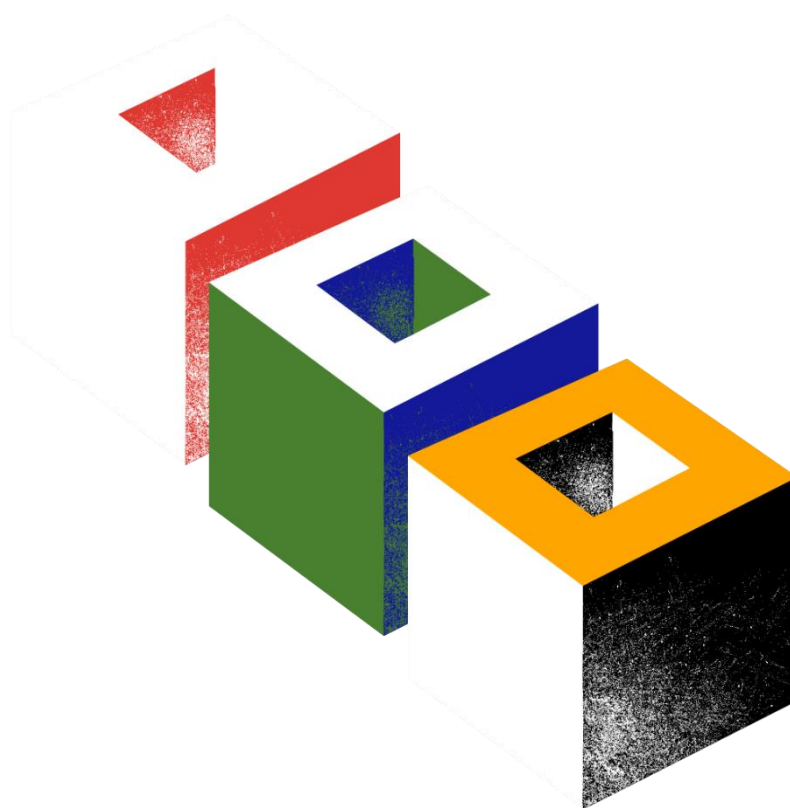
This module is part of a comprehensive set of online election resources which will be updated from time to time in the run-up to the 2021 elections. For further information on the 2021 elections, please visit

<https://elections.sanef.org.za>



Contents

1.	The constitutional framework	4
2.	The legislative framework.....	5
3.	The role of the IEC.....	6
4.	The Electoral Court	7
5.	The voting system	7
6.	Key milestones during the election period	12
7.	Electoral offences	15
8.	Suggested resources	16



MODULE I | ELECTIONS 2021: HOW THE ELECTIONS WORK

Overview of this module:

- The constitutional rights of voters, and the constitutional and legislative framework applicable to elections;
- The role and functions of key electoral institutions such as the Independent Electoral Commission (IEC) and Electoral Court;
- How the mixed-voting system of proportional representation (PR) and first-past-the-post (FPTP) (ward candidates) works in South Africa;
- What the key milestones of the Election Timetable are during an election period.

1. The constitutional framework

Democracy is a fundamental and indispensable principle of government in South Africa. The preamble to the South African Constitution states that government must be based on the “will of the people”, and section 1 sets out the values on which South Africa is founded, which includes universal adult suffrage, a national common voters’ roll, regular elections, and a multi-party system of democratic government.

In an open and democratic society, citizens express their will through elections. Elections are based on — and must be conducted in accordance with — the above democratic values. Political rights are particularly important given South Africa’s history in which the majority of its citizens were denied the right to vote.¹

Chapter 2 (Bill of Rights), section 19 of the Constitution provides:

- “(1) Every citizen is free to make political choices, which includes the right—
- (a) to form a political party;
 - (b) to participate in the activities of, or recruit members for, a political party; and
 - (c) to campaign for a political party or cause.
- (2) Every citizen has the right to free, fair, and regular elections for any legislative body established in terms of the Constitution.
- (3) Every adult citizen has the right—
- (a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
 - (b) to stand for public office and, if elected, to hold office.”

These rights and values are safeguarded by a number of civil and political rights in the Constitution. For example, the right to freedom of expression, contained in chapter 2 (Bill of Rights), section 16 of the Constitution, includes the right to receive and impart information, which can ensure that voters can make informed choices and hold political representatives to account. These rights also include an express protection of media freedom, which is integral to a democratic society.

The exercise of these rights enables citizen involvement in government through a democratic process that is representative, participatory, and direct. However, no right is absolute. Chapter 2 (Bill of Rights), section 36 of the Constitution provides for certain stipulations that the limitation of any right must comply with to be justifiable. These stipulations include that a right may only be limited in terms of a law of general application — that is, that applies to the general population — and to the extent that it is reasonable and justifiable in an open and democratic society.

¹ See *Ramakatsa and Others v Magashule and Others* [2012] ZACC 31 at para 64.

WHAT RIGHTS DO VOTERS ENJOY?

Chapter 2, section 19, read with section 1(d) of Chapter 1 of the Constitution, facilitates both the representative and participatory elements of democracy. According to the IEC, the key rights that each voter enjoys include:²

- The right to free and fair elections;
- The right to vote;
- The right not to vote;
- The right to spoil one's vote;
- The right to vote once at one's registered voting station;
- The right to one's own free choice of party or candidate;
- The right to a secret vote;
- The right to get help to vote;
- The right to vote safely;
- The right to make a complaint about harassment or intimidation.

2. The legislative framework

Several laws apply during the elections. First, the **Electoral Commission Act 51 of 1996** expands on the establishment of the IEC and details its composition, administrative structure, power, duties, and functions.

Second, the **Electoral Act 73 of 1998** (Electoral Act), as amended, is the primary piece of legislation relevant to national and provincial elections in South Africa. It provides for the various operational and administrative aspects relevant to elections, including the registration of voters and the voters' roll, the accreditation of observers, and the determination and declaration of final results. Part I of Chapter 7 of the Electoral Act sets out what conduct is prohibited in terms of the legislation. This is dealt with in more detail below.

The **Local Government: Municipal Electoral Act 27 of 2000** (Municipal Electoral Act), as amended, regulates the specific processes for municipal elections in South Africa. The Act was amended in 2010 and again in 2016 to provide for new technologies, such as smart IDs and electronic payments, and other changes. The Municipal Electoral Act states that the Electoral Act only applies to municipal elections to the extent stated in the Municipal Electoral Act. In other words, the Municipal Electoral Act should be deemed to take precedence over the Electoral Act when it expressly deals with a particular issue related to municipal elections.

These laws have recently been updated by the **Electoral Laws Amendment Act 1 of 2019**, which came into effect on 6 March 2019.³ It makes key changes to the Electoral Commission Act, the Electoral Act, and the Municipal Electoral Act. For instance, it clarifies that the voter's roll to be used in an election must be certified by the chief electoral officer for that election; it repeals the requirement that the identity document of a voter must be stamped as proof of voting; it provides for a different voting procedure for voters without addresses on the voter's roll; and it limits the class of persons who may apply for accreditation to provide voter education for an election to juristic persons.

Finally, there is the **Electoral Code of Conduct** (Electoral Code), which is contained in Schedule 1 of the Local Government: Municipal Electoral Act. The Electoral Code binds every party and candidate contesting an election. The Electoral Code is aimed at promoting conditions conducive to free and fair elections, in which there is a climate of tolerance, free political campaigning, and open public debate.

² IEC, 'Municipal elections handbook', (2016) at pp 51-52 (accessible [here](#)).

³ IEC, 'Commencement of Electoral Laws Amendment Act and Revision of Election Timetable (accessible [here](#)).

WHAT DOES THE ELECTORAL CODE REQUIRE FROM PARTIES AND CANDIDATES?

Parties or candidates must:⁴

- Publicly state that everyone has the right to freely express, challenge, or debate their political beliefs and opinions, to publish election materials, support candidates or parties, or recruit members for a party.
- Publicly condemn any action that may undermine the free and fair conduct of elections.
- Respect and facilitate the right of women to participate in electoral and political activities.
- Refrain from using language or acting in a way that may provoke violence during an election or the intimidation of parties, candidates, or voters, publish false or defamatory allegations, or discriminate on protected grounds.
- Refrain from unreasonably preventing any person access to voters.
- Refrain from defacing or unlawfully removing election materials of parties or candidates.
- Communicate and liaise with other political parties about planned political events.
- Recognise the authority of the IEC, assure voters of its impartiality, and obey lawful orders of the IEC.
- Work with IEC structures and allow them to perform their duties.
- Respect the role of the media.
- Accept the results of the election or challenge the result in court.

Notably, section 2 of the Electoral Code states that every contesting party and candidate must promote the purpose of the Electoral Code, publicise it widely in election campaigns, and promote and support efforts to educate voters. The specific provisions of these laws concerning the media are dealt with in more detail in Module II.

The **Political Party Funding Act 6 of 2018**, which was signed into law on 22 January 2019, is also relevant. It contains a wide range of accountability measures, including a requirement for the disclosure of donations above a prescribed threshold. The Act came into effect from 1 April 2021, in time for the 2021 municipal elections.

Sections 2 to 3 of the Political Party Funding Act establishes two political party funds: (i) the Represented Political Party Fund to enhance multiparty democracy by providing for the funding of represented political parties through funds appropriated by legislation; and (ii) the Multi-Party Democracy Fund for the purpose of funding represented political parties from private sources. The Political Party Funding Act imposes a wide range of accountability measures, including a prohibition on certain donations made directly to political parties, such as funds from foreign governments or foreign government agencies (section 8); and it requires the disclosure of donations above a prescribed threshold (section 9). The Political Party Funding Act has repealed the Public Funding of Represented Political Parties Act 104 of 1997.

Finally, it is also worth noting the 2020 Constitutional Court ruling in *New Nation Movement NPC v President of the Republic of South Africa & Others* that found parts of the Electoral Act unconstitutional in so far as it required candidates to be elected to the National Assembly and Provincial Legislatures only through their membership of political parties, and not as independent candidates.⁵ Parliament was given two years to rectify the legislation to allow for independent candidates to stand for office in national and provincial elections – as currently witnessed in municipal elections.

3. The role of the IEC

The Constitution lists the IEC under Chapter 9 as a state institution supporting democracy. Section 181(2) of the Constitution provides that Chapter 9 institutions are independent, subject only to the Constitution and the law, and that they must be impartial and exercise their powers and functions without fear, favour, or prejudice.

⁴ Schedule 1 of the Local Government: Municipal Electoral Act.

⁵ *New Nation Movement NPC v President of the Republic of South Africa & Others* [2020] ZACC 11.

The IEC consists of five members — one of whom must be a judge — each appointed by the President for a term of seven years.⁶

MEMBERS OF THE IEC FOR THE 2021 MUNICIPAL ELECTIONS

The five members of the IEC for the 2021 Municipal Elections are as follows: Mr Glen Mashinini (Chairperson); Ms Janet Love (Vice-Chairperson); Dr Nomsa Masuku (Commissioner); Mr Mosotho Moepya (Commissioner); and Judge Dhaya Pillay (Commissioner). The Chief Electoral Officer is Mr Sy Mamabolo.

The IEC, through the Office of the Chief Electoral Officer, has three main functions as set out in the Constitution,⁷ including to manage the elections of national, provincial, and municipal legislative bodies, and ensure they are free and fair, to declare results, and to compile and maintain a voters' roll.⁸ A national common voters' roll was first used in the 1999 general elections; and for every subsequent election (general and municipal) thereafter. According to section 5(2) of the Municipal Electoral Act, a municipality's segment of the voters' roll consists of the segments of the voters' roll for the voting district that fall within the municipality.

4. The Electoral Court

The Electoral Court is established in terms of section 18 of the Electoral Commission Act and enjoys the same status as that of a Supreme Court. The role of the Electoral Court is to review the decisions of the IEC relating to an electoral matter, and to hear appeals and reviews of decisions made by the Commission.⁹ All matters must be conducted on an urgent basis and disposed of as expeditiously as possible.¹⁰

The Electoral Court is also empowered to determine any matter that relates to the interpretation of a law referred to it by the IEC,¹¹ and to investigate any allegation of misconduct, incapacity, or incompetence of a member of the Commission and accordingly to make a recommendation to the National Assembly.¹²

For instance, in the decision of *Kham and Others v Electoral Commission and Another*, the Constitutional Court noted that:¹³

“The jurisdiction to review any decision of the IEC relating to an electoral matter affords the Electoral Court a power of judicial oversight over the activities of the IEC. The Electoral Court can examine any decision by the IEC and substitute it with its own. The range of electoral matters may be great. Certainly all the issues arising in the present case relate to electoral matters. They concern who may vote and whether all those who voted were entitled to do so.”

Members sitting on the Electoral Court are appointed by the President, on the recommendation of the Judicial Services Commission (JSC).

5. The voting system

Municipal elections take place in South Africa every five years and constitute the most basic formal level of democratically elected government in South Africa. Municipal elections differ from national and provincial elections in that they use a mixed or hybrid system of both a proportional representation (PR) system and ward system.¹⁴

⁶ Sections 6(1) and 7(1) of the Electoral Commission Act.

⁷ Section 190(1) of the Constitution.

⁸ As set out in section 5(1) of the Electoral Commission Act.

⁹ The powers, duties, and functions of the Electoral Court are set out in section 20 of the Electoral Commission Act.

¹⁰ Section 20(1) of the Electoral Commission Act.

¹¹ Section 20(6) of the Electoral Commission Act.

¹² Section 20(7) of the Electoral Commission Act.

¹³ [2015] ZACC 37 at para 42.

¹⁴ IEC, 'Election Types,' (accessible [here](#)).

There are three types of municipal councils in South Africa which hold executive and legislative authority, namely: ¹⁵

1. Metropolitan councils (also known as Category A):

Metropolitan councils exist in cities that have high population density and high levels of economic activity,¹⁶ of which there are currently eight in South Africa: Cape Town, eThekweni (Durban), Johannesburg, Mangaung (Bloemfontein), Tshwane (Pretoria), Nelson Mandela Bay (Gqeberha, formerly known as Port Elizabeth), Buffalo City (East London), and Ekurhuleni (East Rand).

These municipalities are broken into wards, for which ward councillors are elected. Half of the ward councillors in metropolitan councils are elected through the proportional representation system through parties, and the other half are directly elected by residents (and may be independent or nominated by a political party).¹⁷ At the time of the 2016 municipal elections, South Africa's eight metros boasted 1478 seats in combination: 740 ward and 738 PR seats.

2. Local councils (also known as Category B):

Areas that do not fall within metropolitan municipalities are divided into local municipalities. Currently, there are 205 local councils nationwide. Each local council is further divided into different wards. After the 2016 municipal elections, demarcation changes came into effect that reduced the number of local municipalities in the country from 226 to 205. While in the past there was a differentiation between urban and local urban government, this is no longer the case and now all rural villages and farms fall under local municipalities.¹⁸

3. District councils (also known as Category C):

Multiple local municipalities make up a district municipality. South Africa currently boasts 44 district municipalities across nine provinces.

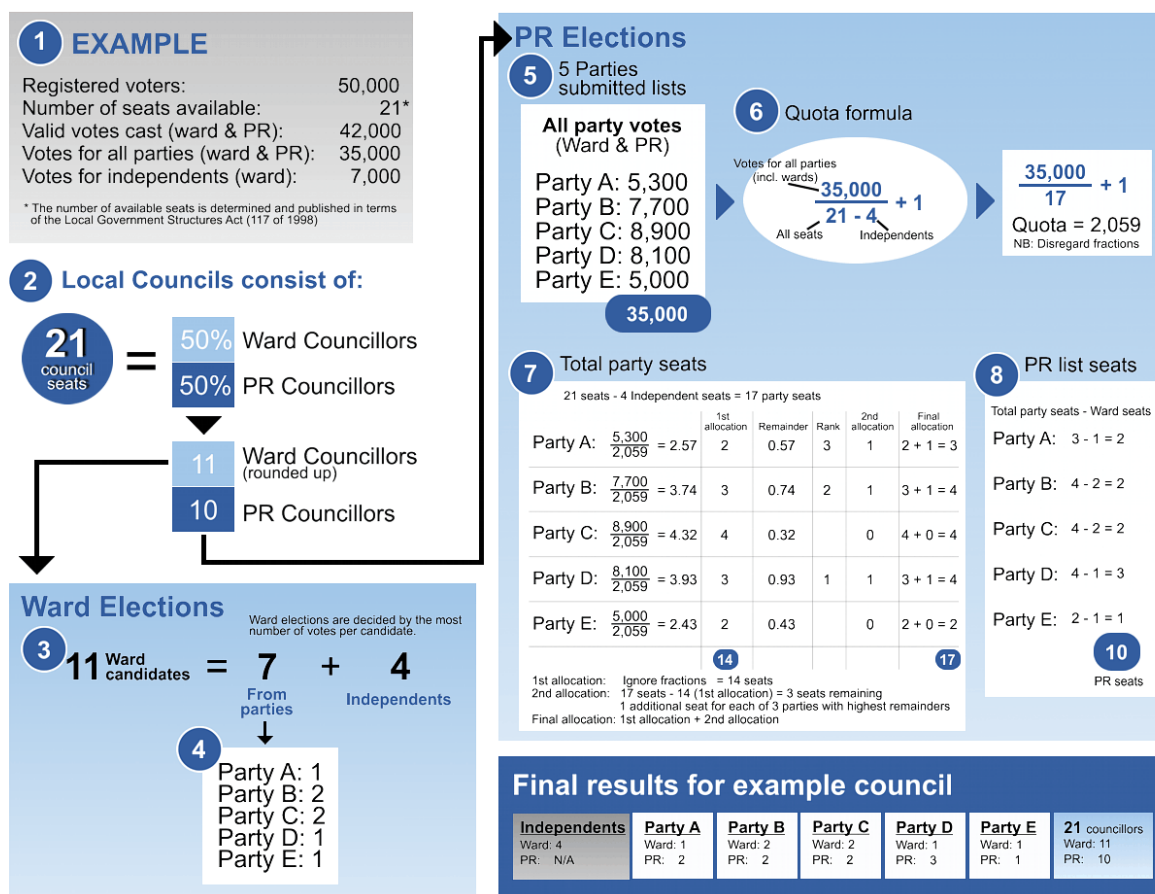
¹⁵ Municipalities.co.za, 'The Local Government Handbook South Africa 2021,' p 12 (accessible [here](#)).

¹⁶ Section 2 of the Local Government: Municipal Structures Act 117 of 1998.

¹⁷ Dullah Omar Institute, 'Electing Councillors: A Guide to Municipal Elections,' (2016) (accessible [here](#)).

¹⁸ IEC, 'Municipal elections handbook', (2016) at p 21 (accessible [here](#)).

Seat Allocation for Metro and Local Councils



The calculations for seat allocation are described in Schedule 1 of the Local Government Structures Act (117 of 1998)

Source: IEC, 'Seat calculation for Metro and Local Councils', accessible [here](#).

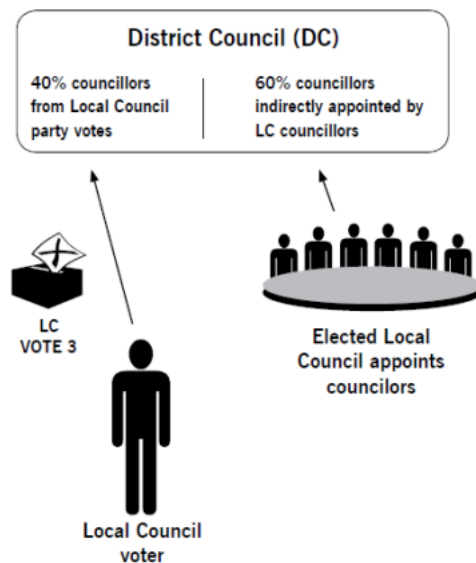
Municipal councils use a mixed system to elect councillors, incorporating both proportional representation (like the national elections), and a ward constituency system.

For both metropolitan and local councils, half of all seats on the council are allocated to proportional representation and half to ward candidates. This means that each voter in one of these municipalities votes once for a party, who is then allocated seats proportional to the percentage of votes that they receive, seats which the party fills from a closed list of candidates. The voter also then votes for an individual from a list of ward candidates, who may be representatives of parties or independent candidates, and from which the individual with the highest number of votes is elected.

A unique element of the mixed system is how the PR vote impacts the overall seat calculation. Even when a smaller party/organisation does not win a ward, those 'lost' votes are not discarded but added to that party/organisation's total votes to possibly give it a PR seat. This was one of the ANC's main criticisms of the electoral system after the 2016 local elections where, although the party had won more wards than other parties, its PR seat tally was restricted through the IEC's complex seat-allocation formula. In some instances, some smaller parties/organisations went on to assume the role of kingmaker in smaller councils due to a single PR seat allocation. Often, this kingmaker status afforded these smaller players more leverage in the form of demanding official positions such as that of the mayor, deputy mayor and council speaker posts as a bargaining tool.

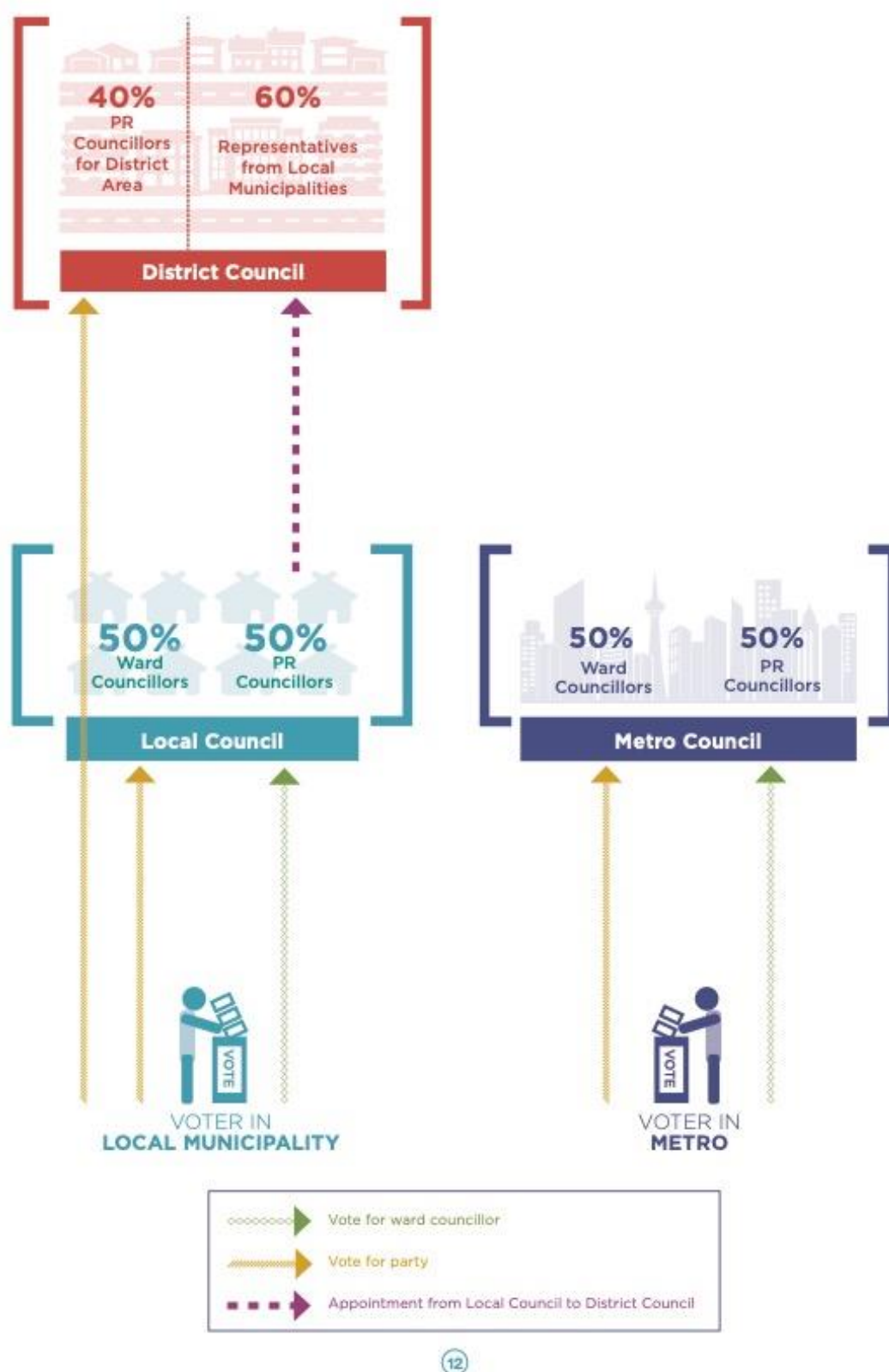
District councils operate slightly differently because they are made up of multiple local municipalities. Each voter in a local municipality also receives a district municipality ballot, from which they vote for parties according to the proportional representation system. 40% of the seats on the district council are allocated this way. The remaining 60% are allocated to

councillors sent by the local councils that make up that district, according to the proportion of support that parties have in a specific council.



Source: IEC, 'Seat allocation for District Councils, accessible [here](#).

Section 157 of the Constitution mandates the composition and election of municipal councils. It requires that a person may vote in a municipality only if they are registered on that municipality's segment of the national common voters' roll. This means that, unlike national elections, South Africans living outside the country may not vote in local elections. Likewise, prisoners also cannot vote in local elections because registered voters need to be resident where they are registered; and their names have to appear on that segment of the voting district voter's roll.



Source: Dullah Omar Institute, 'Electing Councillors: A Guide to Municipal Elections, accessible [here](#).

The process for establishing ward and voting district boundaries is a complicated one that is managed collaboratively by various agencies.¹⁹ First, the Minister of Cooperative Governance and Traditional Affairs (COGTA) defines the formulas for determining the number of councillors for each municipal council. The provincial Members of Executive Councils (MECs) then apply the formula to determine the number of municipal council seats for each municipality in their province, which is published in the *Government Gazette*. The Municipal Demarcation Board (MDB) then steps in. The MDB is an independent body established by the Constitution and the **Municipal Demarcation Act 27 of 1998** to draw municipal (known as demarcation) and ward (known as delimitation) boundaries. After an extensive nationwide public participation programme to inform their work, the MDB hands over final wards to the IEC prior to the election.

It is also worth noting that municipal by-elections take place in between regular elections. These must be held within 90 days after a municipal ward council seat becomes vacant due to death, expulsion, or resignation of a ward councillor.²⁰

6. Key milestones during the election period

To be eligible to vote, citizens must register to vote. To register, a person must be a South African citizen, 18 years old on the date on which the election was proclaimed by the President, have a valid green barcoded ID book, smart-card ID, or temporary ID certificate, and be registered on the roll.²¹ The voters' roll closes at midnight on the day of proclamation, and must then be made publicly available after certification by the IEC.²²

To contest an election, registered political parties and independent (ward) candidates must pay a deposit for each election that they want to contest, and parties must have submitted candidate lists to the IEC.²³ To be registered, a political party must submit the name of the party, the party's symbol in colour, the party's abbreviation, and the party's constitution. Failure to satisfy any one of these requirements may result in a refusal of registration. For example, after the establishment of the Congress of the People (COPE) in 2008, the ANC objected on the basis that COPE's name was closely associated with the ANC's own liberation history. COPE was allowed to keep its name following a court ruling that the 1955 Congress of the People in Kliptown was not the exclusive preserve of the ANC and its history.²⁴

The election date must be proclaimed — in other words, published in the *Government Gazette* — after consultation with the IEC, which is required to compile and publish an election timetable.²⁵

On the night of 21 April 2021, President Cyril Ramaphosa announced 27 October 2021 as the date for South Africa's sixth municipal elections.²⁶ Once the IEC concludes its voter registration drives to get more people registered for the election, notably previously unregistered and/or new voters, the minister of Co-operative Governance and Traditional Affairs (COGTA) is usually the person tasked with proclaiming and gazetting the official election date; and facilitating the closure of the voter's roll at midnight. Once that happens, the Election Timetable of key election milestones is set into motion. These milestones include:

¹⁹ IEC, 'Municipal elections handbook,' (2016) at p 23 (accessible [here](#)).

²⁰ IEC, 'Frequently asked questions: Elections,' (accessible [here](#)).

²¹ Sections 6 and 7 of the Electoral Act.

²² Section 16 of the Electoral Act.

²³ Sections 14 and 727 of the Municipal Electoral Act.

²⁴ *African National Congress v Congress of the People (Association Inc. Under Section 21) and Others* [2008] ZAGPHC 411 (accessible [here](#)).

²⁵ Section 11 of the Municipal Electoral Act. The election timetable includes, for instance, the cut-off date for objections to the voters' roll; the deadline for the certification of the voters' roll; and the closing date for applications for special votes.

²⁶ BusinessTech, 'Ramaphosa sets the date for the 2021 local government elections' (22 April 2021) (accessible [here](#)).

- 1 Proclamation and gazetting of the election date
- 2 Closing of voters' roll at midnight following the proclamation
- 3 Release of proposed voting station addresses for inspection
- 4 Certification and publication of voters' roll
- 5 Deadline for submission of candidate lists and deposits
- 6 Notifying parties/candidates on document/deposit non-compliance
- 7 Final compliance deadline for parties and candidates
- 8 Publication of list of parties and candidates for elections
- 9 Applications for special votes²⁷
- 10 Publication of voting stations and mobile voting station routes
- 11 Issuing of participation certificates to parties and ward candidates, (including independent candidates)
- 12 Special voting days (usually spread over two days) from 8am to 5pm
- 13 **Election Day, 27 October 2021**

(i) Voting procedures

HOW DOES VOTING TAKE PLACE?

Voting takes place as follows:²⁸

- The voter produces an identity document or smart identity card to a presiding officer or voting officer²⁹ who verifies that the voter's name appears on the certified segment of the voters' roll of the relevant voting district³⁰ and that the voter has not already voted in that election.³¹
- The presiding officer records that the voter has voted, marks the hand of the voter, and stamps the back of the ballot paper with the official stamp for the election.
- The voter receives the ballot papers for the municipal elections from the presiding officer.
- The voter must enter an empty voting compartment, mark the ballot papers in a way that indicates the registered party or candidate that the voter wishes to vote for, and fold the ballot paper to conceal the vote. As discussed above, depending on a voter's place of residence they may receive either two (metro or local council) or three ballots (district council) in the municipal election, each of which will clearly state which election it is for.
- The voter must take the ballot papers to the ballot boxes and show it to the presiding officer or a voting officer in a way that the officer can see the official stamp on the back.
- The ballot papers must be placed in the ballot boxes.
- The voter must leave the voting station without delay.
- Disabled voters may be assisted to vote by a presiding officer or voting officer if they request it and in the presence of an accredited observer or two agents from different parties, if available.
- The Municipal Electoral Act also allows for a voter to submit a new ballot if they have accidentally marked it incorrectly or have changed their mind, provided the ballot has not yet been placed in the ballot box.³²

As soon as a ballot box is full, the presiding officer, in the presence of any party agents and candidates present, must seal the ballot box and allow those agents to affix their seals to it.³³ When the voting station closes, the presiding officer must

²⁷ By law, a person can apply for a special vote if they are unable to travel to a voting station for health reasons, or are unable to access their voting station on voting day. Applying for a special vote enables a voter to vote on a predetermined day prior to Election Day, or to be visited by election officials at their home to vote. For more see, pp 49-51 of the IEC, 'Municipal elections handbook' (2016) (accessible [here](#)).

²⁸ Local Government: Municipal Electoral Act 27 of 2000 (accessible [here](#)).

²⁹ The IEC has developed a set of criteria for the appointment of presiding and deputy presiding officers, including that they should not have held political office or been politically active in the preceding five years.

³⁰ A voting district is the geographical area, drawn by the IEC, in an effort to minimise fraud and make administration more efficient. For more about voting districts and stations, see: <http://www.elections.org.za/content/Voters-Roll/About-voting-districts-and-stations/>.

³¹ Section 38(3) of the Electoral Act.

³² Local Government: Municipal Electoral Act 27 of 2000 at section 49, as amended by the Local Government Municipal Electoral Amendment Act No. 1 of 2016.

³³ Section 42 of the Electoral Act.

seal each unused ballot box, and seal in separate containers the certified segment of the voters' roll for that voting district, the unused ballot papers, the cancelled ballot papers, and the written record of any objections concerning voting.³⁴

(ii) Counting of votes

Votes must be counted at the voting station at which those votes were cast, unless the IEC determines otherwise, or if the voting station is a mobile voting station.³⁵ This must begin as soon as the station is closed for voting.³⁶ After sorting the ballot papers, and before counting, the counting officer must reject any ballot paper that:

- Indicates the identity of the voter;
- On which a vote is cast for more than one registered party or candidate;
- That is unmarked or marked in such a way that it is not reasonably possible to determine the voter's choice;
- That does not bear the official stamp of the presiding officer or voting officer; or
- That is not an official ballot paper.³⁷

After determining the provisional results for the municipal elections at a voting station, the counting officer must forward the result to the IEC and deliver the ballots and associated documentation to the local IEC. On receipt of these, the IEC must announce the result of the count in public.³⁸

(iii) Objections and appeals concerning verification

Any interested party can lodge an objection with the IEC concerning any aspect that is material to the determination of the final result of the election.³⁹ This must be done by no later than 17:00 on the second day after voting day.⁴⁰ The IEC must decide the objection within three days after it was served and notify the objector and other parties involved of its decision. If aggrieved by the IEC's decision, the objector or other party may appeal to the Electoral Court within a further three days, which must consider and decide the appeal and notify the parties to the appeal of its decision.⁴¹

It is noteworthy that an appeal to the Electoral Court does not suspend the declared result of an election.⁴²

(iv) Declaration of final result

Only the IEC has the legal authority to announce the election results.⁴³ The IEC is required to determine and declare the result of an election by adding together the results received from all voting stations within seven days after voting day.⁴⁴ However, the IEC has managed in all recent elections to make the final results announcement on the Saturday (four days) after the Wednesday elections.

³⁴ Section 43(1) of the Electoral Act.

³⁵ Section 46(1) of the Electoral Act and section 56 of the Local Government: Municipal Electoral Act 27 of 2000.

³⁶ Section 46(2) of the Electoral Act.

³⁷ Section 47(3) of the Electoral Act and section 61(1) of the Local Government: Municipal Electoral Act.

³⁸ Section 64 of the Local Government: Municipal Electoral Act.

³⁹ Section 65 of the Local Government: Municipal Electoral Act.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ IEC, above n 2 at p 69.

⁴⁴ Section 57(1)(2) of the Electoral Act.

HOW DOES THE PROCESS WORK?

Source: IEC, 'Municipal elections handbook', (2016) at p 69 (accessible [here](#)).

"The tabulation of results takes place at the voting station. Provisional results for each voting station are displayed outside the voting station when counting is finished. The results from each voting station are also sent to the municipal electoral offices, where they are verified and then scanned, captured, and transmitted to the [IEC's] central results system.

The dual scan-capture feature of this system makes the image of the original results slip available, together with the captured result. Moreover, the capturing entails a double-blind process and validations, and is audited by independent auditors.

The overall election results will be worked out at a centralised [Results Operation Centres (ROC)] under the control of the [IEC]: one national ROC based in Pretoria, Tshwane, and one ROC in each province."

Accredited media, observers, election monitors, party agents, and candidates are permitted to be present at the Results Operation Centres (ROCs).⁴⁵ The IEC may determine and declare the result of an election without having received the results of all voting stations, if waiting for all results would unduly delay the declaration of the final result and the outstanding results are not likely to materially influence the overall result of that election.⁴⁶

Councils then have 14-days within which to call their first sitting, at which key office-bearers are elected, including mayors, deputy mayors and speakers.⁴⁷

7. Electoral offences

Electoral fraud — which refers to illegal interference with the process of an election through deliberate wrongdoing — is a matter of particular concern and is a crime.⁴⁸ Electoral fraud can take place throughout the election period, both inside and outside of voting stations.⁴⁹

EXAMPLES OF ELECTORAL OFFENCES

Source: IEC, 'Municipal elections handbook', (2016) at pp 52-53 (accessible [here](#)).

It is an electoral offence to force anyone to do any of the following:

- To register to vote or not to register to vote.
- To vote or not to vote in an election.
- To support or not to support a particular political party or particular candidate.
- To vote or not to vote for a particular political party or particular candidate.
- To attend or not to attend a political event or rally of a political party.
- To interfere with the fairness or independence of the IEC or any officer of the IEC.

Chapter 7 of the Local Government: Municipal Electoral Act sets out prohibited conduct related to municipal elections. This includes, for instance, offences of undue influence, impersonation, intentional false statements, infringement of secrecy, prohibitions concerning voting materials and placards or billboards, and contraventions of the Electoral Code. Importantly, it also includes obstruction or non-compliance with the directions of the IEC or its officers, and a prohibition on the publication of exit polls. In terms of Section 109 of the Electoral Act, No. 73 of 1998, no persons including the media may print, publish, or distribute any exit polls taken in the elections in process during the hours of voting (7am to 7pm). An exit

⁴⁵ IEC, above n 2 at p 69.

⁴⁶ Section 57(3) of the Electoral Act.

⁴⁷ IEC, above n 2 at p 71.

⁴⁸ IEC, above n 2 at p 52.

⁴⁹ *Id.* at pp 52-53.

poll is when you count how many people voted and which parties you think they have supported. To do so, is an electoral offence; Any person who contravenes one of these sections is guilty of an offence, and if convicted may be liable to a fine or imprisonment.

8. Suggested resources

- Guidelines on Access to Information and Elections in Africa (accessible [here](#)).
- Government Communications, *Government system* in 'South African yearbook 2017/2018', (2018) (accessible [here](#)).
- Helen Suzman Foundation, 'The South African electoral system', (accessible [here](#)).
- IEC, 'Media guide: National and provincial elections', (2014) (accessible [here](#)).
- IEC, 'Municipal elections handbook', (2016) (accessible [here](#)).
- Open Society Foundation for South Africa, 'A touchpad for our future: An election resource for journalists (municipal elections 2011)', (March 2011) (accessible [here](#)).
- Constitution of South Africa, Sections 151-164 (accessible [here](#)).
- Yes Media, 'The Local Government Handbook South Africa 2021: A complete guide to municipalities in South Africa' (2021) (accessible [here](#)).
- Dullah Omar Institute, 'Electing Councillors: A Guide to Municipal Elections,' (2016) (accessible [here](#)).

