



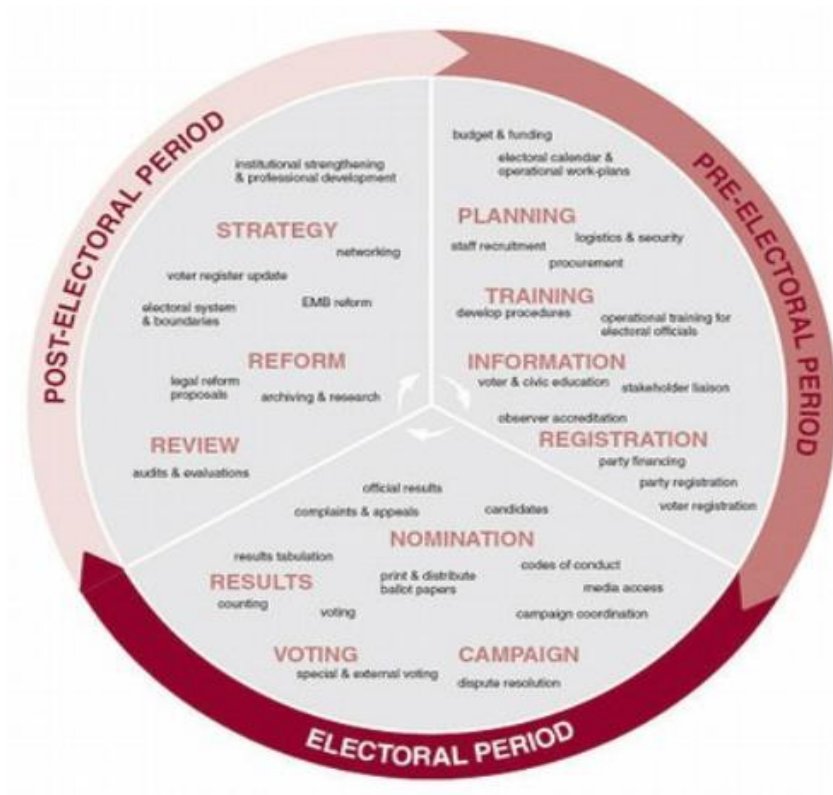
MODULE I

ELECTIONS 2021: HOW ELECTIONS WORK



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The electoral cycle



Source: ACE Electoral Knowledge Network, 'Electoral cycle', accessible here: <http://aceproject.org/electoral-advice/electoral-assistance/electoral-cycle>.

- The electoral cycle recognises elections as a **continuous process**, rather than isolated events.
- Divided into **three periods**:
 - Pre-electoral period.
 - Electoral period.
 - Post-electoral period.
- The electoral cycle has **no fixed starting or ending points**; one cycle may end when another begins.
- Emphasises the need to consider **longer-term and integrated strategies**, rather than short-term intermittent interventions.
- Serves to ensure the **sustainability of future election processes**; enduring results in the **independence and transparency** of electoral management bodies concerned; and the **democratic development** of the country.

Constitutional framework

- **Preamble** to the Constitution: provides that government must be based on the “**will of the people**”.
- **Section 1** of the Constitution: sets out the values on which South Africa is founded, including **universal adult suffrage, a national common voters’ roll, regular elections, and a multi-party system of democratic government**.
- **Section 19** of the Constitution gives citizens the rights:
 - To make **political choices**, including forming a **political party; participating in the activities** of, or recruit members for, a political party, and **campaigning** for a political party or cause.
 - To **free, fair and regular elections** for any legislative body established in terms of the Constitution.
 - To **vote in elections** for any legislative body established in terms of the Constitution, and to do so **in secret**; and
 - To **stand for public office** and, if elected, to **hold office**.
- **Section 36** of the Constitution: sets out the requirements for a **justifiable limitation** of a right contained in the Bill of Rights – a right may only be limited in terms of a law of general application to the extent that it is reasonable and justifiable in an open and democratic society.
- Chapter 7 of the Constitution vests executive and legislative authority for a municipality in its **Municipal Council**, and provides for their **election** through either a Proportional Representation (PR) or mixed/hybrid system.

Legislative framework

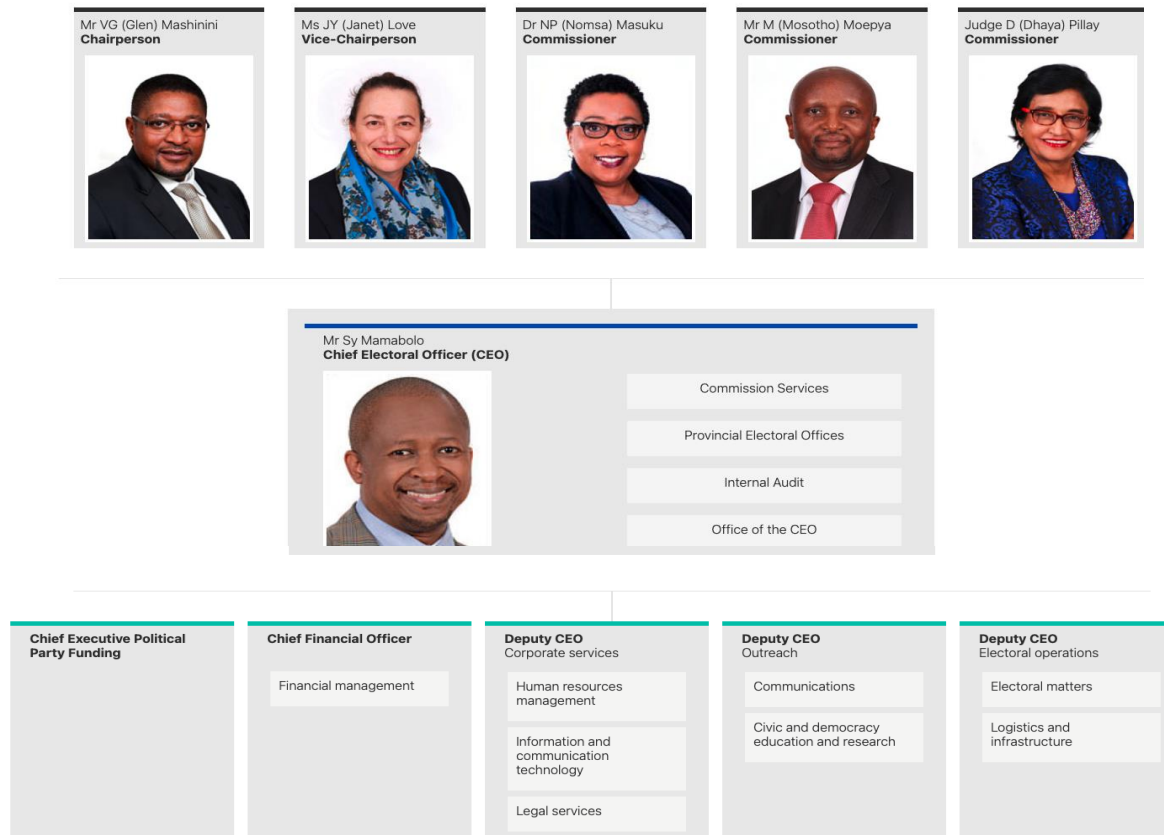
Law	Description
Electoral Commission Act 51 of 1996	<ul style="list-style-type: none">Expands on the establishment of the IEC: composition, administrative structure, power, duties and functions.
Local Government: Municipal Electoral Act 27 of 2000	<ul style="list-style-type: none">Referred to as the instruction manual for municipal elections.Sets out various operational and administrative aspects relevant to municipal elections, including the registration of voters and the voters' roll.
Electoral Laws Amendment Act 1 of 2019	<ul style="list-style-type: none">Makes key changes to the Electoral Commission Act, the Electoral Act, and the Municipal Electoral Act, such as easing requirements for voters without addresses.
Electoral Code of Conduct (contained in Schedule 1 of the Municipal Electoral Act)	<ul style="list-style-type: none">Must be subscribed to by every party and every candidate before being allowed to contest the elections or be placed on the list of candidates.Aimed at promoting conditions that are conducive to free and fair elections, with a climate of tolerance, free political campaigning and open public debate.

QUESTION FOR DISCUSSION: The Political Party Funding Act 6 of 2018 came into effect on 1 April 2021. What opportunities does this present for the media for election coverage? (Hint: Consider the information that is required to be disclosed.)

Electoral Code of Conduct

Prohibited conduct	Media clause
<ul style="list-style-type: none">•Using language which provokes violence;•Intimidation of candidates or voters;•Publishing false information about other candidates or parties;•Plagiarising any other party's symbols, name or acronyms;•Offering any inducement or reward to a person to vote for a party;•Destroying, removing or defacing posters of other parties;•Carrying arms or weapons at political meetings, marches or rallies;•Bribing voters to vote or not vote;•Generally abusing a position of power, privilege or influence to influence the outcome of an election.	<p><i>Every registered party and every candidate—</i></p> <p><i>(a) must respect the role of the media before, during and after an election conducted in terms of this Act;</i></p> <p><i>(b) may not prevent access by members of the media to public political meetings, marches, demonstrations and rallies; and</i></p> <p><i>(c) must take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or supporters.</i></p>

Electoral Commission



Source: IEC, 'Organogram', accessible here: <http://www.elections.org.za/content/about-us/organogram/>.

- The Constitution lists the IEC under **Chapter 9** of the Constitution as a **state institution supporting democracy**.
- Section 181(2) of the Constitution provides that these institutions are **independent**, subject only to the Constitution and the law.
- The IEC is constitutionally required to be **impartial** and exercise its powers and functions **without fear, favour or prejudice**.
- The IEC consists of **five members** recommended by parliament and appointed by the President for a period of seven years.
- **Functions** of the IEC (set out in section 5(1) of the Electoral Commission Act): include to **manage the elections**; ensure that the **elections are free and fair**.

Provincial Electoral Officers

Provincial Electoral Officers



Eastern Cape

Kayakazi Magudumana



Free State

Jabulani Tshabalala



Gauteng

Thabo Masemula



KwaZulu-Natal

Mawethu Mosery



Limpopo

Nkaro Mateta



Mpumalanga

Vacant



North West Province

Tumi Thiba



Northern Cape

Bonolo Modise



Western Cape

Michael Hendrickse

- Provincial offices are responsible for activities in **each of the nine provinces**.
- Each provincial office has a **Provincial Electoral Officer (PEO)** and support staff.
- The provincial offices oversee the municipal electoral officers in their respective provinces and also **manage electoral projects, including elections**.
- The **contact details** for each of the provincial officers is accessible here:
<http://www.elections.org.za/content/About-Us/Contact-Us/>.

Source: IEC, 'Provincial offices', accessible here:
<http://www.elections.org.za/content/About-Us/Provincial-Offices/>.

Role of the party liaison committees

- The IEC is **required by law** to establish party liaison committees at the national, provincial and municipal levels, to allow for **consultation and co-operation** between the IEC and the registered parties.
- **Each registered party** represented in the National Assembly, provincial legislature or municipal council can appoint up to two representatives to the relevant party liaison committee:
 - A party liaison committee at the **national sphere of government**, with not more than two representatives from every registered party represented in the national assembly.
 - A provincial liaison committee for **each of the nine provinces**, with not more than two representatives from every registered party represented in the legislature of the province concerned.
 - A municipal party liaison committee for a **single municipality or a group of municipalities**, with not more than two representatives from every registered party represented in the municipal council; and not more than two representatives represented in the party liaison committee for the province, but not represented in the municipal council; and not more than one representative of every independent councilor represented in a municipal council.
- Role of the party liaison committees is set out in the **Regulations on Party Liaison Committees, 1998**: “Party liaison committees will serve as **vehicles for consultation and co-operation** between the Commission and the registered parties concerned on **all electoral matters**, aimed at the delivery of free and fair elections.”
- **Examples** of issues discussed: voter registration activity; timetable for elections; ballot paper samples; security arrangements.
- The IEC **appoints a representative** for every party liaison committee, who is responsible for convening and chairing meetings.

Electoral Court

- The Electoral Court is established in terms of **section 18 of the Electoral Commission Act**.
- **Powers and functions** of the Electoral Court:
 - Hear appeals / reviews of decisions made by the IEC.
 - Hear and determine any matter that relates to the interpretation of any law referred to it by the IEC.
 - Investigate any allegation of misconduct, incapacity or incompetence of a member of the IEC and make a recommendation to the National Assembly accordingly.
- Matter must be conducted on an **urgent basis** and disposed of as **expeditiously** as possible.

CASE NOTE: Kham and Others v Electoral Commission and Another (CC, 2015):

“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.”

Electoral offences

- **Chapter 7** of the Municipal Electoral Act set out the prohibited conduct.
- Any person who contravenes one of these sections is **guilty of an offence**.
- 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 political party or candidate.
 - To vote or not to vote for a political party or 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.
- Any person who contravenes one of these sections is **guilty of an offence**, and if convicted may be liable to a fine or imprisonment.
- For example, any person or registered party bound by the **Electoral Code of Conduct** who contravenes or fails to comply with a provision of that Code is **liable on conviction to a fine or imprisonment for up to ten years**.

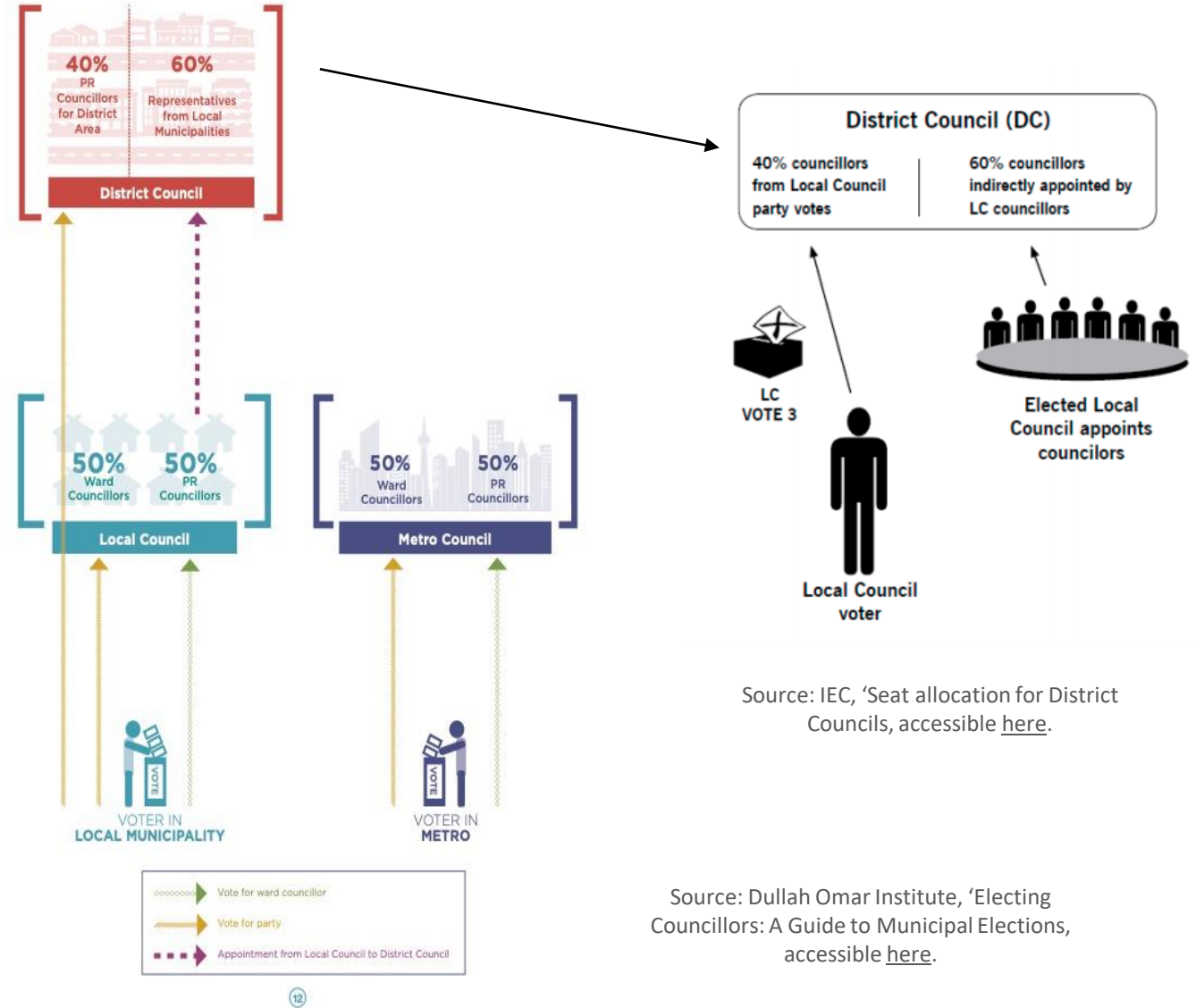
National / provincial / municipal elections

National and Provincial Elections	Municipal Elections
<ul style="list-style-type: none">Take place every five years.	<ul style="list-style-type: none">Takes place every five years, two years later.
<ul style="list-style-type: none">Voters vote for a political party, not individuals. The political party gets a share of seats in Parliament in direct proportion to the number of votes it got in the election. Each party then decides on members to fill the seats it has won. This is called a proportional representation voting system.	<ul style="list-style-type: none">A mixed or hybrid system, making use of both the proportional representation system and the ward system (directly elected candidates), is used for municipal elections.
<ul style="list-style-type: none">National government makes and carries out laws and policies for the whole country, comprising: (i) Parliament led by the Speaker; and (ii) national government led by the President and Ministers.Provincial government makes and carries out laws and policies that affect the province only, comprising: (i) Legislature led by the Speaker; (ii) provincial government led by the Premier and Members of the Executive Council.	<ul style="list-style-type: none">There are three types of Municipal Councils:<ul style="list-style-type: none">Category A: Metropolitan Councils – large cities, dense populations.Category B: Local Councils (LC) – non-metropolitan areas.Category C: District Councils (DC) – made up of multiple local municipalities/councils.

Source: IEC, 'Election types', accessible here: <http://www.elections.org.za/content/Elections/Election-types/>.

Voting system

- **Metropolitan and Local Council seats:**
 - 50% PR councillors
 - 50% ward candidates
- **District Council seats:**
 - Made up of multiple Local Municipalities
 - 40% are allocated through votes from Local Municipality voters through PR
 - 60% are allocated to councillors sent from the Local Councils, according to the proportion of support that parties have in that district



Key milestones in the election period

ELECTION MILESTONES	
	Milestone
1	Proclamation and gazetting of the election
2	Closing of the voters' roll
3	Release of proposed voting station addresses for inspection
4	Certification and publication of voters' roll
5	Deadline for submission of list of candidates and deposits
6	Publication of lists of parties and candidates
7	Applications for special votes
8	Publication of voting stations
9	Special voting days
10	Election day – 27 October 2021

Note: the Electoral Amendment Act 2013 gives South Africans abroad and prisoners the right to register and vote **only** in national elections, not municipal elections.

Voting and counting

Voting

- Voter must produce identity document; voter's name must appear in the relevant segment of the voters' roll for that voting district; and voter must not have already voted in the election.
- Voter receives ballots for municipal elections, and casts vote for the desired party and candidate.
- Voter is expected to leave the voting station without delay.

Counting

- Votes must be counted at the voting station at which they were cast, unless the IEC determines otherwise, as soon as voting is closed.
- Ballots must be rejected if, for example, it indicates voter identity; is cast for more than one registered party; or is not clearly marked.
- After determining the result at a voting station, the counting officer must forward results to the IEC, which must announce the results in public.

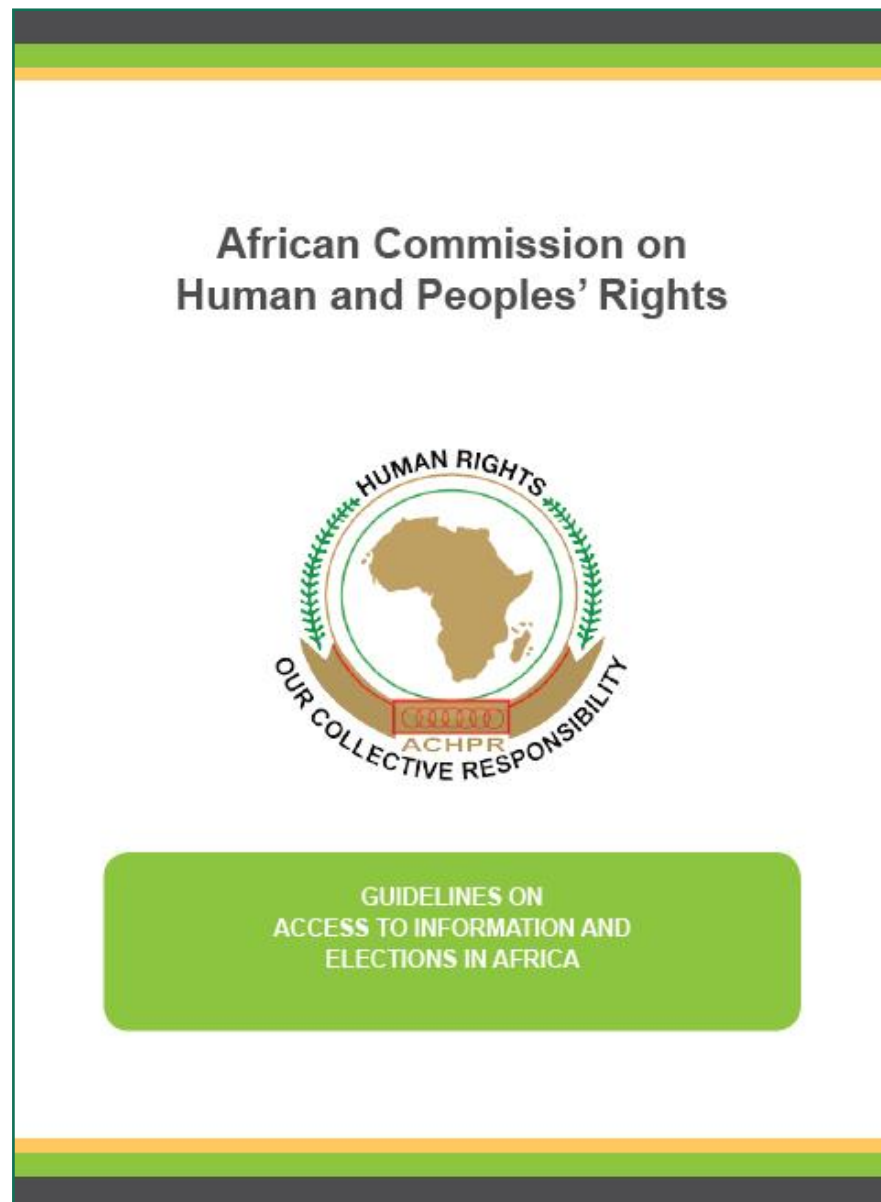
Objections

- Any interested party may lodge an objection with the IEC that is material to the determination of the final result of the election.
- The IEC must decide the objection and notify the objector and other parties involved of its decision.
- Any party may, if aggrieved by the IEC's decision, appeal to the Electoral Court.

Final result

- Only the IEC has the authority to announce the final election results.
- The IEC is required to determine and declare the result of an election within seven days after the voting day.
- Accredited media, observers, party agents and candidates are permitted to be present at the Results Operation Centre.

Access to electoral info and proactive disclosure





FURTHER READING



Visit elections.sanef.org.za

Suggested resources

- ARTICLE 19, 'Acting on UN Human Rights Council Resolution 33/2 on the Safety of Journalists' (2017) (accessible [here](#)).
- C. Silverman, 'Verification handbook: The ultimate guideline on digital age sourcing for emergency coverage', (undated) (accessible [here](#)).
- CPJ, 'Safety kit for journalists covering the South African election,' (2019) (accessible [here](#)).
- IEC, 'Municipal elections handbook', (2016) (accessible [here](#)).
- Media Monitoring Africa, 'Disinformation and 'fake news' during elections: Proposals for the upcoming 2019 General Elections in South Africa' (2018).
- Press Council, 'Code of Conduct and Ethics for the South African Print and Online Media: Decoding the Code sentence by sentence', (1 January 2019) (accessible [here](#)).
- Press Council, 'Guidance notes: A brief for journalists covering the elections', (February 2019) (accessible [here](#)).
- UNESCO, 'Journalism, 'fake news' and disinformation': Handbook for journalism education and training', (2018) (accessible [here](#)).
- Dullah Omar Institute, 'Electing Councillors: A Guide to Municipal Elections,' (2016) (accessible [here](#)).
- Municipalities.co.za, 'The Local Government Handbook South Africa 2021,' p 15 (accessible [here](#)).
- South African Cities Network, 'State of City Finances 2020,' (2020) (accessible [here](#)).

For more information and resources, please visit:

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

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