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REMARKS BY MINISTER DLAMINI ZUMA CALLING AND SETTING THE DATE FOR THE LOCAL GOVERNMENT ELECTIONS

Members of the media,

Fellow compatriots,

Good afternoon.

At the conclusion of our first democratic election in 1994, President Nelson Mandela said: *“Out of the experience of and extraordinary human disaster that lasted too long, must be born a society of which all humanity will be proud.”* Today we are once again confronted by extra ordinary circumstances which have been occasioned by the silent enemy called COVID-19. We proudly take this opportunity to recognise the sterling efforts of our health care workers, who have literally placed their lives on the line to save our lives and livelihoods.

Compatriots you will also recall that the Constitution section 159 read with the Municipal Structures Act prescribes that at the end of a five year term of local government elections must held within a period of 90 days. Consequently, on the 21st of April President Ramaphosa announced that the local government elections will take place on 27 October this year. To follow up and conclude on this we were to proclaim and Gazzette the date this week.

Given the situation in relation to COVID-19, the IEC appointed retired Deputy Chief Justice Moseneke to consider whether we could undertake free and fair elections during October. The inquiry received over 4 000 submissions from political parties, health experts and the general public, concluding its work and handing the report to the IEC on 20th July.

The report concluded that “... *it is not reasonably possible to or likely that the local government elections scheduled for the month of October 2021 will be held in a free and fair manner...*” In balancing the need to secure livelihoods and our democratic obligations we are in agreement with the outcomes of the Moseneke Inquiry, which also concluded that should the IEC “*accept and seek to implement the outcome of [the] Inquiry it is self-evident that it must approach, with deliberate speed, a court of competent jurisdiction to seek a just and equitable order to defer the local government elections to not later than the month of February 2022 and on such terms the court may grant.*”

The minister of COGTA was then confronted by the question, whether the Minister is obliged by law to proclaim the election date despite the DCJ’s recommendation, for which she sought Legal Counsel. If not, what in law would entitle her not to do so. Additionally, whether the IEC may request the Constitutional Court to postpone elections where an election date has not yet been proclaimed. The advice also considered:

- whether this means the Minister must proclaim the election date, leaving the IEC to approach the Constitutional Court for a postponement of the elections;
- whether it should be the IEC or the Minister that approaches the Constitutional Court for the postponement of the elections; and

- the role that the Minister should play in the litigation if the IEC approaches the Constitutional Court – namely whether she should be a co-applicant or *amicus curiae*.

The Legal Opinion concluded that:

1. By resolving to adopt the Report the IEC has, by implication, concluded that elections held in October 2021 will not be free and fair and has resolved to follow the recommendations of the Report.
2. There is an imperative to protect the rights of all persons to life, bodily and psychological integrity, as well as access to healthcare services, all of which rights may be jeopardised if elections continue as initially planned if the findings in the Report.
3. The Minister is not empowered to postpone the elections to a date beyond 90 days after the expiry of the term of the municipal councils, as prescribed by section 159(2) of the Constitution.
4. The nature of the relief that the IEC will seek should determine whether the Minister must first proclaim an election date for purposes of an application to the Constitutional Court. What we say without any doubt is that the Minister is bound to fulfil her constitutional and statutory obligations to timeously proclaim the election date for the elections. There is currently no court order that would excuse the Minister from fulfilling her constitutional and statutory obligations. If the Minister is forced to proclaim the election date before judgment by the Constitutional Court, she may explain that she has been advised to do so to fulfil her constitutional and statutory obligations. If the Court postpones the elections, the Minister would not have acted in contempt of Court. Proclaiming the election date for 2021 would only be prohibited if there is a Court order postponing the elections to February 2022.
5. As to whether it is the Minister or the IEC that should approach the Constitutional Court, the ideal question ought to be whether the

Constitutional Court may grant an order postponing the elections. However, since it is the IEC that has to form the view, and has formed the view, that the elections held within the time period permitted by the Constitution would not be free and fair, it is the IEC that ought to be the applicant. The IEC is obliged to cite the Minister as a respondent. The Minister will be free to participate in the proceedings as a respondent in any manner she wishes. The Minister may abide the decision of the Court or actively support the relief that the IEC will seek. The Minister may even abide the decision but file an explanatory affidavit and make written and oral submissions to assist the Court to come to a just outcome.

It is therefore clear that we still must go ahead to call the elections and gazette the date. This will also enable the IEC to go ahead and file papers in the Constitutional Court to postpone an election that has been called. We are also aware the calling of the elections and gazetting will mean the voters roll will be sealed. The IEC will have to go to the Constitutional Court on an urgent basis and hopefully in their papers will take into account that will be sealed after the calling and gazetting of the date. by these actions. If the Constitutional Court allows for the postponement of course we will abide.

In gazetting the date, we are no way seeking to contradict the Inquiry's conclusion or the IEC's contemplated actions. We are just merely fulfilling our obligations.

I thank you.