

PROTECTING ELECTORAL INTEGRITY: THE CASE OF SOUTH AFRICA

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INTRODUCTION

This case study highlights how the Electoral Commission of South Africa (IEC) has developed strategies to identify and manage risks; adapt and respond to changing circumstances; and prepare for possible crises. Through formal risk and crisis management processes, scenario-based planning and well-established governance structures, the IEC has managed to maintain the integrity of electoral processes in South Africa despite several challenges, such as the Covid-19 pandemic. The IEC's capacity to withstand shocks and stresses while continuing to deliver credible elections has contributed to the consolidation of electoral democracy since the landmark 1994 elections.

BACKGROUND

As an institution enshrined in the Constitution of South Africa, the Electoral Commission (IEC) is an independent body which provides it with sufficient autonomy to manage and respond to threats to the electoral process. Its financial independence affords it the flexibility to adapt and respond to challenges as they arise. The legal framework for elections in South Africa ensures that the IEC operates under a sound governance framework, which establishes formal policies and procedures such as maintaining a risk register. These both help avert risks and enable the IEC to respond effectively when dealing with potential crises. The legal framework also establishes mechanisms such as the party liaison committee and the code of conduct, which contribute to reducing election-related risks by fostering communication, collaboration and cooperation between stakeholders.

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In 1994, South Africa conducted its first ever multiracial elections under the 1993 Interim Constitution. This marked the end of the Apartheid era and the beginning of a transition towards an open and inclusive democratic society. The elections brought the African National Congress (ANC) to power under the leadership of President Nelson Mandela. The newly elected parliament immediately started a reform process and eventually adopted a new and inclusive Constitution (South Africa 1996a), which has provided the framework for political and electoral processes to the present day (Skovsholm 1999).

The 1996 Constitution establishes the basis for determining the political governance structure of the country through its objective of building a ‘united and democratic South Africa’ (South Africa 1996a, Preamble). It provides for universal suffrage, a common national voters’ roll, regular elections and a multiparty system of democratic government, to ensure accountability, responsiveness and openness (Chapter 1). The Constitution also guarantees citizens the right to vote and stand as candidates in ‘free, fair and regular elections’ (Chapter 19). To support constitutional democracy, Chapter 9 provides for the establishment of independent state institutions that must be impartial and exercise their powers and perform their functions ‘without fear, favour or prejudice’. One of these institutions is the Electoral Commission of South Africa, known as the IEC, which has responsibility for organizing elections.¹

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Since the adoption of the current Constitution in December 1996, the IEC has overseen 10 nationwide elections.² Its constitutionally mandated functions (Chapter 9: 190–91) are to:

- manage elections of national, provincial and municipal legislatures in accordance with national legislation;
- ensure that those elections are free and fair; and
- declare the results of those elections within a period that is as short as possible.

The Electoral Act 73 (South Africa 1998) frames the electoral system of the country. Both general and local elections take place every five years, with the most recent municipal elections held in 2021, while the next National Assembly and provincial elections are due to take place in 2024. For the National Assembly elections, there are 400 seats distributed through a system of proportional representation (PR). Of these, 200 seats are allocated from a national list and the other 200 seats through regional lists, based on each province’s population of registered voters. Provincial assembly elections also

¹ There are six ‘Chapter Nine institutions’, namely: (1) the Public Protector; (2) the South African Human Rights Commission; (3) the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; (4) the Commission for Gender Equality; (5) the Auditor-General; and (6) the Electoral Commission.

² National and provincial elections in 1999, 2004, 2009, 2014 and 2019; and municipal elections in 2000, 2006, 2011, 2016 and 2021.

make use of the PR system while municipal elections use a hybrid system, combining PR with the ward system.³

The legislative framework outlines the political rights of all South Africans, including minorities from traditionally under-represented segments of society. Political parties and candidates are required to respect the rights of women and take steps to ensure that they can participate equally in political activities (Electoral Act, Section 4). After the 2019 general elections, South Africa was ranked 16 in the global rankings of women in national parliaments, with 179 women (45.3 per cent) in the National Assembly (IPU n.d., data as of October 2023). The high ranking is due in part to some political parties having instituted voluntary gender quotas for national, provincial and local government candidate party lists. For example, the ANC, which obtained the largest share of the vote in 2019, applies a voluntary 50/50 quota policy as well as a candidate placement strategy which ensures that men and women are given equal chances of being elected (Commission for Gender Equality 2019).

In local government councils, where not all seats are determined using list PR, the number of women elected fell from 41 per cent to 37.9 per cent during the 2021 elections (Maziwisa 2022). In the absence of legislated quotas, South Africa relies entirely on the commitment of individual political parties to promote women's representation (Hicks, Lowe Morna and Fonnah 2016). While significant strides have been made in improving the representativeness of elected leaders, this is yet to translate into improved social and economic positions for women. Levels of gender-based violence remain high (Smout 2021).

The 2024 elections will pose several challenges to the IEC, some of them new, while others have already emerged during recent electoral cycles. The 26,152,855 registered voters (55.3 per cent women; 44.7 per cent men—see: IEC n.d.b) will be voting for the first time since the passage of the Electoral Amendment Act 1 (South Africa 2023). For the first time, the 2023 law provides for the inclusion and nomination of independent candidates to contest elections in the National Assembly and provincial legislatures. Because voters will receive an additional ballot compared to previous elections, the IEC is required to significantly alter several processes and documents, including ICT systems for the transmission of election results (Atkins 2023). This new source of risk will come in addition to the IEC's current priority concerns: threats to the integrity of the electoral process include cyberattacks, possible inaccuracies in the voters' register, misinformation and disinformation.

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³ Municipal by-elections in South Africa follow a mixed system that combines proportional representation with a 'first-past-the-post' system for elections in wards. There are three different categories of municipalities in South Africa (metropolitan, local and district municipalities) and each has a slightly different electoral system.

PROTECTING ELECTORAL INTEGRITY IN SOUTH AFRICA

Since 1994 the challenges to the integrity of the electoral process have evolved considerably. The transitional elections of that year saw unprecedented levels of political violence, with 4,608 deaths reported across a 10-month period (Coleman 1998). Since then, election-related violence has become a less significant risk factor, while new threats have emerged. Nevertheless, violence—including gender-based violence—persists during electoral periods. The sections below provide an overview of the key factors that have enabled the IEC to deal with these various risks and threats to the electoral process, and deliver elections whose results are accepted by all stakeholders.

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PREVENTION

The IEC has a long track record of integrating risk management into its overall approach to protecting electoral integrity. It first introduced risk management following a National Treasury requirement (see: South Africa 2000) that all state-funded institutions maintain an up-to-date risk register (Vincent, Alihodžić and Gale 2021). To fulfil this obligation, the IEC currently employs a comprehensive Risk Management Policy, Methodology and Framework. These tools are based on the principle that management should be held accountable for designing, implementing, monitoring and integrating risk management in day-to-day activities and that the governing body of an organization should identify emerging risks as part of its monitoring functions (IEC 2022b).

Within the IEC Secretariat, the risk management portfolio falls within the remit of the Chief Financial Officer, who serves as the Accounting Officer in the Public Finance Management Act of 1999. To monitor the annual risk implementation plan, the IEC established the Executive Risk Management Committee, which meets on a quarterly basis (IEC 2022b). The risk committee is chaired by an independent external chair, Executive Committee members of the IEC, provincial officers, internal audit, and the Chief Risk Officer—an appointment created in 2022 to support the committee on a continuous basis. Its mandate is to monitor identified strategic and operational risks and mitigation plans, ensure compliance with national laws and regulations, and prevent and detect fraud (IEC 2023).

The Electoral Commission adopts a programme management approach to the planning and delivery of general elections. Each key deliverable of the electoral process is treated as an individual project, with the entire election consisting of over 60 projects (Alihodžić 2016). For each, the IEC identifies potential risk events; assesses the risks; monitors and reports on them; and implements controls and mitigations (IEC 2022b). At the start of this cycle, the IEC organizes workshops with its staff to identify and consider various risk factors, including those related to the global economy. The workshops also aim to assess the possible impact of a risk occurring, including whether it could disproportionately affect under-represented or marginalized groups.

The integration of a risk management approach to project planning and delivery throughout the institution has required investments in human resources. The IEC has undertaken initiatives to promote a culture of risk management by conducting awareness raising (through a Risk Awareness Week as well as year-round activities), involving staff in risk identification, as mentioned, and training staff on the Commission's policies and frameworks. The strategy is similar to the IEC's previous integration of other cross-cutting themes into its work, such as gender equality. Staff members' input is also solicited during the formulation of risk management related policies. These capacity building measures have all served to develop a culture of risk management within the IEC, ensuring that all staff integrate risk considerations into their daily activities (IEC 2023).

Another critical mechanism for managing election-related risks is the existence of party liaison committees at the national, provincial and municipal levels, established by the 1998 regulations on party liaison committees (South Africa 1996b). These committees allow for consultation and cooperation between the IEC and registered parties on all electoral matters. The mechanism assists the IEC in identifying risk factors and the committee at the national level can act as a sounding board for legislative review and key policy decisions, some of which may have a direct bearing on the management, mitigation or avoidance of risks (Alihodžić 2016). Through consultation and information sharing, the mechanism can also build consensus between political parties and ensure their conduct is legally compliant.

Contained in the Electoral Act of 1998, the Electoral Code of Conduct is enforceable through sanctions, up to and including cancellation of a party's registration or of an election (IEC n.d.a). All political parties and candidates are bound by the code, which outlines a list of prohibited conduct. It also requires political parties to educate voters and supporters about the electoral process in general and the code itself. The Electoral Code of Conduct has played a key role in minimizing risks to the electoral process relating to the conduct and rhetoric of political actors.

When the IEC has identified a particularly complex risk that could undermine the integrity of the electoral process, it has developed tailored prevention and mitigation measures. For example, to prevent and reduce election-related violence due to inter- and intra-party conflict or service delivery protests (on which see: Institute for Security Studies 2009), the IEC implemented a project to train provincial conflict mediators (Alihodžić 2016). Launching an initiative of this nature is an illustration of the Electoral Commission's proactive approach to risk management, aiming to de-escalate potential issues.

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RESILIENCE TO STRESS AND SHOCKS

Since its establishment, the IEC has had to react to several unexpected events when risks have materialized into threats. These have been the result of

circumstances on the ground, court orders, or other events. Two examples from 2019 to 2021 highlight how the IEC has managed to overcome challenges to electoral integrity—Covid-19; and misinformation/disinformation.

The Covid-19 pandemic presented unprecedented challenges for the IEC. Municipal by-elections were scheduled to take place during the second quarter of 2020, with nationwide municipal elections due to be held no later than 1 November 2021. The IEC petitioned the Electoral Court and in June 2020, the court ruled that by-elections could be postponed to a later date despite the infringement on the legislated period to fill vacancies. The Electoral Court justified this on the basis that understanding of the virus was limited, there were no safety measures in place and the physical conditions did not allow for political parties to campaign (Letshele 2020). The postponement enabled the IEC to plan for by-elections under new Covid-19 protocols to be imposed in November 2020 in 96 wards across 461 voting districts (IEC 2020).

To plan for the by-elections during the pandemic, the IEC collaborated closely with relevant government agencies. The Department of Health provided technical advice in developing health guidelines (IEC n.d.c) for the registration and voting processes. The Ministry of Home Affairs also assisted during the registration phase, while the government assured the IEC that additional resources would be available for personal protective equipment (PPE) and other Covid-19-related expenditures (IEC 2023). Throughout this process, the IEC communicated regularly with political parties, outlining the challenges and ensuring buy-in from stakeholders. The by-elections proceeded as scheduled with a reported turnout of 37.83 per cent, which was in line with turnout in previous by-elections unaffected by Covid-19 (since the 2016 local government election, see Payne 2020).

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After the by-elections in November 2020, South Africa entered a period when Covid-19 infection rates started to rise rapidly. From January to June 2021, South Africa registered 915,305 cases and 32,231 deaths (respectively, 22 per cent and 31 per cent of totals from January 2020 to August 2023) (WHO n.d.). Due to conditions on the ground, the IEC appointed former Deputy Chief Justice Dikgang Moseneke to lead a process to evaluate the impact of Covid-19 on the feasibility of free and fair elections. The process included consultation with political parties and civil society organizations, the National Assembly, concerned government departments and the Municipal Demarcation Board. The report recommended delaying the planned 27 October 2021 local government elections (Moseneke Inquiry 2021; Reuters 2021). It found that the conditions for free and fair elections did not exist due to the government's State of Disaster regulations and the health risks posed to the public. The IEC had two options for postponement: either filing an application with the Constitutional Court or seeking the intervention of the National Assembly. The IEC decided the judicial option was preferable, to avoid politicizing any postponement (IEC 2023).

In line with the recommendations of the Moseneke Inquiry report, in August 2021 the IEC launched an urgent application at the Constitutional Court to

have the local elections rescheduled from October 2021 to no later than February 2022 (Lekabe 2021). On 3 September 2021, the Court dismissed the IEC's application and ordered that the local elections be held no later than 1 November (Mahlakoana 2021). As a result of this decision, the IEC had less than 60 days to organize nationwide elections during the pandemic. The municipal elections were conducted on 1 November 2021 and saw a turnout of 46 per cent, with women representing 58 per cent of those who cast their ballots (IEC 2022a).

Organizing the elections within a tight timeframe and under pandemic conditions was possible due to the resilience of IEC policies and processes. Throughout the period when a postponement was being considered, the IEC continued electoral preparations based on multiple scenarios. In June 2021, the IEC launched an online voter registration portal, enabling new and existing voters to update or amend their registration without visiting a registration centre (IEC 2021a). Early procurement also contributed to the IEC's being able to organize the elections as ordered by the Constitutional Court.

A second example of the IEC's resilience to stresses and shocks relates to combating misinformation and disinformation. During both the 2019 general and 2021 local government elections, the Commission partnered with a local organization, Media Monitoring Africa.org, to combat the spread of misinformation and disinformation (IEC 2021b). The system, known as Real411, provided a platform for the public to report digital harms including disinformation. The aim was to ensure that online content was assessed and addressed in an independent, open, transparent and accountable manner (Simiyu 2022). Media Monitoring Africa also monitors the media's coverage of the electoral process in South Africa, collecting data on topics such as equitable coverage of political parties, media coverage of women candidates and hate speech (see e.g. Namumba 2022). To reduce the spread of online misinformation and disinformation, including during any potential crises, the IEC has also signed memorandums of understanding (MOU) with social media companies such as Google, Meta and TikTok (Nkanjeni 2023). The MOUs provide a framework to remove content that is demonstrably false, among other measures.

Ahead of the 2024 elections, the IEC has had to adapt some of its processes to deal with the negative impact of South Africa's energy crisis. In 2022, the country experienced 3,751 hours (equivalent to over 156 days) of blackouts, known locally as 'load shedding' (Omarjee 2023). To minimize the possible impact on the electoral process, the IEC has altered some of its procurement timelines to allow vendors additional time to complete their work (IEC 2023). The IEC has also engaged with the national power provider to discuss how to minimize the impact of load shedding around election time.

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RECOVERY FROM CRISIS

Building on the requirements of its governance structure, the IEC has developed crisis management procedures that include standard operating procedures and contingency plans for a wide variety of possible events, although not every eventuality can be covered (IEC 2023). Additionally, the IEC's straight-line budgeting process provides it with flexibility in dealing with unexpected costs that often arise during crises.⁴ This adaptability combined with existing, detailed operating procedures is a critical element of the Electoral Commission's crisis preparedness.

One of the IEC's main concerns in protecting the integrity of the electoral process is cybersecurity. Although South Africa does not use electronic voting, the IEC's systems are increasingly automated and some processes—such as voter registration and the transmission of election results—rely extensively on ICT. The IEC has established contingency measures to protect and back-up critical election-related data. These include multiple redundancies that allow the IEC to store data offline or remotely, which would reduce the levels of disruption and enable the Commission to maintain functional business continuity in case of an attack. The contingency plans are reviewed on a regular basis and updated as needed (IEC 2023). In every election year, the IEC commissions an independent security audit of its entire ICT infrastructure. Additionally, political parties are invited to independently audit the results system, to assure themselves that it works as intended and prescribed in law (van der Staak and Wolf 2019). Although the IEC has previously detected attacks on its website as well as someone impersonating their CEO on social media (Power 98.7 2023), it has not experienced any serious data breaches. While it has acknowledged that no network is 100 per cent safe, the IEC's procedures should minimize the disruption caused by any potential cyberattack (Marrian 2019).

The IEC has activated its crisis management procedures on several occasions, such as during the 2019 general elections. On election day, the main opposition parties—the Democratic Alliance and the Economic Freedom Fighters—raised concerns over possible electoral fraud, including reports of double voting (Hunter and Umraw 2019). Within a day, the IEC confirmed that there had been arrests related to double voting and announced that it would urgently conduct an audit of results in a statistically representative sample of voting stations and those where complaints were received (Business Tech 2019; Merten 2019). To determine the impact of the double voting, the IEC partnered with the Statistician-General in conducting this audit. It meanwhile maintained constant dialogue with concerned political parties. The final report by Statistics South Africa revealed that there was a significant deviation in 13 out of the sampled

⁴ As a publicly funded institution in South Africa, the IEC works closely with the National Treasury on a three-year rolling budgeting cycle, which is supplemented on an annual basis. The budget of the IEC is approved in the National Assembly.

1,020 voting stations and that the trends compared favourably with previous voting patterns (Maphanga 2019). The report was shared with political parties and the outcome of the general elections was accepted by all stakeholders. By responding rapidly and involving external stakeholders, the IEC was able to prevent the situation from degenerating and undermining the credibility of the election.

To prevent a recurrence of the same problem, the Electoral Commission transformed its procedures and introduced voter management devices (VMDs) for the 2021 elections to ensure no person could vote twice. The introduction of the new devices did lead to technical challenges, with an estimated 6,000 persons unable to vote according to the IEC because of faulty devices (Khumalo 2021). Despite these challenges, the use of the devices enabled a live and centrally connected voters' roll, which ensured that problems related to double voting did not recur due to effective controls. During the introduction of the new devices, the IEC also briefed the National Assembly on its plans to make greater use of ICT solutions to protect the electoral process (Mzekandaba 2021).

The decision-making process during a crisis depends on the issue at hand. For events of a significant magnitude, national commissioners and senior staff are involved and decisions are taken in accordance with the governance structures of the IEC. If the issue is more localized, provincial Electoral Commissions are expected to deal with the problem in coordination with the relevant departments or external stakeholders. This was the case when flooding just before the 2019 elections in KwaZulu-Natal required that province's IEC to make alternative arrangements for polling stations and other damaged electoral infrastructure (Ngatane 2019).

Maintaining communication with political parties and the public is a key component of any crisis management strategy. The IEC has a dedicated spokeswoman who maintains relationships with the media and is available to brief them during the election period or in response to events that affect the institution. The party liaison committee also facilitates communication between key actors and was an invaluable platform to ensure that political parties could participate actively and provide input to resolve the double counting issue in 2019.

The IEC's policies and processes assist in learning from challenges and crises. After an event, the IEC leadership convenes a national debriefing where the Chief Electoral Officer and other senior staff reflect on what went wrong and how it can be prevented in future. The findings are compiled in a report and the relevant departments are tasked with implementing the solution. This was the process followed during the introduction of VMDs ahead of the 2021 municipal elections to address the issue of the double voting experienced in 2019 (IEC 2023).

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CONCLUSION

Through a solid legal framework, detailed scenario-based planning and risk management, the Electoral Commission of South Africa has developed a proactive, flexible and adaptable approach to protecting the integrity of electoral processes.

During recent electoral cycles in 2019 and 2021, the IEC showed its capacity to deal with challenges, particularly during the organization of by-elections and municipal elections amid the Covid-19 pandemic. Through regular communication, political parties and the public were informed of potential challenges and afforded an opportunity to provide input to determine solutions at each stage of the process. The IEC was also able to adapt its operational plans to deal with changed circumstances illustrating the institution's resilience in the face of difficulties.

Finally, the IEC's commitment to building partnerships with key stakeholders to protect electoral integrity is a critical element in the institution's efforts. The IEC has built good working relations with government departments and established formal partnerships with other important actors from civil society, the business community and other relevant external actors. The IEC's Executive Risk Management Committee is chaired by an external independent expert, enhancing the likelihood that risks are monitored objectively. During recent elections, the IEC has leveraged partnerships with Statistics South Africa as well as social media companies to respond to potential crises and safeguard the electoral process.

The IEC's commitment to building partnerships with key stakeholders to protect electoral integrity is a critical element in the institution's efforts.

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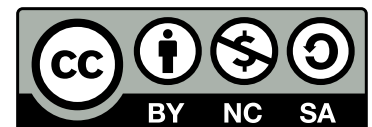
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