



Proactive Disclosure of Information and Elections in South Africa

An assessment of South Africa's compliance with the *Guidelines on Access to Information and Elections in Africa (2017)*, issued by the African Commission on Human and Peoples' Rights

November 2022

Factsheet on Proactive Disclosure of Information



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Introduction

The South African Local Government Elections in November 2021 (LGE 2021) represented a second opportunity following the adoption of the [Guidelines on Access to Information and Elections in Africa](#) (the *Guidelines*)¹ to assess the extent of adherence by electoral stakeholders to their proactive disclosure obligations in the context of an election. The objective of this report is to assess the extent of compliance with the *Guidelines* through a focus on significant developments since the first South African Assessment Report in 2020 and to identify the reasons for compliance or non-compliance. Two other significant factors were considered, i.e., the COVID-19 pandemic that prevailed at the time and the implementation with effect from 1 April 2021 of the Protection of Personal Information Act 4 of 2013 (POPIA).

The Guidelines

The *Guidelines* set out in the various Articles are for the attention of electoral role players and stakeholders involved in the entire electoral process – during the planning, preparation, and actual conduct of elections, as well as post-elections. The *Guidelines* stipulate the minimum standards for proactive disclosure of information applicable to each category of stakeholder involved in the elections value chain: the authority responsible for appointing an election management body; the electoral management body; political parties and candidates; law enforcement agencies; election monitoring and observation groups; media and online media platform providers; media regulatory bodies; and civil society organisations. The *Guidelines* also specifically require that member states adopt legislative, administrative, judicial and other measures to give effect to the *Guidelines*.

Methodology

A simple methodology was utilised, involving two primary phases. First, a desktop study focused on stakeholders' websites and other media platforms, such as Facebook, Twitter and Instagram. Second, an online survey was disseminated to stakeholder group representatives, including the same six political parties that formed part of the 2020 Assessment. Stakeholders were asked to rate their compliance with standards in the *Guidelines* on the following scale: **Completely** / To a **large** extent / To **some** extent / To a **small** extent / **Not at all**.

Special attention was given to the unusual circumstances in which the LGE 2021 and the preceding campaign period took place, i.e., during a COVID-19 lockdown. For this reason, the study explored stakeholders' responses to the impact of the pandemic and particularly whether social media had played a more prominent role in the election campaign and related preparations and conduct of the election. The study also explored the impact of POPIA on election stakeholders.

Number of responses to online survey

Election stakeholder	Number
Appointing Authority (AA): Parliament	1
Election Management Body (EMB): Electoral Commission (IEC)	1
Election Observers and Monitors (EOM)	1
Law Enforcement Agencies and Oversight Bodies (ABs): Information Regulator (South Africa) Information Regulator, Public Service Commission (PSC), South African Human Rights Commission (SAHRC)	3
Media and Internet Regulatory Bodies (RBs): Independent Communications Authority of South Africa (ICASA) and Press Council of South Africa (PCSA)	2
Political Parties and Candidates (PPs)	6
Total	14

Note: Civil society organisations (CSOs) were not included in the online survey due to resource constraints, but compliance with some standards was examined during the desktop study.

Awareness of Guidelines or 2020 Assessment Findings and Recommendations

Election stakeholder	Number	Comment
AA	0	
EMB	1	
EOM	1	
ABs	2	
RBs	1	The PCSA has published a copy of the <i>Guidelines</i> on its website.
PPs	2	
Total	7	

¹ ACHPR, [Guidelines on Access to Information and Elections in Africa: General Principles](#).

Response to COVID-19

Election stakeholder	Response to Covid-19
AA	1. Virtual internal planning meetings. 2. Guidelines [for Members of Parliament?]: virtual external townhall meetings. 3. Limited attendance at in-person 'campaign' meetings. 4. Greater use of telephonic canvassing and social media. [Note: It's unclear why Parliament appears to have responded as if it was participating in LGE 2021.]
EMB	1. A COVID-19 protocol was infused into the voting process. 2. Included procurement of COVID-19 related materials and an education campaign sensitising the electorate. 3. Introduced online voter registration and encouraged use of the IEC's online candidate nomination platform to minimise traffic at the IEC's offices.
EOM	1. Changes to employment conditions. 2. Travel advisories regarding healthcare considerations. 3. Insurance for extended enforced stays in countries other than the country of residence for employees and persons on EOM missions/trips.
ABs	1. Hybrid working. 2. Virtual training and education workshops.
RBs	1. Exemptions / exceptions for licensees from regulatory requirements and licence terms and conditions, e.g. submit information in more flexible manner and timeframes. 2. Introduced online submission systems. 3. Hybrid working and virtual meetings.
PPs	One party mentioned online meetings and events, which may have been campaign events. Another mentioned online election systems, which appears to refer to internal activities. Most parties mentioned only internal adaptations, e.g., digitisation of core organisational systems (e.g. leave, performance, and membership renewal); online / virtual meetings; including branch and other structures; restructured budgets to cover data expenses of members to enable participation and enhanced fact-checking by researchers for our policy statements.

Comment: No party explicitly detailed any change in the way election campaigning was undertaken, including any increased use of social media. However, most parties have a presence on several social media platforms, as detailed in the table below.

Presence on the internet and social media

Social media platform	Website	Facebook	Twitter	Instagram	YouTube	WhatsApp	TikTok
Election stakeholder							
Parliament	X	X	X	X	X		
IEC	X	X	X	X	X	X	
EOM	X	X	X				
SAPS	X	X	X	X	X		
Information Regulator	X	X	X	X	X		
PSC	X	X	X				
Public Protector	X	X	X	X	X		
SAHRC	X	X	X		X		
ICASA	X	X	X	X	X		
PCSA	X						
ACDP	X	X	X	X	X		
ActionSA	X	X	X	X	X		
ANC	X	X	X	X	X		
DA	X	X	X	X	X		X
EFF	X	X	X	X	X		X
FF Plus	X	X	X	X	X		
GOOD	X	X	X	X			
IFP	X	X	X	X			

Comment: Only the IEC seems to have embraced the reach of WhatsApp, especially among less affluent members of the public.

Protection of Personal Information Act (POPIA): Changes to organisational policies and practices²

Election stakeholder	Policy changes in response to POPIA
AA	Virtual meetings.
EMB	IEC: The Chief Electoral Officer must now satisfy himself that the voters roll will only be used for election, statistical or research purposes and that the information will not be processed unlawfully. Penalties and imprisonment on conviction of unlawful use ... ID numbers of voters on the voters roll [partially] redacted to mask the numbers which ... do not indicate date of birth and citizenship. The same applies to ... publication of ... certified candidates list.
ABs	Information Regulator: Guidance provided to electoral stakeholders regarding the voters' roll ahead of the 2019 General Election (GE) – also applicable to 2021 LGE.
RBs	ICASA: Held training workshops with internal stakeholders to promote understanding of POPIA. PCSA: Updated and revised the Press Code after lengthy consultations with members; sent information packs to all members; produced guidelines for members.
PPs ³	<p>1. All measures required by law to ensure compliance [with] POPIA are either in place, or are currently being finalised.</p> <p>2. POPIA manual developed: strict requirements (a) of permission for release of any personal information: (b) in line with the law.</p> <p>PP1: After POPIA implemented, we reminded our structures of the processes, policies and practices already in place to protect private and confidential information of members.</p> <p>PP2: Not aware of any.</p> <p>PP3: Stricter management of membership and voter data and information.</p>

Use of ICTs including social media, to address COVID-19 challenges

Election stakeholder	Change in practice in response to COVID-19
AA	Online advertisements, social media marketing, email, SMS and WhatsApp.
EMB	IEC: All social media platforms were used. The messages were also infused in our overall election and registration campaign which included print, radio, TV and our website.
ABs	Information Regulator: Extensive use of YouTube livestreaming to widen reach of stakeholder consultation webinars. PSC: Facebook, Twitter and radio.
RBs	ICASA: Utilises all forms of Information and Communication Technologies (ICT) and social media to inform, advise and address challenges. PCSA: Most information was emailed; online webinars to discuss amendments to Code.
PPs	<p>PP1: Currently transitioning to a full spectrum ICT platform.</p> <p>PP2: Social media, online conferencing and training platforms.</p> <p>PP3: All social media platforms and virtual (web-based) meetings.</p> <p>PP4: WhatsApp (groups and broadcast) and Zoom to communicate with our structures.</p> <p>PP5: New online membership database, Zoom, Facebook, Twitter.</p> <p>PP6: Virtual platforms for press conferences and events; sell merchandise via mobile app and website.</p>

Was the use of ICTs, including social media, effective in addressing challenges?

Parliament reported that it found ICTs and social media 'somewhat effective'; IEC: 'very effective'; Information Regulator: 'very effective'; PSC and SAHRC: 'somewhat effective'; ICASA and PCSA: 'very effective'; four political parties: 'somewhat effective' and another two parties: 'very effective'.

² All information here, whether or not in quotation marks, is drawn from the online survey

³Due to an error related to data on the survey platform, some information was delinked from the name of the some political parties. Due to contextual information, such as the date when the survey was completed, this did not negatively affect the researchers' ability to link responses to the political party concerned. However, some political parties preferred to respond to the survey anonymously. For purposes of consistency, this request was applied to all parties, except where the information is already in the public domain.

STAKEHOLDERS' RESPONSES: COMPLIANCE WITH GUIDELINES

APPOINTING AUTHORITY

Article 12 of the *Guidelines*

Standard: Parliament's process for the selection and appointment of members of the EMB is clearly stipulated in law, and was transparent, widely publicised and allows for public participation. **Extent of compliance:** To **some** extent.

Standard: Proactive disclosure of the mode, criteria and process of appointment of members of the EMB, including any requisite considerations such as gender balance, qualifications and experience. **Extent of compliance:** To **some** extent.

Standard: Remuneration and conditions of service of members of the EMB. **Extent of compliance:** To **large** extent.

Standard: Procedure for the termination of appointed members of the Election Management Body. **Extent of compliance:** To **some** extent.

Evidence / sources: [The Constitution](#) and the [Electoral Commission Act](#); reports by the IEC and Commission for the Remuneration of Public Office Bearers.

The *Guidelines* were '**somewhat** useful' in enabling Parliament to fulfil its mandate.

ELECTION MANAGEMENT BODY

Articles 13-19 of the *Guidelines*

Standard: Article 13 requires EMBs to (a) create, keep, organise and maintain records in a manner that facilitates access to information, including for vulnerable and marginalised groups; (b) adopt and implement flexible proactive disclosure arrangements that enable access to information without the need for individual applications; and establish clear and effective processes and procedures to deal with requests for information.

Compliance: The IEC reported compliance '**to a large extent**'.

Standard: Article 14 sets out minimum standards for the proactive annual publication of accurate and updated information relating to the EMB's organisational structure; decision-making procedures; recruitment and training; strategy and operations; employee code of conduct and asset declaration; budget; mechanisms for voter identification; procurement processes and decisions; and audited financial statements.

Standard: Article 15 requires the proactive disclosure of information relating to the EMB's membership including details of the professional background of its members; policy on declaration of assets and interests by its members; and its code of conduct and ethics.

Organisational information (Articles 14 and 15)

Number of minimum standards	Extent of compliance by IEC
7	Completely
2	To a large extent
1	To some extent
3	To a small extent

Standard: Article 16 requires proactive disclosure of information by the EMB at all stages of the electoral process, including prior to, during and after the conduct of elections.

Pre-election period (Article 17)

Number of minimum standards	Extent of compliance by IEC
13	Completely
7	To a large extent
2	To some extent
2	To a small extent
2	Not at all

Comments on 'not at all' responses

Standard: Details of applications for accreditation by the media (if applicable), including the number of applications received, number rejected and the reasons for the rejection.

Compliance: Unclear – IEC stated both 'completely' and 'not applicable'. No process for media accreditation may be an indication of good practice, indicating complete media freedom. But in an age of risks arising from uneven media standards, with the possibility of harassment by the media and harassment of media practitioners, as well as increased risks of misinformation and disinformation, it may be appropriate for the IEC to at least maintain a register of individuals and organisations claiming to be conducting themselves as media practitioners.

Standard: A register of the different categories of observers and deployment areas

Compliance: The IEC's response was 'not at all', explaining that observers have the freedom to observe where they choose, which emphasises their independence. As with media practitioners, this complete freedom of movement may be commendable, but the potential for various risks may suggest that the IEC should consider at least a register of 'observers' even if their movements are unrestricted.

Election day and results (Article 18)

Number of minimum standards	Extent of compliance
5	Completely
1	To a large extent
0	To some extent
1	To a small extent
0	Not at all

Post-election period (Article 19)

The IEC reported **complete** compliance with all five standards.

The IEC indicated that the Guidelines were '**very useful**' in enabling it to fulfil its mandate.

Summary of IEC results

Extent of compliance	Not at all	To a small extent	To some extent	To a large extent	Completely
Number of minimum standards applicable: 54					
	None?	6	4	14	30
Notes	1. Media register? 2. Observer register?	1. Declaration of interests. (Staff are required to annually disclose their interests, and do so. However, these disclosures are not proactively disclosed.)	1. Ethics Code ⁴ 2. Media Code ⁵		

POLITICAL PARTIES AND CANDIDATES

Articles 20-22 of the *Guidelines*

Article 20 of the *Guidelines* requires political parties to proactively disclosure specified categories of organisational information: Party name, constitution, code of conduct, leadership/office bearers, policies/principles, symbols, logos, colours, candidates, fundraising / funding.

Note: Eight political parties were included in the desktop study sample, including two new parties, one of which is represented in government.

⁴ An Ethics Code for Commissioners is in the public domain in s9 of the Electoral Commission Act (ECA) 1996. An Employee Code of Conduct is in the [IEC's Employee Policy Manual](#), but is not proactively published.

⁵The IEC doesn't have a standalone Media Code, but media conduct is governed by (a) a requirement media register with the IEC and are accredited; and (b) the provisions of Part 5 'Temporary obligations' of the [Electoral Act 73 of 1998](#).

Desktop study results: Basic organisational information

Political party	Organisational information available
ActionSA	Logo, Constitution, Code of Conduct, Leadership, Values / Principles, Policies, LGE2021 Manifesto, Candidates (direct democracy) & Donation invitation
ACDP	Logo, Constitution absent , Code of Conduct absent , Leadership list absent , Principles / Policies, LGE2021 Manifesto (in English, isiXhosa, Setswana, Sesotho, isiZulu), Candidate information absent , Donation invitation
ANC	Logo, Constitution (including Code of Conduct) & Leadership, Values / Principles, Policies, LGE2021 Manifesto, some candidate information, voting information (link to media article restricted to subscribers) & Crowdfunding & Donation invitation
DA	Logo, Constitution, Code of Conduct, Leadership, Values / Principles, Policies, LGE2021 Manifesto + braille version available + summary manifesto in 4 languages (incl. isiXhosa and Sesotho), Donation invitation
EFF	Logo, Constitution absent , Code of Conduct, Leadership, Values / Principles, Policies (largely) absent , LGE2021 Manifesto, Online shop
FF/FF Plus	Logo, Constitution absent , Code of Conduct absent , Leadership, Policies, LGE2021 Manifesto, Fundraising option absent
GOOD	Logo, Constitution, Code of Conduct absent , Leadership, Values, Policies, LGE2021 Manifesto, Donation invitation
IFP	Logo, Constitution absent , Code of Conduct absent , Leadership, Vision & Values, Policies absent , LGE2021 Manifesto, Fundraising option absent

Standard: Articles 21-22 of the *Guidelines*: The country's legal framework should require the proactive disclosure of the categories of information itemised below.

Note: Six political parties participated in the online survey – the same parties that were included in the 2020 Assessment.

Basic organisational information available

All political parties reported that they comply either '**completely**' or 'to a **large** extent', with one party recognising that full compliance with the standard could be achieved only once their website has been upgraded.

Number of registered members of the political party

Political parties reported compliance variously as to a **small** extent, to **some** extent or **completely**, but this is limited to internal disclosure within party structures.

Criteria and procedure for nomination and election of candidates for internal and external office

Political parties reported a wide range of practices. Some information is available in most parties' constitutions. Some parties publish this information only internally, others publish it externally with varying degrees of proactive public advertisement.

Process for dispute resolution and the relevant appeal mechanisms

Parties' practice differs widely, with some treating this as a purely internal matter, while others indicated that the details are in their party constitutions, some of which include a code of conduct. Some of these constitutions and codes are proactively disclosed on their websites.

Mechanisms for public participation, including any special mechanisms for persons with disabilities

Parties' practice differs widely, ranging from **not at all**, to a **small** extent, to a **large** extent. While all parties reported an openness to accommodating participation by people with disabilities, modes of participation differed from lodging online queries, online queries, complaints and policy suggestions, to attending campaign events. Some parties advertise publicly to invite candidate applications, while one party reported that its ward councillor candidates are nominated in public meetings.

Mechanisms for monitoring nomination process and proceedings

Responses ranged from '**not at all**' (it's an internal party process), to '**some** extent' (party publicly announces internal election results), to '**completely**' (ward candidates are nominated at public meetings).

Names of party agents or representatives responsible for or on duty at various stages of the electoral process

Most parties indicated that the names of their agents and representatives are registered with the IEC,⁶ which publishes them.

Assets, investments, membership subscriptions, subventions and donations

All parties reported that they comply with law, with most mentioning specifically disclosures to Parliament (accountability for parliamentary funding) and to the IEC in terms of the Political Party Funding Act (PPFA). They interpreted this as compliance with the *Guidelines* standard as 'to a **large** extent' or '**completely**'. Only one party arguably responded accurately, by stating that, despite compliance with the law, it does **not** comply **at all** with the *Guidelines* standard, but will make proactive public disclosure of its annual financial statements on its upgraded website.

Financial schemes initiated

Parties interpreted this standard very differently, with responses ranging from '**not at all**' (two said they have no financial schemes), through two that disclose 'to a **small** extent' as required to the IEC, to three that disclose to the IEC and internally '**completely**'.

Campaign funding [i.e. political party funding]

Again, parties interpreted this standard very differently. Although all believe they comply with the law, responses ranged from one that reported '**not at all**' (but will disclose funding on its upgraded website), through three that disclose 'to a **large** extent' as required by law including the PPFA and parliamentary reporting, to two that disclose '**completely**' to the IEC in terms of the PPFA.

Campaign expenditure

South African law does not require disclosure of 'campaign expenditure' as a distinct category of expenditure, although the PPFA introduced a requirement to report on the permissible uses of funding from foreign sources, which exclude campaigning. The PPFA requires parties to report to the IEC on the use of public funding and private donations. Parties represented in the national Parliament must report in broad and general terms on expenditure of public funding received from Parliament. Against the background of this framework, parties reported compliance with the *Guidelines*' standard as ranging from '**not at all**' (three parties explained that it's 'not applicable', it's 'not available' or it's an internal and 'strategic' matter), one party reported disclosure 'to a **small** extent' (as required by law), and two report disclosure 'to a **large** extent' (either internally or to the IEC in accordance with the PPFA).

Annual audited financial reports

Political party	Claimed/Reported compliance
PP1	To a large extent (as required by law)
PP2	To a large extent (presented to party conferences as per party constitution, not to the public)
PP3	To a large extent (published and reported on by Parliament and the different provincial legislatures in as far as ... they relate to political party funding from the public purse)
PP4	Completely (annual financial statements audited annually by external auditors in full compliance with the PPFA)
PP5	Not at all (will be available on the new website)
PP6	Completely (audited financial statements submitted to IEC and Parliament as required.)

⁶ Contrary to what these parties stated in the survey responses, party agent names are not published. Sections 33 and 34 of the Electoral Act do not require publication of agents' names, but merely that they wear a badge designating them as an agent of their party, which is stated on the badge

All other information, proactively disclosed or available on request

Political party	Claimed/Reported compliance
PP1	To a some extent (as required by law)
PP2	To a large extent (wide range of information available on party website and social media)
PP3	To a large extent (information that should be made available upon request in terms of PAIA is supplied when requested. No proactive disclosure)
PP4	To a large extent (the party willingly discloses information that is requested in compliance with applicable legislation)
PP5	To a small extent (more information will be available on the new website)
PP6	Completely (audited financial statements submitted to IEC and Parliament as required.)

Comment: Parties appear to have interpreted the question quite differently, resulting in different responses. One party claimed that it 'largely' complies with the standard but no information is proactively disclosed. Another party interpreted the question as again referring only to its finances.

Use of state resources

Political party	Financial resources ⁷	Institutional resources ⁸	Regulatory resources ⁹	Enforcement resources ¹⁰
PP1	To some extent	To some extent	To some extent (as required by law)	To a large extent (as required by law)
PP2	To a large extent	To a large extent (regulated by the IEC and ICASA)	To a large extent (parliamentary records)	To a large extent (parliamentary oversight)
PP3	To a large extent (N/A)	To a large extent (N/A)	Completely (full details of all political party funding published)	To a large extent (no proactive disclosure, but information on campaign security provided to PP3 by SAPS would be supplied if requested in terms of PAIA)
PP4	Completely	Completely (N/A)?	Completely (N/A)?	Completely (N/A?)
PP5	Not at all	Not at all (N/A)	Not at all (N/A)	Not at all (N/A)
PP6	To a large extent	To a large extent (audited financial statements submitted to IEC and Parliament as required.)	Completely (audited financial statements submitted to IEC and Parliament as required.)	Not at all (N/A)

Comment: Although the law on financial resources from public and private sources is now considerably clearer than before implementation of the PPFA, responses varied widely. Some parties queried the meaning and application of these standards, while one party repeated its rote response used for several questions.

Note: In this table, 'N/A' (not applicable or not available) indicates some uncertainty regarding the meaning of the political party's response. The party's response states that it believes that it has complied with the standard, but the additional information provided appears to indicate that the party has, in our interpretation, misunderstood the meaning of the standard.

⁷ i.e. public funding.

⁸ Advertising rates and the allocation of airtime and space to all political parties in state-supported media coverage, vehicle or flight logs and fuel allocations to Government departments, and service agreements, contracts and tenders awarded, their amounts and budgets

⁹ Documentary justification for requests for approval of supplementary budgets by Parliament, supplementary budgets passed by Parliament and political party finance legislation.

¹⁰ Details of records of the elections deployment strategy for the police, military, paramilitary and other law enforcement agents involved in ensuring security throughout the electoral process.

Figure 1: Funding disclosures for the two quarters close to LGE 2021

PUBLISHED DECLARATIONS REPORT - IEC

Report Details as at: Thursday, 09 September 2021 13:09:28

Financial Year: 2021/2022
 Quarter: Quarter 1
 Party: All Parties
 Donor: All Donors
 Declaration Type: All Types

PUBLISHED DECLARATIONS REPORT - IEC

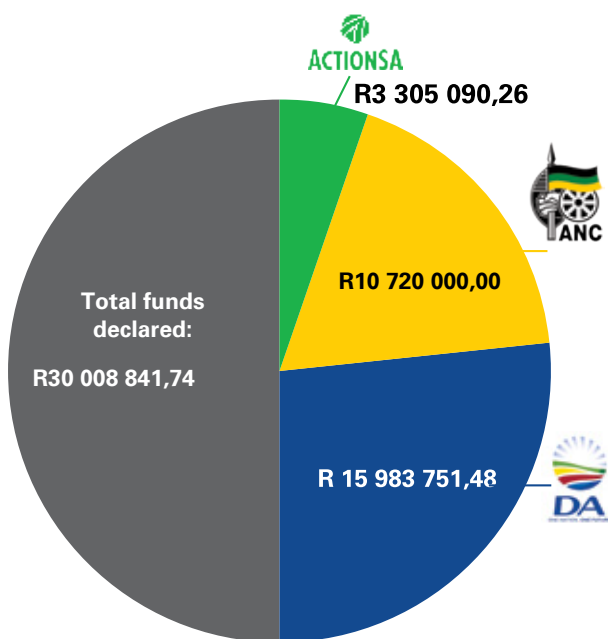
Report Details as at: Thursday, 18 November 2021 14:11:02

Financial Year: 2021/2022
 Quarter: Quarter 2
 Party: All Parties
 Donor: All Donors
 Declaration Type: All Types

DONATIONS AND CONTRIBUTIONS FOR QUARTER 1

Donations declared as contemplated in section 9 (1)

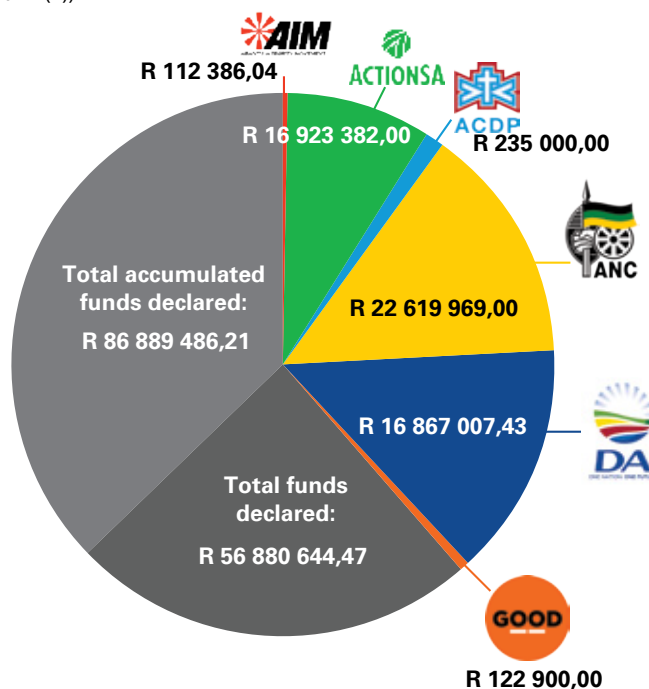
(In terms of the Political Party Funding Act, 6 of 2018 as read with Regulation 7(1))



LIST OF DONATIONS AND CONTRIBUTIONS FOR QUARTER 2

Donations declared as contemplated in section 9 (1)

(In terms of the Political Party Funding Act, 6 of 2018 as read with Regulation 7(1))



Source: My Vote Counts (from data published by the IEC)

Summary of results

Extent of compliance	Not at all	To a small extent	To some extent	To a large extent	Completely
Number of minimum standards applicable: 18					
PP1	5	1	6	4	2
PP2	None	3	1	10	4
PP3	2	2	2	6	6
PP4	None	2	None	7	9
PP5	11	3	1	2	1
PP6	2			5	11

Usefulness of Guidelines

Political party	Relevance of standard to fulfilling mandate
PP5	Very useful
PP2, 3, 4, 6	Useful
PP1	Somewhat useful

ELECTION OBSERVERS AND MONITORS

Article 23 of the *Guidelines* requires election observers and monitors to proactively disclose the categories of information itemised below.

Note: Only one survey respondent was an EOM, a prominent civil society organisation.¹¹

- Names and details of key office bearers in the observer or monitoring mission: **Completely**
- Code of conduct for observers and monitors: **Completely**
- Financial or non-financial assistance received from any donor or any political party or candidate, including the incumbent government: **Completely**
- Detailed Election Observation Mission Report shall be published widely and timeously. Preliminary reports issued within 30 days and final reports issued within 90 days: **To some extent.** (Preliminary reports 100%, but some final reports published later than 90 days.)
- Conflict of interest or political affiliations of local observers or monitors, if any: **Completely**
- Sources of funding for any organisations: **Completely**

The EOM rated the Guidelines as **'useful'** in enabling it to fulfil its mandate.

LAW ENFORCEMENT AGENCIES AND OVERSIGHT BODIES

Standard: Article 24 of the *Guidelines* requires the proactive disclosure by law enforcement bodies [which the study interpreted to include oversight bodies] of the categories of information itemised below.

Note: The South African Police Service (SAPS) did not respond to requests to participate in the survey.

Code of conduct and roles

Election stakeholder	Extent of compliance
Information Regulator	Completely ([but] none to disclose)
PSC	To a large extent (Constitutional Values and Principles 'CVPs' publicised in all provinces through workshops and radio discussions)
SAHRC	To a large extent (N/A)

Comments: 1. The Information Regulator doesn't appear to currently prioritise the promotion or monitoring/oversight of the proactive disclosure of accurate and timely information by electoral stakeholders. 2. The PSC's general promotion of the CVPs among public servants is a significant contribution to reinforce, for example, the Constitution's standards of openness, transparency, accountability and responsiveness within a constitutional democracy. 3. The SAHRC appears to now defer to the Information Regulator on all issues relating to access to information and privacy, including in an electoral context, and to the Electoral Commission on all aspects of the right to vote. It doesn't appear to prioritise promoting or monitoring of the rights and freedoms of association, expression, etc., in an electoral context. The SAHRC's response may appear to be contradictory, but it may reflect the SAHRC's in-principle support for the Guidelines' standard although no longer directly applicable to the SAHRC itself.

Training manuals and operational plans

Election stakeholder	Extent of compliance
Information Regulator	To a large extent (training materials should be available, but disclosing operational plans could compromise the effectiveness of law enforcement.)
PSC	To a large extent (the PSC has developed booklets: 1. Guide on the Constitutional Values and Principles Governing Public Administration ; 2. Guide on the Code of Conduct ; 3. Guide on governance practice for Executive Authorities and Heads of Department)
SAHRC	To a large extent (N/A)

Comments: 1. The Information Regulator makes a significant observation concerning the risks of disclosing operational plans. However, its response doesn't mention that it provided guidance to the IEC and others regarding what personal information in the voters' roll should or should not be disclosed. 2. The guidance prepared and provided by the PSC is relevant for election stakeholders, including after newly elected public representatives are appointed, but current PSC capacity constraints don't enable comprehensive proactive monitoring of compliance.

¹¹As with several political party respondents, the CSO representative requested anonymity.

Deployment plans

Election stakeholder	Extent of compliance
Information Regulator	Not at all (disclosing details of deployment plans could compromise the effectiveness of law enforcement.)
PSC	To a large extent (the PSC provides ongoing input concerning the configuration [e.g. staffing] of departments and to promote efficiency.)
SAHRC	To a large extent (N/A)

Comments: 1. The Information Regulator makes a significant observation concerning the risks of disclosing deployment plans. 2. While the PSC's input is relevant for election stakeholders and to be welcomed, it may be only indirectly related to election stakeholders' deployment during elections.

Budget allocations and actual expenditure

Election stakeholder	Extent of compliance
Information Regulator	Completely (budget information should be made automatically available by all entities that receive public funding. This is provided for in the Promotion of Access to Information Act, section 195(1) of the South African Constitution, and the Batho Pele principles)
PSC	To a small extent (the PSC utilises its annual budget allocation for its input in line with its strategic plan [which doesn't entail direct electoral involvement].)
SAHRC	Completely (N/A)

Comment: While constitutional and budget rules do require and result in broad and general budget and expenditure transparency, two of the three stakeholders interpreted the standard as applying only to their election-related budget and expenditure. (The standard provides for the proactive disclosure of '[b]udgetary allocations and actual expenditure for the electoral period'.) Stakeholders that understand themselves as having a limited or no role in elections, have responded accordingly.

Election-related crimes

Election stakeholder	Extent of compliance
Information Regulator	Completely (criminal activity during the electoral period may bring into question the credibility of an election. It is therefore imperative that when crimes impacting on the fair conduct of elections are detected or reported, they must be investigated and prosecuted where cases can be made.)
PSC	Not at all (no criminal activity was reported to the PSC)
SAHRC	Completely (N/A)

Comments: 1. The SAPS failed to respond to repeated requests to participate in the survey. 2. The Information Regulator adopts a principled approach, which entails that it does not comment directly on its own enforcement activities related to any breaches of access to information or privacy standards. 3. The PSC operates the National Anti-Corruption Hotline (NACH) and could, therefore, receive a complaint or allegation of a public servant's involvement. Therefore, the PSC could have answered 'completely'. However, its response indicates that that no such allegation was lodged with the NACH in connection with LGE 2021. 4. Some election-related offences can be brought by the IEC before the Electoral Court. Future studies should therefore include the IEC in this category of 'Law enforcement agencies and oversight bodies'.

Delegation of law enforcement responsibilities

Election stakeholder	Extent of compliance
Information Regulator	To a large extent (this must be made publicly available only to the extent that it does not fall within the exceptions provided for in terms of the Promotion of Access to Information Act (PAIA) sections 34, 37, 38 and 39.)
PSC	To some extent (PSC performs oversight in monitoring the role of public servants during elections, as compliance with the Code of Conduct is within the PSC's mandate.)
SAHRC	Completely (N/A)

Comments: 1. The Information Regulator adopts a principled approach, which entails that it does not comment directly on its own enforcement activities related to any breaches of access to information or privacy standards. The SAHRC's response is similar in nature. 2. As noted above, the PSC operates the NACH, which could receive a report of a public

servant's involvement and it could have answered 'completely'. The PSC's response entails that it does not indicate whether any such allegation or complaint was lodged with the NACH in connection with LGE 2021, and whether it was referred to any other organ of state for investigation. The PSC's response did not indicate whether or not, if its capacity permitted, it would be willing to implement the 2020 Assessment recommendation that it should scale up its proactive monitoring activities.

USE OF STATE RESOURCES

Standard: Article 22 of the *Guidelines* requires the proactive disclosure of the use of state resources, which are defined as including any monetary and other resources that are directly or indirectly under the control of government or a political entity at the national, regional or local level, which may be human, financial, institutional, regulatory or enforcement-related.

Institutional resources

'Institutional resources' include advertising rates and the allocation of airtime and space to all political parties in state-supported media coverage, vehicle or flight logs and fuel allocations to Government departments, and service agreements, contracts and tenders awarded, their amounts and budgets.

Election stakeholder	Extent of compliance
Information Regulator	Completely (this is consistent with Articles 17 and 33 of the African Charter on Democracy, Elections & Governance.)
PSC	To a small extent (PSC only provides oversight over the department [DPSA] that is to monitor these activities.)
SAHRC	To a large extent (N/A)

Comments: 1. The use of state resources for party political purposes is prohibited primarily in terms of the Public Service Act 1994 (PSA). The conduct of public servants is governed in terms of s. 195 of the Constitution, and sections 2 and 3 of the Code of Conduct for Public Servants issued in terms of the PSA. Public servants are required to conduct themselves and to use state resources impartially and without partisan bias. 2. The PSC exercises oversight over the Department of Public Service and Administration (DPSA), which is required to monitor the conduct of public servants. However, the PSC's response here appears to contradict its response above regarding the previous standard, viz. that the PSC itself monitors the conduct of public servants. As the PSC exercises oversight and is ultimately responsible to Parliament for fulfilling its mandate, the PSC is urged to consider the recommendation in the 2020 Assessment that the PSC should, within its mandate, scale up its proactive monitoring of the use of state resources before and during election campaigns. In practice, it appears that effective mechanisms for timely reporting, monitoring or enforcement are almost non-existent.

Enforcement resources

'Enforcement resources' refers to the police, military, paramilitary and other law enforcement agents involved in ensuring security throughout the electoral process.

Election stakeholder	Extent of compliance
Information Regulator	To some extent (disclosure of police and military deployment strategies could impede law enforcement operations. Disclosure of this information must be consistent with PAIA exceptions.)
PSC	To a small extent (PSC monitors effective and efficient use of resources to ensure that money meant for service delivery is not used for electioneering.)
SAHRC	Completely (N/A)

Comments: 1. The Information Regulator again adopts a principled position. 2. The PSC's response is again somewhat confusing: it undertakes direct monitoring rather than indirect monitoring via the DPSA. 3. SAHRC's response also appears to be at odds with some of its earlier responses.

Usefulness of Guidelines

The Information Regulator rated the *Guidelines* as '**very** useful'; PSC: '**somewhat** useful'; and SAHRC: '**useful**'.

MEDIA AND INTERNET REGULATORY BODIES and MEDIA AND ONLINE MEDIA PLATFORM PROVIDERS

Articles 25-29 of the *Guidelines*

Standard: Article 25 of the *Guidelines* requires media and internet regulatory bodies to adopt regulations on media coverage during elections that ensure fair and balanced coverage of the electoral process, and transparency about political advertising policy on media and online media platforms. These regulations must require the proactive disclosure to the public of the categories of information itemised below.

SOUTH AFRICAN LAW AND PRACTICE

The Electronic Communications Act 36 of 2005 (ECA) –

- Regulates electronic communications in the public interest, with the aim of promoting ‘open, fair and non-discriminatory access to broadcasting services, electronic communication networks and to electronic communications services’.
- During an election period, public broadcasting services are required to air party election broadcasts (PEBs) (and other broadcast licensees if they so choose) provided by political parties.
- In terms of ECA, after consultation with radio and TV broadcasters and political parties, **ICASA** determined the duration and timeslots for PEBs to ensure equitable allocation.
- **ICASA** proactively disclosed the [Regulations](#), and the [PEB schedule and allocation](#).
- **ICASA** established an Election Monitoring Committee and a [Complaints and Compliance Committee](#).
- In terms of section 8 of the [Electoral Code of Conduct](#) (enforced by the **IEC**) –
- Political parties and candidates must respect the role of media during and after elections, including media access to ‘public political meetings, marches, demonstrations and rallies’.
- Parties and candidates must take reasonable measures to protect journalists from ‘harassment, intimidation, hazard, threat or physical assault’ from their agents or supporters.

The [Press Code](#) (enforced by the PCSA) requires print and online media to ensure their professionalism and independence, and to avoid conflicts of interest –

- **PCSA** proactively disclosed Code and complaints mechanisms.
- **PCSA** proactively disclosed complaints and resolution.

Complaints procedure against media organisations that violate the regulations

Election stakeholder	Extent of compliance
ICASA	To a large extent (decisions and judgments by the Complaints and Compliance Committee can be found on ICASA’s website.)
PCSA	Completely (the Press Council produced guidelines for journalists on how to cover the elections and s.1.5 the Press Council’s Complaints Procedures specifically requires complaints about the elections to be dealt with speedily.)

Enforcement mechanism for ensuring compliance with the decisions taken and sanctions imposed

Election stakeholder	Extent of compliance
ICASA	To a large extent. (see SABC judgment .)
PCSA	Completely (the Press Council received six complaints from political parties / politicians in the run-up to the election date. Two were more crime reports than political reporting - criminal charges had been laid against individual politicians and the publications involved quoted from affidavits. No prima facie breaches of the Press Code, so both complaints were declined.)

Code of conduct for online media

Election stakeholder	Extent of compliance
ICASA	Not at all (N/A: the PCSA enforces this Code)
PCSA	Completely (see Code .)

Complaints or petitions received during the electoral period and how these were addressed

Election stakeholder	Extent of compliance
ICASA	Completely (see judgments SABC , iGagasi FM and Good Hope FM .)
PCSA	Completely (report from Public Advocate on LGE 2021 dated 16 November 2021 – sent to HSRC by email. Complaint received against <i>Timeslive</i> but the complainant did not pursue the complaint.)

Refrain from shutting down the internet, or any other form of media, during the electoral process

Election stakeholder	Extent of compliance
ICASA	Completely (see PEB regulations .)
PCSA	Completely (N/A: broadcast media not within PCSA mandate.)

Exceptional cases

In exceptional cases in which a shutdown may be permissible under international law, the reasons for any shutdown shall be proactively disclosed. Any limitation shall be necessary and proportional in a democratic society, and subject to expedited judicial review.

Election stakeholder	Extent of compliance
ICASA	Not at all (N/A)
PCSA	Completely (N/A)

Comment: These responses reflect stakeholders' understanding of their mandates. ICASA's response indicated that, as no such exceptional case had arisen, there had been no need for a shutdown. This respondent, like several others, appears to have been uncertain about whether to respond that it had not complied or that the need to apply the standard had not arisen, hence, N/A.

Proactive disclosure of use by political parties of state-supported media coverage

Election stakeholder	Extent of compliance
ICASA	To a large extent (see PEB amendment regulations .)
PCSA	Completely (N/A: ICASA is responsible for state-supported broadcast media)

ICASA and PCSA rated the *Guidelines* as '**completely**' useful in fulfilling their mandates.

CIVIL SOCIETY ORGANISATIONS

Article 30 of the *Guidelines*

The study focused on **'democracy consolidation'** CSOs as being most relevant to the subject matter. The random sample selected included: Afesis-Corplan, Council for the Advancement of the SA Constitution (CASAC), Defend Our Democracy, Democracy Development Programme (DDP), Democracy Works, Electoral Institute for Sustainable Democracy in Africa (EISA), Media Monitoring Africa (MMA), My Vote Counts (MVC), OpenUp and Parliamentary Monitoring Group (PMG).

PROACTIVE DISCLOSURE IMPLEMENTATION CHECKLIST

Standard: Article 30 of the *Guidelines* requires CSOs to proactively disclose information about the topics itemised below. This information **was found** on the websites of these CSOs, **except** where indicated otherwise -

- Organisational aims and objectives
- Membership and composition
- Details of key staff and office bearers
- Funding sources / 'campaign' funders: CASAC, Defend our Democracy, MMA: **not found**. MVC too, but uniquely, under 'Who we are', MVC posts a **'Disclaimer:** As an NGO, My Vote Counts' funds comes from a diverse range of sources. Our donors have no material influence on our work and we are able to operate independently from these donors.'
- Operational plans, methodology, manuals, civic and voter education implementation: Manuals, materials and tools produced are available on website
- Possible conflict of interest

CASE STUDY: RIGHT TO FREE FLOW OF ACCURATE INFORMATION

Standards: Articles 17(n), 25(c) and 29(i) of *Guidelines*

Multi-stakeholder Partnership to Combat Digital Disinformation: IEC, Media Monitoring Africa (MMA) and political parties

- Disinformation on digital platforms is one of the greatest threats to free, fair and credible elections globally.
- Disinformation definition: 'false, inaccurate or misleading information designed to intentionally cause harm'.
- In an electoral context, this includes false information intended to unduly affect participation in, and the outcome of, elections.
- To mitigate this threat during LGE 2021, IEC and Media Monitoring Africa (MMA) again (as in GE 2019) partnered with major social media platforms Google, Facebook, Twitter and TikTok to deal promptly with disinformation.

Real411 and PADRE

- IEC and MMA used the Real411 (www.real411.com) system developed by MMA as a key component of their efforts to deal with disinformation and misinformation.
- IEC and MMA also used PADRE (Political Advert Repository, also at www.real411.com) to identify and eliminate misinformation and disinformation contained in advertisements published in all media.
- PADRE is a transparent repository of political advertisements by candidates available to all stakeholders to enable verification of authenticity.
- Included online media advertisements targeting individuals or specific groups.
- Social media platforms appointed individuals or teams during the election period to prioritise referrals from the Commission and, acting in terms of their respective policies, remove or delist content, or publish an advisory or warning.

