

QUICK READ



Eskom

SOUTH Africa's energy crisis may threaten an anticipated economic rebound in the fourth quarter of this year. Eskom last week resumed rolling blackouts with a week of stage 2 scheduled power cuts, due to breakdowns at generation units. The power utility's emergency reserves were depleted due to further breakdowns, while delays in returning certain generating units to operation also contributed to the crisis. Breakdowns removed 14700MW from the grid, while planned maintenance was 5 277MW. The economy is estimated to lose R500 million per stage of power cuts per day. | IOL



Factionalism

THE ANC goes into the local government elections next month divided between the "CR-17" faction that supported President Cyril Ramaphosa and the "Radical Economic Transformation" grouping that wanted Dr Nkosazana Dlamini-Zuma to become leader after the 2017 national elective conference in Joburg, writes Cyril Madlala. Across the country, the process to select candidates has been marked by complaints of factional favouritism along pre-conference lines. The senior leadership has urged supporters to put aside their differences on November 1. After that, grievances be addressed. | IOL

Judiciary

IT IS commendable that President Cyril Ramaphosa has set in motion a process that can speed up the necessary democratisation of our judiciary, writes Dr Wallace Mgoqi. While experience and wisdom count, there is an argument for promoting younger minds to these posts. There is a need for a wider shake-up of the judicial appointment system. At present, only Heads of Court can appoint Acting Judges. Acting positions are critical entry points to the judicial office. The power to confer appointments should not be left to only one person to make. | IOL



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LIFESTYLE | Nelandri Narianan
POLITICS | Ricky Naidoo
SPORT | Thulani Mbatha
PRODUCTION | Renata Ford

CONTENT MARKETING | Keshni Odayan
keshni.odayan@iol.co.za

SALES | Charl Reineke
charl.reineke@iol.co.za

ENQUIRIES | buhle.mbonambi@iol.co.za



NONI MOKATI

OPINION

noni.mokati@iol.co.za

@Noni_M2

@NoniMokati

www.iol.co.za

"A rising tide doesn't raise people who don't have a boat. We have to build the boat for them. We have to give them the basic infrastructure to rise with the tide."

Rahul Gandhi

BUSINESS: SHAREHOLDERS CONCERNED ABOUT INDEPENDENCE

Flaws in tenure of directors in SA

SHAREHOLDER activists in South Africa have disapproved of lengthy tenures for directors on boards of listed public companies. They have exerted pressure on long-serving directors to resign.

Boards with many long-serving directors are regarded as entrenched, hence the rising calls from activists that they should be refreshed.

Director tenure attracts attention worldwide. The concern is that directors lose their independence by becoming too close to management if they serve for too long on company boards. This pertains, in particular, to external directors, also known as independent non-executive directors.

Non-executive directors are not involved in the day-to-day management of the company's business and are not full-time salaried employees. They are independent if there is no interest or relationship that is likely to unduly influence or cause bias in their decisions.

Independent directors protect shareholders' interests, manage conflicts of interests and ensure compliance with legislation. They play an important role in detecting fraud and mitigating corporate corruption.

To promote objectivity and reduce the possibility of conflicts of interest in South Africa the King IV Report for Corporate Governance recommends



REHANA CASSIM

Associate Professor in Company Law, University of South Africa

that the majority of board members should be non-executive directors, and most of them should be independent.

South Africa's Companies Act gives original powers to directors to manage the business of the company, unless this is restricted in the company's constitution. The directors delegate particular responsibilities to the executive directors. The non-executive directors in turn monitor the executive directors and exercise oversight over them.

The concern is that if directors stay in their positions for too long, they lose this oversight capability because they become too familiar with the company and its ways.

The situation in South Africa points to the need for change. Some independent non-executive directors have served on boards of JSE-listed companies for as long as 46 years. One study found that 27% of non-executive directors on boards of JSE-listed companies have served for nine years or longer. Another study found that directors in the consumer services sector had the highest average tenure, followed by the industrials sector and then the consumer goods sector.

The South African Companies Act does not put a cap on how long a director may serve on a board. A director elected by the shareholders may serve on a board indefinitely or for a term set out in the company's constitution, if any. Under the King IV Report for Corporate Governance, non-executive directors serving for longer than nine years are classified as independent if the board concludes each year that they are independent.

When a non-executive director has served on the board for longer than nine years, a summary of the board's views on his or her independence must be disclosed to the shareholders.

In my research on the tenure of directors in international jurisdictions, I found that the approach to board tenure may be divided into three categories. South Africa could learn from them. It should review and modernise

its approach to director tenure.

Some studies show that long-serving directors become friendlier with management and can no longer monitor the actions of management objectively. Other studies, however, show that long-serving directors are in a stronger position to monitor management. This is because they are less vulnerable to peer pressure and less likely to be controlled by management.

It is argued that limiting director tenure increases board diversity and attracts new perspectives and skills to the board. On the flip side, it is argued that long-serving directors have vital experience, industry knowledge and a better understanding of the company's strategies. This may be lacking with newly appointed directors.

In my opinion, the optimal director tenure varies by industry and company. The length of stay of a director isn't necessarily a bad thing provided the director is able to remain independent.

At one end of the spectrum are jurisdictions that don't impose any limits on how long a non-executive director may serve on the board. This approach is adopted in the US.

At the other end of the spectrum are jurisdictions that place a hard limit. For example, the European Commission recommends that companies in the EU should limit the tenure of

non-executive directors to 12 years. This is done in France.

In between is a third category which says that there should be a limit on director tenure but it can be extended if the shareholders agree.

For example, in Singapore and Hong Kong independent non-executive directors can stay on the board after nine years if shareholders approve. In Malaysia, shareholder approval is needed after 12 years. In India it is needed after only five years.

In my view South Africa's approach to director tenure fails first to give shareholders any formal say on keeping independent non-executive directors on the board after nine years.

Secondly, the board may disclose to the shareholders only a summary of its views on the independence of a long-serving non-executive director. This might not provide them with enough information.

Thirdly, the board doesn't need to engage external independent facilitators in assessing a non-executive director's independence after nine years, but can do this evaluation itself.

Companies should work with shareholders and external experts to review their approach to director tenure.

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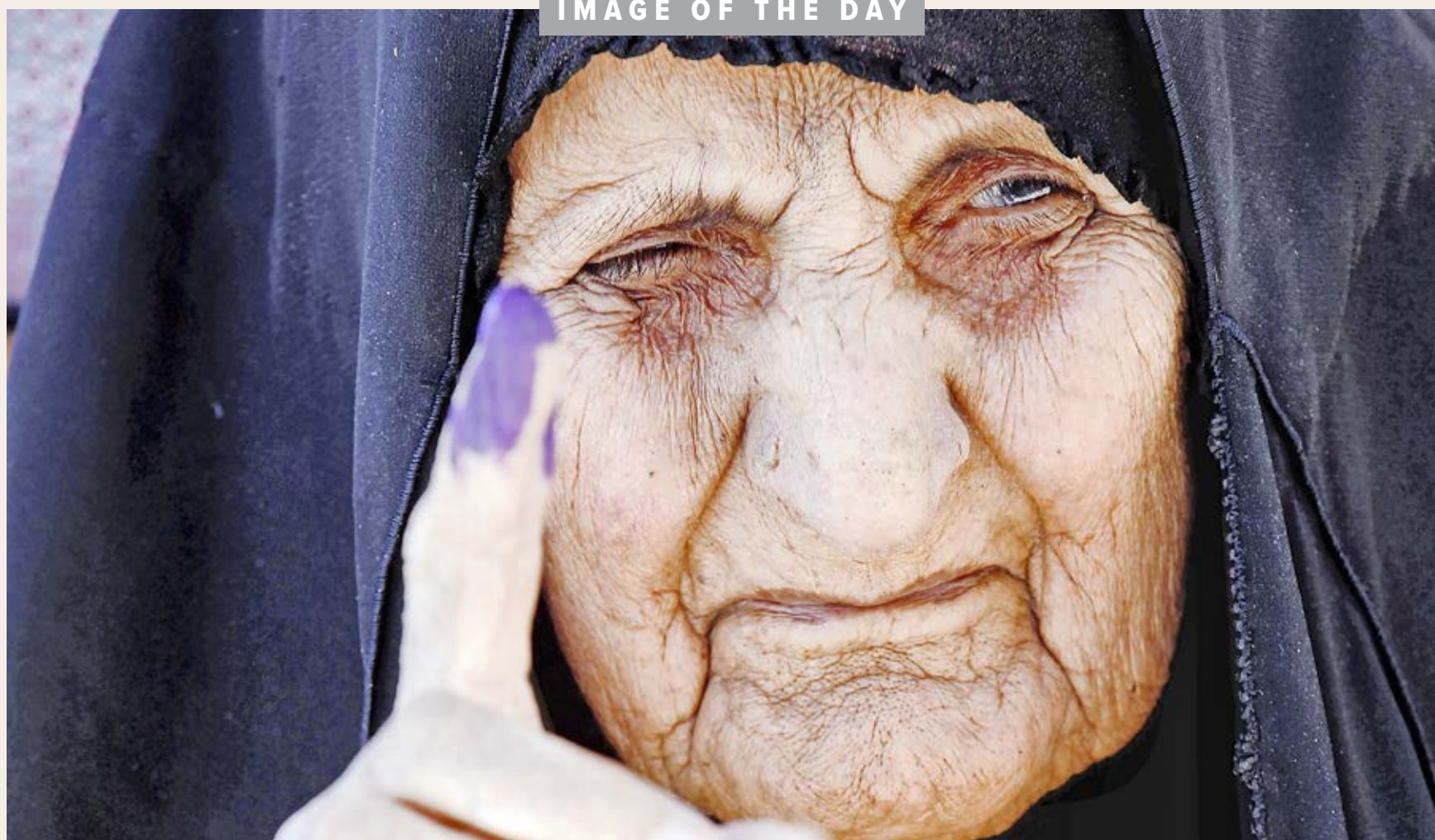
Elections

THE terrain in the Nelson Mandela Metropolitan Municipality Bay is fluid and makes it difficult to predict the winner for the local government elections. There will probably be more attempts at coalition-building, write Dr Ntsikelelo Breakfast and Professor Gavin Bradshaw. The municipality has been under the spotlight since the ascendancy of an ANC faction led by former mayor Nceba Faku, who was implicated in graft. With exceptional levels of unemployment in the metro, it is important that parties co-operate. | IOL

Funds row

THE family of the late Winnie Madikizela-Mandela have voiced their support for Eastern Cape Public Works MEC Babalo Madikizela, who was named as one of the senior politicians who improperly benefited from funds meant for the Struggle stalwart's memorial service. An investigation by the Public Protector found that Madikizela personally benefited to the amount of R350 000. But the Madikizela-Mandela family said Babalo believed there were serious flaws in the report and they believed him. | IOL

IMAGE OF THE DAY



A WOMAN shows her ink-stained finger after casting her vote at a polling station during the parliamentary election, in Najaf, Iraq. | Reuters

HEALTH

HIV is a forgotten pandemic during Covid-19 era

THE Covid-19 pandemic is a global health emergency that has taken central position in service provision – pushing HIV to the periphery. This is an issue of concern in South Africa, a country that had made substantial progress in the prevention, treatment and care of HIV.

As greater efforts were directed towards finding strategies of maintaining and mitigating Covid-19 and its impacts, HIV services were generally overlooked. A recent study by Dr Jienchi Dorward and colleagues from the Centre for the Aids Programme of Research in South Africa found that the provision of antiretroviral therapy remained constant, while HIV testing and antiretroviral therapy (ART) initiatives were adversely affected.

Interruptions in HIV counselling and testing have had adverse impacts on the health of the infected persons as this delays their initiation on ART, weakening their immune system.

The hard lockdown measures were meant to ensure that the coronavirus is contained, so as to reduce and prevent the spread, but this has had adverse effects on HIV service provision.



VIMBAI CHIBANGO

Post-Doctoral Fellow in Gender Justice, Health and Human Development at DUT.

South Africa has wide coverage of HIV testing and counselling services which are provided at its mobile clinics and facilities. Due to the restrictions, these services were also discontinued. The questions that emerge are around how people would know their status.

Additionally, if they cannot test, they would not know if they have to be initiated on ART. Of concern too is the fact that most people who rely on

these services to access condoms were not left unaffected by these measures.

The number of people infected by Covid-19 and those living with HIV in South Africa is alarming. The National Institute for Communicable Diseases states that there are 2 829 435 confirmed Covid-19 cases and about 83 899 Covid-19 related deaths.

In terms of HIV, the report from Statistics South Africa states that approximately 8.2 million people were living with HIV in 2020, approximately 13.7% of the population.

We know that despite being one of the countries with the highest number of people living with HIV in the world, South Africa has the largest roll-out of ART in the world. The country has documented extraordinary progress in ART roll-out in which by 2020, 71% of HIV positive adults and 47% of children were on ART. In addition, a recent report from the Joint UN Programme on HIV/Aids (UNAids) states that South Africa became the first country in the sub-Saharan African region to approve the pre-exposure prophylaxis given to people at high risk of HIV infection. Other countries

have documented the success of their ART roll-out.

In comparison, Latin America has an HIV prevalence lower (2.1 million) than South Africa. However, its ART roll-out is analogous to South Africa with 61% of adults and 46% of children living with HIV on ART.

To maintain the flagship in HIV prevention and treatment, the government would ensure an uninterrupted supply of ART so as to prevent HIV-related deaths and prevent an increase in HIV incidence resulting from lack of prevention.

The link between HIV and Covid-19 is concerning. A report from UNAids states that people living with HIV experience more severe outcomes and have higher comorbidities from Covid-19 than those not infected. The World Health Organization noted:

• People living with HIV were 13% more likely to be admitted to hospital with severe or critical Covid-19 after controlling for age, gender and comorbidities.

• They were more likely to die after admission to hospital with Covid-19; people living with HIV had a 30%

increased risk of death independent of age, gender, severity at presentation, and comorbidities.

• Among people living with HIV, diabetes, high blood pressure, being male or over 75 years old were each associated with increased risk of death.

Under such circumstances, it is expected that people living with HIV be considered as a priority in any of the Covid-19 mitigation strategies.

However, it is shocking to learn that by mid-2021, globally, most people living with HIV had not received the vaccine. In South Africa, where above 13% of the population is living with HIV, prioritising vaccination of this key population is crucial. Nonetheless this subject has not reached the national conversation in any significant way; and there have not been any campaigns to encourage people living with HIV to get vaccinated.

HIV and Covid-19 are twin pandemics and cannot be treated in isolation due to the adverse effects Covid-19 can have on people living with HIV.

Chibango writes in her personal capacity.