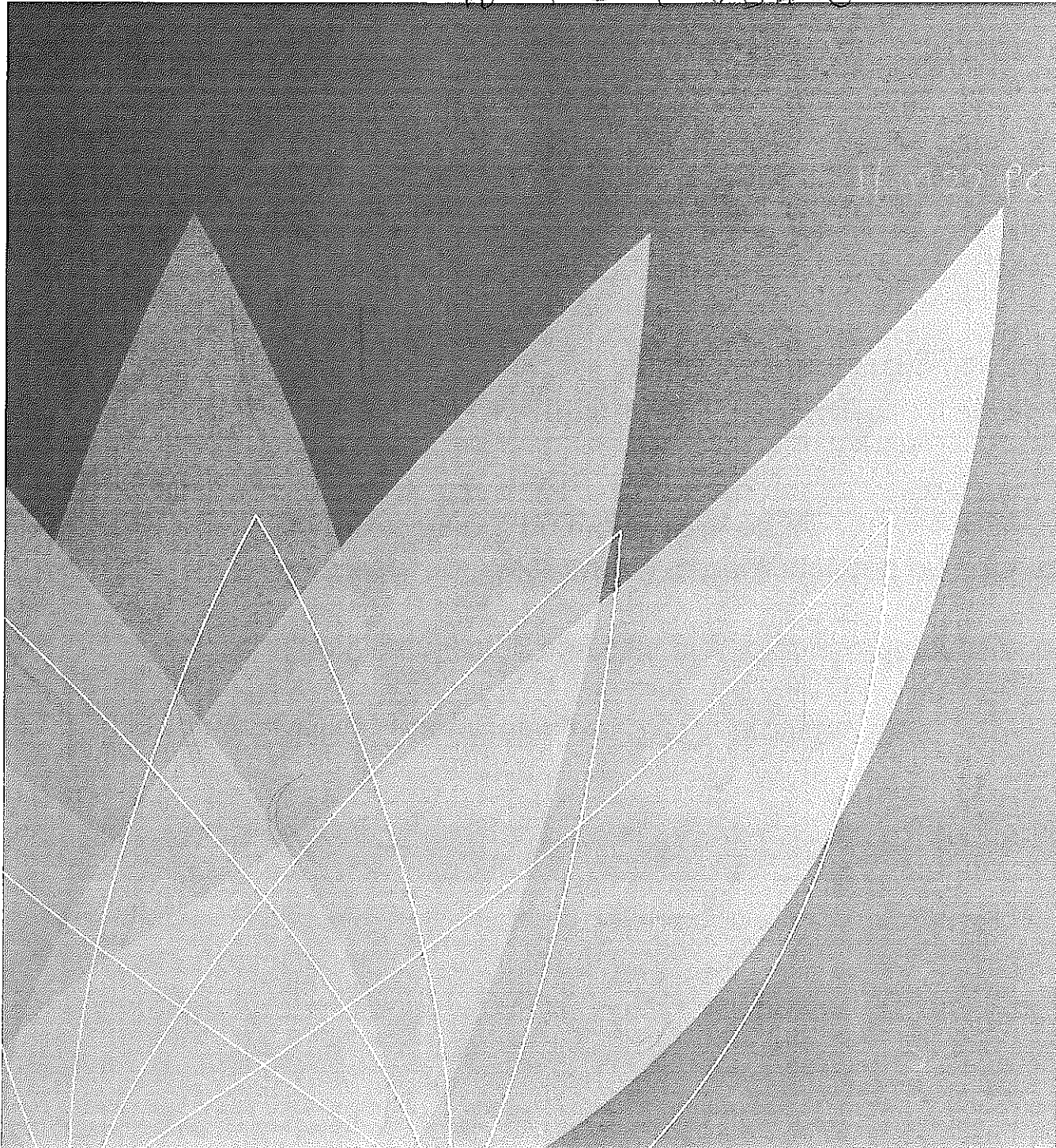


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APPOINTMENT
PROCESS:

SOUTH AFRICAN
HUMAN RIGHTS
COMMISSION

21 September 2016

GUIDELINES: APPOINTMENT OF COMMISSIONERS TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

INTRODUCTION

- The SAHRC Commission Act, 2013, provides that:
 - The Commission consists of a total of 8 commissioners:
 - Of these, no fewer than 6 to be appointed on a full-time basis and no fewer than 2 on a part-time basis.

- There are 7 vacancies that need to be filled: Commissioner Ameerma, a full-time commissioner, will be the sole remaining commissioner from mid October 2016.

GUIDELINES: APPOINTMENT OF COMMISSIONERS TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

INTRODUCTION

- Section 193 of the Constitution, 1996, sets out the process to be followed regarding the appointment of commissioners.
- The President must appoint the Members of the SAHRC on the recommendation of the National Assembly
- The National Assembly must recommend persons nominated by a Committee of the Assembly (multiparty committee).
- Approved by the Assembly by a resolution adopted by a supporting vote of a majority of members of the Assembly.

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INTRODUCTION

- Public participation: The involvement of civil society in the recommendation process may be provided for as asset out in line with section 59(1) of the Constitution.
- Broadly, section 59(1) provides for public access to and involvement in the National Assembly. The provision states that the Assembly must facilitate public involvement in its legislative and other processes and conduct its business in an open manner and hold its business/ meetings in public.
- The involvement of the public in the appointment of the new Public Protector created a new benchmark!

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INTRODUCTION

- As Commissioner (Adv.) Ameerma is a full-time commissioner, the Committee will need to identify five full-time and two part-time candidates to be nominated to the House for appointment.
- Commissioners, who have served one term, may be considered for reappointment.
- The National Assembly must also recommend:
 - The fixed terms of appointment – may not exceed seven years
 - Candidates for the positions of Chairperson and Deputy Chairperson.

GUIDELINES: APPOINTMENT OF COMMISSIONERS TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

ESSENTIAL QUALIFICATIONS

The minimum criteria for appointment as a commissioner at the SAHRC are set out in:

- **Section 193 of the Constitution; and**
- **Section 5 of the South African Human Rights Commission Act, 2013.**

***GUIDELINES: APPOINTMENT OF COMMISSIONERS TO THE
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ESSENTIAL QUALIFICATIONS

Section 193 of the Constitution provides that a Commissioner at the SAHRC must be:

- A South African citizen;
- Fit and proper person to hold the particular office; and
- Comply with any other requirements prescribed by national legislation.

Also, the need for a Commission established by Chapter 9 of the Constitution to broadly reflect the race and gender composition of South Africa must be considered when members are appointed.

GUIDELINES: APPOINTMENT OF COMMISSIONERS TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

ESSENTIAL QUALIFICATIONS

The SAHRC Act, 2013, **specifies that Commissioners should:**

- **Be South African citizens.**
- **Be fit and proper persons.**
- **Have a record of commitment** to the promotion of human rights and a culture of human rights.
- **Be persons with applicable knowledge or experience** with regard to matters connected with the objects of the Commission.

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ESSENTIAL QUALIFICATIONS

The SAHRC Act, 2013, specifies that the following persons are **NOT** eligible to be commissioners:

- Anyone who is appointed by or in the service of the state and receives remuneration for that service.
- An unrehabilitated insolvent.
- Anyone declared of an unsound mind by a South African court.
- Anyone who (after the section took effect) was convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine either in or outside South Africa (if that conduct would have been an offence in South Africa).
- Anyone who is an office-bearer or staff member of a political party, member of the National Assembly, a permanent delegate of the National Council of Provinces, a member of a provincial legislature, a member of a municipal council or who is on a candidate list for any of those positions.

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BEYOND THE ESSENTIALS

Some thoughts for consideration when evaluating a candidate:

- Is the candidate a South African citizen?
- Is the candidate fit and proper?
- Is the candidate an appropriately qualified person (wrt human rights background/commitment/experience)?
- Would his/her appointment assist to reflect the race and gender composition of SA?
- Does the candidate display the necessary passion and motivation?
- Is the candidate technically experienced and experienced with regard to the values and needs of our society?
- Is the candidate technically competent with the capacity to give expression to the values of the Constitution?

**GUIDELINES: APPOINTMENT OF COMMISSIONERS TO THE SOUTH
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FIT AND PROPER PERSON

- Ad hoc Committee to Nominate a Public Protector considered a legal opinion on the meaning of fit and proper.
- The opinion indicated that the requirement of fit and proper requires an objective assessment.
- Necessitates a character screening of potential candidates that interrogates their integrity, reliability, industry, diligence and honesty. Either present in one's history or not.
- Should look at experience, conscientiousness and integrity to be entrusted with the responsibilities of the office concerned.
- Opposites to integrity – corruption, dishonesty, immorality, disrepute, deceit, duplicity

GUIDELINES: APPOINTMENT OF COMMISSIONERS TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

EVALUATION CRITERIA

Character

- Independent and impartial, ability to perform functions without fear, favour or prejudice
- Integrity, reliability, conscientiousness, honesty
- Champion of human rights

Background/ Experience

- Record of commitment to the promotion of respect for human rights and a culture of human rights (look to background and experience, academic qualifications and work, activism, etc)

Knowledge

- Knowledge of SAHRC's mandate, powers and functions
- Understanding of independence and impartiality
- A good understanding of key human rights challenges that face our society
- Understanding of what it is to be a human rights champion

Skills

- Leadership and management
- Communication – internal and external; able to engage with stakeholders
- Conflict resolution skills
- Language skills

GUIDELINES: APPOINTMENT OF COMMISSIONERS TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

OTHER CONSIDERATIONS

- There are no/few formal guidelines -- the Committee must decide its own process.
- In addition, a questionnaire was circulated to **ALL** candidates requesting supplementary information by 21 September 2016.
- Issues to consider?
- Public participation process? (Will CVs be posted on website for public comment?)
- Pre-appointment screening of shortlisted candidates (qualifications, credit record, criminal record, etc)
- Will the interviews be televised?

