**3. Report of the Ad Hoc Committee on the filling of vacancies in the Commission for Gender Equality dated**, **17 March 2017**

The Ad Hoc Committee on the filling of vacancies in the Commission for Gender Equality, having considered the request by the National Assembly to recommend suitable candidates for appointment of Commissioners in the Commission for Gender Equality, reports as follows:

1. On 27 October 2016, the National Assembly resolved, in accordance with section 193(5) of the Constitution of the Republic of South Africa, 1996, to establish an Ad Hoc Committee to nominate persons for appointment as Commissioners to recommend suitable persons for filling of vacancies in the Commission for Gender Equality in terms of the revised Commission for Gender Equality Act, No 39 of 1996, which came into effect on 26 November 2013. The Committee is mandated to exercise the powers in terms of the Rules of the National Assembly that it deems necessary to perform its task, and to report to the House. The initial deadline for the Committee to conclude its business and report back to the House was 31 January 2017. An extension was granted by the House to report back to the House by 31 March 2017.
2. The Membership of the committee was published in the ATC of 16 November 2016 and the committee is composed of eleven members.

The Membership of the Committee is as follows:

**AFRICAN NATIONAL CONGRESS**

* Ms CN Ncube-Ndaba
* Ms PS Kekana
* Ms C Chueu
* Mr TM Manyoni
* Ms BJ Maluleke
* Ms W Newhoudt-Druchen

**DEMOCRATIC ALLIANCE**

* Ms D Robinson
* Ms T Stander
* Ms NI Tarabella-Marchesi, DA\* (alternate)

**INKATHA FREEDOM PARTY**

* Ms LL van der Merwe

**UNITED DEMOCRATIC MOVEMENT**

* Ms CN Majeke

**ECONOMIC FREEDOM FIGHTERS**

* Ms H Hlophe

**AFRICAN CHRISTIAN DEMOCRATIC PARTY (ACDP)**

* Ms C Dudley\* (alternate)

1. **Committee meetings**

The Committee held eleven meetings as follows:

* 23 November 2016: Election of chairperson
* 30 November 2016: Consideration and adoption of programme
* 23 January - 5 February 2017 and extended to 13 February 2017: Comments from civil society and verification of qualifications and screening of candidates
* 14 February 2017: Shortlisting process
* 09 March 2017: Consideration of reports from Human Resources on verification of qualification and screening of candidates
* 13 and 14 March 2017: Interviews
* 15 March 2017: Deliberations
* 17 March 2017: Consideration and adoption of committee report
* 22 March 2017: Adoption of minutes

The Committee elected the Chairperson on 23 November 2016. The Committee, having met, requested for an extension of the deadline to 28 February 2017 which was approved by the House on 6 December 2016. Subsequently, a Committee decision was taken to request a further extension to the deadline to 31 March 2017. The approval was granted by the National Assembly House on 23 February 2017. These extensions have enabled the Committee to accommodate civil society by allowing more time for commentary and for the Committee to undertake a comprehensive process for screening and the verification of qualifications of all shortlisted candidates.

1. **Legal framework and process**
   1. The Committee’s process is guided by the relevant constitutional and statutory provisions, as well as the Rules of the National Assembly:

4.2 In terms of section 193(4)(b) of the Constitution, 1996, the President must appoint members of the Commission for Gender Equality on the recommendation of the National Assembly. Regarding the role of the National Assembly, section 193(5) of the Constitution, 1996, provides that:

*“The National Assembly must recommend persons -*

*(a) nominated by a Committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and*

*(b) approved by the Assembly by a resolution adopted with the supporting vote - of a majority of the members of the National Assembly, if the recommendation concerns the appointment of a member of a Commission.*

4.3. The Committee, therefore, developed its own process to complement the applicable constitutional and legal framework and has made use of a range of tools to establish the suitability of candidates. The Committee did take into consideration, the precedents set by previous committees dealing with filling of vacancies of Chapter 9 institutions of democracy.

**5. Public Participation**

5.1. Section 193(2) of the Constitution provides that the involvement of civil society in the recommendation process may be provided for as envisaged in section 59(1) of the Constitution. Section 59(1) of the Constitution provides for public access to and involvement in the National Assembly. Broadly, 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.

5.2 The Committee is aware of and has welcomed the public interest that its work has attracted.

5.3 To facilitate public participation, the Committee agreed to an open and transparent process.

5.3.1. The advertisement requesting nominations or applications for the position of Commissioner for the Commission for Gender Equality from members of the public appeared in all official languages in various newspapers throughout the country. The advert also appeared on Parliament’s website. The advertisements were placed on 8 January 2017 with a closing date for 23 January 2017. The Committee received a total of 82 applications or nominations and 1 candidate withdrew.

5.3.2 The advertisement indicated that the Ad Hoc Committee on the filling of vacancies in the Commission for Gender Equality, as mandated by the Commission for Gender Equality Act, 2013, invited members of the public and organisations to nominate suitable candidates for appointment to serve in the Commission for Gender Equality as Commissioners. The advertisement also noted that applications would also be accepted and that all applications/nominations received would be published on the Parliamentary website to allow members of the public to comment on the suitability of candidates.

The advertisement clearly stated that the “The President will, on recommendation of Parliament, appoint a member to the Commission for a term of office not exceeding five years. The members of the Commission may be appointed as full-time or part-time. Any person, whose term of office as a member of the Commission has expired, may be reappointed for one additional term.” And that “the candidates must be South African citizens who are fit and proper persons for appointment to the Commission and are broadly representative of South African community, have a record of commitment to the promotion of gender equality and have applicable knowledge of and experience in matters connected with the objects of the Commission.”

5.3.3 On 26 January 2017, the Committee published the names of all candidates with their accompanying *curriculum vitae* on Parliament’s website. Members of the public were given until 13 February 2017 to make submissions on the candidates. The Committee received a few submissions from members of the public.

**6. Selection criteria**

6.1. Section 193(1)(a) and (b) of the Constitution, 1996, indicates that

“..*the members of any Commission established by this Chapter must be women or men who – (s) are South African citizens, (b) are fit and proper persons to hold the particular office; and (c ) comply with any other requirements prescribed by national legislation*.”

6.2 The Commission for Gender Equality is mandated to “promote respect for gender equality and the protection, development and attainment of gender equality” as per section 187 (1) of the Constitution of the Republic of South Africa, 1996. The Constitution goes on to state in section 187 (2) that the “Commission for Gender Equality has the powers, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.”

The Commission for Gender Equality Act, as amended in 2013, assigns to the National Assembly the responsibility for addressing the filling of Commissioner’s vacancies in the Commission for Gender Equality.

The Committee, having taken into consideration the Constitutional imperatives and the Commission for Gender Equality Act, agreed that motivation, technical knowledge, strategic leadership, team work, innovation and governance were key aspects that the Committee would take into consideration in the selection of a person to be recommended as a Commissioner.

6.3 In addition, the Committee agreed that the qualifications of those shortlisted would be verified and that Parliament should be asked to facilitate screening of the candidates. Parliament had verified the qualifications of shortlisted candidates. The Committee is of the view that screening is important as it affords candidates the opportunity to refute any allegations that might arise.

**7. Shortlisting and Interviewing**

7.1 The Committee shortlisted 21 candidates on 14 February 2017. Subsequently, 1 candidate on the short-list withdrew and as such, the Committee interviewed a total of 20 candidates on 13 March and 14 March 2017. The interviews were broadcasted live.

7.2 The following candidates were shortlisted to be interviewed:

* Mr Saber Ahmed Jazbhay
* Ms Susan Abro
* Ms Alina Thandiwe Mfulo
* Ms Salome Ngwanamathiba Khutsoane
* Ms Nthabiseng Sepanya Mogale
* Ms Suraya Bibi Khan
* Dr Praveena Sukhraj-Ely
* Ms Mummy Nomvulazana Constance Jafta
* Ms Thembeka Semane
* Mr Sediko Daniel Rakolote
* Ms Bernedette Muthien
* Mr Sipho Ebenezer Barnabas Dikgale
* Ms Joyce Mando Phiri
* Ms Octavia Lindiwe Ntuli-Tloubatla
* Mr Alfred Mkhipheni Mpontshane
* Ms Sethembiso Promise Mthembu
* Ms Sylvia Stevens-Maziya
* Ms Tamara Eugenia Mathebula
* Ms Louisa Siphiwe Nxumalo
* Ms Nthabiseng Moleko
* Prof Bonita Cecile Meyersfeld (candidate withdrew)

**8. Deliberations**

8.1The Committee deliberated on 15 March 2017 on the selection of candidates to be recommended to the President and agreed to recommend 6 candidates in terms of his/her performance and the Committee’s preference.

8.2 The Committee initially requested for the vetting of shortlisted candidates but was subsequently informed that vetting is an intensive process therefor screening of shortlisted candidates was done. The Committee acknowledges that it is the potential employer’s responsibility to undertake vetting. The Committee has also received a briefing by the State Security Agency on matters arising which was brought to the attention of the Committee as per the screening report and candidates during the interviews. The Committee is of the view that there is a need for Parliament to look into developing an appropriate mechanism to screen candidates that nominated for appointment as public office-bearers to independent constitutional institutions.

8.3 The Committee noted gaps in terms of vetting and security clearance and recommends that PC on Police, PC on Trade and Industry and PC on Public Service and Administration as well as Performance, Monitoring and Evaluation should look at how to improve the systems of vetting and security clearance work in order to have a comprehensive approach and should include issues related to people with disabilities.

**9. Recommendations**

9.1 Having considered the request of the National Assembly for the Committee to nominate candidates for appointment as Commissioners in the Commission for Gender Equality, the Ad Hoc Committee on the filling of vacancies in the Commission for Gender Equality recommends, in this order, the Committee’s preference:

1. Ms Tamara Eugenia Mathebula
2. Ms Nthabiseng Moleko
3. Mr Sediko Daniel Rakolote
4. Ms Nthabiseng Sepanya Mogale
5. Ms Sethembiso Promise Mthembu
6. Dr Praveena Sukhraj-Ely
   1. The Committee further recommends that:

9.2.1 The National Assembly considers the possibility of investigating, establishing a standardised procedure/mechanism to guide committees of the Assembly when dealing with the matter of appointments to statutory bodies/organs of state. To this end, the Committee recommends that Parliament develops a standardised template to deal with these processes in future.

* + 1. The Committee also notes that Parliament has yet to develop comprehensive guidelines for committees that are similarly tasked. The Committee considered the method of the previous ad hoc committee mandated to nominate suitable persons for appointment as Commissioners. In addition, the committee considered the method of other committees that were mandated to deal with the Public Protector and South African Human Rights Commission nominations. The Committee found that there was a lack of uniformity.

**10. Appreciation**

10.1. The Committee would like to thank all candidates for making themselves available to be considered for appointment to the Commission for Gender Equality.

10.2. Furthermore, the Committee would like to acknowledge the active involvement of members of the public and of civil society in this process.

**Report to be considered.**