

Report of the Portfolio Committee on Communications on the consideration of the communication received from the Minister of Communications and Digital Technologies on the filling of six vacancies on the Council of the Independent Communications Authority of South Africa (ICASA), dated 22 July 2020

The Portfolio Committee on Communications (“the Committee”), having considered correspondence by the Minister of Communications and Digital Technologies (“the Minister”) on her recommendations after considering the 10 names submitted by the National Assembly on 9 June 2020, reports as follows:

On 30 June 2020, the Minister addressed correspondence to the Speaker of the National Assembly in which she requested permission to appoint Councillors in only four of the six vacant positions. According to the Minister, the proposed candidates did not possess skills relating to the digital economy, cybersecurity and trends of emerging technologies which are necessary for ICASA to effectively execute its mandate. Accordingly, the Minister requested that the National Assembly embark on a new appointment process to fill the two vacancies that would remain if her request was agreed to.

On 13 July 2020, the Minister addressed further correspondence to the Speaker of the National Assembly, identifying the names of the four candidates that she intended appointing, namely Dr Keabetswe Modimoeng, Mr Peter Zimri, Advocate Luthando Mkumatela and Ms Yolisa Kedama.

The Minister addressed a third letter to the Speaker of the National Assembly later that day, identifying the names of two additional candidates that she intended appointing if her request to appoint only four Councillors was not agreed to, namely Dr Charles Lewis and Ms Dikeledi Mushi. On 14 July 2020, the Committee met to consider the three letters from the Minister and made the following observations and recommendations:

1. Observations

- (i) The Committee has complied with the procedural steps to fill the current vacancies on the ICASA Council, including advertising the vacancies, short listing candidates, allowing public participation, conducting interviews and finally reaching a unanimous decision on the names to be recommended. Furthermore, the National Assembly concluded the process of identifying suitable candidates when it adopted the 10 names on 9 June 2020.
- (ii) The Minister has exercised her discretion as provided for in the ICASA Act by considering the 10 names from which she recommended the following six names:

NAME	GENDER	QUALIFICATIONS	EXPERTISE
Dr Keabetswe Modimeng	Male	Doctor of Philosophy in Business Administration, Master of Business Administration, Certificate in Applied Project Management, National Diploma in Public Relations Management	Business systems implementation Project Management Compliance monitoring Corporate governance Communications ICT Policy regulation
Mr Peter Zimri	Male	Master of Arts in the Field of ICT Policy & Regulation, Managing Telecommunications Policy & Environment, National Higher Diploma in Leadership Management Development	ICT Policy regulation Compliance monitoring Corporate governance
Adv Luthando Mkumatela	Male	Master of Law with specialisation in Aviation and Space Law	Law ICT Policy regulation Corporate governance Financial management
Yolisa Kedama	Female	Bachelor of Science, ND Electrical Engineering Certificate in Financial Management, Master of Management in ICT Policy and Regulation	Financial management Project/program management Policy formulation

NAME	GENDER	QUALIFICATIONS	EXPERTISE
Dr Charles Lewis	Male	Doctor of Philosophy	Finance
		M. Com	Business systems
		Management of Information Systems,	Corporate governance
		BA Honours in English,	
		Bachelor of Arts Degree	
Ms Dikeledi Mush	Female	Higher Education Diploma	
		Master's in Management	ICT Policy regulation
		Degree in ICT Policy and Regulation	
		BA	Corporate governance
		Honours in Industrial Sociology	
		Bachelor of Arts	

- (iii) The Committee is of the view that the requirements in terms of section 5(3)(b) of the ICASA Act would be met with the following selection as proposed by the Committee, however the Committee differs with the Minister in respect of one candidate only.

Candidate	Evaluation of Relevance
Dr Keabetswe Modimoeng	Doctor of Philosophy: Management Sciences (Business Administration)
	Master of Business Administration (MBA)
	Currently serves in a number of Boards
	Served at ICASA Council since 2016 (1 year as an Acting Chair)
	As a former media practitioner, his background is in communications and public relations
	Dr Modimoeng proposes that the capacity of Council members as well as the funding of the regulator should be bolstered if regulation is to be effective
	His honesty on the current challenges of ICASA as the acting chairperson was welcoming and insightful, such as the cost to communicate and data costs, must-carry regulations, inquiry into subscription broadcasting services and call termination regulations. His final proposal was the policy overhaul of the post office.
Ms Yolisa Kedama	Bachelor of Science
	Bachelors in Electrical Engineering
	Masters of Management in ICT Policy and Regulation (MMICT-PR)
	Worked at ICASA for 6 years as Manager: Spectrum Licensing: ICASA
	Has expertise in financial management, project or programme management and policy formulation
	Vast engineering background and with developmental and empowerment experience, especially in supporting women to participate in the ICT sector
	Ms Kedama gave a good account of the challenges of the sector. She was able to present the dynamics of regulation in South Africa in line with the developmental state agenda
Mr Zolani Kgosietsile Matthews	Masters Degree in Public Administration (International Relations and International Finance)
	Political Science (International Relations)
	Served at the Post Office Board for 3 years
	Served at various businesses at an executive level
	During his interview, he explained to the Committee his role at SAPO Board in ensuring that SAPO develops new payment systems in line with the technology sector.
	Mr Mushi understands the concept of regulation (read efficient regulation)
Mr Peter Zimri	BTech Degree
	Worked as Chief Director at the Department for radio and satellite communications and senior manager of frequency management at the SATRA
	Mr Zimri's understanding of the sector and the global positioning of South Africa was an important aspect of his presentation
	Contextualization of global regulatory practices
	His presentation was of a technical nature consistent with his area of management at ICASA Council, in that it lacked a focus of regulating in the public mandate
Adv. Luthando Mkutumela	Master of Laws with specialisation in International Law, he also has a Master of Laws with specialisation in Aviation and Space Law
	His expertise is in law, ICT policy regulation, corporate governance and financial management.
	He has worked for the Ministry of Communications, State Security Agency, Space Affairs Council of South Africa and Independent Broadcasting Authority
	Managing Director at Amalico Investment Solutions
	For his interview, he demonstrated his ability and understanding of the key issues engulfing the South African ICT space and was able to juxtapose his argument to international best practice.
Dr Charles Lewis	Former Senior Lecturer, University of the Witwatersrand, LINK Centre, a leading African academic research and training body
	He has a passion for universal services which also led to his attainment of a PhD
	Universal access & service, and the digital divide
	However, knowledge and experience covers a broad spectrum of key areas across the field of ICT policy and regulation, ranging from telecommunications and broadcasting to broadband and the Internet
	Was head of Information Technology, Congress of South African Trade Unions
	Consumer protection & quality of service; Digital skills development; ICT sector policy, law & regulation
	In his interview, he was eloquent in his presentation about the concepts of a converged regulator underpinned by universal services. He also referred to the case of the United Kingdom.
(iv) The Committee supports the Minister's choice of candidates 1 to 5.	

(v) However, the Committee is of the view that the recommendation to appoint Ms D Mushi would result in the provisions of section 5(3)(B)(ii) of the ICASA Act not being met. The relevant section reads as follows:

“(3) Persons appointed to the Council must be persons who—

(b) when viewed collectively—

(i) are representative of a broad cross-section of the population of the Republic; and

(ii) possess suitable qualifications, expertise and experience in the fields of, amongst others, broadcasting, electronic communications and postal policy or operations, public policy development, electronic engineering, law, information technology, content in any form, consumer protection, education, economics, finance or any other relevant expertise or qualifications.”

- (vi) The Committee, having considered the candidates' skills set as recommended by the Minister, is of the view that the crucial skill of postal services experience is lacking. The Committee is further of the view that only Mr ZK Mathews possesses postal services experience, which it deems necessary for the effective functioning of the Council. The Committee notes that whilst Ms D Mushi possesses expertise in *ICT Policy and Regulation*, five candidates already possess this skill, over and above the broader skills and expertise they possess individually.
- (vii) The legal opinion received from the Constitutional and Legal Services Office in Parliament dated 14 July 2020 affirmed the discretion of the Minister and the Committee's compliance with the process in terms of the ICASA Act.

It is in the interest of South Africans and necessary for the stability and functioning of ICASA, as well as in the interest of the communications sector, that the appointment process of ICASA Councillors be urgently completed. There are currently only three Councillors, which may lead to ineffective and compromised governance of ICASA at a critical time when the ICASA Council has crucial decisions to make.

2. Recommendations

The Committee unanimously recommends that the National Assembly:

- (i) rejects the request by the Minister to fill four vacancies;
- (ii) accepts the first five names submitted by the Minister in as far as these names are drawn from the list of preferred candidates adopted by the National Assembly; informed by (a) the appointment process the Committee undertook; (b) the broad sense of skills set required, responding to the convergence phenomena and as annotated in legislation; (c) the individual performance of candidates during the interviews; (d) the demographics of the country; and (e) other imperatives such as gender balance; and
- (iii) requests that the Minister, in terms of section 5(1B)(b) of the ICASA Act, review her recommendation in respect of one of her proposed candidates (number six - Ms Dikeledi Mushi) and consider the appointment of Mr Zolani Matthews, who brings the expertise and experience in the postal sector, which are skills necessary for ICASA to realise its regulatory objectives of a converged sector.

Report to be considered.