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18 July 2022

Attn: Hon. Claudia Nonhlanhla Ndaba

Chairperson of the Portfolio Committee on Women, Youth and Persons with Disabilities

Per email: [nondaba@parliament.gov.za](mailto:nondaba@parliament.gov.za)

### **Appointment of Commissioners to the Commission on Gender Equality**

1. Corruption Watch is a non-profit, civil society organisation that was established in January 2012. Through our work, we aim to advance principles of transparency, ethics, integrity and accountability, in an effort to build a society that is just, fair and free from corruption. In this regard, over the last decade, our efforts have focused on policy advocacy, strategic litigation, research outputs, public mobilisation and awareness campaigns, behaviour change interventions, and select investigations.
2. Independent and robust institutions that act in the public interest, and who operate without fear, favour or prejudice, are imperative to safeguarding South Africa's constitutional democracy. The collapse of these institutions, as we have witnessed, gives rise to a state where there are minimal checks and balances, where impunity prevails, and where the public is vulnerable to flagrant abuses of their constitutional rights. Safeguarding institutions from further collapse and rebuilding bodies who are able to fulfil their constitutional and public mandate has to start with appointing leaders to these organisations who are independent, ethical, fit and proper, and skilled.
3. To this end, since 2016, Corruption Watch has actively focused on campaigning around appointment processes of leaders to institutions that comprise our criminal justice system, the board of directors of state-owned enterprises, as well as institutions established under Chapters 9 and 10 of the Constitution of the Republic of South Africa. We advocate for appointment processes to be transparent, merit-based, and inclusive of the voices and concerns of the public. In this regard, our proposals to Parliament to conduct open, public participatory and merit-based

appointment processes were supported by a 2020 [legal opinion](#) produced by the Parliamentary Legal Services. The opinion was provided to the Ad Hoc Committee on the Appointment of the Auditor-General and noted the following:

- 3.1. That the publishing of CVs, subject to the Protection of Personal Information Act, was necessary to facilitate meaningful public participation.
  - 3.2. That the public should be provided with an opportunity to comment on shortlisted candidates with a reasonable timeframe;
  - 3.3. That candidates who did not meet legislated criteria must be eliminated, and that the Committee should develop further criteria for shortlisting;
  - 3.4. That the Committee was permitted to develop a classification scale;
  - 3.5. That a questionnaire, though not obligatory, could be a useful tool to assist Committee Members and therefore recommended;
  - 3.6. That a scorecard could assist the Committee, though not obligatory; and
  - 3.7. That Corruption Watch's recommendations were "in line with the Constitution".
4. Additionally, in the [final report](#) of the Judicial Commission of Inquiry into State Capture, Chief Justice Raymond Zondo noted that Parliament should "consider whether it is desirable to amend its rules to give effect to the proposals by Corruption Watch on appointments by Parliament".

#### **Process to Appoint Commissioners**

5. Under Chapter 9 of the Constitution of the Republic of South Africa, the Commission on Gender Equality ("the CGE") is established as a state institution that supports constitutional democracy. Section 181(2) prescribes that the CGE be independent, and subject only to the Constitution and the law, and that it must be impartial and exercise its powers and perform its functions without fear, favour or prejudice.
6. The CGE has the potential to play an imperative role in our society, where patriarchal values and practices continue to dominate in personal, public and professional settings. However, the CGE has been marred by allegations of [maladministration and poor governance](#), leadership instability, [supposed overreach](#) by the parliamentary oversight committee and appointments of politically exposed / aligned individuals to key positions within the organisation. The appointment of new Commissioners to the CGE poses an opportunity to stabilise the leadership crisis and ensure that the body works to advance its constitutional mandate.

7. In this regard, we note the Portfolio Committee on Women, Youth and Persons with Disabilities' ("the Committee") programme to appoint new Commissioners and welcome the interventions to make the appointment process open and accessible to the public. Corruption Watch, however, is concerned about the limited time that was allocated to allow candidates to apply / be nominated for the positions. A timeframe of 22 days may not be sufficient to attract a suitable pool of applications for consideration and we strongly suggest that the deadline for applications be extended by an additional week.

### Criteria for Selection

8. Section 3(1) of the Commission on Gender Equality Act, 1996, provides limited criteria for candidates to be selected as Commissioners. The Act outlines that candidates must have a record of commitment to the promotion of gender equality, and be a person with applicable knowledge or experience with regards to matters connected with the objectives of the CGE. In the advertisement calling for applications and nominations, the Committee included additional criteria, noting that candidates must be South African citizens, must be fit and proper<sup>1</sup> for appointment, and be broadly representative of the South African community.
9. It is our view, that the abovementioned criteria be regarded as the minimum standard that candidates have to meet for shortlisting, but that additional criteria is required to produce a strong selection pool of candidates for interviewing. In this regard, the Committee should:

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1. [1](#) A 2016 [parliamentary legal opinion](#) to the Ad Hoc Committee on the Appointment of the Public Protector Adv. Vanara noted:

The fit and proper person requirement/standard involves character screening of the person involved in the interview to be appointed as the next Public Protector. The honesty, integrity, [and] reliability of a person is screened or interrogated to determine whether such a person is indeed a "fit and proper person" to occupy the said office. The Committee in this regard would be called upon to objectively make a value judgement on whether a person is fit and proper to be the Public Protector.

It is sacrosanct to note that the value judgement that has to be made in this instance is not a subjective, but an objective one... the Committee through the process of interviews has the obligation to screen individuals who will be recommended for appointment, on whether they are sufficiently honest, have integrity, are reliable and therefore a fit and proper person to hold the Office...

Furthermore, in a 2016 [judgement](#) in the case of *The General Council of the Bar of South Africa v Jiba and others*, Judge Legodi described a fit and proper person as someone possessing integrity, objectivity, dignity, capacity for hard work, respect for legal order and a sense of equality and fairness. Thus, it is against this backdrop, that the Committee will be required to develop objective, and merit-based methodologies to test an individual's fitness and propriety, which is underpinned by the abovementioned values and principles.

- Determine the basic level of educational qualifications and experience needed for the position;
- Develop appointment criteria which tests a candidates integrity, honesty, skills and expertise:
- Conduct background checks on candidates and highlight adverse findings;
- Request candidates and Committee members to declare any conflicts of interest during the appointment proceeding – which includes declarations of political exposure and associations; and
- Probe the candidates’ ability to act impartially and without bias, through a series of tests and/or questions.

10. Additionally, the Committee could consider the following criteria when assessing candidates:

- Demonstrated extensive knowledge of gender issues and challenges derived from experience of leadership in academic, governmental, inter-governmental and/or non-governmental settings;
- An ability to be a powerful and convincing advocate on all aspects of gender equality;
- Demonstrated leadership experience with strategic vision and proven skills in leading and managing complex organisations;
- A proven track record of change management in complex organisations
- Demonstrated ability to work harmoniously in a multi-cultural team and establish effective relationships both within and outside the organisation; and
- A proven ability to inspire, encourage, build trust and confidence and also build consensus, stimulate effective campaigns and drive collective action amongst a broad spectrum of people and organisation.

11. Lastly, in relation to candidates who are seeking re-appointment as Commissioners, the Committee should consider the following:

- The performance of candidates during their term in office as Commissioners;
- The performance of the CGE under the leadership of the Commissioners during their term in office;
- Consideration on whether the candidate executed their work with independence, integrity, conscientiousness, honour and is considered to be fit and proper; and
- The advantages and disadvantages associated with the renewal of the candidate’s term;

12. It is important that the Committee's processes are centred on fact and merit-based criteria when shortlisting, interviewing and deliberating on individuals for selection. We propose that the Committee should further engage experts in human resourcing in order to establish measures that could be considered during the appointment proceedings. Proper screening and vetting would also ensure that the decision of the Committee will not contribute towards public discord and further instability at the CGE.

## Conclusion

13. In summary, Corruption Watch requests that the Committee:

- 13.1. Consider extending the application window by one week;
- 13.2. Develop appointment criteria, over and above the minimum requirements, in consultation with HR experts, that will test the integrity, skills and expertise of candidates;
- 13.3. Assess the performance of individuals who are reapplying as Commissioners to the CGE;
- 13.4. Conduct financial and security vetting of candidates; and
- 13.5. Request candidates and committee members to declare conflicts of interest in relation to this appointment.

14. We thank you for considering our recommendations and are available to respond to any questions or concerns that may arise. We look forward to your favourable response.

Sincerely,



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ENDS.



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