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**INDEPENDENT PANEL ESTABLISHED IN TERMS OF RULE  
129U OF NATIONAL ASSEMBLY RULES, READ WITH  
SECTION 194 OF THE CONSTITUTION**

**RECORD OF DOCUMENTS FOR THE INDEPENDENT PANEL**

**5 APRIL 2024**

**MOTION BY HONOURABLE MS F A MASIKO MP, INITIATING REMOVAL PROCEEDINGS AGAINST COMMISSIONER MBUYISELO BOTHA OF THE COMMISSION ON GENDER EQUALITY (CGE) I.T.O. SECTION 194 OF THE CONSTITUTION, READ WITH APPLICABLE RULES OF THE NATIONAL ASSEMBLY**

**INDEX AND RECORD OF DOCUMENTS FOR THE INDEPENDENT PANEL - AS AT 5 APRIL 2024**

<b>NO</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
	<b>PART A: INITIAL DOCUMENTS</b>	
1.	Applicable Rules of the National Assembly	1 – 6
2.	Motion Submitted by Ms F A Masiko MP, dated 1 November 2023	7 – 9
3.	<b>Annexure 1:</b> Transcript of Audio Clip of Recording during Break of a CGE Plenary Meeting of 20 July 2021	10 – 17
4.	<b>Annexure 2:</b> CGE Report on Investigation into Breach of Code of Conduct by Commissioner Botha, adopted by Plenary on 6 August 2021	18 – 29
5.	<b>Annexure 3:</b> CGE Commissioners Handbook	30 – 124
	<b>PART B: CORRESPONDENCE BETWEEN THE INDEPENDENT PANEL AND MR M BOTHA'S LEGAL REPRESENTATIVES</b>	
6.	Letter from Panel to Mr M Botha (per M Vilakazi Attorneys) Requesting Written Representations / Responses – sent on 18 March 2024	125 – 128
7.	Letter from Mr M Botha (per M Vilakazi Attorneys) in response to the Panel's request for Representations – dated 20 March 2024	129 - 131
8.	Letter from Mr M Botha (per M Vilakazi Attorneys) to the CGE copied to the Panel – dated 20 March 2024	132 - 133
9.	Reply Letter from Panel to Mr M Botha (per M Vilakazi Attorneys) in response to letter of 20 March – dated 22 March 2024	134 - 136
10.	Letter from Mr M Botha (per M Vilakazi Attorneys) in response to the Panel's letter of 22 March – dated 27 March 2024	137 - 139

## **ANNEXURE "A"**

### **Rules of the National Assembly applicable to the removal from office of a holder of a public office in a State Institution supporting Constitutional Democracy**

#### **"Part 4: Removal from office of a holder of a public office in a State Institution Supporting Constitutional Democracy"**

##### **Definitions**

For the purposes of Part 4-

**"holder of a public office"** means a person appointed in terms of Chapter 9 of the Constitution;

**"incapacity" includes—**

- (a) a permanent or temporary condition that impairs a holder of a public office's ability to perform his or her work; and
- (b) any legal impediment to employment;

**"incompetence"** in relation to a holder of a public office, includes a demonstrated and sustained lack of—

- (a) knowledge to carry out; and
- (b) ability or skill to perform,

his or her duties effectively and efficiently;

**"member of a commission"** means a member of a commission established under Chapter 9 of the Constitution;

**"misconduct"** means the intentional or gross negligent failure to meet the standard of behaviour or conduct expected of a holder of a public office; and

**"section 194 enquiry"** means an enquiry by the Assembly to remove a holder of a public office in terms of section 194 of the Constitution and these rules.

##### **Initiation of section 194 enquiry**

###### **129R<sup>1</sup>. Initiation of Section 194 enquiry**

- (1) Any member of the Assembly may, by way of a notice of a substantive motion in terms of Rule 124(6), initiate proceedings for a section 194(1) enquiry,

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<sup>1</sup> The numbering of the rules could follow Rule 129A-Q, which concern the removal of the President in terms of Section 89 of the Constitution. This would nevertheless be a temporary arrangement until the rules were re-printed, at which point both would be separate rules and be re-numbered accordingly.

provided that –

- (a) the motion must be limited to a clearly formulated and substantiated charge on the grounds specified in section 194, which must *prima facie* show that the holder of a public office:
    - (i) committed misconduct;
    - (ii) is incapacitated; or
    - (iii) is incompetent;
  - (b) the charge must relate to an action performed or conduct ascribed to the holder of a public office in person;
  - (c) all evidence relied upon in support of the motion must be attached to the motion; and
  - (d) the motion is consistent with the Constitution, the law and these rules.
- (2) For purposes of proceedings in terms of section 194(1), the term “charge” must be understood as the grounds for averring the removal from office of the holder of a public office.

#### **129S. Compliance with criteria**

Once a member has given notice of a motion to initiate proceedings in a section 194 enquiry, the Speaker may consult the member to ensure the motion is compliant with the criteria set out in this rule.

#### **129T. Referral of motion**

When the motion is in order, the Speaker must –

- (a) immediately refer the motion, and any supporting documentation provided by the member, to an independent panel appointed by the Speaker for a preliminary assessment of the matter; and
- (b) inform the Assembly and the President of such referral without delay.

#### **Independent panel to conduct preliminary assessment into Section 194 enquiry**

##### **129U. Establishment**

The Speaker must, when required, establish an independent panel to conduct any preliminary inquiry on a motion initiated in a section 194 enquiry.

**129V. Composition and Appointment**

- (1) The panel must consist of three fit and proper South African citizens, which may include a judge, and who collectively possess the necessary legal and other competencies and experience to conduct such an assessment.
- (2) The Speaker must appoint the panel after giving political parties represented in the Assembly a reasonable opportunity to put forward nominees for consideration for the panel, and after the Speaker has given due consideration to all persons so nominated.
- (3) If a judge is appointed to the panel, the Speaker must do so in consultation with the Chief Justice.

**129W. Chairperson**

The Speaker must appoint one of the panellists as chairperson of the panel.

**129X. Functions and powers of the panel**

- (1) The panel –
  - (a) must be independent and subject only to the Constitution, the law and these rules, which it must apply impartially and without fear, favour or prejudice;
  - (b) must, within 30 days of its appointment, conduct and finalise a preliminary assessment relating to the motion proposing a section 194 enquiry to determine whether there is *prima facie* evidence to show that the holder of a public office –
    - (i) committed misconduct;
    - (ii) is incapacitated; or
    - (iii) is incompetent; and
  - (c) in considering the matter –
    - (i) may, in its sole discretion, afford any member an opportunity to place relevant written or recorded information before it within a specific timeframe;
    - (ii) must without delay provide the holder of a public office with copies of all information available to the panel relating to the assessment;
    - (iii) must provide the holder of a public office with a reasonable opportunity to respond, in writing, to all relevant allegations against him or her;
    - (iv) must not hold oral hearings and must limit its assessment to the relevant written and recorded information placed before it by members, or by the holder of a public office, in terms of this rule; and

- (v) must include in its report any recommendations, including the reasons for such recommendations, as well as any minority view of any panellist.
- (2) The panel may determine its own working arrangements strictly within the parameters of the procedures provided for in this rule.

#### **129Y. Quorum**

The panel may proceed with its business when the chairperson and one other panellist is present.

#### **129Z. Consideration of panel recommendations**

- (1) Once the panel has made its recommendations the Speaker must schedule the recommendations for consideration by the Assembly, with due urgency, given the programme of the Assembly.
- (2) In the event the Assembly resolves that a section 194 enquiry be proceeded with, the matter must be referred to a committee for a formal enquiry.
- (3) The Speaker must inform the President of any action or decision emanating from the recommendations.

#### **Committee for section 194 Enquiry**

##### **129AA. Establishment**

There is a committee to consider motions initiated in terms of section 194 and referred to it.

##### **129AB. Composition and Appointment**

- (1) The committee consists of the number of Assembly members that the Speaker may determine, subject to the provisions of Rule 154.
- (2) Notwithstanding Rule 155(2), the members of the committee must be appointed as and when necessary.

##### **129AC. Chairperson**

The committee must elect one of its members as chairperson.

##### **129AD. Functions and powers of the committee**

- (1) The committee must, when the Assembly has approved the recommendations of the independent panel in terms of Rule 129Z proceed to conduct an enquiry and establish the veracity of the charges and report to the Assembly thereon.

- (2) The committee must ensure that the enquiry is conducted in a reasonable and procedurally fair manner, within a reasonable timeframe.
- (3) The committee must afford the holder of a public office the right to be heard in his or her own defence and to be assisted by a legal practitioner or other expert of his or her choice, provided that the legal practitioner or other expert may not participate in the committee.
- (5) For the purposes of performing its functions, the committee has all the powers applicable to parliamentary committees as provided for in the Constitution, applicable law and these rules.

#### **129AE. Decisions**

A question before the committee is decided when a quorum in terms of Rule 162(2) is present and there is agreement among the majority of the members present, provided that, when the committee reports, all views, including minority views, expressed in the committee must be included in its report.

#### **129AF. Report to the National Assembly**

- (1) The report of the committee must contain findings and recommendations including the reasons for such findings and recommendations.
  - (2) The report must be scheduled for consideration and debate by the Assembly, with due urgency, given the programme of the Assembly.
  - (3) If the report recommends that the holder of a public office be removed from office, the question must be put to the Assembly directly for a vote in terms of the rules, and if the required majority of the members supports the question, the Assembly must convey the decision to the President."
-

**ANNEXURE "B"**

**Rule framed by the Speaker in terms of Rule 6 of the National Assembly on "Unforeseen Eventualities", to be read together with Rules applicable to the removal from office of a holder of a public office in a State Institution supporting Constitutional Democracy**

In light of the limitations of the current Rule 129X(1)(b), and in accordance with Rule 6, the Speaker hereby frames the following sub-rule:

*"129X(3) (a) Notwithstanding rule 129X(1)(b), the Speaker may, at the request of the panel and on good cause shown, extend the time period referred to in that rule to such later period as the Speaker may determine, which extended period may not exceed 90 days from the date of appointment of the panel.*

*(b) In the event that the panel requests a further extension beyond the period contemplated in paragraph (a), the Assembly may, on good cause shown, determine such an extended period".*

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1. Draft resolution (Ms F A Masiko): That the House -

- (1) notes that, in terms of section 194 of the Constitution of the Republic, 1996, the National Assembly, by a resolution adopted by a majority of its members, may remove from office a member of a Commission established in terms of Chapter 9, only on the ground of misconduct, incapacity or incompetence;
- (2) further notes that the Assembly gives effect to the provisions of section 194 in terms of procedures set out in National Assembly Rules 129R to 129AF; and
- (3) resolves to initiate an inquiry into the removal of Mr Mbuyiselo Botha from office as a commissioner of the Commission for Gender Equality ("the CGE"), on the ground of misconduct, charges of which are set out and substantiated as follows:

**3.1 - Charge 1: Statements made against former Commissioner Tamara Mathebula**

- 3.1.1 The statement to Party A as per transcribed audio record that former Commissioner Tamara Mathebula lacks a backbone.
- 3.1.2 The statement is disrespectful, demeaning and humiliating. By its nature, the statement undermined the standing of former Commissioner Mathebula and the CGE in the eyes of Party A, the staff of the CGE and the public.
- 3.1.3 This conduct is in violation of section 10 read with 187 of the Constitution, and Clause 5.3.2 of the CGE Commissioner's Handbook.

Evidence of this misconduct is contained in the audio recording and related transcription of the plenary of 20 July 2021, as attached.

**3.2 - Charge 2: Statements made against Commissioner Nomasonto Mazibuko**

- 3.2.1 The reference to Commissioner Nomasonto Mazibuko's albinism made on 20 July 2021 in a telephone conversation with Party A. The reference is hurtful, discriminatory, objectifies Commissioner Mazibuko, and impugns her dignity.
- 3.2.2 The statement made on 20 July 2021 that Commissioner Mazibuko does not know anything about diplomacy is dismissive and belittling of her contribution and ability. The statements are embarrassing and humiliating to Commissioner Mazibuko and Commissioner Botha was or ought to reasonably have been aware of this.
- 3.2.3 The statement undermined her and the CGE's standing in the eyes of Commissioner Botha's interlocutor and in the eyes of the public that ultimately came to hear his views of Commissioner Mazibuko.
- 3.2.4 This conduct is in violation of sections 9 and 10 read with 187 of the Constitution; section 10 of Promotion of Equality and Prevention of Unfair Discrimination Act No.4 of 2000 (PEPUDA), and clause 5.3.2 of the Commissioner's Code of Conduct.

Evidence of this misconduct is contained in the audio recording and related transcription of the plenary of 20 July 2021, as attached.

### **3.3 - Charge 3: Commissioner Botha's posture and attitude that he intended to disrupt and fight at Plenary meeting is not in the best interest of the CGE**

1. He has failed to act without prejudice, to bring an open mind to the affairs of the CGE and to manage any conflicts with his fellow Commissioners. He failed to provide leadership and instead revealed to Party A details of plenary discussions and disagreements and that he did not intend to act in the best interest of the CGE.
2. The conduct of Commissioner Botha brought the CGE into disrepute. He succeeded to portray the CGE as dysfunctional because of his agenda to disrupt its functioning at plenary and to portray his fellow Commissioners Mathebula and Mazibuko as weak and without intellectual gravitas respectively.
3. He has failed to act in good faith, with honesty and in a transparent manner, and always in the best interests of the CGE, and in such a manner that the credibility, dignity, and integrity of the CGE is not compromised.
4. This conduct is in violation of the fiduciary duty to act in good faith and in the best interest of the organisation as a member of the Commission and the provisions of Clause 5.3.2 of the CGE Commissioner's Handbook.

Evidence of this misconduct is contained in the transcribed audio recording of the plenary of 20 July 2021, as well as the CGE "Report of the Investigation into Breach of Conduct by Commissioner Botha", adopted by plenary on 6 August 2021, as attached.

### **3.4 Charge 4: Statement made against Commissioner Moleko**

- 3.4.1 The statement to Party A as per transcribed audio record that former Commissioner Moleko was "*Moleko oa nnete*" insinuating that she was "troublesome" and or "problematic".
- 3.4.2 The statement is disrespectful, demeaning and humiliating. By its nature, the statement undermined the standing of former Commissioner Moleko and the CGE in the eyes of Party A, the staff of the CGE and the public and deliberately misuses and misinterprets her surname to give it a negative connotation.
- 3.4.3 This conduct is in violation of section 10 read with 187 of the Constitution, and Clause 5.3.2 of the CGE Commissioner's Handbook.

Evidence of this misconduct is contained in the audio recording and related transcription of the plenary of 20 July 2021, as attached.

### **3.5 Charge 5: Statement made against Commissioner Rakolote**

- 3.5.1 The statement to Party A as per transcribed audio record Commissioner Botha mentioned the litigation between himself and Commissioner Rakolote and stated that Commissioner Rakolote would mess his pants once he is finished with him. At the time of this incident both Commissioners were involved in a legal dispute where Commissioner Botha had defamed Commissioner Rakolote. He has since apologised.

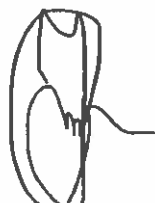
3.5.2 The statement is disrespectful, demeaning and humiliating. By its nature, the statement undermined the standing of former Commissioner Rakolote and the CGE in the eyes of Party A, the staff of the CGE and the public.

3.5.3 This conduct is in violation of section 10 read with 187 of the Constitution, and Clause 5.3.2 of the CGE Commissioner's Handbook.

Evidence of this misconduct is contained in the audio recording and related transcription of the plenary of 20 July 2021, as attached.

**PROPOSED:** FA MASIKO

**SIGNATURE:**



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**DATE:** 1 NOVEMBER 2023

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# Annex 1

10

## RECORDED OPEN PLENARY MEETING

HELD AT:

DATE:

## TRANSCRIPT OF MEETING HELD BETWEEN

PARTY A

and

PARTY B

### PRESENT:

1. Mr Botha
2. Party B
3. Female Speaker
4. 2<sup>nd</sup> Female Speaker
5. CEO
6. CFO
7. CHAIRPERSON



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SOUND FILE:

CHAIRPERSON: 12:00. I would like us to pause here, take a break.

I know that we did promise that we would take a break, allow the CEO and the CFO who joined us this morning and really thank them for joining us for the last part of the Open Plenary. We can release them to go and do their own normal work. We will re-join at 12:00 for the last part of our meeting. 12:00 (intervenes)

FEMALE SPEAKER: Thank you Chair, bye.

MR BOTHA: Bye.

10 FEMALE SPEAKER: Thank you.

CHAIRPERSON: CEO, you are excused.

CHIEF EXECUTIVE OFFICER: Thank you.

2<sup>ND</sup> FEMALE SPEAKER: Bye Chair.

CHAIRPERSON: We can have an extended tea time because we will not have lunch. We will re-convene at 12:00, Colleagues. Thank you so much.

MR BOTHA: Mogwera, tomorrow is your birthday man, tomorrow is your birthday.

MALE SPEAKER: Ee, Ngiyasi.

20 MR BOTHA: I still remember. O yo etsa jwang ka ntho eo? O tloo e etsa jwang, ke ya lunching?

MALE SPEAKER: (Indistinct) I do not know.

MR BOTHA: Is it validated? E re ke mo founele hee. Ke utlwe hore naa oreng. Ntho o sele neh. (Inaudible) o bua nnete neh?

MALE SPEAKER: (Inaudible).

MALE SPEAKER: (Inaudible).

MR BOTHA: Oa bona ke ntho e ya di bra, bra, Braskap, o ya bona?

MALE SPEAKER: Uhm.

MR BOTHA: Maar o o so. Ke sono ka ntho, haa na back bone thaka ya Rra.

MALE SPEAKER: Ba bapala ka (inaudible).

MR BOTHA: Ao ke sono maar.

MALE SPEAKER: (Inaudible).

MR BOTHA: Ao ke sono maar. Ja so.

10 MALE SPEAKER: (Inaudible).

MR BOTHA: Bona, mare ke ene yaa ratang. Mare nna Bro waka, ha ke emele masepa, nna. Ha hona motho lefatsheng e ke mo tshabang, Nna.

MALE SPEAKER: (Indistinct) strateng.

MR BOTHA: No oa utlwa hore ha hona deployment ya niks nie. Ene ke had a risk ya hore ke suewe hape. Ke tlaa bua nnete nna. Ke bua ka Commisioner Sepale Mogale. Ha hona ntho, hore ke ye kae. Order, order, order, ao mametse Rra?

20 MALE SPEAKER: What is happening? What is happening to (inaudible).

MR BOTHA: Oh no broer waka, oa iqakela, oa iqakela motho enwa. Oa iqakela ntho yah ae eno. Ke eng the employer side? Ba chench, ba batla ho chench dilo, maar that is not going to help anything. Bona ke nkile dintho wena ha o tsebe. Go and research; tsamaya o ye ho google ore (Indistinct) o tle o utlwe hore ntho e

jwang ka motho enwa. Mamela, he is South African. He is authority  
(indistinct)

MALE SPEAKER: (Inaudible).

MR BOTHA: O mmotse Zuma, o mmotse Zuma le Zapiro. Zapiro o  
ne a sebedisa ena.

MALE SPEAKER: (Inaudible).

MR BOTHA: Ja, ntho tse ngata tsa hae. Akere Zuma one a kentse  
ha ke tsebe how many millions tsa defamation against Zapiro. Di  
felletse kae? That is the law firm. Ke botsa in particular. So kea bua  
10 otletse masepa makaka antseng a a bua je.

MALE SPEAKER: (Inaudible).

MR BOTHA: Mare yoo ena.

MALE SPEAKER: (Inaudible)

MR BOTHA Mare ha o tsebe wena bra. Ha o so mo tsebe mo  
botshelong jwa hao, hao so mo tsebe die ou. Ke utlwa Mazibuko  
hore letsswega lena le bua ka diplomacy. Ke diplomacy ya eng. It is  
to tell me to say oa mo tshaba, o tshaba motho ho bua lebitso la hae.  
Di consequences tseo, ho bua nnete wena oa a ntseba, le lebitso la  
ka, oa le tseba. Kere ha hona di consequences tsa niks. Can I allude  
20 to the consequences; e re ke bue, ke ene.

MALE SPEAKER: (Inaudible).

MR BOTHA: Utlwa ntho ena, ke setswana ka nnete. Ke mosimane  
wa (indistinct). But jwale ke etsa ka mabomo. Ke etsa ka mabomo.  
Wena ha o tsebe ke rata ntwana wena man. Wa bona haele two days  
e, ke rapela thata hore e be hoseng. Ke batla fela ho mo kgama.

MALE SPEAKER: (Inaudible).

MR BOTHA: No, bona nna kea, no wa rra, [lauging]. Ole bra yaka ke die bra for ho labola. O nahana hore ha ke tsebe hore na ntho eo e fumane back bone kae ntho. Ha are, I was shocked. Ee, I was shocked. Unless, ba qabane somewhere.

MALE SPEAKER: (Inaudible).

MR BOTHA: (Indistinct) hake mo tshepe nna. (Inaudible).

MALE SPEAKER: (Inaudible).

MR BOTHA: Oa cho?

10 MALE SPEAKER: (Inaudible).

MR BOTHA: Oa cho?

MALE SPEAKER: (Inaudible).

MR BOTHA: No, like look I cannot put the finger. All I know is she is unreliable. I cannot say. I was just amazed that (indistinct) his job position. I am just amazed. Ke ka hoo a buang ka diplomacy.

MALE SPEAKER: (Inaudible).

20 MR BOTHA: Mare hoo o right. Mamela hee o etsa ntho eo o right. Mamela nna ke bua ka eng. Hake batle niks. Haale siyo, nna kea ho ntsha, re ile ho ja, re ile ho nwa, re ile ho etsa whatever e e lebaneng le wena. Ke a ho ntsha pele ha dintho. Haa le sio haayo. E ka no baneng o tsamaile ka meno a hae. There is a saying ya Sesotho; tau e ile le meno a yona.

MALE SPEAKER: Tau e tsamaileng e tsamaile le meno a yona.

MR BOTHA: Ja ho o itse yona (indistinct). So nna kere ke...(intervenues)



MALE SPEAKER: (Inaudible).

MR BOTHA: [Laughter] Yoo, wa tseba ke eng. Ekare ke entse nonsense mo. Ke entse nonsense mo.

MALE SPEAKER: Still talking to me?

HEARING ADJOURNS

**CERTIFICATE OF VERACITY**

I, the undersigned, hereby certify that as far as it is audible, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

**X** Applicant

and

**X** Respondent

---

<b>FORUM OF ORIGIN</b>	<b>:</b>	<b>MEETING</b>
<b>TRANSCRIBER</b>	<b>:</b>	<b>R MOTLHALE</b>
<b>DATE COMPLETED</b>	<b>:</b>	<b>19 October 2022</b>
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**TRANSCRIBER'S NOTE****PARTIES****PARTY A****PARTY B****TRANSCRIBER****R MOTLHALE****REASON FOR REPORT**

➤ Some words/phrases were inaudible due to the following reasons:

1. This was a poor recording.
2. Male speaker was not placed close enough to the microphone.



---

**R MOTLHALE  
TRANSCRIBER**

Date



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Commission for Gender Equality  
A society free from gender oppression and inequality



## INVESTIGATION INTO BREACH OF CODE OF CONDUCT BY COMMISSIONER BOTHA

Recommendations of the special committee	
<b>SUBMITTED BY</b>	Comm L Ntuli- Tloubatla and Comm D Mothupi
<b>SUBMISSION DATE</b>	02 August 2021 (Initial submission date)
	05 August 2021 (Final submission date)
<b>ADOPTION DATE</b>	06 August 2021 (Plenary adopted report)

### Contents

1. Overview of the Commission for Gender Equality .....	2
2. Sequence of events .....	4
3. Committee Investigations and Report .....	5
4. Conclusion .....	7
5. Findings .....	8
6. Recommendations .....	11



**Commission for Gender Equality**  
 A society free from gender oppression and inequality

## 1. Overview of the Commission for Gender Equality

The Commission for Gender Equality ("CGE") was established in terms of chapter 9 of the Constitution of South Africa, 1996 ("the Constitution") to support constitutional democracy. In terms of section 187 of the Constitution, the CGE was created to strengthen and deepen constitutional democracy in South Africa through promotion, protection, development, and attainment of gender equality. The powers and functions of the CGE are further outlined in the CGE Act 39 of 1996 ("CGE Act"). Part of the CGE's broader mandate is to monitor and evaluate the advancement and respect for gender equality in all spheres of society. Additionally, the CGE has powers to initiate an own accord investigation and subsequently issue a subpoena against any person involved in an investigation and further conduct investigative hearings if need be.

The CGE is composed of Commissioners and Secretariat with the Commissioners are regarded as the Executive Authority of the CGE. Plenary is the final decision-making body of the CGE. The conduct of Commissioners is governed by CGE Act and the Commissioners' handbook and Code of Conduct which provide guidance to, and regulate Commissioners in the execution of their responsibilities, interface with Secretariat of the Commission, and in the implementation of their public office as Commissioners. Further to that by holding the office of a Commissioner there are fiduciary duties commensurate to those held by a Director of a company acting in good faith and in the best interests of the organisation.

Section 5.3.7 (g) of the Commissioners Handbook compels all Commissioners to act in the best interest of the organisation including managing conflicts.



### Commission for Gender Equality

A society free from gender oppression and inequality

The Commissioners' Handbook (Annexure B: Code of conduct for Commissioners) requires that Commissioners perform the functions of office in good faith, honesty, and transparent manner and at all times act in the best interest of the CGE and in such a manner that the credibility, dignity, and integrity of the CGE will not be compromised. The Chairperson of the Commission is empowered by the Commissioner's Handbook (Annexure B:15) to authorise an investigation of the facts and opinions in case where the Chairperson is of the opinion that the provision of the code has been breached. The investigations will be in terms of the rules of natural justice.

Annexure B:16 on Breaches of the code in the Commissioner's Handbook states that:

*16.1. A special committee constituted of at least two Commissioners by the Chairperson may;*

*a) investigate and make a finding of the alleged breach of the provision of this code ("Code of conduct for Commissioners") with appropriate recommendations in the investigations report.*

*b) the Chairperson will consider the report and make a decision which will be presented to Plenary.*

*c) Plenary will ratify the decision which may be as follows:*

*i. formal warning*

*ii. a request to refrain from the prohibited conduct and or the*

*Commissioner conducts himself/herself in certain manner iii.*

*a suspension*

*iv. a request to the Office of the Speaker requiring a removal of the Commissioner.*



## 2. Sequence of events

### Commission for Gender Equality

*A society free from gender oppression and inequality*

2.1 On the 20<sup>th</sup> of July 2021 Commissioner Mbuyiselo Botha was overheard having a conversation with someone during the break of a plenary meeting. In the conversation various Commissioners are referred to as described below.

2.2 Commissioner Botha uses a derogatory name against Commissioner Nomasonto Mazibuko. He referred to commissioner Mazibuko as *"leswefe"* He said *"wena hao ntsebe, hao se ntsebe, utlwa Mazibuko o reng, lesofe lena le buwa ka diplomacy ..."* he further says *I don't know hore nthoofumane back bone kae unless ba qabane ka mola*" and the other person is heard to be saying *"Mazibuko"* and continues to speak at the end of which commissioner Botha says *"do you think so, ke hore hake mo tshepe nna hake mo battle"*

2.3 Commissioner Botha said *"Moleko yenwa ke moleko wa nnete"*. This appears that he was referring to Commissioner Dr Nthabiseng Moleko.

2.4 Commissioner Botha said that the Chairperson of the commission, Commissioner Mathebula does not have a backbone. He said *"ke sono ka ntho, Tamara ha ana back bone Tamara man"*.

2.5 Commissioner Botha said that he likes war and comes to Plenary meetings ready for war, he even says that for the 2 days of Plenary he wanted to wage war. He said *":ke etsa ka mmabomo, wena hao ntsebe ke rata ntwawa, owa bonahaele two days ke rapelafela ebe hoseng ke batla fela ho mo kgama "*

2.6 On the 20<sup>th</sup> of July 2021 Commissioner Lindiwe Ntuli-Tloubatla brought to the attention of the Plenary which was in session that Commissioner Botha had a conversation with someone during the meeting break, this conversation was about some members of Plenary (Commissioners), and it was about matters that had been discussed in Plenary.



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2.7 In line with applying rules of natural justice, Commissioner Botha who was part of the Plenary was provided an opportunity by Plenary to respond to the allegations. He said whatever he was heard saying in the recording, he can repeat to their faces (*meaning the people that he spoke about in that recording*). He showed no remorse.

2.8 Based on the veracity of the allegations of the breach of the code of conduct by Commissioner Botha and his response on the allegations, Plenary as the highest decision-making body resolved that the matter be referred to the Office of the Chairperson. Plenary became complainant number 1.

2.9 As empowered by the Commissioners Handbook, the Chairperson appointed a committee to:

- a. *investigate and make a finding of the alleged breach of the provision of this code ("Code of conduct for Commissioners') with appropriate recommendations in the investigations report.*
- b. *the Chairperson will consider the report and make a decision which will be presented to Plenary.*

### **3. Committee Investigations and Report**

The source material is the recording of the Plenary meeting of the 20<sup>th</sup> of July 2021 (in which commissioner Botha's conversation is covered) as well as the minutes thereof (which should reflect the decision of Plenary on the matter).





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3.1 Commissioner Botha used a derogatory name against Commissioner Nomasonto Mazibuko. He referred to commissioner Mazibuko as *"leswefe"* He is heard to be saying *"wena hao ntsebe, hao se ntsebe, utlwa Mazibuko o reng, lesofe lena le buwa ka diplomacy ..."* he further says *I don't know hore nthoofumane back bone kae unless ba qabane ka mola* and the other person is heard to be saying *Mazibuko* and continues to speak at the end of which commissioner Botha says *"do you think so, ke hore hake mo tshepe nna hake mo battle"*

3.2 Commissioner Botha said *"Moleko yenwa ke moleko wa nnete"*. This appears that he was referring to Commissioner Dr Nthabiseng Moleko.

3.3 Commissioner Botha said that the Chairperson of the commission, Commissioner Mathebula does not have a backbone. He said *"ke sono ka ntho, Tamara ha ana back bone Tamara man"* and swore at the Chairperson.

3.4 Commissioner Botha said that he likes war and comes to Plenary meetings ready for war, he even says that for the 2 days of Plenary he wanted for war. He said *"ke etsa ka mmabomo, wena hao ntsebe ke rata ntwawa, owa bonahaele two days ke rapelafela ebe hoseng ke batla fela ho mo kgama"*

3.5 Report of the Committee was presented on the 27<sup>th</sup> of July 2021, the Committee tabled its report to the Plenary.

3.6 The Plenary was appraised by the Chairperson of the Commission that Commissioner Nomasonto Mazibuko has submitted a complaint.

3.7 Plenary resolved that the Committee must access all other individual complaints from aggrieved Commissioners, should there be any and include that in their investigations, findings, reports, and recommendations.

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3.8 A copy of Commissioner Mazibuko's formal complaint was shared with the committee members by the chairperson on 02 August 2021.

## 4. Conclusion

CGE was established to support constitutional democracy. South Africa is a constitutional democracy. The Constitution is the highest law. No person irrespective of race, social status, gender et al can go against the Constitution. Section 9 of the Constitution of South Africa, 1996 provides: *(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.*

*(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.*

*(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture.*

*(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of*

subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination



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(5) *Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.*

Section 10 of the Constitution of South Africa, 1996 enshrines that “everyone has inherent dignity and the right to have their dignity respected and protected”. and the Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000, prohibit unfair discrimination on the basis of disability. Section 16 (2) of the Constitution of South Africa, 1996 provides limitations of freedom of expression.

Section 5.3.7 (g) of the Commissioners Handbook compels all Commissioners to act in the best interest of the organisation including managing conflicts. In the Commissioners’ Handbook (Annexure B: Code of conduct for Commissioners) requires from the Commissioners to perform the functions of office in good faith, honesty, and transparent manner and at all times act in the best interest of the CGE and in such a manner that the credibility, dignity, and integrity of the CGE will not be compromised.

## 5. Findings

5.1 Based on what Commissioner Botha is heard to be saying on the recording of the transcript, there is prima facie evidence that Commissioner

Botha's utterances were not in the best interest of the CGE. Commissioner Botha like all other Commissioners is required to act in the best interest of the organisation including managing conflicts.

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5.2 Commissioner Botha's utterances were not in good faith and in such a manner that the credibility, dignity, and integrity of the CGE will be compromised.

5.3 Commissioner Botha's use of derogatory name against Commissioner Mazibuko constitute hate speech, discrimination against Commissioner Mazibuko on the basis of her albinism condition, infringe on Commissioner Mazibuko's right to human dignity as enshrined in the Constitution of South Africa, 1996 and as protected by PEPUDA.

**PEPUDA stipulates the following:**

**10 Prohibition of hate speech**

*Subject to the provision of section 12 no person may publish, propagate, advocate or communicate words based on one or more prohibited grounds against any person, that could reasonably be construed to demonstrate a clear intention:*

- (a) Be hurtful*
- (b) Harmful or incite harm*
- (c) Promote or propagate hatred "*

Commissioner Mazibuko was referred to as Leswafe direct translation to Isizulu Inkawu an animal, a monkey.



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5.4 The utterances of Commissioner Botha remain the main deterrence against possible aggression, delay in service delivery and work against unity and teamwork. His confirmation and appetite for desire and instigation of internal fights pose as a threat to the CGE.

5.5 Commissioner Botha, lack of respect for executive authority and embarked on character assassination of the Chairperson and Deputy Chairperson. Calling Commissioner Moleko *"Moleko yenwa ke moleko wa nnete"* and saying the Chairperson of the CGE Commissioner Mathebula *"ke sono ka ntho, Tamara ha ana back bone Tamara man"*

5.6 Commissioner Botha lacks collegiality as a member of CGE. He is proudly admitting of having plans to deliberately unleash war on fellow colleagues during Plenary and thus causing the CGE Plenary not to be functioning effectively and efficiently.

5.7 We have also found out that commissioner Botha in his media statement was not truthful when saying that he has apologised unreservedly to commissioner Mazibuko, while in his response to News *"I am not stepping down, says gender activist after skin colour furore"* 24 (3 August 2021) he says that he has tried to call commissioner Mazibuko to apologise and could not get hold of her.

5.8 That his action borders along the lines of gender abuse, because during this conversation he assassinates characters of female commissioners while with the male commissioner (Rakolote) he chooses to only speak about his lawyers and does not say any demeaning word about him as a person.



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## 6. Recommendations

Based on what Commissioner Botha is heard to be saying on the recording of the transcript, there is prima facie evidence that Commissioner Botha is not fit to serve in the organisation established to support constitutional democracy in South Africa. Due to the seriousness of the prima facie findings, the Commission for Gender Equality plenary recommended the following:

6.1 Commissioner Botha be suspended from all CGE activities with immediate effect. During his suspension Commissioner Botha must not represent the CGE directly and or indirectly in any platform. The suspension would be precautionary with full pay. The term of the suspension will be determined by the submission of the report and its recommendations to the Office of the Speaker.

6.2 Disciplinary proceedings be instituted against Commissioner Botha.

6.3 The matter has drawn public interest therefore the Commission must be seen acting decisively within the prescripts of law on this matter.

The Commission would inform the public how it is dealing with this serious matter. The Chairperson should be the only one to take interviews on this matter. The Spokesperson should be barred from commenting on this matter.

6.4 The Commission would share this report with the Speaker of Parliament and the President.



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6.5 That the CEO be tasked to investigate the person who was talking to commissioner Botha in this conversation (listening to the audio we suspect it was the CFO) and should this person be the CFO necessary processes be instituted in line with CGE policies. We believe that this person played the part of an instigator because he is the one who is raising "topics: or names of commissioners in the conversation.

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# Commission for Gender Equality

A society free from gender oppression and inequality

COMMISSIONERS HANDBOOK



## Mandate

Section 187(1) of the Constitution of South Africa reads: "The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality." The CGE is a catalyst for the attainment of gender equality. Section 187(2) grants the CGE "the power, 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."

## Our Vision

A society free from gender oppression and all forms of inequality.

### Our Mission

The Commission for Gender equality shall advance, promote and protect gender equality in South Africa. This is done through:

- Research
- public education
- policy development
- legislative initiatives
- effective monitoring and litigation.

# Commission for Gender Equality Commissioners' Handbook

## Table of Contents

1. Introduction .....	4
2. Status and structure of the Commission in the CGE .....	5
3. Governance, Committees and meetings .....	8
4. Decision-making processes .....	21
5. Commissioners' Terms and Conditions .....	27
6. Public Communication .....	40
7. Engaging with Stakeholders .....	45
8. Role of Commissioners in providing support to Provinces .....	54
9. CGE Policy positions on gender equality issues .....	57
10. Code of Conduct for Commissioners .....	57
11. CEO Performance appraisal .....	58
Annexure A .....	59
Annexure B .....	76

Add definitions &  
Glossary

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## 1. Introduction

### 1.1 Purpose of Handbook

The purposes of the Commission for Gender Equality's Commissioners' Handbook is to provide guidance to, and regulate Commissioners in the execution of their responsibilities; <sup>in effect</sup> interface with the Secretariat of the Commission; and in implementation of their public office as Commissioners.

→ amended - further define.

### 1.2 Legislative Framework

Section 187 (1) of the Constitution provides as follows: "The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality."

In terms of Section 11 of the Commission for Gender Equality Act, the Constitutional mandate is amplified and obliges the CGE to monitor and evaluate policies; develop, conduct and manage information as well as education programmes; evaluate Acts of Parliament or any other law; investigate any gender related issues, monitor the compliance

with international conventions; conduct research to further the object of the Commission; and shall liaise with any organisation which actively promotes gender equality and raises consciousness about gender inequality.

## **2. Status and structure of the Commission in CGE**

### **2.1 Executive Authority**

In terms of Section 3.1 of the CGE Act, and subject to section 119 (2) of the Constitution, the Commission *shall consist of* a Chairperson, and no fewer than seven, and no more than eleven members, or Commissioners. The Commissioners are the executive authority of the Commission. It is required to consider quarterly reports of the Secretariat, or more frequently, as required, to ensure that the institution complies with Public Finance Management Act (PFMA).

The Commission, which is the Chairperson and Commissioners; is tasked by Section 15.1 of the CGE Act, with reporting to the President annually on its activities and the achievement

of its objectives. The President ensures that such reports are tabled in Parliament. The Commission is required to table Annual Reports and Financial Reports to Parliament, and present its Strategic Plan to Parliament.

## 2.2 The Chairperson, Deputy Chairperson and Office of the Chairperson

The Chairperson of the Commission is appointed by the President in terms of Section 9(a) of the CGE Act. The Chairperson is accountable to the President, and may only be removed from the position of Chairperson, by the President.

In terms of the CGE Act, the Chairperson is mandated to convene plenary meetings. The Chairperson of the CGE or his delegate acts as an ex officio member of all CGE structures.

Principles adopted by Commissioners in practice provide that the Chairperson acts in consultation with fellow Commissioners, in a transparent manner. Accordingly, the Chairperson ensures that all communication with all stakeholders, on behalf of and in the



name of the Commission, is done in consultation with Commissioners. In accordance with Section 9(a) of the CGE Act, Commissioners are required to elect a Deputy Chairperson from amongst themselves. In accordance with this provision, when the Chairperson is not available, the Deputy Chairperson shall perform the functions of the Chairperson. The Chairperson and Deputy Chairperson by practice assess responsibilities and tasks before the Chairperson, and assign these amongst themselves accordingly.

The Office of the Chairperson exists to support the work of the Chairperson and Commissioners, and comprises the following portfolios:

- The Chairperson
- The Deputy Chairperson
- The Manager
- The PAs to the Chairperson and Deputy Chairperson
- The PA to Commissioners

### 3. **Governance, committees and meetings**

#### 3.1 Principles for meetings

- Agenda and reports for all meeting shall be circulated at least five days in advance of the meeting unless the late dissemination is condoned by the Chairperson.
- Minutes of all meetings must be available within 14 working days after the meeting.
- All minutes must be signed after adoption by the Chairperson of that meeting and the secretary.
- Postponements of meetings must be communicated timeously and with due notice, not less than 24 hours before the date of the meeting

#### 3.2 Plenary, tele-plenary and extraordinary Meetings

Plenary is the final decision-making body of the CGE. It sits four times a year and considers reports from management and Commissioners.

The quorum for any meeting of the Commission shall be a majority of the total number of members appointed by the President.

Commissioners are official members of Plenary whereas the CEO is an ex officio member, and management may attend Plenary if invited by the CEO. The Chairperson can invite anyone in addition to give a presentation in plenary. Union representatives shall not attend plenary meetings and management should deal with their issues. The decision of the majority of the members of the Commission present at a meeting shall be the decision of the Commission,

The Chairperson in consultation with the CEO and chairpersons of committees shall determine the time and frequency of meetings of the Commission. Meetings of the Commission include the following:

- 3.2.1 *Plenary*: Traditionally, full plenary meetings of Commissioners and the CEO are convened on a quarterly basis, to coincide with Secretariat quarterly reporting on the implementation of the CGE Annual



Performance Plan and Budget. The purpose of Plenary is for Commissioners and Secretariat reporting and deliberation on key issues before the Commission, as well as for policy and decision-making.

- 3.2.2 *Tele-plenary*: Plenary meetings are supplemented by tele-plenary meetings, as required. Tele-plenary meetings are convened at the discretion of the Chairperson, and any Commissioner may motivate to the Chairperson to convene such a meeting, to consider urgent business.
- 3.2.3 *Extraordinary meetings*: In between plenary meetings, certain issues might arise that need plenary attention and the Chairperson of the CGE should call an extraordinary plenary. Accordingly, the Chairperson may convene additional, warm body meetings of the Commission, should there be urgent business to be discussed in this format. The Chairperson shall liaise with the CEO regarding any budgetary implications

for such unplanned meetings.

- 3.2.4 *Round robin*: If it is difficult to take a decision through plenary, the Chairperson, in consultation with a member requiring a decision, should draft a round robin statement and circulate it to Commissioners for adoption. Round robin decisions should be ratified at normal plenary meetings

The quorum for all meetings of the Commission shall be a majority of the total number of Commissioners appointed. Decision-making is as far as possible, on the basis of consensus. Should the Commission not be able to reach consensus on a particular matter requiring decision, decision will be put to a vote. The Chairperson does not cast a vote in such circumstances, but has the right to cast a deciding vote, should there be no clear majority.

All meetings of the Commission include the CEO, unless the matter before the Commission

requires the CEO to recuse herself. For regular plenary meetings, the CEO shall ensure that Secretariat reports are shared with Commissioners 7 working days before plenary.

### 3.3 CGE Committees: Purpose, function And types

#### 3.3.1. *Status of Committees*

Section 6 (1) of Commission on Gender Equality Act No. 39 of 1996 states that the Commission may establish one or more committees consisting of one or more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for any period determined by it.

#### 3.3.2. *Decision-making powers*

Committees make recommendations to plenary, and are accountable to plenary. Plenary can devolve or delegate decision-making powers to committees, and identify budget limits for authorised expenditure. Decisions shall be taken on the basis of a

general consensus by those present at committee meetings. Decisions taken on behalf of plenary shall be ratified by quorate plenary.

### 3.3.3. *Types of Committees*

The Commission typically establishes the following committees:

- (a) *Oversight Committees:* CGE strategic objectives are assigned to Oversight Committees, to enable Commissioners to ensure the effective implementation of these objectives, and lend support as required.

Oversight Committees are established in accordance with Public Finance Management Act requirements, as part of Commissioners' fiduciary oversight responsibilities. These include:

- i) Strategic Plan, Annual Report, M & E Committee;
- ii) Finance Committee;
- iii) Audit Committee;
- iv) Human Resources

- Committee;
- v) Information Technology and Communications Committee
- vi) Good Governance Committee

In addition these Committees include:

- vi) Legal Submissions and Complaints Committee;
- vii) Research and Education Committee

(b) *Ad hoc Committees:* Plenary establishes additional ad hoc Committees as required, to lead on addressing a particular issue requiring decision or deliberation by plenary.

Plenary sets the mandate and reporting requirements for *Ad hoc Committees*, and appoints a lead Commissioner to chair proceedings. Once the purpose for *ad hoc Committees* has been achieved, these are dissolved.



(c) *Section 6 Committee*: In accordance with Section 6 of the CGE Act, the CGE is empowered to establish a committee to provide a platform for deliberation and guidance

on substantive matters of gender equality.

Terms of reference for the Section 6 Committee are attached as Annexure A.

The CGE's Section 6 Committee comprises of Commissioners and selected external experts, and its purpose includes the following:

- i) To develop concept notes for focal areas to inform and guide CGE implementation of interventions.
- ii) Provide expert opinion, gender analysis and guidance on strategic gender equality issues.
- iii) Provide expert knowledge on CGE strategic plan.
- iv) Provide guidance on high-level strategic dialogues, conferences and

international gender equality issues.

### 3.3.4. Functions and purpose of CGE Committees

Section 6 (3) states that subject to the directions of the Commission, a committee may exercise such powers of the Commission as the Commission may confer on it and shall perform such function of the Commission as the Commission may assign to it.

Committees will *inter alia*:

- a) Provide input, advice and assistance in respect of addressing strategic and policy issues and challenges.
- b) Identify significant emerging issues affecting implementation of programmes and develop solutions to these issues for Plenary approval.
- c) Make recommendations around their theme or function for the purpose of further developing the CGE policy stance around this theme.
- d) Integrate this theme into CGE strategic

- planning.
- e) Formulate the integration of committee issues into CGE strategic planning, guide implementation of designated projects, as well as monitor and evaluate CGE

Activities around this theme.

- f) Regularly report back to Plenary.
- g) Initiate and discuss policy and strategic issues between the Commission and staff.
- h) Table matters that need the decision of the Commission.
- i) Receive and discuss progress reports on issues that pertain to work of the committee.
- k) Deliberate on issues referred to the committee by plenary and provide recommendations to Plenary.
- l) Monitor project implementation, budgeting as well expenditure against the budget.
- m) Have oversight on compliance and risk.

Secretariat Heads of Department report back to Committee on policy and programmatic implementation. Committees will flag issues to



bring to the attention of Plenary, and bring through urgent issues for decisions where required.

- 3.3.5. Composition Committees comprise designated Commissioners and HODs, and additional staff members where appropriate. Any additional Commissioners, CGE officials or outside persons (external experts), may be invited to attend committee meetings if deemed necessary. Members of the Secretariat are designated to develop and provide any critical material information necessary to inform development of recommendations by committees.
- 3.3.6. CGE Committee meeting procedures  
A committee is chaired by the lead Commissioner designated to chair that committee. The quorum for any meeting shall comprise of two Commissioners and two Secretariat staff. The Secretariat function of committees will be provided for by the CEO, who will arrange for the taking of minutes and the making of all

logistical arrangements.

The lead Commissioner in consultation with committee members is responsible for developing the agenda for committee meetings, and ensuring that this is circulated Timeously among committee members. The lead Commissioner, in consultation with the Secretariat, is responsible for ensuring that the minutes of all committee meetings are distributed timeously to the members of the committee. The agenda, reports and documents shall be circulated at least one week before meetings.

Meetings shall be convened by the lead Commissioner in accordance with the CGE Committee meeting schedule, developed for each financial year by the Chairperson and CEO. Additional meetings may be convened by the committee Chairperson in consultation with the members of the committee, and with the CGE Chairperson, should this have

any cost implications. Meetings are either held face-to-face, or via video or teleconference. Postponements of meetings must be communicated timeously to committee members.

### 3.3.7. Role of Commissioners in CGE Committees

Commissioners' role in Committees, apart from those identified above, include the following:

- Assist with conceptualising, planning and development of recommendations for the thematic focus area.
- Perform an oversight role in overseeing the implementation of agreed upon programmes.
- Perform a support role in the implementation of agreed upon programmes as required.
- Provide a link between committee and Plenary, taking forward any issues requiring decision or guidance from Plenary.

### 3.3.8 Operational budget

The CEO shall make budgetary provisions to address operation costs of Committees.

## 4. Decision-making processes

### 4.1 Introduction

Commissioners are constantly called upon to make decisions in order to solve problems. Decisionmaking and problem solving are ongoing processes of evaluating situations or problems, considering alternatives, making choices, and following them up with the necessary actions. Sometimes the decision-making process is extremely short and mental reflection is essentially instantaneous.

### 4.1 Types of decision-making in CGE

TYPE	CHECKLIST FOR STANDARD	STANDARD
INTERNAL DECISION- MAKING PROCESS	<ul style="list-style-type: none"> <li>- Identification of the Issue/problem.</li> <li>- Discussion/deliberation.</li> <li>- Consolidation</li> <li>- Identification</li> <li>- Communication of the issues.</li> <li>- Obtaining different inputs.</li> <li>- Consolidation of inputs and Views.</li> </ul>	<b>TBD</b>



	<ul style="list-style-type: none"> <li>- Communication of the views.</li> <li>- Adoption of decision taken.</li> <li>- Implementation of the Decision.</li> <li>- Identification of the issue/problem.</li> <li>- Discussion/deliberation focus on issue.</li> <li>- Supporting documents related to issue under discussion.</li> <li>- Avoid mixing the Secretariat issue with Commissioner's issues, therefore separate issues and formulate the alternatives and discuss.</li> <li>- Once decisions have been taken by Plenary, communicate to Secretariat.</li> <li>- Implementation, through documenting the decision taken.</li> <li>- Developing tracking processes and make follow ups.</li> <li>- If issues/problem need to be reviewed then it must be done.</li> </ul>	
<p><b>TELE-PLENARY</b></p>	<ul style="list-style-type: none"> <li>- Chairperson should remind Commissioners via Secretariat who must arrange date, time and majority of agreement.</li> <li>- Identification of the issue/problem.</li> <li>- Discussion/deliberation focus on issue.</li> <li>- Solicit alternative views and understanding on issue.</li> <li>- Chairperson will there after communicate final decision taken after considering all inputs.</li> <li>- Decision should be binding and at Commissioners to implement.</li> <li>- Development of tracking systems of decision taken.</li> <li>- Communicating to Secretariat.</li> </ul>	<p><b>TBD</b></p>
<p><b>TURN-AROUND MECHANISMS</b></p>	<p><i>Identification of the issue/problem.</i></p> <ul style="list-style-type: none"> <li>- Priority of issue/problem.</li> <li>- Priority of issue/problems.</li> <li>- Reasonable time to respond.</li> <li>- Verbal.</li> </ul>	<p><b>TBD</b></p>

SUPPORTING DEFENDING MAJORITY DECISIONS	<i>Principles o decisio- making process:</i> <ul style="list-style-type: none"> <li>* Uphold code of ethics of Commissioners.</li> <li>* Respect the mandate of CGE.</li> </ul>	<b>TBD</b>
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The CGE seeks to promote participatory decision-making processes between Commissioners and staff to enhance the formulation and policy of the Commission. The CGE shall attempt as far as possible to reach decisions by consensus at all decision-making levels. If decisions could not be reached through consensus, only Commissioners have the voting mandate.

In the event of an equality of votes concerning any matter, the member presiding shall have a casting vote in addition to his or her deliberative vote. Once a decision has been reached either by consensus or by the will of the majority, every member of that forum is required to uphold the integrity of the decision and its outcome, regardless of the position that he or she adopted during deliberations unless the dissenting member(s) formally record their contrary view or perspective.

Plenary is the final decision-making body of the CGE. All decisions taken at any other forum are

subject to ratification or amendment by Plenary. Between plenary, the Chairperson with the Deputy Chairperson and CEO will make decisions as when necessary and shall bring them to plenary for ratification. CEO is Expected to take decision in terms of PFMA, Treasury Regulations and other relevant acts, but Plenary should be kept abreast of these decisions.

#### 4.3 Rules of debate and discussions

The Chairperson and all members of the CGE must at all times preserve order in the meeting. Members of the CGE must confine their remarks to the agenda item under consideration and speak only when recognised by the Chairperson except as otherwise raised, before the agenda was adopted and agreed upon, to be included in the agenda. Once a member of the CGE has been recognised, he or she must not be

interrupted unless called to order by the Chairperson. Such standard meeting procedures should be observed where possible, but not to the extent that these restrict necessary deliberation on substantive matters.

In this regard, the rules of debate shall apply, in that:

- a) each member has a right to be heard on all items;
- b) members must endeavour to address issues quickly, openly and honestly;
- c) participants should engage in frank and constructive discussion;
- d) CGE must make every effort to reach agreement on any discussions by way of consensus and final voting;
- e) If all efforts at consensus have been exhausted a majority decision shall prevail; and
- f) No one individual or block of individuals should be able to dominate the Commission's decision making.



- 4.4. Alternative dispute resolution  
When a dispute arises, the Commission should endeavour to resolve it expeditiously, efficiently and effectively. Conflict between Commissioners should be referred to the Chairperson.

If conflict arises between the Chairperson and a Commissioner, Plenary should establish a team of three Commissioners to deal with the matter.

If the matter cannot be resolved internally, an external dispute resolution organisation like the Arbitration Foundation of Southern Africa should be sourced to deal with the matter and its findings should be referred to Plenary. Once findings have been adopted by Plenary, these will be binding on all parties concerned. Should any party not accept the outcome of the matter, she or he may refer this to the Speaker of Parliament for guidance.

## **5. Commissioners' Terms and Conditions**

### **5.1 Commissioners' Terms of Service**

In terms of Section 3(1) of the CGE Act, the President shall, whenever it becomes necessary, appoint as a member of the Commission, a person who has a record of commitment to the promotion of gender equality. Section 8.1 of the CGE Act provides for the remuneration of and allowances for members of the Commission. The length of service; remuneration; allowances; and other terms and conditions of office and service benefits of the full-time and part-time members of the Commission, shall be determined in accordance with provisions related hereto, as set out in the CGE Act.

Commissioners are advised to familiarise themselves with CGE policies that relate to conditions of service like travel and accommodation policy per diem, cell phone allowances and additional policy provisions that relate to conditions of service and benefits.

Part-time Commissioners are expected to work for a maximum of 100 hours per month, whereas full-time Commissioners are bound to work a forty-hour week (eight hours a day).

5.1 Guidance on working conditions

5.3.1 Flexi-time

The Commission has adopted the practice of flex-time for Commissioners. This is innovative in that it allows Commissioners to choose, within limits, the hours for starting and ending work each day, provided that they fulfil their obligations and deliver on their assigned tasks and responsibilities.

Flexi-time allows Commissioners to set their own working hours within agreed limits. These must include 50% of the total working time where the Commissioner should be present at their designated place of work, during certain work periods. Part-time Commissioners operate according to the flexi-time rule. Full-time Commissioners seek permission

Handwritten notes: 50% of the total working time where the Commissioner should be present at their designated place of work, during certain work periods. 21.5-hrly rates by Comms. Pay Parity

from the Office of the Chairperson. The Office of the Chairperson will in consultation with the Human Resources Chairperson and the CEO agree to or reject the specific terms suggested by a Commissioner, and keep these on file. Plenary should review annually the effectiveness of this clause.

### 5.3.2 Working from home

Working from home allows Commissioners to choose the timetable and working conditions that are optimum for their performance and meets their needs. It requires disciplined Commissioners. Part-time Commissioners are permitted to work from home, or an alternate office. Full-time Commissioners need to get the permission from the Chairperson if they intend to work from home for four to six days per week. Full-time Commissioners need not request permission if they intend working from home for one to three days per week. If it is going to be more than 6 days the Office of the Chairperson in consultation with the

notes  
14



Chairperson of Human Resource and the CEO should agree, or reject the proposal made by the Commissioner.

Full-time Commissioners who live far away from the CGE Head Office or Provincial Office should apply to the Office of the Chairperson for usage of his or her own house as a working base. The Commissioner should visit the Head or Provincial Office at least twice a month, and attend meetings in the office. CGE should pay for travelling costs of such Commissioner, for the journey from home to office.

The Office of the Chairperson should file all requests of Commissioners working from home.

#### 5.3.2 Relocation

This matter is regulated by the CGE policy on relocation, which applies to both staff and Commissioners.

#### 5.3.2 Travel and accommodation

This matter is regulated by CGE policy, which applies to both staff and

## Commissioners.

### 5.3.2 Claims

This matter is regulated by CGE policy on subsistence and claims. In addition, part-time Commissioners are required to file a salary claim every month, using the template provided by the CGE finance department. Full-time Commissioners need not submit salary claims, as their salaries are automatically generated through the CGE salary system.

### 5.3.3 Leave

Commissioners' leave is regulated by CGE policy in this regard, including provision for part-time Commissioners' leave. During December vacation, while Commissioners and staff of the CGE are expected to take compulsory leave during the period of office closure, CGE Plenary should choose at least four Commissioners, including one Commissioner from the Office of the Chairperson, to monitor institutional-related matters and critical gender equality issues arising during this period.

Commissioners who are required to attend a formal CGE engagement during weekend time are entitled to take off the equivalent days worked, upon notification of the Office of the Chairperson. Days worked during the weekend cannot be charged as overtime. Commissioners will forfeit such days after two months.

### 5.3.2 Commissioners' Roles and Responsibilities

#### Responsibilities of Commissioners:

- a) Cooperative governance and determining the strategic direction of the Commission.
- b) Lead the Commission ethically for sustainability in terms of the economy, environment and society, taking into account impact on internal and external stakeholders.
- c) Ensure the Commission operates as and is seen to be a responsible, compliant corporate citizen.
- d) Ensure the creation of an ethical culture supportive of gender equality, setting necessary principles, practice

and standards, measuring adherence with and incorporating these into its risk management, operations, performance management and disclosure mechanisms.

- e) Commissioners should be a focal point of good governance, meet at least four times a year, monitor management and stakeholder relations and ensure that the Commission survives and thrives.
- f) Ensure the Commission complies with applicable laws, and considers adherence to non-binding rules, codes and standards.
- g) Act in the best interests of the organisation, including managing conflicts.
- h) Appointing a chief executive officer; establishing a framework for the delegation of authority; and providing for the evaluation of the CEO's performance, ensuring a succession plan for the CEO and senior executives.
- i) The Commission has a reflective role with collective authority and decision-making as a Commission, but Commissioners must carry individual



responsibility for delivery on assigned work areas.

- j) The Commission should evaluate plenary proceedings, the functioning and efficacy of its committees, and individual Commissioners' performance. This should be done on a bi-annual basis.
- k) The Commission should delegate certain functions to well-structured committees, without abdicating its own responsibilities.

#### 5.3.8 Part-time Commissioners

Caution should be taken not to overburden part-time Commissioners with too much work, given that all Commissioners are responsible for the work areas outlined in 5.3.7 above. It is recognised that part-time Commissioners have competing responsibilities, and work assigned to them should be in accordance with time available.

#### 5.4 Role of Secretariat, led by the CEO:

- a) The Chairperson and CEO constitute the liaison between Commissioners and the Secretariat.
- b) Plenary of Commissioners appoints the Chief Executive Officer (CEO) but Commissioners should provide input on senior management appointments, such as Chief Financial Officer, Chief Operations Officer, and all Heads of Departments
- c) The collective responsibilities of management vest in the CEO and as such the CEO bears ultimate responsibility for all management functions.
- d) Plenary of Commissioners delegate all administrative functions to the CEO, who will in turn delegate to those reporting to him/her.
- e) In delegating authority, the Commission establishes benchmarks and performance indicators to hold management accountable for decision-making and actions delegated to the CEO.

## 5.5 Commissioners' Reporting and Accountability

### 5.5.1 Principles

Commissioners are (a) individually accountable to Plenary and (b) individually and collectively accountable to Parliament.

Commissioners' activities are, as far as possible, to be aligned to the Strategic Plan and the Annual Performance Plan of the CGE.

All Commissioners' Reports mentioned in 5.5.2 below should be submitted to the Office of the Chairperson within the timeframe agreed upon by Plenary. Arrangements for late submission of reports should be agreed upon with the Office of the Chairperson.

### 5.5.2 Reports:

#### a. Monthly Reports:

Commissioners are expected to submit to the Office of the Chairperson reports highlighting their monthly activities. Monthly reports will list all activities engaged on and

make urgent recommendations for immediate action by Plenary.

The Office of the Chairperson will develop a process of considering the urgency of the recommendations with the Plenary and implementation thereof.

a. Quarterly Reports:

Every quarter all Commissioners shall compile comprehensive reports on their activities and submit these to the Office of the Chairperson within timeframes agreed upon at Plenary. Such timeframes should take into consideration preparation of documentation for quarterly plenary meetings.

*Performers*

~~EXIT~~ *Reports for Comms*

The format of quarterly reports will be based on the Strategic Objectives of the CGE and shall enhance the mandate of the Commission. The Office of the Chairperson shall consolidate all recommendations and table these in plenary for consideration by the Commission.

c. Oversight Committee Reports:

*37*

Oversight Committee Chairpersons will table their reports and recommendations at Plenary.

- d. Annual Report to Parliament  
The Secretariat shall develop an Annual Report in accordance with legislative prescripts, for tabling in Parliament. The report shall be developed under the guidance of the CGE Strategic Plan, Annual Report and M&E Committee. All Commissioners should make themselves available to form part of the delegation to Parliament to present the Annual Report, lead by the Chairperson.

- 5.5.3 Evaluation of Commission  
Plenary of Commissioners should review the efficiency of Plenary's functioning every two years. The review should also take into account the need for refreshing the Commission.

- 5.5.4 Declaration of interests  
CGE Commissioners are required to



declare personal interests in any business matter of the Commission, before the start of any meeting of Commissioners' Plenary.

Commissioners should complete the CGE's disclosure forms on an annual basis, or as details of their relevant interests are amended. Copies of these forms should be lodged with the Office of the Chairperson, and originals should be sent to Parliament for the attention of the Speaker, on an annual basis.

When a Commissioner has been given a gift or honorarium by any person or body, such gift or honorarium should be declared by such Commissioner at the next sitting of Plenary, if the value of gift or honorarium is above R500. CGE disclosure form should be utilised for such declaration. All disclosure forms should be signed by the Chairperson. In case of the Chairperson the form should be signed by the Deputy Chairperson and the CEO.

## 6. Public Communication

### 6.1 Guiding principles:

- 6.1.1 The Chairperson is the leader of the CGE and, as such, is the public "face" of the CGE, supported by Commissioners. Strategic liaison both nationally and internationally lies with him/her. The Chairperson may delegate medial liaison or interface with the media on a particular issue to a Commissioner, the CEO or the CGE Spokesperson.
- 6.1.2 Commissioners should always present themselves in public communication in the spirit of the Constitution and, in particular, align themselves with the values and principles espoused in Chapter 9 of the Constitution, and the CGE Act.
- 6.1.3 Commissioners should always articulate the views and policy positions of CGE when speaking on behalf of CGE, even on those matters where they personally

hold different ideological perspectives.

6.1.4 Commissioners are also individually and collectively “the face” of the CGE.

Commissioners carry the image of the organisation wherever they are. Any public statement they make will have a bearing on how the public perceives the CGE.

6.1.5 In instances where Commissioners write articles for public consumption in their private capacity, such articles should clearly state that they are being written in their private capacity. It is advisable that when Commissioners write articles in their personal or private capacity, they should be mindful that the private persona is not easily separable from the public.

6.1.6 If articles are being written on behalf of CGE, these should be



submitted to the Office of the Chairperson.

6.1.7 All press statements or requests for media interface should be channelled through the Office of the Chairperson, and the designated CGE Spokesperson.

6.1.8 Liaison with the press regarding provincial matters may be handled by provincial offices and designated Commissioners.

6.1.9 In instances where urgent matters have to be handled provincially, the Chairperson should be briefed on that matter as soon as possible.

6.2 The Spokesperson of the CGE is accountable to the Chairperson on matters of media liaison, and to the CEO for administrative purposes, and as follows:

6.2.1 The Spokesperson works in accordance with the communications policy and

6.2.2 parameters of the CGE.  
The Spokesperson is delegated *de facto* by the Chairperson to liaise with the media, draft press releases, undertake certain interviews on behalf of the CGE and maintain cordial relationships with the media.

- 6.2.3 Additional functions of the Spokesperson include:
- a) Speak on behalf of the CGE, as mandated by the Chairperson.
  - b) Liaise with other units of the CGE to ensure that the CGE speaks with one voice on key issues.
  - c) Facilitate media training or coaching as required.
  - d) Log and track media appearances and calls.
  - e) Work within the Communications Department to develop media lines on issues of interest to the media.
- b) Assist with organising

technical briefings and news conferences.

- c) Refer media queries to the office of the Chairperson.
- d) Draft responses to media queries.
- e) In consultation with HOD: Public Education and Information, develop and manage a CGE media educational programme

6.3 Commissioners are occasionally required to develop opinion pieces on human rights and constitutional matters, for publishing in the media. The Constitution is our guide on our opinions as CGE. It is advisable that, at all times, our opinion pieces be solely guided by the Constitution. Opinion pieces written on behalf of the CGE should be submitted to the Office of the Chairperson for authorisation.

6.4 The Chairperson will designate Commissioners to take interviews on behalf of the CGE.

6.5 **See Annexure A**

## **7. Engaging with stakeholders**

### **7.1 Engaging with State and Parliament**

The Office of the Chairperson or the CEO engages with leadership in Parliament, state departments and state institutions. All written communication to such stakeholders should be authorised and signed off by the Chairperson or CEO, and made available to Commissioners.

Once initial engagements have been established, and further follow-up or intervention is required, the Chairperson may authorise Commissioners to undertake such further communication.

### **7.2 Engaging with civil society**

In engaging with stakeholders CGE should ensure that it respects the principle of Independence. CGE shall as far as is practicable, maintain close liaison with institutions, bodies or authorities with similar objectives to the Commission, in order to foster



common policies and practices and to promote cooperation in relation to the handling of complaints in cases of overlapping jurisdiction or other appropriate instances.

CGE shall liaise with and interact with any organisation which actively promotes gender equality and other sectors of civil society to further the object of the Commission. When collaborating on certain projects with civil society organisations, private companies or public bodies, the CGE should enter into a memorandum of understanding. Organisations that do not actively support gender equality should be consistently engaged and public dialogues or meetings held to discuss gender equality issues.

- 7.3 *Engaging with political parties*  
Where political parties request Commissioners to engage with them on a particular issue, Commissioners should advise that such requests should be formally submitted in writing to the Office of the Chairperson.

The Chairperson will then lead discussion among Commissioners on appropriate strategy and response, and designate a Commissioner to represent the CGE on that matter.

#### 7.4 *Networking*

CGE should use networking mechanisms, such as attendance at and participation in strategic events at national, provincial and local levels, as a means of marketing the institution. Management should develop a list of organisations that CGE wants to network with and develop an annual networking programme, including the national launch of the CGE's Strategic Plan and Annual Report. The CGE should draw on topical issues as an entry point for networking and collaboration with key stakeholders in these sectors.

#### 7.5 *Support for advocacy and protest interventions*

The CGE should support gender equality-related advocacy



campaigns. When this is done, the principle of independence should always be observed. The CGE should participate in marches, demonstrations and campaigns that advocate on substantive gender equality matters, but permission should be sought from the Office of the Chairperson to participate in protest action of any type.

If the CGE participates in protest action, staff and Commissioners should observe the following principles:

- a) Participation in protest action should be peaceful and lawful.
- b) CGE stakeholders should wear CGE-branded materials.
- c) CGE stakeholders should respect other participants and those who opt not to protest.
- d) CGE stakeholders should immediately after the event, provide a report to the Office of the Chairperson.

7.6 Invitations to give presentations at / participation in conferences

#### 7.6.1 *Handling of CGE invitations*

All invitations to the CGE to participate in conferences or events, and give presentations, should be processed through the Office of the Chairperson. The Chairperson shall designate relevant Commissioners to attend or give such presentations, informed by their area of expertise or provincial designation, and in accordance with principles of fairness of opportunity, to ensure exposure and access to such platforms for all Commissioners.

#### 7.6.2 *Personal invitation*

Should a Commissioner be requested or invited in her or his personal capacity to participate in an event or give a required presentation, such Commissioner should refer the invitation to the Office of the Chairperson for authorisation. Where the business of the invitation is related to the work of the CGE, or would serve to enhance the profile and reputation of the CGE, such participation may

take place during a Commissioner's usual work hours, and the CGE may bear costs associated with same, pending availability of finances. Where the event is not related to the work of the CGE, the relevant Commissioner may seek to participate in this event in her or his personal time, taking leave where necessary. In such an instance, the CGE will not bear costs related to participation in the event.

#### 7.6.3 *Development of presentations and Secretariat support*

Commissioners may call upon the Secretariat to assist with researching and developing draft presentations to be given on behalf of the CGE. Requests for such assistance should be made timeously, through the Office of the Chairperson and the CEO.

#### 7.6.4 *Travel and related costs*

The CGE will bear responsibility for making logistical arrangements and

covering travel and any necessary accommodation costs for Commissioners to attend and participate in events, only where such attendance has been authorised by the Office of the Chairperson. Where possible, Commissioners should seek to ensure that event organizers cover logistical costs for their participation in events, particularly where Commissioners have been requested to give a presentation, to reduce costs to the CGE budget.

- 7.6.5 Guiding principles on international travel:
- a) CGE's participation in international events should be linked to strategic objectives and be of strategic and educational value to the CGE.
  - b) Funds permitting, delegations should include representatives of Commissioners and the Secretariat, as assigned by the Chairperson and the CEO respectively.
  - c) Preferably only two representatives should be assigned per delegation,



- unless in special circumstances, and budget permitting.
- d) Where Commissioners are involved, they lead the CGE's delegation.
  - e) Where Commissioners are personally invited to participate in an international event, all associated travel and accommodation costs are to be carried by the inviting institution.
  - f) Principles of fairness and equality of opportunity to travel should be observed in the selection of candidates to attend international events. However the nature of the event, the theme for discussion and areas of expertise will be considering factors in the selection of designated candidates.
  - g) Commissioners seeking participation in an international event should submit a formal proposal complete with cost implications, to the Office of the Chairperson for review and authorisation.
  - h) Chairperson or Office of the Chair authorises after consultation, with the CEO, regarding availability of funds.

- i) Travel requirements and per diem allocations to be funded in accordance with the CGE's travel policy.
- j) Commissioners are required to submit a written report upon return from international events, with clear articulation of lessons learned and proposed recommendations for the CGE.



## **8. Role of Commissioners in providing support to provinces**

### **8.1** *Assignment to provinces*

Annually, Commissioners' Plenary will assign Commissioners to give support to all nine provinces. Each province will be assigned a lead Commissioner and a back-up Commissioner, to lend support to provincial interventions.

Commissioners' primary provincial responsibilities include:

- a) Assisting the Provincial Coordinator (PC) in escalating policy issues within that province to provincial government stakeholders, or to the national spheres, through the office of the Chairperson;
- b) Supporting and participating in provincial interventions and activities as requested by the PC, such as giving keynote addresses and presentation, chairing meetings and facilitating discussions.
- c) Strengthening networking with key state and civil society stakeholders in the province.

*Amber*

The PC in the province is the responsible officer for that office, and all engagements between the designated Commissioner and that officer shall be through the office of the PC. The Commissioner's role is not to give instruction to the PC or provincial office staff, or to monitor their implementation of CGE programme of action, but to lend support to this process as required.

Should the Commissioner come across any issues of concern in relation to performance of their designated provincial office, this should be raised through the Office of the Chairperson, with the CEO.

## 8.2 *Provincial planning and engagement with stakeholders*

As a starting point, Commissioners should seek to establish their presence in their designated province, and work with the PC to plan engagements such as the following:

- a) Meeting and presentation with the provincial gender machinery.
- b) Meeting and presentation with the provincial legislature's Women's Portfolio Committee.
- c) Meeting and presentation with other relevant provincial structures, such as the House of Traditional Leaders.
- d) Dialogue or meeting with civil society stakeholders in the province.
- e) Receive information on the province's quarterly work plans, and its August Month/16 Days planned interventions in particular, and identify where the PC requires a Commissioner's support which events should be attended, what presentations are required, and what role is required of the Commissioner.

### 8.3 *Leadership on gender equality issues in provinces*

As designated leaders, provincial Commissioners, should seek to identify key issues of gender equality emanating from the work of provinces, and work with the PC to strategise on the take-up and

resolution of these issues, either through engaging with relevant provincial stakeholders, or referring this for national intervention, through the Office of the Chairperson.

**9. CGE policy positions on gender equality issues**

Plenary will identify key issues that require a formal policy position by CGE. Such policy issues will be researched by Secretariat and presented to Plenary for discussion and adoption. Agreement on such matters will be preferably arrived at by consensus and where agreement is not reached voting will be done. Once a decision is made, it will be a CGE position that is binding to all in the CGE family.

**10. Code of Conduct for Commissioners**

A designated Code of Conduct for Commissioners is attached as Annexure B.



## 11. **CEO performance appraisal**

The Office of the Chairperson shall facilitate and ensure that the performance evaluation of the CEO is conducted on an annual basis, in accordance with the approved CGE performance management system in operation, and report back to Plenary on outcomes and recommendations.

**Annexure A:  
TERMS OF REFERENCE FOR THE SECTION 6  
COMMITTEE OF THE COMMISSION FOR GENDER  
EQUALITY (ACT, 39 OF 1996, AS AMENDED).**

**1. THE CGE CONSTITUTIONAL AND LEGAL  
MANDATE**

Section 187 (1) provides as follows:

The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.

In terms of Section 11 of the Commission for Gender Equality Act, The Constitutional mandate is amplified and obliges the CGE to monitor and evaluate policies, develop, conduct and manage information as well as education programmes, evaluate Acts of Parliament or any other law, investigate any gender related issues, monitor the compliance with international conventions, conduct research to further the object of the



Commission and shall liaise with any organisation which actively promotes gender equality and raise consciousness about gender inequality.

2.

### **VISION**

A society free from all forms of gender oppression and inequality.

3.

### **MISSION STATEMENT**

To promote, protect, monitor and evaluate gender equality through undertaking research, public education, policy development, legislative initiatives, effective monitoring and litigation.

4.

### **PROBLEM STATEMENT.**

4.1

Gender oppression and inequality in South African society, has necessitated numerous steps inclusive of positive discrimination in favour of the disadvantaged gender constituencies within public and private sectors in order to attain gender equality. In

addition to the aforementioned the establishment of this constitutional institution, namely the Commission for Gender Equality (CGE), various legislative initiatives, research programmes, policy development, effective monitoring of both public and private institutions, public education, as well as resorting to litigation to enforce constitutionally guaranteed rights are the key stratagem aimed at affirming gender equality.

4.2 The deeply entrenched problem of gender oppression and inequality is evidenced by an effective restriction of women and the girl-child in all spheres of life to the extent where they continue to be reduced to a level where they are regard as only wordy of "playing second-fiddle to the male-child from conception to the grave".

4.3 The limitations placed on women and the girl-child finds expression in education, social, economic, cultural, as well as political structures. A review of the progress attributed towards

achieving gender equality, would be measured in these areas, in terms of both equality and equity, in relation to their male counterparts.

- 4.4 Taking cognisance of the fact that unless the problem of existing systemic gender inequities is acknowledged, it will not be known whether it has been addressed when the review process has been completed. Therefore, the problem statement is an ongoing process that sharpens the focus on gender equality continuously.

**5. PURPOSE OF THE SECTION 6 COMMITTEE**

- To develop a concept note for each focus / thematic area
- Provide guidance on strategic interventions aimed at addressing gender equality issues
- Provide expert knowledge and guidance relating to any development of CGE strategic plans and implementation thereof

- Provide guidance on high level strategic dialogues, conferences and international gender equality issues.
- Provide expert opinion on any of Gender Equality issue/matter.
- Provide gender analysis on issues/policies and strategies of national importance

## **6. COMMITTEE OPERATION**

- The term of the external members of the committee should be 3 years with an option to renew the term
- The term of office of all section 6 committee members should be 3 years
- The committee should elect the Chairperson and the Deputy Chairperson. Both the Chairperson and the Deputy Chairperson should be elected amongst serving CGE Commissioners
- The committee should meet six times a year subject to availability of funds
- The Committee Chairperson in consultation with CEO and CGE



Chairperson can convene an ordinary meeting

- The secretary of the committee should be a senior manager appointed by the CEO and who must be assisted by an administrator drawn from CGE staff.

## **7. COMPOSITION OF COMMITTEE**

- The Committee should consist of five Commissioners, three external experts, five CGE staff, two of those should be CEO and one Provincial Coordinator elected by other coordinators
- The quorum for any meeting shall be the majority of the total number of members of the committee, but at least each segment should be represented by two members.
- If a member of the committee resigns, another should be appointed for the unexpired portion of that member's term of office.

## 8. **DECISION MAKING PROCESS**

- All members of the section 6 committee must all times preserve order in the meeting
- Members of the section 6 committee must confine their remarks to the agenda item under consideration and speak only when recognised by the Chairperson except as otherwise raised before the agenda was adopted and agreed upon to be included in the agenda
- Each member has a right to be heard on all items
- Members must endeavour to address issues swiftly, openly and honestly without any fear, favour or prejudice.
- Participants should engage in frank and constructive discussion at all times.
- The committee must make every effort to reach agreement on any issue under discussions by way of consensus.
- If all efforts at consensus have been exhausted a majority decision shall prevail where Commissioners will be



required to vote. The Chairperson will only have a deliberative vote and a casting vote on any issue if there is no majority vote.

- The decision of the majority of the members of the Commission present at a meeting shall be the decision of the committee

The committee will make recommendations to plenary

- If the Chairperson is absent, the Deputy Chairperson will preside over the meeting.
- If both the Chairperson and Deputy Chairperson are absent from a meeting, the members present shall elect one from among their number to preside at that meeting.

**9. THE SCOPE/BOUNDARIES.**

The Scope of the Committee's work will cover a wide range of areas on including governance, management, funding, accessibility, communication and service delivery by the Commission

for Gender Equality. The Committee will provide expert advisory services to the Commission for Gender Equality on the following issues in general:

- 9.1 Providing strategic leadership at national and provincial level on constitutional issues falling within the ambit of the CGE mandate;
- 9.2 Developing collaborative initiatives, through MOU's;  
Development of strategic and operational plans for the Commission's collaborative initiatives;
- 9.4 Assessing whether the current and intended Constitutional and legal mandates of these institutions are suitable for the South African environment;
- 9.5 Share information on matters of

Substantive gender equality requiring the CGE's response, develop recommendations on best practices in terms of appropriate policy, outreach and litigation interventions required and any other matter deemed necessary for inclusion in the CGE's Annual Performance Plan.

**10. SPECIFIC ISSUES TO BE IDENTIFIED AND ADDRESSED.**

This section is the most important because it represents the core functions which will be undertaken by the Committee. In terms of a resolution by the Commission For Gender Equality at its plenary meeting held on 23-25 July, 2012, it was decided that the following are issues of strategic importance that will fall within the ambit of the proposed Section 6 Committee, as well as those matters which will surface from members of the Committee by reason of the expert nature of this Committee:

- 10.1 Economic Empowerment;  
The Committee will explore and identify strategic opportunities for economic empowerment, inclusive of people with disabilities that will enable them to participate in the mainstream economy, and no longer on the periphery. The Committee will also explore ways and means of mainstreaming gender in organisational culture and systems within existing institutions, especially those that have been inaccessible until now.
- 10.2 National Gender Machinery;  
The NGM was set up, amongst others, to give women access to the state and to ensure that both geographically, and sector related gender issues are given maximum exposure. The Committee will provide strategic direction on how the NGM may be strengthened, for maximum effect and impact in order to advance the agenda of gender

mainstreaming in South African society.

10.3 Gender Equality and Health;

The Committee shall devote particular attention to issues of gender and health, as this issue is fundamental to the dignity, equality and quality of life with a view to making recommendations to the authorities concerned as provided for in terms of the Commission for Gender Equality Act 39 of 1996.

10.4 Gender-based Violence (GBV)

This is an area that constitutes gross violations of human rights of women, people with disabilities, and most recently the elderly, who have increasingly become victims of serial perpetrators. Members of the Committee will apply their minds GBV issues and provide strategic advice, towards the elimination of this scourge in our society, and the building of a society free from gender oppression



and inequality. Participation in the NATIONAL COUNCIL FOR GBV as Observer with a clear TOR that must be developed by this Committee will be priority.

#### 10.5 Culture, Religion and Tradition (CRT)

The Committee will explore ways and means whereby the triplets namely culture, religion and tradition, are turned away from being the source of gender oppression, but become the bedrock upon which the freedom and liberty of women is built. The Committee will explore and find ways in which the Commission can create opportunities in these areas such that they act as catalysts which set women free to reach their full potential from the cradle to the grave.

The Committee, shall not be limited to the areas enumerated herein, but shall embrace those areas that fall within the mandate of the Commission,



that would provide a sustainable framework for advancing gender equality and equity in our society.

It is envisaged that concept documents will be developed in each of the abovementioned areas.

### **11. DESIRED OUTCOMES/OUTPUTS (Essential)**

The Terms of Reference herein shall not predict what the outcome will be, though it is essential to outline the product of the review project. The Committee shall strive to make recommendations touching on:

- solving the problem of gender oppression and inequality in our society;
- improving processes being followed currently or the system being used;
- steps that must be taken to accelerate the process of transformation;
- creating a new and innovative system towards gender equality and equity in our society.

## **12. OPERATIONAL STRUCTURE AND COMPOSITION**

### **12.1 Composition of the Committee.**

The Committee shall consist of a minimum of three (3) gender experts in the country , who will serve with no less than five (5) Commissioners , and five CGE staff with the requisite range of skills all of whom shall report to the Commission duly constituted in plenary, at specified times, as shall be determined from time to time and annexed hereto.

### **12.2 Meetings.**

Ideally, the Committee shall hold its meetings ahead of any relevant plenary meetings of the Commission, so as to be able to give expert advice on matters which were deliberated by it self. The minutes / recommendations of the Committee shall serve before the plenary meetings of the Commission. The minutes must be read in the said Committee for adoption as a true reflection, and plenary for ratification.

### 12.3 Resources.

The Committee shall have at its disposal the reasonable services of the Commission Secretariat, as well as a budget, materials and equipment necessary to perform its work, including research support or support staff where editing and research may be required.

All requested resources must adhere to PFMA and CGE financial policy guidelines and requirements.

### 12.4 Reporting Guidelines.

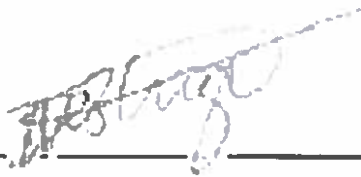
The guidelines should include format for the reports.

The Committee shall keep the Chairperson and Deputy Chairperson informed of any developments within its ranks. The aforesaid office bearers of the Commission shall in turn bring the relevant matters as recommended by the Committee to the attention of the Commission in any of its meetings, plenary or otherwise.

**13. ADOPTION OF TOR BY PLENARY**

This TOR has been placed before and adopted by the CGE Plenary on **12 February 2013** and duly certified as such by the Chairperson as follows:

13.1



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Mr Mfanozelwe Shozl  
Chairperson: Commission for Gender Equality

## **Annexure B:**

### **Code of Conduct for Commissioners**

#### Code of Conduct for Commissioners

##### **1. PREAMBLE**

Commissioners for the CGE are appointed by the President in terms of Section 3 (2) of the Commission for Gender Equality Act 39 of 1996. Commissioners are appointed to ensure that the CGE has a structured mechanism of accountability to the Constitution in order to meet the gender equality needs of the South African public. In fulfilling this responsibility equitably, effectively, and in a sustainable manner within the means and legislative framework of the CGE, Commissioners must be accountable to the National Assembly and report regularly to Parliament, have the requisite skills and commitment to promote, protect, develop and attain gender equality and provide leadership as well as policy direction to the CGE in collaboration with its Secretariat. In order to ensure that



Commissioners fulfil their obligations in terms of the CGE Act and support the CGE in achieving its mandate in terms through its strategic objectives the following Code of Conduct is established.

## 2. DEFINITIONS

2.1 In this code the term "**Commissioner**" means any person appointed in terms of Section 3(2) of the CGE Act in a full-time or part-time basis.

2.2 **Secretariat** would mean person appointed in terms of Section 7 of the CGE Act.

## 3. GENERAL CONDUCT OF COMMISSIONERS

A Commissioner must -:

- (a) perform the functions of office in good faith, honesty and transparent manner and

- (b) at all times act in the best interests of the CGE and in such a manner that the credibility, dignity and integrity of the CGE will not be compromised.

#### **4. ATTENDANCE AT MEETINGS**

- 4.1 A Commissioners must be a member of one or more Section 6 Committee as set out in Section 6 of the CGE Act and fulfil all responsibilities accordingly including meetings of such committees.
- 4.2 All Commissioners must attend each meeting called by the Chairperson and participate at these for a in terms of the powers and obligations set out in the CGE Act.
- 4.3 Where any three or more consecutive meetings are not attended by any Commissioner then the Chairperson may take appropriate action in the circumstances which may include the

Withdrawal of the Commissioner's membership or attendance from any Section 6 committee or meeting Respectively.

**5. SANCTIONS FOR NON-ATTENDANCE OF MEETINGS**

- 5.1 Where a Commissioner in the capacity of Chairperson of a Section 6 Committee fails to hold a meeting as contemplated the Chairperson may enquire and request that such a meeting be held.
- 5.2 Where any Commissioner fails to attend any three or more consecutive Section 6 Committee meeting then the Chairperson may request a written explanation for such non-attendance and withdraw the Commissioner's membership from such a committee if necessary at any stage from the time that a request has been for the explanation for non-attendance.

- 5.3 The same sanctions apply for a failure to remain in attendance of any Section 6 Committee meeting or any other meeting such as a Plenary.
- 5.4 Where any Commissioner fails to attend any three or more consecutive ordinary meetings called by the Chairperson or Deputy Chairperson which requires attendance by any or all Commissioners then the Chairperson may require a written explanation.
- 5.5 In instances where the Chairperson has requested a written explanation from any Commissioner and after considering same then the Chairperson may approach the National Assembly to request that the President act in terms of Section 3(5) of the CGE Act for the removal of such a Commissioner.
- 5.6 The standard procedure for the removal of any Commissioner must be developed and included in the CGE

regulation referred to as the PPR and R

**6. DISCLOSURE OF INTERESTS**

6.1 A Commissioner must :-

- (a) Upon assumption of duty disclose to the CEO any direct or indirect personal or private business interest that any Commissioner, his or her spouse, partner or business associate of that Commissioner may have which includes any matter before the CGE or any committee to which the Commissioner may belong.
- (b) withdraw from the proceedings of the CGE or committee when the matter is considered by the CGE or committee, unless the Chairperson or committee decides that the Commissioner's direct or indirect interest in the matter will not prejudice the proceedings or the CGE.



proceedings or the CGE.

6.2 A Commissioner who, or whose spouse, partner, business associate or close family member acquired or stands to acquire any benefit arising from any employment or contract from the CGE must disclose all information relating to such a benefit immediately where such benefit is imminent.

## 7. PERSONAL GAIN

7.1 A Commissioner may not use his or her position or privileges of a Commissioner, or confidential information obtained as a Commissioner for private gain or to improperly benefit any person

7.1 A Commissioner may not be a party to, undertake or be a beneficiary under a contract for :-

(a) the provision of goods or services to the CGE,

- (b) the provision of goods or services to the CGE,
- (c) the performance of any other work other than that of Commissioner of the CGE,
- (d) the performance of any duty or take any decisions on behalf of or for the secretariat,
- (e) obtain a financial interest in any event or undertaking of the CGE,
- (f) for a fee or other consideration appear on behalf of any Commissioner or staff of the CGE before any tribunal or committee whilst appointed in the capacity of Commissioner.

**8.****DECLARATION OF INTERESTS****8.1**

Upon appointment a Commissioner must within 30 days declare in writing to the Chairperson the following financial interests held by the Commissioner :-

- (a) shares and securities in any company
- (b) membership of any company

- (c) CC or other business entity
- (c) interest in any trust
- (d) directorships
- (e) partnerships
- (f) employment and remuneration outside the CGE
- (g) positions in NGO's and CBO's
- (h) any other relevant interest required by the CEO, Chairperson or Committee as may arise.

8.2 Any change in the nature of the details provided on the financial and other interests must be declared in writing to the CEO upon such change becoming known.

## 9. **REMUNERATIVE WORK**

9.1 A full-time Commissioner may not undertake remunerative work in the ordinary course and must obtain the permission of the Chairperson where any extraordinary or necessary remunerative work is undertaken. The Chairperson may not withhold such permission unreasonably.

- 9.2 A part-time Commissioner is not limited in the nature or scope of remunerative work provided that it is not in conflict with the code of conduct, CGE Act, PPR and R and any other relevant legislative framework applicable to the CGE.

## **10. REWARDS, GIFTS AND FAVOURS**

- 10.1 A Commissioner may not request, solicit or accept any reward, gift or favour for :
- (a) undertaking a particular investigation or recommendation
  - (b) persuading a committee to make a specific decision of which committee that Commissioner is a member
  - (c) making any representation to a CGE committee or party on behalf of the CGE
  - (d) disclosure of privileged or confidential information held by the CGE.

**\* 11. UNAUTHORISED DISCLOSURE**

11.1 A Commissioner may not without the permission of the Chairperson or a Committee divulge any confidential or privileged information of the CGE to an unauthorised person.

11.2 Privileged or confidential information includes:

- (a) Any information or document determined by the CEO/Chairperson as being privileged or confidential
- (b) Any decision taken or discussed in a closed plenary until the CEO/Chairperson has granted permission for dissemination of such information
- (c) Any decision or discussion held by a Section 6 Committee until permission granted by the Chairperson of that Committee for release of such decision or discussion.
- (d) Any document, evidence, exhibit or information declared to be

privileged or secret in terms of any law, policy or regulation.

- 11.3 The exercise of privilege must be commensurate with the Constitution and Access to Information Act of 2000. ✓

## 12. **INTERVENTION IN SECRETARIAT <sup>Adm</sup> FUNCTIONAL AREAS**

- 12.1 The Secretariat and Commissioners are separate with exclusive powers and functions which must be exercised in a manner contemplated in terms of Section 6, 7, and 9 of the CGE Act.
- 12.2 A Commissioner may not intervene in the management or administration of the CGE unless mandated to do so by the National Assembly.
- 12.3 A Commissioner may not give or purport to give any instruction to any employee of the CGE except when authorised to do so by the CEO.



- 12.4 Commissioners may not obstruct or attempt to obstruct the implementation of any decision of the Commission or a Section 6 Committee by the Accounting Officer or an employee.
- 12.5 No Commissioner may encourage or participate in any conduct which would cause or contribute to maladministration of the CGE.
- 12.6 if a Commissioner is found to be in contravention of the above, the Chairperson will interact with the Commissioner in question and deal with him or her appropriately.

### **13. CGE PROPERTY AND ASSETS**

- 13.1 Any equipment, instrument, tool, furniture, or other item which has been provided to a Commissioner during his or her tenure remains CGE property and must be relinquished on the date of exit

by such Commissioner.

#### **14. CLAIMS BY COMMISSIONERS / SUPPORT**

- 14.1 All travel arrangements and authorisations for Commissioners will be done by the Office of the Chairperson and routed to Secretariat via the relevant support staff.
- 14.2 Claims arising out of official duties performed by Commissioners must be submitted within 30 ( thirty ) days of completion of any such official duty and submitted to the Office of the Chairperson for verification, approval and will then be forwarded to Secretariat for settlement with relevant supporting documents and in the prescribed manner.
- 14.3 All claims will be treated in the same manner and subject to the same standards applied by the CGE in keeping with the PFMA, Treasury Regulations and the PPR and R as well

as any AGSA directives that are applicable.

## 15. DUTY OF THE CHAIRPERSON

15.1 If the Chairperson is of the opinion that a provision of this code has been breached, then the Chairperson must :-

- ✓ (a) authorise an investigation of the facts and circumstances of the alleged breach.
- (b) provide the Commissioner a reasonable opportunity to reply in writing in respect of the alleged breach.
- ✓ (c) advise plenary on what steps were taken and the outcome of any such investigation.

15.2 The Chairperson is obliged to make a copy of this code available to all Commissioners after finalisation and

acceptance at Plenary.

Thereafter, the Chairperson must make a copy of the code available to every Commissioner at appointment.

## **16. BREACHES OF THE CODE**

16.1 A special committee constituted of at least two Commissioners by the Chairperson may :-

- (a) investigate and make a finding on any alleged breach of a provision of this code with appropriate recommendations in the investigation report.
- (b) the Chairperson will consider the report and make a decision which will be presented to plenary.
- (c) Plenary will ratify the decision which may be as follows :

which may be as follows :

- (i) a formal warning
- (ii) a request to refrain from the prohibited conduct an /or that the Commissioner conducts him/herself in a certain manner
- (iii) a suspension
- (iv) a request to the Office of the Speaker requiring a removal of the Commissioner

16.2 Any Commissioner who has been warned, suspended or faces a request of removal in terms of 16. 1 (c) may within 14 days of being notified of the Plenary decision appeal to the Chairperson in writing.

16.3 The Chairperson may refer the appeal

for consideration by an external party such as the SAHRC Chairperson who may consider the appeal and either confirm, amend or set aside the decision.

- 16.4 All investigations will be in terms of the rules of natural justice, CGE Act and PPR and R.





CGE offices contacts and addresses

Come talk to us  
CGE OFFICES

**GAUTENG**

**JOHANNESBURG (HEAD OFFICE)**

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ENQUIRIES: Mr T Nage: [tnage@parliament.gov.za](mailto:tnage@parliament.gov.za) / Mr P Hahndiek: [phahndiek@parliament.gov.za](mailto:phahndiek@parliament.gov.za)

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**INDEPENDENT PANEL ESTABLISHED TO ASSESS A PARLIAMENTARY MOTION INITIATED IN TERMS OF NATIONAL ASSEMBLY RULE 129U, READ WITH SECTION 194 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA**

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Menzi Vilakazi Attorneys

Metropolitan Park

1<sup>st</sup> floor, 8 Hillside Road, Parktown

Johannesburg

Email: [info@mvlegal.co.za](mailto:info@mvlegal.co.za)

Ref: M Vilakazi

For the attention of: Mr Mbuyiselo Botha (Commissioner of the Commission for Gender Equality)

Dear Sir/ Madam

**INDEPENDENT PANEL ESTABLISHED TO ASSESS A PARLIAMENTARY MOTION INITIATED IN TERMS OF NATIONAL ASSEMBLY RULE 129U READ WITH SECTION 194 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA**

1. As you are by now aware through the correspondence exchanged between yourselves as attorneys of Commissioner Mbuyiselo Botha ("Mr Botha") and the office of the Speaker of the National Assembly ("the Speaker"), that an independent panel as contemplated in Rule 129U of the Rules of the National Assembly ("Rules") has been established, in terms whereof I was appointed as Chairperson of the Panel as contemplated in Rule 129W, together with two Panel

members to wit Adv Noxolo Mbangeni and Mr Malcolm Gessler (a practising attorney), to conduct preliminary assessment and determine whether there is prima facie evidence to show that Mr Botha has committed misconduct as contemplated in section 194(1)(a) of the constitution of the Republic of South Africa.

2. You indicated in your correspondence that communication pertaining to this process be addressed to yourselves as his attorneys and not to Mr Botha directly. It is for this reason that this letter is addressed to yourselves.
3. The Panel has 30 days from the date of appointment (8 March 2024) to conduct and finalise a preliminary assessment relating to the motion proposing a section 194 enquiry and must without delay from the date of appointment provide Mr Botha with copies of all information available to the panel relating to the assessment and give Mr Botha a reasonable opportunity to respond in writing to all relevant allegations against him.
4. This letter is served on Mr Botha through your office as contemplated in Rule 129X(1)(c)(ii)(iii) of the Rules.
5. The documents indexed and paginated, that was tabled in the National Assembly when the motion submitted by Ms F A Masiko (member of the National Assembly) was admitted as compliant, is served on yourselves with this letter. The 5 misconduct charges (allegations) levelled against Mr Botha are set out in the draft

resolution at paginated pages 7 to 9, and the transcript of the recordings which form the basis of the alleged misconduct is at paginated pages 10 to 17. In responding to the allegations aforesaid, Mr Botha is directed to also answer the questions that the panel has posed below in respect of each of the charges. The response(s) must be directed at each of the charges and clearly specified under a specific charge responded to. A generalised response may make it difficult for the panel to locate it within specific charges mentioned in the draft resolution.

**Charge 1**

6. Does Mr Botha admit that it is his voice in the audio recording of 20 July 2021?
7. Does he admit that the audio recording was accurately transcribed as it appears at pages 10 to 15?
8. Does he admit that the relevant excerpts quoted in the charge is the accurate reflection of what he said?
9. Is Mr Botha willing to disclose the name of Party A referred to in this charge?
10. If he is not willing, what is the basis of his refusal?

**Charge 2**

11. Does Mr Botha admit that he uttered the words alleged in this charge about Commissioner Nomasonto Mazibuko on 20 July 2021?

**Charge 3**

- 12. Does Mr Botha admit that he uttered the words alleged in this charge that he intended to disrupt the meeting? And if so,
- 13. What was the reason for wanting to disrupt the meeting? And
- 14. What was the reason of wanting to fight?

Charge4

- 15. Does Mr Botha admit that he uttered the words alleged in this charge?
- 16. If so, why did he utter those words?

Charge 5

- 17. Does Mr Botha admit that he uttered the words alleged in this charge?
  - 18. If so, why did he utter these words?
  - 19. Did he apologise?
  - 20. If he did, what was he apologising for? And
  - 21. To whom was he apologising to?
22. Mr Botha's response or written representations are required by no later than close of business on Friday, 22 March 2024.

Yours faithfully



ADV W. R. Mokhare SC

Chairperson



129



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**Independent Panel I.T.O Rule 129U –  
Commissioner Botha Section 194 Enquiry**

**c/o National Assembly Secretariat**

Our Reference	MB6921/mv/CGE
Your Reference	
Direct Line	+27(0) 73 976 4099
Direct Telefax	+27(0) 86 471 9112
Date	20 March 2024

Attention: Adv W. R. Mokhare SC – Chairperson  
Per email: [mxaso@parliament.gov.za](mailto:mxaso@parliament.gov.za)  
Copy: [tnage@parliament.gov.za](mailto:tnage@parliament.gov.za); [phahndiek@parliament.gov.za](mailto:phahndiek@parliament.gov.za);  
[kbuso@parliament.gov.za](mailto:kbuso@parliament.gov.za)

Dear Advocate Mokhare SC

**RE: INDEPENDENT PANEL ESTABLISHED IN TERMS OF NATIONAL ASSEMBLY RULE  
129U READ WITH SECTION 194 OF THE CONSTITUTION OF THE REPUBLIC OF  
SOUTH AFRICA – COMMISSIONER MBUYISELO BOTHA**

1. We refer to your letter and bundle of documents delivered to our offices late on Monday 18 March 2024.
2. We confirm that we represent Commissioner Botha and place on record that our client intends to cooperate fully with the panel's inquiry.
3. To this end, we confirm that we are instructed to assist our client with the drafting of a comprehensive response to the draft charges against him, which will include substantive responses to the questions in your letter under reply.
4. We intend to furnish you with our client's response in this regard as soon as possible. However, our client instructs us that:

- 4.1. he is not he is not aware of the source of the audio recording of 20 July 2021;
  - 4.2. he is not aware of the circumstances in which the audio recording was made;
  - 4.3. he is not aware who is in possession of the recording and how or in what manner such person(s) has kept the audio recording in their possession.
5. In the circumstances, in order for us to properly advise our client and to assist him with his response to the charges against him, we request that the panel provide our client with the following:
- 5.1. the identity of the source of the audio recording;
  - 5.2. an indication of the circumstances in which the recording was made;
  - 5.3. an indication of who is in possession of the recording as well as how or in what manner such person(s) has kept the audio recording in their possession.
6. In addition, our client requests that the panel provide him with a copy of the audio recording as well as a sworn translation of the transcript contained in the panel's bundle (page 10 – 17).
7. Upon receipt of the information and records sought herein, our client will attend, as is his entitlement in the circumstances, to obtaining his own independent transcription of the audio recording. Thereafter our client will provide the panel with his comprehensive response to the charges against him.
8. In the light of the above, the deadline imposed by the panel of 22 March 2024 is obviously unrealistic and unfair and cannot in the circumstances be met. In this regard we draw the panel's attention to the fact that our client is entitled in terms of National Assembly Rule 129X(1)(c)(iii) to a reasonable opportunity to respond, in writing, to all relevant allegations against him. Our client undertakes to act with due expedition in relation to the steps required to be taken by him and to furnish the panel with his substantive response to the charges against him as soon as possible in the circumstances.

9. Finally, we draw to the panel's attention to the fact that our client is entitled throughout the parliamentary process, including at the present stage, to proper legal representation and advise that we have in this regard, addressed a letter to the Commission for Gender Equality ("CGE"), asking for confirmation that our client's legal fees will be covered in respect of the present Rule 129U parliamentary process and any subsequent parliamentary proceedings that may ensue pursuant thereto. We attach a copy of our letter to the CGE hereto for your information.
  
10. We look forward to hearing from you.

Yours faithfully

**MENZI VILAKAZI INC.**

**PER: M. VILAKAZI**

Electronically transmitted thus unsigned

132



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**Commission for Gender Equality**

Our Reference	MB6921/mv/CGE
Your Reference	
Direct Line	+27(0) 73 976 4099
Direct Telefax	+27(0) 86 471 9112
Date	20 March 2024

Attention: Adv. Nthabiseng Sepenya-Mogale – Chairperson of CGE &  
Dr. Dennis Matotoka – Chief Executive Officer of CGE  
Per email: [nthabiseng.m@cge.org.za](mailto:nthabiseng.m@cge.org.za); [matotoka.dennis@cge.org.za](mailto:matotoka.dennis@cge.org.za);  
Cc: [thabom@cge.org.za](mailto:thabom@cge.org.za)

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Dear Sirs

**RE: INDEPENDENT PANEL ESTABLISHED IN TERMS OF NATIONAL ASSEMBLY  
RULE 129U READ WITH SECTION 194 OF THE CONSTITUTION OF THE  
REPUBLIC OF SOUTH AFRICA - COMMISSIONER MBUYISELO BOTHA**

1. We confirm that we have been instructed by Commissioner Botha to represent him in the Section 194 proceedings which have been initiated in the National Assembly against him.
2. In this regard, we further confirm that an independent panel, as envisaged by National Assembly Rule 129U, to assess the parliamentary motion for Commissioner Botha's removal from office has been established.
3. We advise that the panel addressed correspondence to Commissioner Botha late on Monday 18 March 2024 in which it required Commissioner Botha to make written representations in response to the allegations against him by close of business on Friday 22 March 2024. This time frame is obviously unrealistic and unfair in the circumstances, and this is being taken up with the panel.

4. We wish to place on record that Commissioner Botha intends to cooperate fully with the parliamentary process. However, in order to do so, Commissioner Botha is entitled throughout the parliamentary process, including at the present stage, viz in the proceedings pursuant to the establishment of the Rule 129U panel, to proper legal representation. This is particularly so in circumstances in which the Rule 129U panel is empowered to make recommendations pertaining to the establishment of a formal section 194 enquiry in terms of National Assembly Rule 129AA.
5. To ensure that Commissioner Botha is subjected to a fair process and is afforded a proper opportunity to present his case, including at the Rule 129U panel stage, he has instructed us to brief two counsels on the matter. To this end, we confirm that we have briefed one senior and one junior counsel.
6. In the circumstances, kindly confirm that, as is required is a matter of law, the CGE will cover Commissioner Botha's legal fees in respect of the Rule 129U parliamentary process and any subsequent parliamentary proceedings that may ensue pursuant thereto.
7. Kindly let us have the confirmation sought herein by no later than close of business on **Friday, 22 March 2024.**

Yours faithfully

**MENZI VILAKAZI INC.**

**PER: M. VILAKAZI**

Electronically transmitted thus unsigned



ENQUIRIES: Mr T Nage: [tnage@parliament.gov.za](mailto:tnage@parliament.gov.za) / Mr P Hahndiek: [pahndiek@parliament.gov.za](mailto:pahndiek@parliament.gov.za)

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**INDEPENDENT PANEL ESTABLISHED TO ASSESS A PARLIAMENTARY MOTION INITIATED IN TERMS OF NATIONAL ASSEMBLY RULE 129U, READ WITH SECTION 194 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA**

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22 March 2024

Menzi Vilakazi Attorneys

Metropolitan Park

1<sup>st</sup> floor, 8 Hillside Road, Parktown

Johannesburg

Email: [info@mvlegal.co.za](mailto:info@mvlegal.co.za)

Ref: M Vilakazi

For the attention of: Mr Mbuyiselo Botha (Commissioner of the Commission for Gender Equality)

**INDEPENDENT PANEL ESTABLISHED TO ASSESS A PARLIAMENTARY MOTION INITIATED IN TERMS OF NATIONAL ASSEMBLY RULE 129U READ WITH SECTION 194 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA**

1. The panel has received your letter dated 20 March 2024, accompanied by a letter you addressed to the Commission for Gender Equality of the same date. The panel has considered the contents of both letters and respond accordingly herein below.
2. Mr Botha is reminded of the provisions of Rule 129X(1)(b), read with Rule 129X(1)(c)(ii)(iii). The function and powers of the panel is to conduct a preliminary assessment relating to the motion proposing a section 194 enquiry and determine if there is prima facie evidence of misconduct, incapacity or incompetence.



3. The panel is obliged to provide Mr Botha with copies of all information available to the panel relating to the assessment and afford Mr Botha a reasonable opportunity to respond to the allegations against him in writing.
4. The panel has complied with its duty in terms of Rule 129X(1)(c)(ii)(iii) on 18 March 2024 when it provided Mr Botha with all information available to it.
5. Mr Botha was afforded an opportunity by the panel to respond to the allegations in writing by no later than 22 March 2024.
6. It seems evident from your letter that Mr Botha will not be submitting his written response or representations on 22 March 2024, and will not do so anytime thereafter, unless the panel provides him with information requested in paragraphs 5 and 6 of your letter, and the Commission for Gender Equality confirms that it would cover Mr Botha's legal fees inclusive of fees of the employment of senior counsel and junior counsel which he has already appointed.
7. The panel has nothing to add to the information it has provided to Mr Botha, and it does not have the information Mr Botha is requesting from the panel in paragraphs 4 and 5 of your letter. The audio recording as requested in paragraph 6 of your letter is available on the Parliamentary website at <https://www.parliament.gov.za/project-event-details/3109>.
8. The panel does not have the sworn translation of the recordings or transcription thereof. The panel has also taken note of Mr Botha's responses in paragraph 4 of your letter, which will be taken into account by the panel when evaluating the information in its possession for preliminary assessment of the draft motion.
9. The panel has decided to *mero motu* extend the date of submission of written response or representations to the allegations to Wednesday, 27 March 2024.

10. The panel will conduct an assessment of the information available to it and make a preliminary assessment with or without Mr Botha's written response or representations and finalise a report for submission to the Speaker of the National Assembly by 5 April 2024.

Yours faithfully



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ADV W. R. Mokhare SC

Chairperson

**Independent Panel I.T.O Rule 129U –  
Commissioner Botha Section 194 Enquiry**

**c/o National Assembly Secretariat**

Our Reference	MB6921/mv/CGE
Your Reference	
Direct Line	+27(0) 73 976 4099
Direct Telefax	+27(0) 86 471 9112
Date	27 March 2024

Attention: Adv W. R. Mokhare SC – Chairperson  
Per email: [mxaso@parliament.gov.za](mailto:mxaso@parliament.gov.za)  
Copy: [tnage@parliament.gov.za](mailto:tnage@parliament.gov.za); [phahndiek@parliament.gov.za](mailto:phahndiek@parliament.gov.za);  
[kbuso@parliament.gov.za](mailto:kbuso@parliament.gov.za)

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Dear Advocate Mokhare SC

**RE: INDEPENDENT PANEL ESTABLISHED IN TERMS OF NATIONAL ASSEMBLY RULE  
129U READ WITH SECTION 194 OF THE CONSTITUTION OF THE REPUBLIC OF  
SOUTH AFRICA – COMMISSIONER MBUYISELO BOTHA**

1. We refer to your letter dated 22 March 2024 and confirm our instructions as set out below.
2. Commissioner Botha remains committed to cooperating with the independent panel's assessment. While he is grateful to the independent panel for providing the link to the audio recording, our client believes that he is not in a position to provide full and proper responses to the panel's questions, and to make further submissions in regard to the allegations raised against him, in the absence of a transcription of the entire meeting in the course of which it is alleged he was to have made the statements he is accused of, more than two and a half years ago. To that end, we are attending to having the audio recording transcribed and translated.

3. We record furthermore, that it is, with the greatest respect, inconceivable that the panel does not have the information requested at paragraphs 4 and 5 of our letter dated 20 March 2024. Given that our client potentially stands to be subjected to removal proceedings as a result of your findings, we trust that it will be appreciated that our client is entitled to the information requested in order to enable him to prepare a comprehensive response to the charges levelled against him and to submit substantive and meaningful responses to the questions posed in your letter dated 18 March 2024.
4. We note from the charges against Commissioner Botha and your letter dated 18 March 2024 that it is alleged that Commissioner Botha made the allegedly offending statements during a private telephone conversation, more than two and half years ago. It is in the circumstances undoubtedly fair and reasonable for Commissioner Botha to request and be provided with clarity on what was recorded, the circumstances in which a private telephone conversation came to be recorded, by whom, and the like. Commissioner Botha is entitled to such information, without which his right to participate meaningfully in this process continues to be prejudiced, as is the fairness of the process itself.
5. Furthermore, we respectfully fail to appreciate how, in the absence of the information requested by Commissioner Botha, the independent panel can itself arrive at even a *prima facie* view on whether there is evidence of our client having committed misconduct that would warrant impeachment proceedings.
6. Lastly, we note from paragraph 2 of your letter under reply, the assertion that the independent panel's function and powers are to conduct an assessment to determine whether there is *prima facie* evidence of misconduct, incapacity, or incompetence against Commissioner Botha. In this regard, we respectfully draw your attention to paragraph 1(3) of the resolution tabled by Ms. F A Masiko MP in the National Assembly (paginated page 7 of the bundle), which was adopted by the National Assembly. The resolution provides that an inquiry envisaged by section 194 of the Constitution is confined to grounds of misconduct only. Accordingly, the independent panel's functions and powers are similarly limited to considering whether, *prima facie*, removal proceedings are warranted on the grounds of misconduct only, and not on grounds of incapacity or incompetence as suggested.
7. We look forward to receiving the requested information at your earliest convenience.

139

Yours faithfully

**MENZI VILAKAZI INC.**

**PER: M. VILAKAZI**

Electronically transmitted thus unsigned