



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



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

<b>Recommendations of the special committee</b>	
<b>SUBMITTED BY</b>	Comm L Ntuli- Tloubatla and Comm D Mothupi
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## 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.



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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

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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 ntwa, 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, lesufe 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 ntwa, 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 a 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.



## 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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