

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**

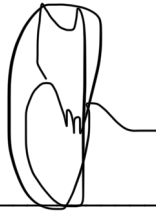
- 3.5.1 The statement to Party A as per transcribed audio record Commissioner Botha mentioned the litigation between himself and Commissioner Rakolote and stated that Commissioner Rakolote would mess his pants once he is finished with him. At the time of this incident both Commissioners were involved 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: F A MASIKO**

A handwritten signature in black ink, appearing to be 'F A MASIKO', written over a horizontal line.

**SIGNATURE:**

**DATE: 1 NOVEMBER 2023**

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