



MONITORING THE IEC COMMISSIONER APPOINTMENT PROCESS

EXECUTIVE SUMMARY

During the course of this year vacancies will arise for the position of Commissioner within the IEC. A public process will be conducted by a panel chaired by the Chief Justice and subsequently the National Assembly to select suitable candidates. The IEC is at the helm of our democracy as it serves as the election management body intended to facilitate our participation in the electoral process. It is critical that the people appointed to serve in the IEC are not only competent but impartial. It is also important that as this public process unfolds, we as citizens monitor, engage and remain vigilant to guard against appointments that would be to the detriment of the IEC and our nation.

Introduction

Next year, South Africa will hold its most contested elections since the birth of our democracy. It is a matter of concern that the election body that administers elections may have three possible vacancies for the position of Commissioner arising this year. This is due to the Vice-Chairperson's second term of office coming to an end and the completion of the first term of office of two Commissioners that may or may not result in a renewal of their appointment. The departure of the Vice-Chairperson will result in a loss of institutional memory as no one has served as a Commissioner as long as he has. This brief will give an overview of the history, composition, function and appointment of Commissioners. Furthermore, it will highlight the importance of these appointments in safeguarding our democracy.

History of the Independent Electoral Commission

The negotiations at CODESA led to the establishment of a temporary Electoral Commission. Under the apartheid regime, the Department of Home Affairs managed elections. However, due to a lack of trust from political parties contesting in the upcoming election, an entirely new Commission was set up. The purpose of this Commission was to administer the first non-racial elections in South Africa. The Independent Electoral Commission Act 150 of 1993 ('IEC Act') empowered the President, on the advice of the Transitional Executive Council to appoint sixteen Commissioners. Eleven were to be South African and five international. The international

Commissioners worked in an advisory capacity. They had the same rights and powers as the other Commissioners except for voting rights. The IEC Act stipulated that the South African Commissioners were to be, "impartial, respected and suitably qualified men and women, who do not have a high party-political profile, are themselves voters, and represent a broad cross section of the population."

In December 1993 the President appointed the eleven required South African Commissioners and a month later he appointed five international Commissioners. Johann Kriegler, who was serving as a judge, on the Appellate Division at the time, was appointed to lead the Commission as Chairperson. The other South African Commissioners were Zakeria Yacoob, Ben van der Ross, Charles Nupen, Dikgang Moseneke, Helen Suzman, Oscar Dhlomo, Frank

1994 ELECTION COMMISSIONERS

South African Commissioners

Zakeria Yacoob, Ben van der Ross, Charles Nupen, Dikgang Moseneke, Helen Suzman, Oscar Dhlomo, Frank Chikane, Dawn Makhobo, Johann Heynes and Rosil Jager.

International Commissioners

Jørgen Elklit, Gay McDougall, Amare Tekle, Walter Kamba and Ron Gould.



Chikane, Dawn Makhobo, Johann Heynes and Rosil Jager. Jørgen Elklit, Gay McDougall, Amare Tekle, Walter Kamba and Ron Gould were the international Commissioners appointed. The Commission started its work in January 1994 and had four months to organise the elections that would usher South Africa into a democratic era. It was a daunting task with logistical and political challenges that the Commission was able to overcome. After serving its purpose the temporary Commission was disbanded.ⁱ

Function of the Independent Electoral Commission

The permanent Independent Electoral Commission ('IEC'), as we know it today, was formally set up on 17 October 1996. It was established under the Constitution as a chapter nine institution. The IEC, like every chapter nine institution was created to strengthen democracy in South Africa. It is intended to be independent, impartial and to carry out its duties without fear, favour or prejudice. It is accountable to the National Assembly (NA) and is required to report to the NA on its work once a year. Furthermore, Section 190 of the Constitution states that the IEC is in charge of managing municipal, provincial and national elections.ⁱⁱ It is meant to ensure that elections are free and fair and it is responsible for announcing the results of elections. The national legislation that was enacted to give effect to the IEC is the Electoral Commission Act 51 of 1996 ('Act'). The Act stipulates that in addition to the functions that the Constitution prescribes, the IEC is responsible for compiling and maintaining a voters' roll, compiling and maintaining a register of all parties and for voter education. Other functions of the IEC are contained in the Act.

Composition of the Independent Electoral Commission

The IEC consists of five Commissioners appointed by the President, one of whom has to be a judge. Commissioners provide oversight in respect of activities of the IEC. They remain accountable but they delegate responsibility for these activities to the Chief Electoral Officer (CEO). Commissioners are to be South African citizens and are not permitted to have a high party-political profile. They serve for a term of seven years that can be renewed once. The Act provides for there to be a Chairperson and Vice-Chairperson of the IEC appointed by the President from the members. The current Chairperson is Mr. Glen Mashinini and the Vice Chairperson is Mr. Terry Tselane. The other Commissioners are Rev Bongani

Finca, Judge Thami Makhanya and Ms Janet Love. The Act gives the IEC the mandate to employ staff in order to achieve its objects and to perform its functions. In this regard, the IEC appoints a CEO who is the head of the administration and who serves as the accounting officer. Additionally, the CEO performs any other duties and functions as entrusted to him by the IEC. This includes appointing officers and employees of the IEC in consultation with the Commissioners. In order to be appointed the CEO has to be suitably qualified and experienced.ⁱⁱⁱ

The CEO is required to have three deputies. One deputy heads Corporate services, the other Outreach and another Electoral Operations. The Corporate Services division provides business processes and systems in respect of financial management, information and computer technology, legal services, human resources and facilities management. The division that deals with Outreach is responsible for communications, civic education, research and knowledge management. Its role is to educate the public on electoral democracy in order to promote public participation in the electoral process. Research, in this division is conducted to assist with organisational planning and other decision-making processes of the IEC. Whereas, communications works to maintain a good image of the Commission with all stakeholders and the public.

The Electoral Operations division is responsible for the maintenance of the voters' roll and delimitation of boundaries. It plans and co-ordinates activities during registration weekends, elections and special voting days. Additionally, its logistics and infrastructure department provides warehousing and distribution of infrastructure such as voting stations, municipal electoral offices, election materials and equipment. Furthermore, the composition of the IEC requires that there be a Provincial Electoral Officer for each province. The Provincial Electoral Officer manages the IEC's provincial office, facilitates access to electoral activities into all areas and communities in the province, and supports and monitors all programmes and projects of the IEC provincially. The current CEO of the IEC is Mr Sy Mamabolo. The Deputy CEO of Outreach is Dr. Nomsa Masuku. The other 2 deputy positions, namely Corporate Services and Electoral Operations, remain vacant.^{iv}



Appointment of Commissioners

When there is a vacancy for a Commissioner that needs to be filled a notice is published that calls for nominations of interested persons. A panel consisting of the Chief Justice, a representative of the Human Rights Commission, a representative of the Commission on Gender Equality and the Public Protector compiles a shortlist from the nominations received. The panel interviews the shortlisted candidates and sends a list of no fewer than eight recommended candidates to the Portfolio Committee of Home Affairs. This committee considers the candidates and nominates one to sit as a Commissioner. A report is submitted to the NA which votes and decides on the candidate that should be recommended to the President. The President then appoints the Commissioner if he/she approves. The entire process is conducted publicly. The Vice-Chairperson of the IEC, Terry Tselane, finishes his second term of office this year. In addition, Rev Finca and Judge Makhanya complete their first terms of office this year. Therefore, three vacancies may arise as a result.^v

The Need for Impartial Commissioners

Since its inception in 1996, the IEC has held elections that have been largely considered free and fair. Their work is commended. Most notably, the Commission is held as one of the most credible institutions in the country. A survey conducted by the Human Sciences Research Council (HSRC) since 1998 reveals that public trust in the IEC is quite high.^{vi} However, the IEC has been plagued with events that have threatened its impartiality. This brief will discuss two instances.

Lease Agreement Scandal

Advocate Pansy Tlakula was Chairperson of the IEC from 2009 – 2014. Her resignation came as a result of allegations levelled against her. The allegations were that she had influenced the tender process that called for a leasing contract for new premises for the IEC. This was during her tenure as CEO. The tender was awarded to the company, Abland and the lease contract was worth R320 million. Former Public Protector, Thuli Madonsela produced a report and found that the allegations against Tlakula were substantiated. The Public Protector found that the tender process was irregular and amounted to misconduct on Tlakula's part. It was revealed that

Tlakula and a shareholder in Abland, Mr Thaba Mufamadi were business partners in another company, Lehotsa Investment. Further concern was raised due to Mr. Mufamadi being a senior MP for the ruling party, the ANC. Therefore, the Public Protector concluded that Tlakula had favoured Abland during the tender process to benefit her business partner, Mr. Mufamadi.^{vii} The matter was taken to the Electoral Court by the UDM, ACDP, Agang SA, COPE and the EFF. The court found that Tlakula had committed misconduct and had acted in a way that compromised the integrity of the IEC warranting her removal from office. Tlakula refused to resign and sought leave to appeal the matter to the Constitutional Court. The Constitutional Court dismissed the matter citing that the appeal had no prospects for success. Tlakula subsequently resigned.^x

Most Recent Appointments

A vacancy arose for Chairperson of the IEC following the resignation of Tlakula in 2014. In 2015, Raenette Taljaard resigned as a Commissioner. Therefore, in that year, the process of appointing new Commissioners began. Candidates were interviewed by the panel and a shortlist of eight names were submitted to the Portfolio Committee of Home Affairs for consideration. The decision came down to two names, Mr. Glen Mashinini and Ms Janet Love. The ANC favoured Mashinini for his vast experience. He had previously been employed in the IEC as Deputy Chief Electoral Officer and had election experience elsewhere in Africa through his consultancy. The DA, IFP and EFF preferred Ms Janet Love, an anti-apartheid activist and human rights lawyer with extensive experience in public service. They emphasized the need for female representation. Mashinini had worked as a Special Projects Advisor to the former president, Jacob Zuma. Therefore, opposition parties were concerned about this link. Nonetheless, the Committee voted 5 (ANC) to 4 (the DA, IFP and EFF) in favour of Mashinini and the matter went to the NA. Despite dissent from the opposition due to concerns about the relationship between former President Jacob Zuma and Mashinini, the NA voted for Mashinini to be recommended for appointment.^{xii} Mashinini was appointed as a Commissioner in April 2015 and as Chairperson of the IEC in October 2015. Love was subsequently appointed as a Commissioner in April 2016.^{xiii}



Conclusion

The IEC still enjoys trust with the public despite these events. However, the appointment of new Commissioners a year ahead of the 2019 elections are cause for concern. The IEC faces different political and logistical challenges than that of the Electoral Commission in 1994. The task of the Electoral Commission in 1994 was to facilitate the birth of our democracy whilst the task of the IEC is to guard it. It is a daunting responsibility. The 2019 elections and beyond will have political parties putting pressure on the IEC and doing their best to discredit them. It will have to navigate these obstacles and others that they will undoubtedly encounter as an election management body. The job of the IEC will be to ensure that it carries out its mandate judiciously and independently with due regard for transparency and accountability. As the appointment process unfolds, we need to ensure that we are confident in the ability of the people appointed to deliver. This will require us to be informed and engaged in the public appointment process.

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