



## INDEPENDENT ELECTORAL COMMISSION

### COMMISSIONER CANDIDATE CONSIDERATIONS

#### **Introduction**

Interviews of the 26 shortlisted candidates for the position of IEC Commissioner take place on Monday the 25<sup>th</sup> and Tuesday the 26<sup>th</sup> of June 2018. Interviews will be held at the Office of the Chief Justice and will be conducted by the Chief Justice, a representative of the South African Human Rights Commission, the Commission on Gender Equality and the Public Protector. This report highlights issues of concern that have arisen from the 26 shortlisted candidates. These concerns and considerations should be kept in mind not only for this IEC Commissioner appointment process but for appointment processes to come.

#### **Political Affiliation**

Legislation dictates that the requirements to become an IEC Commissioner are that a person should be a south african citizen and that they should not have a high party-political profile.<sup>1</sup> Our research has uncovered that two shortlisted candidates have political affiliations. Monica Ledingwane stood for election in 2016 as an ANC ward councillor for the Tshwane Metro Municipality. Furthermore, Advocate Nevondwe is a member of the ANC.<sup>2</sup> These candidates are not precluded from becoming Commissioners as they do not hold prominent positions in these political parties. However, an IEC Commissioner should be independent and impartial. They should command the respect of all political parties and when a person is affiliated with a political party this respect may fall away.

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<sup>1</sup> Section 6 (2), Electoral Commission Act 51 of 1996.

<sup>2</sup> Facebook Profile: Adv Lufuno Nevondwe. Available at:

<https://www.facebook.com/photo.php?fbid=545405559153146&set=pcb.545405629153139&type=3&theatre>

## **Governance vs Administration**

Glen Mashinini (IEC Chairperson) and Janet Love were appointed as Commissioners in 2015 and 2016 respectively. Therefore, they have never run a national election. Once the three vacancies at the IEC have been filled, this new team of Commissioners will be tasked with running a national election for the first time next year. 2019 elections are looming and it is paramount that the Commissioners selected for the position are able to hit the ground running. Six shortlisted candidates have experience working at the IEC. This experience is welcomed. However, it is important to note that this should not be an automatic qualifier for the position. This is because there is a distinct difference between working within the administration of an institution and working in a governance capacity, which these candidates will have to do, should they be selected. Governance requires a different set of skills and the candidates who have worked at the IEC should be interrogated like the rest of the shortlisted candidates to ensure they possess these skills.

## **Chapter nine institution experience**

Bernadette Muthien and Nomalanga Violet Tyamzashe are currently Commissioners at the Commission for the Promotion of the Rights of Cultural, Religious and Linguistic Communities. Dizline Shozi served as Chairperson and Commissioner of the Commission for Gender Equality from 2007 – 2017. Lindiwe Faith Mokate was a Commissioner at the South African Commission for Human Rights (SAHRC) from 2009 – 2016. Their experience as Commissioners at other chapter nine institutions demonstrates that they may have the governance acumen required to manage an institution. However, this does not equate to having the necessary election management expertise required to be a Commissioner of the IEC. The performance of these candidates serving at other chapter nine institutions should be investigated and more so their suitability to be Commissioners at the institution responsible for managing our elections.

## **Mismanagement**

In terms of performance at other chapter nine institutions, Lindiwe Mokate was the CEO of SAHRC from 1998 – 2005. In this position, Mokate faced allegations of victimisation, intimidation and mismanagement. During her tenure, in 2005, unhappy employees at the Commission wrote an open letter to National Assembly Speaker Baleka Mbete. The letter stated that at least 15 employees had resigned in the first six months of the year. They asked for an urgent intervention to save the Commission. In the same year, former Chief Financial Officer Colin Braude accused her of wasteful expenditure. Braude subsequently lost his job. An external audit was conducted and the allegations that Braude was victimised were unfounded. An independent report on staff relations was commissioned. However, Mokate refused to cooperate with the investigation by attorney Thandi

Orleyn. Mokate resigned as CEO of the Commission.<sup>3</sup> However, she was appointed as a Commissioner of the SAHRC in 2009.

### **Violation of Constitutional Obligations**

The IEC was established to strengthen our constitutional democracy. It is imperative that Commissioners abide by the constitutional obligations their positions bestow on them. However, in 2013, former Public Protector Thuli Madonsela released a report entitled 'Inappropriate Moves'. This report was on an investigation conducted about the procurement of premises to accommodate the Head Offices of the IEC. The report set in motion events that led to the resignation of former Chairperson of the IEC, Advocate Pansy Tlakula. It found that the tender process for the premises was irregular and amounted to misconduct on Tlakula's part. In this report, Madonsela recommended that disciplinary action be taken against shortlisted candidate, Mosotho Moepya and two other senior officials for failing to provide her with the budget and a full set of minutes for the Commission's meetings in regards to this procurement process. This, she held, was a violation of their constitutional obligations.<sup>4</sup>

Thereafter, Tlakula mounted a legal battle against the report by the former Public Protector. Moepya as IEC CEO, allocated R500,000 to Tlakula's case. Terry Tsheleane (IEC Commissioner) stated that in his view, this was a violation of the Public Finance Management Act (PFMA) as the Commission had not granted Moepya authorisation to do this.<sup>5</sup>

Similarly, in 2015, the DA made a complaint against shortlisted candidate, Dizline Shoji, in his capacity as the Chairperson of the Commission for Gender Equality. The complaint dealt with the fact that the Commission had taken almost 3 years to finalise a report into allegations of sexist remarks allegedly made by Jacob Zuma in 2012 on a talk show hosted by Dali Tambo. The report was finalised in 2015 and sent to the Office of the Presidency. However, it was never made public.<sup>6</sup>

### **Controversies**

In 2002, the Chairperson of the Premier Soccer League (PSL), Professor Mandla Mchunu appointed his own firm to run the affairs of the league. This firm was established by Professor Mchunu, current IEC Chairperson Glen Mashinini and shortlisted candidate Allan Campbell. The firm Mchunu, Mashinini and Associates (MM&A) charged the league R500, 000 a month and the contract was worth 3 million. The concern with this was that the contract was not put out to tender. Additionally, it

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<sup>3</sup> <https://www.iol.co.za/news/politics/human-rights-ceo-resigns-258798>

<sup>4</sup> [https://www.pprotect.org/sites/default/files/Legislation\\_report/REPORT%20NO%2013%20of%202013%202014%20%283%29.pdf](https://www.pprotect.org/sites/default/files/Legislation_report/REPORT%20NO%2013%20of%202013%202014%20%283%29.pdf)

<sup>5</sup> <https://heraldlive.co.za/news/2014-04-30-new-row-as-iec-plans-to-pay-tlakulas-legal-fees/>

<sup>6</sup> <https://www.voteda.org/2015/01/astonishing-amount-time-taken-finalise-report-zumas-sexist-comments/>

was alleged that the constitution of the National Soccer League, of which the PSL is a trading division, was violated in that Mchunu selected his partners Mxolisi Zwane to lead the league's disciplinary committee and Allan Campbell to oversee its restructuring.<sup>7</sup> This company has since been deregistered.

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<sup>7</sup> <https://www.news24.com/SouthAfrica/PSL-chiefs-huge-payout-20020421>>