

18 July 2022

TO: Hon. Claudia Nonhlanhla Ndaba  
Chairperson of the Portfolio Committee on Women, Youth and Persons with Disabilities

PER: (Email) [nondaba@parliament.gov.za](mailto:nondaba@parliament.gov.za)

AND TO: Miss Neliswa Nobatana  
Committee Secretary  
Portfolio Committee on Women, Youth and Persons with Disabilities

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**Dear Honourable Claudia Nonhlanhla Ndaba**

### **Vacancies in the Commission on Gender Equality**

1. The Commission on Gender Equality (“CGE”) has in terms of Section 187 of the Constitution of the Republic of South Africa, 1996 a mandate to promote respect for gender equality and protection, development and attainment of gender equality. It has powers and functions as regulated by national legislation to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.
2. The Section 187 of the Constitution, 1996 and Section 3 of the Commission for Gender Equality Amendment Act of 17 of 2013, set out the requirements for appointment as a Commissioner to the Commission for Gender Equality.
3. This submission speaks to the invitation directed to members of the South African public and organisations, to nominate suitable candidates for appointment to serve in the Commission for Gender Equality as Commissioners, mandated by the Commission for Gender Equality Act, 2013. All applicants will be required to complete a Google Form on the Parliamentary website<sup>1</sup> or via WhatsApp<sup>2</sup>.
4. A list of shortlisted candidates and their resumes will be published on the Parliamentary website to allow members of the public to comment on the suitability of candidates. All applications will be in line with Protection of Personal Information Act No.4 of 2013, and Employment Equity Act No.55 of 1998.
5. The President will, on recommendation of Parliament, appoint a member to the Commission for a term of office not exceeding five years. The members of the Commission may be

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<sup>1</sup> <https://forms.gle/sZqahubEL7VeGpam9>

<sup>2</sup> 083 709 8472

appointed as full-time or part-time. Any person, whose term of office as a member of the Commission has expired, may be reappointed for one additional term.

6. The candidates must be South African citizens who are fit and proper persons for appointment to the Commission and are broadly representative of South African community, have a record of commitment to the promotion of gender equality and have applicable knowledge of and experience in matters connected with the objects of the Commission.
7. The advertisement for the vacancies went out on 27 June 2022, and the deadline for applications are on Monday, 18 July 2022, at midnight.
8. In this submission OUTA seeks to:
  - 8.1.1. Express its concerns regarding the short period of advertisement of these vacancies (22 days);
  - 8.1.2. Emphasise the critical importance of the Commission for Gender Equality as a Chapter 9 Institute in South Africa; and
  - 8.1.3. Request the Portfolio Committee of DWYPD to extend the period of advertisement to ensure a more inclusive and publicly engaged process to get the best possible candidates for the vacant positions.

### **OUTA'S INTEREST IN THE COMMISSION OF GENDER EQUALITY AND VACANT POSITIONS**

9. The Organisation Undoing Tax Abuse ("OUTA") is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA is further geared towards the harmonious cooperation with government on various levels and seeks to assist government wherever necessary in carrying out its mandate in the interests of the citizens of South Africa. Within OUTA's methods to drive positive developments and effective use of tax-payers funds, we seek to engage with government departments, so as to better understand the various dynamics, operational constraints and expenditures that apply within various departments and cost centres. OUTA believes that in order to become better positioned to collaborate and provide input and proposed solutions from a citizen's perspective, continued engagement and open lines of communication will be paramount.

### **RELEVANCE OF THE COMMISSION FOR GENDER EQUALITY**

10. Section 9, Chapter Two of the Bill of Rights, in the Constitution must be emphasised:  
  
*(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, language and birth.*

*(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.*

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

11. The National Development Plan (NDP) Chapter 15 “National Building and Social Cohesion”, subsection 113 is of relevance:

*(113) The Commission of Gender Equality and the ministry should audit and deal with gaps in legislation and develop joint targets, indicators and timelines for monitoring and evaluating progress towards gender equality.*

12. As a Chapter 9 Institute, The CGE shall advance promote and protect gender equality in South Africa through undertaking research, public education, policy development, legislative initiatives, effective monitoring and litigation.

13. Independent, impartial, and robust state institutions, such as Chapter 9 Institutions like the CGE, that act in the public interest are imperative to safeguarding South Africa’s constitutional democracy. The collapse of these institutions gives rise to a situation where public resources are misappropriated for private gain, where impunity prevails, and where the public is made vulnerable to abuse of our constitutional rights.

14. It is therefore vital that such institutions be led by individuals of the highest professional and moral calibre. Evidence led at the Zondo Commission has established the catastrophic damage that followed from individuals being appointed to state-owned enterprises and institutions because of political connection rather than merit. Inappropriate appointments were one of the primary mechanisms by which the state was captured.

## **RECOMMENDATIONS**

15. OUTA, together with other interested Civil Society Organisations, propose supplementing the shortlisting and selection processes with the following steps:

- 15.1.1. An independent selection panel be established by the Portfolio Committee on Women, Youth and Persons with Disabilities, whose objective is to undertake a transparent and

merit-based shortlisting process that results in recommendations for the most qualified candidates to serve as a commissioner. The selection panel should consist of individuals who are able to impartially assess candidates on agreed-upon criteria.

- 15.1.2. The Committee and selection panel should develop additional criteria and guidelines, beyond the requirement that the candidate be a fit and proper person, that will ensure that only the strongest candidates are identified for the interview process. To be shortlisted, not only do candidates need to possess the necessary experience, expertise and qualifications, but they must also be thoroughly vetted for financial and security risks.
- 15.1.3. The Committee and selection panel should provide scores for each shortlisted candidate against key criteria, weighted by the most important functions of the post – as well as assessments of integrity. Upon compiling the shortlist, the Committee should provide a detailed report that includes the following information:
  - A summary detailing the appointment process;
  - The names of all individuals who applied for the position;
  - The criteria used for shortlisting;
  - The methodology used to assess the skills and competencies of candidates; and
  - The results of the financial and security vetting conducted on shortlisted candidates, as well as character references and qualification checks.
16. Due to the gravity of the role the CGE and its commissioners play, OUTA urgently requests the Parliament to extend the deadline for applications by at least one week.
17. In addition, given the importance of these posts, we consider it imperative to engage with the Committee for consideration of our proposal to improve the recruitment process. It is in the interest of the public, and our constitutional democracy, that there is demonstrated political will to ensure that sufficient checks and balances are in place to end impunity and reinforce principles of accountability in South Africa.
18. OUTA, together with other Civil Society Organisations, are available to discuss, expand upon or respond to any questions and concerns. We look forward to collaborating in the interests of improving the functioning of state institutions.

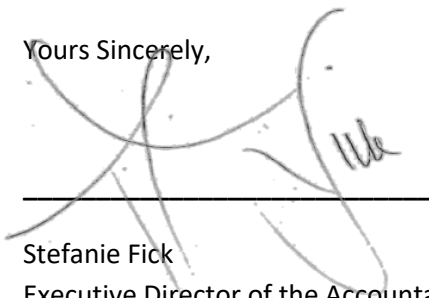
## **CONCLUSION**

19. In reflection of Section 9 of the Bill of Rights, the National Development Plan Chapter 15, as well as the Fifth Sustainable Development Goal on Gender Equality, the inevitable conclusion is that the CGE and DWYPD have significant responsibility to ensure a functioning and ethical Chapter 9 Institution.
20. To achieve this, due diligence and best practices must be followed to ensure a broad, visible and accessible advertisement process is followed to procure fit and proper applicants. The

short deadline of 22 days is insufficient to procure such a variety of potential candidates. The extension by at least one week will serve the country's best interests.

21. In addition, the Committee and selection panel must ensure the shortlisted, and ultimately selected candidates, are independent, have a record of commitment to the promotion of gender equality, and have applicable knowledge of and experience in matters connected with the objects of the Commission.
22. We trust these comments and recommendations are received with due consideration, and we look forward to receiving your response.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Stefanie Fick', is written over a horizontal line. The signature is stylized and somewhat messy.

Stefanie Fick  
Executive Director of the Accountability and  
Public Governance Division  
OUTA – Organisation Undoing Tax Abuse  
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