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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. 404

29 MARCH 2018

**JUDICIAL SERVICE COMMISSION ACT, 1994 (ACT NO.9 OF 1994)
PROCEDURE OF THE COMMISSION**

Under section 5 of the Judicial Service Commission Act, 1994 (Act No.9 of 1994), I, Tshililo Michael Masutha, Minister for Justice and Correctional Services, hereby make known the particulars of the procedure which the Judicial Service Commission has determined in terms of section 178(6) of the Constitution of the Republic of South Africa, 1996, in the Schedule hereto.

Given under my hand at... Pretoria on this the 26th day of March
Two Thousand and Eighteen.

**TM Masutha, MP****Minister of Justice and Correctional Services**

SCHEDULE

ARRANGEMENT OF REGULATIONS

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1. **Definitions.** *-In this Procedure, unless the context otherwise indicates-*

"the Commission" means the Judicial Service Commission;

"the Constitution" means the Constitution of the Republic of South Africa, 1996;

"majority vote" means a vote supported by a majority of the members of the Commission;"

"the screening committee" means a committee of the Commission appointed by the Commission from time to time, consisting of 8 members of the Commission, one of whom is to be the convenor of the committee; and in addition, the Head of a Court concerned and the Premier of the province concerned, where applicable, or an alternate designated by each of them, may participate.

"meeting of the screening committee" means a meeting convened by the convenor of the committee for purposes of preparing a shortlist of candidates to be interviewed.

2. **Judges of the Constitutional Court.** – The procedure for the selection of

candidates for appointment as Judges of the Constitutional Court in terms of section 174(4) and (5) of the Constitution shall be as follows-

- (a) The Chief Justice shall inform the Commission when a vacancy occurs or will occur in the Constitutional Court.
- (b) The Commission shall announce the vacancy publicly and call for nominations by a specified closing date.
- (c) A nomination contemplated in paragraph (b) shall consist of-
 - (i) a letter of nomination which identifies the person making the nomination and the candidate;
 - (ii) the candidate's written acceptance of the nomination;
 - (iii) a detailed curriculum vitae of the candidate which shall disclose his or her formal qualifications for appointment as prescribed in section 174(1) of the Constitution, together with a questionnaire prepared by the Commission and completed by the candidate; and
 - (iv) such further pertinent information concerning the candidate as he or she or the person nominating him or her, wishes to provide.
- (d) After the closing date, all the members of the Commission shall be provided with a list of the candidates nominated, together with the nomination in respect of each candidate, with an invitation to-
 - (i) inform the screening committee, prior to the meeting of the screening committee, of the names of the candidates, if any, who they feel strongly should be included in the shortlist of candidates to be interviewed, for consideration by the screening committee and;

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- (ii) the signification of the preferred name(s) must be accompanied by a written motivation.
 - (e) The screening committee shall at its meeting, prepare a shortlist of candidates to be interviewed, which shall include those who qualify for appointment and who in the opinion of the majority of the members of the screening committee, have reasonable prospect of selection for appointment.
 - (f) The shortlist shall then be published for comment by a specified closing date.
 - (g) After the closing date referred to in paragraph (f), the shortlist, together with the nomination of every shortlisted candidate, as well as all the comments received on a shortlisted candidate, shall be distributed to all members of the Commission.
 - (h) The Commission shall interview all shortlisted candidates.
 - (i) The interviews contemplated in paragraph (h) shall be open to the public and the media.
 - (j) After completion of the interviews, the Commission shall deliberate in private and shall after deliberation decide upon the candidates to be recommended for appointment by a majority vote. The voting process shall be conducted by way of secret ballot.
 - (k) The Chairperson of the Commission shall distil and record the Commission's reasons for recommending the candidates selected.
 - (l) If further candidates have to be recommended in terms of section 174(4) of the Constitution, the Commission may in its discretion select them-

- (i) from the candidates already interviewed *mutatis mutandis* in accordance with the procedures described in paragraphs (j) to (m); or
- (ii) by repeating the whole process *mutatis mutandis* in accordance with the procedures described in paragraphs (b) to (m).

- (m) The Commission shall announce publicly the names of the recommended candidates.
- (n) The Commission shall advise the President of the Republic of the names of the recommended candidates for appointment and of the reasons for their recommendation.

3. Judges of all other Courts. — The procedure for the selection of candidates for appointment as Judges of all other Courts in terms of section 174(6) of the Constitution shall be as follows-

- (a) The Head of a Court shall inform the Commission when a vacancy occurs or will occur.
- (b) The Commission shall announce the vacancy publicly and call for nominations by a specified closing date.
- (c) A nomination contemplated in paragraph (b) shall consist of-
 - (i) a letter of nomination which identifies the person making the nomination, the candidate and the Court for which he or she is nominated;

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- (ii) the candidate's written acceptance of the nomination;
 - (iii) a detailed curriculum vitae of the candidate which shall disclose his or her formal qualifications for appointment as prescribed in section 174(1) of the Constitution, together with a questionnaire prepared by the Commission and completed by the candidate; and
 - (iv) such further pertinent information concerning the candidate as he or she or the person nominating him or her, wishes to provide.
- (d) After the closing date, all the members of the Commission shall be provided with a list of the candidates nominated, together with the nomination in respect of each candidate, with an invitation to-
- (i) inform the screening committee, prior to the meeting of the screening committee, of the names of the candidates, if any, who they feel strongly should be included in the shortlist of candidates to be interviewed, for consideration by the screening committee and;
 - (ii) the signification of the preferred name(s) must be accompanied by a written motivation.
- (e) The screening committee shall at its meeting, prepare a shortlist of candidates to be interviewed, which shall include those who qualify for appointment and who in the opinion of the majority of the members of the screening committee, have a reasonable prospect of selection for appointment.
- (f) The shortlist shall then be published for comment by a specified closing date.
- (g) After the closing date referred to in paragraph (f), the shortlist together with the nomination of every shortlisted candidate, as well as all the comments

received on a shortlisted candidate, shall be distributed to all members of the Commission.

- (h) The Commission shall interview all shortlisted candidates.
- (i) The interviews contemplated in paragraph (h) shall be open to the public and the media.
- (j) After completion of the interviews for a specific Court, the Commission shall deliberate in private and shall after deliberation, decide upon the candidates to be recommended for appointment by a majority vote. The voting process shall be conducted by way of secret ballot.
- (k) The Commission shall announce publicly the name of the recommended candidate for each vacancy.
- (l) The Commission shall advise the President of the Republic of the name of the recommended candidate for each vacancy.

4. *Transfer of Judges from one High Court to another*

- (a) A Judge of a High Court who wishes to be transferred to another High Court may be considered for such transfer only if a vacancy occurs in the Court to which he or she seeks to be transferred and such vacancy has been advertised by the Commission.
- (b) A Judge seeking such transfer shall be required to apply for such vacancy, to complete the standard questionnaire for Judges, and to be interviewed by the Commission in the normal course together with other candidates.
- (c) A transfer of such Judge may only be effected after a decision of the Commission recommending such transfer.

5. *President of the Land Claims Court*

When a vacancy occurs in the office of President of the Land Claims Court, the Commission shall advise the President of the Republic on a candidate for appointment as President of the Land Claims Court in terms of section 22(3) of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), after the Commission has acted *mutatis mutandis* in accordance with the procedure for the selection of candidates for appointment as Judges of the High Court.

6. *Additional Judges of the Land Claims Court*

The procedure for consultation with the President of the Republic on the appointment of additional Judges of the Land Claims Court in terms of section 22 (4) of the Restitution of Land Rights Act, 1994, shall be determined on an *ad hoc* basis in consultation with the Office of the President of the Republic.

7. *Departure*

The Commission may depart or condone any departure from this procedure whenever, in its opinion, it is appropriate to do so.

8. *Withdrawal*

This Procedure replaces the Procedure promulgated by Government Notice No. 24596 of 27 March 2003, which is hereby withdrawn.