



TERMS OF REFERENCE FOR SHORTLISTING PANEL OF NOMINATIONS RECEIVED FOR PURPOSES OF FILLING THE IMMINENT VACANCY OF THE CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

1. BACKGROUND

1.1 The term of office of the current Chief Justice, Justice Mogoeng Mogoeng, comes to an end on 11 October 2021. Section 174(3) of the Constitution of the Republic of South Africa, 1996 (the Constitution) provides as follows:

“(3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the *Chief Justice* (emphasis added) and the Deputy Chief Justice and, after consulting the Judicial Service Commission, appoints the President and Deputy President of the Supreme Court of Appeal.”

1.2 To promote transparency and enable public participation, The President Ramaphosa (the President) has invited all South Africans to submit nominations of candidates for the position of the next Chief Justice.

2. COMPOSITION OF THE PANEL

The President appointed the Shortlisting Panel (Panel) consisting of the following eminent persons:

- (a) Judge Navanethem (Navi) Pillay, former judge of the International Criminal Court and United Nations High Commissioner for Human Rights, as Chairperson of the Panel;
- (b) Mr Jeff Radebe, former Minister of Justice and Constitutional Development as Deputy Chairperson of the Panel;
- (c) Mr Ronald Lamola, MP, Minister of Justice and Correctional Services;
- (d) Adv Thuli Madonsela, former Public Protector and professor of law at University of Stellenbosch;

- (e) Ms Mmapaseka Steve Letsike, co-chair of the South African National AIDS Council; and
- (f) Professor Ziyad Motala, Professor of Law at Howard University School of Law.

3. SCOPE OF WORK

3.1 The Panel must—

3.1.1 Assess and scrutinise all received nominations against the assessment criteria stated in paragraph 5;

3.1.2 Submit a report to the President in which-

(a) it summarises all Nominations submitted in compliance with the stipulated requirements; and

(b) Provide a substantiated, non-prescriptive recommendation of three to five nominees, who, in the view of the Panel satisfy the assessment criteria stated in paragraph 5.

3.1.3 The Panel needs to compile a shortlist of three to five candidates for submission to the President for his referral of candidates from the shortlist to be interviewed by the Judicial Service Commission. This shortlist will be compiled subsequent to a clarification exercise by the Panel of all Viable Nominations received from the Public followed by a written motivated recommendation in a Report to the President.

3.2 The Panel may engage or liaise with any person whose nomination meets the criteria prescribed under paragraph 5 for purposes of eliciting any information that is material to the task of the Panel.

3.3 If the Panel, from the received nominees determines, that there is an insufficient pool of eligible nominees to be shortlisted for nomination in accordance with the set criteria, it must without delay advise the President accordingly.

4. DECISION MAKING PROCESS

4.1 The Panel determines its procedures.

- 4.2 All the decisions of the Panel will be by consensus except where consensus cannot be reached, in which event, the decision will be taken by the majority of the panellists. In the event of no clear majority the Chairperson will have a casting vote.
- 4.2 The Chairperson must ensure that a written record of decisions of each meeting of the Panel is kept.
- 4.3 In its inaugural meeting, the Panel members must disclose any conflicts of interest that may be prejudicial to the decisions of the Panel. In the event any Panel member disclosing a conflict of interest the remaining Panel members must devise an appropriate remedy.

5. APPOINTMENT CRITERIA

In determining whether a candidate is suitable to be shortlisted and recommended for nomination by the President for purposes of filling the vacancy of the Chief Justice, the Panel must assess whether such candidate—

- 5.1 is a fit and proper person who possess the qualifications, skills, knowledge and expertise reasonably expected of an incumbent of the position of the Chief Justice;
- 5.2 meets the constitutional requirements for appointment including with regard to citizenship and mandatory age for discharge from active service;
- 5.3 as head of the Judiciary, demonstrates the ability and capability to:-
- (a) defend, protect and uphold the Constitution;
 - (b) create a conducive environment for asserting the independence of the judiciary and respect for separation of powers; lead and spearhead South Africa's transformative jurisprudence geared for the advancement of social justice and access to justice; and
 - (c) promote a culture of work ethic geared to meet the acceptable judicial performance standards and standards of accountability.

5.4 is reputed to be, of unblemished integrity, be beyond reproach, possess moral leadership qualities and strong skills that would assist in promoting and enhancing an harmonious environment for the entire judiciary;

5.5 Judicial Competence;

5.6 Demonstrate a level of sensitivity and objectivity towards equality in terms of race, gender, persons with disabilities, LGBTI people and other vulnerable groups.

6. ADMINISTRATIVE AND TECHNICAL SUPPORT TO THE PANEL

6.1 The Panel is assisted by the secretariat consisting of officials from the Department of Justice & Constitutional Development as well as the Presidency.

6.2 The Panel may commission any technical assistance, including research that it deems necessary in the performance of its task.

7. TIMEFRAMES

| Description | Latest Date |
|--|--------------------|
| Inaugural meeting of the Panel | 30 September 2021 |
| Closing date of submission of nominees | 01 October 2021 |
| Publication of list of nominees | 04 October 2021 |
| Deadline for submission of objections and comments in relation to the published list of nominees | 15 October 2021 |
| Submission of report of the Panel to the President | 29 October 2021 |