

Tuesday, 29 August 2023]

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PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS,

TABLINGS AND

COMMITTEE REPORTS

TUESDAY, 29 AUGUST 2023

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ANNOUNCEMENTS

National Assembly and National Council of Provinces

The Speaker and the Chairperson

1. Draft Bills submitted in terms of Joint Rule 159

- (1) **Regulation of Interception of Communications and Provision of Communication-Related Information Amendment Bill, 2023**, submitted by the Minister of Justice and Correctional Services.

Referred to the **Portfolio Committee on Justice and Correctional Services** and the **Select Committee on Security and Justice**, for information.

- (2) **National Prosecuting Authority Amendment Bill, 2023**, submitted by the Minister of Justice and Correctional Services.

Referred to the **Portfolio Committee on Justice and Correctional Services** and the **Select Committee on Security and Justice**, for information.

- (3) **General Intelligence Laws Amendment Bill, 2023**, submitted by the Minister in The Presidency.

National Assembly

The Speaker

1. Introduction of Bills

- (1) **The Minister of Justice and Correctional Services**

- (a) **Regulation of Interception of Communications and Provision of Communication-Related Information Amendment Bill [B28–2023]** (National Assembly – proposed sec 75) [Explanatory summary of Bill and prior notice of its introduction published in *Government Gazette* No 49189 of 25 August 2023.]

Introduction and referral to the **Portfolio Committee on Justice and Correctional Services** of the National Assembly, as well as referral to the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160.

In terms of Joint Rule 154 written views on the classification of the Bill may be submitted to the JTM. The Bill may only be classified after the expiry of at least three parliamentary working days since introduction.

2. Referral to Committees of papers tabled

- (1) The following paper is referred to the **Portfolio Committee on Sport, Arts and Culture** for consideration:
 - (a) Report of the Pan South African Language Board (PanSALB) on Linguistic Human Rights Complaints finalised for 2022-23.

3. Membership of Assembly

- (1) The vacancy, which occurred in the National Assembly owing to the loss of membership of Mr W M Madisha in terms of section 47(3)(c) of the Constitution, has been filled with effect from 16 August 2023 by the nomination of Mr T Loate.

TABLINGS

National Assembly

1. The Speaker

- (a) A petition from Team Free Sanitary Pads, calling on the Assembly to investigate the introduction of a Menstrual Health and Hygiene Management Bill and its subsequent enactment as law. (Ms T Bodlani)

Referred to the **Portfolio Committee on Women, Youth and Persons with Disabilities** for consideration and report.

COMMITTEE REPORTS

National Assembly

1. REPORT OF THE *AD HOC* COMMITTEE TO NOMINATE A PERSON FOR APPOINTMENT AS PUBLIC PROTECTOR, DATED 29 AUGUST 2023

The *ad hoc* Committee to Nominate a Person for Appointment as Public Protector (the Committee), having considered the request by the National Assembly to nominate a person for appointment as Public Protector, reports as follows:

1. On 25 May 2023, having noted that the term of office of the Public Protector expires on 14 October 2023, the National Assembly resolved, in accordance with section 193(5) of the Constitution of the Republic of South Africa, 1996, to establish an *ad hoc* committee to nominate a person for appointment as Public Protector. The Committee to -
 - (a) Consist of eleven members as follows: African National Congress (ANC) 6, Democratic Alliance (DA) 2, Economic Freedom Fighters (EFF) 1 and other parties 2;
 - (b) Consist further of fourteen non-voting members of the Assembly as follows: ANC 2, DA 1, EFF 1 and other parties 10;
 - (c) Exercise the powers in Rule 167 that it may deem necessary to perform its task; and
 - (d) Report to the House by 31 August 2023.

2. The following members were nominated by their parties to serve on the Committee:
 - ANC: Magwanishe, Mr G; Xaba, Mr VC; Lesoma, Ms RMM; Tlhape, Ms ME; Mananiso, Ms JS; Dyantyi, Mr QR.
 - DA: Ms. G Breytenbach; Mr. W Horn; Dr MM Gondwe (Non-voting member).
 - EFF: Maotwe, Ms OMC; Yako, Ms Y (Non-voting member).
 - Inkatha Freedom Party (IFP): Buthelezi, Mr EM.
 - Freedom Front Plus: Wessels, Mr WW.
 - National Freedom Party: Shaik-Emam, Mr AM (Non-voting member).
 - African Christian Democratic Party: Swart, Mr S (Non-voting member).

- AL JAMA-AH: Hendricks, Mr MGE (Non-voting member).
 - African Independent Congress: Jaftha, Mr SM (Non-voting member).
 - African Transformation Movement: Zungula, Mr V (Non-voting member).
 - Congress of the People: Madisha, Mr WM (Non-voting member).
 - GOOD: Herron, Mr BN (Non-voting member).
 - United Democratic Movement: Kwankwa, Mr NLS (Non-voting member).
 - Pan Africanist Congress of Azania: Nyhontso, Mr M (Non-voting member).
3. The Committee met for the first time on 6 June 2023, electing Mr VC Xaba (ANC) as the Chairperson of the Committee.
4. The Committee held further meetings, as follows:
- 8 June 2023 to consider its process.
 - 12 July 2023 to further consider its process, having received nominations and applications for the position.
 - 26 July 2023 to conduct shortlisting.
 - 22 August 2023 to further consider its process, including the results of the various screening processes.
 - 23 and 24 August 2023 to conduct interviews.
 - 29 August 2023 to conduct deliberations and to adopt the report.

5. *Legal framework and process*

- 5.1. The Committee's process is guided by the relevant constitutional and statutory provisions, as well as the Rules of the National Assembly.
- 5.2. In terms of section 193(4) of the Constitution, 1996, the President must appoint a Public Protector on the recommendation of the National Assembly. Regarding the role of the National Assembly, section 193(5) of the Constitution, 1996, provides that:

“The National Assembly must recommend persons -

- (a) nominated by a Committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and*
- (b) approved by the Assembly by a resolution adopted with the supporting vote of at least 60 per cent of the members of the Assembly if the recommendation concerns the appointment of the Public Protector ...'.*

6. Public participation

- 6.1. Section 193(2) of the Constitution provides that the involvement of civil society in the recommendation process may be provided for as envisaged in section 59(1) of the Constitution. Section 59(1) provides for public access to and involvement in the National Assembly. Broadly, the provision states that the Assembly must facilitate public involvement in its legislative and other processes and conduct its business in an open manner and hold its sittings, and those of its committees, in public.
- 6.2. To facilitate public participation, the Committee agreed to an open and transparent process:
 - 6.2.1. The advertisement requesting nominations or applications for the position of Public Protector from members of the public appeared in all official languages in various newspapers throughout the country. The advertisement also appeared on Parliament's website. The closing date for nominations or applications was 7 July 2023.
 - 6.2.2. The Committee received a total of 53 nominations and 17 applications. Of the 53 nominations, 32 did not meet the nomination requirements as set out in the advertisement. Two candidates subsequently withdrew from the process.

6.2.3. The Committee published the names of all candidates, with their accompanying *curriculum vitae* on Parliament's website, providing members of the public with the opportunity to make submissions on the candidates. The period for public comment closed on 21 July 2023. The Committee considered the submissions, noting that there were no adverse remarks about any of the candidates.

7. Selection criteria and shortlisting

7.1. Section 193 of the Constitution, 1996, and section 1A of the Public Protector Act 23 of 1994 set out the applicable criteria for appointment as Public Protector: The Public Protector must be a South African citizen and a fit and proper person to hold the position. Section 1A(3) of the Public Protector Act 23 of 1994, adds that the Public Protector shall be:

"...a South African citizen who is a fit and proper person to hold such office, and who-

(a) is a Judge of a High Court; or

(b) is admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or

(c) is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or

(d) has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or

(e) has, for a cumulative period of at least 10 years, been a member of Parliament; or

(f) has acquired any combination of experience mentioned in paragraphs (b) to (e), for a cumulative period of at least 10 years".

- 7.2. All candidates were requested to complete a questionnaire, which also contained disclosure provisions.
- 7.3. In addition, the Committee agreed that the academic qualifications of those shortlisted would be verified and that Parliament should be asked to facilitate screening of the candidates.
- 7.4. The results of these processes were made available to the Committee on 22 August 2023 prior to the interviews being conducted. There were no adverse findings in the reports provided.

8. *Shortlisting and Interviewing*

- 8.1. On 26 July 2023, the Committee met to shortlist the candidates. When considering the meaning of 'fit and proper' the Committee agreed to be guided by case law, which points to attributes such as character, experience, knowledge, and skills, among others.
- 8.2. A total of eight (8) candidates were shortlisted, as follows:
 - Adv. Kholeka Gcaleka.
 - Adv. Oliver Josie.
 - Ms Johanna Kwenadi Ledwaba.
 - Ms Muvhango Lukhaimane.
 - Adv. Lynn Marais.
 - Prof. Boitumelo Mmusinyane.
 - Adv. Kwena Thomas Ntsewa.
 - Adv. Tseliso Thipanyane.
- 8.3. The interviews were conducted at Parliament at S12A on 23 and 24 August 2023.
9. The Committee met to deliberate on 29 August 2023 and agreed to nominate Adv. Kholeka Gcaleka for appointment as Public Protector, with

the Democratic Alliance, Economic Freedom Fighters and Freedom Front Plus dissenting.

Recommendation

10. Having considered the National Assembly's request for the Committee to nominate a person for appointment as Public Protector, the Committee recommends that the House recommends Adv. Kholeka Gcaleka to the President for appointment as Public Protector.

11. *Appreciation*

11.1. The Committee would like to thank all candidates for making themselves available to be considered for appointment.

11.2. Further, the Committee would like to acknowledge the active involvement of members of the public in this process.

Report to be considered.