

Justice Portfolio Committee should open up selection process of Commissioners

By: Dr. Khulekani Moyo

The Parliamentary Portfolio Committee on Justice and Correctional Services recently advertised for nominations to the seven vacant positions of Commissioners at the South African Human Rights Commission. The call for nominations closed on 16th September and the next stage will be for the Committee to shortlist potential interviewees.

What is noteworthy is that the process has almost escaped the mainstream media's attention. This should be contrasted with nomination process to fill the soon-to-be vacant position of the Public Protector where there has been unprecedented attention from the media and civil society.

The selection process for the replacement of the public protector has certainly raised the bar in its openness and the transparency. Of particular significance has been the role of ordinary South Africans and civil society in carefully interrogating the candidates who were vying to be our next Public Protector.

It is important for South Africa's young but maturing democracy that a similar process be replicated for filling in key positions in all the Chapter Nine institutions such as the Commission. These institutions are significant for nurturing South Africa's young democracy. It is important that they be led by women and men whose integrity is beyond reproach.

Although the Committee should be lauded for making an undertaking that it will be transparent in the selection process for the seven Commissioners, the entire process appears to be proceeding under the radar of the media and civil society's attention. The Committee owes it to the people of South Africa that the selection process be open, transparent and beyond reproach. It would be ironic that the process meant to appoint those whose mandate is to safeguard and protect our human rights is itself insular and in violation of constitutional dictates of openness and transparency.

South Africa's complex and well documented and apartheid history, informed by colonialism, imperialism, struggles for independence, systemic human rights abuses, and inequality makes the Commission a focal point in the building of a human rights culture. It is not surprising that the Constitution grants the Commission a huge and all-encompassing human rights promoting, protecting and monitoring mandate.

A Commissioner with the Commission will find him/herself having to engage with some of the most complex issues in society involving vulnerable people, such as the rights of farm workers, access to basic education, access to health care services, corporal punishment in schools,

housing and evictions, the rights of migrants, older persons, racism and other human rights implicating issues.

It is apt that the Constitution provides very detailed criteria for one to be eligible for appointment as a Commissioner. A nominee must be a fit and proper person to hold that particular office; must have a record of commitment to human rights must have knowledge and experience of human rights - both in theory and practice. Skills that are often neglected in the appointment process are those that are appropriate to the Commissioners' oversight role, and these include strategic leadership, financial and human resource management skills.

Commissioners often preside over complex legal issues, high profile complaints and investigative hearings requiring a strong understanding of the law and the Bill of Rights. It might give the Commission the necessary edge and respect from the government and other stakeholders to appoint a former judge as Chairperson to ensure fidelity to the law in its execution of the mandate.

The Commission's credibility is dependent on its independence and this rests largely on the political neutrality, integrity and incorruptibility of those who man this important institution. The Public Protector selection process has shown that a strong civil society participation in the selection process is cardinal to ensure there is appropriate public scrutiny for those who offer themselves for appointment to important public positions. This will give the public an opportunity to assess the suitability of the nominees for appointment to such a key public institution.

Incompetent, ill-tempered, prejudiced and politically compromised candidates deserve to be exposed and ferreted out before the interview process. It is important that the best candidates proceed to the next stage given the unusually high number of Commissioners to be appointed.

The public must therefore be afforded a meaningful opportunity to participate in the selection process. The Constitution is very clear that parliament should involve the public in its processes and this obligation is central to a representative and participatory democracy. A reasonable opportunity should be offered to members of the public and all interested stakeholders to object or comment on any of the nominees. The Committee should therefore publicise the list of nominees and all their accompanying documents. Importantly, the Portfolio Committee should also give a reasonable time for interested parties to make any objections and comments on any of the nominees. In the interests of openness and transparency, any such objections should also be publicized.

South Africa's transition to democracy was underpinned by a strong constitutional and legal commitment to human rights as evidenced by the Constitution and the legal framework that followed. The role of the Commission is in many ways cardinal in translating the human rights vision, values and commitments in the Constitution into reality. Those tasked with the

important assignment of superintending this institution must be women and men of integrity genuinely committed to the human rights ethos espoused in the Constitution.