



**PRESIDENTIAL  
CLIMATE COMMISSION**  
TOWARDS A JUST TRANSITION

# DRAFT CHARTER

Version 5.0

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## Introduction

This document has been developed by the Presidential Climate Commission (hereinafter referred to as “**the Commission**”) after consultation with the Presidency and the Department responsible for supporting the establishment of the Commission and Secretariat.

The Commission is a multistakeholder advisory body established by the President of the Republic of South Africa to advise on the country’s climate change response and pathways to a low-carbon, climate-resilient economy and society. The Commission was mooted in the Presidential Jobs Summit Framework dated 4 October 2018 (hereinafter referred to as “**Agreement**”), which set out the intention behind the establishment of the Commission. In furthering the aims of the Agreement, the National Executive (hereinafter referred to as “**Cabinet**”) took a decision which approved the establishment of the Commission. Accordingly, the Commission was established by the President of the Republic of South Africa in terms of his constitutional authority under section 85(2)(b), (c) and (e) of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as “**the Constitution**”).

This document sets out the broad framework within which the Commission will undertake its day-to-day operations and covers the following matters:

- **Part-1:** briefly sets out the definitions adopted in this document as well as the purpose of this Charter;
- **Part-2:** sets out in detail the objectives, functions, powers and duties of the Commission;
- **Part-3:** focusses on the core issues of governance, administration and staff of the Commission;
- **Part-4:** addresses the financial and accountability matters; and
- **Part-5:** deals with the provisions for delegation of powers and duties by the Commission.

## PART-1: DEFINITIONS AND PURPOSE OF THIS CHARTER

### 1. Definitions

**‘adaptation’** means any adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects which moderates harm or exploits beneficial opportunities;

**‘Commission’** means the Presidential Climate Commission established by the President and communicated to the public on 9 September 2020;

**‘commissioner’** means a member of the Commission appointed by the President;

**‘confidential information’** means sensitive information disclosed to a commissioner or by a commissioner in the discharge of their official capacity in the Commission, which is not publicly available and may be commercially sensitive if disclosed without authorisation;

**‘conflict of interests’** means any direct or indirect financial or other material interest or benefit of an economic nature or to which a monetary value may be attributed that a commissioner may have, which results or could be reasonably perceived to result in a commissioner being unable to perform their functions in an impartial proper manner;

**‘Constitution’** means the Constitution of the Republic of South Africa, 1996, as amended from time to time;

**‘department’** means the Department responsible for supporting the establishment of the Commission and Secretariat;

**‘delegation’**, in relation to a duty, includes an instruction or request to perform or to assist in performing the duty;

**‘fit and proper person’** means a commissioner’s personal attributes relating to their integrity and independence, and also their possession of knowledge, technical skills and experience in matters of climate change science, socio-economic, environmental and broader sustainability field;

**‘incapacity’** means inability to perform the duties expected of a commissioner at the appropriate or expected work standard;

**‘just transition’** means a shift towards a low carbon, climate resilient economy and society and ecologically sustainable economies and societies which contribute toward the creation of decent work for all, social inclusion and the eradication of poverty;

**‘majority’** means more than 50% of the commissioners attending a quorate meeting and who are entitled to vote;

**‘Minister’** means the Cabinet Minister responsible for environmental affairs;

**‘misconduct’** means improper, inappropriate, or unlawful conduct of a commissioner which is contrary to the objectives of their official appointment to the Commission;

**‘mitigation’** means a human intervention to reduce the sources or enhance the carbon sinks of greenhouse gases;

**‘social partners’** means all stakeholders affected by climate change and the just transition.

## **2. Purpose of this Charter**

The purpose of this Charter is to set out the broad framework within which the Commission, as established by the President in September 2020, will operate as it carries out its mandate.

### **PART-2: OBJECTIVES, FUNCTIONS, POWERS AND DUTIES OF THE COMMISSION**

## **3. Objects of the Commission**

The Commission seeks to build a compact between social partners around a just climate transition through an inclusive, transparent, action-oriented process informed by science.

## **4. Independence of the Commission**

(1) The Commission has full legal capacity, is independent and impartial and is subject to the Constitution, applicable legislation and this Charter.

(2) The Commission and each commissioner must exercise their powers and perform their functions objectively and in good faith, and in compliance with the Constitution, applicable legislation and this Charter.

## **5. Governing principles**

The Commission will be governed by the following principles:

- (a) Efficient, economic and effective use of resources.
- (b) Transparency in the performance of its functions.
- (c) Independent advice informed by science.
- (d) The Commission will conduct its work in a manner that allows public participation, with a particular aim of including the voices of those most affected by climate change and the just transition.
- (e) The Commission will be accountable to the public for its work and activities.

## **6. Functions of the Commission**

The Commission is responsible to–

- (a) build consensus between social partners on key decisions involved in climate transition;
- (b) convene and facilitate role players to take their own and collaborative action to advance a just transition to a low-carbon and climate-resilient economy;
- (c) provide independent advice regarding detailed pathways to achieve a socially just, climate-resilient and low carbon economy and society;
- (d) identify threats and opportunities to jobs and livelihoods and recommend measures to transition to the labour force of the future;
- (e) promote the uptake of clean and climate-resilient technologies and facilitate climate finance and investment to support the transition to a socially just, climate-resilient and low carbon economy and society;
- (f) ensure that the best available scientific advice is mobilised to inform recommendations by the Commission on the key decision involved in the climate transition;

- (g) develop and promote the development of climate change expertise and technology in the State and social partners;
- (h) advise the Government of the Republic of South Africa and social partners about any matter relating to climate change response or the just transition generally;
- (i) recommend to the Government of the Republic of South Africa pathways to achieve a socially just, climate-resilient and low carbon economy and society by 2050; and
- (j) monitor and review progress towards climate goals and a just transition.

## **7. Powers and Duties of the Commission**

- (1) The Commission has power and authority to undertake activities within its mandate that are necessary or appropriate to be done for or in connection with the performance of its functions.
- (2) In particular the Commission has the power and authority to—
  - (a) acquire the necessary staff, whether by employment, secondment, appointment on contract or otherwise in accordance with employment practices that are fair, equitable and compatible with labour legislation and this Charter;
  - (b) enter into contracts;
  - (c) acquire or dispose of any right in or to movable or immovable property, or hire or let any property;
  - (d) accept donations or inheritance, including money, in accordance with this Charter;
  - (e) insure itself against—
    - (i) any loss, damage or risk; or
    - (ii) any liability it or any of the commissioners may incur in the exercise of their powers and performance of their functions;
  - (f) institute or defend any legal action;
  - (g) publish the results of such activities carried out by the Commission or others commissioned by the Commission to carry out such activities;
  - (i) liaise and exchange information, knowledge and expertise – including relevant traditional, indigenous and local knowledge – with the official bodies or authorities entrusted with the climate change response or just transition generally;
  - (j) co-operate with educational or other bodies or research institutions on the climate change response research, just transition research or clean and climate-resilient technologies;
  - (k) generally, carry out any other duty and exercise any other power not inconsistent with the Constitution, applicable legislation and this Charter.

## **PART-3: GOVERNANCE, ADMINISTRATION AND STAFF OF THE COMMISSION**

### **8. Members of the Commission**

- (1) The inaugural commissioners, comprising representatives of government departments and state entities, organised business, organised labour and civil society, were appointed by the President with effect from 17 December 2020.
- (2) The commissioners were appointed on a part-time basis for a five (5) year term.

(3) The Commission is chaired by the President, but if the President is absent from a meeting, the Deputy Chairperson.

(4) The Deputy Chairperson will be appointed from amongst the commissioners by the President.

(5) Whenever a vacancy occurs as contemplated in paragraph (14), the Commission will on written notice call for nomination from the category of social partners who nominated the vacating commissioner, whereafter that category of social partners shall nominate a replacement commissioner on written notice to the Commission for noting and endorsement, thereafter the Deputy Chairperson shall make a recommendation to the President for the appointment of a new commissioner.

(6) A person appointed to fill a vacancy will hold office of the unexpired portion of the term of the vacating member of the Commission.

#### *Acting Deputy Chairperson*

(7) If the Deputy Chairperson is for any reason absent or unable to exercise the responsibilities, duties and powers of that office, the President may appoint another commissioner as acting Deputy Chairperson for a period not exceeding six (6) months.

(8) Whilst acting as the Deputy Chairperson, such commissioner has the responsibilities, duties and powers of that office.

(9) In the event that the Deputy Chairperson or acting Deputy Chairperson is unable to attend a meeting of the Commission, that meeting will be chaired by an acting chairperson, elected by the commissioners who are present in that meeting, from one of their number.

#### *Term of office*

(10) An appointed commissioner—

(a) holds office for a term not exceeding five (5) years, but which is renewable for one further period of no longer than five (5) years period; and

(b) serves as a member of the Commission on the terms and conditions determined by the President and specified in the member's letter of appointment.

(11) A commissioner may have their term of office extended by the President for a specific period, if in the opinion of the President there are sound reasons for doing so.

#### *Remuneration and allowances of members of the Commission*

(12) The Minister will, after consultation with the Minister of Finance, determine commissioners' remuneration, allowances and benefits.

#### *Resignation by a member of the Commission*

(13) A commissioner may resign—

(a) on account of ill health or for any other reason which the Commission considers sufficient; and

(b) by giving at least one (1) month written notice to the Commission.

#### *Vacancy in the Commission*

(14) A member of the Commission will cease to be a commissioner—

(a) when that member's term of office expires; or

(b) if that member—

(i) resigns, subject to paragraph (13) above; or

(ii) is removed from office in terms of paragraph (15) below.

(15) The President may, on recommendation by the Commission, remove a commissioner from office on the grounds of—

- (a) misconduct or incapacity;
- (b) failure to perform the functions connected with that office or to exercise the powers and to perform the functions adequately, diligently and efficiently;
- (c) conviction of a criminal offence without the option of a fine;
- (d) engaging in any activity that may undermine the credibility, independence or integrity of the Commission; or
- (e) absence from three consecutive meetings of the Commission without the prior permission of the Commission except on cause shown.

(16) A commissioner may be removed from office on the ground of misconduct or incapacity only after a finding to that effect has been made by an enquiry appointed by the President.

(17) A commissioner may be suspended from office by the President at any time pending the outcome of an enquiry.

## **9. Conduct of members of the Commission**

(1) A commissioner will—

- (a) serve with integrity and good faith;
- (b) perform the functions of their office without fear, favour or prejudice; and
- (c) exercise their duties on a fully informed basis, with diligence, skill and care.

(2) A commissioner will not—

- (a) make private use of or profit from any confidential or privileged information gained as a result of their appointment as a commissioner, or improperly benefit another person;
- (b) divulge any confidential or privileged information to another person save in the course and scope of their official responsibilities;
- (c) by their conduct, association, statement or membership of any organisation place at risk their independence or perceived independence, or in any other manner harm the credibility, independence or integrity of the Commission; and
- (d) place themselves in a position where a conflict of interests arises with their obligations to the Commission.

(3) Subject to paragraph (4), a commissioner may not at any meeting of the Commission during the discussion of any matter before such meeting in respect of which they have any financial or other interest which might preclude them from performing the functions of their office without fear, favour or prejudice—

- (a) be present; or
- (b) in any other manner participate in the proceedings thereof.

(4) If at any stage during the course of any proceedings before the Commission it appears that a commissioner has or may have an interest which may cause a conflict of interests to arise on their part—

(a) such commissioner shall forthwith and fully disclose the nature of their interest and leave the meeting so as to enable the remaining members of the Commission to discuss the matter and determine whether such commissioner is precluded from participating in such meeting by reason of a conflict of interests; and

(b) such disclosure and the decision taken by the remaining members regarding such determination shall be final and binding, and shall be recorded in the minutes of the meeting.

(5) If a commissioner fails to disclose any interest as required by paragraph (4) above or, subject to that paragraph, is present at a meeting of the Commission or in any manner whatsoever participates in the proceedings of the Commission in relation to such matter, such proceedings may be reviewed and varied or set aside by the Commission.

## **10. Meetings of the Commission**

(1) (a) The Commission will meet at intervals of not less than four (4) times a financial year. Additional meetings may be held as practical circumstances may dictate from time to time.

(b) The meetings of the Commission will be chaired by the Deputy Chairperson.

(c) The Deputy Chairperson will determine the manner or mode in which a meeting of the Commission will be conducted.

(d) A special meeting of the Commission will be convened by the Deputy Chairperson at such intervals or as circumstances may dictate, or upon request by the President.

(2) (a) A majority of the commissioners present at a meeting will form a quorum.

(b) The Commission will endeavour to seek consensus but, where it is not possible to achieve a consensus, a decision will be made on the basis of the support of a majority of the commissioners with the Deputy Chairperson having a casting vote.

(c) The Commission must provide reasons for its decisions, in accordance with its governing principles in paragraph 5 of this Charter.

(3) The Commission may determine procedures, in accordance with the principles of this Charter, to be followed at its meetings and meetings of its sub-committees and the finance and governance committee, and further regulate the proceedings at its meetings, sub-committees and committee as it may think fit.

(4) The Secretariat will have minutes prepared and kept of the proceedings of the Commission meetings and must have copies of the minutes circulated to the commissioners.

(5) The minutes so prepared, when approved at a next meeting by the commissioners, will, in the absence of proof of error therein, be regarded and treated as a true and correct record of the proceedings and matters that they purport to minute and will be sufficient evidence of those proceedings and matters at any proceedings before a court of law, any tribunal or a commission of inquiry.

## **11. Establishment of sub-committees**

(1) The Commission may establish sub-committees consisting of commissioners as may be designated by the Commission, and technical experts as may be appointed by the Commission for that purpose and for the period determined by the Commission.

(2) The Commission may at any time extend the period of any appointment of a technical expert made by it under paragraph (1) above or, if in the opinion of the Commission there are sound reasons for doing so, terminate such appointment.



- (3) The Commission will designate a chairperson for every sub-committee and, if the Commission deems it necessary, a deputy chairperson.
- (4) For purposes of paragraph (3) above, the Commission will discuss and appoint a chairperson and deputy chairperson from amongst the commissioners designated to serve in a sub-committee with the support of a majority of the commissioners present at a meeting.
- (5) The chairperson of a sub-committee, subject to the provisions of this Charter, presides at meetings of the sub-committee.
- (6) In the event that the chairperson or deputy chairperson of a sub-committee is unable to attend a meeting of the sub-committee, that meeting will be chaired by an acting chairperson, elected by the members who are present in that meeting.
- (7) A sub-committee will, subject to the directions of the Commission, perform such functions of the Commission as the Commission may assign to it.
- (8) The procedure applicable at the meetings of any sub-committee will be as set out in paragraph 10 above, unless the Commission directs otherwise.
- (9) The Commission may at any time dissolve any sub-committee.

## **12. Development of Strategic Plan and Work Programme**

The Commission—

- (a) must develop and approve a Strategic Plan for the Commission annually for the next three (3) years and submit it to the Minister for final approval;
- (b) must provide oversight and direction on the implementation of the Work Programme of the Secretariat. The Secretariat must seek the prior approval of the Commission for actions or significant expenditure which falls outside the approved Work Programme or budget;
- (c) may give guidance or direction on the exercise of power and performance of function by the Secretariat;
- (d) may develop and approve a Code of Conduct for commissioners;
- (e) may develop and approve internal policies or guidelines on matters it deems appropriate to ensure its effective and efficient functioning.

## **13. The Secretariat**

- (1) The Commission has a secretariat consisting of—
  - (a) an Executive Director who is the head of the secretariat; and
  - (b) any other staff members referred to in paragraph 14 of this Charter.

### *Responsibilities of the secretariat*

- (2) The Secretariat, under the supervision, control and direction of the Executive Director, is responsible for—
  - (a) secretarial and administrative services to the Commission, sub-committees and finance and governance committee;
  - (b) organising and financing the meetings of the Commission, sub-committees and finance and governance committee;
  - (c) all logistical arrangements for all commissioners and for collating an agenda and documents relating to all matters to be dealt with by the Commission, sub-committees and finance and governance committee;

- (d) causing all records of matters dealt with by the Commission, sub-committees and finance and governance committee to be safeguarded;
- (e) managing and facilitating the work of the Commission throughout the year, and liaising with the sub-committees and finance and governance committee on matters the sub-committees and committee are directed to deal with by the Commission;
- (f) undertaking consultations, arrange dialogue sessions and involve social partners in order to support Commission's consensus building functions;
- (g) contracting and managing research, investigations or inquiries and collect any information on climate transition and related matters, in accordance with the approved Strategic Plan and priorities;
- (h) preparing the Commission's approved recommendations to government, in accordance with the decisions and instructions of the Commission;
- (i) raising funds from social partners or any other source, in accordance with this Charter;
- (j) contracting for procurement of goods and services;
- (k) accounting for monies received or paid out for or on account of the administration and functioning of the Commission, including preparing the reports required by paragraph 17(2) of this Charter;
- (l) performing such functions as may from time to time be directed by the Commission;
- (m) generally, performing such secretarial and administrative tasks related to the work of the Commission, sub-committees and finance and governance committee, as may from time to time be directed by the Commission.

#### *Appointment of Executive Director*

- (3) The Deputy Chairperson, after consultation with the President, the Minister and members of the Commission, will appoint a person with appropriate qualifications, experience and expertise as the Executive Director following a competitive recruitment process.

#### *Tenure, salary, allowances and benefits of the Executive Director*

- (4) The person appointed as the Executive Director holds office—
  - (a) for an agreed term not exceeding five (5) years, but which is renewable for one further period of no longer than five (5) years; and
  - (b) on terms and conditions determined by the Deputy Chairperson, which must include salary, allowances, benefits and performance standards, after consultation with the Minister of Finance.

#### *Resignation by the Executive Director*

- (5) The Executive Director, on one month written notice addressed to the Deputy Chairperson, may resign as Executive Director.

#### *Removal of Executive Director from office*

- (6) The Deputy Chairperson, after consultation with the President, the Minister and members of the Commission, may remove the Executive Director from office for—
  - (a) serious misconduct;
  - (b) permanent incapacity;
  - (c) conviction of a criminal offence without the option of a fine;

- (d) engaging in any activity that may undermine the credibility, independence or integrity of the Commission.
- (7) However, where a ground for removal is not admitted or is denied by the Executive Director, the Deputy Chairperson may not decide the matter unless the Deputy Chairperson has appointed an impartial person to investigate the grounds of removal, and—
- (a) the investigator has given the Executive Director sufficient opportunity to show cause why such ground for removal does not justify removal from office, and to make representations and give whatever explanations may be regarded necessary; and
  - (b) has duly considered the investigator's report as to the truth or accuracy, or otherwise, to the question whether or not such a ground for removal is sufficient to justify removal from office.
- (8) The Deputy Chairperson may suspend the Executive Director from office pending the outcome of the investigation on any condition as to remuneration that the Deputy Chairperson may approve and that is fair in the circumstances.

*Acting Executive Director*

- (9) Whenever the Executive Director because of illness or incapacity is unable to exercise the duties and powers of that office, or whenever there is a vacancy in that office, or if the Executive Director has been suspended under paragraph (8), the Deputy Chairperson may appoint a senior staff member of the Secretariat as acting Executive Director for a period not exceeding six (6) months.
- (10) If the Executive Director is for any reason absent, the Executive Director may appoint a senior staff member as acting head of the secretariat for a period not exceeding one (1) month.
- (11) Whilst acting as the Executive Director, such staff member has the responsibilities, duties and powers of the Executive Director.

**14. Administration and staff of the commission**

- (1) The Executive Director is the head of the administration who must perform the functions of office in accordance with this Charter under the oversight and direction of the Commission.
- (2) As administrative head, the Executive Director—
- (a) is responsible for the management of the administration, including the—
    - (i) organisation, control and management of all staff; and
    - (ii) maintenance of discipline;
  - (b) will comply with paragraph 15(11) of this Charter; and
  - (c) will report to the Commission on aspects of management of the administration, implementation of the Work Programme of the Secretariat and the exercise of duties and powers assigned to the Executive Director in terms of this Charter, at such frequency and in such manner, as the Commission may require.
- (3) The Executive Director must exercise the responsibilities, duties and powers of office subject to the directions of the Commission.
- (4) The Executive Director—
- (a) within the administrative, functional and financial limits set by the Commission, must determine a staff establishment necessary for the work of the Commission; and

- (b) may appoint persons in posts on the staff establishment.
- (5) A person appointed in terms of this paragraph is employed subject to the terms and conditions of employment determined by the Commission, and must be paid the remuneration, allowances and benefits determined by the Commission after consultation with the Minister, subject to paragraph (7) below.
- (6) A person seconded to the Commission or appointed on contract to perform specific tasks, must carry out their duties under the control and directions of the Executive Director in accordance with the secondment agreement or contract of employment.
- (7) The Secretariat will establish and follow employment practices that are fair, equitable and compatible with labour legislation.

#### **PART-4: FINANCIAL AND ACCOUNTABILITY MATTERS**

##### **15. Finances and accountability**

- (1) The Commission will comply with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999) for financial reporting and accountability purposes.

##### *Funding*

- (2) The Commission will be funded from moneys—
- (a) appropriated by Parliament for that purpose to departmental vote in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
  - (b) received by way of grant, donation or inheritance from any of the social partners or any source, whether inside or outside the country, in accordance with a fundraising strategy to be adopted by the Commission from time to time. That strategy will provide that such funding, amongst others:
    - (i) must be unconditional other than that it will be used towards fulfilment of the functions of the Commission;
    - (ii) will not result in a conflict of interests for the Commission or any commissioner;
    - (iii) must be disclosed in full in accordance with any applicable legislation and this Charter.
- (3) Monies appropriated by Parliament for this purpose—
- (a) constitute earmarked funds on the Minister's departmental vote; and
  - (b) may not be used by the Commission for any other purpose, without the approval of the Department and National Treasury.
- (4) The Commission may accept a grant, donation or inheritance, in accordance with the fundraising strategy to be adopted by the Commission from time to time.
- (4A) All grants, donations or inheritances shall be disclosed in the annual report of the Commission, and all material grants, donations or inheritance must be itemised.

##### *Bank accounts*

- (5) The Commission may open one or more accounts with an institution or institutions registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).
- (6) All money received by or on behalf of the Commission shall promptly be deposited into such account or accounts.
- (7) Only the Executive Director or staff members authorised by the Executive Director, in writing, may make payments from such a bank account, with three signatories.

### *Budget and financial administration*

- (8) The Commission will budget for the necessary resources or additional resources to enable it to exercise its powers and perform its duties and functions effectively.
- (9) The Commission will consult with the Department on the funds required for the administration and functioning of the Commission, as part of the budgetary process of departments of State.
- (10) The Executive Director is responsible for—
- (a) managing the financial administration of the Commission;
  - (b) accounting for monies received or paid out for or on account of the administration and functioning of the Commission; and
  - (c) all assets and the discharge of all liabilities of the Commission.
- (11) The Executive Director will, for the purposes of paragraph (10), take all reasonable steps to ensure—
- (a) that full, true and effective records of all income and expenditure and of all assets, liabilities, and of all financial transactions of the Commission are kept, which records must be audited by the Auditor-General of South Africa;
  - (b) that the Commission has and maintains a system of internal control under the oversight and direction of the finance and governance committee for—
    - (i) effective, efficient and transparent system of financial reporting processes and disclosure practice;
    - (ii) administrative and accounting compliance practice;
    - (iii) corporate governance;
    - (iv) effective, efficient and transparent system of risk management;
    - (v) effective, efficient and transparent system of internal and external audit processes;
    - (vi) appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
    - (vii) the information technology system governance framework; and
    - (iv) properly evaluating the Commission's system of monitoring compliance with laws and regulations applicable to the Commission;
  - (c) a high standard of professional ethics within staff members of the Commission;
  - (d) that the resources of the Commission are used effectively, efficiently, economically and transparently;
  - (e) that irregular expenditure, fruitless and wasteful expenditure and losses resulting from criminal conduct are prevented;
  - (f) that the assets of the Commission are effectively managed, safeguarded and maintained, and that liabilities are properly managed;
  - (g) that all contractual obligations of the Commission are complied with;
  - (h) that any irregular or fruitless and wasteful expenditure in the administration is immediately reported to the Commission, in writing;

- (i) that all relevant financial considerations, including issues of propriety, regularity and value for money, are considered when decisions affecting the Commission's funds are made; and
- (j) that staff members of the Commission comply with the measures set out above.

#### *Auditing of Commission's accounts and financial management*

(12) The Commission shall annually appoint the Auditor-General of South Africa to audit the accounts and financial management of the Commission.

(13) A person assigned as auditor by the Auditor-General of South Africa in terms of paragraph (12)—

- (a) must be registered as an accountant and auditor in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005); and
- (b) may not have any conflict of interest as a result of the assignment by the Auditor-General of South Africa.

#### *Annual report and financial statements*

(14) The Executive Director, under the oversight and direction of the finance and governance committee, will for each financial year prepare an annual report and financial statements which—

- (a) fairly present the state of affairs of the Commission, including all material grants, donations or inheritances received, its activities, financial results, performance against predetermined objectives and financial position as at the end of the financial year;
- (b) include particulars of—
  - (i) any material losses through criminal conduct, any material irregular expenditure, and any fruitless and wasteful expenditure that occurred during the financial year;
  - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure; and
  - (iii) any other matters that the external auditor considers necessary.

(15) The financial statements must be in accordance with international best practice.

(16) The Executive Director must within two (2) months after the end of a financial year submit the financial statements for that year to the Auditor-General of South Africa as appointed in terms of paragraph (12) above.

(17) The Auditor-General of South Africa must—

- (a) audit those statements; and
- (b) submit an audit report on those statements to the Commission within two (2) months of receipt of the statements for auditing, which report must include an opinion or conclusion on the reported information relating to the performance of the Commission against predetermined objectives.

(18) The Commission will submit the annual report, the financial statements and the audit report on those statements within six (6) months after the financial year to which they relate to the Minister for tabling in the National Assembly.

## **16. Finance and Governance Committee**

- (1) The finance and governance committee is hereby established.
- (2) The Commission will establish and maintain a system of internal control contemplated in paragraph 15(11)(b) of this Charter to comply with and operate in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999) under the oversight and direction of the finance and governance committee.

#### *Composition of the committee*

- (3) The finance and governance committee will consist of—
  - (a) at least two (2) commissioners, one (1) of whom shall be appointed chairperson of the committee by the Commission;
  - (b) Executive Director; and
  - (c) finance and governance experts not in the employ of the Commission to be determined and appointed by the Commission from time to time.
- (4) The membership of the committee should have the requisite business, financial and leadership skills.

#### *Remuneration and allowances of members of the committee*

- (5) The Commission will, after consultation with the Minister, determine remuneration, allowances and benefits for members of the committee for the days (including any part of a day) on which a member of the committee was officially occupied with the business or affairs of the committee.

#### *Term of office and vacancy in the committee*

- (6) A member of the committee holds office at the Commission's pleasure.
- (7) A majority of the members of the committee present at a meeting will form a quorum, which will include at least two (2) commissioners, Executive Director and one (1) finance and governance expert.
- (8) The Commission may fill a vacancy in the committee. A person appointed to fill a vacancy will hold office of the unexpired portion of the term of the vacating member of the committee.

#### *Acting Chairperson*

- (9) In the absence of a chairperson of the committee for a substantial period of time or from a meeting, or if the appointment of a chairperson is pending, or if the position of chairperson is vacant for any reason, the Commission will appoint any other commissioner as acting chairperson.

#### *Areas of responsibility*

- (10) The committee shall exercise oversight and direction in the following areas of the responsibility:
  - (a) financial reporting processes and disclosure practices;
  - (b) administrative and accounting compliance practices;
  - (c) corporate governance framework;
  - (d) risk management;
  - (e) procurement and provisioning system;
  - (f) internal and external audit processes and practices;
  - (g) information technology governance framework; and



- (h) system for monitoring compliance with relevant laws and regulations applicable to the Commission.

#### *Powers of the committee*

- (11) The committee has power to do all things that appears to it necessary or appropriate to be done for or in connection with the exercise of oversight and direction in the areas of responsibility.

#### *Conduct of members of the committee*

- (12) A member of the committee—

- (a) must perform the functions of their office in good faith and without favour or prejudice;
- (b) must disclose to the committee any personal or private business interest that that member, or spouse, or partner, or close family member of that member may have in any matter before the committee, and must withdraw from the proceedings of the committee when that matter is considered, unless the committee decides that the interest of that committee member in the matter is trivial or irrelevant;
- (c) may not use their office, privilege information or knowledge for private gain or to improperly benefit another person; and
- (d) may not act in a way that compromises the credibility, impartiality or integrity of the committee.

- (13) If a member of the committee fails to disclose any interest as required by paragraph (12)(c) above or, subject to that paragraph, is present at a meeting of the committee or in any manner whatsoever participates in the proceedings of the committee in relation to such matter, such proceedings may be reviewed and varied or set aside by the Commission.

#### *Meetings of the committee*

- (14) The procedure applicable at the meetings of the committee will be as set out in paragraph 10 above, unless the Commission directs otherwise.

#### *Accountability of the committee*

- (15) The committee is accountable to the Commission. In this regard, the committee will not have decision making power, but make recommendations to the Commission for a decision.

- (16) The committee will report quarterly to the Commission.

- (17) The Commission will be responsible to annually review the effectiveness of the committee.

### **17. Accountability reports**

- (1) The Commission is accountable to the President.

- (2) The Commission will annually submit a report to the Minister on its activities and the performance of its functions, including the implementation of its approved Strategic Plan.

- (3) In addition, the Commission will annually, within six (6) months after the end of each financial year, submit to the Minister—

- (a) the report on the overall control of the Commission's administration in terms of paragraph 14(1) of this Charter; and



- (b) the report, the financial statements and the audit report on those statements in terms of paragraph 15(12) of this Charter.
- (4) The Commission shall furnish the Minister with such additional information and particulars as the Minister may from time to time in writing require in connection with the activities or functions of the Commission.
- (5) If the Commission fails to comply with paragraph (2) and (3) above, the Commission will promptly submit a written explanation setting out the reasons for the delay to the Minister.
- (6) The Minister must table in the National Assembly the reports submitted in terms of paragraph (2) and (3)—
  - (a) within 15 business days after receiving the reports from the Commission; or
  - (b) if the National Assembly is not then sitting, within 15 business days after the commencement of the next sitting.

## **PART-5: GENERAL PROVISIONS**

### **18. Delegation of powers and duties**

- (1) The Commission may delegate any power or duty assigned to the Commission in terms of this Charter, to—
  - (a) the Executive Director; or
  - (b) any sub-committee established in terms of paragraph 11 of this Charter.
- (2) The Executive Director may delegate to another staff member—
  - (a) any power or duty assigned to the Executive Director in terms of this Charter; or
  - (b) any power or duty reasonably necessary to assist the Executive Director in complying with a duty assigned in terms of this Charter to take reasonable steps to ensure the achievement of a specific result.
- (3) A delegation in terms of paragraph (1) or (2) —
  - (a) will be in writing;
  - (b) is subject to any limitations, conditions and directions the Commission or Executive Director may impose;
  - (c) does not divest the Commission or Executive Director of the responsibility concerning the exercise of the delegated power or duty;
  - (d) does not prevent the exercise of the delegated power or duty by the Commission or Executive Director; and
  - (e) may be withdrawn at any time.
- (4) The Commission or Executive Director may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this paragraph, subject to any rights that may have accrued to a person as a result of the decision.