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**GOVERNMENT NOTICE**  
**GOEWERMENTSKENNISGEWING**

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**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**  
**DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING**

No. R. 423

27 March 2003

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

Under section 5 of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), 1, Penuell Mpapa Maduna, Minister for Justice and Constitutional Development, 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 (Act No. 108 of 1996), in the Schedule hereto.

**P. M. MADUNA**

**Minister for Justice and Constitutional Development**

**SCHEDULE**

***Definitions***

1. 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 (Act No. 108 of 1996);

“the Institutions” means the Law Society of South Africa, the Black Lawyers Association, the Department of Justice and Constitutional Development, the General Council of the Bar of South Africa, the Magistrates Association of South Africa, the National Association of Democratic Lawyers, the Society of Teachers of Law and the Association of Regional Magistrates of South Africa, and such other institutions with an interest in the work of the Commission as the Commission may identify from time to time;

a selection made by “majority vote” is one made with the support of at least an ordinary majority of all the members of the Commission; and

“the screening committee” means an *ad hoc* subcommittee of the Commission constituted from time to time.

### ***Judges of the Constitutional Court***

2. The procedure for the nomination 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) Each 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 members of the Commission shall be provided with a list of the candidates nominated with an invitation to -

(i) make additional nominations should they wish to do so and such nominations shall comply with the requirements of paragraph (c) above; and

(ii) inform the screening committee of the names of the candidates, if any, who they feel strongly should be included in the short list of candidates to be interviewed.

(e) The screening committee may, in its discretion, receive and consider nominations received after the specified closing date and shall prepare a short list of candidates to be interviewed which shall include all candidates who qualify for appointment and who -

- (i) are referred to in paragraph (d) (ii); or
- (ii) in the opinion of the screening committee or any of its members, have a real prospect of recommendation for appointment.
- (f) (i) The short list of candidates proposed by the screening committee shall forthwith be submitted to the members of the Commission.
- (ii) Within 7 days of receipt of the short list any member of the Commission may request the Secretary of the Commission in writing to add to the short list the name of any candidate who was duly nominated, but who was not included in the short list, and who the member feels strongly should be added to the short list of candidates to be interviewed.
- (iii) The name of any such candidate shall thereupon be added to the short list.
- (g) The short list shall be distributed to the institutions and publicly announced for comment by a specified closing date.
- (h) After the closing date referred to in paragraph (g), the short list and all the material received on short-listed candidates shall be distributed to all the members of the Commission.
- (i) The Commission shall interview all short-listed candidates.
- (j) The interviews contemplated in paragraph (i) shall be open to the public and the media subject to the same rules as those ordinarily applicable in courts of law and shall not be subject to a set time-limit.
- (k) After completion of the interviews, the Commission shall deliberate in private and shall, if deemed appropriate, select the candidates to be recommended for

appointment in terms of section 174 (4) of the Constitution by consensus or, if necessary, by majority vote.

(l) The chairperson and deputy chairperson of the Commission shall distil and record the Commission's reasons for recommending the candidates selected.

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

(n) The Commission shall announce publicly the names of the candidates recommended for appointment.

(o) 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 (k) to (n); or

(ii) by repeating the whole process *mutatis mutandis* in accordance with the procedures described in paragraphs (b) to (n).

### ***Judges of the High Court***

3. The procedure for the selection of candidates for appointment as judges of the High Court in terms of section 174 (6) of the Constitution shall be as follows:

(a) The President of the Supreme Court of Appeal or responsible Judge President shall inform the Commission when a vacancy occurs or will occur in the Supreme Court of Appeal or any provincial or local division of the High Court.

(b) The Commission shall inform the institutions of the vacancy and shall 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 division of the High Court for which he or she is nominated;

(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 with an invitation to -

(i) make additional nominations should they wish to do so and such nominations shall comply with the requirements of paragraph (c) above; and

(ii) inform the screening committee of the names of the candidates, if any, who they feel strongly should be included in the short list of candidates to be interviewed.

(e) The screening committee may, in its discretion, receive and consider nominations received after the specified closing date and shall prepare a short list of candidates to be interviewed, which shall include all candidates who qualify for appointment and

who -

(i) are referred to in paragraph (d) (ii); or

(ii) in the opinion of the screening committee or any of its members, have a real prospect of selection for appointment.

(f)(i) The short list of candidates proposed by the screening committee shall forthwith be submitted to the members of the Commission.

(ii) Within 7 days of receipt of the short list any member of the Commission may request the Secretary of the Commission in writing to add to the short list the name of any candidate who was duly nominated but who was not included in the short list and who the member feels strongly should be added to the short list of candidates to be interviewed.

(iii) The name of any such candidate shall thereupon be added to the short list.

(g) The short list shall be distributed to the institutions for comment by a specified closing date.

(h) After the closing date referred to in paragraph (g), the short list and all the material received on short-listed candidates shall be distributed to all the members of the Commission.

(i) The Commission shall interview all short-listed candidates.

(j) The interviews contemplated in paragraph (i) shall be open to the public and the media subject to the same rules as those ordinarily applicable in courts of law and shall not be subject to a set time limit.



(k) After completion of the interviews, the Commission shall deliberate in private and shall, if deemed appropriate, select the candidates for appointment by consensus or, if necessary, majority vote.

(l) The Commission shall advise the President of the Republic of the name of the successful candidate for each vacancy.

(m) The Commission shall announce publicly the name of the successful candidate for each vacancy.

***Transfer of judges from one High Court to another***

4. (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.

***President of the Land Claims Court***

5. 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.

***Additional Judges of the Land Claims Court***

6. 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.

***Departure***

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

***Withdrawal***

8. This Procedure replaces the Procedure promulgated by Government Notice No. R. 114 of 2 February 1996, as amended by Government Notices Nos. R. 795 of 13 June 1997 and R. 402 of 5 April 2002, which are hereby withdrawn.