

8 March 2021

Attention: The Secretary of the Parliamentary
Portfolio Committee on Trade, Industry
and Competition

C/O: ahermans@parliament.gov.za
tmadima@parliament.gov.za

Dear Sir,

**SUBMISSION BY THE ORGANISATION UNDOING TAX ABUSE: NATIONAL LOTTERIES
COMMISSION – APPOINTMENT OF CHAIRPERSON**

OUR REF: ED1904/005

YOUR REF: UNKNOWN

1. We refer to the above.
2. The Organisation Undoing Tax Abuse (“OUTA”) is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation.
3. Part and parcel to OUTA’s mission is challenging and acting against maladministration and corruption and where possible, holding individuals personally responsible to account for their unlawful actions.
4. We are cognisant of the fact that the Parliamentary Portfolio Committee on Trade, Industry and Competition (“the PC”) has regard to due process being followed in the appointment of a suitable candidate as chairperson for the National Lotteries Commission (“the NLC”). However, OUTA contends that although the shortlisted candidates have been selected through a parliamentary voting process by the PC, some individuals may be unsuitable for the position.
5. As such, we submit that it is our duty as civil society to inform the PC in support of a fair and transparent appointment process.

OUTA’S CONCERNS – BACKGROUNDS OF SHORTLISTED CANDIDATES

6. We submit that the following shortlisted candidates are unsuitable to be considered for the position of chairperson within the NLC:

6.1 Dr Muthuhadini Alfred Madzivhandila (“Dr Madzivhandila”)

- 6.1.1 Dr Madzivhandila has been serving on the board of the NLC from 1 April 2017 to present. This is the same board that has observed allegations of corruption and maladministration pertaining to the NLC proactive funding model.
- 6.1.2 Subsequent to the allegations that have been widely covered in the media, followed by a series of criminal complaints lodged with the South African Police Service (“the SAPS”) – of which OUTA lodged two criminal complaints against the NLC in 2019, the Special Investigating Unit (“SIU”) was mandated by the President of the Republic of South Africa to investigate the NLC.
- 6.1.3 The scope of the SIU’s proclamation includes the investigation of serious maladministration and unlawful appropriation of expenditure of public money of property and covers a period between 1 January 2014 and 6 November 2020 (as well as instances prior to the aforementioned date, which are ancillary to conduct being investigated). It should be noted that Dr Madzivhandila has been serving on the NLC board from 1 April 2017.
- 6.1.4 Dr Madzivhandila served as a director of Enterprise South Africa (Tshwane) from 6 May 2004, a non-profit company that received grant funding from the NLC totalling R900,000.00. It is unclear whether this had been declared by Dr Madzivhandila upon appointment to the NLC board. It is advised that the PC ascertain the details of this transaction and consider a possible conflict of interest.
- 6.1.5 Notwithstanding pending investigations on various levels by both law enforcement agencies and regulatory bodies and notwithstanding the absence of a final outcome of such investigations, it should be emphasised that Dr Madzivhandila occupied a key position within the NLC yet failed to address alleged irregularities that occurred under his guard as board member. This is so irrespective of whether he acted as an executive or non-executive board members.
- 6.1.6 It is unfortunate that the NLC had escalated to such dysfunctional levels that external bodies (including the President) had to intervene in an attempt to address the malfeasance proliferating within the NLC. The appointment of Dr Madzivhandila as chairperson of the NLC would be a disservice not only to the NLC itself, but to the public.

6.1.7 Dr Madzivhandila is accordingly rendered unsuitable for consideration to be appointed to the position of chairperson of the NLC for the reasons set out above. In this regard, we submit that nothing prohibits Dr Madzivhandila from being subjected to a probity test to determine suitability or continued suitability in line with section 3A(2) of the Lotteries Act, 1997 (“the Act”).

6.2 Mr Ashwin Hirjee Trikamjee (“Mr Trikamjee”)

6.2.1 Mr Trikamjee served on the board of The South African Red Cross Society from 22 July 2015 to 21 January 2020, during which it received R 540,000.000 in grant funding from the NLC in 2016. It is unclear whether this has been declared by Mr Trikamjee. We submit that this may potentially constitute a conflict of interest.

6.2.2 Mr Trikamjee served on the board of the Moral Regeneration Movement from 17 September 2006, a non-profit company which received a total of R3,350,000.00 in grant funding (R1, 675, 000.00 in 2013 and 2014 respectively) from the NLC during the time he was an active director. It is unclear whether this has been declared by Mr Trikamjee. We submit that this may potentially constitute a conflict of interest.

6.2.3 Mr Trikamjee served on the board of the 1860 Legacy Foundation, a non-profit company which received R703,400.00 in grant funding from the NLC during the time he was an active director. It is unclear whether this has been declared by Mr Trikamjee. We submit that this may potentially constitute a conflict of interest.

6.2.4 As per Mr Trikamjee’s *curriculum vitae*, his affiliation with the above-mentioned non-profit companies is not disclosed. We submit that non-disclosure of Mr Trikamjee’s involvement with these non-profit companies ought to be taken note of by the PC.

6.2.5 Therefore, we submit that Mr Trikamjee is rendered unsuitable for consideration to be appointed to the position of chairperson of the NLC for the reasons set out above. In this regard, we submit that nothing prohibits Mr Trikamjee from being subjected to a probity test to determine suitability or continued suitability in line with section 3A(2) of the Act.

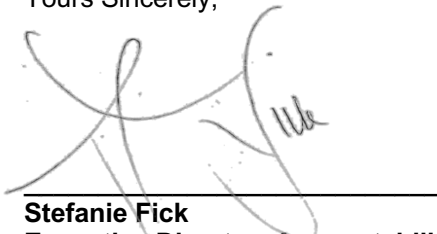
6.3 Ms Beryl Delores Ferguson (“Ms Ferguson”)

6.3.1 Ms Ferguson served on the board of a non-profit company known as Wola Nani between 15 July 2002 and 31 January 2012, during which time it received a total of R6,392,292.00 in grant funding from the NLC. It is unclear whether this has been declared by Ms Ferguson. We submit that this may potentially constitute a conflict of interest.

6.3.2 Therefore, we submit that Ms Ferguson is rendered unsuitable for consideration to be appointed to the position of chairperson of the NLC for the reasons set out above. In this regard, we submit that nothing prohibits Ms Ferguson from being subjected to a probity test to determine suitability or continued suitability in line with section 3A(2) of the Act.

7. We trust that you find the above in order and trust that the PC will act in a manner that is fair, transparent and within the public interest.

Yours Sincerely,



Stefanie Fick
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OUTA – Organisation Undoing Tax Abuse
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