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Allegations of a violation of the Executive Ethics Code in a matter between Mr Mbhele, MP of the Democratic Alliance and the former Minister of Police Mr Nathi Nhleko, MP.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE FORMER MINISTER OF POLICE MR NATHI NHLEKO, MP.

1. INTRODUCTION

1.1 This is a closing report in terms of section 182 (1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), section 8(1) of the Public Protector Act, 1994 (the Public Protector Act) and section 3 of the Executive Members Ethics Act, 1998 (EMEA).

1.2 The report relates to an investigation into allegations of a violation of the Executive Ethics Code by the former Minister of Police the Hon. Mr Nkosinathi Nhleko, MP (hereinafter referred to as Minister Nhleko).

1.3 The report is submitted to the President of the Republic of South Africa in terms of section 3 of the Executive Members’ Ethics Act, 1998.

1.4 Minister Nhleko approached my office on 29 November 2016, requesting an investigation into allegations reported in an article published by the City Press on 27 November 2016, alleging that he was involved in the payment of millions of Rands in favour of Indoni SA (Indoni), a non-governmental organisation (NGO) owned by his partner, Dr Nomcebo Mthembe.

1.5 Minister Nhleko stated that the allegations as reported in the City Press are damning, misleading, malicious and suggest that he is implicated in improper conduct to enrich his partner.

1.6 Mr Zakhele Mbhele, MP (Mr Mbhele) lodged a complaint with my office on 30 November 2016 in terms of Section 4 of the Executive Members Ethics Act, 82 of 1998.
1.7 He alleged that:

1.7.1 Minister Nhleko improperly awarded a contract worth R30 million, to a NGO by the name of Indoni, which is run by his partner Dr Nomcebo Mthembu, without going out on tender;

1.7.2 In doing so, Minister Nhleko was acting in violation of the Executive Ethics Code, specifically paragraphs 2.3 (d) (e) and (f), as well as paragraph 3.1(c); and

1.7.3 Section 3(1) and 4(1)(a) of the Executive Members' Ethics Act, 1998 provides that the Public Protector must investigate any alleged violation of the Executive Ethics Code on receipt of a complaint by inter alia a Member of the National Assembly against a Minister.

2. THE ISSUES CONSIDERED AND INVESTIGATED

2.1 On analysis of the complaint and the information and documentation received during preliminary enquiries, the following issues were considered and investigated:

2.1.1 Whether Minister Nhleko by awarding a contract worth R30 million to an NGO named Indoni, which is owned by his partner Dr Nomcebo Mthembu acted improperly, and if so whether this was in violation of the Executive Members Ethics Act, 1998

3. THE INVESTIGATION

3.1 Scope of the investigation

3.1.1 The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act and section 3 of the EMEA.
3.1.2 The scope of the investigation focused on the issues referred to in paragraph 2 above.

3.1.3 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

3.1.4 Whilst my investigation focused on the conduct of Minister Nhleko in respect of the EMEA, it came to my attention during the investigation process that the Civilian Secretariat of Police Service (CSPS) had lodged a complaint with the Public Service Commission (PSC) which focussed on the alleged irregularity of the process followed by the CSPS in awarding a contract of R30.8 million to a company called Indoni SA.

3.2 The investigation approach

3.2.1 The approach to the investigation commenced by analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

3.2.2 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

- What happened?
- What should have happened?
- Is there a discrepancy between what happened and what should have happened and does that deviation amounts to violation of the Executive Ethics Code?

3.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct of Minster Nhleko constitutes a violation of the Executive Ethics Code.
3.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by Minister Nhleko to prevent a violation of the Executive Ethics Code.

4. **KEY SOURCES OF INFORMATION**

4.1 **Applicable Legislation.**


4.1.2 The Public Protector Act, 23 of 1994.

4.1.3 The Executive Members’ Ethics Act, 82 of 1998.

4.1.4 The Civilian Secretariat for Police Service Act, 02 of 2011 and

4.1.5 The Executive Ethics Code.

4.2 **Documents and information sent and received.**

4.2.1 The relevant information and documents obtained and analysed, were primarily:

4.2.1.1 Letter to President J Zuma from the Public Protector informing the President of the investigation, dated 20 February 2017.

4.2.1.2 Letter to Minister Nhleko outlining the allegations and requesting documentation, dated 17 February 2017.

4.2.1.3 Letter to the Secretary of the Police Service outlining the allegations and requesting documentation, dated 17 February 2017.

4.2.1.4 A response received from the Minister of Police, Minister Nhleko, dated 03 April 2017.
4.2.1.5 A response from the Secretary of the Police Service, Mr Alvin Rapea, dated 03 April 2017.

4.2.1.6 City Press article titled “Nhleko’s R30 Million Blessing” by Abram Mashego, dated 27 November 2016.

4.2.1.7 Public Service Commission Report titled “Public Service Commission’s report on the investigation into the regularity of the process followed by the Civilian Secretariat for Police Service in awarding a contract R30.8 million to a company called Indoni SA”

4.3 Meetings and Interviews

4.3.1 Meeting held with Mr Avlin Rapea, Secretary of the CSPS on 02 November 2017;

4.3.2 Meeting held with Mr Hendrik L. Robbertze, Director : Finance of CSPS on 02 November 2017;

4.3.3 Meeting held with PSC officials on 14 November 2017; and

4.3.4 Meeting with PSC officials on 04 June 2018 to hand over PSC Report to Public Protector.

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS

5.1 Whether Minister Nhleko by awarding a contract worth R30 million to an NGO named Indoni, which is owned by his partner Dr Nomcebo Mthembu acted improperly, and if so whether this was in violation of the Executive Members Ethics Act, 1998
Common cause facts

5.1.1 Minister Nhleko was the Minister of Police at the time the complaint was lodged with the Public Protector.

5.1.2 Indoni is owned by Minister Nhleko's partner Dr Nomcebo Mthembu.

Issues in dispute

5.1.3 Mr Mbhele, MP submitted that Minister Nhleko acted in violation of the Executive Ethics Code, specifically in violation of paragraph 2.3 (d) (e) and (f), as well as paragraph 3.1(c) in awarding a contract worth R30 million to Indoni, which is run by his partner Dr Nomcebo Mthembu without going out on tender.

5.1.4 In their responses to the allegations dated 03 April 2017, both Minister Nhleko and the CSPS submitted that there was no tender awarded to Indoni for the past three financial years (2014/2015, 2015/2016 and 2016/2017) by the CSPS.

5.1.5 Minister Nhleko and the CSPS further submitted that the latter's relationship with Indoni started when a Memorandum of Understanding (MoU) was signed on 23 May 2014, by the former Minister of Police Mr Nkosinathi Mthethwa and that Minister Nhleko was appointed as the Minister of Police Minister with effect from the 26 May 2014.

5.1.6 Both Minister Nhleko and the CSPS submitted that Minister Nhleko is not involved in the day to day administration activities of CSPS and that payments to Indoni were approved by CSPS officials.

5.1.7 The issue whether Minister Nhleko acted in violation of the Executive Ethics Code, specifically in violation of paragraph 2.3 (d) (e) and (f), as well as paragraph 3.1(c) in awarding a contract worth R30 million to Indoni, which is owned by his partner Dr Nomcebo Mthembu is a legal issue regulated by the
Executive Members Ethics Act, 1998 and the Executive Ethics Code which will be determined when the standard that had to be complied with is discussed below.

Application of relevant law

5.1.8 Section 3(1) and 4(1)(a) of Executive Members Ethics Act, 1998, provides that the Public Protector must investigate any alleged violation of the Executive Ethics Code on receipt of a complaint by inter alia a Member of the National Assembly.

5.1.9 Paragraphs 2.3(d),(e) and (f) of the Executive Ethics Code states that Members of the Executive may not:

"(d) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;

(e) use information received in confidence in the course their duties otherwise than in connection with the discharge of their duties;

(f) expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests..."

5.1.10 Paragraph 3.1(c) of the Executive Ethics Code states that "a member must declare any personal or private financial or business interest that a member may have in a matter in relation to which the member is required to take a decision as a member of the Executive."

5.1.11 There is no evidence to corroborate that, due to his relationship with Dr Nomcebo Mthembu, Minister Nhleko acted in violation of paragraphs 2.3(d), (e) and (f) as well as paragraph 3.1(c) of the Executive Ethics Code.

5.1.12 Minister Nhleko was not yet appointed as the Minister of Police when the MOU with Indoni was signed and he was not involved in the administrative processes to utilise the services of Indoni and the payment thereof.
5.1.13 The evidence indicates that submissions for approval of costs to be incurred for payments made to Indoni were approved by the accounting officer, the Acting Secretary of CSPS.

5.1.14 In a meeting held between the Public Protector’s investigation team and the Acting Secretary of CSPS on 02 November 2017 Mr Rapea, he stated that Minister Nhleko was never involved in any process to utilise the services of Indoni.

5.1.15 He further indicated that the CSPS had approached the PSC to investigate the allegations reported in the City Press article.

5.1.16 On the 14 November 2017, a meeting was held with officials from the PSC, wherein they confirmed their investigation relating to the alleged irregularity of the process followed by the Civilian Secretariat for Police Service in awarding a contract of R30.8 million to a company called Indoni SA.

5.1.17 The report on the investigation conducted by the PSC on these allegations was handed over to the investigation team on 04 June 2018.

5.1.18 The PSC investigation inter alia made the following findings:

5.1.18.1 That there was no contract worth R30.8 million that was entered into between the CSPS and Indoni; and

5.1.18.2 That based on documents provided to PSC by CSPS a total amount of R1 254 428.72 was paid to Indoni.

5.1.18.3 That payments made by CSCP failed to comply with the National Treasury’s Practice Note No. 8 of 2007/2008 by failing to invite competitive bids in the procurement process and also failed to record the reasons for deviation from normal procurement processes.

5.1.19 The PSC’s investigation inter alia made the following recommendations;
5.1.19.1 The CSPS must ensure that when it conducts procurement processes, it always adheres to its own supply chain management policies and all other related prescripts that govern supply chain management processes within the Public Service.

5.1.19.2 The CSPS must ensure that when deviating from normal procurement processes, it always ensures that the reasons for deviating from inviting competitive bids are recorded and then approved by the Accounting Officer.

6. **REASONS FOR CLOSURE**

6.1 The complaint that Minister Nhleko improperly awarded a contract worth R30 million to an NGO named Indoni, which is run by his partner Dr Nomcebo Mthembu, without going out on tender and in doing so acted in violation of the Executive Ethics Act, specifically in violation of paragraphs 2.3 (d) (e) and (f), as well as paragraph 3.1(c) is not substantiated by the evidence and the information obtained during the investigation.

6.2 Minister Nhleko was not yet appointed as the Minister of Police when the MOU with Indoni was signed and he was not involved in the administrative processes to utilise the services of Indoni and the payment thereof.

6.3 Kindly take note that in terms of section 7(2) of the Public Protector Act, 1994, the contents of this closing report are confidential and no person may disclose them without the authorization of the Public Protector.

6.4 Contravention of section 7(2) is in terms of section 11(1) of the Public Protector Act, 1994, an offence and upon conviction, punishable in terms of subsection (4) with a fine not exceeding R40 000 or with imprisonment not exceeding 12 months or with both such fine and such imprisonment.
6.5 Should there be any enquiries or responses to this closing report, kindly contact Mr Rodney Mataboge, the Chief Investigator: Good Governance and Integrity of the Public Protector South Africa at rodneym@pprotect.org within 10 working days of receipt of this report.

[Signature]

ADV BUSISWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 10/08/2018