

CLOSING NOTE OF THE PUBLIC PROTECTOR IN TERMS OF RULE 13(1)(a) AND (b) OF CHAPTER 4 OF THE PUBLIC PROTECTOR RULES PUBLISHED IN THE GOVERNMENT GAZETTE NO 41903, NOTICE NO. 945 ON 14 SEPTEMBER 2018 UNDER SECTION 7(11) OF OF THE PUBLIC PROTECTOR ACT, 1994



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CLOSING NOTE ON A REFERRAL OF THE COMPLAINT IN TERMS OF SECTION 6(4)(c)(ii) OF THE PUBLIC PROTECTOR ACT, 1994: ALLEGATIONS OF AN ATTEMP BY THE ANC TO INSTRUCT ITS DEPLOYED CADRES IN THE NATIONAL GOVERNMENT TO INFLUENCE APPOINTMENTS FOR THE POSITIONS OF DIRECTORS-GENERAL, CHIEF EXECUTIVE OFFICERS, CHAIRPERSONS AND BOARD MEMBERS IN STATE OWNED ENTITIES

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1. INTRODUCTION

- 1.1 This is a Closing Note of the Public Protector in terms of Rule 13(1)(a) and (b) of Chapter 4 of the Public Protector Rules published in the Government Gazette no 41903, Notice no. 945 on 14 September 2018 under section 7(11) of of the Public Protector Act 1994 (the Public Protector Rules), on a referral of the complaint to the Speaker of Parliament of the Republic of South Africa (Parliament) in terms of section 6(4)(c)(ii) of the Public Protector Act, 1994.
- 1.2 The Closing Note relates to a complaint, dated 16 July 2020, received by the Public Protector on 22 July 2020, in which the Complainant alleges that the ANC attempted to instruct its deployed cadres in the National Government to influence appointments for the positions of Directors-General (DGs), Chief Executive Officers (CEOs), Chairpersons and Board members in State Owned Entities (SOEs).
- 1.3 The referral of the complaint was made in terms of section 6(4)(c)(ii) of the Public Protector Act, 1994 (the Public Protector Act) which gives the Public Protector the power to refer any matter which has a bearing on the investigation to an appropriate public body or authority affected by it or to make appropriate recommendation

regarding the redress of the prejudice resulting therefrom or make appropriate recommendation deemed appropriate to the affected public body or authority.

- 1.4 The complaint was lodged with the Public Protector by Dr Leon Schreiber, MP, (Complainant), a member of the Democratic Alliance (DA), on 22 July 2020, in which the Public Protector was requested to investigate the following:
- 1.4.1 Whether any member of Cabinet was influenced to appoint any Directors-General, CEO, Chairpersons and Board members on recommendation of the movement's Deployment Committee (ANC);
- 1.4.2 Whether any member of the National Cabinet has ever submitted appointment decisions to the deployment committee first before its submission to the National Cabinet;
- 1.4.3 Whether any member of the National Cabinet has ever informed the ANC [Deployment Committee] of any vacancies before it was advertised; and
- 1.4.4 Whether any member of the National Cabinet has ever shared with the ANC a list of abridged CVs of all applicants, a shortlist with complete CVs, recommended candidates or summary of candidates with columns of qualifications, experience, gender, age and Province of each candidate.
- 1.5 The complaint was based on an ostensibly leaked copy of a document purporting to be a memorandum from the Office of the Secretary-General of the ANC, titled *"Deployment Committee Procedure"*, addressed to *"All Deployed Comrades"*, (Memorandum), who were however unnamed, amongst others, providing that:
- 1.5.1 The office of the Deputy Secretary-General should be informed of all posts prior to them being advertised and be sent the Advertisement once it has been published, for comrades who meet the criteria on the database to be allowed to apply; and

- 1.5.2 That does not alter the current process of what is supposed to be presented to the Committee by the relevant Ministers.
- 1.6 According to the Memorandum concerned, the following was required in the presentation of deployments, at least 3 (three) days before the presentation:
 - 1.6.1 Background and summary of challenges;
 - 1.6.2 Post advertisement;
 - 1.6.3 List of abridged CVs of all applicants;
 - 1.6.4 Shortlist with complete CVs;
 - 1.6.5 Recommended candidates; and
 - 1.6.6 Summary of candidates which includes column of qualifications, experience, gender, age and Province of the candidate.
 - 1.6.7 No appointment should be taken to Cabinet before passing through the deployment committee first.

2. LEGAL FRAMEWORK

- 2.1 As far as the context of the allegations raised is concerned, the powers of the Public Protector are limited, in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act, to investigate any conduct in state affairs, or in the public administration in any sphere of government. The conduct of the Secretary-General of the ANC in this regard falls within party political affairs and not within state affairs, or in the Public Administration.

- 2.2 The Complaint makes reference to members of the ANC as National Cabinet members, ostensibly falling under the remit of sections 92(2) and (3) as well as 93(2) of the Constitution, who accordingly are accountable to Parliament.

3. CONCLUSION

- 3.1 Having regard to the above, it appeared that the complaint may best be dealt with by Parliament and the Public Protector considered it prudent, in terms of section 6(4)(c)(ii) of the Public Protector Act, read with section 92(2) and (3) and/or 93(2) of the Constitution, to refer the matter to the Speaker of Parliament, Ms Thandi Modise, (the Speaker) to further consider referring same to the Joint Committee on Ethics and Members' Interests, or any appropriate committee for further consideration and action in terms of section 56 and 69 of the Constitution.
- 3.2 The Public Protector requested the Speaker, on 18 November 2020, in terms of Rule 13(1)(b) of Chapter 4 of the Public Protector Rules, to liaise directly with the Complainant regarding further information or progress of the matter, and also advised the Complainant about the referral of the complaint to the Speaker in terms of section 6(4)(c)(ii) of the Public Protector Act, further advising the Complainant to in future contact the Office of the Speaker in that regard.
- 3.3 The Public Protector also informed the Complainant, on 18 November 2020, in terms of Rule 13(1)(a) of the Public Protector Rules regarding the communication to the Speaker, and to contact the Office of the Public Protector for any inquiries relating to the complaint, through her Personal Assistant, Mr Ephraim Kabinde, who may be reached at (012) 366 7108 and email at Ephraimk@pprotect.org or the Investigation Team in the Good Governance and Integrity Branch (GGI).

3.4 Except for acknowledging the letter, the Complainant indicated that he would consider the matter and then revert to the Public Protector. However, since then, the Complainant has not reverted to the Public Protector.

4. REASONS FOR CLOSURE

4.1 The complaint was referred to the Speaker and the Complainant acknowledged receipt of the referral letter from Public Protector on 24 November 2020. He responded that he *“would consider it and revert as needed”*.

4.2 However, since then, the Complainant has not reverted to the Public Protector with any queries regarding the complaint and the matter is hereby considered as finalised and the file is therefore considered as closed.



ADV. BUSISIWE MKHWABANE
PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA

DATE: 05/05/2021

Assisted by Good Governance and Integrity Branch