

**CLOSING REPORT IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**Report No: 59 of 2021/22  
ISBN No: 978-1-77634-723-0**

**CLOSING REPORT ON ALLEGATIONS THAT THE FORMER MINISTER OF FINANCE, MR TITO TITUS MBOWENI IRREGULARLY APPOINTED MS RANJENI MUNUSAMY TO THE POSITION OF THE COMMUNITY OUTREACH OFFICER AND THEREBY CONTRAVENED THE EXECUTIVE ETHICS CODE, 2000.**

## **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) and section 8(1) of the Public Protector Act, 1994 [Act No. 23 of 1994] (Public Protector Act).
- 1.2 The investigation relates to allegations that the Minister of Finance, Mr Tito Titus Mboweni, (Minister Mboweni), irregularly appointed Ms Ranjeni Munusamy (Ms Munusamy) to the position of the Community Outreach Officer and in so doing, acted in violation of the Executive Ethics Code, 2000 published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853 in terms of section 2(1) of Executive Members' Ethics Act, 1998 (Executive Ethics Code).
- 1.3 The report is submitted to His Excellency, President Matamela Cyril Ramaphosa (President Ramaphosa) in terms of section 3(2)(a) read with section 3(3) of Executive Members' Ethics Act, 82 of 1998 (EMEA).
- 1.4 The report is also submitted to the Chief Whip of the Economic Freedom Fighters (EFF), Mr Nyiko Floyd Shivambu, MP (the Complainant) in terms of section 8(1) read with section 8(3) of the Public Protector Act.
- 1.5 The report is also submitted to Minister Mboweni in terms of section 8(1) read with section 8(3) of the Public Protector Act.

## **2. THE COMPLAINT**

- 2.1 The complaint was lodged with the Public Protector in terms of section 4(1) of EMEA through a letter dated on 27 October 2020.
- 2.1 In his letter of complaint, the Complainant alleged that:

- 
- 2.1.1 According to the statement issued by the Department of National Treasury (National Treasury) on 21 October 2020, Ms Munusamy was appointed as a Community Outreach Officer. However, according to former Minister Mboweni, she was appointed as a Political Secretary;
- 2.1.2 Regardless of the position she occupied, the Public Protector was requested to investigate whether Ms Munusamy's appointment was made in terms of section 9 of the Public Service Act, 1994 (Public Service Act), read with Regulation 66 of the Public Service Regulations of 2016 (PSR);
- 2.1.3 In particular, the Complainant raised the following questions (*in verbatim*) in his complaint:
- (a) *“Was the selection committee appointed in terms of section 67 of the Public Service Regulations of 2016;*
  - (b) *If yes, who were the people appointed to the selection committee and who was the appointed chairperson of the selection committee;*
  - (c) *When was the selection committee appointed and when did it make its recommendation; and*
  - (d) *What were the valid methods, criteria or instruments used for selection?”*  
(sic)
- 2.1 The Complainant also requested the Public Protector to establish whether it was *“acceptable and rational for executive authority to appoint Ms Munusamy to such a sensitive position when there was undisputed evidence submitted to the Judicial Commission of Inquiry into Allegations of State Capture that Ms Munusamy received illegal money from the State Security slush fund”*. (sic)

**3. Based on analysis of the complaint, the following issue was identified to inform and focus the investigation:**

3.1 Whether the former Minister of Finance, Mr Tito Titus Mboweni, MP irregularly appointed Ms Ranjeni Munusamy to the position of the Community Outreach Officer and thereby contravened the Executive Ethics Code.

**4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

4.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

4.2 Section 182(1) of the Constitution provides that:

*“The Public Protector has power as regulated by national legislation –*

*(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,*

*(b) to report on that conduct ; and*

*(c) to take appropriate remedial action”.*

4.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

4.4 Section 4(1)(a) of EMEA, provides *inter alia* that, the Public Protector “...*must investigate in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly*

*or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister...”*

- 4.5 This complaint was lodged by a Member of the National Assembly against a Minister Mboweni who was a Cabinet Member at the time and therefore the complaint fell within the purview and jurisdiction of matters that should be investigated by the Public Protector.
- 4.6 In terms of section 3 of EMEA, the Public Protector must submit a report on the alleged breach of the Executive Ethics Code by a Cabinet Member within 30 days of the receipt of the complaint. If the Public Protector reports at the end of this period that the investigation has not yet been completed, she must submit another report when the investigation has been completed.

## **5. THE INVESTIGATION**

### **5.1 Methodology**

- 5.1.1 The investigation was conducted in accordance with section 182(1) of the Constitution, read with sections 3 and 4 of EMA and section 7 of the Public Protector Act.
- 5.1.2 In terms of section 4(1)(a) of EMEA, the Public Protector must investigate an alleged breach of the Executive Ethics Code on receipt of a complaint from the President, a Member of the National Assembly and a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister.

## 5.2 Approach to the investigation

- 5.2.1 The investigation included correspondence with the Complainant, President Ramaphosa, Minister Mboweni, the former Minister of Public Services and Administration, Mr Senzo Mchunu (MPSA) and the Director-General of the National Treasury, Mr Dondo Mogajane (Mr Mogajane).
- 5.2.2 The investigation also included an analysis of relevant documentation and the consideration and application of relevant laws, regulatory frameworks and prescripts.
- 5.2.3 The investigation was approached using an enquiry process that seeks to find out:
- (a) What happened?
  - (b) What should have happened?
  - (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to a violation of the Executive Ethics Code? and
  - (d) In the event of a violation, what action should be taken?
- 5.2.4 The question regarding what happened is resolved through a factual enquiry relying on evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry focused on whether the alleged conduct of former Minister Mboweni constituted a violation of the Constitution and/or the Executive Ethics Code.
- 5.2.5 The enquiry regarding what should have happened, focused on the law or rules that regulate the standard that should have been met by former Minister Mboweni to prevent a violation of the Constitution and/or the Executive Ethics Code.

- 5.2.6 The President was informed that the investigation would not be concluded within the thirty (30) days period as prescribed by section 3(2)(a) of EMEA in a letter dated 15 November 2020. Consequently, the Public Protector undertook to submit the report of the investigation, as envisaged in section 3(3) of EMEA.
- 5.2.7 A Discretionary Notice in terms of rule 42(1) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018*, as promulgated under section 7(11) of the Public Protector Act was issued to the Complainant on 24 August 2021. No response was received from the Complainant.

## **6. KEY SOURCES OF INFORMATION**

### **6.1 Correspondence and documents**

- 6.1.1 Complaint letter of Copy of complaint from Mr NF Shivambu, MP dated 27 October 2020.
- 6.1.2 Letter from the Public Protector to Mr NF Shivambu, MP dated 19 December 2020.
- 6.1.3 Letter from the Public Protector to Minister Mboweni. 4 March 2021
- 6.1.4 Subpoena issued to Minister Mboweni dated 26 May 2021.
- 6.1.5 Affidavit of Minister Mboweni dated 9 June 2021
- 6.1.6 Supporting documents (Memo, CV, etc) from Minister Mboweni received on 9 June 2021.
- 6.1.7 Letter from the Public Protector to MPSA dated 22 June 2021.
- 6.1.8 Letter from the Public Protector to DG of the National Treasury dated 23 June 2021
- 6.1.9 Response from MPSA to the Public Protector dated 6 July 2021.
- 6.1.10 Response from the DG of the National Treasury to the Public Protector dated 1 July 2021.

- 6.1.11 Contract between the National Treasury and Ms R Munusamy dated 1 June 2020.
- 6.1.12 Memorandum from DG: National Treasury to Minister Mboweni dated 26 March 2020.

## **6.2 Legislation and other prescripts.**

- 6.2.1 Constitution of the Republic of South Africa, 1996.
- 6.2.2 The Executive Members' Ethics Act, 82 of 1998.
- 6.2.3 Executive Ethics Code, 2000 published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853 in terms of section 2(1) of Executive Members' Ethics Act, 1998.
- 6.2.4 The Public Protector Act, 23 of 1994.
- 6.2.5 The Public Service Act, 1994.
- 6.2.6 Public Service Regulations of 2016.
- 6.2.7 Guide for Members of the Executive approved by the President and became effective on 20 November 2019.

## **7. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS.**

- 7.1 **Regarding whether the former Minister of Finance, Mr Tito Titus Mboweni, MP irregularly appointed Ms Ranjeni Munusamy to the position of the Community Outreach Officer and thereby contravened the Executive Ethics Code:**

### ***Common cause issues***

- 7.1.1 On 9 October 2018, Minister Mboweni was announced by President Ramaphosa as the Minister of Finance during the fifth administration and was



again announced as the Minister of Finance during the sixth administration on 29 May 2019.

7.1.2 Minister Mboweni appointed Ms Munusamy to the Office of the Minister during his tenure as the Minister of Finance in the sixth administration.

7.1.3 On 5 August 2021, President Ramaphosa announced Minister Mboweni's resignation as the Minister of Finance.

### ***Issues in dispute***

7.1.4 The Complainant submitted that according to the statement issued by the National Treasury on 21 October 2020, Ms Munusamy was appointed as a Community Outreach Officer. However, according to Minister Mboweni, she was appointed as a Political Secretary.

7.1.5 Notwithstanding the position she occupied, the Complainant requested the Public Protector to investigate whether Ms Munusamy's appointment was made in terms of section 9 of the Public Service Act and Regulations 66 of the PSR;

7.1.6 In particular, the Complainant raised the following questions (*in verbatim*) in his complaint:

- (a) *“Was the selection committee appointed in terms of section 67 of the Public Service Regulations of 2016;*
- (b) *If yes, who were the people appointed to the selection committee and who was the appointed chairperson of the selection committee;*
- (c) *When was the selection committee appointed and when did it make its recommendation; and*
- (d) *What were the valid methods, criteria or instruments used for selection?”*

7.1.7 The Complainant also asked the question whether it was “*acceptable and rational for executive authority to appoint Ms Munusamy to such a sensitive position when there was undisputed evidence submitted to the Judicial Commission of Inquiry into Allegations of State Capture that Ms Munusamy received illegal money from the State Security slush fund*”. (sic)

7.1.8 Through a letter dated 19 December 2020, the Complainant was requested to clarify and/or specify the clause(s) that were allegedly breached by the conduct of Minister Mboweni, unfortunately the Complainant did not furnish a response in this regard.

#### **Minister Mboweni’s response to the allegations**

7.1.9 Notwithstanding the above, the Public Protector through letter dated 4 March 2021, requested Minister Mboweni to respond to the Complainant’s allegations. A subpoena dated 26 May 2021 was subsequently issued to Minister Mboweni when he failed to respond within 14 days after the transmission of aforementioned letter.

7.1.10 Minister Mboweni responded to the Complainant’s allegations through an affidavit dated 9 June 2021 wherein he *inter alia* submitted that:

7.1.10.1 Ms Munusamy was appointed as the Community Outreach Officer in terms of section 9 of the Public Service Act read with Regulation 66(1) of the PSR;

7.1.10.2 Regulation 66(2) provides that an executive authority may fill a post in the Office of the executive authority without advertising in terms of Regulation 65 of the PSR;

- 
- 7.1.10.3 In instances where an appointment is made in terms of Regulation 66(2), the resulting selection process in Regulation 67 (except for compliance with Regulation 67(5) (b) of the PSR do not apply;
- 7.1.10.4 Ms Munusamy's skill and competencies were accordingly considered before as required by Regulation 67(5)(b) of the PSR;
- 7.1.10.5 The statements about Ms Munusamy at the Commission of Inquiry into Allegations of State Capture (State Capture Inquiry) were allegations, and no finding of wrong doing has been made against her that should have been considered when she was appointed.
- 7.1.11 Upon perusal of the curriculum vitae (CV) of Ms Munusamy submitted to the Public Protector by Minister Mboweni, it was established that she holds a National Diploma in Journalism and has 20 years' experience as a journalist and communication specialist. Her experience was stated *inter alia* as follows:
- (a) Associated Editor: Analysis at Arena Holdings;
  - (b) Associate Editor at the Daily Maverick from April 2012 to 10 June 2017;
  - (c) Head of Communications in the Ministry of Higher Education and Training;
  - (d) Senior Political Correspondence for the Sunday Times South Africa;
  - (e) Spokesperson for the MEC of Transport in KwaZulu-Natal from 1996 to 1998.
- 7.1.12 The Public Protector through a letter dated 23 June 2021 requested Mr Mogajane, to clarify the role played by the National Treasury and provide the necessary documentation concerning this appointment.
- 7.1.13 In his response dated 1 July 2021, Mr Mogajane advised that the role played by the National Treasury in the appointment of Ms Munusamy was to prepare an internal memorandum as it is accustomed to doing so. The internal

memorandum, amongst other things, outlined the qualifications and skill's set that the candidate possesses. Employees in the Office of the Minister and Deputy Minister are part of the establishment of the National Treasury. Therefore, the Human Resources Management Unit (HRM), in this appointment, provided advice on the applicable employment prescripts. In this case, Regulation 67(5)(b) to (d) of the PSR was followed as outlined in the Department of Public Service and Administration (DPSA) Circular HRP 8 of 2018.

- 7.1.14 The recommendation made by the National Treasury for the approval by Minister Mboweni read thus:

*"It is recommended that the Minister approves, in terms of Section 9 of the PSA read with Regulation of the PSR, the appointment of Ms N Munusamy, as Community Outreach Officer in the Office of the Minister, following the date of approval which will terminate on the last day of the month that follows the date on which Minister Mboweni, for any reason relinquishes the portfolio of Minister of Finance.*

- 7.1.15 Upon perusal of the employment contract entered between the National Treasury and Ms Munusamy, amongst other things, the following was established:

- 7.1.15.1 That Ms Munusamy was appointment in terms of section 9 of the Public Service Act as the Community Outreach Officer;

- 7.1.15.2 That the employment contract between the National Treasury and Ms Munusamy was concluded on 1 June 2020 until the last day of the month that follows the date on which Minister Mboweni, for any reason, relinquishes the portfolio of the Minister of Finance; and

7.1.15.3 That she was offered an inclusive remuneration package of R863 748.00 (eight hundred and sixty three thousand, seven hundred and forty eight rand) per annum, a package under salary level 11.

7.1.16 The MPSA, through a letter dated 22 June 2021, was also requested to provide clarification pertaining to the application of Regulation 67 of the PSR, specifically with regard to the appointment of selection committees referenced therein. In his response to the Public Protector dated 6 July 2021, the MPSA was of the view that :

*“... an executive authority exercises her/his authority to appoint a person in terms of section 9 of the PSA, 1994, read with Regulation 66(2) as reflected above. Regarding the application of Regulation 66(2), it requires the application of the appointment criteria as specified in Regulation 67(5)(b) to (d) however does not refer to or reflect the application of Regulation 67(1) which necessitates the appointment of a selection committee.”*

7.1.17 The MPSA further submitted that it remains the responsibility of the executive authority to ensure that when taking a decision on the appointment or the filling of a post, to satisfy herself or himself that the candidate qualifies in all respect for the post and is fit and proper as envisaged in section 10 of the Public Service Act.

#### ***Application of the relevant law***

7.1.18 Section 96 of the Constitution provides that:

*(1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.*

- (2) *Members of the Cabinet and Deputy Ministers may not—*
- (a) ...;
  - (b) ***act in any way that is inconsistent with their office***, or expose themselves to any situation involving the risk of a conflict between their ***official responsibilities*** and private interests; or
  - (c) *use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.....”*

7.1.19 EMEA is the national legislation referenced in section 96(1) of the Constitution and the bedrock of the Executive Ethics Code.

7.1.20 Section 2(1) of EMEA read thus:

*“The President must, after consultation with Parliament, by proclamation in the Gazette, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECS must comply in performing their official responsibilities.*

7.1.21 The general standards which the members of the Executives<sup>1</sup> must comply with are contained in clause 2.1 of the Executive Ethics Code which provides that:

*2.1 “Members of the Executive must to the satisfaction of the President or the Premier, as the case may be-*

---

<sup>1</sup> Member of the Executives means a Cabinet member, a Deputy Minister or a Member of a Provincial Executive Committee, and ‘member’ and ‘Executive’ have corresponding meanings.

- (a) *perform their duties and exercise their powers diligently and honestly;*
- (b) *fulfill all the obligations imposed upon them by the Constitution and law;*
- (c) *act in good faith and in the best interest of good governance;*
- (d) *act in all respects in a manner that is consistent with the integrity of their office or the government.”*

7.1.22 Clause 2.2 provides that *“In deciding whether members of the Executive complied with the provisions of clause 2. 1, the President or Premier, as the case may be, must take into account the promotion of an open, democratic and accountable government.*

7.1.23 Clause 2.3 of the Executive Ethics Code provides that:

2.3 *“Members of the Executive may not-*

- (a) *wilfully mislead the legislature to which they are accountable;*
- (b) *wilfully mislead the President or Premier, as the case may be;*
- (c) *act in a way that is inconsistent with their position;*
- (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 of 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;*
- (g) *receive remuneration for any work or service other than for the performance of their functions as members of the Executive or*

(h) *make improper use of any allowance or payment properly made to them, or disregard the administrative rules which apply to such allowance or payments.”*

7.1.24 In the case of **Public Protector and Others v President of the Republic of South Africa and Others (CCT 62/20) [2021] ZACC 19 (1 July 2021)**, the court in par 11 denoted that:

*“Section 3 empowers the Public Protector to investigate any breach of the code. The scheme that emerges from the reading of this provision is that the Public Protector’s power to investigate is subject to a formal complaint. **This suggests that the scope of an investigation is determined by the breach of the code contained in the complaint.** It is important to note that section 3 does not authorise the Public Protector to investigate a violation of the Act itself but limits her authority to investigating a breach of the code.”*

7.1.25 In his complaint, the Complainant did not allege violation of a specific clause of the Executive Ethics Code apart from indicating that the complaint was lodged in terms of section 4(1) of EMEA and requesting the Public Protector to investigate the appointment of Ms Munusamy.

7.1.26 Despite requesting the Complainant, through a letter dated 19 December 2020, to provide clarity regarding the alleged breach of the Code, the Public Protector did not receive any response thereto.

7.1.27 Notwithstanding the above, it was noted that the Constitution and the Executive Ethics Code enjoined Minister Mboweni to conform to the prescribed ethical standards when performing his official functions. It was not disputed that Minister Mboweni appointed Ms Munusamy in his capacity as the Minister of Finance and thus discharging his official duties.



7.1.28 In the main, the issue raised by the Complainant was whether Ms Munusamy was irregularly appointed. In order to answer to this question, due regard was given to the regulatory framework highlighted hereunder.

#### **The Public Service Act, 1994**

7.1.29 Section 9 of provides thus:

*“An executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed.”*

7.1.30 Section 10 states that:

*“No person shall be appointed permanently, whether on probation or not, to any post on the establishment in a department unless he or she-*

- (a) is a South African citizen or permanent resident; and*
- (b) is a fit and proper person.”*

#### **The Public Service Regulations, 2016**

7.1.31 Regulation 66(1) provides that:

(1) *“An executive authority may only fill vacancies in the Office of an executive authority or a Deputy Minister by means of:*

- (a) an appointment in terms of section 9 of the Act for the term of office of the incumbent executive authority or Deputy Minister which will terminate at the end of the first month after the month which the term of that executive authority or Deputy Minister terminates for any reason;*

(b) ....

(2) *Subject to the appointment criteria in regulation 67(5)(b) to (d), an executive authority may fill a post in the Office of the executive authority or a Deputy Minister in that executive authority's portfolio, in terms of subregulation (1) without complying with regulations 65 (1); (3) and (4).*

7.1.32 Regulation 67 provides that:

(5) *“The selection committee shall make a recommendation on the suitability of a candidate after considering only-*

- (a) *...;*
- (b) *the inherent requirements of the post;*
- (c) *the department's employment equity plan as contemplated in regulation 27; and*
- (d) *in respect of candidates applying for posts from salary level 9 and above-*
  - (i) *the level of understanding of the relevant departmental mandates;*
  - (ii) *the ability to identify problems and find innovative solutions; and*
  - (iii) *the ability to work in a team.”*

7.1.33 Paragraph 3 of the DPSA Circular no: 8 HRP of 2018 reads thus:

*“Regulation 66(2) of the Public Services Regulations provides that appointments in the posts in the Office of an Executive Authority may be made without following normal advertisement process. Notwithstanding this, the suitability of such candidates must still be assessed on the basis of the appointment criteria prescribed in Regulation 67(5)(a) to (b) of the Public*

---

*Services Regulations and such appointment's must be made on contract for the period as referred to in paragraph 2 above."*

- 7.1.34 In terms of Chapter 3 of the Guide for Members of the Executive<sup>2</sup> (Guide for the Executive), the staff establishment for the Office of a Member (Private Office) is 7, comprising of the following positions and salary levels (SL): 1 x Chief of Staff – SL 14; 1 x Private & Appointment Secretary; SL 13; 1 x Media Liaison Officer SL 13; 1 x Parliamentary Officer – SL 13; **1 x Community Outreach Officer – SL 11**; 1 x Assistant Appointment & Administrative Secretary – SL 9; 1 x Receptionist – SL 5 (Own emphasis).
- 7.1.35 From the evidence traversed above, Ms Munusamy was appointed in terms of section 9 of the Public Service Act. In this regard, the appointment is required to comply with the PSR and related prescripts.
- 7.1.36 The position occupied by Ms Munusamy, i.e. Outreach Community Officer, is one of the seven (7) positions that the Member of the Executive can appoint into the Private Office as provided for in Guide for the Executive.
- 7.1.37 It would appear that the Complainant construed the four (4) questions<sup>3</sup> that appears in his complaint in the context Regulation 67(5) of the PSR. Therefore the main question was whether any selection committee should have played a role in the appointment of the Ms Munusamy.
- 7.1.38 Firstly, it is noted that Regulation 67(5) commences with the phrase "*the selection committee shall make a recommendation*". The literal reading of this phrase may presuppose that there must a selection committee that must make recommendation based on criteria listed thereunder. In this instance, the

---

<sup>2</sup> Approved by the President and became effective on 20 November 2019.

<sup>3</sup> The questions were contained in the original complaint from Mr NF Shivambu, MP.

criteria to be considered by the selection committee is contained in paragraphs (b) to (d) of subregulation 5.

- 7.1.39 However, does it mean that the appointment should only be made at the backdrop of the selection committee's recommendation?
- 7.1.40 The second proposition is that on purposive reading of regulation in question, there is no need for a selection committee to be appointed and make recommendation for appointments made in accordance with Regulation 66(2). This is premised on the understanding that the aforesaid regulation appears to limit the application of Regulation 67 (5) (b) to (d), the "*appointment criteria*" and does not refer to Regulation 67(1) which requires the appointment of a selection committee.
- 7.1.41 It is further noted that Regulation 67 does not strictly apply to appointment made by the executive authority but applies to appointments made in terms of the Public Service Act and its regulations in general. However, the appointments made in terms of Regulation 66(2) absolves from the executive authority from complying with some regulations including Regulations 65(1); (3) and (4).
- 7.1.42 The aforementioned regulations refer to the advertising requirements, which process if followed would usually attract more than one applicant to the post in question. In these instances, the selection committees would be required to sift through a number of potential candidates before making the necessary recommendation for the appointment of a candidate.
- 7.1.43 Regulation 66(2) on the other hand appears to give the executive authority an autonomy to earmark the candidate for a post in the Private Office. The only requirements expected to be met thereto are those appearing in Regulation 67(5)(b) to (d).

- 
- 7.1.44 The Minister submitted that he considered Ms Munusamy's skill and competencies before her appointment as a Community Outreach Officer in line with Regulation 67(5)(b) to (d). To this end, Ms Munusamy has a National Diploma in Journalism and has over twenty (20) years of extensive experience working in the media sector, specialising in journalism and communication.
- 7.1.45 It is noted that the MPSA also holds a view that Regulation 66(2) confines the application of Regulations 67(5)(b) to (d) to the appointment criteria and does not stipulate the appointment of a the selection committee as provided for in Regulation 67(1).
- 7.1.46 Section 9 of the Constitution provides that:
- (3) *"The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*
- (4) *No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination."*
- 7.1.47 Section 35(3)(h) of the Constitution provides for the presumption of innocence to the accused persons.
- 7.1.48 The Complainant further raised the issue whether it was acceptable and rational for the executive authority to appoint Ms Munusamy after she was implicated of having received monies from the State Security slush fund.

- 
- 7.1.49 Section 10 of the Public Service Act makes it a requirement of permanent appointments for such candidates to be South African citizens and to be fit and proper person.
- 7.1.50 It was established that Ms Munusamy's appointment was linked to the tenure of Minister Mboweni. It was not disputed that Ms Munusamy is a South African citizen. However, it was not necessary for the Minister to consider the requirements listed in section 10 of the Public Service Act because Ms Munusamy was not a permanent appointment to the National Treasury.
- 7.1.51 Notwithstanding the above, Minister Mboweni would have still been expected to comply with the clauses in the Executive Ethics Code. Similarly, there appears to be no evidence of specific violation of the clauses contained therein.
- 7.1.52 It was noted that with the information that was revealed in the State Capture Inquiry, the appointment of Ms Munusamy could raise questions around whether or not Minister Mboweni acted "*...in good faith and in the best interest of good governance*" and/or acted "*... in all respects in a manner that is consistent with the integrity of their office or the government.*"
- 7.1.53 Should it be accepted that the proper construction or application of Regulation 67(5)(b) to (d) did not require the use of a selection committee to make recommendation to the executive authority, it would be difficult to conclude the conduct of Minister Mboweni was in bad faith and not in the best interest of good governance. This is so because good governance, *inter alia* entails compliance with the applicable prescripts (rule of law) when taking certain decisions.
- 7.1.54 Some of the principles of good governance includes participation; representation; responsiveness; efficiency and effectiveness; openness and

transparency; rule of law, ethical conduct; competence and capacity; innovation and openness to change.

7.1.55 It is however, noted that the allegations made at the State Capture Inquiry that Ms Munusamy received illegal money from State Security slush fund had potentially tainted her name. In this regard, her appointment could potentially be seen as condonation of her conduct, albeit not having been found guilty as charged. This raises the question whether the Minister acted against the integrity of his office when he appointed someone whose reputation may have been impaired.

7.1.56 Whereas it could be argued that the allegations against Ms Munusamy were formally raised at the State Capture Inquiry, no conclusion has been reached thereto. On consideration of the above cited constitutional provisions, it is apparent that the Constitution provides protection from unfair discrimination which may include being discriminated against on the basis of suspicion.

### **Conclusion**

7.1.57 In view of the foregoing, Minister Mboweni's appointment of Ms Munusamy into the position of the Community Outreach Officer was made in terms of the Public Service Act read with Regulations 66(2) of the PSR.

7.1.58 The post to which Ms Munusamy was appointed is included in Chapter 3 of the Guide for Executive Members.

7.1.59 It is the Public Protector's view that the appointment made by Minister Mboweni did not require the use of the selection committee save for compliance with the appointment criteria listed in Regulation 67(5)((b) to (d) of the PSR.

7.1.60 Whereas it was noted that the revelations made at the State Capture Inquiry might have placed the integrity of Ms Munusamy into question, there was no evidence to conclude that the appointment of Ms Munusamy by Minister Mboweni was in violation of the Executive Ethics Code.

## 8. FINDINGS

8.1 Having regard to the evidence, the regulatory framework determining the standard that Minister Mboweni should have complied with and the impact thereof on good administration, the Public Protector makes the following findings:

8.1.1 **Regarding whether the former Minister of Finance, Mr Tito Titus Mboweni, MP irregularly appointed Ms Ranjeni Munusamy to the position of the Community Outreach Officer and thereby contravened the Executive Ethics Code.**

8.1.1.1 The allegations that Minister Mboweni irregularly appointed Ms Munusamy to the position of the Community Outreach Officer and thereby contravened the Executive Ethics Code could not be corroborated.

8.1.1.2 The appointment of Ms Munusamy by Minister Mboweni was consistent with section 9 of the Public Service Act read with Regulation 66(2) of the PSR.

8.1.1.3 Therefore, the conduct of the Minister Mboweni was not in breach of clause 2.1(c) and (d) and 2.3(b) of the Executive Ethics Code .

## 9. REASON (S) FOR CLOSURE

9.1 The complaint is closed based on the following:



- 
- 9.2 In the main, the allegations that the Minister Mboweni irregularly appointed Ms Munusamy to the position of the Community Outreach Officer and thereby violated the Executive Ethics Code could not be corroborated
- 9.3 Minister Mboweni resigned as a member of Cabinet before the Public Protector could issue the final report and therefore President Ramaphosa can no longer take “*any action*” against him as envisaged in section 3(5)(a) of EMEA.
- 9.4 The Complainant did not make further submission in response to the discretionary notice that was issued to him on 24 August 2021 in terms of rule 42(1) of the Public Protector Rules.



---

**ADV BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:** 29/09/2021

*Assisted By: Adv. Arius Dathi Senior Investigator*