

**CLOSING REPORT OF THE PUBLIC PROTECTOR 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**



REPORT NUMBER: 12 OF 2021/22

ISBN NO: 978-1-77630-037-2

**CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF
MALADMINISTRATION, IMPROPER CONDUCT AND IRREGULAR APPOINTMENT
OF THE CHAIRPERSON FOR THE COMMISSION FOR THE PROMOTION AND
PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC
COMMUNITIES**

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 (Public Protector Act), on an investigation into allegations of maladministration, improper conduct and irregular appointment of Prof David Luka Mosoma (Prof Mosoma) for the position of the Chairperson of the Commission for the Promotion and Protection of the Rights of Cultural, and Religious and Linguistic Communities (CRL Commission).
- 1.2. The investigation relates to a complaint that was lodged with the Public Protector by Mr Mthimadi Ernerst Ngwenya (the Complainant) on 6 September 2019, where he alleged that when Prof Mosoma was appointed in June 2019 as the Chairperson of the CRL Commission and when he was also appointed as the Deputy Chairperson of the CRL Commission in March 2014, he was also an additional member of the African National Congress (**ANC**) in Gauteng's Provincial Executive Committee (**PEC**).
- 1.3. The Complainant alleged that the appointment was irregular and improper because in terms of section 16(3)(c) of the Commission for the Promotion and Protection of the Rights of Cultural, and Religious and Linguistic Communities Act No 19 of 2002 (CRL Act), a member of the Commission is regarded as having resigned if that member is an office bearer of a political party, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of the provincial legislature or a member of a municipal council and fails to resign from such office within thirty (30) days of having been appointed as a member of the Commission. (own emphasis)
- 1.4. The Complainant further alleged that this should have disqualified Prof Mosoma when he failed to resign from his position as an elected additional member of the ANC Gauteng PEC as section 10(2) (b) of the CRL Act provides that, a person is

disqualified from becoming or remaining a member of the Commission if a person fails to resign as provided for in section 16(3) (c) of the CRL Act.

1.5. It is also the Complainant's submission that the processes and procedures for the appointment of all members of the Commission were not followed because after the former Minister of Cooperative Governance and Traditional Affairs (COGTA), Dr Zweli Mkhize, appointed the selection panel, the said panel did not submit the names of the selected persons as required by section 11(3)(d) of the CRL Act to the President together with reasons, but instead submitted the names to the former Minister of COGTA, who also took a long-time to submit the names to the President.

2. **Based on the analysis of the complaint, including the allegations contained herein, the following issues were identified to inform and focus the investigation:**

2.1. Whether Prof David Luka Mosoma was appointed irregularly and contrary to section 16(3)(c) of the CRL Act to the position of the Chairperson of the Commission for the Promotion and Protection of the Rights of Cultural, and Religious and Linguistic Communities in that he was an elected member of the ANC Gauteng PEC.

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

3.1. The Public Protector was established in terms of section 181 of the Constitution to support and strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2. Section 182(1) of the Constitution provides that the Public Protector has the power 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, to report on that conduct and to take appropriate remedial action. Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.

- 3.3. Additional powers of the Public Protector to investigate improper conduct in state affairs are provided for in national legislation, among others, sections 6 and 7 of the Public Protector Act.

4. **THE INVESTIGATION**

4.1. **Methodology**

- 4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.2. **Approach to the investigation**

- 4.2.1. The approach to the investigation included analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

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

- 4.2.2.1. What happened?

- 4.2.2.2. What should have happened?

- 4.2.2.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to a maladministration and improper conduct?

- 4.2.2.4. In the event of a violation, what action should be taken?

- 4.2.3. 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 Prof Mosoma was appointed irregularly and contrary to section 16(3)(c) of the CRL Act to the position of the Chairperson of the Commission for the Promotion and Protection of the Rights of Cultural, and Religious and Linguistic Communities in that he was an elected member of the ANC Gauteng PEC.
- 4.2.4. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the COGTA and the Presidency to prevent maladministration and conduct failure.

4.3. **Key Sources of Information**

4.3.1. **Correspondence Sent and Received**

- 4.3.1.1. A copy of the complaint dated 06 September 2019.
- 4.3.1.2. A copy of the correspondence sent to His Excellency MC Ramaphosa, the President of the Republic of South Africa dated 26 November 2019.
- 4.3.1.3. A copy of the correspondence sent to Dr Nkosazana Clarice Dlamini Zuma, the Minister of COGTA dated 5 March 2019.
- 4.3.1.4. A copy of the correspondence sent to Prof Mosoma, the Chairperson of the CRL Commission dated 05 March 2020.
- 4.3.1.5. A copy of the correspondence sent to Mr. Jacob Khawe, the ANC Gauteng Provincial Secretary dated 13 March 2020.
- 4.3.1.6. A copy of the correspondence received from Dr R Cassius Lubisi, the former Director General and Secretary of the Cabinet in the Presidency dated 17 January 2020.
- 4.3.1.7. A copy of the correspondence received from Dr Dlamini Zuma dated 4 March 2020.

- 4.3.1.8. A copy of the correspondence received from SS Maluleka Incorporated for Prof Mosoma dated 26 March 2020.
- 4.3.1.9. A copy of the correspondence received from SS Maluleka Incorporated for Mr. Khawe dated 30 March 2020.

4.3.2. **Legislation and other prescripts**

- 4.3.2.1. The Constitution of the Republic of South Africa, 1996;
- 4.3.2.2. The Public Protector Act, 1994;
- 4.3.2.3. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act of 2002;
- 4.3.2.4. The Remuneration of Public Office Bearers Act 20 of 1998;and,
- 4.3.2.5. The Constitution of the ANC as amended and adopted at the 54th National Conference, Nasrec, Johannesburg 2017.

4.4. The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, she is now in a position to make findings. Having regard to the investigation conducted in the matter, the evidence and information obtained therewith, it appears to the Public Protector that the allegation raised is not substantiated.

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

5.1. **Regarding whether Prof David Luka Mosoma was appointed irregularly and contrary to section 16(3) (c) of the CRL Act to the position of the Chairperson of the Commission for the Promotion and Protection of the Rights of Cultural, and Religious and Linguistic Communities:**

Common Cause Issue

5.1.1. It is not disputed that Prof Mosoma was appointed to the position of the Chairperson of the CRL Commission.

Issues in Dispute

5.1.2. The issue for determination was whether Prof Mosoma was appointed irregularly and contrary to section 16(3) (c) of the CRL Act to the position of the Chairperson of the CRL Commission, in that he was an elected member of the ANC Gauteng PEC.

5.1.3. Correspondence was sent to the President of the Republic of South Africa on 28 November 2019. A response was received from Dr R Cassius Lubisi, the former Director General and Secretary of the Cabinet (Director-General) on 17 January 2021.

5.1.4. In his response, the Director-General informed the Investigating team that the process for the appointment of members of the CRL Commission is outlined in section 11 of the CRL Act, 2002. According to the Act, the President, the Minister of COGTA and the Selection Panel have different roles to play in the process of appointing members of the CRL Commission.

5.1.5. The Director General further stated that with regard to **the role of the Selection Panel**, section 11(3) of the CRL Act, amongst others, requires the Selection Panel to select persons who qualify to be appointed as members of the CRL Commission and to submit their names to the President. (own emphasis)

5.1.6. He also submitted that with regard to **the role of the President**, section 11(4) of the CRL Act provides for the role of the President, which states as follows:

“(4) The President must appoint-

- (a) members of the Commission from the names of selected persons submitted in terms of subsection 3(d); and*
- (b) comply with section 9(3) when making appointments” (own emphasis)*

5.1.7. He further affirmed that in terms of section 11(4) of the CRL Act, the President is required to comply with section 9(3) of the CRL Act when making appointments of members of the CRL Commission and that section 9(3) of the Act provides that the Commission must be composed in such a way that it:

- (a) Is at least broadly representative of the main cultural, religious and linguistic communities in South Africa;*
- (b) Broadly reflects the gender composition of South Africa; and*
- (c) Collectively possesses sufficient knowledge and experience concerning issues relevant to-*
 - (i) The promotion and protection of the rights of cultural, religious and linguistic communities; and*
 - (ii) Nation-building*

5.1.8. The Director General further stated that with regard to the current members of the CRL Commission, the President received twenty two (22) names of the recommended candidates from the Selection Panel through the Minister of COGTA, from Prof S Ngubane, the Chairperson of the Selection Panel.

5.1.9. The Memorandum from Prof Ngubane dated 5 April 2019 and titled *“Recommendations for the appointment of Commissioners for the Commission on the promotion and Protection of the Rights of the Cultural, Religious and Linguistic Communities the CRL Commission)”* provides that the Minister must:

5.1.9.1. Note the list of recommended candidates for the appointment as Commissioners for the CRL Rights Commission; and

- 5.1.9.2. Submit the recommended twenty two (22) names of candidates for consideration and appointment of twelve (12) Commissioners of the CRL Commission by the President for the period 2019-2024.
- 5.1.10. The purpose of the memorandum was to inform the Minister of the process that was followed in the appointment of Commissioners of the CRL Commission. It informed the Minister that the Department of Cooperative Governance and Traditional Affairs issued a notice through an advertisement in the media in order for members and organisations to nominate individuals within cultural, religious and linguistic communities of South Africa to nominate persons for appointment to the CRL Commission for the 2019 to 2024 term of the office. The closing date for the submission of nominations forms was 30 September 2018 and a total of 74 nominations were received.
- 5.1.11. The term of office of the previous CRL Commission ended on 28 February 2019.
- 5.1.12. A total of 44 candidates were shortlisted and invited to be interviewed. Father Smangaliso Mkhathshwa and Ms. Yvonne Mhiga were included in the shortlist and later declined and all shortlisted candidates were taken through a security screening process and outcomes of the criminal and credit check were presented to the panel.
- 5.1.13. According to the Memorandum, the panel met on 10 March 2019 for the panel briefing meetings and interviews were held on 11 and March 2019 to make recommendations for the appointment of the Commissioners by the President. One of the shortlisted candidates, Mr. Morakabe Seakgwa, excused himself and withdrew from being interviewed on the date of the interview.
- 5.1.14. A total of 41 candidates were interviewed to serve as the Commissioners and during the interviews, the panel assessed candidates' knowledge and understanding of issues of culture, religion and language, including the mandate

of the CRL Commission and scoring rates were used to rate candidates' performance in the interview and recommended them for appointment.

- 5.1.15. According to the Memorandum and in line with section 11(3)(c) of the CRL Act, and based primarily on their performance in the interview, the panel unanimously recommended 19 candidates for consideration and appointments of 12 Commissioners (including the Chairperson and Deputy Chairperson) by the President:

	Name	Equity	Province	Category	Total
1.	Prof Mosoma	A/M	GP	Religion	470
2.	Ms. Thoko Mkhwanazi-Xaluva	A/F	KZN	Culture	461
3.	Ms. Sheila Khama	A/F	GP	African Religion	451
4.	Ms. Pumla Madiba	A/F	GP	Culture	426
5.	Ms. Tsholofelo Mosala	A/F (Youth)	GP	Culture	412
6.	Mr. Sicelo Emmanuel Dlamini	A/M (PWD)	KZN	Language (PWD)	412
7.	Dr Oscarine Nokuzola Mdende	A/F	EC	Africa Religion (Traditional Healer)	410
8.	Prof Pitika Ntuli	A/M	GP	Religion/Culture	408
9.	Dr Sylvia Mmamohapi Phato	A/F	GP	Tradition	398
10.	Dr John Mphaphuli	A/M	NW	Tradition	390
11.	Rasta Siphon Mantula	A/M	GP	Religion (Rastafari)	362
12.	Mr. Mxolisi Eshweli Zwane	A/M	MP	Language	358
13.	Dr Muneer Abduroaf	A/M	WC	Religion (Muslim)	358
14.	Rev Micah Nthali	A/M	MP	Religion	358

15.	Mr. Phumlani Victor Mzobe	A/M (Youth)	KZN	Culture (Youth)	358
16.	Ms. Nomalanga Tyamzashe	A/F	GP	Culture (Modern/Creative Arts)	358
17.	Ms. Ramokona Tryphina Kgatla	A/F	Limpopo	Language	354
18.	Rev Dr Tsietsi Maloma	A/M	GP	Religion	351
19.	Adv Richard Botha	W/M	GP	Culture (Khoi-San)	342

5.1.16. According to the Memorandum, the panel reconvened on 3 April to consider representivity of the list of recommended candidates (as required by section 9 of the CRL Act) and also to balance the list of candidates for consideration for appointments to serve as Commissioners.

5.1.17. The panel unanimously agreed that the Traditional Leadership, Afrikaner and Culture (Entertainment) category was not adequately represented. Furthermore, the panel observed that the Gauteng Province and Christian Religion category were over-represented and recommended that the following candidates be replaced on the recommended list:

Name	Category	Province
Ms. Pumla Madiba	Culture	Gauteng
Rev Dr Tsietsi Maloma	Religion (Christian)	Gauteng

5.1.18. After deliberations, the panel unanimously recommended that the following candidates be included on the list for consideration and appointment of 12 Commissioners (including the Chairperson and Deputy Chairperson) by the President to balance representation of all categories in line with section 11 (3) (c) of the CRL Act:

Name	Category	Province
Mr. Renier Schoeman	Religion (Afrikaans)	Gauteng
Dr Leshabela H Maduane	Language/ Culture	Limpopo
Mr. Mandla Langa	Culture (Entertainment)	Gauteng
Ikosi Sydney Ndevu	Traditional Leadership	EC
Vhavhuwini Dr Johannes Tshilfularo	Traditional Leadership	EC

5.1.19. The panel was also presented with the security screening results of all candidates and all of them were informed of their security screening and given an opportunity to confirm the security results and the following 5 recommended officials had negative reports:

NAME	SECURITY RESULT
Ms. Thoko Mkhwanazi- Xaluva	Negative credit record
Mr. Mxolisi Eshwell Zwane	Criminal record and Negative credit record
Mr. Phumlani Victor Mzobe	Negative credit record
Ms. Sylvia Pheto	Negative credit record
Mr. Sicelo Emmanuel Dlamini	Negative credit record

5.1.20. The panel also considered the security screening results of the recommended candidates and was satisfied with reasons provided for the negative records. However, the panel advised that the President should nonetheless still exercise caution when considering the candidature of these nominees.

5.1.21. The panel also observed with concern that out of the 41 candidates interviewed, only 2 were white and that they had already served one term as Commissioners. According to the Memorandum this needed attention in the future as it may

suggest that the nomination process is failing to reach or appeal to the white community. A related observation was with regard to the inadequate geographic spread of candidates, with the Northern Cape Province not being represented at all while the Free State had only 1 candidate.

5.1.22. The panel further noted that the quality of candidates and their level of preparedness for the interview were uneven, with some struggling to even engage on basic issues such as the Constitutional mandate and powers and functions of the CRL Commission. The panel was impressed by the scope and depth of the views shared by some of the candidates during interviews as this bodes well for the democracy and suggests that there is indeed hope for South Africa.

5.1.23. The panel then recommended that the Minister notes the list of 22 recommended candidates for appointment as Commissioners for the CRL Commission and submits the recommended names of candidates for consideration and appointment of 12 Commissioners for the CRL Commission by the President for the period 2019-2024.

	Name	Province	Category
1	Prof Mosoma (Current Commissioner)	GP	Religion
2	Ms. Thoko Mkhwanazi-Xaluva (Current Commissioner)	GP	Culture
3	Ms. Sheila Khama (Current Commissioner)	GP	African Religion (Traditional Healer)
4	Ms. Tsholofelo Mosala	GP	Youth/Culture
5	Mr. Sicelo Emmanuel Dlamini (Current Commissioner)	KZN	Religion
6	Dr Oscarine Nokuzola Mdende (Former Commissioner)	EC	Language (PWD-DEAF)

7	Prof Pitika Ntuli	GP	Religion (SACC)
8	Dr Sylvia Mmamohapi Pheto	NW	Tradition
9	Dr John Mphaphuli	GP	Religion
10	Rasta Siphon Mantula	GP	Religion(Rastafari)
11	Mr. Mxolisi Eshwell Zwane	MP	Language
12	Dr Muneer Abduroaf	WC	Religion(Muslim)
13	Rev Micah Nthali	MP	Religion
14	Mr. Phumlani Victor Mzobe	KZN	Youth /Culture
15	Ms. Nomalanga Tyamzashe (Current Commissioner)	GP	Culture (Modern Art)
16	Ms. Ramokona Tryphina Kgatla	LIM	Language
17	Adv Richard Botha (Current Commissioner)	GP	Culture(Khoi-San)
18	Dr Leshabela H Maduane	LIM	Culture/Language
19	Dr Johannes Gogome Tshilfularo	LIM	Tradition
20	Mr. Mandla Langa	GP	Culture/Entertainment
21	Ikosi Sydney Ndevu	EC	Tradition
22	Mr. Renier Schoeman (Current Commissioner)	KZN	Religious (Afrikaans)

5.1.24. The investigating team was provided with the nomination form of Prof Mosoma in which, amongst others, he declared that he was not an office bearer of a political party nor a Member of Parliament, National Council of Provinces, Provincial Legislature and/or Municipal Council. The nomination form was signed on 15 September 2018.

5.1.25. The investigating team was also provided with the President's Minutes Number 182, whereby the President and in terms of section 9(1) read with 13(1) of the CRL Act, appointed the following person as members of the CRL Commission for a period of 5 years:

	Name	Category
1	Prof Mosoma	Religion
2	Dr Sylvia Mmamohapi Pheto	Tradition
3	Ms. Sheila Khama	African Religion (Traditional Healer)
4	Ms. Tsholofelo Mosala	Youth/Culture
5	Mr. Sicelo Emmanuel Dlamini	Religion
6	Dr Oscarine Nokuzola Mdende	Language (PWD-DEAF)
7	Ms. Nomalanga Tyamzashe	Culture (Modern Art)
8	Ms. Ramokona Tryphina Kgatla	Language
9	Dr Muneer Abduroaf	Religion(Muslim)
10	Adv Richard Botha (Current Commissioner)	Culture(Khoi-San)
11	Prof Pitika Ntuli	Religion (SACC)
12	Mr. Renier Schoeman (Current Commissioner)	Religious (Afrikaans)
13	Mr. Mandla Langa	Culture/Entertainment

5.1.26. The President in the Presidential Minute and in terms of section 12 of the CRL Act, appointed Prof. Mosoma and Dr Pheto as Chairperson and Deputy Chairperson of the CRL Commission, respectively. The Presidential Minute was given under the President's hand and seal of the Republic of South Africa in Johannesburg on 7 June 2019. The document was signed by the President and the Minister of the Cabinet.

- 5.1.27. A General Notice was also signed on 7 June 2019, where the President gave a Notice to the public that he has appointed the above persons as members of the CRL Commission.
- 5.1.28. On 26 March 2020, Prof Mosoma, through his attorneys SS Maluleka Incorporated, wrote to the investigating team and advised that there was no merit in the complaint, and that the complaint seems to be politically motivated as their client was previously a member and not an office bearer of the ANC Gauteng PEC.
- 5.1.29. On 30 March 2020, Mr. Khawe also responded to the Investigating team indicating that Professor Mosoma was a member, activist and leader of various affiliates of the United Democratic Front (UDF) such as Atteridgeville Sausville Residents Organisation (ASRO) in the 1980s and he has also been an ANC member and activist for many years. He further informed Investigating team that, throughout the years he served within the ANC and the struggle, he has not been elected as an ANC Official/ Office Bearer.
- 5.1.30. Correspondence was sent to Dr Nkosazana Zuma on 26 November 2019. A response was received from her on 04 March 2021. In her response she stated that the procedures and processes followed by the Selection Panel and the former Minister of COGTA in the appointment of members of the CRL Commission were in line with section 11 of the CRL Act.
- 5.1.31. She also stated that the former Minister invited nominations for members of the CRL Commission and appointed the Selection Panel as provided for in the CRL Act. She further stated that, as provided by the CRL Act, the Selection Panel conducted the interviews and selected persons who qualified to be appointed as members of the CRL Commission.
- 5.1.32. She also informed the Investigation team that the former Minister received the list of recommended candidates from the Selection Panel for submission to the

President and this was due to the fact that the Minister for COGTA is the responsible Cabinet member for the administration of the CRL Act and was therefore obliged in terms of section 101 of the Constitution to prepare and sign a draft Presidential Minute for the appointment of the recommended candidates after having considered the criteria outlined in the CRL Act.

5.1.33. According to Minister Dlamini Zuma, in line with the CRL Act, the President appoints the Commissioners of the CRL Commission and not the Minister, hence the former Minister did not make the appointment of Commissioners.

5.1.34. Minister Dlamini Zuma further stated that the Selection Panel submitted 22 names of the recommended candidates to the President, through the Minister and section 12(1) of the CRL Act requires the President to appoint a member of the CRL Commission or another person satisfying the qualifications set out in section 10 of the CRL Act as the Chairperson of the CRL Commission.

5.1.35. According to section 10(1) of the CRL Act, any person who meets the following requirements can be appointed as the Chairperson of the CRL Commission

5.1.35.1. Be a South African citizen;

5.1.35.2. Be a fit and proper person to hold office as a member of the CRL Commission;
and

5.1.35.3. Subscribes to the objects of CRL Commission.

5.1.36. According to Minister Dlamini Zuma, Professor Mosoma was amongst the 22 candidates submitted by the Selection Panel through the former Minister to the President. Minister Dlamini Zuma further stated that, Prof Mosoma met all the above mentioned qualifying criteria for appointment as a member of the CRL Commission and furthermore Prof Mosoma was a Deputy Chairperson of the CRL Commission and he was also the top performing candidate in the interview.

5.1.37. Minister Dlamini Zuma further stated that there is nowhere in the nomination form signed by Prof Mosoma indicating that he is an office bearer of any political party or member of Parliament, National Council of Provinces, Provincial Legislature or Council.

Application of the relevant legislation and prescripts

Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act of 2002

5.1.38. The CRL Commission is an independent institution established in terms of chapter nine of the South African Constitution. The mandate of the Commission is to strengthen constitutional democracy through the protection and promotion of cultural, religious and linguistic community rights.

5.1.39. The CRL Act 19 of 2002 provides for the investigation and conflict resolution on any issue concerning the rights of cultural, religious and linguistic communities

5.1.40. According to section 9(3) of the CRL Act, the CRL Commission must be composed in such a way that it:

“

(a) is at least broadly representative of the main cultural, religious and linguistic communities in South Africa;

(b) broadly reflects the gender composition of South Africa; and

(c) collectively possesses sufficient knowledge and experience concerning issues relevant to:

(i) the promotion and protection of the rights of cultural, religious and linguistic communities; and

(ii) Nation-building.”

5.1.41. Section 16(3) (c) provides that, a member of the Commission is regarded as having resigned if that member is an office bearer of a political party, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of the provincial legislature or a member of a municipal council and fails to resign from such office within thirty (30) days of having been appointed as a member of the Commission. (own emphasis)

5.1.42. Section 10(2) (b) of the CRL Act also provides that, a person is disqualified from becoming or remaining a member of the CRL Commission if a person fails to resign as provided for in section 16(3) (c) of the CRL Act. (own emphasis)

5.1.43. **The role of the Selection Panel**: Section 11(3) of the CRL Act, amongst others, requires the Selection Panel to select persons who qualify to be appointed as members of the CRL Commission and to submit their names to the President.

5.1.44. **The role of the President**: section 11(4) of the CRL Act provides for the role of the President, and provides as follows:

“(4) The President must appoint

(c) members of the Commission from the names of selected persons submitted in terms of subsection 3(d); and

(d) comply with section 9(3) when making appointments”

5.1.45. He further affirmed that in terms of section 11(4) of the CRL Act, the President is required to comply with section 9(3) of the CRL Act when making appointment of members of the CRL Commission.

5.1.46. Section 12(1) of the CRL Act provides that the President must appoint a member of the CRL Commission or another person satisfying the qualifications set out in section 10 as the Chairperson of the CRL Commission.

5.1.47. Section 10 of the CRL Act provides with regard to the Qualifications for membership that a member of the CRL Commission must be a South African citizen; be a fit and proper person to hold office as a member of the CRL Commission; and subscribe to the objects of the CRL Commission set out in section 4.

5.1.48. Section 10 (2) of the CRL Act also provides for the following persons that are disqualified from becoming or remaining a member of the Commission:

“

(a) A person who on any of the grounds set out in section 47(1)(c), (d) or (e) of the Constitution is not eligible to be a member of the National Assembly;

(b) a person who fails to resign as provided for in section 16(3)(c);

(c) a person who has been removed from office in terms of section 17; or

(d) a person who has been convicted of a crime or an offence in respect of which a court has determined that hatred based on race, ethnicity, gender or religion played a role.”

5.1.49. The Complainant alleged that, the appointment was irregular and improper because in terms of section 16(3)(c) of the CRL Act, a member of the CRL Commission is regarded as having resigned if that member is an office bearer of a political party, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of the Provincial Legislature or a member of a Municipal Council and fails to resign from such office within thirty (30) days of having been appointed as a member of the Commission. (own emphasis)

- 5.1.50. He further alleged that this should have disqualified Prof Mosoma when he failed to resign from his position as an elected additional member of the ANC Gauteng PEC as section 10(2) (b) of the CRL Act provides that, a person is disqualified from becoming or remaining a member of the CRL Commission if a person fails to resign as provided for in section 16(3) (c) of the CRL Act.
- 5.1.51. The Provincial Secretary of the ANC Gauteng informed the Investigating team that Professor Mosoma was a member, activist and leader of various affiliates of the United Democratic Front (UDF) such as Attridgeville Sausville Residents Organisation (ASRO) in the 1980s and he has also been an ANC member and activist for many years. He further informed the investigating team that, throughout the years he served within the ANC and the struggle, he has not been elected as an **ANC Official/ Office Bearer**. (own emphasis)
- 5.1.52. The ANC is better suited to know whether a member has been elected as an **ANC Official/ Office Bearer**, disputed the allegations that Professor Mosoma served as an ANC Office Bearer. (own emphasis)
- 5.1.53. The Constitution of the ANC as amended and adopted at the 54th National Conference, Nasrec, Johannesburg 2017 also provides that an “**office bearer**” means any member who has been elected and holds an office or position of authority in a structure of the ANC
- 5.1.54. The Remuneration of Public Office Bearers Act 20 of 1998 defines “office bearer” to mean a Deputy President, a Minister, a Deputy Minister, a member of the National Assembly, a permanent delegate, a Premier, a member of an Executive Council, a member of a provincial legislature, a traditional leader, a Khoi-San leader, a non-traditional leader member, a member of a house and a member of a Municipal Council. It is clear on evidence discussed above that Professor Mosoma was never an elected as an **ANC Official/ Office Bearer**. (own emphasis)

- 5.1.55. The Investigating team could not find any information that demonstrates that the appointment of Professor Mosoma was not in line with the CRL Act.
- 5.1.56. A Discretionary Notice was sent to the Complainant on 18 May 2021 and he had not responded to it as at the date of this report.

Conclusions

- 5.1.57. Based on the information and evidence obtained during the investigation and the application of the legal framework to the facts of the matter, it can be concluded that the allegation that Prof Mosoma was appointed irregularly and contrary to section 16(3)(c) of the CRL Act to the position of the Chairperson of the CRL Commission is **unsubstantiated**.
- 5.1.58. Prof Mosoma **was not an office bearer** as he was not a member of the ANC who has been elected and holds an office or position of authority in a structure of the ANC nor a Deputy President, a Minister, a Deputy Minister, a member of the National Assembly, a permanent delegate, a Premier, a member of an Executive Council, a member of a Provincial Legislature, a Traditional Leader, a Khoi-San leader, a non-traditional leader member, a member of a house and a member of a Municipal Council.

6. REASON(S) FOR CLOSURE

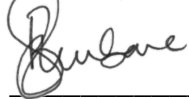
- 6.1. The Public Protector is therefore closing the investigation on the matter taking into cognisance the abovementioned reasons. There is no evidence provided that corroborated the allegation that Prof Mosoma was appointed irregularly and contrary to section 16(3)(c) of the CRL Act to the position of the Chairperson of the CRL Commission and therefore the allegation is unsubstantiated.

- 6.2. Prof Mosoma was not an office bearer as he was not a member of the ANC who has been elected and holds an office or position of authority in a structure of the ANC nor a Deputy President, a Minister, a Deputy Minister, a member of the National Assembly, a permanent delegate, a Premier, a member of an Executive Council, a member of a Provincial Legislature, a Traditional Leader, a Khoi-San leader, a non-Traditional leader member, a member of a house and a member of a Municipal Council.
- 6.3 In terms of Rule 42(1) of the Public Protector Investigation Rules published in Government Gazette No. 41903 dated 14 December 2020, when the Public Protector intends concluding a complaint by means of a closing report provided for in rule 41 (b), the Complainant shall be informed in writing accordingly and be given an opportunity to make representations in connection with the intended closure of the complaint within 14 days of delivery of the notification. In this instance, the Complainant was provided with the notice, through an email and the contact information he provided, but has failed to respond to the notice. As a result, the Public Protector was not able to dispense with the provisions of Rule 42(1) of the Public Protector Investigation Rules, as prescribed as the Complainant did not respond to the notice.
- 6.4 Accordingly, in accordance with Rule 42(2) of the Public Protector Investigation Rules published in Government Gazette No. 41903 dated 14 December 2020, which provides that, “The Public Protector may, if the complainant has not responded within the prescribed time frame of 14 days, proceed with the closing of the file, the investigation into this matter is considered as finalised and the Public Protector proceeds to close this file as the Complainant did not respond to the R42(1) notice within the prescribed period.

7. Kindly note that the Public Protector is now *functus officio* in the matter and cannot take the matter any further. Should any party wish to challenge this decision he/she is at liberty to approach a court of law and lodge an application for a judicial review of the matter.

8. For any further enquiries with regard hereto, you may contact Mr. Khulile Mtiki, the Lead Investigator in this matter who can be reached on 012 366 7097, alternatively at khulilem@pprotect.org.

Kind regards



ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 07/06/2021

Assisted by: Mr. Khulile Mtiki- Senior Investigator: Investigations