



CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE MINISTER OF STATE SECURITY, MR MBAGISENI DAVID MAHLOBO, 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.
- 1.2 The report relates to an investigation into allegations of a violation of the Executive Ethics Code by the Minister of State Security, Mr David Mahlobo MP (hereinafter referred to as Minister Mahlobo).
- 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 The first complaint was lodged with the Public Protector South Africa (PPSA) by Mr Michael Waters, MP of the Democratic Alliance on 18 November 2016, in terms of section 4 of the Executive Members' Ethics Act, 1998. A further similar complaint was received on 5 December 2016 from Mr N F Shivambu MP of the Economic Freedom Fighters.
- 1.5 The complainants alleged that:
 - 1.5.1 During a panel discussion hosted by the Institute for Security Studies on 14 November 2016, Minister Mahlobo commented on the arrest of one of the "*Fees Must Fall*" movement's activists, Mr Mcebo Dlamini; and stated that, "*And I happen to know Mcebo. He has been to my house several times.*"

1.5.2 Two days later, on Wednesday 16 November 2016, during a National Assembly sitting, the Minister responded to an oral question from Prof. Belinda Bozzoli MP; stating that the "*Fees Must Fall*" activist, Mr. Mcebo Dlamini has never been to his house.

1.5.3 It is the contention of the complainants that Minister Mahlobo deliberately misled Parliament and in so doing, contravened paragraph 2.3(a) of the Executive Ethics Code.

1.6 Section 3(1) and 4(1)(a) of Executive Members' Ethics Act, 1998 provide that the Public Protector must investigate any alleged violation of the Executive Ethics Code by a Cabinet member on receipt of a complaint by a Member of the National Assembly.

2. THE ISSUES CONSIDERED AND INVESTIGATED

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

2.1.1 Whether the statement made by Minister Mahlobo in the National Assembly on 16 November 2016 contradicts his statement made two days prior in a panel discussion at the Institute for Security Studies;

2.1.2 Whether Minister Mahlobo deliberately misled Parliament in violation of the Executive Ethics Code.

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, section 3 of the Executive Members Ethics Act of 1998, and sections 6 and 7 of the Public Protector Act of 1994.

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.

3.2 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 amount to a 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 Minister Mahlobo 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 Mahlobo in compliance with the Executive Ethics Code.

4. KEY SOURCES OF INFORMATION

4.1 Applicable Legislation.

4.1.1 The Constitution of the Republic of South Africa, 108 of 1996.

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 Executive Ethics Code.

4.2 Documents and information received.

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

4.2.1.1 A response to the complaints received from Minister Mahlobo, dated 3 February 2017.

4.2.1.2 Hansard, question 259 to the Minister of State Security, of 16 November 2016.

4.2.1.3 *Mail & Guardian Online*, "David Mahlobo: Mcebo Dlamini has been to my house Several times", by Ra'eesa Pather, published on 14 November 2016.

4.2.1.4 *News 24 Online*, "Mcebo who?' More woes for State Security Minister over student leader", by Thulani Gqiran published on 01 February 2017.

4.2.1.5 Institute for Security Studies, Panel discussion audio recording, 17 November 2016: <https://youtu.be/5x63PJKqeUM>

4.3 Correspondence sent and received.

4.3.1 Email sent to the complainants on 07 December 2016 requesting whether a complaint was lodged with the Parliamentary Ethics Committee.

4.3.2 Email received from Mr Waters on 08 December 2016 confirming that the complaint was not lodged with the Parliamentary Ethics Committee.

4.3.3 Letter from the Public Protector to President J Zuma informing him of the investigation, dated 12 January 2017.

4.3.4 Letter from the Public Protector to Minister Mahlobo requesting a response to the complaint and the relevant documents, dated 12 January 2017.

4.3.5 Letter received from the Presidency acknowledging receipt of letter dated 30 January 2017.

4.3.6 A response received from Minister Mahlobo, dated 3 February 2017.

4.3.7 Email sent to Ms. D Billy, Administrative Assistant at Parliament requesting Hansard on 22 February 2017.

4.3.8 Email containing a copy of the Hansard received on 22 February 2017.

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 **Regarding whether the statement made by Minister Mahlobo in the National Assembly on 16 November 2016 contradicts his statement made two days prior in a panel discussion at the Institute for Security Studies;**

- 5.1.1 In a letter to Minister Mahlobo dated 12 January 2017, the Public Protector requested him to respond to allegations made by the complainants regarding his alleged conflicting statements.
- 5.1.2 In his response dated 3 February 2017, Minister Mahlobo confirmed participating in a seminar organised by the Institute for Security Studies on 14 November 2016 and that a member of the civil society organisation, *Right2Know*, posed the following question to him: “...*Minister were you involved in the arrest of Mcebo Dlamini...*”
- 5.1.3 His response was: “...*I don’t do the arrests. Mcebo was brought and arrested by the police; and I happen to know Mcebo. He has been to my house several times...*”
- 5.1.4 Minister Mahlobo further submitted that the context of his answer sought to clarify the different roles that law enforcement agencies play in fulfilling their constitutional and legal mandates, and the fact that he said he knows Mr Mcebo Dlamini and that he has been to his house several times.
- 5.1.5 Minister Mahlobo further explained that on 16 November 2016, Prof B Bozzoli’ MP asked him the following question in the National Assembly:

“...Minister, in your many meetings at your home which were revealed to have taken place in last week’s Mail & Guardian with Mr Mcebo Dlamini, one of the most militant leaders of the Fees Must Fall movement and who now faces charges of public violence, theft, malicious damage to property and assault with intent to cause grievous bodily harm, did you ever discuss any aspects of the student revolt with him and did you provide him with guidance as to how to calm the situation rather than to inflame it?”

- 5.1.6 His response was, “*The member speaks as a fact on a newspaper article without actually putting the facts to the nation; the meeting never took place. Mcebo Dlamini has not been to my house.*”

5.1.7 Minister Mahlobo further indicated, that the context and gist of Prof. Bozzoli's question sought to suggest that Mr Mcebo Dlamini met with him at his residence to discuss the student protests.

5.1.8 Minister Mahlobo submitted that in his response to the Prof Bozzoli's question, his intention was to address the suggestion made by her and not to deny that Mr Dlamini ever visited him at his residence. His response related to whether he met with Mr Dlamini at his residence (specifically) to discuss the student protests.

5.1.9 He therefore contended that he did not make contradictory statements in regard to Mr Dlamini's visits to his residence.

5.1.10 Minister Mahlobo's version of what he stated in regard to Mr Dlamini visiting his residence is corroborated by media reports in this regard, Hansard recording of the question he was asked in the National Assembly and his response thereto.

5.2 Regarding whether Minister Mahlobo deliberately or inadvertently misled Parliament in violation of the Executive Members Ethics Code;

5.2.1 Paragraph 2.3(a) of the Executive Ethics Code states that Members of the Executive may not *"Deliberately or inadvertently mislead the President, or the Premier or, as the case may be; the legislature."*

5.2.2 According to Minister Mahlobo, he never intended to mislead Parliament in his response to Prof Bozzoli's question. He was addressing the suggestion that Mr Dlamini visited his residence to discuss the student protests.

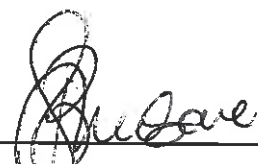
5.2.3 The context of the question asked by Prof Bozzoli and Minister Mahlobo's response in the National Assembly favours an interpretation that it related specifically to whether Mr Dlamini met with him at his residence to discuss the student protests.

5.2.4 There is no indication in the recording of the Minister's response that he denied knowing Mr Dlamini or that the latter ever visited his residence.

5.2.5 Under the circumstances it cannot be found that the Minister wilfully misled Parliament.

6. REASON FOR CLOSURE

6.1 The complaints that the Minister violated paragraph 2.3(a) of the Executive Ethics Code are not substantiated by the evidence and information obtained during the investigation.



ADV BUSISIWE MKHWEBANE

PUBLIC PROTECTOR

REPUBLIC OF SOUTH AFRICA

DATE: 03/11/2017

Assisted by: GGI Investigating Team