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OF THE REPUBLIC OF SOUTH AFRICA

**NATIONAL ASSEMBLY**  
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**RE: NLC Matter - Response to your letter dated the 7<sup>th</sup> of September 2020**

Dear Minister E. Patel,

I thank you for your response and note the contents thereof.

However, I would like to engage further on points 7, 8 and 9 of your letter in which you detail your reluctance to fire the National Lotteries Commission (NLC) board and place the institution itself under administration.

With respect to points 7 and 8, you detailed the process and actions which you took to ensure that the NLC complied with the law. However, despite these actions on your part, they still broke the law for several years (Starting in the 2017/2018 financial year). This was as a direct result of the stance adopted by the NLC's board and its chairperson, Prof. A Nevuthanda which used Regulation 8 to prevent the release of grant beneficiary lists. To my mind the failure by the NLC's board to disclose grant beneficiary information is tantamount to serious misconduct as they failed to act in accordance with the Lotteries Act. As per Chapter 1 section 5 (a) of the National Lotteries Act No. 57 of 1997 (Lotteries Act) as amended;

*“**Subject to section 33** of the Constitution. the Minister — ... (~) may. as soon as he or she gains knowledge of any possible disqualification. terminate the membership of any member of the board on the grounds of serious misconduct or prolonged inability to perform the functions of a member of the board;*

This is supported by Adv. Z Adhikarie's legal opinion to the portfolio committee on trade, industry and competition which argued that;

*“As to whether the assertion by the National Lotteries Commission (NLC) that previous publications of lists of beneficiaries, had been done erroneously, is correct, we submit that the assertion is incorrect and would not in our view withstand constitutional scrutiny”.*

This is supported by our legal opinion which we sought from Adv. P Olivier which argued that;

*“This means that if the Commission refuses to disclose the names of Fund beneficiaries to Parliament on the basis that it is prohibited from doing so, it has acted unlawfully because it has committed an error of law. This is so even if it is assumed that my interpretation of the Lotteries Act is incorrect and the Commission is permitted to not disclose this information to Parliament”.*

You stated in your response dated the 7<sup>th</sup> of September 2020 that “I advised the NLC that I was not in agreement with their legal interpretation on the prohibition on disclosure of beneficiary information”. This would imply that you sought your own legal opinion which determined that the NLC had been acting in an unlawful manner. Therefore, this means that three entirely separate legal opinions found that they had acted in contravention of not only the Lotteries Act, but the Constitution too.

Furthermore, I argue that the board are entrusted with fiduciary duties to ensure that funds disbursed on behalf of the National Lottery Distribution Trust Fund (NLDTF) are done so in a manner consistent with good governance precepts such as openness and transparency.

It is clear that this duty was not carried out for a prolonged period of time as no substantive action was taken by the board against those implicated in corrupt activities i.e. the case of Denzhe Primary Care and the COO Philemon Letwaba.

I contend that this should compel you to invoke Chapter 1 section 5 (a) of the Lotteries Act to remove the board as they were all complicit in the aforementioned violations.

In point 9 of your letter you state that “Only at such time as the appropriate conditions are met, will a request to National Treasury to appoint one or more competent functionaries to perform the functions of the Board, be appropriate”.

Could you please indicate what you mean by the appropriate conditions? Are these specified in Public Finance Management Act (PFMA) or are they a set of criteria that the DTIC has decided upon internally? Moreover, are you not of the view that as per Section 49 (3) of the PFMA the circumstances the NLC finds itself in are exceptional, and should therefore trigger a request to National Treasury to appoint functionaries to perform the functions of the Board?

As per the scope of your investigation, R53 406 800 Million has allegedly been stolen from four projects. That is only a small fraction of the R1.5 to R2 Billion the NLC disburses on an annual basis. It is well publicised that the extent of the corruption runs into the hundreds of millions of Rands – far exceeding the scope of your investigation. Surely these revelations as well as your own investigation are sufficiently exceptional and of a serious enough nature to request National Treasury to place the NLC under administration?

Minister Patel, the funds that have been misappropriated under the watch of the current leadership of the NLC were meant for the most vulnerable in society, however, they have not benefitted from these funds as was intended. It is both morally unconscionable and unjust to allow this kind of conduct by a public institution to continue.

I reiterate my call to you to fire the NLC’s board and place the organisation under administration. Anything short of this, will only allow the impression that the NLC Board is untouchable and beyond consequence for their actions.

I look forward to your further response.

Yours sincerely,

**Mat Cuthbert, MP**

*DA Shadow Deputy Minister of Trade, Industry and Competition*

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