
**AFFIDAVIT IN THE SECTION 194 INQUIRY INTO THE REMOVAL OF THE
PUBLIC PROTECTOR ADV. B. MKHWEBANE**

I, the undersigned,

FREDDIE NYATHELA

do hereby make oath and say that:

1. I am an adult South African male who resides in Orlando West, Soweto. I am also the President of the South African Roadies Association ("SARA"), a non-profit organisation which I founded in the early 1990s.
2. SARA is a South African-based Association. It is a unique and dynamic non-profit training organisation dedicated to the advancement and development of skills and knowledge amongst the youth in the technical sectors of sound and production which form an essential part of the entertainment sector in general.
3. The facts herein contained are within my personal knowledge except where it is evident from the contents that they are not.

A brief history of SARA

4. The Association offers special programmes and skills capacities in the lighting, sound, staging, power, rigging and AV sectors, through both the SAQA-

accredited skills education and training authority [SETA] training courses as well as through its entry-level on-the-job training and international exchange programmes.

5. SARA is the only institution in the whole of Africa that offers focused and dedicated training for black youth in the abovementioned disciplines which remain the sole preserve of white practitioners.
6. In 1992 I conceived the idea of giving young people career prospects in entertainment, technology, and business and equipping them with the necessary qualifications. This arose from my observation of the skills gap and racially skewed nature of the availability of relevant skills as well as training and development opportunities in the sector.
7. Up until 2004 the Association just had a single room, and it was only with the support of the National Lottery and the French Embassy that a building with enough space for several classrooms, administration offices and a storage area could be purchased in the Newtown area of Johannesburg specifically in Henry Nxumalo Street, a stone throw from the famous Market Theatre.
8. When they complete their training, many of the graduates work all over the world. Currently, some of the products of the scheme can be found in places like Dubai, the USA and all over South Africa in the broadcasting, music and film industries, to mention a few.

9. I started as a roadie in the 1980s for one of the best-known South African bands, Harari which was led by Sipho Hotstix Mabuse. Roadies are the technicians or support personnel who travel with a band on tour and handle every part of the concert productions except actually performing the music with the musicians. This catch-all term thus covers many people; tour managers, production managers, stage managers, front-of-house and monitor engineers, lighting directors, lighting designers, lighting technicians, guitar technicians, bars technicians, drum technicians, keyboard technicians, pyrotechnicians, security/bodyguards, truck drivers, merchandise crew and catering, among others. It is no exaggeration to say that no decent entertainment product can be possible without the competent input of roadies. The majority of the people who get credited at the end of any none or television production are "*roadies*" of one type or another.
10. I must mention that Harari was the first "*black band*" in South Africa to own its technical equipment. During apartheid, black people were not allowed to learn technical skills and I saw the imbalance in the entertainment industry, which touched my soul and has been my passion since the early 1980s.
11. That was the period when the idea was born. Something had to be done so that those who came after us would not have to experience the same things we did. The youth had to be given a chance to learn the technical and production skills needed to do productions. This is future-oriented and gives young people the opportunity to work worldwide and to create employment for others. It fits in with any belief that skills development is the foremost tool to

lift the black African child out of a life condemned to unemployment, crime, drug addiction and manual jobs such as car guards and manual labourers.

12. To put this idea into practice, I began to set up international support networks. SARA currently has connections to organisations all over the world.

SARA's international footprint in general

13. I personally canvassed these international networks over the years by knocking at closed doors, campaigning and identifying like-minded people across the globe. To cut a long story short I can mention that to date I have managed to send hundreds of young black South Africans on exchange programmes in France, Denmark, the Netherlands, Norway, the United Kingdom and the United States of America. This has been taking place for more than 10 years and continues today, except for the Covid 19 interruption in the recent past.
14. These foreign organisations support SARA by sending professionals to South Africa to teach young people and share their knowledge.
15. Since 2015, SARA has been hosting Africa's only Live Event Technical and Productions Conference (LETPC) which takes place every year. Many international guests also participate in this live event. The SARA youth skills development project is now world-renowned and appreciated while at home it is sadly looked down upon and not supported.

16. The list of international partners is long: VPLT from Germany, the Backstage Academy from England, and Roskilde Festival from Denmark. We have networks which extend to the technical backup teams of the best international stars such as Beyonce and others.
17. To advance my dreams and passions in this sector all I had expected from the democratic government is support and partnership. Instead, all I have received from the state is the worst level of frustration and sabotage imaginable. This saddens my heart to unimaginable proportions.

MY FIRST COMPLAINT TO THE PUBLIC PROTECTOR OF SOUTH AFRICA, AND HOW ADVOCATE MKHWEBANE PERFORMED HER DUTIES AS OPPOSED TO PREVIOUS PUBLIC PROTECTORS

18. To advance my dreams and passions in this sector all I had expected from the democratic government is support and partnership. Instead, all I have received from the state is the worst levels of frustration and sabotage imaginable. This saddens my heart to unimaginable proportions.

SARA's partnership with UniverSoul of the USA

19. Although the objectives of SARA have always been aimed at empowering previously disadvantaged youth with live event technical and production skills, the current back-led South African government disappointingly refused to support SARA. For many years support came exclusively from outside the country and the programme has miraculously survived despite all the attempts to kill it by the state.

20. Outside country organisations like the US-based UniverSoul Circus came on board and assisted SARA with training programmes. It further afforded, as it continues to do SARA students opportunities to acquire more live event technical and production skills after being trained at SARA.
21. The partnership with SARA and UniverSoul Circus began in 2002. Since then more than 150 young South Africans have been part of the On-the-job training programme with UniverSoul Circus, learning more about sound staging, audio, visual, video technicians and production while touring the United States for ten months at a time.
22. The Universal Circus, as it is based in Atlanta, Georgia, is a world-class live entertainment attraction that has captured the hearts and imaginations of a new generation of families. It showcases and exhibits black talent on the performance side but has now managed to focus on the training and utilisation of black talent on the production side. Before its partnership with SARA, it was also solely dependent on white production-side skills.
23. The UniverSoul Circus did not only offer training to SARA students but also covered all costs for our students travelling overseas, including travel and accommodation costs. As if that was not enough, in addition, paid our SARA students handsomely in foreign currency. Some have built homes for their parents for the first time, from such earnings.

24. During October 2004, as a result of SARA's continued relationship with the UniverSoul Circus, an offer was once again made to place approximately 30 of our students into their training programmes, on an increased salary from \$350 to \$650 per week [R6,044.45 to R11,225.40].
25. However, for some reason, they indicated to us that they would need SARA to provide air travel from South Africa to Atlanta. A copy of a letter addressed to me on behalf of SARA dated 28 October 2004 is annexed hereto and marked "FN1".
26. Based on our experience with the government in the past, a decision was taken reluctantly to approach the Department of Arts and Culture to half cover the travel costs of 16 youths who were to take part in the UniverSoul training.
27. After submitting an application for funding to the Department, the Department through its official firmly assured SARA telephonically and subsequently in writing that the applications would be successful. Based on the Department's assurance travel arrangements were finalised. However, only five hours before departure, the Department reneged on the promise leaving the youth desperate. A white lady who worked for the travel agency which the government refused to pay, however, had to come to the party, as she could not bear the disappointment and loss of opportunities for our youth. She made arrangements to allow the trip on credit by paying from her own pocket with an undertaking that SARA repays when it gets the money in future. Without that intervention, I still shudder to think what might have happened to the

futures of those children whose dreams were nearly permanently dashed by their government.

28. SARA was let down by the Department and felt that the Department was not living up to its objectives and functions. On top of that, SARA was left with a huge debt as it still needed to repay the travel agency.
29. We felt seriously aggrieved by the conduct of the Department and its officials but as we did not have the resources, could not take the Department to court. Our only option was to lodge a complaint with the Public Protector. This was during the tenure of Mr Lawrence Mushwana as the Public Protector of South Africa.

Real experiences

30. To say that our experiences of the next 11 years only added salt to the wounds we had suffered at the hands of the State, would be a gross understatement.
31. Although the Public Protector accepted and investigated the SARA complaint, we were not happy about the processes followed, the treatment and not to mention the outcome. In fact, the Public Protector decided that the issue could only be resolved through the process of mediation. In that process, the Public Protector team which was led by Mrs Ponatshego Mogaladi openly sided with government officials who had abused us and portrayed us, the victims of maladministration as the problem. We were deeply hurt by this.

32. The mediation process did not yield any positive results, especially on the issues of funding international trips for youth and funding SARA's operational and administrative costs including renovation of SARA's building. A report issued by Mushwana, the then Public Protector, is annexed and marked "FN2". To our utter surprise, the report came to the conclusion that the Department had not made any commitment to the project.
33. It is important to note that even though the complaint to Mushwana had much to do with the Department's renegeing on funding SARA students' overseas tickets, it was also dominated by equally important issues, namely (1) a request to the Department for funding of SARA's operational and administrative costs (2) a request for assistance to renovate SARA House, see paragraphs 2.3.5 and 5.3.7 of the report respectively.
34. The Mushwana report and mediation process did not yield any results.
35. Advocate Mushwana finished his term of office without assisting SARA.
36. Advocate Thuli Madonsela stepped into his shoes, in 2009.
37. As a result of Mushwana's failure to implement any of the decisions previously taken, I then lodged a complaint with the new Public Protector, Thuli Madonsela. The purpose of this complaint was to review the matters previously lodged with Mushwana. Madonsela delegated her Deputy Public Protector, Mr Malunga, to deal with the matter. She failed to personally deal



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with the matter. The investigating team was still operating under the leadership of Mrs Mogaladi.

38. During the meetings we had with the Deputy Public Protector and the Department, it was agreed that there was a need to draft a new settlement agreement as the previous agreement did not achieve a resolution between the parties. Apart from a finding which we sought in respect of the maladministration referred to above, we raised the issue of the need for assistance in renovating our building as well as part subsidisation of the running costs.
39. We had acquired the building which we had been told was at the time worth approximately R5 million, at the massively discounted price of R1 million. This happened because the property mogul who owned it, a Dr Barney Hurwitz, was so touched by the story of the youth development projects run by SARA that he was prepared to reduce the price and also agreed to very soft rent-to-buy terms, all of which made it possible for us to own the building. However, we could not afford to pay for the much-needed renovations and the monthly running costs, hence our appeal for government intervention.
40. Subsequently, a *"final"* settlement agreement was signed on 1 April 2014, between SARA, the Department of Arts and Culture and the office of the Public Protector represented by Advocate Malunga. I attach hereto a copy of the said settlement agreement marked annexure **"FN3"**.

41. Disappointingly both the Department and the office of the Public Protector failed to comment on and implement resolutions of the final settlement agreement.
42. Throughout her 7-year term, I never met Adv Madonsela. I only spoke to her once over the telephone. She always referred my complaints to her juniors and this never yielded any results.
43. When the new Public Protector, Advocate Mkhwebane came into office in 2016, I lodged a complaint with her complaining about the Department's failed or undue delay to implement the final settlement agreement referred to above.
44. Three things positively surprised me. Most importantly I was shocked to hear that Mkhwebane unlike the previous Public Protectors, was willing to personally meet with me and hear out my cries. Secondly, she immediately appointed Mr Vusimuzi Dlamini, a senior investigator to prioritize and look into the matter. [I was later informed that Mr Dlamini was one of the most seasoned investigators who was assigned to the most important assignments]. He was indeed excellent. The investigation was carried out within 6 months and the report was subsequently issued within the same period. I attach hereto a report issued by Advocate Mkhwebane dated 19/20 June 2017, marked annexure "FN4". Thirdly, and most importantly at the end of the meeting, Adv Mkhwebane uttered words which I will never forget to my grave because no state official had ever understood our struggles. She said, *"Mr Nyathela, I get you. This is not about you. It is about our children and our grandchildren"*.

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When she said so, tears literally rolled down my eyes. I would have been happy even if the matter ended there. This was sufficient vindication for me and it ease up all the pain I had suffered at the hands of the South African state, including the office of the Public Protector up until that magic moment.

45. Her appointment to the position of Public Protector and her approach to the task of protecting vulnerable members of the public was a game changer for me, for SARA, our beneficiaries and no doubt millions of other South Africans in our position who have benefitted from her efficient and humane delivery style.
46. Advocate Mkhwebane was able to resolve an issue which had been dragging on for almost 11 years and which had eluded two successive Public Protectors in office. Notably, both Adv Mushwana and Madonsela completed their entire terms of office without being able to resolve the issue or to have a decent interaction with me as an ordinary South African whose hopes were pinned on them, alongside the hopes of so many others.

Tangible outcomes

47. The Mkhwebane intervention resulted in SARA's building getting renovated and SARA's operational and administrative costs satisfactorily funded by the Department for the benefit of the youth. These were some of the minimum requirements we had been begging the state to provide in order to assist black

African youth and to make a dent in black poverty and unemployed as well as all the social ills which result from such issues.


48. To our surprise, even after this major victory for the youth, the Department lodged a review application challenging findings and remedial action that SARA's building should be renovated and that SARA's operation and administration costs be funded.
49. After the Public Protector filed its court papers, the Department realised it had no prospects of success and did the right thing by withdrawing its application and tendering taxed costs in favour of amongst others the Public Protector and SARA.
50. The full and final settlement in this regard was made an Order of Court. I attach hereto a copy of a full and final settlement signed by the parties and made an order of court marked "FN5".
51. Advocate Mkhwebane further assisted SARA to investigate another serious matter which had involved the CEO of the National Arts Council.
52. The CEO faced an allegation that he has falsified SARA's application to the executive committee (EXCO) for partnership funding using the SARA name without my consent.

53. I also asked Advocate Mkhwebane to look into whether there was impropriety and abuse of the expired project and surplus policy by the NAC in the distribution of the surplus funds resulting in prejudice to SARA.
54. Advocate Mkhwebane found in our favour on both issues, namely that SARA's name was used without my consent to source out funding and that the implementation of the policy by the NAC was inconsistent with the Constitution, Promotion of Administrative Justice Act (PAJA) and the National Treasury Regulations. I attach hereto a copy of the Public Protector's report dated 15 June 2020, marked "FN6".
55. Inasmuch as the Public Protector's findings and remedial action were well-founded and rational, the National Arts Council filed papers to challenge the Public Protector's report.
56. As we strongly believed that Advocate Mkhwebane's report and conclusions were rational, a decision was taken to oppose the NAC's review application. The opposing papers were subsequently filed. After the Respondents filed opposition papers, the NAC immediately backtracked and filed a notice of withdrawal, tendering the Respondents' wasted costs. I attach hereto the NAC's notice of withdrawal marked "FN7".
57. The NAC just like the previous Public Protectors, namely Mushwana and Madonsela, is defying or reluctant to act on the Public Protector's remedial action, even though it has withdrawn its review application.

58. In fact, it has misled the Portfolio Committee, claiming to have implemented the Public Protector's remedial action. I have been trying in vain to get the South African Parliament to intervene on our behalf by punishing the people responsible for deliberately misleading Parliament at our expense. I annex some of the relevant correspondence marked "FN7(b)" and "FN7(c)".
59. The NAC has since implemented only one of the six remedial actions of the Public Protector, the easiest of them offering us an apology.
60. The Chairperson of the Portfolio Committee is aware of the NAC's dishonest conduct, but he is not willing to fulfil his mandate in this regard. I, therefore, find it surprising and hypocritical that the same Parliament is now trying to remove the only person in the entire system who had ever shown us empathy and actually taken active steps to resolve our problem. In doing so Parliament is placing reliance on people like Mrs Mogaladi who are responsible for our tortured souls. Without insisting on deadlines and delivery, thousands of people like me would have lost all hope and the dreams of the African child would have been permanently dashed. I do not doubt that there are millions of other South African who have benefitted like us from the new approaches introduced by Adv Mkhwebane. If this has also caused some discomfort to the well-paid public servants who are employed to deliver to the public, then it is a small price to pay. Those who are not prepared to make the necessary sacrifices should be removed or they must move over to other jobs. The solution cannot be to remove Adv Mkhwebane for insisting on quick delivery to the public.

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61. I have even solicited the assistance of the Speaker, Nosiviwe Mapisa-Nqakula to instruct the Chairperson to deal with this issue. (On my interaction with the Chairperson of the Portfolio and the Speaker, I will place before the enquiry correspondence and demonstrate the NAC and Chairperson's unwillingness to ensure that the Public Prosecutor's remedial action is fully implemented).
62. Finally, during my oral evidence, I am going to place on record the bad treatment I have been receiving from various officials who have been placed in various positions to assist the public but contributed to our misery. The following officials will be mentioned in my oral evidence:
- 62.1. Ponatshego Mogaladi [PP's office];
- 62.2. All Ministers of Arts and Culture since Pallo Jordan [Former Minister of Arts and Culture];
- 62.3. The CEO of the National Arts Council;
- 62.4. Certain MPs and various officials employed in the Department and the NAC;
- 62.5. Officials of the Johannesburg Municipality who tried to remove SARA from its building in Newtown.
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63. I also intend to place before the enquiry the record where Ponatshego Mogaladi was making demeaning remarks about me. I have been watching


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the proceedings of this Committee in pain for the past few months. But my pain was heightened to a high level on the day when I was watching, and I heard Mrs Mogaladi responding to a question put to her about complaints I had lodged about her with the dismissive and contemptuous remark that "*Mr Nyathela likes to complain*". That is what the Public Protector's office was formed to deal with. That is what she gets paid for the past two decades, to solve our complaints. There is no human being on earth, myself included, who "*likes to complain*". We only complain when there is a need to complain and when we have been abused and disappointed by those who are supposed to protect us.

References

64. My struggles with the South African state and its various organs have also been widely covered in the public and social media. I attach a few exemplary articles for ease of reference and so as to avoid setting out some of the relevant details here. For illustrative purposes, I will refer the Committee to the following randomly selected material:-

64.1. An article which appeared in the City Press on 29 September 2022 headed by the Parliament Speaker, Nosiviwe Mapisa-Nqakula, "Given False Information: NPO" and marked "FN7B";

64.2. An article which appeared in the Weekly SA Mirror on 4 November 2022 titled "Minister Where Are You?" and marked "FN8";


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- 64.3. Photographs of the newly renovated SARA Building marked “FN9”;
- 64.4. Messages of appreciation from some of the SARA graduates or products marked “FN10”; and
- 64.5. A voice note of appreciation from the sound manager who tours with the award-winning international star Beyonce.
65. To end on a positive note, I will also share with the Committee and through it, with South Africans, the good end to our story as symbolised by the R27 million building which was ironically officially opened by the current Minister of Arts and Culture Mr Nathi Mthethwa in the absence of Adv Mkhwebane who could not attend because her present persecution had already begun. The truth is without the intervention of Adv Mkhwebane none of this would have happened. I will also share some of the positive messages received from young people and others around the country and the world, for the intervention of SARA in their lives.

CONCLUSIONS

66. Like other beneficiaries of Adv Mkhwebane’s leadership, I hope that my story will touch the hearts of those tasked with judging Advocate Mkhwebane who must ask themselves whether they could have matched up with her high standards of competency and delivery. When Adv Mkhwebane’s term comes to an end in October 2023, we should only hope that she will be replaced by

somebody equally or more dedicated to the advancement of the economic fortunes of ordinary people in South Africa. Somehow, I have my doubts if that will be achieved but I hope it will, "*for the sake of our children and grandchildren*", to quote Advocate Mkhwebane herself. My message is simple: Hands off Advocate Mkhwebane, the first and only Public Protector. Any suggestion that she is incompetent to be the Public Protector is not only incorrect but flies in the face of strong evidence to the contrary, including the real experiences of ordinary people like me. No person is more competent for that job.

67. I make this statement in the strong belief that it is not possible for the Committee to discharge its duty without hearing even one voice representing the public which the Public Protector was appointed to protect. The Committee has heard an excessive number of those who are employed to assist the Public Protector, most of whom have failed to do so or to appreciate the task of an institution like the Public Protector. No effort was made to balance the picture by also hearing how as members of the public, we have experienced the office and the incumbent. I do not pretend to speak on behalf of the public in a mandated position. I speak only for myself. But I know that I cannot be the only one feeling this way. Public Protector cannot and should not be confined to token invitations to comment but must also involve participation in the actual proceedings of the Committee.


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[Handwritten Signature]

DEPONENT

I hereby certify that the deponent has acknowledged understanding the contents of this affidavit, which was signed and sworn before me at Sandton on 22/11/2022, the regulations contained in the Government Notice R1258 of 21 July 1972, as amended, and Government Notice R1648 of 19 August 1977, as amended, having been complied with.

[Handwritten Signature: D.E. Mostert]

D.E. MOSTERT

Commissioner of Oaths

i.t.o. Section 5(1) of the Justices of Peace and

Commissioners of Oaths Act, 16 of 1963

RO-15/09/2021 – Randburg 08/11/2021

Administrator and Manager

GROUP ONE ADVOCATES

2 Pybus Road, Sandton, Tel.: 011 290-4000

[Handwritten Signature: D.E. Mostert]

COMMISSIONER OF OATHS

NAME: _____

CAPACITY: _____

ADDRESS: _____

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Initial
Deponent

[Handwritten Initials: DM]
Initial
Commissioner

"FN1"



October 28, 2004

Mr. Freddie Nyathela
 South African Roadies Association
 #55 Henry Nxumalo Street
 Newtown Cultural Precinct
 Newtown, Johannesburg 2113

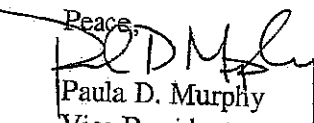
Dear Freddie:

It is with great pleasure that I am able to inform you that the members SARA have once again exceeded our expectations. As you know we actually hire and train young people from around the world and the members of SARA have consistently outperformed many of them. The initiative, enthusiasm and professionalism they possess is unparalleled. You are to be commended for the training and leadership you have provided the members of your organization.

We would like to extend the opportunity to place approximately 30 of your students next year earning salaries of \$350 to \$650 per week. In addition to the normal training areas they will have an opportunity next year to be exposed to film and video production. The UniverSoul Circus will provide training, salary, transportation and lodging stateside. We will need you to provide Air travel from South Africa to Atlanta.

Over the years we have watched a number of your youth grow through our organization and we hope that we can continue to provide this level of exchange between our countries. It is great to see these young people learning and earning an income to support their families and future aspirations. I am certain these members can go into the market there and compete for any available jobs with confidence and experience.

Please let me know at your earliest convenience if you will be able to provide air travel for the members. If you have any questions or concerns please feel free to contact me.

Peace,

 Paula D. Murphy
 Vice President

FN
 PM



Committed to the delivery of quality education

The implementation, so to speak, of a **vision** is only possible when you enjoy the **cooperation** of the relevant stakeholders. This is especially true when your vision foresees a **better future** for an entire nation.

Therefore, we have taken the liberty to **recognise** your organisation's commitment to the delivery of **quality education** in South Africa with the accompanying **Pledge**.

This certificate bears testimony to an institution that believes in the value of establishing and maintaining **high standards of education** on a national level.

It specifically acknowledges your commitment to advance the objectives of the **National Qualifications Framework**, namely:

- the creation of an **integrated national framework** for learning achievements;
- facilitating **access** to, and mobility and progression within education, training and career paths;
- enhancing the **quality** of education and training;
- accelerating the **redress** of past unfair discrimination in education, training and employment opportunities; and
- contributing to the full **personal development** of each learner and the social and economic development of the nation at large.

We are confident that your **pro-active support** of SAQA's goals will in turn contribute to your organisation's **long-term success**. Thank you for helping us create a **responsive** national education and training system that provides quality learning opportunities for every South African.

Kind regards,

Samuel BA Isaacs
Executive Officer

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Tel (+27 12) 431-5000
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Website: www.saqa.org.za

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SAQA'S MISSION

To ensure the development and implementation of a National Qualifications Framework which contributes to the full development of each learner and to the social and economic development of South Africa.

CONFIRMATION OF PLEDGE

South African Roadies Association

Commits itself to advance the objectives
of the NQF which are to:

- create an integrated national framework for learning achievements;
- facilitate access to, and mobility and progression within education, training and career paths;
- enhance the quality of education and training;
- accelerate the redress of past unfair discrimination in education, training and employment opportunities;
- contribute to the full personal development of each learner and the social and economic development of the nation at large.



Samuel BA Isaacs
EXECUTIVE OFFICER



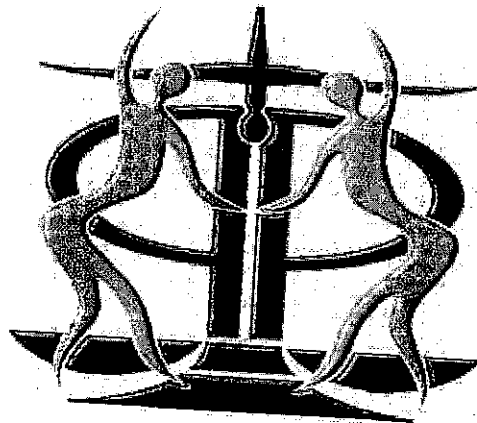
For a full list of accredited providers please visit www.saqqa.org.za,
www.education.gov.za or the relevant SETA website.

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Call

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REPORT IN TERMS OF SECTION 8(3) OF THE PUBLIC PROTECTOR ACT 23
OF 1994



PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO 73

REPORT ON A COMPLAINT BY MR NYATHELA ON ALLEGATIONS THAT
THE DEPARTMENT OF ARTS AND CULTURE RENEGED ON AN ALLEGED
UNDERTAKING TO PROVIDE FUNDING TO THE SOUTH AFRICAN
ROADIES ASSOCIATION

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Report of the Public Protector



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Report of the Public Protector



EXECUTIVE SUMMARY

The Public Protector received a complaint from Mr Nyathela, President of the South African Roadies Association (SARA). He alleged that he had approached the Department of Arts and Culture (DAC) in October 2004 with a request to fund return air tickets for 16 South African youths who were to take part in training provided by Universoul Circus in Atlanta, United States of America.

It was alleged that after SARA had lodged an application for funding, an official of the DAC assured the complainant telephonically that his application would be successful, but he subsequently received a letter from the DAC informing him that the application for funding was unsuccessful. The complainant alleged further that SARA confirmed the traveling arrangements on the basis of the verbal promises and guarantees by the official, and requested compensation for the expenses incurred. However, the DAC denied giving any assurances to fund the trip.

The complainant was advised that any claim for damages he might wish to bring against the DAC for allegedly renegeing on its commitment, would best be resolved by a court of law, as the Public Protector did not have the authority to make any orders for compensation.

The complainant further alleged that he had written to the DAC on several occasions requesting meetings and he received no responses to these requests. The complainant furnished copies of the letters written to the DAC and it was noted from this correspondence that SARA had long outstanding and unresolved issues with the DAC, and that the present situation aggravated the already strained relationship between the parties.

Report of the Public Protector



The Public Protector decided that the issues could best be resolved through the process of mediation between the parties in terms of section 6(4)(b) of the Public Protector Act, 1994.

The Office of the Public Protector mediated between the parties and the parties agreed as follows:

1. The request for compensation by SARA would best be resolved by a court of law.
2. Communication between the parties should be in writing to avoid situations like the present one where SARA alleged they were promised funding and the DAC denied it.
3. The DAC would facilitate a meeting between itself and SARA to discuss and reach agreement on how they would deal with the following issues:
 - 3.1 Assistance to SARA by the DAC to strengthen SARA's international relations;
 - 3.2 The funding by the DAC of international trips for youths;
 - 3.3 SARA's request for funding of its operational / administrative costs.



1. INTRODUCTION

1.1 This report is submitted to Mr Freddy Nyathela, President of the South African Roadies Association (SARA), as well as the Department of Arts and Culture in terms of section (8)3 of the Public Protector Act, 1994. It deals with a complaint by Mr Nyathela alleging that the Department of Arts and Culture (DAC) reneged on an undertaking to provide funding for the South African Roadies Association. He also complained that he had written to the DAC on several occasions without receiving responses.

2. JURISDICTION, POWERS AND FUNCTIONS OF THE PUBLIC PROTECTOR

2.1 The provisions of Chapter 9 of the Constitution, 1996

2.1.1 The Public Protector (as an institution) was established by virtue of section 181(1) of the Constitution of the Republic of South Africa 108 of 1996, as one of the institutions mandated to strengthen constitutional democracy.

2.1.2 Section 182 of the Constitution empowers the Public Protector 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. In addition to the investigative mandate, the Public Protector has the power to report on the conduct in question and to take appropriate remedial action.

2.2 The Public Protector Act, 1994

2.2.1 The Public Protector Act 23 of 1994, has been promulgated to define the powers and functions of the Public Protector and to regulate the operations of the institution.



- 2.2.2 Section 6(4)(a) provides that the Public Protector is competent to investigate any alleged maladministration in connection with the affairs of government at any level and any alleged abuse of power or other improper conduct by a person performing a public function.
- 2.2.3 Section 6(4)(b) of the Public Protector Act empowers the Public Protector to endeavour, in his sole discretion, to resolve any dispute or rectify any act or omission by mediation, conciliation or negotiation.
- 2.2.4 Section 6(4)(c)(ii) provides that the Public Protector is competent at any time prior to, during or after an investigation, if he or she deems it advisable, to make appropriate recommendations regarding the redress of the prejudice found or any other appropriate recommendation he or she deems expedient under the circumstances, to the affected body or authority.

3. THE COMPLAINT

- 3.1 The complaint was lodged by Mr Nyathela, the President of the South African Roadies Association (SARA), hereinafter referred to as the complainant. The details of his allegations were as follows:
- 3.1.1 SARA made an application for funding to the Department of Arts and Culture (DAC) in October 2004 with a request to fund return air tickets of 16 South African youths who were to take part in training provided by the Universoul Circus in Atlanta, United States of America;
- 3.1.2 After lodging the application, an official of the DAC assured complainant telephonically that the application would be successful and he requested that SARA's travel agent confirm in writing the terms and conditions of payment;



- 3.1.3 However, on 26 January 2005 the DAC informed complainant as follows:

"I regret to inform you that your proposal for funding for air tickets for 16 students to attend an experiential training in Atlanta offered by the Universoul Circus has been unsuccessful".

"It is due to serious financial constraints that this project cannot be funded, as the department is almost at its financial year end and funds for this financial year have already been allocated to be spent";

- 3.1.4 The complainant responded to this letter by writing to the Minister of Arts and Culture, Dr Pallo Jordan, on 27 January 2005 requesting the Minister to intervene;
- 3.1.5 The complainant did not receive any response from the Minister and sent an open letter to the Minister on 14 February 2005 via the media. The Minister responded and indicated that he found the letter offensive and objected to the letter being addressed to him unsolicited. The Minister further indicated that no promises for funding had been made to the complainant;
- 3.1.6 The complainant had written to the Department on several other occasions requesting meetings and he received no response to these requests.

4. THE INVESTIGATION

- 4.1 The complainant was advised in writing that if he wanted to pursue any claim for damages against the DAC for allegedly renegeing on its commitment, he should approach a court of law, as the Public Protector



did not have the authority to issue orders for the payment of damages. He was informed that the Public Protector would investigate the alleged non-response by the officials of the DAC to the complainant's requests for meetings.

- 4.2 The complainant furnished copies of the letters written to the DAC and it was noted from this correspondence that SARA had long outstanding and unresolved issues with the DAC, and that the present situation aggravated the already strained relationship between the parties.
- 4.3 The Public Protector decided that the issues could best be resolved through the process of mediation between the parties in terms of section 6(4)(b) of the Public Protector Act.

5. MEDIATION BY THE OFFICE OF THE PUBLIC PROTECTOR

- 5.1 A meeting was convened by the investigators of the Public Protector between SARA, represented by the complainant and Mr M Matshoba, and the DAC, represented by Mr T Wakashe and Mr A Singh.
- 5.2 SARA was given an opportunity to identify critical unresolved issues and thereafter the DAC was given an opportunity to respond to the issues identified by SARA.
- 5.3 Through the process of mediation the following issues were identified, and agreement reached between the parties as indicated in italics below:

5.3.1 *Compensation to SARA by the DAC for the Atlanta trip of January 2005*

- 5.3.1.1 SARA made an application for funding to the DAC in October 2004 with a request to fund return air tickets of 16 South African youths who

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- were to take part in training provided by the Universoul Circus in Atlanta, United States of America.
- 5.3.1.2 The complainant reiterated his allegation that, after lodging the application, an official of the DAC assured him telephonically that the application would be successful, and that the official requested that SARA's travel agent confirmed in writing the terms and conditions of payment.
- 5.3.1.3 SARA confirmed the traveling arrangements on the basis of the alleged verbal promises and guarantees by the official, and now requested compensation for the expenses incurred.
- 5.3.1.4 *The parties agreed that this was a dispute of fact and that it could best be resolved by a court of law. The Public Protector had previously advised SARA in a letter dated 6 May 2005 that it did not have adjudication powers and that this matter could best be resolved by a court of law. (SARA had initiated proceedings in this regard already at the time of the meeting.)*
- 5.3.2 Lack of acknowledgements and responses by the DAC to correspondence received from SARA**
- 5.3.2.1 SARA has written several letters to the DAC requesting funding, but no acknowledgement or response was received.
- 5.3.2.2 *The DAC acknowledged that communication was often a problem and undertook that the DAC would improve on it. It was agreed that it was important that communication between the parties should be in writing to avoid situations like the present one where SARA alleged they had been promised funding and the DAC denied it.*



5.3.2.3 *It was further agreed that in order to rebuild the relationship between the parties, SARA's Board would in future send formal requests for meetings to the DAC and that the requests would outline the proposed issues for discussion to enable the DAC to prepare for the meetings.*

5.3.3 Assistance to SARA by the DAC to strengthen its international relations

SARA requested the DAC to assist them in establishing relations with international organizations that would assist SARA in fulfilling its mandate, but no response or assistance was received.

5.3.4 Funding by the DAC of international trips for youths affiliated to SARA

SARA requested the DAC in future to provide financial assistance by funding traveling expenses for South African youths sent abroad by SARA to gain international exposure.

5.3.5 SARA's request to the DAC for funding of its operational/administrative costs

SARA requested the DAC to assist them with funding of their operational and administrative costs.

5.3.6 *On the three issues listed in paragraphs 5.3.3 to 5.3.5 above, it was agreed that the DAC would facilitate a meeting between itself and SARA to discuss and reach agreement on how they would deal with these issues.*

Report of the Public Protector



5.3.7 Request for assistance to renovate SARA house

5.3.7.1 SARA had made an application for funding to the DAC for assistance to renovate their premises.

5.3.7.2 *The DAC indicated that they did not have a budget to assist SARA with funding for infrastructure and renovations to their premises but undertook that it would facilitate this request through an appropriate funding agency.*

6. CONCLUSION

6.1 It was agreed at the meeting that the involvement of the Public Protector with this matter was concluded, and that the Public Protector would issue a report, incorporating the decisions taken at the meeting

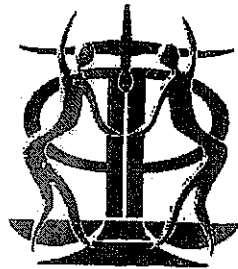
ADV M L MUSHWANA

PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 25/07/06

Assisted by: Mrs Montwedi-Tshabalala
Senior Investigator

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**PUBLIC PROTECTOR
SOUTH AFRICA**

PUBLIC PROTECTOR SOUTH AFRICA

**SETTLEMENT AGREEMENT
IN TERMS OF
SECTION 6(4) (d) OF
THE PUBLIC PROTECTOR ACT, 1994**

INVOLVING A DISPUTE BETWEEN:

THE SOUTH AFRICAN ROADIES ASSOCIATION

AND

THE NATIONAL DEPARTMENT OF ARTS AND CULTURE

FINAL SETTLEMENT AGREEMENT 1 APRIL 2014

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1. INTERPRETATION

1.1 Clause Headings are for convenience only and shall not be used in the agreement's interpretation;

1.2 Unless the context clearly indicates the contrary, an expression which denotes:

1.2.1 any gender includes other genders

1.2.2 a natural person includes a legal person and vice versa;

1.2.3 the singular includes the plural and vice versa.

1.3 In this Agreement the following words shall where the context so admits have the following meaning:

1.3.1 "Act" shall mean the Public Protector Act, 1994;

1.3.2 "SARA" shall mean the South African Roadies Association herein represented by Mr Mthuthuzeli Matshoba (SARA Chairman), Mr Freddie Nyathela (President), Ms Mmaphefo Kefilwe (SARA Operations) and Mr Graeme Giffilan (SARA Business Affairs) ;

1.3.3 "PPSA" shall mean the Public Protector South Africa as defined in the Act herein represented by the Advocate S Kevin Malunga (DPP), Advocate Mashaba Matimolane (PPSA), Mr Reginald Ndou (PPSA), Mr Thulare Makama (Office of the DPP) and Ms Jane Diane (Office of the DPP);

1.3.4 "DAC" shall mean the Department of Arts and Culture herein represented by Sibusiso Xaba (Director General), Ms Maseapo Kganedi (Deputy Director General - Institutional Governance), Mr Glenn Masokaone (Director - Cultural Development) and Mr Collen Hlatshwayo (Deputy Director -Cultural Development);

1.3.5 "Previous Settlement Agreement" shall mean the agreement signed on 17th February 2012 between the DAC and SARA and the PPSA, a mediation settlement agreement pursuant to Section 6 (4) (d) of the Act, which was facilitated by the PPSA;

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- 1.3.6 "facilitate" shall mean ease, enable, simplify, smooth, help, aid, assist, expedite, accelerate, make easy, make possible, smooth the progress of and all in all have the opposite meaning of "impede";
- 1.3.7 "DPP" shall mean the Deputy Public Protector;
- 1.3.8 "Batho Pele principles" shall mean the Eight Batho Pele principles developed to serve as acceptable policy and legislative framework regarding service delivery in the public service. These principles are aligned with the Constitutional ideals of promoting and maintaining high standards of professional ethics, providing service impartially, fairly, equitably and without bias, utilising resources efficiently and effectively, responding to people's needs; the citizens are encouraged to participate in policy-making and rendering an accountable, transparent, and development-oriented public administration. (source: http://www.ipid.gov.za/about%20us/batho_pele.asp)
- 1.3.9 "PAJA" shall mean the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"), the Constitution of the Republic of South Africa 108 of 1996.
- 1.3.10 "parties" shall mean the PPSA, SARA and the DAC;
- 1.3.11 "Agreement" shall mean this Mediation Settlement Agreement;
- 1.3.12 "Funding Agencies" shall mean all funding sources including without limitation Government, NGO, International Donors, Private, Educational and/or sources arising from bi-lateral agreements and multi-lateral agreements
- 1.3.13 "MGE shall mean Mzansi Golden Economy, a strategy to reposition the cultural industries in South Africa. The MGE strategy opens up the arts, culture and heritage sector to effectively and comprehensively contribute to economic growth and job creation...(including inter alia):
- 1.3.13.1 *The Cultural Events initiative funds big cultural events in different cities and towns of the country. These Events provide platforms for performing artists to display their arts and earn a living. It also provides secondary and supportive jobs.*
- 1.3.13.2 *The Sourcing Enterprise sources goods and services for events, shows, conferences and exhibitions. It chooses the best and most*

appropriate artists, and their creations. It also provides an opportunity for the young upcoming artists to be showcased on these platforms.

- 1.3.13.3 *The Public Art project looks at proposals from artists who can do a Public Art Performance like the Cape Carnival and the Infecting the City project which does 'impromptu' multi-media arts. Street theatre and dance are also part of this programme. The Public Art project consists of outdoor murals and sculpture. The Department has been funding such projects which offer job opportunities to visual artists, especially among the youth and beautifies public spaces;*
- 1.3.13.4 *The Touring Venture project deals with Art Exhibitions, Plays and Public Art Performances that need to be taken to various cities to provide opportunities for audiences elsewhere to experience the art;*
- 1.3.13.5 *The Art Bank Project is envisaged as a national rental agency for contemporary and traditional South African Art. Its function will be to procure and curate artworks in all public buildings, including government departments and its institutions and South African Embassies around the world to ensure that good quality contemporary artworks are displayed.*
- 1.3.13.6 *The National Cultural Industries Skills Academy (NaCISA) is a proposed centre of excellence that is being developed in collaboration with Departments of Basic and Higher Education, the Department of Trade and Industry and the Department of Labour. We are discussing the project with various tertiary level institutions that provide training to the arts sector to devise a curriculum and programme of training, having found gaps with the skills shortages identified by researches in the arts sector. This centre of excellence will provide a training centre for the youth at tertiary level";*
- 1.3.13.6 *The information contained in clauses 1.3.13.1 to 1.3.13.6 inclusive is sourced from <https://www.dac.gov.za/content/3-what-mzansi-golden-economy-mge>;*
- 1.3.14 **"Objectives** shall mean the specific points detailed in Section 3 hereunder";

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2. BACKGROUND OF THE MATTER

2.1 During October 2012 SARA lodged a complaint with the PPSA regarding the lack of implementation by the DAC and PPSA, of the "Previous Settlement Agreement" and other matters arising;

2.2 In the Previous Settlement Agreement the following were included:

2.2.1 The PPSA was approached by the SARA regarding alleged lack of response to a proposal to renovate their building and non-payment of the ten percent (10%) which is Eighty-Five Thousand Rand Only (R85 000-00) emanating from Eight Hundred and Fifty Thousand Rand Only (R850 000-00) promised funding by the DAC in 2010.

2.2.2 In the 2010/11 financial year, the SARA submitted a proposal to the DAC for funding of renovation of SARA's building and Eight Hundred and Fifty Thousand Rand Only (R850 000-00) for skills development and training. The DAC paid ninety percent (90%) of the R850 000-00 and did not respond to the proposal for renovating SARA's office building.

2.2.2.1 That SARA will submit a report and audited financial statements to the DAC by Friday, 24 February 2012, which SARA did.

2.2.2.2 The DAC undertook to consider the report and pay the 10% indebted to SARA within thirty (30) days after accepting the report mentioned in 1.3.1 and a letter confirming the acceptance of the report shall be sent to SARA, which DAC did.

2.2.2.3 The DAC acknowledged that *"the projects of SARA are in line with the Strategic objectives of the Department and the relationship shall be maintained"*.

2.2.2.4 *"The agreement was entered into between the parties with the aim of improving the relationship between the parties and in the spirit of Ubuntu Batho Pele principles and good faith"*.

2.2.2.5 "The PPSA in terms of the Act decreed that appropriate methodology for the resolution of the complaints would be Alternative Dispute Resolution, specifically Interest based negotiation. At a joint meeting facilitated by the DPP the parties agreed on a procedure for the consideration of the applications to give effect to the relevant legislation, more particularly PAJA as well as the Batho Pele principles;

2.2.2.6 The DAC and SARA shall continue to engage each other regarding future funding henceforth and that all communications from SARA should be directed to the DAC Director-Cultural Development, Mr Glen Masokoane.

2.2.2.7 All other issues relevant to funding and affairs of the SARA shall be addressed to the DAC through Mr Masokoane as indicated above in 1.2.2.6.

2.2.2.8 The DAC shall respond to a proposal made by SARA requesting funding for the renovation of the SARA building.

2.3 As a result of the PPSA's response to the complaint lodged with it by SARA, SARA and the PPSA, copied to DAC, subsequently exchanged communications during the period up to from November 2012 through to 11th July 2013 on which date the parties met at the Office of the PPSA under the Chairmanship of the DPP and reviewed the matters arising in respect of said complaint lodged by SARA in respect of the Previous Settlement Agreement. The meeting was recorded. Subsequently on the same day the DPP issued a Directive in respect of resolving the complaint lodged by SARA whereby the parties agreed that:

2.3.1 That SARA will furnish DAC and copy the DPP with all outstanding issues that needed to be addressed in particular clarity from both parties is required concerning:

2.3.1.1 (a) DAC providing assistance to SARA'S operations over the coming three (3) years

2.3.1.2 (b) DAC possible assistance in regard to the SARA'S building needs

DAC: _____ SARA: _____

Mediation Settlement Agreement between DAC and SARA in terms of Section 7(4) (a) and (b) of the Public Protector South Africa Act, 1994

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2.3.2 That the parties will send their representatives by 1 August 2013 with a view to discussing a new settlement agreement in the spirit of amicably resolving this matter.

2.4 SARA furnished DAC and copied the DPP, as per the DPP'S Directive, on 17th July 2013 in a communication detailing the 3 outstanding issues as far as SARA was concerned:

2.4.1 The conclusion of a SARA – DAC relationship on a three (3) year SARA Administration and Operations support plan, the starting point being where the parties last left off on the issue ;

2.4.2 The conclusion of a SARA – DAC relationship on a three (3) year SARA House renovation, maintenance and repair programme, the starting point being where the parties last left off on the issue.

2.4.3 SARA – DAC – PPSA agreement, with a time frame and deliverables that would see an end to the challenges and the initiative of a new era of mutually constructive, productive and positive outcomes

2.5 In addition SARA confirmed to the DAC, in its 17th July 2013 communication the following:-

2.5.1 Settling and signing the three (3) agreements, as per clauses 2.4.1, 2.4.2 and 2.4.3 above, would certainly resolve all the outstanding issues between SARA and DAC;

2.5.2 The following commitments from SARA in respect of its focus interacting with DAC

- 2.5.2.1 On the matters at hand;
- 2.5.2.2 On the future
- 2.5.2.3 On mutually productive and positive outcomes
- 2.5.2.4 On Fostering and growing goodwill and good relations
- 2.5.2.5 On implementing the Objectives

2.6 During the abovementioned meeting convened between the DAC and SARA which was facilitated by the DPP on 11 July 2013:

2.6.1 It was evident that DAC and SARA were far apart on a numerous issues (to the extent that SARA was obliged to request, from the Office of the

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DPP, and secure a copy of the recording of the meeting of 11 July 2013, which SARA did)

2.6.2 it was agreed that there is a need to draft a new Agreement as the Previous Settlement Agreement did not achieve resolution between the parties.

2.7 The Office of the DPP submitted a draft Agreement to the DAC and SARA on 7th October 2013

2.8 SARA and the PPSA, copied to DAC, subsequently exchanged communications and revisions of the draft Agreement during the period up to from 16th October 2013 through to 28th October 2013 on which date the parties met at the Office of the PPSA under the Chairmanship of the Deputy Public Protector (DPP) and addressed the outstanding issues in respect of the draft Agreement. The meeting was recorded.

2.9 The terms of this Agreement reflect the discussions at the meeting of 28th October 2013 between parties present.

3. OBJECTIVES OF THIS SETTLEMENT AGREEMENT

3.1 The Objectives of this Agreement are to:

3.1.1 Put the complaint lodged by SARA to rest and amicably resolve all issues attendant thereto

*3.1.2 Implement the DAC commitments to SARA made variously

3.1.3 For the DPP to have oversight in respect of monitoring the progress of the Objectives and outcomes of the Agreement, and accordingly to put in place an appropriate monitoring mechanism;

*3.1.4 To ensure the DAC operates in strict accordance with the Batho Pele principles in all its dealings with SARA, and that the relationship between the DAC and SARA is compliant in respect of PAJA

*3.1.5 DAC commits to respond to SARA's proposals within thirty (30) days of receipt of such proposal(s).

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4. AGREEMENT BETWEEN THE PARTIES

4.1. Therefore the parties agree as follows:

4.1.1. That SARA shall submit its request for funding of its projects to the DAC in the form of a proposal and with requisite supporting documentation. The DAC shall consider such request based on the departmental policies, prescripts and budget allowable. Should SARA's request for funding be successful, the DAC shall consider funding on a three (3) year funding cycle, based on the principles of the MGE. The parties shall, upon successful application by SARA, enter into a Memorandum of Agreement regulating the funding relationship. DAC agrees that it shall take no longer than thirty (30) days to consider and respond to SARA'S aforementioned proposal.

4.1.2 The parties agree that the Department shall in keeping with its existing agreement with Industrial Development Trust facilitate a process to evaluate the needs of SARA in regard to structural renovation of SARA House. DAC shall request IDT to do an assessment on SARA House with a view of establishing the cost related to the renovation of SARA House.

* 4.1.3 The DAC shall consistent with clause 4.1.9 below immediately consider and intervene to remedy the health ,safety and security risks uncovered at the SARA House.

* 4.1.4. That SARA and the DAC will deploy and/or see to it that sufficient personnel, oversight and resources are set aside by DAC to see to it that this Agreement is adequately supported in order to implement the Objectives hereunder including respective obligations warranties and representations respectively.

4.1.5. That SARA shall continue to seek funding from other prospective Funding Agencies.

* 4.1.6. That DAC and SARA commit to a continuous and harmonious relationship in ensuring that SARA's vision and mission, as a training organization servicing the technical and production sectors, is enhanced, facilitated and supported.

4.1.7. That in good faith and to the best of its ability, the DAC shall, facilitate SARA's application for funding of renovating its building to other Funding Agencies.

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Such facilitation shall be to extent possible by the DAC and shall be for a period not longer than one (1) year.

4.1.8. That the parties may, notwithstanding any other rights in law, take the matters arising from any breach arising and not remedied 14 days after written notification by one party to the other concerning the breach, to the PPSA and or any other forum of their respective choices.

*4.1.9 The DAC shall submit to PPSA a detailed project/implementation plan in regard to the Intervention of the IDT and other bodies and its proposal regarding assisting with the removal of the health, safety and security risks uncovered at SARA House by close of business on Tuesday 15 April 2014

4.1.10 That the parties accept and acknowledge that, notwithstanding anything to the contrary contained herein, the PPSA may at any time for any breach hereunder exercise its rights in terms of Section 6(4)(c)(ii) which provides that *"the Public Protector is competent at any time prior to, during or after an investigation, if he or she deems it advisable, to make appropriate recommendations regarding the redress of the prejudice found or any other appropriate recommendation he or she deems expedient under the circumstances, to the affected body or authority"*

THUS SIGNED AND DATED AT PRETORIA ON THIS 1 DAY OF April 2014.

Freddie Nyathela

.....
**South African Roadies Association
President**

Mr. Freddie Nyathela

Date:

Being duly authorized to sign for and on behalf of South African Roadies Association 01/04/2014

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KM *[Signature]*



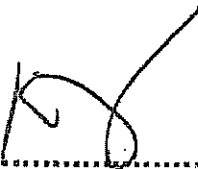
.....
Department of Arts and Culture

Director General

Mr. S. Xaba

Date: 01/04/2014

Being duly authorized to sign for and on behalf of Department of Arts and Culture



.....
Deputy Public Protector of the Republic of South Africa

Adv K.S Malunga

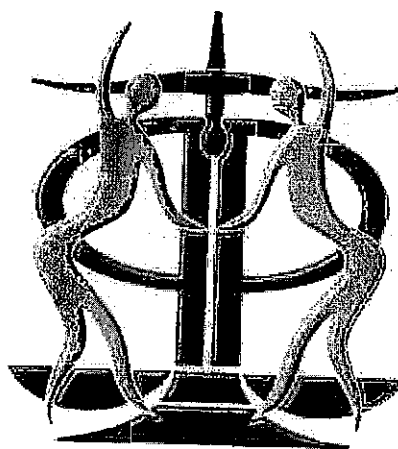
Date: 01/04/2014

Being duly authorized to sign for and on behalf of the Public Protector South Africa

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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



PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO. 6/2017

ISBN: 978-1-928366-27-0

"Allegations of Failure or Undue Delay by the Department of Arts and Culture (DAC) to implement the Settlement Agreement signed in terms of section 6(4)(a) and (b) of the Public Protector Act, between South African Roadies Association (SARA) and Department of Arts and Culture (DAC)"

REPORT ON AN INVESTIGATION INTO AN ALLEGED FAILURE OR UNDUE DELAY BY
THE DEPARTMENT OF ARTS AND CULTURE TO IMPLEMENT THE SETTLEMENT
AGREEMENT SIGNED IN TERMS OF SECTION 6(4) (a) and (b) OF THE PUBLIC
PROTECTOR ACT 23 OF 1994.

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



Executive Summary

- (i) This is a report of the Public Protector issued 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. This report relates to an investigation into the alleged failure or undue delay by the Department of Arts and Culture (DAC) to implement the Settlement Agreement signed in terms of section 7(4) (a) and (b) of the Public Protector Act 23 of 1994. The complaint was lodged with the Public Protector by South African Roadies Association (SARA) following the lack of implementation by DAC of the Settlement Agreement signed on 01 April 2014.
- (ii) The Complainant is SARA duly represented by its president, Mr Freddie Nyathela.
- (iii) In the main, the complaint was that the DAC failed or unduly delayed to implement the Settlement Agreement signed between DAC and SARA in terms of section 7(4) (a) and (b) of the Public Protector Act 23 of 1994 on 01 April 2014.
- (iv) On analysis of the complaint, the following issues were identified and investigated:
 - (a) Whether the Department improperly failed or unduly delayed in implementing the Settlement Agreement signed between SARA and DAC on 01 April 2014.
 - (b) Whether the Department improperly failed to fund or render financial assistance to SARA on the following issues despite SARA being fully compliant with DAC funding policies:
 - (i) Assistance to SARA by DAC to strengthen its international relations.
 - (ii) SARA's request to DAC for funding of its operational and administrative costs.

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



- (c) Whether the Department unduly funded operational and administrative costs of the three (3) orchestras namely Cape Town Philharmonic Orchestra, Cape Town Jazz Orchestra and KwaZulu Natal Philharmonic Orchestra and unfairly discriminated against SARA.
- (d) Whether the Department improperly failed to acknowledge receipt and respond to correspondences from SARA?
- (e) Whether the Complainant was prejudiced by the conduct of the Department in the circumstances.
- (v) The investigation was conducted in terms of section 182 of the Constitution which gives the Public Protector the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act, 1994, which regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level. In order to resolve the matter amicably the matter was resolved through Alternative Dispute Resolution (ADR).
- (vi) Key laws and policies taken into account to determine if there had been maladministration by the Department and prejudice to the Complainant were principally those imposing administrative standards that should have been complied with by the Department or its officials when processing this complaint. Those are the following:
- a. Section 2(1) (a) and (b) of Culture Promotions Act 35 of 1983 which provides amongst other things that the Minister may in order to foster culture in the Republic, acquire, develop and maintain movable and immovable property,

In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



- award bursaries and make grants for the undertaking of study tours to foreign countries, subsidise or finance a chair in a university, an association, a programme or a project in any other country having as its object the making known of the culture of the Republic.
- b. Section 2 of Cultural Institutions Act 119 of 1998 which provides for the payment of subsidies to declared institutions by the Minister of Arts and Culture.
 - c. Section 9 and 10 of the Skills Development Act 97 of 1998 which provides for the establishment of Sector Education and Training Authorities (SETA) and its functions, which involves the allocation of grants in the prescribed manner to employers, education and training providers and workers.
 - d. DAC's Infrastructure Policy (drafted in April 2016) which provides for the funding criteria of non DAC institutions.
 - e. Estimates of National Expenditure (ENE)/Treasury Guidelines (2009) which provides for instructions on how to complete the chapter on Estimates of National Expenditure.
 - f. Section 9(3) of the Constitution which provides that 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, diasability, religion, conscience, belief, culture, language and birth.
 - g. Section 25 and 26 of Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 which places the duty and responsibility on the state and its officials to promote equality in the spheres of their operation.

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- h. Section 2 of Broad Based Black Economic Empowerment of 2003 which provides for the promotion of economic transformation in order to enable a meaningful participation of black people in the economy and achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises.
- (vii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:
- (a) **Whether the Department improperly failed or unduly delayed in implementing the Settlement Agreement signed between SARA and DAC on 01 April 2014;**
- (aa) The allegation that the Department improperly failed or unduly delayed to implement the settlement agreement is substantiated.
- (bb) The Department of Arts and Culture failed to implement a Settlement Agreement entered into between SARA and it, dated 01 April 2014 which was facilitated by the Deputy Public Protector, Advocate KS Malunga.
- (cc) DAC's failure to implement the Settlement Agreement was in violation of *Clause 4.1.9 of the Settlement Agreement which provides that DAC shall submit to the Public Protector a detailed implementation plan with regard to the intervention of the IDT and other bodies and its proposal regarding assisting with the removal of health, safety and security risks uncovered at SARA House by close of business on Tuesday 15 April 2014.*
- (dd) DAC's failure in this regard constitutes improper conduct and maladministration as contemplated in Section 182(1)(a) of the Constitution of the Republic of South Africa and in section 6 (4) (a) (v) of the Public Protector Act 23 of 1994.

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- (b) **Whether the Department improperly failed to fund or render financial assistance to SARA on the following issues despite SARA being fully compliant with DAC's funding policies:**
- (i) **Assistance to SARA by DAC to strengthen its international relations;**
- (aa) The allegation that the Department improperly failed to render its support to SARA of the international interactions is not substantiated.
- (bb) Indications in terms of available evidence are that DAC has fulfilled its obligations and full support of international interactions proposals over a cycle of three years has been provided to SARA. According to SARA'S comprehensive financial statement for the year ending on 31 December 2015, an accumulated fund of R4, 686,487 is reflected. A contract has also been concluded and funds transferred in accordance with the contract.
- (cc) The Public Protector accordingly could not find any improper conduct, undue delay or maladministration on the part of the Department in relation to the funding and assistance to SARA to strengthen its international relations.
- (ii) **SARA's request to DAC for funding of its operational and administrative costs.**

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- (aa) The allegation that the Department improperly failed to fund operational and administrative costs of SARA while other similar organisation were granted the same support is substantiated.
- (bb) In terms of the DAC's Implementation of an Agreement Settlement Report, dated 2016-10-14 to the Public Protector, DAC indicated that it would not grant funding in this regard given the prevailing rules and statutes in the Public Service. The Department has in fact acknowledged that there has been some inconsistency in the approach with regard to the funding provided to a number of stakeholders. There is no policy informing the funding model in this regard and as a result other organisations have been receiving this kind of funding (for operations) while others such as SARA have been excluded from this support. The absence of a policy document regulating this grant and the discretionary mandate derived from Culture Promotions Act of 1983 result in some inconsistencies in the approach to funding these type of costs.
- (cc) The Public Protector accordingly finds that there is no proper alignment on this funding model and that the exercise of such discretion has been unfairly exercised in the case of SARA.
- (dd) The Public Protector also could not find the evidence of the proper application of Section 2 of Broad Based Black Economic Empowerment of 2003 which provides for the promotion of economic transformation in order to enable meaningful participation of black people in the economy and achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises in this regard.
- (ee) The conduct of DAC in this regard was improper and constitutes maladministration as contemplated in section 182(1)(a) of the Constitution of

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the Republic of South Africa and in section 6(4)(a)(v) of the Public Protector Act 23 of 1994.

- (c) **Whether the Department unduly funded operational and administrative costs of the three (3) orchestras namely (Cape Town Philharmonic Orchestra, Cape Town Jazz Orchestra and KwaZulu Natal Philharmonic Orchestra) and unfairly discriminated against SARA.**
- (aa) The allegation that the Department improperly funded operational and administrative costs of three (3) orchestras while on the other side failing and denying SARA similar funding is substantiated.
- (bb) In terms of the available evidence the funding of the three (3) designated orchestras is a legacy of decision taken after a White Paper on Arts, Culture and Heritage of 1996. The direct funding to orchestras was documented in the 2003 Estimates of National Expenditure published by National Treasury and approved by Parliament.
- (cc) However, Public Protector finds that the White Paper on Arts, Culture and Heritage of 1996, unfairly discriminates against SARA in that it makes specific provision for funding of both operational and administrative costs to orchestras whilst SARA is only funded for administrative costs.
- (dd) The Public Protector accordingly finds improper conduct and maladministration as contemplated in terms of section 182(1)(a) of the Constitution of the Republic of South Africa and in section 6 (4) (a) (v) of the Public Protector Act 23 of 1994 on the part of the Department in relation to funding of the three named orchestras, in as far as such provision makes specific arrangement to benefit certain institutions while excluding others who

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are still within the same set up of promotion of culture and social cohesion in South Africa.

- (d) Whether the Department improperly failed to acknowledge receipt and respond to correspondences from SARA.**
- (aa) The allegation that the Department improperly failed to acknowledge receipt and respond to correspondences from SARA is not substantiated.
- (bb) In terms of the available evidence, the Department has notably been more responsive to SARA's voluminous communications. There is constant update and reports from DAC to SARA, Office of the Public Protector and to the Parliamentary Portfolio Committee on Arts and Culture about this case on a regular basis. The Office of the Public Protector has also been conveying regular feedback to SARA from DAC about this matter through emails, meetings and telephone calls.
- (cc) The Public Protector accordingly could not find any improper conduct on the part of the Department in relation to acknowledging receipt and responding to correspondences from SARA.
- (e) Whether the Complainant was prejudiced by the conduct of the Department in the circumstances.**
- (aa) Based on the above findings the Public Protector finds that the Complainant (SARA) was prejudiced by the conduct of the Department (DAC) with regard to Paragraph (a) of the above, which is renovate SARA House in terms of the Settlement Agreement. Had the Department acted properly, SARA would have been able to conduct its business of training the South African youth in Live

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Events and Technical Skills Production in an environment and in a building that is not exposed to safety, health, occupational and security risks.

- (bb) The Public Protector also finds that SARA and its learners were prejudiced by the conduct of the Department (DAC) with regard to Paragraph (b) (ii) of the above, which is to deny SARA the funding for operational and administrative costs. Had the Department acted properly, SARA would have enabled SARA to set up satellite training centres in all nine provinces in the country, maintain its facilities, devices, equipment, components and to service other related operational resources required for its training needs.
- (cc) The Public Protector further finds that SARA was prejudiced by the conduct of the Department (DAC) with regard to Paragraph (c) of the above by unfairly discriminating against SARA while orchestras are funded for both operational and administrative costs on an annual basis (by way of a ring fenced budget) through special arrangements as provided for in the White Paper on Arts, Culture and Heritage of 1996.
- (j) **The appropriate remedial actions that the Public Protector is taking in the light of the above evidence and findings as contemplated in section 182(1)(c) of the Constitution are the following:**
- (aa) The Settlement Agreement concluded between SARA and DAC, in accordance with section 6(4) (a) and (b) of the Public Protector Act, 1994 (Act No. 23 of 1994), constitutes remedial action of the Public Protector.

With Regard to the Renovation of SARA House:

- (bb) The Director-General of Department of Arts and Culture (DAC)

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- a) DAC must provide funding for the renovation of SARA House in the amount of R15 000 000.00 (Fifteen million rand) as per Settlement Agreement.
- b) The grant amount of R15 000 000.00, as allocated to SARA for renovation is a huge amount which cannot be transferred to a private entity, considering that SARA does not have capacity to implement the renovation of this magnitude.
- c) In order to ensure that Public Funds are spent appropriately and for the purpose it is intended for, DAC must appoint Development Bank of Southern Africa (DBSA), as a Government infrastructure implementing agent, to implement and manage the renovation at SARA house.
- d) The funding of R15 000 000.00 (Fifteen Million Rand) allocated by DAC for renovations of SARA House must be paid directly to the Development Bank of Southern Africa (DBSA) within thirty (30) days of signing of the implementation agreement between DAC and DBSA.
- e) Development Bank of Southern Africa must be paid 10% of the grant amount by DAC, being the management fees for management of the renovations at SARA House.

With regard to the funding of operational and administrative costs of SARA:

- (cc) **The Minister of Department of Arts and Culture (DAC)**

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



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- a) The Minister must amend the White Paper on Arts, Culture and Heritage of 1996, within three (3) months of this report to ensure that SARA is not unfairly discriminated against when it comes to the allocation of operational and administrative costs.
 - b) DAC must further ensure that within three (3) months of receipt of this report, a written policy informing this type of funding is developed for future and put in place to align the criteria that should be followed in this funding model. The Public Protector issues this remedial action against the backdrop of inconsistencies in DAC's approach towards funding of administrative and operational costs. This should help this funding model to be more coherent and consistent in its approach.

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REPORT ON AN INVESTIGATION INTO ALLEGED FAILURE/OR UNDUE DELAY BY THE DEPARTMENT OF ARTS AND CULTURE TO IMPLEMENT THE SETTLEMENT AGREEMENT SIGNED IN TERMS OF SECTION 6(4) (a) and (b) OF THE PUBLIC PROTECTOR ACT 23 OF 1994.

1. INTRODUCTION

- 1.1. This is a report of the Public Protector issued 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 (the Public Protector Act).
- 1.2. The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation:
- 1.2.1. The Honourable Minister of the Department of Arts and Culture;
- 1.2.2. The Acting Director General of the Department of Arts and Culture and
- 1.2.3. A copy of the report is also provided to South African Roadies Association, the Complainant.
- 1.3. The report relates to an investigation into the alleged failure or undue delay by the Department of Arts and Culture (DAC) to implement the Settlement Agreement signed on 01 April 2014 between DAC and SARA under the auspices of Public Protector, South Africa.

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2. THE COMPLAINT

- 2.1 The Complainant is South African Roadies Association (SARA) duly represented by its president Mr Freddie Nyathela.
- 2.2 In the main, the complaint was that the DAC failed or unduly delayed to implement the Settlement Agreement signed between DAC and SARA in terms of section 6(4) (a) and (b) of the Public Protector Act 23 of 1994 on 01 April 2014.
- 2.3 The clauses of the said Settlement Agreement may be summarised in the following numeric order as agreed by the parties thereto:
- 2.4 *"That SARA shall submit its request for funding of its projects to DAC in the form of a proposal and with requisite supporting documentation. The DAC shall consider such request based on the departmental policies, prescripts and budget allowable. Should SARA request for funding be successful, the DAC shall consider funding for a three (3) year functional cycle based on the principles of Mzansi Golden Economy (MGE). The parties shall upon successful application by SARA, enter into a Memorandum of Understanding regulating the funding relationship. DAC agrees that it shall take no longer than thirty (30) days to consider and respond to SARA'S aforementioned proposal.*
- 2.5 *The parties agree that the Department shall in keeping with its existing agreement with the Industrial Development Trust facilitate a process to evaluate the needs of SARA in regard to the structural renovation of SARA house. DAC shall request IDT to do an assessment of SARA House with a view of establishing the cost related to the renovation of SARA House.*
- 2.6 *The DAC shall consistent with clause 4.1.9 below immediately consider and intervene to remedy the health, safe and security risks uncovered at SARA house.*

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- 2.7 That SARA and DAC shall deploy and see to it that sufficient personnel, oversight and resources are set aside by DAC to see to it that this Agreement is adequately supported in order to implement the objectives hereunder including respective obligations, warranties and representations respectively.
- 2.8 That SARA shall continue to seek funding from other prospective Funding Agencies.
- 2.9 That DAC and SARA commit to a continuous and a harmonious relationship in ensuring that SARA's vision and mission as a training organisation servicing the technical and production sectors is enhanced, facilitated and supported.
- 2.10 That in good faith and to the best of its ability, the DAC shall, facilitate SARA's application for funding of renovating its building to other Funding Agencies. Such facilitation shall be to the extent possible by the DAC and shall be for a period not longer than one (1) year.
- 2.11 That the parties may, notwithstanding any other rights in law, take the matters arising from any breach and not remedied 14 days after written notification by one party to the other concerning the breach, to the PPSA or any other forum of their respective choices.
- 2.12 The DAC shall submit to PPSA a detailed implementation plan in regard to the intervention of it and other bodies and its proposal regarding assisting with the removal of health, safety and security risks uncovered at SARA House by close of business on Tuesday 15 April 2014.
- 2.13 That the parties accept and acknowledge that, notwithstanding anything to the contrary contained herein, the PPSA may at any time for any breach hereunder exercise its right in terms of section 6(4) (c) (ii) which provides that the Public Protector is competent at any time prior to, during or after an investigation, if he or

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Protector is competent at any time prior to, during or after an investigation, if he or she deems it advisable to make appropriate recommendations he or she deems expedient under circumstances to the affected body or authority".

- 2.14 SARA alleged that the DAC failed to implement the Settlement Agreement as outlined above.
- 2.15 SARA alleged further in the subsequent meeting with the Public Protector (held on 18 January 2017) that the DAC failed without proper cause or reason to fund or render assistance to SARA on the following issues despite it being fully compliant with funding policies:
- a) Assistance to SARA by DAC to strengthen its international relations.
 - b) SARA's request to DAC for funding of its operational and administrative costs. SARA alleges that other institutions such as Ifa Lethu Foundation have received funding for their operations and that such is confirmed in the minutes of the meeting held on 02 June 2015. There is also an allegation by SARA that three (3) orchestras namely (Cape Town Philharmonic Orchestra, Cape Town Jazz Orchestra and KwaZulu Natal Philharmonic Orchestra) are receiving funding for operational and administrative costs while SARA is being deliberately excluded and unfairly discriminated against by senior officials at DAC.
 - c) Lack of acknowledgements and responses by DAC to correspondences from SARA.

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3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 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.

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

"The Public Protector has the 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."*

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

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

In the Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public

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Protector has a binding effect.¹ The Constitutional Court further held that: *"When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences"*

- 3.5 The DAC is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector's mandate. The Public Protector's power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

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.
- 4.1.2. 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. Section 6 of the Public Protector Act gives the Public Protector the authority to resolve a matter without conducting an investigation and resolve a complaint through appropriate dispute resolution (ADR) measures such as conciliation, mediation and negotiation.
- 4.1.3. The complaint was initially classified as an Early Resolution matter capable of resolution by way of a conciliation process or mediation in line with section 6(4)(b) of

¹ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

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the Public Protector Act, 1994. However, after several attempts to conciliate the matter, it was escalated into an investigation.

4.2. Approach to the Investigation

4.2.1. Like every Public Protector investigation, 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 maladministration?
- d) In the event of maladministration, what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.2. 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 Department acted improperly or unduly delayed in implementing the settlement agreement signed by it and SARA under the auspices of the Office of the Public Protector.

4.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department or organ of state to prevent maladministration and prejudice.

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- 4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a Complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the Department or organ of state complied with the regulatory framework setting the applicable standards for good administration.
- 4.3. **On analysis of the complaint, the following were issues considered and investigated:**
- 4.3.1 Whether the Department improperly failed or unduly delayed to implement the Settlement Agreement signed between SARA and DAC on 01 April 2014?
- 4.3.2 Whether the Department improperly failed to fund or render financial assistance to SARA on the following issues despite SARA being fully compliant with DAC funding policies:
- (i) Assistance to SARA by DAC to strengthen its international relations.
 - (ii) SARA'S request to DAC for funding of its operational and administrative costs.
- 4.3.3 Whether the Department unduly funded operational and administrative costs of the three (3) orchestras namely (Cape Town Philharmonic Orchestra, Cape Town Jazz Orchestra and KwaZulu Natal Philharmonic Orchestra) and unfairly discriminated against SARA?
- 4.3.4 Whether the Department improperly failed to acknowledge receipt and respond to correspondences from SARA?
- 4.3.5 Whether the Complainant was prejudiced by the conduct of the Department in the circumstances?

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- 4.4 The key sources of information**
- 4.4.1 Documents**
- 4.4.1.1 A copy of the Complainant's claim documents.
- 4.4.1.2 DAC Audit Outcome 2013/14
- 4.4.1.3 DAC Audit Outcome 2014/15
- 4.4.1.4 Enyokeni Forensic Investigation Report
- 4.4.1.5 DAC Infrastructure Policy 2016
- 4.4.1.6 2003/04 ENE Vote 14: Arts and Culture
- 4.4.1.7 2006/07 ENE Vote 14: Arts and Culture
- 4.4.1.8 Northern Cape Theatre Infrastructure grant
- 4.4.1.9 Ifa Lethu Grant 2008/09/11/12/13/14/15 and 2016
- 4.4.1.10 Steve Biko Centre Infrastructure grant
- 4.4.1.11 Liliesleaf Museum infrastructure grant
- 4.4.1.12 Dakawa Community Arts Centre infrastructure grant
- 4.4.1.13 Morris Isaacson Community Arts Centre infrastructure grant
- 4.4.1.14 KwaZulu Natal Philharmonic Orchestra Contract and Report
- 4.4.1.15 Cape Town Philharmonic Orchestra Contract and Report
- 4.4.1.16 Cape Town Jazz Orchestra contract and report
- 4.4.1.17 SARA grant letter and contract: Live Events. Technical Production Conference 3 year grant (LETPC)
- 4.4.1.18 SARA report and financial statements: International Interactions 2014/15/16
- 4.4.1.19 SARA Administration and Operational funding proposal
- 4.4.1.20 ENE guidelines for 2009/10
- 4.4.1.21 List of Accredited Technical Production Training Providers, CATHSSETA
- 4.4.1.22 ADR sessions as recorded
- 4.4.1.23 Interviews and meetings conducted with the complainant (SARA).

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4.4.2 Correspondence sent and received

4.4.2.1 A copy of a progress update letter from Mr Vusithemba Ndima, Acting Director-General of the Department of Arts and Culture addressed to Deputy Public Protector, Advocate KS Malunga, [dated 2016-10-14]

4.4.2.2 A submission of a progress report and update letter from Mr Vusithemba Ndima, Acting Director-General of the Department of Arts and Culture addressed to Public Protector, Advocate Busisiwe Mkhwebane, dated 2017-02-07.

4.4.3 Legislation and other prescripts

4.4.3.1 The Constitution of the Republic of South Africa, 1996;

4.4.3.2 Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000;

4.4.3.3 Promotion of Administrative Justice Act 3 of 2000 (PAJA);

4.4.3.4 Culture Promotions Act 35 of 1983

4.4.3.5 Cultural Institutions Act 119 of 1998

4.4.3.6 Broad Based Black Economic Empowerment Act 53 of 2003

4.4.3.7 Settlement Agreement concluded between SARA and DAC on 01 April 2014 in terms of the Public Protector Act 23 of 1994.

4.4.3.8 White Paper on Arts, Culture and Heritage of 1996

4.4.4 Case Law and Legal sources/authors.

4.4.4.1 (The Law of Contract, Christie, 5th ed. – page 192;

4.4.4.2 Lowrey v Steedman 1914 AD 532 at 543;

4.4.4.3 Sealed Africa (Pty) Ltd v Kelly & Another 2006 (3) SA 65 (W) at para [15] per Epstein AJ) and

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4.4.4.4 *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

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 Whether the Department (DAC) improperly failed or unduly delayed to implement the settlement agreement concluded with SARA on 01 April 2014.

Common cause issues

5.1.1 On 01 April 2014, the DAC and SARA signed a Settlement Agreement under the auspices of section 6(4) (a) and (b) of the Public Protector Act, 23 of 1994.

5.1.2 In terms of clause 4.1.3 of the Settlement Agreement, the DAC undertook to consider, intervene and remedy the health, safety and security risks uncovered at the SARA House.

5.1.3 Furthermore, in terms of clause 4.1.9 of the Settlement Agreement, the DAC agreed to submit to PPSA a detailed implementation plan in regards to the implementation of the Settlement Agreement by the IDT and its proposal regarding assistance with the removal of health, safety and security risks uncovered at SARA House by the close of business on Tuesday, 15 April 2014.

5.1.4 Clause 4.1.3 of the Settlement Agreement has not yet been complied with by DAC.

Issues in dispute

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- 5.1.5 In response to the allegation that the DAC Improperly failed to implement the Settlement Agreement, DAC submitted as follows; that in the light of the current substantial audit queries highlighted in the 2013/14 and 2014/2015 financial year's annual reports of DAC pointing out significant maladministration of projects by third parties such as IDT, whether it would have still been appropriate to appoint IDT in these circumstances. Further, the DAC's relationship with IDT was terminated in December 2016 due to such audit queries and maladministration of infrastructure development projects by IDT.
- 5.1.6 The audit issues emerged in June and July 2014, well after the conclusion of the Settlement Agreement with SARA. As a result, DAC has been concerned with utilizing a third party to complete renovation projects, largely because of these audit queries and findings.
- 5.1.7 In essence DAC submitted that it could not implement the Settlement Agreement in the light of the reasons advanced above.
- 5.1.8 The Complainant (SARA) on the other hand insists that DAC must implement the Settlement Agreement as it is, because it is a legal binding document. SARA does not want to accept a direct grant/subsidy from DAC and to take responsibility for renovation of its own property.
- 5.1.9 The Department on the other hand contends that SARA should take responsibility of its property renovation and source the service provider using 10% of the total grant. The DAC further contends that this is in line with their newly approved Infrastructure Development Policy. DAC has also indicated that they are doing the same practice with other non-state or non-DAC institutions whereby an infrastructure grant/subsidy is transferred directly to a funded institution from DAC without DAC having to take responsibility of appointing the service provider for the non-state institution.

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5.1.10 The Department submitted copies of examples of contracts where a direct grant or subsidy had been made directly to non-state institutions as well as a copy of its own Infrastructure Development Policy. Copies of the Audit Committee findings (2013/14 and 2014/2015) and queries in this regard were also provided by the Department.

5.1.11 It then follows that in the light of the above evidence and submissions by the Department, the Settlement Agreement signed well before such audit and forensic investigation outcomes, should have long been implemented. The signing of the Settlement Agreement predates all the queries raised in DAC's submissions. The newly approved Infrastructure Development Policy of DAC cannot also apply retrospectively to invalidate this Settlement Agreement which is already in place. Such would unfairly prejudice the Complainant.

Application of the relevant law

5.1.12 Section 6(4)(a) and (b) of the Public Protector Act 23 of 1994 provides amongst other things that the Public Protector shall be competent to investigate on his or her own initiative or on receipt of a complaint any alleged maladministration, abuse of power, omission, improper conduct or dishonest act in connection with the affairs of the government at any level and to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by mediation, conciliation or negotiation.

5.1.13 The issue of whether there was any improper failure or undue delay by the DAC to implement the Settlement Agreement signed by it and SARA on 01 April 2014 is regulated by the clauses of the Settlement Agreement itself signed in terms of above cited relevant section of the Public Protector Act

5.1.14 Clause 4.1.3 of the Settlement Agreement provides that DAC shall consistent with clause 4.1.9 below immediately consider and intervene to remedy the health, safe and security risks uncovered at SARA house.

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- 5.1.15 *Clause 4.1.9 of the Settlement Agreement provides that DAC shall submit to PPSA a detailed implementation plan in regard to the intervention of the IDT and other bodies and its proposal regarding assisting with the removal of health, safety and security risks uncovered at SARA House by close of business on Tuesday 15 April 2014.*
- 5.1.16 The DAC was in terms of the above cited clauses of the Settlement Agreement obliged to perform through IDT or other bodies (third parties/service providers) renovations at SARA House to remove health, safety and security risks uncovered at SARA House.
- 5.1.17 The conduct of DAC in the circumstances contravened clause 4.1.9 of the Settlement Agreement by failing to appoint IDT or other service providers to renovate SARA House in order to remove the health, safety and security risks uncovered at SARA House. Instead, DAC has submitted the following extrinsic and factual evidence which falls outside the terms of the Settlement Agreement in order to justify its failure and undue delay to appoint IDT or any other service provider on behalf of SARA in order to renovate SARA House:
- a) Previous audit queries against DAC related to this kind of projects.
 - b) Outcomes of forensic investigation report related to this projects.
 - c) Termination of DAC's relationship with IDT.
 - d) Approval of the New Infrastructure Development Policy of DAC and
 - e) Maladministration of similar projects by third parties appointed by the DAC.
- 5.1.19 It follows therefore that the interpretation of the terms of a written agreement is a question of law and not of fact. The basic rule regarding interpretation of a written agreement is that no evidence may be given of its terms except the document itself, nor may the contents of such document be contradicted, altered, added to or varied by oral evidence. (The Law of Contract, Christie, 5th ed. – page 192; *Lowrey v*

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



Steedman 1914 AD 532 Act 543; Sealed Africa (Pty) Ltd v Kelly & Another 2006 (3) SA 65 (W) at para [15] per Epstein AJ.”

5.1.20 It further follows that the complainant's allegation in this regard is substantiated and that DAC was obligated in terms of clause 4.1.9 to implement the Settlement Agreement.

Conclusion

5.1.21 The DAC improperly failed to implement the Settlement as signed by it and SARA on 01 April 2014 at the Offices of the Public Protector, South Africa, and that constituted an improper conduct and maladministration as contemplated in terms of section 182(1)(a) of the Constitution of the Republic of South Africa and in section 6 (4) (a) (v) of the Public Protector Act 23 of 1994 on the part of the Department.

5.2 Whether the Department improperly failed to fund or render financial assistance to SARA on the following issues despite SARA being fully compliant with DAC funding policies:

(i) SARA'S request to DAC for funding of its operational and administrative costs.

Common cause issues

5.2.1 SARA applied to DAC for funding of its operational and administrative costs.

5.2.2 DAC failed to fund SARA on such costs and indicated that it would not grant funding in this regard given the prevailing rules and statutes in the Public Service.

5.2.3 The Department (DAC) has in fact acknowledged that there has been some inconsistencies in their approach with regard to the funding provided to a number of stakeholders. There is no policy informing the funding model in this regard and as a

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



result, other organisations have been receiving this kind of funding (for operations) while others such as SARA have been excluded from this support. The absence of the policy document regulating this grant and the discretionary mandate derived from Culture Promotions Act of 1983 result in some inconsistencies in the approach to funding these type of costs.

Issues in dispute

- 5.2.4 It was disputed and argued by DAC that it would not grant funding to SARA in this regard given the prevailing rules and statutes in the Public Service.
- 5.2.5 DAC was given an opportunity to provide the Public Protector with copies of such rules and statutes which provided them with guidance when addressing issues for the granting of operational and administrative costs as applicable in the Public Service according to their submission. DAC failed to supply the Public Protector with such rules and statutes they referred to in their report dated 2016-10-14.

Application of the relevant law

- 5.2.6 Section 2(1)(a) and (b) of Culture Promotions Act of 1983 provides for this discretion which the Minister may exercise to subsidize or finance provision of services by any person in order to foster educational and cultural relations but it does not lay down the specific criteria to be followed in granting this financial aid. It provides as follows:

"Minister or any Departmental official delegated by him may in order to foster culture in the Republic make grant, award, subsidize or finance an association, programme or project having its object the making known of the culture of the Republic of South Africa".

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



5.2.7 It is clear that the application of the ministerial discretion in this regard did not help to foster educational and cultural relations as it is part of SARA's objects and purpose.

The Public Protector also could not find evidence of the proper application of Section 2 of Broad Based Black Economic Empowerment Act 53 of 2003 which provides for the promotion of economic transformation in order to enable a meaningful participation of black people in the economy and achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises in this regard. SARA appears to be both the black and only entity within the space of Live Events and Technical Skills Production in the, that advances the making of known of the culture in the country.

Conclusion

5.2.8 It then follows that there is no proper alignment on this funding model and that the exercise of such discretion has been unfairly exercised against SARA.

- (ii) Whether the Department unduly funded operational and administrative costs of the three (3) Orchestras namely Cape Town Philharmonic Orchestra, Cape Town Jazz Orchestra and Kwa-Zulu Natal Philharmonic Orchestra and unfairly discriminated against SARA.

Common cause issues

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



- 5.2.9 The Department of Arts and Culture did not fund SARA for its administrative and operational costs.
- 5.2.10 All three (3) Orchestras namely Cape Town Philharmonic Orchestra, Cape Town Jazz Orchestra and Kwa-Zulu Natal Philharmonic Orchestra are annually funded by the DAC for their operational and administrative costs.

Issues in dispute

- 5.2.11 It is disputed by SARA that, it is being unfairly discriminated when it comes to funding of its operational as well as administrative costs while on the other hand orchestras are being funded for the same costs by the Department (DAC) on an annual basis on a specifically arranged ring-fenced budget, without even applying for such funding.
- 5.2.12 The SARA's application for operational funding was not granted as DAC contends that provision is made only for subsidies to declared cultural institutions. However it is argued by the complainant that SARA is part of the cultural set up in the country but it is not recognised by DAC as such one cultural institution. It is further argued by the complainant that the three named orchestras are also privately owned and are not DAC entities.

Application of the relevant law

- 5.2.13 In terms of the available evidence the funding of the three (3) designated orchestras is a legacy of decision taken after a White Paper of 1996 (White Paper on Arts, Culture and Heritage of 1996).
- 5.2.14 The direct funding to orchestras was documented in the 2003/04 Estimates of National Expenditure published by National Treasury and approved by Parliament.

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



5.2.15 The White Paper of 1996 essentially unbundled Performing Arts Centres (PAC's) and transformed them into playhouses which are funded annually through National Arts Council, which makes provision for programming activities and support for administrative support overheads for the designated national orchestras.

5.2.16 According to the arrangements of this 1996 White Paper on Arts and Culture, orchestras enjoy a maximum threshold of 15% of the total grant for administration costs while institutions like SARA has a maximum threshold of 10 % for administration costs only, in other instances where financial support is granted, such as support for international interactions.

Conclusion

5.3.5 The Public Protector accordingly finds improper conduct on the part of the Department in relation to the funding of the three named orchestras for both operational and administrative costs while SARA is unfairly discriminated against.

5.3 Whether the Department improperly failed to acknowledge receipt and respond to correspondences from SARA.

Common cause issues

5.4.1 SARA has alleged that the Department has failed to acknowledge as well as respond to its correspondences and communication.

Issues in dispute

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



- 5.4.2 DAC disputed that it failed to respond to SARA's correspondences. DAC submitted that it has been more responsive to SARA's voluminous communication.
- 5.4.3 The evidence obtained by Public Protector indicates that DAC fairly responded to voluminous correspondences from SARA. The Public Protector has also conveyed constant updates to SARA from DAC while conducting this investigation.

Application of the relevant law

- 5.4.4 In terms of section 195(e) of the Constitution Public Service must be governed by democratic values and principles which includes that people's needs must be responded to and that the public must be encouraged to participate in policy-making. This principle applies in every sphere of government, organs of state and public enterprises.

Conclusion

- 5.4.4 The Public Protector accordingly could not find any improper conduct on the part of the Department in relation to acknowledging receipt and responding to correspondences from SARA.
- 5.4 Whether the Complainant was prejudiced by the conduct of the Department in the circumstances.

Common cause issues

- 5.4.9 On 01 April 2014, the DAC and SARA signed a Settlement Agreement under the auspices of section 6(4)(a) and (b) of the Public Protector Act, 1994 and never implemented the settlement agreement.

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- 5.4.10 In terms of clause 4.1.3 of the Settlement Agreement, the DAC undertook to consider, intervene and remedy the health, safety and security risks uncovered at the SARA House but failed to implement such an undertaking.
- 5.4.11 SARA applied to DAC for funding of its operational and administrative costs and never received funding.

Issues in dispute

- 5.4.12 The DAC's dispute is that in the light of the current substantial audit queries highlighted in the 2013/14 and 2014/2015 financial year's annual reports of DAC pointing out significant maladministration of projects by third parties such as IDT, whether it would have still been appropriate to appoint IDT in these circumstances. Further, the DAC's relationship with IDT was terminated in December 2016 due to such audit queries and maladministration of infrastructure development projects by IDT. The audit issues emerged in June and July 2014, well after the conclusion of the Settlement Agreement with SARA. As a result, DAC has been concerned with utilizing a third party to complete renovation projects, largely because of these audit queries and findings.
- 5.4.13 The Complainant (SARA) insists that DAC must implement the Settlement Agreement as it is because it is a legal binding document. SARA does not want to accept a direct grant/subsidy from DAC and to take responsibility for renovation of its own property.
- 5.4.14 The Department on the other, hand contends that SARA should take responsibility of its property renovation and source the service provider using 10% of the total grant. The DAC further contends that this is in line with their newly approved Infrastructure Development Policy. DAC has also indicated that they are doing the same practice



with other non-state or non-DAC institutions whereby an infrastructure grant/subsidy is transferred directly to a funded institution from DAC without DAC having to take responsibility of appointing the service provider for the non-state institution.

- 5.4.15 The Department submitted copies of examples of contracts where a direct grant or subsidy had been made directly to non-state institutions as well as a copy of its own Infrastructure Development Policy. Copies of the Audit Committee findings (2013/14 and 2014/2015) and queries in this regard were also provided by the Department.
- 5.4.16 The complainant argues further that the Department improperly failed to fund operational and administrative costs of SARA while other similar organisations were granted the same support.

Application of the relevant law

- 5.4.17 Section 9(3) of the Constitution which provides that 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.
- 5.4.18 Section 25 and 26 of Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 places the duty and responsibility on the state and its officials to promote equality in the spheres of their operation.
- 5.4.19 Section 2 of Broad Based Black Economic Empowerment of 2003 which provides for the promotion of economic transformation in order to enable a meaningful participation of black people in the economy and achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises.

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- 5.4.20 The Public Protector does not find a proper consideration and application of the above legal prescripts by DAC in its dealings with regard to this case and its treatment of SARA. The discrimination against SARA and its exclusion from the ring fenced funding which is afforded to orchestras on an annual basis, could not be sufficiently justified by DAC and as such constitute unfair discrimination and prejudice to SARA and other similar institutions within the cultural set up.
- 5.4.21 Clause 4.1.3 of the Settlement Agreement provides that DAC shall consistent with clause 4.1.9 below immediately consider and intervene to remedy the health, safe and security risks uncovered at SARA house.
- 5.4.22 Clause 4.1.9 of the Settlement Agreement provides that DAC shall submit to PPSA a detailed implementation plan in regard to the intervention of the IDT and other bodies and its proposal regarding assisting with the removal of health, safety and security risks uncovered at SARA House by close of business on Tuesday 15 April 2014.
- 5.4.23 The DAC was in terms of the above cited clauses of the Settlement Agreement obliged to perform through IDT or other bodies (third parties/service providers) renovations at SARA House to remove health, safety and security risks uncovered at SARA House.
- 5.4.24 The conduct of DAC in the circumstances contravened clause 4.1.9 of the Settlement Agreement by failing to appoint IDT or other service providers to renovate SARA House in order to remove the health, safety and security risks uncovered at SARA House.
- Instead, DAC has submitted the following extrinsic and factual evidence which falls outside the terms of the Settlement Agreement in order to justify its failure and undue delay to appoint IDT or any other service provider on behalf of SARA in order

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to renovate SARA House:

- a) Previous audit queries against DAC related to this kind of projects.
- b) Outcomes of forensic investigation report related to this projects.
- c) Termination of DAC's relationship with IDT.
- d) Approval of the New Infrastructure Development Policy of DAC and
- e) Maladministration of similar projects by third parties appointed by the DAC.

5.4.25 Section 2(1) (a) (b) of Culture Promotions Act of 1983 provides for the discretion which the Minister may exercise to subsidize or finance provision of services by any person in order to foster educational and cultural relations but it does not lay down the specific criteria to be followed in granting this financial aid.

5.4.26 It provides as follows: "Minister or any Departmental official delegated by him may in order to foster culture in the Republic make grant, award, subsidize or finance an association, programme or project having its object the making known of the culture of the Republic of South Africa"

5.4.27 There is no policy informing the funding model in this regard and as a result, other organisations have been receiving this kind of funding (for operations) while others such as SARA have been excluded from this support. The absence of the policy document regulating this grant and the discretionary mandate derived from Culture Promotions Act of 1983 result in some inconsistencies in the approach to funding these type of costs.

Conclusion

5.4.28 It follows therefore that the Complainant (SARA) was prejudiced by the conduct of the Department (DAC) with regard to Paragraph (5.1) of the above which is the Department's improper failure and undue delay to implement the Settlement Agreement, with regard to Paragraph 5.2 (i) of the above, which is to deny SARA

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the funding for operational and administrative costs and with regard to Paragraph 5.2 (ii) which is to fund both operational and administrative costs of the three (3) Orchestras namely Cape Town Philharmonic Orchestra, Cape Town Jazz Orchestra and Kwa-Zulu Natal Philharmonic Orchestra while SARA is unfairly discriminated against.

6 FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

- 6.1 Whether the Department improperly failed or unduly delayed to implement the Settlement Agreement signed between SARA and DAC on 01 April 2014.**
- 6.1.1 The allegation that the Department improperly failed or unduly delayed to implement the Settlement Agreement signed between SARA and DAC on 01 April 2014 is substantiated.
- 6.1.2 The Public Protector accordingly finds that, the issue of whether there was any improper failure or undue delay by the DAC to implement the Settlement Agreement signed between it and SARA on 01 April 2014 is regulated by the clauses of the Settlement Agreement itself.
- 6.1.3 The Public Protector further finds that, Clause 4.1.3 of the Settlement Agreement provides that DAC shall consistent with Clause 4.1.9 immediately consider and intervene to remedy the health, safe and security risks uncovered at SARA house but improperly failed to do so.
- 6.1.4 The Public Protector further finds that, the DAC was in terms of the above cited clauses of the Settlement Agreement obliged to perform through IDT or other bodies

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(third parties/service providers) renovations at SARA House to remove health, safety and security risks uncovered at SARA House but improperly failed to do so.

- 6.1.5 The Public Protector accordingly finds that the basic rule regarding interpretation of a written agreement is that no evidence may be given of its terms except the document itself, nor may the contents of such document be contradicted, altered, added to or varied by oral evidence.
- 6.1.6 The Public Protector finally finds that the conduct of DAC in the circumstances contravened clause 4.1.3, and 4.1.9 of the Settlement Agreement by failing to appoint IDT or another service provider to renovate SARA House in order to remove the health, safety and security risks uncovered at SARA House.
- 6.1.7 Such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(v) of the Public Protector Act 23 of 1994.
- 6.2 **Whether the Department improperly failed to fund or render financial assistance to SARA on the following issues despite SARA being fully compliant with DAC funding policies:**
- (i) **SARA'S request to DAC for funding of its operational and administrative costs.**
- 6.2.1 The allegation that the Department improperly failed to fund operational and administrative costs of SARA while other similar organisation were granted the same support is substantiated.
- 6.2.2 The Public Protector finds that there is no policy informing the funding model in this regard and as a result, other organisations have been receiving this kind of funding



(for operations) while others such as SARA have been excluded from this support. The absence of the Policy document regulating this grant and the **discretionary mandate** derived from Culture Promotions Act of 1983 results in some inconsistencies in the approach to funding these types of costs.

- 6.2.3 The Public Protector also could not find evidence of the proper application of Section 2 of Broad Based Black Economic Empowerment Act 53 of 2003. It provides for the promotion of economic transformation in order to enable a meaningful participation of black people in the economy and achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises. Evidence shows that SARA is one of the emerging black enterprise in the Technical Skills and Production sector in the country.
- 6.2.4 The Public Protector accordingly finds that the non-application of Broad Based Black Economic Empowerment Act 53 of 2003 amounts to omission and conduct failure in as far as it does not promote economic transformation in order to enable *meaningful participation of black people in the economy and achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations* such as Technical Skills and Production sector, which skills SARA seeks to promote and advance in the country.
- 6.2.5 Such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a) (v) of the Public Protector Act 23 of 1994.
- (ii) **Whether the Department unduly funded operational and administrative costs of the three (3) Orchestras namely Cape Town Philharmonic Orchestra, Cape Town Jazz Orchestra and Kwa-Zulu Natal Philharmonic Orchestra and unfairly discriminated against SARA.**

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- 6.2.6 The allegation that the Department improperly funded operational and administrative costs of the three (3) orchestras while on the other side discriminating against SARA on the same funding is substantiated.
- 6.2.7 The Public Protector finds that the funding of the three (3) designated orchestras is a legacy of decisions taken after a White Paper on Arts, Culture and Heritage of 1996, 2003/04 ENE Vote 14. The direct funding to orchestras was documented in the 2003 and 2006 ENE published by National Treasury and approved by Parliament. The former performing Arts Councils have been restructured. Performing and Production Companies were separated, playhouses were established and increased attention was paid to their effective management.
- 6.2.8 The Public Protector further finds that in the 2006/07 ENE, the responsibility for the funding of orchestras was shifted to the National Arts Council (NAC) which explains the rapid increase in financial assistance to the council from 2006/07 and the equivalent end of subsidies for the orchestras. Recognising the need for multi-year funding for arts institutions, the NAC introduced the so called 'company funding' for the disciplines within its purview and in an attempt to make the funding system more coherent, the funding for the designated national orchestras was transferred to NAC.
- 6.2.9 However, the Public Protector finds that the White Paper on Arts, Culture and Heritage of 1996, unfairly discriminates against SARA in that it makes specific provision for funding of both operational and administrative cost to orchestras whilst SARA is only funded for administrative costs.
- 6.3 **Whether the Department improperly failed to acknowledge receipt and respond to correspondences from SARA.**
- 6.3.1 The allegation that the Department improperly failed to acknowledge receipt and respond to correspondences from SARA is not substantiated.

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



- 6.3.2 The Public Protector finds that the Department has notably been more responsive to SARA's voluminous communications. There is constant update and reports from DAC to SARA and to the Office of the Public Protector about this case. The Office of the Public Protector has also been conveying regular feedback to SARA from DAC about this matter.
- 6.3.3 The Public Protector accordingly could not find any improper conduct on the part of the Department in relation to acknowledging receipt and responding to correspondences from SARA.
- 6.4 **Whether the Complainant was prejudiced by the conduct of the Department in the above circumstances.**
- 6.4.1. Based on the above findings the Public Protector finds that the Complainant (SARA) was prejudiced by the conduct of the Department (DAC) with regard to **Paragraph 6.1** of the above which is the Department's improper failure and undue delay to implement the Settlement Agreement, with regard to **Paragraph 6.2 (i)** of the above, which is to deny SARA the funding for operational and administrative costs by the Department and with regard to **Paragraph 6.2 (ii)** which is to fund both operational and administrative costs of the three (3) Orchestras namely Cape Town Philharmonic Orchestra, Cape Town Jazz Orchestra and Kwa-Zulu Natal Philharmonic Orchestra while SARA is unfairly discriminated against.

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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



7. REMEDIAL ACTION

The appropriate remedial actions that the Public Protector is taking in the light of the above evidence and findings as contemplated in section 182(1)(c) of the Constitution are the following:

- 7.1 The Settlement Agreement concluded between SARA and DAC, in accordance with section 6(4) (a) and (b) of the Public Protector Act, 1994 (Act No. 23 of 1994), constitutes remedial action of the Public Protector.

The Director-General of Department of Arts and Culture (DAC)

7.2 With Regard to the Renovation of SARA House:

- 7.2.1 DAC must provide funding for the renovation of SARA House in the amount of R15 000 000.00 (Fifteen million rand) as per Settlement Agreement.
- 7.2.2 The grant amount of R15 000 000.00, as allocated to SARA for renovation is a huge amount which cannot be transferred to a private entity, considering that SARA does not have capacity to implement the renovation of this magnitude.
- 7.2.3 In order to ensure that Public Funds are spent appropriately and for the purpose it is intended for, DAC must appoint Development Bank of Southern Africa (DBSA), as a Government infrastructure implementing agent, to implement and manage the renovation at SARA house.
- 7.2.4 The funding of R15 000 000.00 (Fifteen Million Rand) allocated by DAC for renovations of SARA House must be paid directly to the Development Bank of Southern Africa (DBSA) within thirty (30) days of signing of the implementation agreement between DAC and DBSA.

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7.2.5 Development Bank of Southern Africa must be paid 10% of the grant amount by DAC, being the management fees for management of the renovations at SARA House.

With regard to the funding of operational and administrative costs of SARA:

7.3 The Minister of Department of Arts and Culture (DAC)

7.3.1 The Minister must amend the White Paper on Arts, Culture and Heritage of 1996, within three (3) months of this report to ensure that SARA is not unfairly discriminated against when it comes to the allocation of operational and administrative costs.

7.3.2 DAC must further ensure that within three (3) months of receipt of this report, a written policy informing this type of funding is developed for future and put in place to align the criteria that should be followed in this funding model. The Public Protector issues this remedial action against the backdrop of inconsistencies in DAC's approach towards funding of administrative and operational costs. This should help this funding model to be more coherent and consistent in its approach.

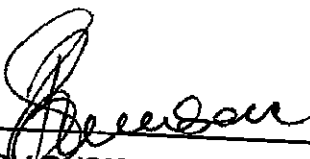
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In the matter between Department of Arts and Culture and South African Roadies Association: Report of the Public Protector [June 2017]



8. MONITORING

- 8.1. The Director-General (and the successor in title) of the Department of Arts and Culture must submit an implementation plan to the Public Protector within 30 (thirty) days of receipt of this report on how the remedial action outlined under paragraph 7 above will be implemented.
- 8.2. Director General of DAC must provide to the Public Protector a quarterly and close-out report on the renovation of SARA House.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR
THE REPUBLIC OF SOUTH AFRICA
DATE: 19/06/2017

Assisted by: Mr Vusumuzi Dlamini

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[Signature]
27/08/2018

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

22 August 2018
Before Judge v/d Westhuizen

CASE NO. 63756/2018

In the matter between

THE MINISTER OF ARTS AND CULTURE
THE DEPARTMENT OF ARTS AND CULTURE

First Applicant
Second Applicant

and

THE OFFICE OF THE PUBLIC PROTECTOR
THE PUBLIC PROTECTOR
THE SOUTH AFRICA ROADIES ASSOCIATION
DEVELOPMENT BANK OF SOUTHERN AFRICA

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

DRAFT ORDER

Having heard counsel, read the application and considered the matter, the following order is made.

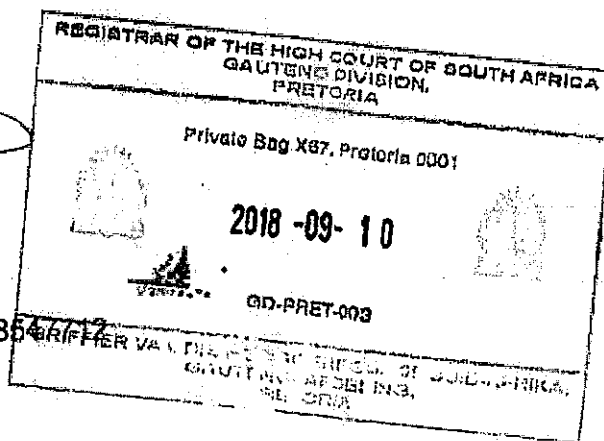
The settlement agreement marked *"xy2-1"* is made an order of court.

BY THE COURT

REGISTRAR

NL Dandadzi

Counsel for the applicants - 0718546717



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[Signature]
18/08/2018

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 63756/17

In the matter between:

THE MINISTER OF ARTS AND CULTURE	First Applicant
THE DEPARTMENT OF ARTS AND CULTURE	Second Applicant

and

THE OFFICE OF THE PUBLIC PROTECTOR	First Respondent
THE PUBLIC PROTECTOR	Second Respondent
THE SOUTH AFRICAN ROADIES ASSOCIATION	Third Respondent
DEVELOPMENT BANK OF SOUTHERN AFRICA	Fourth Respondent

FULL AND FINAL SETTLEMENT AGREEMENT

WHEREAS the Applicants (the Minister of Arts and Culture and the Department of Arts and Culture) and the First, Second and Third Respondents (the Office of the Public Protector, the Public Protector and the South African Roadies Association) are involved in a legal dispute in the above-mentioned case number;

AND WHEREAS, the parties are desirous of concluding a Settlement Agreement as stated below:

NOW THEREFORE, the parties agree as follows:

1. The Applicants hereby withdraw their application instituted under case number: 63756/17 and undertake not to pursue any further legal proceedings pertaining to the implementation of the Second Respondent's remedial action contained in her Report numbered 6/2017 on an investigation into allegations of failure or undue delay by the Department of Arts and Culture (DAC) to implement the Settlement Agreement signed in terms of Section 6(4)(a) and (b) of Public Protector Act 23 of 1994, dated 19 June 2017 ("the Report");

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2. The Applicants agree that they shall implement the Second Respondent's remedial action as set out in the Report;
3. The Third Respondent undertakes not to sell the SARA House without the express permission of the Applicants for a period of six years after completion of the renovations;
4. The parties agree that this Settlement Agreement shall be made an Order of Court; and
5. The Applicants tender to pay the taxed costs of the First, Second and Third Respondents jointly and severally, the one paying and the other to be absolved.

DATED at SANDHURST on this 15 day of JUNE 2018.

[Signature]

For and on behalf of the Applicants

Duly Authorised

As Witnesses:

1) [Signature]

2) [Signature]

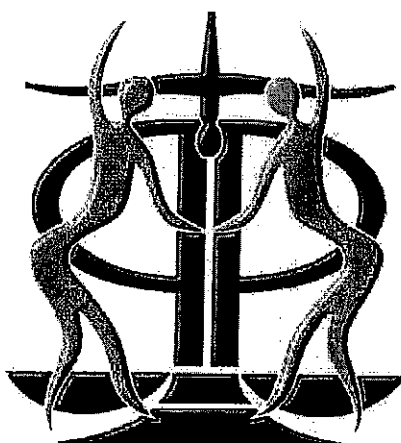
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REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 23 OF 1994.



**PUBLIC PROTECTOR
SOUTH AFRICA**

Report No: 125 of 2019/20

ISBN No: 978-1-928507-85-7

REPORT ON AN INVESTIGATION INTO ALLEGED MALADMINISTRATION, CORRUPTION, NEPOTISM AND ABUSE OF POWER BY THE NATIONAL ARTS COUNCIL (NAC).

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Executive Summary

- (i) This is my report issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 23 of 1994 (Public Protector Act).
- (ii) This report communicates my findings and appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into a complaint lodged by Mr Freddy Nyathela on behalf of the South African Roadies Association (the Complainant) on 23 January 2017. The Complainant alleged as follows:
- (a) Abuse of power and subversion of due processes by the Chief Executive Officer (CEO) of the National Arts Council (NAC);
 - (b) Falsification of the South African Roadies Association's (SARA) funding application by the CEO;
 - (c) Lack of adherence to and compliance with the Promotion of Administrative Justice Act Promotion Act, 3 of 2000 (PAJA) and *Batho Pele* Principles;
 - (a) Maladministration and Corruption; and
 - (b) Disregard of the National Arts Council Act, 56 of 1997 (NAC Act); especially the objects of Council.
- (iii) I held a meeting with the Complainant on 19 April 2017 in order to get clarification on issues raised by him. Subsequently, the Complainant confirmed that I must investigate the following two issues:

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- (a) That the CEO of the NAC allegedly falsified the Complainant's application to EXCO for partnership funding without his knowledge and consent; and
- (b) That there was impropriety and abuse of the Expired Projects and Surplus Policy (the Policy), which is applicable in the distribution of the surplus funds by the NAC.
- (iv) **Based on analysis of the allegations, and by agreement with the Complainant, the following issues were identified to inform and focus this investigation:**
- (a) Whether the CEO of the NAC submitted an application to EXCO for partnership funding using the Complainant's name without his consent, and if so, whether such conduct was improper and constitutes maladministration; and
- (b) Whether there was impropriety and abuse of the Expired Projects and Surplus Policy, by the NAC in the distribution of the surplus funds resulting in prejudice to the Complainant.
- (v) The investigation was conducted through exchange of correspondence, meetings and interviews with the Complainant, the CEO of the NAC, Risk Committee members and current and former Chairpersons of the NAC Board.
- (vi) Section 181 (1)(a) of the Constitution establishes the office of the Public Protector as an office intended to strengthen constitutional democracy in the Republic. In terms of Section 182 of the Constitution, the Public Protector has the power to:
- (a) *The Public Protector has the power, as regulated by national legislation;*

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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."*

- (vii) Therefore, the Public Protector Act significantly confers wide powers to me to investigate any alleged maladministration, abuse, improper conduct, act or omission arising within the public administration.
- (viii) My investigation is informed by virtue of the provisions of section 181(2) of the Constitution and the Public Protector Act. The Public Protector has jurisdiction in terms of the Constitution, to investigate any conduct in state affairs or in the public administration which is alleged or suspected to be improper or to result in impropriety or prejudice.
- (ix) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, including the response to the section 7(9) Notice, I make the following findings:
 - (a) **Regarding whether the CEO of the NAC submitted an application to EXCO for partnership funding using the Complainant's name, without his knowledge and consent, and if so, whether such conduct was improper and constitutes maladministration.**
- (aa) The allegation that the CEO of the NAC submitted an application to EXCO for partnership funding using the Complainant's name without his knowledge and consent, is substantiated.



- (bb) The CEO submitted a proposal for the partnership funding to EXCO using the Complainant documents from the rejected application without his knowledge and consent, but. However, this was not a falsified/forged application as alleged by the Complainant.
- (cc) The Complainant was not informed by the CEO about the annual partnership proposal since the Policy does not explicitly provide for such an obligation on the part of the CEO once such a need has been identified.
- (dd) Although the submission of the proposal to EXCO by the CEO is purportedly permissible in terms of the Policy, this is inconsistent with the provisions of section 33(1) of the Constitution and sections 3(1) and 3(2)(b) of PAJA, which provide for a reasonable and procedurally fair administrative action.
- (ee) Notwithstanding the CEO's contention, I find the reasons provided to justify not informing the Complainant who was subjects of the proposal under the annual partnership, such as that they did not want to raise his hopes, when in fact such proposals are presented to EXCO in their name, unacceptable.
- (ff) Therefore, the CEO's failure to inform the Complainant before submitting the proposal to EXCO for partnership funding, amounts to improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- (b) Regarding whether there was impropriety and abuse of the Expired Projects and Surplus Policy, by the NAC in the distribution of the surplus funds resulting in prejudice to the Complainant.**
- (aa) The allegation that there was impropriety and potential abuse of the Policy by the NAC in the distribution of the surplus funds is substantiated. The fact that the



CEO proceeded to use the Complainant's documents from the rejected application, which she did without his knowledge and consent is improper.

- (bb) The fact that the proposal by the CEO is based on the Complainant's rejected application for funding, to which the Complainant is yet to receive a recorded formal response thereto, in which cogent reasons for the rejection are captured by the NAC has resulted in perpetual prejudice to him.
- (cc) The implementation of the Policy by the NAC is inconsistent with the Constitution, PAJA and the National Treasury Regulations and therefore procedurally unfair as it does not take into account the rights of the applicant, but affords NAC employees, management or Council wide powers to deal arbitrarily with applications for surplus funds, in particular for annual partnership funding without their knowledge and consent and therefore has the potential of abuse.
- (dd) Therefore, the conduct of the CEO and the NAC in the manner in which it is implementing the Policy, amounts to improper conduct in state affairs as envisaged in section 182(1)(a) of the Constitution and constitutes maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- (x) The appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remedying the improper conduct and maladministration referred to in this report, is the following:
- (a) **The Minister of Sports, Arts and Culture:**
- (aa) To take note of the report in so far as the findings and remedial action contained therein are concerned and as the Executive Authority, assist in ensuring that the remedial action as provided for hereunder is expedited.

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**(b) The Chairperson of the NAC Board:**

(aa) To take note of my findings in this report and, within sixty (60) days of the issuing of this report:

- i. Act in accordance with his fiduciary duty of ensuring that the inconsistencies identified in the Policy during my investigation are addressed , by setting in motion a process to amend the Policy and promulgate Standard Operating Procedures on the implementation of Expired Projects and Surplus Funds Policy so as to align it with the relevant legislative framework;
- ii. Amend and strengthen the Expired Projects and Surplus Policy in order to close the gaps that exist in it, so as to prevent the NAC staff and other NAC stakeholders from exploiting the Policy contrary to the ethos of fairness, equity, transparency, competition and cost effectiveness as enshrined in the Section 217 of the Constitution of the Republic of South Africa;
- iii. Where necessary put in place Standard Operating Procedures to cure the inconsistencies in the implementation of the Policy as revealed by my investigation;
- iv. Generally to align the internal NAC Policy toolkit with the relevant legislative framework such as sections 33(1) and 217 of the Constitution, section 51(1)(b)(iii) of the PFMA, sections 3(1) and 3(2)(b)(i) of PAJA, Regulation 16A8 of the National Treasury Regulations as well as Regulation 13(c) of the Public Service Regulations, 2016;



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- v. Must within thirty (30) days of the issuing of this report, ensure that a letter of apology is issued by the CEO to the Complainant for the manner in which he was treated by the NAC, including the formal letter on the outcome of his 2014 application and cogent reasons for its rejection; and
- vi. Must within thirty (30) days of the issuing of this report ensure that the CEO has put in place a "Declaration of Interest register" for all NAC employees relating to the projects they have initiated since 2015 to date, so as to manage any prevalent conflict of interest.



REPORT ON AN INVESTIGATION INTO ALLEGED MALADMINISTRATION, CORRUPTION, NEPOTISM AND ABUSE OF POWER BY THE NATIONAL ARTS COUNCIL (NAC).

1. INTRODUCTION

- 1.1. This is my report issued 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, 23 of 1994 (Public Protector Act).
- 1.2. This report is submitted in terms of section 8 of the Public Protector Act to the following people to note the outcome of this investigation:
- 1.2.1. The Minister of Sports, Arts and Culture, Mr Nathi Mthethwa, MP;
- 1.2.2. The Chairperson of the NAC Board, Mr Hartley Ngoato;
- 1.2.3. The erstwhile Chairperson of the NAC Board, Ms Angie Makwetla;
- 1.2.4. Chief Executive Officer, Ms Rosemary Mangope; and
- 1.2.5. The Complainant, Mr Freddy Nyathela.
- 1.3. This report relates to my investigation into a complaint relating to allegations of maladministration, corruption, nepotism and abuse of power by the National Arts Council (NAC).



2. THE COMPLAINT

- 2.1. The complaint was lodged on 23 January 2017 by Mr Freddy Nyathela on behalf of the South African Roadies Association (SARA) (the Complainant) with a specific request for me to investigate allegations relating to maladministration, corruption, nepotism and abuse of power by the NAC.
- 2.2. The Complainant alleged as follows:
- 2.2.1 That there was abuse of power and subversion of due processes by the Chief Executive Officer (CEO) of the National Arts Council (NAC);
- 2.2.2 That there was falsification of the SARA's funding application by the CEO;
- 2.2.3 That there was lack of adherence to and compliance with the Promotion of Administrative Justice Act Promotion Act, 3 of 2000 (PAJA) and *Batho Pele* Principles; and
- 2.2.4 That there was Maladministration and Corruption and that there was disregard of the National Arts Council Act, 56 of 1997 (NAC Act); especially the objects of Council by the NAC in implementing the Expired Projects and Surplus Funds Policy (the Policy).
- 2.3. **Based on analysis of the allegations, and by agreement with the Complainant, the following issues were identified to inform and focus this investigation:**



- 2.3.1 Whether the CEO of the NAC submitted a falsified application to EXCO for partnership funding using the Complainant's name without his consent, and if so, whether such conduct was improper and constitutes maladministration; and
- 2.3.2 Whether there was impropriety and abuse of the Expired Projects and Surplus Policy by the NAC in the distribution of the surplus funds resulting in prejudice to the Complainant.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1. The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to 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 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**."

- 3.3. Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.
- 3.4. The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state

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affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5. In the constitutional court, in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016)*, Chief Justice Mogoeng stated the following with own emphasis, when confirming the powers of the Public Protector:

3.5.1. The remedial action taken by the Public Protector has a binding effect, *"When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences"* (para 73);

3.5.2. Complaints are lodged with the Public Protector to **cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles** (para 65);

3.5.3. An appropriate remedy must mean **an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced** (para 67);

3.5.4. Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, **she is constitutionally**



empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);

- 3.5.5. The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their **nature, context and language**, to determine what course to follow (para 69) ;
- 3.5.6. Every complaint requires a **practical or effective remedy** that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (para 70);
- 3.5.7. The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the **subject-matter of investigation** and the **type of findings made** (para 71);
- 3.5.8. Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that **she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence** (para 71(c));
- 3.5.9. **She has the power to determine the appropriate remedy and prescribe the manner of its implementation** (para 71(d));



- 3.5.10. "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (para 71(e));
- 3.6. The NAC is an organ of state and their conduct amounts to conduct in state affairs, as a result the complaint falls within the ambit of the Public Protector's mandate. Accordingly, the Public Protector has the power and jurisdiction to investigate and take appropriate remedial action in the matter under investigation.
- 3.7. The Public Protector's powers and jurisdiction to investigate and take appropriate remedial action was not disputed by the NAC.
- 3.8. My investigation is informed by the provisions of section 181(2) of the Constitution and the Public Protector Act. The Public Protector has jurisdiction in terms of the Constitution, to investigate any conduct in state affairs or in the public administration which is alleged or suspected to be improper or to result in impropriety or prejudice.

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.
- 4.1.2. 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.



4.2. Approach to the Investigation

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

4.2.1.1. What happened?

4.2.1.2. What should have happened?

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

4.2.2. In the event of improper conduct or maladministration what would it take to remedy the wrong or to place the Complainants as close as possible to where he would have been but for the maladministration or improper conduct?

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 the roles played by the NAC when they considered the Complainant's application for funding.

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 officials of the NAC.

4.2.5. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration or impropriety. Where the Complainant has suffered prejudice, the idea is to place him as close as possible to where he would have been had the institution concerned complied with the regulatory framework setting the applicable standards for good administration.



4.3. The Key Sources of information

4.3.1. Documents

- 4.3.1.1. A copy of a submission to the NAC EXCO dated 9 March 2015 from Rosie Katz (Manager in the CEO's office) to EXCO;
- 4.3.1.2. Disciplinary Procedure Policy 2016/3 approved on 30 August 2016;
- 4.3.1.3. A copy of a Letter dated 21 August 2015 from National Treasury to NAC;
- 4.3.1.4. Email dated 21 May 2014 from Julie Diphofa to the Complainant;
- 4.3.1.5. Email dated 22 March 2015 from the CEO to the Complainant;
- 4.3.1.6. Email dated 18 March 2015 from Connie Thabede to the Complainant;
- 4.3.1.7. Expired Project and Surplus Policy GR003/4/2015 approved on 22 May 2015;
- 4.3.1.8. A copy of the Complainant's application to NAC dated 30 July 2014;
- 4.3.1.9. A copy of a letter from the NAC to the Complainant dated 5 December 2014;
- 4.3.1.10. A copy of the minutes of a meeting held between the NAC and the Complainant held on 24 February 2015;
- 4.3.1.11. A copy of the EXCO minutes of the meeting held on 9 and 10 March 2015;
- 4.3.1.12. A copy of the minutes of a special meeting held on 19 March 2015; and

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4.3.1.13. A copy of the EXCO minutes of the meeting held on 30 and 31 March 2015.

4.4. Interviews and meetings conducted:

4.4.1. Interviews with the Chairperson of the Board, Mr Hartley Ngoato on 6 May 2019;

4.4.2. Interviews with the CEO of the NAC, Ms Rosemary Mangope on 6 May 2019;

4.4.3. Interviews with the Former Chairperson of the Board, Ms Angelina Makwetla on 11 June 2019;

4.4.4. Interviews with the Manager of Arts and Culture, Ms Julie Diphofa on 30 January 2019;

4.4.5. Interviews with the Risk Committee members on 30 January 2019; and

4.4.6. Interviews with the Complainant dated 19 April 2017.

4.5. Correspondence sent and received

4.5.1. A letter from the NAC Chairperson to the Public Protector dated 08 August 2017;

4.5.2. A letter from the Public Protector to the NAC dated 17 July 2017;

4.5.3. Email dated 25 October 2019 from the CEO to the Public Protector;

4.5.4. Email dated 07 November 2019 from the CEO to the Public Protector; and



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- 4.5.5. Email dated 24 October 2019 from the Public Protector to the CEO.
- 4.6. **A Response to the notice in terms of section 7(9)(a) of the Public Protector Act, 23 of 1994 from:**
- 4.6.1. Response from Ms Rosemary Mangope, the CEO of the NAC dated 15 November 2019.
- 4.7. **Legislation and other prescripts.**
- 4.7.1. The Constitution of the Republic of South Africa, 1996 (The Constitution);
- 4.7.2. The Public Protector Act, 23 of 1994 (Public Protector Act);
- 4.7.3. The National Arts Council Act, 56 of 1997 (Act);
- 4.7.4. Public Finance Management Act, 1 of 1999 (PFMA);
- 4.7.5. Promotion of Administrative Justice Act 3 of 2000 (PAJA);
- 4.7.6. Public Service Regulations of 2016 (Regulations);
- 4.7.7. Treasury Instruction Note 3 of 2015/2016; and
- 4.7.8. Regulation 16A8 of the National Treasury Regulations.
- 4.8. **Case law**
- 4.8.1. ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others*** (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016).



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 the CEO of the NAC submitted an application to EXCO for partnership funding using the Complainant's name without his consent, and if so, whether such conduct was improper and constitutes maladministration.**

Common cause issues

- 5.1.1. It is not in dispute that the Complainant submitted an application for funding on 30 July 2014 to the NAC, requesting funding for staging and lighting equipment at a cost of R920 734.62, which was declined.
- 5.1.2. It is also not disputed that the CEO submitted a proposal to EXCO for R350 000 for annual partnership funding using the Complainant's name on 9 March 2015.
- 5.1.3. The issue for my determination was whether the CEO failed to inform the Complainant of the said partnership application, and whether she falsified the Complainant's application to EXCO.

Issues in dispute

- 5.1.4. According to the NAC's response to my office the Complainant's first application of 30 July 2014 was declined by the NAC in a letter to him dated 5 December 2014, with the following reasons:

- 5.1.5. That the application did not contain the following documents:

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- 5.1.5.1. Three reference letters;
- 5.1.5.2. Copies of identity documents of the board members;
- 5.1.5.3. Audited Financial Statements;
- 5.1.5.4. Curriculum vitae of office bearers;
- 5.1.5.5. Three months' bank statements; and
- 5.1.5.6. Tax clearance certificate.
- 5.1.6. Subsequent to the rejection of the application, the CEO then submitted a proposal to EXCO for annual partnership on 9 March 2015 in the name of the Complainant, requesting EXCO to support training and development programmes for the youth.
- 5.1.7. The purpose thereof was to address historical imbalances, to give the historically disadvantaged groups such help and resources required and to give them greater access to arts, with the financial implications for one (1) year amounting to R350 000.00.
- 5.1.8. The said proposal for funding was submitted to EXCO internally by the CEO in the name of the Complainant, but without the Complainant's knowledge and consent as there was no formal communication between the NAC and him regarding the submission.
- 5.1.9. The Complainant disputes the procedure which was followed by the CEO with regard to the application for funding that involved the submission to EXCO dated 9 March 2015, wherein she proposed an amount of R350 000.00 to be allocated for funding a partnership project with the Complainant under the Policy.
- 5.1.10. The Complainant maintained that he did not have knowledge and/or was not informed of the proposal submitted by the CEO to EXCO on 9 March 2015.

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- 5.1.11. However, the said proposal for annual partnership funding amounting to R350 000 submitted by the CEO in the name of the Complainant to EXCO on 9 March 2015 was not for staging and lighting equipment as indicated above, but for funding to support training and development programmes for the youth in the name of the Complainant.
- 5.1.12. According to the CEO, the purpose thereof was to address historical imbalances and to give historical disadvantaged group such help and resources required for greater access to arts, with the financial implications for one (1) year.
- 5.1.13. The evidence at my disposal indicates that the annual partnership proposal made by the CEO to EXCO in the name of the Complainant would have emanated from a meeting that was held on 24 February 2015, between the Complainant and Ms Makwetla, the CEO and the Manager of Arts and Culture, Ms Julie Diphofa (Ms Diphofa).
- 5.1.14. However, from the minutes of the meeting of 24 February 2015 referred to above, it confirms that the reason for the meeting with the Complainant was regarding his disapproved application submitted for staging and lighting equipment which the CEO of the NAC mentioned that it was not supported by the NAC for reasons advanced in its letter dated 5 December 2014 to the Complainant.
- 5.1.15. According to the CEO, during the meeting held on 24 February 2015, she addressed the issue relating to the reasons provided to the Complainant when declining his application. She indicated that the letter sent to the Complainant should not have mentioned that the application was incomplete by citing documents missing from the application.

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- 5.1.16. That the disclaimer should have indicated that the NAC no longer supports capital/infrastructure applications. However, despite this being the primary reason for the rejection of the application, as it was based on the NAC Policy, it was not formally communicated to the Complainant as required by PAJA.
- 5.1.17. During an interview held on 19 April 2017, the Complainant submitted to me that the NAC made an undertaking to correct the mistake made relating to the reasons contained in the letter of response to his application by stating true reasons for the decline, but they had failed to get back to him.
- 5.1.18. However, the minutes of the said meeting, do not indicate that the NAC had made an undertaking to correct the letter submitted to the Complainant. It only indicates that the letter should have reflected the reasons for NAC's inability to provide funding of capital/infrastructure to the Complainant.
- 5.1.19. Further that it should have also been mentioned in the said letter, that the application was for capital/infrastructure equipment, which the NAC was unable to support due to limited funding or resources.
- 5.1.20. The NAC submitted evidence to me on 22 May 2019 as proof that it had long taken a decision not to provide funding for capital/infrastructure in this regard in a document titled: "*Criteria for Funding*", which shows that capital/ infrastructure funding is excluded by the NAC.
- 5.1.21. Following EXCO meetings held on 9 and 10 March 2015, respectively, EXCO had resolved that special projects be discussed first by the Chairpersons of the Advisory Panel.

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- 5.1.22. In a letter dated 18 March 2015 to the Complainant, Ms Connie Thabede (Ms Thabede), the Assistant to the CEO requested the Complainant to submit an electronic version of a document titled: *"Live Event Technical and Production conference"* which was the Complainant's application that was initially declined.
- 5.1.23. The Complainant stated that he was astonished when Ms Thabede requested the aforesaid documentation on 18 March 2015 on behalf of the CEO.
- 5.1.24. On 19 March 2015, a special meeting was held by the NAC Advisory Panel during which the proposal submitted by the CEO due for consideration by EXCO was first not recommended by the NAC Advisory Panel.
- 5.1.25. According to the minutes of this meeting, the NAC Advisory Panel discussed that the Complainant could be an institutional risk and that a full due diligence of the organisation is required as the Complainant's organisation did not meet the requirement when they previously submitted their application for flagship funding. It was further stated that there was no sufficient funding to support their scope. The following recommendations were then made:
- (a) *"That a mechanism needs to be put in place to enable the NAC to be responsible to applications/ proposals as the NAC is continually interfacing with people in the sector, and various requests arise.*
 - (b) *The NAC needs to consider how to allow for flexibility."*
- 5.1.26. On 22 March 2015, the CEO provided the Complainant with the reasons for requesting the aforesaid application, and mentioned that it was for convenience of inclusion in her request for support of the proposal for annual partnership funding in her presentation to the EXCO.

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5.1.27. The submission of a proposal for special projects from the CEO's office was submitted by the CEO to EXCO on 24 March 2015.

5.1.28. During the meetings held by EXCO on 30 and 31 March 2015, the above proposal was presented to it and the discussion was held as indicated below:

South African Roadies Association: The CEO informed the meeting that the NAC received an email from the SA Roadies Association which itemised what was presented on the day. The email indicated how much had been allocated to whom. It was clear that there was quite a huge breach of confidentiality in the NAC. The information was leaked ahead of time on the deliberations that had happened at panel level. The SA Roadies application was declined due to governance issues.

Resolution: Council resolved that an investigation be started in order to establish how the information was leaked.

5.1.29. During an interview with the CEO on 6 April 2019, she conceded that she did not inform the Complainant regarding the proposal which she had prepared and submitted to EXCO for consideration.

5.1.30. She stated that had the Complainant been informed of the proposal for annual partnership funding, it would have raised legitimate expectation on the part of the Complainant. Further, this process is intended to be an initiation from the CEO's office and not an application brought by the Complainant.

5.1.31. In her explanation to me during the interview held on 6 April 2019, the CEO indicated that according to the NAC legal prescripts and policy, she is allowed to submit a proposal if she has identified a gap and/or would like to enter into a partnership agreement with any institution.

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- 5.1.32. Although the CEO stated that when she submits a self-initiated proposal, such proposals should follow the normal approval process and the institution in whose name a proposal is made, need not be informed regarding such CEO-initiated proposal as this may raise false hope for them. Based on this, the Complainant was not formally informed of the submission made by the CEO to EXCO.
- 5.1.33. However, this is an affront to a transparent and procedurally fair process through which all applicants must be treated in line with the Constitution and PAJA. Furthermore, nowhere in the NAC Policy is it spelt out that an institution in whose name a proposal is made, need not be informed thereof.
- 5.1.34. It was further stated that EXCO declined the CEO's proposal on the basis that the Complainant was not providing rare skills and the CEO was advised to invite everyone to apply under the Policy in an open and competitive process. This was also one of the several varied reasons provided by the NAC through the Advisory Panel and EXCO, respectively, during their consideration of the proposal by the CEO. It was however, never acted upon until the Complainant raised his complaint with the Public Protector.
- 5.1.35. During my interview with Ms Diphofa on 30 January 2019, she stated that the distribution of the surplus funds under the flagship projects by the NAC is processed through the CEO's office, and this information was given to the Complainant through a communication on 21 May 2015.
- 5.1.36. She explained that, in an e-mail dated 21 May 2015, she had informed the Complainant what the flagship projects were all about. She indicated to him that:

"Flagship projects are usually projects that make an impact on the sector in a big way. They are usually unique projects that stand out (carry our flag) in a way that we can say we are proud of."



- 5.1.36 It is disconcerting that in two (2) separate meetings convened by the NAC to deal with the CEO's proposal to EXCO using the name of the Complainant, both EXCO and the Advisory Panel could not conceal their irritation and/or loathe of the Complainant, if their recorded remarks above, are to be deciphered.
- 5.1.37 Interestingly, these meetings were dealing with the proposal by the CEO which the Complainant was oblivious to, but still added to the prejudice he was subjected to by the NAC in that he was still castigated, in absentia.

Application of the relevant law

- 5.1.38 Section 33(1) of the Constitution provides that *"Everyone has the right to administrative action that is lawful, reasonable and procedurally fair"*.
- 5.1.37. Section 1 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) defines an administrative action as any decision taken or any failure to take a decision, by an organ of state, when exercising a power in terms of the Constitution or a provincial constitution; or exercising a public power or performing a public function in terms of any legislation.
- 5.1.38. PAJA defines a **decision** as a decision of an administrative nature made, **proposed to be made, or required to be made**, as the case maybe, under an empowering provision.
- 5.1.39. Section 3(1) of t (PAJA) provides that *"Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair"*.

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5.1.40. Section 3(2)(b) of PAJA provides that *"In order to give effect to the right to procedurally fair administrative action, an administrator, subject to sub-section (4), must give a person referred to in subsection (1) –*

- (i) adequate notice of the nature and purpose of the proposed administrative action;*
- (ii) reasonable opportunity to make representations;*
- (iii) a clear statement of the administrative action;*
- (iv) adequate notice of any right of review or internal appeal, where applicable; and*
- (v) adequate notice of the right to request reasons in terms of section 5."*

5.1.41. Section 6(3) of the NAC Act permits the council to initiate projects which it considers necessary in the pursuit of its objects, provided that such projects are undertaken in partnership with existing organisations or institutions which have the capacity to undertake such projects.

5.1.42. In terms of Paragraph 9, sub-paragraphs 9.3 and 9.4 of the Policy, the scope of the application of the surplus funds is as follows:

- 9.3 *"The funds may be utilised to support projects and programmes that are designed to transform and grow the sector. These programmes may be identified by the Staff, Panels, and Council and/or by means of an open call for applications, however, internal approval processes should be followed as specified in the Grant Awarding Manual".*



9.4 *"It may also be applied in a situation where Management or Council wishes to develop or strengthen its relationship or partnership with a particular organisation within the sector in pursuance of its objectives"...*

- 5.1.43. The evidence discussed above indicates that the CEO submitted a proposal to EXCO for annual partnership funding on 9 March 2015 using documents from the Complainant's rejected application without the Complainant's consent and knowledge.
- 5.1.44. The annual partnership proposal submitted by the CEO to EXCO on 9 March 2015 in the name of the Complainant would have been in line with the powers and responsibilities of the CEO, as provided for by sub-paragraph 9.3 as well as sub-paragraph 9.4 of the Policy which empower NAC management and Council to initiate projects which it considers necessary in the pursuit of its objects.
- 5.1.45. However, the problem with the CEO's proposal was that she had used the Complainant's documents from a rejected application despite having not yet formally communicated the rejection, as well as having not notified him of the proposal to EXCO.
- 5.1.46. It has been confirmed by the evidence and the facts that the CEO did not falsify the Complainant's application when she submitted a proposal for annual partnership funding to EXCO, but instead utilised the documents from the Complainant's rejected application for staging and lighting equipment.
- 5.1.47. During my meeting with the CEO on 6 April 2019, she indicated that she was trying to assist the Complainant through the proposal for annual partnership funding to EXCO. Although this might seem to have been with good intentions, the Complainant was nevertheless, not informed by the CEO about such possible annual partnership proposal with the NAC.



- 5.1.48. Immediately after the rejection of the Complainant's first application for funding, the NAC should have informed him of the annual partnership proposal which was submitted by the CEO to EXCO, to enable him to give consent on whether he wished to participate in the partnership project or not.
- 5.1.49. The fact that the CEO did not inform the Complainant about possible annual partnership application with him, rendered the process suspicious and unfair to the Complainant. This also lent credence to the belief that the NAC is abusing the Policy through the manner in which they were effecting its implementation.
- 5.1.50. I therefore conclude that the implementation of the Policy by the NAC is inconsistent and procedurally unfair as it does not take into account the rights of the applicant but affords NAC employees, management or Council wide powers to deal arbitrarily with applications for surplus funds, in particular for annual partnership funding without his/her knowledge and consent and therefore has the potential of abuse.

Conclusion

- 5.1.51. Based on the foregoing, the above process followed by the NAC in dealing with the annual partnership proposal by the CEO without the Complainant's knowledge and consent, is inconsistent with the provisions of sections 33(1) of the Constitution and sections 3(1) and 3(2)(b) of PAJA, which provide for a reasonable and procedurally fair administrative action.

Response to the section 7(9) notice from the CEO of the NAC dated 15 November 2019 dealing with the issue above



5.1.52. Section 7(9) of the Public Protector Act provides that *“if it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances”*.

5.1.53. The response provided by the CEO of the NAC regarding the section 7(9) notice is considered herein. I have however, not dealt with each and every aspect raised in the response but that should not be construed as an admission of any kind of the averments contained therein.

At paragraph 1 – 13 of the response

5.1.53.1. In its response to my section 7(9) Notice dated 21 October 2019, which was issued to the NAC on 24 October 2019, the CEO pointed out that the Notice appeared to insinuate that she made a submission to EXCO improperly and for the purpose of receiving funds for her own personal benefits.

5.1.53.2. She further highlighted that the findings of facts that are made in my reports have a potential of damaging consequences on those that are named. Further that the Notice accuses some members of the NAC, condemns others, and has the potential to ruin reputation or careers. That my report may lead to judicial proceedings and expose members of the NAC to criminal or civil actions.

5.1.53.3. Due to the aforesaid consequences the NAC urged the Public Protector to conduct its duties diligently with clear and with proper exposition of the facts and the law.



- 5.1.53.4. The CEO referred to Section 5(1)(a) of the NAC Act provides that *"the members of the council shall be persons who have special knowledge or experience in the arts or, in the case of other persons referred to in section 4(1) who have specialist skills, who are not directly related to the arts but would be beneficial to the council"*.
- 5.1.53.5. Section 6 of the NAC Act further provides that the functions of the Council which include determining which field of the arts should have preference for the purposes of support, investigate and determine the need for support of any person, organisation or institution, enter into agreements with any person, organisation or institution upon conditions as may be agreed upon (generally do everything which is necessary to achieve its objects).
- 5.1.53.6. Section 6(3) of the NAC Act permits the Council to initiate projects which it considers necessary in the pursuit of its objects, provided that such projects are undertaken in partnership with existing organisations or institutions which have the capacity to undertake such projects.
- 5.1.53.7. The CEO submitted that the Policy exists to enable the NAC to perform its legislated mandate of initiating projects it considers necessary in pursuit of its objects.
- 5.1.53.8. Further that it is only when the NAC contracts with a party that procurement related prescripts apply. Prior to that, the NAC is performing its mandated duty of identifying and supporting culture through the arts.
- 5.1.53.9. Lastly, the Policy is the one that provides a guideline to the institution on how the exercise of its powers to initiate programmes/projects should be undertaken.



5.1.53.10. I do not disagree with the CEO's explanation and clarification on what the NAC Act and Policy provide for, and how the NAC complies therewith in their dealings with stakeholders. However, it is the arbitrary manner through which the NAC implements the Policy that I find unacceptable.

At paragraph 14 – 20 of the response

5.1.53.11. The CEO stated that the issue under investigation which relates to "whether the CEO failed to inform the Complainant of the partnership application" implies that, firstly, there existed an obligation to inform the Complainant of a submission to EXCO and, secondly, that the submission was a partnership application for funding.

5.1.53.12. She indicated that on 9 March 2015, she made a submission to EXCO of the NAC to consider proposed flagship projects that the NAC could pursue, with a copy annexed thereto.

5.1.53.13. She stated that the purpose of the proposal was to obtain a decision from EXCO on whether the NAC would pursue discussions with potential entities that fall within the ambit of its mandate for the purpose of forming partnership to pursue projects.

5.1.53.14. Furthermore, that the submission was in line with the Policy. The Policy serves as a framework for identifying organisations and individuals that have not reported and accounted for funds within a specific time, claimed funds or withdrew funds for various reasons. The funds available as a result of expired projects, shall be approved by Council for project funding and other NAC strategic activities.

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5.1.53.15. She stated that the submission made to EXCO is therefore an internal process that preceded the forming of any partnership with individuals or organisations. Furthermore, that in order to communicate an intention for the NAC to form a partnership with an organisation, the NAC would first need to take a decision to do so.

5.1.53.16. She argued that notifying the organisation prior to the NAC (EXCO) having taken a decision to do so would have been irresponsible and premature on their part. Moreover, she would have had no mandate to approach organisations which include the Complainant as there is no obligation for her to inform external organisation of her intentions and obtain their consent, prior to making a proposal to EXCO when she wishes to initiate partnerships or flagship projects with individuals or organisations.

5.1.53.17. I have noted the preceding explanation by the CEO and have to say that this is a clear indication of the arbitrary implementation of the Policy by the NAC which flies in the face of a fair administrative process, and is therefore problematic.

At paragraph 21 – 30 of the response

5.1.53.18. She further argued that I pursued an investigation premised on the flawed assumption that there exists an obligation for her to communicate with external parties prior to her obtaining approval from EXCO to pursue projects appears to be an irrational assumption.

5.1.53.19. She reiterated that the submission was not a partnership application, but a proposal to EXCO to pursue discussions with potential organisations for the purpose of forming partnerships and the allocation of funding was merely an

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indication for the purposes of establishing what budget requirements would apply to any such partnership, if it is pursued.

- 5.1.53.20. She stated that any deliberations and decision by EXCO based on her submissions would not result in monies being paid to the Complainant, but would however enable discussions to commence with the Complainant's organisation on that basis. Also that these would form part of a separate process, which will include formulating the agreement that would govern such partnership.
- 5.1.53.21. She referred to paragraph 5 of my Notice wherein it addressed what I labelled as "*common cause issues*", however, rebutting such. She specifically referred to paragraph 5.1.3, stating that it incorrectly refers to her proposed flagship project submission to EXCO as an application as well as that the application is in the Complainant's name.
- 5.1.53.22. She said that the submission was neither a partnership application nor was it made in the name of the Complainant. That the Complainant was mentioned in the application as a potential partnership that she had earmarked and which she sought a decision from Council to pursue.
- 5.1.53.23. She submitted that although the funds were emanating from the surplus funds, an indication of the cost implications was required in her submission and that the amount served only to give EXCO an indication of the financial implications of pursuing a partnership of this nature. However, this does not mean that the entire amount would be utilised for such a project or that it would necessarily be paid out once the approval to pursue the project was given by EXCO.
- 5.1.53.24. I have noted the CEO's explanation about not being obliged to communicate with external parties prior to her obtaining approval from EXCO for the purpose

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of forming partnerships which I find disingenuous, especially in the case of the Complainant whose rejected application's documents were used in the proposal to EXCO. This clearly serves to confirm arbitrariness on the part of the CEO.

At paragraph 31 – 35 of the response

5.1.53.25. The CEO submitted that the Notice seems to characterise the internal submission she made to EXCO, alternatively the refusal by EXCO to accept her proposal, as administrative action. She indicated that, she was advised that this is legally incorrect for the following reasons:

- (a) *"The Complainant made no application to the NAC or to EXCO for partnership funding; and*
- (b) *The Complainant is/was entitled to, alternately had no right to such partnership funding and no legitimate expectation had been created for the Complainant to believe that the NAC intended to create a partnership with them."*

5.1.53.26. Further that she was advised that both acts by herself and that of the NAC did not materially and adversely affect the rights or legitimate expectations of the Complainant.

5.1.53.27. She referred me to paragraph 5.1.29 of my Notice wherein it stated that the reason such proposal are made without informing the parties, is to prevent a situation where a legitimate expectation is created and the NAC opts not to pursue the project.

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- 5.1.53.28. She submitted that this is an internal function within the scope of her duties and the Policy. She argued that the Complainant's consent was not required for the purposes of her submission. However, the Complainant would be in a position to accept or refuse a proposal for partnership had EXCO accepted her proposal and taken a decision to extend an invitation to form such a relationship with him.
- 5.1.53.29. She indicated that paragraph 5.1.43 of my Notice records that "... *the Complainant was not informed about the possible annual partnership proposal with the NAC*" confirming that this is an accurate reflection of what transpired herein.
- 5.1.53.30. I wish to agree with CEO's explanation with regards to the proposal to EXCO as being an internal process and therefore not an administrative action. However, the proposal was based on the Complainant's rejected application which therefore had all the hallmarks of an administrative action, whilst having not being dealt with accordingly as the Complainant was not provided with cogent reasons for its rejection and possible appeal process, if he so wished.

At paragraph 36 – 42 of the response

- 5.1.53.31. In reference to my findings that the Policy is not without risk of abuse by the NAC, because EXCO could approve such annual funding without the Complainant's knowledge and consent, the CEO argued that the process followed by the NAC in dealing with the annual partnership applications without the Complainant's knowledge and consent, is not inconsistent with the provisions of section 33(1) of the Constitution and 3(1) and 3(2)(b)(i) of PAJA, which provides for a fair administrative action, the CEO's contention is that these findings are misguided.

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- 5.1.53.32. Should her proposal for an annual partnership with the Complainant be accepted by EXCO, then the next step in the process would have been for the NAC to formulate a proposal in this regard, alternatively, solicit one with terms of reference/specifications. The Complainant would be a part of that process.
- 5.1.53.33. Her contention is that the risk of abuse of funding being approved without the Complainant's knowledge and consent is, as a result, unfounded and furthermore a misunderstanding of the specific process that was underway, one that, in fact ended with a decision to go on public tender.
- 5.1.53.34. She stated in her response that the Public Protector criticised the NAC for opting for a competitive process in this regard.
- 5.1.53.35. She further submitted that the alleged non-compliance with the requirement of the Constitution and PAJA, arises from the abovementioned flawed assumption that there exists an obligation for her to inform external organisation of her intentions and obtain their consent, prior to making a proposal to EXCO when she wishes to initiate partnerships or flagship projects with individuals or organisations.
- 5.1.53.36. She indicated that the above conclusion would be putting the proverbial cart before the horse. She stated that, she must first obtain EXCO permission to approach the organisation with a proposal, either directly, in instances where the skills set or services of that organisation is so rare that it is otherwise not available anywhere else, alternatively by way of public tender which in this case was proposed. Further that such public tender would have still allowed the Complainant to make a submission of an application to partner with the NAC.

Conclusion

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- 5.1.53.37. I have taken note of the CEO's above submission and I still do not find comfort and confidence in how the NAC goes about implementing the Policy, which should be in a transparent and procedurally fair manner for the benefit of all its stakeholders as well as in compliance with the Constitution, PAJA and the PFMA.
- 5.1.53.38. Therefore, I find it completely distasteful that an application that has been turned today, later the same institution that has turned it down, finds it valuable or worthy to again consider, albeit in a different category, worse still without the applicant's knowledge and consent.
- 5.1.53.39. The arbitrariness in implementing the Policy is therefore inconsistent with the provisions of section 33(1) of the Constitution and sections 3(1) and 3(2)(b) of PAJA, which provide for a reasonable and procedurally fair administrative action.
- 5.2. **Regarding whether there was impropriety and abuse of the Expired Projects and Surplus Policy, by the NAC in the distribution of the surplus funds resulting in prejudice to the Complainant.**

Common cause issues

- 5.2.1. It is not in dispute that the NAC declined the Complainant's first application for funding for staging and lighting equipment at a cost of R920 734.62 on 30 July 2014.

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- 5.2.2. It also not in dispute that on 9 March 2015 the CEO of the NAC then submitted a proposal to EXCO for annual partnership in the name of the Complainant, requesting EXCO to support training and development programmes for the youth.
- 5.2.3. The purpose thereof was to address historical imbalances, to give the historically disadvantaged groups such help and resources required and to give them greater access to arts, with the financial implications for one (1) year amounting to R350 000.00.
- 5.2.4. The issue for my determination was whether or not there was impropriety and abuse by the NAC in the implementation of the Policy to distribute surplus funds which may have resulted in prejudice to the Complainant.
- 5.2.5. The evidence at my disposal relating to the Complainant's application dated 30 July 2014, confirms that he had submitted an application for staging and lighting equipment amounting to R920 734.62 which was declined.
- 5.2.6. However, evidence at my disposal prior to the submission of a proposal for annual partnership funding by the CEO on 9 March 2015, the NAC had not provided the Complainant with a letter of response stating cogent reasons for the decline of his first application.
- 5.2.7. According to the evidence, various reasons were advanced for the decline such as the fact that he did not provide the relevant requisite documents and/or the fact that the NAC no longer funded capital projects, just to name a few. However, this was not articulated in the decline letter dated 5 December 2014.
- 5.2.8. The evidence at my disposal indicates that the partnership application made by the CEO to EXCO in the name of the Complainant would have emanated from a



meeting that was held on 24 February 2015, between the Complainant and Ms Makwetla, the CEO and the Manager of Arts and Culture, Ms Julie Diphofa (Ms Diphofa).

- 5.2.9. However, from the minutes of the meeting of 24 February 2015 referred to above, it confirms that the reason for the meeting with the Complainant was regarding his declined application submitted for staging and lighting equipment which the CEO of the NAC mentioned that it was not supported by the NAC for reasons advanced in its letter dated 5 December 2014 to the Complainant, which reasons it has now been revealed were accepted by NAC not to be the actual and even the specific reasons, thus needed to be augmented by a subsequent letter to the Complainant encapsulating cogent reasons.
- 5.2.10. According to the CEO, during the meeting held on 24 February 2015, she addressed the issue relating to the reasons provided to the Complainant when declining his application. She indicated that the letter sent to the Complainant should not have mentioned that the application was incomplete by citing documents missing from the application.
- 5.2.11. That the disclaimer should have indicated that the NAC no longer supports capital/infrastructure applications. However, despite this now seemingly being the primary reason for the rejection of the application, as it was based on the NAC Policy, it was not accordingly communicated to the Complainant in line with PAJA.
- 5.2.12. During an interview held on 19 April 2017, the Complainant submitted to me that the NAC made an undertaking to correct the mistake made relating to the reasons contained in the letter of response of his application by stating true reasons for the decline, but they failed to get back to him.



- 5.2.13. Further that it should have also been mentioned in the said letter, that the application was for capital/infrastructure equipment which the NAC was unable to support due to limited funding or resources.
- 5.2.14. Therefore, the letter to the Complainant fell far short of the requirements of PAJA, in that not only did it fail to present cogent reasons for the rejection of his application, but did not offer him an opportunity to appeal the NAC's decision.
- 5.2.15. I have noted that it was only when the Complainant engaged the NAC later about his application that he was offered various reasons as alluded to above which had not been formalised in writing.
- 5.2.16. It has also come to my attention that the Department of Arts and Culture (the Department) commissioned Business Innovation Group (Pty) Ltd (BIG) to conduct an investigation into allegations of misconduct by senior management of the NAC as a result of their failure to award a grant to the Complainant.
- 5.2.17. Consequently, on 6 October 2016 BIG issued an investigation report relating to the investigation with the following findings and conclusion:
- "16.6 The Expired Project and Surplus Policy- approved by the Audit and Risk Committee (EXCO) appears not to be in line with Treasury Regulations and PFMA. Further this policy appears to be unfair and uncompetitive."*
- 17.6 Treasury Regulation 6.4.1 states that savings on transfer payments may be rolled over to a subsequent year, but only if it is rolled over for the purpose originally voted for.*



17.7 Treasury Regulation 6.4.2 states that request for rollovers must be submitted to the relevant treasury on or before the last working day of May each year, in a format determined by the National Treasury⁷.

- 5.2.18. The Complainant in his complaint still argued that the implementation of the Policy by the NAC was in breach of section 51(1)(b)(iii), section 38 (1) (a) (iii) of the PFMA, the NAC Act and National Treasury Regulations Instruction Note 3 of 2015/2016, as confirmed in the findings and conclusion of the BIG investigation report as reflected above.
- 5.2.19. Although a much wider and independent investigation was conducted by my office in this regard, it did not fall far from the BIG Report's findings as confirmed by the facts and evidence canvassed in this report.
- 5.2.20. In its initial response to me dated 17 July 2017, the NAC provided that it had complied with all the legal prescripts when it considered the Complainant's application for funding under the Policy and denied any wrongdoing by the CEO or the NAC. This was again reiterated by the CEO during my meeting with her on 6 April 2019.
- 5.2.21. In its subsequent response to me dated 10 September 2019, the NAC provided me with the National Treasury's approval to retain accumulated surplus funds at the end of the 2014/15 financial year which was captured in a letter dated 21 August 2015. In terms of this letter, the National Treasury confirmed receipt of the aforesaid application on 10 June 2015.
- 5.2.22. The National Treasury granted the NAC's application to retain the accumulated surplus funds at the end of 2014/15 financial year. The approval was in terms of section 53(3) of the PFMA. The NAC was therefore disbursing with accrued

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surplus funds for the 2014/14 F/Y when the Complainant's application was dealt with.

Application of the relevant law

5.2.23. Section 217 of the Constitution is the basis upon which all procurement practices within the public sector are developed. The Constitution demands that when an organ of state contracts for goods and services it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

5.2.24. Section 3(1) of t (PAJA) provides that "*Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair*".

5.2.25. Section 3(2)(b) of PAJA provides that "*In order to give effect to the right to procedurally fair administrative action, an administrator, subject to sub-section (4), must give a person referred to in subsection (1) –*

(vi) *adequate notice of the nature and purpose of the proposed administrative action;*

(vii) *reasonable opportunity to make representations;*

(viii) *a clear statement of the administrative action;*

(ix) *adequate notice of any right of review or internal appeal, where applicable;*
and

(x) *adequate notice of the right to request reasons in terms of section 5."*



- 5.2.26. Section 13(1) and (2) of the NAC Act provides that the Council shall appoint a full time Chief Executive Officer for the Council. The Chief Executive Officer shall be responsible for the management of the affairs of the Council and shall report on those affairs to the Council as often as maybe required by the Council.
- 5.2.27. Section 14(1) of the NAC Act provides that in addition to the other functions entrusted to the Chief Executive Officer by or under this Act, he or she shall be the Accounting Officer charged with the responsibility of accounting for all moneys received and the utilisation thereof and be responsible for the property of the Council.
- 5.2.28. Section 51(1)(a)(iii) of the PFMA provides that *"The accounting authority for a public entity,— must ensure that public entity has and maintains an appropriate ... provisioning system which is fair, equitable, transparent, competitive..."*
- 5.2.29. Regulation 13(c) of the Public Service Regulations of 2016 provides that an employee shall not conduct business with any organ of state or be a director of a public or private company conducting business.
- 5.2.30. Section 6A of the NAC Act provides as follows:
- A. *"Subject to subsection (3) and in order to achieve its objects, the Council may:*
- investigate and determine which field of the arts should have preference for the purpose of support thereof;*
- (c) investigate and determine the need for support of any person, organisation or institution;*
- ...



(p) generally, do everything which is necessary to achieve its objectives”.

5.2.31. In terms of Paragraph 9 of the Policy, the scope of the application of the surplus funds is as follows:

9.1 *“Surplus funds may be applied to attain the NAC objective however provided that the process does not transgress any legislation and policies that regulate the operations of the NAC;*

9.2 *...;*

9.3 *The funds may be utilised to support projects and programmes that are designed to transform and grow the sector. These programmes may be identified by the Staff, Panels, and Council and/or by means of an open call for applications, however, internal approval processes should be followed as specified in the Grant Awarding Manual.*

9.4 *It may also be applied in a situation where Management or Council wishes to develop or strengthen its relationship or partnership with a particular organisation within the sector in pursuance of its objectives;*

9.5 *It may also be utilised to support projects that do not fall within the seven arts discipline which are supported by the NAC; provided that the project has a potential or ability to as contribute towards the growth of the sector and*

Council and Management can directly make decisions with regard to the utilisation of surplus fund only if that allocation relates to project operational activities”.



5.2.31 The Treasury Regulations set out the areas that form the SCM framework and this is to be found in Regulation 16A8 which reads as follows:

“16A8 Compliance with ethical standards

16A8.1 All officials and other role players in a supply chain management system must comply with the highest ethical standards in order to promote –

- (a) mutual trust and respect; and*
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.*

16A8.2 The National Treasury’s Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role players involved in supply chain management.

16A8.3 A supply chain management official or other role player –

- (a) must recognise and disclose any conflict of interest that may arise;*
- (b) must treat all suppliers and potential suppliers equitably;*
- (c) may not use their position for private gain or to improperly benefit another person;*
- (d) must ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or hospitality or any other act;*
- (e) must be scrupulous in their use of public property; and*
- (f) must assist accounting officers or accounting authorities in combating corruption and fraud in the supply chain management system.*

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16A8.4 If a supply chain management official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must –

- (a) disclose that interest; and*
- (b) withdraw from participating in any manner whatsoever in the process relating to that contract.*

16A8.5 An official in the supply chain management unit who becomes aware of a breach of or failure to comply with any aspect of the supply chain management system must immediately report the breach or failure to the accounting officer or accounting.”

5.2.32 It is of concern that the Policy allows NAC's employees, Panels and Council to identify and fund projects that are earmarked to transform and grow the Arts sector. In this regard, without the NAC having in place checks and balances based on the general understanding of established provisioning legal prescripts, the implementation of the Policy is susceptible to manipulation, since some employees could recommend their relatives, families and/or cronies to be funded through the Policy. The employees would be acting in breach of the Public Service Regulations which prohibits public servants from conducting business with government.

5.2.33 The facts and evidence discussed above indicate that the NAC rejected the Complainant's application for funding in respect of staging and lighting equipment amounting to R920 734.62 in 2014. However, the disapproval was not properly communicated to SARA as required by PAJA in that he was never furnished with the actual full reasons for the rejection of his application, and was ultimately



deprived of an opportunity to appeal or review the decision if he would have seen it fit to.

5.2.34 Instead, the NAC through the CEO proceeded and submitted an annual partnership proposal to EXCO without having satisfied the requirements of PAJA with respect to the first application as referred to above. This was done without the knowledge and consent of the Complainant and this was the basis of his discontent.

5.2.35 It is worth noting that Paragraph 9 sub-paragraph 9.1 of the Policy further provides that the process of funding by the NAC should not transgress any legislation and policies that regulates the operations of the NAC.

Conclusion

5.2.36 In light of foregoing, I can conclude that the implementation of the Policy by the NAC is arbitrary and generally not consistent with the spirit of the law. NAC allows the entity and its employees to proceed and initiate proposals for funding on behalf of applicants without their knowledge and consent and this is not in line with the requirements of sections 33(1) and 217 of the Constitution as well as sections 3(1) and 3(2) of PAJA as well as Regulation 16A8 of the National Treasury Regulations, that require any administrative action to be transparent, lawful and procedurally fair.



5.2.37. Response to my section 7(9) notice from the CEO of the NAC dated 15 November 2019 dealing with the issue above

At paragraph 43 – 50 of the response

- 5.2.37.1 In its response to this issue, the CEO confirmed that the use of the surplus funds, was approved by the National Treasury.
- 5.2.37.2 She further referenced section 217 of the Constitution and indicated that at the stage her partnership proposal was being considered by EXCO, the NAC was neither contracting for any goods nor services. Notwithstanding this, the NAC had not determined a system in which the procurement or contracts of such goods and services would take place.
- 5.2.37.3 She indicated that the above process would manifest more specifically to the submission involving the Complainant. The decision by EXCO was that the proposal in relation to the Complainant should be placed on open tender.
- 5.2.37.4 Further that in line with paragraph 5.2.26 of my Notice, this would allow the Complainant a reasonable opportunity to compile and submit an annual partnership application to EXCO based on his discretion and not hers as the CEO.
- 5.2.37.5 In this regard she further indicated that this election or opportunity to compile and submit an application or proposal was not limited by her submission to EXCO. The Complainant was at liberty to make applications for funding at any time. The refusal, by EXCO relates to a proposal of a project sought by her to have the NAC initiate the partnership with the Complainant.



5.2.37.6 The CEO conceded that paragraph 5.2.27 of the Notice confirms that EXCO had recommended that she should issue an advertisement, inviting everyone to apply under the policy, in line with the requirements of section 33 of the Constitution and section 38(1)(a)(iii) of the PFMA, which would be in accordance with the provisioning system that is transparent and fair.

5.2.37.7 She further argued that my investigation, as a result fails, to consider relevant material facts.

At paragraph 52 – 61 of the response

5.2.37.8 The CEO argued that the complaint relates to the Policy. However, reference is made to purported erroneous payments to Directors or staff members in terms of the Policy.

5.2.37.9 She submitted that paragraph 5.2.10 of my Notice refers to payments to a director that was allegedly employed by the NAC. She submitted that, Firstly:

(a) There has never been an employee of the NAC with the identity number referred to in the Notice; and

(b) The payments referred to, were made under the GAP, and not the Policy.

5.2.37.10 Secondly, she contended that the alleged impropriety relating to one Policy cannot be used to impugn another, she was advised.

5.2.37.11 She submitted that my conclusion that the conduct of the NAC amounts to improper conduct in state affairs as envisaged in section 182(1)(a) of the Constitution, constitutes maladministration in terms of section 64(a)(i) of the Public Protector Act is thus unsubstantiated and irrational in that:



- (a) The NAC EXCO conducted itself in accordance with an existing Policy and did so bona fide;
- (b) The conclusion that the Policy in its current form does not comply with the requirement of section 33 of the Constitution and with the PFMA, fails to take all material facts into consideration; and
- (c) The NAC was established to promote, through the arts, the free expression of South African cultures. This includes initiating partnership projects.

5.2.37.12 She further argued that concluding that the Policy is susceptible to manipulation improperly creates the impression that the Policy explicitly allows *"relative, families and/or cronies to be funded on the provisions of the policy"*. Insofar as my office holds this view, such view is as advised, legally and factually incorrect.

5.2.37.13 She stated that in the event employees undertake the above behaviour, they will be disciplined in accordance with the disciplinary procedure of the NAC a copy of which was provided to the Public Protector.

5.2.37.14 She indicated that the above disciplinary process is also supported by paragraph 11.2 of the Policy which provides that if any of the principles outlined in the policy have been compromised or breached disciplinary procedures will be applied.

5.2.37.15 She further pointed that as stated in the Notice, EXCO took a decision to embark on a public participation process before pursuing a project similar to that relating to the one she had proposed with reference to the Complainant.



Such a decision, as reflected in the Notice is in line with section 217 of the Constitution.

- 5.2.37.16 She further argued that the Notice fails to identify an instance where the Policy specifically excludes and/or attempts to bypass the requirements of the Constitution or the PFMA.
- 5.2.37.17 In her argument she contended that concluding that the policy is unfair or amounts to maladministration based on the instances referred to in paragraph 5.2.20 of the Notice is thus irrational.
- 5.2.37.18 She further contended that the finding that the conduct of the NAC amounts to improper conduct or state affairs and maladministration are also unfounded and legally unsubstantiated and irrational.

At paragraph 62 – 69 of the response

- 5.2.37.19 In her submission, she also indicated that the conclusion that the application of the Policy contravened section 217 of the Constitution, section 38(1)(a)(iii) of the PFMA and Regulation 13(c) of the Public Service Regulation, 2016 are unfounded in that:
- (a) The application of a Policy in a manner that is in contravention of section 217 of the Constitution has not been identified; and
 - (b) The PFMA is applicable to the Policy and specifically mentioned therein. The said contravention of Regulation 13(c) of the Public Service Regulation has not been identified and/or alternatively have been condoned by the Treasury as referred to in paragraph 5.2.7 of the Notice.



5.2.37.20 In her submission, she indicated that the observation highlighted in paragraph 5.2.25 of my Notice ought to have been a further reason for my office to investigate the process that had taken place. Also that the nature of the agreement and how it would be entered into still needed to be considered, deliberated and approved by EXCO.

5.2.37.21 Therefore, determining whether or not the Complainant would have been awarded the contract, had he submitted his own application, would not be applicable or relevant in that:

- (a) She was performing her duties in terms of the Policy;
- (b) In proposing a project, she was assisting the NAC to consider projects that could assist it to meet its legislated objectives;
- (c) The Complainant had not proposed or applied for such an initiative;
- (d) The Complainant had no intention of submitting an application for funding of that nature;
- (e) The Complainant cannot be prejudiced by a process which he was not a party to;
- (f) The Complainant cannot be prejudiced by the outcome of process which he was not a party to; and



- (g) When the NAC does put out an invitation for annual partnership submissions, the Complainant will have an opportunity to make a submission.

5.2.37.22 In conclusion she submitted that for the reasons indicated above, her submission of the partnership proposal with the Complainant and the decision by EXCO not to accept it, does not amount to administrative action and/or alternatively does not amount to administrative action that materially affected the rights or legitimate expectations of the Complainant.

Conclusion

- 5.2.37.23 I have considered the NAC's submission regarding the fact that at the time the CEO's proposal was being considered by EXCO, the NAC was not contracting for any goods or services. The CEO had not yet determined the process by which the acquisition or contracts of such goods and services would take place. This only took place when EXCO took a decision that the proposal be placed on an open tender.
- 5.2.37.24 However, the above argument does not extend to the Complainant's initial rejected application as the decision of the NAC at the time was an administrative action and should have been dealt with accordingly through providing reasons for the rejection to the Complainant as well as invite his comments and an opportunity to appeal process in line with PAJA. This should have preceded the submission of the proposal for annual partnership to EXCO by the CEO which essentially became the source of the Complainant's discontent



5.2.37.25 It also worth noting that while dealing with the Complainant's proposal by the CEO for annual partnership to EXCO, the NAC's Advisory Panel recommended in their minutes as follows:

"That a mechanism needs to be put in place to enable the NAC to be responsible to applications/ proposals as the NAC is continually interfacing with people in the sector, and various requests arise.

The NAC needs to consider how to allow for flexibility."

5.2.37.26 In view of the above extract from the NAC's Advisory Panel which lends credence to the inconsistencies uncovered by my investigation as well as the BIG investigation, I believe that this is indicative of a need to revisit the manner in which the NAC implements the Policy so as to harmonise it with other national legal prescripts such as the Constitution, PAJA and the PFMA.

5.2.37.27 It is disconcerting that in two (2) separate meetings convened by the NAC to deal with the CEO's proposal to EXCO using the name of the Complainant, both EXCO and the Advisory Panel could not conceal their irritation and/or exasperation with the Complainant, if their recorded remarks above, are to be deciphered.

5.2.37.28 Interestingly, these meetings were dealing with the proposal by the CEO which the Complainant was oblivious to, but still added to the prejudice he was subjected to by the NAC in that he was still castigated, in absentia.

5.2.37.29 How the foregoing should not be construed as a negative perception and attitude towards the Complainant, which not only disadvantages him in his dealings with the NAC, but also besmirches his reputation thereby causing perpetual prejudice to him.



6 FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I hereby make the following findings

6.1 Regarding whether the CEO of the NAC submitted an application to EXCO for partnership funding using the Complainant's name, without his knowledge and consent, and if so, whether such conduct was improper and constitutes maladministration.

6.1.1 The allegation that the CEO of the NAC submitted an application to EXCO for partnership funding using the Complainant's name without his knowledge and consent, is substantiated.

6.1.2 The CEO submitted a proposal for the partnership funding to EXCO using the Complainant's documents from the rejected application without his knowledge and consent. However, this was not a falsified/forged application as alleged by the Complainant.

6.1.3 The Complainant was not informed by the CEO about the annual partnership proposal since the Policy does not explicitly provide for such an obligation on the part of the CEO once such a need has been identified.

6.1.4 Although the submission of the proposal to EXCO by the CEO is purportedly permissible in terms of the Policy, the manner in which this has been practiced in this case is inconsistent with the provisions of section 33(1) of the Constitution and sections 3(1) and 3(2)(b) of PAJA, which provide for a reasonable and procedurally fair administrative action.

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- 6.1.5 Notwithstanding the CEO's contention, I find the reasons provided to justify not informing the Complainant who was subjects of the proposal under the annual partnership, such as that they did not want to raise his hopes, when in fact such proposals are presented to EXCO in their name, unacceptable.
- 6.1.6 Therefore, the CEO's failure to inform the Complainant before submitting the proposal to EXCO for partnership funding, amounts to improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- 6.2 Regarding whether there was impropriety and abuse of the Expired Projects and Surplus Policy, by the NAC in the distribution of the surplus funds resulting in prejudice to the Complainant.**
- 6.2.1 The allegation that there was impropriety and potential abuse of the Policy by the NAC in the distribution of the surplus funds is substantiated. The fact that the CEO proceeded to use the Complainant's documents from the rejected application, which she did without his knowledge and consent is improper.
- 6.2.2 The fact that the proposal by the CEO is based on the Complainant's rejected application for funding, to which the Complainant is yet to receive a recorded formal response thereto, in which cogent reasons for the rejection are captured by the NAC has resulted in perpetual prejudice to him.
- 6.2.3 The implementation of the Policy by the NAC is inconsistent with the Constitution, PAJA and the National Treasury Regulations and therefore procedurally unfair as it does not take into account the rights of the applicant, but affords NAC employees, management or Council wide powers to deal arbitrarily with applications for surplus funds, in particular for annual partnership funding without the Complainant's knowledge and consent and therefore has the potential of abuse.

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6.2.4 Therefore, the conduct of the CEO and the NAC in the manner in which it is implementing the Policy amounts to improper conduct in state affairs as envisaged in section 182(1)(a) of the Constitution and constitutes maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

7 REMEDIAL ACTION

7.1 In light of the above, the appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remedying the improper conduct and maladministration referred to in this report, is the following:

7.1.1 The Minister of Sports, Arts and Culture:

7.1.1.1 To take note of the report in so far as the findings and remedial action contained therein are concerned and as the Executive Authority, assist in ensuring that the remedial action as provided for hereunder is expedited.

7.1.2 The Chairperson of the NAC Board:

7.1.2.1 To take note of my findings in this report and, within sixty (60) days of the issuing of this report:

7.1.2.1.1 Act in accordance with his fiduciary duty of ensuring that the inconsistencies identified in the Policy during my investigation are addressed, by setting in motion a process to amend the Policy and promulgate Standard Operating Procedures on the implementation of Expired Projects and Surplus Funds Policy so as to align it with the relevant legislative framework;

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- 7.1.2.1.2 Amend and strengthen the Expired Projects and Surplus Policy in order to close the gaps that exist in it, so as to prevent the NAC staff and other NAC stakeholders from exploiting the Policy contrary to the ethos of fairness, equity, transparency, competition and cost effectiveness as enshrined in the Section 217 of the Constitution of the Republic of South Africa;
- 7.1.2.1.3 Where necessary put in place Standard Operating Procedures to cure the inconsistencies in the implementation of the Policy as revealed by my investigation;
- 7.1.2.1.4 Generally to align the internal NAC Policy toolkit with the relevant legislative framework such as sections 33(1) and 217 of the Constitution, section 51(1)(b)(iii) of the PFMA, sections 3(1) and 3(2)(b)(i) of PAJA, Regulation 16A8 of the National Treasury Regulations as well as Regulation 13(c) of the Public Service Regulations, 2016;
- 7.1.2.1.5 Must within thirty (30) days of the issuing of this report, ensure that a letter of apology is issued by the CEO to the Complainant for the manner in which he was treated by the NAC, including the formal letter on the outcome of his 2014 application and cogent reasons for its rejection; and
- 7.1.2.1.6 Must within thirty (30) days of the issuing of this report ensure that the CEO has put in place a "Declaration of Interest register" for all NAC employees relating to the projects they have initiated since 2015 to date, so as to manage any prevalent conflict of interest.



8 MONITORING

- 8.1 The Minister of Sports, Arts and Culture, within thirty (30) working days of the issuing of this report, provide the Public Protector with the acknowledgement letter relating to the findings and remedial action referred to in paragraphs 6.1.1 and 7.1.2 of this report.
- 8.2 The Chairperson of the NAC Board must, within thirty (30) working days of the issuing of this Report provide the Public Protector with the Implementation Plan indicating how the remedial action referred to in paragraph 7.1.2. of this Report will be implemented.
- 8.3 In line with the Constitutional Court judgment in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11, and in order to ensure the effectiveness of Office of the Public Protector, the remedial actions prescribed in this Report are legally binding.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 15 / 06 / 2020

Assisted by: Ms Pfunzo Mhelembe (Senior Investigator)

FN
CAU

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case number: 59833/2020

In the matter between:

THE NATIONAL ARTS COUNCIL

OF SOUTH AFRICA

Applicant

And

THE OFFICE OF THE PUBLIC PROTECTOR

First Respondent

THE PUBLIC PROTECTOR

Second Respondent

THE MINISTER OF SPORTS, ARTS & CULTURE

Third Respondent

FREDDY NYATHELA

Fourth Respondent

THE SOUTH AFRICAN ROADIES ASSOCIATION

Fifth Respondent

NOTICE OF WITHDRAWAL OF ACTION

FN
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KINDLY TAKE NOTICE that the Applicant hereby withdraws the application in the above matter against the Respondents.

KINDLY TAKE FURTHER NOTICE that the Applicant tenders the Respondent's wasted costs occasioned thereby.

SIGNED at **SANDTON** on this the **21st** day of **JUNE 2021**.



MOBEEN MOOSA ATTORNEYS

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info@mmoosa.co.za
Ref: Mr M Moosa/M47/17

TO:

THE REGISTRAR OF THE COURT

PRETORIA

FN
AM

AND TO:

THE OFFICE OF THE PUBLIC PROTECTOR

First Respondent

175 Lunnon Street

Hillcrest Office Park

Pretoria

Service by way of electronic mail to:

thokozani@mmlegal.co.za

Rule 9(a) – Rules relating to the conduct of proceedings in the Magistrates Courts of South Africa

AND TO:

THE PUBLIC PROTECTOR

Second Respondent

175 Lunnon Street

Hillcrest Office Park

Pretoria

Service by way of electronic mail to:

thokozani@mmlegal.co.za

Rule 9(a) – Rules relating to the conduct of proceedings in the Magistrates Courts of South Africa

AND TO:

THE MINISTER OF SPORTS, ARTS & CULTURE

Third Respondent

17th Floor, Sechaba House Building

202 Madiba Street

Pretoria

Received a copy hereof on this
the ___ day of **JUNE 2021**

FOR: THE MINISTER OF SPORTS, ARTS &
CULTURE

FN

PM

AND TO:

FREDDY NYATHELA

Fourth Respondent

2113 South, 53 Henry Nxumalo Street

Newtown

Johannesburg

Service by way of electronic mail to:

thokozani@mmlegal.co.za

Rule 9(a) – Rules relating to the conduct of proceedings in the Magistrates Courts of South Africa

AND TO:

THE SOUTH AFRICAN ROADIES ASSOCIATION

Fifth Respondent

2113 South, 53 Henry Nxumalo Street

Newtown

Johannesburg

Service by way of electronic mail to:

thokozani@mmlegal.co.za

Rule 9(a) – Rules relating to the conduct of proceedings in the Magistrates Courts of South Africa

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"FN7(b)"



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

THE SPEAKER
PO Box 15 Cape Town 800 Republic of South Africa
Tel: 27(21) 403 2595 Fax: 27(21) 461 9462
speaker@parliament.gov.za

Mr F Nyathela
President: South African Roadies Association (SARA)
P O Box 192
Johannesburg
2000

Email: Nyathelaf@saroadies.co.za

Dear Mr Nyathela,

REQUEST FOR INTERVENTION

Your submission, dated 19 May 2022 and subsequent follow-ups, requesting my assistance in getting the Portfolio Committee on Sports, Arts and Culture (the Committee) to respond to you regarding the concerns that you have reported to it about the happenings within the National Arts Council, bear reference.

We have established that the National Arts Council did respond to your concerns and that their response was transmitted to you through the Committee.

Notwithstanding the above, I have forwarded your submission to the Committee with a directive that it communicates with you on the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "N N Mapisa-Nqakula".

Ms N N Mapisa-Nqakula, MP
Speaker of the National Assembly

Date: 01 SEPT. 2022

FN
Dall

"FN7(c)"

55 Henry Nxumalo Street
Newtown,
Johannesburg 2001



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037-358-NPO

Hon Ms N N Mapisa-Nqakula, MP
Speaker of the National Assembly
Parliament of the Republic of South Africa
P.O. Box 15
Cape Town
8000

Email: speaker@parliament.gov.za

Dear Hon Speaker, Ms N N Mapisa-Nqakula, MP

RE: REQUEST FOR Intervention

Thank you for the letter dated 1st September 2022.

SARA is obliged to inform the Speaker of the National Assembly that as a matter of fact, SARA has received no response from the NAC, either directly from the NAC or through the Committee. This advises that whatever assurances the Speaker of the National Assembly was given to have established that the NAC did respond through the Committee, were assurances *sans* evidence, meaning that the Speaker of the National Assembly was given false and untrue information.

Notwithstanding, SARA thanks the Speaker of the National Assembly for her intervention by forwarding SARA's submission to the Committee with a directive that it communicates with SARA on the matter, which communication SARA looks forward to receiving.

Hopefully a response will be received by SARA shortly and that this unfortunate long-dragging request soon be put to bed.

Please advise any questions.

Sincerely

A handwritten signature in black ink, appearing to read 'Freddie Nyathela'.

02/09/2022
Freddie Nyathela
President
South African Roadies Association (SARA)

FN
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Board of Trustees:
Mr. Mthuthuzeli Matshoba, Mr. Eugene Zwane, Mr. Makhosonke Mrubata

"FN7B"**City Press**

Msindisi Fengu

29 Sep 2022



National Assembly Speaker Nosiviwe Mapisa-Nqakula. Photo: Deaan Vivier/Netwerk24

NEWS

An NPO has accused a parliamentary oversight committee of failing to hold a state entity accountable.

This after the SA Roadies Association (Sara) wrote to National Assembly Speaker Nosiviwe Mapisa-Nqakula on May 12 asking for her intervention following allegations that the portfolio committee on sports, arts and culture has failed to ensure the National Arts Council (NAC) accounts for its controversial policy on expired projects and surplus grants.

Sara, an NPO dedicated to the advancement and development of technical and production skills and knowledge of young people, has been at loggerheads with the NAC over the decision taken by former CEO Rosemary Mangope to make a submission on behalf of Sara for funding, allegedly without the NPO's knowledge, which resulted in the NPO being disqualified from receiving funding.

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READ: AG, Public Protector probe arts council as questions raised after clean audit

The marathon battle between the NAC and Sara landed at the Office of Public Protector Busisiwe Mkhwebane, who found it in Sara's favour.

City Press understands that in a response to Sara's president Freddie Nyathela, Mapisa-Nqakula directed the committee to respond to Nyathela's concerns relating to the NAC's submission to the committee about its controversial policy.

Mapisa-Nqakula, in a letter dated September 1, which City Press has seen, said she was responding to Nyathela's requests for her assistance in getting the committee to respond to concerns he had reported "about the happenings around the NAC".

She said they established that the NAC responded to his concerns.

"Notwithstanding the above, I have forwarded your submission to the committee with a directive that it communicates with you on the matter," Mapisa-Nqakula wrote.

'You were misled'

But, in response to Mapisa-Nqakula, Nyathela told her in a letter dated September 2 that Sara was obliged to inform her that they had not received a response from either the committee or the NAC.

Nyathela said:

This advises that whatever assurances the Speaker of the National Assembly was given to have established that the NAC did respond through the committee, were assurances [without] evidence, meaning that the Speaker of the National Assembly was given false and untrue information.

He, however, thanked Mapisa-Nqakula for intervening by forwarding Sara's submission to the committee with a directive to communicate with them on the matter.

"Hopefully, a response will be received by Sara shortly and that this unfortunate long-dragging request soon be put to bed," Nyathela wrote.

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PM

'NAC lied'

However, Nyathela told City Press that the NAC and the committee had deliberately failed to respond to his letter.

READ: Mangope launches bid to set aside Mkhwebane report

He said the committee also failed to respond to Sara's complaint against the NAC for willfully presenting dishonest statements to the committee on May 27 regarding the implementation of the remedial action of Mkhwebane's office and the alleged unlawful expired projects and surplus policy.

Nyathela said:

The NAC council has breached section 17 (2) (d) (e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (Act 4 of 2004).

In terms of the act, Nyathela said it was a criminal offence to present false and dishonest statements to Parliament and its committee.

Questions were sent to the committee, but a response has not been received.

The NAC has also not responded at the time of publishing.

'Concerns not addressed'

City Press understands that at the centre of the dispute is a letter that was sent by NAC acting chief executive officer Julie Diphofa to Nyathela on July 13 2021.

Diphofa was responding to Nyathela's letter dated June 23 2021 questioning the NAC's decision relating to its policies.

READ: Suspended NAC boss' bid to set aside Public Protector's report is challenged

In her letter, Diphofa was at pains explaining how she thought that Sara was suitable for funding despite the NAC's funding policy not supporting applications for capital or infrastructure projects.

She said the ultimate decision to fund Sara rested on a formal adjudication process.

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Diphofa said:

The application submitted by Sara was subsequently declined at the first stage of adjudication based on administrative non-compliance. As has already been addressed in my correspondence on June 23 2021, the application should not have been declined for administrative non-compliance but rather on the basis that the NAC Funding Policy no longer supports capital/infrastructure applications.

She said they acknowledged that this should have been formally communicated to Sara at the time and that it failed to do so.

"The apology contained in my letter of June 23 2021 is repeated," Diphofa wrote.

But, Nyathela in a letter to Diphofa on July 22 2021 said her letter did not address their concerns.

"In fact, you exacerbate Sara's concerns," he wrote.

In part, Nyathela said the only policy that was used by the NAC for flagship projects was the expired projects and surplus policy.

"So, what 'NAC Funding Policy' exactly do you refer to is one question Sara asks...and why do you not refer to the Expired Projects and Surplus Policy, the specific policy utilised by the NAC, on record, with respect to the flagship projects is a second question. You make no reference to which clause in this so-called 'NAC Funding Policy', which 'did not support applications for capital/infrastructure projects' – could you please confirm which clause in which exact policy you refer to," Nyathela wrote.

FN
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"FN8"

By AB Mphahlele

The Minister of sports, arts and culture Nathi Mthethwa is yet to respond to an e-mail sent by the office of the Public Protector almost three weeks ago demanding clarity over the outstanding remedial actions at the embattled National Arts Council, NAC.

This week the PP's office had to write a follow-up e-mail once more imploring Mthethwa to explain why only one of the four PP's remedial actions in June 2020 had not been fully implemented at the statutory-created NAC, which falls under his department.

The PP's remedial actions and recommendations were as a result of a complaint by a small training NPO, South African Realities Association, SARA, in the wake of a fraudulent application by the NAC in 2015 using SARA's name without their knowledge or consent. In her damning findings, the PP had found the NAC wanting and had made several remedial actions to be implemented at the NAC within six months.

The e-mail sent by the PP's office to SARA, which Weekly SA Mirror has seen, states:

"As discussed this morning, I am making a follow up with the office of the Minister on the outstanding Remedial Actions. I will revert to you with an update within a period of 7 working days.

In their previous correspondence on October 13 to Mthethwa's PA the PP's office had stated:

"There are two Remedial Actions that are still outstanding. I have forwarded an email to the PA of the Minister requesting clarity on the Outstanding Remedial Actions."

The PP's office correspondence to the Minister files in the face of a presentation to the portfolio committee by the NAC led by its chairperson Celestine Dlamini early this year on May 27.

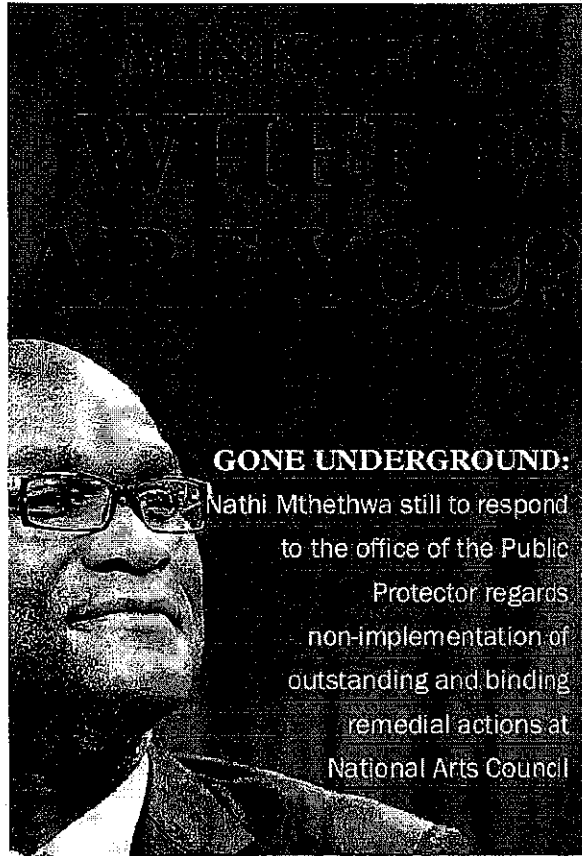
Dlamini had previously stated the NAC had "implemented" all the PP's remedial actions as per her ruling in June 2020.

SARA vehemently disputes the NAC's presentation, which they describe as "dishonest", and says of the PP's remedial actions, the NAC has only implemented one, which states that "within thirty (30) days of the issuing of the PP's report, ensure that a letter of apology is issued by the CEO to the Complainant for the manner in which he was treated by the NAC, including the formal letter on the outcome of his 2014 application and cogent reasons for its rejection."

The PP's remedial actions had stated:

"The NAC must align its internal policy toolkit with the relevant legislative framework such as sections of the Constitution, the PFMA, PAJA, the National Treasury Regulations as well as Regulation 12(a) of the Public Service Regulations, 2016.

"The NAC to amend and strengthen the Expanded Projects and Surplus Policy in order to close the gaps that exist in it, so as to prevent the NAC



GONE UNDERGROUND:
Nathi Mthethwa still to respond to the office of the Public Protector regards non-implementation of outstanding and binding remedial actions at National Arts Council

staff and other NAC stakeholders from exploiting the Policy contrary to the ethos of fairness, equity, transparency, competition, and cost effectiveness as enshrined in the Section 217 of the Constitution of the Republic of South Africa.

• Must within thirty (30) days of the issuing of

this report ensure that the CEO has put in place a "Declaration of Interest register" for all NAC employees relating to the projects they have initiated since 2015 to date, so as to manage any potential conflict of interest; and

• that within thirty (30) days of the issuing of

the PP's report, ensure that a letter of apology is issued by the CEO to the Complainant for the manner in which he was treated by the NAC, including a formal letter on the outcome of his 2014 application and cogent reasons for its rejection.

The PP had further emphasised that in line with the Constitutional Court judgment in the matter of Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11, and in order to ensure the effectiveness of Office of the Public Protector, "the remedial actions prescribed in this Report are legally binding". The NAC presentation to parliament has also seen a flurry of e-mails and SMS's sent by SARA president to portfolio chairperson Beauty Dhlana urging her to "do the right thing" by holding the NAC to account as per her mandate and that the role of the portfolio committee is not to "tolerate dishonesty".

Addressing a virtual portfolio committee meeting this week, Dhlana complained bitterly about Nyathela's SMS's which she described as "harassment of a woman by a member of the public".

In his response, a member of the committee Economic Freedom Fighters' BS "Ringo" Madlingozi writing to Dhlana said:

"As this morning the chairperson felt like Mr Nyathela is harassing her, looking at the binding remedial implementation the National Arts Council (NAC) received from the Public Protector's office, were they all implemented? If not, then the portfolio committee needs to emphatically send the message to the CEO of NAC.

It is our duty as the portfolio committee of sport, arts and culture, in which the NAC answers to, to make sure that it does what it is expected to do; binding remedial actions. I would want to believe that the committee works as a unit while it comprises of different political organisations. It (committee) cannot be seen as processing the Department of Sport, Arts and Culture (DSAC) and NAC when it comes to doing its oversight duties.

I hope my response reaches the chairperson with much respect.

Warmest regards
BS MADLINGOZI"

Interestingly, the portfolio committee had on October 5 requested SARA to submit a detailed report about the alleged dishonest statements by the NAC to parliament, of which SARA duly submitted seven days later on October 12.

By late Friday the committee had not yet acted or provide a definite way forward response to SARA's submission.

At the meeting on Tuesday there were strong suggestions that the portfolio committee should convene a meeting between itself (the committee), SARA, the Public Protector and the NAC for further clarity.

DIDDY SPENDS R3 BILLION TO CREATE MEGA CANNABIS FIRM



WEED MUGUL: Sean "Diddy" Combs

WEED: Rapper plans to open doors for black entrepreneurs to take root in cannabis sector by providing opportunity and jobs...

By Samantha Dorlca

United States music mogul and rapper Sean Combs, aka Diddy, has entered into a deal to create the largest black-owned cannabis company.

Through the deal, Combs plans to break down barriers as he makes his debut into the cannabis space.

The acquisition will impact three states: According to a press release sent to AfroTech, Diddy

has entered into an agreement with Cresco Labs and Columbia Care to acquire licensed marijuana operations in three states - New York, Massachusetts and Illinois. The deal is valued at an estimated R3.3 billion, composed of an estimated R1.9 billion in cash and R805 million in seller notes with "the remaining portion of the purchase price would be payable post-closing upon achievement of certain short-term, objective, and market-based milestones," according to a press release announcing the deal.

Cresco Labs is one of the largest public cannabis companies in the world. They plan to "develop the most responsible, respectable and robust industry possible," with the help of Combs.

"Today's announcement is bigger than the Transaction - and it couldn't come at a time of greater significance and momentum. We've seen executive power exercised to address matters of cannabis injustice, we're seeing bi-partisan support for elements of federal reform, and we're seeing some of the largest and most influential states

in the country launch cannabis programs prioritizing social responsibility - this announcement builds to that momentum," said Charles Bechtel, Cresco Labs' CEO.

Diddy's investment is set to pave the way for the largest Black-owned and licensed cannabis company in the world. Diddy plans to open doors for Black entrepreneurs and underrepresented groups to take root in the cannabis sector by providing opportunity and employment. - AfroTech Editors

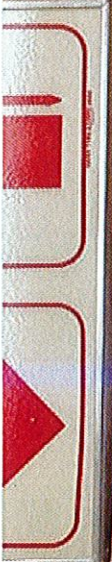
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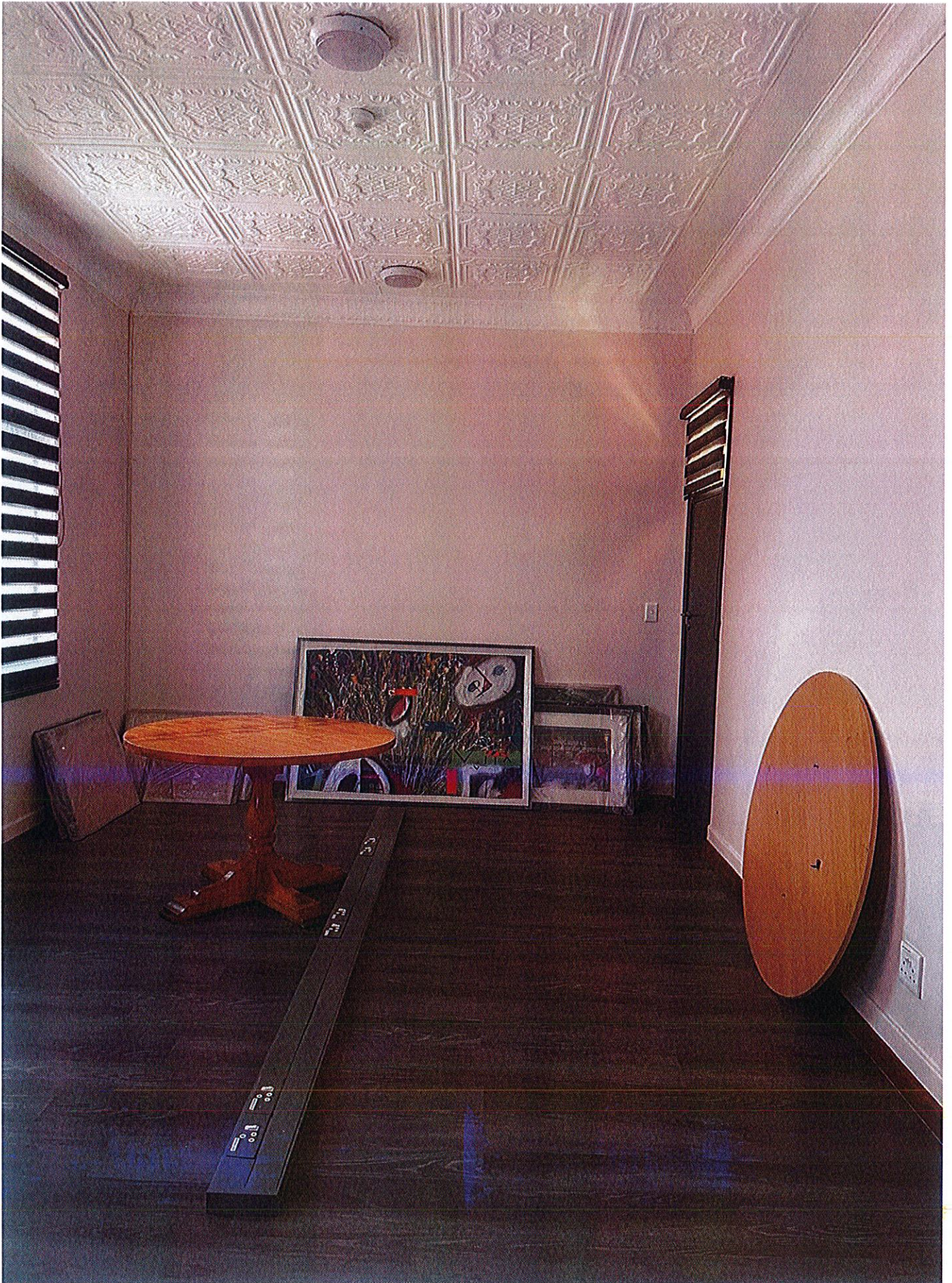
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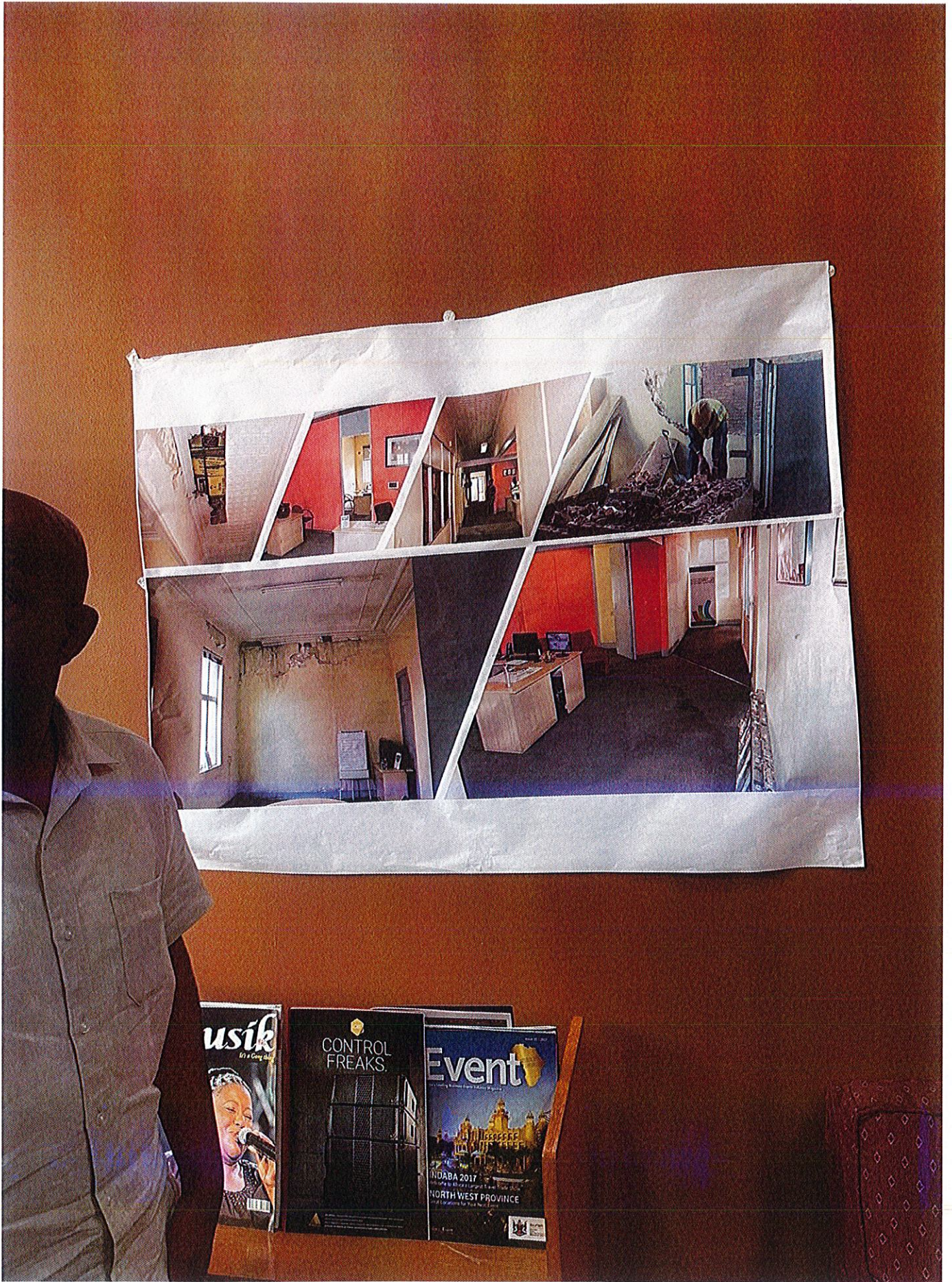
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"FN10"**Freddie Nyathela**

From: Seiso <seisosithole@gmail.com>
Sent: Thursday, 14 April 2022 16:20
To: Freddie Nyathela
Subject: Gratitude

Greetings Mr Nyathela,

I am Seiso S Sithole from Soshanguve Pretoria currently residing in Maryland USA. I joined SARA at the end of 2012 and have been a member of the association since. I was part of the crew of 3 that represented SARA at USA Universoul Circus for skills enhancement and development in 2017. I currently work at WMATA(Washington Metropolitan Area Transport Authority) since October 2021 as Mechanic Helper Communications. We service audio, surveillance cameras, emergency call stations on elevators and platforms, information display systems, access control and card readers and lastly fire systems on the rail network. Everyday is a learning experience.

I want to thank SARA for the knowledge and opportunities it has created for me to advance myself to where I am and headed in life. Words cannot express the amount of gratitude. Through SARA I have established international and domestic relationships and networks.

Thank you Mr Nyathela for believing in me and the life lessons that you keep passing on. You are an inspiration to me and others.

Thank you,

Seiso Sithole
Cell: +1 (301) 318 3164
Alt Email: seisos@outlook.com / sssithole@wmata.com

FN
@al

WhatsApp message from Tumi Motswaledi 03 Nov 2022 at 08:10 am

Good morning Pa, ke Tumi. it's been a while. I really need to take this opportunity and thank you. For always believing in a black child and that we also need to have equal opportunity. I write this text, got an opportunity to go to Qatar. Because off you pa I'm able to provide for my children. In everything I do, I really thank you. What you do for a black child is really amicable.... Highly appreciated 🙏

FN
@du