

# The Nemo Iudex in Causa Sua and Audi Alteram Partem: Lessons from State of Capture Report for Public Sector Officials

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**Abstract:** The basic administrative principles of *nemo iudex in causa sua* and *audi alteram partem* are important for attaining justice in public administration particularly as they relate to decision-making authority. By the way, the *nemo iudex in causa sua* and *audi alteram partem* are Latin maxims, of which the former simply means that no person must exercise decision-making power or judgement in his or her own matter whereas the latter suggest the right to be heard. Therefore, the primary aim of this paper is to discuss the extent to which the abovementioned principles were applied in the state of capture report compiled by the former Public Protector, Advocate Thuli Madonsela. Further, this discussion extends to the assessment of the four tests used to determine possible biasness in decision making, namely: prejudice, personal interest, pecuniary interest, and subjective bias. This paper argues that the former Public Protector acted judiciously when she recommended that the selection of a judge to preside over a commission of inquiry into state capture ought to be conducted by a chief justice. In this regard, evidence suggest that the former Public Protector complied with basic procedural requirements when applying the *nemo iudex in causa sua* whereby the former state president, Mr Jacob Zuma, was advised to recuse himself from exercising his presidential prerogative of selecting a judge to head the aforementioned commission into state capture. Indeed, it is clear that the former state president was conflicted due to personal interest and could not pass a subjective bias test. This paper concludes that the public sector officials as well as political office bearers should be circumspect and consistent in applying the *nemo iudex in causa sua* principle pertaining to decision making, which implies that the *audi alteram partem* principle needs to be considered in order to advance administrative justice in the public sector.

**Keywords:** Audi alteram partem, Nemo iudex in causa sua, Personal interest, Subjective interest

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## 1. Introduction

In 2016, the former Public Protector, Advocate Thuli Madonsela released a State of Capture Report in relation to an "investigation into complaints of alleged improper and unethical conduct by the state president and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of ministers and Directors of State Owned Entities (SOEs) resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's businesses" (Public Protector South Africa, 2016:4). The Office of the Public Protector applied two fundamental principles (*nemo iudex in causa sua* and *audi alteram partem*) in its interaction with the former president, Mr Jacob Zuma, particularly as they relate to advancing justice in decision making. The two Latin maxims have two different meanings but they are not mutually exclusive. In this sense, any of the two principles can be understood and

applied appropriately if both precepts are interpreted in relation to one another. While the *nemo iudex in causa sua* suggests that "no man shall be judge in his own cause" (Zubair & Khattak, 2014:68), the *audi alteram partem* denotes that "no man should be condemned unheard" (Sarmah, 2014). Following these, it is clear that according to the former, a person in a position of authority to make decisions must not be biased or appear to be partial whereas the latter indicates that the deciding authority should be prepared to hear both sides of a matter prior to taking a decision.

Subsequent to the investigation, the Office of the Public Protector made the following recommendations: firstly, the former state president was required to appoint a commission of inquiry led by a competent judge selected by Chief Justice whose name had to be submitted to the president within 30 days. Secondly, the commission had to be sufficiently resourced and the appointed judge would

have a prerogative to appoint his/her own team in order to pursue further investigation into alleged state of capture. Thirdly, the commission would be anticipated to complete its investigative tasks and present a report outlining the findings and recommendations to the state president within a period of 180 days. Subsequent to receipt of the report, the state president would be expected to submit a copy to parliament and explain how the recommendations were going to be implemented, thus, within 14 days of the release of the commission's report (Public Protector South Africa, 2016). However, the former president, Mr Jacob Zuma, challenged these recommendations by lodging an application with the High Court in Pretoria in order to have remedial actions reviewed and set aside. In fact, Mr Jacob Zuma was of a view that the public protector had no authority to instruct him to appoint a commission of inquiry or to determine the nature of matters to be investigated by the commission and set the timelines for reporting (Wolf, 2017). According to Mabuza (2017), Mr Jacob Zuma relied on Section 84(2)(f) of the Constitution which states that the president is responsible for "appointing commissions of inquiry." Therefore, the aim of this paper is to discuss the extent to which the *nemo iudex in causa sua* and *audi alteram partem* principles were applied in the state of capture report compiled by the former Public Protector, Advocate Thuli Madonsela. This paper focusses on the assessment of the four tests used to determine possible biasness in decision making, namely: prejudice, personal interest, pecuniary interest, and subjective bias, a nuanced discussion on the requirements or preconditions for the *audi alteram partem* principle as well as exceptions to the same principle, a detailed discussion on how the aforementioned common law principles were applied by the former public protector in the State of Capture Report. The paper also demonstrates that public officials ought to learn to recuse themselves when conflict of interest in decision-making is evident and unavoidable.

## 2. Nemo Iudex in Causa Sua

The *nemo iudex in causa sua* principle teaches that a decision-maker has to be disinterested and not biased (Chew, 2016). In support of this view, Wolf (2017:23) states that "the *nemo iudex in sua causa* applies not only to the administration of justice involving decisions taken by prosecutors and judges, but extends to a variety of less obvious forms of impartiality to secure good administration."

## 2.1 Important Principles for Testing Biasness

There are at least four tests which decision makers need to pass in order to ensure that decisions made do not cast doubt regarding their validity. At the same time, unbiased decision maker indicates that justice will not only be served but will be seen to be done appropriately. Some of the important principles for testing biasness are discussed below.

### 2.1.1 Pecuniary Interest

In order to test a degree of biasness, there is a need to determine a decision maker has pecuniary interest in the matter under consideration. In fact, Roux, Brynard, Botes and Fourie (1997) argue that whenever a decision maker has financial interest in the matter, it is appropriate to make a declaration thereof followed by recusal from decision-making processes by parties concerned. In other words, any person who has financial interest in relation to the matters under consideration should avoid participating in decision-making process. Zubair and Khattak (2014) opine that the existence of financial interest in relation to the matter under consideration is adequate to disqualify a decision maker.

### 2.1.2 Personal Interest

Personal bias emanates from "personal relation of friendship or animosity or profession" in which case a decision maker's judgement could be highly influenced by whether or not he or she likes the other person who may be affected by the decision (Zubair & Khattak, 2014). It may happen that a government official may have personal interest instead of financial interest in the matter, which may require such an official to withdraw from decision-making process (Roux *et al.*, 1997). For instance, if a prosecutor has a son who is involved in criminal case in which he has to prosecute, he would have personal interest in the case and therefore, it would be ideal to withdraw from the case.

### 2.1.3 Subjective Bias

Subjective bias may arise when an individual in decision-making position has had unsavoury experience with people in their private interactions (Roux *et al.*, 1997). This suggests that previous unpleasant interactions may tend to influence the decision maker to arrive at an unfavourable decision against the other people. In O'Brien's (2011:29) view, "the rule against bias was originally founded on a principle of fairness and accuracy in decision making, but it is now founded on the idea that to allow a biased

tribunal to make a decision would be to undermine public confidence in the system." Clearly, this indicates that public confidence in government officials can be affected tremendously if individuals who appear to be biased are allowed to participate in decision making processes. However, O'Brien (2011) notes that since the exact state of decision maker's mind may be difficult to determine, it remains an onerous and tedious exercise to prove allegations to subjective bias against a decision maker. Moreover, when allegations of subjective bias arise, the court may only make inferences based on the decision-maker's conduct to determine the degree of biasness during decision making (O'Brien, 2011).

#### **2.1.4 Prejudice**

According to Roux *et al.* (1997), prejudice may arise due to various factors: firstly, a decision maker could be given information prior to the commencement of a decision making process, which may negatively influence the outcome in which another person is ultimately affected. Secondly, the decision-making proceedings may be conducted in an environment, which disadvantage another person due to some discomforts created by such an environment. In instances where it is evident that the decision is influenced detrimentally by the decision maker's prejudice, such a decision has to be suspended or subjected to a review. In line with O'Brien' (2011) view, Okwor (2014) argues that when a *nemo iudex in causa sua* is violated by a person vested with decision making authority, such a decision must be set aside. This is simply because the abovementioned maxim demands that individuals entrusted with decision-making duties should discharge their responsibilities without any prejudice. In other words, decisions that are made by bureaucrats or public officials have to be fair, reasonable, and consistent with legal prescripts. Similar to subjective bias, the issue of prejudice may tend to be difficult to prove but the aforementioned arguments indicate that decision makers have to exercise great circumspection when handling different matters in order to prevent allegations or perceptions of prejudice in their decision-making processes.

#### **2.2 Exceptions to Nemo Iudex in Causa Sua**

The doctrine of necessity is an exception to the *nemo iudex in causa sua*. When bias is evident, it is necessary to replace a biased decision maker with another person who is not conflicted. In some instances, when it has become difficult to replace a

decision maker due to the absence of another competent authority, the doctrine of necessity could be invoked (Aslam, 2020). According to Dave (2020), a doctrine of necessity suggests that a valid decision can be made by a decision maker who is subject to disqualification on the basis of bias if:

- No other competent individual is available to make a decision.
- A quorum cannot be formed without a conflicted person.
- No other competent body can be constituted to make a decision.

In Prasad's (2018) view, "if the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit from it." Nevertheless, the doctrine of necessity does not imply that conflicted parties have to automatically make decisions by virtue of being in positions of authority to make such decisions. In cases where Individuals in positions of decision making authority are conflicted, they should consider recusing themselves in order to avoid travesty of justice. By so doing, fairness in decision making processes could be enhanced.

### **3. Audi Alteram Partem**

The above Latin maxim emphasises the importance of listening to the other party. According to Sarmah (2014), the etymology of *audi alteram partem* principle can be traced back to the Garden of Eden, where both Adam and Eve were granted an opportunity to state their case before punishment was meted out to them. In support of this view, Genesis 3 verse 9-19 reads as follows:

But the Lord God called to the man, "Where are you?" He answered, "I heard you in the garden, and I was afraid because I was naked; so I hid." And he said, "Who told you that you were naked? Have you eaten from the tree that I commanded you not to eat from?" The man said, "The woman you put here with me – she gave me some fruit from the tree, and I ate it." Then the Lord God said to the woman, "What is this you have done?" The woman said, "The serpent deceived me, and I ate." So the Lord God said to the serpent, "Because you have done this, "Cursed are you above all livestock and

all wild animals! You will crawl on your belly and you will eat dust all the days of your life. And I will put enmity between you and the woman, and between your offspring and hers; he will crush your head, and you will strike his heel." To the woman he said, "I will make your pains in childbearing very severe; with painful labor you will give birth to children. Your desire will be for your husband, and he will rule over you." To Adam he said, "Because you listened to your wife and ate fruit from the tree about which I commanded you, 'You must not eat from it,' "Cursed is the ground because of you; through painful toil you will eat food from it all the days of your life. It will produce thorns and thistles for you, and you will eat the plants of the field. By the sweat of your brow you will eat your food until you return to the ground, since from it you were taken; for dust you are and to dust you will return."

The above text shows that it is fair to grant a person an opportunity to put forward any mitigating factors prior to condemnation. Further, the text indicates that justice would be incomplete and punishment would be unfair without hearing the other party's case. Roux *et al.* (1997) point out that the individuals whose rights, privileges and freedoms are bound to be encroached upon in the process of exercising discretion in administrative action ought to be afforded a chance to state their cases. Failure to exercise this important precautionary measure in decision-making would constitute a travesty of justice. Sahu (2015) adds that natural justice principles become more relevant in case of administrative actions that are quasi-judicial. In other words, the aforementioned principles are important in instances where individual rights, liberties, and privileges are likely to be affected by administrative actions.

### 3.1 Requirements for Audi Alteram Partem

There are, nevertheless, some preconditions that have to be met before individuals could be called upon to state their side of the story. The two prominent issues that have to be considered are explained below.

#### 3.1.1 Prior Notice of Action

All individuals who are required to appear before any board or person of authority have to be given prior notice (Roux *et al.*, 1997). In other words, all the parties concerned have to be informed timeously about the date, time and place of the intended hearing. Equally important, those individuals who

are affected must know the purpose of the intended hearing in order to allow the other party ample time to prepare. Moreover, the prior notice has to be reasonable under the circumstances. According to Manyika (2016), reasonable notice can only be considered to be fair if affected individuals are granted sufficient notice, reasonable time to respond, unambiguous statement of administrative action and notification of individuals' rights to review any action or decision. In support of this view, section 3(2) of the Promotion of Administrative Justice Act 3 of 2000 categorically states that any individual who is materially and adversely affected by an administrative action has to be granted "adequate notice of the nature and purpose of the proposed administrative action; a reasonable opportunity to make representations; a clear statement of the administrative action; and adequate notice to any right of review or internal appeal, where applicable" (Republic of South Africa, 2000:4). In Sahu's (2015) analysis, individual rights are considered to be adversely affected if an administrative action places a burden on a person upon whom such decision has some negative ramifications, in which case written justifications have to be provided. This explains that the issue of prior notice is not an intricate process but arduous.

#### 3.1.2 Opportunity to be Heard

Granting another party an opportunity to be heard constitutes an integral part of the audi alteram partem. In this regard, Zubair and Khattak (2014) argue that the opportunity to be heard does not only suggest granting another person a chance to speak before a decision maker but extends to affording another person a reasonable opportunity to communicate a response to the decision maker orally or through written representations. Some decision makers default these important principles when a need to make a critical decision arises. For instance, in *Opperman v CCMA and Others* the Labour Court found the plaintiff was not given sufficient opportunity to make submissions regarding the sanction imposed. For this reason, the Court made adverse findings against the arbitrator and the employer. This case shows that individuals have to be granted an opportunity to be heard when an administrative action or decision that affects them is imminent.

### 3.2 Exceptions to the Audi Alteram Partem

There are exceptional instances where an opportunity to a fair hearing may not be afforded and still

no unfairness could be inferred. Those instances are discussed briefly below.

### **3.2.1 Legislative Function**

A right to a hearing can be excluded if an administrative action appears to be as consequence of legislative function. Specifically, this may arise in instances where a legislation is silent about the application of natural justice in dealing with issues that are addressed in the legislation (Dhanapalan, 2018). For instance, in South Africa, there is no legal provision for consulting with prisoners if the parole conditions have to be altered. According to Sarmah (2014), the legislative actions are not subject to the principle of natural justice because the principle sets the standards without any reference to specific persons.

### **3.2.2 Emergency**

Dhanapalan (2018) highlights that in case of emergency, there may not be sufficient time to have public hearings to obtain the views of the citizenry regarding a situation but the state institutions would have to take decisive action. In such cases, it means that the right to be heard falls away. An example in this regard, would be an announcement of Covid-19 lockdown by the South African state President. Due to an urgent need to make pronouncements concerning the direction which the South African government had to take in March 2020, there was no need to engage in public hearings about whether or not lockdown should be introduced. In support of the views expressed above, Sarmah (2014) states that "in cases of extreme urgency, where interest of public would be jeopardised by the delay or publicity involved in a hearing, a hearing before condemnation would not be required by natural justice or in exceptional cases of emergency where prompt action, preventive or remedial, is needed, the requirement of notice and hearing may be obviated."

### **3.2.3 Impracticability**

Natural justice can only be applied and adhered to when it is feasible to do such (Sarmah, 2014). In this sense, the audi alteram partem principle may not be applied when it is evident that it would be impractical to pursue such exercise. If a situation arises where a natural person or juristic person challenges an administrative decision on the basis that no hearing was held prior to decision making, a court or an adjudicating authority may rely on "impracticability."

## **4. The Application of the Nemo Iudex in Causa Sua and Audi Alteram Partem in the State of Capture Report**

The investigation into the state of capture by the former Public Protector, Advocate Thuli Madonsela, began with prior notice to former State President, Mr Jacob Zuma pertaining to the allegations reported against him (Public Protector South Africa, 2016). On the 22 of March 2016, the former Public Protector, Advocate Thuli Madonsela wrote to the former President of the Republic of South Africa, Mr Jacob Zuma, regarding the allegations of violating the Executive Members' Code of Ethics. The correspondence to the former President was part of an investigation into allegations that Mr Jacob Zuma had connived with the members of the Gupta family in the offering of ministerial positions. For these reasons, Advocate Thuli Madonsela requested Mr Jacob Zuma to respond to the allegations (Public Protector South Africa, 2016). Subsequently, the Public Protector took decisive steps to investigate the allegations in tandem with the provisions of section 182 subsection 1 paragraph a, b and c of the Constitution (1996) which states succinctly that the Public Protector has the powers to conduct an investigative inquiry into any alleged unlawful or unethical conduct within the realm of public administration or government affairs, followed by a report on such investigations wherein remedial actions are well-articulated (Republic of South Africa, 1996). Indeed, the Public Protector acted within the parameters of the law and observing the rights of the former State President, Mr Jacob Zuma in the performance of her responsibilities and duties.

It appears that Advocate Thuli Madonsela afforded the former President sufficient time to attend to the allegations that were levelled against him. However, there was no response from Mr Jacob Zuma in relation to the allegations. In support of these assertions, Advocate Madonsela mentions:

On 13 September 2016 I sent another letter to the President asking for a meeting with him in order to brief him on the investigation and affording him a further opportunity to comment on the allegations, which were summarised to the effect that the President ought to have known and/or allowed his son Duduzane Zuma to exercise enormous undue influence in strategic ministerial appointments as well as board appointments at SOEs (Public Protector, 2016:40).

Comments made by Advocate Madonsela indicate that, Mr Jacob Zuma was afforded a second opportunity to respond to the abovementioned allegations. Nevertheless, it seems Mr Jacob Zuma was not interested in dealing with the merits of the investigation despite efforts taken by Advocate Madonsela to provide him with written documents and records pertaining to the allegations. Mr Jacob Zuma's conduct could be translated as an effort to frustrate investigation into his alleged misconduct. Mr Zuma's conduct could be construed as delaying tactics and strategies because Advocate Madonsela had to provide a report in relation to the alleged violation of code of ethics within a period of 30 days after receiving the complaint as per the provision of section 2 of the Executive Members' Ethics Act 82 of 1998 (Republic of South Africa, 1998). Advocate Madonsela's remarks serve as evidence in this regard:

On 6 October 2016 I met with the President, whose legal team raised various legal objections and refused to discuss the merits of the investigation or the allegations against the President. The Presidency requested that the meeting be postponed to allow the President to study the documents provided and obtain legal advice. The Presidency raised an objection that they had not been provided with the relevant documents and records, and argued that they should be allowed to question witnesses who had already testified before me. I disagreed with this request and instead offered to provide the President with written questions to which the President would be required to respond by affidavit (Public Protector South Africa, 2016:41).

It is worth noting that Advocate Thuli Madonsela did not only afford Mr Jacob Zuma an opportunity to read the documents in relation to the allegations but he was granted an opportunity to consult his legal advisors. Although Mr Jacob Zuma attempted to avoid answering questions and confuse Advocate Madonsela, he ultimately answered the questions, which were subsequently asked pertaining to the allegations against him. This was after Advocate Madonsela had to remind him about the significance of his duty to account to the people of the Republic of South Africa. The Public Protector South Africa (2016:41-42) wrote:

The President's legal advisor argued emphatically that the matter should be deferred to the incoming Public Protector for conclusion. There was a lengthy

discussion with the President and his advisor on this matter, after which the President expressed his willingness to answer the questions posed by the Public Protector, at a future date, after having had an opportunity to scrutinize the documents and consult with his legal advisor. I advised the President that, as head of state, he is accountable to the people of the Republic, and that it is in his interest that he do so. In an attempt to demonstrate to the President that my questions to him were questions of fact, not requiring legal assistance, I posed said questions to him. The President undertook to meet with me again on 10 October 2016 and provide me with an affidavit in response to the questions posed (Public Protector South Africa, 2016:44).

The former Public Protector, Advocate Thuli Madonsela, issued a notice in terms of section 7(9) of the Public Protector Act to the former President of the Republic of South Africa, Mr Jacob Zuma, pertaining to matters in which he was implicated (Public Protector South Africa, 2016). This was in line with the *audi alteram partem* principle. Specifically, section 7(9) of the Public Protector Act 23 of 1994 states (Republic of South Africa, 1994:13). If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated, the Public Protector shall afford such person an opportunity to be heard in connection therewith by way of the giving of evidence, and such person or his or her legal representative shall be entitled, through the Public Protector, to question other witnesses, determined by the Public Protector, who have appeared before the Public Protector in terms of this section.

Subsequent to her preliminary investigation into the state of capture, Advocate Thuli Madonsela took some remedial actions that would serve as a point of departure for broader investigations into the allegations. In that regard, the Public Protector took the following remedial actions that are worth noting considering the focus of this paper. Firstly, "the President has the power under section 84(2)(f) of the Constitution to appoint commissions of inquiry however, in the *EFF vs Speaker of Parliament* the President said that: I could not have carried out the evaluation myself lest I be accused of being judge and jury in my own case. Secondly, the President is to appoint, within 30 days, a commission of inquiry headed by a judge solely selected by the Chief Justice who shall provide one name to the President. Thirdly, the judge is to be given the power

to appoint his/her own staff and to investigate all the issues using the record of this investigation and the report as a starting point. Lastly, the commission of inquiry is to complete its task and present the report with findings and recommendations to the President within 180 days. The President shall submit a copy with an indication of his/her intentions regarding the implementation to Parliament within 14 days of report" (Public Protector South Africa, 2016:353-354). Following the release of the State of Capture report by the Public Protector, in the case of the President of the Republic of South Africa v Office of the Public Protector and Others, it is evident that Mr Jacob Zuma was determined to challenge the above remedial actions. Nevertheless, Mr Zuma's efforts to have the Public Protector's findings and remedial actions overturned by the High Court failed when the review was dismissed.

Wolf (2017) notes important issues in relation to the recommendations made by the Public Protector. Firstly, restraining the President's powers conferred in terms of section 84(2)(f) was reasonable and consistent with the law because Mr Jacob Zuma was the implicated party. Secondly, if Mr Jacob Zuma were to select and appoint a judge who would head the commission of inquiry into his case, he would possibly select and appoint a judge who would be compassionate to him. To support this view, Wolf (2017:25) adds that the Seriti Commission (Commission of inquiry into the arms deal) serves as an important point of reference because Mr Jacob Zuma appointed judges who were sympathetic to him, thus, Judge Willie Seriti, Judge Willem van der Merwe and Judge Francis Legodi. However, Judge van der Merwe recused himself from being part of the Commission. Subsequently the Commission was tainted with reports of manipulation of crucial information pertaining to the inquiry and resignation of investigators. Indeed, there is no doubt that history could easily repeat itself if the Public Protector had not taken a decision to restrain the powers of the President to select a judge who would lead a commission into state of capture. Notably, the decision to fetter President's powers was in line with the *nemo iudex in causa sua*, wherein the president could not use his discretion to select a judge to investigate his case. Moreover, a decision to allow former President Zuma to select judge to conduct an inquiry into his wrongdoing would constitute a perversion of the Constitution. Nevertheless, according to section 3(1) of the Promotion of Administrative Justice Act 3 of 2000, "administrative action which materially

and adversely affects the right or legitimate expectations of any person must be procedurally fair" (Republic of South Africa, 2000:4). In relation to the Zuma investigation, it appears that the Office of the Public Protector's decisions were procedurally fair and consistent with the law. For instance, the Public Protector was careful in her recommendations not to take away the President's powers and functions because this would amount to violation of section 90(1) of the Constitution. In other words, the Public Protector could only make recommendations with regard to the processes leading to the selection of a judge rather than the appointment thereof. This explains that there was no way that another person other than the president would have to appoint a judge who would head a commission of inquiry into state capture. In terms of section 90(1) of the Constitution, it is when the President is away from South Africa, unable to perform his presidential duties or when the President's office is vacant that another competent authority would be allowed to exercise powers and functions of the head of state. The former Public Protector, Advocate Madonsela acted judiciously by observing the doctrine of necessity in relation to the exercise of powers and functions of the head of state.

## **5. Conclusion and Recommendations**

Based on the above assessment of the State of Capture report by the Public Protector, it is evident that numerous lessons could be drawn therefrom. In relation to the first basic principle of natural justice (*nemo iudex in causa sua*), it seems the former president could not see anything inappropriate when he approached a court of law seeking a review of the Public Protector's recommendations in order to use his discretion in his own cause. For this reason, it must be stated emphatically that public officials as decision makers have to develop the capacity to identify and avoid potential conflict of interests in the performance of their duties. When potential conflict of interest or biasness is evident, public officials have to declare and subsequently recuse themselves from decision making processes. Public officials should not find themselves participating or trying to influence decisions either directly or indirectly if they are conflicted.

Contrary to what the former President Zuma did in trying to frustrate the investigative processes by Advocate Madonsela, public official have to be exemplary and cooperate with important institutions

such as the Public Protector when investigations are conducted. In this way, the public officials have to avoid unnecessary delays that could be interpreted as an obstruction to the end of justice. This indicates that the actions of public officials as key actors in the public sector have to be informed by law and ethics. Contrary to the former President's attitude not to adhere to the recommendations of the Public Protector, public officials should strive to adhere to the recommendations of the investigative institutions such as the Public Protector. The starting point should be to respect, observe and comply with the provisions of various legislative prescripts in the public sector. Importantly, an endeavor by former President Zuma to take Public Protector's recommendations on review could be seen as an attempt to avoid accountability to the South African citizenry. Therefore, there is a need for public officials to keep away from the temptation of using courts of law in an effort to circumvent accountability.

As seen in the Public Protector's interactions with former President Zuma, public official ought to adhere to the fundamental principle of audi alteram partem in the process of making decisions in the public sector. For instance, if there is a complaint against any member or directorate within a public sector institution, it will be imperative to provide full details regarding the nature of a complaint reported. If any individual is likely to be affected by a subsequent administrative decision, a notice may have to be given by public officials in order to allow a concerned party to prepare a response, thus in line with the provisions of Promotion of Administrative Act 3 of 2000. The State of Capture report has shown that the Public Protector gave former President Zuma sufficient time to respond and his version in relation to the state capture was heard. This practice indicates that public officials should be in a position to ensure that any individual who is bound to be affected by administrative decisions is given adequate opportunity to be heard before a decision is taken. The enhancement of public confidence in government's decision-making practices could be enhanced if there is consistent adherence to the two fundamental principles of natural justice.

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