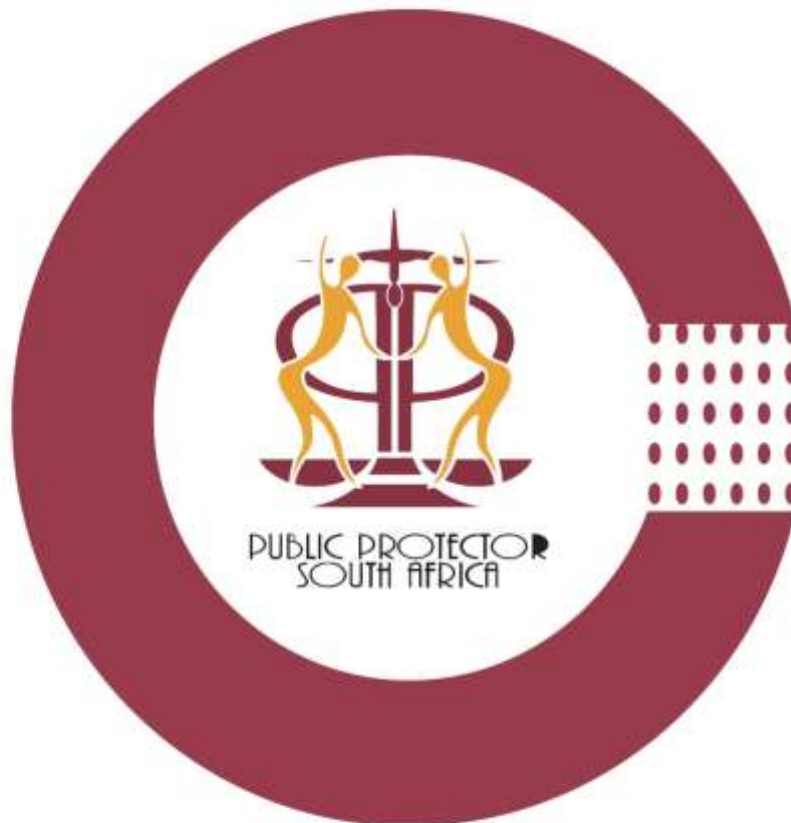


**REPORT OF THE PUBLIC PROTECTOR ISSUED IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996, SECTIONS 3(2)(a), 3(3) OF THE EXECUTIVE MEMBERS ETHICS ACT, 1998 AS WELL AS SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**

## **PUBLIC PROTECTOR SOUTH AFRICA**



**Accountability • Integrity • Responsiveness**

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**REPORT NUMBER: 12 of 2023/24**

**ISBN NUMBER: 978-1-991244-44-4**

**INVESTIGATION INTO ALLEGATIONS OF VIOLATION OF THE EXECUTIVE ETHICS CODE AGAINST THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA, MR MC RAMAPHOSA, AS WELL AS ALLEGATIONS OF IMPROPER CONDUCT AGAINST MEMBERS OF THE SAPS IN TERMS OF THE PUBLIC PROTECTOR ACT, IN CONNECTION WITH THE HOUSEBREAKING WITH THE INTENT TO STEAL AND THEFT OF CASH IN FOREIGN CURRENCY THAT TOOK PLACE ON OR ABOUT 09 FEBRUARY 2020 AT PHALA PHALA FARM, WATERBERG IN THE LIMPOPO PROVINCE**

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**LIST OF ACRONYMS AND ABBREVIATIONS**

<b>ACRONYM/ABBREVIATION</b>	<b>DESCRIPTION</b>
AGSA	Auditor General of South Africa
ANC	African National Congress
ATM	African Transformation Movement
ATC	Parliamentary Committee for Announcements, Tablings and Committee Reports
AU	African Union
CAS	Crime Administration System
CC	Close Corporation
CCTV	Close-Circuit Television
CEA	Currency and Exchanges Act, 1933
Col	Colonel
Complainant(s)	Mr Vuyolwethu Zungula, Mr John Steenhuisen, Mr Ellias Muller and Mr Simphiwe Ndlovu
ConCourt	Constitutional Court
Constitution	Constitution of the Republic of South Africa, 1996
DA	Democratic Alliance
DHA	Department of Home Affairs
DIRCO	Department of International Relations and Cooperation
DJCD	Department of Justice and Constitutional Development
DPCI	Directorate of Priority Crime Investigations
EFT	Electronic Funds Transfer

EMEA	Executive Members Ethics Act, 1998
Executive Ethics Code	Executive Ethics Code 2000 published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853
FIC	Financial Intelligence Centre
FinSurv	Compliance and Enforcement, Financial Surveillance Department of SARB
Gen	General
HNH	Harris Nupen Molebatsi Incorporated Attorneys
ICCMA	International Cooperation in Criminal Matters Act, 1996
Investigation Team	Investigation Team of the Public Protector
IPID	Independent Police Investigative Directorate
Lt Col	Lieutenant Colonel
MCS	Movement Control System
MISS	Minimum Information Security Standard (Policy)
MP	Member of Parliament
OECD	Organisation for Economic Co-Operation and Development
PAIA	Promotion of Access to Information Act, 2000
PDF	Portable Document Format
POCA	Prevention of Organised Crime Act, 1998
POPIA	Protection of Personal Information Act, 2013
PPS	Presidential Protection Services

PPSA	Public Protector South Africa
PPU	Presidential Protection Unit
PRECCA	Prevention and Combating of Corrupt Activities Act, 2004
President's Legal Representatives	Harris Nupen Molebatsi Incorporated Attorneys
Public Protector	The Public Protector of South Africa or the Acting Public Protector of South Africa
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended
SADC	Southern African Development Community
SAPS	South African Police Service
SARB	South African Reserve Bank
SARS	South African Revenue Services
SCCU	Specialized Commercial Crimes Unit
Section 89 Panel Report	Report of the Independent Panel appointed to conduct a preliminary enquiry in terms of section 89 of the Constitution of the Republic of South Africa, 1996
SGB	Stud Game Breeders
SGT	Sergeant
SPP	Senior Public Prosecutor
SSA	State Security Agency
TAA	Tax Administration Act, 2011
The Farm	Phala Phala farm, Waterberg in the Limpopo Province

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The Housebreaking	The alleged housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province
The President	The President of the Republic of South Africa, Mr Cyril Matamela Ramaphosa
Tsala	Tsala Hunting Safaris
US\$	United States Dollar
VIP	Very Important Person(s)

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## EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution, which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice and section 8(1) of the Public Protector Act, which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into allegations of a violation of the Executive Ethics Code made against the President of the Republic of South Africa, Mr MC Ramaphosa (the President), as well as allegations of improper conduct made against members of the South African Police Service (SAPS) in terms of the Public Protector Act, in connection with the alleged housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province (the Farm).
- (iii) Complaints were lodged by Mr Vuyolwethu Zungula (Mr Zungula) and Mr John Steenhuisen (Mr Steenhuisen), who are Members of the National Assembly in terms of Executive Members Ethics Act, 1998 (EMEA) as well as by Mr Elias Muller (Mr Muller) and Mr Simphiwe Ndlovu (Mr Ndlovu), who are ordinary members of the public in terms of the Public Protector Act (together, the Complainants).<sup>1</sup>

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1 In a matter of *Public Protector and Others v President of the Republic of South Africa and Others* [2021] ZACC [19], the Constitutional Court held at Paragraph 17 that:

*"A member of the public cannot be a complainant in relation to a complaint submitted in terms of section 4 of the Members Act. However, this does not mean that a member of the public can never complain about a breach of the code. Where this occurs, the Public Protector must investigate the complaint in accordance with the Public Protector Act and not in terms of section 3 of the Members Act".* See also section 4(3) of the EMEA.

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- (iv) Initially, the Public Protector received two written complaints dated 02 and 03 June 2022 from Mr Zungula, the President of the African Transformation Movement (ATM), in connection with allegations that the President had violated the Executive Ethics Code 2000 published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853 (Executive Ethics Code), in relation to the alleged housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 at the Farm (the Housebreaking).
- (v) Further to the complaint from Mr Zungula, the Public Protector subsequently received three (3) more similar complaints in June 2022, from other complainants, namely Mr Steenhuisen, who is the leader of the Democratic Alliance in Parliament, Mr Ndlovu, the Complainant and Mr Muller, who are not Members of Parliament.
- (vi) It is important to mention that all the complaints were based on the affidavit of Mr Arthur Fraser (Mr Fraser), the former Director General of the State Security Agency (SSA), which was already in the public domain and circulating around various media platforms, indicating that Mr Fraser had laid criminal charges against the President at the Rosebank Police Station in Gauteng. The complaints recorded that Mr Fraser's allegations were said to be supported by video footage, photographs, bank accounts and names of various individuals referred to in the statement that he filed with the Rosebank Police Station.
- (vii) The Public Protector has consolidated all four (4) complaints received into one File Ref Number 7/2-005084/22, to avoid duplication of investigations as the facts arise from the same incident and are to a large extent similar. The complainants were all notified accordingly.
- (viii) Based on the analysis of the complaint, the following issues were considered and investigated:



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- (a) Whether the President of the Republic of South Africa, Mr MC Ramaphosa acted in a manner that is inconsistent with his office in dealing with the alleged housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province and thus abused state resources, exposed himself to any situation involving a risk of a conflict between his constitutional duties and obligations and his private interests arising from or affected by his alleged paid work in violation of clause 2.1(b) and (d) and clause 2.3(d), (f) and (g) of the Executive Ethics Code;
- (b) Whether the President failed to report the alleged crime that took place at Phala Phala farm on or about 09 February 2020 and abused his power in utilising state resources by causing the Presidential Protection Services (PPS) to be deployed to Phala Phala farm and to investigate a housebreaking with the intent to steal and theft of cash in foreign currency at Phala Phala farm, thus violating clause 2.3(d) and (f) of the Executive Ethics Code; and whether such conduct constitutes improper conduct as contemplated in section 182(1) of the Constitution and abuse of power as contemplated in section 6(4)(a)(ii) of the Public Protector Act; and
- (c) Whether the members of the South African Police Service (SAPS) attached to the PPS acted improperly by investigating the alleged housebreaking with the intent to steal and theft of cash in foreign currency, which took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province, and if so, whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act.
- (ix) The investigation was conducted in terms of section 182(1) of the Constitution read with section 3 of the EMEA and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law and related prescripts.

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- (x) On 10 March 2023, Notices in terms of section 7(9)(a) of the Public Protector Act,<sup>2</sup> read with Rule 42(1) and 41(1) of the Public Protector Rules (the Notices), were issued to the President, Mr Zungula, Mr Steenhuisen, Mr Muller, Mr Ndlovu, the Complainant, General FS Masemola (Gen. Masemola), the National Commissioner of SAPS, General Khehla Sitole (Gen. Sitole), the former National Commissioner SAPS, General W Rhooode (Gen. Rhooode), the Head of PPS, Sgt H Rekhoto (Sgt Rekhoto), a member of the PPS, Mr Bheki Cele, Minister of the Police (the Minister of Police) and the former Special Adviser to the President, Mr Bejani Chauke (Mr Chauke), to provide them with an opportunity to respond to the interim findings.
- (xi) Written responses to the Notices were received from the President, Mr Zungula, Mr Steenhuisen, Mr Muller, Gen. Masemola, Gen. Rhooode, Sgt Rekhoto, the Minister of Police and Gen. Sitole between 20 March and 26 May 2023. No response was received from Mr Ndlovu, the Complainant.
- (xii) Having regard to the evidence and regulatory framework determining the standard that should have complied with, the following findings are made:
- (a) **Whether the President of the Republic of South Africa, Mr MC Ramaphosa, acted in a manner that is inconsistent with his office in dealing with the alleged housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 at the Phala Phala farm, Waterberg in the Limpopo Province and thus exposed himself to any situation involving a risk of a conflict between his constitutional duties and obligations and his private interests arising from or affected by his alleged paid work in violation of clause 2.1(b) and (d) and clause 2.3(d),(f) and (g) of the Executive Ethics Code**

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<sup>2</sup> Which enjoins the Public Protector, during the course of an investigation, to afford any person being implicated and/or affected in the matter under investigation, and where such implication may be to the detriment and/or interest of that person or where an adverse finding and/or remedial action pertaining to that person may result, an opportunity to respond in connection thereto.

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- (aa) The allegation that the President improperly and in violation of the provisions of the Executive Ethics Code exposed himself to any risk of a conflict between his constitutional duties and obligations and his private interests is **not substantiated**.
- (bb) The allegation that the President undertook remunerated work at Phala Phala farm, is **not substantiated**.
- (cc) The Public Protector's investigation has revealed that Phala Phala farm is managed by a private entity called Ntaba Nyoni Close Corporation (Ntaba Nyoni), through its own private employees, on land owned and registered under Tshivhase Trust. The evidence and information before the Public Protector indicate that the US dollars stolen at Phala Phala farm on or about 09 February 2020 emanate from a private cash transaction. Mr Mustafa Mohamed Ibrahim Hazim (Mr Hazim) a citizen of Sudan, arrived in the country on 23 December 2019 and thereafter purchased buffalo at Phala Phala farm on 25 December 2019.
- (dd) Mr Sylvester Ndlovu (Mr Ndlovu), an employee of Ntaba Nyoni Close Corporation received a cash amount of US\$580,000 on 25 December 2019 and issued a cash payment receipt as proof of the transaction to Mr Hazim. It is apparent from the evidence before the Public Protector that the President was not at Phala Phala farm during this transaction and did not play a role in the sale.
- (ee) In accordance with paragraph 8.2 of the Executive Ethics Code, on 07 October 2022, the Investigation Team visited the office of the Secretary to Cabinet and inspected the Register of Financial Interests of the President, in particular, the declaration relating to the financial year 2019/2020. On the remuneration section of the Register of Financial Interests of the President, it was observed that the President declared that he received no remuneration other than as a member of the Executive during the reporting period of

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- 2019/2020, as required in terms of paragraph 5.6 of the Executive Ethics Code.
- (ff) The President indicated further that he instructed Mr Steyn Speed (Mr Speed) of his Office, to ensure compliance with the Executive Ethics Code, as required by paragraph 8.1. The President further indicated that he is aware of the provisions of the Executive Ethics Code regarding the proper conduct expected of a member of the Executive.
- (gg) Following the inspection of the President's Register of Financial Interests, the Public Protector established that the President had stated in the Register that he retains a financial interest in the form of a sole member's interest at Ntaba Nyoni, as described in paragraph 6 of the Executive Ethics Code.
- (hh) While the facts point towards the President being more involved in the management of the affairs of the CC than he appears to let on in his general submissions, the Public Protector could not find evidence indicating that the President is actively involved in the day to day operations of Ntaba Nyoni or Phala Phala farm. According to the evidence before the Public Protector, the day to day operations of Phala Phala Wildlife are managed by Mr Hendrik von Wielligh (Mr von Wielligh) as the general manager, with the assistance of approximately 40 employees.
- (ii) Having regard to the objective and purpose of the relevant provisions of the Code, the evidence before the Public Protector does not support the allegation that the President's financial interests in game and cattle farming at Phala Phala farm exposes him to any situation involving the risk of a conflict between his official responsibilities and his private interests in violation of the Executive Ethics Code.
- (jj) Having considered the meaning of the concept(s) of paid work or remunerated work as gleaned from various sources, the overarching condition which arises from most definitions refers to an employment relationship or a self-employed person who provides work or renders

physical or mental labour for remuneration or payment in money or in kind, given as a result of a contribution to the operations of a business. For such a purpose, an employee or self-employed person is deemed to be at work during the time that he is in the course of his employment. A payment or remuneration is made or owing to any person in return for work performed or services rendered.

- (kk) The Public Protector finds that to have a financial interest in a business is distinguishable from working, being employed, and receiving remuneration for contributing to the operations of the business.
- (ll) What is prohibited is the active involvement of members in the enterprises which produce the income – because that would divide their attention from their official duties.
- (mm) Accordingly, the Public Protector could not find evidence to support the allegation that the President receives remuneration and/or undertakes paid work in relation to Phala Phala farm whilst being a member of Cabinet.
- (nn) Aggregated against the standard imposed by the Executive Ethics Code, the Public Protector finds that there is no basis upon which to conclude that the President contravened clause 2.1(b) and (d), clause 2.3(d), (f) and (g) of the Executive Ethics Code, including in the period following the Housebreaking.
- (b) **Whether the President failed to report the alleged crime that took place at Phala Phala farm on or about 09 February 2020 and abused his power in utilising state resources by causing the Presidential Protection Services to be deployed to Phala Phala farm and to investigate a housebreaking with the intent to steal and theft of cash in foreign currency at Phala Phala farm, thus violating clause 2.3(d) and (f) of the Executive Ethics Code; and whether such conduct constitutes improper conduct as contemplated in section 182(1) of the Constitution and abuse of power as contemplated in section 6(4)(a)(ii) of the Public Protector Act**

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- (aa) Section 34(1) of PRECCA places the duty on certain persons to report certain offences. Failure to report is an offence. In that case, the Public Protector is not empowered to pronounce on the merits and demerits of the alleged crime and to make findings in respect thereof because the offence does not fall within section 6(4)(a) of the Public Protector Act. The matter is investigated by the public body, which is tasked with criminal investigations, namely the DPCI.
- (bb) The allegation that the President abused his power in utilising state resources by causing the PPS to be deployed to Phala Phala farm and to investigate a housebreaking with the intent to steal and theft at the said farm, is **not substantiated**.
- (cc) The evidence placed before the Public Protector does not support the allegation of abuse of power in utilising state resources by causing the PPS to be deployed to Phala Phala farm and to investigate the crime of housebreaking with the intent to steal and theft at Phala Phala farm.
- (dd) Based on the evidence obtained, the Public Protector concludes that the President reported the security breach in the form of a housebreaking at Phala Phala farm, on 10 February 2020 to Gen. Rhooode. The Public Protector further finds that on 02 March 2020, the President reported the theft of cash in foreign currency, which took place on the same day of the housebreaking, at his private residence on Phala Phala farm to Gen. Rhooode, who is a senior police officer and a member of the PPS, a component of SAPS.
- (ee) Gen. Rhooode confirmed that the President reported the incident to him as a police officer and as the head of PPS, without giving him any specific instructions regarding how he should deal with the matter.
- (ff) The Public Protector could not find any evidence upon which to conclude that after reporting this crime to Gen. Rhooode, the President abused his power in

- utilising state resources by causing the PPS members to be deployed at Phala Phala farm and to investigate the crime of housebreaking with the intent to steal and theft.
- (gg) The Public Protector further finds that in terms of the Presidential Handbook, read together with the PPS Policy, the President is entitled to static protection at all his private residences, which he uses from time to time during his term of office.
- (hh) Accordingly, the Public Protector could not find any evidence upon which to conclude that the deployment of PPS at the President's private residence at Phala Phala farm amounts to abuse of SAPS resources, since he is entitled to this protection in terms of the Presidential Handbook, read together with the PPS Policy.
- (ii) Measured against the standard imposed by Executive Ethics Code, the Public Protector finds that there is no basis upon which to conclude that the President violated clause 2.3(d) and (f) of the Executive Ethics Code. It can also not be concluded that the President's conduct constitutes improper conduct as contemplated in section 182(1) of the Constitution and abuse of power as contemplated in section 6(4)(a)(ii) of the Public Protector Act.
- (c) **Whether the members of the South African Police Service attached to PPS acted improperly by investigating the alleged housebreaking with the intent to steal and theft of cash in foreign currency, which took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province, and if so, whether such conduct constitutes improper conduct as contemplated in section 182(1) of the Constitution and maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act**
- (aa) The allegation that the members of the SAPS attached to PPS acted improperly by investigating the Housebreaking is **substantiated**.

- 
- (bb) The investigation has revealed that on or about 09 February 2020, a crime of housebreaking with the intent to steal and theft took place at the President's house situated at Phala Phala farm, where cash in US dollars was stolen from the cushion of a couch.
- (cc) Evidence tendered before the Public Protector further reveals that Gen. Rhooode did not inform his commanding officer about this crime, in line with section 13(2) of the SAPS Act, after the President reported it to him on 10 February and 02 March 2020. Instead, Gen. Rhooode alleges that he reported the crime to General Sindile Mfazi (Gen. Mfazi), the then National Head of SAPS' Detection Service, who has since passed away. The Public Protector was neither provided with any proof by Gen. Rhooode to support the assertion that he reported the matter to the late Gen. Mfazi, nor was the information available from SAPS.
- (dd) No case docket was opened and registered on the CAS of SAPS to enable an official investigation by the relevant Crime Detection Service. Consequently, this crime was also not captured in the SAPS's Crime Statistics Report for the financial year 2019/2020.
- (ee) Further evidence before the Public Protector reveals that Gen. Rhooode assembled his own investigation team and subsequently engaged in an unofficial criminal investigation, which included interviewing suspects, witnesses, conducting surveillance, travelling to Cape Town to trace suspects, collecting evidence, and compiling a report in connection with the incident that occurred at the President's house at Phala Phala farm.
- (ff) Although Gen. Rhooode contends that he was only conducting a *preliminary investigation* on the security breach to establish if there was a threat on the President's safety, on the instruction of the late Gen. Mfazi, his contention is not supported by the evidence at hand. The report compiled by Sgt Rekhoto at the instruction of Gen. Rhooode indicates that the investigation focused on



the crime of housebreaking with the intent to steal and theft, rather than the threat to the President's safety.

- (gg) Accordingly, the Public Protector finds that Gen. Rhoode and Sgt Rekhoto, acted improperly by investigating the Housebreaking without a registered case docket. The failure and/or impropriety is in direct contravention of the section 13(1), (2) and (3) of the SAPS Act, as well as Regulation 5(3) of the SAPS Discipline Regulations.
- (hh) Having examined all the available evidence, the conduct of Gen. Rhoode and Sgt Rekhoto constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (jj) The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action to redress the conduct referred to in this report upon finalisation of an investigation where adverse findings are made.
- (kk) In the matter of 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 Protector has a binding effect.
- (ll) Taking into account the submissions and information that were presented before the Public Protector, the appropriate remedial actions that the Public Protector is taking in terms of section 182(1)(c) of the Constitution, are the following:

**The Minister of the South African Police Service**

- (aa) Must take note of the findings of maladministration and improper conduct against the SAPS as highlighted in this report, in connection with the allegation that the members of the SAPS attached to PPS acted improperly

by investigating the crime of housebreaking with the intent to steal and theft, which took place on or about 09 February 2020 at Phala Phala farm, in line with the authority vested on the Minister of Police, in terms of section 206 of the Constitution.

**The National Commissioner of the South African Police Service**

- (bb) Within sixty (60) calendar days from the date of receipt of this report ensure that appropriate action is initiated against Gen. Rhooode and Sgt Rekhoto for contraventions of the SAPS prescripts as highlighted in this report, in line with the provisions of section 40 of the SAPS Act and Regulation 6 of the SAPS Discipline Regulations, 2016.
- (cc) Within ninety (90) calendar days from the date of receipt of this report, develop an appropriate PPS directive, instruction, policy or such other prescript within the statutory powers vested to the National Commissioner in terms of section 11 of the SAPS Act and section 207(2) of the Constitution, directing how the PPS members must manage crimes reported directly to them by the VIP's under their protection.

## 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) read with section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report is submitted in terms of section 8(1), section 8(3) of the Public Protector Act, read with section 3(2)(a) and section 3(3) of the EMEA, which empower the Public Protector to make known the findings of an investigation, to affected parties (including the Complainants) for such persons to note the outcome of the investigation and to implement the remedial action.
- 1.3 The report is submitted to the following persons:
- 1.3.1 President of the Republic of South Africa, Mr MC Ramaphosa;
  - 1.3.2 The Speaker of the National Assembly, Ms N Mapisa Nqakula;
  - 1.3.3 The Minister of Police, Mr B Cele;
  - 1.3.4 The National Commissioner of the SAPS, Gen. FS Masemola;
  - 1.3.5 The former National Commissioner of the SAPS, Gen. K Sitole;
  - 1.3.6 The former Special Adviser to the President, Mr B Chauke;
  - 1.3.7 Head of the PPS, Gen. W Rhooode;
  - 1.3.8 An official of the PPS, Sgt H Rekhoto; and
  - 1.3.9 A copy of the report is also provided to Mr Zungula, Mr Steenhuisen, Mr Muller and Mr Ndlovu, (the Complainants).
- 1.4 The report relates to an investigation into allegations of a violation of the Executive Ethics Code 2000, published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853 (Executive Ethics Code) made against the President, as well as allegations of improper conduct made against members of the SAPS, in terms of the Public Protector Act, in connection with the housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province (the Farm).

## 2. THE COMPLAINTS

2.1. The Public Protector received two written complaints dated 02 and 03 June 2022 from Mr Vuyo Zungula (Mr Zungula), a Member of Parliament (MP) and the President of the African Transformation Movement (ATM), in connection with allegations that the President had violated the Executive Ethics Code.

2.2. In his complaint dated 03 June 2022, which substitutes his complaint of 02 June 2022, Mr Zungula alleged as follows:

*“It has become public information that Mr Arthur Fraser, the former Director General of the State Security Agency laid alarming criminal charges against President Ramaphosa at the South African Police Service station in Rosebank, Gauteng.*

*In his media statement Mr Arthur Fraser alleges that on 09 February 2020 there was a theft of millions of US dollars, (in excess of four million US dollars) concealed within the premises of the President’s Phala Phala farm in Waterberg, Limpopo, by criminals who were colluding with Mr Ramaphosa’s domestic worker. Included in the media statement is the defeating of the ends of justice, kidnapping of suspects, their interrogation on his property and bribery. Furthermore, the President is alleged to have concealed this crime from the South African Police and/or South African Revenue Services (“SARS”) and thereafter paid the culprits for their silence. Mr Fraser’s allegations have included video footages, photographs, bank accounts and names in the statement that he filed with the Rosebank Police Station in Gauteng.*

*President Ramaphosa in a media statement issued on the 2nd June 2022 confirmed the robbery in his property as per the statement of Mr. Fraser. At the time of writing this letter no South African Police Station (SAPS) had confirmed that Mr Ramaphosa opened a case for robbery neither did he say he went to any SAPS to open a robbery case.*

*Section 96 of the Constitution demands that members of the Cabinet must act in accordance with a code of ethics set out by national legislation. As the President is the head of the Cabinet, he is bound by the Act and the Code.*

*In particular the ATM draws your attention to s96 (2)(a) of the Constitution which prohibits members of Cabinet from undertaking any other paid work. It is the view of the ATM that anyone with cash amounting to millions of US Dollars can only be involved in trading whose legitimacy needs to be established. Whether the trading is legit or not it constitutes paid work and thus a violation of the said section of the Constitution. Please investigate.*

*In addition, s96(2)(b) of the Constitution, prohibits Members of Cabinet from acting in a way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests. It is not clear whether the information in the public domain that Mr Ramaphosa stopped his business dealings upon assuming his role as Deputy President in the 5th administration is true or not. If indeed the President is no longer actively pursuing his private interests, why then did it become the President's direct responsibility to report the robbery to the Head of the Presidential Protection Unit (PPU)? Also, does the mandate of the Presidential Protection Unit include looking after security matters of the farm of the President? Does the use of the PPU for the President's farm security not constitute abuse of state resources? Please investigate.*

*Should you find other transgressions that may not be within your mandate to investigate, please do not hesitate to refer those to appropriate authorities as you see fit.*

*If after your investigation you find that the allegations of Mr Fraser are substantiated, we request you to recommend appropriate remedial actions.*

*Given the seriousness of this complaint, the ATM wishes to remind you that S3(2) of the Executive Members Ethics Act compels you to report on alleged breaches of the Code within 30 days” (sic).*

2.3. Further to the complaint from Mr Zungula, the Public Protector subsequently received three (3) more similar complaints in June 2022, from Mr John Steenhuisen (Mr Steenhuisen), the leader of the Democratic Alliance in Parliament, Mr Simphiwe Bruno Ndlovu (Mr Ndlovu, the Complainant) and Mr Elias Muller (Mr Muller), who are not Members of Parliament.

2.4. In his complaint dated 20 June 2022, Mr Steenhuisen stated the following:

*‘I hereby lay a formal complaint with your office in terms of section 3(2)(a) and section 4(1)(a) of the Executive Members’ Ethics Act No. 82 of 1998 and request you to investigate the following alleged breaches of the Executive Ethics Code by President Cyril Ramaphosa.*

*The complaint is about the alleged theft on 9 February 2020 from President Ramaphosa’s Phala Phala game farm of millions of dollars in cash, money which he has claimed is proceeds from the sale of game.*

*It has been confirmed by the South African Police Service that no case was ever opened for this theft.*

*Yet, the Inspector-General of the Namibian Police Force confirmed in a statement on 16 June 2022 that the Namibian Police met with SAPS officials on 19 June 2020 at what they termed “no man’s land” near Noordoewer on the Namibian / South African border. They met “to share operational information pertaining to Mr David Imanuwela and other Namibian nationals suspected to have stolen money in South Africa and fled to Namibia”.*

*This statement suggests that President Ramaphosa used state resources, most likely the Presidential Protection Unit located in SAPS’ VIP Protection*

*Unit, to investigate his private business matter in an attempt to track and bring back his money.*

*Section 2.1 of the Executive Ethics Code states:*

*2.1 Members of the Executive must to the satisfaction of the President or the Premier, as the case may be*

- (b) fulfill all the obligations imposed upon them by the Constitution and law; and*
- (d) act in all respects in a manner that is consistent with the integrity of their office or the government.*

*I put it to you that President Ramaphosa was obliged by law to report the theft, and in failing to do so, has contravened section 2.1 (b) and (d) of the Executive Ethics Code.*

*Section 2.3 of the Executive Ethics Code states:*

*2.3 Members of the Executive may not -*

- (d) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;*
- (f) expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;*

*I put it to you that in using state resources, specifically the Presidential Protection Unit within SAPS, to track and bring back his stolen dollars, President Ramaphosa has contravened section 2.3 (d) and (f) of the Executive Ethics Code.*

*I submit this complaint in terms of section 3(2) (a) and section 4(1) (a) of the Executive Members' Ethics Act No. 82, 1998 which state:*

- 3.(2) The Public Protector must submit a report on the alleged breach of the code of ethics within 30 days of receipt of the complaint –*

(a) *to the President, if the complaint is against a Cabinet member, Premier or Deputy Minister.*

4.(1) *The Public Protector must investigate, in accordance with section 3, an alleged breach of the code of ethics on receipt of a complaint by –*

(a) *the President, a member of the National Assembly, or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister.*

*I trust you will carry out your constitutional duty with utmost integrity, including conducting your investigation without fear, favour or prejudice and giving effect to the principle of equality before the law, as per your reassurances to the public on your appointment as Acting Public Protector. Thank you’.*

2.5. In his complaint dated 06 June 2022, Mr Muller stated the following:

*“I hereby submit a complaint of abuse of power and state resources against both the President and the presidential protection unit. This complaint is based on serious allegations made by Mr Arthur Fraser in his criminal complaint against both President Ramaphosa and Mr Rhooode.*

*PP, I believe that while the SAPS will possibly investigate the alleged criminal elements in Mr Fraser complaint, there are other alleged improprieties that might not necessarily constitute criminality but maladministration.*

*It is for this reason, that I am requesting your esteemed office to investigate the alleged conduct of the president and Mr Rhooode to determine if they might have also contravened or violated inter alia section 195(1)(a) and (f) of the constitution. The fact that the President decided not to open a criminal*



*case, means state resources should not have been used by Mr Rhooode in tracing the alleged robbers as alleged by Mr Fraser.*

*Mr Rhooode is alleged to have travelled to Cape Town and Namibia tracing the alleged robbers. One can only reasonably suspect he used taxpayers' money in those trips he undertook. President Ramaphosa is also alleged to have contacted the Namibian President, regarding one of the alleged robbers having been in Namibia, to seek his assistance in apprehending him.*

*If the President had indeed contacted the Namibian President, it will then be clear that the President was abusing his position as the State President for personal gain.*

*PP, I request your office to kindly investigate:*

- 1. Whether the President or Mr Rhooode acted in violation or contravention of the constitution in anyway?*
- 2. Whether the President and Mr Rhooode abused their positions in anyway?*
- 3. Whether the President acted in any manner that is inconsistent with the oath of his office?*
- 4. Whether the President and Mr Rhooode abused state resources in anyway?"*

2.6. In his complaint dated 08 June 2022, Mr Ndlovu, the Complainant stated the following:

*"...Please be advised that I'm writing this complaint to you regarding the incident that occurred on the farm called Phalaphala farm on about the 6<sup>th</sup> February 2020. (sic)*

*Where they caught perpetrator in Namibia but the incident was it reported at the nearest South African police. (sic)*

*But my complaint about taxpayers' money was it used to bring those perpetrators into South Africa? (sic)*

*If yes, are we allowed to do so?*

*If no, was any member of the public involved in bringing those thugs back in South Africa? (sic)*

*How was the process of bringing them in our country conducted without state money involved?*

*How much each citizen or company must keep cash in the premises? (sic)*

*Was the money reported or declared to South African Revenue Service before or after the incident took place?*

*Can we separate crime that occurs at a private land from any other place inside South Africa? Why I'm saying this the president said there was no need to report this to Saps at happened on the private property (sic)*

*Was there an auction before the incident or that financial year? (sic)*

*Was the department of home affairs aware of the people who were carrying large sum of money I mean the foreigners who came for auction or hunting?*

*What are the procedures to follow for animal hunting did they have SA licence or any other relevant documents for that particular activities? (sic)*

*Did SARS allow them to carry cash I mean unchanged currency to buy in South Africa? What are the rules of law in that regard to have transaction with foreign currency? (sic)*

*I am asking all these questions in order to establish money laundering on this complaint.*

*After the incident where was the money exchanged in which bank did allow alleged sum of dollars? Did the bank report this to the relevant authorities? Bribery did it took place to whom and why? In order to prove there was no money laundering (sic)*

*Did this money pay vat or any other relevant tax we have in South Africa? (sic)*

*I will gladly if the minister of police or the commissioner did authorise the extradition of the perpetrators on what grounds if the crime was not reported? (sic)*

*Was the minister of International Relations and cooperation and Justice Minister were they involved in communication with Namibian authorities in order to get alleged criminals?*

*I also believe that money (bill note) belong to the state who or which department should have picked up this transaction or may I say government was supposed to involve in this to protect it currency or integrity? (sic)*

*Financial Intelligence Centre why did they not investigate where people were buy expensive items? (sic)*

*Dealership were they not suppose to alert these activities in order to prevent money that was stolen to buy? (sic)*

*President as a first citizen was he suppose to let this matter go without reporting or do follow up?*

*Was he the president aware of the alleged bribery? (sic)*

*What role should the following departments played but not in this matter?  
(sic)*

*President of the republic*

*Presidency office*

*Head of protection*

*Police minister*

*Police Commissioner*

*South African revenue service*

*Department of home of affairs*

*International relations and cooperation department..." (sic)*

- 2.7. These complaints were quoted verbatim, with spelling and grammatical errors, to ensure that the issues as expressed by Complainants are captured as is, for the purpose of the investigation.
- 2.8. It is important to mention that all the complaints were based on the affidavit of Mr Arthur Fraser (Mr Fraser), the former Director General of the State Security Agency (SSA), which was already in the public domain and circulating around all media platforms, indicating that Mr Fraser had laid criminal charges against the President at the Rosebank Police Station in Gauteng. The complaints recorded that Mr Fraser's allegations were said to be supported by video footage, photographs, bank accounts and names of various individuals referred to in the statement that he filed at the Rosebank Police Station.
- 2.9. The Public Protector has consolidated all four (4) complaints received into one File Ref Number 7/2-005084/22, to avoid duplication of investigations as the facts arise from the same incident and are to a large extent *similar*. The complainants were all notified accordingly.

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

#### 3.1 General

3.1.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution of the Republic of South Africa, 1996 (the Constitution) to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.1.2 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”.*

3.1.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation including *inter alia* the Public Protector Act and Executive Members’ Ethics Act, 1998 (EMEA).

3.1.4 Section 4(1)(a) of the EMEA, provides *inter alia* that, the Public Protector *“...must investigate in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister...”*

3.1.5 This complaint was lodged by the Members of the National Assembly in terms of EMEA as well as by ordinary members of the public, in terms of the

Public Protector Act<sup>3</sup> against the President, who is a member of Cabinet and therefore the complaint fell within the purview and jurisdiction of matters that should be investigated by the Public Protector. SAPS is an organ of state and therefore the Public Protector has jurisdiction in terms section 6(4)(a)(i) of the Public Protector Act.

## 3.2 Time limitations

3.2.1 Where an incident or matter reported to the Public Protector occurred more than two years prior to the reporting of the matter to the Public Protector, he/she is expected to exercise his/her discretion in terms of section 6(9) of the Public Protector Act to entertain the complaint based on special circumstances as envisaged in Rule 10(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018 as amended.<sup>4</sup> (Public Protector Rules). Section 6(9) of the Public Protector Act states that:

*“Except where the Public Protector in special circumstances, within his or her discretion, so permits, a complaint or matter referred to the Public Protector shall not be entertained unless it is reported to the Public Protector within two years from the occurrence of the incident or matter concerned.”*

3.2.2 In this regard, the President contended that the lodgement of this complaint outside the two year statutory period was not explained to justify entertaining this case.

3.2.3 When the Public Protector received the complaint on 03 June 2022, she noted that the time limitations imposed by section 6(9) of the Public Protector

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3 In a matter of *Public Protector and Others v President of the Republic of South Africa and Others* [2021] ZACC [19] the court held at Paragraph 17 that: “A member of the public cannot be a complainant in relation to a complaint submitted in terms of section 4 of the Members Act. However, this does not mean that a member of the public can never complain about a breach of the code. Where this occurs, the Public Protector must investigate the complaint in accordance with the Public Protector Act and not in terms of section 3 of the Members Act”. See also section 4(3) of the EMEA.

4 Published under Government notice No 945, Government Gazette 41903 of 14 September 2018 and amended in Government Notice No 1047, Government Gazette 43758 dated 2 October 2020.

Act, might not be relevant to complaints received in terms of sections 3(1) and 4 of the EMEA, which states that he/she “*must investigate*” any alleged breach of the Executive Ethics Code (emphasis added).

3.2.4 Nevertheless, when the Public Protector commenced with the investigation, due consideration was given to the time period within which the complaint was received by the Public Protector, and whether or not there were special circumstances that would have permitted her to entertain the matter.

3.2.5 The exercise of a discretion referred to in terms of section 6(9) of the Public Protector Act to entertain this particular complaint was based on the following *special circumstances*<sup>5</sup> as envisaged in Rule 10(1) of the Public Protector Rules:

3.2.5.1 In the allegations letter of the Public Protector dated 07 June 2022, it was submitted at paragraph 10, amongst others, that there was supporting evidence or records furnished by Mr Fraser, which made it practical to entertain this matter. *Ex post facto*, it has been established that the information was only obtained and verified by the Public Protector with Mr Fraser at a later stage, however, this was not the sole determining factor in establishing special circumstances:

3.2.5.2 The very serious nature of the allegations which reveal the possibility of unremedied injustice, transgressions and/or violations of a plethora of Laws related to South African Revenue Services (SARS), South African Reserve Bank (SARB), immigration, money laundering, bribery or corruption, defeating the ends of justice, kidnapping, abuse of state resources such as the Presidential Protection Services (PPS), including a violation of the

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5 In *Gordhan v Public Protector and Others* [2019] JOL 45246 (GP) and *Gordhan and Others v Public Protector and Others* (36099/2098) [2020] ZAGPPHC 777 (17 December 2020), the Supreme Court of Appeal (the SCA) and the High Court in Pretoria respectively, held that, it is only where special circumstances exist, that complaints that are older than two years can be entertained, and that, the particulars of the special circumstances must be succinctly set out.

Executive Ethics Code, arising from the alleged theft of foreign currency that took place at Phala Phala farm (the Housebreaking);

3.2.5.3 The public interest generated by this matter both in the country and internationally, as evidenced by various media reports;<sup>6</sup> and

3.2.5.4 The opportunity to address injustice, which may result if the matter is not investigated, were also taken into account.

#### 4. ISSUES IDENTIFIED FOR INVESTIGATION

4.1 Identifying and defining the issues of a complaint is an important step in the complaint handling process. A complaint may have more than one action or decision complained about and therefore more than one issue. It is also possible for a complaint to consist of several issues or focus areas even though there is only one action or decision involved. It is important not to rely solely on the issues as identified by the Complainant. Upon reading the complaint, it may be clear that there are other issues that are borne out by the facts.

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6 <https://www.iol.co.za/pretoria-news/news/cyril-ramaphosa-denies-involvement-in-crime-after-r60m-stolen-from-his-phala-phala-farm> accessed on 06 May 2022; <https://www.sabcnews.com/sabcnews/alleged-theft-at-president-ramaphosas-farm-under-investigation-deputy-minister> accessed on 06 May 2022; <https://www.citizen.co.za/news/south-africa/politics/3113330/ive-never-stolen-money-from-our-taxpayers-ramaphosa-on-theft-of-game-farm-millions> accessed on 06 May 2022; <https://www.jacarandafm.com/news/news/opposition-parties-demand-ramaphosa-come-clean-phala-phala-millions> accessed on 06 May 2022; <https://www.ghanamma.com/za/2022/06/05/watch-video-of-thieves-stealing-millions-at-president-cyril-ramaphosas-farm-phalaphala> accessed on 06 May 2022; <https://www.dailysun.co.za/dailysun/news/how-r62m-was-stolen-from-ramaphosas-farm> accessed on 06 May 2022; <https://www.heraldlive.co.za/news/2022-06-06-watch-inside-ramaphosas-rare-game-farm-and-previous-controversy> accessed on 06 May 2022; <https://www.dailymaverick.co.za/article/2022-06-04-ramaphosas-stolen-millions-the-namibian-connection> accessed on 06 May 2022 and <https://www.enca.com/news/ramaphosa-farm-theft-watch-udm-calls-probe-stolen-millions> and many more media reports accessed on 06 May 2022.



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- 4.2 The issues of the complaint should be translated and aligned into the mandate areas of the Public Protector and be framed in such a way that allows them to be tested, that is, proved or disproved. They should not simply be a statement of fact. Issues that have been identified may have different levels of significance relating to whether and in what way they might be investigated, the level of significance potentially being different for the Complainant and the public interest. Clear identification of issues assists with prioritisation and decisions regarding investigative work.
- 4.3 Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:
- 4.3.1 Whether the President of the Republic of South Africa, Mr MC Ramaphosa acted in a manner that is inconsistent with his office in dealing with the alleged housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province and thus abused state resources, exposed himself to any situation involving a risk of a conflict between his constitutional duties and obligations and his private interests arising from or affected by his alleged paid work in violation of clause 2.1(b) and (d) and clause 2.3(d), (f) and (g) of the Executive Ethics Code;
- 4.3.2 Whether the President failed to report the alleged crime that took place at Phala Phala farm on or about 09 February 2020 and abused his power in utilising state resources by causing the Presidential Protection Services to be deployed to Phala Phala farm and to investigate the Housebreaking, thus violating clause 2.3(d) and (f) of the Executive Ethics Code; and whether such conduct constitutes improper conduct as contemplated in section 182(1) of the Constitution and abuse of power as contemplated in section 6(4)(a)(ii) of the Public Protector Act; and
- 4.3.3 Whether the members of the South African Police Service attached to PPS acted improperly by investigating the Housebreaking and, if so, whether such conduct constitutes improper conduct as contemplated in section

182(1) of the Constitution and maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act.

4.4 The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, the Public Protector is now in a position to make findings and take appropriate remedial action.

4.5 Evidence indicating improper conduct and maladministration by Gen. Rhode and Sgt Rekhoto was found, and the Public Protector has made adverse findings against them and is taking appropriate remedial action in order to address the improper conduct and maladministration.

## **5. THE INVESTIGATION**

### **5.1 Methodology**

5.1.1 The investigation was conducted in terms of section 182(1) of the Constitution, which confers on the Public Protector the powers to investigate, report and take appropriate remedial action in response to alleged improper or prejudicial conduct in state affairs. Section 182(2) of the Constitution allows for these powers to be supplemented by national legislation. While the primary source of the Public Protector's powers is the Constitution, the Public Protector Act and the EMEA supplement the powers of the Public Protector, as contemplated by section 182(2) of the Constitution.

5.1.2 The investigation was principally undertaken in terms of the EMEA because of Members of the National Assembly lodged their complaints under the EMEA, which does not allow the Public Protector discretion to decide whether or not to investigate a matter falling under her jurisdiction. The alleged improper conduct of the President involving a potential violation of the Executive Ethics Code, was therefore investigated under section 3(1) of the EMEA.

- 5.1.3 Although Mr Ndlovu and Mr Muller’s complaints relate to the same allegations, their complaints are not covered by section 4(1) of the EMEA.<sup>7</sup> Section 4(3) of the EMEA provides for the Public Protector to indicate that nothing in this section may prevent the Public Protector from investigating any complaint by a member of the public in accordance with the Public Protector Act. Messrs Ndlovu and Muller’s complaints were accordingly dealt with in terms of the Public Protector Act.
- 5.1.4 Considering that all these complaints relate to the same facts and persons, the Public Protector resolved to consolidate them into one investigation under section 182 of the Constitution, which confers on the Public Protector the power to investigate any alleged or suspected improper or prejudicial conduct, to report on that conduct and to take appropriate remedial action; and in terms of section 3(1) of the EMEA which places a peremptory duty on the Public Protector to investigate allegations of unethical conduct or violations of the Executive Ethics Code by the President and other Members of the Executive.
- 5.1.5 In its response to the Public Protector’s Notice in terms of section 7(9) of the Public Protector Act (the Notice), the Complainant, Mr Zungula advised that the “ATM expresses regret that their advice has not been heeded, wherein ATM advocated for the separation of the complaints into EMEA from those in terms of the Public Protector Act”. He noted that-

*“The result of lumping everything into one report has resulted into this prolonged, unreasonable and unlawful delay in violation of section 3(2) of EMEA, in which it is peremptory for the Public Protector to issue the report within 30 days. ATM implored the Public Protector, not to delay the process*

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<sup>7</sup> Section 4(1) of EMEA states that the Public Protector must investigate, in accordance with section 3, an alleged breach of the code of ethics on receipt of a complaint by—

- (a) the President, a member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister: or
- (b) the Premier or a member of the provincial legislature of a province, if the complaint is against an MEC of the province.

*by conflating issues of EMEA with the rest of the issues, particularly because all other issues, bar maladministration, can be competently dealt with by other institutions with requisite mandates.”*

- 5.1.6 The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation with due regard to the circumstances of each case. The Supreme Court of Appeal reiterated that the Public Protector is given broad discretionary powers as to which complaints to accept, which allegations of maladministration to investigate, *“how to investigate them and what remedial action to order – as close as one can get to a free hand to fulfil the mandate of the Constitution”*.<sup>8</sup>
- 5.1.7 The Public Protector considered the objections by Mr Zungula, during the course of the investigation, as well as in response to the Notice. The EMEA does not explicitly prescribe the procedure to be followed during an investigation. However, it mandates the Public Protector to follow processes outlined in the Public Protector Act and exercise investigative powers afforded to her by that Act.<sup>9</sup> It does not entitle a Complainant to decide which process would have been the best use of the Public Protector’s discretion. That is a decision for the Public Protector to make.<sup>10</sup>
- 5.1.8 The investigation process was therefore inevitably going to be informed by the provisions of sections 6 and 7 of the Public Protector Act, which on its own carries no inherent risk of delays. The Public Protector is on record in presentations to Cabinet, amongst others, on the challenges she faced in trying to comply with the statutory requirement to finalise and report on

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<sup>8</sup> *Minister of Home Affairs and Another v Public Protector of the Republic of South Africa* (308/2017) [2018] ZASCA 15; [2018] 2 All SA 311 (SCA); 2018 (3) SA 380 (SCA) (15 March 2018) at paragraph 37.

<sup>9</sup> *Public Protector and Others v President of the Republic of South Africa and Others* (CCT 62/20) [2021] ZACC 19; 2021 (9) BCLR 929 (CC); 2021 (6) SA 37 (CC) (1 July 2021) at paragraph 12.

<sup>10</sup> *Minister of Home Affairs and Another v Public Protector of the Republic of South Africa* (308/2017) [2018] ZASCA 15; [2018] 2 All SA 311 (SCA); 2018 (3) SA 380 (SCA) (15 March 2018) at paragraph 42.

EMEA investigations within a period of 30 days, due to factors such as internal capacity constraints and the scope of investigations of this nature.

- 5.1.9 This challenge is, however, mitigated by section 3(3) of EMEA which allows the Public Protector to report to the President or the Premier in circumstances where an investigation will not be completed in 30 days. Section 3(3) of EMEA provides as follows:

*“If the Public Protector reports at the end of the period referred to in subsection (2) that the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed.”*

- 5.1.10 The substance of what the Public Protector must report at the interim stage is a matter of interpretation, which is within the exclusive prerogative of the Public Protector, or the Acting Public Protector, as is the case presently. Mr Zungula insisted on the release of an interim report on the merits of the complaint before the investigation was completed. This demand is contrary to the legal standard that the Public Protector must comply with, as it has been interpreted and applied by all the Public Protectors since the promulgation of the EMEA.

## 5.2 Approach to the investigation

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

- 5.2.2 The investigation was approached using an enquiry process that seeks to determine:

- (a) What happened?
- (b) What should have happened?

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- (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to a violation of the Executive Ethics Code and/or does that deviation amount to maladministration or other improper conduct?
- (d) In the event of a violation of the Executive Ethics Code and/or maladministration and improper conduct, what remedial action should be taken?
- 5.2.3 The question regarding what happened is resolved through a factual enquiry carried out by gathering sufficient, reliable and admissible information and evidence, obtained from the parties and independently sourced by the Public Protector, to enable the issue(s) to be adequately addressed by proving or disproving matters relevant to the issue(s) being investigated. In this particular case, the factual enquiry principally focused on whether or not the President violated the Executive Ethics Code as a result of the Housebreaking and/or acted in a way that is inconsistent with his office in the manner that he dealt with the alleged crime.
- 5.2.4 Another part of the factual inquiry principally focused on whether members of the SAPS failed to comply with and uphold its statutory and constitutional duties in relation to the events subsequent to the Housebreaking.
- 5.2.5 The enquiry regarding what should have happened focuses on the law or rules that regulate the standard that should have been met by the President to comply with the Executive Ethics Code, and by the members of the SAPS to act in accordance with the standard expected of them in the proper performance of their constitutional and statutory functions.
- 5.2.6 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of the improper conduct.

5.2.7 In the matter of the *Public Protector and Others v President of the Republic of South Africa and Others*<sup>11</sup> Jafta J offered advice, quoting the Supreme Court of Appeal in the *Public Protector v Mail and Guardian Ltd and Others*<sup>12</sup> by emphasising that investigations by the Public Protector should be conducted with an "open and enquiring mind" as follows:

*"I think that it is necessary to say something about what I mean by an open and enquiring mind. That state of mind is one that is open to all possibilities and reflects upon whether the truth has been told. It is not one that is unduly suspicious but it is also not one that is unduly believing. It asks whether the pieces that have been presented fit into place... How it progresses will vary with the exigencies of the particular case. One question might lead to another, and that question to yet another, and so it might go on. But whatever the state of mind that is finally reached, it must always start out as one that is open and enquiring."*

5.2.8 The Constitutional Court<sup>13</sup> also noted that the judgement in the *Mail & Guardian* case makes plain that the duty of the Public Protector is not only to discover the truth but also to inspire public confidence that in each investigation, the truth has been discovered. Where the evidence is inconclusive or incongruent, the Public Protector "is obliged to carefully evaluate it to determine the truth". To this extent, the Court emphasised that the Public Protector is required to evaluate the credibility, authenticity and reliability of the testimony and evidence before him or her to determine its testimonial value (in other words as evidence of the truth of what it asserts). The rationale for the exclusion of evidence and information constituting hearsay is that it is often unreliable and, as a result, has little probative value.

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11 (CCT 62/20) [2021] ZACC 19; 2021 (9) BCLR 929 (CC); 2021 (6) SA 37 (CC) (1 July 2021) at paragraph 140.

12 The *Public Protector v Mail & Guardian Ltd and Others* (2011 (4) SA 420 (SCA)) [2011] ZASCA 108; 422/10 (1 June 2011) at paragraph 22.

13 *Public Protector and Others v President of the Republic of South Africa and Others* (CCT 62/20) [2021] ZACC 19; 2021 (9) BCLR 929 (CC); 2021 (6) SA 37 (CC) (1 July 2021) at paragraph 77.

- 5.2.9 In terms of section 181(2) of the Constitution, the Public Protector exercises his or her powers and functions subject to the Constitution and the law. The truth is therefore established by facts that are placed before the Public Protector through reliable, lawful and admissible evidence and information. This standard calls for the investigation to be thorough and to leave no stone unturned; to be fair to the parties including the respondents; and to be conducted within the bounds of the Constitution and the law. Further, this calls on the Public Protector to see to it that the investigation is not only carried out independently; impartially and without fear, favour or prejudice but also that the Public Protector is *seen* to be carrying it out independently; impartially and without fear, favour or prejudice.
- 5.2.10 The scope of the investigation was determined by the specific alleged breach(es) of the Code contained in the original complaint and subsequent complaints. The Public Protector heeded the Court's advice that she cannot make sweeping statements pertaining to the purported breaches of clauses of the Executive Ethics Code.<sup>14</sup> She must use her report to specify, analyse, and reflect, independently and impartially, on whether or not there are exact transgressions of specific clauses of the Executive Ethics Code.
- 5.2.11 The Public Protector recognises that when the details of the Phala Phala farm episode came to light in 2022, multiple oversight mechanisms sprang into action, sometimes working collaboratively, sometimes in parallel, which resulted in several institutions and oversight bodies simultaneously being seized with the investigation of the same matter in accordance with their own functions and mandates, including –
- (a) SARS;
  - (b) SARB;
  - (c) DPCI;
  - (d) FIC;

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14 Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC [19] at paragraph 77.



- (e) IPID; and
- (f) an independent panel appointed by Parliament in terms of section 89 Of the constitution.

5.2.12 These multiple layers of inquiry and oversight of the South African executive branch that have helped raise public awareness of possible wrongdoing and serve as a measure of accountability over powerful public officials. While incomplete and at times tenuous, “*these institutional checks and balances provide insight into South Africa’s democratic resiliency.*”<sup>15</sup> The web of official and unofficial oversight mechanisms in South Africa highlights that public accountability does not rest with a single entity or individual.

5.2.13 While explaining the limitation of the powers of the Public Protector in respect of investigating crime, the Constitutional Court stated that “*the fact that she does not bear the primary responsibility to investigate criminal offences or is not expressly empowered to do so does not mean that she may not look into and subsequently refer to the relevant authority, any offence that is intertwined with allegations of unethical conduct that she is otherwise entitled to investigate.*”<sup>16</sup>

5.2.14 The determination in respect of criminal offences, where the evidence before Public Protector reveals commission of a crime, falls squarely within her section 6(4)(c)(i) powers and as stated and it is for other public authorities to resolve or determine within their mandate(s).

### 5.3 The Investigation Process

5.3.1 The approach to the investigation included a variety of methods such as an exchange of documentation between the Public Protector, the President, the

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<sup>15</sup> Lessons from South Africa for Holding Leaders Accountable by Paul Nantulya Africa Center for strategic studies, April 18, 2023, accessible on <https://africacenter.org/spotlight/lessons-south-africa-holding-leaders-accountable>.

<sup>16</sup> Public Protector and Others v President of the Republic of South Africa and Others (CCT 62/20) [2021] ZACC 19; 2021 (9) BCLR 929 (CC); 2021 (6) SA 37 (CC) (1 July 2021) at paragraph 196 to 197.

Speaker of the National Assembly, Mr Fraser, various state institutions, managers of Phala Phala farm, as well as other individual witnesses, who are in possession of information which has a bearing on the investigation of this matter.

## 5.4 Key sources of information

### 5.4.1 Documents and e-mail correspondence

- 5.4.1.1 A copy of a written complaint from Mr Zungula, dated 02 June 2022;
- 5.4.1.2 A copy of an affidavit deposed by Mr Fraser at the Rosebank police station in the Gauteng province on 01 June 2022;
- 5.4.1.3 A copy of the substitute written complaint from Mr Zungula, dated 03 June 2022;
- 5.4.1.4 A written complaint from Mr Muller, dated 06 June 2022;
- 5.4.1.5 The allegations letter from the Public Protector to the President, dated 07 June 2022;
- 5.4.1.6 A copy of a written complaint from Mr Ndlovu, the Complainant, dated 08 June 2022;
- 5.4.1.7 A copy of the correspondence from Harris Nupen Molebatsi Incorporated Attorneys (HNM), dated 17 June 2022, acknowledging receipt of the allegations letter dated 07 June 2022 on behalf of the President;
- 5.4.1.8 A copy of a written complaint from Mr Steenhuisen, dated 20 June 2022;
- 5.4.1.9 Correspondence from the Public Protector, addressed to Gen. Masemola, dated 29 June 2022;

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- 5.4.1.10 Correspondence from the Public Protector, addressed to the Speaker, dated 01 July 2022;
  - 5.4.1.11 A copy of an affidavit of Gen. Rhooode, dated 11 July 2022;
  - 5.4.1.12 A copy of a response from the Secretary of Parliament, Mr Xolile George, dated 11 July 2022;
  - 5.4.1.13 A copy of an affidavit from Gen. Masemola to the Public Protector, dated 12 July 2022;
  - 5.4.1.14 A copy of a response letter received from HNM on behalf of the President, dated 13 July 2022;
  - 5.4.1.15 A further request from Harris Nupen Molebatsi Incorporated for an extension to reply by 18 August 2022, dated 13 July 2022;
  - 5.4.1.16 A copy of a letter from HNM, dated 15 July 2022;
  - 5.4.1.17 Correspondence from the Public Protector, addressed to the President, dated 18 July 2022;
  - 5.4.1.18 A copy of the letter from HNM seeking a response to their letter of 15 July 2022, dated 18 July 2022;
  - 5.4.1.19 Correspondence from the Public Protector to HNM refusing to grant a further extension, dated 18 July 2022;
  - 5.4.1.20 Correspondence from the Public Protector addressed to Mr Steenhuisen, dated 20 July 2022;
  - 5.4.1.21 Correspondence from the Public Protector to the President, dated 21 July 2022;

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- 5.4.1.22 A copy of the President's response to the allegations letter, dated 22 July 2022;
- 5.4.1.23 A copy of a submission from the Executive Director of the Independent Police Investigative Directorate (IPID), Ms JD Ntlatseng to Public Protector, dated 29 July 2022;
- 5.4.1.24 A copy of an affidavit deposed by the IPID investigator, Mr J Baloyi, to the Public Protector, dated 24 August 2022;
- 5.4.1.25 Correspondence from the Public Protector to the Secretary to Cabinet, Ms Phindile Baleni, dated 31 August 2022;
- 5.4.1.26 Correspondence to Gen. Masemola from the Public Protector, dated 31 August 2022;
- 5.4.1.27 Correspondence from the Public Protector to Mr Edward Kieswetter, the Commissioner of SARS, dated 31 August 2022;
- 5.4.1.28 Correspondence from the Public Protector to HNM, dated 26 August 2022;
- 5.4.1.29 Correspondence from the Public Protector addressed to Mr Lesetja Kganyago, South African Reserve Bank Governor, dated 31 August 2022;
- 5.4.1.30 Correspondence(s) from the Public Protector addressed to the Complainants, dated 31 August 2022;
- 5.4.1.31 A copy of a correspondence received from Mr Lesetja Kganyago, South African Reserve Bank Governor, dated 01 September 2022;
- 5.4.1.32 Correspondence from the Public Protector addressed to Mr Bejani Chauke, the former Special Adviser to the President, dated 02 September 2022;

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- 5.4.1.33 Correspondence from the Public Protector addressed to Mr Hendrik von Wielligh, Phala Phala Wildlife Manager , dated 02 September 2022;
  - 5.4.1.34 Correspondence from the Public Protector addressed Mr Ndlovu, Phala Phala Wildlife Manager, dated 02 September 2022;
  - 5.4.1.35 A copy of a correspondence from Mr Edward Kieswetter, the Commissioner of SARS, to the Public Protector, dated 05 September 2022;
  - 5.4.1.36 A copy of an affidavit of Col. SK Mathlo of PPS, dated 05 September 2022;
  - 5.4.1.37 A copy of an affidavit of Lt Col. TD Letswalo of PPS, dated 05 September 2022;
  - 5.4.1.38 A copy of a Memorandum received by the Public Protector from Political Opposition Parties and Civil Society Organisations on 09 September 2022;
  - 5.4.1.39 A copy of supplementary affidavit of Gen. Rhooode, dated 11 September 2022;
  - 5.4.1.40 A copy of an affidavit of Sgt Rekhoto of PPS, dated 12 September 2022;
  - 5.4.1.41 Correspondence from the Public Protector to the Master of the High Court in Pretoria, dated 12 September 2022;
  - 5.4.1.42 Correspondence from the Public Protector addressed to Adv Martin Mafojane, Chief Master of the High Court, dated 12 September 2022;
  - 5.4.1.43 Correspondence from the Public Protector to Mr L T Makhode, Director General Department of Home Affairs, dated 12 September 2022;
  - 5.4.1.44 Correspondence from the Public Protector to Mr Arthur Joseph Peter Fraser, dated 14 September 2022;

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- 5.4.1.45 A copy of a response letter received by the Public Protector from Ms Phindile Baleni, Director-General in the Presidency and the Secretary of the Cabinet, dated 14 September 2022;
- 5.4.1.46 A copy of a memoranda/submission received by the Public Protector from the SAPS on 14 September 2022;
- 5.4.1.47 A copy of an affidavit from Mr Bejani Chauke, former Special Adviser to the President, dated 14 September 2022;
- 5.4.1.48 A copy of an email sent by the Public Protector to Mr Jaco Erasmus, Operations Manager of Bushveld Security Group, dated 19 September 2022;
- 5.4.1.49 A copy of a response received by the Public Protector from Adv. Martin M Mafojane, the Chief Master of the High Court, Pretoria accompanied by an affidavit, dated 15 September 2022;
- 5.4.1.50 A copy of a written response received by the Public Protector from the President's Legal Representatives, dated 22 September 2022;
- 5.4.1.51 A copy of a response received by the Public Protector from Mr TL Makhode, Director General of Department of Home Affairs, dated 26 September 2022;
- 5.4.1.52 A copy of further a submission received by the Public Protector from Mr Fraser, accompanied by a flash disk containing video footage, google maps, photos and other documentary evidence, dated 26 September 2022;
- 5.4.1.53 Correspondence from the Public Protector to Mr Edward Kieswetter, the Commissioner of SARS, dated 29 September 2022;
- 5.4.1.54 Correspondence from the Public Protector to Ms JD Ntlatseng, the Executive Director of IPID, dated 29 September 2022;

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- 5.4.1.55 Correspondence sent by the Public Protector to Gen. Khehla Sitole, the former National Commissioner of the SAPS, dated 29 September 2022;
  - 5.4.1.56 Correspondence sent by the Public Protector to Gen. Godfrey Lebeya, the National Head of DPCI, dated 29 September 2022;
  - 5.4.1.57 A copy of a response received by the Public Protector from Mr Edward Kieswette, the Commissioner of SARS, dated 04 October 2022;
  - 5.4.1.58 A copy of an affidavit received by the Public Protector from Mr Ndlovu dated 04 October 2022;
  - 5.4.1.59 A copy of an affidavit of Lt. General PA Jacobs of SAPS' Crime Intelligence Division, dated 05 October 2022;
  - 5.4.1.60 Correspondence by the Public Protector to Advocate D Mashabane, the Director General of the Department of Justice and Constitutional Development (DJCD), dated 06 October 2022;
  - 5.4.1.61 Correspondence by the Public Protector to the Financial Intelligence Centre, dated 06 October 2022;
  - 5.4.1.62 Subpoena from the Public Protector to the South African Reserve Bank (SARB), dated 07 October 2022;
  - 5.4.1.63 A copy of a response letter received by the Public Protector from Gen. Godfrey Lebeya, the National Head of DPCI, dated 10 October 2022;
  - 5.4.1.64 A copy of a response letter received by the Public Protector from Financial Intelligence Centre, dated 11 November 2022;
  - 5.4.1.65 A copy of an affidavit of Lt. Colonel JB Mogola, PPS' Fleet Manager to the Public Protector, received from Gen. Masemola on 13 October 2022;

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- 5.4.1.66 A copy of the Deployment Sheet (SAP 15) for PPS members deployed at Phala Phala farm, dated 10 February 2020, received from Gen. Masemola on 13 October 2022;
- 5.4.1.67 Correspondence by the Public Protector to Mr Zane Dangor (Mr Dangor), the Director General of the Department of International Relations and Cooperation (DIRCO), dated 17 October 2022;
- 5.4.1.68 A copy of a response letter from the SARB's General Counsel CJ van der Walt, dated 17 October 2022;
- 5.4.1.69 A copy of an affidavit of Col. Jorine Edwards, dated 17 October 2022;
- 5.4.1.70 A copy of a trip authority for Sgt Rekhoto's official trip to Cape Town on 07 March 2020, and returned to Pretoria received by the Public Protector on 20 March 2020;
- 5.4.1.71 A copy of the preliminary investigation report and/or notes compiled by Sgt Rekhoto, received by the Public Protector on 26 October 2022;
- 5.4.1.72 A copy of a supplementary affidavit of Mr Ndlovu, dated 24 October 2022;
- 5.4.1.73 Correspondence sent by the Public Protector to the Companies and Intellectual Property Commission (CIPC), dated 31 October 2022;
- 5.4.1.74 A copy of a supplementary affidavit of Mr Bejani Chauke, dated 04 November 2022;
- 5.4.1.75 A copy of a response received by the Public Protector from Mrs Lucinda Steenkamp, the Senior Legal Advisor, Corporate Legal, CIPC Deputy Information Officer, dated 07 November 2022;
- 5.4.1.76 A copy of a response from Gen. K Sitole, the former National Commissioner of the SAPS, to the Public Protector, dated 08 November 2022;



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- 5.4.1.77 A copy of an affidavit of Col. Mohamed Imraan Hyder, dated 22 November 2022;
- 5.4.1.78 A copy of the President's response letter to further questions, dated 23 February 2023;
- 5.4.1.79 A copy of the President's further response letter to further questions, dated 25 April 2023;
- 5.4.1.80 A copy of the SAPS' further response, dated 26 April 2023;
- 5.4.1.81 Correspondence by the Public Protector to the SAPS, dated 07 May 2023;
- 5.4.1.82 Correspondence by the Public Protector to the DPCI, dated 07 May 2023;
- 5.4.1.83 A copy of a response letter from Gen. Masemola, the National Commissioner of SAPS, dated 12 May 2023;
- 5.4.1.84 A copy of a response letter from the Gen. Godfrey Lebeya, the National Head of DPCI, dated 13 May 2023; and
- 5.4.1.85 A copy of an affidavit of Mr Tasliem Marlie, Car Sales Manager for Volkswagen Barons Culemborg, dated 13 July 2022, received by email from Lt. Colonel Ludi Rolf Schnell of DPCI on 23 June 2023.

#### **Inspections of registers conducted**

- 5.4.1.86 An inspection of the SAPS' Security Risk Assessment Report for Phala Phala farm was conducted by the Investigation Team in the office of Gen. Masemola on 27 October 2022; and

5.4.1.87 An inspection of the Register of Financial Interests of the President for the period between 01 April 2019 to 31 March 2020 was conducted by the Investigation Team at the Presidency on 07 October 2022.

#### **Meetings and interviews held**

5.4.1.88 A virtual meeting with the President's Legal Representatives and the Investigation Team was held on 14 July 2022;

5.4.1.89 A physical meeting was held at Phala Phala farm by the Investigation Team to conduct an interview with a General Manager, Mr von Wielligh, on 06 September 2022;

5.4.1.90 An interview with Mr Fraser was held with the Investigation Team on 8 September 2022;

5.4.1.91 An interview with Mr Bejani Chauke was held with the Investigation Team on 15 September 2022;

5.4.1.92 An interview with Lt Col Letswalo was held with the Investigation Team on 20 September 2022;

5.4.1.93 An interview with Mr Patrick Nice, the CCTV operator at Phala Phala, was held with the Investigation Team on 20 September 2022;

5.4.1.94 An interview with General Khehla John Sitole was held with the Investigation Team on 29 September 2022;

5.4.1.95 An interview with the IPID's investigation team, represented by Director Mr T Keefelakae and Deputy Director Mr J Baloyi, was held with the Investigation Team on 30 September 2022;

5.4.1.96 An interview with the officials from the office of Secretary to Cabinet was held with the Investigation Team on 07 October 2022;

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- 5.4.1.97 An interview with Sgt Rekhoto was held with the Investigation Team on 20 October 2022;
- 5.4.1.98 Postponed interview on record with Gen. Rhoode on 20 October 2022;
- 5.4.1.99 An interview with Col. Solomon Kamela Mathlo was held with the Investigation Team on 20 October 2022;
- 5.4.1.100 An interview with Lt. Col Thomas Letswalo was held with the Investigation Team on 20 October 2022;
- 5.4.1.101 An interview with General Wally Rhoode was held with the Investigation Team on 28 October 2022;
- 5.4.1.102 An interview with Gen. Masemola was held with the Investigation Team on 11 November 2022; and
- 5.4.1.103 A further interview with Gen Rhoode was held with the Investigation Team on 04 November 2022.

#### **Legislation and other prescripts**

- 5.4.1.104 The Constitution of the Republic of South Africa, 1996;
- 5.4.1.105 Public Protector Act, 1994;
- 5.4.1.106 The Executive Members Ethics Act, 1998;
- 5.4.1.107 The Tax Administration Act, 2011;
- 5.4.1.108 The Currency and Exchanges Act, 1933;
- 5.4.1.109 International Cooperation in Criminal Matters Act, 1996;

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- 5.4.1.110 The Exchange Control Regulations made in terms of section 9 of the CEA were promulgated by Government Notice R.1111 of 1 December 1961 and amended up to Government Notice No. R.445 in Government Gazette No. 35430 of 8 June 2012;
- 5.4.1.111 The Prevention and Combating of Corrupt Activities Act, 2004;
- 5.4.1.112 The Customs and Excise Act, 1964;
- 5.4.1.113 The Close Corporation Act, 1984;
- 5.4.1.114 The Presidential Handbook: November 2015;
- 5.4.1.115 The Policy on Risk Management System Protection Packages;
- 5.4.1.116 PPS Policy No. 3 of 2018;
- 5.4.1.117 The South African Police Service Act, 1995;
- 5.4.1.118 The SAPS Policies and National Instructions;
- 5.4.1.119 The National and Provincial Organisational Structure of the SAPS for 2020-2021 financial year;
- 5.4.1.120 SAPS Standing Order (General) 27 : Keeping of Diaries by Members of the Service;
- 5.4.1.121 The National Instruction 4 of 2011 of the SAPS: Vehicle Register;
- 5.4.1.122 The National Instruction 5 of 2005 of the SAPS: Official Journeys Abroad;
- 5.4.1.123 Trust Property Control Act, 1998;

5.4.1.124 Basic Conditions of Employment Act, 1997;

5.4.1.125 Companies Act, 2008;

5.4.1.126 Occupational Health and Safety Act, 1993;

5.4.1.127 Prevention of Organised Crime Act, 1998; and

5.4.1.128 General Law Amendment Act, 1955.

### **Case Law considered**

5.4.1.129 Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11;

5.4.1.130 Commissioner of the South African Revenue Service v Public Protector and Others [2020] 2 All SA 427 (GP);

5.4.1.131 Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Services and Others (88359/2019) [2021] ZAGPPHC 779; 2022 (2) SA 485 (GP); 84 SATC 153 (16 November 2021);

5.4.1.132 Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Service and Others [2023] ZACC;

5.4.1.133 Democratic Alliance v Public Protector; Council for the Advancement of the South African Constitution v Public Protector 2019 (7) BCLR 882 (GP);

5.4.1.134 Public Protector v Commissioner for the South African Revenue Service and Others 2022 (1) SA 340 (CC);

5.4.1.135 Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC [19];

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- 5.4.1.136 Speaker of the National Assembly v Public Protector and Others; Democratic Alliance v Public Protector and Others (CCT 257/21; CCT 259/21) [2022] ZACC 1; 2022 (3) SA 1 (CC); 2022 (6) BCLR 744 (CC) (4 February 2022);
- 5.4.1.137 Gordhan v Public Protector and Others [2019] JOL 45246 (GP) and Gordhan and Others v Public Protector and Others (36099/2098) [2020] ZAGPPHC 777 (17 December 2020);
- 5.4.1.138 Ellerines Holdings v CCMA and others [1999] JOL 5078 (LC);
- 5.4.1.139 City of Cape Town v Nkomo N.O. and Others (C 913/2014) [2015] ZALCCT 12 (18 June 2015);
- 5.4.1.140 Barloworld Logistics Africa (Pty) Ltd v Silvertron 481 CC and Others 48248/2010) [2013] ZAGPPHC 198 (15 July 2013);
- 5.4.1.141 Public Protector and Others v President of the Republic of South Africa and Others 2021 (6) SA 37 (CC) para 115; Madikizela v Public Protector and Others; Mabuyane v Public Protector and Others; Speaker: Winnie Madikizela Mandela Local Municipality and Others v Public Protector and Others (800/2021; 802/2021; 818/2021) [2023] ZAECBHC;
- 5.4.1.142 Mthimunye-Bakoro v Petroleum Oil and Gas Corporation of South Africa (SOC) Limited and Another (12476/2015) [2015] ZAWCHC 113; 2015 (6) SA 338 (WCC);
- 5.4.1.143 The Public Protector v Mail & Guardian Ltd (422/10) [2011] ZASCA 108 (1 JUNE 2011);
- 5.4.1.144 Minister of Home Affairs v The Public Protector (308/2017) [2018] ZASCA 15 (15 March 2018);

5.4.1.145 Minister of Police and Others v Fidelity Security Services (Pty) Limited 2023 (3) BCLR 270 (CC);

5.4.1.146 S v Pakane and Others (43/07) [2007] ZASCA 134; [2007] SCA 134 (RSA) 2008 (1) SACR 518 (SCA) (28 September 2007);

5.4.1.147 Gigaba v Minister of Police and Others (43469/2020) [2021] ZAGPPHC 55 and

5.4.1.148 Government Employees Medical Scheme and Others v The Public Protector of the Republic of South Africa and Others (1000/2019 and 31514/2018 and 33401/2018) [2020] ZASCA 111 (29 September 2020).

#### **Journals and/or other Articles consulted**

5.4.1.149 Managing Conflict of Interest in the Public Sector – Organisation for Economic Co-Operation and Development, ISBN 92-64-01822-0 – © OECD 2005;

5.4.1.150 King IV Report on Corporate Governance in South Africa 2016 and

5.4.1.151 Lessons from South Africa for Holding Leaders Accountable by Paul Nantulya Africa Center for strategic studies, April 18, 2023, accessible on <https://africacenter.org/spotlight/lessons-south-africa-holding-leaders-accountable>.

#### **Notices issued in terms of section 7(9) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules**

5.4.1.152 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to the President, dated 10 March 2023;

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- 5.4.1.153 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to Mr Zungula, dated 10 March 2023;
- 5.4.1.154 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to Mr Steenhuisen, dated 10 March 2023;
- 5.4.1.155 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to Mr Muller, dated 10 March 2023;
- 5.4.1.156 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to Mr Ndlovu, the Complainant, dated 10 March 2023;
- 5.4.1.157 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to Gen. Masemola, dated 10 March 2023;
- 5.4.1.158 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to Gen. K Sitole, dated 10 March 2023;
- 5.4.1.159 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to Gen. Rhooode, dated 10 March 2023;
- 5.4.1.160 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to the Minister of Police, Mr Bheki Cele, dated 10 March 2023;



5.4.1.161 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to Mr Bejani Chauke, dated 10 March 2023 and

5.4.1.162 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was issued to Sgt H Rekhoto, dated 10 March 2023.

**Responses to Notices issued in terms of section 7(9) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules**

5.4.1.163 A response to a Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from Mr Muller, dated 14 March 2023;

5.4.1.164 A response to a Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from Mr Zungula, dated 20 March 2023;

5.4.1.165 A response to a Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from Haffegee Roskam Savage Attorneys on behalf of Gen. Rhooode, dated 22 March 2023;

5.4.1.166 A response to a Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from Gen. Masemola on behalf of SAPS, dated 24 March 2023;

5.4.1.167 A response to a Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from President's Legal Representatives on behalf of the President and Mr Chauke, dated 30 March 2023;

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- 5.4.1.168 A response to a Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from Minde Schapiro & Smith Inc. on behalf of Mr Steenhuisen, dated 30 March 2023;
- 5.4.1.169 A response to a Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from Sgt Rekhoto, dated 04 April 2023;
- 5.4.1.170 A response to a Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received the Minister of Police, Mr B Cele, dated 09 May 2023 and
- 5.4.1.171 A response response to a Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from Gen. K. Sitole, dated 26 May 2023 and he indicated that he has read the provisional report and does not intend to make any further submissions.

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

- 6.1 **Whether the President of the Republic of South Africa, Mr MC Ramaphosa, acted in a manner that is inconsistent with his office in dealing with the alleged housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province and thus exposed himself to any situation involving a risk of a conflict between his constitutional duties and obligations and his private interests arising from or affected by his alleged paid work in violation of clause 2.1(b) and (d) and clause 2.3(d),(f) and (g) of the Executive Ethics Code**

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*Common Cause Issues*

- 6.1.1 The facts outlined immediately herein below are common cause amongst the parties:
- 6.1.1.1 On 09 February 2020 there was a housebreaking with the intent to steal and theft of cash in foreign currency at Phala Phala farm; and
- 6.1.1.2 The money in question was kept under the cushions of a couch in a room in the President's house situated on Phala Phala farm.

*Issues in Dispute*

- 6.1.2 The central issues for the Public Protector's determination are as follows:
- (a) Whether the President undertook other paid work outside of his duties as the President; and
- (b) Whether there was a conflict of interest on the part of the President in relation to his alleged involvement in the activities of Phala Phala farm.

*The Complainants' version*

- 6.1.3 The complaints referred to in paragraph 2 above succinctly set out the nature of complaints lodged by all four Complainants. For the sake of brevity, it is not necessary to repeat same. In summary, the Complainants alleged, based on an affidavit of Mr Fraser, that the President committed the following transgressions as a result of the Housebreaking:
- (a) Concealed the crime of housebreaking and theft of cash from his premises and failed to report it to the SAPS;
- (b) Concealed the cash at his premises and failed to report it to the SARS;

- (c) Breached Rules and/or Regulations governing the handling or keeping of foreign currency, which was allegedly used to buy animals from the President's farm;
- (d) Used state resources, which included SAPS officials such as the PPS located in SAPS' VIP Protection Unit, to investigate his private business matter in "no man's land" near Noordoewer on the Namibian/South African border in an attempt to track and bring back his money, without a registered case number;
- (e) Abused his position in respect of the incident;
- (f) Breached the Home Affairs procedures and/or immigration laws in bringing back or securing the extradition of the alleged perpetrators from Namibia for interrogation in South Africa, when there was no crime reported or registered;
- (g) Kidnapped the suspects and interrogated them in connection with the Housebreaking;
- (h) Paid a bribe to the suspected culprits in order to buy their silence for this crime;
- (i) Defeated the ends of justice in the process; and
- (j) Violated the Constitution, the law and the Executive Ethics Code.

*The affidavit of Mr Arthur Joseph Peter Fraser*

6.1.4 The complainants based their complaints on an affidavit deposed to by Mr Fraser on 01 June 2022 at the Rosebank police station in the Gauteng province. On 31 August 2022, the investigation team wrote to Mr Fraser and invited him to a meeting scheduled for 08 September 2022. At the said

- meeting, Mr Fraser confirmed the contents and the veracity of the same affidavit to the Investigation Team.
- 6.1.5 In his affidavit, Mr Fraser indicated that on or about 09 February 2020, trespassing and housebreaking occurred at the main house at Phala Phala farm, a wildlife farm situated in Bela-Bela, Limpopo, which is privately owned by the President. He submitted that during the incident, a large undisclosed sum of US dollars, concealed in the furniture in the main farmhouse, had been unlawfully removed from the President's premises by assailants.
- 6.1.6 According to Mr Fraser, the incident was not officially reported to the police to investigate. He indicated further that the President instructed Gen. Rhodee to immediately investigate the incident, to apprehend the suspects and to retrieve the stolen money. Mr Fraser further alleged that Gen. Rhodee subsequently acquired the services of a local farmer, with investigation experience and capabilities, to assist him with the investigation.
- 6.1.7 Mr Fraser alleged that Gen. Rhodee immediately and illegally constituted a team, consisting, *inter alia*, of former SAPS members and serving members of the SAPS' Crime Intelligence Unit, along with the local farmer, to investigate the matter at the instance of the President. According to Mr Fraser, he was advised that the team constituted by Gen. Rhodee collected video and photo evidence; interviewed the domestic worker concerned and some of the suspects; recovered some of the stolen money; and obtained documentary proof of how some of the stolen money had been spent by the alleged perpetrators.
- 6.1.8 In his affidavit, Mr Fraser alleged that he was also informed by a member of Gen. Rhodee's team of the following:
- 6.1.8.1 That one of the domestic workers employed at Phala Phala farm discovered an undisclosed sum of US dollars concealed in the furniture of the President's residence on the farm;

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- 6.1.8.2 That the domestic worker hails from an informal settlement in proximity to Phala Phala farm, known as Cyferskyl, which is predominantly occupied by Namibian citizens;
- 6.1.8.3 That upon discovering the undisclosed sum of US dollars, the domestic worker conspired with some of the community members of Cyferskyl Informal settlement, who facilitated the following persons resident in Cape Town, namely: Urrbanus Lomboleni Shaumbwako (Mr Shaumbwako), a Namibian citizen; Petrus Fikeipo Muhekeni, a Namibian citizen; Erkki Shikongo, a Namibian citizen; Imanuwela David, a South African citizen; and Petrus Afrikaner, a Namibian citizen, to break into the President's residence at Phala Phala to steal the US dollars at the President's property;
- 6.1.8.4 That the assailants unlawfully entered the perimeters of Phala Phala farm at approximately 22h17 on 09 February 2020 by cutting the wire perimeter fencing, after which they surreptitiously approached the President's residence. Attached to his affidavit as annexure AF1 and AF2 is a topographical image purportedly depicting the places where the fences were cut and where 'spoor' (prints) were found at Phala Phala farm;
- 6.1.8.5 That entry was gained through a window on the ground floor of the President's main residence on the farm. Attached to his affidavit, as annexure AF3, is an image purportedly depicting the window;
- 6.1.8.6 That the break-in to the President's residence at Phala Phala was captured by both external security cameras strategically situated outside the farmhouse and internal security cameras strategically situated inside the President's residence. Mr Fraser later furnished the Investigation Team with a flash disk marked as PPSA1, which contains the images that according to his affidavit, are marked as annexures AF1 to AF25. Included in the flash disk is a video footage marked as AF4, which is a security camera footage and images purportedly depicting the following:

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- (a) Two assailants outside the premises;
  - (b) Footage capturing the voices of the investigators viewing the footage of the incident;
  - (c) One of the assailants on the outside of the premises;
  - (d) Two of the assailants on the outside “*of the premises*” removing the window where entry was gained into the premises; and
  - (e) Some of the assailants inside the premises.
- 6.1.8.7 That the alleged perpetrators subsequently ransacked the President’s residence at Phala Phala by removing an undisclosed number of US dollars that was concealed in the furniture;
- 6.1.8.8 That the perpetrators thereafter immediately returned to Cape Town;
- 6.1.8.9 That although there was no certainty as to the precise amount of US dollars stolen from the President’s residence, the quantum was speculated to be between US\$ 4 million to US\$ 8 million;
- 6.1.8.10 That the staff members, including the domestic worker, were interrogated at the President’s residence at Phala Phala. Attached to his affidavit, as annexure AF5, is an image purportedly depicting a picture of a domestic worker taken by members of Gen. Rhoode’s investigation team on the day of the interview;
- 6.1.8.11 That the domestic worker was subsequently dismissed from her employment at Phala Phala, but was later reinstated following discussions between the President and the domestic worker’s father;
- 6.1.8.12 That upon reinstatement, the domestic worker was paid an amount of R150 000 (One Hundred and Fifty Thousand Rand) in cash in return for her

- undertaking not to divulge any information about what had transpired at Phala Phala;
- 6.1.8.13 That another suspect was interrogated whilst handcuffed at the President's residence. Attached to his affidavit, as annexure AF6, is an image purportedly depicting the suspect being interrogated while being handcuffed;
- 6.1.8.14 That the investigation team constituted by Gen. Rhooode traced some of the alleged perpetrators back to Cape Town, where they were apprehended under the ruse of an official police investigation and were interrogated. Attached to his affidavit, as annexures, were AF7, a Namibian Passport of Mr Shaumbwako, AF8, a South African Driving License of Mr Shaumbwako, AF9, a South African Identity Document of Mr Shaumbwako, AF10, a South African Identity Card of Mr Mukekeni, AF11, a Namibian Passport of Mr Shikongo, AF12, a South African Identity Card of Mr David, AF13, a South African Driving Licence of Mr David, and AF14 , a Namibian Identity Card of Mr Afrikaner;
- 6.1.8.15 That the stolen US dollars were exchanged for South African Rands at an informal foreign exchange service ordinarily run by persons of Chinese nationality in Cape Town. Attached to his affidavit, as annexure AF15, is a copy of a photograph of an informal foreign exchange service point, where the stolen US dollars were allegedly exchanged for South African Rands situated at Hout Street in Cape Town;
- 6.1.8.16 That the alleged suspects thereafter commenced spending the stolen money on various high-end purchases and cash deposits into bank accounts. Attached to his affidavit, as annexure AF16, is a copy of a handwritten note compiled by one of the investigators in the team constituted by Gen. Rhooode, which provides a scant breakdown of how some of the money was spent;
- 6.1.8.17 That on 14 February 2020, Mr Mukekeni had purchased a 2019 Ford Ranger 2.0TDCi Wildtrack 4x4 bakkie, which he insured through King Price Insurance. Attached to his affidavit, as annexure AF17(1) to AF17(3), are



- copies of photographic images, a vehicle registration license, and a confirmation of King Price insurance for Mr Mukekeni's 2019 Ford Ranger 2.0TDCi Wildtrack 4 x 4 bakkie, purchased on 14 February 2020;
- 6.1.8.18 That on 15 February 2020, Mr Shikongo transferred Three Hundred Thousand Rand (R300 000-00) from his Gold Cheque Account held at First National Bank to Barons-Culemborg Volkswagen dealership and a further Four Hundred and Fifteen Thousand Rand (R415 000-00), again to Barons-Culemborg Volkswagen dealership, on 16 February 2020. Attached to his affidavit as annexure AF18 and AF19 are copies of the transaction of R300 000-00 from Mr Shokongo's Gold Cheque Account, held at First National Bank, to Barons-Culemborg and R415 000-00 again to Barons-Culemborg. on 16 February 2020;
- 6.1.8.19 That a red Volkswagen GTI was subsequently registered in Mr Shaumbwako's name on 19 February 2020. Attached to his affidavit, as annexure AF20 and AF21, are copies of the registration documents of a red Volkswagen GTI registered in Mr Shaumbwako's name on 19 February 2020. Also attached, as annexure AF22(1) to AF22(3), are three further pictures of some of the suspects with new vehicles;
- 6.1.8.20 That another suspect was traced and found to have fled to Namibia and that the President sought the assistance of the President of Namibia, President Hage Geingob, in apprehending the suspect in Namibia;
- 6.1.8.21 That this resulted in Gen. Rhooode traveling to Namibia, utilising official government resources and without being legally processed through border control, where Gen. Rhooode interviewed the suspect and stolen monies were seized from him;
- 6.1.8.22 That a specified person had sent a message to an unknown person on or about 27 February 2020, advising that: *"I have information about those who stole in phala phala but scared for my safety"*. Attached to his affidavit, as annexure AF23, is a copy of the message. sent by a specified person to an

unknown person on or about 27 February 2020 advising that “*I have information about those who stole in phala phala but scared for my safety*”;

- 6.1.8.23 That a message was forwarded to Gen. Rhooode containing pictures of one of the suspects. Attached to his affidavit, as annexure AF24, is a copy of a screenshot of the text message forwarded to Gen. Rhooode containing pictures of one of the suspects;
- 6.1.8.24 That numerous screenshots of text messages between a certain woman, who seemed to know the alleged suspects and investigators, and unknown persons, detailing attempts to trace the suspects in relation to the theft at Phala Phala farm. These are attached to his affidavit as annexure AF25;
- 6.1.8.25 That after interrogating Mr Shaumbwako, Mr Mukekeni, Mr Shikongo, Mr David and Mr Afrikaner, Gen. Rhooode’s team confiscated a large sum of money and valuables from these suspects;
- 6.1.8.26 That Gen. Rhooode and his team, on the instruction of the President, paid Mr Shaumbwako, Mr Mukekeni, Mr Shikongo, Mr David, and Mr Afrikaner R150 000-00 each in cash to conceal the events that took place at Phala Phala farm on 09 February 2020;
- 6.1.8.27 That as the first citizen of the Republic of South Africa, the President has a duty to uphold and respect the rule of law, due process, constitutional values and most importantly, his oath of office. He submitted that the President took an oath to protect and uphold the Constitution and the laws of the Republic and that the same applies to Gen. Rhooode. Mr Fraser added that the mere fact that the President had a large undisclosed sum of foreign currency in the form of US dollars concealed in his furniture at his Phala Phala residence, is *prima facie* proof of money laundering in contravention of section 4 of the Prevention of Organised Crime Act No. 121 of 1998 (POCA). Mr Fraser further stated that it is prudent for the SAPS to establish the origins of this large sum of foreign currency. He also stated that the President’s conduct may also amount to a contravention of section 36 of the General Law

Amendment Act 62 of 1955 and contraventions of various fiscal, currency and exchange control and custom and excise laws and regulations;

6.1.8.28 That in the same way, Gen. Rhooode's conduct in assisting the President, Mr Shaumbwako, Mr Mukeneni, Mr Shikongo, Mr David and Mr Afrikaner, falls foul of section 5 of POCA;

6.1.8.29 That the alleged payment by the President, Gen. Rhooode and his team of R150 000 in cash, each to the domestic worker, Mr Shaumbwako, Mr Mukeneni, Mr Shikongo, Mr David and Mr Afrikaner, not to divulge any information in relation to the huge sum of US dollars taken from President's Phala Phala residence, where same was concealed, not only amounts to corruption in contravention of Prevention of Corrupt Activities Act 12 of 2004, but also intended to defeat and/or obstruct the course of justice; and

6.1.8.30 That the conduct of Gen. Rhooode and his team, acting at the instance of the President, having forcefully interrogated the alleged suspects, that their conduct amounts to kidnapping, in that they unlawfully and intentionally deprived the alleged suspects of their respective personal freedom of movement and constitutional rights.

*Further submission from Mr Fraser*

6.1.9 On 08 September 2022, the Investigation Team interviewed Mr Fraser to get clarity on some of the information contained in his affidavit. During the interview Mr Fraser was accompanied and legally assisted by Mr Eric Mabuza, Advocate Shaun Abrahams and Advocate Muzi Sikhakhane SC. This interview was followed by a further submission<sup>17</sup> dated 26 September 2022 by Mr Fraser, handed over to the Investigation Team. In this submission, Mr Fraser provided further information and stated amongst other things, that there is enough in the public domain that should direct the Public

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<sup>17</sup> This written submission was accompanied by a flash disk containing video footage, google maps, photos and other documentary evidence related to Phala Phala housebreaking and theft.

Protector's investigation about the conduct of the President and some of his Cabinet Ministers.

6.1.10 In this regard, Mr Fraser indicated that the Public Protector's Investigation Team should consider Minister Ronald Lamola's<sup>18</sup> (Minister Lamola) initial response to the revelation that the Namibian authorities had sought mutual legal assistance from the South African authorities. He added that on 25 June 2022, Minister Lamola, through his spokesperson, Mr Chrispin Phiri, categorically denied that the Namibian authorities requested such assistance. Mr Fraser enjoined the Investigation Team to compare this with Minister Lamola's own statement, a month later, on 25 July 2022, wherein he confirmed that such assistance was indeed requested by the Namibian authorities and establish if there was no cover up in this regard.

6.1.11 Mr Fraser further indicated that on 16 June 2022, the office of the Inspector General of Namibian Police Force issued a press statement, wherein the Inspector General stated *inter alia* as follows:

*"A preservation order was issued, and a formal request was made through the Ministry of Justice to South Africa to confirm whether or not a crime was registered in South Africa. However, no response was received from South African authorities, resulting in cancellation of the preservation order and release of assets".*

6.1.12 It was further submitted by Mr Fraser that contrary to media reports claiming that only about six hundred thousand rand (R600, 000) or less was stolen during the burglary, footage already in the public domain reveals that the robbers actually stole more money than what the President and sections of the media sympathetic to him want people to believe. According to Mr Fraser, the Investigation Team should consider what was revealed during the

interrogation of Immanuwela David by Gen. Rhooode and his team in respect of the precise amount they accused him of stealing.

- 6.1.13 Furthermore, Mr Fraser submitted that the footage already furnished to the Hawks reveals that the assets purchased by the robbers add up to millions. He stated that this may be inconsistent with the claims made by the President about the amount that was stolen. Mr Fraser added that it is undisputed that the President kept a sum of cash, which he claims came from his farming business which he runs at Phala Phala. He implored on the Investigation Team to investigate whether the President's admission in this regard is contrary to the constitutional requirement not to engage in any other paying job or activity as he was admittedly receiving payment emanating from his farming activities.
- 6.1.14 Mr Fraser provided the following additional information to the Investigation Team and further indicated that he is advised that this information is already in the public domain and does not run the risk of compromising the criminal investigation:
- 6.1.14.1 A copy of the Namibian Crime Intelligence Report compiled by Commissioner Nelius Becker of the Criminal Investigation Department, Namibian Police Service, Windhoek dated 21 June 2021. This report referred to liaison between the Namibian authorities and South African authorities, notably through the South African Police Service's attaché, Col. Edward, stationed at the South African Embassy in Windhoek.
- 6.1.15 He stated that in view of the fact that the matter related to the President of South Africa, it is common practice that the Namibian enquiries would have been registered with the South African Ambassador to Namibia, the Minister of International Relations and Cooperation, Minister of Justice and the Minister of Police;
- 6.1.16 He also stated that when the Namibian Police interviewed Mr Imanuwela David, he confirmed that they had stolen US dollars of the President that was

- concealed inside the furniture at President's Phala Phala farm. He further stated that this is how the Namibian authorities became aware of the theft that had taken place at Phala Phala farm;
- 6.1.17 Mr Fraser submitted that the Namibian authorities detected Mr Imanuwela David when he illegally entered Namibia on or about 07 June 2020;
- 6.1.18 He mentioned that the Namibian Crime Intelligence Report records that as part of their follow up issues, amongst others, a request for cooperation had to be addressed by the Namibian Financial Intelligence Centre to the South African Financial Intelligence Centre (FIC). He further mentioned that it may be prudent for the Public Protector to ascertain from the South African FIC if any request for assistance/cooperation had been received by it from the Namibian FIC on the matter related to the theft at Phala Phala farm and if anything had been done in respect thereof;
- 6.1.19 He further stated that it is known that SAPS' attaché, Col. Edwards deployed to the South African Embassy in Windhoek is deployed from within the Crime Intelligence Division of the SAPS. He also stated that Col. Edwards' involvement with the Namibian Crime Intelligence's investigation (on matters related to the burglary and theft at Phala Phala farm) is detailed in the Namibian Crime Intelligence Report. Col. Edwards therefore had a fiduciary duty to report the matter (related to President Ramaphosa) to SAPS head office in South Africa. He submitted that it therefore logically follows that the hierarchy in the SAPS, including the executive would have been informed, especially because it related to a burglary at the President's farm;
- 6.1.20 Mr Fraser stated that it would be prudent for the Public Protector to ascertain from SAPS whether it had received any information and/or any formal or informal request from the Namibian authorities to render assistance in the Namibian investigation;
- 6.1.21 In reference to Minister Lamola, Mr Fraser submitted that it is common cause that although his initial response was a denial, Minister Lamola has since

confirmed to Parliament that they had received a request for mutual legal assistance from the Namibian authorities;

6.1.22 He also stated that it is also a matter of public record that the theft that occurred at the President's Phala Phala farm was not reported in the Annual Report of the SAPS' Protection Services to Parliament;

6.1.23 In addition, Mr Fraser attached a copy of a press statement by the Namibian President, Dr. Hage Geingob dated 10 June 2022, titled "*statement by the Namibian Presidency following unfounded allegations that the President of the Republic of Namibia may have assisted President Cyril Ramaphosa in apprehending a suspect connected to the Phala Phala Farm Burglary*"; and

6.1.24 Lastly, Mr Fraser indicated his commitment to render further assistance to the Public Protector and Parliament in furtherance of their investigation into the matter, should new information become available or when the Public Protector deems it appropriate "*to share with him the President's responses*", he is available to clarify any issue.

*The allegations letter to the President*

6.1.25 On 07 June 2022, the Public Protector issued an allegations letter to the President requesting him to submit a detailed response to the complaint received from Mr Zungula. In terms of this letter, the President was given fourteen (14) calendar days to respond to the allegations and therefore his response was due on 22 June 2022.

6.1.26 On 17 June 2022, the Public Protector received a letter from *Harris Nupen Molebatsi Incorporated Attorneys* who acknowledged receipt of the allegations letter dated 07 June 2022 from the Public Protector, and confirmed that they have been appointed by the President as his attorneys to represent him in this matter. *Harris Nupen Molebatsi Incorporated Attorneys* (the President's Legal Representatives) further indicated that all further correspondence should be addressed to them.

- 6.1.27 In the same letter, the President's Legal Representatives requested the Public Protector to grant the President an extension until 18 July 2022 to furnish the requested response, which was granted. On 13 July 2022, the Public Protector received a further request from the *President's Legal Representatives* for an extension to reply by 18 August 2022.
- 6.1.28 On 14 July 2022, the Investigation Team convened a virtual meeting with the President's Legal Representatives. During the meeting, the Investigation Team requested that the President should respond on 18 July 2022 to questions that do not require substantive details, with a view to supplement same with supporting evidence and additional information at a later stage.
- 6.1.29 However, on 15 July 2022, the President's Legal Representatives responded in a third letter indicating that the President is not amenable to respond in a piecemeal fashion to such serious allegations as it may undermine his right to a fair process.
- 6.1.30 On 18 July 2022, the President's Legal Representatives sent a letter seeking a response to their letter of 15 July 2022. On the same date, a response was furnished denying the request for further extension, with reasons.

*The President's response to the allegations*

- 6.1.31 On 22 July 2022, the President responded to the allegations letter sent by the Public Protector on 07 June 2022. The President's response was received by the Public Protector through his Legal Representatives. The President's response raised certain interlocutory issues, which shall hereunder be referred to in brief:



*Denial of further extension*

- 6.1.32 In paragraphs 3 to 14 of his response, the President contended that he has not been afforded a fair opportunity by the Public Protector to reply to the allegations and, accordingly submitted that his right to a fair process has been undermined.

*The complaint is out of time*

- 6.1.33 The President's Legal Representatives submitted that section 6(9) of the Public Protector Act, creates a general rule that a complaint shall not be entertained if more than two years have elapsed since the incident or matter in question has occurred. They submitted further that section 6(9) of the Public Protector Act allows the Public Protector to exercise her discretion to entertain a complaint referred to her outside that period, but only in "*special circumstances*". It was further argued that the theft of money from Phala Phala farm occurred on 09 February 2020 and that the complaint was only received by the Public Protector on 03 June 2022, which fell outside the prescribed two-year period.
- 6.1.34 They further argued that the President does not believe that there is a reasonable basis for concluding that the complaint can be "*successfully investigated*", based on the evidence made available by Mr Fraser. It was said that Mr Fraser's affidavit relates to criminal proceedings, to which the President has publicly committed to cooperating with; it contains hearsay evidence from an unknown source; and the evidence dates back to a number of years and its reliability is questionable.
- 6.1.35 The President's Legal Representatives further contended that the delay of about four months beyond the prescribed two-year period is also entirely unexplained. They further submitted that the fact that the complaint has been delayed to a point just six months before the African National Congress'

(ANC) 2022 elective conference strongly suggests that it was deliberate, motivated by an ulterior purpose, and aimed at achieving partisan political outcomes. They stated that for these reasons, the President submitted that there are no special circumstances that warrant the complaint being entertained outside the statutory period.

*The specific requests for information and/or documents*

- 6.1.36 At the outset, the President submitted that notwithstanding his contention that the Public Protector lacks jurisdiction to investigate this complaint, a response is given to fully address Mr Zungula's allegations under the following headings:

*The Operations of the Phala Phala Farm*

- 6.1.37 According to the President, Phala Phala Wildlife is the operating name of Ntaba Nyoni Estates CC (Ntaba Nyoni). The President indicated that he is the sole Member of Ntaba Nyoni and that the business is managed and run by its employees. According to the President, Phala Phala Wildlife is a game ranching farm operation where game such as buffalo, sable, roan, black and white impala, wildebeest, kudu and other antelopes are bred and farmed within a game reserve type of environment. He stated further that Ankole cattle are also kept on the farm. The President submitted that Phala Phala Wildlife sells the animals that it breeds through auctions or private out-of-hand sales.
- 6.1.38 It was submitted by the President that Phala Phala Wildlife is also a partner in a hunting operation on another portion of the farm. Further that it is a joint venture with Tsala Safaris, who are hunting outfitters. He stated that Tsala Safaris markets hunting opportunities for hunters who come from all over the world. He submitted that Tsala Safaris help the hunters in the hunting process and entertain them. According to the President, Phala Phala Wildlife

provides the accommodation and animals that are hunted, thus the proceeds are shared on an arranged basis.

*Theft of US Dollars from Phala Phala Farm*

- 6.1.39 The President submitted that on 09 February 2020, an amount of Five Hundred and Eighty Thousand US Dollars (US\$580, 000) in cash, was stolen from Phala Phala farm. He stated that the money was kept in a room in his house where it was thought it would be safe. He submitted that Mr Ndlovu, who was the Lodge Manager at Phala Phala farm at the time, would have further information regarding this. He stated that the money which was stolen was a payment that had been made by Mr Hazim, for the purchase of buffalo that Phala Phala Wildlife had decided to sell.
- 6.1.40 According to the President, he and the General Manager of Phala Phala farm, Mr von Wielligh, had discussions for some time, about the disposal of buffalo that were substandard and were a financial drain on the operations of Phala Phala Wildlife. The President submitted that they were of the view that the buffalo should be sold as a parcel, because this made better financial sense than selling them individually for hunting purposes. The President indicated that he had advised Mr von Wielligh that there were potential buyers of these buffalo from the Middle East and other African countries.
- 6.1.41 The President submitted that he arrived at Phala Phala farm on 26 December 2019, and that upon his arrival, Mr Ndlovu reported to him about Mr Hazim's visit to Phala Phala farm the previous day, being 25 December 2019. According to the President, Mr Ndlovu reported that:
- 6.1.41.1 On 25 December 2019, Mr Hazim, a citizen of Sudan, visited Phala Phala farm and was met by Mr Ndlovu, who showed him the buffalo in Camp 6;
- 6.1.41.2 Mr Hazim showed an interest in the buffalo and told Mr Ndlovu that he wanted to close the deal and buy the buffalo;

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- 6.1.41.3 Mr Hazim handed Mr Ndlovu a bag that he said contained US dollars in the amount of US\$580,000;
- 6.1.41.4 Mr Ndlovu, upon receipt of the money, gave Mr Hazim an acknowledgement of receipt<sup>19</sup> and informed him that he would inform the President about the transaction, and
- 6.1.41.5 Mr Ndlovu took the bag and locked it in the safe at the Bayeto Centre office, which is an administrative building at Phala Phala farm.
- 6.1.42 The President stated that, as he was proceeding directly to Cape Town the following day, being 27 December 2019 and because Mr von Wielligh was away, the money should be kept at the farm until the President's return, when he and Mr von Wielligh would have the opportunity to process matters related to the transaction and have the money banked. According to the President, he left Phala Phala farm on 27 December 2019 for Cape Town, on holiday.
- 6.1.43 He further stated that the sale of buffalo such as those in camp 6, is not unusual. He further mentioned that Phala Phala Wildlife recently concluded a transaction for the sale of buffalo that will soon be exported to a country in the Middle East, following the fulfilment of various regulatory processes such as the extraction of blood from the buffalo to test for various diseases, export permits and other regulatory processes that are required for the transportation of wild animals.
- 6.1.44 According to the President, Mr Ndlovu was due to go home to Bushbuckridge on leave on 30 December 2019. The President stated that Mr Ndlovu informed him that he felt uncomfortable leaving the money in the safe at the Bayeto Centre, because several staff members had access to the safe to retrieve documents and keys to various buildings on the Phala Phala farm. He stated further that Mr Ndlovu decided that the safest place to store the

money would be the President's house situated on Phala Phala farm, where Mr Ndlovu thought nobody would dare steal anything from the President.

- 6.1.45 It was further submitted by the President that Mr Ndlovu decided to put the money below the cushions of a couch in a spare bedroom that is hardly ever used in the President's house.

*Alleged Collusion*

- 6.1.46 The President indicated that he does not have personal knowledge of the crime that took place on the Phala Phala farm. He indicated that the farm is managed by Mr von Wielligh, although he occasionally visits the farm, he does not reside there.

*Alleged concealment of the crime*

- 6.1.47 According to the President, on 10 February 2020, the day after the theft, he was advised by Mr von Wielligh that there was a security breach at Phala Phala farm. He submitted that at the time, he was in Addis Ababa, to chair the African Union Summit meeting. He stated that Mr von Wielligh sent footage to him from the CCTV cameras situated outside his residence at Phala Phala farm, which shows intruders on the property. The President stated that he then arranged for Gen. Rhode to visit him in his suite, at their hotel in Addis Ababa. The President indicated that during their meeting, he informed Gen. Rhode that he had received information that there had been a breach of security at Phala Phala farm and requested Gen. Rhode to attend to the matter and report back to him.

- 6.1.48 The President submitted further that soon after the security breach was reported to him by Mr von Wielligh, Mr Ndlovu contacted him to tell him that the money that he had kept in the President's house had been stolen. The President stated that he wanted to confirm this for himself before reporting it to Gen. Rhode. The President further stated that during the second half of

February 2020, which is the soonest his schedule allowed, he visited Phala Phala farm for the purpose of confirming that the money was stolen.

- 6.1.49 The President stated that on or about 02 March 2020, he asked Gen. Rhooode to meet him at his residence in Hyde Park. According to the President, his schedule did not allow him, after returning from the Summit held in Addis Ababa, to establish for himself what had happened at the Phala Phala farm. He submitted further that once he had the opportunity to do so, he contacted Gen. Rhooode at his earliest convenience. The President also stated that, during the meeting held in early March, he advised Gen. Rhooode that money from the sale of game was missing from his residence at Phala Phala farm.
- 6.1.50 The President submitted that it was agreed that Gen. Rhooode would confer with his superiors and revert to him on the way forward. He stated that Gen. Rhooode subsequently told him that he had been instructed by the now late Deputy National Commissioner for Crime Detection, Gen. Mfazi to conduct a preliminary enquiry focusing on the safety and threats to the President, and thereafter to report back to him, and after which Gen. Mfazi would take over the case, if necessary.
- 6.1.51 It was stated by the President that it is clear that by reporting the security breach and the theft to Gen. Rhooode, who holds the rank of Major-General in the SAPS, and by specifically requesting that Gen. Rhooode to attend to the matter, he had no intention of concealing the crime from the SAPS, SARS, or at all.

*The alleged payment of suspects*

- 6.1.52 The President denies that he made payments to the alleged suspects of the crime. The President indicated that he did not make any payments to the alleged suspects at all and that this aspect of the complaint constitutes pure fabrication.

*The alleged breach of the law by the President*

- 6.1.53 The President submitted that, Mr Zungula’s complaint makes specific reference to section 96(1) of the Constitution, which deals with breaches of the Executive Ethics Code, as well as section 96(2)(a) and section 96(2)(b) of the Constitution. He stated that section 96(2)(a) of the Constitution provides that Members of the Cabinet and Deputy Ministers may not undertake any other paid work. He submitted that Mr Zungula alleges that *“anyone with cash amounting to millions of US Dollars can only be involved in trading whose legitimacy needs to be established. Whether the trading is legit or not it constitutes paid work and thus a violation of the said section of the Constitution.”*
- 6.1.54 According to the President, Phala Phala Wildlife operates independently of him. He submitted that he is the sole member of the close corporation that runs the farming business, but he does not work for it. The President further stated that to suggest that he undertakes paid work on or through the farm is mistaken and that he plainly does not.
- 6.1.55 The President contended that there is also no concern regarding the legitimacy of the trading of Phala Phala farm. He further stated that although Mr Zungula gratuitously states *“anyone with cash amounting to millions of US Dollars can only be involved in trading whose legitimacy needs to be established”*, he immediately acknowledges that he does not know *“...whether the trading is legit or not...”*. The President also stated that the highwater mark of Mr Zungula’s complaint is that the President received payment for conducting *“other work”* in contravention of section 96(2)(a) of the Constitution, but that is not so.
- 6.1.56 According to the President, while he has an interest in Phala Phala farm as a game and cattle farming operation, he does not *“conduct any other paid work”* on or in relation to the farm as referred to in section 96(2)(a) of the Constitution.

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- 6.1.57 The President mentioned that section 96(2)(b) of the Constitution provides that Members of the Cabinet and Deputy Ministers may not act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests.
- 6.1.58 According to the President, Mr Zungula vaguely suggests that it is not clear whether *President Ramaphosa* stopped his business dealings upon assuming his role as Deputy President. He stated that the complaint also makes vague and unsubstantiated insinuations of a conflict of interest and impropriety, namely that *“If indeed the President is no longer actively pursuing his private interests, why then did it become the President’s direct responsibility to report the robbery to the Head of the Presidential Protection Unit (PPU)? Also, does the mandate of the Presidential Protection Unit include looking after security matters of the farm of the President? Does the use of the PPU for the President’s farm security not constitute abuse of state resources?”*
- 6.1.59 The President indicated that Mr Zungula raises three issues in this regard:
- 6.1.59.1 Whether the President stopped doing business dealings upon assuming his role as Deputy President;
- 6.1.59.2 Why the President reported the theft on his farm to Gen. Rhooode; and
- 6.1.59.3 Whether the mandate of the PPU includes looking after security matters of Phala Phala farm, or whether this constitutes an abuse of state resources.
- 6.1.60 It was submitted by the President that when he assumed office as Deputy President in 2014, he began a process, in compliance with section 3.6 of the Code, to dispose of, or placing under the control of an independent and professional person or agency, the administration of any interests which *“may give rise to a conflict of interest”* in the performance of his functions as a member of the Executive.



- 6.1.61 The President submitted that he disposed of all his interests that could potentially give rise to a conflict of interest. He submitted further that for example, on 26 November 2014, Shanduka announced his divestment from the group. According to the President, this involved the disposal of interests in sectors like mining, telecommunications and energy, (i.e. those which may give rise to a conflict of interest). He indicated that he, however, retained assets in some sectors, which were not considered capable of giving rise to a conflict of interest.
- 6.1.62 In answering to Mr Zungula's question directly, the President stated that he did comply with the requirements of the Executive Ethics Code with respect to dealing with any of his interests which may give rise to a conflict of interest (e.g. Shanduka). According to the President, his interest in farming operations were not considered capable (and indeed are not capable) of giving rise to a conflict of interest, in the performance of his functions as a member of the Executive.
- 6.1.63 It was submitted by the President that his directorships and shareholding in farming entities, including Phala Phala farm, have been disclosed and included in his annual Declaration of Interests to Parliament (2014-2018) and to the Secretary to Cabinet (2014-2022). He contended that since he is no longer a Member of Parliament, he is not required to submit a Declaration to Parliament since 2019.
- 6.1.64 According to the President, his decision to report the theft to Gen. Rhoode has been dealt with in his earlier submission. He stated that Gen. Rhoode's mandate, as Head of the PPS, includes the physical, information and logistical security for the President and his spouse. The President contended that he acted appropriately by reporting the crime directly to Gen. Rhoode as a Major-General in the SAPS and the Head of the PPS. The President indicated that Gen. Rhoode in turn reported the matter to Gen. Mfazi.

6.1.65 According to the President, as at the date of the theft, the PPS was not providing security at Phala Phala farm. He stated that since then, as a result of the security breach, and in order to secure his residence on Phala Phala farm, members of the PPS have been deployed to the farm. The President submitted that no expenses have been incurred in relation to this deployment other than the officers present at any given time. The President indicated that these officers are fed and accommodated on the farm premises and at the farm's expense.

6.1.66 He stated that any security breach, which he experiences should be reported to Gen. Rhode. He submitted that he was not in control of the process followed after he reported the matter to Gen. Rhode. He stated that he can only assume that it was conducted in accordance with the rules and regulations of the SAPS governing such matters.

*The Executive Ethics Code*

6.1.67 The President contended that while Mr Zungula alleges a breach of the Executive Ethics Code, he does not refer to a specific section. The President stated that however, paragraph 21 of the Public Protector's letter highlights paragraphs 2.3(c), (f) and (g) of the Executive Ethics Code. According to the President, section 4(2)(b) (read with section 3) of the EMEA requires that an investigation by the Public Protector into a breach of the Executive Ethics Code must be in relation to a complaint, and that such a complaint "*must contain full particulars of the alleged conduct.*"

6.1.68 The President submitted that a blanket allegation that he breached the Executive Ethics Code does not satisfy the requirement to furnish full particulars of the alleged conduct. According to the President, he is unable to determine what specific conduct is alleged to constitute a breach of the Executive Ethics Code, and which specific provision of the Executive Ethics Code such conduct is alleged to have breached. The President stated that in any event, he has not acted in breach of these provisions of the Executive

Ethics Code. He further submitted that paragraphs 2.3(c), (f) and (g) of the Executive Ethics Code provide that Members of the Executive may not: -

- “(c) act in a way that is inconsistent with their position; ...*
- (f) expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;*
- (g) receive remuneration for any work or service other than for the performance of their functions as members of the Executive...”*

6.1.69 According to the President, he has not acted in any way inconsistent with his position in terms of paragraph 2.3(c) of the Executive Ethics Code. He indicated that as for paragraph 2.3(f) of the Executive Ethics Code, there is no risk of a conflict of interest between his official responsibilities and his private interests in Phala Phala farm. The President denied that he exposed himself to the risk of a conflict of interest between his official responsibilities and his private interests. With respect to paragraph 2.3(g) of the Executive Ethics Code, the President submitted that he is not involved in the day to day running of the Phala Phala farm and that he does not work for the farm. The President insisted that he certainly has not received any “*remuneration*” for work in respect of Phala Phala farm.

6.1.70 With regard to the permit to trade, the President clarified that the sale of game such as buffalo requires a long process, which includes testing of the animals for diseases, securing export permits, transportation permits and other regulatory steps. He submitted that all of this must be done before the buffalo can leave the farm. According to the President, it is only once these steps have been taken, that invoices are generated, the buffalo leave the farm, and the transaction is said to be concluded. He stated that due to the theft of the money, the necessary administrative processes did not take place and the buffalo have not left Phala Phala farm. He also indicated that the transaction is therefore incomplete.

6.1.71 The President submitted that the exact amount of the exchange rate at the time of the transaction was approximately R14.0981 to the dollar, meaning

that the approximate amount in Rands at the time was about Eight million one hundred and seventy six thousand, eight hundred and ninety eight Rand (R8 176 898.00). The President indicated that the cash was kept on the premises until it was stolen, 30 business days later.

- 6.1.72 The President further stated that Ntaba Nyoni is a registered taxpayer and VAT vendor, and that it submits its tax returns to SARS, including in relation to the sale of stock.
- 6.1.73 The President stated that according to his knowledge, none of the stolen money was recovered. He indicated that he has no knowledge of any persons being interrogated, arrested and/or charged for housebreaking and theft. He contended that it should be noted that, although these allegations are made in Mr Fraser's statement, they do not form part of Mr Zungula's complaint.
- 6.1.74 The President submitted that he does not know whether any workers were present on the day of the theft. He stated that there are two permanent domestic workers employed at Phala Phala farm, Ms Monica Shihepo and Ms Lettie Malapane. He submitted that on occasion, temporary domestic workers have been used at Phala Phala farm when the workload has been too much for the permanent staff. He further indicated that in the past two years as a result of Covid-19, there has not been a need to employ temporary domestic workers.
- 6.1.75 According to the President, Mr Fraser's allegations that employees at Phala Phala farm were dismissed as a result of the housebreaking and thereafter re-hired, are not true. The President stated that following the outbreak of Covid-19, a number of employees, including one of the managers, were retrenched, due to the negative impact that the pandemic had on the game industry, and this was not related to the housebreaking.
- 6.1.76 He also denied the allegation that he gave Gen. Rhooode instructions to deal with the matter without reporting same to the police station.

*Response to additional complaints by Messrs J. Steenhuisen, E Muller and S. Ndlovu*

- 6.1.77 On 22 September 2022, the President's Legal Representatives submitted a letter on behalf of the President to acknowledge receipt of additional allegations lodged with the Public Protector in this regard. The President's Legal Representatives indicated that after careful consideration, the President has decided not to submit a further response.

*Evidence from the Office of the Registrar of Deeds Limpopo, Department of Agriculture, Land Reform and Rural Development*

- 6.1.78 The Public Protector through a letter dated 07 June 2022, requested the office of the Registrar of Deeds in Limpopo to verify and disclose information related to the ownership of Phala Phala farm for the purposes of this investigation. On 17 June 2022, Advocate Thabo Shadrack Phali (Adv. Phali), Deputy Registrar of the Deeds Office in Polokwane, Limpopo, replied to the Public Protector by means of an affidavit and stated *inter alia* that:

- 6.1.78.1 That according to the records of his office, Phala Phala Wildlife is situated over three farm properties and all those properties are registered in the name of *Tshivhase Trust* and neither are registered in the personal name of the President; and
- 6.1.78.2 That there is a mortgage bond taken in favour of a financial institution over the three properties on 14 December 2011, in which Mr Matamela Cyril Ramaphosa as the Trustee of the *Tshivhase Trust* signed the Power of Attorney.

*Evidence by the Master of the High Court in Pretoria*

- 6.1.79 On 12 September 2022, the Public Protector sent an enquiry to the Master of the High Court in Pretoria, as a custodian of Trust documents to obtain

clarity on the existence or nature of Tshivhase Trust. A response was received from Advocate Martin M Mafojane (Adv Mafojane), the Chief Master of the High Court, Pretoria accompanied by an affidavit dated 15 September 2022. The affidavit was deposed to by Ms Anna Maria Nel (Ms Nel), Assistant Master of the High Court, Gauteng Division Pretoria. In her affidavit, Ms Nel submitted that she has satisfied herself that a Trust Instrument in respect of Tshivhase Trust has been lodged with the Master as provided for by section 4 of the Trust Property Control Act.<sup>20</sup> She further submitted that the Master has registered the Trust in question and issued Letters of Authority for the Trustees as provided for in section 6 of the Trust Property Control Act.

6.1.80 Amongst the copies of documents delivered by Adv. Mafojane to the Public Protector, was a Deed of Trust in respect of the Tshivhase Trust signed by the President on 23 October 2008 as well as Letters of Authority. Upon perusal of the Letters of Authority dated 31 October 1996, it was noted that they certify that Mr Cyril Ramaphosa and others were authorised to act as trustees of the Tshivhase Trust.

6.1.81 Upon perusal of the Deed of Trust, it was noted that Tshivhase Trust was created under Master's reference number IT 10769/96 and letters of authority were issued to the first trustees on or about 31 October 1996. According to paragraph 2.6 of the Deed of Trust in respect of the Tshivhase Trust, which is an interpretation clause thereof, "**beneficiary**" means any of "*CYRIL, TSHEPO, and their children listed in clause 2.6.1 to clause 2.6.4 and any of the children born of CYRIL and TSHEPO's marriage to each other or jointly adopted by them*".

*President's response relating to Tshivhase Trust*

6.1.82 On 23 February 2023, the President replied to further questions which related to the nature of his interests held in Tshivhase Trust. He stated that

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20 Act 57 of 1998.

he does not hold any financial interest in the Tshivhase Trust. The President indicated that as it appears from the Trust Deed, his relationship with the Tshivhase Trust and its assets are as follows:

- (a) The Trust is the owner of its assets, which include immovable property and shares in companies. He stated that he does not have any personal right to or interest in these assets and that they are held by the trustees for the benefit of the beneficiaries of the Tshivhase Trust. He stated further that he is one of the trustees of the Tshivhase Trust and indicated the names of the other Trustees. The President averred that Trustees may only take decisions by majority vote, as per clause 6.2 of the Trust Deed. He also stated that the Trustees may, in their absolute discretion, distribute the net income of the Tshivhase Trust as per clause 11.1.1 of the Trust Deed. He also stated that they may also, in their absolute discretion, in limited circumstances, distribute the capital of the Tshivhase Trust as per clause 12 of the Trust Deed.

6.1.83 The President indicated that he is one of the beneficiaries of the Tshivhase Trust, however, the beneficiaries do not have any right or claim to any of the assets of the Tshivhase Trust as per clause 14.1 of the Trust Deed. He indicated that he has not received any income or capital distribution of the Tshivhase Trust since 2012, before he assumed office as the Deputy President of South Africa. The President submitted that he shall also ensure, by the exercise of his right of veto, in terms of clause 6.1 of the Trust Deed that it does not make any distribution to him for as long as he remains in office as the President of the Republic of South Africa.

6.1.84 The President also stated that the only money paid by the Tshivhase Trust to him is a partial repayment for an interest free loan advanced by him to the Tshivhase Trust. He indicated that other than repayments of the outstanding loan referred to above, he derives no benefit, income, remuneration, money or other financial gain from the Tshivhase Trust while he remains the President.

6.1.85 The President further submitted that the Deed of Trust was amended in 2016 and he furnished a copy of the Deed of Amendment to the Public Protector. He also indicated that although the Deed of Amendment was signed in 2016, it was only properly lodged with the Master of the High Court in 2019 and that it is for this reason that the covering letter from the Master of the High Court, wherein receipt of the Deed of Amendment is acknowledged, is dated 08 August 2019.

*The version of Mr Dumisani Sylvester Ndlovu*

6.1.86 On 02 September 2022, the Investigation Team sent a letter to Mr Dumisani Sylvester Ndlovu (Mr Ndlovu) requesting him to avail himself for an interview on 06 September 2022 at Phala Phala farm. The purpose was to seek an explanation of his role in connection with the theft of foreign currency at Phala Phala farm, which took place on 09 February 2020. Mr Ndlovu did not attend the physical interview with the Investigation Team as scheduled for 06 September 2022. He instead indicated that he will send his written affidavit to the Public Protector, which was received on 04 October 2022 from Haffegge Roskam Savage Attorneys.

6.1.87 In his affidavit, Mr Ndlovu submitted amongst other things that on or about 07 December 2014, he was employed as a Lodge Manager at Phala Phala farm, situated at Bela Bela by Ntaba Nyoni and he reported directly to Mr von Wielligh. He also submitted that during his employment as a Lodge Manager at Phala Phala farm, his general responsibilities included, but were not limited to:

6.1.87.1 The day to day running of the lodge, including managing housekeeping staff;

6.1.87.2 Managing the food and beverage department, which involved buying food for the kitchen, drinks for functions, and general hospitality duties;



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- 6.1.87.3 Allocating duties to housekeeping and kitchen staff, including waiters, and inspecting rooms;
- 6.1.87.4 Welcoming guests to the farm and making arrangements for guests, which would include room allocations and ensuring that everyone is enjoying their stay at the lodge; and
- 6.1.87.5 Managing the housekeeping and kitchen staff that worked at both Phala Phala farm and Diepdrift farm, and transporting them between the two farms.
- 6.1.88 According to Mr Ndlovu, there were about sixty (60) buffalo in camp six (6) at Phala Phala farm, some of which were not considered to be up to Phala Phala farm standards. He stated that the President and Mr von Wielligh had mentioned to him that they had decided to sell the buffalo and the asking price was four hundred thousand rand (R400 000.00) each. He further submitted that on 25 December 2019 at around midday, a man arrived at the gate of the Phala Phala farm with someone who appeared to be a driver and introduced himself as Mr Hazim. Mr Ndlovu further submitted that he had not met Mr Hazim before, but there are lots of people who have come to the farm to enquire about animals and he did not find Mr Hazim's enquiry unusual.
- 6.1.89 Mr Ndlovu further submitted that, normally, either himself or Mr von Wielligh are responsible for welcoming guests at the Bayeto Centre, however, in this instance he welcomed Mr Hazim alone, as Mr Von Wielligh was on leave. He further indicated that Mr Hazim told him that he heard that Phala Phala farm was selling buffalo. Mr Ndlovu stated that he assumed this was in reference to buffalo in camp 6 and he drove Mr Hazim to view the animals. Mr Ndlovu further stated that he showed Mr Hazim the buffalo and he chose the ones that he was interested in.
- 6.1.90 Mr Ndlovu further submitted that they drove back to Bayeto Centre and he advised Mr Hazim that the price was R400 000.00 per buffalo and the total price for twenty (20) buffalo would be eight million rand (R8 000 000.00). He indicated that he was then informed by Mr Hazim that he was interested in

the buffalo and would pay in US dollars. Mr Ndlovu submitted that, Mr Hazim then went back to his car and returned with two canvas bags, and he was surprised because no one had ever paid cash in US dollars before, as he has received cash for the sale of animals before, but not in US dollars and not for such a large amount.

- 6.1.91 According to Mr Ndlovu, the sale of animals is usually through a bank transfer, after an invoice has been issued and once all relevant processes have been completed. Mr Ndlovu submitted that he asked Mr Hazim why he was paying in US dollars, and he said it was the only currency that he had at the time, and he wanted to make sure that he secured the buffalo. He further indicated that they counted the money at the Bayeto Centre and that it was in the denomination of hundred (100) US dollar notes, that amounted to USD580 000. According to Mr Ndlovu, he checked the exchange rate and it amounted to approximately R8 000 000.00 at the time.
- 6.1.92 Mr Ndlovu stated that he then informed Mr Hazim that the purchase could not be finalised, because he still needed to obtain approval, and thereafter further processes would be undertaken such as calling the State Veterinarian to check whether the animals were in good health, and obtain the necessary permits to move the animals. Mr Ndlovu indicated that he then gave Mr Hazim a note to record that he received the money.
- 6.1.93 It was further submitted by Mr Ndlovu that after Mr Hazim had left, he took the money, which was still in the bags, and placed it in a safe in Bayeto Centre and then locked the premises and went to his house on the farm to join his family for Christmas.
- 6.1.94 Mr Ndlovu further indicated that on 26 December 2019, the President arrived at Phala Phala farm late in the afternoon as he was from Mpumalanga *en route* to Cape Town for holiday. Mr Ndlovu indicated that it was then that he explained to the President what transpired the previous day and also informed him that the money was in the safe at Bayeto Centre.

- 6.1.95 According to Mr Ndlovu, the President informed him that since he was going on holiday, the money could only be dealt with (banked and submitted to the authorities) upon his return to the farm and he would have the transaction discussed and processed with Mr von Wielligh as the General Manager.
- 6.1.96 Mr Ndlovu further stated that on 30 December 2019, he was scheduled to take his December off days and Mr von Wielligh was still not back from leave. He indicated that he was concerned about leaving the money at the Bayeto Centre, because the safe is used to store documents for the farm and keys to various buildings, which means that other workers have access to the safe. He indicated that he thought that should anything happen to this money while he was on leave, he would be responsible.
- 6.1.97 Mr Ndlovu further indicated that he decided to take the money to the President's house on the farm, as he thought that the money would be safe there since it is the President's house, and no one was going to go there, as there were cameras outside. He also indicated that he chose the room in the house that is used by the President's daughter when she is at the farm as this room is seldom used. He also indicated that this a room where items such as bicycles and golf bags are usually stored and the President's daughter only uses the room once or twice a year when there is a function at Phala Phala farm.
- 6.1.98 It was further indicated by Mr Ndlovu that, there was a couch in the bedroom. He stated that he lifted the bottom cushions of the couch and placed the money beneath the cushions. He further stated that he then put the cushions back and he took other cushions and placed them on top of the couch and thereafter he put a golf bag on top as well. He further stated that he then went on leave to Thulamahashe with his family.
- 6.1.99 Mr Ndlovu also stated that he cannot recall when he told the President that he had moved the money from the sale at the Bayeto Centre to the President's house. He further stated that he returned to Phala Phala farm from the holiday on or about 13 January 2020. He indicated that he

embarked on his normal duties, including checking the premises the following day and confirming that the money was still stored at the President's house, which it was. He stated further that on 10 February 2020, during his usual inspection of the premises, one of the housekeepers, Monica, called him to the President's house and when he arrived, she showed him that the sliding door, which was usually locked from inside, was open and the curtain of the sliding door was also open.

- 6.1.100 Mr Ndlovu submitted that, after thoroughly inspecting the house, he discovered that the window's wooden frame was opened and had scratches which appeared to be from a screwdriver. He submitted that he also discovered that the cameras outside were out of place and were hanging loose and the golf bag he had put on the couch was still there and the cushions were there, but the money was missing. He submitted that he then called Mr von Wielligh to come to the main house, which he did. According to Mr Ndlovu he then showed Mr von Wielligh that the sliding door and curtain were open, and the cameras were hanging loose, and the wooden frame had scratches and was also open. In conclusion, Mr Ndlovu submitted that around mid-morning on 10 February 2020, he called the President and told him that the money that he had placed in the couch had been stolen.
- 6.1.101 The Investigation Team sent questions seeking specific clarity from Mr Ndlovu and on 24 October 2022, he submitted a supplementary affidavit to the Public Protector through his attorneys of record.
- 6.1.102 In the supplementary affidavit, Mr Ndlovu added that Mr Hazim did furnish him with his contact telephone number, however, he did not take down any further details of Mr Hazim.
- 6.1.103 Mr Ndlovu also clarified that he has no knowledge of how Mr Hazim accessed the Phala Phala farm premises and whether he signed any access control register and has no knowledge of the details of the car that he was travelling in.

- 6.1.104 He also submitted that when the President was at the Phala Phala house for a few hours on 26 December 2019, he informed him of the transaction.
- 6.1.105 He further submitted that on 30 December 2019, and before his departure from the farm, he informed the President that he moved the money to the house for fear of leaving it at Bayeto Centre, where the staff members had easy access to the safe, he however did not inform the President exactly where he had placed the money.
- 6.1.106 According to Mr Ndlovu, he has not communicated with Mr Hazim since he paid for the buffalo, and he was not aware of any other managers at Phala Phala farm having been in contact with Mr Hazim. Mr Ndlovu further submitted that, as far as he knows, the President played no role other than being informed about Mr Hazim’s transaction. He also added that he did not show the President the money on 26 December 2019.
- 6.1.107 It was added by Mr Ndlovu that as far as he knows, the President has never been, and does not get involved in the handling of money received from cash sales of animals at Phala Phala farm.
- 6.1.108 Mr Ndlovu further clarified that Mr Hazim did not sign any document when he purchased the animals. He also informed the Investigation Team that on 25 December 2019, when he went with Mr Hazim to camp six (6) and identified the buffalo, he noted their tag numbers and he left the list of the tag numbers at the farm house. Mr Ndlovu stated that he subsequently obtained the list of buffalo selected by Mr Hazim from Ms Salome Msiska, the Financial Controller, as shown below:

No	Old Tag	Current Tag	Name	Microchip no	Camp	M	F	Dam	Sire	DOB
7	01	5.7		4930386F61/	68	0	1	Unknown	Unknown	2005
8	Red2	5.8	Kimberly	9450000011868 00	68	0	1	Unknown	Unknown	2005
9	J1	B10.1		9000088001971 26	68	0	1	Unknown	Unknown	01/01/2010

10	Blue B11-2	B11.9	Tilode	945000011368 92	68	0	1	Blue 2	Jabulani	12/11/2021
11	Blue 12/1	B12.24	Thabita	945000011714 07	68	0	1	Tamela (84.7)	Matetsi	01/12/2012
12		B12.25	Layla	9000088005116 2	68	0	1	Lani (82.2)	Otawf	13/11/2012
13		B13.64		945000013089 05	68	0	1	Whitey (82.3)	Mvunjane	12/01/2013
14		B14.5		711033493C	68	0	1	Gomba (88.6)	Unknown	01/06/2012
15		B14.29		7110330637	68	0	1	Doker (81.1)	Bayethe	09/03/2014
16		B14.32		7110350228	68	0	1	Sahara (89.2)	Bayethe	29/12/2014
17		B14.52		945000016590 0	68	0	1	Lani (88.3)	Matetsi	20/12/2014
18		B15.13		7110351D5F	68	0	1	Red 2	Monster	06/04/2015
19		B15.16		4C4A17244F	68	0	1	85.1	Monster	06/07/2015
20		B15.20		4C4A12216E	68	0	1	88.2	Monster	08/07/2015
21		B15.24		945000016589 25	68	1	0	Tamela (84.7)	Matetsi	06/04/2015
22		B15.25		945000016589 22	68	0	1	Whitey (82.3)	Matetsi	25/01/2015
23		B15.26		945000016209 98	68	0	1	Tamela (84.7)	Matetsi	18/03/2015
24		B15.27		711036212F	68	0	1	Anni (3.3)	Matetsi	7/05/2015
27		B15.50		9001820001262 360	68	1	0	Donker (81.1)	Bayethe	26/09/2015
31		15.60				1	0	Lani (82.2)	Matetsi	10/11/2015
						3	17			

*The version of Mr Hendrik Efraim von Wielligh*

6.1.109 On 06 September 2022, the Investigation Team visited Phala Phala farm to conduct an interview with a General Manager, Mr von Wielligh, in relation to this matter. Mr von Wielligh provided the Investigation Team with his written statement, which he also read into record. In his statement he highlighted *inter alia that:*

6.1.109.1 He is currently employed as the General Manager of Phala Phala Game Farm, which is privately owned by the President. He stated that he started working at Phala Phala farm in 2014. The game farm is called Phala Phala

farm, however, it is conducting business under the company named Ntaba Nyoni;

- 6.1.109.2 The farm is owned by the President's family trust and is run as a game ranching business. As the General Manager, he oversees and manages the following different departments within Phala Phala farm, day to day farming operations and management; Game Breeding; Lodging; Operations Department and Hunting at Diepdrift farm;
- 6.1.109.3 The game breeding department mainly deals with the breeding of game and the marketing thereof, which includes all auctions and hunting of game. The staff would be separated between the following departments, operations - that deals with maintenance; fencing; and building. The housekeeping mainly deals with cleaning of all properties on the farm and includes catering, security guards assist with general security on Phala Phala farm. The lodging comprises of all the sleeping quarters on the farm.
- 6.1.109.4 During 2020, there were approximately 40 permanent staff members working at Phala Phala farm. There were two security guards working on the farm that were reporting directly to him. Their duties were to patrol the farm every evening and provide security services. The security guards were only deployed in the evenings in shifts as there were always many people around during the day and their duties were then not necessary. When the President is on the farm, it is the only time that there would be police officials on the farm. When the President was not on the farm, the only security would be the private guards. Between June to August 2020, the farm underwent a retrenchment process and both guards were retrenched at that time;
- 6.1.109.5 There are numerous chalets on the farm that are not used for any commercial purpose. The chalets are only used when there are game auctions for the clients to sleep in and when the President has his own family or people from the President's charitable organisations as visitors. More staff would be employed on a temporary basis during functions. The

temporary staff would be sourced from the Vingerkraal informal settlement situated next to Phala Phala farm. The duties of the temporary workers would be cleaning, ironing and general assistance for the duration of the specific function that was being hosted at the time;

6.1.109.6 Phala Phala farm sells its game through private sales and through two game auctions a year in which it participates and that all of the logistics are conducted by him and the staff. The auctions are conducted by an independent company called Wildswinkel. The process in respect of the auction is that a client would purchase an animal through a private sale on the farm or in an open auction bidding process. The sale is made through the auction, payment would be made to Wildswinkel through an Electronic Fund Transfer (EFT). When the sale is through the auction, the entire process is facilitated by Wildswinkel and only when the payment is made and the specific agreed upon commission retained by Wildswinkel, would the animal be released to the client and payment transfer made from Wildswinkel to Phala Phala farm;

6.1.109.7 Phala Phala farm is involved in hunting with a company called Tsala Hunting Safaris (Tsala) that facilitates hunting on a farm called Diepdrift, which is also owned by the President's family trust. The only time that he is aware of any foreign currency being on the farm, would be when Tsala would have foreign hunters and there would be foreign currency given to employees as tips, and that these amounts would be minimal and only the Tsala hunting employees would have the currency with them. No foreign currency would be given to the President and that he would in any case not be involved in the day to day running of Tsala;

6.1.109.8 He constantly communicates with the President and always keeps the President updated on the business of Phala Phala farm and on the condition of the animals. He had a discussion with the President as the farm had huge overheads and expenses were very high. He also informed the President that the majority of the animals in some of the breeding camps were not of a high standard (auction quality). This would result in



high expenditures, like feeding and veterinary bills and management costs, with a low value of the animals if put on auction. The President told him that he should not worry too much as he had an investor that was going to facilitate a very lucrative deal with Phala Phala farm, which should ease the financial burden that Mr von Wielligh was experiencing;

- 6.1.109.9 On 09 February 2020, the President was not on the farm, there were no police officers on duty and he only had the security guards patrolling at night. On 10 February 2020, the housekeeping manager, Mr Ndlovu informed him that there was a break-in at the President's residence on Phala Phala farm. He proceeded to the President's house and found that the first window on the southern side, next to the ground floor sliding door of the house was opened. He noticed that the wooden window frame was forced open causing the screws holding the latch to pull out of the wood. There was no window broken and there are no burglar bars on the windows;
- 6.1.109.10 He does not have much knowledge about the main house as only select housekeeping staff are allowed to access and clean there. He does not know if there is a safe in the President's main house, however, he knows that there is a very large walk-in safe in the administration building. The safe mainly keeps documents, petty cash and spare keys to all of the properties on the farm. No valuables are kept in this safe. At that point it was only him, Mr Ndlovu, Lettie and Monika at the main house and he could not see if anything was stolen as he is not familiar with the contents of the house;
- 6.1.109.11 He immediately called the President, who said that the police would come and see him. He did not call the police and that the President did not give him any specific instructions and only told him to show the police where the house was broken into. The President did not instruct him to go look at any specific place to see if something was stolen. He told everyone to leave the house as is until the police arrived. He conducted a general inspection and noted that nothing had been broken and that the cushions

that were normally placed neatly on the couches were thrown around and out of place;

- 6.1.109.12 The police arrived on the farm on 10 February 2020, but he does not know where the police were from. He gave the police a report on what happened but did not give a statement. He did not take any photos of the scene and was informed that the police would take photos and dust for fingerprints. There is no access control book on Phala Phala farm, therefore he was unable to indicate who the policemen were and what vehicles they were driving. There is a CCTV camera system on Phala Phala farm and there are cameras outside the President's main house. The cameras only show the outside of the residence, there are no indoor cameras inside any of the properties on Phala Phala farm and that the camera system is managed by Patrick Nice of Nice Network Solutions;
- 6.1.109.13 He viewed the camera footage and could see that there were two males who were leopard-crawling to the President's house towards the window that was ultimately forced open. One of these males used a tool to push the camera away so that it does not record the house. This was the only camera that recorded the two persons and that the other camera did record a suspect looking out from behind a pillar, but this was a very short clip and did not assist any further in identifying them or establishing if there were more than two suspects;
- 6.1.109.14 He learned that the neighbouring farm to Phala Phala farm, Stokkiesdraai, was also broken into the night prior to the break-in at Phala Phala farm. The farm owner of Stokkiesdraai is Michael Abreu and the farm Manager is Sean Weber. He does not know what was stolen during the Stokkiesdraai break-in, and that Michael Abreu informed him that hardly anything was stolen;
- 6.1.109.15 He did not suspect anybody of breaking into the President's house and has no idea as to whether inside information was given to people outside to break in. He never questioned anybody on the farm about the break-in.

- 6.1.109.16 During the latter part of February 2020, he travelled to the United States of America (USA). He returned to Phala Phala farm at the beginning of March 2020 and while on the farm, policemen arrived and showed him a picture of a group of employees of Phala Phala farm. He could not remember any of the policemen and he does not know any of their names. The only person he can recall being with the police was a private security official called Nick De Kock (Nick), a white male in civilian clothing.
- 6.1.109.17 Nick worked for a security company called Bushveld Armed Response. Nick had some pictures in his possession and he showed Mr von Wielligh the pictures. He suspected that Nick got these pictures from Facebook or somewhere, but he did not recognise anybody except on one picture where there were a few employees of Phala Phala farm and one of the employees, who Nick pointed out and asked if this was Froliana, which he confirmed. He told Nick that Froliana is one of the temporary workers who are called only when there are functions and extra duties that were to be performed on the farm. The President was not on the farm at that period.
- 6.1.109.18 He was told by Nick that according to their investigation, Froliana was the person who gave information to outside people about money in the President's main house on Phala Phala farm. He could recall that Nick and the police went to fetch Froliana and her brother, and he saw them arriving in a private vehicle. He did not know Froliana's brother, but was informed that he was her brother. Nick and the police were asking all the farm employees including Froliana and her brother about what they knew regarding the break-in. The questions were asked in a normal way, without any aggression or threats during his presence. He was not present during the entire questioning as he had a lot of work to do, but while he was talking to Nick, the police came to him and informed him that Froliana told them that she did not give out any information regarding the break-in at Phala Phala farm.

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- 6.1.109.19 He was never questioned by the police on both occasions they visited the farm. He was not involved in any interrogation or questioning of any of the employees and none of the employees were interrogated, assaulted, handcuffed or arrested in his presence. The police, Nick and Froliana left Phala Phala farm thereafter.
- 6.1.109.20 Nick informed him that they were looking for cash that was allegedly stolen from the President's main house and told him that an amount of two hundred thousand (200 000) US dollars was stolen during the break-in. He told Nick that he had no knowledge of any cash being held on Phala Phala farm, except for some petty cash in the administration building safe.
- 6.1.109.21 The rule on Phala Phala farm was that only the permanent main housekeeping staff would access the President's house and clean up. He learned that Mr Ndlovu might have mistakenly allowed Froliana access to the President's house to assist with the cleaning. He did not get a full explanation from Mr Ndlovu about this transgression, as Mr Ndlovu was retrenched during the retrenchment process between June and August 2020 and replaced with Fridah Seema, who was working in the game breeding programme.
- 6.1.109.22 He did not request any private investigation to be conducted around the break-in on Phala Phala farm, however, he does know that Heritage Protection Group ("HPG"), has a WhatsApp group and that Michael Abreu might have asked them to assist with the break-in at his farm. Nick was the only private investigator working on the Phala Phala farm break-in and he did not appoint Nick to do any investigation. He got the impression that Nick got information from his people working for him to the effect that there were US dollars stolen from Phala Phala farm and that Nick got the police to assist him. It appeared that Nick had good knowledge about what happened on Phala Phala farm and the break-in before his visit in March 2020.

6.1.109.23 On 23 June 2022, he met with Brigadier Basi and Lt Col. LR Schnelle, who are investigators of the DPCI on this matter. They interviewed him about the break-in at Phala Phala farm. The DPCI members showed him pictures and video footage from their laptop (referred to by Mr Fraser as AF1 to AF25). He identified the pictures and the footage shown to him as follows:

- (a) A google maps printout depicting the area, which is a map of Stokkiesdraai farm and not Phala Phala farm;
- (b) A photo depicting the front entrance to Phala Phala farm;
- (c) A photo that depicts a cut fence, but it is not of the perimeter fence for Phala Phala farm, instead it is a picture of the Stokkiesdraai fence as Michael Abreu packs rocks at the base of his fences;
- (d) A photo that depicts broken burglar bar louvers is definitely not from Phala Phala farm, the building style is different and the window frame is aluminium, while Phala Phala farm only has wooden window frames. The glasses at Phala Phala farm were all still intact;
- (e) A screenshot from camera 1 which recorded footage of two suspects leopard-crawling towards a brick house. The time stamp reflects that the time was 22:15 on 09 February 2020. This is the footage of the camera facing the President's main house on Phala Phala farm, however, he does not know of any footage showing the suspects entering or exiting the President's house;
- (f) A screenshot from camera 4, which recorded footage of two people, the time stamp reflects that the time was 00:33 on 09 February 2020. This is definitely not reflective of any building on Phala Phala farm, but a building style used on Stokkiesdraai;

- (g) A footage from camera 3 and a screenshot of this footage depicts a man holding a long pipe. The time stamp on this screenshot is 00:34 on 09 February 2020. This is not footage from any camera on Phala Phala farm;
- (h) A footage from camera 5 and a screenshot of this footage depicts two men walking around inside a house. The time stamp on this screenshot is 01:44 on 09 February 2020. This is not footage from any camera on Phala Phala farm;
- (i) A footage from camera 1 and a screenshot of this footage depicts two men walking around inside a house. This is not footage from any camera on Phala Phala farm;
- (j) A photo depicting Froliana lying down on a sofa in the Sable room on Phala Phala farm, she is wearing a Phala Phala farm branded shirt; and
- (k) A photo depicting a man with a red shirt sitting on a sofa in the Sable room on Phala Phala farm. He does not know this man or remember seeing him at Phala Phala farm and does not recognise any of the other persons in this picture.

*The version of Phala Phala's Close-Circuit Television (CCTV) system operator, Nice Network Solutions*

- 6.1.110 On 20 September 2022, the Investigation Team met with Mr Patrick Nice (Mr Nice) who is the CCTV operator at Phala Phala farm to interview him in connection with his role in this matter. Mr Nice subsequently provided a statement and stated that:
  - 6.1.110.1 On 10 February 2020 around 11:00 in the morning, Mr von Wielligh from Phala Phala farm phoned him and requested to be assisted with recovering video footage from the President's residence at Phala Phala farm;

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- 6.1.110.2 He is the installer and maintains all the CCTV cameras on Phala Phala farm. He logged into Mr von Wielligh's laptop via *anydesk*, connected to the Network Video Recorder (NVR) and noticed that the cameras were moved out of position. He then traced back to the time where the cameras were moved the previous night and pointed out the time to Mr von Wielligh. Mr von Wielligh forwarded to him some footage from another incident at the neighbour's farm, Mr Michael, from the previous night;
- 6.1.110.3 He pointed out to Mr von Wielligh that the camera was moved around 22:00 the previous night – 09 February 2020. He noticed that there were 2 people involved in the burglary at President's house and he sent Mr von Wielligh the photo of where they were against the wall. Once the burglars noticed the cameras they moved towards the camera and changed its position with an item that looked like a braai tong;
- 6.1.110.4 At one stage the burglar stood behind the pillar below the deck of the house, peaked and noticed the other camera(s) and then moved it as well. Mr von Wielligh asked him if he could send him the video footage of the incident, and he told him that it would be better from his laptop as he was not on the farm. He then showed Mr von Wielligh how to access it and Mr von Wielligh recorded it from his phone camera;
- 6.1.110.5 He is not certain what happened to the footage, which was recorded on Mr von Wielligh's phone. They could not record any footage from where the burglars exited the premises and that there were no cameras in the house to track their movements.
- 6.1.111 On 20 September 2022 he met with the Investigation Team and was shown footage from which he confirmed the multiple videos which were from Michael's farm (Phambile) and not Phala Phala. The other incident occurred in the early morning of 09 February 2022 at 00:20 and during that night at 22:00 the incident occurred at Phala Phala farm.

6.1.112 Online Video No1 was from Phala Phala farm. Video 2 to 5 was not from Phala Phala farm, it was the farm next door (Phambile) as far as he knows, which is owned by Michael. Photo AF5 with the lady lying on the couch – looks like it was taken from Palanka (Staff Quarters at Phala Phala), photo AF6 Suspect 1 and 2 – looks like the Sable Building at Phala Phala.

6.1.113 There are no cameras inside the President's house, which confirms that the footage wherein people were moving inside the house was not from Phala Phala farm.

*The version of Bushveld Security Group*

6.1.114 On 19 September 2022, the Investigation Team called and further sent an email to the Operations Manager of Bushveld Security Group, Mr Jaco Erasmus to verify if Nick is employed by Bushveld Security Group and whether he participated in the investigation or interviewing of Phala Phala suspects, together with the members of the SAPS. The Investigation Team also enquired if Bushveld Security Group has any investigation report in connection with Phala Phala farm burglary.

6.1.115 On 22 November 2022, the Chief Executive Officer of Bushveld Security Group, Mr Sebastiaan Steyn (Mr Steyn) confirmed to the Investigation Team in a telephonic interview that Nick was working for Bushveld Security Group in 2020, but he passed away in March 2021. Mr Steyn further clarified that Bushveld Security Group had no contract with Phala Phala farm and that there is no official work or a report done by Nick for Bushveld Security Group in respect of Phala Phala farm.

*Inspection of the Register of Financial Interests of the President*

6.1.116 The Public Protector through a letter dated 31 August 2022, requested the Secretary to Cabinet, Ms Phindile Baleni, to disclose certain information related to Phala Phala farm investigation for verification purposes. On 07 October 2022, the Investigation Team met with Mr Geoffrey Mphaphuli,



Principal State Law Adviser, to view the Register of Financial Interests of the President. Of relevance for the purposes of this investigation was the disclosure period made by the President for 01 April 2019 to 31 March 2020 financial year, which was found to reflect Ntaba Nyoni (Phala Phala Wildlife).

*Remuneration Part of the Register of Financial Interests of the President*

- 6.1.117 On this part of the Register of Financial Interests, the President declared that he received no remuneration other than as a member of Executive during the reporting period 2020 in terms of paragraph 5.6 of the Executive Ethics Code. In this regard, the President indicated that he instructed Mr Steyn Speed of his office to ensure compliance with Executive Ethics Code, paragraph 8.1 and that he is aware of the provisions of the Executive Ethics Code regarding the proper conduct of members of the Executive.

*Evidence by Companies and Intellectual Property Commission (CIPC)*

- 6.1.118 The Public Protector through a letter dated 31 October 2022, requested the CIPC to verify the existence of Ntaba Nyoni and to provide information on its profile for the purposes of this investigation.
- 6.1.119 On 07 November 2022, Mrs Lucinda Steenkamp, the Senior Legal Advisor, Corporate Legal, CIPC Deputy Information Officer, responded by a letter to the Public Protector and stated *inter alia* that:
- 6.1.119.1 The entity, Ntaba Nyoni Estates, is registered as a close corporation on CIPC's records, incorporated on 18 February 2004, with registration number 2004/014395/23. A copy of the disclosure certificate for the close corporation in question was attached and indicates the registration details of the entity, as well as the full history of the members of the close corporation from date of incorporation up to and until 04 November 2022;

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- 6.1.119.2 Mr Ramaphosa is reflected as the current, sole member (100%) of the close corporation;
- 6.1.119.3 According to the CIPC records, the business activities code (as per incorporation data) relates to Agriculture, and related services. The general business description of the close corporation is reflected as “*cattle farming and weaner breeder*”; and
- 6.1.119.4 The CIPC records reflect the close corporation status as “*in business*”, which is evident from the disclosure certificate content. The status indication simply means that the close corporation’s annual returns (administrative requirement) is up to date. The CIPC cannot provide any insight as to whether an entity is actively trading and doing business.

*President’s response relating to Ntaba Nyoni*

- 6.1.120 On 23 February 2023, the President replied to further questions relating to his nature of interests held in Ntaba Nyoni. He stated that the only payments made by Ntaba Nyoni to him were partial loan repayments of the interest-free loans in respect of capital advanced to Ntaba Nyoni by him, which loans are reflected in Ntaba Nyoni’s confidential financial statements. The President indicated that other than the loan repayments referred to above, he does not receive any payment, financial benefit or income arising from or related to his interests in Ntaba Nyoni and that he has also not received any dividends from Ntaba Nyoni.
- 6.1.121 The President stated further that he is the sole member of Ntaba Nyoni and that he disclosed this investment to Parliament and subsequently to the Secretary to Cabinet, as required. He also submitted that the nature of his interest in Ntaba Nyoni is that of an investor in the Close Corporation and he has also lent money to Ntaba Nyoni to allow it to operate as a game ranching business, however, Ntaba Nyoni is run by managers and employees who are responsible for the operations of the business.

- 6.1.122 The President stated that he has never acknowledged that he *“is running and/or involved in a private business and getting paid work in the process”*. He indicated that he is an investor in Ntaba Nyoni and that it owns and operates a business, which is conducted by its managers and employees. He stated that he has never worked for Ntaba Nyoni and has never received any payment for any such work.
- 6.1.123 The President indicated that he visits Phala Phala farm from time to time to rest and relax with his family and friends and participating in strategy sessions involving various entities including charities that he is part of. The President stated that he does not go there to do business. He stated further that when he is there, he will occasionally meet with the managers of the farm to discuss issues relating to the business of the animals that are bred on the farm. According to the President, the managers will typically brief him on the state of the animals and the business and may raise issues on which they seek his guidance.
- 6.1.124 The President submitted that he would then discuss the issues with the managers and give them the guidance they seek. He indicated that his discussion with the general manager, Mr von Wielligh, about the sale of some of the buffalo, was one such occasion. It was further submitted by the President that in his capacity as sole member of Ntaba Nyoni, he discussed the issue with Mr von Wielligh, in his capacity as general manager of its business, however, the business is managed and conducted by its managers and employees.
- 6.1.125 The President further indicated that, Mr Ndlovu, as the then employee of Ntaba Nyoni, reported to him in his capacity as a sole member of Ntaba Nyoni, regarding the money received from Mr Hazim. He stated that he undertook to convey the information to Mr von Wielligh when they meet. The President stated that he made it clear to Mr Ndlovu that Mr von Wielligh would then process the transaction and make arrangements with regard to banking the money on his return.

*The evidence obtained from the Department of Home Affairs (DHA)*

- 6.1.126 On 12 September 2022, the Public Protector requested the DHA to assist with International Movement Control Information related or linked to the name Mr Mustafa Mohamed Ibrahim Hazim's travel in and out of South Africa that may be available in their records.
- 6.1.127 On 26 September 2022, the Director General of DHA, Mr TL Makhode, replied to the Public Protector and indicated amongst other things that according to their Movement Control System (MCS) report, Mr Mustafa Mohamed Ibrahim Hazim is a citizen of Sudan. He submitted further that according to the information linked to Mr Hazim's travel record into South Africa, he entered the country through OR Tambo International Airport on 23 December 2019 at 11:05 and departed through OR Tambo International Airport on 26 December 2019 at 17:00. The DHA further furnished the Public Protector with the copy of the MCS record for Mr Hazim.

*The evidence obtained from the South African Revenue Services (SARS)*

- 6.1.128 On 31 August 2022, the Public Protector wrote to SARS and requested the latter to indicate as to whether it is investigating allegations that the sum of foreign currency that was stolen from the Phala Phala farm could pertain to an illicit flow of cash, not declared to SARS for tax purposes. The allegation was that the existence of such cash could have been in contravention of SARS' prescripts such as Tax Administration Act 28 of 2011, Income Tax Act 21 of 1994 and/or Custom and Excise Duty Act 91 of 1964. In the same letter, the Public Protector also requested SARS to furnish the Public Protector with the outcomes of their investigation if at all SARS was investigating this matter in line with its mandate.
- 6.1.129 On 05 September 2022, the Commissioner of SARS, Mr Edward Kieswetter (Mr Kieswetter), replied to the Public Protector and stated that, viewed collectively, the information requested by the Public Protector

constitutes taxpayer information as defined in section 67(1)(b) of the Tax Administration Act 28 of 2011(TAA). Mr Kieswetter submitted that section 69 of the TAA generally prohibits a SARS official from disclosing taxpayer information to any person who is not a SARS official, and to do so, is a criminal offence in terms of section 236 of the TAA.

- 6.1.130 According to Mr Kieswetter there are, however, certain exceptions to this general rule, wherein SARS is authorised to disclose taxpayer information to specific persons and organs of state or under the authority of a High Court order. However, he indicated that the Public Protector is not one of the persons to whom SARS is authorised by the TAA to provide taxpayer information to. He indicated that these issues were ventilated in and decided in favour of SARS in *Commissioner of the South African Revenue Service v Public Protector and Others [2020] 2 All SA 427 (GP)*. He stated that the Public Protector’s application for leave to appeal directly to the Constitutional Court was refused on 15 December 2020, and is reported as *Public Protector v Commissioner for the South African Revenue Service and Others 2022 (1) SA 340 (CC)*.
- 6.1.131 According to Mr Kieswetter, in this judgment the Constitutional Court said that “section 69(1) of the Tax Administration Act provides that SARS officials “must preserve the secrecy of taxpayer information and may not disclose taxpayer information to a person who is not a SARS official”. Thereafter, the Act creates narrow exceptions to this prohibition. The disclosure of taxpayer information in compliance with a subpoena issued by the Public Protector is not one of the exceptions. SARS officials are thus enjoined to withhold taxpayer information even in the face of such subpoena. Any other interpretation is at odds with the clear wording of section 69(1).
- 6.1.132 Mr Kieswetter emphasized that the guarantee of confidentiality of taxpayer information is what taxpayers get in return for the compulsion to provide full information to SARS. He stated that without the statutory guarantee of confidentiality, the expectation that the taxpayer will be candid and

accurate with SARS diminishes. Mr Kieswetter asserted that this is compact written into law between the tax authority and taxpayers which is the foundation of the tax system, without which SARS cannot function properly. As a result, Mr Kieswetter declined to provide the Public Protector with the requested clarity.

6.1.133 On 29 September 2022, the Public Protector addressed a second letter to SARS requesting SARS to indicate if Mr Mustafa Mohamed Ibrahim Hazim as reflected in the DHA's travel record, declared any foreign currency (money) either upon arrival or departure at the port of entry to SARS' Customs Division that is responsible for control of movement of goods and people entering or exiting the borders of the Republic of South Africa.

6.1.134 On 04 October 2022, Mr Kieswetter replied to the Public Protector and indicated that in terms of section 4(3) of the Customs and Excise Act 91 of 1964, neither the Commissioner nor any current or former SARS employee is permitted to share customs-related information with the Public Protector. Should any SARS official do so, it would be an unlawful disclosure and such official would commit an offence in terms of section 78(1) of the Customs and Excise Act.

6.1.135 Mr Kieswetter therefore declined to disclose any information to the Public Protector in this regard, save to indicate that SARS has accordingly decided to refer the matter to the FIC and the SARB in terms of section 4(3)(vii) and section 4(3)(v) of the Customs and Excise Act, 91 of 1964 respectively with a view to obtaining additional information in this regard.

*The evidence obtained from the South African Reserve Bank (SARB)*

6.1.136 On 07 October 2022, the Public Protector made a written request to SARB to seek clarity and confirmation on whether SARB has taken any steps to enforce its Exchange Control Regulations, 1961 in respect the foreign currency stolen at Phala Phala farm.

- 6.1.137 On 17 October 2022, the SARB replied to the Public Protector as per letter signed off by Mr CJ van der Walt, General Counsel (Mr van der Walt). Mr van der Walt submitted that the SARB through its Financial Surveillance Department (FinSurv) is the custodian of exchange controls, and the administration and enforcement thereof vests in it. He added that the powers in relation to the enforcement of exchange control vest with the SARB and not the Public Protector. He contended that all the matters specifically addressed by the Public Protector (and which are framed as questions or clarity sought) and which are to be addressed by SARB, fall within the domain of the SARB and FinSurv and do not relate to the powers bestowed on the Public Protector in terms of the Public Protector Act.
- 6.1.138 It was submitted further by Mr van der Walt that as the Public Protector correctly acknowledges, this falls within *"the domain of the SARB"*. He indicated that what the SARB can however, advise the Public Protector, and this is already in the public domain, is that FinSurv is conducting an investigation into the matter arising out of the criminal complaint by Mr Arthur Fraser. He further advised that the investigation is however not yet complete.
- 6.1.139 It was also suggested by Mr van der Walt that a report that FinSurv may compile at the conclusion of its investigations may contain findings on some of the questions raised for clarity by the Public Protector. He suggested that the Public Protector ought to await the conclusion of the FinSurv investigation and report and consider the findings made in relation to all matters under investigation, to the extent that such matters are relevant to matters under investigation by the Public Protector.

*The evidence obtained from the Financial Intelligence Centre (FIC)*

- 6.1.140 On 06 October 2022, the Public Protector addressed a letter to the FIC and sought information as to whether they had received a request for

cooperation or assistance from the Namibian FIC/authorities regarding the theft of cash at Phala Phala farm, and if so, an indication of how South African FIC handled or dealt with same. On 11 November 2022, the FIC responded to the Public Protector, however, there was no information which has a bearing on the issues under investigation by the Public Protector.

*The evidence obtained from the Directorate of Priority Crimes Investigations (DPCI)*

- 6.1.141 On 29 September 2022, the Public Protector wrote to the DPCI in order to share information in relation to the allegations of housebreaking and theft of cash in foreign currency that took place at Phala Phala farm. On 10 October 2022, the National Head of DPCI, Gen. Godfrey Lebeya (Gen. Lebeya) replied to the Public Protector through a letter and confirmed that DPCI is conducting a criminal investigation<sup>21</sup> based on Mr Fraser's case.
- 6.1.142 Implicit or explicit from the above submission as understood by the Public Protector is that the criminal aspects of this matter such as housebreaking and theft, money laundering including investigation to establish the source of the US dollars stolen from the President's residence and tax related offences as alleged by Complainants, are being investigated by the DPCI in line with their mandate.

*The evidence obtained from the Independent Police Investigative Directorate (IPID)*

- 6.1.143 On 29 September 2022, the Public Protector wrote to the Executive Director of the IPID in order to obtain information in relation to allegations of housebreaking and theft of cash in foreign currency that took place at

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<sup>21</sup> In terms of section 17D(1)(a) of the SAPS Act 68 of 1995 the duties of the DPCI is to prevent, combat and investigate national priority offences which in the opinion of the National Head of DPCI need to be addressed by the DPCI, including selected offences and other category of offences referred to it by the National Commissioner of the SAPS.



Phala Phala farm. On 30 September 2022, the Investigation Team held a meeting with the IPID's investigation team to share information of common interests. The IPID was represented by Director Mr T Keefelakae and Deputy Director Mr J Baloyi during the meeting.

- 6.1.144 IPID submitted to the Public Protector a letter dated 29 July 2022, signed by the Executive Director of IPID, Ms JD Ntlatseng, which was addressed to the Complainant, Mr Zungula. The letter stated amongst other things that IPID has noted that **the criminal elements of this matter are being investigated by DPCI** and that IPID does not intend to duplicate any process that is carried out by another government entity. This letter further indicated that IPID focuses on the investigation aspects not covered by DPCI, which is to establish whether there was any transgression of the SAPS regulations or prescripts.
- 6.1.145 IPID further furnished the Investigation Team with an affidavit dated 24 August 2022, deposed to by Mr J Baloyi (Mr Baloyi), who is the lead investigator of this matter at IPID. In his affidavit, Mr Baloyi indicated amongst other things that on 01 August 2022, he visited Bela Bela police station to conduct an investigation into kidnapping and torture under Bela Bela CAS 78/03/2020 which is also referenced as IPID REF: CCN2022070130.
- 6.1.146 According to the affidavit of Mr Baloyi, the station commander of Bela Bela, Col. Phetla and the Detectives Branch Commander, Lieutenant Col. Smith advised IPID that there was no case of theft related to Phala Phala farm that was reported at Bela Bela police station, except the one reported by Mr Arthur Fraser at Rosebank police station, which was referred to them under Bela Bela CAS 93/06/2022, and later transferred to DPCI for further investigations.
- 6.1.147 Mr Baloyi indicated that IPID was informed by Lieutenant Col. Smith that Bela Bela police station had a case of kidnapping registered under Bela

Bela CAS 78/03/2020 which was reported by Ms Bernadette Joseph<sup>22</sup> of Vingerkraal. According to Mr Baloyi, the victims in this docket were listed as Floriana Nduumona and David Joseph. He stated that a copy of this docket was given to IPID and it was alleged by Lieutenant Col. Smith that the Senior Public Prosecutor (SPP) declined to prosecute in the matter as Ms Bernadette Joseph later submitted a withdrawal statement.<sup>23</sup> According to the affidavit of Mr Baloyi, the original docket is missing from the police station as confirmed by Lieutenant Col. Smith.

6.1.148 Mr Baloyi submitted that on 15 August 2022, he and his colleague Mr T Keefelakae further proceeded to Vingerkraal to trace, interview and obtain statements from the victims of this kidnapping and torture as per Bela Bela CAS 78/03/2020. He stated that IPID was also accompanied by Captain JN Shitlhane of Bela Bela police station. He stated further that upon arrival at C15 Vingerkraal, they found Ms Bernadette Joseph and Ms Floriana, who both denied ever reporting a case of kidnapping during 2020, despite their names and signatures shown to them. According to Mr Baloyi they acknowledged signatures but denied reporting a case. Mr Baloyi indicated they also denied meeting Captain Shitlhane before.

6.1.149 It was further submitted by Mr Baloyi that IPID was also told by Ms Floriana that her brother David Joseph recently found employment and they did not know where he is working. According to Mr Baloyi, he attempted to obtain a statement from Ms Floriana Joseph, but after consulting or speaking with an unknown person over the phone, Ms Floriana Joseph refused to sign the statement.

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<sup>22</sup> Ms Bernadette Joseph is a mother to Floriana and David Joseph and she laid this complaint in respect of her children who were allegedly kidnapped.

<sup>23</sup> The District Court stamp of Bela Bela Magistrate Court is dated 16 March 2020 on the copy of the docket and the withdrawal affidavit of Ms Bernadette Joseph bears the same date.

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*Documentary Evidence received from IPID*

- 6.1.150 The affidavit of Mr Baloyi is also supported by a confirmatory affidavit of Captain Shitlhane of Bela Bela police station, which was also furnished to the Public Protector by IPID.
- 6.1.151 The Investigation Team noted both copies of the withdrawal statements from Ms Floriana Joseph and her mother Ms Bernadette Joseph. Ms Floriana Joseph stated amongst other things that this whole thing was a misunderstanding and that they are back home with her brother David Joseph, unharmed and that there is no need for a case. On the other hand Ms Bernadette Joseph stated that she is withdrawing the case of her own volition and that no one forced, threatened or gave her any money.
- 6.1.152 On 14 September 2022, the Investigation Team also made a telephonic effort to engage with Ms Floriana Joseph to obtain her version. She refused to agree to an appointment and told the Investigation Team over the phone that she is not interested to talk to the Public Protector about this matter and she is tired of talking to many people, including media.

***Applicable legal framework***

**The Constitution of the Republic of South Africa, 1996**

- 6.1.153 Section 91 of the Constitution stipulates that:
- (1) *“The Cabinet consists of the President, as head of the Cabinet, a Deputy President and Ministers”.*
- 6.1.154 Section 96 of the Constitution provides that:
- (1) *“Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.*
- (2) *Members of the Cabinet and Deputy Ministers may not—*

- (a) *undertake any other paid work;*
- (b) *act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or*
- (c) *use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.”*

6.1.155 The above constitutional provisions have an important bearing on the context and purpose of the EMEA and the Executive Ethics Code. The EMEA is the national legislation contemplated in section 96(1) of the Constitution and the foundation of the Executive Ethics Code. Evidently, the scope of the EMEA is limited to regulating ethical conduct of members of the Executive at both national and provincial spheres.

6.1.156 In this regard Mr Zungula submitted that the President is guilty of a serious violation of section 96(2)(a) of the Constitution in that he is actively running a farm business. On the other hand the President denied this allegation and submitted that he did not do any other work for which he is paid and has not been paid for any work except for his duties as the President.

### **Executive Members Ethics Act, 1998**

6.1.157 Section 1 of the EMEA provides that a cabinet member includes the President. The Public Protector is empowered, in terms of section 3 of the EMEA, to investigate breaches of the Executive Ethics Code when a complaint is made in terms of section 4 of the EMEA. Section 4 of the EMEA provides that the Public Protector must investigate in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a member of National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet Member or Deputy Minister.

6.1.158 In this instance, the Public Protector is in receipt of a complaint<sup>24</sup> lodged in terms of the EMEA, from Messrs Zungula and Steenhuisen, who are both members of the National Assembly.

6.1.159 The reporting obligations of the Public Protector to be followed during an investigation related to the enforcement of the EMEA and the Executive Ethics Code, are regulated by sections 3(2), and (3) of the EMEA, which provide as follows:

*“3(2) The Public Protector must submit a report on the alleged breach of the code of ethics within 30 days of receipt of the complaint-*

- (a) to the President, if the complaint is against a Cabinet member, Premier or Deputy Minister; and*
- (b) to the Premier of the province concerned, if the complaint is against an MEC.*
- (3) If the Public Protector reports at the end of the period referred to in subsection (2) that the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed”.*

6.1.160 In this regard it must be noted that the President is the subject of the investigation. The legislative scheme of the EMEA is silent on this point and does not reveal to whom the Public Protector must submit her report to, if the President was the subject of an investigation. It may well be that,

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<sup>24</sup> In the case of *Public Protector and Others v President of the Republic of South Africa and Others* (CCT 62/20) [2021] ZACC 19 (1 July 2021) (the President case). In par 11, the court denoted that:

“Section 3 empowers the Public Protector to investigate any breach of the code. The scheme that emerges from the reading of this provision is that the Public Protector’s power to investigate is subject to a formal complaint. This suggests that the scope of an investigation is determined by the breach of the code contained in the complaint. It is important to note that section 3 does not authorise the Public Protector to investigate a violation of the Act itself but limits her authority to investigating a breach of the code.”

because the President is the subject of the investigation, the National Assembly should be notified.<sup>25</sup>

6.1.161 Accordingly, the Public Protector notified the Speaker of the National Assembly that the investigation will not be completed within thirty (30) days as prescribed by section 3(2) of the EMEA. The Speaker of the National Assembly acknowledged receipt of the notification as per letter dated 03 August 2022 and advised that the letter has been tabled in the Parliamentary Committee for Announcements, Tablings and Committee Reports (ATC), for the benefit of all members.

6.1.162 Section 2(1) of EMEA reads as follows:

*“The President must, after consultation with Parliament, by proclamation in the Gazette, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECs must comply in performing their official responsibilities.”*

6.1.163 The general standards the members of the Executives<sup>26</sup> must comply with are contained in clause 2.1 of the Executive Ethics Code, which provides that-

2.1 *“Members of the Executive must to the satisfaction of the President or the Premier, as the case may be-*

- (a) perform their duties and exercise their powers diligently and honestly;*
- (b) fulfill all the obligations imposed upon them by the Constitution and law;*

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<sup>25</sup> For example, section 102(2) of the Constitution empowers or gives the National Assembly powers over the President, including the power to remove the President from office by a motion of no confidence.

<sup>26</sup> Member of the Executives means a Cabinet member, a Deputy Minister or a Member of a Provincial Executive Committee, and 'member' and 'Executive' have corresponding meanings.

- (c) *act in good faith and in the best interest of good governance;*
- (d) *act in all respects in a manner that is consistent with the integrity of their office or the government.”*

6.1.164 Clause 2.2 provides that *“In deciding whether members of the Executive complied with the provisions of clause 2. 1, the President or Premier, as the case may be, must take into account the promotion of an open, democratic and accountable government.”*

6.1.165 Clause 2.3 of the Executive Ethics Code provides that members of the Executive may not:

- (a) wilfully mislead the legislature to which they are accountable;
- (b) wilfully mislead the President or Premier, as the case may be;
- (c) act in a way that is inconsistent with their position;
- (d) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;
- (e) use information received in confidence in the course of their duties otherwise than in connection with the discharge of their duties;
- (f) expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;
- (g) receive remuneration for any work or service other than for the performance of their functions as members of the Executive; or
- (h) make improper use of any allowance or payment properly made to them, or disregard the administrative rules which apply to such allowance or payments.

6.1.166 Paragraphs 5 and 6 of the Executive Ethics Code are of relevance in this investigation.

Paragraph 5 reads as follows:

- “5.1 Every member must disclose to the Secretary particulars of all the financial interests, as set out in paragraph 6, of—*
- (a) the member; and*
  - (b) the member’s spouse, permanent companion or dependent children, to the extent that the member is aware of those interests.*
- 5.2 The first disclosure must be made within 60 days after the promulgation of this Code or of a member’s assumption of office, or of a member becoming aware of such interest, as the case may be.*
- 5.3 After the first disclosure, members must annually disclose particulars of their financial interests on or before a date determined by the Secretary.*
- 5.4 Cabinet members and Deputy Ministers who are members of the National Assembly and are required to disclose particulars of their financial interests in terms of the Rules of Parliament, comply with paragraph 5.1—*
- (a) by submitting to the Secretary a copy of those particulars on the same date as they are filed with the relevant parliamentary official; and*
  - (b) in so far as those particulars do not meet the requirements of paragraph 6 of this Code, by filing with the Secretary a statement containing the necessary additional disclosure.*
- 5.5 Where any doubt exists as to whether particular financial interests must be disclosed, the member must consult the Secretary.*
- 5.6 When a member makes a disclosure in terms of paragraph 5.1, the member must confirm in writing to the Secretary that the member receives no remuneration other than as a member of the Executive.”*



- 6.1.167 The disclosure of such information facilitates transparency and openness in so far as it relates to the need for ethical government through adoption of the Executive Ethics Code that prohibits members of the executive from exposing themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests.
- 6.1.168 The President submitted his declaration of Financial Interests to the Secretary to Cabinet during the 2020 reporting period, in terms of paragraph 5 of the Executive Ethics Code. The declaration relates to amongst others, Ntaba Nyoni and Tshivhase Trust. The Investigation Team viewed the Register of Members' Financial Interests on 07 October 2022 in terms of paragraph 8.2 of the Executive Ethics Code.<sup>27</sup> The declaration also indicated that the President received no remuneration other than as a member of the Executive.

### **Tax Administration Act, 2011**

- 6.1.169 Section 67(1) of Tax Administration Act<sup>28</sup> (TAA), is a confidentiality regime against disclosure of information by SARS and provides as follows:
- “(1) This Chapter applies to—*
- (a) SARS confidential information as referred to in section 68(1); and*
- (b) taxpayer information, which means any information provided by a taxpayer or obtained by SARS in respect of the taxpayer, including biometric information.”*
- 6.1.170 In terms of section 67(2) of the TAA, SARS officials must take an oath or solemn declaration undertaking to comply with the above requirements in the prescribed form, before a magistrate, justice of the peace or commissioner of oaths.

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<sup>27</sup> Paragraph 8.2 of the Executive Ethics Code states that a member must assist the Public Protector in the performance of the Public Protector's functions under the Act.

<sup>28</sup> Act 28 of 2011.

6.1.171 Section 69(1) of the TAA is of particular relevance and indicates *inter alia*:

“A person who is a current or former SARS official *must preserve the secrecy of taxpayer information and may not disclose taxpayer information to a person who is not a SARS official*”.<sup>29</sup> (Own underlining)

6.1.172 However, the above secrecy clause is qualified by the following exceptions in that SARS officials may share the information, in the course of performance of duties to —

- i. the South African Police Service or National Prosecuting Authority if the information relates to, and constitutes material information for proving a tax offence;
- ii. a witness in proceedings instituted in terms of a tax Act, whether civil or criminal; or
- iii. the taxpayer information necessary to enable a person to provide certain information required by SARS from that person.

6.1.173 In addition, section 70 of TAA indicates other exceptions to the prohibition against disclosure to other entities such as SARB, FIC including the Auditor-General of South Africa (AGSA). Notably, the Public Protector is not included in the list and the exceptions appear to be meticulously exhaustive, specific and narrow.<sup>30</sup>

6.1.174 In the matter of the *Public Protector v Commissioner for the South African Revenue Service and Others*<sup>31</sup> the Concourt held amongst other things that:

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<sup>29</sup> Our underlining.

<sup>30</sup> Advocate H Maenetje SC confirmed same on the legal opinion piece he gave in this regard at Paragraph 11.

<sup>31</sup> [2020] ZACC 28 at Paragraph 24.

“.....Disclosure of taxpayer information in compliance with a subpoena issued by the Public Protector is not one of the exceptions. SARS officials are thus enjoined to withhold taxpayer information even in the face of such subpoena. Any other interpretation is at odds with the clear wording of section 69(1)”.

6.1.175 On 16 November 2021, in the matter of *Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Services and Others*<sup>32</sup> the high court held amongst other things that “*the principle espoused by the Commissioner of SARS that without taxpayer secrecy, tax administration cannot properly function, is not a universal truth*”. The court disputed SARS’ contention and held that the notion that voluntary disclosure and taxpayer compliance is inextricably linked to or dependent on the taxpayer secrecy regime also appears not to be a universal truth.

6.1.176 According to the High Court,<sup>33</sup> the threat of detection, punishment and criminal sanctions or penalties are the driving forces, obliging taxpayers to make truthful and accurate submissions to SARS, not necessarily the secrecy provisions contained in TAA. There is no direct or factual evidence that taxpayers in South Africa make disclosure of their affairs because of the secrecy provisions as opposed to the coercion of the penalties and sanctions which follow upon non-disclosure. At the end, the High Court ruled amongst other things that the blanket prohibitions of disclosure of taxpayer information contained in section 67 and 69 of the TAA are unconstitutional and invalid to the extent that they preclude access to information being granted to a requester in respect of tax records in circumstances where the requirements set out in section 46 of the Promotion of Access to Information Act, 2000 (PAIA) are met.<sup>34</sup>

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32 (88359/2019) [2021] ZAGPPHC 779; 2022 (2) SA 485 (GP); 84 SATC 153 (16 November 2021) at Paragraph 8.

33 *Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Services and Others* (88359/2019) [2021] ZAGPPHC 779; 2022 (2) SA 485 (GP); 84 SATC 153 (16 November 2021) at Paragraph 8.

34 *Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Services and Others* (88359/2019) [2021] ZAGPPHC 779; 2022 (2) SA 485 (GP); 84 SATC 153 (16 November 2021) at Paragraph 10-11.

- 6.1.177 On 30 May 2023, the above order of constitutional invalidity issued by the High Court in respect of sections 67 and 69 of the TAA was confirmed by the majority decision of the Constitutional Court,<sup>35</sup> including the *reading-in* of the wording to support the mandatory disclosure of tax information by SARS to a public body, where such disclosure is in the public interest.
- 6.1.178 To the extent that SARS contends that the Public Protector cannot be furnished with tax information on the basis of the legislative imperatives under TAA and case law, certain sections of TAA that governs tax payer confidentiality are now confirmed to be constitutionally invalid. The provisions contained in sections 181(3), 182(1) and (2) of the Constitution should supersede the confidentiality clause in the TAA, in that organs of state, which include SARS, are obligated to assist the Public Protector to be effective for the purposes of her investigation.
- 6.1.179 In this instance, the allegations were that the President may have contravened tax related prescripts in connection with his interests in Ntaba Nyoni. Therefore, it stands to reason that the disclosure of tax information by SARS to the Public Protector would have been in the public interest, since the disclosure was reasonably believed that it would reveal evidence of a substantial contravention of or failure to comply with the law by the President, who is the head of state.
- 6.1.180 However, the Public Protector, took a *prima facie* view that as a principal institution directly charged with a responsibility to regulate and enforce tax related breaches or infringements, it is appropriate to afford SARS an opportunity to make a determination in respect of this allegation within its mandate and to avoid duplication and parallel processes.<sup>36</sup>

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<sup>35</sup> Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Service and Others [2023] ZACC at Paragraphs 195 and 205.

<sup>36</sup> Government Employees Medical Scheme and Others v The Public Protector of the Republic of South Africa and Others (1000/2019 and 31514/2018 and 33401/2018) [2020] ZASCA 111 (29 September 2020) at paragraph 25.

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### Currency and Exchanges Act, 1933

6.1.181 In South Africa, the exchange control policy vests with the Minister of Finance, who ostensibly is the domain and/or the authority responsible for the Currency and Exchanges Act 9 of 1933 (CEA).<sup>37</sup>

6.1.182 Section 9(1) of the CEA provides amongst other things that:

*“9(1) The Governor-General may make regulations in regard to any matter directly or indirectly relating to or affecting or having any bearing upon currency, banking or exchanges.*

*9(2) Such regulations may provide that the Governor-General may apply any sanctions therein set forth which he thinks fit to impose, whether civil or criminal”.*

6.1.183 Accordingly, the Exchange Control Regulations made in terms of section 9 of the CEA were promulgated by Government Notice R.1111 of 01 December 1961 and amended up to Government Notice No. R.445 in Government Gazette No. 35430 of 08 June 2012.

6.1.184 Regulation 22E of the Exchange Control Regulations provides that:

*“(1) The Minister of Finance may delegate to any person any power or function conferred upon the Treasury by any provision of these regulations or assign to any such person a duty imposed thereunder to the Treasury.*

*(2) The Treasury shall not be divested of any power or function or duty delegated to any person under subregulation (1) and may at any time*

*withdraw or amend any decision taken by any such person in the exercise or performance of the power or function or duty in question”.*

- 6.1.185 The above Regulation implies that the control over South Africa’s foreign currency reserves as well as the accruals and spending thereof is vested in the Treasury. The “Treasury” is defined as –*“In relation to any matter contemplated in these Regulations, means the Minister of Finance or an officer in the Department of Finance who, by virtue of the division of work in that department, deals with the matter on the authority of the Minister of Finance”*.<sup>38</sup>
- 6.1.186 Treasury has specifically delegated to the Governor, a Deputy-Governor of the SARB and/or the General Manager for Compliance and Enforcement, Financial Surveillance Department of SARB (FinSurv) all powers, functions and duties assigned to and imposed on Treasury under Exchange Control Regulations. As a result, the FinSurv of the SARB is responsible for the day to day administration of the Exchange Control Regulations in South Africa.
- 6.1.187 The SARB through its FinSurv is empowered to conduct investigations or to appoint investigators in terms of Regulation 19. It is apparent that the SARB through its FinSurv is the delegated custodian of exchange controls, and the administration and enforcement thereof.
- 6.1.188 FinSurv is mandated to investigate alleged contraventions of the Exchange Control Regulations and to, where appropriate take administrative action against alleged perpetrators. The alleged contravention of the Exchange Control Regulations is a statutory offence.<sup>39</sup> Contravening the Regulations can lead to criminal sanctions,

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38 Regulation 1 of the Exchange Control Regulations.

39 Regulation 22 of the Exchange Control Regulations states amongst other things that every person who contravenes or fails to comply with any provision of these regulations, shall be guilty of an offence and liable upon conviction to a fine not exceeding two hundred and fifty thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

as well as a severe financial penalty in a form of the attachment and forfeiture of assets.

6.1.189 To the extent that it is submitted that the alleged or suspected contravention of the Exchange Control Regulations by the President, might constitute a breach of the Executive Code of Ethics, the Public Protector deems it prudent to afford SARB an opportunity as a primary authority, to investigate the substance of the allegations that the President had failed to declare or disclose the foreign currency to Treasury or the SARB. This stance is informed by the need to avoid a parallel process, with potential conflicting decisions.<sup>40</sup> The SARB has already confirmed to the Public Protector that it is conducting an investigation in connection with allegations of violation of Exchange Control Regulations pertaining to this matter.

#### **Close Corporation Act, 1984**

6.1.190 In terms of section 2 of the Close Corporation Act<sup>41</sup>, a corporation formed in accordance with the provisions of a Close Corporation Act is upon registration a *juristic person* and continues, to exist as a juristic person notwithstanding changes in its membership until it is deregistered or dissolved.

6.1.191 Section 2(3) of the Close Corporation Act stipulates that members of a corporation shall not merely by reason of their membership be liable for the liabilities or obligations of the corporation.

6.1.192 Section 2(4) of the Close Corporation Act provides that a corporation shall have the capacity and powers of a natural person of full capacity in so far

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<sup>40</sup> Government Employees Medical Scheme and Others v The Public Protector of the Republic of South Africa and Others (1000/2019 and 31514/2018 and 33401/2018) [2020] ZASCA 111 (29 September 2020) at Paragraph 25.

<sup>41</sup> Act 69 of 1984.

as a juristic person is capable of having such capacity of exercising such powers.

- 6.1.193 The net effect of the above legislative scheme implies that a Close Corporation acquires its own independent legal personality and a corporate status separate from its members. The corollary of this is that the members of the corporation are allowed the greatest possible flexibility to arrange their internal relationships, management, operations and/or administration of the corporation. This also means that while the President is admittedly the sole member of Ntaba Nyoni, it does not alter the fact that Ntaba Nyoni has a separate corporate and legal personality independent of the President. The President and Ntaba Nyoni therefore enjoy the advantages of their separate perpetual legal personalities per arrangement in terms of section 2 of the Close Corporation Act.

**Response to a notice in terms of section 7(9)(a) and (b) of the Public Protector Act, read with Rule 42(1) and 41(1) of the Public Protector Rules**

- 6.1.194 A notice in terms of section 7(9)(a) and (b) of the Public Protector Act, read with Rule 42(1) and 41(1) of the Public Protector Rules, dated 10 March 2023 was issued and sent to all the affected parties. In what follows, the Public Protector proceeds to consider the responses submitted regarding the notices.
- 6.1.195 Mr Zungula responded to a notice on 20 March 2023. In respect of this issue, he responded *inter alia* as follows:
- 6.1.195.1 The ATM expresses regret that their advice has not been heeded, wherein ATM advocated for the separation of the complaints into EMEA from those in terms of the Public Protector Act. The result of lumping everything into one report has resulted into this prolonged, unreasonable and unlawful delay in violation of section 3(2) of EMEA, in which it is peremptory for the



Public Protector to issue the report within 30 days. ATM implored the Public Protector, not to delay the process by conflating issues of EMEA with the rest of the issues, particularly because all other issues, bar maladministration, can be competently dealt with by other institutions with requisite mandates.

- 6.1.195.2 ATM registers its disappointment at the failure of the interim report to acknowledge that the ATM, through its President and his support staff, had a physical meeting with the Investigating Team on 26 August 2022, during which the complaint and the timing of the initial report were further discussed and clarified to the Investigation Team. Further, and most importantly the ATM again in the late afternoon of the same day (26 August 2022) supplemented its submission through furnishing the Investigation Team with the Impeachment Notice of Motion which further elucidated the complaint including supplying the evidence to substantiate the complaint.
- 6.1.195.3 The non-recognition of the both the physical meeting referred to above and the substantiated impeachment notice of motion that was submitted explains the gaping holes, contradictions and what ATM views, as an apparent cover up by the provisional report of the Public Protector. It is very clear to the ATM that the Acting Public Protector misdirected herself in concluding that allegations against Mr Ramaphosa are not substantiated.
- 6.1.195.4 ATM acknowledges that a notice in terms of section 7(9) of the Public Protector Act read with Rule 41(1) of the Public Protector Rules is not a final report and hopes that its contributions herein will assist to close the obvious gaps and to correct the errors of law that ATM have identified. ATM anticipates that the final report will indeed take into account their submission and correct the errors as identified. As the provisional report currently stands, it gives credence to the suspicion that the Office of the Public Protector in this case has chosen to engage in a cover-up, wherein officials are thrown under the proverbial bus, simply to protect President

Ramaphosa. Such conduct, if true, will cause permanent damage to the reputation of this important office.

6.1.195.5 To avoid a costly review processes through the courts, the ATM will in its response bring to bear the analysis of the allegations that was done by very senior people in the judicial and legal fraternity<sup>42</sup> which included no less than a former Chief Justice, a retired Senior Judge and a Senior Counsel, who contrary to the findings of the Acting Public Protector, acted without fear, favour or prejudice, and found as follows:

*“264. In light of all the information placed before the Panel, we conclude that this information discloses, prima facie, that the President may have committed:*

*264.1. A serious violation of sections 96(2)(a).*

*264.2. A serious violation of section 34(1) of PRECCA.*

*264.3. A serious misconduct in that the President violated section 96(2)(b) of the Constitution by acting in a way that is inconsistent with his office.*

*264.4. A serious misconduct in that the President violated section 96(2)(b) by exposing himself to a situation involving a conflict between his official responsibilities and his private business.”*

6.1.195.6 While ATM is mindful of the independence of the Public Protector; however, nothing stopped the Investigation Team to study the report of the Section 89 Panel and benefit from the insights of the experts in the field of law, whose combined legal experience is probably no less than a century. The Section 89 Independent Panel Report should have been

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<sup>42</sup> Report of the Section 89 Independent Panel, Parliament of the Republic of South Africa Vol. 1 30 November 2022. In terms of section 89(1) of the Constitution of the Republic, 1996, the National Assembly, by a resolution adopted by a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of –  
(a) a serious violation of the Constitution or the law;  
(b) serious misconduct; or  
(c) inability to perform the functions of office.

considered, particularly after the failed review application by Mr Ramaphosa at the Constitutional Court, albeit, on jurisdictional grounds amongst other grounds. So indeed, even in law, the Acting Public Protector misdirected herself.

### *Rebuttal of the Interim Findings*

#### (i) Paid Work

- 6.1.195.7 The ATM is not at all concerned with the declarable financial interests that Mr Ramaphosa has made and therefore strongly cautions against deliberate and malicious conflation of issues. There was never an allegation, at least from the ATM, that Mr Ramaphosa failed to declare. The declaration issue must be seen as a red herring and a deliberate obfuscation of issues, resulting in a failure to make Mr Ramaphosa account for his own actions or a lack thereof.
- 6.1.195.8 Where the provisional report attempts to interpret the concept of “paid work” it fails dismally to comply with the basic rules of interpretation. The attempt to ascribe a narrow and self-serving definition is evidenced by a statement wherein it states that “*The concepts of paid work and/or remunerated work are not defined in the Constitution, EMEA or the Code of Ethics.*” This extract can never be used to dodge the meaning of PAID WORK as contemplated in section 96(2)(a) of the Constitution.
- 6.1.195.9 While the Acting Public Protector seeks refuge in what is referred to in the provisional report as “the golden rule of interpretation...” her interpretation is the direct opposite of such golden rule. If the interpretation by the Acting Public Protector in respect of what is meant by “paid work” were followed, it would mean that a doctor or advocate in private practice, deriving, not a salary, but profit from his or her full-time practice, could also dabble as President or Cabinet Minister. ATM submits that this interpretation creates an absurdity.

- 6.1.195.10 Paid work, in the context of the very intention of the legislation approach adopted, should be interpreted to encompass drawing of payment from one's business or private practice. The real intention is to avoid the risk of conflict as well as the involvement of Cabinet Members/Executive in other forms of work or paying work while serving the public. We submit that this self-serving narrow interpretation as postulated by the Interim report is absurd and smacks of an attempt to find ways to exonerate Mr Ramaphosa. ATM implores the Office of the Public Protector to reconsider its finding in this regard because it does constitute an error of law, which would render the Final Report reviewable if it retained such interpretations.
- 6.1.195.11 Mr Ramaphosa was an active participant in the *Paid Work* of the CC where he is a sole member. (The ATM will underline and bold for emphasis). According to the President, he and the General Manager of Phala Phala farm, Mr Hendrik von Wielligh ("Mr von Wielligh"), **had discussions for some time, about the disposal of buffalo that were substandard and were a financial drain on the operations of Phala Phala Wildlife. The President submitted that they were of the view that the buffalo should be sold as a parcel, because this made better financial sense than selling them individually for hunting purposes.** The President indicated that **he had advised Mr von Wielligh that there were potential buyers of these buffalo from the Middle East and other African countries.**
- 6.1.195.12 According to Mr Ndlovu, there were about sixty (60) buffalo in camp six (6) at Phala Phala farm, some of which were not considered to be up to Phala Phala farm standards. **He stated that the President and Mr von Wielligh had mentioned to him that they had decided to sell the buffalo and the asking price was four hundred thousand Rand (R400 000.00) each.**

6.1.195.13 The two extracts above are incontrovertible submissions substantiating and evidencing that indeed Mr Ramaphosa, the sole member of the CC was actively involved. In addition, it is common cause that the first extension for Mr Ramaphosa to submit his reply to the Public Protector was given on 17 June 2022, because he was reported to be too busy. Yet, the very next day on 18 June 2022 it was widely reported in the media that he was present in person at the auction of game and livestock at Phala Phala farm. By his own admission Mr Ramaphosa is involved in the cattle and game farming business, and absolving him in this fashion as contained in the provisional report truly brings the Office of the Public Protector into disrepute.

6.1.195.14 Explaining the large sum of foreign currency stolen from his residence, the President told the ANC Conference in Limpopo that:

*“However, I would like to say **that I’m a farmer**. I am in the cattle business and the game business. And through that business, which has been declared in Parliament and all over, **I buy, and I sell animals**. Sometimes people buy these animals – **and some of the people who bought some of the animals some of them are here – I do it yes**; the sales are sometimes through cash or sometimes through transfers”.*

6.1.195.15 This unprovoked express and verbatim admission by Mr Ramaphosa puts to bed any doubt about his personal involvement in the PAID WORK of the CC where he is the sole member. Contrary to the wrong analysis of the Acting Public Protector, Mr Ramaphosa didn’t say I have a financial interest in farming, he said, “I’m a farmer”. The ATM agrees with the contentions of the Section 89 Panel as they unpack “PAID WORK” from paragraph 187 to 199 of its report.

(ii) Risk of Conflict

6.1.195.16 Mr Ramaphosa committed a serious misconduct namely, violation of section 96(2)(b) read with section 83(b) of the Constitution. Mr

Ramaphosa is guilty of serious misconduct by violating section 96(2)(b) of the Constitution, which provides that Members of the Cabinet and Deputy Ministers may not, inter alia, expose themselves to any situation involving the **risk of a conflict between** their official responsibilities and private interests.

6.1.195.17 The ATM wishes to emphasise that for the transgression to occur, the threshold is risk of conflict, not even the actual conflict. The provisional report seems to miss the fact that it is the “*risk of a conflict*” that is the hallmark of this provision, not the conflict itself. ATM implores the Office of the Public Protector in its final report to correct this obvious error of law in interpreting the relevant section of the Constitution.

6.1.195.18 The ATM poses the following basic questions: - What if the current Expropriation Bill requires that half of Phala Phala Farm should be converted into land for low-cost housing? Would Mr Ramaphosa sign that, Bill? We don't know. What if the Minister of Environmental Affairs wants a Bill passed to outlaw the importation of Ankoles to avoid cross border animal diseases? Would Mr Ramaphosa sign that, Bill? We don't know. What if the communities around Phala-Phala Farm want a commission of inquiry to investigate their land claim in Phala-Phala Farm? Would Mr Ramaphosa appoint that commission? We don't know. The ATM therefore contends that the Acting Public Protector must agree and find that the risk of conflict between the private interests of Mr Ramaphosa and his official duty is palpable.

(iii) Acting in a way that is inconsistent with the office in violation of section 96(2)(b) of the Constitution.

6.1.195.19 The Acting Public Protector is wrong to conclude that this charge is not substantiated. Mr Ramaphosa's choice of not having the premises guarded was not only fundamentally flawed but was unlawful as well. The ATM contends that this gross error of judgement on the part of Mr Ramaphosa is responsible for the virtually uninterrupted burglary at Phala

Phala farm. By so doing, Mr Ramaphosa opened an avenue for thieves to break in without anyone stopping them. Furthermore, despite him knowing that he elected not to have his property guarded but he still sends his body guard to the scene of the crime to investigate.

6.1.196 Mr Steenhuisen responded to a notice in a letter dated 30 March 2023. In respect of this issue, he responded *inter alia* as follows:

6.1.196.1 The Public Protector's finding that SARB has exclusive powers, functions and duties assigned to FinSurv, which is responsible for the day to day administration of the Exchange Control Regulations in South Africa, is a material error of law.

6.1.196.2 The Exchange Control Regulations do not provide that the enforcement of regulations relating to currency is within the "exclusive" power of the South African Reserve Bank. The Regulations make no mention of any "exclusive" power of enforcement.

6.1.196.3 In any event, the Public Protector does not seek to "enforce" the Exchange Control Regulations. The Public Protector is duty-bound to investigate breaches of the Code. A member of the executive, including the President, could breach the Code by falling foul of Exchange Control Regulations.

6.1.196.4 For instance, the President could act in a manner inconsistent with his position, or expose themselves to conflicts of interest, if they unlawfully failed to declare possession of foreign currency.

6.1.196.5 In this case, complainants alleged that the President breached the Code by failing to adhere to the Regulations. Indeed, in this case, there is a strong *prima facie* case that the President failed to declare or disclose the foreign currency to Treasury or the Reserve Bank. The Public Protector, in turn, cannot abdicate her duties and pass the buck to the Reserve Bank. The Public Protector must investigate whether there is substance in these allegations. A failure to do so, because she thought the SARB had

exclusive jurisdiction over the enforcement of the Regulations, would be a material error of law.

6.1.197 Mr Muller submitted a supplementary response to a notice in an email dated 20 March 2023. In respect of this issue, he responded *inter alia* as follows:

6.1.197.1 While the President might not be involved in the day to day running of the Phala Phala farm, however, an inference that can be drawn is that, the President is actively involved in the running of Phala Phala farm.

6.1.197.2 The President indicated that he advised Mr von Wielligh that there were potential buyers of the substandard buffalos from Middle East and other African countries. Furthermore, the President told Mr Ndlovu that money could only be dealt with (banked and submitted to authorities) upon his return to the farm and he would discuss and process the transaction with Mr von Wielligh as the General Manager. This is yet another evidence of President's active involvement in the running of Phala Phala farm.

6.1.197.3 Media article(s) seems to suggest that money that was stolen might have been far more than the money mentioned by both the President and Mr Ndlovu. However, once a docket into the robbery and theft can be registered, a lawful criminal investigation will uncover the real amount that was stolen at Phala Phala farm.

6.1.198 A response to a Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from President's Legal Representatives on behalf of the President and Mr Chauke, as per email dated 30 March 2023, stating *inter alia*:

6.1.198.1 Our clients do not intend to submit any written representations in response to the interim report. In the event that any adverse findings are made



against President Ramaphosa and/or Mr Chauke, our clients' rights are strictly reserved.

### **Analysis of the evidence**

#### *Legal concept of paid work and/or remunerated work*

6.1.199 In this regard, the President's response is a denial of allegations that he undertook *paid work* outside his Cabinet duties. The President denied any breach of the Code of Ethics and section 96(2)(a) and (b) of the Constitution. He stated that he does not work for Ntaba Nyoni or Phala Phala farm and was not paid for anything. The concepts of *paid work and/or remunerated work* are not defined in the Constitution, EMEA or the Code of Ethics.

6.1.200 In order to arrive at the decision whether the President breached the Constitution and the Code of Ethics, it is pertinent for the Public Protector to interpret and determine the meaning of the concept "***undertakes any other paid work***" and/or ***receive remuneration for any work or service other than for the performance of their functions as members of the Executive*** (own emphasis).

6.1.201 The modern approach to interpretation is neatly summarised as follows by the Constitutional Court<sup>43</sup>:

*"The interpretation of the Act must be guided by the following principles:*

- a) *Words in a statute must be given their ordinary grammatical meaning unless to do so would result in an absurdity.*
- b) *This general principle is subject to three interrelated riders: a statute must be interpreted purposively; the relevant provision must be*

*properly contextualised; and the statute must be construed consistently with the Constitution, meaning in such a way as to preserve its constitutional validity...*"

- 6.1.202 In the matter of the *Public Protector and Others v President of the Republic of South Africa and Others*<sup>44</sup>, the court stated that “*the Constitution, the Members Act, and the Code exist for the purpose of enhancing or enabling attainment of justice, giving substance to our founding values and ensuring compliance with high ethical standards and constitutional obligations. They are not to be interpreted in a way that impedes the realisation of these critical objectives. Courts should not therefore inadvertently enable schemes designed to or that could unintentionally frustrate the fulfilment of ethical imperatives and constitutional obligations by allowing legal sophistry or technicalities to obscure commonsensical realities*”.
- 6.1.203 Section 1 of the Basic Conditions of Employment Act<sup>45</sup> states that “*remuneration*” means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and “*remunerate*” has a corresponding meaning.
- 6.1.204 In terms of section 30(6)(a) of the Companies Act 71 of 2008, as amended, “*...remuneration includes – fees paid to directors for services rendered by them to or on behalf of the company, including any amount paid to a person in respect of the person’s acceptance of the office of director...*”
- 6.1.205 Section 1 of the Occupational Health and Safety Act (OHSA) provides that “*employer*” means, subject to the provisions of subsection (2), any person who employs or provides work for any person and remunerates that

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44 [2021] ZACC [19] at para 170.

45 Act 75 of 1997.

person or expressly or tacitly undertakes to remunerate him. OHSA also defines "*remuneration*" as any payment in money or in kind or both in money and in kind, made or owing to any person in pursuance of such person's employment. OHSA further defines "*employment*" or "*employed*" as meaning employment or employed as an employee. The OHSA further defines "work" to mean work as an employee or as a self-employed person, and for such purpose an employee is deemed to be at work during the time that he is in the course of his employment, and a self-employed person is deemed to be at work during such time as he devotes to work as a self-employed person.

- 6.1.206 The Guide on managing other Remunerative Work in the Public Service<sup>46</sup> states that, to have an interest in a business is not work *per se*. There has to be evidence of a physical or mental effort contributing to the operations of the business over a period of time. Over a period of time means the event continues for a period of time without stopping.<sup>47</sup>
- 6.1.207 According to the affidavit of Gen. Rhooode, the President declined the permanent deployment of PPS personnel and technology at the Phala Phala farm on the basis that he is not always there.
- 6.1.208 Having assessed the definition or meaning of *paid work or remunerated work*, it is prudent to state that applicable sources in the main, refer to employees in the employ of the state, rather than specifically to the Members of the Executive. However, for the purposes of this investigation and determining the ordinary meaning of the relevant statutory provisions, these guidelines serve as the only source for interpretation of the concept of *paid work or remunerated work*.

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<sup>46</sup> Guide on Managing other Remunerative Work in the Public Service by the Department of Public Service and Administration, June 2020 at page 10.

<sup>47</sup> <https://dictionary.reverso.net/english-cobuild/continuously+over+a+period+of+time>, accessed on 26 June 2023.

- 6.1.209 In the case at hand, the meaning of the words ***paid work or remunerated work*** appear to be plain, as well as in harmony with the syntax in which it occurs. The wording should therefore be interpreted in line with its ordinary grammatical meaning. Objectively viewed, these words mean that a Member of Cabinet must not, regardless of the form of work or agreement in place, be paid or receive remuneration in respect of any work, other than work related to his or her duties as a Member of Cabinet.
- 6.1.210 The only prohibition that arises from the scheme of section 96(2)(a) of the Constitution and from clause 2.3(g) of the Code of Ethics is narrow and focused, and that is to say a Member of Cabinet may not do other work, for which he or she gets paid or receives remuneration.
- 6.1.211 Within this context it is imperative that consideration be given to the purpose of the prohibition of undertaking other paid work. In the Public Protector's view this is one of the most important considerations which ultimately inform whether or not there has been a violation of the provisions of the Executive Ethics Code.
- 6.1.212 That purpose can only be to ensure that Members of the Executive give their undivided attention to their job as a part of the Executive and to prevent them from becoming distracted by other work that they could earn remuneration from.
- 6.1.213 In other words, the prohibition is on earning other active income – in the sense that it is income earned in exchange for work or services that would distract the member concerned from fulfilling their functions in government.
- 6.1.214 At the same time, when read in context, the EMEA and the Executive Ethics Code recognise, realistically, that Members of the Executive will hold financial interests. These other interests will in most instances also produce income for the members concerned – such as rent received from immovable property owned by the member and leased out, or dividends

received as a shareholder in a listed or private company. Members are required to disclose these interests in terms of section 2(c) of the Act and paragraph 5 of the Code Executive Ethics.

6.1.215 In the Executive Ethics Code there is therefore nothing *per se* problematic with members of the executive holding financial interests which may provide them with another source of passive income, i.e. income which they receive without having to undertake work or provide services.

6.1.216 What is prohibited is the active involvement of members in the enterprises which produce the income – because that would divide their attention from their official duties.

6.1.217 Very often determining this issue will be a matter of degree and the dividing line between passive (or permitted) involvement and active (prohibited) involvement will be difficult to draw.

#### *Declaration of Financial Interests*

6.1.218 While the President acknowledged that he still retains certain interests in Phala Phala farm as a game and cattle farming operation, he submitted that he does not “*conduct any other paid work*” on or in relation to the farm as envisaged in section 96(2)(a) of the Constitution.

6.1.219 On 07 October 2022, the Public Protector, inspected the Register of Financial Interests of the President in particular the period between 01 April 2019 to 31 March 2020 financial year. The President’s financial interests and member’s interests held in Ntaba Nyoni and Tshivhase Trust were declared. The value and the nature thereof were also disclosed in the financial register kept in the office of the Secretary to Cabinet. On the remuneration part of the Register of Financial Interests of the President, it was observed by the Public Protector that the President declared that he received no remuneration other than as a member of Executive during the reporting period 2020 as required in terms of paragraph 5.6 of the

Executive Ethics Code. The President indicated further that he instructed Mr Steyn Speed of his office to ensure compliance with Executive Ethics Code, as required by paragraph 8.1 and that he is aware of the provisions of the Executive Ethics Code regarding the proper conduct expected of the Members of the Executive.

6.1.220 The President's interest in Ntaba Nyoni and Tshivase Trust are described as "*registrable interests*" and records inspected indicated that he has declared this investment as *financial interests* which he has in corporate entities.

6.1.221 In terms of paragraph 6 of the Code of Ethics, **financial interests** refer to registrable interests that must be disclosed such as:

- (a) Shares and other financial interests in companies and other corporate entities;
- (b) Sponsorships;
- (c) Gifts and hospitality other than that received from a spouse or permanent companion or family member;
- (d) Benefits;
- (e) Foreign travel other than personal visits paid for by the member, or official travel paid for by the state, or travel paid for by the member's party;
- (f) Land and immovable property, including land or property outside South Africa; and
- (g) Pensions.

6.1.222 The Public Protector could not establish any proof which indicates that the President either works at Phala Phala farm or receives remuneration from Phala Phala farm.

6.1.223 The Executive Ethics Code creates a distinction between the concepts of **paid work/remuneration** as contemplated in paragraph 2.3(g) of the Code of Ethics and **financial interests** as described in paragraph 6 of the Code of Ethics. The objective of this distinction in the Code of Ethics is to

separate the paid work/remuneration as envisaged in an employer-employee relationship as opposed to shares and other financial interests in companies and other corporate entities. The purpose of the distinction is clear, namely to avoid a risk of competing demands on the time required for public responsibilities, undue influence on political behaviour and conflict between constitutional duties.

6.1.224 Evidence arising from the inspection of the President's register for financial interests reveals that the President retains *financial interests* in Ntaba Nyoni as described paragraph 6 of the Code of Ethics.

6.1.225 While not conclusive, these facts certainly point towards the President being more actively involved in the management of the affairs of the CC than he appears to let on in his general submissions

6.1.226 There are, of course, other facts which point away from the President being involved in paid work. For one thing, he does not draw a salary from the Ntaba Nyoni CC nor receive any distributions (only the repayment of a soft loan). He also plainly is not physically present at the farm very often.

*Risk of a conflict of interest*

6.1.227 Paragraph 2.3(f) of the Executive Ethics Code and section 96(2)(b) of the Constitution stipulate that members of the Executive may not expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests. The aim of these provisions is to prohibit conduct that is inconsistent with a Member's office, or that which exposes a Member to any situation involving the risk of a conflict between his/her official responsibilities and private interests.

6.1.228 Conflict of interest is a situation in which a person has a duty to more than one person or organization, but cannot do justice to the actual or

potentially adverse interests of both parties.<sup>48</sup> According to King IV Report on Corporate Governance in South Africa 2016<sup>49</sup>, a conflict of interest, used in relation to members of the governing body and its committees, occurs when there is a direct or indirect conflict, in fact or in appearance, between the interests of such member and that of the organisation. It applies to financial, economic and other interests in any opportunity from which the organisation may benefit, as well as use of the property of the organisation, including information.

6.1.229 The Organisation for Economic Co-Operation and Development (OECD) is a unique forum where governments of various democracies work together to address the economic, social and environmental challenges of globalisation. South Africa is a key member state to the OECD having joined on 16 May 2007. The OECD is also at the forefront of efforts to understand and help governments respond to new developments and concerns, such as corporate governance, managing conflict of interests and to seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies. In its report/toolkit titled “*Managing Conflict of Interest in the Public Sector*”, emphasis is placed on the pressing need to properly manage perceived or potential conflict of interest and provides *inter alia*:

*“A conflict of interest is not necessarily corruption, which is understood as “actual abuse of public office for private advantage”. But a conflict does have the potential for corrupt conduct. Conflicts between private interests and public duties of public officials must therefore be correctly identified, appropriately managed, and effectively resolved. Left unresolved, a conflict of interest can result in corrupt conduct, abuse of public office, misconduct, breach of trust, or unlawful action. More importantly, public*

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<sup>48</sup> <https://www.bing.comOxford+dictionary+meaning+of+conflict+of+interests> accessed on 14 February 2023.

<sup>49</sup> King IV Report on Corporate Governance in South Africa 2016 at page 11.



*confidence in the integrity of public institutions can also be seriously damaged”.*<sup>50</sup>

6.1.230 A conflict of interest is not in itself misconduct, however, failing to recognise it or manage it appropriately is, at best, improper. The private interest of an official assumes a public dimension only if and when it impinges on or is perceived to impinge on some action or decision the official must take in the course of duty. If this occurs, the official becomes ‘conflicted’ and must promptly consider the proper ethical path to take in the particular case.<sup>51</sup>

6.1.231 The Western Cape High Court<sup>52</sup> held that the test regarding a conflict of interest-

*“rests upon the broad doctrine that a man, who stands in a position of trust towards another, cannot, in matters affected by that position, advance his own interest, by making a profit at that other’s expense.”*

6.1.232 There are many different views on the definition of ‘*a conflict of interest*’. However the common theme present in all definitions relates to a clash between the official or business duties of the decision maker concerned and his/her personal interests. The official or business interests are often described as the primary interests, while the personal interests are regarded as secondary interests.<sup>53</sup>

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50 OECD: Managing Conflict of Interest in the Public Sector – ISBN 92-64-01822-0 – © OECD 2005 at page 8.

51 Conflict of interest in the public sector Ombudsman for Victoria, Australia March 2008 at page 70.

52 Mthimunye-Bakoro v Petroleum Oil and Gas Corporation of South Africa (SOC) Limited and Another (12476/2015) [2015] ZAWCHC 113; 2015 (6) SA 338 (WCC) (4 August 2015) at page 33.

53 As applied by the Public Protector in the State of Capture Report issued 14 October 2016: Report on an investigation into alleged improper and unethical conduct by the 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 Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family’s businesses.

- 6.1.233 Primary interest refers to the principal goals of the profession or activity and the duties of public office. Secondary interest includes not only financial gain but also such motives as the desire for professional advancement and the wish to do favours for family and friends, but conflict of interest rules usually focus on financial relationships because they are relatively more objective, fungible, and quantifiable.
- 6.1.234 Again, paragraph 3 of the Executive Ethics Code makes it clear that not all interests held by a member of the executive will give rise to a conflict for purposes of the Code. The existence of a secondary interests is therefore not treated as wrong in themselves, but become objectionable when they are believed to have greater weight than the primary interests.
- 6.1.235 The conflict of interest exists whether or not a particular individual is actually influenced by the secondary interest. It exists if the circumstances are reasonably believed (on the basis of past experience and objective evidence) to create a risk that decisions may be unduly influenced by secondary interests.
- 6.1.236 Again, as this provision makes clear, not all interests held by a member of the executive will give rise to a conflict for purposes of the Executive Ethics Code. This is clear when regard is had to paragraph 3.6, which requires a member to dispose of an interest in a company or corporate entity or profit-making enterprise, or place it in the management of an independent person, if that interest “*may give rise to a conflict of interest in the performance of that member’s functions as a member of the Executive*”.
- 6.1.237 The President contended that he has been advised that the kind of interests he retains in Phala Phala farm as a game and cattle farming operation, does not give rise to a risk of a conflict of interest or expose him to any situation involving the risk of a conflict between his official responsibilities and his private interests. He retained assets which he believed would not give rise to a conflict of interest, including his member’s interest in the CC that operates Phala Phala. He also remains both a

trustee and beneficiary of the Tshivhase Trust, which owns the farm property.

6.1.238 In the abstract, ownership of a farm or corporate entity that runs a business on a farm is very unlikely to give rise to a conflict of interest in the performance of a member's functions as a member of the Executive.

6.1.239 In terms of the evidence placed before the Public Protector, the day to day operations of Phala Phala Wildlife are managed by Mr von Wielligh as the general manager with the assistance of about 40 employees, though occasionally when the President visits the farm they would seek advice from him and he would give guidance. The buffalo sale transaction between Mr Ndlovu and Mr Hazim took place in the absence of the President, thus indicating that he is not involved in the ordinary business decision making, in the main.

6.1.240 The evidence placed before the Public Protector revealed that the President held discussions with farm managers, notably regarding the disposal of certain animals due to them being substandard.

6.1.241 Considering the evidence before the Public Protector in its totality and the application of the law, there is no basis to exalt such deliberations to a degree where it can be held that there existed a real or potential conflict of interests on the part of the President regarding his duty as the Head of Cabinet and his interests in game and cattle farming at Phala Phala farm in violation of the Code.

*Responses to submissions made to Notices*

6.1.242 In response to the provisional report, Mr Zungula gave examples of hypothetical scenarios that are likely to give rise to a potential risk of a conflict of interest on the part of the President as the head of cabinet. While these given scenarios were noted, however they are based on imagined presuppositions that currently do not exist. The Public Protector

is unable to base her investigation on hypothesis and conclude as if same had been proven in order to establish the argument based on a potential conflict of interest. In this regard, Mr Zungula also did not file any evidence to support the probability of his proffered suppositions occurring.

6.1.243 In terms of the letter dated 14 June 2022, which was sent to Mr Zungula, the Public Protector indicated that the format and the procedure to be followed in conducting any investigation shall, in terms of section 7(1)(b) of the Public Protector Act, 1994 be determined by the Public Protector with due regard to the circumstances of each case.

6.1.244 In this regard, the Public Protector received similar complaints from various Complainants, which contained substantially similar allegations. These complaints were lodged both in terms of the EMEA and the Public Protector Act respectively. All the complaints were subsequently consolidated into one investigation file for ease of administration, since they all related to the same incident, same facts and same respondents. As a result, consolidation of the complaints did not result in a prolonged, unreasonable and unlawful delay in violation of section 3(2) of the EMEA, as alleged by Mr Zungula.

6.1.245 The Public Protector further acknowledges the physical meeting between the ATM and the Investigation Team, which was held on 26 August 2022, where ATM advocated for the separation of the complaints lodged in terms of the EMEA from those in terms of the Public Protector Act. Later on 26 August 2022, the Investigation Team further received a letter, dated 18 July 2022, from ATM addressed to the Speaker of the National Assembly, contents of which were duly considered by the Public Protector during the course of this investigation.

6.1.246 The above stated letter from ATM, addressed to the Speaker of the National Assembly stated amongst other things that the President, in response to allegations by Mr Fraser, told delegates to a Conference of the ANC in Limpopo that *"I'm a farmer, I am in the cattle business and the*

*game business... I buy and I sell animals.....*” ATM stated that this statement by the President confirms that he is actively running his farming business and this also means the President misled the nation when in 2014, on assuming office as Deputy President, he said that all his business interests would be managed by a blind trust.

6.1.247 The Public Protector could not find evidence to underpin a finding or a conclusion that the President’s comments or utterances in this regard were a continuous act to be considered or construed as active involvement in the business or paid work.

6.1.248 According to Mr Zungula, for the transgression to occur, the threshold is *risk of conflict, not even the actual conflict* and he raised hypothetical questions which he considered as risks of a conflict of interests which should be the hallmark of the Public Protector’s interpretation of the risk of a conflict of interest facing the President in this matter. This submission was noted, however, the Public Protector could neither establish the probability nor find any prospect of the stated risks materialising given the intricate process involved in passing legislation.

6.1.249 Mr Zungula is of the view that the Public Protector cannot contradict the report of the Section 89 Independent Panel, and it is expected to concur with it. The response by Mr Zungula is noted, however it is not within the purview of the Public Protector to review the report of the Section 89 Independent Panel.

6.1.250 In this regard, it is further submitted that the Public Protector and the Section 89 Independent Panel have different processes, scope and standards of proof. The Section 89 Independent Panel indicated that it was required to determine whether there is a *prima facie* case against the President and that it was not its function to enquire into whether the President is guilty of a serious violation of the Constitution or the law, or a serious misconduct. It was not empowered to investigate the matter fully, including summoning persons to give evidence before it or to produce

documents and hold public hearings.<sup>54</sup> It was stated that the Section 89 Independent Panel therefore functions as a filter to ensure that only a Motion which establishes, *prima facie*, that the President has a case to answer, is considered by the Impeachment Committee.<sup>55</sup>

6.1.251 In considering the question whether the Section 89 Panel Report's conclusion that there is *prima facie* evidence that the President may have committed a violation of the Constitution and other laws, means that there is sufficient evidence upon which the Public Protector can make an adverse finding on this matter, she reflected on the following:

6.1.252 Section 89 Panel is a mechanism that may be employed by parliament to interrogate executive performance at the level of the President and to hold the President to account;

6.1.253 Section 89 removal from office involves a three-stage process:

- a) a preliminary enquiry<sup>56</sup> by an Independent Panel;
- b) a full-scale enquiry by the Impeachment Committee; and
- c) a debate and a vote on the Motion by the National Assembly.

6.1.254 The first stage commenced with the consideration of the Motion by the Panel. The Section 89 Independent Panel may not hold any oral hearing. In terms of Rule 129G(1)(c)(iv) of the National Assembly Rules for the

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<sup>54</sup> Report of the Section 89 Independent Panel, Parliament of the Republic of South Africa Vol. 1 30 November 2022 at paragraph 75.

<sup>55</sup> Report of the Section 89 Independent Panel, Parliament of the Republic of South Africa Vol. 1 30 November 2022 at paragraph 76.

<sup>56</sup> The Constitutional Court explained in paragraph 84 in the matter of the *Speaker of the National Assembly v Public Protector and Others; Democratic Alliance v Public Protector and Others* [2022] ZACC in relation to the same process prescribed in respect of to the removal of a head of a Chapter 9 Institution that "*The purpose of the preliminary enquiry is to determine whether the motion for removal has any merit. If, on the advice of the panel, the National Assembly decides not to proceed with a section 194 enquiry, the office-bearer is protected against unmeritorious removal motions. The appointment of the independent panel, sifting through the removal motion, therefore, supports the principle that Chapter 9 institution office-bearers should not be subjected to repeated, unmeritorious enquiries in terms of section 194 of the Constitution. This sifting mechanism is an important component in the jurisdictional requirements of section 194.*" (Own emphasis).

Removal of the President from office in terms section 89 of the Constitution, its enquiry is limited to the information placed before it by members of the National Assembly and the President's response to this information. The Panel noted that the scope of its powers was in fact very limited. Panel was required to "*make a recommendation whether sufficient evidence exists to show that the President committed*" one of the grounds. "*(T)to determine whether there is a prima facie case against the President – whether the President has a case to answer*".

6.1.255 The Section 89 Independent Panel lacks the power to test the reliability of the information placed before it, in particular the absence of the power to hear evidence from persons or institutions that might have information relevant to the removal of the President from office. "*It was never intended that the Panel should make a finding on whether the President is in fact guilty of any of the acts listed in section 89(1)*"<sup>57</sup>

6.1.256 On the merits of its findings, the Panel *inter alia*, observed that:

*"We are concerned that we have not been given all the information that is presently available on the Phala Phala issue ...*

*The President indicates that about eight institutions that are investigating the Phala Phala issue, yet we have not been furnished with reports on the outcome of these investigations, nor have we been told how far these investigations are....(sic)*

*Furthermore, there are persons who have personal knowledge of the issues we are investigating but who, for unexplained reasons, have not provided statements to tell us what happened.*"<sup>58</sup>

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57 Report of the Section 89 Independent Panel, Parliament of the Republic of South Africa Vol. 1 30 November 2022 at paragraph 71.

58 Report of the Section 89 Independent Panel, Parliament of the Republic of South Africa Vol. 1 30 November 2022 at paragraph 80.

6.1.257 According to Mr Zungula, the President's initial choice of not having his residence at Phala Phala premises being guarded was not only fundamentally flawed but was unlawful as well, however, this was not the complaint which was lodged with the Public Protector.

*Issues falling within the jurisdiction of other state institutions*

6.1.258 The mandate of the Public Protector is enshrined in section 182(1) of the Constitution. Additional powers and functions of the Public Protector are prescribed by national legislation including *inter alia*, the Public Protector Act and the EMEA. The powers and jurisdiction of the Public Protector are specifically prescribed, where it is not, the Public Protector has no jurisdiction. In terms of section 6(4)(c) of the Public Protector Act, the Public Protector shall be competent to make a referral to any other appropriate public body, during or after the investigation, which has jurisdiction over some aspects of the investigation at the Public Protector's disposal.

6.1.259 The crux of the assessment of the matter which included engaging with other state institutions revealed that the primary aspects of this complaint namely, the investigation and adjudication of issues relating to compliance with foreign exchange regulations, compliance with tax, and allegations of criminality, all fall within the domain and/or jurisdiction of SARB, SARS, DPCI and IPID. For this reason, the Public Protector deems it expedient that these public entities finalise all their institutional determinations regarding whether there was any transgression of any prescripts related to foreign exchange control, tax compliance and criminality in connection with the theft of foreign currency at Phala Phala farm.

6.1.260 As indicated above, the High Court ruled amongst other things that the blanket prohibitions of disclosure of taxpayer information contained in section 67 and 69 of the TAA are unconstitutional and invalid to the extent that they preclude access to information being granted to a requester in respect of tax records in circumstances where the requirements set out in



section 46 of the PAIA are met. This order was confirmed by the Constitutional Court in May 2023.

- 6.1.261 The enforcement of regulations relating to foreign currency, is within the powers, functions and duties assigned to FinSurv of the SARB, which is responsible for the day to day administration of the Exchange Control Regulations in South Africa, made in terms of section 9 of the CEA. SARB has already confirmed that it is investigating the alleged breach. Therefore, the Public Protector shall not delve into the alleged breaches of Exchange Control Regulations, as SARB is best suited to do so.
- 6.1.262 The DPCI's investigation is done in line with their mandate as highlighted in section 17D(1)(a) of the SAPS Act 68 of 1995, which is to prevent, combat and investigate national priority offences. The Public Protector has already engaged with the DPCI and shared information with a bearing to this complaint. The DPCI confirmed that it is conducting a criminal investigation based on Mr Fraser's complaint.
- 6.1.263 IPID's mandate is embedded in section 28 of the IPID Act 1 of 2011, which details the nature of the complaints IPID is empowered to investigate. The IPID also confirmed to the Public Protector during a meeting, that they are also investigating the criminal aspect of this complaint in line with its mandate.
- 6.1.264 Heeding the decision of the Supreme Court of Appeal, in the matter of *Government Employees Medical Scheme and Others v The Public Protector of the Republic of South Africa and Others*,<sup>59</sup> the Public Protector deemed it advisable not to embark on a parallel investigation process, with the potential for conflicting decisions.

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59 (1000/2019 and 31514/2018 and 33401/2018) [2020\] ZASCA 111](#) (29 September 2020) at para 25.

6.1.265 Therefore, the mandate of the Public Protector remains essentially with a determination of whether or not the conduct of the President amounts to violation of the Code of Ethics or impropriety in connection with the housebreaking with the intention to steal and theft of cash in foreign currency or in relation to the activities at Phala Phala farm. To do otherwise, will in effect be encroaching on the jurisdictional powers of other state organs and in flagrant disregard of the findings of the Courts as set out fully above.

*Evidence in foreign jurisdictions*

6.1.266 With regard to the evidence of persons outside the Republic of South Africa (such as Mr Hazim and the Namibian President, Dr Hage Geingob) as well as leaked Namibian Crime Intelligence Report, it is worth mentioning that the jurisdiction of the Public Protector does not provide for powers and methods of collecting evidence from foreign sovereign states.<sup>60</sup> The empowering provisions of the Public Protector have no extra-territorial application or jurisdiction.

*Conclusion*

6.1.267 Based on a thorough evaluation of the evidence and information, as well as the consideration of the applicable legal framework, the Public Protector makes the following conclusions:

6.1.268 The evidence before the Public Protector does not support the allegation that the President undertakes *paid work or receives remuneration* from Phala Phala farm.

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<sup>60</sup> Neither the empowering provisions of the Constitution, PPA nor EMEA provide that the Public Protector enjoys extra-territorial application to enforce her investigative powers in respect of evidence held or based in a foreign country.

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- 6.1.269 According to the evidence at the Public Protector's disposal, the day to day operations of Phala Phala Wildlife are managed by Mr von Wielligh as the general manager with the assistance of about 40 employees.
- 6.1.270 Having assessed the definition for the concept(s) of paid work or remunerated work as gleaned from various sources, it is prudent to conclude that the overarching condition which arises from most definitions refer to an employee employed by another entity or the state, a self-employed person who provides work or renders physical or mental labour for remuneration or payment in money or in kind, given as a result of a contribution to the operations of a business and for such purpose an employee or self-employed person is deemed to be at work during the time that he is in the course of his employment. A payment or remuneration is made or owing to any person in return for work performed or services rendered.
- 6.1.271 Following the inspection of the President's register for financial interests, it is concluded that the President retains a financial interest as an investor and trustee in the form of a member's interest at Ntaba Nyoni as described in paragraph 6 of the Executive Ethics Code.
- 6.1.272 Similarly, the evidence before the Public Protector does not support the allegation that the President's financial interests in game and cattle farming at Phala Phala farm exposes him to a risk of a conflict of interest or exposes him to any situation involving the risk of a conflict between his official responsibilities and his private interests.
- 6.1.273 Accordingly, the Public Protector concludes that to have a financial interest as an investor and trustee in a business is distinguishable from working, being employed and receiving remuneration for contributing to the operations of the business.
- 6.1.274 Evidence before the Public Protector revealed that the President is not always on the premises of Phala Phala farm, which under the

circumstances suggests that he is unlikely to be involved in the day to day operations of the farm.

6.1.275 As a result, the Public Protector finds no basis upon which to conclude that the President contravened paragraphs 2.1 and 2.3 of the Executive Ethics Code, including the period following the alleged housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 from his private house at Phala Phala farm in Waterberg, Limpopo.

6.2 **Whether the President failed to report the alleged crime that took place on or about 09 February 2020 at Phala Phala farm and abused his power in utilising state resources by causing the Presidential Protection Services to be deployed to Phala Phala farm and to investigate a housebreaking with the intent to steal and theft at Phala Phala farm, thus violating clause 2.3(d) and (f) of the Executive Ethics Code; and whether such conduct constitutes improper conduct as contemplated in section 182(1) of the Constitution and abuse of power as contemplated in section 6(4)(a)(ii) of the Public Protector Act**

*Common Cause Issues*

6.2.1 The facts outlined herein below are common cause:

6.2.1.1 On or about 09 February 2020 there was a housebreaking with the intent to steal and theft of cash in foreign currency at Phala Phala farm. The money in question was kept in a room in the President's house situated at Phala Phala farm under the cushions of a couch.

6.2.1.2 Gen. Rhoades travelled with Mr Chauke, the former Special Adviser to the President, to Namibia on 25 to 26 June 2020, using the resources of the SAPS and/or the PPS.

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*Issues in Dispute*

- 6.2.2 The issue for the Public Protector's determination is whether the President failed to report the crime that took place at Phala Phala farm and abused his power in utilising state resources by causing the PPS to investigate a housebreaking with the intent to steal and theft at Phala Phala farm.

*Version of the Complainants*

- 6.2.3 The complaint captured in paragraph 2 above, sets out the nature of different complaints lodged by all four Complainants. Without being repetitive, it suffices to indicate that it was alleged that the members of the SAPS, in particular Gen. Rhooode as well as the President were involved in the following transgressions as a result of the housebreaking with the intent to steal and theft of US dollars at Phala Phala farm:

- (a) Concealed the crime of housebreaking with the intent to steal and theft of cash at the President's residence and failed to register the case on the Crime Administration System (CAS) in line with the procedures;
- (b) Used state resources which included members of SAPS from the PPS, to investigate the President's private business matter to recover the stolen money without a registered case;
- (c) Breached the Home Affairs procedures and/or Immigration Laws in bringing back the alleged perpetrators from Namibia for interrogation in South Africa when there was no crime reported or case registered;
- (d) Kidnapped the suspects and interrogated them in connection with the theft from the President's residence;
- (e) Paid bribes to the culprits in order to buy their silence for the alleged crime of housebreaking with the intent to steal and theft; and

(f) Defeated the ends of justice in the process.

*Responses by the President*

6.2.4 As already stated, on 22 July 2022, the President responded through his Legal Representatives to the allegations letter sent by the Public Protector on 07 June 2022.

*Alleged concealment of the crime*

6.2.5 According to the President, on 10 February 2020, the day after the theft, he was advised by Mr von Wielligh that there was a security breach at Phala Phala farm. He submitted that at the time, he was in Addis Ababa, to chair the African Union Summit meeting. He stated that Mr von Wielligh sent footage to him from the CCTV cameras situated outside his residence at Phala Phala farm, which shows intruders on the property. The President stated that he then arranged for Gen. Rhooode to visit him in his suite, at their hotel in Addis Ababa. The President indicated that during their meeting, he informed Gen. Rhooode that he had received information that there had been a breach of security at Phala Phala farm and requested Gen. Rhooode to attend to the matter and report back to him.

6.2.6 The President submitted further that soon after the security breach was reported to him by Mr von Wielligh, Mr Ndlovu contacted him to tell him that the money that he had kept in the President's house had been stolen. The President stated that he wanted to confirm this for himself before reporting it to Gen. Rhooode. The President further stated that during the second half of February 2020, which was the soonest his schedule allowed, he visited Phala Phala farm for the purpose of confirming that the money was stolen.

6.2.7 According to the President, on or about 02 March 2020, he asked Gen. Rhooode to meet him at his residence in Hyde Park. The President indicated that his schedule did not allow him, after returning from the Summit held in Addis Ababa, to establish for himself what had happened at the Phala Phala farm. He submitted further that once he had the opportunity to do so, he contacted Gen. Rhooode at his earliest convenience. According to the President, during the meeting held in early March, he advised Gen. Rhooode that the money from the sale of game was missing from his residence at Phala Phala farm.

6.2.8 The President submitted that it was agreed that Gen. Rhooode would confer with his superiors and revert to him on the way forward. He stated that Gen. Rhooode subsequently told him that he had been instructed by the late Deputy National Commissioner for Crime Detection, Gen Mfazi, to conduct a preliminary enquiry focusing on the safety and threats to the President, and thereafter to report back to him, whereafter Gen Mfazi would take over the case, if necessary.

6.2.9 It was stated by the President that it is clear that by reporting the security breach and the theft to Gen. Rhooode, who holds the rank of Major-General in SAPS, and by specifically requesting that Gen. Rhooode should attend to the matter, he had no intention of concealing the crime from the SAPS, SARS, or at all.

*The alleged abuse of power and use of state resources by the President*

6.2.10 According to the President, as at the date of the theft, the PPS was not providing security at Phala Phala farm. He stated that since then, as a result of the security breach, and in order to secure his residence on Phala Phala farm, members of the PPS have been deployed to the farm.

6.2.11 The President stated that he did not abuse state resources by reporting the crime to Gen. Rhooode. He submitted that Gen. Rhooode and the PPS are responsible for his security and that any security breach, which he

experiences should properly be reported to Gen. Rhooode. He submitted that he was not in control of the process followed after he reported the matter to Gen. Rhooode and could only assume that it was conducted in accordance with the rules and regulations of the SAPS governing such matters.

*The version of Gen. Rhooode, Head of PPS*

- 6.2.12 In his affidavit to the Public Protector, Gen. Rhooode stated *inter alia* that he is currently employed by SAPS as the Head of the PPS and that he holds the rank of Major-General in the SAPS since 01 June 2018.
- 6.2.13 It was indicated by Gen. Rhooode that contrary to his advice even before the date of housebreaking with the intent to steal and the theft of cash in foreign currency, the President had declined the permanent deployment of PPS personnel and technology at the Phala Phala farm on the basis that state resources should not be spent on his personal property, especially when he is not always there.
- 6.2.14 It was stated by Gen. Rhooode that on 10 February 2020, he was with the President in Addis Ababa, Ethiopia as part of a delegation of the Republic of South Africa at the AU Summit meeting. He also stated that on 10 February 2020, he was summoned by the President to his suite in Addis Ababa, and the President informed him that he received information that there was an alleged breach of security at Phala Phala farm. Gen. Rhooode indicated that the President asked him that he should attend to the breach of security and report back to him. According to Gen. Rhooode, this instruction was to alert him to the incident so that he could properly carry out his duties in respect of protecting the President and his family.
- 6.2.15 Gen. Rhooode stated that he instructed Col. Mathlo, from the PPS, who was with him in Addis Ababa, to contact the PPS office in Pretoria and



instruct them to assess the breach of security and to deploy PPS personnel to the farm.

6.2.16 According to Gen. Rhooode, Col. Mathlo then informed him that through Lieutenant Col. Letswalo he can confirm that two (2) cameras at the Phala Phala farm had been tampered with and the PPS police further found that a window was half opened at the President's house on the farm. Gen. Rhooode stated that he was informed further that the President's house was locked and there was no one present with access to open the house and accordingly the PPS police did not enter the house.

6.2.17 Gen. Rhooode indicated that Lieutenant Col. Letswalo subsequently deployed security personnel on 10 February 2020 to Phala Phala farm. Gen. Rhooode stated that he was advised that four (4) PPS personnel had been deployed to protect the Phala Phala farm on a shift schedule, with two (2) on day shift and the other two (2) on night shift.

6.2.18 Gen. Rhooode stated that although at this stage he was not aware that anything had been stolen from the President's residence, he took the matter seriously because a breach of security at the President's residence amounts to a direct threat to the President, and poses a serious threat to the President's life and the lives of his family members.

6.2.19 It was indicated by Gen. Rhooode that he was only able to brief the President on the steps he had taken once they had boarded the President's plane at or around 03h30 on 11 February 2020, at Addis Ababa Airport, as they flew back to Cape Town, South Africa.

6.2.20 Gen. Rhooode indicated that for the remaining days of February 2020, the President attended to several commitments across South Africa. He further stated that on 02 March 2020, the President called him to his residence in Hyde Park, where he informed him that money from the sale of animals was missing from his residence at the farm.

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*Submission by Department of International Relations and Cooperation (DIRCO)*

- 6.2.21 As part of the ongoing investigation by the Public Protector into this matter, DIRCO was requested to clarify whether it received a request for cooperation or assistance from the Namibian authorities regarding the theft of cash at President's house at Phala Phala farm and if so, to submit a copy or the details of such a request and to explain how the DIRCO dealt with the request.
- 6.2.22 On 17 October 2022, the Director General of DIRCO, Mr Zane Dangor (Mr Dangor), replied to the Public Protector through a letter and confirmed that DIRCO received a request for mutual legal assistance through *Note Verbale 1/4/1/3* dated 03 September 2020. He stated further that the request was submitted to the Chief Directorate Consular Services by the High Commission of Namibia in Pretoria in order for it to be processed through the diplomatic channel to the responsible line function department.
- 6.2.23 According to Mr Dangor, the request was thus forwarded by the Chief Directorate Consular Services to the Department of Justice and Constitutional Development as the competent authority for such requests on 16 September 2020 for its attention. It was indicated by Mr Dangor that in a letter of response dated 06 October 2020, the Department of Justice and Constitutional Development acknowledged receipt of the correspondence and stated that the request from Namibia was forwarded to the National Prosecuting Authority (NPA) for its consideration and advice on the way forward.
- 6.2.24 Mr Dangor further clarified in a letter dated 11 May 2021, that the Department of Justice and Constitutional Development informed DIRCO that the request for mutual legal assistance could not be processed. He stated that the Department of Justice and Constitutional Development requested that a formal request be made by the Namibian Central

Authority and that a bound, sealed and *apostille certificate* should be attached to the formal request. He further indicated that the Department of Justice and Constitutional Development advised that the formal request should contain a precise summary of all the facts, as well as material provisions of extracts of the relevant Namibian laws and bank statements, showing proof of suspected money laundering by the Namibian national under investigation.

- 6.2.25 Mr Dangor submitted further that the Chief Directorate Consular Services conveyed the response from the Department of Justice and Constitutional Development to the High Commission of Namibia in Pretoria on 31 August 2021 under cover *Note Verbale CONS/0164/2021*, of which the High Commission acknowledged receipt on 01 September 2022. No further communication was received from the Namibian Authorities by the DIRCO. Mr Dangor further furnished the Public Protector with the correspondences related to this request as exchanged by DIRCO, Department of Justice and Constitutional Development and the authorities of Namibia.

*Submission by Department of Justice and Constitutional Development (DJCD)*

- 6.2.26 Similarly, on 06 October 2022, the Public Protector requested the Director General of DJCD as the custodian of all the records in the possession of the department to clarify whether it received a request for cooperation or assistance from the Namibian authorities regarding the theft of cash at Phala Phala farm and if so, to submit a copy or the details of such a request and to explain how the DJCD dealt with the request.
- 6.2.27 On 24 October 2022, the Director General of DJCD, Adv. D Mashabane (Adv Mashabane) replied to the Public Protector and confirmed that during September 2020, the DJCD received a request for mutual legal assistance titled *Noordoewer CR 14/06/2020* (Messrs. David, Afrikaner and Shikongo) from the Republic of Namibia.

- 6.2.28 Adv. Mashabane submitted that during October 2020, the DJCD forwarded the request to the Specialised Commercial Crime Unit (SCCU) of the National Prosecuting Authority for their consideration. He indicated that all requests involving financial crimes are forwarded to the SCCU to ensure that a request for mutual legal assistance does not involve foreign bribery. According to Adv. Mashabane this practice is followed as South Africa is a Party to the Organisation for Economic Cooperation and Development's Convention against Bribery of Public Officials in International Business Transactions.
- 6.2.29 It was further submitted by Adv. Mashabane that after the SCCU informed the DJCD that the request may be processed, it was allocated to an official within the Chief Directorate for Extradition and Mutual Legal Assistance during March 2021. He indicated that the request was perused to establish whether the requirements of the International Cooperation in Criminal Matters Act 75 of 1996 were met. He further stated that the official concluded that the request did not meet the requirements and the letter in this regard was compiled setting out the inadequacies and requested that an amended request be forwarded to the DJCD. He indicated that the letter was forwarded to DIRCO for onward transmission to the High Commission of the Republic of Namibia.
- 6.2.30 Adv. Mashabane further submitted that during August 2021, the DIRCO forwarded the letter under cover of a *Note Verbale* to the High Commission. He further stated that during September 2021, the High Commission acknowledged receipt of the *Note Verbale* through an email to DIRCO. He indicated that thus far, the DJCD has not received an amended request or any response from any Namibian Authority and that in light of the above, the DJCD could not further proceed with the processing of the request. Adv. Mashabane also attached copies of the request and relevant documentation for Public Protector's perusal.

*Applicable legal framework*

6.2.31 The general standards the members of the Executives must comply with are contained in paragraph 2.1 of the Executive Ethics Code, which provides that-

*2.1 “Members of the Executive must to the satisfaction of the President or the Premier, as the case may be-*

- (a) perform their duties and exercise their powers diligently and honestly;*
- (b) fulfill all the obligations imposed upon them by the Constitution and law;*
- (c) act in good faith and in the best interest of good governance;*
- (d) act in all respects in a manner that is consistent with the integrity of their office or the government.”*

6.2.32 Paragraph 2.2 provides that *“In deciding whether members of the Executive complied with the provisions of clause 2.1, the President or Premier, as the case may be, must take into account the promotion of an open, democratic and accountable government.”*

6.2.33 Paragraph 2.3 of the Executive Ethics Code provides that members of the Executive may not:

- (a) wilfully mislead the legislature to which they are accountable;
- (b) wilfully mislead the President or Premier, as the case may be;
- (c) act in a way that is inconsistent with their position;
- (d) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;
- (e) use information received in confidence in the course of their duties otherwise than in connection with the discharge of their duties;
- (f) expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;

- (g) receive remuneration for any work or service other than for the performance of their functions as members of the Executive or
- (h) make improper use of any allowance or payment properly made to them, or disregard the administrative rules which apply to such allowance or payments.

Prevention and Combating of Corrupt Activities Act, 2004 as amended

6.2.34 Section 34(1) of the Prevention and Combating of Corrupt Activities Act<sup>61</sup> (PRECCA) provides that:

- (1) *Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed-*
  - (a) .....
  - (b) *the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service Act, 1995.*
  
- (4) *For purposes of subsection (1) the following persons hold a position of authority, namely-*
  - (a) *the Director-General or head, or equivalent officer, of a national or provincial department;*
  - (b) *in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);*
  - (c) *any public officer in the Senior Management Service of a public body; (d) any head, rector or principal of a tertiary institution;*

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61 Act 12 of 2004.

- (e) *the manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act 69 of 1984);*
- (f) *the executive manager of any bank or other financial institution;*
- (g) *any partner in a partnership;*
- (h) *any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;*
- (i) *any other person who is responsible for the overall management and control of the business of an employer; or*
- (j) *any person contemplated in paragraphs (a) to (i), who has been appointed in an acting or temporary capacity.*

6.2.35 In terms of the PRECCA Section 34 Reporting Guide,<sup>62</sup> the responsibilities of other members of the SAPS are outlined. Section 34 Reporting Guide indicates that a police officer, may refer the reporting person to the DPCI offices. It is also indicated that a police officer must enquire if the reporting person wishes to open a criminal case. If a reporting person needs to report the criminal case with a Section 34 element involved, a police officer can take down a statement and register a criminal case before referring the reporting person/whistleblower to the DPCI offices. The National Head of DPCI, Gen SG Lebeya confirmed to the Investigation Team the existence and the authenticity of the PRECCA Section 34 Reporting Guide in a letter dated 13 May 2023.

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62 <https://www.saps.gov.za/dpci/reportingguide> accessed on 20 April 2023.

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### **Close Corporation Act, 1984**

6.2.36 Section 2(3) of the Close Corporation Act stipulates that members of a corporation shall not merely by reason of their membership be liable for the liabilities or obligations of the corporation. In this regard, it was noted that Ntaba Nyoni or Phala Phala farm is run by its employees who are responsible for its overall management and day to day operations, and who would have been responsible for reporting the crime as contemplated in section 34(4)(i) of PRECCA. In this regard, managers of Phala Phala farm namely, Mr von Wielligh and Mr Ndlovu informed the President about the housebreaking with the intent to steal and theft and the President reported to Gen. Rhooode on 10 February 2020 as well as on 02 March 2020.

### ***Presidential Handbook***

6.2.37 Presidential Handbook<sup>63</sup> provides guidelines for the administrative, logistical, security and general support services to be rendered by the state to the President, his spouse and dependent children.

6.2.38 Paragraph 12 of the Presidential Handbook, stipulates that the SAPS takes full responsibility for the protection and security of the President at all times during his term of office. The SAPS and the intelligence agencies ensure that regular and comprehensive security assessments are conducted with regard to the President and Deputy President. Protection and security measures of the President and Deputy President include, but are not limited to:

- (i) Regular security assessments in conjunction with the intelligence agencies.

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63 Presidential Handbook, November 2015.



- (ii) Static protection at all official and private residences and office accommodation used from time to time during the term of office.
- (iii) In-transit protection during all domestic and international movements.

6.2.39 From the above guidelines of Presidential Handbook, it is manifest that PPS has to conduct regular security assessments in conjunction with the intelligence agencies such as State Security Agency and/or Crime Intelligence of the SAPS.

6.2.40 According to Gen. Rhooode he conducted the threat assessment for Phala Phala farm and compiled a report dated 10 December 2020, after the deployment of the PPS personnel at the President's farm on 10 February 2020.

#### ***Policy on Risk Management System Protection Packages (RIMAS)***

6.2.41 On 17 September 1997 the Cabinet approved RIMAS policy for *Very Important Person(s)* (VIP).<sup>64</sup> The ultimate goal of the RIMAS is to regulate the VIP protection service to a specific group of people only, which are to be protected by PPS. RIMAS gives a clear indication on who PPS should protect and the resources to be utilised for protection both in-transit and static. This policy is applicable to all members of the PPS who renders such duties.

6.2.42 According to the paragraph 4 of the RIMAS, the following VIP's qualify for protection in-transit and in some instances for static protection:

- (a) President;
- (b) Deputy President;
- (c) Cabinet Ministers;

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64 As amended by Cabinet on 6 October 2004.

- (d) Deputy Ministers;
- (e) National Speaker;
- (f) Deputy National Speaker;
- (g) Chairperson of the National Council of Provinces;
- (h) Deputy Chairperson of the National Council of Provinces
- (i) Former Presidents;
- (j) Premiers;
- (k) MEC's;
- (l) Speakers of Various Provincial Legislatures;
- (m) Chief Justice;
- (n) Deputy Chief Justice;
- (o) President of the Supreme Court of Appeal;
- (p) Deputy President of the Supreme Court of Appeal;
- (q) Judge Presidents; and
- (r) Judge President of Labour Court.

***PPS Policy No. 3 of 2018 (PPS Policy)***

- 6.2.43 Paragraph 1 of the PPS Policy indicates that on 27 October 2010 the then National Commissioner of the SAPS approved the establishment of the Component, PPS within the SAPS to protect the President and his or her immediate family, Deputy Presidents and their immediate family, former Presidents, foreign and former Heads of State and their spouses and Ad-hoc VIP'S.
- 6.2.44 Both the Presidential Handbook and the PPS Policy as set out above indicate that the President and his immediate family must be protected by PPS including static protection at all official and private residences, which he utilises from time to time.

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***Perusal of the Phala Phala's Risk Assessment Report by the Public Protector***

- 6.2.45 On 27 October 2022, the Investigation Team visited the office of Gen. Masemola per arrangement to peruse the SAPS' security risk assessment report for Phala Phala farm. This was to determine if the deployment of the PPS personnel or SAPS resources at the venue was done in line with the procedure and for the purpose permitted by applicable legal prescripts. The Investigation Team observed that the threat assessment was done, though it is not a prerequisite.

**Response to a notice in terms of section 7(9)(a) and (b) of the Public Protector Act, read with Rule 42(1) and 41(1) of the Public Protector Rules**

- 6.2.46 A notice in terms of section 7(9)(a) and (b) of the Public Protector Act, read with Rule 42(1) and 41(1) of the Public Protector Rules, dated 10 March 2023 was issued and sent to all the affected parties. In what follows, the Public Protector proceeds to consider the responses submitted regarding the notices.
- 6.2.47 Mr Zungula responded to the Notice on 20 March 2023. In respect of this issue, he responded *inter alia* as follows:

***Failure to report a crime as directed by section 34(1) of PRECCA***

- 6.2.47.1 It is disingenuous for the Public Protector to seek to treat a CC as if it's a (Pty) Ltd where there is distinct separation between Shareholders, Board Members and Employees. In the case of a CC there is no share capital and therefore no shareholders. The owners of the CC are the members of the CC. In the case at hand, Mr Ramaphosa is the owner and sole member of the CC. The ATM notes that the Acting Public Protector in her attempt to shield Mr Ramaphosa from accountability, she misconstrued

the limited liability of members of the CC for debts as a “*get out of jail card*” for Mr Ramaphosa as it pertains to his duty to report.

- 6.2.47.2 The duty to report is imposed by the PRECCA under section 34(4)(e) to the member of the CC, not to anyone else. The management arrangements in terms of the daily operations of the CC do not absolve the member of the CC from the duty to report as imposed by the law. The law must trump management decisions where those are inconsistent with the law.
- 6.2.47.3 The ATM contends that the instruction by Mr Ramaphosa for Gen Rhooode to report back to him was irregular and supports the view that this investigation was done outside the normal channels. Further, the fact that Gen Sitole, who was the National Commissioner at the time knew nothing about this theft despite being Gen Rhooode’s direct superior is further evidence that Mr Ramaphosa and Gen. Rhooode colluded in breaking the law.
- 6.2.47.4 In its letter of complaint to the Public Protector the ATM stated categorically that “*at the time of writing the letter [of complaint] no South African Police station had confirmed that Mr Ramaphosa opened a case for robbery, neither did he say he went to any SAPS to open a robbery case*”. For his part, Mr. John Steenhuisen MP wrote: “*it has been confirmed by the South African Police Services that no case was ever opened for this theft.*” Yet it must be noted that by the end of August 2022 a case was registered and the office of the Public Protector ignores this peculiarity completely.
- 6.2.47.5 The office of the Public Protector seems to be satisfied with the quantity and origin of the foreign currency stolen. The office of the Public Protector does this by simply going on the words of the President and Mr Ndlovu. The Public Protector ignores the evidence provided by several others including Mr Fraser and journalists who have done their own investigations.

- 6.2.48 Mr Steenhuisen responded to the Notice on a letter dated 30 March 2023. In respect of this issue, he responded *inter alia* as follows:
- 6.2.48.1 First, the Public Protector’s finding that President Ramaphosa did not instruct, consent to, or otherwise know of the unlawful investigations by members of the SAPS is a mistake of fact and irrational given the evidence before the Public Protector.
- 6.2.48.2 The President consented to and knew of the unlawful investigation. The Public Protector correctly finds that members of SAPS linked to the PPS acted improperly by investigating the housebreaking and theft at President Ramaphosa’s Phala Phala farm. Gen. Rhooode’s investigation, as borne out by the report of Sgt Rekhoto, concerned only the crime of housebreaking with intent to steal and theft at Phala Phala. The investigation did not consider, at all, any threats or risks to the personal safety of the President.
- 6.2.48.3 Importantly, the Public Protector finds that the investigation was improper and constituted maladministration because the investigation focused on the crimes of housebreaking and theft, and not threats to the President’s safety. Where the Public Protector’s report errs, with respect, is in its finding that President Ramaphosa did not instruct, consent to, or know of Gen. Rhooode’s improper investigation.
- 6.2.48.4 However, the evidence demonstrates that the President instructed, consented to, or knew of Gen. Rhooode’s clandestine investigation. First, on 10 February 2020, the President met with Gen. Rhooode at the President’s suite in a hotel in Addis Ababa, Ethiopia. According to the President, *“he informed Gen. Rhooode that he had received information that there had been a breach of security at Phala Phala farm and requested Gen. Rhooode to attend to the matter and report back to him”*.

- 6.2.48.5 Gen. Rhooode confirms the President's version. So, from the beginning, the President instructed Gen. Rhooode to "*attend to the matter*" and keep the President abreast of developments. Second, on 11 February 2020, Gen. Rhooode briefed the President on the steps to date, which included deploying PPS' personnel to Phala Phala farm. Gen Rhooode, in other words, duly complied with the President's instruction to report back.
- 6.2.48.6 Third, on 02 March 2020, the President met with Gen. Rhooode again at the President's residence in Hyde Park. On the President's version, at this meeting, the President agreed with Gen. Rhooode that the latter "*would confer with his superiors and revert to [the President] on the way forward*".
- 6.2.48.7 Fourth and tellingly, neither the President nor Gen. Rhooode address whether Gen. Rhooode reported back to the President after Gen. Rhooode initiated his investigation around 03 March 2020. On the evidence before the Public Protector, the President and Gen. Rhooode do not say that Gen. Rhooode ceased to keep the President abreast of Gen. Rhooode's steps.
- 6.2.48.8 There is no reason to think that Gen. Rhooode failed to report to the President after their second meeting on 02 March 2020 and after Gen. Rhooode commenced his investigation around 03 March 2020. Gen. Rhooode is the head of the PPS. Gen. Rhooode is heavily involved in protecting the President and regularly interacts with him. Gen. Rhooode had already reported to the President, on 11 February 2020, on his initial steps in response to the Phala Phala security breach.
- 6.2.48.9 Gen. Rhooode, at some stage, must have informed the President of his investigations. He had been instructed, twice, to report to the President. The matter concerned the President's residence and his personal money (foreign currency). Gen. Rhooode would have had no reason not to keep the President abreast of his investigations. Once Gen. Rhooode reported on his investigations to the President, it must have become apparent to the President that Gen. Rhooode was not investigating threats to the President's safety. It would have been clear to the President that instead

Gen. Rhooode was focusing on recovering the stolen money for the President. At that stage, the President (tacitly or expressly) instructed Gen. Rhooode to continue with his investigation.

6.2.48.10 Alternatively, the President (tacitly or expressly) consented to the investigation by not telling Gen. Rhooode to cease employing PPS resources beyond the PPS' mandate. At the very least, the President knew of Gen. Rhooode's ulterior use of PPS resources.

6.2.48.11 The President, even if he at least knew of Gen. Rhooode's investigation, cannot allege that he reasonably assumed that Gen. Rhooode's investigation accorded with PPS regulations. The President, if he knew of Gen. Rhooode's investigation, must have realised that Gen. Rhooode was employing PPS resources beyond their mandate. It would have been obvious to the President that Gen. Rhooode was not investigating a safety threat to the President, but attempting to investigate and recover stolen money.

6.2.48.12 The President thus instructed, consented to, or knew of the use of PPS resources beyond their mandate and for an ulterior purpose. He acquiesced, either actively or passively, in the abuse of power. The Public Protector's finding to the contrary is a mistake of fact and irrational given the evidence before the Public Protector. The President breached the provisions of the Code of Ethics. He acquiesced or ratified the use of PPS resources for a purpose ulterior to the PPS' mandate. He tacitly approved the use of PPS resources to hunt down and recover his stolen money. This is an abuse of power.

6.2.49 Mr Muller responded to the Notice on an email dated 14 March 2023. In respect of this issue, he responded *inter alia* as follows:

6.2.49.1 In the absence of valid reasons or grounds from the President, for his failure to immediately report missing money to the SAPS or Gen Rhooode, like it is the case now, the Public Protector, should therefore make adverse

findings against the President for breach of the Executive Ethics Code and the Constitution. Excuses that were provided to the Public Protector by the President, should be rejected with the contempt they deserve.

- 6.2.49.2 The President acted improper or irregularly when he refused the deployment of PPS to Phala Phala farm prior to the robbery and theft. President Ramaphosa has submitted that he was not involved in the day to day running of Phala Phala farm, but he wanted to confirm first about the money having been stolen.
- 6.2.49.3 That Gen. Masemola should be found to have acted in breach of section 237 of the Constitution for failing to issue a directive that a docket be opened in relation to a crime reported by the President. While Gen. Masemola was not aware of the incident until around June or so, he had a duty to ensure an official investigation was conducted upon becoming aware.
- 6.2.49.4 Gen. Masemola responded to the Notice on behalf of SAPS in a letter dated 24 March 2023. In respect of this issue, he responded *inter alia* as follows:
- 6.2.49.5 That the Public Protector’s interim report refers to an outdated version of section 34(1) of the PRECCA. It is accordingly proposed that the discussion be revised to reflect amended legal position. PRECCA was amended in 2012, with the result that suspicions of corruption are no longer to be reported to “*any police official*” but to be reported to “*a police official of the DPCI*”.
- 6.2.50 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from President’s Legal Representatives on behalf of the President and Mr Chauke, as per email dated 30 March 2023, stating *inter alia*:



- 6.2.50.1 Our clients do not intend to submit any written representations in response to the interim report. In the event that any adverse findings are made against President Ramaphosa and/or Mr Chauke, our clients' rights are strictly reserved.

***Analysis of evidence***

- 6.2.51 Evidence placed before the Public Protector indicates that Phala Phala farm was not listed as the President's private residence on which there was a fulltime deployment of PPS personnel at the time of the crime of housebreaking with the intent to steal and theft, because the President chose not to have it listed, as he seldom visits the farm. This, according to the President was intended to mitigate the use of state resources.
- 6.2.52 According to Gen. Rhooode, since his appointment on 01 June 2018, he attempted to persuade the President that PPS personnel should be deployed at the farm, as the President visits it as one of his private residences. Gen Rhooode stated that when the President was not at Phala Phala farm, there were no SAPS or PPS members to prevent breaches of security. Gen. Rhooode further indicated that the President has always refused the deployment of PPS personnel and technology at the farm.
- 6.2.53 Having regard to the applicable prescripts, notwithstanding the President's initial refusal to have PPS deployed at Phala Phala farm, paragraph 12 of the Presidential Handbook, read together with the PPS Policy prescribes that the SAPS must take full responsibility for the protection and security of the President at all times during his term of office. These prescripts stipulate further that protection and security measures of the President include, *inter alia*, regular security assessment in conjunction with intelligence agencies and static protection at all official and private residences and office accommodation used from time to time during his term of office.

- 6.2.54 According to the evidence of Gen. Rhooode, Mr Ndlovu, Mr von Wielligh and the President, on 10 February 2020, there was a security breach by intruders at Phala Phala farm, which the President reported to Gen. Rhooode on the same day. Thereafter, Mr Ndlovu reported to the President that the money from the sale of game was stolen from the President's residence at Phala Phala farm. After confirming same, on 02 March 2020 the President reported the theft of money from the sale of game to Gen. Rhooode.
- 6.2.55 Having considered the response of Mr Zungula, the Public Protector remains of the view that the contention that the President was the only person, as a member of the CC, to report a crime as directed by section 34(1) of PRECCA, is not supported by a proper reading of the relevant section, and that both Messrs Von Wielligh and Ndlovu too, were persons of authority mandated to report the theft as envisaged in section 34(4)(e) and (i) of PRECCA and had an obligation, as persons with the personal knowledge of the crime, to report the housebreaking.
- 6.2.56 Section 34(1)(e) and (i) of PRECCA places an obligation on the manager and the member of the CC and any other person who is responsible for the overall management and control of the business of an employer. In this instance, the member of the CC, the President, is not involved in the day to day running of the business. At the time of the incident, the money was not under the President's control and management, as it is clear from the evidence that the money was received and stored by Mr Ndlovu in the absence of the President.
- 6.2.57 On 25 April 2023, the President stated that he did not open any criminal case during August 2022 in connection with the theft of foreign currency at his residence at Phala Phala farm, as alleged by Mr Zungula. The President submitted that it was not his responsibility to do so, however he did report a security breach to Gen. Rhooode of the SAPS. The President stated that he has been advised that Mr von Wielligh opened a case in

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August 2022 at Bela Bela, under CAS 299/08/2022, acting on the instructions of the DPCI, after they interviewed him. The DPCI required a case to be formally registered for it to conduct an investigation into the housebreaking and theft incident, which investigation is separate from the one into the allegations reported by Mr Arthur Fraser, at the Rosebank police station.

6.2.58 In a letter dated 26 April 2023, Gen. Masemola confirmed to the Investigation Team that on 22 August 2022, Mr von Wielligh opened a case namely, Bela Bela CAS 299/08/2022 for housebreaking and theft that took place on 09 February 2020.

6.2.59 In considering Mr Steenshuisen’s submission for the Public Protector to reject the notion and evidence that the President did not instruct, consent to, or otherwise know of the unlawful investigations by members of the SAPS, the Public Protector heeded the advice of the Constitutional Court that, where evidence is inconclusive or diverges, she is obliged to carefully evaluate it to determine the truth. This decision affirms that the objective of investigations by the Public Protector is to discover the truth.<sup>65</sup> Where the investigation yields disparate pieces of evidence which do not fit into place, the Public Protector must continue digging until the true picture emerges. The Court further noted that when the versions placed before the Public Protector diverged on some of the relevant issues, she could not without more evidence prefer one version over the other – “*(t)he truth is established by facts and not one’s preference*”.<sup>66</sup>

6.2.60 The Constitutional Court<sup>67</sup> furthermore warned that Public Protector has no place summarily dismissing any information. His or her function is to weigh the importance or otherwise of the information and if appropriate to take steps that are necessary to determine its truth.

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65 Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC [19] at paragraph 77.

66 Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC [19] at paragraph 79.

67 Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC [19] at paragraph 76.

- 6.2.61 To this end and having identified witnesses who were interviewed and approached for information and their testimony, this report sets out in detailed form the evidence of each witness. These include the President, the Managers on Phala Phala farm, as well as the members of the SAPS involved.
- 6.2.62 The evidence was obtained by means of a pro-active and systematic investigative process and was thoroughly scrutinised. The substantive evidence and information at the disposal of the Public Protector is corroborative of each other on all relevant issues and cannot, on a balance of probabilities be construed or perceived as inconclusive or diverging, or summarily dismissed.
- 6.2.63 Determination of the origin and exact amount of money stolen from Phala Phala farm was not within the scope of the investigation of the Public Protector. It is therefore incorrect to surmise that the office of the Public Protector seems to be satisfied with the quantity and origin of the foreign currency stolen. The focus of investigation by the Public Protector was only on the three distinct issues identified in this report.
- 6.2.64 The concept of *abuse of power* is not defined in the Public Protector Act, however, in terms of the dictionary meaning it is defined as meaning wrongful use of a position of authority to influence employees, students, colleagues, or volunteers (e.g. coercion to participate in activities or decision making, in violation of laws, regulations, or policies).<sup>68</sup>
- 6.2.65 In a matter of *Gigaba v Minister of Police and Others*<sup>69</sup> Sardiwalla J gave an example of “*abuse of power*” as an instance in which powers, given to public authorities to be used for certain purposes, are wrongly used by them to achieve another unauthorised ulterior purpose. In this case the

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68 <https://www.lawinsider.com/dictionary/abuse-of-power> accessed on 16 February 2023.

69 (43469/2020) [2021] ZAGPPHC 55; [2021] 3 All SA 495 (GP) (11 February 2021) at para 75 and 77.

court held that the involvement of the Hawks/DPCI in a trivial domestic spat amounted to the *abuse of power* by Mr Gigaba as a former Minister in using the State administration for his own personal benefit with an intention to intimidate the applicant.

6.2.66 In determining this issue, the Public Protector had to evaluate the evidence to establish if the conduct of the President can be equated to an abuse of his position of power and whether he utilised state resources, which included deployment of PPS members to Phala Phala farm and to investigate the crime of housebreaking with the intent to steal and theft without a registered case to recover the stolen money.

6.2.67 In response to the Notice, Mr Steenhuisen stated that the President consented to, or knew of the use of PPS resources beyond its mandate. Mr Steenhuisen insisted that the President acquiesced, either actively or passively, in the abuse of power and PPS resources. Mr Steenhuisen did not furnish any evidence to support this contention. The Public Protector could not find evidence to prove that the President was aware of the investigation by Gen Rhooede.

6.2.68 As a result, the Public Protector cannot make a finding that assumes a position with respect to the President's state of mind, without empirical evidence to support the allegation that he consented to the use of PPS resources beyond their mandate and for an ulterior purpose.

### *Conclusion*

Based on a thorough evaluation of the evidence and information, as well as the consideration of the applicable legal framework, the Public Protector makes the following conclusion:

6.2.69 Section 34(1) of PRECCA places the duty on certain persons to report certain offences. Failure to report is an offence. In that case, the Public Protector is not empowered to pronounce on the matter because the offence does not fall

within section 6(4)(a) of the Public Protector Act. This matter is investigated by the public body which is tasked with criminal investigations, namely the DPCI.

- 6.2.70 The evidence before the Public Protector does not demonstrate cognisable facts corroborating abuse of power and unlawful use of the SAPS resources by the President to recover the money stolen from Phala Phala farm.
- 6.2.71 From the evidence obtained by the Public Protector, it is concluded that the President reported the security breach on 10 February 2020 and the crime of housebreaking with the intent to steal and theft on 02 March 2020. The President reported the security breach and the crime at his premises to Gen. Rhode, who is a police officer and a member of the SAPS entrusted with his security, albeit not a member of the DPCI as contemplated in section 34(1)(b) of PRECCA.
- 6.2.72 In this regard, it suffices to mention that it was the responsibility of the managers of Ntaba Nyoni to report the crime to DPCI as stipulated in PRECCA. The President nonetheless, having been informed thereof, reported the incident to Gen. Rhode. It follows logically that the President reported the security breach and the crime to Gen. Rhode who is responsible for his security matters.
- 6.2.73 The question whether or not the President was under the circumstances absolved of any obligation to personally report the housebreaking is paramount to a determination of a violation of section 34(1) of PRECCA, and therefore amounting to an offence.
- 6.2.74 The Public Protector is empowered, by section 182(1)(a) of the Constitution, 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*". She is also empowered, by section 6(4) of the Public Protector Act, to investigate certain criminal offences.<sup>70</sup>

6.2.75 If the Public Protector investigates a criminal offence listed in section 6(4)(a) of the Public Protector Act and "*during the course of, or before, an investigation... forms the opinion that the facts disclose the commission of an offence, she is empowered to bring the matter to the attention of the relevant authority charged with prosecutions.*"<sup>71</sup> In that case, the Public Protector is competent to assume the investigative role and to refer the matter to the prosecuting authority for prosecution.<sup>72</sup>

6.2.76 However, if the Public Protector investigates another matter, such as one falling under section 182(1)(a) of the Constitution, and she nevertheless comes across information "*that, in her opinion, gives rise to a well-founded suspicion of the commission of an offence by any person, the appropriate public body to whom it should be referred is an investigative body.*"<sup>73</sup> In that case, she is not empowered to conduct the investigation because the offence does not fall within section 6(4)(a) of the Public Protector Act. The matter will need to be investigated by the public body which is tasked with criminal investigations, SAPS.

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<sup>70</sup> Section 6(4)(a)(iii) of the Public Protector Act empowers the Public Protector to investigate:

" improper or dishonest act, or omission or offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, with respect to public money.

<sup>71</sup> *Public Protector and Others v President of the Republic of South Africa and Others* 2021 (6) SA 37 (CC) para 115; *Madikizela v Public Protector and Others*; *Mabuyane v Public Protector and Others*; *Speaker: Winnie Madikizela Mandela Local Municipality and Others v Public Protector and Others* (800/2021; 802/2021; 818/2021) [2023] ZAECBHC at para 31.

<sup>72</sup> *Public Protector and Others v President of the Republic of South Africa and Others* 2021 (6) SA 37 (CC) para 115; *Madikizela v Public Protector and Others*; *Mabuyane v Public Protector and Others*; *Speaker: Winnie Madikizela Mandela Local Municipality and Others v Public Protector and Others* (800/2021; 802/2021; 818/2021) [2023] ZAECBHC at para 39.

<sup>73</sup> *Madikizela* at para 40

6.2.77 While faced with these limitations, the Public Protector’s duty to ensure effective redress does not diminish. As held by the High Court, Gauteng Division in *DA v Public Protector*.<sup>74</sup>

*“[W]hen the PP receives complaints of impropriety or abuse of public office, she is obliged to use the powers vested in her. This will include her power to call for assistance from organs of state, or to refer matters to other appropriate authorities, to ensure that the complaint is properly and effectively addressed.”*

6.2.78 While the Public Protector is obliged to use the powers vested in her to seek remedial action that is “*effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case*”<sup>75</sup> she cannot “*proceed to an investigation into the merits and demerits of the alleged crime and to make findings in respect thereof.*”<sup>76</sup>

6.2.79 As a result, the Public Protector is obliged to refer the matter of the President’s non-disclosure in terms of section 34(1) of PRECCA to SAPS for investigation, who in this case, confirmed that the matter is under investigation by the DPCI.

6.2.80 It was confirmed by Gen. Rhode to the Public Protector during the course of the investigation that the President reported both these incidents to him as the police officer and as the head of PPS. Gen. Rhode further indicated that the President did not give him any specific instruction as to how he should deal with this matter. There is no evidence upon which to conclude that Gen. Rhode was influenced, coerced or dictated to by the President as to how he should deal with this matter. Gen. Rhode accepts

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74 *Democratic Alliance v Public Protector; Council for the Advancement of the South African Constitution v Public Protector* 2019 (7) BCLR 882 (GP) at para 36.

75 *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance Speaker of the National Assembly and Others* 2016(3) SA 580 (CC) at paras 68 and 71(e).

76 *Madikizela* at para 53.



same and further indicated that the matter was escalated to the late Gen. Mfazi.

- 6.2.81 The Public Protector could not find any evidence upon which to conclude that after reporting both the security breach and the crime to Gen. Rhooode, the President abused his power and state or SAPS resources or gave specific instructions to Gen. Rhooode or any person or official, directing and controlling how the matter should be handled by SAPS, other persons or organs of state.
- 6.2.82 It is apparent from the Presidential Handbook, read together with the PPS Policy, that the President is entitled to static protection at all his private residences that he uses from time to time during his term of office. The initial refusal by the President to have deployment at his residence in Phala Phala farm does not take away the protection he is entitled to receive as the Head of State, in terms of the prescripts and that the security assessment is not a pre-requisite, but a periodical determination for the level of the security detail.
- 6.2.83 The Public Protector could not establish any evidence upon which to conclude that the deployment of PPS at the President's private residence at Phala Phala farm amounts to an abuse of SAPS resources, since the President is entitled to this protection in terms of the Presidential Handbook, read together with the PPS Policy, as adumbrated above.
- 6.2.84 Accordingly, no evidence could be found to conclude that the President breached the Constitution, Executive Ethics Code and the Public Protector Act.
- 6.3 **Whether the members of the South African Police Service attached to the PPS acted improperly by investigating the alleged housebreaking with the intent to steal and theft, which took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province, and if so, whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the**

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**Constitution and maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act**

*Common Cause Issues*

6.3.1 The facts outlined herein below are common cause amongst the parties:

6.3.1.1 It is not in dispute that on or about 09 February 2020 there was a housebreaking with the intent to steal and theft of cash in foreign currency at Phala Phala farm. The money in question was kept in a room in the President's house situated on the Phala Phala farm under the cushions of a couch.

6.3.1.2 It is not in dispute that, at the time of the lodgement of this complaint with the Public Protector, no case docket was registered by SAPS in connection with the incident of housebreaking with the intent to steal and theft that took place on or about 09 February 2020 at the President's Phala Phala farm in Waterberg, Limpopo.

6.3.1.3 It is further not disputed that Gen. Rhooode escorted Mr Bejani Chauke to Namibia on 25 June 2020.

6.3.1.4 It is equally not disputed that Gen. Rhooode conducted an investigation at Phala Phala farm and in Cape Town, notably with the help of Sgt Rekhoto, who is a member of the PPS amongst others, following the President's report of the incident to Gen. Rhooode.

*Issue in Dispute*

6.3.2 The issue for the Public Protector's determination is whether the members of the SAPS failed to comply with and uphold their statutory and constitutional duties in relation to the housebreaking with the intent to steal

and theft, which took place on or about 09 February 2020 at Phala Phala farm.

*Version of the Complainants*

6.3.3 The complaint captured in paragraph 2 above, sets out the nature of different complaints lodged by all four Complainants. Without being repetitive, it suffices to indicate that it was alleged that the members of the SAPS, in particular Gen. Rhooode as well as the President, committed the following transgressions as a result of the housebreaking with intent to steal and theft of US dollars at Phala Phala farm:

- (a) Concealed the crime of housebreaking with intent to steal and theft of cash at the President's residence and failed to register the case on the Crime Administration System (CAS) in line with the procedures;
- (b) Used state resources which included members of SAPS from the PPS, to investigate the President's private business matter to recover the stolen money without a registered case;
- (c) Breached the Home Affairs procedures and/or Immigration Laws in bringing back the alleged perpetrators from Namibia for interrogation in South Africa when there was no crime reported or case registered;
- (d) Kidnapped the suspects and interrogated them in connection with the theft from the President's residence;
- (e) Paid bribes to the culprits in order to buy their silence for the alleged crime of housebreaking with intent to steal and theft; and
- (f) Defeated the ends of justice in the process.

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*The allegations letter to the SAPS*

- 6.3.4 On 07 June 2022, the Public Protector issued an allegations letter to the National Commissioner of the SAPS, Gen. Masemola, requesting him to submit a detailed response to the complaint received from Mr Zungula. In terms of this letter Gen. Masemola was given fourteen (14) calendar days to respond to the allegations and his response was due on 22 June 2022.

*Responses by the SAPS*

- 6.3.5 On 22 June 2022, the Public Protector received an undated and unsigned letter from the office of Gen. Masemola acknowledging receipt of the Public Protector's letter of 07 June 2022 and requesting to be granted extension to reply by 12 July 2022, due to the detailed information required. On 12 July 2022, Gen. Masemola responded to the Public Protector and submitted two affidavits deposed to under oath by him and Gen. Rhooode respectively, which affidavits are summarised hereunder.

*The Affidavit of Gen. Rhooode, Head of PPS*

- 6.3.6 In his affidavit to the Public Protector, Gen. Rhooode stated amongst other things that he is currently employed by SAPS as the Head of the PPS and that he holds a rank of Major-General in the SAPS since 01 June 2018.
- 6.3.7 Gen. Rhooode submitted that he reports directly to the National Commissioner of the SAPS. He also indicated that in addition, he reports directly to the President. He indicated that his responsibilities include, but are not limited to, ensuring the physical, information and logistical security of the President, the Deputy President, all former Presidents and former Deputy Presidents, as well as their spouses. He further stated that he is also responsible for the security of visiting Heads of Foreign States.

- 6.3.8 Gen. Rhooode submitted that the complaint by Mr Zungula emanates from a statement made by Mr Fraser, which is based on hearsay evidence without disclosing the identity of the sources. He stated further that he has not been furnished with the supporting evidence to which Mr Fraser makes reference.
- 6.3.9 It was further indicated by Gen. Rhooode that on 10 February 2020, he was with the President in Addis Ababa, Ethiopia as part of a delegation of the Republic of South Africa to the AU Summit meeting. He also stated that on 10 February 2020, he was summoned by the President to his suite in Addis Ababa, and the President informed him that he received information that there was an alleged breach of security at Phala Phala farm. Gen. Rhooode indicated that the President requested him to attend to the breach of security and report back to him. According to Gen. Rhooode, this instruction was to alert him to the incident so that he could properly carry out his duties in respect of protecting the President and his family.
- 6.3.10 Gen. Rhooode submitted that he instructed Col. Mathlo, from the PPS, who was with him in Addis Ababa, to contact the PPS office in Pretoria and instruct them to assess the breach of security and to deploy PPS personnel to the farm. It was mentioned by Gen. Rhooode that contrary to his advice, the President had declined the permanent deployment of PPS personnel and technology at the Phala Phala farm on the basis that state resources should not be spent on his personal property, especially when he is not always there.
- 6.3.11 According to Gen. Rhooode, he was later informed by Col. Mathlo that through Lieutenant Col. Letswalo, he can confirm that two (2) cameras at the Phala Phala farm had been tampered with and the PPS police further found that a window was half opened at the President's house on the farm. Gen. Rhooode submitted that he was informed further that the President's house was locked and there was no one present with access to open the house and accordingly the PPS police did not enter the house.

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- 6.3.12 Gen. Rhooode indicated that Lieutenant Col. Letswalo subsequently deployed security personnel on 10 February 2020. Gen. Rhooode submitted that he was advised that four (4) PPS personnel had been deployed to protect Phala Phala farm on a shift schedule, with two (2) on day shift and the other two (2) on night shift.
- 6.3.13 Gen. Rhooode stated that although at this stage he was not aware that anything had been stolen from the President's residence, he took the matter seriously because a breach of security at the President's residence amounts to a direct threat to the President, and poses a serious threat to President's life and the lives of his family members.
- 6.3.14 It was indicated by Gen. Rhooode that he was only able to brief the President on the steps he had taken once they had boarded the President's plane at or around 03h30 on 11 February 2020, at Addis Ababa Airport, as they flew back to Cape Town, South Africa.
- 6.3.15 Gen. Rhooode indicated that for the remaining days of February 2020, the President attended to several commitments across South Africa. He further stated that on 02 March 2020, the President called him to his residence in Hyde Park, where he informed him that money from the sale of animals was missing from his residence at the farm. According to Gen. Rhooode the President did not indicate the amount of money that was missing.
- 6.3.16 It was stated by Gen. Rhooode that given the sensitivity and the seriousness of a breach of security at the President's residence, he informed the President that he is going to report the matter to his superiors and undertook to revert to the President on the course of action to be followed.
- 6.3.17 Gen. Rhooode indicated that following the meeting with the President at his Hyde Park residence, he immediately reported the security breach to and consulted with one of his superiors, Gen. Mfazi. He stated further that

Gen. Mfazi requested him to gather some preliminary information about the incident and potential suspects to determine whether there was any threat to President's safety and advised him that he would institute a full-scale investigation. Gen. Rhooode submitted that it is beyond his scope of work to be allocated matters or case dockets to conduct criminal investigations.

6.3.18 According to Gen. Rhooode, in an attempt to gather the requested preliminary information, on or about 03 March 2020, accompanied by Mr Trevor Fredericks (Mr Fredericks) and Sgt. Rekhoto, he went to Phala Phala farm. Gen. Rhooode submitted that he had asked Mr Fredericks to assist him as he was a former policeman and a social worker, and he thought his expertise would be useful. Gen. Rhooode indicated that Mr Fredericks died from Covid-19 in 2021. Gen. Rhooode indicated that he requested the assistance of Sgt. Rekhoto who works in the PPS as he is multilingual, and Gen. Rhooode thought he could assist with interpreting any interviews which he conducted.

6.3.19 Gen. Rhooode submitted that when at Phala Phala farm, he interviewed a temporary employee in housekeeping by the name of Ms Floriana Joseph. He stated that the purpose of the interview was to ascertain whether Ms Floriana Joseph had any information regarding the housebreaking that had taken place. Gen. Rhooode stated further that in the presence of Sgt. Rekhoto, Ms Floriana Joseph was advised of her rights and that she did not have to answer any questions if she did not want to. He further stated that Ms Floriana Joseph answered his questions voluntarily.

6.3.20 It was submitted by Gen. Rhooode that Ms Floriana Joseph advised him that her brother, Mr David Joseph, had information regarding the alleged break in. Gen. Rhooode submitted that Mr David Joseph voluntarily subjected himself to an interview. He stated further that it would not be correct to characterise these interviews as interrogations, which implies a degree of forcefulness. Gen. Rhooode stated that with the assistance of

Sgt. Rekhoto, he compiled the preliminary information requested by Gen. Mfazi and submitted same to him to hand the matter over. Gen. Rhooode indicated that he assumed that Gen. Mfazi, as part of his full-scale investigation, would follow the prescribed process, including opening a docket if appropriate. Gen. Rhooode indicated that he was not aware of the outcome of Gen. Mfazi's investigation.

6.3.21 According to Gen. Rhooode, he acted as diligently as possible and in accordance with the applicable legislative and policy framework from which he derives his authority as head of PPS, and brought the matter to the attention of Gen. Mfazi, as directed by protocol.

6.3.22 Gen. Rhooode further indicated that he has no knowledge of any money or item derived from the proceeds of the money stolen from Phala Phala farm being recovered. Furthermore, Gen. Rhooode submitted that he does not have any knowledge of a referral being made to the Asset Forfeiture Unit in connection with this matter.

6.3.23 Gen. Rhooode denied the allegations that he was involved or has knowledge of any person kidnapping, torturing or paying bribes to the alleged culprits in order to buy their silence in connection with this matter.

6.3.24 It was stated by Gen. Rhooode that on 25 June 2020 he went with Mr Bejani Chauke, the President's envoy for Africa, on an official trip to Namibia. He submitted further that they could not fly due to lockdown restrictions at the time and as a result they drove from Upington to Naskop border post, where they completed all of the necessary paperwork on the South African side.<sup>77</sup>

6.3.25 According to Gen. Rhooode, they then drove to No Man's Land where they waited for the Namibian police to meet them. He stated that the Namibian

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77 A copy of the relevant pages from Gen Rhooode's passport was furnished to the Public Protector on 23 February 2023.



Police picked them up in a helicopter and they went to Windhoek. Gen. Rhooode indicated that they arrived late at night and the next morning they went to see President Geingob.

6.3.26 According to Gen. Rhooode, Mr Bejani Chauke met with President Geingob and he stayed outside of the meeting and thus does not know what was discussed. Gen. Rhooode indicated that to his knowledge, the trip was not in connection with the alleged theft at Phala Phala farm. Gen. Rhooode submitted that the trip was authorised by the former National Commissioner of SAPS, Gen. Khehla Sitole.

6.3.27 Regarding the allegation that *“the Inspector-General of the Namibian Police Force confirmed in a statement on 16 June 2022 that the Namibian Police met with SAPS officials on 19 June 2020 at what they termed “No Man’s Land” near Noordoewer on the Namibian / South African border. They met “to share operational information pertaining to Mr David Imanuwela and other Namibian nationals suspected to have stolen money in South Africa and fled to Namibia”*, Gen Rhooode indicated in his response dated 23 February 2023 that he neither has knowledge of the meeting that took place on 19 June 2020 at *“no man’s land”* near Noordoewer, nor was he present at the meeting referred to.

*Supplementary Affidavit of Gen. Rhooode, Head of PPS*

6.3.28 On 31 August 2022 the Public Protector sent another letter to Gen. Masemola and requested to be provided with a supplementary affidavit from Gen. Rhooode in order to clarify certain questions. Gen. Rhooode submitted a supplementary affidavit and replied to the questions posed to him.

6.3.29 In response to specific questions, Gen. Rhooode indicated that he interviewed Mr Joseph on 03 and 04 March 2020 at Phala Phala farm. According to Gen. Rhooode, on both days Mr Joseph arrived at the farm driving a vehicle which was either a Corolla or Almera. Gen. Rhooode

submitted that Mr Joseph's sister (Floriana) called Mr Joseph to the farm. He further stated that he did not detain Mr Joseph or anybody else, however Mr Joseph was interviewed at the farm after being read his rights. According to Gen. Rhooode Mr Joseph willingly participated in that interview.

- 6.3.30 Gen. Rhooode submitted that when he undertook the trip to Namibia with Mr Bejani Chauke on 25 June 2020, Warrant Officer Ruiters drove Mr Bejani Chauke and him from Pretoria to Upington, where they slept over. He stated that the next morning Warrant Officer Ruiters took them to the border post and dropped them in No Man's Land and nobody else accompanied them to Namibia.
- 6.3.31 According to Gen. Rhooode, they returned from Namibia on 27 June 2020. Warrant Officer Ruiters collected them in No Man's Land and drove them back to Pretoria. He stated further that they fully complied with all the Home Affairs immigration movement control procedures or regulations while on the said trip to and from Namibia.
- 6.3.32 It was Gen. Rhooode's further explanation that he neither recorded the interview with Mr Joseph, nor did he keep notes of the interview. He also indicated that he gave his report to Gen. Mfazi, when he reported back to him and he did not keep a copy.
- 6.3.33 Gen. Rhooode stated that other than Sgt. Rekhoto and the late Mr Fredericks there were no other police officials or police units present during the interview. He indicated that Floriana and David's mother was present for part of the interview on 03 March 2020.
- 6.3.34 Gen. Rhooode further stated that on 04 March 2020, while they were interviewing Mr Joseph, a male person arrived who introduced himself to them as Nick. Gen. Rhooode stated that Nick was accompanied by a male person. According to Gen. Rhooode this person left and returned with someone called Thomas, a male person whose hands were tied behind

his back with cable ties. Gen. Rhooode stated that he instructed Nick to untie Thomas, which he eventually did. According to Gen. Rhooode Mr Joseph said that Thomas had given him a lift to Bela-Bela and that Thomas had transported those responsible for the theft from Bela-Bela towards Vingerkraal.

6.3.35 On the question regarding why he did not report this incident to the police station after the President informed him about it, Gen. Rhooode stated that he reported the incident to the Deputy National Commissioner, Gen. Mfazi, which is the proper procedure in a matter of this nature. Gen. Rhooode further said that it is not his job to open criminal cases and that he followed proper procedures according to his reporting and accountability lines.

6.3.36 Gen. Rhooode further explained that he consulted the Deputy National Commissioner, Gen. Mfazi, on 03 March 2020 and was instructed to conduct a preliminary inquiry. He stated that depending on the results, Gen. Mfazi was to institute a full scale investigation. He stated that Gen. Mfazi determined this procedure in light of the fact that Gen. Rhooode was dealing with the office of the President. He indicated that the purpose of a preliminary inquiry was to determine whether there was any immediate threat to the President's safety. According to Gen. Rhooode it was beyond the remit of his duties to conduct a criminal investigation and/or open a docket.

6.3.37 Gen. Rhooode also stated that Phala Phala farm was not listed as the President's official premises/residence on which there was a fulltime deployment of PPS or SAPS personnel at the time of the theft, because the President chose not to have it listed. According to Gen. Rhooode, since his appointment on 01 June 2018, he attempted to persuade the President that PPS personnel be deployed at the farm, as the President visits it. He stated that when the President is not at the farm, there are no SAPS or PPS units at the farm to prevent breaches of security. He also indicated

that the President has always refused the deployment of PPS personnel and technology at the farm.

- 6.3.38 It was indicated by Gen. Rhooode that Lt. Col. Letswalo of the PPS subsequently deployed PPS personnel on 10 February 2020 to the farm and also reported to Col. Mathlo in relation to the security breach. He indicated further that the reason for the deployment was because the President had reported a breach of security and, in such circumstances, a breach of the President's personal security was deemed to warrant the deployment of such personnel at the farm.
- 6.3.39 Gen. Rhooode was also requested to clarify if there was any other operation carried out by him using SAPS resources in connection with the Phala Phala farm theft and he stated that as far as he was aware, there was no other operation authorised in connection with this incident. He further stated that when he was in Cape Town around 10 or 11 March 2020, he received a call from Sgt. Rekhoto who told him that he had found out from a certain source that the perpetrators of the theft had bought new cars.
- 6.3.40 According to Gen. Rhooode, Sgt. Rekhoto said that the cars had been bought from Barons in Culemborg, Cape Town. He stated further that shortly after receiving the telephone call from Sgt. Rekhoto, the latter collected Gen. Rhooode at his office in Garmor House opposite Parliament. He stated that they subsequently drove to Barons motors and spoke to the manager who confirmed that on 14 February 2020, Mr Mukekeni had purchased a 2019 Ford Ranger and he supplied further details in relation to the purchase of the vehicle.
- 6.3.41 Gen. Rhooode stated further that Sgt. Rekhoto compiled a report of the information he gathered on the perpetrators. He indicated that upon his return to Pretoria, Sgt. Rekhoto gave him a report, which he gave to Gen. Mfazi.

*The version of the Former National Commissioner of the SAPS: Gen. Khehla Sitole*

- 6.3.42 On 29 September 2022, the Public Protector addressed a letter to the former National Commissioner of the SAPS, Gen. Sitole and sought clarity on his role and his knowledge in connection with this matter. Gen. Sitole replied as per written submission delivered to the Public Protector on 08 November 2022.
- 6.3.43 Gen. Sitole stated that he cannot confirm that SAPS failed to comply with its statutory and constitutional obligations in this matter. Gen. Sitole indicated that according to the protection and security prescripts, which in this case is both the Presidential Handbook as well as the Policy on Risk Management System Protection Packages (RIMAS), the incidents in issue are reported formally as a security breach and only failure to act after such an incident is reported, can one confirm failure by SAPS.
- 6.3.44 Gen. Sitole stated that in this case no evidence could be traced or found either in a form of written reports or verbal means confirming that the Phala Phala farm theft was brought to his attention as the then serving National Commissioner. According to Gen. Sitole he was not afforded the opportunity to issue relevant instructions to ensure that those who had the obligation to open the criminal case do so, due to the fact that the whole incident was not reported to him. Gen. Sitole indicated that it is therefore not possible to conceal something that was not brought to his attention.
- 6.3.45 It was further stated by Gen. Sitole that according to the “*purification*” function of the SAPS, the protection and security services is neither entrusted with the responsibility to investigate nor trained to do so, and that this mandate lies with crime detection.
- 6.3.46 According to Gen. Sitole, the use of resources is governed by prescripts, which include the Public Finance Management Act (PFMA), and the

authorisation of such resources should be consistent with the mandate emanating from such prescripts.

- 6.3.47 Gen. Sitole indicated that the authorization of resources for the PPS to conduct an investigation would simply have resulted in either unauthorized, wasteful or fruitless expenditure since it is not supported by the mandate. According to Gen. Sitole no request for deviation in granting authority for the use of PPS resources for an investigation was submitted to him as the then Accounting Officer of the SAPS for approval.
- 6.3.48 Gen. Sitole emphasized that no reporting was made to him as the then serving National Commissioner or to a police station, as a result he could not have issued an instruction for the utilisation of SAPS resources to investigate the President's matter or to recover the stolen money.
- 6.3.49 He further highlighted that when members of SAPS are to perform duties, which impact on Home Affairs prescripts, the SAPS has a clear policy framework in the form of National Instructions complemented by Interpol Cooperation Agreement, where each and every member who needs to perform an investigation or any other duty must apply, after which an authority is granted by the Accounting Officer and/or the Minister where applicable. Gen. Sitole also indicated that in this case, no authority was granted in terms of the applicable prescripts for any member to go and investigate, interrogate or extradite suspects from another country including Namibia. He stated that any other action by SAPS members outside the applicable prescripts would be unprocedural and completely unlawful.
- 6.3.50 Regarding the alleged kidnapping and interrogation of suspects, Gen. Sitole stated it was not reported to him, therefore no instruction was given to any member to apprehend any suspect in relation to this matter, more so, because there was no case registered which could have warranted such an act. He added that no authorisation or instruction was given by

him as National Commissioner to any member of the SAPS to pay bribes or engage in criminal activities such as defeating the ends of justice.

6.3.51 He further indicated that it needs to be mentioned that Gen. Mfazi was the Deputy National Commissioner responsible for Crime Detection and according to the approved organizational structure, the Head of the PPS, who is Gen. Rhooode was reporting directly to the National Commissioner and not to Gen. Mfazi.

6.3.52 In responding to whether he authorised any operation in connection with this matter, he responded that an approved operational plan is always evidence of an authorised operation and the plan then becomes the authority for the use or deployment of resources. Gen. Sitole indicated that it is therefore important to mention that no operational plan pertaining to this incident was escalated for his approval and no approved operational plan by any of the Deputy National Commissioners was also brought to his attention, which then means there was no authority to deploy resources in this case.

6.3.53 Gen. Sitole further stated that the authorisation of a trip to Namibia was granted solely by him for Gen. Rhooode to embark on advance protection duties for the Presidential Protection team within the ambit of both Presidential Handbook and RIMAS policy. He further stated that the documents (memorandum) purport that the instruction came from the President for the presidential protection team to accompany Mr Bejani Chauke to Windhoek.

6.3.54 Gen. Sitole indicated that it is important to mention that the President did not give the instruction to him as the National Commissioner directly. He further stated that this was not unusual because most, if not all presidential trips are communicated via the Head of PPS, Gen. Rhooode to the National Commissioner, for authorisation as and when presidential protection members are deployed for presidential protection services. According to Gen. Sitole, the memorandum for the trip did not direct that Mr Bejani

Chauke was going to use the SAPS resources and this is supported by the SAPS 501, which is the itinerary application form that was completed by Gen. Rhooode.

6.3.55 It was submitted by Gen. Sitole that Mr Bejani Chauke was not covered for the use of SAPS resources. He stated that the execution of a memorandum is always done by means of an itinerary which follows thereafter. According to Gen. Sitole an itinerary for the execution of this memorandum was submitted by Gen. Rhooode, which excluded Mr Bejani Chauke, meaning that the authorisation of the itinerary would not extend to the utilisation of SAPS resources for Mr Bejani Chauke. The said itinerary was solely for rendering of protection duties to the President, according to Gen. Sitole.

6.3.56 He further explained that subsequent to the itinerary, SAPS 157(a) which is a claim form for foreign duties was completed by Gen. Rhooode and approved by him as the National Commissioner solely for Gen. Rhooode's expenses and not Mr Bejani Chauke. Gen. Sitole stated that the itinerary is the sole and main document that has officialised the trip of Gen. Rhooode to Namibia with an understanding that he was rendering presidential protection duties to the President and not Mr Bejani Chauke.

6.3.57 In response to the question regarding the deployment of SAPS personnel to Phala Phala farm, Gen. Sitole stated that National Key Points are declared in terms of the Critical Infrastructure Act and that the deployment of SAPS personnel would always be informed by a threat assessment, which would warrant either permanent or temporary deployments. He further stated that during his term as the National Commissioner there was not any threat assessment or report submitted to him about Phala Phala farm. Gen. Sitole advised that it might be important to check with the current National Commissioner whether such a threat assessment report is available or not in the classified domain. Gen. Sitole stated that he did not authorise the deployment of SAPS officials at Phala Phala farm.



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*Documentary Evidence received from SAPS, Memorandum signed and approved by Gen. Sitole*

6.3.58 The Public Protector is in possession of a memorandum received from the SAPS on 14 September 2022. The memorandum is titled “*Foreign Visit of Major General WP Rhoode to Windhoek, Namibia from 25 June 2020 until 26 June 2020*”. It is noted by the Public Protector that the purpose of the memorandum was to request authorisation for Gen. Rhoode to accompany Mr Chauke to Namibia on 25 June to 26 June 2020. It was further noted by the Public Protector that the memorandum was signed by Gen. Rhoode on 24 June 2020 and approved by Gen Sitole on 07 July 2020.

*Affidavit of Lt. Colonel JB Mogola, PPS Fleet Manager*

6.3.59 The Public Protector is in possession of an affidavit deposed to by Lt. Colonel Mogola, received from Gen. Masemola on 13 October 2022. In his affidavit Lt. Colonel Mogola stated that between May and July 2020, he gave Warrant Officer Ruiters a vehicle, namely SAP BWB 81 B, which was still new and awaiting to be fitted with emergency lights and a siren, for an undisclosed task. Lt. Colonel Mogola further stated that he created the logbook for the said vehicle.

6.3.60 He stated that during the renovations that took place at their building, all the boxes in his office were moved and when they were returned some boxes could not be found. Lt. Colonel Mogola indicated that as a result, the logbook for June 2020 could not be found. He also stated that the logbook for the vehicle, SAP BVP 988 B, which is another convoy vehicle could also not be found due to a mix up of boxes and files that are kept at a basement parking due to lack of space.<sup>78</sup>

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As a result, the Investigation Team was not furnished with the logbooks to inspect the trips undertaken using those state vehicles around June 2020.

*Version of the National Commissioner of the SAPS: Gen. Fannie Sehlahle Masemola*

- 6.3.61 Gen. Masemola furnished the Public Protector with a confirmatory affidavit dated 12 July 2022, stating that on 10 February 2020, the President reported a security breach at Phala Phala farm to Gen. Rhooode. Gen. Masemola made reference to paragraph 10 of Gen. Rhooode's affidavit and confirmed that the alleged theft was reported on 02 March 2020 by the President to Gen. Rhooode.
- 6.3.62 He stated that based on enquiries made with the Provincial Commissioner of Limpopo and the station commander of Bela-Bela SAPS, he confirms that no case was opened and registered following the alleged theft at the President's property at Phala Phala. He further stated that the complaint of Mr Fraser which was registered as Rosebank under CAS 2/6/2022 was transferred to Bela-Bela SAPS and is currently registered as Bela-Bela CAS 93/06/2022.
- 6.3.63 Furthermore, Gen. Masemola submitted a supplementary affidavit to the Public Protector dated 14 September 2022 and stated that Gen. Mfazi passed away during 2021 and that he is unable to assist with his affidavit. Gen. Masemola clarified further that Gen. Rhooode reported directly to the former National Commissioner of the SAPS, Gen. Sitole at the time of the period under investigation and that he was still the Deputy National Commissioner for Policing at the time. On this score, Gen. Masemola furnished a schematic diagram of the approved organisational structure of the SAPS for the 2020-2021 financial year to the Public Protector to note the reporting lines for Component PPS.
- 6.3.64 According to Gen. Masemola he cannot state whether Gen. Sitole as the then National Commissioner was informed of the incident of theft at the President's farm. Gen. Masemola stated further that he did not authorise any operation in connection with the incident of theft that took place at

Phala Phala farm as he was not the National Commissioner of SAPS at that time. He further clarified that he did not authorise any deployment of SAPS resources at the President's farm at any time after the incident. According to Gen. Masemola he became aware that such deployment was done on the instruction of Gen. Rhooode, through the affidavits of Gen. Rhooode, Sgt. Rekhoto, Col. Mathlo and Lt. Col. Letswalo.

6.3.65 According to Gen. Masemola, the Divisional Commissioner of Crime Intelligence, Lt. Gen. PA Jacobs (Gen. Jacobs), received a request from Gen. Rhooode to conduct a Risk and Threat Assessment, but it was not related to the incident of February 2020.

6.3.66 In his supplementary affidavit, Gen. Masemola further attached additional information such as affidavits from the relevant members of SAPS, a memorandum and itinerary documents related to the trip to Namibia as requested by the Public Protector.

*Affidavit of Sgt HH Rekhoto of PPS*

6.3.67 In his affidavit dated 12 September 2022, Sgt Rekhoto corroborated Gen. Rhooode in connection with the interview that was held with Floriana and David at Phala Phala farm on 03 and 04 March 2020. Sgt Rekhoto indicated that he played the role of an interpreter during these interviews conducted by Gen. Rhooode.

*Interview held with Sgt Rekhoto*

6.3.68 On 20 October 2022, the Investigation Team further held an interview with Sgt Rekhoto. During the interview Sgt Rekhoto submitted that he also undertook an official trip in March 2020, using the SAPS resources to Cape Town on the instruction of Gen. Rhooode to pursue the investigation and surveillance in the area called Imizamo Yethu informal settlement at Houtbay.

6.3.69 According to Sgt Rekhoto, he was still gathering information related to the housebreaking suspects who stole money from Phala Phala farm. Sgt Rekhoto indicated that when he finalised his investigation related to this matter, he compiled a report and gave it to Gen. Rhoode. Sgt Rekhoto also furnished the Investigation Team with a copy of the report.

*Trip Authority confirming Sgt Rekhoto's travel to Cape Town*

6.3.70 On 07 March 2020 Sgt Rekhoto travelled from Pretoria to Cape Town and returned to Pretoria on 20 March 2020. The purpose for travel is captured as “*attending meeting with component head*” on the trip authority form received by the Public Protector from Gen. Rhoode on 10 November 2022. The trip authority documents received from Gen. Rhoode for this trip were confirmed to the Investigation Team by Sgt Rekhoto on 22 February 2023 as a correct reflection of the trip.

*Investigation report compiled by Sgt Rekhoto*

6.3.71 The Public Protector is in possession of an undated investigation report drafted by Sgt Rekhoto, received by email on 26 October 2022. The report reflects amongst other things the following:

- (a) Identification of the suspects or role players in the planning and commission of the crime of housebreaking with the intent to steal and theft and all their names are listed in the report;
- (b) Background of what transpired until the commission of the crime is set out in the report, which indicates how Floriana, when she was cleaning in the President's house at Phala Phala farm, realised there was money inside the couch wrapped in transparent plastic and after work told her younger brother (David) about the money she saw;

- (c) How David then organised his Namibian friends who subsequently came and stole the money as well as how they planned and successfully executed their plan based on the information received from David. It further explains how after breaking-in and stealing the money, they shared it amongst each other;
- (d) The report further sets out the kind of surveillance and information gathering techniques used by Sgt Rekhoto to investigate and follow the suspects connected with this crime; and
- (e) The report further details all the cars bought by the suspects, car registration numbers, taverns where they often drink alcohol in Houtbay Mandela Park, hotels where they often stayed and other information such as the names of their girlfriends.

*Affidavit of Mr Tasliem Marlie, Car Sales Manager for Volkswagen Barons Culemborg, Cape Town*

6.3.72 In his affidavit dated 13 July 2022, Mr Tasliem Marlie (Mr Marlie) confirmed that he was employed as a Car Sales Manager for Volkswagen Barons Culemborg, Cape Town in 2020. He further confirmed the purchase of a VW Golf 7R 2.0 TSI by Mr Urrbanus Lombeleni Shaumbwakwo. In paragraph 9 of his affidavit Mr Marlie confirmed that in 2020, he was approached by a police officer in respect of this matter, who requested to be provided with the details of the sale transaction, the identity and the residential address of the buyer/client. According to Mr Marlie, the said police officer was a coloured male, who had his badge hanging on a lanyard around his neck, and that he could not recall his name.

*Affidavit of Col. SK Mathlo of PPS*

- 6.3.73 In his affidavit dated 05 September 2022, Col. Mathlo indicated that he is the Commander of the Static Unit under PPS in Gauteng and that the President's farm is protected by Static Protection Gauteng.
- 6.3.74 According to Col. Mathlo on 09 and 10 February 2020, he was in Ethiopia as a detail leader where the President was attending the AU summit. Col. Mathlo stated that in the morning of 10 February 2020, he was called by Gen. Rhooode who was also accompanying the President and he told him to start deploying static members of the PPS to the farm of the President at Phala Phala farm to do patrols around the farm, with immediate effect.
- 6.3.75 Col. Mathlo indicated that he did not know anything about the alleged "robbery" until the allegations were in the media. It was indicated by Col. Mathlo that from the instructions of Gen. Rhooode he requested Lt. Col. Letswalo to deploy PPS members, four (4) members during the day and four (4) members at night to Phala Phala farm. On 03 March 2023, Col. Mathlo sent a message<sup>79</sup> to the Investigation Team and clarified an error in his affidavit relating to the number of PPS members deployed at Phala Phala farm. He stated that the correct number is two members per shift from the first day of deployment and it increased to four with time.

*Affidavit of Lt Col. TD Letswalo of PPS*

- 6.3.76 Lt Col. Letswalo, attached to the PPS unit and a subsection commander stationed at Union Buildings stated in his affidavit, dated 05 September 2022, that he cannot recall the exact date when he was called by Col. Mathlo from Ethiopia informing him to post members at Phala Phala farm. According to Lt. Col. Letswalo no mention was made of what happened and he took the instruction and posted the members to the Phala Phala

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79 WhatsApp message dated 03 March 2023.

farm on 10 February 2020. Lt Col. Letswalo indicated further that he could not notify the local police station as no incident was reported.

*Deployment Sheet (SAP 15) for PPS members deployed at Phala Phala farm*

6.3.77 The Public Protector is in possession of the deployment sheet dated 10 February 2020, received from Gen. Masemola on 13 October 2022. The deployment sheet reflects the PPS static protection members and the duties which they were deployed for at Phala Phala farm from 10 February 2020 under the Relief Command of Captain Reddy.

*Affidavit of Lt General PA Jacobs of SAPS's Crime Intelligence Division*

6.3.78 In an affidavit deposed to by Lt. Gen. PA Jacobs on 05 October 2022, he submitted that since April 2021, he was deployed as the Divisional Commissioner, Inspectorate. He stated that for the period 01 April 2018 to November 2021, he was deployed as the Divisional Commissioner of Crime Intelligence.

6.3.79 Lt. Gen. Jacobs indicated that he neither knew nor was he informed about the alleged “*Phala- Phala*” robbery or housebreaking incident as reported to have occurred in February 2020. He stated further that the first time he heard about the housebreaking incident, it was reported in the press during June or July 2022.

6.3.80 Lt Gen. Jacobs indicated that when he visited the Phala Phala farm in October 2020, it was for an incident unrelated to housebreaking and theft at Phala Phala farm.

6.3.81 Lt Gen. Jacobs also submitted that on his return, he instructed the Crime Intelligence Analysis Centre (CIAC) to conduct a Threat and Risk Assessment (TRA) on all the President’s facilities in order to determine

the extent of the threat and the possible vulnerability at these possible sites/facilities. He then clarified that the initiation of the TRA process is a standard procedure once a threat has been identified on a high profile person and /or facility linked to such a high profile person.

- 6.3.82 He also stated that he is no longer deployed at Crime intelligence, therefore he neither knows nor is able to confirm whether a TRA was conducted on Mr Chauke.

*Perusal of the Phala Phala's Risk Assessment Report by the Public Protector*

- 6.3.83 On 27 October 2022, the Investigation Team visited the office of Gen. Masemola per arrangement to peruse the SAPS's security risk assessment report for Phala Phala farm. This was to determine if the deployment of the PPS personnel or SAPS resources at the venue was conducted in line with the procedure and for the purpose permitted by applicable legal prescripts. The Investigation Team observed that the threat assessment was conducted.

*Affidavit of Mr Bejani Chauke, Special Adviser to the President*

- 6.3.84 On 14 September 2022, Mr Chauke deposed to an affidavit in response to a letter that was sent to him by the Public Protector on 02 September 2022. Mr Chauke indicated that he is the Special Adviser to the President and he is based in the Presidency. Mr Chauke stated further that he was appointed as Special Adviser to the President with effect from 01 July 2019 for a period linked to the term of office of the President.
- 6.3.85 He further indicated that as a Special Adviser to the President, his role is focused on political matters and on numerous occasions, the President has asked him to be his envoy to meet the heads of state or the representatives of various countries to discuss issues of national security



or matters of a political nature. Mr Chauke confirmed that on 25 June 2020 he undertook an official trip to Namibia and that he received protection by SAPS to navigate roadblocks since this was during the Covid-19 lockdown period.

6.3.86 On 04 November 2022, Mr Chauke, deposed to a supplementary affidavit and submitted same to the Public Protector following an interview held with the Investigation Team on 15 September 2022. Mr Chauke stated that the reason for him to submit a supplementary affidavit was that certain points were raised during the interview, which he was unable to provide answers to in detail at the time.

6.3.87 With regard to the trip to Namibia, Mr Chauke stated that on or about 24 June 2020, the Presidency furnished him with a letter addressed to President Geingob and instructed him to travel to Namibia as the President's envoy to meet with President Geingob. He stated that the purpose of the meeting with President Geingob was to discuss a matter of national security in which Namibia was affected.

6.3.88 According to Mr Chauke prior to his trip to Namibia, he was in a country in the sub-Saharan Africa and he had a discussion with the President of that country, and a matter of national security was raised with him. He indicated that due to the serious nature of the matter, he reported it to Mr Lucas Thabiso Thiti<sup>80</sup> (Mr Thiti) of the State Security Agency (SSA), whose responsibilities at that time related to one of the affected countries in sub-Saharan Africa. In his affidavit, Mr Chauke attached a confirmatory affidavit of Mr Thiti, confirming the conversation that took place.

6.3.89 Mr Chauke further reiterated that the sole purpose of his trip to Namibia was to meet with President Geingob with regard to the above matter. According to him this was unrelated to any matter arising from the theft at

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80 Mr Thiti supplied a confirmatory affidavit in this regard.

Phala Phala farm, which had occurred some four and a half months earlier. Mr Chauke also stated that he usually travels on commercial airlines when he undertakes trips in his capacity as Special Adviser to the President and in such circumstances, his personal assistant would make the necessary arrangements.

6.3.90 It was further indicated by Mr Chauke that although he usually flies unaccompanied, upon his arrival in another country on official business, in most cases the host arranges for an escort and provides him with security. He further stated that due to travel restrictions imposed by COVID-19, it was not possible to travel as usual as there were no commercial flights between South Africa and Namibia and the land borders between the countries were still closed.

6.3.91 Mr Chauke also indicated that due to these extraordinary circumstances, it was necessary for him to travel with the SAPS to assist with the exiting and re-entering South Africa. He further stated that the use of *No Man's Land* was as a result of the fact that the land borders at that stage were unstaffed due to the restrictions in place.

6.3.92 In conclusion, Mr Chauke stated that he did not arrange any of the logistics for the trip to Namibia and does not have personal knowledge thereof and that he was informed by Gen. Rhode that he would be accompanying him, which seemed appropriate under the circumstances.

*Affidavit of Col. Jorine Edwards*

6.3.93 In her affidavit dated 07 October 2022, Col. Jorine Edwards (Col Edwards) stated that she reports to the Division Crime Intelligence, INTERPOL in Pretoria. She stated that she was deployed as the South African Police Liaison Officer from October 2017 to December 2021. Col. Edwards indicated that in terms of her placement and role of the extension of the SAPS capabilities to the host country, key responsibilities might entail but

are not limited to the coordination, liaison of investigations to minimise and curb cross border related crimes in mutual assistance to strengthen the relationship between SAPS and the law enforcement agency in the host country.

6.3.94 Col. Edwards confirmed that she received a copy of an Inter-Office Memo of the Namibian Police Force with reference to the subject: *REPORT ON ARREST OF IMMANUWELA DAVID- PERSON SMUGGLED INTO NAMIBIA* dated 2020/06/17 at 09:10, which was for information purposes, submitted to her as South African Police Liaison Officer. Col. Edwards indicated that pursuant to the above mentioned inter-office memo, she submitted the reports to the relevant officials via their official email addresses, according to the procedure.

6.3.95 According to Col. Edwards she is confident that she has complied and acted in accordance with her duties as per reporting standards operating procedures. According to Col. Edwards this specific request was dealt with as an illegal border crossing and as a violation of the Namibian Immigration Control Act and contravention of the Covid-19 Control measures. She stated that no further requests related to this were made again during that time period. It was also stated by Col Edwards that she had no knowledge whether the President has a farm in Limpopo and whether there was any recent “robbery”.

*Affidavit of Col. Mohamed Imraan Hyder*

6.3.96 On 22 November 2022, Col. Mohamed Imraan Hyder (Col. Hyder) deposed to an affidavit and clarified his role on the reports transmitted by the former SAPS Liaison Officer to Namibia, Col. Edwards.

6.3.97 Col. Hyder stated that he functioned as the SAPS’ International Liaison Officer Coordinator at Interpol NCB Pretoria between November 2019 and September 2021. He stated that during this period, his responsibilities

included coordinating and facilitating reports from International SAPS Liaison Officers placed at selected South African Foreign Missions abroad. He further stated that this included reports from Col. Edwards who was the SAPS' Liason Officer placed in Namibia.

6.3.98 According to Col. Hyder, he confirms having received three (3) reports from Col. Edwards namely:

- (a) Report on the arrest of Imanuwela David dated 17 June 2020,
- (b) Follow up report on arrest of Imanuwela David- Person smuggled into Namibia dated 22 June 2020; and
- (c) Request for information Sharing NAMPOL- Imanuwela David dated 30 June 2020.

6.3.99 Col. Hyder further stated that all the reports indicated the alleged unlawful entry of Mr Imanuwela David into Namibia from South Africa and that none of the reports made mention of the subject being a suspect in a "robbery" at the President's farm. According to Col. Hyder the reports presented a case of an illegal border crossing and a violation of the Namibian Immigration Control Act and Contravention of the Covid-19 control measures.

6.3.100 Col. Hyder indicated that Col. Edwards requested that the SAPS should profile the arrested subject and provide any relevant criminal information on the suspect. He also added that all the reports indicated above were duly forwarded to the Border Integrity Intelligence Centre for their information and attention. He also indicated that a copy of Imanuwela David's passport was included in the documents.

6.3.101 It was further indicated by Col. Hyder that the reports revealed that, "*no further information available as his bank cards and mobile phones were seized and in the safe of one of the Officers in quarantine.*" and this was significant as it impeded the further profiling of the subject. Col. Hyder stated that the Col. Rhengu Rapudi of the Border Integrity Intelligence

Centre reported that the SA Passport number AO 5678718 belonging to the suspect, Imanuwela David is fake and that no records existed for the document.

6.3.102 Col. Hyder also indicated that the Border Integrity Intelligence Centre further requested Col. Edwards on 25 June 2020 to obtain pictures of all the stamps appearing on the pages of the travel document in question, which is in possession of the Namibian Authorities. Col. Edwards further indicated that the request had been forwarded to NAMPOL on 30 June 2020.

6.3.103 He stated that he transmitted a final message to Col. Edwards on 02 July 2020 informing her as follows: *That due to the travel document being fake, it would not be possible to obtain any electronic crime records for further sharing with Namibian Authorities.* He also stated that neither of the reports from Col. Edwards, nor any information transmitted by her, indicated the subject, Imanuwela David, was suspected of a “robbery” at the President’s farm.

6.3.104 In conclusion, Col. Hyder stated that he carried out his functions at Interpol NCB Pretoria diligently as the coordinator for SAPS officers based abroad and facilitated all the reports he received to the relevant sections in the SAPS.

#### *Applicable legal framework*

6.3.105 The Republic of South Africa has a national police service, which forms part of the criminal justice system. The structure and the functions of the police are governed by sections 205 to 208 of the Constitution and the South African Police Service Act.

#### **The Constitution of the Republic of South Africa, 1996**

6.3.106 Section 205(3) of the Constitution outlines the SAPS' constitutional duties. It assigns and bestows to SAPS the following duties:

*“The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”*

6.3.107 In *Glenister II*<sup>81</sup>, Moseneke DCJ and Cameron J, writing for the majority, stated it is equally clear that the national police service, amongst other security services, shoulders the duty to prevent, combat and investigate crime.

6.3.108 It is evident therefore that the SAPS is the primary institution of the state responsible for the discharge of the above constitutional duty to prevent, combat and investigate crime in general.

6.3.109 Section 205(2) of the Constitution further provides:

*“National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.”*

### **South African Police Service Act, 1995**

6.3.110 In this regard, section 13 of the South African Police Service Act<sup>82</sup> (SAPS Act), states that:-

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<sup>81</sup> *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) 2011 (7) BCLR 651 (CC) (17 March 2011) at para 176.

<sup>82</sup> Act 68 of 1995.

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*“(1) Subject to the Constitution and with due regard to the fundamental rights of every person, a member may exercise such powers and shall perform such duties and functions as are by law conferred on or assigned to a police official.*

6.3.111 Section 13(2) of the SAPS Act states that *“where a member who becomes aware that a prescribed offence has been committed, he or she shall inform his or her commanding officer thereof as soon as possible”*.

6.3.112 Section 13(3)(a) of the SAPS Act provides that *“a member of the Police Service who is obliged to perform an official duty, shall, with due regard to his or her powers, duties and functions, perform such duty in a manner that is reasonable in the circumstances”*.

6.3.113 By virtue of the above provisions, one finds positive obligations on all members of the SAPS to enforce the law as contemplated both in the Constitution and the SAPS Act.<sup>83</sup>

6.3.114 Section 24(1)(g) of the SAPS Act, provides that the Minister may make regulations regarding conduct by members that may constitute misconduct. In this regard, SAPS Discipline Regulations were issued on 01 November 2016 under Government Gazette No. 40389.

6.3.115 Regulation 5(3) of the SAPS Discipline Regulations stipulates *inter alia, that:*

*“An employee will be guilty of misconduct if he or she:-*

***(a) fails to comply with, or contravenes an Act, regulation or legal obligation;***

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<sup>83</sup> *Carmichele v Minister of Safety and Security* (CCT 48/00) [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC) (16 August 2001) at paragraph 62.

- (b) performs any act or fails to perform any act with the intention -
- (i) to cause harm to or prejudice the interests of the Service, be it financial or otherwise;
  - (ii) **to undermine the policy of the Service; or**
  - (iii) not to comply with his or her duties or responsibilities;...
  - (t) **conducts himself or herself in an improper, disgraceful and unacceptable manner;...**
  - (gg) **neglects his or her duty or performs his or her functions in an improper manner...**” (own emphasis)

### **SAPS Policies and National Instructions**

- 6.3.116 The SAPS like any other government department, operates within a certain Regulatory Framework which includes codified Policies, National Instructions and Directives that guide its day to day procedures, operations and administrative activities for an effective, uniform and standardised implementation within the organisation. Although these regulatory instruments cannot be elevated to a strict legal code such as an Act of parliament or legislation, they are often crafted to mirror the objects of the legislation and are further informed by the Constitution.
- 6.3.117 Accordingly, in the course of an investigation contemplated by section 6(4) of the Public Protector Act, the Public Protector is bound to consider the applicable organisational policies to determine the extent to which same have been complied with by government officials concerned in the execution of their official duties.

### **PPS Policy No. 3 of 2018 (PPS Policy)**

- 6.3.118 Paragraph 1 of the PPS Policy indicates that on 27 October 2010, the then National Commissioner of the SAPS approved the establishment of the Component: PPS within the SAPS to protect the President, Deputy



President and their immediate family, former Presidents, foreign and former Heads of State and their spouses and Ad-hoc VIP's.

6.3.119 In terms of paragraph 3 of PPS Policy “*Ad-hoc VIP*” means an identified VIP as approved by a person holding authority to give permission for a person to be protected under certain circumstances.

6.3.120 Paragraph 6(1) of the PPS Policy provides for the following principles that apply in respect of PPS:

- a) VIP Protection must be executed in line with the directives and procedures for protection duties;
- b) All operational actions should be informative or intelligence driven and executed with an integrated approach;
- c) Professional protection service must be provided to the following VIPs:
  - (i) President, Deputy President, Former Presidents and Former Deputy Presidents;
  - (ii) Foreign Heads of State from other countries, former Heads of state, their spouses and identified Foreign VIPs;
  - (iii) Royalties who are Heads of State; and
  - (iv) ***Identified VIPs on an ad-hoc basis after the threat assessment has been conducted.*** (own emphasis)

6.3.121 During interviews conducted by the Investigation Team with Gen. Sitole, Gen. Masemola, Gen. Rhoode and Mr Chauke, they all agreed that no threat assessment was conducted by SAPS in respect of Mr Chauke as contemplated in the PPS Policy.

6.3.122 In terms of the above provisions of the PPS Policy, a risk and threat assessment must be conducted, before one can be considered to be a VIP. It follows therefore that Gen. Rhoode had to ensure compliance with

the PPS Policy when he travelled with Mr Chauke to Namibia on 25 June 2020 using PPS resources.

6.3.123 In terms of paragraph 8(1) of the PPS Policy, the National Commissioner of the SAPS is an overall commander of the PPS and may direct operations across provincial boundaries and international borders.

6.3.124 Paragraph 8(4) of the PPS Policy in particular, indicates that the Component Head: PPS is accountable to the National Commissioner.

6.3.125 In terms of Paragraph 9 of the PPS Policy the Component Head of PPS *inter alia*, has the following responsibilities:

- (a) Proper management and control of the PPS (including operational, financial and resource management);
- (b) Rendering of professional protection service to relevant dignitaries; and
- (c) ***Implementation and administration of all approved Policies impacting on PPS. (own emphasis)***

#### **Policy on Risk Management System Protection Packages (RIMAS)**

6.3.126 On 17 September 1997, Cabinet approved the RIMAS Policy for Very Important Persons (VIPs).<sup>84</sup> The ultimate goal of the RIMAS is to regulate the VIP protection service to a specific group of people only, which are to be protected by the PPS. RIMAS Policy gives a clear indication on who the PPS should protect and the resources to be utilised for protection both in-transit and static. This policy is applicable to all members of the PPS, who render such duties.

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84 As amended by Cabinet on 06 October 2004.

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- 6.3.127 According to paragraph 4 of the RIMAS Policy, the following VIPs qualify for protection in-transit and in some instances for static protection:
- (a) President;
  - (b) Deputy President;
  - (c) Cabinet Ministers;
  - (d) Deputy Ministers;
  - (e) Speaker of the National Assembly;
  - (f) Deputy Speaker of the National Assembly;
  - (g) Chairperson of the National Council of Provinces;
  - (h) Deputy Chairperson of the National Council of Provinces;
  - (i) Former Presidents;
  - (j) Premiers;
  - (k) MECs;
  - (l) Speakers of Various Provincial Legislatures;
  - (m) Chief Justice;
  - (n) Deputy Chief Justice;
  - (o) President of the Supreme Court of Appeal;
  - (p) Deputy President of the Supreme Court of Appeal;
  - (q) Judge Presidents; and
  - (r) Judge President of the Labour Court
- 6.3.128 Paragraph 11.2 of the RIMAS Policy, stipulates that should any other VIP<sup>85</sup> request protection, a threat analysis will be conducted and if the potential danger exists, the relevant security would be provided.
- 6.3.129 Mr Chauke was appointed in terms of section 12A of the Public Service Act, 1994 (PSA). In terms of section 12A of the PSA, the role of the person appointed therein is to:

- (a) advise the Executive Authority on the exercise or performance of the executive authority's powers and duties;
- (b) advise the executive authority on the development of policy that will promote the relevant department's objectives; or
- (c) perform such other tasks as may be appropriate in respect of the exercise or performance of the executive authority's powers and duties.

### **National and Provincial Organisational Structure of the SAPS for 2020-2021 financial year**

6.3.130 In terms of the SAPS' approved National and Provincial Organisational Structure for the 2020-2021 financial year that was furnished to the Public Protector by Gen. Masemola, the Component Head of the PPS reports directly to the National Commissioner of the SAPS. At the time of the theft of foreign currency at Phala Phala farm, Gen. Rhode was the Component Head of PPS and Gen. Sitole was the National Commissioner of the SAPS.

### **Standing Order (General) 27**

6.3.131 According to paragraph 1, the purpose of this Standing Order is to regulate the keeping of diaries by members of the Service and paragraph 2 indicates that every officer must keep a diary.

6.3.132 Paragraph 3 of this Standing Order is titled "*Completion of a Diary*" and it states that a diary must contain a fair reflection of the work related activities of the holder thereof. According to paragraph 4, every holder of a diary must retain his or her diary for two years after the end of the year in respect of which it was issued, after which it may be destroyed.

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### **National Instruction 4 of 2011 of the SAPS: Vehicle Register**

- 6.3.133 National Instruction 4 of 2011<sup>86</sup> regulates amongst other things, Vehicle Register, namely SAP 132(b). According to paragraph 40 of this National Instruction, the purpose of SAP 132(b), which is also called a logbook, is to regulate the record keeping of the use of all SAPS' vehicles to facilitate control over such vehicles. Paragraph 41 stipulates *inter alia*, that each vehicle must have an SAP 132(b) logbook register. The driver must complete all relevant columns before a journey is undertaken and after completion of the trip.
- 6.3.134 Paragraph 42 indicates that SAP 132(b) must always record the destination of the journey, nature of the duties performed and odometer reading of the vehicle. In terms of paragraph 46, all completed SAP 132(b) registers for a financial year for each vehicle must be bound and be filed together for auditing purposes by a relevant commander.
- 6.3.135 The Public Protector was not furnished with the logbook/SAP 132(b) register and the automatic vehicle location (AVL) report for the vehicle that was used by Gen. Rhooode and his team for the trip of 25 June 2020, for perusal.

### **National Instruction 5 of 2005 of the SAPS: Official Journeys Abroad**

- 6.3.136 The purpose of this Instruction<sup>87</sup> is to regulate official journeys abroad, including neighbouring countries by employees of the SAPS. Paragraph 4 of this Instruction stipulates that an employee who intends to undertake an official journey abroad must notify the Department of Foreign Affairs (now DIRCO) in writing of the intended journey. Paragraph 4 further

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<sup>86</sup> Issued by Supply Chain Management under Consolidation Notice 12 of 2011, amended by CN 18 of 2022.

<sup>87</sup> Issued by Finance Services: Cain Section under Consolidation Notice 15 of 2005.

indicates that the application must state that the DIRCO has been notified of the intended journey and that no objection was received.

- 6.3.137 Paragraph 5 stipulates that if an employee intends to undertake a journey abroad, he or she must direct a memorandum to the Minister within a reasonable time before he or she plans to undertake the journey. The memorandum must reach the office of the Minister at least three (3) weeks before the planned departure date.
- 6.3.138 With regard to the trip undertaken by Gen Rhooode to Namibia on 25 June 2020, the Public Protector was only furnished with a memorandum approved by Gen. Sitole, but was not furnished with the documents which show compliance with paragraphs 4 and 5 of the National Instruction 5 of 2005 of the SAPS.
- 6.3.139 On 10 March 2023, the office of Gen. Masemola furnished the Investigation Team with the Delegation of Powers document issued by Consolidation Notice 37 of 2019, which came into effect from 06 November 2019. This delegation document approved the Delegation of Powers to performer levels in terms of the SAPS Act, 1995, Regulations for the South African Police, 1964, South African Police Service Employment Regulations, 2018, Public Service Act, 1994 and Public Service Regulations, 2016. Delegations 97 to 101 of the said delegation document provides for the approval of journeys to neighbouring and Southern African Development Community (SADC) countries.
- 6.3.140 Delegation 97 of the said delegation document provides that the power to approve a journey to a SADC country has been delegated to the level of a Deputy National Commissioner or the National Head, DPCI. The implication of the approval of this delegation meant that the same procedures as set out in the National Instruction 5 of 2005 must be followed, apart from obtaining the approval of the Minister of Police and the notification to DIRCO.

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**Responses to Notices issued in terms of section 7(9) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules**

- 6.3.141 Gen. Masemola responded to the Notice on behalf of SAPS in a letter dated 24 March 2023. In respect of this issue, he responded *inter alia* as follows:
- 6.3.141.1 The SAPS reaffirms its commitment to assist and protect the essential role that is played by the Public Protector in a democratic dispensation. Findings made in respect of the SAPS are viewed in a serious light and steps will accordingly be taken to implement such findings.
- 6.3.141.2 The Notice of the Public Protector refers to section 13(2) of the SAPS Act, which provides as follows:
- “Where a member who becomes aware that a prescribed offence has been committed, he or she shall inform his or her commanding officer thereof as soon as possible”. (Own Underlining).*
- 6.3.141.3 According to section 1 of the SAPS Act, prescribe means prescribed by regulation. It needs to be noted that the Minister has not exercised the power to prescribe any such offence. There is therefore no such regulation that has been issued by the Minister of Police or any category of offences which places a legal duty on the member to report same to his or her commander.
- 6.3.141.4 With regard to a finding which requires appropriate action against Gen. Rhoode and Sgt Rekhoto, you are advised that such action will commence immediately after receipt of the final report. The legal framework as referred to *supra* may also influence the outcome of this process. The finding in relation to the development of an appropriate instruction or policy, directing how PPS members must manage crimes reported directly

to them will be implemented immediately and has already been brought to the attention of the divisions within the SAPS to ensure compliance within the period as determined.

6.3.142 In a letter dated 12 May 2023, Gen. Masemola further responded to clarify what was sought by the Investigation Team and indicated that there is no prescript that regulates the reporting format and procedure for incidents such as the security breach that took place at Phala Phala farm at the residence of the President. Gen. Masemola stated that **Standing Order (General) 27** “*Keeping of Diaries by Members of the Service*” only states that a diary must contain a fair reflection of the work related activities of the holder thereof.

6.3.143 Gen. Masemola further stated that it cannot be confirmed if a record of the report of the Phala Phala incident by Gen. Rhoode to Gen. Mfazi exists. He further stated that the security breach incident and theft at Phala Phala was not recorded in the handing over report of Gen. Mfazi’s successor, Gen. LE Ntshinga. Gen. Masemola further stated that Gen. Mfazi was not an appropriate authority to receive a section 34 report in terms of PRECCA, since the late Gen. Mfazi was not part of the DPCI.

*Email from SAPS received from the office of Gen. Masemola, dated 28 June 2023*

6.3.144 On 28 June 2023, the Investigation Team received an email from SAPS after seeking clarity on whether there is a difference in approach between a Security Breach Investigation and Investigation of Crime in general. The following descriptions of a security breach investigation and an investigation of crime (criminal investigation) was tabulated by SAPS:



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## **Security Breach**

- (a) Focus of investigation is on the breach itself, the impact thereof and the implementation of counter-measures thereto;
- (b) Not comprehensively dealt with by law and National Instructions;
- (c) A violation, breach or infringement of protective security measures or procedures;
- (d) Unauthorised access to sensitive, confidential or protected (official) resources;
- (e) Unauthorised attempts to access sensitive, confidential or protected resources;
- (f) Mainly dealt with internally in terms of the prescripts of the Minimum Information Security Standards (MISS) Policy and VIP Protection policies but may also be dealt with as a crime in terms of applicable legislation such as the Cybercrimes Act of 2020 where there was unlawful access to official computer systems; and
- (g) Security incident (as opposed to security breach), refers to conduct or incidents, after unlawful access had been gained, that will be regarded as a crime and will be dealt with in terms of applicable law and prescribed procedures.

## **Investigation of crime (criminal investigation)**

- (a) Focus of investigation is on the crime and the perpetrators involved, by means of case docket or project driven approach;
- (b) Comprehensively dealt by law and National Instructions of the SAPS;

- (c) Crime scene investigation plays an integral part of the investigation in order to link a perpetrator to the scene and to prove that a specific crime had been committed;
- (d) For this purpose all evidence is collected and preserved by the police to present the most reliable and admissible evidence to a court of law to ensure that the court can take an informed decision, based on all the facts before it; and
- (e) The guilt of the perpetrator must be proven by the State and therefore all elements of a specific crime must be proved beyond reasonable doubt;
- (f) Investigations are usually guided by applicable legislation such as the Criminal Procedure Act of 1977, other relevant laws and National Instructions.

6.3.145 The Minister of Police, responded to the Notice on behalf of the Ministry of Police in a letter dated 09 May 2023. In respect of this issue, he stated that he has noted the contents of the Notice and the findings in respect of the members of the SAPS. He further stated that he concurs with the response and the undertakings of the National Commissioner of the SAPS, dated 24 March 2023.

6.3.146 Haffegée Roskam Savage Attorneys responded on behalf of Gen. Rhode to the Notice in two letters, both dated 22 March 2023. In respect of this issue, Haffegée Roskam Savage Attorneys responded *inter alia* as follows:

6.3.146.1 The explanations provided by Gen. Rhode in his interviews were not included in the Notice of the Public Protector; and therefore, have not been given due cognisance. The Notice of the Public Protector states that the Public Protector is “likely to find” that Gen. Rhode and Sgt Rekhoto acted

improperly by investigating the crime of housebreaking. This appears to suggest that the Public Protector's mind is made up and it raises the question whether these representations will be properly considered.

6.3.146.2 The threat assessment conducted by Gen. Rhooode is dealt with at length. For clarity, Gen. Rhooode's evidence given during the interview was that the threat assessment was conducted in respect of the full portfolio of properties under protection by the PPS, which after the housebreaking incident, included the Phala Phala farm. Although Gen. Rhooode had wanted to do it well before December 2020, he could not due to the strict COVID lockdown regulations and the fact that the exercise required personnel to travel all over the country. The threat assessment that was conducted in respect of the Phala Phala farm was done as part of this exercise and in accordance with the applicable legislative framework. This is distinct from the investigation that Gen. Rhooode was required to do in respect of the actual incident of a security breach which took place on 09 February 2020.

6.3.146.3 With regard to a conclusion that the investigation into housebreaking by "*in particular*" Gen. Rhooode and Sgt Rekhoto was inconsistent with the SAPS Act and "*incidental prescripts*". No other persons are identified for remedial action even though the phrase "*in particular*" suggests that others were involved in the investigation which allegedly constitutes a contravention of the relevant legal prescripts. Gen. Rhooode gave, *inter alia*, the following evidence in support of him conducting a preliminary investigation into the security breach:

- (a) The PPS' responsibility is to protect the President from any threat. The incident at his residence at Phala Phala farm amounted to a breach of security and was the cause of a potential threat to the President.

- (b) As part of fulfilling his responsibilities, Gen. Rhode needed to understand why someone wanted to break into the President's house, how they got in and who was involved.
- (c) It was for this reason that when he went to Gen. Mfazi, he was directed to conduct a preliminary investigation to address his areas of responsibility. It was Gen. Rhode's understanding that any criminal investigation would be conducted by Gen. Mfazi, or a person delegated to do so.
- (d) The scope of the preliminary investigation was limited to evaluating the full extent of the security breach and consequent threat to the President. The preliminary investigation was not focused on obtaining evidence about how much money was stolen, information which Gen. Rhode was not even privy to, or gathering evidence to prove the crime of housebreaking with the intent to steal and theft, as a criminal investigation would be.
- (e) A preliminary investigation of a security breach is to understand motives and how the breach happened to determine weaknesses and assess risk. This was particularly important to Gen. Rhode when he realised that nearby Phala Phala farm was a settlement of former Koevoet operatives.
- (f) The lines between a criminal investigation and investigation of a security breach can be blurred, but Gen. Rhode is aware of the fact that it was not his responsibility to conduct a criminal investigation; and accordingly, did not do so.

6.3.146.4 It is submitted that several aspects of this finding are unsubstantiated. Firstly, the investigation was not a criminal investigation. It does not appear from the Notice that there is any evidence to suggest that there was such an investigation. It does not appear that the Public Protector's

office confirmed with any of the suspects that interviews were conducted nor, with any witnesses.

- 6.3.146.5 The only evidence on which this finding could be based is the version of Gen. Rhooode and Sgt. Rekhoto, both of whom confirm that the investigation was not a criminal investigation. In addition, they go to great lengths to explain the purpose of their information gathering exercise. Gen Rhooode was in Cape Town around 10 or 11 March 2020 discharging other obligations. He did not travel to Cape Town for the purpose of the preliminary investigation. He confirms that he did go to a car dealership as explained in the Notice, but it was because he was at the time deployed in Cape Town performing official PPS duties.
- 6.3.146.6 Gen. Rhooode's principal residence is in Cape Town. Even if he was not performing his duties at any given time, he would be in Cape Town at his home, where his wife lives. Moreover, Cape Town is where he ordinarily resides. Gen. Rhooode was not in Cape Town for the particular purpose of conducting a preliminary investigation.
- 6.3.146.7 Gen Rhooode submitted that he does not have a copy of the report which he submitted to Gen. Mfazi with the preliminary information that he and Sgt. Rekhoto gathered. This is acknowledged in the Notice and nothing indicates that the Public Protector has a copy of this report in her possession. Although it is not attached to the Notice, "*the report*" referred to is not the same report that was submitted by Gen. Rhooode to Gen. Mfazi. Sgt Rekhoto's "report" constitutes notes that were used to draft the report to Gen. Mfazi. This "report" therefore does not constitute proof that "the investigation focused on the crime of housebreaking with the intent to steal and theft, rather than the threat to the President's safety", as concluded by the Public Protector.
- 6.3.146.8 With regard to reporting housebreaking to the National Commissioner, at a formal level Gen. Rhooode reports to the National Commissioner. Gen. Rhooode did not report the housebreaking crime to the National

Commissioner; he reported it to the (late) Deputy National Commissioner, Gen. Mfazi.

6.3.146.9 Gen. Rhooode's evidence about why he reported the matter to Gen. Mfazi rather than the National Commissioner was as follows:

- a) On 10 February 2020 the President alerted Gen Rhooode of a security breach at the President's residence at Phala Phala farm. Gen. Rhooode deployed police officers to the farm. They reported that, *inter alia*, CCTV cameras had been tampered with. No evidence of housebreaking with intent to steal and theft was reported to him at this stage;
- b) In early March 2020 the President alerted Gen. Rhooode to the fact that the security breach at his residence was also a housebreaking and that money had been stolen;
- c) On the day that Gen. Rhooode was made aware of the fact that money was stolen, he reported the matter to Deputy National Commissioner, Gen. Mfazi. He did so for the following reasons:
  - (i) In addition to being the Deputy National Commissioner, Gen. Mfazi was the head of detection services and responsible for investigation and intelligence;
  - (ii) Reporting a matter to the division or unit responsible for such matters and with the capabilities to respond to it, is consistent with the methodology that has been used by the PPS for the full extent of Gen. Rhooode's involvement in that service. According to his evidence, Gen. Rhooode stated that Gen. Sitole followed the same methodology when he was the head of security protection.
  - (iii) This was also the same methodology that was followed when the President's phone and emails were hacked. Gen. Rhooode reported

this directly to the person responsible for cyber-crimes in the DPCI and to the State Security Agency who are responsible for counter-intelligence. Similarly, with the fire at Parliament when there was a security breach at Tuinhys.

- (iv) In addition to the fact that this is the methodology that Gen. Rhooode and others have for many years followed, on the day that he reported it, the National Commissioner was busy with all performance assessments for component heads and regional commissioners.
- (v) Gen. Mfazi's office was in the same corridor as Gen. Rhooode's. Given that the National Commissioner was otherwise preoccupied and that Gen. Mfazi was the person responsible for investigation and intelligence, he went to him.

6.3.146.10 Even though this methodology is not recorded in "*incidental prescripts*", it has been the practice of the PPS for several years.

6.3.146.11 Notwithstanding section 13(2) of the SAPS Act, it appears therefore that to conclude that Gen. Rhooode misconducted himself by not reporting the matter to the National Commissioner is to promote form over substance.

6.3.146.12 The statement that Gen. Rhooode did not provide any proof to support his claim that he reported the matter to the late Gen. Mfazi is most unfortunate. It suggests that Gen. Rhooode is guilty until he proves that he is innocent. The reversal of the burden of proof is not lawful. There is no evidence before the Public Protector to conclude that Gen. Rhooode's evidence about this matter is unlikely or even doubtful.

6.3.146.13 Insofar as there is an insinuation that Gen. Rhooode's evidence that he reported the matter to Gen. Mfazi was convenient because Gen. Mfazi has passed away, this is rejected. Moreover, it fails to take into account Gen. Mfazi's position and responsibilities within the SAPS.

- 6.3.146.14 It is submitted that due consideration was not given to the oral testimony by Gen. Rhooode. In particular, Gen. Rhooode's explanation for why he conducted a preliminary investigation into the security breach and the reason for reporting the matter to Deputy National Commissioner, Gen. Mfazi, has been overlooked.
- 6.3.146.15 It is submitted that all of Gen. Rhooode's conduct and in particular, reporting the matter to Gen. Mfazi and conducting a preliminary investigation, was for the purpose of ensuring the President was protected. If one gives due consideration to the circumstances, including the sensitivity of the matter and the methodology that is practiced by the PPS, Gen. Rhooode performed his duties in a manner that is reasonable in the circumstances.
- 6.3.146.16 Accordingly, there is no basis to find a direct breach of sections 13(1), (2) and/or (3) of the SAPS Act, as the Acting Public Protector is inclined to do. In the light of the above, it is submitted that there is insufficient evidence for the Public Protector to conclude that Gen. Rhooode conducted an unofficial criminal investigation and that as a result, a finding of improper conduct and/or maladministration should be made against him. We request that these submissions be considered in full and that the contemplated findings be reconsidered
- 6.3.147 Sgt Rekhoto responded to the Notice in a letter dated 04 April 2023. In respect of this issue, he responded *inter alia* as follows:
- 6.3.147.1 That he will only respond to the parts of the Notice by the Public Protector that implicate him. He submits that he forms part of the support staff employed in the office of the Component Head of the PPS. The Component Head is Gen. Rhooode. Captain Mashinini is employed as Staff Officer and reports to Gen. Rhooode as his ultimate superior and at all times he was acting on the instructions of his ultimate superior, Gen. Rhooode.(own emphasis)



- 6.3.147.2 That he is not aware of any evidence and none is referred to in the Notice which supports the contention that a criminal investigation was conducted. The information gathered was conducted on the instruction of Gen. Rhooode and it was a preliminary investigation for the sole purpose of establishing whether President Ramaphosa was exposed to any risk or further threat arising from the security breach that took place at Phala Phala farm.
- 6.3.147.3 He did not travel to Cape Town to trace suspects or pursue the investigation and surveillance in the area called Imizamo Yethu, as alleged in the Notice. The Public Protector is aware that his trip to Cape Town was authorised for the purpose of attending meetings with the Component Head, Gen. Rhooode. He explained that in his interview with the Public Protector, they only went to Imizamo Yethu, because he was already in Cape Town and he went there to confirm if a place existed, not because he was following any suspects. He submits that the Notice refers to no evidence that contradicts the authorised purpose as his reason for travelling to Cape Town. The conclusion that he travelled to Cape Town to trace suspects and/or pursue the investigation is completely unsubstantiated.
- 6.3.147.4 In the Notice, reference is made to a report that he submitted to the Public Protector and it is relied on to draw certain conclusions. He indicated what he submitted to the Public Protector were his notes from the information gathering exercise. He neither followed the suspects nor did he go to Cape Town for that purpose. He also denied that this “report” or rather his notes can constitute proof that *“the investigation focused on the crime of housebreaking with intent to steal and theft, rather than the threat to the President’s safety”*, as concluded in the Notice.
- 6.3.147.5 He also submitted that the two issues are linked and he does not believe that one could understand the threat to the President’s safety without knowing the basic facts about the housebreaking with intent to steal and theft. It bears mentioning that the safety and security of the President and

the extent to which he wanted to ascertain the identity of those responsible for the housebreaking at Phala Phala farm and their whereabouts must be considered within context.

- 6.3.147.6 He is aware that he is not empowered to conduct a criminal investigation and he did not do such a thing. He submitted that he gathered information to enable Gen. Rhoode to fulfil his roles and responsibilities as component Head of the PPS. In conclusion, he submitted that in view of the submissions made to the Public Protector, he contends that he has not contravened sections 13(1), (2) and (3) of the SAPS Act as alleged and accordingly, it is not necessary to make any referral to the Minister of Police and the National Commissioner of SAPS.

*Analysis of evidence*

- 6.3.148 On 20 October 2022, Sgt Rekhoto stated on record during the interview with the Investigation Team, that while he and Gen. Rhoode interviewed David at Phala Phala farm, David admitted that he arranged with his Namibian friends from Cape Town, who subsequently broke into President's private residence at Phala Phala farm and stole cash in US dollars. According to Sgt Rekhoto, David was given a share of thirty thousand rand (R30, 000) and he was angry that he was not given enough money for his role.<sup>88</sup>
- 6.3.149 The interviews conducted with suspects at Phala Phala farm in March 2020 were also confirmed to the Investigation Team by Gen. Rhoode himself on record.<sup>89</sup> It was further revealed by Gen Rhoode in paragraph 2 and 4 of his supplementary affidavit, dated 01 September 2022, that when he interviewed Mr Joseph in March 2020, he read his constitutional right to him. These rights are understood to be read to a person who is

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<sup>88</sup> Page 73 of the transcript record of an interview between Sgt Rekhoto and the Public Protector on 20 October 2022.

<sup>89</sup> Page 17 to 21 of the transcript record of an interview between Gen Rhoode and the Public Protector on 11 November 2022.

arrested, detained or accused, in terms of section 35 of the Constitution. The act of reading these rights to Mr Joseph is indicative of an interaction between a police officer conducting a criminal investigation and a suspect.

- 6.3.150 The information disclosed to both Sgt Rekhoto and Gen. Rhooode by Mr Joseph during the interview held on 03 and 04 March 2020, places a legal duty on them as police officers in terms of section 13(2) and (3) of the SAPS Act to report to the commanding officer or to perform such duty in a manner that is reasonable in the circumstances.
- 6.3.151 It is trite and a settled fact that “*Housebreaking with an intent to steal and Theft*” is a common law offence in South Africa. As a result, it would not be necessary for the Minister of Police in this instance to prescribe it by way of Regulation as contended by SAPS in its response to the Notice. The Supreme Court of Appeal in the matter between the *S v Pakane and Others*<sup>90</sup> held that a rigid interpretation of section 13(2) of the SAPS Act, which may amount to an interpretation that a member of the SAPS has no legal reporting duty to report **other crimes** (that are not created in regulations – such as the shooting incident in question) “*is a brazen perversion of the section which cannot be countenanced, least from law enforcement officers*”. The Court stated that this duty flows from section 205(3) of the Constitution and is affirmed by the SAPS Act.
- 6.3.152 Therefore, Gen. Rhooode and Sgt Rekhoto were legally obliged to act in line with the provisions of section 13(2) and (3) of the SAPS Act upon becoming aware that a crime namely, a common law offence of housebreaking with an intent to steal and theft had been committed and more so when suspects made admissions to them during an interview in respect of the same crime/offence.

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<sup>90</sup> *S v Pakane and Others* (43/07) [2007] ZASCA 134; [2007] SCA 134 (RSA) ; 2008 (1) SACR 518 (SCA) (28 September 2007) at 30 to 31.

- 6.3.153 According to the evidence at the disposal of the Public Protector, Gen. Rhooode reported this incident to Gen. Mfazi,<sup>91</sup> who was neither his commanding officer nor part of DPCI, as contemplated in section 34 of PRECCA. Gen. Rhooode indicated during his interview with the Investigation Team that he opted to report this matter to Gen. Mfazi as the head of Crime Detection services and also because the National Commissioner was busy with performance assessments. Gen. Rhooode further stated another reason for reporting to Gen Mfazi was that their offices were in the same corridor.<sup>92</sup>
- 6.3.154 However, in terms of the SAPS' approved National and Provincial Organisational Structure for 2020-2021 financial year, Gen. Rhooode as the Component Head of the PPS reports directly to the National Commissioner of the SAPS.
- 6.3.155 Evidence placed before the Public Protector further indicates that Gen. Rhooode conducted an investigation, assisted by Sgt Rekhoto, Mr Trevor Fredericks and Nick to investigate this incident without a case having been registered on SAPS' CAS. It is important to note although Mr Fredericks and Nick assisted Gen. Rhooode to conduct his investigation, they were not members of the SAPS.<sup>93</sup>
- 6.3.156 The evidence and objectively ascertainable facts around the activities of Gen. Rhooode, Sgt Rekhoto and Nick do not support the assertion that these were primarily aimed at conducting a threat assessment in respect of the President or his private residence at Phala Phala farm in accordance with the applicable legislative framework.
- 6.3.157 The Public Protector further noted the following statement by Gen. Rhooode, which confirms the investigation of crime, the tracing and

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<sup>91</sup> Paragraphs 9 and 17 of the supplementary affidavit of Gen. Rhooode dated 2022-09-11.

<sup>92</sup> Page 41 to 43 of the transcript record of an interview between Gen Rhooode and the Public Protector on 28 October 2022.

<sup>93</sup> Paragraph 10 of the supplementary affidavit of Gen. Rhooode dated 2022-09-11.

following of money stolen from Phala Phala, as contained in his supplementary affidavit:

*“When I was in Cape Town around 10 or 11 March 2020, I received a call from Sgt Rekhoto who told me that he had found out from certain sources that the perpetrators of theft had bought new cars. He said that the cars had been bought from Barons in Culemborg, Cape Town. Shortly after receiving the call from Sgt Rekhoto, he picked me up at my office in Garmor House opposite Parliament. We drove to Barons motors and spoke to the manager who confirmed that on 14 February 2020, a Mr Mukekeni had purchased a 2019 Ford Ranger and supplied further details in relation to the purchase of the vehicle”<sup>94</sup>*

6.3.158 The above extract from Gen. Rhooede’s supplementary affidavit is corroborated by the affidavit of Mr Marlie, who was the Car Sales Manager at Barons in Culemborg, Cape Town, which indicates that the police officer requested details of the sale transaction, identity and residential address of the buyer.

6.3.159 Furthermore, the report compiled by Sgt Rekhoto only addresses issues related to the crime of housebreaking with the intent to steal and theft at Phala Phala farm. The report by Sgt Rekhoto is clearly tabulated into three distinct headings which focus on crime as follows:

- (a) Role Players in the planning and commission of crime;
- (b) Background of what transpired until the commission of crime; and
- (c) Surveillance and gathering of information of individuals connected therewith.

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94 Paragraph 18 of the supplementary affidavit of Gen. Rhooede dated 2022-09-11.

- 6.3.160 The Public Protector noted that the report by Sgt Rekhoto specifies each suspect, the role played by each during the commission of the crime and what was bought with the money they stole from Phala Phala farm. This report by Sgt Rekhoto does not make any remarks, conclusions and findings about any threat and risk assessments to the personal safety of the President or his family.
- 6.3.161 While Sgt Rekhoto in his response to the Notice contends that he was merely acting on the instruction of his superiors, it is a trite principle of law that employees are not under obligation to obey unlawful or illegal instructions. Employers including SAPS, have developed job descriptions in order to assign certain tasks to certain units/employees in order to promote efficiency and accountability. In the circumstances, a job description should have guided Sgt Rekhoto's refusal to perform certain tasks if he believed fell outside the scope of his job description. In the matter of *City of Cape Town v Nkomo and Others*<sup>95</sup> the Labour Court confirmed that employees are not obliged to obey unlawful instructions.
- 6.3.162 In the light of the above, it is submitted that refusal to obey an instruction to do work that was unlawful or that Sgt Rekhoto legitimately felt he was not qualified to perform could not have been held to constitute insubordination. The fact that Sgt Rekhoto acted on his superior's instruction (Gen. Rhode) could not by itself have justified his conduct to obey unlawful instructions. An employee is under no obligation to obey an unlawful instruction. If he obeys unlawful instruction, he does so at his own risk.<sup>96</sup>

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<sup>95</sup> (C 913/2014) [2015] ZALCCT 12 (18 June 2015 at paragraph 15, read with *Ellerines Holdings v CCMA and Others* [1999] JOL 5078 (LC) at paragraph 45.

<sup>96</sup> *Ellerines Holdings v CCMA and Others* [1999] JOL 5078 (LC) at paragraph 45.

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*Observations by the Public Protector*

- 6.3.163 The Public Protector has noted that Mr Chauke, who is neither in the employ of the SAPS nor covered by the RIMAS Policy, travelled to Namibia on 25 to 26 June 2020, accompanied by Gen. Rhoode using PPS resources, with the approval of Gen. Sitole.
- 6.3.164 The request for the trip approval was signed and submitted by Gen. Rhoode on 24 June 2020 and it is clear from paragraph 1 of the memorandum seeking approval for the trip that Gen. Rhoode would be accompanying Mr Chauke to Namibia from 25 June 2020 until 26 June 2020. However, in terms of the evidence placed before the Public Protector, no link or *nexus* could be established between this trip to Namibia and the investigation that was conducted by the PPS in respect of the crime of housebreaking with the intent to steal and theft, committed at Phala Phala farm on or about 09 February 2020.

*Conclusion*

- 6.3.165 On the strength of the evidence gathered by the Public Protector on this issue, it is concluded that the members of the SAPS attached to the PPS acted improperly by investigating the housebreaking with the intent to steal and theft, which took place on or about 09 February 2020 at Phala Phala farm.
- 6.3.166 Gen. Rhoode did not report the crime of housebreaking with the intent to steal and theft, (which is a common law criminal offence in South Africa) to the National Commissioner as his commanding officer, which was reported to him by the President on 10 February and 02 March 2020.
- 6.3.167 Gen Rhoode and Sgt Rekhoto also neglected to ensure that a case docket was opened, despite the fact that Mr Joseph admitted to them during an interview that he arranged with his Namibian friends from Cape Town, who

subsequently broke into President's private residence at Phala Phala farm and stole cash in US dollars.

6.3.168 Accordingly, the Public Protector concludes that the investigation of housebreaking with the intent to steal and theft, by Gen. Rhoode and Sgt Rekhoto was inconsistent with the SAPS Act and incidental prescripts as outlined above.

## 7. FINDINGS

Having regard to the evidence as well as the regulatory framework determining the standard that should have been complied with by the President and the SAPS, the Public Protector makes the following adverse findings:

7.1 **Whether the President of the Republic of South Africa, Mr MC Ramaphosa acted in a manner that is inconsistent with his office in dealing with the alleged housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 at the Phala Phala farm, Waterberg in the Limpopo Province and thus exposed himself to any situation involving a risk of a conflict between his constitutional duties and obligations and his private interests arising from or affected by his alleged paid work in violation of clause 2.1(b) and (d) and clause 2.3(d),(f) and (g) of the Executive Ethics Code**

7.1.1 The allegation that the President improperly and in violation of the provisions of the Executive Ethics Code exposed himself to any risk of a conflict between his constitutional duties and obligations and his private interests **is not substantiated.**

7.1.2 The allegation that the President undertook remunerated work at Phala Phala farm, is **not substantiated.**



- 7.1.3 The Public Protector's investigation has revealed that Phala Phala farm is managed by a private entity called Ntaba Nyoni Close Corporation (Ntaba Nyoni), through its own private employees, on land owned and registered under Tshivhase Trust. The evidence and information before the Public Protector indicate that the US dollars stolen at Phala Phala farm on or about 09 February 2020 emanate from a private cash transaction. Mr Mustafa Mohamed Ibrahim Hazim (Mr Hazim) a citizen of Sudan, arrived in the country on 23 December 2019 and thereafter purchased buffalo at Phala Phala farm on 25 December 2019.
- 7.1.4 Mr Sylvester Ndlovu (Mr Ndlovu), an employee of Ntaba Nyoni Close Corporation received a cash amount of US\$580,000 on 25 December 2019 and issued a cash payment receipt as proof of the transaction to Mr Hazim. It is apparent from the evidence before the Public Protector that the President was not at Phala Phala farm during this transaction and did not play a role in the sale.
- 7.1.5 In accordance with paragraph 8.2 of the Executive Ethics Code, on 07 October 2022, the Investigation Team visited the office of the Secretary to Cabinet and inspected the Register of Financial Interests of the President, in particular, the declaration relating to the financial year 2019/2020. On the remuneration section of the Register of Financial Interests of the President, it was observed that the President declared that he received no remuneration other than as a member of the Executive during the reporting period of 2019/2020, as required in terms of paragraph 5.6 of the Executive Ethics Code.
- 7.1.6 The President indicated further that he instructed Mr Steyn Speed (Mr Speed) of his Office, to ensure compliance with the Executive Ethics Code, as required by paragraph 8.1. The President further indicated that he is aware of the provisions of the Executive Ethics Code regarding the proper conduct expected of a member of the Executive.

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- 7.1.7 Following the inspection of the President's Register of Financial Interests, the Public Protector established that the President had stated in the Register that he retains a financial interest in the form of a sole member's interest at Ntaba Nyoni, as described in paragraph 6 of the Executive Ethics Code.
- 7.1.8 While the facts point towards the President being more involved in the management of the affairs of the CC than he appears to let on in his general submissions, the Public Protector could not find evidence indicating that the President is actively involved in the day to day operations of Ntaba Nyoni or Phala Phala farm. According to the evidence before the Public Protector, the day to day operations of Phala Phala Wildlife are managed by Mr Hendrik von Wielligh (Mr von Wielligh) as the general manager, with the assistance of approximately 40 employees.
- 7.1.9 Having regard to the objective and purpose of the relevant provisions of the Code, the evidence before the Public Protector does not support the allegation that the President's financial interests in game and cattle farming at Phala Phala farm exposes him to any situation involving the risk of a conflict between his official responsibilities and his private interests in violation of the Executive Ethics Code.
- 7.1.10 Having considered the meaning of the concept(s) of paid work or remunerated work as gleaned from various sources, the overarching condition which arises from most definitions refers to an employment relationship or a self-employed person who provides work or renders physical or mental labour for remuneration or payment in money or in kind, given as a result of a contribution to the operations of a business. For such a purpose, an employee or self-employed person is deemed to be at work during the time that he is in the course of his employment. A payment or remuneration is made or owing to any person in return for work performed or services rendered.

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- 7.1.11 The Public Protector finds that to have a financial interest in a business is distinguishable from working, being employed, and receiving remuneration for contributing to the operations of the business
- 7.1.12 What is prohibited is the active involvement of members in the enterprises which produce the income – because that would divide their attention from their official duties.
- 7.1.13 Accordingly, the Public Protector could not find evidence to support the allegation that the President receives remuneration and/or undertakes paid work in relation to Phala Phala farm whilst being a member of Cabinet.
- 7.1.14 Aggregated against the standard imposed by the Executive Ethics Code, the Public Protector finds that there is no basis upon which to conclude that the President contravened clause 2.1(b) and (d), clause 2.3(d), (f) and (g) of the Executive Ethics Code, including in the period following the Housebreaking.
- 7.2 **Whether the President failed to report the alleged crime that took place at Phala Phala farm on or about 09 February 2020 and abused his power in utilising state resources by causing the Presidential Protection Services to be deployed to Phala Phala farm and to investigate a housebreaking with the intent to steal and theft of cash in foreign currency at Phala Phala farm, thus violating clause 2.3(d) and (f) of the Executive Ethics Code; and whether such conduct constitutes improper conduct as contemplated in section 182(1) of the Constitution and abuse of power as contemplated in section 6(4)(a)(ii) of the Public Protector Act**
- 7.2.1 Section 34(1) of PRECCA places the duty on certain persons to report certain offences. Failure to report is an offence. In that case, the Public Protector is not empowered to pronounce on the merits and demerits of

the alleged crime and to make findings in respect thereof because the offence does not fall within section 6(4)(a) of the Public Protector Act. The matter is investigated by the public body, which is tasked with criminal investigations, namely the DPCI.

- 7.2.2 The allegation that the President abused his power in utilising state resources by causing the PPS to be deployed to Phala Phala farm and to investigate a housebreaking with the intent to steal and theft at the said farm, is **not substantiated**.
- 7.2.3 The evidence placed before the Public Protector does not support the allegation of abuse of power in utilising state resources by causing the PPS to be deployed to Phala Phala farm and to investigate the crime of housebreaking with the intent to steal and theft at Phala Phala farm.
- 7.2.4 Based on the evidence obtained, the Public Protector concludes that the President reported the security breach in the form of a housebreaking at Phala Phala farm, on 10 February 2020 to Gen. Rhooode. The Public Protector further finds that on 02 March 2020, the President reported the theft of cash in foreign currency, which took place on the same day of the housebreaking, at his private residence on Phala Phala farm to Gen. Rhooode, who is a senior police officer and a member of the PPS, a component of SAPS.
- 7.2.5 Gen. Rhooode confirmed that the President reported the incident to him as a police officer and as the head of PPS, without giving him any specific instructions regarding how he should deal with the matter.
- 7.2.6 The Public Protector could not find any evidence upon which to conclude that after reporting this crime to Gen. Rhooode, the President abused his power in utilising state resources by causing the PPS members to be deployed at Phala Phala farm and to investigate the crime of housebreaking with the intent to steal and theft.

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- 7.2.7 The Public Protector further finds that in terms of the Presidential Handbook, read together with the PPS Policy, the President is entitled to static protection at all his private residences, which he uses from time to time during his term of office.
- 7.2.8 Accordingly, the Public Protector could not find any evidence upon which to conclude that the deployment of PPS at the President's private residence at Phala Phala farm amounts to abuse of SAPS resources, since he is entitled to this protection in terms of the Presidential Handbook, read together with the PPS Policy.
- 7.2.9 Measured against the standard imposed by Executive Ethics Code, the Public Protector finds that there is no basis upon which to conclude that the President violated clause 2.3(d) and (f) of the Executive Ethics Code. It can also not be concluded that the President's conduct constitutes improper conduct as contemplated in section 182(1) of the Constitution and abuse of power as contemplated in section 6(4)(a)(ii) of the Public Protector Act.
- 7.3 **Whether the members of the South African Police Service attached to PPS acted improperly by investigating the alleged housebreaking with the intent to steal and theft of cash in foreign currency, which took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province, and if so, whether such conduct constitutes improper conduct as contemplated in section 182(1) of the Constitution and maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act**
- 7.3.1 The allegation that the members of the SAPS attached to PPS acted improperly by investigating the alleged crime of housebreaking with the

intent to steal and theft, which took place on or about 09 February 2020 at Phala Phala farm, is **substantiated**.

- 7.3.2 The investigation has revealed that on or about 09 February 2020, a crime of housebreaking with the intent to steal and theft took place at the President's house situated at Phala Phala farm, where cash in foreign currency, in US dollars was stolen from the cushion of a couch.
- 7.3.3 Evidence tendered before the Public Protector further reveals that Gen. Rhooode did not inform his commanding officer about this crime in line with section 13(2) of the SAPS Act, after the President reported it to him on 10 February and 02 March 2020. Instead, Gen. Rhooode alleges that he reported the crime to General Sindile Mfazi (Gen. Mfazi), the then National Head of SAPS' Detection Service, who has since passed away. The Public Protector was neither provided with any proof by Gen. Rhooode to support the assertion that he reported the matter to the late Gen. Mfazi, nor was the information available from SAPS.
- 7.3.4 No case docket was opened and registered on the CAS of SAPS to enable an official investigation by the relevant Crime Detection Service. Consequently, this crime was also not captured in the SAPS's Crime Statistics Report for the financial year 2019/2020.
- 7.3.5 Further evidence before the Public Protector reveals that Gen. Rhooode assembled his own investigation team and subsequently engaged in an unofficial criminal investigation, which included interviewing suspects, witnesses, conducting surveillance, travelling to Cape Town to trace suspects, collecting evidence and compiling a report in connection with the incident that occurred at the President's house at Phala Phala farm.

- 7.3.6 Although Gen. Rhooode contends that he was only conducting a *preliminary investigation* on the security breach to establish a threat on the President's safety on the instruction of the late Gen. Mfazi, his contention is not supported by the evidence at hand. The report compiled by Sgt Rekhoto at the instruction of Gen. Rhooode in this regard, indicates that the investigation focused on the crime of housebreaking with the intent to steal and theft, rather than the threat to the President's safety.
- 7.3.7 The report by Sgt Rekhoto, neither makes any remarks, conclusions or findings about any threat and risk assessments to the personal safety of the President or his family, nor does it make remarks or conclude on the violation, breach, infringement of protective security measures or procedures and unauthorised access to sensitive, confidential or protected (official) resources. Instead, it is apparent that the investigation by Gen. Rhooode and Sgt Rekhoto focused on the crime, the perpetrators involved including how they spent the money stolen from Phala Phala farm, without a registered case docket.
- 7.3.8 Accordingly, the Public Protector finds that Gen. Rhooode and Sgt Rekhoto, acted improperly by investigating the crime of housebreaking with the intent to steal and theft, which took place on or about 09 February 2020 at Phala Phala farm without a registered case docket. This conduct failure and/or impropriety is in direct contravention of the section 13(1), (2) and (3) of the SAPS Act, as well as Regulation 5(3) of the SAPS Discipline Regulations.
- 7.3.9 Having examined all the available evidence, the conduct of Gen. Rhooode and Sgt Rekhoto constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

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## 8. REMEDIAL ACTION

8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct highlighted in this report finalisation of an investigation where adverse findings are made.

8.2 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others*<sup>97</sup> the Constitutional Court held that the remedial action taken by the Public Protector has a binding effect.

8.3 Having regard to the evidence, the regulatory framework determining the standard that members of the PPS namely, Gen. Rhodee and Sgt Rekhoto should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

### **The Minister of the South African Police Service**

8.4 Must take note of the findings of maladministration and improper conduct against the SAPS as highlighted in this report, in connection with the allegation that the members of the SAPS attached to PPS acted improperly by investigating the crime of housebreaking with the intent to steal and theft, which took place on or about 09 February 2020 at Phala Phala farm, in line with the authority vested on the Minister of Police, in terms of section 206 of the Constitution.

### **The National Commissioner of the South African Police Service**

8.5 Within sixty (60) calendar days from the date of receipt of this report ensure that appropriate action is initiated against Gen. Rhodee and Sgt

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<sup>97</sup> Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 1 at para 76 and 105.



Rekhoto for contraventions of the SAPS prescripts as highlighted in this report, in line with the provisions of section 40 of the SAPS Act and Regulation 6 of the SAPS Discipline Regulations, 2016.

- 8.6 Within ninety (90) calendar days from the date of receipt of this report, develop an appropriate PPS directive, instruction, policy or such other prescript within the statutory powers vested to the National Commissioner in terms of section 11 of the SAPS Act and section 207(2) of the Constitution, directing how the PPS members must manage crimes reported directly to them by the VIP's under their protection.

## 9. MONITORING

- 9.1 The SAPS to provide a report to the Public Protector on the implementation of the remedial action within sixty (60) calendar days from the date of this report.



**ADV KHOLEKA GCALEKA**  
**ACTING PUBLIC PROTECTOR**  
**OF THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 30 JUNE 2023**

*Assisted by: Mr VX Dlamini*

*Acting Executive Manager: Investigations*