

**REPORT OF THE PUBLIC PROTECTOR ISSUED IN TERMS SECTION 182(1)(b)  
OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 READ  
WITH SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER  
CONDUCT AND MALADMINISTRATION RELATING TO THE FORMER  
MINISTER OF DEFENCE AND MILITARY VETERANS, MS NOSIVIWE MAPISA-  
NQAKULA'S OFFICIAL TRIP TO ZIMBABWE IN SEPTEMBER 2020**

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**LIST OF ACRONYMS**

<b>ANC</b>	African National Congress
<b>ANC NEC</b>	African National Congress National Executive Committee
<b>ATM</b>	African Transformation Movement
<b>COVID 19</b>	Coronavirus disease
<b>DIRCO</b>	Department of International Relations and Cooperation
<b>DoD</b>	Department of Defence and Military Veterans
<b>DPW</b>	Department of Public works
<b>MoD</b>	Minister of Defence
<b>PFMA</b>	Public Finance Management Act
<b>SAAF</b>	South African Air Force
<b>SADC</b>	Southern African Development Community
<b>SANDF</b>	South African National Defence Force
<b>ZANU-PF</b>	The Zimbabwean African National Union- Patriotic Front
<b>ZBC</b>	Zimbabwe Broadcasting Corporation

## EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and published in terms of section 8(1) of the Public Protector Act, 1994 (Public Protector Act) which provides for the publication of the outcome of an investigation.
- (ii) The report communicates the findings and appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration relating to the former Minister of Defence and Military Veterans, Mrs Nosiviwe Mapisa-Nqakula's (Mrs Mapisa-Nqakula) official trip to Zimbabwe.
- (iii) A total number of five (5) complaints were lodged against Mrs Mapisa-Nqakula and the President of the Republic of South Africa and Commander-in-Chief of the South African National Defence Force, His Excellency President Cyril Matamela Ramaphosa (President Ramaphosa) in relation to the former's official travel to Zimbabwe in a South African National Defence Force (SANDF) aircraft accompanied by the African National Congress (ANC) delegation led by their Secretary General, Mr Elias Sekgobelo Magashule (Mr Magashule) during the period of 8-9 September 2020.
- (iv) In the complaints lodged by the African Transformation Movement (ATM) Member of Parliament, Mr Vuyolwethu Zungula (Mr Zungula) on 09 September 2020; Mr Hurter Willie Spies (Mr Spies) acting on behalf of AfriForum on 10 September 2020; the Freedom Front Plus Member of Parliament, Mr Pieter Groenewald (Mr Groenewald) on 11 September 2020, Mr Bokang Ntlatlapa (Mr Ntlatlapa) on 14 September 2020; and Mr Elias Muller (Mr Muller) on 14 September 2020 it is alleged amongst others that:

- a) Mrs Mapisa-Nqakula undertook an international trip to and from Zimbabwe in an SANDF aircraft with a delegation of ANC members during the period when South Africa was placed on lockdown level 2 which prohibited international commercial flights other than repatriation flights. It is alleged that Mrs Mapisa-Nqakula's travel to Zimbabwe with ANC members violated section 80(3) of the Defence Act, 2002 [Act No. 42 of 2002], which requires consultation between the Minister of Defence and the Minister of Finance prior to the conveying of any person who is not an officer or employee of the State by means of any vehicle, aircraft or vessel belonging to the Department of Defence.
  - b) The Complainants, therefore, requested that an investigation be conducted to determine whether the trip undertaken by Mrs Mapisa-Nqakula complied with the guidelines as articulated in the Ministerial Handbook regulating international travel by Ministers and Deputy Ministers, as well as, whether President Ramaphosa in his capacity as the President of the Republic and Commander-in-Chief of the SANDF, was aware or should have known that the ANC members were going to travel with Mrs Mapisa-Nqakula in an SANDF aircraft to and from Zimbabwe and failed to prevent state assets from being used for party political gain.
- (v) Based on the analysis of the complaints and the allegations contained therein, the following issues were identified to inform and focus the investigation:
- a) Whether the former Minister of Defence and Military Veterans, Mrs Mapisa-Nqakula ferried the ANC delegation to and from Harare, Zimbabwe in an SANDF aircraft in violation of applicable legal prescripts and if so, whether such conduct was improper and constitutes maladministration as envisaged in section 182(1) of the Constitution and section 6(4) of the Public Protector Act.

- b) Whether the Department of Defence and Military Veterans suffered financial prejudice as a result of the former Minister of Defence and Military Veterans, Mrs Mapisa-Nqakula's conduct of ferrying the ANC delegation to and from Zimbabwe in an SANDF aircraft and if so, whether such conduct was improper and constitutes maladministration, unlawful enrichment or receipt of improper advantage by a person as a result of an act or omission in the public administration as envisaged in section 182(1) of the Constitution and section 6(4) of the Public Protector Act.
- (vi) The investigation was conducted in terms of section 182(1)(a) of the Constitution and sections 6 and 7 of the Public Protector Act. It included the consideration of the complaints lodged by the Complainants, the exchange of correspondences and documentation with the Presidency, Mrs Mapisa-Nqakula, the ANC, Department of Home Affairs, the Department of Defence and Military Veterans, meetings held between the Public Protector and members of the ANC who travelled to and from Zimbabwe with Mrs Mapisa-Nqakula, the Secretary for Defence as well as written responses to the section 7(9) notices of the Public Protector Act served and received from the relevant parties.
- (vii) Having considered the submissions made and evidence uncovered during the course of the investigation against the relevant legislative and regulatory framework, the Public Protector makes the following findings:
- a. **Regarding whether the former Minister of Defence and Military Veterans, Mrs Mapisa-Nqakula, ferried the ANC delegation to and from Harare, Zimbabwe in an SANDF aircraft in violation of applicable legal prescripts and if so, whether such conduct was improper and constitutes maladministration as envisaged in section 182(1) of the Constitution and section 6(4) of the Public Protector Act.**

- (aa) The allegation that the former Minister of Defence and Military Veterans, Ms Mapisa-Nqakula ferried the ANC delegation to and from Harare, Zimbabwe in an SANDF aircraft in violation of applicable legal prescripts is substantiated.
- (bb) Mrs Mapisa-Nqakula departed South Africa together with a total of six (6) members of the ANC's delegation on an SANDF aircraft from the Waterkloof Air Force Base on 8 September 2020 and returned to South Africa through Waterkloof Air Force Base with the same ANC delegation on 9 September 2020.
- (cc) Mrs Mapisa-Nqakula neither had the authority nor permission to ferry the ANC delegation in an SANDF aircraft that was approved to transport herself and her staff to and from Harare, Zimbabwe for an official meeting with her counterpart Mrs Muchinguri-Kashiri as approved by President Ramaphosa as reflected in the submission dated 7 September 2020, titled "*MOD'S Official Visit to Zimbabwe: 8<sup>th</sup> -10<sup>th</sup> September 2020*" (*Presidential Request*) as well as reflected in the submission dated 7 September 2020, titled "*MOD'S Official Visit to Zimbabwe: 8<sup>th</sup> -10<sup>th</sup> September 2020*" (*Departmental Request*).
- (dd) Neither the Cabinet Memorandum of 1994 nor the *Guide for Members of the Executive of 2019* makes provision for Principals to ferry or *give lifts* to other persons on the same aircraft who are not in the approved request for air transport submitted to the Secretary for Defence.
- (ee) The conduct of Mrs Mapisa-Nqakula of ferrying the ANC delegation to and from Harare, Zimbabwe in an SANDF aircraft was in breach of section 96(1)(c) of the Constitution, in a sense that state resources were inappropriately used to improperly benefit a political party.

(ff) In view of the above, the conduct of Mrs Mapisa-Nqakula constitutes improper conduct as envisaged in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

**b. Regarding whether the Department of Defence and Military Veterans suffered financial prejudice as a result of Mrs Mapisa-Nqakula's conduct of ferrying the ANC delegation to and from Zimbabwe in an SANDF aircraft and if so, whether such conduct was improper and constituted maladministration, unlawful enrichment or receipt of improper advantage by a person as a result of an act or omission in the public administration as envisaged in section 182(1) of the Constitution and section 6(4) of the Public Protector Act.**

(aa) The allegation that the Department of Defence and Military Veterans suffered financial prejudice as a result of Mrs Mapisa-Nqakula's conduct of ferrying the ANC delegation to and from Zimbabwe in an SANDF aircraft is substantiated.

(bb) There were travel financial costs incurred by the state as a result of the trip to and from Harare, Zimbabwe including incidental expenses such as on-board refreshments that were served to all passengers including the ANC delegation.

(cc) According to the *Request for Official Price Quotation* dated 7 September 2020 in possession of the Public Protector, the total flying hours and the fuel costs in connection with this trip amounted to R231,973.20 (two hundred and thirty one thousand, nine hundred and seventy three rand, twenty cents) The cost of on-board refreshments amounted to R15 558.00 (Fifteen thousand, five hundred and fifty eight rand only).

- (dd) The Department of Defence and Military Veterans calculated the amount due by the ANC using paragraph 1.8 of the *Guide for Members of the Executive of 2019*, which amounted to R105 545.46 (One hundred and five thousand, five hundred and forty five rand forty six cents). On 30 September 2020 the ANC reimbursed the Department of Defence and Military Veterans the said amount for the costs incurred for their delegation.
  
- (ee) In view of the above, Mrs Mapisa-Nqakula's conduct of ferrying or giving lift to the ANC delegation on the SANDF aircraft, constituted an improper advantage and/or unlawful enrichment to the ANC as envisaged in terms of section 6(4)(a)(iv) of the Public Protector Act.
  
- (viii) The appropriate remedial action taken as contemplated in section 182(1)(c) of the Constitution with a view to remedy the improper conduct and maladministration referred to above is as follows:

**The President of the Republic of South Africa must:**

- (aa) Within 30 days of receipt of this report give an instruction for the issuance of a directive for compliance with the Ministerial Handbook in terms of section 85(2) of the Constitution to handle the practice of giving lifts to ensure that Cabinet Members and Deputy Ministers act within the confines of section 92(3)(a) of the Constitution at all times when dealing with state resources.
  
- (bb) No remedial action is taken against Mrs Mapisa-Nqakula as President Ramaphosa already admonished her and directed that her salary for three (3) months be forfeited to the Solidarity Fund.
  
- (cc) No remedial action is being taken in respect of the recovery of the cost of the trip from the ANC as they have already paid the amount determined.

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO THE FORMER MINISTER OF DEFENCE AND MILITARY VETERANS, MRS NOSIVIWE MAPISA-NQAKULA'S OFFICIAL TRIP TO ZIMBABWE IN SEPTEMBER 2020**

**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) which provides for the publication of the outcome of the investigation.

1.2 The report communicates the findings and appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution, following an investigation conducted into allegations of improper conduct and maladministration relating to the former Minister of Defence and Military Veterans, Mrs Nosiviwe Mapisa-Nqakula's official trip to Zimbabwe on 08-09 September 2020.

1.3 The report is submitted to the persons mentioned hereunder in terms of section 8(3) of the Public Protector Act, which provides that the findings of the investigation should be made available to the Complainant and any other person implicated thereby:

1.3.1 President of the Republic of South Africa, His Excellency Cyril Matamela Ramaphosa;

1.3.2 Speaker of the National Assembly, Honourable Nosiviwe Mapisa-Nqakula;

1.3.3 Minister of Defence and Military Veterans, Honourable Thandi Modise;

- 1.3.4 Acting Minister of Public Service and Administration, Honourable Thembelani Thulas Nxesi;
- 1.3.5 Secretary for Defence, Ms Gladys Kudjoe;
- 1.3.6 Acting Secretary General of the African National Congress, Mr Paul Mashatile; and the following Complainants;
- 1.3.7 Mr Vuyolwethu Zungula;
- 1.3.8 Mr Hurter Willie Spies;
- 1.3.9 Mr Pieter Groenewald;
- 1.3.10 Mr Bokang Ntlatlapa; and
- 1.3.11 Mr Elias Muller.

## **2. THE COMPLAINTS**

- 2.1 The complaints relate to allegations of improper conduct and maladministration with regard to the travel arrangements by Ms Mapisa-Nqakula to and from Zimbabwe in a South African National Defence Force (SANDF) aircraft accompanied by the African National Congress (ANC) delegation led by their Secretary General, Mr Elias Sekgobelo Magashule (Mr Magashule) on 8-9 September 2020. The complaints were received from the following Complainants:
  - 2.1.1 The African Transformation Movement (ATM) Member of Parliament, Mr Vuyolwethu Zungula (Mr Zungula) on 09 September 2020;
  - 2.1.2 Mr Hurter Willie Spies (Mr Spies) acting on behalf of AfriForum on 10 September 2020;

2.1.3 The Freedom Front Plus Member of Parliament, Mr Pieter Groenewald (Mr Groenewald) on 11 September 2020;

2.1.4 Mr Bokang Ntlatlapa (Mr Ntlatlapa) on 14 September 2020; and

2.1.5 Mr Elias Muller (Mr Muller) on 14 September 2020.

2.2 **The first complaint was received from the African Transformation Movement (ATM) Member of Parliament, Mr Vuyolwethu Zungula (Mr Zungula) on 09 September 2020, who alleged that:**

*“It is common course that on 9<sup>th</sup> September 2020 the ANC delegation led by their Secretary General landed in Harare, Zimbabwe and were met by Zanu-PF Chairperson Oppah Muchinguri-Kashiri and several other party officials.*

*It is also common course that the ANC delegation included the NEC member Nosiviwe Nqakula-Mapisa and various other ANC NEC members.*

*It is common course that on the 10<sup>th</sup> of September 2020, the ANC through its national Spokesperson issued a public statement to give feedback on what the meeting deliberated on. Noteworthy in that feedback is that nothing involved military issues was mentioned, not even a line to say such was discussed but not strategic to give details.*

*It is common course that the aircraft of the South African Defence Force was used to transport the ANC delegation. Media reports attributed to the Spokesperson of the Ministry of Defence, Mr Sphiwe Dlamini saying that the ANC meeting coincided with the official work of Minister Mapisa-Nqakula. Mr Dlamini is reported to have said that Minister Mapisa-Nqakula was meeting her Zimbabwe counterpart in preparation for a SADC Troika meeting and the UN reconfiguration of the Force Intervention which comprises troops from the SADC region. The Minister has not repudiated the Spokesperson and therefore it is safe to conclude that she agrees with the version of the Spokesperson.*

*President Ramaphosa issued a public statement on the 11<sup>th</sup> of September 2020 instructing the Minister of Defence Ms Mapisa-Nqakula to furnish him with a detailed report within 48 hours on the circumstances that led to the Minister sharing a flight to Zimbabwe with a delegation of the African National Congress. The ATM is requesting the Public Protector to investigate the following:*

- 1. Did Minister Mapisa-Nqakula comply with the guidance as articulated in Chapter 6: INTERNATIONAL TRAVEL, Clause 1.3 of the Ministerial Handbook which says, 'Ministers and Deputy Ministers should approach the President in writing to request approval for the intended visit and in the event of a planned official visit abroad, such a request should be at least two weeks prior to departure. Such request, in the case of a Minister, should be accompanied by a request for the appointment of an Acting Minister';*
- 2. Can President Ramaphosa independently confirm that he indeed received the request for approval as intimated above and if so, did he approve such a request. If so, why is President Ramaphosa requiring a report as if the trip was not sanctioned by him?*
- 3. Noting that Minister Mapisa-Nqakula is not on record repudiating the explanation given by the Spokesperson of Ministry of Defence, can Minister Mapisa-Nqakula provide all the paper trail for this Zimbabwe trip which according to the Ministerial Handbook should at least predate the day of travel by two weeks. In addition, can Minister Mapisa-Nqakula provide written correspondence between her office and that of her counter-part where the logistics including purpose of the meeting were discussed?*
- 4. Can Minister Mapisa-Nqakula give a written account of her whereabouts from the time she landed in Harare, Zimbabwe on the*

*8<sup>th</sup> of September 2022, to when she boarded the flight to South Africa?*

5. *Can the Minister under oath confirm that the meeting with her counterpart indeed took place and that the matters as listed were discussed?*
  
6. *Chapter 7; Use of Non-Commercial Air Travel, in the Ministerial Handbook Clause 1.6 states thus “All applications for the provision of air transport by the South African Air Force must be made to the Secretary of Defence, in advance, to establish the availability of aircraft, flights and landing strips”. Can the Secretary of Defence confirm that indeed she received this application in terms of the required lead time, if not provide reasons that she may have been given.*
  
7. *Again Chapter 7, Use of Non-Commercial Air Travel, in the Ministerial Handbook Clause 1.7 states thus “All applications have to be confirmed in writing and the following details have to be furnished:*

*(a) Dates(s) of flights(s);*

*(b) Names(s) of passengers(s);*

*(c) Flight Plans (places and times);*

*(d) Refreshments required (light refreshments or meals);*

*Noting that on the unrepudiated version of the Spokesperson of the Ministry of Defence this trip by Minister Mapisa-Nqakula was coincidental and thus no connection between the purposes of these meetings, how then did the Secretary of Defence approve a list containing civilians from a political party?*

*(e) Was President Ramaphosa derelict in his duty as the Commander-in-Chief of the Arm for knowingly allow(sic) the delegation of his political party to use state assets for narrow political purposes? President Ramaphosa ought to have known*

*that the level 2 lockdown that he announced recently does not allow international commercial flights other than repatriation flights?*

- (f) Why is President Ramaphosa acting surprised yet he announced the trip in person on national television and as President of the country the buck stops with him on international travel of the executive?*
- (g) Has the Minister of Finance given the authority for state assets to be used as directed by section 80(3) of the Defence Act of 2002?*
- (h) Is it safe to conclude that President Ramaphosa is numb to corruption because his reaction was only at the instance of public pressure and not proactive.*
- (i) Does the role of President Ramaphosa in the whole saga accord with section 83(b) of the Constitution to uphold and respect the Constitution as the supreme law of the Republic”.*

**2.3 The second complaint received from Mr Hurter Willie Spies (Mr Spies) acting on behalf of AfriForum on 10 September 2020 alleged that:**

1. *“AfriForum is a civil rights organisation representing more than 255 000 members.*
2. *As a civil rights’ watchdog our client has learnt, with grave concern about allegations that certain members of the ANC travelled to Zimbabwe to engage with the ruling Zanu-PF with an aircraft of the South African Airforce.*
3. *This delegation, according to media reports included:*
  - a) Mr Ace Magashule (Secretary General of the ANC);*
  - b) Mr Gwede Mantashe (Chairperson of the ANC);*
  - c) Mr Tony Yengeni (Member of the NEC);*

- d) *Ms Lindiwe Zulu (Minister of Social Development);*
  - e) *Mr Enoch Godongwana (Member of the ANC-NEC);*
  - f) *Ms Nomvula Mokonyane;*
  - g) *Mr Dakota Legoete (Member of the ANC-NEC); and*
  - h) *Nosiviwe Mapisa-Nqakula (Minister of Defence and Military Veterans).*
4. *In terms of section 80(3) of the Defence Act, 2002 [Act No. 42 of 2002], the Minister of Defence and Military Veterans only after consultation with the Minister of Finance may authorise the conveyance of any person who is not an officer or employee of the State by means of any vehicle, aircraft or vessel belonging to the Department of Defence and Military Veterans (the Department of Defence).*
5. *As this particular delegation consisted mostly of employees and office bearers of the ANC, and not the government of the Republic of South Africa, we submit that the above section is applicable to this matter.*
6. *Our client formally requests, based on the powers vested in the Public Protector in section 9 of the Constitution of the Republic of South Africa, the following:*
- a) *For the office of the Public Protector to open an official investigation into the matter;*
  - b) *Determination of the question whether the Minister of Defence consulted with the Minister of Finance, before undertaking the journey;*
  - c) *Determination whether this delegation was authorised and accredited by the Department of International Relations and Cooperative Governance (DIRCO);*
  - d) *A suitable sanction and/or corrective action if and when deemed necessary”.*

**2.4 The third complaint received from the Freedom Front Plus Member of Parliament, Mr Pieter Groenewald (Mr Groenewald) on 11 September 2020 alleged that:**

*“On the 08<sup>th</sup> September 2020, delegation of African National Congress (ANC) arrived in Zimbabwe on a Falcon 900 aeroplane belonging to the South African National Defence Force.*

*Later the Minister for Defence and Military Veterans confirmed that the ANC delegation were on the said plane;*

*The ANC delegation was not an official delegation representing the South African government. The ANC delegation met with their counterparts from the Zanu-PF party from Zimbabwe. This meeting was a private meeting between two political parties.*

*Official government transport is prohibited for private use by any individual or organisation. I hereby request an investigation on the matter in so far as:*

- 1. Who authorised the ANC delegation to use the SANDF plane and on what regulations this was authorised;*
- 2. What the cost of the trip was and if any taxpayer money was used to finance the trip and amount;*

*Corrective steps to be taken to ensure that public money is protected and regained”.*

**2.5 The fourth complaint received from Mr Bokang Ntlatlapa on 14 September 2020 alleged that:**

*“I am residing in Carletonville. I would like to lodge a complaint against Minister of Defence. The media reported that on the 9<sup>th</sup> September, Ms Nqakula flew in a state plane with some members of the ruling party. These members are private citizens at the moment. Is this allowed by laws of this country? Is this another example of state capture”?*

**2.6 The fifth complaint received from Mr Elias Muller on 14 September 2020 alleged that:**

*“I hereby request for investigation into the ANC Zimbabwe delegation usage of SANDF jet. I request your office to investigate the following:*

- 1. Who gave permission for ANC delegates to travel with the SANDF jet?*
- 2. Did minister Mapisa-Nqakula attend the same meeting that was attended by her party delegation to Zimbabwe?*
- 3. Was the decision to allow ANC delegates to travel with the SANDF jet an abuse of power?*
- 4. Did minister Mapisa-Nqakula acted in contravention of the Constitution in anyway”? (sic)*

2.7 As a corollary to this, the Complainants requested that an investigation be instituted to determine amongst others whether the trip undertaken by former Minister Mapisa-Nqakula complied with relevant legislative framework and guidelines in the Ministerial Handbook regulating international travel by Ministers and Deputy Ministers. In addition, to determine whether President Ramaphosa was in breach of his duties as the Commander-in-Chief of the SANDF by allowing the delegation of his political party to utilise the SANDF aircraft to travel to and from Zimbabwe for a political party meeting at the expense of taxpayers. Furthermore, whether Ms Mapisa-Nqakula consulted with the Minister of Finance prior to undertaking the trip, as well as whether the ANC delegation was authorised and accredited by the Department of International Relations and Cooperation (DIRCO) to travel. Finally, under which regulations was the ANC delegation authorised to travel to Zimbabwe in a SANDF aircraft, as well as the cost of the trip.

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

3.1 The Public Protector is an independent state institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through amongst others, investigating and redressing improper conduct in state affairs or public administration and take appropriate remedial action.

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

*“The Public Protector has the power as regulated by national legislation –*

*(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*

*(b) to report on that conduct; and*

*(c) to take appropriate remedial action”.*

3.3 Section 182(2) of the Constitution provides that the Public Protector has additional powers and functions prescribed by national legislation.

3.4 Section 182(4) of the Constitution requires that the Public Protector be accessible to all persons and communities. It is against this background that the services of the Public Protector are rendered free. The Public Protector affords equal protection to complainants as well as the person or institution against whom a complaint was lodged. It is to be noted further that the accessibility of the Public Protector is enabled by amongst others, the publication of the reports which are easily accessible and form a repository of public knowledge on the work of the institution to all persons, communities, the academia, and public administration.

#### **4. ISSUES IDENTIFIED FOR INVESTIGATION**

4.1 Based on the analysis of the complaints, the following issues were identified to inform and focus the investigation:

4.1.1 Whether the former Minister of Defence and Military Veterans, Mrs Mapisa-Nqakula ferried the ANC delegation to and from Harare, Zimbabwe in a SANDF aircraft in violation of applicable legal prescripts and if so, whether her conduct was improper and constituted maladministration in terms of sections 182 of the Constitution and 6(4) of the Public Protector Act.

4.1.2 Whether the Department of Defence and Military Veterans suffered financial prejudice as a result of the former Minister Mrs Mapisa-Nqakula's conduct of ferrying the ANC delegation to and from Zimbabwe in a SANDF aircraft in terms of sections 182 of the Constitution and 6(4) of the Public Protector Act.

#### **5 THE INVESTIGATION**

##### **5.1 Methodology**

5.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

## **5.2 The Investigation Process**

5.2.1 The investigation process commenced with the exchanging of documentation and correspondence between the Public Protector with the Presidency, Mrs Mapisa-Nqakula, the ANC, the Department of Home Affairs, the Department of Defence and Military Veterans.

## **5.3 Approach to the investigation**

5.3.1 The investigation was approached using an enquiry process that seeks to find out:

5.3.1.1 What happened?

5.3.1.2 What should have happened?

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

5.3.1.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong and what action should be taken?

5.3.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the former Minister of Defence and Military Veterans, Mrs Mapisa-Nqakula ferried the ANC delegation to and from Harare, Zimbabwe in a SANDF aircraft in violation of applicable legal prescripts; and whether the Department of Defence and Military Veterans suffered financial prejudice as a result of the former Minister Mrs Mapisa-Nqakula's conduct of ferrying the ANC delegation to and from Zimbabwe in a SANDF aircraft and if so, whether her conduct was improper and constituted maladministration and

5.3.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the former Minister Mrs Mapisa-Nqakula to prevent improper conduct, maladministration and prejudice.

5.3.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and/or maladministration where possible and appropriate.

#### 5.4 Key sources of information and documentation

5.4.1 Key sources of information and documentation obtained during the course of the investigation, analysed and assessed throughout the investigation process are listed in the table below:

Copy of <i>Complaint from Mr Vuyolwethu Zungula of the African Transformation Movement</i>	09 Sept 2020
Copy of <i>Complaint from Mr Hurter Spies on behalf of the AfriForum</i>	10 Sept 2020
Copy of <i>Complaint from Mr Pieter Groenawald of the Freedom Front Plus</i>	10 Sept 2020
Copy of <i>Complaint from Mr Bokang Ntlatlapa</i>	14 Sept 2020
Copy of <i>Complaint from Mr Ellias Muller.</i>	14 Sept 2020
Copy of letter titled: <i>Official visit to the Republic of Zimbabwe 08 - 10 September 2020</i> from Mrs Mapisa-Nqakula addressed to Mrs Oppah Muchinguri-Kashiri initiating an official visit.	7 Sept 2020
Copy of letter titled: <i>Request for official visit to the Republic of Zimbabwe</i> from Mrs Muchinguri-Kashiri accepting to host Mrs Mapisa-Nqakula.	7 Sept 2020
Copy of submission titled <i>MOD's visit to Zimbabwe: 8<sup>th</sup> - 10<sup>th</sup> September 2020</i> signed by Mrs Mapisa Nqakula requesting permission from the President for an official	7 Sept 2020

visit to Zimbabwe and the appointment of Dr Nkosazana Dlamini-Zuma as acting Minister of Defence and Military Veterans.	
Copy of submission titled : <i>MOD's visit to Zimbabwe: 8<sup>th</sup> - 10<sup>th</sup> September 2020</i> signed by Mrs Mapisa-Nqakula reflecting the trip plan and logistics for the travel to Zimbabwe.	7 Sept 2020
Copy of <i>Crew List and Passenger Manifesto (Departure)</i> .	9 Sept 2020
Copy of <i>Crew List and Passenger Manifesto (Entry)</i> .	9 Sept 2020
Copy of <i>Traveller's Record on Falcon 900</i> .	8&9 Sept 2020
Copy of <i>President's Act No. 108</i> .	9 Sept 2020
Copy of Response signed by Mrs Lusanda Mxenge, Acting Director-General and Acting Secretary of Cabinet responding to the allegations letter of the Public Protector, dated 17 Sept 2020.	30 Sept 2020
Copy of <i>Request to travel to Zimbabwe</i> signed by Mr Geoffrey Mphaphuli, Principal State Law Adviser, Legal and Executive Services.	10 Sept 2020
Copy of <i>Minister of Defence and Military Veterans Report to the President and Commander-in-Chief, HE Cyril Matamela Ramaphosa on the Zimbabwe Trip 08<sup>th</sup> and 09<sup>th</sup> September 2020</i> signed by Mrs Mapisa-Nqakula.	12 Sept 2020
Copy of letter titled: <i>Travel to Zimbabwe</i> signed by President Ramaphosa responding to Mrs Mapisa-Nqakula's Report, dated 12 September 2020	22 Sept 2020
Copy of <i>Minister of Defence and Military Veterans Report to the President and Commander-in-Chief, HE Cyril Matamela Ramaphosa on the Zimbabwe Trip 08<sup>th</sup> and 09<sup>th</sup> September 2020</i> from Mrs Mapisa-Nqakula addressed to President Ramaphosa and signed by Mrs Mapisa-Nqakula	22 Sept 2020
Copy of letter titled: <i>Travel to Zimbabwe</i> signed by President Ramaphosa responding to Mrs Mapisa-Nqakula's Report dated 12 September 2020	25 Sept 2020
Copy of <i>'Instruction on payment of the Minister of Defence and Military Veteran's salary into the Solidarity Fund:</i>	14 Oct 2020

November 2020 to January 2021' signed by Mrs Mapisa-Nqakula	
Copy of ' <i>Feedback in Respect of the Instruction on the Payment of the Minister of Defence and Military Veteran's Salary into the Solidary Fund</i> ' signed by Vice Admiral AE Kubu and addressed to Mrs Mapisa-Nqakula confirming contribution of R82 107.84 into the Solidary Fund	26 Oct 2020
Copy of ' <i>Payroll Printout</i> ' confirming that the salary of Mrs Mapisa-Nqakula was directed into the Solidarity Fund.	17 May 2021
Copy of a letter titled: ' <i>In Re: Travel to Zimbabwe: Implementation of sanctions ordered against myself</i> ' signed by Mrs Mapisa-Nqakula addressed to President Ramaphosa.	18 Nov 2020
Copy of ' <i>Deferral of sanction-imposed payment</i> ' signed by President Ramaphosa and addressed to Mrs Mapisa-Nqakula	26 Nov 2020
Copy of letter titled: ' <i>Urgent: Instruction on payment of the Minister of Defence and Military Veteran's salary into the Solidarity Fund: Deferral of Sanction Imposed Payment to be Spread over 9 Months</i> ' signed by Mrs Mapisa-Nqakula addressed to Vice Admiral AE Kubu, Chief of Human Resource, Department of Defence and Military Veterans.	10 March 2021
Copy of <i>Sworn Affidavit</i> by Mrs Mapisa-Nqakula responding to the allegations letter from the Public Protector dated 17 September 2020	29 Sept 2020
Copy of <i>Sworn Affidavit</i> by Mrs Mapisa-Nqakula responding to the Subpoena from the Public Protector.	20 May 2021
Copy of Covid-19 Test results and Approval of Self-Quarantine of Mrs Mapisa-Nqakula	8 & 13 Sept 2020
Copy of <i>Sworn Affidavit</i> by Mrs Kudjoe responding to the Subpoena from the Public Protector dated 7 June 2021	10 June 2021
Copy of the <i>Attendance Register</i> of a meeting between the SANDF and investigation team of the Public Protector	12 August 2021
Copy of <i>Cabinet Memorandum No 2 of 1994</i> (copy marked <b>secret</b> )	28 Nov 1994
Copy of <i>Invoice</i> by the Department of Military Defence and	21 Sept 2020

REPORT OF THE PUBLIC PROTECTOR

Military Veterans to the ANC	
Copy of <i>Completion of indemnity forms for civilian passengers utilising military aircrafts signed by the Officer Commanding SA Air Force College, H Maal (Copy marked <b>restricted</b>)</i>	August 2021
Copy of <i>South African Air Force Passenger List (marked <b>restricted</b>)</i>	8 August 2020
Copy of <i>Trans Mission Order Request</i> reflecting that the flight tasking was requested by Mrs Mapisa-Nqakula	8 Sept 2020.
Copy of <i>Costing of flight against repayment over period 08 to 09 September 2020: Tasking Serial No: WK02150365 (copy marked <b>restricted</b>)</i> .	Sept 2020
Copy of <i>Request for Official Price Quotation</i> for on board refreshments	7 Sept 2020.
Copy of <i>Sworn Affidavit</i> deposed by Ms Rika Anker, Chief Director; Port Control Department of Home Affairs	24 June 2021
Copy of Letter to Dr Obert Moses Mpofo of Zanu-Pf signed by Mr Magashule.	4 Sept 2020
Copy of Response from the ANC to the subpoena of the Public Protector signed by the Mr Krish Naidoo	30 Oct 2020
Copy of <i>Main Sworn Affidavit</i> by Mr Magashule	29 Oct 2020
Copy of <i>Supplementary Sworn Affidavit</i> by Mr Dakota Legoete	29 Oct 2020
Copy of <i>Supplementary Sworn Affidavit</i> by Mr Enoch Godongwana	29 Oct 2020
Copy of <i>Supplementary Sworn Affidavit</i> by Ms Lindiwe Zulu	29 Oct 2020
Copy of <i>Supplementary Sworn Affidavit</i> by Ms Nomvula Mokonyane	29 Oct 2020
Copy of <i>Supplementary Sworn Affidavit</i> by Mr Tony Yengeni	30 Oct 2020
Copy of <i>Notification of Payment</i> by the ANC for the amount of R105 545,46	30 Sept 2020
Copy of Additional information pursuant to a meeting on 24 <sup>th</sup> instant signed by Mr Krish Naidoo	29 Nov 2020
Copies of a press release by the ZBC News	Undated

Copies of notices issued in terms of section 7(9) of the Public Protector Act served on President of the Republic of South Africa, Mr Cyril Matamela Ramaphosa, Speaker of the National Assembly, Ms Nosiviwe Mapisa-Nqakula, Minister of Defence and Military Veterans, Ms Thandi Modise, Secretary for Defence, Ms Gladys Kudjoe and Acting Secretary General of the African National Congress, Mr Paul Mashatile.	27 April 2022
Copies of responses to the notice issued in terms of Section 7(9) of the Public Protector Act received from the Presidency, Speaker of the National Assembly and the Minister of Defence and Military Veterans.	5 May 2022, 1 June 2022; and 3 June 2022.

## 5.5 Meetings held

5.5.1 A meeting was held between the Public Protector and the delegation of the ANC led by Mr Magashule and another meeting was held between the Public Protector and Mr Tony Yengeni.

5.5.2 A further meeting was held between the investigation team of the Public Protector and officials of the Department of Defence and Military Veterans led by the Secretary for Defence, Ms Gladys Kudjoe (Ms Kudjoe).

## 5.6 Legislative framework and policy prescripts

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

5.6.2 The Public Protector Act, 1994 [No 23 of 1994];

5.6.3 Public Finance Management Act, 1999 [No.1 of 1999];

5.6.4 Treasury Regulations issued in terms of section 76 of the PFMA;

- 5.6.5 Defence Act 2002 [Act No. 42 of 2002];
- 5.6.6 Disaster Management Act, 2002 [Act No. 57 of 2002];
- 5.6.7 Cabinet Memorandum Number 2 of 1994; and
- 5.6.8 Guide for Members of the Executive of 2019.

**5.7 Notices issued in terms of section 7(9) of the Public Protector Act**

- 5.7.1 A Notice dated 27 April 2022 was issued in terms of section 7(9) of the Public Protector Act to the President Ramaphosa, Speaker of the National Assembly, Mrs Mapisa-Nqakula, Minister of Defence and Military Veterans, Ms Thandi Modise, Secretary for Defence, Ms Gladys Kudjoe and the Acting Secretary General of the African National Congress, Mr Paul Mashatile, respectively, affording them an opportunity to respond to the evidence obtained during the investigation, the preliminary adverse findings and intended remedial action in the notice, prior to the finalisation of the investigation and issuance of the report. The responses received in connection to the notice are incorporated in the report.

**6. DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION AND CONCLUSION MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS**

- 6.1 **Regarding whether the former Minister of Defence and Military Veterans Mrs Mapisa-Nqakula, ferried ANC delegation to and from Harare, Zimbabwe in a SANDF aircraft in violation of applicable legal prescripts<sup>1</sup> and if so, whether her conduct was improper and**

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<sup>1</sup> Mrs Mapisa-Nqakula was granted permission to travel to Zimbabwe on a SANDF aircraft for the period of 8-9 September 2020. Therefore there was no contravention of the Disaster Management Act Regulations applicable to Alert Level 2 during that period.

**constitutes maladministration as envisaged in terms of section 182(1) of the Constitution and section 6(4)(a) of the Public Protector Act.**

Common cause

- 6.1.1 Mrs Mapisa-Nqakula initiated the official travel to Zimbabwe when she requested a meeting with her counterpart Mrs Muchinguri-Kashiri relating to Southern African Development Community (SADC) regional force as reflected in the copy of a letter dated 7 September 2020, titled *Official visit to the Republic of Zimbabwe: 08-10 September 2020*.
- 6.1.2 The purpose of the official travel was amongst others “*to conduct a bilateral meeting with her counterpart, the Honourable Minister of Defence and War Veterans Ms Oppah Chamu Muchinguri-Kashiri*”.
- 6.1.3 Mrs Muchinguri-Kashiri accepted the request for a meeting with Mrs Mapisa-Nqakula on the same day through a letter dated 7 September 2020 titled “*Request for official visit to the Republic of Zimbabwe*”.
- 6.1.4 Subsequent to Mrs Muchinguri-Kashiri accepting the request for a meeting, Mrs Mapisa-Nqakula requested permission from President Ramaphosa for an official visit to Zimbabwe as reflected in the submission dated 7 September 2020, titled “*MOD’S Official Visit to Zimbabwe: 8<sup>th</sup> -10<sup>th</sup> September 2020*” (*Presidential Request*).
- 6.1.5 Mrs Mapisa-Nqakula requested air transport from the Secretary for Defence through another submission titled “*MOD’S Official Visit to Zimbabwe: 8<sup>th</sup> -10<sup>th</sup> September 2020*” (*Departmental Request*).
- 6.1.6 Following the submission of permission to travel to the Presidency on 7 September 2020, and the subsequent approval of the provision of air transport by the Secretary for Defence on 7 September 2020, Mrs Mapisa-Nqakula departed South Africa together with the ANC delegation from the Waterkloof Air Force Base on 8 September 2020. They returned

to South Africa through Waterkloof Air Force Base with the same ANC delegation on 9 September 2020 as reflected in the copy of “*Passenger List and Travel Records (Passenger Manifesto)*” obtained from the Department of Home Affairs.

- 6.1.7 President Ramaphosa approved Mrs Mapisa-Nqakula’s request to travel in writing on 9 September 2020 as reflected in the copy of the *President’s Act No. 108 of 2020* however this was after Mrs Mapisa-Nqakula’s returned to South Africa from Zimbabwe.

*Issues in dispute*

- 6.1.8 The issues for determination by the Public Protector are whether:
- 6.1.8.1 President Ramaphosa as the Commander-in-Chief of the Defence Force was reasonably expected to be aware or should have been aware that the ANC delegation was to travel with Mrs Mapisa-Nqakula in the SANDF aircraft and failed to prevent the use of state resources for political party purposes;
- 6.1.8.2 Mrs Mapisa-Nqakula and the ANC delegation breached the Disaster Management Act regulations by departing from South Africa while the country was on COVID-19 Alert Level 2 which prohibited international travel except for humanitarian purposes;
- 6.1.8.3 Mrs Mapisa-Nqakula’s ferrying of the ANC delegation to and from Harare Zimbabwe in a SANDF aircraft violated section 80(3) of the Defence Force Act, the Guide for Members of the Executive, section 64 of the Public Finance Management Act and its Regulations;
- 6.1.8.4 Whether Mrs Mapisa-Nqakula was required to inform the Department of International Relations and Cooperation at least two weeks prior to her undertaking international travel; and

- 6.1.8.5 There were financial implications for the state as a result of the travel to and from Harare, Zimbabwe including incidental expenses such as on-board refreshments.

*Response by the President*

- 6.1.9 The allegations were raised with President Ramaphosa in a letter dated 17 September 2020. President Ramaphosa responded through the Presidency in a letter dated 30 September 2020 signed by Ms Lusanda Mxenge, the then Acting Director-General and Acting Secretary for Cabinet stating amongst others that:

- 6.1.9.1 President Ramaphosa received a request for permission to travel to Harare, Zimbabwe for the period of 8 to 10 September 2020 from Mrs Mapisa-Nqakula on 7 September 2020. The purpose of the travel was amongst others; *“to conduct a bilateral meeting with her counterpart, the Honourable Minister of Defence and War Veterans Mrs Oppah Chamu Muchinguri-Kashiri”*.

- 6.1.9.2 The request for permission to travel reflected that she was to travel with two (2) other people namely, her Personal Assistant and one (1) Close Protection Officer and the mode of transport was the SANDF aircraft.

- 6.1.9.3 The request for permission to travel was approved verbally on 8 September 2020 as President Ramaphosa was not in Gauteng at the time and documentation was signed thereafter.

- 6.1.9.4 The request for permission to travel did not comply with the Ministerial Handbook requirements stipulating that requests for international travel must be made at least two weeks prior to departure. Unfortunately due to the pressure of work, it is not an uncommon occurrence.

- 6.1.9.5 President Ramaphosa became aware on 9 September 2020 that the ANC delegation travelled with Mrs Mapisa-Nqakula to and from Harare,

Zimbabwe on the same SANDF aircraft. This resulted in President Ramaphosa requesting a report from Mrs Mapisa-Nqakula and two reports were submitted to him. After considering the reports he was of the view that:

- a. The ferrying of the ANC delegation to and from Harare, Zimbabwe on the SANDF aircraft was unjustified.
- b. Mrs Mapisa-Nqakula was supposed to have used the SANDF aircraft for the trip excluding the ANC delegation. In this regard, state resources were inappropriately used to benefit a political party and Mrs Mapisa-Nqakula was sanctioned for her conduct.
- c. The trip to Zimbabwe by the ANC delegation was known however, it was not for President Ramaphosa to arrange the logistics for their travel or grant any permission necessary to undertake the trip.

6.1.10 The response from the Presidency was submitted together with copies of the following documentation:

6.1.10.1 Copy of submission dated 7 September 2020 titled, "*MOD'S Official Visit to Zimbabwe: 8<sup>th</sup> -10<sup>th</sup> September 2020*" (*Presidential Request*) signed by Mrs Mapisa-Nqakula on 7 September 2020 stating amongst others that:

- (a) She was to conduct a bilateral meeting with Mrs Muchinguri-Kashiri for the period of 8-10 September 2020 in Harare, Zimbabwe;
- (b) Her delegation was to consist of two people namely one Personal Assistant and one Close Protection Officer. The total estimated cost of the trip was **R33 380.00** inclusive of accommodation, flights, airport transfers, and ground transport as well as travel & subsistence allowances. The mode of transport was the Falcon 900 aircraft of the SANDF; and

- (c) The Minister of Cooperative Governance and Traditional Affairs, Doctor Nkosazana Dlamini-Zuma, was to act as the Minister of Defence and Military Veterans during her absence.

6.1.10.2 Copy of *'Approval for the Minister's request to travel to Zimbabwe'*; signed by Mr Geoffrey Mphaphuli, Principal State Law Advisor, Legal and Executive Services dated 10 September 2020 states amongst others that:

- a) The request for Mrs Mapisa-Nqakula to travel to Harare, Zimbabwe for the period 8 to 10 September 2020 was approved in writing by President Ramaphosa on 9 September 2020, by means of *President's Act 108 of 2020*. This written approval was signed after Mrs Mapisa-Nqakula had already departed to Zimbabwe on 8 September 2020. Copy of *President's Act 108 of 2020* further reflects that:

- i. Dr Nkosazana Dlamini-Zuma, the Minister of Cooperative Governance and Traditional Affairs was appointed as acting Minister of Defence and Military Veterans in terms of section 98 of the Constitution 1996 during the absence of Mrs Mapisa-Nqakula from South Africa; and
- ii. Mrs Mapisa-Nqakula was to submit a report to the Presidency relating to her travel to Harare, Zimbabwe within seven days of her return, in terms of the directive issued by the Presidency dated 27 July 2012.

6.1.10.3 In the copy of *"Minister of Defence and Military Veterans Report to the President and Commander-in-Chief, HE Cyril Matamela Ramaphosa on the Zimbabwe Trip 08<sup>th</sup> and 09<sup>th</sup> September 2020"* signed by Mrs Mapisa-Nqakula on 12 September 2020 it is stated amongst others that:

- i. The travel was undertaken pursuant to a request for permission to visit and engage with the Zimbabwean counterpart on bi-lateral matters pertaining to her portfolio as well as the role of South Africa and Zimbabwe in regional security in particular to the Democratic Republic of Congo and recent discussions within the SADC prior to and during the Summit. It is further stated that:
- ii. *“The challenges in Zimbabwe have been matters of discussion within our government and our ruling party, the African National Congress, for quite some time and successive administrations in government and the party have had to deal with it. Against this background and for compelling national interests, the President directed that there be a delegation of members of National Executive Committee to visit Zimbabwe. Given the current Covid-19 pandemic and attendant prohibition of normal air flights, especially cross border, it was deemed fit that since I would be undertaking the trip to meet with my counterpart, the other members could be ferried on the aircraft I was to use as there would not have been any other means for them to travel with land and air borders closed”.*

6.1.10.4 In a copy of *“Minister of Defence and Military Veterans Report to the President and Commander-in-Chief, HE Cyril Matamela Ramaphosa on the Zimbabwe Trip 08<sup>th</sup> and 09<sup>th</sup> September 2020”* addressed to President Ramaphosa and signed by Mrs Mapisa-Nqakula on 22 September 2020 it is stated amongst others that:

- a) She departed from Waterkloof Air Force Base on 8 September 2020 at 18H25 and arrived at Harare Airport at 19H35 the same evening. After concluding her official visit and attending to the meeting with Zanu-PF, she departed for South Africa on 9 September 2020 at 21H45 and arrived at Waterkloof Air Force Base at 22H30 the same evening. She drew the attention of President Ramaphosa to copies of the *Sworn Affidavit, Passenger Manifesto*, and the letter from Mrs

Muchinguri-Kashiri accepting her request for a meeting and copies of media reports which were already submitted to the Public Protector pertaining to this investigation.

- b) She reiterated that her trip to Harare, Zimbabwe was approved and further stated that; *“I agree in hindsight that it would have been prudent to inform your Office in writing of my intention to ferry ANC NEC members of which delegation I formed part to meet with ZANU-PF counterparts”*.
- c) It is further stated in paragraphs 3.3 of the letter that :

*“Paragraph 1.2 of Chapter 7, Use of Non-Commercial Air Travel in the Guide for Members of the Executive approved by the President on 20 November 2019 provides as follows”: ‘Air transport provided by the South African Air Force or any other Government Department may not be used by Members for party political engagements, unless such transport enables the Member concerned to fulfil important official engagements before or after the party political engagements’.*

*In my understating of the above quoted paragraph, I did not need additional permission to attend to party political engagements using the SAAF flight as such has already been catered for in the Ministerial Handbook. As to the ferrying of additional persons on the same aircraft, I am not aware of any prohibition on doing such or specific permission that ought to be sought as it is a regular occurrence in the use of SAAF aircraft to provide for the ferrying of business persons or the like if all are travelling in the same direction as the flight being used for official Government purposes”.*

- d) Paragraph 3.3

*“Paragraph 1.5 of Chapter 7 provides as follows: ‘The South African Air Force may further assist Members with flights abroad, which*

*cannot be provided for by commercial airlines, if such flights are within the capacity of the South African Air Force’.*

e) *Paragraph 3.6*

*“The total cost are calculated as follows; the flying hour tariff of R62 000, 00 per flying hour is a product of the approved model. The average hourly fuel consumption of 1500 litres for both engines is derived from various stages of flight for this type of aircraft. Therefore the direct cost for a 2.7 hour (2 two hours and seventy minutes) flight can be calculated as follows:*

*R62, 000.00 x 2.7 = R167.400.00; and*

*1600 litres x 16 (ROE) = R24, 000.00 per flying hour, thus*

*R24, 000.00 x 2.7 = R64, 800.00*

*Total: R167, 000.00 + 64, 800.00 = **R232, 200.00***

*Total due to the African National Congress Delegation **R105, 545.46”.***

f) *Paragraph 3.6.1*

*“For international travel on the continent the MOD uses the Falcon 900 or similar sized chartered aircraft. The Falcon 50’s is used only for internal travel as a rule. Thus I would have used the Falcon 900 or similar size chartered aircraft given that commercial flights are not available regardless of whether additional ANC NEC members joined my visit or not”.*

6.1.10.5 In a copy of letter titled *Travel to Zimbabwe* dated 25 September 2020 addressed to Mrs Mapisa-Nqakula and signed by President Ramaphosa it is stated amongst others as follows:

(1) .....

(2) .....

(3) *Having read your reports, I have come to the conclusion that it was not in any way justified to ferry the ANC NEC delegation to*

*Zimbabwe on the South African Air Force aircraft you were meant to use for your own approved trip, to meet with your counterpart.*

- (4) *State resources were inappropriately used to the benefit of a political party.*
- (5) *This error of judgment on your part is not, in my view, in keeping with your responsibilities as a Minister of Cabinet.*
- (5.1) *You did not act...in the best interest of good governance as required by section 2.1(c) of the Executive Members Code, 2000 ("the Code").*
- (5.2) *You failed to adhere to legal prescripts warranting care in use of state resources.*
- (5.3) *You acted "in a way that is inconsistent with [your] position" as required of you in section 2.3(c) of the Code.*

6.1.10.6 It is further stated that the violations of the standards of conduct by Mrs Mapisa-Nqakula warranted an appropriate sanction demonstrating the seriousness of her error of judgement as a result of her high position in government and the sanction imposed was as follows:

- (8.1) *Your salary for the next three months should be paid into the Solidarity Fund. You will however, be required to continue fulfilling your duties to the state in your capacity as Minister of Defence and Military Veterans throughout this period, without pay.*
- (8.2) *You ensure that the ANC reimburse the state for the cost incurred in ferrying their delegation to Zimbabwe on the South African Air Force aircraft'.*

6.1.10.7 Copy of 'Instruction on payment of the Minister of Defence and Military Veteran's salary into the Solidarity Fund: November 2020 to January 2021' signed by Mrs Mapisa-Nqakula on 14 October 2020 and addressed to Vice Admiral AE Kubu, Chief of Human Resource, reflect amongst others that:

- a) Mrs Mapisa-Nqakula's three months' salary shall be paid into the Solidarity Fund as directed by President Ramaphosa in the letter dated 25 September 2020.
- b) Copy of '*Feedback in Respect of the Instruction on the Payment of the Minister of Defence and Military Veteran's Salary into the Solidary Fund*' dated 26 October 2020 signed by Vice Admiral AE Kubu and addressed to Mrs Mapisa-Nqakula confirmed that a contribution of R82 107.84 into the Solidary Fund had been effected for the period of 1 November 2020 to 31 January 2021 as directed by her office.
- c) Copy of '*Payroll Printout*' dated 17 May 2021 also confirmed that the salary of Mrs Mapisa-Nqakula was directed into the Solidarity Fund.
- d) Copy of '*In Re: Travel to Zimbabwe: Implementation of sanctions ordered against myself*' dated 18 November 2020 signed by Mrs Mapisa-Nqakula and addressed to President Ramaphosa reflects amongst others that:
- e) She requested that the payment of her salary into the Solidarity Fund be deferred over the period of 9 months starting in February 2021. In the copy of the '*Deferral of sanction-imposed payment*' dated 26 November 2020 signed by President Ramaphosa and addressed to Mrs Mapisa-Nqakula the request to defer the payment over a nine (9) months period with effect from 1 February 2021 was accepted.
- f) The copy of "*Urgent: Instruction on payment of the Minister of Defence and Military Veteran's salary into the Solidarity Fund: Deferral of Sanction Imposed Payment to be Spread over 9 Months*" signed by Mrs Mapisa-Nqakula on 10 March 2021 and addressed to Vice Admiral AE Kubu, Chief of Human Resource, Department

of Defence and Military Veterans reflect the new contribution into the Solidarity Fund as an amount of R19 603.33 per month for 9 months.

- 6.1.11 Having considered the response from President Ramaphosa and the evidence presented it is established that:
- 6.1.11.1 President Ramaphosa approved Mrs Mapisa-Nqakula's request to travel to Zimbabwe in writing on 9 September 2020. Although it is submitted that the request was verbally approved on 8 September 2020.
- 6.1.11.2 The Presidency further stated that the travel arrangement request was to be submitted at least two weeks prior to the date of departure however, it was not an uncommon occurrence/practice in government that this time period is not adhered to.
- 6.1.11.3 Mrs Mapisa-Nqakula does not explicitly explain why she did not inform President Ramaphosa about her intention to ferry the ANC delegation or at what point she foresaw the need to ferry the delegation with her save to say that; *"As to the ferrying of additional persons on the same aircraft, I am not aware of any prohibition on doing such or specific permission that ought to be sought as it is a regular occurrence in the use of SAAF aircraft to provide for the ferrying of business persons or the like if all are travelling in the same direction as the flight being used for official Government purposes"*
- 6.1.11.4 In her submission dated 7 September 2020 and titled *MOD'S Official Visit to Zimbabwe: 8<sup>th</sup>-10<sup>th</sup> September 2020 (Presidential Request)* requesting permission to travel, Mrs Mapisa-Nqakula stated that her delegation consisted of two (2) persons namely her Personal Assistant and a Close Protection Officer whereas in another submission dated 7 September 2020 and titled *MOD'S Official Visit to Zimbabwe: 8<sup>th</sup> -10<sup>th</sup> September 2020 (Departmental Request)* to the Secretary for Defence, relating to logistical arrangements for the travel, it is stated that her delegation will

consist of four (4) persons namely a Personal Assistant, a Close Protection Officer and two (2) Medical Support Staff.

- 6.1.11.5 The *Passenger Manifesto* also confirms that her delegation consisted of four (4) persons in addition to the ANC delegation. The information submitted to the Presidency requesting permission to travel is different from the information in the submission preparing her logistical arrangements for the travel submitted to the Secretary for Defence in that it did not include two (2) Medical Support Staff.

*Response by Mrs Mapisa-Nqakula*

- 6.1.12 The allegations were raised with Mrs Mapisa-Nqakula in a letter dated 17 September 2020. She responded in a *Sworn Affidavit* dated 29 September 2020 giving a background on the role played by South Africa in SADC and in the Continent towards the achievement of peace and security submitting amongst others that:

- 6.1.12.1 President Ramaphosa granted her permission to travel to Harare, Zimbabwe for the period of 8-10 September 2020 for a bi-lateral meeting with her counterpart Mrs Muchinguri-Kashiri as reflected in the copies of the *Request for official visit to the Republic of Zimbabwe, Official visit to the Republic of Zimbabwe: 08-10 September 2020, MOD'S Official Visit to Zimbabwe: 8<sup>th</sup> -10<sup>th</sup> September 2020, President Act 108*, which are already discussed in the above paragraphs.

- 6.1.12.2 Upon receiving acceptance to be hosted by Mrs Muchinguri-Kashiri for the bi-lateral meeting of 9 September 2020, her office proceeded to prepare a request for permission to travel for President Ramaphosa's approval including a request that in her absence Dr Nkosazana Dlamini-Zuma be appointed as the acting Minister of Defence and Military Veterans. This is reflected in a copy of the submission titled *MOD's official visit to Zimbabwe: 8<sup>th</sup> -10<sup>th</sup> September 2020* signed by former Minister Mapisa-Nqakula on 7 September 2020.

- 6.1.12.3 President Ramaphosa approved the request for permission to travel to Harare, Zimbabwe as well as appointing Dr Nkosazana Dlamini-Zuma as the acting Minister of Defence and Military Veterans as reflected in the copy of *President's Act No. 108 of 2020* as well as a copy of letter titled *Request to travel to Zimbabwe* dated 10 September 2020 signed by Mr Godfrey Mphaphuli, Principal State Law Advisor, Legal and Executive Services.
- 6.1.12.4 In August 2020, President Ramaphosa appointed and dispatched Special Envoys to engage the government of Zimbabwe relating to recent developments in that country. A decision was also taken to send a delegation of the NEC members of the ANC to meet with their counterparts of the Zanu-PF in Zimbabwe.
- 6.1.12.5 As she was to form part of the NEC delegation to Zimbabwe and as she was set to depart from South Africa on the Falcon 900 aircraft of the SAAF, and since normal international travel was not available due to the Covid-19 pandemic, and given the urgency of the matters to be discussed she offered to ferry the ANC delegation to and from Harare, Zimbabwe stating that:

*“Given that my official visit to meet my counterpart had been approved and that the Ministerial Handbook allow me to also attend to party political arrangements in these circumstances and the fact that the costs to be incurred for the SAAF flight would remain the same whether it is just myself on the plane or others joined me, I extended the invitation to ferry the ANC NEC members. However, shortly after returning to South Africa the top structures of the ANC met and thereafter offered to reimburse the costs incurred for their delegation that joined my flight to Zimbabwe. The costs have been calculated using the model prescribed in paragraph 1.8 of the Guide for Members of the Executive when another Department use SAAF aircraft and is set to reimburse the Department of Defence.” (sic)*

6.1.12.6 She departed from Waterkloof Air Force Base on 8 September 2020. Upon arrival in Harare, Zimbabwe she was met at the airport by Mrs Muchinguri-Kashiri for a quick courtesy briefing of less than an hour. The following day on 9 September 2020 she formed part of the ANC delegation for a meeting with ZANU-PF officials. She later had a bi-lateral meeting with Mrs Muchinguri-Kashiri on the same day and they jointly issued a media statement. She departed Harare, Zimbabwe for South Africa on 9 September 2020 at around 21H45.

6.1.12.7 Mrs Mapisa-Nqakula was also served with a subpoena dated 12 May 2021 in terms of Section 7(4)(a) of the Public Protector Act and in her response to the subpoena dated 20 May 2021 indicated amongst others that:

- a) Certain categories of international travel were allowed under COVID-19 Alert Level 2 Regulations subject to directions of the Cabinet members responsible for Home Affairs, Health and Transport. Only international passenger air travel for leisure purposes was prohibited under Alert Level 2. International travel for diplomatic purposes was allowed and Special Envoys departed subject to directions stipulated in Regulation 59 of the Disaster Management Act, 2002.
- b) She complied with directions stipulated in Regulation 59 of the Disaster Management Act in relation to international travel that she undertook to Zimbabwe, by undergoing Covid-19 testing prior to her departure and self-quarantine upon return to South Africa.
- c) She was allowed to use a SANDF aircraft to and from Harare, Zimbabwe in terms of Chapters 6 and 7 of the *Guide for Members of the Executive of 2019*.
- d) She did not seek permission to ferry the ANC delegation to and from Harare, Zimbabwe and President Ramaphosa did not grant her authority to transport the ANC delegation to and from Harare,

Zimbabwe, therefore President Ramaphosa was not derelict in performing his duties as alleged by the Complainants.

- e) Upon returning from Harare, Zimbabwe, President Ramaphosa requested her to provide him with a detailed report in relation to her ferrying of the ANC delegation using a SANDF aircraft to and from Harare, Zimbabwe. She submitted two reports to President Ramaphosa dated 12 and 22 September 2020 respectively.
- f) President Ramaphosa upon receiving the two reports concluded that it was not justified to ferry ANC delegation to Zimbabwe on a SANDF aircraft. A sanction was imposed against her which she accepted and complied with.
- g) Her interpretation of the alleged violation of section 80(3) of the Defence Act, 2002 is that the provisions of the Act relate to a situation whereby, *“authorisation is to be given for the utilisation of the aircraft belonging to the Department of Defence in circumstances where no persons on board who are to be conveyed are officers or employees of the state acting in the execution of their duties. In others words, this section applies where an aircraft or vehicle or vessel belonging to the Department of Defence in its entirety is to be used by someone not in the employ of the state with no one else on board who is in the employ of the state and is therefore for the execution of official duties” (sic)*
- h) In her tenure of nine (9) years as Minister of Defence and Military Veterans, the Department of Defence had not brought to her attention a policy relating to the conveyance of persons not in the employ of the state that required authorisation of the kind envisaged in section 80(3) of the Defence Act.
- i) Her travel to and from Harare, Zimbabwe for a bi-lateral meeting with Mrs Muchinguri-Kashiri and her ferrying of the ANC delegation

on board the Falcon 900 could not have triggered section 80(3) of the Defence Act as the ANC delegation was not conveyed without the presence of a person in the employ of the state executing official duties.

- j) She did not make assurances to either President Ramaphosa or the ANC that it was regular or lawful to ferry the ANC delegation in a SANDF aircraft to and from Harare, Zimbabwe to attend a political party meeting with Zanu-PF officials.

6.1.13 Considering the above response of Mrs Mapisa-Nqakula and the evidence presented the following was established:

6.1.13.1 Mrs Mapisa-Nqakula was not granted permission to ferry the ANC delegation to and from Harare, Zimbabwe in a SANDF aircraft. It is her submission that she did not inform President Ramaphosa that she would be travelling with the ANC delegation in the SANDF aircraft and therefore President Ramaphosa could not have known about it.

6.1.13.2 She attended a party political meeting with Zanu-PF officials together with the ANC delegation that she ferried in the SANDF aircraft prior to her attending the bi-lateral meeting with her counterpart Mrs Muchinguri-Kashiri on 9 September 2020.

6.1.13.3 Mrs Mapisa-Nqakula does not explicitly concede that it could have been improper to ferry a political party delegation in a SANDF aircraft or use state resource for the benefit of a political party as she is of the view that the cost of air travel on a Falcon 900 would have remained the same whether she travelled alone or if the ANC delegation joined. She further affirms this position by stating that; *“I am not aware of any prohibition on doing such or specific permission that ought to be sought as it is a regular occurrence in the use of SAAF aircraft to provide for the ferrying of business persons or the like if all are travelling in the same direction as the flight being used for official Government purposes”*. She equates the

ferrying of the ANC delegation in a SANDF aircraft to that of ferrying of business persons by government or the like if all are travelling in the same direction as the flight being used for official Government purposes.

Response by the Secretary for Defence

6.1.14 The allegations were raised with the Department of Defence through a letter dated 17 September 2020 addressed to the Secretary for Defence, Ms Gladys Sonto Kudjoe (Ms Kudjoe). A subpoena dated 7 June 2021, was also served on Ms Kudjoe requesting her response and submission of documentation pertinent to the investigation. In her response dated 10 June 2021, Ms Kudjoe stated amongst others that:

6.1.14.1 She had no direct custody of the information requested in the subpoena and that the information ordinarily resides with the Chief of the South African National Defence Force. She would have to request the information and would endeavour to make it available to the Public Protector.

6.1.15 Following the above response, a meeting with Ms Kudjoe was held on 12 August 2021 to afford the Department of Defence an opportunity to explain its process relating to the provision of air transport to Members of Cabinet (the Principals) in particular with regard to the matter under investigation. Ms Kudjoe was accompanied by high ranking officers of the SANDF as reflected in the copy of the *Attendance Register* for the meeting. During the discussion it was submitted by the Department of Defence that:

6.1.15.1 The provision of air transport to the Principals is governed by *Cabinet Memorandum No 2 of 1994* in conjunction with the *Guide for Members of the Executive of 2019*.

6.1.15.2 An aircraft for the Principal is determined on the basis of amongst others, the distance to be travelled, and the number of passengers to be

transported, luggage and the availability of the type of the aircraft to undertake the trip.

- 6.1.15.3 The Air Force Crew may not refuse to transport any person who is travelling with the Principal that requested the air transport for as long as the aircraft has the capacity to carry and transport the number of persons travelling with the Principal on that particular day and time. In other words the Air Force Crew does not handle the boarding of passengers, this is the task of the support staff of the Principal.
- 6.1.15.4 In this particular incident, the suitable aircraft to undertake the trip was the Falcon 900 and the number of members of the delegation to travel with the Principal as per the request was four passengers. At the time of departure, the number of passengers was more than what was approved in the request for travel submission made by the Mrs Mapisa-Nqakula. Due to the aircraft having capacity to accommodate the additional passengers travelling with the Principal, they were boarded and regarded as the delegation of the Principal.
- 6.1.15.5 The Department of Defence invoiced the ANC for an amount of **R105, 545.46**” which has since been paid. The criteria used to invoice the ANC was based on paragraph 1.8 of the *Guide for Members of the Executive of 2019*.
- 6.1.15.6 It was further submitted that it is not an uncommon practice that Principals often give *lifts* to other persons travelling in the same direction as the Principal in addition to the number of persons stated when the air transport was requested.
- 6.1.15.7 It was further submitted that the provisions of section 80(3) of the Defence Act do not apply in this instance on the basis that the requisition for air transport was requested and processed in accordance with *Cabinet Memorandum No 2 of 1994* in conjunction with the *Guide for Members of the Executive of 2019* and not in terms of the Defence Act.

- 6.1.16 The Department of Defence later submitted documentation outlining the processes that are in place in relation to the provision of air transport to the Principals. The documentation that are pertinent to the investigation of this matter are discussed in paragraphs below as follows:
- 6.1.17 Copy of a letter titled *Completion of indemnity forms for civilian passengers utilising military aircrafts signed by the Officer Commanding SA Air Force College, H Maal* dated August 2021 states amongst others that:
- 6.1.17.1 All civilian passengers not in the employment of the Department of Defence must have approval from the Chief of Logistics to travel on board a military aircraft as per policy guidelines.
- 6.1.17.2 Civilian passengers travelling on board a military aircraft must complete Indemnity Forms during check-in process, however the completion of Indemnity Forms during the check-in process is not mandatory with reference to VVIP flights tasked by the Air Force Command Post or VVIP Unit transporting the President, Deputy President of the Republic, the Minister and Deputy Minister of Defence as well as the Secretary for Defence.
- 6.1.17.3 Flight tasking (requisition) should indicate the Principal and the number of passengers travelling with the Principal. The names of the passengers travelling with the Principal are never included as tasking of aircrafts is subject to change at short notice.
- 6.1.17.4 It has been a standard practice that the passenger list is compiled and finalised during the checking-in process by the Personal Assistant of the respective Principal with support from the respective security service personnel.

6.1.17.5 Copy of *South African Air Force Passenger List* dated 8 September 2020 reflects that there were eleven (11) passengers travelling in the Falcon 900 with a crew of four (4).

6.1.17.6 Copy of the *Trans Mission Order Request* reflects that the flight tasking was requested by Mrs Mapisa-Nqakula on 8 September 2020.

6.1.17.7 Copy of *Costing of flight against repayment over period 08 to 09 September 2020: Tasking Serial No: WK02150365* of September 2020 shows the cost of the flight incurred by Mrs Mapisa-Nqakula with a delegation of 10 passengers against payment as follows:

(a) Tariff per flying Hour for F900: R61,916.00 x 2.7 hours = R167,173,20;

(b) Fuel consumption per flying hour for F900: 1,500 litres per hour x R16.00 per litre = R64, 800.00;

(c) Total flying hours and fuel cost: R167,173.20 + R64, 800.00 = **R231, 973.20**

6.1.17.8 The cost of on board refreshments amounted to **R15 558.00** as recorded in the copy of *Request for Official Price Quotation* dated 7 September 2020.

6.1.17.9 Copy of *Cabinet Memorandum No: 2/94: Use of Military Air Transport by Political Office Bearers, Senior Government Officials and Departments* provides amongst others that:

a) The direct costs incurred by the South African Air Force (SAAF) for the provision of non-scheduled air transport that is provided to

political office bearers is recovered from the user departments as approved by National Treasury<sup>2</sup>.

- b) The provision of air transport is based on factors such as the time when the flight is scheduled, does not promote efficiency, or when the services of commercial airlines to unscheduled destinations are not readily available or cost effective<sup>3</sup>.
- c) Air transport provided by the SAAF to other government departments cannot be used by Ministers and Deputy Ministers to attend party political appointments, unless it will enable the incumbent to attend an important official appointment prior to or after the party-political appointment<sup>4</sup>.

6.1.18 Having considered the response from the Department of Defence and the evidence presented, the following came to the fore:

6.1.18.1 Mrs Mapisa-Nqakula mentioned in her request for air transport that her delegation consisted of four (4) persons, however on the date and time of departure the number of her delegation was increased by six (6) persons consisting of the ANC members whom she invited to join her flight to Harare, Zimbabwe.

6.1.18.2 All civilian passengers not in the employment of the Department of Defence must have approval from the Chief of Logistics to travel on board a military aircraft as per policy guidelines, however the additional six passengers (6) consisting of the ANC members were not approved to travel in the aircraft as their names were not included in the submission requesting air transport that was submitted to the Secretary for Defence.

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<sup>2</sup> Paragraph 2.2 of Cabinet Memo Number 2 of 1994.

<sup>3</sup> Paragraph 3.4.4 of Cabinet Memo Number 2 of 1994.

<sup>4</sup> Paragraph 3.4.12 of Cabinet Memo Number 2 of 1994.

6.1.18.3 Neither the Department of Defence nor the Air Force Crew had control over the additional number of passengers that the Principal invited to join her in the flight that was handled by the Personal Assistant of Mrs Mapisa-Nqakula.

6.1.18.4 The Department of Defence concurs with Mrs Mapisa-Nqakula that it is a common practice that Principals give *lifts* to other people who would be travelling in the same direction as the Principal as reflected in Mrs Mapisa-Nqakula's response to President Ramaphosa in which she stated amongst others that:

*“As to the ferrying of additional persons on the same aircraft, I am not aware of any prohibition on doing such or specific permission that ought to be sought as it is a regular occurrence in the use of SAAF aircraft to provide for the ferrying of business persons or the like if all are travelling in the same direction as the flight being used for official Government purposes”.*

*The Completion of indemnity forms for civilian passengers utilising military aircrafts signed by the Officer Commanding SA Air Force College, H Maal dated August 2020 was a proposal and there is no indication that it was approved.*

*Response by the Department of Home Affairs:*

6.1.19 The then Acting Director-General, Department of Home Affairs, Mr Jacky McKay (Mr McKay) was requested to provide a travel record of the persons who departed from the Waterkloof Air force Base travelling with Mrs Mapisa-Nqakula to determine compliance with the relevant provisions of the Immigration Act as well as the relevant Regulations of the Disaster Management Act under COVID-19 Alert Level 2.

- 6.1.19.1 In his response dated 13 October 2020, Mr McKay submitted a travel record of persons who travelled with Mrs Mapisa-Nqakula which included the names of the ANC delegation.
- 6.1.19.2 Their departure from and entry into South Africa was accordingly recorded in compliance with the Immigration Act and all persons were in possession of valid passports as reflected from the travel record submitted by Mr McKay and they departed from a designated port of entry.
- 6.1.19.3 In a sworn affidavit deposed by Ms Rika Anker, Chief Director: Port Control, it was submitted that the Department of Home Affairs Ports of Entry Directorate operates on a call-out model for the provision of immigration services at Waterkloof Air Force Base (WAFB). A call was received on 7 September 2020 from Corporal Mabotja of the WAFB Operational Commander requesting immigration services for the flight scheduled to depart on 8 September 2020.
- 6.1.19.4 The Department of Home Affairs responded to the request for immigration services and the services were rendered as per the normal practice on the date of departure and date of entry as reflected in the travel records of the travellers.

*Response by the ANC delegation:*

- 6.1.20 The ANC was informed of the investigation relating to its members having travelled to and from Harare, Zimbabwe together with Mrs Mapisa-Nqakula in a SANDF aircraft. In the response signed by Mr Krish Naidoo, Legal Advisor for the ANC it is submitted amongst others that:

- 6.1.20.1 Mr Magashule would depose to the main affidavit and the other members of the ANC delegation would depose to the confirmatory affidavits. In the affidavit deposed by Mr Magashule dated 29 October 2020 it is submitted amongst others that:
- 6.1.20.2 During the ANC meeting held on 28 and 30 August 2020, it was resolved to send a NEC delegation to Zimbabwe for greater party to party interaction between the ANC and Zanu-PF with the intention to develop a full understanding of the situation and determine how the ANC and the government could assist.
- 6.1.20.3 President Ramaphosa, Mrs Mapisa-Nqakula, Mr Tony Yengeni, Ms Lindiwe Zulu, Ms Nomvula Mokonyane, Mr Dakota Legoete and Mr Enoch Godongwana were amongst the people present in the meeting and supported the decision.
- 6.1.20.4 Normal international travel under Lockdown Alert Level 2 made it impossible for the NEC members to travel to and from Harare, Zimbabwe and engage on the situation. The travel to Harare, Zimbabwe by the NEC members together with Ms Mapisa-Nqakula was one of convenience as all land borders were closed. It is further submitted that:

*“In the haste to rally to the support of Zanu-PF and the government and people of Zimbabwe, the need to ensure compliance with the necessary permissions and protocols, including the fall-out from travelling together the conduct of the ANC was not wilful and there was no intention to contravene the Defence Act or the lockdown regulations. The ANC has since humbled itself and admitted that the delegation travelled in an unusual manner and, as a consequence, undertook to reimburse government for the costs which has been calculated to be **R105 545, 00**. The organisation issued public statement to this effect on 15 September 2020 and the amount was paid on 30 September 2020”.*

- 6.1.21 Subsequent to the receipt of the response from the ANC, a meeting was held between the Public Protector and the ANC delegation that travelled to and from Harare, Zimbabwe in a SANDF aircraft. The meeting was held on 24 November 2020 and present at the meeting were Mr Magashule, Ms Lindiwe Zulu, Ms Nomvula Mokonyane, Mr Dakota Legoete and Mr Enoch Godongwana. Mr Tony Yengeni was not present and a meeting with him was later held on 18 December 2020.
- 6.1.22 In the meeting held on 24 November 2020 the following issues came to the fore:
- 6.1.22.1 The resolution taken by the ANC to despatch members of the NEC was known to all present in the meeting including President Ramaphosa, however, the logistics on how the NEC members will be travelling to and from Harare, Zimbabwe were not discussed.
- 6.1.22.2 The ANC delegation submitted that they received information on 8 September 2020 relating to the travel to Harare, Zimbabwe through the office of the Secretary General requesting them to converge at Waterkloof Air Force Base for departure to Harare, Zimbabwe.
- 6.1.22.3 They completed some forms at the Waterkloof Air Force Base prior to their departure and upon entry. They underwent isolation in compliance with the Covid-19 regulations upon their return from Harare, Zimbabwe.
- 6.1.22.4 Upon returning from Zimbabwe the ANC took a decision to reimburse the state for the cost of ferrying its members in a SANDF aircraft and the money was already paid to the Department of Defence.
- 6.1.22.5 It was also submitted that giving *lifts* to members of business community in air transport provided by the SANDF is a common practice in government.

6.1.23 In the meeting held between the Public Protector and Mr Tony Yengeni on 18 December 2020, he submitted amongst others that:

6.1.23.1 During the NEC meeting held 28 and 30 August 2020 it was resolved to send NEC members to Harare, Zimbabwe and engage with Zanu-PF members on the issues affecting the respective sister political parties.

6.1.23.2 There was no decision on the logistics for the intended travel, however, Mrs Mapisa-Nqakula assured President Ramaphosa that it would not be improper to travel to and from Harare, Zimbabwe on a SANDF air transport.

6.1.24 Having considered the submissions by the ANC delegation and deliberations of the meetings held with the Public Protector it is established that:

6.1.24.1 The ANC delegation was invited by Mrs Mapisa-Nqakula to travel with her in a SANDF aircraft to and from Harare, Zimbabwe;

a) The *giving of lifts* in SANDF aircraft by the Principals to other persons appears to be a prevalent practice as it was confirmed in the responses from Mrs Mapisa-Nqakula, the Department of Defence officials and the ANC delegation.

b) Although the ANC took a decision to send a delegation to meet with Zanu-PF officials, the logistics were not discussed, however, it was not submitted by the ANC delegation how the Zanu-PF was informed about the intention to meet and discuss issues pertinent to the two political parties prior to departure.

c) The submission by Mr Tony Yengeni that Mrs Mapisa-Nqakula made an assurance that it would not be improper to ferry the ANC delegation to and from Harare, Zimbabwe in a SANDF aircraft was neither substantiated by evidence nor corroborated by the other

ANC delegates who held a meeting with the Public Protector on 24 November 2020. Mrs Mapisa-Nqakula denied in her response that she ever made such an assurance to either the ANC or President Ramaphosa.

Application of the relevant law and prescripts

6.1.25 **The Constitution 1996 provides as follows:**

6.1.25.1 Section 96 of the Constitution provides as follows in relation to the conduct of Cabinet members and Deputy Ministers:

- (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.*

6.1.25.2 Considering the above provisions of the Constitution 1996 the Public Protector is of the view that Mrs Mapisa-Nqakula used her position as the then Minister of Defence and Military Veterans to ferry the ANC delegation in SANDF aircraft to and from Harare, Zimbabwe and she did not deny that she ferried the ANC delegation to and from Harare, Zimbabwe in an SANDF aircraft.

6.1.25.3 In the meeting held between the Public Protector and the ANC delegation on 24 November 2020 as well as according to the information contained in the sworn affidavit of Mr Magashule, it was further submitted that as international commercial flights were not available and land borders

having been closed, travelling with Mrs Mapisa-Nqakula in a SANDF aircraft was convenient under the circumstances.

6.1.26 Having considered the evidence above, it can be concluded that Mrs Mapisa-Nqakula used her position and information at her disposal to improperly benefit the ANC and its delegation that travelled with her to and from Harare, Zimbabwe on 8 to 9 September 2020.

6.1.26.1 The conduct of Mrs Mapisa-Nqakula of travelling with the ANC delegation in SANDF aircraft that was meant to transport herself and four (4) staff members of her Ministry was inconsistent with her office as the then Minister of Defence who had many years of experience in that portfolio. Her contention that it was a regular occurrence to *give lifts* in air transport provided by the SANDF does not make it an ethical or an acceptable practice or conduct.

6.1.27 **The Defence Act 2002 [Act No. 42 of 2002]**

6.1.27.1 Section 80(3) of the Act provides as follows:

(a) *If it is in the public interest, or in the case of an emergency, the Minister, after consultation with the Minister of Finance, may authorise-*

(i) *the conveyance of any person who is not an officer or employee of the State acting in the execution of his or her duty as such, or any goods belonging to such person, by means of any vehicle, aircraft or vessel belonging to the Department; or*

(ii) *the use of any vehicle, aircraft, vessel, equipment, facility or any other property belonging to the Department, by any person who is not an officer or employee of the State acting in the execution of his or her duty as such.*

*(b) Any authorisation contemplated in paragraph (a) may be made subject to such conditions as the Minister may determine.*

6.1.27.2 The evidence reveals that the approval of the Minister's travel was granted according to the Memorandum to the President in line with the Ministerial Handbook. The Public Protector is therefore of the view that section 80(3) of the Defence Act does not apply in this instance as contented by the Complainants.

6.1.28 **Chapter 7 of Guide for Members of the Executive of 20 November 2019** provides as follows with regard to provision of air transport to Ministers and Deputy Ministers:

*1.1 Members<sup>5</sup> may use South African Air Force aircraft for official purposes at the cost of the relevant Department<sup>6</sup>, when available and under the following circumstances:*

- (a) If there are time constraints in reaching the destination by vehicle or scheduled commercial flight due to other official duties;*
- (b) If the safety of passengers so demands;*
- (c) If the facilities of commercial airlines are not cost-effective and/or readily available in the specific instance; and*
- (d) For health reasons.*

*1.2 Air transport provided by the South African Air Force or any other Government Department may not be used by Members for party political engagements, unless such transport enables the Member concerned to fulfil important official<sup>7</sup> engagements before or after the party political engagements.*

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<sup>5</sup> “**Member/s**” means a National Member or a Provincial Member.

<sup>6</sup> “**Department**” means, in respect of a Minister, Premier, Deputy Minister or Member of the Executive Council (MEC), the relevant department listed in the Schedules 1, 2 and 3 of the Public Service Act, 1994.

<sup>7</sup> “**Official**” means in the course and scope of the duties of the Member executing their powers and functions as assigned by the relevant authority.

1.7 *All applications have to be confirmed in writing and the following details have to be furnished.*

- (a) Date(s) of flight(s);*
- (b) Name(s) of passenger(s);*
- (c) Flight plans*
- (d) Refreshments required;*
- (e) Any other particulars that may influence the choice of aircraft, for example, time of arrival and the mass and volume of luggage, to enable the South African Air Force to provide the most economical aircraft. The application should indicate whether the crew of the aircraft should arrange their own overnight accommodation.*

1.8 *Flights by an aircraft of the South African Air Force are undertaken at the expense of the relevant Department. Only the direct costs of flight will be claimed from the relevant Department.*

6.1.28.1 Having considered the above provisions of the *Guide for Members of the Executive* and the evidence obtained during the investigation, it is established that:

6.1.28.2 A request was made to the Secretary for Defence for the provision of the air transport to travel to and from Harare as reflected in the submission titled *MOD's Official Visit to Zimbabwe: 8<sup>th</sup>-10<sup>th</sup> September 2020*.

6.1.28.3 It is public knowledge that international commercial air transport for leisure was prohibited under COVID-19 Alert Level 2 Regulations. Mrs Mapisa-Nqakula as a Member of Cabinet was entitled to use non-commercial air transport for official purposes depending on the availability of the aircraft. In this regard, the aircraft was made available to her by the SANDF for the travel.

- 6.1.28.4 In Chapter 6 of the *Guide for Members of the Executive* it is provided that a requisition for air transport must be made at least two weeks prior to departure and the Department of International Relations and Cooperation must also be informed at least two weeks prior to departure in case of travel arrangements by a commercial flight. However, with regard to non-commercial air transport the *Guide for Members of the Executive* is silent on this aspect. In the response from the Presidency it is conceded that the request for travel was not received at least two weeks prior to the scheduled travel, however this practice was said to be common in government.
- 6.1.28.5 The *Guide for Members of the Executive* requires amongst others that names of passengers be provided to the SAAF in relation to requisition of the air transport and Mrs Mapisa-Nqakula provided the names of the persons accompanying her as reflected in the submission *MOD's Official Visit to Zimbabwe: 8<sup>th</sup>-10<sup>th</sup> September 2020*.
- 6.1.28.6 The *Guide for Members of the Executive* is also silent on how costs are to be recovered from non-government institutions or organisations for utilising the same flight that is being used to ferry a Member/Principal as was the case in this investigation. The ANC is not a government department and its members travelled together with a Member/Principal and they were required to reimburse the SANDF on a scale as if the ANC was a department as reflected in the document titled *Costing of Flight Against Repayment Over Period 08 to 09 September 2020: Tasking Serial No: WK02150365* of September 2020, as there is no other guide for such payment.
- 6.2 **Regarding whether the Department of Defence and Military Veterans suffered financial prejudice as a result of Mrs Mapisa-Nqakula's conduct of ferrying the ANC delegation to and from Zimbabwe in an SANDF aircraft and if so, whether such conduct was improper and constitutes maladministration, unlawful**

**enrichment or receipt of improper advantage by a person as a result of an act or omission in the public administration as envisaged in section 182(1) of the Constitution and section 6(4) of the Public Protector Act.**

Common cause

- 6.2.1 In her request for permission to travel to Zimbabwe Mrs Mapisa-Nqakula stated that she would be accompanied by four (4) staff members of her Ministry as reflected in the submission titled *MOD's Official Visit to Zimbabwe: 8<sup>th</sup>-10<sup>th</sup> September 2020 (Departmental Request)* dated 7 September 2020.
- 6.2.2 On the date of departure, a total of six (6) members of the ANC delegation joined Ms Mapisa-Nqakula in the SANDF aircraft as reflected in the *Passenger List and Travel Records* obtained from the Department of Home Affairs, *Sworn Affidavits* from Mrs Mapisa-Nqakula and Mr Magashule as well as *Confirmatory Affidavits* from other members of the ANC delegation that travelled in the same SANDF aircraft.

Issue in dispute

- 6.2.3 The Public Protector must determine whether the Department of Defence suffered financial prejudice as a result of Mrs Mapisa-Nqakula's conduct of ferrying the ANC delegation to and from Harare, Zimbabwe in the SANDF aircraft that was approved to transport herself and her staff only and whether the ANC improperly or unduly benefited from the ferrying of its delegation to and from Harare, Zimbabwe in SANDF aircraft at the state's expense; and whether the amount paid by the ANC to the Department of Defence was just, fair and appropriately determined.

*Response by Mrs Mapisa-Nqakula*

- 6.2.4 In her response dated 29 October 2020 in the form of a sworn affidavit Mrs Mapisa-Nqakula stated amongst others that:
- 6.2.4.1 Her travel to and from Harare, Zimbabwe for a bi-lateral meeting with Mrs Muchinguri-Kashiri was approved by President Ramaphosa as reflected in *President Act No. 108 of 2020* and the costs to be incurred by her flight would remain the same whether it was only herself in the aircraft or the ANC delegation joined her for the trip.
- 6.2.4.2 Upon returning to South Africa, the top structure of the ANC met and offered to reimburse the Department of Defence the costs incurred for ferrying the ANC delegation in a SANDF aircraft to and from Harare, Zimbabwe.
- 6.2.4.3 The ANC was invoiced an amount of **R105, 845.46** as reflected in the *Invoice* dated 21 September 2020 and the amount was paid in full as shown in the *Notification of Payment* dated 30 September 2021. The cost was determined using the model prescribed in paragraph 1.8 of the *Guide for Members of the Executive of 2019*.
- 6.2.5 In response to the *subpoena* dated 5 May 2021, Mrs Mapisa-Nqakula stated amongst other that:
- 6.2.5.1 She did not request authority to transport the ANC delegation to and from Harare, Zimbabwe and President Ramaphosa did not grant her authority to transport them. She submitted two reports dated 12 and 22 September 2020 to President Ramaphosa relating to her trip to and from Harare, Zimbabwe and the transportation of the ANC delegation using SANDF aircraft.

6.2.5.2 President Ramaphosa considered the two submissions and concluded that:

- a) She violated sections 2.1(c) and 2.3(c) of the Executive Members Code, 2000;
- b) It was not justified for her to ferry the ANC delegation to and from Harare, Zimbabwe in SANDF aircraft.
- c) State resources were inappropriately used to the benefit of a political party;
- d) She failed to comply with the legal prescripts warranting care in use of state resources; and
- e) She was to ensure that the ANC reimburses the state for the cost incurred in ferrying its delegation to and from Harare, Zimbabwe in a SANDF aircraft.

6.2.6 The copy of unsigned *Costing of Flight Against Repayment Over Period 08 to 09 September 2020: Tasking Serial No: WK02150365* of September 2020 sets out the costs incurred by Ms Mapisa-Nqakula with a delegation of 10 passengers against payment as follows:

- (e) Tariff per flying Hour for F900: R61.916.00 x 2.7 hours = R167,173,20;
- (f) Fuel consumption per flying hour for F900: 1,500 litres per hour x R16.00 per litre = R64, 800.00;
- (g) Total flying hours and fuel cost: R167,173.20 + R64, 800.00 = **R231, 973.20**

6.2.7 The *Minister of Defence and Military Veterans' Supplementary Report to the President and Commander-in-Chief, HE, Cyril Matamela Ramaphosa on the Zimbabwe Trip 08<sup>th</sup> and 09<sup>th</sup> September 2020* signed by Mrs Mapisa-Nqakula on 22 September 2020 states that the *-total due by the ANC delegation was **R105, 545.46.***

6.2.8 The copy of *MOD's Official Visit to Zimbabwe: 8<sup>th</sup>-10<sup>th</sup> September 2020* signed by Mrs Mapisa-Nqakula on 7 September 2020 states amongst others the following:

6.2.8.1 Paragraph 4 sets out the financial implications of the trip to Harare, Zimbabwe as reflected in the table below:

*"The estimated cost for the visit is **R33 280.00** which includes accommodation, airport transfers and ground transport as well as travel & subsistence allowance".*

<b>Item/product</b>	<b>Estimated Cost</b>
Hotel Accommodation for Ms Mapisa-Nqakula, Personal Assistant and Close Protector	R21 664.00
Transport at destination for 1 x SUV and 1x Sedan	R5 934.00
Daily allowances for Ms Mapisa-Nqakula, Personal Assistant and Close Protector.	R5 782,00
<b>Total Expenditure</b>	<b>R33 280.00</b>

6.2.8.2 It is to be noted that the cost reflected in the above table excludes costs of on board refreshment which amounted to **R15 558.00** as reflected in the copy of *Request for Official Price Quotation* dated 7 September 2020.

6.2.9 Considering the above responses from Mrs Mapisa-Nqakula and the evidence presented it is established that:

6.2.9.1 The assertion that the cost of air travel using a SANDF aircraft to and from Harare, Zimbabwe would have remained the same regardless of the number passengers is not correct and sustainable. The cost factor could not be a justification for Mrs Mapisa-Nqakula to ferry political party members for a meeting of a political nature on basis that the cost would remain the same.

6.2.9.2 Further, the cost that she is referring to, did not benefit the state rather it was an expenditure to the state and a benefit to the ANC.

6.2.9.3 The *Guide for Members of the Executive 2019* provides for a Member to travel on air transport provided by the SANDF to attend party political engagements which coincide with his or her official meetings, however the provision does not provide a Member with a discretion that she/he can exercise and invite political party members to travel with her/him on the basis that they are to attend the same party political meeting prior to or after her/his official engagements, or that when the cost of the air travel remains the same.

6.2.9.4 President Ramaphosa directed Mrs Mapisa-Nqakula to ensure that the state is reimbursed for the air transport cost incurred ferrying the ANC delegation. The letter from the President to the Minister dated 25 September 2020 further stated, amongst others, that:

- a) *State resources were inappropriately used to the benefit of a political party; and*
- b) *She failed to comply with the legal prescripts warranting care in use of state resources.*

6.2.9.5 The Public Protector concurs with the conclusion of President Ramaphosa that former Minister Mapisa-Nqakula's *error of judgment, is not in keeping with her responsibilities as a Minister of Cabinet*. Further that she did *not "act...in the best interest of good governance "as required by section 2.1(c) of the Executive Members Code, 2000 ("the Code")*.

6.2.9.6 Mrs Mapisa-Nqakula had a duty to ensure that state resources are used only for the advancement of state interests and a person in her position should be alive to this reality and must exercise due care . Any failure to do that, may constitute an infringement or a breach of certain legislation within the administration of state affairs.

#### 6.2.10 **Application of the relevant law and prescripts**

##### 6.2.10.1 **Public Finance Management Act of 1999**

Section 38 of the Act provides as follows:

(1) *The accounting officer for a department, trading entity or constitutional institution—*

*...;*

(c) *must take effective and appropriate steps to-*

*(i) collect all money due to the department, trading entity or constitutional institution;*

6.2.10.2 While the functionaries of the Department of Defence billed the ANC an amount of R105 545.46 for the cost of transporting its delegation to and from Harare, Zimbabwe, the amount was determined using calculation applicable to a government department, because there was no alternative guide.

**6.3 Notice in terms of section 7(9) of the Public Protector Act**

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

6.3.2 In view of the above provisions of the Public Protector Act, a notice dated 27 April 2022 was served on President Ramaphosa, Speaker of the National Assembly, Mrs Mapisa-Nqakula, Minister of Defence and Military Veterans, Ms Thandi Modise, Secretary for Defence, Ms Gladys Kudjoe and the Acting Secretary General of the African National Congress, Mr Paul Mashatile. The recipients of the notice were requested to respond to the preliminary adverse findings and intended remedial action reflected in the notice within ten (10) days of receipt and prior to the finalisation of the investigation and issuance of the report. The responses received in connection to the notice are discussed below as follows:

*Response from the Presidency*

6.3.3 A response dated 1 June 2022 was received from Mrs Phindile Baleni the Director-General and Secretary of the Cabinet in the Presidency stating amongst others that the Presidency has taken cognisance and consideration to the intended remedial action directed at the President and its implementation, however the *Guide for Members of the Executive* is a Cabinet documentation and its amendment has to be processed through by the Cabinet Minister responsible for Public Service and Administration who is also responsible for the administration of the *Guide for Members of the Executive*.

- 6.3.4 It is further stated that considering the Cabinet process and consultation that needs to be effected in order to implement the proposed remedial action which required an implementation within a period of ninety (90) days of receiving the final report, it is submitted that the Public Protector consider extending the proposed implementation period to a period of at least six (6) months.
- 6.3.5 Considering the above response from Mrs Phindile Baleni it is worth to submit that:
- 6.3.5.1 Although the notice was addressed to President Ramaphosa the response was received from and signed by Mrs Phindile Baleni in her capacity as the Director-General and Secretary for the Cabinet in the Presidency and there is neither objection nor contestation of the findings and or remedial action taken by the Public Protector. In other words, President Ramaphosa concurs with the findings and remedial action of the Public Protector therefore it is reasonably expected that the remedial action will be implemented;
- 6.3.5.2 Cognisance has since been made that this provision is provided for in the *Guide for the Members of the Executive*, however it has not been complied with. It is the compliance thereof that needs to be directed.

*Response by Mrs Mapisa-Nqakula*

- 6.3.6 In her response dated 5 May 2022, Mrs Nosiviwe Mapisa-Nqakula stated amongst others that she has noted and accepted the findings in the notice that no remedial action be taken against her as she was already sanctioned by the President for her conduct.

*Response by Minister of Defence and Military Veterans*

- 6.3.7 In her response dated 3 June 2022 the Minister of Defence and Military Veterans, Ms Thandi Modise stated that instructions were given to the Secretary for Defence to act upon the findings in the notice which included the initiation of a process to review transport policies to effect better control and restriction on the usage by non-DoD and/or non-government organisations and individuals. The Secretary for Defence was further directed to tighten the standard working procedures to ensure good governance of the South African National Defence Force ports of entry under the command and control of the South African Air Force.
- 6.3.8 It was further submitted that the Secretary for Defence has already recouped the monies from the ANC and further steps will be taken and reported back to the Public Protector should it be deemed necessary.
- 6.3.9 No responses were received from the Secretary for Defence, Ms Gladys Kudjoe and Acting Secretary General of the African National Congress, Mr Paul Mashatile despite having been served with the notice and reminders sent to their respective offices.
- 6.3.10 A letter was prepared and forwarded the Acting Director-General of the National Treasury requesting assistance in determining whether the formula used by the Department of Defence and Military Veterans was appropriate under the circumstance to determine the total amount due by the ANC. No response was received in this regard.

## **7. FINDINGS**

- 7.1 **Regarding whether the former Minister of Defence and Military Veterans, Mrs Mapisa-Nqakula, ferried the ANC delegation to and from Harare, Zimbabwe in an SANDF aircraft in violation of applicable legal prescripts and if so, whether such conduct was**

**improper and constitutes maladministration as envisaged in section 182(1) of the Constitution and section 6(4) of the Public Protector Act.**

- 7.1.1 The allegation that the former Minister of Defence and Military Veterans, Ms Mapisa-Nqakula ferried the ANC delegation to and from Harare, Zimbabwe in an SANDF aircraft in violation of applicable legal prescripts is substantiated.
- 7.1.2 Mrs Mapisa-Nqakula departed South Africa together with a total of six (6) members of the ANC delegation on an SANDF aircraft from the Waterkloof Air Force Base on 8 September 2020 and returned to South Africa through Waterkloof Air Force Base with the same ANC delegation on 9 September 2020.
- 7.1.3 Mrs Mapisa-Nqakula neither had the authority nor permission to ferry the ANC delegation in an SANDF aircraft that was approved to transport herself and her staff to and from Harare, Zimbabwe for an official meeting with her counterpart Mrs Muchinguri-Kashiri as approved by President Ramaphosa as reflected in the submission dated 7 September 2020, titled “MOD’S Official Visit to Zimbabwe: 8th -10th September 2020” (Presidential Request) as well as reflected in the submission dated 7 September 2020, titled “MOD’S Official Visit to Zimbabwe: 8th -10th September 2020” (Departmental Request).
- 7.1.4 Neither the Cabinet Memorandum of 1994 nor the Guide for Members of the Executive of 2019 makes provision for Principals to ferry or give lifts to other persons on the same aircraft who are not in the approved request for air transport submitted to the Secretary for Defence.

7.1.5 The conduct of Mrs Mapisa-Nqakula of ferrying the ANC delegation to and from Harare, Zimbabwe in an SANDF aircraft was in breach of section 96(1)(c) of the Constitution, in a sense that state resources were inappropriately used to improperly benefit a political party.

7.1.6 In view of the above, the conduct of Mrs Mapisa-Nqakula constitutes improper conduct as envisaged in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

**7.2 Regarding whether the Department of Defence and Military Veterans suffered financial prejudice as a result of Mrs Mapisa-Nqakula's conduct of ferrying the ANC delegation to and from Zimbabwe in an SANDF aircraft and if so, whether such conduct was improper and constitutes maladministration, unlawful enrichment or receipt of improper advantage by a person as a result of an act or omission in the public administration as envisaged in section 182(1) of the Constitution and section 6(4) of the Public Protector Act.**

7.2.1 The allegation that the Department of Defence and Military Veterans suffered financial prejudice as a result of Mrs Mapisa-Nqakula's conduct of ferrying the ANC delegation to and from Zimbabwe in an SANDF aircraft is substantiated.

7.2.2 There were travel financial costs incurred by the state as a result of the trip to and from Harare, Zimbabwe including incidental expenses such as on-board refreshments that were served to all passengers including the ANC delegation.

7.2.3 According to the Request for Official Price Quotation dated 7 September 2020 in possession of the Public Protector, the total flying hours and the fuel costs in connection with this trip amounted to R231, 973.20 (two hundred and thirty one thousand, nine hundred and seventy three rand,

twenty cents) The cost of on-board refreshments amounted to R15 558.00 (Fifteen thousand, five hundred and fifty eight rand only).

7.2.4 The Department of Defence and Military Veterans calculated the amount due by the ANC using paragraph 1.8 of the Guide for Members of the Executive of 2019, which amounted to R105 545.46 (One hundred and five thousand, five hundred and forty five rand forty six cents). On 30 September 2020 the ANC reimbursed the Department of Defence and Military Veterans the said amount for the costs incurred for their delegation.

7.2.5 In view of the above, Mrs Mapisa-Nqakula's conduct of ferrying or giving lift to the ANC delegation on the SANDF aircraft, constituted an improper advantage and/or unlawful enrichment to the ANC as envisaged in terms of section 6(4)(a)(iv) of the Public Protector Act.

## **8. REMEDIAL ACTION**

8.1 In terms of the Constitutional Court Judgement in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and others; Democratic Alliance v Speaker of the National Assembly and others [2016] ZACC 11*, and in order to ensure the effectiveness of the Public Protector South Africa, the remedial action taken in this report are legally binding unless a court directs otherwise.

8.2 The appropriate remedial action taken as contemplated in section 182(1)(c) of the Constitution with a view to remedy the improper conduct and maladministration referred to above is as follows:

### **The President of the Republic of South Africa must:**

8.2.1 Within 30 days of receipt of this report give an instruction for the issuance of a directive for compliance with the Ministerial Handbook in terms of

section 85(2) of the Constitution to handle the practice of giving lifts to ensure that Cabinet Members and Deputy Ministers act within the confines of section 92(3)(a) of the Constitution at all times when dealing with state resources.

8.2.2 No remedial action is taken against Mrs Mapisa-Nqakula as President Ramaphosa already admonished her and directed that her salary for three (3) months be forfeited to the Solidarity Fund.

8.2.3 No remedial action is being taken in respect of the recovery of the cost of the trip from the ANC as they have already paid the amount determined.

## **9 MONITORING**

9.1 The President of the Republic of South Africa must provide written confirmation to the Public Protector within thirty (30) days from the date of receipt of this report indicating that the directive as per paragraph 8 has been issued or complied with.



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**ADV. KHOLEKA GCALEKA**  
**ACTING PUBLIC PROTECTOR OF**  
**THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 30 SEPTEMBER 2022**

*Assisted by: Mr Mulao Lamula*  
*Provincial Representative of the Western Cape*