

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



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**INVESTIGATION INTO ALLEGATIONS THAT THE PRESIDENT OF THE
REPUBLIC OF SOUTH AFRICA MR MC RAMAPHOSA ABUSED HIS POWERS
AND STATE RESOURCES WHEN HE USED THE SOUTH AFRICAN NATIONAL
DEFENCE FORCE HELICOPTER TO ATTEND THE AFRICAN NATIONAL
CONGRESS LETSEMA CAMPAIGN HELD IN WELKOM IN 2022**

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS AND ABBREVIATIONS	DESCRIPTIONS
AFCP	Air Force Command Post
ANC	African National Congress
ATR	Air Transport Request
CAF	Chief of the Air Force
CiC	Commander in Chief
CSANDF	Chief of the South African National Defence Force
Constitution	Constitution of the Republic of South Africa, 1996
DG	Director-General
DoD	Department of Defence
Investigation Team	Public Protector's Investigation Team
NSS	National Security Service
PFMA	Public Finance Management Act
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended.
Public Protector	Public Protector of the Republic of South Africa
PUP	Presidential Protection Unit
SAAF	South African Air Force
SAPS	South African Police Service
SACAA	South African Civil Aviation Authority
SANDF	South African National Defence Force
The President	Mr Matamela Cyril Ramaphosa
The Presidency	Office of the President

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 (Constitution) which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice, and section 8(1) of the Public Protector Act, 1994 (Public Protector Act), which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into allegations of abuse of power and state resources by the President of the Republic of South Africa, Mr Matamela Cyril Ramaphosa (the President), when he used the helicopter of the South African National Defence Force (SANDF) to attend the African National Congress (ANC) Letsema campaign held in Welkom on 08 October 2022.
- (iii) The complaint was lodged by Mr Elias Muller (the Complainant) on 20 October 2022. In essence, the Complainant alleged, *inter alia*, that:
 - (a) The media revealed that the President used the SANDF helicopter to attend the ANC Letsema campaign held in Welkom on 08 October 2022. This indicates that the President failed to conduct himself in a manner that is beyond reproach, as required by the Constitution; and
 - (b) The President's irregular conduct is a clear abuse of power and state resources for political party interest and is a violation or contravention of sections 96 and 195 of the Constitution.
- (iv) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

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- (a) Whether President Ramaphosa abused his powers and state resources when he used the SANDF helicopter to attend the ANC Letsema campaign, thereby exposing himself to a situation involving the risk of a conflict between his official responsibilities and private interests in violation of the Constitution, if so, whether such conduct constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution and amounts to abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act.
- (v) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all relevant documents, application of relevant laws and related prescripts.
- (vi) On 29 August 2024, a Notice in terms of Rule 41(1) of the *Rules relating to investigations by the Public Protector and matters incidental thereto, 2018, as amended* (The Public Protector Rules) was issued to the Complainant to afford him an opportunity to respond to the interim findings. The Complainant acknowledged receipt of the Notice on 16 September 2024 and responded by email on 26 September 2024.
- (vii) Having regard to the evidence and regulatory framework determining the standard that should have been complied with, the following findings are made:
- (a) **Whether President Ramaphosa abused his powers and state resources when he used the SANDF helicopter to attend an ANC campaign and thereby exposed himself to a situation involving the risk of a conflict between his official responsibilities and private interests in violation of the Constitution, if so, whether such conduct constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution and abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act**

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- (aa) The allegation that the President abused his powers and state resources when he used the SANDF helicopter to attend an ANC campaign and thereby exposing himself to a situation involving the risk of a conflict between his official responsibilities and private interests in violation of the Constitution, is **not substantiated**.
- (bb) The investigation revealed that the President was transported by the SANDF helicopter to Welkom to attend the ANC Letsema campaign on 08 October 2022, at the cost of the state in line with the Cabinet memorandum, the SAAF Instruction and the Presidential Handbook. Therefore, there is no basis, upon which to conclude that the President violated sections 96 (2)(b) and 195 (1)(a),(b) and (f) of the Constitution, paragraph 3.2 of the Cabinet memorandum, paragraph 6.2, 6.3 and 6.5 of the SAAF Instruction MRI 020034 and the clause 14 of the Presidential Handbook.
- (cc) Accordingly, the conduct of the President does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(ii) of the Public Protector Act.
- (viii) Based on the findings recorded in paragraph (vii) above, the Public Protector will not take remedial action as contemplated in section 182(1)(c) of the Constitution.

1. INTRODUCTION

1.1 This is a closing report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

1.2 The report is submitted to President Matamela Cyril Ramaphosa (the President) in terms of section 8(1) read with section 8(3) of the Public Protector Act and Rule 40(b) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto*, 2018, as amended (Public Protector Rules), which empower the Public Protector to make known the findings of an investigation, to the following affected parties, for such persons to note the outcome of the investigation:

1.2.1 Mr Matamela Cyril Ramaphosa, the President;

1.2.2 Ms Angie Motshekga, the Minister of Defence and Military Veterans; and

1.2.3 The Complainant, Ms Elias Muller.

1.3 The report relates to allegations of abuse of power and state resources by the President of the Republic of South Africa, Mr Matamela Cyril Ramaphosa (the President), when he used the helicopter of the South African National Defence Force (SANDF) to attend the African National Congress (ANC) Letsema campaign held in Welkom on 08 October 2022.

2. THE COMPLAINT

2.1 The complaint was lodged with the Public Protector by Mr Elias Muller (the Complainant) on 20 October 2022. In essence, the Complainant alleged, *inter alia*, that:

- 2.1.1 The media revealed that the President used the SANDF helicopter to attend the ANC Letsema campaign held in Welkom on 08 October 2022. This indicates that the President failed to conduct himself in a manner that is beyond reproach, as required by the Constitution of the Republic of South Africa, 1996 (Constitution); and
- 2.1.2 The President's irregular conduct is a clear abuse of power and state resources for political party interest and is a violation or contravention of sections 96 and 195 of the Constitution.
- 2.2 The Complainant specifically requested the Public Protector to investigate the following:
 - 2.2.1 Whether the President's conduct constitutes abuse of power and state resources for his party's interests;
 - 2.2.2 Whether the President's conduct is in violation or contravention of section 195(1)(a) and (f) of the Constitution; and
 - 2.2.3 Whether the President's conduct is in violation or contravention of section 96 of the Constitution.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.
- 3.2 Section 182(1) of the Constitution provides that:

"The Public Protector has the power, as regulated by national legislation to:

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action”.*

- 3.3 Section 182(2) directs that the Public Protector has the additional powers and functions prescribed by national legislation.
- 3.4 The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.
- 3.5 The President is the Head of State in terms of section 83(a) and (b) of the Constitution and must uphold, defend and respect the Constitution as the supreme law of the Republic. The Presidency, which comprises of, *inter alia*, the President as one of its political principals and Head of State, is responsible for the executive management and co-ordination of Government and to organise governance. Therefore, the Presidency is an organ of state as envisaged in section 239 of the Constitution and the conduct of the functionaries of the Presidency amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to investigate as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(i) and (ii) of the Public Protector Act.

4. ISSUE IDENTIFIED FOR INVESTIGATION

- 4.1 Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

- 4.1.1 Whether President Ramaphosa abused his powers and state resources when he used the SANDF helicopter to attend the ANC Letsema campaign, thereby exposing himself to a situation involving the risk of a conflict between his official responsibilities and private interests in violation of the Constitution, if so, whether such conduct constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution, and amounts to abuse of power as envisaged in section 6(4)(a)(ii) 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, read with 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 the format and procedure to be followed in conducting any investigation with due regard to the circumstances of each case.

5.2 Approach to the investigation

- 5.2.1 The process of investigation involved the exchange of correspondence with the Complainant, the Director General in the Office of the Presidency, the Secretaries of Cabinet and Defence, interviews with the functionaries of the Department of Defence (DoD), including the analysis of the relevant documentation and the consideration and application of relevant laws, regulatory framework and prescripts.

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

- (a) What happened.
- (b) What should have happened.
- (c) Is there a discrepancy between what happened and what should have happened.
- (d) In the event of a violation, what remedial action should be taken.

5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this instance, the factual enquiry principally focused on whether in using the SANDF helicopter to attend an ANC campaign, the President abused his powers and state resources. Furthermore, whether he exposed himself to a situation involving the risk of a conflict between his official responsibilities and private interests.

5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Presidency and the SANDF to prevent the violation of the Constitution, the Presidential Handbook and the Cabinet memorandum.

5.3 Key sources of information

5.3.1 Documents

5.3.1.1 Complaint dated 20 October 2022, from the Complainant and received by the Public Protector on 21 October 2022;

5.3.1.2 Allegations letter from the Public Protector to President Ramaphosa dated 19 April 2023;

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- 5.3.1.3 Allegations letter to the Presidency, dated 21 April 2023;
- 5.3.1.4 Email communication from the Principal State Law Advisor, Mr Mphaphuli to the Public Protector, dated 15 May 2023;
- 5.3.1.5 Email dated 19 May 2023, from Mr Mphaphuli to the Public Protector, with the response and annexures from the Director General and Secretary of the Cabinet, Ms Baleni, dated 18 May 2023 to the allegation letter dated 19 April 2023;
- 5.3.1.6 Allegation letter from the Public Protector to the Acting Secretary for Defence, Dr Gamede, dated 14 May 2024;
- 5.3.1.7 Letter from the Public Protector dated 15 May 2024 to Dr Gamede requesting a meeting;
- 5.3.1.8 Email response from Dr Gamede to the Public Protector dated 04 June 2024, enclosing a response from the Chief of the Air Force, Lt General WS Mbambo and the following annexures:
- (a) Cabinet Memorandum No 2 of 1994;
 - (b) Presidential Handbook;
 - (c) SAAF Instruction, MRI: 020034; and
 - (d) Air Transport Request dated 06 October 2022.
- 5.3.1.9 Rule 41(1) notice of the Public Protector Rules (Notice) dated 29 August 2024, issued to the Complainant, the President and the State Law Advisor;

5.3.1.10 Acknowledgement of receipt of the Rule 41(1) notice from the Complainant, dated 16 September 2024; and

5.3.1.11 Email from the Complainant, dated 26 September 2024, responding to the Rule 41(1) Notice; and

5.4 Legislation and other prescripts

5.4.1 Constitution of the Republic of South Africa, 1996;

5.4.2 Public Protector Act 1994;

5.4.3 South African Defence Act, 42 of 2002;

5.4.4 Presidential Handbook, 2015; and

5.4.5 South African Air Force Instruction MRI 020034.

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

6.1 Whether President Ramaphosa abused his powers and state resources when he used the SANDF helicopter to attend the ANC's Letsema campaign, thereby exposing himself to a situation involving the risk of a conflict between his official responsibilities and private interests in violation of the Constitution, if so, whether such conduct constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution and abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act

Common cause

- 6.1.1 On 08 October 2022, Mr Ramaphosa, in his capacity as the President of the ANC, was transported in a SANDF helicopter to attend an ANC Letsema campaign in Welkom.
- 6.1.2 The Letsema campaign is an initiative of the ANC that is intended to address service delivery issues facing communities.

Issue in dispute

- 6.1.3 The issue for the Public Protector's determination is whether the conduct of the President in utilising the helicopter belonging to the SANDF to attend the ANC Letsema campaign was at variance with the applicable prescripts regulating the usage of state resources by the President when attending his party-political interests.

The Complainant's version

- 6.1.4 The Complainant contended that the conveyance of the President to an ANC Letsema campaign using the SANDF helicopter amounts to an abuse of his powers and state resources.
- 6.1.5 The Complainant further asserted that the President acted in a way that was inconsistent with his office, as required by sections 96 and 195(1)(a) and (f) of the Constitution and/or exposed himself to a situation involving the risk of a conflict between his official responsibilities and private party interests.

Response from Mr Geoffrey Mphaphuli, dated 19 May 2023

6.1.6 The Public Protector raised the allegations with the President through a letter, dated 21 April 2023. On 19 May 2023, Mr Geoffrey Mphaphuli (Mr Mphaphuli), the Principal State Law Adviser in the Presidency submitted a response from the Director-General and Secretary of Cabinet, Ms Phindile Baleni (Ms Baleni), dated 18 May 2023, stating that:

6.1.6.1 The South African Air Force (SAAF) transported the President to Welkom on 08 October 2022 to attend the ANC Letsema campaign, accompanied by his personal assistant, personal protectors and medics. However, the allegation that he abused his powers and state resources is denied based on the following:

- (a) The Presidential Handbook provides guidelines for the administrative, logistical, security and general support services to be rendered by the state to the President, Deputy President, their spouses and dependent children;
- (b) The SAAF is responsible for the air transport of the President, irrespective of the purpose of the travel;
- (c) Furthermore, the South African Police Service (SAPS) is responsible for the protection and security of the President and the mode of transport is informed by the security risk assessment conducted by the security services; and
- (d) The use of the SANDF helicopter was done in accordance with Clause 14 of the Presidential Handbook which provides that:

“14.1 Transport for the President and Deputy President in South Africa is the responsibility, and for the account, of the state;

- 14.2 *Ground transport for the President and Deputy President is for the account of the SAPS in terms of the relevant security planning;*
- 14.3 *The SANDF is responsible for air transport for the President and Deputy who may use SANDF aircraft, or any aircraft chartered by the SANDF for the purpose;*
- 14.4 *The cost of in-flight catering on board aircraft utilised by the President and Deputy President is for the account of the Presidency, except where exigencies dictate otherwise, in which case the costs thereof are borne by SANDF;*
- 14.5 *The President and Deputy President have the prerogative to invite passengers to accompany him or her, on the official aircraft designated for his or her use, provided that there is space to accommodate the additional passenger or passengers in addition to the security, medical and necessary Presidency staff;*
- 14.6 *Each invited guest passenger not employed by the state, shall indemnify for any loss suffered by the passenger due to injury or otherwise;*
- 14.7 *For official purposes private or commercial aircraft may be utilised by the Deputy President only in special circumstances, and after consultation with NSS. For private travel, private or commercial aircraft may be used after consultation with NSS.*
- 14.8 *For official purposes, private aircraft may be utilised by the President only in special circumstances, and after consultation with NSS.”*

Documents received from Ms Baleni

- 6.1.7 In support of her response dated 18 May 2023, Ms Baleni attached the following documents:
- 6.1.7.1 Presidential Handbook, dated November 2015;
- 6.1.7.2 Tasking Confirmation of Flight dated 07 October 2022, showing the routing from Waterkloof Airforce base to Welkom and return; and
- 6.1.7.3 SAAF Passenger list dated 08 October 2022, which reflects the President and six (06) names (inclusive of the name of a person who did not travel on the said date), personal assistants, personal protectors, medical staff and three (03) crew members.

Virtual meeting held with Dr Thobekile Gamede on 04 June 2024

- 6.1.8 The Public Protector's Investigation Team (Investigation Team) wrote a letter dated 14 May 2024, to Dr Thobekile Gamede (Dr Gamede), the Acting Secretary for Defence, requesting a meeting to clarify the role of the Department of Defence (DoD) in the transportation of the President.
- 6.1.9 On 04 June 2024, a virtual meeting was held by the Investigation Team with Dr Gamede and other functionaries from the DoD, including LT-Gen WS Mbambo (Lt Gen Mbambo), the Chief of the South African Air Force (SAAF); and Mr Adam Abotsi, (Mr Abotsi) the Acting Chief Financial Officer. Dr Gamede indicated that:
- 6.1.9.1 The President is the Commander in Chief (CiC) of the SANDF and the Air Travel Request (ATR) by the Presidency is treated as a security matter. The transportation of the President must be done in a way that provides safety, comfort and efficiency. These issues are key to the

SAAF when determining the platform that must be used for his conveyance;

6.1.9.2 The SAAF executes its mandate without questioning the purpose of the President's travel; and

6.1.9.3 The ATR does not make any distinction between private and public engagements, therefore, there is no distinction between the President's use of the service for state or private functions. The SAPS provides security to the President at all times when he travels by air and road. Security cannot be disregarded just because he would be attending a private function. The President's security is of paramount concern as he is required to be protected on a twenty-four-hour (24hr) basis.

6.1.9.4 Lt-Gen Mbambo submitted that:

- (a) The ATR is an instruction, and the mandate of the SAAF is to execute the request by the Presidency to undertake a mission;
- (b) As per the Cabinet Memorandum 2 of 1994 and the Presidential Handbook, there is no legal responsibility or obligation by the Presidency to disclose the purpose of an ATR;
- (c) As part of the process of implementing the tasking from the Office of the Presidency, the Acting Secretary for Defence will normally indicate that the President and two (02) or three (03) persons will require transportation from point A to B and return. The ATR does not include the details of the activity or where the President will be going once he has landed on an airstrip.
- (d) In the event that the SAAF does not have an asset to meet the ATR, alternative proposals are then considered, viz, private chartering and these would be submitted to the requestor; and

- (e) The security and safety of the President is of paramount importance and as Head of State, it is impractical to separate his public and private obligations for the provision of safety and security, which is provided to him 24 hours throughout the year.

6.1.9.5 Mr Abotsi submitted the following in response to the applicability of the Public Finance Management Act, 1999 (PFMA) with regard to the use of state resources by the President when he attends private functions:

- (a) As per the mandate of the SAAF and the SAPS, the ATR is required to be implemented without reservation. There is no consideration of violation of the PFMA because the ATR does not contain the details of the trip, including whether the President is attending a private or an official function; and
- (b) There is currently no policy requesting the SAAF to distinguish between the private and official travels of the President and/or to determine whether the ATR is compliant with the PFMA. Until there is a policy requiring the SAAF to apply the PFMA and enjoin them to avoid irregular expenditure related thereto, they can only operate within the current policy framework. Dr Gamede also echoed similar sentiments.

Response received from Dr Gamede, dated 04 June 2024

6.1.10 On 04 June 2024, Dr Gamede responded to the issues raised by the Public Protector by attaching a letter from Lt Gen WS Mbambo dated 23 May 2024, indicating, *inter alia*, that:

6.1.10.1 The SAAF has no authority to determine whether the President abused his powers and state resources in utilising the SANDF helicopter to attend the ANC campaign;

- 6.1.10.2 The ATR from the Presidency does not indicate any specific reason for a particular trip. The SANDF helicopter was used to transport the President to Welkom as per the ATR from his office;
- 6.1.10.3 The Cabinet Memorandum 2 of 1994 authorises the use of military air transport by political office bearers, senior government officials and Departments;
- 6.1.10.4 The Presidential Handbook authorises and mandates the SAAF to provide air transport to the President as the Head of State, the Head of National Executive and the CiC of the SANDF, as contemplated in the Constitution;
- 6.1.10.5 The Presidential Handbook states, *inter alia*, that:
“Transport for the President and Deputy President in South Africa is the responsibility and for the account of the state. Air transport for the President and Deputy President in South Africa is the responsibility and account of the SANDF, who may use SANDF aircraft, or any aircraft chartered by the SANDF for the purpose;” and
- 6.1.10.6 On 06 October 2022, the Presidency submitted an ATR to avail a suitable aircraft to transport the President and six (06) other passengers from the Air Force Base in Waterkloof to Welkom airport on 08 October 2022 and the return trip on the same date.
- 6.1.11 Lt Gen WS Mbambo submitted the following documents which formed the basis for the approval of the use of the SANDF helicopter:

The Presidential Handbook, November 2015

- 6.1.11.1 The Presidential Handbook provides guidelines for the administrative, logistical, security and general support to be rendered by the state to the

President, his/her spouse and dependent children, and the Deputy President and his/her spouse.

SAAF Instruction

- 6.1.11.2 The aim of the *SAAF Instruction MRI:020034* dated 31 July 2011, is to align all stakeholders to the process required to provide efficient, safe and professional air transport services to the Presidency.

Air Transport Request

- 6.1.11.3 A copy of the ATR letter dated 06 October 2022, titled “*NEW Flight Bookings for His Excellency President Ramaphosa: 08 October 2022*” was signed on behalf of Ms Malebo Sibiya, Director: Support Services to the President and addressed to VVIP Unit, SAAF Flight Support Centre.
- 6.1.11.4 The ATR also recorded the departure and arrival points and the details of the passengers.

Response to the Rule 41(1) notice by the Complainant

- 6.1.12 On 29 August 2024, the Public Protector issued a Rule 41(1) notice of the Public Protector Rules (Notice) to the Complainant. Rule 41(1) provides that when the Public Protector intends concluding an investigation by means of a closing report provided for in Rule 40(b), the Complainant shall be informed in writing accordingly and be given an opportunity to make representations in connection with the intended closure of the complaint within fourteen (14) days of delivery of the notification.

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- 6.1.13 The Complainant acknowledged receipt of the Notice on 16 September 2024 and responded to the Public Protector by email on 26 September 2024 as follows:
- 6.1.13.1 The Cabinet Memorandum of 1994 is inconsistent with the Constitution and it can't be relied upon, considering that it is the Cabinet Memorandum that was relevant before the 1996 Constitution was adopted;
- 6.1.13.2 The President contravened the Constitution by using the SANDF helicopter to attend the ANC Letsema campaign;
- 6.1.13.3 The Presidential Handbook is silent on the usage of the SANDF helicopter for private interests by the President. The suggestion that there was nothing improper with the President's usage of the SANDF helicopter ought to be rejected. This suggestion further contradicts the position of the Public Protector's office in the Nkandla matter.
- 6.1.13.4 The Public Protector is not concerned that the SANDF implement ATRs without reservations, irrespective of violation of the PFMA in some instances. The President took an oath to, *inter alia*, respect and uphold all laws which include the PFMA.
- 6.1.13.5 The absence of a policy that distinguishes between private and official travel, cannot be used to accommodate the President's unlawful requests for personal interests. Section 96(2)(a) does address such instances where there's a conflict between the President's private and official interests.
- 6.1.13.6 The SANDF cannot ignore any legislation in order to comply with the ATRs, as such conduct will be inconsistent with the Constitution which

states clearly that any law or conduct that is inconsistent with the Constitution is invalid and unconstitutional.

- 6.1.13.7 The Presidency has not provided any valid reasons that motivated the usage of the SANDF helicopter to transport the President in his ANC regalia, to the ANC's Letsema campaign.
- 6.1.13.8 In terms of paragraph 6.1.6.1(c) it stated that the mode of transport is informed by the security risk assessment conducted by the Security Services, in terms of the Presidential Handbook. However, the Presidency, the SANDF and the PPSA are silent on whether the President's transportation with the SANDF helicopter was informed by any security risk assessment conducted by the Security Services, or not.
- 6.1.13.9 The silence by the Public Protector, leads to the inference that the Presidency might not have acted in violation or contravention of the Presidential Handbook by making a request for the SANDF helicopter without any security risk assessment conducted by the Security Services.
- 6.1.13.10 Who decided on the mode of transport and what were the grounds that informed the mode of transport to be used on the day of the ANC's Letsema campaign in Welkom?

Applicable law

Constitution of the Republic of South Africa, 1996

- 6.1.14 Section 83 provides that the President: —

“(a) is the Head of State and head of the national executive;

(b) must uphold, defend and respect the Constitution as the supreme law of the Republic;

(c)”

6.1.15 Section 96(2) states that members of the Cabinet and Deputy Ministers may not: —

“(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.”

6.1.16 Section 195(1) of the Constitution provides that:

“(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.

(b) Efficient, economic and effective use of resources must be promoted;...

(f) Public administration must be accountable.”

Presidential Handbook, November 2015

6.1.17 The objective of the Presidential Handbook as encapsulated in the preface, is threefold:

“(i) To ensure the provision of reliable and consistent support required for the President and the Deputy President.

(ii) *To provide a concise operational guide to relevant government departmental staff with clearly indicated responsibilities and duties, and by implication, lines of accountability.*

(iii) *To provide the authority for the relevant civil servants to make decisions and to empower departmental staff with respect to what is approved, permissible and what may fall outside of the level of support required to be given to the President and Deputy President.”*

6.1.18 Clause 3.7 stipulates that the President and the Deputy Presidents remain in authority for the full duration of their terms of office.

6.1.19 Clause 12.1 which deals with the provision of security, provides that:

“The SAPS takes full responsibility for the protection and security of the President and Deputy President at all times during their term of office.”

6.1.20 Clause 12.2 states that *the SAPS and the intelligence agencies cause that regular and comprehensive security assessments are done with regard to the President and Deputy President.*

6.1.21 Clause 12.3. Protection and security measures of the President and Deputy President include, but are not limited to:

i. *Regular security assessments in conjunction with the intelligence agencies.*

ii. *In-transit protection during all domestic and international movements.*

6.1.22 Clause 14 regulates domestic transport for the President and Deputy President and states as follows:

- “ 14.1 Transport for the President and Deputy President in South Africa is the responsibility, and for the account, of the state;*
- 14.2 Ground transport for the President and Deputy President is for the account of the SAPS in terms of the relevant security planning;*
- 14.3 The SANDF is responsible for air transport for the President and Deputy who may use SANDF aircraft, or any aircraft chartered by the SANDF for the purpose;*
- 14.4 The cost of in-flight catering on board aircraft utilised by the President and Deputy President is for the account of the Presidency, except where exigencies dictate otherwise, in which case the costs thereof are borne by SANDF;*
- 14.5 The President and Deputy President have the prerogative to invite passengers to accompany him or her, on the official aircraft designated for his or her use, provided that there is space to accommodate the additional passenger or passengers in addition to the security, medical and necessary Presidency staff;*
- 14.6 Each invited guest passenger not employed by the state, shall indemnify for any loss suffered by the passenger due to injury or otherwise;*
- 14.7 For official purposes private or commercial aircraft may be utilised by the Deputy President only in special circumstances, and after consultation with NSS. For private travel, private or commercial aircraft may be used after consultation with NSS.*
- 14.8 For official purposes, private aircraft may be utilised by the President only in special circumstances, and after consultation with NSS.”*

South African Air Force Instruction MRI: 020034

- 6.1.23 Paragraph 6.2 of the South African Air Force Instruction MRI: 020034 (SAAF Instruction) provides that the Presidency represents the requirements of the President, Deputy President and previous Presidents as well as Presidential envoys for whom flight services must be provided as per approved Cabinet Memorandum of 1994.
- 6.1.24 Paragraph 6.3 states that the Ministry of Defence and Military Veterans is the executive authority accountable for the supply of the Presidential air transport services via the mechanism of the SAAF with safety and security support from Defence Intelligence and others.
- 6.1.25 Paragraph 6.5 stipulates that the Presidential Protection Unit (PPU) of the SAPS is responsible for safety and security of the President and should effectively manage a 24/7- control centre that manages all safety and secure issues of the President. The centre is required to perform a leading role in managing all safety and security emanating from ground or air incidents once the President is on the ground.

Analysis

- 6.1.26 The evidence at the Public Protector's disposal confirmed that on 08 October 2022, the President was transported in SANDF helicopter from Waterkloof Airforce Base to attend the ANC Letsema campaign in Welkom.
- 6.1.27 The trip was undertaken after the submission of the ATR to the SAAF by the Presidency notifying them of the President's intended trip and to provide him with air transportation as required by the SAAF Instruction MRI020034.

- 6.1.28 The evidence in the Public Protector's possession indicates that the ATR from the Presidency for the President's travel to and from the ANC Letsema campaign in Welkom was submitted and processed by the SAAF in accordance with Clause 14 of the Presidential Handbook. Clause 14 regulates domestic transport for the President and Paragraphs 6.2, 6.3 and 6.5 of the SAAF Instruction place an obligation on the Ministry of Defence and Military Veterans and the Presidential Protection Unit of the SAPS to ensure the safety and security of the President from ground or air at all times.
- 6.1.29 Paragraph 3(2) of the Cabinet memorandum read with Paragraph 6.2 of the SAAF Instruction and Clause 14(1) and (13) of the Presidential Handbook places an obligation on the state, SAAF and SANDF, to provide air transport to the President, his invited passengers and his team. Furthermore, in terms of the SAAF Instruction, the Presidency presents the requirements of the President to whom flight services must be provided as per the Cabinet memorandum.
- 6.1.30 The Complainant contended that the Cabinet Memorandum of 1994 is inconsistent with the Constitution and cannot be relied upon as it was adopted prior to the promulgation of the Constitution. He further argues that the SANDF cannot ignore any legislation in order to comply with the ATRs, as such conduct will be inconsistent with the Constitution, which states clearly that any law or conduct that is inconsistent, is invalid and unconstitutional.
- 6.1.31 It is settled law that the constitutional mandate of the Public Protector as clearly defined in section 182 of the Constitution is to investigate, report and remedy improper conduct in state affairs. It is further common course that in terms of section 172(2)(a) of the supreme law of the country, the Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act

of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force or effect unless it is confirmed by the Constitutional Court.

- 6.1.32 The evidence in the Public Protector possession indicates that there have not been any amendments to the Cabinet Memorandum of 1994 or has it been repealed by Cabinet or declared unconstitutional by the courts. Therefore, it remains valid and applicable. Furthermore, the Handbook and the Cabinet Memorandum are not laws or Acts of Parliament but guidelines. Nevertheless, the Public Protector does not have the same powers as a court of law and cannot make legal determinations regarding the constitutional validity of policies. This responsibility is reserved for the judiciary.
- 6.1.33 The Complainant further asserted that the absence of a policy that distinguishes between private and official travel, cannot be used to accommodate the President's unlawful requests for personal interests. Section 96(2)(a) does address such instances where there's a conflict between the President's private and official interests. He further stated that the Presidential Handbook is silent on the usage of the SANDF helicopter for private interests by the President.
- 6.1.34 On analysis of the ATR, it is not required for the Presidency to divulge the purpose of the trip or to distinguish between private and public engagements. The SAAF is merely obligated to transport the President by air and ensure his safety and comfort until the SAPS takes over when he lands at the destination stated in the ATR.
- 6.1.35 Therefore, as the Head of State and the Head of the National Executive in terms of section 83 of the Constitution and CiC of the SANDF, it is impractical to separate the President's official and private engagements for the purpose of providing safety and security. Therefore, the SANDF

is mandated to ensure the safety and security of the President at all times, irrespective of the nature of the trip.

- 6.1.36 Accordingly, the fact that the President travelled by means of air transport belonging to the SAAF to attend a party-political event, did not suspend the obligations imposed by law on the SAAF. The President cannot relinquish his official persona whilst attending a meeting as leader of a political party. As Head of State, the President is entitled to comprehensive security, at all times.
- 6.1.37 The Complainant argued that the Public Protector in paragraph 6.1.6.1.(c) of Rule 41(1) Notice states that according to Mr Mphaphuli, the Principal State Law Adviser in the Presidency, the mode of transport is informed by the security risk assessment conducted by the Security Services, in terms of the Presidential handbook. However, the Presidency, the SANDF and the Public Protector are silent on whether the President's transportation with the SANDF helicopter was informed by any security risk assessment conducted by the Security Services, or not.
- 6.1.38 It is the Public Protector's view that the SAPS and the intelligence agencies are only required to conduct regular and comprehensive security assessments in accordance with Clause 12.2. The Protection and security measures of the President and Deputy President include, *inter alia*, in-transit protection during all domestic and international movements in terms of Clause 12.3 (iii).
- 6.1.39 Objective (iii) to the Preface of the Presidential Handbook provides, *inter alia*, guidelines for the administrative, logistical, security and general support services to be rendered by the state to the President. It also provides the authority for the officials to make decisions and to empower departmental staff with respect to what is approved, permissible and

what may fall outside of the level of support required to be given to the President.

- 6.1.40 The Complainant asserts that the suggestion that, there was nothing improper with the President's usage of the SANDF helicopter ought to be rejected because it is in contradiction with the position of the Public Protector's office in the Nkandla matter. This assertion is vague and unsubstantiated as it does not elaborate on the manner in which the Nkandla matter is being contradicted in this matter.
- 6.1.41 The Public Protector's view and decision on this matter is also informed by the manner in which the security protocols and the relevant provisions have consistently been applied to the position of the President and the Deputy President without reservation or legal challenge irrespective of the incumbent.
- 6.1.42 Therefore, the contention that the President violated the provisions of section 96(2) of the Constitution in that he acted in a manner that is inconsistent with his office or exposed himself to any situation involving the risk of a conflict between his official responsibility and private interest cannot be sustained. Equally, the contention that the President did not act ethically and/or that he was not accountable as contemplated in section 195(1)(a) and (f) is not supported by the evidence.

Conclusion

- 6.1.43 The President attended a party-political event utilising the SAAF transport at the cost of the state as facilitated by the Presidency in accordance with the Cabinet memorandum, the SAAF Instruction MRI 020034 and the Presidential Handbook.

- 6.1.44 The applicable prescripts do not distinguish between official and private engagements undertaken by the President and the SAAF and SAPS are obligated to always provide comprehensive safety and security.
- 6.1.45 Premised on the above, there is no evidence to conclude that the transportation of the President by the SAAF was at variance with the provision of sections 96 and 195(1) of the Constitution.

7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that the President should have complied with and the impact thereof on good administration, the Public Protector is likely to make the following findings:

7.1 Whether President Ramaphosa abused his powers and state resources when he used the SANDF helicopter to attend an ANC campaign and thereby exposed himself to a situation involving the risk of a conflict between his official responsibilities and private interests in violation of the Constitution, if so, whether such conduct constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution, and abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act

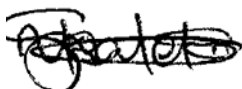
- 7.1.1 The allegation that the President abused his powers and state resources when he used the SANDF helicopter to attend an ANC campaign and thereby exposing himself to a situation involving the risk of a conflict between his official responsibilities and private interests in violation of the Constitution, is **not substantiated**.
- 7.1.2 The President was transported by the SANDF helicopter to Welkom to attend the ANC Letsema campaign on 08 October 2022, at the cost of the state in line with the Cabinet memo, the SAAF Instruction and the

Presidential Handbook. Therefore, there is no basis, upon which to conclude that the President violated sections 96 (2)(b) and 195 (1)(a),(b) and (f) of the Constitution, paragraph 3.2 of the Cabinet memorandum, paragraph 6.2, 6.3 and 6.5 of the SAAF Instruction MRI 020034 and the clause 14 of the Presidential Handbook.

- 7.1.3 Accordingly, the conduct of the President does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(ii) of the Public Protector Act.

8. CONCLUSION

- 8.1 The Public Protector considers this matter as finalised and cannot take it further.



ADV. Kholeka GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE:30 SEPTEMBER 2024

Assisted by: Ms Maselaelo Manyathela
Acting Executive Manager: Investigations