

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



**REPORT NO 40 OF 2024/2025
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**ADVISORY REPORT REGARDING AN INVESTIGATION INTO ALLEGATIONS
OF IMPROPER CONDUCT, MALADMINISTRATION AND/OR ABUSE OF POWER
BY THE ERSTWHILE MINISTER OF HOME AFFAIRS, DR PA MOTSOLEDI AND
THE PREMIER OF EASTERN CAPE, MR LO MABUYANE, IN RELATION TO THE
DESIGNATION OF BULEMBU AIRPORT, BHISHO IN THE EASTERN CAPE
PROVINCE, AS A PORT OF ENTRY AND EXIT AND THE ACCEPTANCE OF
TWENTY MILLION RAND DONATION FROM THE UNITED ARAB EMIRATES
GOVERNMENT, RESPECTIVELY**

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS ABBREVIATIONS	/ DESCRIPTIONS
AFS	Annual Financial Statements
API	Advance Passenger Information
ATM	African Transformation Movement
BMA	Border Management Authority
BMA Act	Border Management Authority Act, 2020
BTC	Border Technical Committee
CEO	Chief Executive Officer
CFO	Chief Financial Officer
Complainants	Mr Vuyolwethu Zungula, MP and Mr Elias Muller
Constitution	Constitution of the Republic of South Africa, 1996
CTIA	Cape Town International Airport
Customs and Excise Act	Customs and Excise Act, 1964, as amended
DFFE	Department of Forestry, Fisheries and the Environment
DG	Director-General
DIRCO	Department of International Relations and Cooperation
DHA	Department of Home Affairs
DPME	Department of Planning, Monitoring and Evaluation

ACRONYMS / ABBREVIATIONS	DESCRIPTIONS
EC Province	Eastern Cape Province
EC Provincial Government	Eastern Cape Provincial Government
EC Transport	Eastern Cape Department of Transport
EC Treasury	Eastern Cape Department of Provincial Treasury
GPW	Government Printing Works
KZN	KwaZulu-Natal
IMCC	Inter-Ministerial Consultative Committee
Immigration Act	Immigration Act, 2002, as amended
Investigation Team	Public Protector Investigation Team
MEC	Member of Executive Council
NDoT	National Department of Transport
NEDLAC	National Economic Development and Labour Council
NGOs	Non-Governmental Organisations
OCSLA	Office of the Chief State Law Advisor
OTP	Office of the Premier
PFMA	Public Finance Management Act, 1999, as amended
Public Protector Act	Public Protector Act, 1994 (as amended)
PPA	Passenger Processing Area

ACRONYMS / ABBREVIATIONS	DESCRIPTIONS
Public Protector Rules	Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 (as amended)
Republic	Republic of South Africa
SACAA	South African Civil Aviation Authority
SARS	South African Revenue Services
SCA	Supreme Court of Appeal
SOCs	State Own Companies
VAT	Value added tax
UAE	United Arab Emirates

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), 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, read with sections 6(4)(c)(ii), and (d)(iii) of the Public Protector Act, 1994 (the Public Protector Act) which empowers the Public Protector to make appropriate recommendation if she deems it advisable, and 8(1) of the Public Protector Act, which provides that the Public Protector may make known the findings, point of view or recommendation on any matter investigated by her.
- (ii) The report relates to an investigation into allegations of improper conduct, maladministration and/or abuse or unjustifiable exercise of power by the former Minister of Home Affairs, Dr PA Motsoaledi, MP (Dr Motsoaledi) and the Premier of the Eastern Cape (EC) Province, Mr LO Mabuyane, MPL (Mr Mabuyane) in relation to the designation Bulembu Airport, Bhisho, EC Province (Bulembu Airport), and the acceptance of twenty million rand (R20 million) donation from the United Arab Emirates (UAE) government, respectively; including the alleged failure by the South African Revenue Services (SARS) to ensure that all goods and foreign currency were declared during the landing of the UAE delegation at Bulembu Airport.
- (iii) The investigation originates from complaints lodged by the President of the African Transformation Movement (ATM), Mr Vuyolwethu Zungula, MP (Mr Zungula) and Mr Elias Muller (Mr Muller) on 25 April 2023 and 03 May 2023 respectively.
- (iv) In essence, Mr Zungula alleged that:

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- (a) Dr Motsoaledi possibly violated the provisions of the Immigration Act, 2002 (Immigration Act) and the Border Management Authority Act, 2020 (BMA Act), in declaring Bulembu Airport, as an international port of entry and exit;
 - (b) There is nothing in section 9(3)(b) of the Immigration Act, which deals with the declaration of airports as ports of entry, as alluded to by Dr Motsoaledi in a media statement dated 12 April 2023; and
 - (c) Given the flurry of hurried approvals from the Departments of Home Affairs (DHA) and Transport (NDoT) around the same time, and virtually on the eve of the landing of the UAE Boeing transporting the President of the UAE and Ruler of Abu Dhabi, Mr Mohamed bin Zayed Al Nahyan (Mr Al Nahyan), and his entourage, the ATM is convinced that the approvals were irregular.
- (v) Mr Zungula requested the Public Protector to investigate the above allegations and seek answers to the following questions:
- (a) Whether Dr Motsoaledi complied with the relevant section in the Immigration Act when he designated Bulembu Airport as a port of entry and exit;
 - (b) Whether Dr Motsoaledi complied with section 30(3) of the BMA Act, when he designated Bulembu Airport as a port of entry and exit;
 - (c) Whether Mr Mabuyane, complied with the requirement of the BMA Act, as directed by Dr Motsoaledi;
 - (d) Noting that there were allegations that Port Health in Bhisho refused to offload the animals that were on board in the UAE aircraft and that they had to be rerouted to KwaZulu-Natal (KZN), did King

Shaka International Airport comply with all the prescripts before offloading the animals; and

- (e) Whether the South African Revenue Services (SARS) Customs can confirm that all the mandatory declaration of goods and foreign currency were complied with at Bulembu Airport.
- (f) In relation to the alleged donation of R20 million made by the UAE to ensure that Bulembu Airport was renovated before it was declared an international port of entry and exit, Mr Zungula requested the Public Protector to investigate the following issues:
 - (g) Whether Mr Mabuyane complied with all the relevant prescripts prior to accepting the R20 million donation from the UAE;
 - (h) Which Treasury Regulation was used for the acceptance of the donation from the UAE;
 - (i) Was the R20 million donation to the EC Provincial Government, paid to the EC Provincial Revenue Fund as required by Treasury Regulations; and
 - (j) Noting reports that no significant upgrades were made at Bulembu Airport, did the renovation amount to R20 million?
- (vi) In his complaint, Mr Muller alleges that Dr Motsoaledi failed to comply with section 30(3) of the BMA, which required him to publish a notice in a Government *Gazette* for public comments for a period of no less than thirty (30) days, before he could issue such declaration.
- (vii) He then requested the Public Protector to investigate the following:

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- (a) Whether Dr Motsoaledi acted in contravention or violation of sections 30(3) of the BMA Act and 195(1)(a) of the Constitution; and
 - (b) Whether Dr Motsoaledi acted improperly or irregularly or in any manner that is inconsistent with the office he occupied, in relation to the landing of UAE President.
- (viii) Based on the analysis of the complaints, the following issues were considered and investigated:
- (a) Whether the designation of Bulembu Airport as a port of entry and exit by Dr PA Motsoaledi, to facilitate the landing of Mr Mohammed bin Zayed Al Nahyan and his entourage, was in contravention of the applicable prescripts, if so, whether such conduct is improper as envisaged by section 182(1)(a) of the Constitution and amounts to maladministration contemplated in section 6(4)(a)(i) of the Public Protector Act;
 - (b) Whether Mr LO Mabuyane accepted a donation of twenty million rand from the United Arab Emirates government to refurbish Bulembu Airport in contravention of the applicable prescripts, if so, whether such conduct is improper conduct in terms of section 182(1)(a) of the Constitution and amounts to maladministration contemplated in section 6(4)(a)(i) of the Public Protector Act; and
 - (c) Whether the South African Revenue Services failed to ensure that all declarations of goods and foreign currency were made during the landing of Mr Mohammed bin Zayed Al Nahyan and his entourage at Bulembu Airport, if so, whether such conduct is improper in terms of section 182(1)(a) of the Constitution and

constitutes maladministration contemplated in in section 6(5)(a) of the Public Protector Act.

- (ix) 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 the relevant documents, application of relevant laws, case law, and related prescripts.
- (x) On 11 March 2025, notices in terms of section 7(9)(a) of the Public Protector Act (the Notice/s) were issued to the following implicated and/or affected parties to provide them with an opportunity to respond to the proposed provisional findings and recommendations:
 - (a) Dr PA Motsoaledi, MP, the Minister of Health;
 - (b) Dr Leon Amos Schreiber, MP (Dr Schreiber), the Minister of Home Affairs;
 - (c) Mr L T Makhode (Mr Makhode), the Director-General of the DHA;
 - (d) Mr Mlungisi Mvoko, MPL (Mr Mvoko), MEC for Finance, EC Province;
 - (e) Mr Vuyolwethu Zungula, MP; and
 - (f) Mr Elias Muller, the Complainant.
- (xi) Written responses to the Notices were received from Mr Makhode, Mr Mvoko, Dr Motsoaledi, Mr Muller and Dr Schreiber on 18, 19, 20 and 24 March 2025, respectively. Further written submissions were received from Mr Makhode and Dr N.M Masiapato, Commissioner of the Border Management Authority on 27 March 2025.
- (xii) The responses submitted by the five (05) respondents were duly considered by the Public Protector.
- (xiii) Having regard to the evidence and regulatory framework determining

the standard that should have been complied with by respective respondents, the Public Protector makes the following findings:

- (a) **Whether the designation of Bulembu Airport as a port of entry and exit by Dr PA Motsoaledi, to facilitate the landing of Mr Mohammed bin Zayed Al Nahyan and his entourage, was in contravention of the applicable prescripts, if so, whether such conduct is improper as envisaged by section 182(1)(a) of the Constitution and amounts to maladministration contemplated in section 6(4)(a)(i) of the Public Protector Act.**
- (aa) The allegation that the designation of Bulembu Airport as a port of entry and exit by Dr Motsoaledi, to facilitate the landing of Mr Al Nahyan and his entourage, was in contravention of the applicable prescripts, is **not substantiated**.
- (bb) The Public Protector finds that Dr Motsoaledi issued a notice of designation of Bulembu Airport in writing on 12 April 2023 and the notice was subsequently gazetted on 05 May 2023, in accordance with section 9A of the Immigration Act read with the Regulation 8 of the Immigration Regulations.
- (cc) Given the fact that Dr Motsoaledi was only required to designate Bulembu Airport temporally for a period of a month, it would have been unreasonable to oblige him to use section 30 of the BMA Act.
- (dd) Accordingly, the conduct of Dr Motsoaledi does not constitute improper conduct in terms of section 182(1) of the Constitution or amount to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

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- (b) **Whether Mr LO Mabuyane accepted a donation of twenty million rand from the United Arab Emirates government in order to refurbish Bulembu Airport, in contravention of the applicable prescripts, if so, whether such conduct was improper conduct in terms of section 182(1)(a) of the Constitution and amounted to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act.**
- (aa) The allegation that Mr Mabuyane accepted a donation of R20 million rand from the UAE government in order to refurbish Bulembu Airport, in contravention of the applicable prescripts, is **not substantiated**.
- (bb) The Public Protector could not find evidence that Mr Mabuyane and/or the EC Provincial Government accepted funds from the UAE and failed to deposit same into the EC Provincial Government Revenue Fund in terms of Regulation 21.2.2 of the Treasury Regulations.
- (cc) The Public Protector finds that Mr MC Mafani, the accounting officer at EC Transport during that period, tacitly approved the acceptance of the donation in kind in compliance with Regulation 21.2.1 of Treasury Regulations.
- (dd) The Public Protector also finds that EC Transport declared a donation in kind for repairs undertaken at Bulembu Airport in the audited Annual Financial Statements (AFS) of the department in compliance with paragraph 21.2.4 of the Treasury Regulations.
- (ee) Accordingly, the Public Protector could not find evidence to conclude that the conduct of Mr Mabuyane and/or the functionaries of the EC Provincial Government constitutes improper conduct in terms of section 182(1) of the Constitution and amount to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act.

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- (c) **Whether the South African Revenue Services failed to ensure that Mr Mohammed bin Zayed Al Nahyan and his entourage declared all the goods and foreign currency during their visit to the Republic of South Africa in April 2023, if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and maladministration contemplated in section 6(5)(a) of the Public Protector Act.**
- (aa) The allegation that SARS failed to ensure that Mr Al Nahyan and his entourage declare all the goods and foreign currency during their visit to the Republic in April 2023, is **not substantiated**.
- (bb) The evidence indicates that the goods that were brought by Mr Al Nahyan and his entourage at Bulembu Airport which included consumables, vehicles, gym equipment and helicopters, were declared, inspected and cleared in accordance with sections 4 and 15(1) of the Customs and Excise Act, 1964, as amended.
- (cc) The Public Protector finds that SARS Customs officials inspected the luggage of the visitors that landed at Bulembu Airport but could not find foreign currency that was supposed to be declared in terms section 15(1) of Custom Exercise Act read with paragraph 2.2 of the Customs Excess Currency Policy.
- (dd) Accordingly, the Public Protector cannot not find evidence to conclude that the conduct of the functionaries of SARS constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and amount to maladministration in terms of section 6(5)(a) of the Public Protector Act.

OBSERVATIONS

- (d) **Regarding whether the designation of Bulembu Airport as a port of entry and exit by Dr PA Motsoaledi, to facilitate the landing of Mr Mohammed bin Zayed Al Nahyan and his entourage was in contravention of the applicable prescripts:**
- (aa) The evidence at the Public Protector's disposal shows that the proof of email sent by Mr Makhode to Ms TA Fosi (Ms Fosi), Chief Executive Officer, Government Printing Works, purporting to be the transmission of Notice of designation, showed that it was "*not responding*." The evidence from Ms Fosi also indicates that she did not receive an email from Mr Makhode on or about 12 April 2023. Resultantly, the publication of the Notice of designation only occurred subsequent to a follow-up email from Mr Makhode to Ms Fosi on 03 May 2023.
- (bb) The Public Protector noted with concern that the publication of the designation of Bulembu Airport only happened on 05 May 2023, despite being approved by Dr Motsoaledi on 12 April 2023. Although, Regulation 8 of the Immigration Regulations does not prescribe timelines regarding the publication of the notice, it is reasonable to expect it to precede the actual activity, which did not happen in this instance. In fact, by the time the designation was published in the Gazette on 05 May 2023, the UAE delegation had already left the Republic.
- (cc) The Public Protector also noted that although Dr Motsoaledi designated Bulembu Airport as a port of entry and exit in terms of section 9A of the Immigration Act read with Regulation 8, there is a need to harmonise it with section 30 of the BMA Act. There must be clarity on the circumstances which would ordinarily trigger the application of section 9A of the Immigration Act *vis-a-vis* section 30 of the BMA Act. This is so, because whilst the DHA asserts that section 9A of the Immigration Act applies in

‘temporary designation,’ the Act does not specifically contain a phrase ‘temporary designation’ to irrefutably show that it caters for such kind of designations.

(e) Regarding the issue whether Mr LO Mabuyane accepted a donation of twenty million rand from the United Arab Emirates government to refurbish Bulembu Airport in contravention of the applicable prescripts:

(aa) The Public Protector did not uncover evidence that Mr Mabuyane received a donation of R20 million from the UAE, instead, EC Transport received a donation in kind in the form of repairs undertaken at Bulembu Airport which were subsequently declared in the audited AFS of the department in compliance with Regulation 21.2.4 of the Treasury Regulations.

(bb) The Public Protector noted that the letter from Mr Mafani to Ezulu Game Reserve did not explicitly provide for the approval of the donation in kind but could be construed as granting tacit approval as required by Regulation 21.2.1 of Treasury Regulations. The EC Treasury and EC Transport do not have a policy and/or instructions or standard operating procedures (SOPs) dealing with the processing of donations which would guide the functionaries on what steps to follow and which documents should form part of the portfolio of evidence when granting donations, gifts and sponsorships. In this regard, a policy or instructions or SOPs or checklist may assist the functionaries to follow a prescribed process which could facilitate transparency and accountability as envisaged in section 195(1)(g) and (f) of the Constitution.

(xiv) Considering the above observations, the following recommendations are made in terms of section 6(4)(c)(ii) of the Public Protector Act.

Minister of Home Affairs

- (a) **Within a period of twenty four (24) months** upon receipt of the final report, takes steps to initiate and finalise the harmonisation of section 9 of the Immigration Act and section 30 of the BMA Act in the regulations to be promulgated in terms of section 36(1)(k) of the BMA Act.

**Member of the Executive Council For Finance, Eastern Cape
Provincial Treasury**

- (b) **Within one hundred and twenty (120) calendar days**, take steps to ensure that the EC Treasury issues instructions in terms of section 18(2)(a) of the PFMA to regulate the acceptance of donations, gifts, and sponsorships by departments, whether in cash or in kind.

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), 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, read with sections 6(4)(c)(ii), and (d)(iii) and section 8(1) of the Public Protector Act which provides that the Public Protector may make known the findings, point of view or recommendation on any matter investigated if it is deemed it advisable.
- 1.2 The report is submitted to the following persons to note the outcome of the investigation and the Public Protector's recommendations:
- 1.2.1 Dr Leon Amos Schreiber, MP, Minister of Home Affairs;
 - 1.2.2 Dr PA Motsoaledi, MP, Minister of Health;
 - 1.2.3 Mr LO Mabuyane, MPL, Premier of Eastern Cape Province;
 - 1.2.4 Mr Mlungisi Mvoko, MPL, MEC for Finance, Eastern Cape Provincial Treasury;
 - 1.2.5 Mr Edward Keiswetter, Commissioner of the South African Revenue Services;
 - 1.2.6 Mr LT Makhode, Director-General, Department of Home Affairs;
 - 1.2.7 Dr NM Masiapato, Commissioner of the Border Management Authority;
 - 1.2.8 Mr Andile Fani, Acting Head of the Eastern Cape Department of Transport;
 - 1.2.9 Mr Vuyolwethu Zungula, MP, the Complainant; and
 - 1.2.10 Mr Elias Muller, the Complainant.

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- 1.3 This matter concerns an investigation into allegations of improper conduct, maladministration and/or abuse or unjustifiable exercise of power by the former Minister of Home Affairs, Dr PA Motsoaledi (Dr Motsoaledi) and the Premier of the Eastern Cape (EC) Province, Mr LO Mabuyane, MPL (Mr Mabuyane) in relation to the designation Bulembu Airport, Bhisho, EC Province (Bulembu Airport), and the acceptance of twenty million rand (R20 million) donation from the United Arab Emirates (UAE) government, respectively, including alleged failure by the South African Revenue Services (SARS) to ensure that all goods and foreign currency were declared during the landing of UAE delegation at Bulembu Airport.

2. THE COMPLAINT

- 2.2 The investigation originates from complaints lodged by the President of the African Transformation Movement (ATM), Mr Vuyolwethu Zungula, MP (Mr Zungula) and Mr Elias Muller (Mr Muller) on 25 April 2023 and 03 May 2023 respectively.
- 2.3 In essence, Mr Zungula alleges that:
- 2.3.1 Dr Motsoaledi possibly violated the provisions of the Immigration Act, 2002 (Immigration Act) and the Border Management Authority Act, 2020 (BMA Act), in declaring Bulembu Airport, as an international port of entry and exit;
- 2.3.2 There is nothing in section 9(3)(b) of the Immigration Act, which deals with the declaration of airports as ports of entry as alluded to by Dr Motsoaledi in a media statement dated 12 April 2023; and
- 2.3.3 Given the flurry of hurried approvals from the Departments of Home Affairs (DHA) and Transport (NDoT) around the same time, and virtually on the eve of the landing of the UAE Boeing transporting the President of the

UAE and Ruler of Abu Dhabi, Mr Mohamed bin Zayed Al Nahyan (Mr Al Nahyan), and his entourage, the ATM is convinced that the approvals were irregular.

2.4 Mr Zungula requested the Public Protector to investigate the above allegations and seek answers to the following questions:

2.4.1 Whether Dr Motsoaledi complied with the relevant section in the Immigration Act when he designated Bulembu Airport as a port of entry and exit;

2.4.2 Whether Dr Motsoaledi complied with section 30(3) of the BMA Act, when he designated Bulembu Airport as a port of entry and exit;

2.4.3 Whether Mr Mabuyane, complied with the requirement of the BMA Act, as directed by Dr Motsoaledi;

2.4.4 Noting that there were allegations that Port Health in Bhisho refused to offload the animals that were on board in the UAE aircraft and that they had to be rerouted to KwaZulu-Natal (KZN), did King Shaka International Airport comply with all the prescripts before offloading the animals; and

2.4.5 Whether SARS Customs can confirm that all the mandatory declaration of goods and foreign currency were complied with at Bulembu Airport.

2.5 In relation to the alleged donation of R20 million made by the UAE to ensure that Bulembu Airport was renovated before it was declared an international port of entry and exit, Mr Zungula requested the Public Protector to investigate the following issues:

2.5.1 Whether Mr Mabuyane complied with all the relevant prescripts prior to accepting the R20 million donation from the UAE;

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- 2.5.2 Which Treasury Regulation was used for the acceptance of the donation from the UAE;
- 2.5.3 Was the R20 million donation to the EC Provincial Government, paid to the EC Provincial Revenue Fund as required by Treasury Regulations; and
- 2.5.4 Noting reports that no significant upgrades were made at Bulembu Airport, did the renovation amount to R20 million?
- 2.6 In his complaint, Mr Muller alleges that:
- 2.6.1 Dr Motsoaledi failed to comply with section 30(3) of the BMA Act, which required him to publish a notice in a *Government Gazette* for public comments for a period of no less than thirty (30) days, before he could issue such declaration.
- 2.7 He then requested the Public Protector to investigate the following:
- 2.7.1 Whether Dr Motsoaledi acted in contravention or violation of section 30(3) of the BMA Act and section 195(1)(a) of the Constitution; and
- 2.7.2 Whether Dr Motsoaledi acted improperly or irregularly or in any manner that is inconsistent with the office he occupied, in relation to the landing of the UAE President.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional institution established in terms of 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 the national legislation –

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

3.3 Section 182(2) directs that the Public Protector has the additional powers and functions prescribed by national legislation, including the Public Protector Act. 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 state affairs.

3.4 The DHA, the EC Provincial Government and SARS are organs of state as contemplated in section 239 of the Constitution and the conduct of their functionaries amounts to conduct in state affairs. The Public Protector is therefore satisfied that the complaint falls within its competency to investigate as envisaged in section 182(1)(a) of the Constitution and section 6(4) and (5) of the Public Protector Act.

4. ISSUES IDENTIFIED FOR INVESTIGATION

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

4.1.1 Whether the designation of Bulembu Airport as an port of entry and exit by Dr PA Motsoaledi, to facilitate the landing of Mr Mohammed bin Zayed Al Nahyan and his entourage, was in contravention of the applicable

prescripts, if so, whether such conduct is improper as envisaged by section 182(1)(a) of the Constitution and amounts to maladministration contemplated in section 6(4)(a)(i) of the Public Protector Act;

4.1.2 Whether Mr LO Mabuyane, accepted a donation of twenty million rand from the United Arab Emirates government to refurbish Bulembu Airport in contravention of the applicable prescripts, if so, whether such conduct is improper conduct in terms of section 182(1)(a) of the Constitution and amounts to maladministration contemplated in section 6(4)(a)(i) of the Public Protector Act; and

4.1.3 Whether the South African Revenue Services failed to ensure that all declarations of goods and foreign currency were made during the landing of Mr Mohammed bin Zayed Al Nahyan and his entourage at Bulembu Airport, if so, whether such conduct is improper in terms of section 182(1)(a) of the Constitution and constitutes maladministration contemplated in in section 6(5)(a) 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 Approach to the investigation

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- 5.2.1 The approach to the investigation included an exchange of documentation between the Public Protector, the Complainants, Dr Motsoaledi, Mr Mabuyane, the functionaries of Departments of Home Affairs, International Relations and Cooperation (DIRCO), Transport (NDoT), EC Transport and EC Provincial Treasury (EC Treasury), and the Border Management Authority (BMA) and SARS.
- 5.2.2 All relevant documents and correspondence were obtained and analysed. Relevant laws, policies and related prescripts were considered and applied throughout the investigation.
- 5.2.3 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 and does that deviation amount to improper conduct?
 - (d) In the event of a violation, what remedial action should be taken?
- 5.2.4 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. Evidence is evaluated and a determination is made on what happened based on a balance of probabilities. In this case, first factual enquiry principally focused on the process Dr Motsoaledi followed in declaring Bulembu Airport as a port of entry for the visit of the Mr Al Nahyan and his entourage. What should have happened focuses on determining whether such declaration was in accordance with the applicable law.

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- 5.2.5 The second factual enquiry is whether the UAE government donated R20 million rand to Mr Mabuyane and/or the EC Provincial Government in order to enable them to effect refurbishment of Bulembu Airport prior to the visit of Mr Al Nahyan and his entourage. What should have happened focuses on determining whether such a donation was accepted in accordance with the applicable law.
- 5.2.6 The third factual enquiry is whether the functionaries of SARS inspected and processed goods and persons that were brought into the Republic during the visit of Mr Al Nahyan and his entourage. What should have happened, focuses on the law or rules that regulate the standard that should have been met by functionaries of SARS in performing their legal obligations during the landing of the aircraft.

Regarding the allegations of the off-loading of animals during the visit of Mr Al Nahyan to the Republic

- 5.2.7 Mr Zungula alleges that Port Health in Bisho refused to offload the animals that were in the UAE aircraft and that they had to be rerouted to KZN. He questioned whether the airport in KZN complied with all the prescripts before offloading the animals.
- 5.2.8 Through a letter dated, 16 May 2023, the Public Protector Investigation Team (Investigation Team) requested a meeting with Mr Zungula in order to obtain more details regarding this allegation.
- 5.2.9 During a meeting held on 19 May 2023 via MS Teams virtual platform between the Investigating Team, Mr Zungula and Mr Mxolisi Makhubo of the ATM, it was resolved that Mr Zungula would submit further information in support of this issue, including the date of the incident and the name of the airport in question.

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- 5.2.10 In his letter to the Investigation Team dated 26 May 2023, Mr Zungula simply questioned the basis upon which the animals brought by Mr Al Nahyan were denied entry at Port Health in the EC Province.
- 5.2.11 It was noted by the Investigation Team that the information submitted by Mr Zungula did not reveal *prima facie* wrongdoing or contravention or the necessary details as contemplated in Rule 5(3) of the Public Protector Rules that warranted an investigation by the Public Protector in terms of section 6(4) and (5) of the Public Protector Act.
- 5.2.12 However, a preliminary investigation in accordance with section 7(1)(a) of the Public Protector Act, read with Rule 20(1) of the Public Protector Rules revealed that there were no animals that were offloaded in the Republic during the visit by Mr Al Nahyan and his entourage in April 2023.
- 5.2.13 Furthermore, in an affidavit, Ms HH Zama, Acting Port Commander of the BMA based at King Shaka International Airport, asserted that there were no animals that were offloaded from the aircraft linked with Mr Al Nahyan at King Shaka International Airport between 18 April and 20 April 2023. On 19 April 2023, one of the aircraft that was used by Mr Al Nahyan and his entourage voyaged to King Shaka Airport to refuel for departure to Abu Dhabi.
- 5.2.14 Consequently, this issue was not investigated any further by the Public Protector.

5.3 **Key sources of Information**

5.3.1 **Correspondence exchanged**

- 5.3.1.1 Allegations letter from the Public Protector to Dr PA Motsoaledi, dated 22 September 2023;

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- 5.3.1.2 Allegations letter from the Public Protector to Mr LO Mabuyane, Premier of Eastern Cape, dated 25 September 2023;
 - 5.3.1.3 Allegations letter from the Public Protector to Mr Zane Dangor (Mr Dangor), Director-General (DG) of DIRCO, dated 27 September 2023;
 - 5.3.1.4 Allegations letter from the Public Protector to Adv James Mlawu (Adv Mlawu), DG of the NDoT, dated 27 September 2023;
 - 5.3.1.5 Allegations letter from the Public Protector to Mr Edward Keiswetter, Commissioner of SARS, dated 27 September 2023;
 - 5.3.1.6 Response from Dr Motsoaledi to the Public Protector, dated 26 October 2023, addressing the allegations raised against him;
 - 5.3.1.7 Response from Mr Dangor to the Public Protector dated, 27 October 2023;
 - 5.3.1.8 Response from Mr Mabuyane to the Public Protector, dated 16 November 2023;
 - 5.3.1.9 Allegations letter from the Public Protector to Ms TA Fosi (Ms Fosi), Chief Executive Officer of Government Printing Works, dated 13 August 2024;
 - 5.3.1.10 Response from Ms Fosi to the Public Protector, dated 20 August 2024, addressing issues of the delay in the publication of the Notice of Designation;
 - 5.3.1.11 Allegations letter from the Public Protector to Mr Makhode, DG of DHA, dated 04 September 2024;
 - 5.3.1.12 Allegations letter from the Public Protector to Dr NM Masiapato (Dr Masiapato), Commissioner of Border Management Authority (BMA), dated

04 September 2024;

- 5.3.1.13 Response from Dr Georgio Radesich, Head: Liaison Desk at SARS to the Public Protector, dated 31 October 2023;
- 5.3.1.14 Response from Mr Makhode to the Public Protector, dated 11 September 2024;
- 5.3.1.15 Response from Dr Masiapato to the Public Protector, dated 11 September 2024;
- 5.3.1.16 Allegations letter from the Public Protector to Mr Mbulelo Sogoni, the DG in the office of the Premier of Eastern Cape, dated 08 October 2024;
- 5.3.1.17 Letter addressed to Mr Rupert Fortune by Mr B.S. Makambi, Acting Chief Director Transport Operations, EC Transport, dated 16 November 2024;
- 5.3.1.18 Response from Mr Sogoni to the Public Protector, dated 17 October 2024;
- 5.3.1.19 Allegations letter from the Public Protector to Mr Andile Fani, Acting HOD of EC Transport, dated 22 October 2024;
- 5.3.1.20 Letter from the Public Protector to Mr Fred Stow (Mr Stow), dated 22 October 2024;
- 5.3.1.21 Email from the Investigation Team to Ms Notemba Nqabisa of the office of HOD of EC Treasury, dated 23 November 2024;
- 5.3.1.22 Response from Mr Lomex Sisilana, the Acting HOD of EC Transport, dated 08 November 2024;
- 5.3.1.23 Email to Ms Thandokazi Mtotywa, Director: Norms and Standards, EC

Treasury, dated 01 November 2024;

5.3.1.24 Response from Mr Stow to the Public Protector dated, 13 November 2024;

5.3.1.25 Allegations letter from the Public Protector to Mr MC Mafani (Mr Mafani), former HOD of EC Transport, dated 21 November 2024;

5.3.1.26 Letter from the Public Protector to Mr Leon Potgieter, Head of Sea Modality, SARS, 21 November 2024;

5.3.1.27 Email from Investigation Team to Mr Makambi, dated 25 November 2024;

5.3.1.28 Response from Mr Mafani to the Public Protector dated 28 November 2024;

5.3.1.29 Response from Dr Georgio Radesich, Head: Liaison Desk at SARS, dated 29 November 2024;

5.3.1.30 Email response from Mr Makambi to the Investigation Team; dated 18 December 2024;

5.3.2 Documents received

5.3.2.1 Copy of Instruction Note 4 of 2017/2018 titled “Provincial Cost Containment Measures;”

5.3.2.2 Copy of the EC Transport Annual Report 2022/23;

5.3.2.3 Copy of a gift register titled “Gift Donations, Sponsorships Received,” dated 2022/04/01-2023/03/31;

5.3.2.4 Copy of a letter addressed to the Managing Director: Ezulu Game Reserve by Mr Mafani, dated 12 March 2023;

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- 5.3.2.5 Note Verbale dated 04 April 2023 with reference number 1/3/129-251;
 - 5.3.2.6 Note Verbale dated 06 April 2023 with reference number 1/3/129-253;
 - 5.3.2.7 Written notice of designation of Bulembu Airport by Dr Motsoaledi, dated 12 April 2023;
 - 5.3.2.8 Note Verbale dated 15 April 2023 with reference number 1/3/129-281;
 - 5.3.2.9 Note Verbale dated 16 April 2023 with reference number 1/3/129-2766;
 - 5.3.2.10 Government Gazette No. 488524, dated 05 May 2023, containing the designation of Bulembu Airport;
 - 5.3.2.11 Original complaint email from Mr Zungula, dated 25 April 2023, raising issues concerning all three issues addressed in the report;
 - 5.3.2.12 Original complaint from Mr Muller, dated 03 May 2023, raising allegations concerning the first issue addressed in this report;
 - 5.3.2.13 Mr Zungula's supplementary complaint dated 24 May 2023, seeking to provided further particulars regarding certain aspects of complaint;
 - 5.3.2.14 Copy of a memorandum titled "Narrative on the Private Visit to Bhisho by the President of the United Arab Emirates in April 2023, approved on 01 June 2023; and
 - 5.3.2.15 Undated schedule of upgrades and associated costs submitted by Mr Mabuyane on 16 November 2023.

5.4 Legal framework

- 5.4.1 Border Management Authority Act, 2020;
- 5.4.2 Constitution of the Republic of South Africa, 1996;
- 5.4.3 Customs and Excise Act, 1964, as amended
- 5.4.4 Immigration Act, 2002, as amended;
- 5.4.5 Public Finance Management Act, 1999, as amended; and
- 5.4.6 Public Protector Act, 1994.

5.4.7 Case Law

- 5.4.8 *Independent Institute of Education (Pty) Limited v Kwazulu-Natal Law Society 2020 (4) BCLR 495 (CC); and*
- 5.4.9 *Arse v Minister of Home Affairs 2012 (4) SA 544.*

5.5 Notices issued in terms of section 7(9)(a) of the Public Protector Act

- 5.5.1 On 11 March 2025, notices in terms of section 7(9)(a) of the Public Protector Act (the Notice/s) were issued to the following implicated and/or affected parties to provide them with an opportunity to respond to the proposed provisional findings and remedial action:
- 5.5.2 Dr PA Motsoaledi, MP, the Minister of Health;
- 5.5.3 Dr Leon Amos Schreiber, MP, the Minister of Home Affairs;
- 5.5.4 Mr L T Makhode, the Director-General of the DHA;
- 5.5.5 Mr Mlungisi Mvoko, MPL, MEC for Finance, EC Treasury;
- 5.5.6 Mr Vuyolwethu Zungula, the Complainant and
- 5.5.7 Mr Elias Muller, the Complainant.

5.6 Response received to the Notice issued in terms of Section 7(9) of the Public Protector Act

5.6.1 Written responses to the Notices were received from Mr Makhode, Mr Mlungisi Mvoko, MPL (Mr Mvoko), MEC for Finance, EC Treasury, Dr Motsoaledi, Mr Muller and Dr Schreiber on 18, 19, 20 and 24 March 2025, respectively.

5.6.2 On 27 March 2025, further submissions were received from Mr Makhode and Dr Masiapato.

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

6.1 Whether the designation of Bulembu Airport as a port of entry and exit by Dr PA Motsoaledi, to facilitate the landing of Mr Mohammed bin Zayed Al Nahyan and his entourage, was in contravention of the applicable prescripts, if so, whether such conduct is improper as envisaged by section 182(1)(a) of the Constitution and amounts to maladministration contemplated in section 6(4)(a)(i) of the Public Protector Act

Common cause

6.1.1 Dr Motsoaledi served as the Minister of Home Affairs during the 6th Administration between 2019 and 2024 and is currently serving as Minister of Health in the Seventh Administration.

6.1.2 The private visit by Mr Al Nahyan and his entourage was preceded by formal diplomatic correspondence between the UAE embassy and DIRCO. The correspondence from the UAE indicated that Mr Al Nahyan

would be accompanied by a large entourage and that he would be domiciled at Ezulu Game Reserve situated in Makhanda in the EC Province.

- 6.1.3 Mr Al Nahyan and his entourage landed at Bulembu Airport between 16 April and 20 April 2023 and departed from the Republic by 30 April 2023.

Issue in dispute

- 6.1.4 The issue for the Public Protector's determination is whether in designating Bulembu Airport as a port of entry and exit, Dr Motsoaledi complied with the applicable prescripts.

The Complainants' version

- 6.1.5 Mr Zungula submitted that by designating Bulembu as a port of entry and exit, Dr Motsoaledi violated the Immigration Act and the BMA Act. Both Complainants contended that Dr Motsoaledi failed to comply with section 30(3) of the BMA Act in that the public was not afforded thirty (30) days to comment before he made the designation.

Dr Motsoaledi's version

- 6.1.6 The Public Protector, through a letter dated 22 September 2023, requested Dr Motsoaledi to respond to the allegations proffered against him by the Complainants. In his response letter dated 26 October 2023, he stated that:

- 6.1.6.1 On 07 April 2023, he received an application/request for designation of Bulembu Airport and provision of immigration services from Mr Mabuyane. The request contained supporting documentation, including diplomatic communication.

6.1.6.2 The said request from Mr Mabuyane, *inter alia*, stated that:

- (a) The EC Province received a request from the UAE Embassy dated 28 March 2023 for Diplomatic Overflight and Landing Rights Permit for the Abu Dhabi Presidential Flight scheduled to arrive at Bulembu Airport on 12 April 2023 and depart on 12 May 2023;
- (b) The EC Provincial Government held consultations with Ambassador Mahash Salem Alhameli since December 2022 with the aim of promoting investment, trade and tourism between the EC Province and the Abu Dhabi Emirate;
- (c) He subsequently visited the UAE from 31 March 2023 to 04 April 2023, during which a firm commitment was made for a multi-billion investment portfolio in oil, gas, energy, tourism, agriculture and economic infrastructure towards the EC Province;
- (d) Mr Al Nahyan indicated that he would be undertaking a private visit to the EC Province in April 2023 and intended to bring along a large entourage that will continue to assess investment opportunities in the EC Province; and
- (e) Based on the above he requested the Minister of Home Affairs to designate Bulembu Airport as a port of entry and exit and to provide necessary immigration services during the arrival and departure of the visitors.

6.1.6.3 On 10 April 2023, he received a submission from Mr Makhode and Dr Masiapato which he approved;

6.1.6.4 He considered section 9A of the Immigration Act, which states that, “*The Minister may, in the prescribed manner, designate any place in the*

*Republic, which complies with the prescribed requirements, **where all persons have to report before they may enter, sojourn or remain within, or depart from, the Republic.***” (His emphasis);

- 6.1.6.5 He also had regard to section 30 of the BMA Act, particularly section 30(3) which provides for the publication of a notice in the *Gazette* for public comments for a period of not less than 30 days;
- 6.1.6.6 He was convinced that section 9A of the Immigration Act read with Regulation 8 of the Immigration Regulations, 2014 (Immigration Regulations) was the relevant and applicable prescript and not section 30 of the BMA Act;
- 6.1.6.7 He duly applied his mind to all the facts before him and on 12 April 2023, he issued a notice of designation of Bulembu Airport as a port of entry and exit as contemplated in section 9A, read with Regulation 8;
- 6.1.6.8 Due to the administrative delays in the Government Printing Works (GPW), the government *Gazette* was only published on 05 May 2023;
- 6.1.6.9 The Notice of designation (with a covering letter) dated 12 April 2023 was sent to Mr Mabuyane; and
- 6.1.6.10 He did not rely on section 9(3)(b) of the Immigration Act as alluded to by Mr Zungula.
- 6.1.7 Dr Motsoledi also provided copies of documents which are discussed hereunder.

Notice of designation, dated 12 April 2023

- 6.1.8 The notice titled “*Notice of Designation of a Place as Port of Entry and Exit*” was signed by Dr Motsoaledi on 12 April 2023. It recorded that he

was designating Bulembu Airport as a place of entry and exit in terms of section 9A of the Immigration Act read with Regulation 8. Further that, the designation was valid for a period between 12 April 2023 and 12 May 2023 at midnight.

Government Gazette No. 488524, dated 05 May 2023

- 6.1.9 Government Gazette published the notice containing the Notice of designation reflected above under government notice number 3382.

Response from Mr Zane Dangor, DG of DIRCO

- 6.1.10 The Public Protector, through a letter dated 27 September 2023, requested Mr Dangor, to provide documentation relating to the visit of Mr Al Nahyan to the Republic. On 27 October 2023, he responded to the Public Protector by providing numerous documentations, including several “*Note Verbale*” which are reflected hereunder.

Note Verbale dated 04 April 2023 with reference number 1/3/129-251

- 6.1.11 The *Note Verbale* from the Embassy of the UAE in Pretoria requested DIRCO to assist in obtaining a permit for Diplomatic Overflight of the Airspace and Landing Rights in the Republic for aircraft Agusta.AW-139Hh 145 D3 of the UAE to land at Bulembu Airport during the period 05 April until 05 May 2023; for the helicopter support of the UAE private presidential visit.

Note Verbale dated 06 April 2023 with reference number 1/3/129-253

- 6.1.12 The *Note Verbale* from the Embassy of the UAE in Pretoria requested DIRCO to facilitate the required temporary import permits and clearances for the following equipment that would be accompanying Mr Al Nahyan:

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- (a) Medical equipment;
 - (b) IT equipment;
 - (c) Presidential vehicles transporting communication systems;
 - (d) Four (04) helicopters;
 - (e) Twelve (12) ambulances;
 - (f) Armaments;
 - (g) Kitchen Equipment, appliances and ingredients;
 - (h) Diplomatic Overflight of the Airspace and Landing Rights;
 - (i) Communications; and
 - (j) Search and Rescue Team.

Note Verbale dated 15 April 2023 with reference number 1/3/129-281

- 6.1.13 The *Note Verbale* from the Embassy of the UAE in Pretoria to DIRCO confirmed that Mr Al Nahyan would arrive on 19 April 2023.

The Note Verbale dated 16 April 2023 with reference number 1/3/129-2766

- 6.1.14 The *Note Verbale* from the Embassy of the UAE in Pretoria requested DIRCO to assist in obtaining a permit for Diplomatic Overflight of the Airspace and Landing Rights in the Republic for the Royal Jet of Abu Dhabi, UAE A/C Reg. A6-RJU aircraft to land at Bulembu Airport and OR Tambo International Airport during the period 17-19 April 2023, for landing and parking.

Response from Adv James Mlawu, DG of the NDoT

- 6.1.15 The Public Protector, through a letter dated 27 September 2023, requested Adv Mlawu (Adv Mlawu), DG of NDoT, and/or the South African Civil Aviation Authority (SACAA) to indicate the role they played regarding the landing of Mr Al Nahyan and his entourage at Bulembu Airport in April

2023. On 23 October 2023, in addition to Note Verbale discussed above, Adv Mlawu provided a copy of a memorandum discussed hereunder:

Memorandum titled "Narrative on the Private Visit to Bhisho by the President of the United Arab Emirates in April 2023," dated 16 October 2023

- 6.1.16 The memorandum was from Ms E Mpye (Ms Mpye), Chief Director, Aviation Policy and Regulation to Adv Mlawu, which recorded that:
- 6.1.16.1 On 29 March 2023, the Branch: Civil Aviation received a request from the EC Transport for approval for Mr Al Nahyan to fly directly from Abu Dhabi to Bulembu Airport. The request was also submitted by DIRCO;
- 6.1.16.2 The EC Transport advised that the airport was being upgraded so that it would be able to handle the large aircraft. The Branch: Civil Aviation advised that the use of Bulembu Airport as a port of entry was not permissible since it was not a port of entry and did not have all the necessary resources and equipment to process an international flight;
- 6.1.16.3 The Branch: Civil Aviation advised that the flight should first clear customs and immigration at an international airport and proceed to Bulembu Airport, provided that the latter was operational and could handle the type of aircraft to be used. The other alternative would be to use the Port Elizabeth Airport which is an international port of entry and proceed to Bhisho by using road transport; and
- 6.1.16.4 In April 2023, Dr Motsoaledi designated Bulembu Airport as an international port of entry from 12 April to 12 May 2023 and advised the EC Transport that landing clearances for flights to Bulembu Airport may be approved.

*Response from Ms TA Fosi, Chief Executive Officer of the Government
Printing Works*

- 6.1.17 The Public Protector, through a letter dated 13 August 2024, requested Ms Fosi to provide amongst others the reasons why the Notice of designation, dated 12 April 2023 was only published on 05 May 2023. In her response dated 20 August 2024, she made the following submissions:
- 6.1.17.1 On 03 May 2023, she received an email from Mr Makhode enquiring about a notice sent to her on 12 April 2023 through an email. The said email was attached as proof;
- 6.1.17.2 On the same day, she forwarded the message from Mr Makhode to Ms Hope Masilo who is responsible for the development and publication of the eGazettes;
- 6.1.17.3 She proceeded to check all emails received from Mr Makhode on 12 April 2023 and the dates around this day but could not find anything on the email system. She then requested Mr Zwelibanzi Gwiba (Mr Gwiba), the Chief Information Officer, to check the said email on the domain but he could not trace it either. The outcome of all checks made by her and Mr Gwiba suggested that the email from the Mr Makhode was not delivered on the said date;
- 6.1.17.4 Following the query from the Public Protector, she again requested Mr Gwiba to send her a report from the GPW's domain showing all email communication between the DHA and GPW on 12 April 2023 and days around this date. She wanted to establish if perhaps the email was delayed, because the email screenshot sent by Mr Makhode showed the status of her email as "*not responding*" at the time. The report indicates that the email from Mr Makhode was not delivered to her; and

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- 6.1.17.5 The official notice for publication or Z95 form was completed by Adv Moses Malakate which indicated the publication date as 05 May 2023. The Notice for designation was subsequently published on the GPW's website on 05 May 2023 and a copy was sent to Mr Makhode as proof.

Meeting between the Investigation Team, Mr Makhode and Dr Masiapato

- 6.1.18 On 13 August 2024, the Investigation Team requested a meeting with both Mr Makhode and Dr Masiapato to discuss the recommendation they made to Dr Motsoaledi that Bulembu Airport be designated in terms of section 9A of the Immigration Act.
- 6.1.19 The proposed meeting was held on MS Teams virtual platform on 23 August 2024 where the following transpired:
- 6.1.19.1 Mr Makhode indicated that the recommendation for the designation of Bulembu Airport as a port of entry and exit in terms of section 9A of the Immigration Act read with Regulation 8 of Immigration Regulations was premised on the fact that the request from Mr Al Nahyan was for a designation for a short period, between 12 April 2023 and 12 May 2023;
- 6.1.19.2 Mr Makhode also indicated that the DHA normally deals with these kinds of requests from various quarters such as non-governmental organisations (NGOs), churches, state own companies (SOCs), Denell, and the military; and
- 6.1.19.3 Dr Masiapato also reiterated that the requests for temporary designations of places were made all the time. In most cases, the designations are requested in order to accomplish a particular activity which only affects specific persons. Thus, a notice would be published just to reflect that such a designation in terms of section 9A of the Immigration Act was made.

Response from Mr LT Makhode, DG of DHA

- 6.1.20 Through a letter dated 04 September 2024, the Investigation Team requested Mr Makhode to explain his rationale behind the recommendation that Bulembu Airport should be designated in terms of section 9A of the Immigration Act as encapsulated in the memorandum titled “*Designation of Bulembu Airport (Bhisho) as a Place of Entry and Exit.*” In his response dated 11 September 2024, he stated that:
- 6.1.20.1 The designation of Bulembu Airport was done in accordance section 9A of the Immigration Act, because it was of a temporary nature as stated in the request/application by Mr Mabuyane;
- 6.1.20.2 It should be noted that section 30 of the BMA Act contains similar provisions and in particular, section 30(3) provides for publication of a notice in the *Gazette* for public comments for a period of not less than 30 days;
- 6.1.20.3 The provisions of the BMA Act are intended for permanent designation of places as ports of entry and exit. The BMA Act further provides a requirement for public comments; and
- 6.1.20.4 The DHA has previously designated the following places as ports of entry and exit in terms of section 9A of the Immigration Act;
- (a) The Nedbank Tour De Tuli-Mapungubwe, was granted by the former Minister of Home Affairs, Mr MKN Gigaba, MP (Mr Gigaba); on 18 July 2015 for the period 13 to 18 August 2015;
 - (b) The Air Force Base Overberg, was granted by Mr Gigaba in terms of section 9A(1) and 9(3)(b) of the Immigration Act on 28 February 2017;

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- (c) The Victoria and Alfred Waterfront, Cape Town, was granted by Dr Motsoaledi on 21 November 2019, for entry on 24 November and exit on 28 November 2019; and
 - (d) Witsieshoek Mountain Lodge to Afri-Ski Transboundary Hiking Event, 2022, was granted by Dr Motsoaledi on 25 October 2022 for the period 14 to 18 November 2022.

6.1.21 Regarding the publication of the Notice of designation on 05 May 2023, Mr Makhode explained that the initial request to publish was sent to Ms Fosi on 12 April 2023 and a reminder was subsequently sent to her on 03 May 2023. He attached a copy of the screenshot of the email sent on 12 April 2023 and a copy of an email from Ms Fosi dated 04 May 2024 acknowledging his email dated 03 May 2023.

Response from Dr Masiapato, Commissioner and CEO, BMA

6.1.22 Through a letter dated 04 September 2024, the Public Protector requested Dr Masiapato to explain his rationale behind the recommendation that Bulembu Airport should be designated in terms of section 9A of the Immigration Act and not section 30 of the BMA as captured in the memorandum titled “*Designation of Bulembu Airport (Bhisho) as a Place of Entry and Exit.*” A response from Dr Masiapato was received on 11 September 2024 where he stated that:

6.1.22.1 Section 30(3) of the BMA Act, emphasises that, ‘*the Minister must, prior to an approval in terms of subsection (1) or (2), publish a notice in the Gazette for public comments for a period of not less than 30 days.*’ Therefore, prior to approval, there will be several activities undertaken at the technical and ministerial level involving several stakeholders with interest in the border management environment. Once the discussions are concluded and all stakeholders concur, then the Minister of Home Affairs would publish the request for public comments for not less than 30 days;

6.1.22.2 The process that would have to be followed in the designation of a place as a port of entry or exit in terms of the BMA Act would entail consideration of the following:

- (a) Section 24(1) of the BMA Act establishes the Inter-Ministerial Consultative Committee (IMCC) on Border Management and its functions include, amongst others, consultation on the designation, determination, appointment or prescription, and withdrawal or cancellation of a port of entry in terms of section 24(1)(a)(i);
- (b) Further, section 25(1) of the BMA Act establishes the Border Technical Committee (BTC) on Border management and its functions include, amongst others, providing advice to the IMCC on the implementation of legislation, policies and protocols related to border management in terms of section 25(3)(a);
- (c) Therefore, once the request for the designation of the port of entry is received, the Minister of Home Affairs would send it to the Commissioner of the BMA for processing. Once received, the BMA would conduct due diligence on the request. Thereafter, the request would be tabled at the BTC by the Commissioner for deliberation by the DGs and the Heads of Entities;
- (d) The discussions would include the rationale for opening a port at the identified place which would also include the conducting of various studies such as, the environmental impact analysis, the security assessment, and/or the socio-economic impact study;
- (e) Once all the conducted studies concur with the proposal for opening a new port of entry, a report would be prepared for presentation to the IMCC for consideration. Once the Ministers in the IMCC agree, then the Minister of Home Affairs would publish the notice in the government Gazette for public comments. At this point, all members

of the public would have the opportunity to engage on the proposal and all their input would be taken into consideration; and

- (f) Once all public comments are considered and there is no major objection, the Minister of Home Affairs would grant approval in terms of section 30(1) of the BMA Act.

Response to the Notice issued in terms of section 7(9) of the Public Protector Act (Notice)

- 6.1.23 On 11 March 2025, the Investigation Team electronically transmitted the Notices to Dr Motsoaledi, Dr Schreiber, Mr Makhode and the Complainants in order solicit further submissions with regard thereto.
- 6.1.24 On 13 March 2025, the Investigation Team received an acknowledgement of the Notice from Mr Mxolisi Makhubo, on behalf Mr Zungula.
- 6.1.25 Mr Makhode responded to the Notice through a letter dated 18 March 2025 wherein he noted the report and the findings; and indicated that he has no objections or further representations to make. However, he requested the Public Protector to consider, when establishing the timelines for the recommendations, that the process of developing Regulations typically requires more than 120 calendar days.
- 6.1.26 In his letter dated 19 March 2025, Dr Motsoaledi indicated that he was satisfied with the contents of the report and did not wish to make any further submissions.
- 6.1.27 On 20 March 2025, Mr Muller indicated that he noted the contents of the Notice and did not have any submission to make.

- 6.1.28 On 24 March 2025, Dr Schreiber noted the recommendations contained in the Notice and indicated that he no representations to make regarding the proposed recommendations.

Response from Mr LT Makhode and Dr NM Masiapato

- 6.1.29 On 26 March 2025, Mr Makhode and Dr Masiapato made further submission following a virtual meeting held with the Investigation Team on 25 March 2025 confirming that the meeting resolved that the Regulations to be made under the BMA Act would be best suited to clarify the circumstances under which the Minister can designate a place as port of entry and exit, alternatively, to provide for the harmonisation of section 9A of the Immigration Act, and section 30 of the BMA Act. The DHA, together with the BMA, also opined that such clarification is in line with the provisions of section 36(1)(k) of the BMA Act.
- 6.1.30 The submission further requested the Public Protector to consider the steps, as well as the envisaged timelines it would take to process the proposed regulations as indicated in the table below:

#	PROCESS	Responsibility	Time-Frames (Indicative)
1.	Drafting of the regulations	Legal Services of the BMA	1 week
2.	Alignment of the regulations	BMA	1 week
3.	Request preliminary certification of the draft Regulations from the Office of the Chief State Law Advisor ("OCSLA")	BMA	1 month (dependency on OCSLA)

4.	Request preliminary Socio-Economic Impact Assessment System Report from the Department of Planning, Monitoring and Evaluation, The Presidency ("DPME")	BMA	1 month (dependency on DPME)
5.	Consideration of inputs / opinion from the OCSLA - update the regulations as per the preliminary certification opinion	BMA	1- 2 Weeks
6.	Draft submission and obtaining Minister's approval of draft Regulations and to publish in the Gazette for public comments	BMA	2 Weeks
7.	Submit the draft Regulations, together with the requisite Cabinet Memorandum, to the Government consultative structures	BMA	2-3 months (depending on cluster scheduling)
8.	Table the draft Regulations to Cabinet for approval to publish the draft Regulations, in the Government Gazette, for public comment	BMA	Dependent on Cabinet meeting schedule
9.	Once approval is obtained from Cabinet, obtain quotation and order number	BMA	3 to a week

10.	Submit draft Regulations to Government Printing Works ("GPW") for publication	BMA	2 days
11.	Publish draft Regulations in the Gazette	BMA	30 to 60 days
12.	Submit draft Regulations to the National Economic Development and Labour Council ("NEDLAC") in order to obtain the required NEDLAC Report	BMA	6 months (as per NEDLAC processes)
13.	Consolidation of comments and consideration and effecting proposed amendment	BMA	2 weeks
14.	Request final certification from OCSLA	BMA	1 month (dependency on OCSLA)
15.	Request final SEIAS certificate from DPME	BMA	1 month (dependency on DPME)
16.	Draft submission to inform Minister of the comments and obtain Minister's approval of final draft Regulations Draft requisite proclamation, Presidential Minute and requisite documents to be submitted to The Presidency	BMA	2 weeks

17.	Obtain quotation and order number	BMA	2 days to a week
18.	Publish final Regulations in the Gazette	BMA	2 days to a week

Applicable law

Immigration Act, 2002, as amended

- 6.1.31 Section 9(1) stipulates that subject to this Act, no person shall enter or depart from the Republic at a place other than a port of entry.
- 6.1.32 Section 9(3)(b) stipulates that no person shall enter or depart from the Republic except at a port of entry, unless exempted in the prescribed manner by the Minister.
- 6.1.33 Section 9A of the Immigration Act was inserted by section 6 of Immigration Amendment Act, 2011 and regulates the designation of places of entry or exit. Section 9A(1) stipulates that;

“The Minister may, in the prescribed manner, designate any place in the Republic, which complies with the prescribed requirements, where all persons have to report before they may enter, sojourn or remain within, or depart from, the Republic.”

Border Management Authority Act, 2020

- 6.1.34 Section 24(1)(a)(i) establishes the Inter-Ministerial Consultative Committee to consult, designate, determine, appoint or prescribe, and withdraw or cancel a port of entry;

6.1.35 Section 24(3) stipulates that the IMCC consists of the Minister of Home Affairs, the Cabinet members responsible for Agriculture, Forestry and Fisheries, Defence and Military Veterans, Environmental Affairs, Finance; Health, Police; State Security, Trade and Industry, Transport and any other Cabinet member appointed by the President.

6.1.36 Section 30 specifically regulates the designation of ports, points or places of entry or exit by the Minister and stipulates that:

“(1) Notwithstanding any other legislation, the power to designate, determine, appoint or prescribe any port, point or place of entry or exit for—

(a) the movement of goods; or

(b) the movement of persons,

in and out of the Republic may only be made with the approval of the Minister.

(2) ...

(3) The Minister must, prior to an approval in terms of subsection (1) or (2), publish a notice in the Gazette for public comments for a period of not less than 30 days.”

6.1.37 Section 39(1)(a) of the BMA stipulates that ports, points and places of entry or exit at the commencement of this Act include those designated by the Minister of Home Affairs in terms of section 9A of the Immigration Act.

Immigration Regulations, 2014¹

6.1.38 Regulation 8 of the Immigration Regulations provides that:

¹ Published in Government Notice R413 of 2014.

“(1) *The designation of any place as a port of entry in terms of section 9A of the Act shall be made by the Minister in writing.*

(2) *A designation of any place as a port of entry shall be published in the Gazette.”*

Case law

6.1.39 It is trite or a basic principle of statutory application that related statutes must be read together as forming one system and as interpreting and enforcing each other. This is known as the principle of harmonious or schematic interpretation. The principle was explained as follows by the Constitutional Court in *Independent Institute of Education (Pty) Limited v Kwazulu-Natal Law Society*² (Independent Institute of Education):

“It is a well-established canon of statutory construction that ‘every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statute, and with every other unrepealed statute enacted by the Legislature’. Statutes dealing with the same subject matter, or which are in pari materia, should be construed together and harmoniously. This imperative has the effect of harmonising conflicts and differences between statutes. The canon derives its force from the presumption that the Legislature is consistent with itself. In other words, the Legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law. Statutes relating to the same subject matter should be read together because they should be seen as part of a single harmonious legal system.”

6.1.40 In *Arse v Minister of Home Affairs*³ the court formulated the interpretive challenge caused by conflicting statutes as follows:

² 2020 (4) BCLR 495 (CC).

³ 2012 (4) SA 544 (SCA) para 19.

“In so far as there may be a conflict between two provisions they should be reconciled. Where two enactments are not repugnant to each other, they should be construed as forming one system and as re-enforcing one another.”

Analysis

- 6.1.41 The evidence at the Public Protector’s disposal indicates that on 07 April 2023, Dr Motsoaledi received an application from Mr Mabuyane requesting him to designate Bulembu Airport as a port of entry and exit following a request from the UAE. This was predicated on the request from Mr Al Nahyan who wanted to land closest to Ezulu Game Reserve Lodge in Bhisho due to the large equipment and entourage he intended bringing to the Republic.
- 6.1.42 According to the evidence of Mr Makhode and Dr Masiapato, the DHA has been using section 9A of the Immigration Act read with the Immigration Regulations to process applications for temporary designation that would only apply to specific activities undertaken by specific persons for a specific period.
- 6.1.43 Dr Masiapato noted that section 30(3) of the BMA Act mandates the publication of a notice in the Gazette for public comment for at least 30 days before the Minister can approve the designation of a port of entry and exit. In this context, the Minister's approval is contingent upon thorough consultations with the IMCC, BTC, and various stakeholders involved in border management. These consultations, which include Ministers from different portfolios within the IMCC, aim to clarify the justification for establishing a new port of entry at the proposed location. Additionally, stakeholders are responsible for conducting studies such as environmental impact assessments, security evaluations, and socio-economic impact analyses.

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- 6.1.44 Section 9A of the Immigration Act empowers the Minister to designate places as ports of entry and exit in a prescribed manner. According to Regulation 8 of the Immigration Regulations, the prescription is that the designation must be made in writing and be published in a Gazette.
- 6.1.45 Notably, section 30 of BMA Act appears to regulate the same powers granted to the Minister in terms of section 9A of the Immigration Act. However, it contains an additional requirement that the designation must be preceded by a publication of a notice in the Gazette for public comments for a period of not less than 30 days.
- 6.1.46 The evidence held by the Public Protector suggests that the participation of Ministers from different portfolios in the IMCC indicates that the provisions of the BMA Act are meant for permanent designation of locations as ports of entry and exit. Consequently, if a location has already been established, the involvement of the IMCC and the need for various studies prior to its designation would be redundant. Based on these factors it would not be reasonable to expect such process to find application in temporary designations, which rarely goes beyond a month.
- 6.1.47 The principle of harmonious or schematic interpretation was adopted by the Constitutional Court in the Independent Institute of Education case, wherein it denoted that every provision in a statute should be construed so that it is consistent with every other part of that statute, and with every other existing statute. This principle finds application in the current circumstances considering that sections 9A and 30 of the Immigration Act and BMA Act respectively, contain varying requirements that should be harmonised with reference to context and purpose.
- 6.1.48 Having regard to the temporality of the designation of Bulembu Airport it is reasonable to accept Dr Motsoaledi's contention that, after having

regard to both sections 9A and 30 of the Immigration Act and BMA Act respectively, he was convinced that former was applicable.

- 6.1.49 On 12 April 2023, Dr Motsoaledi issued a notice to designate Bulembu Airport as a port of entry and exit for the period between 12 April 2023 and 12 May 2023 in terms of section 9A of the Immigration Act read with Regulation 8 of the Immigration Regulations. The notice to designate Bulembu Airport as a port of entry and exit was made in writing and subsequently published in a *Gazette* on 05 May 2023 in compliance with Regulation 8 of the Immigration Act.
- 6.1.50 The Public Protector noted with concern that the publication of the designation of Bulembu Airport as port of entry only happened on 05 May 2023, because of technical glitches, despite having been approved in writing by Dr Motsoaledi on 12 April 2023. However, Regulation 8 of the Immigration Regulations does not prescribe timelines regarding the publication of the notice. Notwithstanding, it would be prudent to endeavour to publicise the notice before the actual activity takes place.
- 6.1.51 The Public Protector noted that section 9(3)(b) of the Immigration Act does not deal with the designation of places as ports of entry and exit but deals with exemptions by the Minister of persons from entering or departing from the Republic. Therefore, the Public Protector could not find evidence to support Mr Zungula's assertion that Dr Motsoaledi designated Bulembu Airport in terms of section 9(3)(b) of Immigration Act.
- 6.1.52 Following the issuing of Notices to the Complainants to make further representations concerning the proposed findings and recommendations, no further submissions were received for consideration. However, the Public Protector received submissions from the DHA and the BMA with regard to the proposed recommendations, which were considered.

Conclusion

6.1.53 Based on the evidence and information obtained, the Public Protector concludes that Dr Motsoaledi correctly designated Bulembu Airport in accordance with section 9A of the Immigration Act read with Regulation 8 of the Immigration Regulations.

6.2 **Whether Mr LO Mabuyane accepted a donation of twenty million rand from the United Arab Emirates government to refurbish Bulembu Airport in contravention of the applicable prescripts, if so, whether such conduct is improper in terms of section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act**

Common cause

6.2.1 On 29 March 2023, the Branch: Civil Aviation of the NDoT received a request from the EC Transport for approval for Mr Al Nahyan to fly directly from Abu Dhabi to Bulembu Airport.

6.2.2 Remedial or repair works were undertaken by Ezulu Game Reserve at Bulembu Airport from 13 March 2023 and completed on 14 April 2023, to make it suitable for the landing of a large aircraft.

Issue in dispute

6.2.3 The issue for the Public Protector's determination is whether Mr Mabuyane accepted a donation of R20 million rand from UAE for the renovation of Bulembu Airport, in accordance with the applicable prescripts.

The Complainant's version

- 6.2.4 Mr Zungula questioned whether Mr Mabuyane accepted the R20 million donation made by the UAE to ensure that Bulembu Airport was renovated before it was declared an international port of entry and exit and/or whether the donation was accordingly paid to the EC Provincial Government Revenue Fund as required by Treasury Regulations.
- 6.2.5 He further questioned whether the renovation amounted to R20 million given that no significant upgrades were made at Bulembu Airport.

Mr LO Mabuyane's version

- 6.2.6 Mr Mabuyane was requested, through a letter dated 25 September 2023, to respond to Mr Zungula's allegation relating to funding for the upgrades of Bulembu Airport. In his response dated 16 November 2023, he stated that:
- 6.2.7 The EC Provincial Government did not receive any cash donation from the UAE. However, the UAE performed upgrades at Bulembu Airport to the value of R5.2 million rand; and
- 6.2.8 The upgrades were performed in terms of the SACAA Regulations following a request by the UAE to land at Bulembu Airport.

A schedule of upgrades and associated costs

- 6.2.9 Mr Mabuyane availed a copy of a document with the breakdown of work done and associated costs as follows:

Bulembu Airport			
No	Activity	Service Provider	Total Excl VAT
1	Grass Cutting & Tree Felling	Vulithuba Bush Clearing	R 698 500,00
1.1	Cutting Grass on Run Way back 20m x 5000m		
1.2	Cutting Grass on Taxi Way (A) 20m x 800mm		
1.3	Cutting Grass on Taxi Way (B) 20m x 700m		
1.4	Removal of all trees within 50m of RunWay & Taxi Way		
1.5	Herbicide all Areas of Runway, Taxi Way & Apron		
1.6	Allowance for 30 Loads of Trees & Branches to be carted to stockpile as directed on site or to the nearest Village for local residents to use as Fire wood.		
New	Exposing of Approach Lights. Removal of Trees & Stumps. Cutting of Grass Additional Areas	Vulithuba Bush Clearing	R 660 000,00

	at ends of Runway as instructed by Client		
2	Runway/Taxi Way Markings & Line Painting	Legend Road Markings	R 843 612,00
2.1	Taxi Way Centre Line: Alpha & Bravo 150mm wide Yellow.		
2.2	Stop Bars: 2 on Alpha & 2 on Bravo Incl 150mm Yellow line		
2.3	Blast Ends of Runway - 900mm Yellow Lines.		
2.4	Runway Markings:		
2.4.1	Threshold Markings x 12 Bars @1.8m x 30m		
2.4.2	Touch Down Markings 2 x 3 at 2 Points @ 1.8m x 22.5m		
2.4.3	Aiming Point Markings x 2 @ 45 x 1.8m		
2.4.5	Touch Down Zone 2 x 2 @22.5m x 1.8m		
2.2.6	Touch Down Zone 1 x 2 at 2 Points @22.5m x 1.8m		
2.5	Runway Numbers		

2.5.1	26 No as per Existing 6m x 9m		
2.5.2	8 No as per Existing 6m x 9m		
2.6	Runway Centre Line		
2.6.1	48 Dashes @30m x 0.9m		
2.7	Runway Edge Line		
2.7.1	900mm White Line		
2.8	Removal Of Existing Road Markings		
2.8.1	Overpainting of Existing Lines with Black Paint		
2.9	Site Establishment & De Establishment		
NEW	Additional Apron, Turning Circle Lines and Additional Blacking out of existing Lines as per Client instruction on 13 March 2023 site Meeting	Legend Road Markings	R 213 890,00
3	Runway Light Repair		R 800 000,00
4	Generator	Universal Equipment East London	R 1 141 800,00
4.1	Supply & Installation of 250 kva Standby Enclosed		

	Canopy 3 Phase Diesel Generator		
4.2	Auto Change Over Panel		
4.3	All Electrical Work		
4.4	Concrete Plinth for Generator		
4.5	First Fill Tank Diesel		
5	Engineering Fees PCU Testing	Jasper Burden Consultants/ Engineering Advice & Services	R 105 000,00
5.1	Work, Reports & Calculations carried out by Engineers to obtain PCNS		
6	Cores & Concrete Panel Removal & Reinstall Concrete	Cape Coring East London	R 91 447,00
6.1	Coring of 350mm & 250mm Apron Slabs to obtain Concrete Strength Results		
6.2	Saw Cutting & Removal of 3m x 3m x 400mm Thick reinforced Concrete Section of Apron Slab to access Material for Testing		

6.3	Reinstate Concrete Slab 400mm Thick to match Existing Concrete Specifications		
7	Lab Testing	Strata Lab. East London	R 48 365,00
7.1	Testing Of Concrete Cores		
7.2	Testing of the Insitu Sub Base Material under the 350mm Concrete Slab (400kgs of)		
7.3	Excavating, Transporting of 400kgs Material for Testing		
	SUB Total		R 4 602 614,00
	15% VAT		R 690 392,10
	TOTAL SA RAND		R 5 293 006,10

Response from Mr Mbulelo Sogoni, the DG in the office of the Premier of Eastern Cape

6.2.10 The Public Protector, through a letter dated 08 October 2024, requested Mr Sogoni, the DG in the Office of the Premier of EC (OTP) to respond to the following issues:

6.2.10.1 Whether, as the accounting officer in the OTP, he approved any donation in terms of the Treasury Regulations, if so, to avail a copy of the approval;

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- 6.2.10.2 Clarity on how the UAE performed the upgrades at Bulembu Airport;
- 6.2.10.3 Clarity on who was involved in procurement of services from the different service providers who undertook work at Bulembu Airport; and
- 6.2.10.4 To avail copies of the invoices from the service providers and proof of payment thereof.
- 6.2.11 In a letter dated 17 October 2024, Mr Sogoni stated that following receipt of the Public Protector's letter, he engaged EC Transport to ascertain specific details requested therein and based on the information supplied to him, he replied as follows:
- 6.2.11.1 He was the accounting officer in the OTP and that Mr Fani is the acting HOD of EC Transport and could assist with providing the copy of approval of the donation; and
- 6.2.11.2 He was advised that the UAE Embassy in Pretoria commissioned Mr Stow (Mr Stow), General Manager of Ezulu Game Reserve, to perform the upgrades at Bulembu Airport.
- 6.2.12 Mr Sogoni, through Mr Rupert Fortune (Mr Fortune) from State Attorney and the OTP, also furnished the Public Protector with copies of documents discussed hereunder.

Letter from Mr B.S. Makambi, Acting Chief Director Transport Operations

- 6.2.13 In a letter to Mr Fortune dated 16 October 2024, Mr Makambi, Acting Chief Director Transport Operations, stated that:
- 6.2.13.1 With reference to the services provided to the EC Transport, Regulation 21.2.1 of the Treasury Regulations was complied with as evidenced by a

memorandum titled “*Narrative about UAE Visit at Bhisho Airport as Requested by the CFO’s Office;*”

- 6.2.13.2 There were no structural upgrades performed at the Bulembu Airport; and
- 6.2.13.3 In response to how the UAE performed the upgrades at Bulembu Airport, the UAE was represented by Ezulu Game Reserve, and they procured all service providers who undertook work at Bulembu Airport.

Memorandum on the visit by UAE and landing at Bulembu (Bhisho) Airport

- 6.2.14 On 31 May 2023, Mr Makambi submitted a memorandum titled “*Narrative about UAE Visit at Bhisho Airport as Requested by the CFO’s Office*” signed by Mr Mafani, on 01 June 2023. It was stated in the memorandum that:
- 6.2.14.1 On 09 March 2023, a meeting was convened at the ICC between the UAE Ambassador, Mr Mabuyane, Member of Executive Council (MEC) for Transport, Mr Mafani, Senior Official from OTP and Senior Officials from Transport and it was decided that Bhisho Airport will be used for the visit of the UAE delegation. Emanating from the meeting, a Task Team was formed to prepare for the visit which included OTP, Mr. Mhlaba of EC Transport, Mr. Godwin and the UAE Team;
- 6.2.14.2 The first Task Team was to identify what is required for the Airport to be ready for the visit including:
- (a) To request and get approval for the airport to be port of entry for the duration of the visit;
 - (b) To upgrade the airport to Category 9 for the duration of the visit;
 - (c) The increase of fire engines;
 - (d) The increase of firefighters;
 - (e) The source of equipment for the landing of flights;

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- (f) Increase security at the airport; and
 - (g) The need for SARS and Customs officials and SAPS; and

6.2.14.3 All repairs/work had to be in accordance with SACAA Regulations as it would be inspected by SACAA before granting an exemption. The maintenance work commenced on 13 March 2023 and was completed on 14 April 2023 when SACAA granted the exemption for the utilization of the airport;

6.2.14.4 All repairs/work done had to be costed, as this was on State property; and

6.2.14.5 The first flight was on 16 April and the last flight was on 30 April 2023;

6.2.14.6 The following items were sponsored and paid for by the UAE including a new generator which was subsequently donated to the Department:

No	Task	Amount
1.	Grass cutting	R 698 500
2.	Tree cutting	R 660 000
3.	Fixing of ground lights	R 800 000
4.	Procurement of a Generator	R 1 141 800
5.	Repainting of Bhisho Airport	R 1 057 502
6.	Repairs and painting at Mthatha Airport	R 135 000
7.	Core Testing	R 244 812
	15% vat	R 690 392.10
	Total	R 5 293 006.10

Response from Mr Andile Fani, Acting HOD of EC Transport

- 6.2.15 The Public Protector, through a letter dated 22 October 2024, requested Mr Fani to respond to amongst others, to the following issues:
- 6.2.15.1 Having regard to the submission that the memorandum constituted an approval of the UAE donation, provide clarity on why the alleged approval appears to have been granted after the refurbishments at Bhisho Airport were completed; and
- 6.2.15.2 Whether the refurbishment done at Bhisho Airport was disclosed in the financial statements of EC Transport as contemplated in Regulation 21.2.4 of the Treasury Regulations;
- 6.2.16 A response dated 08 November 2024 was received from Mr Lomex Sisilana, (Mr Sisilana), the Acting HOD of EC Transport, who submitted that:
- 6.2.16.1 The memorandum referred to above was a narrative requested by Chief Financial Officer (CFO) when the Annual Financial Statements (AFS) were being prepared for the 2022/23 Financial Year as required in terms of section 40(1)(c) of the PFMA and as guided by Modified Cash Standards;
- 6.2.16.2 The value of the work received in kind was disclosed in Note 3.4 of the audited AFS. However, the approval letter from Mr Mafani was signed before the arrival of the UAE delegation;
- 6.2.16.3 As the company that was representing and arranging for the UAE delegation, Ezulu Game Reserve made all the costing for the maintenance work done at Bhisho Airport. They also procured all services relating to the maintenance work;

6.2.16.4 Mr Noel Godwin (Mr Godwin), a former Director: Infrastructure Operations, worked with Ezulu Game Reserve and its service providers at the Airport and oversaw everything that was done; and

6.2.16.5 Infrastructure Operations ensured that all Civil Aviation Regulations were complied with and helped in the application of the Airport to be Category 9.

6.2.17 Mr Sisilana also availed copies of the documents which are reflected below.

Letter from Mr MC Mafani to Ezulu Game Reserve

6.2.18 In a letter dated 12 March 2023 addressed to the Managing Director: Ezulu Game Reserve and titled “*RE: Usage of Bhisho Airport,*” Mr Mafani indicated, amongst others, the following:

6.2.18.1 EC Transport had no objection to the use of Bhisho Airport by the royal family of the UAE, however, the airport needed improvements in the following areas before an application for an exemption could be requested from SACAA:

- (a) Standby generator was faulty;
- (b) Runway markings were faded;
- (c) Tree felling and grass cutting was required;
- (d) Runway lightings needed repairs; and
- (e) Core drilling to be done to ensure correct PCN (strength of airside area).

6.2.18.2 All repairs/ work to be done in accordance with SACAA Regulations as they would be inspected by SACAA before an exemption could be granted; and

6.2.18.3 All repairs/ work to be costed as they were to be done on state property.

EC Transport Annual Report 2022/23

6.2.19 The donation received in kind for repairs and maintenance done at Bhisho Airport and costed at five million one hundred and seventy-three thousand rand (R5 173 000) was recorded under Note 3.4 at page 259 of the EC Transport annual report 2022/23.

Response from Mr Fred Stow

6.2.20 In a letter dated 22 October 2024, the Public Protector requested Mr Stow, amongst other things, to confirm if Ezulu Game Reserve acted as the representatives of the UAE government and clarify the role it played in facilitating the refurbishment at Bhisho Airport. In his response dated 13 November 2023, he stated, *inter alia*, that:

6.2.21 Ezulu Game Reserve is a private company which owns various properties in South Africa. The shareholder of Ezulu Game Reserve is a corporate entity registered in the UAE;

6.2.22 Ezulu Game Reserve hosted, as its paying guests, members of the UAE Royal family. It procured and paid directly for professional services to provide air and ground travel services in order to host its guests for their visit to Eastern Cape in April 2023.

6.2.23 The airport maintenance work which the service providers performed included:

- (a) Runway/taxi way markings & line painting;
- (b) Grass cutting & tree felling;
- (c) Exposing of approach lights. Removal of trees & stumps. Cutting of grass in additional areas at ends of runway as instructed by client;

(d) Runway light repair.

- 6.2.24 These maintenance services exclude third party moveable equipment which was hired for a limited duration. The relevant equipment includes ground handling equipment, fire trucks, fuel tankers and a generator;
- 6.2.25 The total cost of the above works was three million eight hundred and thirty-two thousand nine hundred and twenty-two rand (R3 832 922). As mentioned, all these works were performed to ensure safe landing and departure of the Ezulu guests and not as donation to the Republic or ECPG; and
- 6.2.26 In order to undertake this maintenance work, Ezulu Game Reserve did not conclude an agreement or memorandum of understanding. However, if any such agreement exists, it would have been at government level as the government granted the airport temporary port of entry status and provided the necessary immigration services.

Response from Ms Thandokazi Mtotywa, Director: Norms and Standards, EC Provincial Treasury

- 6.2.27 The Investigation Team, through an email dated 23 October 2024 and 01 November 2024 respectively, requested Ms Notemba Nqabisa of the office of HOD of EC Provincial Treasury and Ms Thandokazi Mtotywa (Ms Mtotywa), to advise if the department issued any instruction on donations and sponsorships in terms of section 18(2)(a) of the PFMA.
- 6.2.28 On 06 November 2024, Ms Mtotywa provided a copy of the Provincial Instruction Note 4 of 2017/2018 titled “*Provincial Cost Containment Measures*.” Paragraph 36 stipulates that all gifts, donations and sponsorships to be granted by departments should comply with Regulation 21 of the Treasury Regulations.

- 6.2.29 In a follow-up email dated 06 November 2024, the Investigation Team requested Ms Mtotywa to explain how the departments are supposed to report donations in kind. In her response dated 21 November 2024, she advised that there is no prescribed format to report any donations, except to do so in terms of the Treasury Regulations, failing which they are non-compliant.

Additional information received

- 6.2.30 In support of a response received on 08 November 2024, the Investigation Team received additional information via email on 22 November 2024, from Ms Angie Majongile, by the direction of the acting HOD, containing two documents as attachments:

Gift register

- 6.2.31 The first document signed by Mr Makambi was titled "*Gift Donations, Sponsorships Received*" for the period between 01 April 2022 and 31 March 2023 reflected the following details:

ITEM	QUANTITY	VALUE IN RAND	SPONSOR	RECIPIENT
Grass cutting	1	698 500	UAE	Bhisho Airport
Tree cutting	1	660 000	UAE	Bhisho Airport
Fixing of ground lights	1	800 000	UAE	Bhisho Airport
Generator	1	1 141 800	UAE	Bhisho Airport

Repainting of Bhisho Airport	1	1 057 502	UAE	Bhisho Airport
Repairs and painting at Bhisho Airport	1	135 000	UAE	Bhisho Airport
Core testing	1	680 103	UAE	Bhisho Airport
Total amount		5 172 905		

Memorandum on the visit by UAE and landing at Bulembu Airport

6.2.32 The second document was a copy of a memorandum titled “*Narrative about UAE Visit at Bhisho Airport as Requested by the CFO’s Office*” already discussed above.

6.2.33 The activities performed by the UAE were as follows:

No	Task	Amount
1.	Grass cutting	R 698 500
2.	Tree cutting	R 660 000
3.	Fixing of ground lights	R 800 000
4.	Procurement of Generator	R 1 141 800
5.	Repainting of Bhisho Airport	R 1 057 502
6.	Repairs and painting at Mthatha Airport	R 135 000

7.	Core Testing	R 680 103
	Total	R 5 172 905⁴

Additional response from Mr Butise Makambi

6.2.34 Through an email dated 25 November 2024, Mr Fani was requested to explain the inconsistencies between the two memoranda purporting to be dealing the same subject matter. In an email dated 18 December 2024, Mr Makambi explained that the correct memorandum was the second one which was signed after due diligence was conducted by the CFO. The first memorandum included the VAT which was removed after the verification conducted by the CFO.

Response from Mr MC Mafani

6.2.35 On 21 November 2024, the Public Protector requested Mr Mafani to formally respond to the following issues:

- (a) Whether he granted approval for the refurbishment for maintenance or repair work undertaken at Bulembu Airport around March 2023, in preparation for the visit by the UAE delegation, as contemplated in Regulation 21.2.1 of Treasury Regulations; and
- (b) To provide clarity regarding the purpose of the letter dated 13 March 2023, he addressed the Managing Director of Ezulu Game Reserve.

6.2.36 In his response dated 28 November 2024, Mr Mafani stated that:

⁴ The second memorandum contained the same amounts as reflected in the gift register document, but some amounts and the total were different from those indicated in the first memorandum.

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- 6.2.36.1 The EC Provincial Government did not have any objection to the landing of the UAE delegation and the responsibility of the EC Transport was to ensure that any landing at the airport was compliant with the SACAA directives and/or prescriptions; and
- 6.2.36.2 At the time, the airport did not meet the standards prescribed by the SACAA nor did it have the budget to carry out the necessary remedial work, hence the letter advising Ezulu Game Reserve of the prevailing situation.

Response to the Notice

- 6.2.37 On 11 March 2025, the Investigation Team electronically transmitted the Notices to Mr Mvoko and the Complainants in order solicit further submissions with regard thereto.
- 6.2.38 On 13 March 2025, the Investigation Team received an acknowledgement of the Notice from Mr Mxolisi Makhubo, on behalf Mr Zungula.
- 6.2.39 On 20 March 2025, Mr Muller noted the contents of the Notice and did not wish to make any submission or comments in respect to this issue.

Response from Mr M Mvoko, MPL, MEC for Finance, EC Treasury

- 6.2.40 On 19 March 2025, Mr Mvoko indicated that EC Treasury acknowledged that whilst there might be a need to expand on the process currently outlined in Regulation 21.2 of Treasury Regulations, by issuing an instruction note, policy or SOP, this might not be necessary due the impending amendment of the PFMA , which aims to eliminate the need to issue instructions other than what would be contained in the amended Act and its Regulations.

6.2.41 The Investigation Team received a further submission from Mr Mvoko dated 26 March 2025 following a virtual meeting held with the functionaries of the EC Treasury on 25 March 2025 which stated that:

- (a) It was agreed during the virtual meeting that the current Treasury Regulations do not provide for explicit guidelines on how the donations in kind are to be recorded and accounted for, and thus create a potential for inconsistent application by the departments;
- (b) Whilst the observations would be used as an input in the PFMA amendment process that the National Treasury is commencing, it is accepted that in the intervening period, there is need for guidelines to be issued by the Provincial Treasury; and
- (c) The Provincial Treasury accordingly commits to issuing an instruction note within 120 days, in terms of section 18(2)(a) of the PFMA to regulate the acceptance of donations, gifts, and sponsorships by departments, whether in cash, in-kind or immovable assets. The instruction note will be requiring departments to incorporate the standard operating procedures into their own policies.

Applicable law

Public Finance Management Act, 1999, as amended

6.2.42 Section 76(1)((l) of the PFMA empowers the National Treasury to make regulations concerning, amongst other things, gifts or donations by or to the state.

6.2.43 Section 18(2)(a) empowers a provincial treasury to issue instructions that are not inconsistent with this Act.

**Treasury Regulation for Departments, Trading Entities,
Constitutional Institutions and Public Entities, 2005**

- 6.2.44 Regulation 21.2.1 provides that the accounting officer may approve the acceptance of any gift, donation or sponsorship to the state, whether such gifts, donations or sponsorships are in cash or in kind.
- 6.2.45 Regulation 21.2.2 requires that all cash gifts, donations or sponsorships must be paid into the relevant revenue fund, except those donations received in terms of the Reconstruction and Development Fund Act, 1994, as amended.
- 6.2.46 Regulation 21.2.4 requires all gifts, donations or sponsorships received during the course of the financial year to be disclosed as a note to the AFS of the institution.

Analysis

- 6.2.47 The Public Protector did not uncover evidence that Mr Mabuyane or the EC Provincial Government received R20 million from the UAE government as alleged by the Complainant. Consequently, there is no evidence showing that Mr Mabuyane or the EC Provincial Government failed to ensure that the donation is paid into the EC Treasury as contemplated in Regulation 21.2.2 of Treasury Regulations since there was no cash donation made to the EC Provincial Government. The evidence shows that the final amount disclosed in the EC Transport AFS of 2022/2023 was R5 172 905.
- 6.2.48 The evidence reveals that Ezulu Game Reserve, performed repairs and/or remedial works at Bulembu Airport to enable it to comply with the SACAA Regulations so that it can receive the aircraft carrying Mr Al Nahyan and his entourage.

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- 6.2.49 The repairs and remedial works which included tree felling, grass cutting, fixing of runway lighting system, core testing, repairs and repainting of Bulembu Airport were undertaken by different service providers procured by Ezulu Game Reserve at the behest of the UAE government. Ezulu Game Reserve also procured a generator to serve as a backup at Bulembu Airport. There was no evidence that any funds were given to EC Transport to undertake the project.
- 6.2.50 The repairs undertaken by Ezulu Game Reserve at Bulembu Airport were preceded by a letter from Mr Mafani dated 12 March 2023, which indicated that EC Transport had no objection in having the UAE delegation using the airport. The letter further indicated that repair works must be costed and undertaken in accordance with SACAA Regulations.
- 6.2.51 The response from Mr Sisilana dated 08 November 2024, indicated that the letter from Mr Mafani constituted approval of the acceptance of the donation from the UAE. However, in his response, Mr Mafani does not confirm or characterise the letter as evidence of approval granted in terms of Regulation 21.2.1 of Treasury Regulations which states that the accounting officer may approve the acceptance of a donation or in cash or in kind.
- 6.2.52 An ordinary reading of the letter which is titled "*Usage of Bisho Airport*" appears to be an approval granted for the use of Bulembu Airport by the UAE delegation provided that certain repairs are undertaken. There is no other document at the Public Protector's disposal evidencing the acceptance of the repairs that were to be undertaken by Ezulu Game Reserve as a donation. However, considering the evidence in totality, the aforesaid letter can be construed as a tacit acceptance of donation in kind received through the refurbishment undertaken at Bulembu Airport.

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- 6.2.53 Further evidence shows that the value of the repairs received in kind was captured in the gift register of the department and also disclosed in Note 3.4 to the audited AFS in line with paragraph 21.2.4 which requires all gifts or donations received during the course of the financial year to be disclosed as a note to the AFS of the institution.

Conclusion

- 6.2.54 Premised on the evidence and information gathered by the Public Protector, there is no evidence that Mr Mabuyane or the EC Provincial Government received a donation of R20 million which they failed to deposit into the relevant revenue fund as envisaged in Regulation 21.2.2 of Treasury Regulations.
- 6.2.55 The Public Protector noted that Mr Mafani, the accounting officer at EC Transport during that period, tacitly approved the acceptance of the donation in kind as required by Regulation 21.2.1 of Treasury Regulations.
- 6.2.56 Based on the exposition of factual evidence discussed above, the Public Protector concludes that EC Transport properly received a donation in kind in the form of repairs undertaken at Bulembu Airport which were subsequently declared in the audited AFS of the department in compliance with paragraph 21.2.4 of the Treasury Regulations.
- 6.3 **Whether the South African Revenue Services failed to ensure that all declarations of goods and foreign currency were made during the landing of Mr Mohammed bin Zayed Al Nahyan and his entourage, if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and maladministration contemplated in in section 6(5)(a) of the Public Protector Act**

Common cause

- 6.3.1 Mr Al Nahyan and his entourage landed at Bulembu Airport between 16 April and 20 April 2023 and departed from the Republic by 30 April 2023.

Issue in dispute

- 6.3.2 The issue for the Public Protector's determination is whether SARS ensured that the alleged goods and foreign currency brought by Mr Al Nahyan and his entourage were declared, in line with the applicable prescripts.

Mr Zungula's version

- 6.3.3 In his complaint, Mr Zungula questioned whether SARS Customs ensured that all mandatory declarations of goods and foreign currency were done during the landing of Mr Al Nahyan and his entourage at Bulembu Airport.

Response from Dr Motsoaledi

- 6.3.4 The Public Protector, through a letter dated 22 September 2023, requested Dr Motsoaledi to respond to the allegations raised by Mr Zungula. In his response dated 26 October 2023, Dr Motsoaledi asserted that:

- 6.3.4.1 Upon the arrival of Mr Al Nahyan and his entourage, immigration services were rendered through the BMA. All visitors from whom visas were required were in possession of the requisite visas while other visitors only produced valid passports as they came from countries where visas are not

required. A total of six hundred and eighty (680) visitors⁵ were duly processed by the functionaries of the BMA; and

- 6.3.4.2 SARS customs officials and functionaries from other relevant departments performed their respective statutory duties once Mr Al Nahyan and his entourage landed at Bulembu Airport. All goods were duly declared and any suggestion to the contrary was nothing but a wild speculation.

Response from Dr Georgio Radesich, Head: Liaison Desk at SARS

- 6.3.5 The Public Protector, through a letter dated 27 September 2024, requested the Commissioner of SARS, Mr Edward Keiswetter, to explain the role it played during the landing of the people in question. Dr Georgio Radesich (Dr Radesich) responded through a letter dated 31 October 2023 which referred to a report titled "*The role of SARS during the Royal Emirati visit to the Eastern Cape, April 2023*" which stated, *inter alia*, that:

- 6.3.5.1 SARS Customs was contacted on Tuesday 11 April 2023 by Mr Stephen van Neel (Mr van Neel) of the BMA and requested to attend a briefing at the Bhisho Airport on Wednesday 12 April 2023 to discuss the requirements outlined in the following letters;

- (a) A letter from Dr Motsoaledi to Mr Mabuyane, dated 12 April 2023, and
- (b) A letter from the Acting Deputy Director-General: Civil Aviation of the NDoT to DIRCO approving overflight and landing rights for 1 Flight from Abu Dhabi to Bhisho and back to Abu Dhabi to transport an undisclosed number of VIP passengers.

⁵ List containing the names of the visitors and the relevant documents processed by the BMA were provided to the Investigation Team.

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- 6.3.5.2 Since the scheduled flight was initially expected to arrive on Friday, 14 April 2023, in preparation for the landing, the Customs Teams from Qgeberha and East London were initially mobilised and were put on standby from Friday. The SARS Customs Team was eventually assembled on Sunday morning, 16 April 2023, with the news that a flight was on final approach. When the first plane arrived at 08:00, the SARS Customs Team was on the ground to receive them;
- 6.3.5.3 The SARS Customs Team was the only Government agency at the Airport when two C17 Cargo Aircraft landed at 08:00 and 08:12 respectively. The Team of 07 Customs officials led by Senior Manager, Mr Zanemvula Miza, prevented any cargo or PAX from being off-loaded, in the absence of the other Port agencies;
- 6.3.5.4 The refusal to off-load cargo by the SARS Customs Team was because the goods on board had not yet been pre-cleared by the UAE in terms of the provisions of the Customs and Excise Act, 1964 (Customs and Excise Act) despite being instructed to do so before the arrival, during the discussions with the clearing agent, Billion Company;
- 6.3.5.5 The South African Police Service (SAPS) and the DHA arrived at 10:40 am on 16 April 2024 and assisted with their respective mandates;
- 6.3.5.6 At this stage, there was still no pre-clearance for any cargo and the clearing agent, Billion Company, which DIRCO offered as the representative, was not able to assist. However, Billion Company indicated that it was not retained and ultimately made the decision not to frame the required import declarations as requested. The SARS Customs Team on site insisted that the provisions to submit full clearance of goods to be imported, both temporarily or for home consumption, as defined in the Customs and Excise Act had to be complied with and indicated that without any clearance, there could be no release of any cargo from the

aircraft. The Team tried to assist the UAE delegation to engage other clearing agents, but all those contacted were either not available or not interested;

6.3.5.7 In the interim, Ms Lynne de Jong (Ms de Jong) from DIRCO confirmed that no exemption certificates would be issued for all incoming cargo as the visit was not official and the UAE delegation was travelling in their private capacities. SARS Customs, as part of the briefing process only had sight of a *Note Verbale* (no1/3/129-2822, dated 15 April 2023) which indicated immunities and privileges accorded to Heads of State and presidential cargo only. This was applied to the 3 VVIP aircraft which landed on Wednesday, 19 April 2023;

6.3.5.8 After several discussions and exploring all options, the processes that were followed including the agreements reached with the Director: Customs Border Control at 11:42 am on 16 April 2023 were that:

- (a) Due to the remote nature of Bulembu Airport with no secure storage facilities, Customs would permit a preliminary release of the goods under embargo. This means that SARS Customs Team verified all goods off-loaded against what was stated in the packing lists and ensured that the goods were loaded onto the designated trucks. The SARS Custom Team then escorted the trucks in convoy to the destination, being the nature reserve;
- (b) SARS Customs Team throughout insisted that the UAE engage a clearing agent for the declaration documents to be presented in order that all compliance requirements would be met;
- (c) This embargo process was in force for the duration of the disembarking process and included all goods landed, except the 04

helicopters which were brought in “*knocked down*” state and later assembled on the runway in Bhisho Airport;

- (d) A similar process was followed for all consumable goods landed on subsequent days;
- (e) On each day, a minimum of 02 Cargo Aircraft landed mostly carrying large items such as vehicles, helicopters, and security equipment;
- (f) On Tuesday 18 April 2023, a cargo flight landed with controlled goods and K9s onboard. The controlled goods were off-loaded and secured in the hangar for inspection;
- (g) SAPS took over the controlled goods which required permits as designated in their mandate. To ensure greater security of these goods, the goods were loaded into two (02) trucks which were sealed with Customs seals. The numbers of the seals were recorded by SARS Customs Team;
- (h) It was agreed that SAPS would escort the trucks to the reserve and cut the seals there, once release had been obtained;
- (i) SARS Customs Team refused to allow the off-loading of the K9s without the required State Veterinary release documentation and they departed with the K9’s to Cape Town, in order to approach the State Vet. It was confirmed by the Cape Town International Airport (CTIA) Customs Senior Manager that the State Vet in Cape Town did not issue them a release and all ten (10) K9’s were ordered back to the UAE, on the same day;
- (j) After multiple engagements with the local UAE delegation and an eventual escalation to DIRCO, SARS Customs received a

commitment from the Ambassador of the UAE personally that he would send a delegate to meet with Customs and the representatives from BIDVEST, the newly appointed clearing agent, to initiate the Customs Clearance process;

- (k) On Wednesday 19 April 2023, Miss Fatima from the Embassy took receipt of the BIDVEST documentation. It was agreed that she would meet with the Customs Team manager in East London on Thursday 20 April 2023 to sign and initiate the clearance processing;
- (l) Customs continued to deploy two (2) resources at Bulembu Airport daily between 07:00-16:00 to ensure all goods were declared, clearance documentation was collected, and cargo inspections were processed;
- (m) Passenger goods processing was done in line with existing Air Modality Standard Operating Procedures for all other International Airports and included baggage scanning, the deployment of the Detector Dog Unit and physical inspections, where warranted;
- (n) The goods brought into the Republic included consumables, vehicles, gym equipment and helicopters. The vehicles, helicopters and gym equipment were imported temporarily, and all returned to the UAE, after the departure of the royal party;
- (o) No foreign currency was declared nor found during inspections of luggage;
- (p) The UAE delegation departed in groups during the week of 25-28 April 2023;

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- (q) All export cargo was checked against the landed packing lists to ensure that SARS could determine what went into home consumption for purposes of the Customs and Excise Act read with the Schedules thereto;
 - (r) A protracted process then took place to get the UAE Embassy to finalise the required Customs clearances and they were engaged through numerous emails and letters via DIRCO, in this regard;
 - (s) Customs clearance was eventually formally lodged by the UAE Embassy and payment of import duties made on 05 July 2023; and
 - (t) Customs formalities were completed which included release from the Department of Forestry, Fisheries and the Environment (DFFE) and Port Health on 06 July 2023.

6.3.5.9 Customs transacts with traders on an electronic platform. In terms of the provisions of section 4(3) of the Customs and Excise Act,⁶ this documentation cannot be disclosed by the Commissioner or an officer except in the performance of his/her duties under the Act or by an order of a competent court.

Additional Information from Dr Giorgio Radesich

6.3.6 On 21 November 2024, the Public Protector requested Mr Leon Potgieter, Head of Sea Modality, SARS, to provide clarity on certain aspects of the responses received. In a response dated 29 November 2024, Dr Radesich referred to a report which indicated that:

⁶ “No officer shall disclose any information relating to any person, firm or business acquired in the performance of his duties, except-(a) for the purposes of this Act; or (b) when required to do so as a witness in a court of law; or (c) such information in relation to any person as may be required by the Chief of the Central Statistical Services in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1976 (Act 66 of 1976), or any regulation thereunder.”

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- 6.3.6.1 The K9s were denied entry and did not disembark at Bulembu Airport because no quarantine or import information was available for the K9's;
- 6.3.6.2 In the absence of a Passenger Processing Area (PPA) and any Advance Passenger Information (API), all personal belongings and passengers were screened by SARS Customs Team, including a Detector Dog on the tarmac, prior to being admitted to the "arrivals hall." No passengers declared any goods, other than personal effects – therefore no Traveller Cards (TC-01) were completed or collected;
- 6.3.6.3 Random inspections were conducted to test the validity of the declarations and no goods which should have been declared were found;
- 6.3.6.4 There were no formal traveller cards which were received or collected. All traveller information was collected by BMA officials upon entry as supported by the contract security staff and the SAPS;
- 6.3.6.5 SARS Customs Team fully executed their duties in terms of traveller processing before allowing the passengers to enter the designated "arrival hall" where they were processed by the BMA Team before having their baggage and persons scanned and thereafter escorted on to the busses, in the waiting area.
- Response to the notice in terms of Rule 41(1) of the Public Protector Rules
- 6.3.7 On 11 March 2025, the Investigation Team electronically transmitted notices in terms of Rule 41(1) of the Public Protector Rules to the Complainants in order solicit further submissions with regard thereto.
- 6.3.8 On 13 March 2025, the Investigation Team received an acknowledgement of the Notice from Mr Mxolisi Makhubo, on behalf Mr Zungula.

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- 6.3.9 On 20 March 2025, Mr Muller noted the contents of the Notice and did not wish to make any submission or comments in respect to this issue.

Applicable law

The Customs and Excise Act, 1964 as amended

- 6.3.10 Section 4(9) stipulates that a Customs official shall have free access to and the right to rummage every part of any such vehicle or aircraft and to examine all goods on board, with power to fasten down hatchways and to mark any goods before landing and to lock up, seal, mark or otherwise secure any goods on board that aircraft or vehicle, including any apparatus thereof, and he may also demand from the master of such ship or the pilot of any aircraft concerned or the person in charge of any other vehicle the production of any document to which any provision of this Act relates.

- 6.3.10.1 Section 15(1) provides that:

“Any person entering or leaving the Republic shall, in such a manner as the Commissioner may determine, unreservedly declare-

(a) at the time of such entering, all goods (including goods of another person) upon his person or in his possession which he brought with him into the Republic which-

(i) were purchased or otherwise acquired abroad or on any ship, vehicle or in any shop selling goods on which duty has not been paid;

(ii) were remodelled, processed or repaired abroad; or

(iii) are prohibited, restricted or controlled under any law;

(b) before leaving, all goods which he proposes taking with him beyond the borders of the Republic, and shall furnish an officer with full particulars thereof, answer fully and truthfully all questions put to him by such officer

and, if required by such officer to do so, produce and open such goods for inspection by the said officer, and shall pay the duty assessed by such officer, if any, to the Controller.”

Customs Excess Currency Policy, 2021

- 6.3.10.2 Paragraph 2.2 requires every person to declare foreign currency in his / her possession upon arrival and departure from the Republic.

Analysis

- 6.3.10.3 The evidence before the Public Protector reveals that there was diplomatic correspondence exchanged between the UAE and DIRCO in order to facilitate the private visit of Mr Al Nahyan and his entourage. The purpose of the correspondence between the UAE and DIRCO was to ensure approval of the necessary permits and to ensure that the necessary arrangements are made for the processing of the visitors upon arrival.
- 6.3.10.4 Following the designation of Bulembu Airport as a port of entry and exit, SARS Customs officials were dispatched to perform their functions. The evidence reveals that cargo inspections were conducted. The goods brought into the Republic included consumables, vehicles, gym equipment and helicopters. The vehicles, helicopters and gym equipment were imported temporarily, and were all returned to the UAE, after the departure of Mr Al Nahyan and his entourage.
- 6.3.10.5 Notwithstanding the challenges initially experienced with the processing of the goods that were brought by Mr Al Nahyan and his entourage, the evidence before the Public Protector reveals that SARS Custom officials processed all goods, collected clearance documentation, inspected cargo and received payment of import duties, where applicable.

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- 6.3.10.6 Section 4(9) of the Customs and Excise Act empowers SARS Customs officials to mark or seal or secure any goods on board of any aircraft. In this regard, the Customs officials sealed, marked and secured some of the goods that were on different aircrafts from the UAE until the necessary clearances were obtained.
- 6.3.10.7 Paragraph 2.2 of the Customs Excess Currency Policy enjoins every person to declare foreign currency in his / her possession upon arrival and departure from the Republic. The evidence at the Public Protector's disposal reveals that SARS Customs officials did not find foreign currency during inspections of visitor's luggage.
- 6.3.10.8 The Public Protector did not receive any further submissions from the Complainants to counter the proposed findings contained in the Notice.

Conclusion

- 6.3.10.9 From the evidence traversed above, SARS Customs officials properly inspected the luggage of the visitors that landed at Bulembu Airport and could not find foreign currency to be declared by the visitors.
- 6.3.10.10 The goods brought by Mr Al Nahyan and his entourage at Bulembu Airport which included consumables, vehicles, gym equipment and helicopters, were correctly declared, inspected and cleared in terms of section 15 of the Customs and Excise Act.

7. FINDINGS

Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

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- 7.1 **Whether the designation of Bulembu Airport as a port of entry and exit by Dr PA Motsoaledi, to facilitate the landing of Mr Mohammed bin Zayed Al Nahyan and his entourage, was in contravention of the applicable prescripts, if so, whether such conduct is improper as envisaged by section 182(1)(a) of the Constitution and amounts to maladministration contemplated in section 6(4)(a)(i) of the Public Protector Act**
- 7.1.1 The allegation that the designation of Bulembu Airport as a port of entry and exit by Dr Motsoaledi, to facilitate the landing of Mr Al Nahyan and his entourage, was in contravention of the applicable prescripts, is **not substantiated**.
- 7.1.2 The Public Protector finds that Dr Motsoaledi issued a Notice of designation of Bulembu Airport in writing on 12 April 2023 and the notice was subsequently gazetted on 05 May 2023 in accordance with section 9A of the Immigration Act read with the Regulation 8 of the Immigration Regulations.
- 7.1.3 Given the fact that Dr Motsoaledi was only required to designate Bulembu Airport temporally, for a period of a month, it would have been unreasonable to oblige him to use section 30 of the BMA Act.
- 7.1.4 Accordingly, the conduct of Dr Motsoaledi does not constitute improper conduct in terms of section 182(1) of the Constitution or amount to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- 7.2 **Whether Mr LO Mabuyane accepted a donation of twenty million rand from the United Arab Emirates government in order to refurbish Bulembu Airport, in contravention of the applicable prescripts, if so, whether such conduct was improper conduct in terms of section**

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

- 7.2.1 The allegation that Mr Mabuyane accepted a donation of R20 million rand from the UAE government in order to refurbish Bulembu Airport, in contravention of the applicable prescripts, **is not substantiated.**
- 7.2.2 The Public Protector could not find evidence that Mr Mabuyane and/or the EC Provincial Government accepted funds from the UAE and failed to deposit same into the EC Provincial Government Revenue Fund in terms of Regulation 21.2.2 of the Treasury Regulations.
- 7.2.3 The Public Protector finds that Mr Mafani, the accounting officer at EC Transport during that period, tacitly approved the acceptance of the donation in kind in compliance with Regulation 21.2.1 of Treasury Regulations.
- 7.2.4 The Public Protector also finds that EC Transport declared a donation in kind for repairs undertaken at Bulembu Airport in the audited AFS of the department in compliance with paragraph 21.2.4 of the Treasury Regulations.
- 7.2.5 Accordingly, the Public Protector could not find evidence to conclude that the conduct of Mr Mabuyane and/or the functionaries of the EC Provincial Government constitutes improper conduct in terms of section 182(1) of the Constitution and amount to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act.
- 7.3 **Whether the South African Revenue Services failed to ensure that Mr Mohammed bin Zayed Al Nahyan and his entourage declare all the goods and the foreign currency during their visit to the Republic of South Africa in April 2023, if so, whether such conduct was improper**

in terms of section 182(1)(a) of the Constitution and maladministration contemplated in section 6(5)(a) of the Public Protector Act

- 7.3.1 The allegation that SARS failed to ensure that Mr Al Nahyan and his entourage declared all the goods and the foreign currency during their visit to the Republic in April 2023, **is not substantiated**.
- 7.3.2 The evidence indicates that that the goods that were brought by Mr Al Nahyan and his entourage at Bulembu Airport which included consumables, vehicles, gym equipment and helicopters, were declared, inspected and cleared in accordance with sections 4 and 15(1) of the Customs and Excise Act.
- 7.3.3 The Public Protector found that SARS Customs officials inspected the luggage of the visitors that landed at Bulembu Airport but could not find foreign currency that was supposed to be declared in terms section 15(1) of Custom Exercise Act read with paragraph 2.2 of the Customs Excess Currency Policy.
- 7.3.4 Accordingly, the Public Protector could not find evidence to conclude that the conduct of the functionaries of SARS constitute improper conduct as contemplated in section 182(1)(a) of the Constitution and amount to maladministration in terms of section 6(5)(a) of the Public Protector Act.

8. OBSERVATIONS

- 8.1 **Regarding whether the designation of Bulembu Airport as a port of entry and exit by Dr PA Motsoaledi, to facilitate the landing of Mr Mohammed bin Zayed Al Nahyan and his entourage was in contravention of the applicable prescripts:**

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- 8.1.1 The evidence at the Public Protector’s disposal shows that the proof of email sent by Mr Makhode to Ms Fosi purporting to be the transmission of Notice of designation showed that it was “*not responding*.” The evidence from Ms Fosi also indicate that she did not receive an email from Mr Makhode on or about 12 April 2023. Resultantly, the publication of the Notice of designation only occurred after a follow-up email from Mr Makhode to Ms Fosi on 03 May 2023.
- 8.1.2 The Public Protector noted with concern that the publication of the designation of Bulembu Airport only happened on 05 May 2023, despite being approved by Dr Motsoaledi on 12 April 2023. Although, Regulation 8 of the Immigration Regulations does not prescribe timelines regarding the publication of the notice, it is reasonable to expect it to precede the actual activity, which did not happen in this instance. In fact, by the time the designation was published in the Gazette on 05 May 2023, the UEA delegation had already left the Republic.
- 8.1.3 The Public Protector also noted that although Dr Motsoaledi designated Bulembu Airport as a port of entry and exit in terms of section 9A of the Immigration Act read with Regulation 8, there is a need to harmonise it with section 30 of the BMA Act. There must be clarity regarding the circumstances which would ordinarily trigger the application of section 9A of the Immigration Act *vis-a-vis* section 30 of the BMA Act. This is so, because whilst the DHA asserts that section 9A of the Immigration Act applies in ‘temporary designation,’ the Act does not specifically contain a phrase ‘temporary designation’ to irrefutably show that it caters for such kind of designations.
- 8.2 **Regarding the issue whether Mr LO Mabuyane accepted a donation of twenty million rand from the United Arab Emirates government to**

refurbish Bulembu Airport in contravention of the applicable prescripts:

- 8.2.1 The Public Protector did not uncover evidence that Mr Mabuyane received a donation of R20 million from the UAE but instead EC Transport received a donation in kind in the form of repairs undertaken at Bulembu Airport which were subsequently declared in the audited AFS of the EC Transport in compliance with Regulation 21.2.4 of the Treasury Regulations.
- 8.2.2 The Public Protector noted that the letter from Mr Mafani to Ezulu Game Reserve did not explicitly provide for the approval of the donation in kind but could be construed as granting tacit approval as required by Regulation 21.2.1 of Treasury Regulations. The EC Treasury and EC Transport do not have a policy and/or instructions or standard operating procedures (SOPs) dealing with the processing of donations which would guide the functionaries on what steps to follow and which documents should form part of the portfolio of evidence when granting donations, gifts and sponsorships.
- 8.2.3 In this regard, a policy or instructions or SOPs or checklist may assist the functionaries to follow a prescribed process which could facilitate transparency and accountability as envisaged in section 195(1)(g) and (f) of the Constitution.

9. RECOMMENDATIONS

- 9.1 Premised on the observations, the Public Protector makes the following recommendations in terms of section 6(4)(c)(ii) of the Public Protector Act:

Minister of Home Affairs

- 9.1.1 **Within a period of twenty-four (24) months** upon receipt of the final report, take steps to initiate and finalise the harmonisation of section 9 of

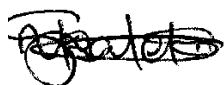
the Immigration Act and section 30 of the BMA Act in the regulations to be promulgated in terms of section 36(1)(k) of the BMA Act.

**Member of the Executive Council For Finance, Eastern Cape
Provincial Treasury**

- 9.1.2 **Within one hundred and twenty (120) calendar days**, takes steps to ensure that the EC Treasury issues instructions in terms of section 18(2)(a) of the PFMA to regulate the acceptance of donations, gifts, and sponsorships by departments, whether in cash or in kind.

10. MONITORING

- 10.1 The Minister and the MEC submit action plans to the Public Protector within **thirty (30) calendar days** from the date of this report on the implementation of the recommendations referred to in paragraph 9 above, respectively.
- 10.2 The Minister and the MEC, **within thirty (30) calendar days** after the implementation of the recommendations or at the expiry of periods stated in paragraph 9 above, furnish the Public Protector with close-out reports on the implementation of the recommendations, respectively.



ADV. Kholeka Gcaleka
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2025

Assisted by: Ms Maselaelo Manyathela

Acting Executive Manager: Investigations