

REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION, 1996, SECTION 3(2) OF THE EXECUTIVE MEMBERS' ETHICS ACT, 1998 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO: 1/2006

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNETHICAL AND IMPROPER CONDUCT BY DEPUTY PRESIDENT P MLAMBO-NGCUKA RELATING TO HER UNOFFICIAL VISIT TO THE UNITED ARAB EMIRATES IN DECEMBER 2005

INDEX

Executive summary	7
1. INTRODUCTION	11
PART 1: BACKGROUND, THE COMPLAINANTS AND POWERS OF THE PUBLIC PROTECTOR	11
2. Background	11
3. The complaints	16
4. The request that SCOPA investigates the apparent misappropriation of public funds	19
5. Investigation by the Auditor General	19
6. The decision to commence with an investigation	20
7. Comments of the President in the National Assembly	20
8. The jurisdiction and powers of the Public Protector to investigate the complaint	22
PART 2: THE INVESTIGATION	24

PART 3: THE LEGAL FRAMEWORK REGULATING THE ETHICAL CONDUCT OF MEMBERS OF THE CABINET	26
10.1 The Constitution	26
10.2 The Executive Members' Ethics Act	27
10.3 The Executive Ethics Code	28
PART 4: ARE THE FUNDAMENTAL RIGHTS TO FAIR LABOUR PRACTICES AND FREEDOM OF MOVEMENT OF MEMBERS OF THE CABINET LIMITED BECAUSE OF THE POSITIONS THAT THEY OCCUPY?	30
11.1 The provisions of the Bill of Rights	30
11.2 Conclusion	31
PART 5: THE OBLIGATION OF THE STATE TO PROTECT MEMBERS OF THE CABINET	32
PART 6: THE PROTECTION OF MEMBERS OF THE CABINET BY THE SOUTH AFRICAN POLICE SERVICE	34
17. Constitutional mandate	34

18. The VIP Protection Service of the South African Police Service	34
19. The Risk Management Support System for Very Important Persons Policy	34
20. The protection of former Presidents and Deputy Presidents	38
PART 7: THE POLCY AND PRESCRIPTS REGULATING THE TRANSPORTATION OF MEMBERS OF THE CABINET	39
21. Cabinet Memorandum 2 of 1994	39
22. The Handbook for Members of the Executive and Presiding Officers	40
23. The involvement of the SAAF	41
24. The draft Presidential Handbook	41
PART 8: INTERNATIONAL COMPARATIVE STUDY	42
PART 9: THE PROCEDURE THAT IS FOLLOWED BY THE PRESIDENCY IN RESPECT OF OVERSEAS TRAVELS OF THE PRESIDENT AND DEPUTY PRESIDENT	43

PART 10: THE PRIVATE OVERSEAS TRIPS OF THE DEPUTY PRESIDENT DURING DECEMBER 2005	45
33. Approval by the Presidency	45
34. Who accompanied the Deputy President?	45
35. What was the cost to the Presidency of the Deputy President's trip to London?	47
36. Did the SAAF aircraft make any stopovers on route to the UAE and back?	48
37. What was the total cost of the flight to the UAE and back?	48
38. Why was Ambassador Moopeloa on board the return flight from the UAE?	49
39. Why did the Deputy President travel to the UAE with an aircraft of the SAAF, when a week earlier she took a commercial flight to London?	49
40. Where did the Deputy President plan to stay during her visit to the UAE?	50
41. Is the hospitality offered to the Deputy President by the UAE Government regarded as a "gift" in terms of the Code?	51



PART 11: THE RESPONSE OF THE DEPUTY PRESIDENT TO THE ALLEGATIONS OF A BREACH OF THE EXECUTIVE ETHICS CODE	52
PART 12: CONSIDERATION OF THE POLICY REGULATING THE PROTECTION OF THE PRESIDENT AND THE DEPUTY PRESIDENT	54
PART 13: THE AUDIT CONDUCTED BY THE OFFICE OF THE AUDITOR—GENERAL	55
PART 14: ANALYSIS OF THE INFORMATION OBTAINED FROM AND THE EVIDENCE SUBMITTED DURING THE INVESTIGATION	56
PART 15: FINDING	60
PART 16: RECOMMENDATION	61

Executive summary

The Office of the Public Protector investigated complaints lodged by two Members of Parliament against Deputy President P Mlambo-Ngcuka relating to her unofficial visit to the United Arab Emirates (UAE) in December 2005. It was mainly alleged that by using an aircraft of the South African Air Force (SAAF) to transport her, her husband, children and a friend to the UAE for a holiday at state expense, the Deputy President acted improperly and in breach of the Executive Ethics Code, published by virtue of the provisions of the Executive Members' Ethics Act, 1998. It was furthermore averred that the hospitality afforded to the Deputy President and her entourage by the government of the UAE during their stay, should be regarded as a gift, which has to be declared in terms of the Executive Ethics Code.

The information obtained from and the evidence submitted during the investigation indicated that:

- The State has a constitutional obligation to protect the Deputy President on a full time basis during her/his tenure and after she/he leaves office. Former Presidents and Deputy Presidents are protected by the State, at substantial cost, despite the fact that they are not performing any official duties;
- The protection of the Deputy President in office and the associated expenditure, is in the national interest. It is based on provisions of the Constitution, national legislation and policies approved by the Cabinet;
- The security measures instituted by the State to protect the Deputy President apply irrespective of whether she/he performs official duties or is on vacation;

- The policies and practices regulating the protection of the Deputy President are in line with international standards and practice;
- The South African Police Service (SAPS) is responsible for the protection of the Deputy President;
- The Deputy President is obliged to accept and conform to the protection measures implemented by the SAPS. She/he has no control over the decisions taken by the SAPS in this regard as it is based on government policy and relates directly to the position that she/he occupies and not only to her/him as a person;
- The protection measures of the Deputy President currently include that she/he is obliged to travel, locally and abroad, by an aircraft of the SAAF at the expense of the Department of Defence, irrespective of the purpose of the trip. She/he has no choice in the matter;
- The requirement that the Deputy President has to be transported by an aircraft of the SAAF forms part of a total security package. The costs of such air travels are budgeted for by the Department of Defence;
- Only in circumstances where an aircraft of the SAAF is not available, would the Deputy President be allowed to travel by commercial airline. In such circumstances, strict security measures would apply (at cost to the State) to ensure that the Deputy President is properly protected;
- The Deputy President is entitled to take leave whenever it is possible for her/him to do so and to travel to any destination of her/his choice when she/he is on vacation;

- The obligation of the State to protect the Deputy President, even when she/he is on leave, cannot infringe on her/his right to go on vacation to the destination of her/his choice. It also cannot prevent her/him from being accompanied by her/his family and friends, should she/he wish to take them along. The fact that the mode of transport is prescribed to her/him by the SAPS, for security reasons and in terms of government policy, does not disqualify her/him from traveling wherever she/he wants to go on vacation;
- The Deputy President went on vacation to the UAE with the approval of the President. The Presidency was informed of her visit and her Private Secretary had to accompany her, in terms of the practice and policy of the Presidency. Approval in this regard was granted by the Director General of the Presidency;
- In terms of the policies providing for the full time protection of the Deputy President, she had to be transported to the UAE by means of an aircraft of the SAAF at the expense of the Department of Defence;
- The expenditure incurred by the Presidency for the trip to the UAE was approved by the Chief Accounting Officer in terms of the relevant provisions of the Public Finance Management Act, 1999;
- The Deputy President was entitled, in terms of a policy approved by the Cabinet, to be accompanied on her vacation trip to the UAE by her family, friends and other passengers of her choice;
- The Deputy President was obliged, by virtue of her position, to consider the offer of the UAE Government to accommodate her and her entourage

during their stay in the UAE. Declining the offer could have insulted the Head of State of the UAE, which could have had an impact on diplomatic relations between the two countries;

- The hospitality that the Deputy President received from the UAE government did not constitute a 'gift' in terms of the Executive Ethics Code; and
- Under the circumstances it cannot be found that the Deputy President acted improperly or that she failed to act in good faith and in the best interests of good governance or in a manner that is inconsistent with her office, as alleged. She was entitled, as is anyone else, to take her family, a friend and the children of her Private Secretary with her to the UAE, and no-one therefore improperly benefited from the trip.

From the investigation it was found that:

The Deputy President did not act improperly or in breach of the Executive Ethics Code when she went on vacation to the United Arab Emirates in December 2005.

The Public Protector recommended that:

The Secretary of the Cabinet take urgent steps to ensure that the draft Presidential Handbook deals with the matters and issues investigated in clear and certain terms and that it is submitted to the Cabinet for consideration.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNETHICAL AND IMPROPER CONDUCT BY DEPUTY PRESIDENT P MLAMBO-NGCUKA RELATING TO HER UNOFFICIAL VISIT TO THE UNITED ARAB EMIRATES IN DECEMBER 2005

1. INTRODUCTION

This report is submitted to the President of the Republic of South Africa in terms of the provisions of section 182(1)(b) of the Constitution, 1996, section 3(2) of the Executive Members' Ethics Act, 1998 and section 8(1) of the Public Protector Act, 1994. It relates to an investigation into allegations of improper and unethical conduct by Deputy President P Mlambo-Ngcuka regarding her unofficial visit to the United Arab Emirates in December 2005.

PART 1

BACKGROUND, THE COMPLAINTS AND THE POWERS OF THE PUBLIC PROTECTOR

2. Background

2.1 Allegations published by the media

On 10 January 2006, reports appeared in the print media alleging that the Deputy President went on vacation to the United Arab Emirates (UAE) at the expense of the South African taxpayer in December 2005. According to these reports, the Presidency commissioned an aircraft of the South African Air Force (SAAF) to transport the Deputy President, her husband and her children to the UAE, despite the fact that her visit was unofficial. The costs involved was reported as having been in the region of R 400 000.

2.2 The initial response of the Presidency

The Presidency issued the following statement in connection with the media reports referred to above, on 10 January 2006:

"In response to media queries, the Presidency wishes to confirm that the Deputy President undertook a private visit to the United Arab Emirates from 27 to 31 December 2005.

It is part of the convention and practice in government for the state to take full responsibility for the provision of transport and security for the President and the Deputy President - as well as all associated costs-irrespective of whether they are on official or private travels.

The actual modalities of transport are determined on the basis of security, cost and convenience. In this instance, the Deputy President was advised that the provision of security would be best served through the use of South African National Defence Force transport.

It should also be noted that such arrangements are provided for in the standard procedures of many governments across the world."

2.3 Further reports by the media

2.3.1 The said trip of the Deputy President to the UAE was subsequently comprehensively covered by all sectors of the media. On 13 January 2006, it was reported that the Deputy President stated during an interview with the SABC that her visit was partly work related and partly vacation. She apparently indicated that she visited certain industries as part of her mission to develop programmes to enhance South Africa's initiatives for

economic growth. This statement was regarded as contradicting the official explanation issued by the Presidency.

2.3.2 Further media reports alleged, *inter alia*, that the Deputy President had also been accompanied by Ms T Skweyiya, the wife of the Minister of Social Development, and Mr S Macozoma, a prominent businessman, that the cost of using the SAAF Aircraft amounted to R 700 000 and that the Deputy President acted in violation of the provisions of the Executive Members' Ethics Act, 1998 when she undertook an unofficial visit at state expense.

2.3.3 It was also reported that the Democratic Alliance had requested the Parliamentary Standing Committee on Public Accounts (SCOPA) to investigate the allegations of the misappropriation of public funds made in connection with the Deputy President's unofficial visit to the UAE and that a complaint would be lodged with the Public Protector.

2.4 A further statement issued by the Presidency

The Presidency issued a further statement in connection with the matter concerned on 17 January 2006. It read as follows:

"In response to ongoing media speculation the Presidency wishes to further clarify matters relating to the visit of the Deputy President to Abu Dhabi in December. The Presidency hopes that this will ensure that the matter is discussed on the basis of fact rather than speculative political point scoring.

As the Presidency indicated in its statement of 10 January 2006, the Deputy President undertook a private visit to the United Arab Emirates from 27 to 31 December 2005.

It was further explained that the state takes full responsibility for the provision of transport and security for the President and the Deputy President- as well as associated costs-irrespective of whether they are on official or private travels. The movement of the President and the Deputy President is the responsibility of both the Presidency and the South African Police Service and the President and Deputy President do not themselves decide on the manner or modalities of movement. The modalities are determined on the basis of security, cost and convenience. In this instance, the responsible officials made the required determinations and in particular with respect to the provision of security, South African National Defence Force air transport was considered to be the most appropriate.

As has been consistently stated, the visit was a private one and the Deputy President was on leave. However, the Deputy President was aware of developments in Abu Dhabi from which lessons could be drawn relevant to the Accelerated Shared Growth Initiative of South Africa (ASGI-SA), in particular with regard to the management of large infrastructure projects and the empowerment of women in this field. She wished to take the opportunity to learn from these developments while on holiday.

It was in this context that she invited a friend, Ms Thuthukile Mazibuko-Skweyiya, to accompany her. Ms Mazibuko-Skweyiya is contributing on a voluntary basis to the development of a programme within ASGI-SA for the development of project management skills for infrastructure projects with a particular focus on the empowerment of women. She is also a member of the Joint Initiative for Priority Skills Acquisition for South Africa.

In the group visiting Abu Dhabi with the Deputy President, her spouse and two children, apart from the standard detail of security, medical staff and

personal assistant, and making up her entourage on the SANDF aircraft with her, were Ms Mazibuko-Skweyiya and two children of the personal assistant. The Deputy President had decided that in this holiday period, the human thing for her to do was to take her Personal Assistant's children along so that they could be with their mother.

During the stay in Abu Dhabi there were no formal appointments but they visited various buildings and sites, under the guidance of the South African Ambassador to the United Arab Emirates, as well as a public exhibition on infrastructure development.

As is standard practice, the costs of vacation accommodation and other related costs other than those of transport to the destination and protection, are the responsibility of and for the account of the principals themselves. In this instance, on the Deputy President's arrival at the pre-booked hotel, the Emir of the United Arab Emirates insisted that the UAE government should accommodate her and the party at the government guest-house. The UAE government also provided transport and covered incidental costs for the duration of the visit.

Whilst acknowledging the media's watchdog role, it needs to be stressed that in no respect did the Deputy President-or those who took the decisions regarding the modalities of travel to Abu Dhabi-infringe any law, regulation or policy prescript. The Deputy President is firmly committed to good governance, transparency and the rule of law, and therefore pays serious attention to public concerns that are raised regarding such matters."

3. The complaints

3.1 Mr G Morgan, a Democratic Alliance Member of Parliament, lodged a complaint with the Public Protector in connection with the private trip of the Deputy President to the UAE, on 17 January 2006. His complaint was based on the provisions of the Executive Members' Ethics Act, 1998¹(the Executive Members' Ethics Act) and stated that:

"The Presidency has confirmed that this was a private trip, undertaken as part of a holiday for the Deputy President and her family. However, it has now come to light that the Deputy President is alleged to have been accompanied by the spouse of a Cabinet minister as well as other senior ANC officials.

I therefore call on you to investigate the possible abuse of her office and state resources by the Deputy President. Such an enquiry would need to explore the following aspects:

- *Section 2(2)(a)(i) of the Executive Members' Ethics Act requires Cabinet members at all times to act in good faith and in the best interests of good governance. The use of taxpayers' money to pay for a private holiday, as well as for the friends of the Deputy President, would appear to be a violation of this section.*
- *Section 2(2)(b)(ii) requires a Cabinet member to act in a way that is consistent with his or her office. The use of state resources for private purposes appears to be inconsistent with this section.*

¹ See paragraph 8.3 below



- *Section 2(2)(b)(iii) prohibits Cabinet members from exposing themselves to any situation involving the risk of a conflict between their official responsibilities and their private interest. The Deputy President has claimed that she inspected the construction industry in the United Arab Emirates during her stay. Therefore a possible conflict of interest needs to be investigated into whether her husband Bulelani Ngcuka, who has substantial interests in a South African construction company, in any way benefited from these interactions;*
- *Section 2(2)(b)(iv) prohibits members of Cabinet from using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person. If it is proved that a spouse of a member of Cabinet, or any other person not a member of government, was allowed to travel on the SANDF aircraft in question, then the Deputy President would be guilty of improperly benefiting the persons concerned.*
- *Section 2(2)(c)(ii) requires a member of Cabinet to disclose to an official in the office of the President designated for this purpose any financial interests acquired after their assumption of office, including any gifts, sponsored foreign travel and hospitality. As it has been reported that the Deputy President was accommodated in one of the royal palaces of the UAE royal family it would need to be investigated whether this benefit was declared as required by the Act. If it was not then this would constitute a violation of this act (sic)."*

3.2 A second complaint in connection with the matter concerned was lodged on 17 January 2006 by Mr W Spies, a Freedom Front Plus Member of Parliament. Mr Spies requested the Public Protector to investigate:

- "1. *The circumstances surrounding the Deputy President's journey to the (sic) Dubai in the United Arab Emirates from 27 to 31 December 2005.*
2. *The question whether the journey was undertaken in the course of the Deputy President's duties as such, or in the course of private family business enterprises, or as an overseas holiday.*
3. *The exact nature of certain business relationships between close relatives of the Deputy President and close relatives of the Minister of Social Development; with a specific request for an investigation into the question whether the spouse of the Minister of Social Development accompanied the Ngcuka family.*
4. *The income tax position with regard to the travel benefit enjoyed by the Deputy President-if the trip was undertaken as a private holiday;*
5. *The question as to whether the journey and the accompanying expenses were approved in accordance with the provisions of the Public Finance Management Act."*

4. The request that SCOPA investigates the apparent misappropriation of public funds

4.1 SCOPA had reportedly² also been requested by the Democratic Alliance to investigate the alleged misappropriation of public funds relating to the Deputy President's visit to the UAE.

4.2 In order to avoid a duplication of investigations it was decided to establish from the Chairperson of SCOPA whether the Committee would be considering the matter.

4.3 The Chairperson advised, on 2 February 2006, that SCOPA had considered the request of the Democratic Alliance, but decided not conduct an investigation.

5. Investigation by the Auditor-General

5.1 Following the decision of SCOPA not to investigate the allegations of misappropriation of public funds, there was an indication from the Auditor-General that his Office might consider an investigation of possible violations of the Public Finance Management Act, 1999. The Auditor General was indeed reported to have said that he would consider investigating the matter, if he was approached.

5.2 On 8 February 2006, the Auditor-General informed the Office of the Public Protector that a request for an investigation had indeed been received from the Democratic Alliance, but that he had decided to deal with the said allegations as part of the normal audit of the Presidency.

² See paragraph 2.3.3 above

6. The decision to commence with an investigation

- 6.1 As no other investigation that could have resulted in a duplication of an investigation by the Office of the Public Protector was instituted, and as the provisions of the Executive Members' Ethics Act makes it peremptory on the Public Protector to investigate a complaint lodged in terms of section 3³, it was decided to commence with an investigation on 9 February 2006.
- 6.2 The President was informed of the reasons for the delay in commencing with an investigation of the complaints lodged in terms of the Executive Members' Ethics Act and that it would not be possible to conclude it within 30 days, as is required by section 3(2), but that a report would be submitted to him as soon as possible thereafter.

7. Comments of the President in the National Assembly

In his response to the State of the Nation Debate in the National Assembly, on 9 February 2006, the President referred to the Deputy President's visit to the UAE. He stated the following in this regard:

"Before I conclude, I would like to return to the important comment made by the Hon Dr Buthelezi when he said that 'this is a time in which history demands of us to rise above... petty division in politics', and refer to the matter of the Hon Deputy President's holiday in Abu Dhabi.

The security arrangements in place since 1994 and before provide that both the President and the Deputy President are provided with security on

³ See paragraph 8.3.2 below

a 24-hour basis. Among other things, this means that when they travel by road, they do so in transport provided, managed and run by the South African Police Service.

When they travel by air, unless circumstances make this impossible, they travel in planes provided, managed and flown by the South African Air Force.

These transport arrangements, which are an integral part of the security system decided exclusively by the state security services, and not the President or the Deputy President, apply regardless of their destinations and the purpose of their travel.

The South African Air Force therefore carried the Deputy President to and from Abu Dhabi, as the security regulations require. This was the only cost of the holiday of the Deputy President that accrued to the state. All other expenses incurred by the Deputy President by going on holiday were met entirely by the Deputy President, with absolutely no charge to the state.

I am certain that now and again the Deputy President will have to take a break from work and rest wherever she may choose. Unless the security arrangements are changed, leaving her unprotected because she is on holiday, it will remain the responsibility of the South African Police Service and the South African Air Force to transport her to her holiday destination.

I trust that, after this explanation, nobody will find it impermissible that she should continue to be provided with security on a 24-hour basis, which includes the periods when she is on holiday.”

8. The jurisdiction and powers of the Public Protector to investigate the complaint

8.1 The constitutional mandate

8.1.1 The Public Protector is one of a number of institutions grouped together in Chapter 9 of the Constitution, 1996 (the Constitution) that has the mandate to strengthen and support our constitutional democracy.

8.1.2 Section 182(1) provides that the Public Protector has the power –

8.1.2.1 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;

8.1.2.2 To report on the conduct investigated; and

8.1.2.3 To take appropriate remedial action.

8.1.3 In terms of section 182(2), the Public Protector has the additional powers and functions prescribed by national legislation.

8.2 The Public Protector Act, 1994

8.2.1 Section 6(4) provides that the Public Protector is competent to investigate, *inter alia*, any alleged:

8.2.1.1 Maladministration in connection with the affairs of government at any level;

- 8.2.1.2 Abuse or unjustifiable exercise of power or other improper conduct by a person performing a public function; or
- 8.2.1.3 Improper or unlawful enrichment or receipt of any improper advantage by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level.
- 8.2.2 The format and procedure to be followed in conducting any investigation is determined by the Public Protector⁴.
- 8.2.3 The Public Protector can at any time, prior to, during or after an investigation make any appropriate recommendation to the affected public body or authority⁵.
- 8.2.4 Section 8(1) provides that the Public Protector may make known to any person any finding, point of view or recommendation in respect of a matter investigated by him or her.

8.3 The Executive Members' Ethics Act

- 8.3.1 This Act provides for a code of ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of provincial Executive Councils⁶.
- 8.3.2 Sections 3 and 4 provide, *inter alia*, that the Public Protector must investigate any alleged breach of the code of ethics on receipt of a

⁴ Section 7(1)(b)(i)

⁵ Section 6(4)(c)(ii)

⁶ See paragraph 10.3 below for a detailed discussion on the Executive Ethics Code

complaint by a member of the National Assembly, if the complaint is against a Cabinet member. It also states that when an investigation is conducted in terms of the Act, the Public Protector shall have all the powers vested in him or her in terms of the Public Protector Act.

8.3.3 The President must within a reasonable time, but not later than 14 days after receiving a report on a Cabinet member, submit a copy of the report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the National Assembly⁷.

8.4 Conclusion

The complaints of improper and unethical conduct by the Deputy President fall within the jurisdiction and powers of the Public Protector to investigate.

PART 2

THE INVESTIGATION

9. The investigation was conducted in terms of sections 3 and 4 of the Executive Members' Ethics Act and section 7 of the Public Protector Act, 1994. It comprised:

9.1 Consideration and evaluation of the complaints;

9.2 Consideration of the media reports and the official statements issued by the Presidency in connection with the matter concerned;

⁷ Section 3(5)(a)

- 9.3 Consideration of the comments of the President in connection with the matter concerned, made during his response to the State of the Nation Debate in the National Assembly on 9 February 2006;
- 9.4 Correspondence with:
 - 9.4.1 The Deputy President;
 - 9.4.2 The Director General of the Presidency;
 - 9.4.3 The Chief Accounting and Chief Operations Officer of the Presidency;
 - 9.4.4 The Auditor-General;
 - 9.4.5 The Chairperson of SCOPA;
 - 9.4.6 The Minister of Defence;
 - 9.4.7 The Chief of the South African Air Force;
 - 9.4.8 The Commissioner of the South African Police Service;
- 9.5 Consideration of comprehensive documentation provided by the Presidency, the South African Air Force and the South African Police Service;
- 9.6 Consideration of a report on an international comparative study commissioned during the investigation;
- 9.7 Consultation with senior officials of the Office of the Auditor-General;

- 9.8 Consultation with the Divisional Commissioner: Protection and Security Service of the South African Police Service;
- 9.9 Consultation with the Secretary of the Cabinet;
- 9.10 Consideration and application of the relevant provisions of the Constitution, the Public Protector Act, the Executive Members' Ethics Act and the Executive Ethics Code.; and
- 9.11 Application of findings relating to the consideration of government policy, contained in the *Report of the Public Protector on an investigation into allegations of impropriety in connection with the approval by the Cabinet of an operational plan for comprehensive HIV and AIDS care, management and treatment for South Africa, designed by the Department of Health, dated 21 October 2004.*

PART 3

THE LEGAL FRAMEWORK REGULATING THE ETHICAL CONDUCT OF MEMBERS OF THE CABINET

10.1 The Constitution

- 10.1.1 In terms of section 92, members of the Cabinet, including the President and the Deputy President⁸ must act in accordance with the Constitution. They are accountable to Parliament for the exercise of their powers and the performance of their functions.

⁸ See section 91(1)

10.1.2 Section 96 provides that:

- "(1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.*
- (2) Members of the Cabinet and Deputy Ministers may not-*
- (a) undertake any other paid work;*
 - (b) act in a way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or*
 - (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person."*

10.2 The Executive Members' Ethics Act

10.2.1 Section 2 provides that the President must publish a code of ethics prescribing the standards and rules, as set out in this section, aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and Members of provincial Executive Councils must comply in performing their official responsibilities.

10.2.2 As indicated above, alleged breaches of the code of ethics have to be investigated by the Public Protector⁹.

⁹ See paragraph 8.3.2 above

10.3 The Executive Ethics Code

10.3.1 The Executive Ethics Code (the Code) was published on 28 July 2000.

10.3.2 Paragraph 2 lays down the general standards of compliance. It provides, *inter alia*, that members of the Cabinet must, to the satisfaction of the President:

10.3.2.1 perform their duties and exercise their powers diligently and honestly;

10.3.2.2 act in good faith and in the best interest of good governance, and

10.3.2.3 act in all respects in a manner that is consistent with the integrity of their office or the government.

10.3.3 Paragraph 2.3 provides that members of the Cabinet may, *inter alia*, not:

10.3.3.1 act in a way that is inconsistent with their positions;

10.3.3.2 use their positions to enrich themselves or improperly benefit any other person; and

10.3.3.3 expose themselves to a situation involving the risk of a conflict of interest between their official responsibilities and their private interests.

10.3.4 Paragraph 4 regulates the acceptance of gifts by, *inter alia*, members of the Cabinet. It provides that:

"4.1 A Member may not solicit or accept a gift or benefit which-

- a. *is in return for any benefit received from the Member in the Member's official capacity*;
 - b. *constitutes improper influence on the Member; or*
 - c. *constitutes an attempt to influence the Member in the performance of the Member's duties.*
- 4.2 *When a Member, in the course of the Member's duties, has received or has been offered a gift with a value of more than R1000, the Member may request permission from the President or the Premier, as the case may be, to retain or accept the gift. If the permission is granted the Member may retain or accept the gift, but must disclose particulars thereof in terms of paragraph 6 of this Code. Where such permission has not been requested or granted the Member must either-*
- a. *return the gift or decline the offer; or*
 - b. *donate the gift to the state.*
- 4.3 *For the purposes of paragraph 4.2 'gift' does not include travel facilities or hospitality arising from attendance at meals, functions, meetings, cocktail parties, conventions, conferences or similar events attended by the Member as part of the Member's executive duties."*(emphasis added)

10.3.5 in terms of paragraph 6.1.3 of the Code, a Member of the Cabinet is only obliged to disclose hospitality received from a source other than a spouse or permanent companion, if:

10.3.5.1 The hospitality was intended as a personal gift and exceeded a value of R350; and

10.3.5.2 The hospitality was intended as a gift, received from a single source and cumulatively exceeded the value of R350 in any calendar year.

10.3.6 Gifts, including hospitality, are in general terms regarded by the Code as “financial interests”, as far as disclosure is concerned. Paragraph 5.5 provides that where any doubt exists as to whether a particular financial interest (gift) must be disclosed, the Secretary of the Cabinet must be consulted.

PART 4

ARE THE FUNDAMENTAL RIGHTS TO FAIR LABOUR PRACTICES AND FREEDOM OF MOVEMENT OF MEMBERS OF THE CABINET LIMITED BECAUSE OF THE POSITIONS THAT THEY OCCUPY?

11.1 Provisions of the Bill of Rights

11.1.1 In terms of section 7 of the Constitution, the Bill of Rights enshrines the rights of all people in our country. It affirms the democratic values of human dignity, equality and freedom and binds the legislature, the executive and all organs of state.

11.1.2 The rights in the Bill of Rights are however, subject to the provisions of section 36 of the Constitution, which provides, *inter alia*, that:

"The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom..."

11.1.3 Everyone has the right to:

11.1.3.1 Equal enjoyment of all rights and freedoms¹⁰.

11.1.3.2 Freedom of movement¹¹;

11.1.3.3 Leave the Republic;¹² and

11.1.3.4 Fair labour practices¹³.

11.2 Conclusion

11.2.1 In the absence of a law of general application that limits the said rights of members of the Cabinet, each individual has a constitutional right to be treated fairly in respect of his/her employment by the State, which includes that leave of absence should be granted occasionally, to move around freely and to leave the Republic. In terms of the right to equality, members of the Cabinet have the rights and freedoms equal to any other

¹⁰ Section 9(2)

¹¹ Section 21(1)

¹² Section 21(2)

¹³ Section 23(1)

person, to visit international destinations of their choice when they are on vacation.

11.2.2 The security measures of the State that have been designed to protect members of the Cabinet have an impact on the exercising of their rights to privacy and freedom of movement. These restrictions are however justified, as it complies with the requirements of the Constitution¹⁴, is fair and reasonable in an open and democratic society and is essential for the protection of the national interest of the Republic.

PART 5

THE OBLIGATION OF THE STATE TO PROTECT MEMBERS OF THE CABINET

12. Section 12(1) of the Constitution provides that everyone has the right to freedom and security of the person. In terms of section 7(2), the State has to respect and protect this right.
13. The measures that the State has to apply to protect the right to security of the person would depend on a number of factors, such as the personal circumstances of the individual, the position that he/she occupies in government, the location or area where such an individual finds himself/herself and the impact that an infringement of the security of the person concerned might have on matters of national security and interest.
14. Members of the Cabinet have powers and perform functions that impact directly on matters of national security and interest. It is therefore of

¹⁴ See Part 5 below

fundamental importance that the State makes special and specific provisions for their protection.

15. Section 198 of the Constitution provides that the principles governing the national security in the Republic include that:

"(a) National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want to seek a better life;

....

(d) National security is subject to the authority of Parliament and the national executive."

16. The President and the Deputy President occupy the highest and most strategic and sensitive positions in government. Their positions make them especially vulnerable and any actual or potential threat to their security constitutes a direct threat to the national security and safety of the whole country. The State is therefore obliged to take stringent measures to provide for their security and protection, in the interest of the nation and the individuals concerned.

PART 6

THE PROTECTION OF MEMBERS OF THE CABINET BY THE SOUTH AFRICAN POLICE SERVICE

17. Constitutional mandate

Section 205 of the Constitution provides that the objects of the national police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law.

18. The VIP Protection Service of the South African Police Service

The VIP Protection Service of the South African Police Service (SAPS) is one of the functions of its Protection and Security Services Division. The purpose of the Division is *"to strive towards the rendering of a professional, effective and accountable protection and security service to all identified dignitaries and government interests."* This Division is currently headed by Divisional Commissioner L M Tshabalala.

19. The Risk Management Support System for Very Important Persons Policy

19.1 The security packages provided to members of the National Executive are determined by policies and operational procedures and guidelines.

19.2 The Risk Management Support System for Very Important Persons Policy (RIMAS) was presented to the Cabinet in October 1996 and subsequently approved.

19.3 RIMAS defines the term “*Very Important Persons*” (VIPs) as follows:

“individuals or groups of individuals who act in the interest of the country or whose safety is of significant importance to the country, and whose safety and security is either manifestly threatened or the likelihood of their safety and security being threatened is high.”

19.4 The following criteria is regarded as of importance in respect of determining the level of protection that has to be afforded to specific VIPs:

19.4.1 The personal profile of the VIP. In this regard the focus is on the personal background of the person concerned, his/her involvement in controversial projects and issues and the effect thereof on public views and opinions;

19.4.2 The political sensitivity of the portfolio of the VIP;

19.4.3 Manifest and potential threats against the security of the VIP. This is based on general intelligence provided by the intelligence community;

19.4.4 The residential and office location of the VIP; and

19.4.5 International threat analyses in respect of manifest or potential threats to the security of VIPs, either from domestic or international origin.

19.5 RIMAS also states that:

“Although the South African Police Service respects the privacy of VIPs, the responsibility to protect a VIP is still a function assigned to the South African Police Service by the Constitution. It is an extremely sensitive task,

which has to be dealt with most carefully. Rigid guidelines cannot be laid down, as every situation is unique and must be dealt with according to its merits. Criteria are linked to a risk and response matrix that reflects three categories of VIP protection, i.e. high, medium and low risk cases."

- 19.6 As far as the level of protection of the President and the Deputy President is concerned, RIMAS provides that:

"In the national interest, the President and the Deputy President receive high profile VIP protection and are obliged to accept it."(emphasis added)

- 19.7 In relation to transport, Divisional Commissioner Tshabalala explained during the investigation that according to RIMAS, the (SAPS) is responsible for providing transport for the President and the Deputy President when they travel by road. The responsibility of managing their travels by air remains that of the SAPS, but the aircraft is provided by the South African Air Force (SAAF). The SAAF is responsible for the flying and managing of the aircraft assigned to the Presidency on a 24-hour basis, regardless of the nature of the journey and irrespective of the existence or absence of any threat. Commissioner Tshabalala also stated in this regard that:

"This is the standard provision but should any threat assessment be received indicating a specific threat, and dependant on the nature of such threat, it might only serve to require an escalation of security measures generally provided, that is if law enforcement agencies cannot pro-actively neutralize the threat by arrest and prosecution.

If the focus of the investigation (by the Public Protector) is the utilization of public funds for the provision of VIP Protection then it should also be

taken into account that the service is provided to incumbents of the Presidency on a 24-hour basis irrespective of the circumstances (i.e. official or private) and when providing such security public funds are expended to resource measures put in place including personnel, motor vehicles, accommodation, technical and related security equipment and aircraft if the situation requires it. The policy also dictates that the incumbent is obliged to accept it and is not permitted to make any pronouncements on the measures adopted for their security. This policy is in line with international practice.

It would be unreasonable to require of the SAPS or SANDF to provide protection on a selective basis dependent on the activities of the VIP, such as when the dignitary engages in party political work, vacation or social activities which may not be directly related to the government portfolio occupied, then all protection is withdrawn and is only re-engaged when official work is resumed. The individual protected remains an office bearer irrespective of the activity which may be engaged in and the interests of the country will still be negatively impacted upon should harm befall such individual thus requiring seamless protection."(emphasis added)

- 19.8 When an aircraft of the SAAF is not available and a commercial airline has to be used by the Deputy President, the security procedures include creating a safe and sterile departure point at the airport, clearing the seating area in the immediate vicinity of the Deputy President and special measures and clearances at the point of arrival to prevent diplomatic incidents or embarrassment to the Deputy President.
- 19.9 These procedures cause significant inconvenience to the traveling public and individuals who may have booked seats in advance. According to Commissioner Tshabalala, the said security measures are cumbersome

and often generate the animosity of those impacted by them during the course of their travels as opposed to utilizing an aircraft of the SAAF, which enjoys full diplomatic immunity and is conducive to a secure traveling environment.

19.10 Commissioner Tshabalala also stated that:

"It must be understood that the VIP Protection Service has to slowly phase in the protective measures on a new dignitary as it impacts severely on the private lives of office bearers, leading inevitably to a lifestyle change to accommodate the security measures. VIPs find it difficult to adapt to the impact on their lifestyle that security measures require of them."

20. The protection of former Presidents and Deputy Presidents

Former Presidents and Deputy Presidents are protected in terms of RIMAS for the rest of their lives. According to Commissioner Tshabalala, the estimated costs in this regard, for the 2005/2006 financial year amounted to the following:

Former President P W Botha	R 2 038 714
Former President F W De Klerk	R 3 034 515
Former President N Mandela	R 5 100 310
Former Deputy President J Zuma	R 6 834 192

Commissioner Tshabalala explained in this regard that:

"It is important to note that all expenditure incurred for the activities of abovementioned dignitaries were not related to any government work, but the service was provided to protect the interests of the state given the office occupied by such individuals and knowledge they were privy to by virtue of such office."(emphasis added)

PART 7

THE POLICY AND PRESCRIPTS REGULATING THE TRANSPORTATION OF MEMBERS OF THE CABINET

21. Cabinet Memorandum 2 of 1994

- 21.1 On 7 December 1994, the Cabinet approved a request to ratify a decision taken by the Cabinet of the former Government, in respect of the use of military transport for political office bearers and senior officials.
- 21.2 Cabinet Memorandum 2 of 1994 stated the following in regard to air transport by the SAAF:
- 21.2.1 Except for the President, Deputy President and Minister and Deputy Minister of Defence, a military aircraft may only be used if there are no commercial flights available;
- 21.2.2 Nominated private staff and/or passengers may accompany VIPs on their flights. It is the prerogative of the VIP for whom the flight was arranged to nominate his/her fellow passengers;

21.2.3 The President and the Deputy President have first priority in respect of the use of the three Falcon aircraft of the SAAF;

21.2.4 Flights by aircraft of the SAAF are undertaken at the expense of the respective departments with the exception of the President and the Deputy President.

22. The Handbook for members of the Executive and Presiding Officers

22.1 The Handbook for Members of the Executive and Presiding Officers (the Handbook) was approved by the Cabinet on 3 February 2003. It contains the Executive Ethics Code issued in terms of the Executive Members' Ethics Act, 1998 and guidelines in respect of benefits, privileges and administrative support services.

22.2 Chapter 6 of the Handbook provides in regard to air transport that members may only use military aircraft for official purposes and at the cost of the relevant department under certain prescribed circumstances.

22.3 The provisions of the Handbook only apply to "members", defined as:

"a Minister, Deputy Minister, Premier, Member of the Executive Council and a Presiding Officer in Parliament or in a Provincial Legislature, except in cases where specific categories of the above members are mentioned by name/title."

The President and the Deputy President are therefore specifically excluded from the provisions of the Handbook.

23. The involvement of the SAAF

The Minister of Defence confirmed during the investigation that the SAAF is obliged to provide the President and the Deputy President and their respective delegations with air transportation, irrespective of the destination and the purpose of their travels.

24. The draft Presidential Handbook

24.1 The policies and practices relating to the protection of the President and the Deputy President have been captured in the draft Presidential Handbook, which is currently in the process of being finalized.

24.2 Chapter 6 of the draft deals with the transport of the President and the Deputy President. It is stated that the Presidential Protection Unit of the SAPS is charged with providing security protection to the President and the Deputy President at all times.

24.3 No distinction is made between official and private trips as far as motor vehicle and air transportation is concerned. Paragraph 6.3 provides in regard to the latter that:

"For safety and security reasons, the President and the Deputy President may under no circumstances travel in a single-engine aircraft. For the same reasons, the President may not travel on a commercial aircraft, whilst the Deputy President may only in extreme circumstances use a commercial airline."

All domestic and international air transport (including the presidential aircraft) for the President and Deputy President is rendered by the South African Air Force.

All applications for the provision of air transportation by the Air Force must be made in advance to the Secretary of Defence to establish the availability of the aircraft and landing strips.”

- 24.4 According to the Chief Accounting and Chief Operations Officer of the Presidency, the draft Presidential Handbook is not regarded as a policy at present. It will be submitted to the Cabinet for approval as soon as all the outstanding policy issues have been resolved.

PART 8

INTERNATIONAL COMPARATIVE STUDY

25. An international comparative study in connection with the security and transport arrangements of Deputy Presidents and office bearers of equal status, was commissioned during the investigation. The research was conducted by researchers of the Centre for African Renaissance Studies of the University of South Africa.
26. The list of countries considered in the study includes several in Africa, Asia, Europe, Australia, New Zealand and the United States of America.
27. The results of the research indicate that:
- 27.1 The policies and prescripts regulating the security and transport arrangements of Presidents also apply to Deputy Presidents;

- 27.2 The protection and security of Deputy Presidents is the primary determining factor relevant to their travel arrangements, irrespective of official or private visits;
- 27.3 Deputy Presidents are mostly regarded as always being on duty and all travels are therefore regarded as official and paid for by the state;
- 27.4 In some instances it is required of the Deputy President to obtain the approval of the President before traveling abroad for whatever purpose;
- 27.5 Family members are usually allowed to travel with Deputy Presidents at state expense. There is however no common rule relating to friends and other associates accompanying the Deputy President;
- 27.6 The expenses of the officials that accompany Deputy Presidents on all their travels are paid for by the state; and
- 27.7 The President and the Deputy President are, for security reasons, mostly transported by military aircraft, where it is available.

PART 9

THE PROCEDURE THAT IS FOLLOWED BY THE PRESIDENCY IN RESPECT OF OVERSEAS TRAVELS OF THE PRESIDENT AND DEPUTY PRESIDENT

28. From the investigation it appeared that the Presidency is responsible for the expenditure incurred by its staff that has to accompany the President and Deputy President. The Presidency regards the President and Deputy President as being on call 24 hours of every day, whether they are inside

- or out of the country and irrespective of whether they are on official duty or vacation.
29. The Presidency also covers the costs of the catering on board the SAAF aircraft that transports the President and Deputy President.
 30. Delegations for most trips of the President and the Deputy President include staff of the Presidency that has to travel to the planned destinations in advance to prepare for the arrival of the President or Deputy President and to set up an operations centre for the duration of their stay.
 31. The Director General of the Presidency has a delegated authority from the President to approve the composition of the delegations of staff of the Presidency that have to accompany the President and Deputy President on their travels abroad.
 32. The Chief Operations Officer of the Presidency has been appointed as its Chief Accounting Officer in terms of the provisions of the Public Finance Management Act, 1999. He/she is therefore responsible for approving the said expenditure incurred by the Presidency when the President or Deputy President travels abroad, whether on official business or vacation.

PART 10

THE PRIVATE OVERSEAS TRIPS OF THE DEPUTY PRESIDENT DURING DECEMBER 2005

33. Approval by the Presidency

- 33.1 From the documentation obtained during the investigation it appeared that the Acting Deputy Director General of the Presidency requested approval, on 7 December 2005, for the Private Secretary of the Deputy President to accompany her on private trips to London, from 20 to 23 December 2005, and to Dubai, from 27 to 31 December 2005.
- 33.2 The letter requesting the said approval stated that the Deputy President would be accompanied by her husband and their children and that they would be flying to London on a commercial aircraft, whilst for the trip to Dubai “they are using the Deputy President’s aircraft.”
- 33.3 Approval for the Private Secretary to accompany the Deputy President was recommended by the Accounting Officer and granted by the Director General of the Presidency. Her related expenses were approved by the Acting Deputy Director General, in terms of her delegated authority.

34. Who accompanied the Deputy President?

34.1 The trip to London

The Deputy President confirmed during the investigation that she travelled on a commercial flight to London on 20 December 2005 and returned to South Africa on 23 December 2005. She was however, not accompanied

by her husband and children as anticipated by the Acting Deputy Director General when she applied for the approval referred to above¹⁵. Only her Private Secretary and officials of the SAPS Presidential Protection Unit accompanied the Deputy President on this trip.

34.2 The trip to the UAE

34.2.1 Documentation obtained from the SAAF during the investigation indicate that the Dassault Falcon 900-A aircraft of the SAAF, which was assigned to transport the Deputy President to the UAE and back, departed from Waterkloof Air Force Base on 27 December 2005.

34.2.2 On board the aircraft were:

- (a) The Deputy President;
- (b) Advocate B Ngcuka (the husband of the Deputy President);
- (c) Mr L Ngcuka (the son of the Deputy President);
- (d) Mr O Mdleleni (a dependant of the Deputy President that lives with her);
- (e) Ms T Skweyiya (a personal friend of the Deputy President);
- (f) Ms N Mngomezulu (a member of the SAPS Presidential Protection Unit);
- (g) Mr and Ms Shange (the children of the Private Secretary of the Deputy President); and
- (h) The 4 flight crew members.

¹⁵ See paragraph 33 above

34.2.3 The return flight to South Africa departed from Abu Dhabi on 31 December 2005. Apart from the passengers listed above, the South African Ambassador to the UAE, was also on board.

35. What was the cost to Presidency for the Deputy President's trip to London?

35.1 According to the Accounting Officer of the Presidency, the costs incurred were the following:

Air ticket for the Deputy President	R 48 985
Air ticket for the Private Secretary	R 38 385
Subsistence and travel allowance of the Private Secretary	R 2011
Accommodation of the Private Secretary	R 2779

35.2 The Accounting Officer explained that protocol and security requirements dictate that the Deputy President has to fly First Class when traveling on commercial airlines. However, as she went to London on vacation, she is required to pay for the difference between an Economy and First Class ticket, which amounts to R 29 000.

35.3 The total costs incurred by the Presidency for the trip to London amounted to R 63 160. This figure excludes the costs of the SAPS Presidential Protection Unit.

36. Did the SAAF aircraft make any stopovers on route to the UAE and back?

The records of the SAAF indicate that the aircraft only stopped at Mombassa to refuel.

37. What was the total cost of the flight to the UAE and back?

37.1 The records of the SAAF state that the costs incurred by the SANDF for the flight amounted to the following (some of the figures below were estimated as final invoices were still outstanding at the time of the investigation):

Aircraft operating costs	R 347 847
Fuel	R 130 470
Landing and handling fees	R 50 000
Accommodation and allowances of the crew	R 35 736

37.2 According to the Accounting Officer of the Presidency, it had to pay for the following expenses:

Air ticket for the Private Secretary (who traveled in advance)	R 28 568
Subsistence and travel allowance of the Private Secretary	R 2262

Catering on the SAAF aircraft R 10 000

37.3 The total costs, excluding the costs of the SAPS Presidential Protection Unit, amounted to (approximately) R 604 883.

38. Why was Ambassador Moopeloa on board the return flight from the UAE ?

In her response to this question during the investigation, the Deputy President stated that the Ambassador was supposed to have been on leave in South Africa with his family during the time that she visited the UAE. When he was informed that the Deputy President would be visiting the UAE, he decided to postpone his leave. As there was space on the SAAF aircraft on the return flight, the Deputy President “*offered him a lift back home*”.

39. Why did the Deputy President travel to the UAE with an aircraft of the SAAF, when a week earlier she took a commercial flight to London?

39.1 In his response to this question, the Accounting Officer of the Presidency stated that:

“The SAPS takes full responsibility for the safety of the principals (the President and Deputy President) and this is done according to their own internal policies. The transportation of the principals is determined by the SAPS largely based on the security requirements. The responsibility of the Presidency in relation to the mode of transport, is operational coordination. Consequently, the reasons for traveling commercially would not be the

subject of decision-making and, therefore, unlikely to be contained in documents of the Presidency."

39.2 The matter was raised with Commissioner Tshabalala who confirmed that it is the Presidential Protection Unit of the SAPS that decides on the modes of transport of the President and the Deputy President, irrespective of the purpose of their travels. The Deputy President was allowed to travel to London by commercial airline as *"the SANDF was not able to field an aircraft in time to meet the planned schedule."*

40. Where did the Deputy President plan to stay during her visit to the UAE?

40.1 From the information provided by the Accounting Officer of the Presidency, it appeared that arrangements for international travel and accommodation of the Deputy President, irrespective of its purpose, are made through the international desk of the Department of Foreign Affairs and the Embassy of the relevant country.

40.2 The Deputy President requested the staff of the Presidency to investigate the options and costs of accommodation in the UAE.

40.3 The permission of the UAE Government was required for the visit of the Deputy President, particularly as she was traveling with a military aircraft. It was therefore unavoidable that the Head of State of the UAE was aware that the Deputy President would be visiting his country.

40.4 The UAE Government made an offer to accommodate the Deputy President and her entourage during her visit, which she accepted.

41. Is the hospitality offered to the Deputy President by the UAE Government regarded as a “gift” in terms of the Code?

- 41.1 During the investigation the Secretary to the Cabinet explained that it is customary for heads and deputy heads of state to inform the governments of countries they plan to visit in advance of the time and duration of their stay, irrespective of whether the planned visit is official or private.
- 41.2 It is also customary for the government of the country visited by a President or Deputy President to offer him/her and his/her entourage its hospitality, which may include, *inter alia*, accommodation and transport, even though the visit is unofficial.
- 41.3 The hospitality offered by governments to visiting Presidents and Deputy Presidents relate directly to the positions that they occupy and not to them as individuals.
- 41.4 Declining an offer of hospitality by a government of a country visited by a President or Deputy President could be perceived as an insult, which could have an impact on future diplomatic and business relations between the two countries. Presidents and Deputy Presidents are therefore obliged to accept such offers, even though they are visiting on vacation.
- 41.5 Under the circumstances, the Secretary of the Cabinet is of the view that the Deputy President had no choice but to accept the hospitality offered to her by the UAE Government. It was not offered to her as a personal gift, but in her capacity as the Deputy President of the Republic of South Africa. The Secretary is therefore of the opinion that there is no obligation

on the Deputy President in terms of the Code to have requested the permission of the President to accept the offer or to disclose it.¹⁶

PART 11

THE RESPONSE OF THE DEPUTY PRESIDENT TO THE ALLEGATIONS OF A BREACH OF THE EXECUTIVE ETHICS CODE

42. The allegations of improper conduct and a breach by the Deputy President of the Executive Ethics Code, referred to in paragraph 3 above, were put to her during the investigation and she was requested to respond thereto.
43. In her response, the Deputy President stated that:
 - 43.1 She had requested the approval of the President to undertake a private trip to the UAE, which was granted;
 - 43.2 The Director General and the Accounting Officer of the Presidency were consulted and approval granted for her Private Secretary to accompany her at state expense. The Private Secretary had to travel to the UAE in advance as is customary and particularly as no Protocol Officer accompanied her on this private visit.
 - 43.3 Her office was requested to make arrangements for accommodation for her and her family, which they were to pay for. However, the UAE Government insisted on hosting her and her entourage, including the security personnel.

¹⁶ See paragraphs 10.3.4 and 10.3.5 above

43.4 Ms T Skweyiya accompanied her as a friend. During the visit she participated in discussions with the South African Ambassador in respect of the training programme for South African women in the construction industry in the UAE.

"There was no visit to or interaction with the construction industry in the United Arab Emirates during our visit there. There were interactions with the South African Ambassador to the UAE on the training needs and placement of South African women in infrastructure projects in the UAE. No one in my entourage will benefit from the training planned in the UAE. Mrs Skweyiya in fact has been voluntarily assisting in the planning of the training programme in the UAE and will do so with regard to other countries."

43.5 *"Given that my Personal Assistant (Private Secretary) is a widow and was going to be away and her children would have been left alone, I made the request to travel with them on the state plane (at no additional cost to the state) and that my PA (Private Secretary) would pay for their accommodation."*

43.6 The Falcon 900 aircraft of the SAAF was the transport preferred by the Presidential Protection Unit;

43.7 *"Given all the steps I took together with my office, I am of the firm view that there is no basis and substance in the allegation that I acted in bad faith and not in the interest of good governance. My office consulted and liaised with all the relevant offices as required. This is a procedure followed in all trips and there was no inconsistency in this case. It is against this backdrop that I refute the allegation that I did not act in a manner consistent with my office."*

PART 12

CONSIDERATION OF THE POLICY REGULATING THE PROTECTION AND SECURITY OF THE PRESIDENT AND THE DEPUTY PRESIDENT

44. In the *Report of the Public Protector on an investigation into allegations of impropriety in connection with the approval by the Cabinet of an operational plan for comprehensive HIV and AIDS care, management and treatment for South Africa, designed by the Department of Health*, the powers of the Public Protector to investigate government policy was considered. This Report was submitted to the Cabinet on 21 October 2004.
45. On the basis of judgments of the Constitutional Court in regard to the matter, it was found that the Public Protector “has the authority to investigate allegations of impropriety in regard to the formulation and implementation (but not the desirability) of government policy.” Reference was in particular made to the following finding of the Constitutional Court in the case of *Minister of Health and Others v Treatment Action Campaign and Others*¹⁷:

"The primary duty of the courts (and the Public Protector) is to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice. The Constitution requires the State to respect, protect, promote, and fulfill the rights in the Bill of Rights. Where State policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the State has given effect to its constitutional obligations. If it should hold in any given

¹⁷ 2002(10) BCLR 1033 (CC) from page 1061

*case that the State has failed to do so, it is obliged by the Constitution to say so.*¹⁸

46. The said Report also stated that:

“Where the formulation and implementation of a government policy allegedly results in an impropriety, the Public Protector (as an institution) would be failing in its duty if it shows reluctance or refuses to investigate. Section 181(1) of the Constitution clearly provides that it is the function of the Public Protector to strengthen constitutional democracy in the Republic. Whether the contents of a policy is otherwise desirable and appropriate is however a political issue that falls outside of the ambit of the jurisdiction of the Public Protector.”¹⁹ (emphasis added)

PART 13

THE AUDIT CONDUCTED BY THE OFFICE OF THE AUDITOR-GENERAL

47. Shortly before the investigation was finalized, senior officials of the Office of the Auditor General indicated that a few administrative shortcomings relating to the procedures followed in regard to the arrangement of travels of office bearers of the Presidency were discovered during its auditing process. These matters will be raised in reports of the Auditor General and are therefore not referred to in this report.

¹⁸ See page 17 of the Report

¹⁹ See page 18 of the Report

PART 14

ANALYSIS OF THE INFORMATION OBTAINED FROM AND THE EVIDENCE SUBMITTED DURING THE INVESTIGATION

48. The State has a constitutional obligation to protect the Deputy President on a full time basis during her/his tenure and after she/he leaves office. Former Presidents and Deputy Presidents are protected by the State, at substantial cost, despite the fact that they are not performing any official duties.
49. The protection of the Deputy President in office and the associated expenditure, is in the national interest. It is based on provisions of the Constitution, national legislation and policies approved by the Cabinet.
50. The security measures instituted by the State to protect the Deputy President apply irrespective of whether she/he performs official duties or is on vacation.
51. The policies and practices regulating the protection of the Deputy President and the draft policy contained in the draft Presidential Handbook are in line with international standards and practice.
52. The SAPS is responsible for the protection of the Deputy President.
53. The Deputy President is obliged to accept and conform to the protection measures implemented by the SAPS. She/he has no control over the decisions taken by the SAPS in this regard as it is based on government policy and relates directly to the position that she/he occupies and not only to her/him as a person.

54. The protection measures of the Deputy President currently include that she/he is obliged to travel, locally and abroad, by an aircraft of the SAAF at the expense of the Department of Defence, irrespective of the purpose of the trip. She/he has no choice in the matter.
55. The requirement that the Deputy President has to be transported by an aircraft of the SAAF forms part of a total security package. The costs of such air travels are budgeted for by the Department of Defence.
56. Only in circumstances where an aircraft of the SAAF is not available, would the Deputy President be allowed to travel by commercial airline. In such circumstances, strict security measures would apply (at cost to the State) to ensure that the Deputy President is properly protected. It is, *inter alia*, required that she travels First Class²⁰. However, as the mode of transport in such cases is not provided by the State, the Presidency has to bear the costs of the difference between a First Class and Economy Class Ticket. This mode of transport does not form part of a security package to protect the Deputy President and it is therefore required of the Deputy President to pay for an Economy Class ticket when undertaking private travels by commercial airline.
57. The Deputy President is entitled to take leave whenever it is possible for her/him to do so and to travel to any destination of her/his choice when she/he is on vacation.
58. The obligation of the State to protect the Deputy President, even when she/he is on leave, cannot infringe on her/his right to go on vacation to the destination of her/his choice. It also cannot prevent her/him from

²⁰ See paragraphs 19.8 and 35.2 above

being accompanied by her/his family and friends, should she/he wish to take them along. The fact that the mode of transport is prescribed to her/him by the SAPS, for security reasons and in terms of government policy, does not disqualify her/him from traveling wherever she/he wants to go on vacation.

59. The Deputy President went on vacation to the UAE with the approval of the President. The Presidency was informed of her visit and her Private Secretary had to accompany her, in terms of the practice and policy of the Presidency. Approval in this regard was granted by the Director General of the Presidency.
60. In terms of the policies providing for the full time protection of the Deputy President, she had to be transported to the UAE by means of an aircraft of the SAAF at the expense of the Department of Defence.
61. The expenditure incurred by the Presidency for the trip to the UAE was approved by the Chief Accounting Officer in terms of the relevant provisions of the Public Finance Management Act, 1999.
62. The Deputy President was entitled, in terms of a policy approved by the Cabinet, to be accompanied on her vacation trip to the UAE by her family, friends and other passengers of her choice.
63. The Deputy President was obliged, by virtue of her position, to consider the offer of the UAE Government to accommodate her and her entourage during their stay in the UAE. Declining the offer could have insulted the Head of State of the UAE, which could have had an impact on diplomatic relations between the two countries.

64. The hospitality that the Deputy President received from the UAE government did not constitute a 'gift' in terms of the Code²¹ as:
- 64.1 It was not offered to her in return for any benefit received;
- 64.2 There is no evidence or suggestion that the offer was intended to constitute an improper influence on the Deputy President;
- 64.3 It was not intended as a personal gift, but was offered to her in her capacity as the Deputy President of the Republic of South Africa; and
- 64.4 The offer was in line with international convention applicable to visits of heads and deputy heads of states to other countries, irrespective of its purpose.
65. The Deputy President is under no obligation to disclose in terms of the Code the hospitality offered to her by the UAE Government, even though she indicated her willingness to do so during the investigation.
66. The Deputy President was not accompanied by Mr S Macozoma, as was alleged by media reports.
67. As the Deputy President was entitled to be accompanied by her family and a friend on her vacation to the UAE, the affairs and movements of those accompanying her during their stay are irrelevant.

²¹ See paragraphs 10.3.4 and 10.3.5 above

68. Under the circumstances it cannot be found that the Deputy President acted improperly or that she failed to act in good faith and in the best interests of good governance or in a manner that is inconsistent with her office, as alleged. She was entitled, as is anyone else, to take her family, a friend and the children of her Private Secretary with her to the UAE, and no-one therefore improperly benefited from the trip. The allegations of a conflict of interest relating to the interests of the spouse of the Deputy President in the construction industry are also without merit.
69. Part of the wording of the official statements issued by the Presidency in response to media reports relating to the matter concerned, were interpreted as contradicting statements made by the Deputy President. The statement that the Deputy President visited certain buildings and a public exhibition on infrastructure development was, for example, construed as an attempt to disguise her visit to the UAE as partly official. As indicated above, the purpose of the visit of the Deputy President to the UAE is immaterial in respect of the costs incurred by the State. The alleged contradictions in the said statements are therefore of no consequence in respect of the merits of the matters investigated.

PART 15

FINDING

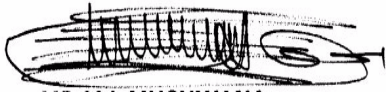
70. From the investigation it was found that:

The Deputy President did not act improperly or in breach of the Executive Ethics Code when she went on vacation to the United Arab Emirates in December 2005.

PART 16

RECOMMENDATION

71. In terms of section 182(1)(c) of the Constitution, 1996 and section 6(4)(c)(ii) of the Public Protector Act, 1994, it is recommended that the Secretary of the Cabinet take urgent steps to ensure that the draft Presidential Handbook deals with the matters and issues investigated in clear and certain terms and that it is submitted to the Cabinet for consideration.



ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

Date: 15 August 2006

Assisted by: Adv C H Fourie
Head: Special Investigations
Office of the Public Protector