

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION  
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF  
SOUTH AFRICA, 1996 AND SECTION 8(2)(b) OF THE PUBLIC  
PROTECTOR ACT, 1994**



**Report No: 15 of 2007/8**

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF  
MISCONDUCT BY THE MINISTER OF TRANSPORT, MR J RADEBE**

## INDEX

<b>Executive summary</b>	<b>3</b>
1. INTRODUCTION	5
2. BACKGROUND	5
3. THE COMPLAINT	6
4. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT	7
5. THE INVESTIGATION	8
6. ATTEMPTING TO ESTABLISH THE SUBSTANCE OF THE MEDIA REPORT CONCERNED	9
7. THE EVIDENCE OF MR C MSIBI, THE MEDIA LIAISON OFFICER OF THE MINISTRY OF TRANSPORT	10
8. THE RESPONSE OF THE SOUTH AFRICAN POLICE SERVICE	12
9. THE RESPONSE OF THE MINISTER	13
10. THE PROTECTION OF MEMBERS OF THE CABINET BY THE SOUTH AFRICAN POLICE SERVICE	14
11. THE RELEVANT PROVISIONS OF THE NATIONAL ROAD TRAFFIC ACT, 1996	15
12. EVALUATION OF THE AVAILABLE EVIDENCE	15
13. OBSERVATIONS	17
14. FINDING	21

## Executive summary

The Office of the Public Protector investigated a complaint by a Member of Parliament in connection with a report published by *Beeld*, alleging that shortly after the Minister of Transport launched the National Road Safety Project at Rayton on 5 December 2006, where he urged motorists to drive slowly, the car in which he was transported was observed driving in the direction of Pretoria at high speed. The complainant held the view that by allowing his driver to speed, the Minister acted improperly.

As the complaint was solely based on the said media report, from which it was not clear who made the observations reported, the newspaper concerned was requested to provide more information during the investigation. The eventual response received from the Deputy Editor was that *Beeld* preferred to remain independent where other witnesses were present. Reference in this regard was only made to the Media Liaison Officer of the Ministry, who denied the allegation, as did the Minister and his driver.

The Public Protector held that it could reasonably be expected from members of the media to cooperate with organs of state investigating allegations of misconduct by members of the executive that they know of and/or reported on.

It is the responsibility of the South African Police Service to transport the Minister when he is travelling on official business. The member of the SAPS driving the vehicle transporting the Minister is therefore, as is the case of any other driver, responsible for complying with traffic rules and regulations. The Minister has limited, if any control over the driver, whose primary focus is his safety.

The driver of the vehicle transporting the Minister may only exceed the speed limit if the protection of the Minister requires him/her to do so. He/she has the discretion in this regard and it is not dependent on directions of the Minister.

Exceeding the speed limit at the instruction of the Minister for any other reason would be unlawful.

From the evidence that could be obtained during the investigation, it could not be found that the Minister acted improperly, as was alleged.

## **REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF MISCONDUCT BY THE MINISTER OF TRANSPORT, MR J RADEBE**

### **1. INTRODUCTION**

This report is submitted to the National Assembly in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(2)(b) of the Public Protector Act, 1994. It relates to an investigation into an allegation of misconduct by the Minister of Transport, Mr J Radebe (the Minister).

### **2. BACKGROUND**

2.1 On 6 December 2007, the Afrikaans daily newspaper *Beeld* published an article under the heading: "*Ry stadig, sê Radebe...en jaag weg na Pretoria*" (drive slowly said Radebe...and sped off towards Pretoria).

2.2 In the article, apparently written by Ms H Fourie, one of *Beeld's* journalists, it was, in the main, stated that:

2.2.1 The Minister launched the National Road Safety Project at Rayton, east of Pretoria, on 5 December 2006. In his address, the Minister urged motorists to abide by the traffic laws, to drive slowly, not to drink and drive and to rest at regular intervals during long journeys.

2.2.2 Shortly after having issued the said appeal, the Minister and his entourage were observed by "*Beeld*" (no names provided) driving at a high speed on the N4 in the direction of Pretoria.

2.3 A follow-up report was published in *Beeld* on the next day, i.e. 7 December 2007. It focussed on the response of Mr C Msibi, the Media Liaison Officer of the Ministry of Transport, on the said article, which

stated that senior members of government are by law allowed to exceed the prescribed speed limit under certain circumstances. He refrained however, from commenting on the alleged incident on behalf of the Minister, as Mr Radebe was attending a Cabinet Meeting at the time and the matter had not been discussed with him.

- 2.4 In *Beeld's* weekly satirical column of 7 December 2006, under the heading "*Lood se praatjies*", reference was again made to the said allegation against the Minister. It was stated that the Minister's convoy passed the "*Beeld-mobiel*" on the N4. The driver tried to determine the speed of the convoy, but failed as *Beeld's* car could only reach 150 km/h.
- 2.5 *Pretoria News* and *Citizen* of 8 December 2006 published reports referring to *Beeld's* allegation that the Minister and his entourage was seen driving at high speed shortly after he had urged motorists not to do so.

### **3. THE COMPLAINT**

- 3.1 Mr J H van der Merwe MP, the Chief Whip of the IFP, lodged a complaint against the Minister, based on the allegations published by *Beeld*, referred to above, with the Office of the Public Protector on 14 December 2006.
- 3.2 In his letter of complaint, Mr Van der Merwe, *inter alia*, stated:

*"What a scandalous example set by the Minister of Transport, who had the cheek to warn other motorists not to speed, because 75% of motor accidents are caused by speed, and then he arrogantly and contemptuously ignores the very same warnings he had issued to motorists!"*

*To argue that Ministers are transported in cars driven by others who contravene traffic rules, is of course no excuse, because the Minister will certainly know when his driver is committing a crime and then has the duty to interfere and stop the driver, otherwise he becomes a party to the crime.*

*I call on the Public Protector to investigate this matter in terms of, inter alia, section 182 of the Constitution, to report on these complaints and to take appropriate remedial action.*

*I suggest that it be made abundantly clear to Ministers that they are not above the Law (sic) and if they are party to contraventions of the Laws (sic) of our land, they are to be criminally prosecuted."*

#### **4. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

- 4.1 In terms of section 182 of the Constitution, the Public Protector has the power to investigate any conduct in the public administration in any sphere of government, that is alleged to be improper.
- 4.2 Section 6(4) of the Public Protector Act, 1994 provides that the Public Protector has the power to investigate any alleged improper conduct by a person performing a public function or any act by a person in the employ of government at any level which results in unlawful or improper prejudice to any other person.
- 4.3 The alleged conduct by the Minister of Transport therefore falls within the powers and jurisdiction of the Public Protector to investigate.

## 5. THE INVESTIGATION

The investigation was conducted in terms of section 6(4) and section 7 of the Public Protector Act, 1994. It comprised:

- 5.1 Correspondence with Mr Van der Merwe, the complainant;
- 5.2 Consideration of the media reports referred to in paragraph 2 above;
- 5.3 Correspondence with the Divisional Commissioner: Protection and Security Service of the South African Police Service;
- 5.4 Correspondence with the Minister of Transport;
- 5.5 Correspondence with Ms H Fourie, a journalist from *Beeld*;
- 5.6 Correspondence with the Deputy Editor of *Beeld*;
- 5.7 Correspondence with the Media Liaison Officer of the Ministry of Transport;
- 5.8 Consideration of the relevant provisions of the National Road Traffic Act, 1996;
- 5.9 Consideration of the judgement of the Constitutional Court in the case of in the cases of: *Khumalo and Others v Holomisa*<sup>1</sup>; and
- 5.10 Consideration of relevant portions of the *Report of the Commission of Inquiry into allegations of spying against the National Director of Public Prosecutions, Mr B T Ngcuka*<sup>2</sup>.

---

<sup>1</sup> 2002(5)SA 401 (CC)

<sup>2</sup> Issued on 19 January 2004



## **6. ATTEMPTING TO ESTABLISH THE SUBSTANCE OF THE MEDIA REPORT CONCERNED**

6.1 The complaint was based solely on a reports published by *Beeld*<sup>3</sup>, which were written by a journalist, Ms H Fourie. From its contents, it was not clear who made the observations relating to the Minister's convoy and on what basis it was alleged that the vehicles involved travelled at a high speed.

6.2 The reference to the incident that appeared in *Beeld* of 7 December 2006 in the column "*Lood se praatjies*" were phrased in a satirical manner and clearly based on hearsay.

6.3 In an attempt to obtain what appeared to be the best evidence in support of the said allegations, it was decided to approach Ms Fourie directly for assistance. In a letter addressed to her on 8 March 2007, she was requested to respond to the following questions:

6.3.1 Whether she made the observations in connection with the Minister's convoy, referred to in the reports published under her name;

6.3.2 If not, who was the source of her information and when was it conveyed to her?

6.3.3 If so,

6.3.3.1 How many vehicles were in the Minister's entourage?

6.3.3.2 Who were the drivers?

6.3.3.3 Were the blue lights referred to in the reports flashing?

---

<sup>3</sup> See paragraph 2 above

- 6.3.3.4 On what basis was it averred that the convoy travelled at a high speed?
- 6.3.3.5 What was regarded by her as a high speed?
- 6.3.3.6 Does she know whether the cars involved exceeded the speed limit?
- 6.4 Ms Fourie replied that she could not respond to the request for assistance without the approval of her superiors, to whom the matter was forwarded for a decision.
- 6.5 After several attempts to obtain a response from the Deputy Editor of *Beeld*, it was eventually received on 26 April 2007. It stated that it is the policy of *Beeld* to remain independent where other witnesses that were present at the incident reported are available. In this regard reference was made only to Mr C Msibi, the Media Liaison Officer of the Ministry of Transport. No other witnesses were named.

## **7. THE EVIDENCE OF MR C MSIBI, THE MEDIA LIAISON OFFICER OF THE MINISTRY OF TRANSPORT**

- 7.1 In a statement submitted by Mr Msibi during the investigation, he indicated that:
- 7.1.1 He was approached by a female journalist of *Beeld* on 6 December 2006, who enquired about the following:
- 7.1.1.1 Why “the Minister was speeding” the previous day, especially after having launched the *Arrive Alive* campaign; and
- 7.1.1.2 Whether the law allows Ministers to exceed the speed limit.

- 7.1.2 He requested more information about the allegation against the Minister.  
*"The journalist indicated that the Minister's car overtook her vehicle at high speed on the N4 highway south bound and she tried to keep up with the vehicle but failed. To her, this was proof enough that the Minister's car exceeded the speed limit. The MLO (Mr Msibi) then stated that the absence of the (sic) scientific proof or laser reading left us with no option but to clarify the facts with the Minister and his driver."*
- 7.1.3 He made the journalist aware of the fact that he was also part of the Minister's convoy at the time, which was driving at 120 km/h. She acknowledged having seen his vehicle as she was driving behind it when she made her observations.
- 7.1.4 The only official comments that he made at the time was that:
- 7.1.4.1 *"Yes, indeed, the Road Traffic Act did allow Ministers to disobey traffic signs while being escorted by the members of the police force (sic), during the execution of their duties";* and
- 7.1.4.2 *"Secondly, that he (Mr Msibi) could not comment on whether the Minister's car was speeding but will check with both the Minister and his driver who were at a Cabinet meeting at the time."*
- 7.1.5 He subsequently consulted the Minister and his driver in connection with the allegation made by the journalist. The Minister stated that he had no reason to rush at the time his car was allegedly speeding. His driver indicated that he had observed the car following the convoy and that he was driving within the speed limit.
- 7.1.6 At the time when he contacted the journalist to inform her of the Minister's and his driver's response to her allegation of speeding, he was informed that the *"story had already been filed"*.

7.1.7 The Ministry issued the following statement in response to the media reporting that the Minister's car was seen speeding shortly after he had launched the *Arrive Alive* campaign:

*"The Road Traffic Act provides for executive political leaders in Government such as Deputy Ministers, Ministers, the Deputy President and President to disobey traffic signs in the execution of their duties whilst being escorted by VIP unit personnel. However, the Ministry of Transport continues to be disturbed by allegations that Minister Radebe's driver drove beyond the speed limit on 5 December 2006.*

*No one has so far presented to us any evidence to corroborate these allegations, including Beeld newspaper. If these allegations continue to persist, we will have no choice but to consider our legal options against any party that continues to perpetrate them".*

## **8. THE RESPONSE OF THE SOUTH AFRICAN POLICE SERVICE**

- 8.1 The said allegation of speeding published by *Beeld* was raised with the Divisional Commissioner: Protection and Security Service of the South African Police Service (SAPS).
- 8.2 Deputy National Commissioner H M Hlela responded by indicating that he had the matter investigated.
- 8.3 It was confirmed that "Close Protectors" assigned to the Minister travelled with him on the day in question on the N4 towards Pretoria, as alleged.
- 8.4 The vehicles involved in the convoy carried portable blue lights attached to the roofs, which were however not used at the time.

- 8.5 It was also denied that the drivers of the vehicles involved exceeded the speed limit.
- 8.6 The Minister did not give any instruction that the speed limit had to be exceeded.
- 8.7 *“Close protection officers may exceed speed limits depending on the situation they are faced with at the time. Provision are (sic) made for members of the Service appointed in terms of the South African Police Act, 1995 and Section 3 of the Civil Protection Act, 1977 as amended, to exceed speed limits if the situation dictates.”*

## **9. THE RESPONSE OF THE MINISTER**

The allegation of speeding referred to above was put to the Minister during the investigation. In his response he stated, *inter alia*, that:

*“The complaint is that, after having launched the Arrive Alive Campaign, whereby one of the objectives is to discourage motorists from speeding, the motor vehicle in which I was a passenger was speeding. This allegation, which is not based on any substantiated proof of fact but on the assumption that the vehicle must have been travelling in (sic) a speed in excess of the prescribed speed, is totally incorrect.*

*As highlighted above the driver of my vehicle was not exceeding the speed limit, but travelling (sic) within the prescribed speed limit.*

*My driver is quite conversant with my responsibilities as the Minister of Transport and the message my Department is sending out to the general public with regard to abiding to the traffic laws. It was communicated to the driver that under no circumstances must he disobey road traffic signs and always to travel within the speed limit.*

*Furthermore, I need to bring to your attention that the National Road Traffic Act, 1996 does not exempt Member (sic) of Parliament to disobey road traffic signs and to exceed the speed limit.*

*As highlighted herein I cannot be seen to be acting contrary to the provisions of the National Road Traffic Act, nor condone any conduct, which is a mockery of the Arrive Alive Campaign that I launched.”*

## **10. THE PROTECTION OF MEMBERS OF THE CABINET BY THE SOUTH AFRICAN POLICE SERVICE**

10.1 The VIP Protection Service of the SAPS is one of the functions of its Protection and Security Services Division. The purpose of this Division is *“to strive towards the rendering of a professional, effective and accountable protection and security service to all identified dignitaries and government interests.”*<sup>4</sup>

10.2 The security packages that are provided to members of the National Executive are determined by, *inter alia*, the *Risk Management Support System for Very Important Persons Policy* (RIMAS) of the SAPS and provide for a driver, bodyguard and close protection team (in transit protection) in the case of Ministers.

10.3 Chapter 5 of the *Handbook for Members of the Executive and Presiding Officers*, which was approved by the Cabinet on 5 February 2003, provides that *“State-owned official vehicles and South African Police Services (sic) VIP Drivers/Protectors, may be allocated to Members and are made available for official purposes and in the interest of security.”*

---

<sup>4</sup> For a more detailed discussion in this regard see Part 6 of *The Report of the Public Protector 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- Report no 1/2006.*

## **11. THE RELEVANT PROVISIONS OF THE NATIONAL ROAD TRAFFIC ACT, 1996**

11.1 In terms of section 59, no person shall drive a vehicle on a public road at a speed in excess of the general speed limit which applies in respect of that road.

11.2 Section 60 provides, *inter alia*, that:

*“Notwithstanding the provisions of section 59, the driver of a fire-fighting vehicle, a rescue vehicle or an ambulance, who drives such vehicle in the carrying out of his or her duties, a traffic officer who drives a vehicle in the carrying out of his or her duties or any person driving a vehicle while engaged in civil protection as contemplated in an ordinance made in terms of section 3 of the Civil Protection Act, 1977, may exceed the applicable general speed limit: Provided that*

*(a) he or she shall drive the vehicle concerned with due regard to the safety of other traffic;*

*(b) ...”*(emphasis added).

11.3 A “*traffic officer*” includes, in terms of section 1, a member of the South African Police Service.

## **12. EVALUATION OF THE AVAILABLE EVIDENCE**

### **12.1 The newspaper reports**

12.1.1 The complainant relied for his contention that the Minister acted improperly on 2 reports that appeared in *Beeld* of 7 December 2006.

12.1.2 In the first report it is merely stated in this regard that the Minister and his entourage travelled at high speed and with blue lights flashing on the N4 in the direction of Pretoria.

12.1.3 The second report is in the form of a satirical column from which it appears that the writer was told by a female journalist that the Minister's convoy passed her at high speed, that she tried to establish the speed of the convoy, but as the car that she was driving could only reach 150 km/h she could not catch up.

12.1.4 It is therefore not evident from these reports or the report that appeared in *Beeld* on 6 December 2007<sup>5</sup>, who made the observation of speeding, under what circumstances and whether the convoy actually exceeded the speed limit.

12.1.5 The refusal of the Deputy Editor of *Beeld* to co-operate with the investigation<sup>6</sup> resulted in the statements made in the reports being unsupported by additional and corroborating evidence. Apart from referring to Mr Msibi as a witness to the incident, no indication of any other possible witness that could substantiate the observations made by the journalist involved, was provided.

## 12.2 Mr C Msibi

12.2.1 Mr Msibi's evidence provided some support to the hearsay statement that was made in the report referred to in paragraph 12.1.3 above. According to him, the female journalists that approached him alleged that she was driving on the N4 when the Minister's convoy passed her at high speed. It is however, not clear at what speed she was driving at the time and what she regarded as "high speed". It also does not appear from what she told Mr Msibi that the convoy exceeded the speed limit.

---

<sup>5</sup> See paragraph 2.2 above

<sup>6</sup> Discussed in more detail in paragraph 13.1 below



12.2.2 In the absence of any corroborated and reliable evidence to the contrary, Mr Msibi's evidence that he was part of the convoy which was travelling at 120 km/h, which is supported by that of the Minister and his driver, cannot be rejected.

### **12.3 The Minister and the SAPS**

The evidence of the Minister and of the SAPS officials responsible for his protection on the day in question, corroborates that of Mr Msibi i.e. that the convoy did not exceed the speed limit, as alleged. No valid reason could be found under the circumstances to question the credibility and reliability of this evidence.

## **13. OBSERVATIONS**

The following observations have been made from the investigation:

### **13.1 *Beeld's* failure to co-operate**

13.1.1 Our courts have repeatedly upheld the right of freedom of the press and the media entrenched in section 16 of the Constitution. It has however also been made clear that it is expected of the media to act reasonably and responsibly. In the case of *Khumalo and Others v Holomisa*<sup>7</sup>, the Constitutional Court stated the following in this regard<sup>8</sup>:

*"In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture. As primary agents of the dissemination of information and ideas, they are, inevitably, extremely powerful institutions in a democracy and they have a*

---

<sup>7</sup> 2002(5) SA 401(CC)

<sup>8</sup> At paragraph 24

*constitutional duty to act with vigour, courage, integrity and responsibility.*

*However, although freedom of expression is fundamental to our democratic society, it is not a paramount value. It must be construed in the context of the other values enshrined in our Constitution. In particular, the values of human dignity, freedom and equality.”*

13.1.2 It could therefore reasonably be expected from members of the media to cooperate with organs of state investigating allegations of misconduct by members of the executive that they know of and/or reported on. Consequently, it is disconcerting that a newspaper of *Beeld’s* stature was not willing to co-operate with the investigation of allegations of misconduct relating to a Minister that it published without reservation, especially as it impacted directly on his reputation and dignity.

13.1.3 In considering whether *Beeld* should be compelled in terms of the provisions of the Public Protector Act to provide the information requested from Ms Fourie, regard had to be taken of experience in this regard and the common stance of the media in South Africa not to submit evidence to investigative bodies and to the courts relating to its published reports. Cognisance was, for example, taken of the experience of Judge Hefer in the *Commission of Enquiry into allegations of spying against the National Director of Public Prosecutions, Mr B T Ngcuka* (also known as the Hefer Commission). Referring to the refusal of a journalist to testify before the Commission, the learned judge stated<sup>9</sup>:

*“My view was that the constitutionality guaranteed freedom of expression (including the freedom of the press and other media and the freedom to gather and disseminate information) does not entail that*

---

<sup>9</sup> On page 13

*every journalist is in all cases entitled to refuse to testify in a court of law or a commission of enquiry or to disclose relevant information gathered in the course of his or her profession. Unless other reasons exist which justify a refusal to testify a journalist, like any other person, is obliged to testify and is only entitled to refuse to answer specific questions against which there is a valid objection.*

*This view, I may say, is not popular with the media, nor was it acceptable to Ms Munusamy's (the journalist) counsel during his argument in the commission. But it was eventually not questioned when my decision went on review."*

The Commission eventually released the journalist from the subpoena and relied on other evidence as she appealed against the judgment of the High Court in favour of the Commission's ruling and the Commission held the view that the conclusion of its enquiry would be unreasonably delayed in the process. It therefore relied on the other evidence that was available.

13.1.4 Taking what is stated above into account, it was however, decided not to compel *Beeld* to cooperate with the investigation, for the following reasons:

13.1.4.1 The complaint was against the Minister. It was common cause that he was a passenger in the vehicle that was allegedly seen speeding. He was not in control of the vehicle and the evidence of the journalist would at the most have led to an assumption that the Minister approved of the alleged conduct of the driver of the car. She would therefore not have been able to provide direct evidence relating to the complaint of misconduct against the Minister;

- 13.1.4.2 All indications from the investigation were that the journalist made the observation of speeding on her own, i.e. without any supporting evidence and while she was driving. Her version would therefore have to be considered with circumspection; especially in the light of the evidence of the Media Liaison Officer, whom the Deputy Editor of *Beeld* regarded as a witness to the incident, which is corroborated by that of the Minister and his driver.
- 13.1.4.3 The issuing of a subpoena directing the journalist involved to testify during the investigation, would probably have been contested. The delay caused by such legal proceedings and the associated expenditure of public money could not be justified under the circumstances.

## **13.2 The responsibility of transporting the Minister**

It is the responsibility of the SAPS to transport the Minister when he is travelling on official business. The member of the SAPS driving the vehicle transporting the Minister is therefore, as is the case of any other driver, responsible for complying with traffic rules and regulations. The Minister has limited, if any control over the driver, whose primary focus is his safety.

## **13.3 Exceeding the speed limit**

The member of the SAPS driving the car of the Minister may only exceed the speed if the execution of his/her primary responsibility, i.e. the protection of the Minister, requires him/her to do so. He/she has the discretion in this regard and it is not dependent on directions of the Minister. Exceeding the speed limit at the instruction of the Minister for any other reason would be unlawful.

#### **14. FINDING**

From the investigation it cannot be found that the Minister acted improperly, as was alleged.

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

Date: 31 July 2007