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

REPORT NUMBER:

ISBN NUMBER:

INVESTIGATION INTO ALLEGATIONS OF ABUSE OF POWER AND/OR IMPROPER CONDUCT AND A BREACH OF THE EXECUTIVE ETHICS CODE BY MS KHUMBUDZO NTSHAVHENI, MP, MINISTER IN THE PRESIDENCY, IN RELATION TO THE UNANNOUNCED OVERSIGHT VISIT TO THE DIRECTORATE FOR CONVENTIONAL ARMS CONTROL BY MESSRS CHRIS HATTINGH AND NICHOLAS GOTSELL

TABLE OF CONTENTS

ITEM	DESCRIPTION	PAGE
	LIST OF ACRONYMS AND ABBREVIATIONS	2
1.	INTRODUCTION	3
2.	THE COMPLAINT	4
3.	POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR	6
4.	ISSUE IDENTIFIED FOR INVESTIGATION	11
5.	THE INVESTIGATION	11
6.	THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS	16
7.	FINDINGS	50
8.	OBSERVATION	51
9.	RECOMMENDATION	51
10.	CONCLUSION	52

LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS/ ABBREVIATION	DESCRIPTION
ARMSCOR	The Armaments Corporation of South Africa
Constitution	The Constitution of the Republic of South Africa, 1996
DCAC	Directorate Conventional Arms Control
EMEA	Executive Members' Ethics Act, 1998
JSCD	Joint Standing Committee on Defence
MEC	Member of the Executive Council
MP	Member of Parliament
NCAC	National Conventional Arms Control Act, 2002
NCACC	National Conventional Arms Control Committee
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended
SANDF	South African National Defence Force
The Code	Executive Ethics Code, 2000, published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853

1. INTRODUCTION

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

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

1.2.1. Mr MC Ramaphosa, President of the Republic of South Africa;

1.2.2. Ms Khumbudzo Ntshavheni, Member of Parliament (MP), the Minister in the Presidency;

1.2.3. Mr Andries Nel, Deputy Chairperson, National Conventional Arms Control Committee (NCACC);

1.2.4. Ms Thokozile Didiza, MP, Speaker of the National Assembly;

1.2.5. Ms Refilwe Maria Mtshweni-Tsipane, Chairperson of the National Council of Provinces (NCOP);

1.2.6. General R Maphwanya, Chief of the South African National Defence Force (SANDF);

1.2.7. Dr T Gamede, Acting Secretary for Defence;

1.2.8. Mr SP Mashaba, Acting Director, National Conventional Arms Control Committee (NCACC) Secretariat; and

1.2.9. Messrs C Hattingh and N Gotsell (the Complainants).

1.3. The Report relates to an investigation into allegations of breach of the Executive Ethics Code, 2000[1] (the Code), by Ms Khumbudzo Ntshavheni, MP (Ms Ntshavheni), the Minister in the Presidency.

2. THE COMPLAINT

2.1 The investigation emanates from a complaint received from the Complainants, who are members of the Joint Standing Committee on Defence (JSCD), relating to their unannounced oversight visit to the Directorate for Conventional Arms Control (DCAC), on 17 February 2025.

2.2 In the letter to the Public Protector dated 20 February 2025, the Complainants alleged, *inter alia,* that:

2.2.1 On 17 February 2025, they conducted an unannounced oversight visit to the DCAC;

2.2.2 The reason for the visit was prompted by concerns over regulatory challenges affecting the South African Defence Industry;

2.2.3 During a meeting of the JSCD on 15 November 2024, the South African Aerospace Maritime Defence Industries Association reported that the NCACC had not convened since April 2024. Further reports indicated several challenges in respect of the DCAC's operations;

2.2.4 Upon arrival at the DCAC building, which is situated at Armscor building in Pretoria, they introduced themselves to the Acting Director, Mr Sipho Peter Mashaba (Mr Mashaba). The Chief of the South African National Defence

[1] The Executive Members` Ethics Act provides for a Code of Ethics No. 21399 Notice No. 41 Regulation 6853

Force, General R Maphwanya (General Maphwanya), joined them in the meeting room;

2.2.5 After questioning how they gained access to Armscor building, General Maphwanya informed them that they could not proceed without written authorisation from the Minister of Defence and instructed Mr Mashaba not to engage with them; and

2.2.6 As General Maphwanya was departing, Mr Mashaba informed them that he received a phone call from Ms Ntshavheni instructing him not to meet with them and not to allow them to conduct oversight.

2.3 The Complainants requested the Public Protector to investigate the alleged breach of the Code by Ms Ntshavheni, in terms of section 4(1)(a) of EMEA, on the grounds that:

2.3.1 The conduct of Ms Ntshavheni, in personally directing Mr Mashaba and possibly General Maphwanya, to refuse them to undertake their constitutionally protected, and mandated oversight duties at DCAC as members of the JSCD, constitutes an unlawful interference with parliamentary business and privilege;

2.3.2 Ms Ntshavheni's portfolio is unrelated to the activities at DCAC and accordingly, by intervening in the oversight visit, she overreached and abused her powers as a member of the Executive to stifle lawful parliamentary activities; and

2.3.3 Ms Ntshavheni's direct intervention at DCAC, notwithstanding that no other official with lawful jurisdiction over the premises barred their entry, is *ultra vires* and unlawful.

2.4 The Complainants relied on section 96(1) of the Constitution, which provides that members of Cabinet must act in accordance with the code of ethics prescribed by national legislation. They also relied on section 96(2)(b), which provides that members of Cabinet may not act in any way that is inconsistent with their office.

2.5 The Complainants specifically cited the provisions of the Code that Ms Ntshavheni allegedly breached as follows:

2.5.1 Clause 2.1(a) to (d) of the Code which requires that members of the Executive must, to the satisfaction of the President or the Premier, as the case may be, perform their duties and exercise their powers diligently and honestly, fulfil all the obligations imposed upon them by the Constitution and law, act in good faith and in the best interest of good governance and act in all aspects in a manner that is consistent with the integrity of their office or the government; and

2.5.2 Clause 2.3(c) of the Code, which requires that members of the Executive may not act in a way that is inconsistent with their position.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

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

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

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

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

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

3.3 Section 4(1)(a) of EMEA, provides *inter alia* that, the Public Protector *"…must investigate, in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet Member or Deputy Minister…*"

3.4 Section 3(4) of EMEA provides that "*When conducting an investigation in terms of this section, the Public Protector has all the powers vested in the Public Protector in terms of the Public Protector Act, 1994".*

3.5 It is also important to note that the investigation, as envisaged in section 4(1) of EMEA, must relate to the breach of the Code, by Cabinet Members, Deputy Ministers and Members of the Executive Council (MECs).

3.6 Clause 1 of the Code provides that "*member of the Executives means a Cabinet member, a Deputy Minister or a member of a Provincial Executive Committee, and 'member' and 'Executive' have corresponding meanings".*

3.7 Clause 2.1 of the Code encapsulates the general standards which the members of the Executive must comply with, to the satisfaction of the President or the Premier, whichever is applicable.

3.8 Further thereto, clause 2.3(c) of the Code prohibits members of the Executive from acting in a way that is inconsistent with their position.

3.9 The Constitutional Court in the matter of the *Public Protector and Others v President of the Republic of South Africa and Others*[2] denoted that:

"*Section 3 empowers the Public Protector to investigate any breach of the code. The scheme that emerges from the reading of this provision is that the Public Protector's power to investigate is subject to a formal complaint. This suggests that the scope of an investigation is determined by the breach of the code contained in the complaint. It is important to note that section 3 does not authorise the Public Protector to investigate a violation of the Act itself but limits her authority to investigating a breach of the code.*

Its perusal reveals some tension between the Code and section 2 of the Members Act. For example, section 2 directs that the Code should require all members of the Executive, including the President and Premier, to act in good faith and in the best interests of good governance and to meet all obligations imposed on them by law.

The Code, on its face, exempts the President and Premiers from these obligations and requires other members to discharge these obligations to the satisfaction of the President or the relevant Premier.
Paragraphs 2.1 and 2.2 of the Code suggest that it is the President or Premier who determines whether the relevant obligations have been properly discharged and, for them to make that determination, they should take into account "the promotion of an open, democratic and accountable government." But it is not clear whether in relation to obligations under paragraph 2.3 of the Code, the President and Premier play the role given to them by paragraph 2.1. However, this ambiguity has no bearing on the issues that arise because the entire case, here and before the High Court, was prosecuted on the footing that paragraph 2.3 of the Code applies to the President. Consequently, it is not necessary for present purposes to decide

[2] [2021] ZACC [19-21.

definitively whether it applies. The matter must be approached on the same understanding."

3.10 The complaint was lodged by members of the National Assembly in terms of EMEA against Ms Ntshavheni, who is a member of Cabinet, therefore, the complaint falls within the jurisdiction of the Public Protector. The alleged breach of the Code is contained in the complaint and specifically determines the scope of the investigation.

3.11 However, the applicability of Clause 2.1 of the Code imposes apparent limitations on the mandate of the Public Protector to investigate, insofar as it suggests that it is the President or Premier, who determines whether the relevant obligations have been satisfactorily discharged by Members of the Executive. The limitation arises not from the Public Protector's interpretation but from the Code's own architecture, which designates the President/Premier as the satisfaction-assessor for other members of the Executive.

3.12 The clause places exclusive authority on the President to determine satisfaction with executive conduct, thereby precluding the Public Protector from pronouncing on breaches of this provision. This approach aligns with the Constitutional Court's recognition of tensions between the Code and the Public Protector's mandate under EMEA, even though the Court did not make a ruling as it was not an issue before it.

3.13 From a constitutional perspective, the Public Protector is of the view that the interpretation of clause 2.1 requires members of the executive to perform their duties to the satisfaction of the President. This is consistent with the President's responsibilities under sections 83(a) and 91(2) of the Constitution. It follows that the wording of clause 2.1 inherently limits the Public Protector's mandate.

3.14 The limitation arises not from the Public Protector's interpretation but from the Code's own architecture, which designates the President/Premier as the satisfaction-assessor for other members of the Executive.

3.15 Here, the clear text of clauses 2.1 and 2.2 builds an assessor-of-compliance mechanism that is externally designated, that mechanism does not exist for the President's own compliance, creating a mechanism gap. Therefore, purposive interpretation cannot override clear textual limitations inherent in the Code's own structure. The Constitutional Court in *Public Protector v President (supra)* acknowledged at paragraph 21 that clauses 2.1 and 2.2 *"suggest that it is the President or Premier who determines whether the relevant obligations have been properly discharged."*

3.16 This approach aligns with the Constitutional Court's recognition of tensions between the Code and the Public Protector's mandate under EMEA, even though the Court did not make a ruling as it was not an issue before it.

3.17 Notwithstanding the limitation imposed by Clause 2.1 of the Code, the Public Protector is nevertheless compelled to investigate all allegations of breach of the Code as required by section 3(1) of the EMEA. EMEA does not allow the Public Protector a discretion to decide whether or not to investigate allegations of breach of the Code, albeit in connection with Clause 2.1, with a limited scope. As a result, this investigation is undertaken in terms of the EMEA, since it was lodged by Complainants who are members of the National Assembly under the EMEA.

3.18 For these reasons, the Public Protector will proceed to investigate the alleged breach of clause 2.3(c) as this clause contains objective prohibitions and is not subject to Presidential satisfaction.

3.19 It is noted that Ms Ntshavheni instituted legal proceedings in the High Court of South Africa, Western Cape Division, under Case No. 2025-153598, seeking to review and set aside the findings of the Joint Committee on

Ethics and Members' Interests. These findings stemmed from the same complaint that has been lodged with the Public Protector by the Complainants. The Court did not adjudicate the matter on its merits. Instead, by mutual agreement between the parties, the matter was remitted to the Joint Committee on Ethics and Members' Interests for reconsideration *de novo*.

3.20 As the Court did not pronounce on the substantive merits of the dispute, the Public Protector is not precluded from proceeding with an investigation into the matter in terms of section 182(3) of the Constitution read with section 6(6) of the Public Protector Act.

4. ISSUE IDENTIFIED FOR INVESTIGATION

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

4.1.1. Whether Ms Khumbudzo Ntshavheni, the Minister in the Presidency, prevented the unannounced oversight visit by Members of Parliament at the offices of the Directorate for Conventional Arms Control and acted in a manner that is inconsistent with her office, if so, whether such conduct violates section 96(1) and (2)(b) of the Constitution and amounts to a breach of Clause 2.3 (c) of the Executive Ethics Code.

5. THE INVESTIGATION

5.1 Methodology

5.1.1 The investigation is conducted in terms of section 182 of the Constitution, read with sections 3 and 4 of the EMEA and sections 6 and 7 of the Public Protector Act.

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation with due regard to the circumstances of each case.

5.2 Approach to the investigation

5.2.1 The approach to the investigation included an exchange of documentation between the Public Protector, the Complainants, Ms Ntshavheni, Mr Nel, Mr Mashaba, General Maphwanya, Dr Gamede and the Speaker.

5.2.2 The Public Protector notes that the Speaker, in her letter dated 29 September 2025, stated that Mr Gotsell is a member of the NCOP. The Public Protector did not correspond with Ms Refilwe Maria Mtshweni-Tsipane, the Chairperson of the NCOP, due to the fact that Mr Andries Nel (Mr Nel), Deputy Chairperson of the NCACC, had raised the matter with the Speaker who advised the Complainants on how to address it. The crux of the issue was addressed by the Speaker's response.

5.2.3 All relevant documents and correspondence were obtained and analysed, and relevant laws, policies and related prescripts were considered and applied throughout the investigation.

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

(a) What happened?
(b) What should have happened?
(c) Is there a discrepancy between what happened and what should have happened?
(d) In the event of a violation of the Constitution or breach of the Code, what action should be taken?

5.2.5 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence is evaluated and a determination is made on what happened based on a balance of probabilities. In this case, the factual enquiry principally focused on whether Ms Ntshavheni issued instructions to DCAC to prohibit the Complainants from conducting an oversight visit.

5.2.6 The enquiry on what should have happened focuses on the law or rules that regulate the standard that should have been met by Ms Ntshavheni in the execution of her duties in relation to the subject of the complaint.

5.3 Key sources of information

5.3.1 Correspondence exchanged

5.3.1.1 Complaint letter received by the Public Protector from the Complainants, dated 20 February 2025;

5.3.1.2 Letter from Mr Nel to Ms Didiza, dated 21 February 2025;

5.3.1.3 Letter from Ms Didiza to Messrs Hattingh and Gotsell, dated 17 March 2025;

5.3.1.4 Sworn statement of Mr Mashaba, dated 01 April 2025;

5.3.1.5 Sworn statement of Ms Ntshavheni, dated 08 April 2025;

5.3.1.6 Notice issued in terms of Rule 23(1) of the Public Protector Rules from the Public Protector to Ms Ntshavheni, dated 29 April 2025;

5.3.1.7 Notice issued in terms of Rule 23(1) of the Public Protector Rules from the Public Protector to Mr Ramaphosa notifying him about the investigation, dated 29 April 2025;

5.3.1.8 Response letter from Ms Ntshavheni, dated 07 May 2025;

5.3.1.9 Letter from Messrs Hattingh and Gotsell to Mr Nel, dated 07 May 2025;

5.3.1.10 Letter from Mr Nel to Messrs Hattingh and Gotsell, dated 11 May 2025;

5.3.1.11 Notice issued in terms of Rule 23(1) of the Public Protector Rules from the Public Protector Investigation Team (Investigation Team) to Mr Mashaba, dated 29 May 2025;

5.3.1.12 Response letter from Mr Mashaba, dated 02 June 2025;

5.3.1.13 Supplementary response letter from Mr Mashaba, dated 17 June 2025;

5.3.1.14 Letter from the Investigation Team to Mr Mashaba, dated 01 September 2025;

5.3.1.15 Response letter from Mr Mashaba, dated 08 September 2025;

5.3.1.16 Notice issued in terms of Rule 23(1) of the Public Protector Rules from the Investigation Team to Dr Gamede, dated 08 September 2025;

5.3.1.17 Notice issued in terms of Rule 23(1) of the Public Protector Rules from the Investigation Team to General Maphwanya, dated 08 September 2025;

5.3.1.18 Response letter from General Maphwanya, dated 22 September 2025;

5.3.1.19 Notice issued in terms of Rule 23(1) of the Public Protector Rules from the Public Protector to Ms Didiza, dated 22 September 2025;

5.3.1.20 Response letter from Ms Didiza, dated 29 September 2025;

5.3.1.21 Response letter from Dr Gamede, dated 30 September 2025;

5.3.1.22 Letter from the Public Protector to Ms Ntshavheni, dated 17 November 2025;

5.3.1.23 Response letter from Ms Ntshavheni, dated 10 December 2025;

5.3.1.24 Notice issued in terms of Rule 23(1) of the Public Protector Rules from the Investigation Team to Mr Nel, dated 19 January 2026; and

5.3.1.25 Response letter from Mr Nel, dated 10 February 2026.

5.3.1.26 A Notice in terms of Rule 41(1) of the Public Protector Rules (the Notice) dated 03 March 2026, was issued to Complainants, Ms Ntshavheni, Mr Ramaphosa, Ms Didiza, Mr Nel, General Maphwanya, Dr Gamede and Mr Mashaba and Ms Mtshweni-Tsipane to afford the parties an opportunity to make representations in connection with the intended closure of the complaint.

5.3.1.27 Acknowledgements of receipt of the Rule 41(1) Notice from Mr Ramaphosa and Ms Ntshavheni, dated 04 March 2026.

5.3.1.28 Response to the Rule 41(1) Notice from Ms Didiza, dated 09 March 2026.

5.3.1.29 Acknowledgment of receipt of the Rule 41(1) Notice from General Maphwanya, dated 12 March 2026.

5.3.1.30 Representations from the Complainants in response to the Rule 41(1) Notice, dated 13 March 2026.

5.3.1.31 Responses to the Rule 41(1) Notice from Dr Gamede, dated 19 March 2026 and 23 March 2026 respectively.

5.3.2 **Legislation and other prescripts**

5.3.2.1 Constitution of the Republic of South Africa, 1996;

5.3.2.2 Public Protector Act, 1994;

5.3.2.3 Executive Members Ethics Act, 1998;

5.3.2.4 Executive Ethics Code 2000 published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853;

5.3.2.5 The National Conventional Arms Control Act, 2002; and

5.3.2.6 Notice No. 5521 by the President issued in terms of section 5(2) of the National Conventional Arms Control Act, 2002[3].

5.3.3 **Case law**

5.3.3.1 Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC

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

6.1 Whether Ms Khumbudzo Ntshavheni, the Minister in the Presidency, prevented the unannounced oversight visit by Members of Parliament at the offices of the Directorate for Conventional Arms Control and acted in a manner that is inconsistent with her office, if so, whether such conduct violates section 96(1) and (2)(b) of the Constitution and amounts to a breach of Clause 2.3 (c) of the Executive Ethics Code

Common cause

6.1.1. Ms Ntshavheni was appointed by President Cyril Ramaphosa as a member of the NCACC in 2024 and was designated as the Chairperson.

[3] Published in Government Gazette No. 51519 dated 07 November 2024

6.1.2. The Complainants conducted an unannounced oversight visit to the DCAC on 17 February 2025.

Issue in dispute

6.1.3. The issue for the Public Protector's determination is whether Ms Ntshavheni prevented the Complainants from proceeding with their unannounced oversight visit at the DCAC and thereby acted in a way that is inconsistent with her position as a member of the Executive and breached the general standards as outlined in the Code.

Complainant's version

6.1.4. The Complainants contended that the conduct of Ms Ntshavheni, by instructing Mr Mashaba to refuse them to undertake their constitutionally protected and mandated oversight duties at DCAC as members of the JSCD, constitutes unlawful interference with parliamentary business and privilege. Further, that her portfolio is unrelated to the activities at DCAC and by interfering with the oversight visit, she overreached, abused her powers and stifled lawful parliamentary activities, as a member of the Executive.

6.1.5. The Complainants further stated that Ms Ntshavheni acted in breach of clauses 2.1(a) to (d), 2.3(c) of the Code by interfering with a lawful parliamentary oversight visit.

Ms Ntshavheni's response, dated 07 May 2025

6.1.6. On 29 April 2025, the Public Protector issued a Notice in terms of Rule 23(1) of the Public Protector Rules to Ms Ntshavheni. In her response dated 07 May 2025, she stated that she has responded to the Parliamentary

Committee on this matter and attached her sworn statement as well as that of Mr Mashaba as follows:

Sworn statement of Mr Mashaba dated 01 April 2025

6.1.6.1 Mr Mashaba stated *inter alia* that:

(a) He was appointed as the Acting Director at the National Conventional Arms Control Secretariat, Chief Directorate Conventional Arms Control;

(b) On 17 February 2025, the Complainants visited the offices of the Secretariat of the NCACC unannounced;

(c) The Secretariat performs its function within the Department of Defence and in terms of section 12(1) of the Act, the Minister of Defence is legally responsible to resource the Secretariat administratively;

(d) The Complainants, upon gaining access to the building stated that they were exercising their constitutional right in terms of section 55(2) of the Constitution;

(e) His understanding is that a structured process must be followed in exercising the section 55(2) right;

(f) His consultation with the Executive did not take place in the presence of the Complainants. He was, however, unsuccessful as they were not within reach and were not in the building;

(g) The Chairperson of the NCACC did not instruct him in his capacity as the Acting Head of NCACC Secretariat to remove the Members of Parliament from the building; and

(h) It was not feasible for the NCACC, as the competent authority, to meet on the date of the visit to authorise the Secretariat to disclose classified information.

Sworn statement of Ms Ntshavheni dated, 08 April 2025

6.1.6.2 In her sworn statement, Ms Ntshavheni stated, *inter alia,* that:

(a) She was appointed as the Chairperson of the NCACC, on 25 October 2024;

(b) On 20 March 2025, she received a letter and affidavits from the Complainants, informing her about the alleged breach of the Code of Ethical Conduct and Disclosure of Members' Interests;

(c) She did not instruct anyone as alleged, as she has no authority to authorise or refuse access as an individual;

(d) Access to information on the business of the NCACC is regulated by the National Conventional Arms Control Act, 2002. Section 23(3) provides that "*No person may disclose any classified document or content thereof concerning the business of the Committee except with the permission of a competent authority or as required in terms of the Promotion of Access to Information Act, 2000*;" and

(e) The NCACC, as the competent authority, did not receive a request or notice from the said Members of Parliament for the oversight to grant permission referred to in Section 23(3) of the Act. It had not delegated the Chairperson the authority to authorise or refuse permission

referred to in Section 23(3) of the Act. Therefore, if such a request or notice were to be submitted to the Chairperson, she would have been required to convene a meeting of the Committee in terms of Section 6(1) of the Act to authorise or refuse the request.

Mr Mashaba's response, dated 02 June 2025

6.1.7. On 29 May 2025, the Public Protector Investigation Team (Investigation Team) issued a Notice in terms of Rule 23(1) of the Public Protector Rules to Mr Mashaba to afford him an opportunity to clarify the contents of his sworn statement. In his response, he stated, *inter alia,* that:

6.1.7.1. In terms of section 12(1) of the National Conventional Arms Control, 2002 (NCAC Act), the Department of Defence is administratively responsible for the functioning of the NCACC Secretariat, which is housed by the Department at its Armscor building;

6.1.7.2. The sub-committee of the NCACC, the Scrutiny Committee, is chaired Dr Gamede. The Executive that he is referring to in his affidavit is also Dr Gamede;

6.1.7.3. It was his first exposure to the unannounced oversight visit, hence he sought clarity from Dr Gamede, who is also the Chairperson of the Scrutiny Committee. She then indicated that she was not within reach due to other official commitments outside the office, and she undertook to check the availability of Senior Management to assist him;

6.1.7.4. He then escorted the Complainants to the conference room; but they did not specify the type of information they required, making it difficult to assist them; and

6.1.7.5. On 07 May 2025, the Complainants wrote a letter to Mr Nel notifying him of the intended oversight on 12 May 2025. The oversight subsequently took place on 12 May 2025, in the presence of the Deputy Minister of Defence and Dr Gamede.

6.1.8. Mr Mashaba submitted together with his response the documents discussed hereunder:

Notice by the President

6.1.8.1 The President issued Notice No. 5521 in Government Notices on 25 October 2024, in terms of section 5(2) of the NCAC Act, appointing members of the NCACC.

6.1.8.2 Ms Ntshavheni was designated as the Chairperson in terms of section 5(3) of the NCAC Act.

Letter from the Complainants to the Deputy Chairperson of the NCACC, dated 07 May 2025

6.1.8.3 The Complainants wrote a letter to Mr Nel, giving notice of their intention to conduct an oversight visit to the DCAC on 12 May 2025.

6.1.8.4 They stated in the letter that, considering his recent concern about members exercising their *constitutional* oversight duties, they are addressing this letter to him as a courtesy, as suggested in the correspondence from the Speaker of the National Assembly dated 17 February 2025 (sic).

6.1.8.5 They further stated that to be clear, oversight does not require permission. However, in the absence of Parliamentary procedure and pending the finalisation thereof, they shall adhere to the advice of the Speaker.

Letter from Mr Nel to the Complainants, dated 11 May 2025

6.1.8.6 On 11 May 2025, Mr Nel wrote a letter to the Complainants informing them that Ms Ntshavheni, as well as the Secretariat in DCAC, have been advised of their intended oversight visit. Further that they will be received by Mr Mashaba.

6.1.8.7 He also stated that they welcome the oversight role of Parliament and that they are bound by their oaths of office to uphold the Constitution and the law. In this regard, the NCAC Act contains prescripts that govern access to information and records related to the work of the NCACC.

Letter from Speaker of the National Assembly to the Complainants

6.1.9 The Investigation Team wrote an email to the Complainants on 04 June 2025, requesting a copy of the letter from the Speaker of the National Assembly (the Speaker) dated 17 March 2025, which they referred to in their letter to Mr Nel. The Investigation Team received the letter through email on the same day. In the letter, the Speaker stated, *inter alia,* that:

6.1.9.1 Mr Nel raised concern about the Complainants' visit to the Defence Headquarters on 17 February 2025, without making prior arrangements;

6.1.9.2 She stated that it is necessary to clarify Parliament's current position regarding individual oversight. Further, she is of the view that it is beneficial for members to be proactive and have direct relations with the Government beyond Parliament and this matter has been raised in Parliament's strategic planning processes.

6.1.9.3 Furthermore, the present statutory framework does not regulate the parameters of such interactions. In the absence of procedures, a mutual appreciation of the functions of the respective arms is paramount; and

6.1.9.4 Since oversight is not meant to be adversarial, the Complainants may want to consider making prior arrangements for their oversight visits, not ask for permission, but as a necessary courtesy.

Supplementary response from Mr Mashaba, dated 17 June 2025

6.1.10 Mr Mashaba supplemented his response to the Investigation Team in a letter dated 17 June 2025 stating, *inter alia,* that:

6.1.10.1 He did not call Ms Ntshavheni, and she also did not instruct him to remove the Complainants from the building;

6.1.10.2 The NCAC Act has no provision empowering the Chairperson to make unilateral decisions, the competent authority is the NCACC;

6.1.10.3 On the date of the unannounced oversight visit, it was not feasible for NCACC to convene to authorise the Secretariat to disclose its classified information; and

6.1.10.4 Technical information is omitted from the reports of the NCACC to Cabinet or Parliament, to protect military and commercial secrets in line with section 23(5) of the NCAC Act.

Supplementary response from Mr Mashaba, dated 08 September 2025

6.1.11 On 01 September 2025, the Investigation Team requested Mr Mashaba to clarify which official Dr. Gamede had assigned to assist him, as well as to indicate who had made the decision that the Complainants should not proceed with the oversight visit. In his response dated 08 September 2025, Mr Mashaba stated, *inter alia,* that:

6.1.11.1 Dr Gamede sent General Maphwanya to assist him;

6.1.11.2 However, he was not part of the discussion between General Maphwanya and the Complainants; and

6.1.11.3 After the discussion, General Maphwanya indicated that he is going back to his office, and it was at that point when he told the Complainants that he was not authorised to assist them.

Response from General Maphwanya, dated 22 September 2025

6.1.12 On 08 September 2025, the Investigation Team issued a Notice in terms of Rule 23(1) of the Public Protector Rules to General Maphwanya. In his response dated 22 September 2025, General Maphwanya stated, *inter alia* that:

6.1.12.1 He received a telephone call from Dr Gamede, requesting him to assist Mr Mashaba. He was the only member of the Council on Defence present at the Defence Headquarters;

6.1.12.2 He requested clarity from the Complainants regarding the purpose of their unannounced visit, and they indicated that they wanted to interview Mr Mashaba;

6.1.12.3 He tried to find out if the Complainants notified the Minister of Defence or if there was a mandated authority by the oversight Committees, the Portfolio Committee on Defence or JSCD. The Complainants explained that they were exercising their constitutional rights as members of Parliament;

6.1.12.4 He informed the Complainants that the norm is that the Minister of Defence should be informed by Committees of Parliament about the oversight visit to the Department of Defence;

6.1.12.5 To ensure that accountability is preserved, he informed the Complainants that the oversight visit could not proceed and that they should, out of courtesy, inform the Minister of Defence of the proposed oversight visit through legally the compliant channel;

6.1.12.6 Access to the Armscor Building requires formal authorisation, and the authority to grant such access rests with the Commanding Officer of the facility or the designated SANDF security authority in accordance with the established security protocols;

6.1.12.7 It was not necessary for him to contact Ms Ntshavheni regarding the merits of the visit by the Complainants as it was not registered as an official oversight visit; and

6.1.12.8 He acted in good faith and in accordance with the established protocols.

Response from Dr Gamede, dated 30 September 2025

6.1.13 On 08 September 2025 the Investigation Team issued a Notice in terms of Rule 23(1) of the Public Protector Rules to Dr Gamede. In her response dated 30 September 2025, she stated, *inter alia,* that:

6.1.13.1 She was contacted telephonically by Mr Mashaba regarding the unannounced oversight visit by the Complainants;

6.1.13.2 Mr Mashaba informed her that the Complainants had not clearly articulated the purpose of their visit nor specified the intended outcome they sought to achieve. However, she will seek guidance from the Minister of Defence as the Executive Authority accountable to Parliament, but she was unable to contact the Minister as she was out of the country;

6.1.13.3 She then contacted Ms Ntshavheni, but she was not available at that point. Ms Ntshavheni later returned her call and informed her that she returned Mr Mashaba's call but found that the matter was already attended to;

6.1.13.4 When Ms Ntshavheni returned her call, she had already been called back by Mr Nel. She called Mr Nel who indicated that he will write to the Speaker about the incident;

6.1.13.5 Ms Ntshavheni enquired from her how visitors were able to get access to the Armscor Building and make their way to the offices without proper authorisation;

6.1.13.6 She contacted General Maphwanya as he was the most senior member available and requested him to assist Mr Mashaba by explaining to the Complainants the applicable security protocols;

6.1.13.7 Ordinarily, DCAC and NCACC are civilian structures and therefore she would not have contacted General Maphwanya if she were in the building;

6.1.13.8 Historically, parliamentary committees responsible for the Department of Defence have always enjoyed the freedom to conduct site visits to military installations, and the visits are always announced in advance through the parliamentary channel to the Ministry to ensure the availability of relevant senior officials; and

6.1.13.9 A protocol should be established between the Ministry of Defence and Committees of Parliament for procedures to be followed when Members of Parliament want to visit the Defence and Military Establishments.

Response from Ms Thokozile Didiza, MP, Speaker of the National Assembly, dated 29 September 2025

6.1.14 On 22 September 2025, the Public Protector issued a Notice in terms of Rule 23(1) of the Public Protector Rules to the Speaker, requesting her to advise whether Parliament has initiated a process of developing a formal regulatory framework to govern individual oversight visits undertaken by Members of Parliament. In her response, she stated, *inter alia,* that:

6.1.14.1 It should be noted that Mr Hattingh is a member of the National Assembly and Mr Gotsell is a member of the NCOP. The submission addresses proceedings within the realm of the National Assembly and, where applicable, joint structures;

6.1.14.2 The Constitution enjoins the National Assembly to oversee and hold the Executive to account in terms of sections 55 and 57 of the Constitution. It has discretion in terms of how these functions can be undertaken. The Rules of Parliament provide the various formal mechanisms for this purpose, including joint committees;

6.1.14.3 It is evident from the existing statutory and procedural framework that committees must oversee ministerial and departmental affairs within their portfolios. Such activities typically take place within Parliament, although committees do undertake off-site visits for purposes of gathering information;

6.1.14.4 The National Assembly has also attached importance to the work that individual members as public representatives carry out outside Parliament, and specifically their interactions with constituents. While the law does not provide for formal constituencies, Parliament does provide resources to political parties to undertake community or constituency work.

6.1.14.5 These parties have designated members to specific localities. It is necessary to note that a distinction can be made between the work of committees whose mandate emanates from the rules, and individual members acting on their own initiative;

6.1.14.6 Committee oversight and members' constituency endeavours have taken place throughout the life of the democratic Parliament. In the main, the different arms of the State have displayed a mutual understanding and appreciation for their respective constitutional functions. Despite this, some disputes have arisen between members and the Executive, especially in relation to unannounced visits to facilities which would ordinarily restrict public access;

6.1.14.7 Correspondence has recently been addressed to the Portfolio Committee on Defence and Military Veterans to indicate that committees could, even in the absence of established procedures for oversight visits, engage with the Executive with a view to reaching an arrangement about how members of the Portfolio Committee could, either as a committee or as individual members, conduct such visits. This position was taken, mindful of the character and sensitivities of defence operations;

6.1.14.8 Given the instances that have arisen over time, the National Assembly has initiated a process to discuss the possible imposition of procedures to guide both announced and unannounced oversight visits. This was done through a letter from the Speaker to the National Assembly Rules Committee (the Rules Committee), dated 17 March 2025.

6.1.14.9 The matter was accordingly referred to the Subcommittee on Review of Assembly Rules (the Subcommittee), which reports to the Rules Committee. The Subcommittee is a technical committee whose function includes discussing and drafting the details of proposed rules and policies;

6.1.14.10 The Rules Committee and Subcommittee have instructed the Secretariat to explore the legalities and parameters to govern procedures for oversight visits. The Secretariat has prepared documentation which the Subcommittee will consider at its next meeting; and

6.1.14.11 It should be noted that the absence of procedures to regulate oversight visits is not necessarily an impediment to the fulfilment of the constitutional mandate of the National Assembly, although such procedures may serve to complement other available mechanisms as well as clarify lingering uncertainties.

6.1.15 The Speaker submitted her response together with the documents discussed hereunder:

Draft minutes of the meeting of Subcommittee on Review of the Assembly Rules held on 01 April 2025

6.1.15.1 According to these draft minutes, amongst others, the Secretary to the National Assembly presented correspondence from the Speaker regarding the need for rules or guidelines for oversight visits by committees and individual members. He explained that the Speaker received concerns from both members and the Executive on the prevailing practices. Further that Parliament's Oversight and Accountability Model (OVAC) had also recognised the benefits of providing Parliament with the means of conducting unannounced visits.

6.1.15.2 The members deliberated on the issue of unannounced oversight visits specifically in relation to restricted facilities as well as processes to be followed. The Chairperson of the Subcommittee encouraged the political parties to reflect on the matter and make inputs so that the matter could be concluded.

Letter from Speaker to Mr Legoete, MP, Chairperson of the Portfolio Committee on Defence and Military Veterans, dated 10 September 2025

6.1.15.3 The Speaker wrote a letter to Mr Legoete, titled *Rules regarding individual oversight visits to Government facilities*, wherein she stated that there is no legal and procedural framework to regulate how members can conduct oversight outside Parliament. Further, in the absence of procedures, it may be prudent to engage the responsible Executive, in the case of Defence facilities, with a view to reaching a standing arrangement on how members of the Portfolio Committee Defence and Military Veterans, either as a committee or as individual members, conduct unannounced visits.

Powers of Joint Committees in the Joint Rules

6.1.15.4 In this document, it is stated that for the purposes of performing its functions and exercising its powers, a joint committee may, *inter alia*, subject to the Constitution, legislation, rules and resolutions of the Houses, summon any person to appear before it to give evidence on oath or affirmation, or to produce documents, conduct public hearings, receive petitions, representations or submissions from interested persons or institutions.

Functions of Joint Standing Committee on Defence

6.1.15.5 In this document, it is sated that the function of the Joint Standing Committee, *inter alia*, is to report to both Houses on all reports submitted to Parliament in terms of section 23 of the NCAC Act.

6.1.15.6 The Joint Standing Committee shall perform any other functions and exercise any other powers assigned to it by statute or in terms of resolutions adopted by both Houses.

Additional response by Ms Ntshavheni, dated 10 December 2025

6.1.16 On 17 November 2025 the Public Protector requested her to provide a detailed response relating to the events of 17 February 2025, the date on which the Complainants visited the DCAC. In her response, she stated, *inter alia,* that:

6.1.16.1 On 17 February 2025, she and Mr Nel were not immediately reachable;

6.1.16.2 She is aware that Dr Gamede and Mr Mashaba attempted to contact her and Mr Nel during the course of the incident but were unsuccessful at that stage. As a result, any actions taken during the incident occurred without her knowledge, involvement, or instruction;

6.1.16.3 When she regained access to her mobile phone, the first missed call she returned was that of Mr Nel. He informed her that he had engaged with Dr Gamede, who advised him that she was informed that the matter relating to the Complainants' visit had already been attended to;

6.1.16.4 At no stage during this conversation did she issue any instruction or directive, nor was any guidance sought from her;

6.1.16.5 Following her discussion with Mr Nel, she spoke directly to Mr Mashaba who confirmed that the matter had already been attended to. She did not issue any instructions during this conversation. She merely enquired how the individuals who had no prior appointment gained access to a national key point premise and who had authorised such access;

6.1.16.6 Mr Mashaba informed her that the Complainants gained access through an ARMSCOR service provider. No undertakings, directives or follow-up actions were discussed or agreed upon;

6.1.16.7 The final call that she returned on that day was that of Dr Gamede. When she contacted her, Dr Gamede had already spoken to Mr Nel;

6.1.16.8 The purpose of her call was to enquire from her, as the Acting Secretary for Defence, about how a service provider was able to provide access to a National Key Point premise to visitors with no prior appointment. Dr Gamede informed her that a fact-finding investigation would be undertaken to determine if there were any breaches of the access protocols;

6.1.16.9 She did not issue any instruction, directive or guidance to Dr Gamede regarding the Complainants' visit or removal from the premises;

6.1.16.10 Any reference to her to the effect that "*the matter had already been attended to"* is a de-contextualisation of the statement or confusion of facts, as she was not in a position to make such a determination given the chronology of events, except to relay what she had been informed. She was not reachable at the time of the incident and could not have issued any instructions prior to or during the events;

6.1.16.11 Mr Nel subsequently reduced his account of events to writing, in a letter addressed to the Speaker. His contemporaneous involvement further confirms that no instruction or direction could have originated from her;

6.1.16.12 Her enquiries about access to national key point premises must be understood within the framework of her statutory responsibilities relating to national security;

6.1.16.13 Section 2A of the National Strategic Intelligence Act, 1994, enjoins the State Security Agency, under the authority and political oversight of the responsible Minister, to conduct security vetting and security competency assessments in respect of any person who requires access to classified information, sensitive state information, or national strategic installations;

6.1.16.14 The Act specifically contemplates that access to national key points and other security-sensitive state premises must be limited to persons who have been duly vetted and cleared. It places an obligation on the Executive Authority to ensure compliance with such vetting and access control measures;

6.1.16.15 Where there is reason to believe that unauthorised or unvetted persons may have gained access to a sensitive facility, she has, as the custodian of this statute, to interrogate the circumstances of such access and to satisfy herself that the applicable security protocols were followed;

6.1.16.16 Any enquiry by her into how access was granted, by whom and on what authority is therefore not discretionary or optional, but flows directly from her responsibilities under the Act and the national security mandate it establishes; and

6.1.16.17 The allegations against her are factually incorrect, legally unsustainable and disclose no abuse of power, improper conduct, or breach of the Code.

6.1.17 Ms Ntshavheni also attached to her response, the document canvassed below:

Letter from Mr Nel to the Speaker, dated 21 February 2025

6.1.17.1 Mr Nel wrote a letter to the Speaker, stating, *inter alia,* that:

(a) He is writing to the Speaker in his capacity as the Deputy Chairperson of the NCACC, with the concurrence of the Chairperson, Ms Ntshavheni;

(b) He was contacted by Dr Gamede on 17 February 2025 to inform him that the Complainants arrived at Defence Headquarters under the pretext of conducting an oversight visit to the DCAC, which reports to

the NCACC. The Complainants serve on the JSCD, to which NCACC reports;

(c) The visit appears to have been unannounced and caused some confusion and consternation amongst staff working at the Defence Headquarters; and

(d) It is not clear whether it was an official committee visit or an individual initiative. Furthermore, it is not clear what the Complainants sought to achieve by visiting Defence Headquarters and the DCAC. These are not public service delivery sites, they are administrative offices of a department that deals with sensitive security matters which are reported to the NCACC, which in turn reports to the JSCD.

Submission by Mr Nel, Deputy Chairperson of NCACC, dated 10 February 2026

6.1.18 On 19 January 2026 the Investigation Team issued a Notice in terms of Rule 23(1) of the Public Protector Rules, to Mr Nel requesting him to provide his version relating to the Complainants' unannounced oversight visit. In his response he stated, *inter alia,* that:

6.1.18.1 The events took place almost a year ago and accordingly his response is reliant upon his diary, records on his mobile phone and the correspondence authored and received by him and officials in his office;

6.1.18.2 On 17 February 2025, he tried to contact Ms Ntshavheni telephonically, but she did not answer his call. She returned his call later that afternoon or early evening, during which he expressed concern about the unannounced visit to Defence Headquarters that had taken place earlier in the day. They subsequently agreed that a letter should be drafted and submitted to the Speaker;

6.1.18.3 On 20 February 2025, he provided Ms. Ntshavheni with a draft of his letter to the Speaker, in which he raised concerns regarding the Complainants' unannounced oversight visit. Ms. Ntshavheni agreed with the contents of the letter, and on 21 February 2025 he proceeded to submit it to the Speaker;

6.1.18.4 He has records of missed calls and WhatsApp text messages exchanged between himself and Dr Gamede on 17 February 2025 between 10h46 and 15h30, however he has no record of a telephonic conversation;

6.1.18.5 Dr Gamede sent him a text message to inform him that the Complainants, without notice, walked in at Defence Headquarters to conduct site inspection on the work of DCAC. She indicated that she tried to contact the Minister of Defence and Ms Ntshavheni, but they were not available, hence his guidance as Deputy Chairperson would be appreciated;

6.1.18.6 He tried to call Dr Gamede, but she did not answer his call;

6.1.18.7 He then sent her a text message asking about whether the Complainants are members of the JSCD. Dr Gamede responded by text message stating that *"don't know, but the Chair gave guidance and we are fine. Since I was not in the building I requested the Chief of SANDF, as the only senior in the building, to explain to them and eventually they left*." His understanding of these words is that General Maphwanya, under whose operational control Defence Headquarters resorts, explained to the Complainants the procedures for accessing the premises;

6.1.18.8 Whilst DCAC supports and operates under the authority of the NCACC, it is housed at Defence Headquarters. General Maphwanya is responsible for operational control over the premises in accordance with the laws and regulations governing access to SANDF facilities;

6.1.18.9 In response to the question what he understood Dr Gamede to mean when she said that "*the matter relating to the Complainants' visit had already been attended to,"* he stated that he is unable to provide an account as he has no recollection of Dr Gamede using these words;

6.1.18.10 In May 2025, subsequent to the exchange of letters between the Speaker and himself, his office received communication from the Complainants indicating that they intended to visit DCAC at Defence Headquarters on 12 May 2025, and the oversight visit took place without any incident; and

6.1.18.11 There was no intention to obstruct the oversight responsibilities of Members of Parliament, provided that constitutional and legal frameworks are respected.

Notice issued in terms of Rule 41(1) of the Public Protector Rules

6.1.19 On 03 March 2026, the Public Protector issued a Notice in terms of Rule 41(1) of the Public Protector Rules to the Complainants, Mr Ramaphosa, Ms Ntshavheni, Ms Didiza, Ms Mtshweni-Tsipane, Mr Nel, General Maphwanya, Dr Gamede and Mr Mashaba to inform them about the preliminary outcome of the investigation and affording the parties an opportunity to make representations in connection with the intended closure of the complaint.

6.1.20 *Responses to the Rule 41(1) Notice*

6.1.20.1 On 04 March 2026, acknowledgements of receipt of the Rule 41(1) Notice were received from Mr Ramaphosa and Ms Ntshavheni.

6.1.20.2 On 12 March 2026, General Maphwanya acknowledged receipt of the Notice. No further submissions were received from these parties.

6.1.20.3 The Public Protector did not receive any responses to the Rule 41(1) Notice from Mr Nel, General Maphwanya, Dr Gamede, Mr Mashaba and Ms Mtshweni-Tsipane.

6.1.20.4 Comprehensive responses were received from the Complainants, Ms Didiza and Dr Gamede and are duly considered and addressed hereunder.

Response from Ms Thoko Didiza, Speaker of Parliament, dated 9 March 2026

6.1.21 Ms Didiza responded on 09 March 2026 and stated that she has taken note of contents of the Notice and the recommendation. Further that the National Assembly is giving the matter necessary priority.

Response from Messrs C Hattingh and N Gotsell, dated 13 March 2026

6.1.22 The Complainants collectively responded on 13 March 2026 stating, *inter alia*, that:

6.1.22.1 The proposed findings are materially flawed in fact and law, and the investigation did not adequately address material contradictions in the evidence;

6.1.22.2 These contradictions go to the core factual question identified by the Public Protector, namely, whether Ms Ntshavheni interfered with or prevented a lawful oversight visit by Members of Parliament;

6.1.22.3 The central allegation forming the basis of the complaint is that Mr Mashaba informed them that he received a telephonic instruction from Ms Ntshavheni not to engage with them and not to permit the oversight visit;

6.1.22.4 Mr Mashaba made this statement contemporaneously during the incident, which carries significant evidentiary weight;

6.1.22.5 The investigation did not interrogate the contradiction between Mr Mashaba's contemporaneous statement and his sworn statement, in which he denied receiving an instruction from Ms Ntshavheni;

6.1.22.6 The Notice appears to accept the sworn statement at face value without considering the circumstances under which the original statement was made, the possibility of subsequent revision or reconstruction of events and the absence of any explanation from Mr Mashaba for the change in his version;

6.1.22.7 The investigation records conflicting versions regarding whether Ms Ntshavheni spoke to Mr Mashaba on the day in question. According to Mr Mashaba, no telephonic conversation took place whereas Ms Ntshavheni stated that the telephonic conversation did take place later that day after the matter had already been attended to;

6.1.22.8 The Notice does not resolve this contradiction, nor does it explain how the Public Protector reconciled the conflicting evidence;

6.1.22.9 The evidence of Dr Gamede introduces an additional inconsistency in that, in her WhatsApp message to Mr Nel, she stated that "*the Chair gave guidance and we are fine"*. Reference to the Chair refers to Ms Ntshavheni in her capacity as the Chairperson of the NCACC. This message suggests that guidance had in fact been obtained from Ms Ntshavheni;

6.1.22.10 Dr Gamede stated that Ms Ntshavheni was unreachable at the time of the incident, but the Notice does not reconcile the contradiction between her version and her WhatsApp message to Mr Nel;

6.1.22.11 The Notice reflects three different explanations regarding who took the decision that the oversight visit should not proceed. Dr Gamede stated that she requested General Maphwanya to explain the applicable protocols to the Complainants. General Maphwanya stated that he independently decided that the oversight visit could not proceed as no prior notice was given to the Minister of Defence.

6.1.22.12 Mr Mashaba stated that the issue was the disclosure of classified information and the authority of the NCACC. The Notice ultimately attributes the decision to General Maphwanya without adequately addressing the competing versions;

6.1.22.13 The Notice appears to rely significantly on the absence of a formal procedural framework governing individual oversight visits by Members of Parliament. While it is acknowledged that Parliament may develop additional procedural guidance in this regard, the absence of such procedures cannot limit the constitutional powers of Members of Parliament.

6.1.22.14 Section 55(2) of the Constitution provides that the National Assembly must maintain oversight over the exercise of executive authority and all organs of state. The reliance on the regulatory gap has a risk of incorrectly restricting the oversight function of Parliament;

6.1.22.15 It is an established practice that Members of Parliament can undertake oversights, including unannounced visits, in their capacity as Members of Parliament. Oversight is not exclusively limited to formal committee processes, and for decades Members of Parliament have been conducting oversight visits independently. This practise has not, to their knowledge been question in any substantial manner;

6.1.22.16 The issue identified for investigation by the Public Protector is whether Ms Ntshavheni prevented the oversight visit and thereby acted in a manner that

is inconsistent with her office. However, the Notice appears to place the focus on whether the oversight visit was formally authorised and whether prior arrangements were made. Even if the oversight visit was unannounced, the central question remains whether Ms Ntshavheni improperly interfered with parliamentary oversight;

6.1.22.17 Interference by members of the Executive in the oversight activities of Parliament raises serious constitutional. Parliamentary oversight is a cornerstone of constitutional democracy and is essential to maintaining executive accountability;

6.1.22.18 Where evidence suggests that an executive office bearer may have attempted to prevent such oversight, the matter requires careful and rigorous factual analysis. The current draft findings do not adequately address this constitutional dimension;

6.1.22.19 The evidence place before the Public Protector contains several mutually inconsistent versions regarding whether an instruction was issued preventing the oversight visit. The Notice does not identify which version the Public Protector accepts, nor does it provide a credibility assessment explaining how these contradictions were resolved. Where material factual disputes exist, an investigative authority is required to evaluate credibility and probabilities before reaching a conclusion. In the absence of such an evaluation, the investigation cannot be said to have resolved the central factual question identified by the Public Protector, namely whether the oversight visit was prevented as a result of executive intervention.

6.1.22.20 In circumstances where material factual contradictions remain unresolved, the ability of the investigation to reach a rational and defensible conclusion is affected.

6.1.22.21 The Public Protector should, in light of the representation, reconsider the evaluation of the contradictory evidence, address inconsistencies of witness accounts and reassess the legal analysis relating to parliamentary oversight; and

6.1.22.22 The intended findings, for the reasons set out above, should be reconsidered before a final report is issued on the basis that they do not adequately resolve the material contradictions in the evidence, nor do they correctly apply the constitutional principles governing parliamentary oversight.

Responses to the Rule 41(1) Notice from Dr Gamede

6.1.23 Dr Gamede responded on 19 March 2026 and explained that the "*Chair*" referred to in her WhatsApp message to Mr Nel was Ms Ntshavheni, and that the guidance provided related to access protocols at Defence Headquarters.

6.1.24 On 23 March 2026, she submitted a supplementary response indicating that, at the time of her telephonic discussion with Ms Ntshavheni, the matter had already been addressed by General Maphwanya. She further stated that, although their discussion took place after the issue had been resolved, she nonetheless regarded Ms Ntshavheni's enquiries about access protocols as guidance.

Applicable law

Constitution of the Republic of South Africa, 1996

6.1.25 Section 96 of the Constitution 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-

(b) act in any way that is inconsistent with their office…"

6.1.26 Section 55(2) of the Constitution provides that "*The National Assembly must provide for mechanisms-*

(a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and
(b) to maintain oversight of-

(i) the exercise of national executive authority, including the implementation of legislation; and
(ii) any organ of state."

6.1.27 Section 57 provides that (1) "*The National Assembly may-*

(a) determine and control its internal arrangements, proceedings and procedures, and
(b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
(2) (a) The rules and orders of the National Assembly must provide for the establishment, composition, powers, functions, procedure and duration of its committees.

Executive Members' Ethics Act, 1998

6.1.28 Section 2(1) of EMEA provides that *"The President must, after consultation with Parliament, by proclamation in the Gazette, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy*

Ministers and MECs must comply in performing their official responsibilities."

The Executive Ethics Code

6.1.29 The general standards that the members of the Executive[4] must comply with are contained in clause 2.1 of the Code, which provides that:

"2.1 Members of the Executive must, to the satisfaction of the President or the Premier, as the case may be-

(a) perform their duties and exercise their powers diligently and honestly;

(b) fulfil all the obligations imposed upon them by the Constitution and law;

(c) act in good faith and in the best interest of good governance;

(d) act in all respects in a manner that is consistent with the integrity of their office or the government."

6.1.30 Clause 2.3(c) provides that Members of the Executive may not act in a way that is inconsistent with their position.

National Conventional Arms Control Act, 2002 (as amended)

6.1.31 In terms of section 1 competent authority means the Committee or any subcommittee to which, or any member of the Committee, a subcommittee or the secretariat, or any inspector of the Inspectorate, to whom, a power has been delegated, or a duty has been assigned in terms of section 11. Committee means the NCACC.

[4] Member of the Executive means a Cabinet member, a Deputy Minister or a Member of a Provincial Executive Committee, and `Member` and `Executive` have corresponding meaning.

6.1.32 Section 5(1)(a) provides that the Committee consists of such Ministers and Deputy Ministers as the President may appoint.

6.1.33 Section 5(2)(a) provides that the President must make the appointment of the members contemplated in subsection (1) known by notice in the Gazette and must specify the period for which each member is appointed.

6.1.34 Section 5(3) provides that the President must designate one member of the Committee as the chairperson and another as the deputy chairperson.

6.1.35 Section 8(1)(a) provides that the work incidental to the performance of the functions of the Committee or a subcommittee must be performed by a secretariat consisting of administrative personnel.

6.1.36 Section 23(6) provides that no person may disclose any information concerning the business of the Committee except with the permission of a competent authority; as required in terms of the Promotion of Access to Information Act, 2000; to a person who needs the information for performance of official functions or to Execute the decisions of the Committee.

Analysis

6.1.37 The complaint before the Public Protector arises from an alleged interference by Khumbudzo Ntshavheni with the constitutional oversight functions of Members of Parliament during an unannounced visit to the Directorate for Conventional Arms Control (DCAC) on 17 February 2025. The matter requires a determination of whether the conduct attributed to the Minister constitutes a breach of section 96(2)(b) of the Constitution and clause 2.3(c) of the Executive Ethics Code, namely whether she acted in a manner inconsistent with her office.

6.1.38 At the outset, the dispute must be contextualised within the constitutional framework governing the separation of powers and accountability. Section 55(2) of the Constitution imposes a positive obligation on the National Assembly to maintain oversight over the exercise of executive authority and all organs of state. However, section 55(2)(b)(ii) read with section 57 of the Constitution makes clear that such oversight is exercised institutionally through mechanisms established by the National Assembly, including committees constituted in terms of its rules.

6.1.39 The evidence before the Public Protector does not indicate that the Complainants' visit was undertaken pursuant to a formal mandate or mechanism of the National Assembly. Rather, it constituted an unannounced, own-initiative oversight visit by individual Members of Parliament.

6.1.40 While the Complainants contend that it is an established practice for Members of Parliament to conduct oversight independently, including through unannounced visits, such practice cannot override the constitutional and legal framework. As correctly observed, practice does not take precedence over law. The Speaker of the National Assembly further emphasised the distinction between committee-based oversight, which is formally grounded in parliamentary rules, and actions undertaken by individual members outside such structures. Although the value of individual engagement is acknowledged, it remains legally distinct from institutional oversight exercised under the authority of the National Assembly.

6.1.41 Importantly, the evidence reveals the existence of a regulatory lacuna. There is no statutory or formalised framework specifically governing oversight visits initiated by individual Members of Parliament outside parliamentary committees. This gap has contributed to recurring disputes between the Legislature and the Executive, particularly in relation to

unannounced visits to sensitive facilities, including those designated as national key points. While the Complainants argue that the absence of such a framework cannot limit their constitutional powers, the absence of regulation does not confer unfettered authority, particularly where other statutory regimes, such as those governing national security and access to classified information, apply.

6.1.42 Against this backdrop, the factual enquiry turns on whether Ms Ntshavheni issued any instruction that prevented the oversight visit. The Complainants rely primarily on an alleged contemporaneous statement by Mr Mashaba that he had received a telephonic instruction from the Minister not to engage with them. This allegation forms the crux of the complaint. However, it is directly contradicted by Mr Mashaba's sworn evidence, in which he unequivocally denies both receiving such an instruction and making the alleged statement. The evidentiary value of the alleged contemporaneous statement is further weakened by its uncorroborated nature and its express repudiation under oath.

6.1.43 The broader evidentiary record does not support the allegation of executive interference. Ms Ntshavheni consistently denies issuing any directive and maintains that she was not reachable at the time of the incident. This version is corroborated by Dr Gamede, who confirmed that attempts to contact the Minister during the incident were unsuccessful and that she acted independently in managing the situation. It follows, on a balance of probabilities, that Ms Ntshavheni could not have issued any instruction influencing events at the time they unfolded.

6.1.44 The question of whether a telephonic conversation later occurred between Ms Ntshavheni and Mr Mashaba does not alter this conclusion. While Mr Mashaba denies that such a conversation took place, Ms Ntshavheni asserts that it did occur after the matter had already been addressed. This version is supported by Dr Gamede. In any event, the divergence regarding

the timing or occurrence of such communication is not material to the central issue, which is whether any instruction was issued to obstruct the oversight visit.

6.1.45 The role of General Rudzani Maphwanya is decisive in this regard. His evidence establishes that he independently determined that the oversight visit could not proceed, based on the absence of prior notification to the Minister of Defence and the applicable security protocols governing access to Defence Headquarters. He expressly stated that he did not contact Ms Ntshavheni and that there was no need to do so. This account is consistent with the Complainants' own version, which confirms that it was General Maphwanya who informed them that they could not proceed.

6.1.46 The reliance by the Complainants on the WhatsApp message from Dr Gamede stating that "*the Chair gave guidance*" does not alter the evidentiary position. Dr Gamede clarified that the reference to "*the Chair*" was indeed to Ms Ntshavheni, however, the communication occurred after General Maphwanya had already intervened and resolved the matter. The "*guidance*" referred to was retrospective and related to access protocols applicable to a national key point. This explanation is consistent with Ms Ntshavheni's account that her involvement was limited to enquiring how unauthorised individuals had gained access to a sensitive facility.

6.1.47 Crucially, the response of Mr Nel further contextualises the events. In his submission dated 10 February 2026, Mr Nel confirms that on 17 February 2025 he attempted to contact Ms Ntshavheni but was unsuccessful. She returned his call later that afternoon or early evening, at which point he raised concerns about the unannounced visit and they agreed that a letter should be drafted to the Speaker. He further confirms that Dr Gamede informed him that the matter had already been attended to before he was able to intervene operationally.

6.1.48 Mr Nel also records that Dr Gamede's WhatsApp message indicated that she had attempted to contact both Ms Ntshavheni and himself without success, and that guidance was sought from him in his capacity as Deputy Chairperson. He understood from Dr Gamede's message that General Maphwanya had already explained the procedures for access to the premises and that the Complainants had subsequently left the facility. Importantly, Mr Nel confirms that there was no intention to obstruct parliamentary oversight, provided legal and constitutional frameworks were respected, and that subsequent arrangements allowed the oversight visit on 12 May 2025 to proceed without incident once prior notification was given.

6.1.49 These facts are consistent with the additional response by Ms Ntshavheni, dated 10 December 2025. In that response, she states that on 17 February 2025 she was not immediately reachable and was unaware of the unfolding events at the time they occurred. She confirms that she and Mr Nel attempted to contact her but were unsuccessful. She further explains that upon returning calls later that day, she engaged first with Mr Nel, who informed her that the matter had already been attended to. She expressly denies issuing any instruction, directive, or guidance at any stage during the incident.

6.1.50 She further confirms that in her subsequent conversation with Mr Mashaba, she merely enquired how unauthorised persons had gained access to a national key point facility and was informed that access had been facilitated via an ARMSCOR service provider. She emphasises that no directives or follow-up instructions were issued during that exchange. Her final conversation with Dr Gamede similarly related to a post facto enquiry regarding access control procedures and not any operational instruction.

6.1.51 Furthermore, the statutory framework governing the NCACC supports Ms Ntshavheni's position. In terms of section 23(6) of the National

Conventional Arms Control Act, only the NCACC as a collective body may authorise or refuse access to information. Ms Ntshavheni, as Chairperson, does not possess unilateral authority to grant or deny such access. Her explanation that she lacked the power to authorise or refuse access is therefore consistent with the applicable legal prescripts.

6.1.52 The surrounding circumstances further reinforce the conclusion that the failure of the oversight visit to proceed was not the result of executive interference, but rather the absence of prior coordination in a sensitive security environment. The Speaker had advised the Complainants to consider making prior arrangements for oversight visits, particularly in the absence of formal procedures.

6.1.53 The probabilities further support the conclusion that the events of 17 February 2025 were driven by operational security considerations arising from an unannounced visit to a sensitive facility, rather than executive intervention. This is reinforced by the subsequent oversight visit on 12 May 2025, which proceeded without incident once prior notification and coordination were effected through Mr Nel, demonstrating that no systemic obstruction existed.

6.1.54 In law, where mutually destructive versions exist, an investigative authority is required to assess credibility and probabilities. In this instance, the alleged contemporaneous statement remains uncorroborated hearsay and is expressly denied under oath, whereas the version that Ms Ntshavheni was not involved is consistent, corroborated, and supported by the objective sequence of events. The probabilities therefore favour the conclusion that the decision to halt the visit was taken at an operational level by officials on the ground, particularly General Maphwanya.

6.1.55 Turning to the legal question, even if the Complainants' oversight visit is accepted as constitutionally permissible in principle, the determinative

issue remains whether Ms Ntshavheni acted in a manner inconsistent with her office by interfering with that oversight. While the matter highlights a broader institutional lacuna regarding the regulation of unannounced oversight visits by individual Members of Parliament to security-sensitive installations, such systemic gaps cannot be conflated with individual misconduct.

6.1.56 Accordingly, when the evidence is considered cumulatively, the probabilities favour the conclusion that no improper instruction was issued by Ms Ntshavheni and that the impugned events arose independently of her actions. The failure of the oversight visit to proceed is more plausibly attributable to operational decisions taken in response to security protocols and the absence of prior arrangements. The subsequent successful facilitation of the oversight visit once proper procedures were followed further confirms this position.

6.1.57 On the totality of the evidence, there is no basis to conclude that Ms Ntshavheni acted in a manner inconsistent with her office or that she interfered with parliamentary oversight functions in breach of section 96(2)(b) of the Constitution and clause 2.3(c) of the Executive Ethics Code.

Conclusion

6.1.58 Having regard to the evidence traversed above, it is concluded that there is no basis upon which to conclude that Ms Ntshavheni acted or conducted herself in breach of clause 2.3(c) of the Code.

7. FINDINGS

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

7.1 Whether Ms Khumbudzo Ntshavheni, the Minister in the Presidency, prevented the unannounced oversight visit by Members of Parliament at the offices of the Directorate for Conventional Arms Control and acted in a manner that is inconsistent with her office, if so, whether such conduct violates section 96(1) and (2)(b) of the Constitution and amounts to a breach of Clause 2.3 (c) of the Executive Ethics Code.

7.1.1 The allegation that Ms Ntshavheni interfered with the unannounced oversight visit and acted in a manner that is inconsistent with her office, **is not substantiated**.

7.1.2 There is no evidence before the Public Protector that Ms Ntshavheni instructed Mr Mashaba not to allow the Complainants to conduct oversight.

7.1.3 No corroboratory evidence could be found during the investigation, to support the Complainants' version.

7.1.4 Accordingly, there is no evidence to conclude that Ms Ntshavheni acted in a manner that is inconsistent with section 96(1) and (2)(b) of the Constitution or clause 2.3(c) of the Code.

8. OBSERVATION

8.1 In light of the regulatory gap, the National Assembly has initiated a process, through its Rules Committee and Subcommittee, to consider and develop an appropriate legal and procedural framework to regulate both announced and unannounced oversight visits.

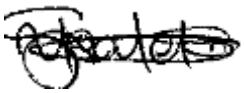
9. RECOMMENDATION

9.1 The Speaker of the National Assembly is to ensure that the National Assembly expedites the process of developing a statutory framework to

regulate and guide announced and unannounced oversight visits by Members.

10. CONCLUSION

10.1 The Public Protector considers this matter as finalised in terms of section 182(1)(b) of the Constitution and section 8(1) of the Public Protector Act.



ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE:1 APRIL 2026

Assisted by: Ms Veronika Pillay
Acting Executive Manager: Investigations