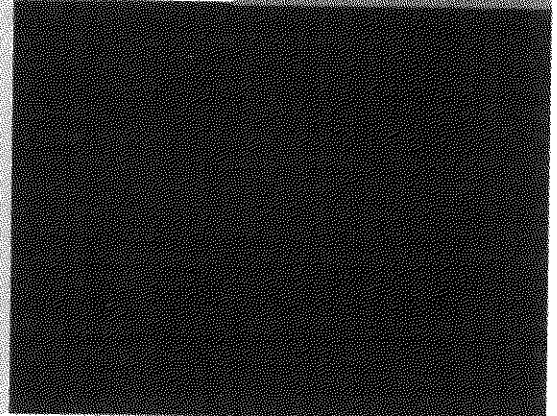
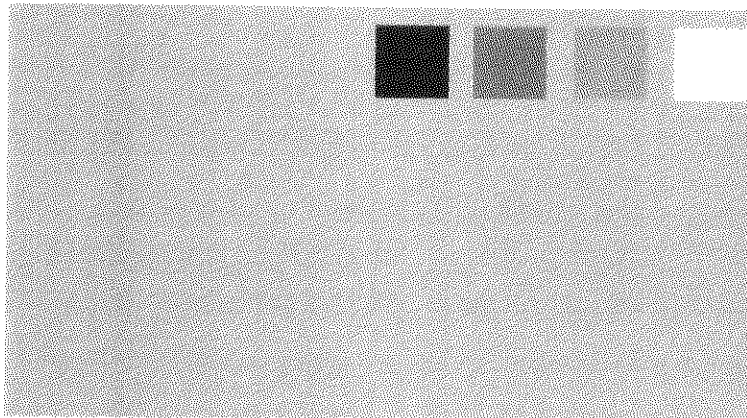
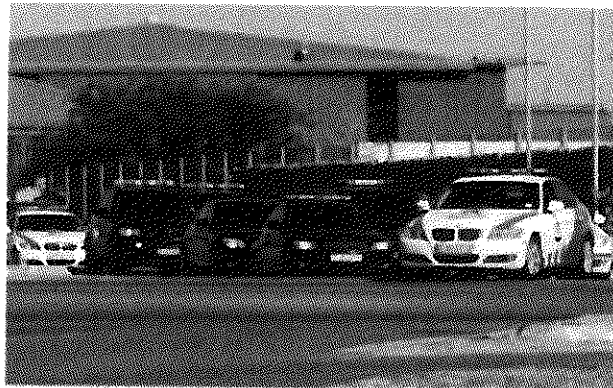
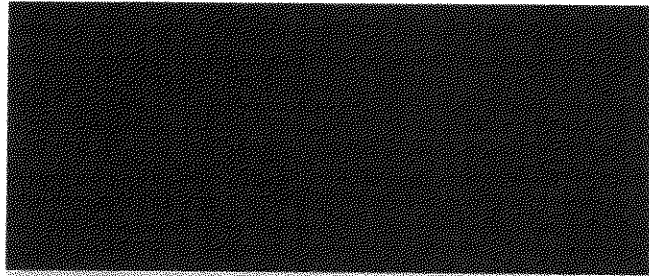


# JCPS CLUSTER REPORT

## LANDING OF A CHARTERED COMMERCIAL AIRCRAFT AT AIR FORCE BASE WATERKLOOF

17 May 2013



government

REPUBLIC OF SOUTH AFRICA

INVESTIGATION INTO THE LANDING OF A CHARTERED COMMERCIAL AIRCRAFT  
AT AIR FORCE BASE WATERKLOOF ON 30 APRIL 2013

TABLE OF CONTENTS

1. CHAPTER 1: INTRODUCTION	
1.1 Problem Statement	3
1.2 Terms of Reference	3
1.3 Methodology	3
2. CHAPTER 2: SEQUENCE OF EVENTS	
2.1 Pre-Arrival Phase	5
2.2 Arrival Phase	11
2.3 Post-Arrival Phase	15
2.4 Exit Phase	17
3. CHAPTER 3: ANALYSIS	
3.1 Pre-Arrival Phase	18
3.2 Arrival Phase	22
3.3 Post-Arrival Phase	23
3.4 Exit Phase	24
4. CHAPTER 4: FINDINGS	24
5. CHAPTER 5: RECOMMENDATIONS	29
6. CHAPTER 6: CONCLUSION	30

*ddd*

## 1. CHAPTER 1: INTRODUCTION

### 1.1 Problem Statement

On 30 April 2013 Jet Airways charter flight JAI 9900 landed at Air Force Base Waterkloof, a strategic entry point, referred to in this report as "the base", between 06h50 and 07h00. This was deemed a national security incident. The Ministers of the Justice, Crime Prevention and Security (JCPS) Cluster instructed on 2 May 2013 that a team of Directors-General investigate the circumstances that gave rise to the incident, and report their findings within seven working days. The members of the Investigating Team, referred to in this report as "the team", were the following:

- 1.1.1 Mr D.T. Dlomo: Acting Director-General of the State Security Agency.
- 1.1.2 Ms N. Sindane: Director-General of the Department of Justice and Constitutional Development.
- 1.1.3 Mr T.S. Moyane: National Commissioner of the Department of Correctional Services.
- 1.1.4 Dr C.G. Swemmer: Acting Coordinator for Intelligence (co-opted).

### 1.2 Terms of Reference

The Terms of Reference governing the work of the team were the following:

- 1.2.1 Determine the sequence of events prior to, during and after the landing of the chartered commercial aircraft at Air Force Base Waterkloof.
- 1.2.2 Assess the actual events in the light of the established legislation, regulations, government and departmental protocols.
- 1.2.3 Interview and interact with relevant persons to establish facts, and factor in investigations currently under way.
- 1.2.4 Make findings and recommendations to avert similar occurrences in future.

### 1.3 Methodology

In conducting the investigation the team approached the incident in four phases, namely the pre-arrival phase, arrival phase, post-arrival phase and exit phase, and conducted its work according to these phases.

The methodology adopted included the scrutiny of relevant documentary evidence; the scrutiny of departmental submissions; interviews with officials and individuals involved in the matter; investigations conducted within affected departments; and in loco visits.

*dda*

The visits consisted of the following:

- 1.3.1 On 9 May 2013: to the Chief of the South African Air Force (SAAF), Lieutenant-General F.Z. Msimang, which visit was further assisted by General Mcetywa; interaction with Sergeant-Major Thabo Ntshisi at the Air Force Command Post; interviews at the base with Colonel Visser responsible for reception of VIPs visitors; Lieutenant-Colonel Mdluli, Officer Commanding Movement Control; and loadmasters Sergeants Mohlala and Manganyi.
- 1.3.2 On 10 May 2013 at the base with Lieutenant-Colonel Fredrikson; with Sergeant-Major Van Bentheim responsible for security; at the South African Revenue Service (SARS) with Commissioner Oupa Magashula, Chief Operating Officer Barry Hore, and Mr J.J. Louw, the Legal Advisor; at O.R. Tambo International Airport with Mr Ockert Jacobs, Deputy Director Port Health, Gauteng Province; with Lieutenant-General Nyembe, Chief of Defence Intelligence; and at the offices of the Department of Defence and Military Veterans with the Advisor to the Minister, Mr Michael (Mike) Ramagoma.
- 1.3.3 The Investigating Team conducted interviews on 13 May 2013 with Mr William Matjila from the Directorate State Visits in DIRCO; with Ms Marilyn Morris, Personal Assistant to the Chief of State Protocol, DIRCO; Warrant Officer Masilo from SAPS Border Police; Mr V. Ndwamato of the Directorate Air Transport, Department of Transport (DoT); Mr Andries Njani, Deputy Director Aviation Licencing and Permits, DoT; and Ms Adriana van der Westhuizen of the DoT. The team also met with the Minister of Transport, Mr D.B. Martins.
- 1.3.4 On 14 May 2013 Mr Mike Ramagoma visited the team to provide an explanation on his updated statement.
- 1.3.5 On 16 May 2013 the Investigating Team had a meeting with Ambassador Vusi Bruce Koloane.

In light of the availability of officials who had not been interviewed by the Investigating Team, the Team deemed it necessary to engage with them after the presentation of their report on 14 May 2013. The Investigating Team briefed the JCPS Ministers on the content on 17 May 2013, which concluded the Team's mandate.

## 2. CHAPTER 2: SEQUENCE OF EVENTS

Based on the submissions received, the team understands the sequence of events to have unfolded as follows:

*std*

## 2.1 Pre-Arrival Phase

In the pre-arrival phase, the following are the standard operating procedures that would be followed by departments in preparing for the arrival of a VVIP or VIP flight at the base:

- 2.1.1 Air Force Base Waterkloof would only receive flights classified as military flights, VVIP flights or VIP flights. The former would include Heads of State and/or Government and Ministers. No commercial or charter flights would receive permission to land except in an emergency situation. The Standard Operating Procedures for the issuing of such clearances issued in July 2007 state clearly in paragraph 7(b): "Note that only military personnel, Head and Deputy Head of State may make use of AFB Waterkloof".
- 2.1.2 The Embassy or High Commission would forward a Note Verbale to the Office of the Chief of State Protocol requesting the assistance of government with the visit.
- 2.1.3 The Air Force Command Post would interact with DIRCO for clearance of state visits or VVIPs prior to issuing the clearance for continuation of the nature of the visit.
- 2.1.4 Under the Customs and Excise Act of 1964, Section 7(1A)(a), non-military and non-VIP flights seeking to land at an airport other than one of the ten customs and excise airports, would need to obtain special permission prior to landing from the Commissioner SARS to do so. This would especially be the case when the passengers are not subject to the Diplomatic Privileges and Immunities Act of 2001.
- 2.1.5 Once clearance had been granted, the base would notify departments with immigration, customs, health, and phyto-sanitary responsibilities of the pending arrival to enable them to be in attendance at the time. This notification would take place in writing and/or via telephone notification. All the above departments would be notified for all incoming and outgoing flights. However, full protocol would only be provided during state and official visits.
- 2.1.6 DIRCO would convene and chair an interdepartmental meeting to deal with official state visits; the meeting would include the Presidential Protection Unit for visiting VVIPs and Special Envoys.
- 2.1.7 Protection for vehicle convoys of visiting delegations would be arranged at the national level by way of activation of the National JOINTS when the route crosses provincial boundaries. This is the responsibility of the National Commissioner of SAPS.

*ltd*

- 2.1.8 The Department of Home Affairs would issue visas to the visitors against return flight tickets if travelling on a commercial flight, or if confirmed to travel on a charter flight.

The sequence of events in the pre-arrival phase in this specific matter is as follows:

- 2.1.9 In February 2013 Mr Tony Gupta approached the Airports Company South Africa to enquire about the use of O.R. Tambo International Airport (ORTIA) for the arrival of "at least five heads of state, ministers and senior Indian Government officials" invited to a four-day wedding event at Sun City (Source: ACSA Report; NICOC Report 1 May 2013). The Chief of State Protocol, Ambassador V. B. Koloane, attended a meeting of the Gupta family representative, Mr Tony Gupta; the Acting Chief Executive Officer of ACSA, Mr Bongani Maseko; and Minister of Transport Mr Ben Martins. At the meeting Mr Tony Gupta requested "to use facilities at the airport to welcome guests from India who were to attend a wedding" (Source: Statement by Minister Martins 13 May 2013). It was concluded that it would not be possible to use ORTIA given the request for an elaborate welcoming ceremony; this was a space used by the Department of Home Affairs for checking passports. Minister Martins agreed with ACSA's explanation (Source: NICOC Report 1 May 2013; written statement by Minister Martins). ACSA suggested that alternatives be considered, among them Lanseria or Pilanesberg airports. It was later determined that the runway at Lanseria was being upgraded. At a follow-up meeting and after enquiring with SAA, ACSA informed Mr Gupta that the apron at Pilanesberg could not accommodate an Airbus A330-200 (Source: ACSA Report).
- 2.1.10 In early March 2013 the Minister of Defence and Military Veterans was approached by Mr Atul Gupta. The Minister's Political Advisor, Mr Michael Ramagoma, was also approached by Mr Ashu Chawla on behalf of the Gupta family (Source: Response to questions by the Gupta family lawyer Mr G. van der Merwe 14 May 2013).
- 2.1.11 During the latter half of March 2013 the Political Advisor of the Minister of Defence and Military Veterans approached the Chief of the South African Air Force, Lieutenant-General F.Z. Msimang, to determine the regulations governing the landing and taking off of civilian aircraft at Air Force Base Waterkloof. The Chief of the Air Force informed the Political Advisor that it would be irregular for an aircraft carrying Indian wedding guests to land at the base. The Chief of the Air Force advised the Political Advisor that the matter should not be entertained any further. This was at the time of the military developments in the CAR, and of the air force helicopter crash in the Kruger National Park (Source: Submission by the Chief of the Air Force dated 10 May 2013; confirmed by Mr Mike Ramagoma in his interview with the Team).



- 2.1.12 On 2 April 2013 the Chief of State Protocol contacted the Political Advisor to the Minister of Defence and Military Veterans to enquire as to progress with the request. The Ambassador stated that he was "under pressure from No. 1" on the matter. The Political Advisor stated that he was not in a position to respond at that point in time (Source: Political Advisor 10 May 2013; confirmed by Ambassador V.B. Koloane on 1 May 2013 and in the interview with him on 16 May 2013).
- 2.1.13 On 3 April 2013 Mr Ramagoma met with Mr Chawla to inform him that the Minister had denied permission for a landing at the base (Source: Political Advisor 10 May 2013).
- 2.1.14 Mr Chawla then liaised with individuals in the Indian High Commission for assistance (Source: Response to questions by the Gupta family lawyer Mr G. van der Merwe dated 14 May 2013). On 4 April 2013 an individual at the Indian High Commission applied by faxed letter at 15h38 to the Air Command Unit at the Air Force Command Post for Overflight and Landing Clearance for a "Chartered Flight" at the base (Source: Fax IHC 4 April 2013). The accompanying document containing details is titled "Request for Diplomatic Overflight and Landing Clearance: South Africa". The purpose of the flight is cited under item 9 as "Delegation Visit" (Source: Indian High Commission Request 4 April 2013).
- 2.1.15 On 9 April 2013 the Chief of State Protocol telephoned Sergeant-Major Ntshisi at the Air Force Command Post to enquire as to progress with the clearance request from the Indian High Commission. Ntshisi informed the Ambassador that the base could only receive flights transporting "Heads of State and their deputies". The Ambassador responded that there would be "four to five Ministers on board". He added that the Minister of Transport, Mr Ben Martins, had been given instructions "by the President to assist the Gupta family"; that the Minister of Defence and Military Veterans "has no objection"; that "at a meeting of the Minister of Transport, the CEO of ACSA and the Guptas" he had been "told to assist"; and that "this was a unique case". Ntshisi requested "a note or a letter" from the Ambassador. The Ambassador responded that "the challenge was that this could not be put in writing". He added that he had met with Lieutenant-Colonel Anderson the previous week to "show them around the area"; Ntshisi should contact the Lieutenant-Colonel to confirm this. The Ambassador stated clearly that this was for "the Gupta family wedding". He instructed Ntshisi to call him back. On 13 May 2013, the Director-General in The Presidency stated that at no point did the President give instructions to Ambassador Koloane or discuss the issue of the landing of the aircraft with him. Regarding the specific questions posed to him relating to the pre-arrival phase, he denied that The Presidency had ever received a request for landing at Waterkloof Air Force Base from any person whatsoever.

*dfd*

- 2.1.16 Sergeant-Major Ntshisi then telephoned Lieutenant-Colonel Anderson to enquire about the "217 Indian delegates". He was informed that she was not available and would return the call.
- 2.1.17 Lieutenant-Colonel Anderson returned Sergeant-Major Ntshisi's call. Anderson stated that she had just spoken to the Chief of State Protocol, who had informed her that Ntshisi had rejected the request. She questioned him as to how he could have refused such a request from the Chief of State Protocol. Ntshisi clarified that he had requested written confirmation. Anderson then stated that "in confidentiality (sic), I must be very careful now, our Number 1 knows about this. It is political. Allow them. I'll phone the Ambassador back to find out who's the senior minister". Ntshisi asked Anderson to confirm that the base could only receive flights carrying Heads of State and Ministers. Anderson responded that it depends on the visit type, and that it would be acceptable for a "private visit if DIRCO approves. It is not a problem. Yes my dear, they can".
- 2.1.18 The Chief of State Protocol then called Sergeant-Major Ntshisi and stated "I believe you have spoken to Colonel Anderson?" Ntshisi confirmed this and stated that he would go ahead with the clearance immediately. Ntshisi asked whether he should fax the clearance to Mr Matjila (Mr William Matjila – Directorate State Visits DIRCO). The Chief of State Protocol asked where Ntshisi was at the time and was unable to understand the explanation given. He then requested Ntshisi to e-mail a copy of the clearance to his private e-mail address and to his official e-mail address.
- 2.1.19 Mr William Matjila, Senior Foreign Affairs Assistant at DIRCO received a call from the Chief of State Protocol instructing him to assist with the clearance of the Indian delegation. This was the first ever and last call from the Chief of State Protocol, Ambassador Koloane to him.
- 2.1.20 In response to the request for a letter from Sergeant-Major Ntshisi, Mr William Matjila forwarded an e-mail sent to him by Ms. Marilyn Morris, Secretary of the Chief of State Protocol. It stated: "As per your discussion with Ambassador Koloane with regards (sic) to the request for flight clearances and landing at Waterkloof AFB for the Indian Delegation, kindly note that Amb Koloane telephonically approved the request" (Source: E-mail DIRCO at 08h33 dated 9 April 2013). All those involved confirmed this fact.
- 2.1.21 Mr William Matjila forwarded this e-mail to various recipients within State Protocol at DIRCO "for your urgent assistance and information" (Source: E-mail DIRCO at 08h57 on 9 April 2013).

*dtd*

2.1.22 On 9 April 2013 Captain Kutty at the IHC forwarded a request titled "Fuelling Requirement: VVIP Chartered Flight at AFB Waterkloof" to the Air Force Command Post requesting 40 tonnes of fuel for "refueling of the VVIP chartered aircraft", and requesting that this be included in the request for overflight landing and clearance dated 4 April 2013 (Source: Indian High Commission Request 9 April 2013).

2.1.23 On 9 April 2013 Lieutenant-Colonel S.J. van Zyl, who has the authority to clear flights at the Air Force Command Post, signed RSA05 External Clearance on the strength of the documentation received and conversations conducted that morning. The clearance was sent to ATNS, the Civil Aviation Authority (CAA), the Department of Transport (DoT), the Department of Home Affairs (DHA), Chief of Joint Operations, Defence Foreign Relations and Senior Staff Officer. The clearance stated the following:

- (i) Requestor: India Delegation.
- (ii) Aircraft type: A330-200 with registration number VT-JWQ.
- (iii) Call sign: 9W 9900.
- (iv) Pax (passengers): 217.
- (v) Reason: Delegation visit.
- (vi) Fuel quantity: 13 000 litres.
- (vii) Parking/hangar facilities: N/A.
- (viii) Movements: VIP.
- (ix) Customs and/or Border Police: Yes.
- (x) Security: N/A.
- (xi) SARS: Yes.
- (xii) Foreign Operators Permit: Yes.
- (xiii) Import/export permits: Yes.
- (xiv) DOT authority required: Yes.
- (xv) Parking and landing fees to be paid: N/A.
- (xvi) "All ground handling requirements to be arranged with Lt Col Anderson at FAWK" (FAWK = Air Force Base Waterkloof) (Source RSA05 External Clearance Authority No. RSA05/V/8643/VT-JWQ/29-Apr-13).

2.1.24 On 19 April 2013 the SAPS Provincial Commissioner, North-West Province, Lieutenant-General Mbombo, received a letter from Ms Ronica Ragavan representing the Gupta family, requesting protection for the convoys that would be travelling from the base to Sun City (Source: SAPS Report 10 May 2013).

2.1.25 On 22 April 2013 Sun City Security applied to the SAPS for an Event Risk Categorisation. The request was from Mr Claud Horne, Security Manager at the Entertainment Centre, Sun City Resort. The application was forwarded to the Cluster Commander, Major-General P. Asaneng, and by the Provincial Commissioner to the

North-West Province Crime Intelligence and Operational Response Services. On hearing about the nature of the visit, the Provincial Commissioner turned down the request, and also declined to attend the wedding as a guest. A second application that emphasised the attendance of Indian Ministers at the wedding was then presented. The applicant requested that the event be categorised as High Risk, but the Deputy Provincial Commissioner: Operational Services, Major-General Mpembe, categorised the event as Medium Risk on 25 April 2013 (Source SAPS Report 10 May 2013).

2.1.26 On 23 April 2013 the base informed the following individuals and departments by fax of the arrival information of the Jet Airways flight:

- (i) DHA Immigration: J de Wet, Morare and Molefe.
- (ii) Health: Mr Jacobs.
- (iii) SARS: T. Mokhachane.
- (iv) Agriculture, Forestry and Fisheries: Amanda Steyn and Lawrence Mochena.
- (v) Border Police: Superintendent Moloto.
- (vi) Nature Conservation: Messrs Steenkamp and Booysen.
- (vii) SSA: Ms A. Claasen.

2.1.27 On 24 April 2013 the Indian High Commission requested the Chief of State Protocol for assistance with arranging the reception and logistics at the base (Source: NICOC Report 1 May 2013; Interview with Ambassador V.B. Koloane on 16 May 2013).

2.1.28 On 24 April 2013 the Chief of State Protocol met with Lieutenant-Colonel Anderson and an individual in the Indian High Commission at the base to discuss arrangements (Source: NICOC Report 1 May 2013; Interview with Lieutenant-Colonel Mdluli 9 May 2013; Interview with Ambassador V.B. Koloane on 16 May 2013).

2.1.29 On 25 April 2013 an individual at the Indian High Commission sent the Air Force Command Post a written request for "Permission for Private Helicopters and Chartered Flights" to land at the base. The request stated that the aircraft would be required to ferry the delegation from the base to Sun City on 30 April 2013, and back again on 3 May 2013. Tail and registration numbers for the seven helicopters and two fixed-wing aircraft were provided (Source: IHC application dated 25 April 2013).

2.1.30 On 25 April 2013 the SAPS Cluster Commander, Major-General Asaneng, convened the Operation Bojanala and South African Music Awards plenary meeting at Sun City to initiate security planning. An Operational Plan with serial number 44/2013 dated 25 April 2013 was compiled. It was recorded that Major-General Asaneng would liaise directly with Major-General Gela of Gauteng SAPS to arrange for assistance. Gauteng Province did not develop an operational plan (Source: SAPS Report 10 May 2013).

*Handwritten signature*

- 2.1.31 On 26 April 2013 the loadmasters were briefed in their regular 15h00 daily meeting by Lieutenant-Colonel Anderson on "the arrival of the VIP flight from India on 30 April 2013" (Source: Interview with Sergeant Manganyi 10 April 2013). The Mission Board for 29-30 April 2013 lists the Jet Airways flight as "9W 9900 – A330-22 – VIP – Delegation Visit – Delhi-WK" (Source: Mission Board Air Force Base Waterkloof; Report by the Officer Commanding dated 10 May 2013).
- 2.1.32 Lieutenant-Colonel Anderson subsequently briefed the Officer Commanding Air Force Base Waterkloof, Brigadier-General T.S. Madumane, to the effect that "a VIP aircraft from India would be arriving on 30 April 2013 with Ministers on board" (Source: Report by the Officer Commanding dated 10 May 2013). Brigadier-General Madumane then instructed that the visitors must be accorded the requisite protocols as he would be on leave.
- 2.1.33 On 29 April 2013 the Air Force Command Post issued RSA04 Internal Clearance for the helicopters and fixed-wing aircraft (Source: RSA04 Internal Clearances RSA04/V/9405/ZS-HLM/30-Apr-2013 and RSA04/V/9401/B407/30-Apr-13).
- 2.1.34 On 29 April 2013 Jet Airways lodged a flight plan for flight JAI 9900 through the Civil Aviation Briefing Office at Indira Gandhi International Airport, New Delhi, at 14h33 UTC, 16h33 SAST. The flight plan was addressed to all air traffic control authorities that would handle the flight from departure to arrival at the base. Letters of Procedure were provided to the Beira (Mozambique), Johannesburg and Waterkloof Air Traffic Service Units (ATSU's) to coordinate the transfer of control of the aircraft amongst them (Source: ATNS Report 9 May 2013).
- 2.1.35 On 29 April 2013 the lounges at the base were decorated by an unvetted private company in preparation for the arrival of Flight JAI 9900.
- 2.1.36 On 29 April 2013 the SAPS Joint Operational Commander, Lieutenant-Colonel Du Plooy, activated the Event Safety and Security Planning Committee (ESSPC) and all relevant role players as the plan went operational in keeping with the Standard Operating Procedures (Source: Status Report: National Commissioner of SAPS 12 May 2013).

## 2.2 Arrival Phase

In the arrival phase the following procedures would normally take place:

*dtl*

- 2.2.1 Air Traffic and Navigations Service (ATNS) would manage the flight from its entry into South African airspace in terms of International Civil Aviation Organisation (ICAO) standards, South African Civil Aviation Authority Regulations and Technical Standards, as well as the requirements and procedures published in the South African Aeronautical Information Publication.
- 2.2.2 The receiving airport radar would manage the actual landing.
- 2.2.3 Health procedures would take place according to the prescripts of Port Health.
- 2.2.4 Customs procedures would take place according to the prescripts of the Customs and Excise Act of 1964 and the Diplomatic Privileges and Immunities Act of 2001. The latter Act quotes the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963, which confer inviolability on a Head of State, Foreign Minister and Ambassadors; and lesser immunities and privileges on a Special Envoy, albeit with a certain degree of inviolability.
- 2.2.5 Immigration procedures would take place according to the Immigration Act of 2002. In terms of the latter, the Act requires that civilians present themselves physically to the Immigration Officer for processing.
- 2.2.6 Firearms would be cleared in terms of the Firearms Control Act, Act 60 of 2000.
- 2.2.7 Convoy protection for VIPs would be provided upon request by SAPS in terms of the approved Operational Plan under the Safety at Sport and Recreational Events (SSAREA) Act, Act 2 of 2010.

The arrival phase unfolded as follows:

- 2.2.8 At 05h01 on 30 April 2013 Beira Area Control coordinated Jet Airways Flight JAI 9900 with Johannesburg Area Control. The aircraft transponder was switched on for the duration of the flight using code 0527. The aircraft was under primary and secondary radar surveillance from entry into South African airspace until landing at the base. At 06h00 Johannesburg Area Control established contact with Flight JAI 9900 and confirmed the destination. At 06h17 Johannesburg Area Control made routing alterations to the flight plan due to weather conditions. At 06h38 Flight JAI 9900 established radar contact with Johannesburg radar. At 06h29 Johannesburg radar descended the flight to 8 000 feet. At 06h38, Johannesburg radar informed the flight to expect vectors for a long final approach into Waterkloof. At 06h38 Johannesburg radar descended the flight to 7 000 feet. The flight informed Johannesburg radar that it did not have Waterkloof in sight



due to the cloud cover. Johannesburg radar instructed the flight to climb to 8 000 feet for repositioning. At 06h39 the flight requested vectors for Runway 01 at the base, and at 06h45 for a ten-mile final approach to Waterkloof. At 06h50 Johannesburg radar descended the flight to 7 000 feet. At 06h53 Flight JAI 9900 informed Johannesburg radar that it had the base in sight. At 06h54, Johannesburg radar transferred the flight to Waterkloof Air Traffic Control Tower, and the ATNS service terminated. Air traffic controllers did not notice anything unusual in terms of the behavior of the flight while in South African airspace. The handling of Flight JAI 9900 was in accordance with standard operating procedures at all times (Source: ATNS Report 9 May 2013).

- 2.2.9 Seven helicopters and two fixed-wing aircraft landed at the base between 05h00 and 06h00 on 30 April 2013 and were marshaled by the loadmasters (Source: Interview with Sergeants Mohlala and Manganyi 9 May 2013). One of the helicopters and one of the aircraft bore the Sahara company logo (Source: Interview with Deputy Director Jacobs 10 May 2013).
- 2.2.10 Seven members of the SAPS Border Police from Lanseria Airport deployed on the airside at the base to undertake security scanning and a firearms check as per normal practice. No suspicious persons were identified, and no firearms were declared by the arriving guests (Source: Warrant Officer Masilo of SAPS Border Police stationed at Lanseria Airport, 13 May 2013).
- 2.2.11 Flight JAI 9900 landed at the base between 06h50 and 07h00. The flight was marshaled by Sergeant Manganyi assisted by Sergeant Mohlala. The operating agent, BidAir, placed the stairs against the aircraft and positioned its loadmasters to receive the baggage (Source: Interviews with Sergeants Mohlala and Manganyi 9 May 2013).
- 2.2.12 Health procedures were conducted by Deputy Director Ockert Jacobs of Gauteng Port Health. Deputy Director Jacobs received the disinfectant canisters and requisite health certificate from the crew and gave permission to disembark the flight (Source: Interview with Deputy Director Jacobs 10 May 2013).
- 2.2.13 BidAir commenced with the baggage offload (Source: Interview with Sergeant Manganyi 9 May 2013).
- 2.2.14 Flight Sergeant Van Bentheim, responsible for security at the base, escorted the transit vehicles to the airside. The passengers started to disembark and were well behaved. The situation was, however, somewhat confused with some passengers walking to the lounges and others being ferried there by white Range Rovers. A reception had been arranged at the entrance to the lounges consisting of music and dancing. Inside the

*Handwritten signature*

lounges refreshments were served (Source: Interview with Flight Sergeant Van Bentheim 10 May 2013).

- 2.2.15 Colonel Visser was on duty to receive VIP's. Two red carpets were laid out at the entrances to the lounges. No VIP's were identified. He ended up greeting everybody who greeted him (Source: Interviews with Colonel Visser and Lieutenant-Colonel Mdluli 9 May 2013).
- 2.2.16 The National Immigration Branch of the Department of Home Affairs processed the passports of the incoming visitors. This was done at the immigration counters, with Lieutenant-Colonel Anderson and two members of the delegation bringing the passports to the Immigration Officers (Source: Interview with Colonel Visser 9 May 2013).
- 2.2.17 At 07h10 the Chief of State Protocol received a telephone call from an individual in the Indian High Commission informing him of the arrival of Flight JAI 9900. He diverted to the base and found in excess of 50 vehicles there to transport the guests. In the interview on 16 May 2013 Ambassador Koloane was no longer sure of the number of cars present, although he noted that there were no familiar VIP protectors in the cars. Some of these vehicles had already departed for Sun City upon his arrival. He was informed by Lieutenant-Colonel Anderson and three individuals from the Indian High Commission that the arrival and processing of the visitors had proceeded smoothly. No DIRCO protocol officers were present (Source: NICOC Report 1 May 2013; Interview with Ambassador V.B. Koloane on 16 May 2013).
- 2.2.18 Border Police were present at the base to perform their normal border security functions. They reported no illegal activity (SAPS Report 10 May 2013).
- 2.2.19 Port Health stood in for the Department of Agriculture, Forestry and Fisheries in terms of a standing arrangement between the two departments (Source: Interview with Deputy Director Jacobs 10 May 2013).
- 2.2.20 The baggage coming off the flight was scanned by the base security (Source: Interviews with Sergeant Manganyi, Flight Sergeant Van Bentheim and Deputy Director Jacobs 10 May 2013).
- 2.2.21 The helicopters, fixed-wing aircraft and vehicles left the base. The vehicles were divided into four convoys of 15 vehicles each, with one police vehicle to lead the convoy and one traffic vehicle at the rear. Members of the SAPS Flying Squad were present outside the base (Source: Interview with Flight Sergeant Van Bentheim 10 May 2013; SAPS Report 10 May 2013).
- std*

2.2.22 SAPS Gauteng deployed 31 cars and 62 members for route security; half the cars and members were allocated to the in and out trips. Gauteng Province developed a highway patrol matrix to guide the process. Extraordinary deployments were made that necessitated the utilisation of members who were not on duty. These additional deployments, which were not planned for, cost the department approximately R47 000. The Gauteng Province SAPS provided route security from ORTIA and Air Force Base Waterkloof up to the boundary with the North-West Province at the Brits Toll Plaza. The North-West Province Flying Squad consisting of five cars and six members was deployed from there to Sun City. A total of 26 security vehicles were deployed by the event organiser from ORTIA to Sun City for the convoy and guest transport. A total of 70 security vehicles were deployed by the event organiser from the air force base to Sun City (Source: SAPS Report 10 May 2013).

2.2.23 The convoys passed through the Brits Toll Plaza. At 14h08 and 14h11 on the same day two payments of R4 585-00 and R6 606-00 respectively were made into the First National Bank account of the Brits Mainline Plaza. (Source: Brits Mainline Plaza Toll Collection Work Log Sheets 42579596 and 42579611).

2.2.24 Tshwane Metro Police officials were involved in the convoy moonlighting as escorts. These Metro Police officials have now been placed on suspension by the Metro.

### **2.3 Post-Arrival Phase**

The following developments took place during the post-arrival phase:

2.3.1 As the convoy travelled to Sun City it was accompanied by public comment by way of phone-ins to radio stations and comment on social media networks. An analysis of the media coverage indicates that 55% of the reporting related to the matter was negative and 45% neutral or positive (Source: Media analysis by SSA 8 May 2013).

2.3.2 On 30 April 2013 the Government Communication and Information Systems (GCIS) coordinated a meeting of departmental communicators to manage the media environment (Source: NICOC Report 1 May 2013).

2.3.3 An extended meeting of the NICOC Principals was held from 16h00 to 21h00 on 1 May 2013 to discuss the matter and coordinate a response from the security cluster. The meeting was attended by NICOC, SSA, SAPS, Defence Intelligence, DIRCO, The Presidency, Home Affairs, Justice and Constitutional Development, SARS and GCIS.

*atd*

The meeting took the following decisions:

- (i) Directors-General should interact with their Ministers and advise against attendance at the wedding at Sun City.
- (ii) The National JOINTS should be convened at 21h00 to take control of the operation from the two provinces.
- (iii) The Provincial Joint Operational Committees (ProvJOCS) should be activated to action the decisions of the National JOINTS.
- (iv) SAPS should determine immediately whether the visiting "ministers" were receiving VIP protection or not, and corrective measures should be taken.
- (v) The aircraft at the base should be removed immediately.
- (vi) A port of entry should be identified for the departure of the visitors; that port should under no circumstances be Air Force Base Waterkloof.
- (vii) Home Affairs should immediately re-authenticate who had arrived and where they were staying, and ensure that this correlated with the eventual departure register.
- (viii) SARS should immediately travel to the venue to issue customs declaration forms.
- (ix) GCIS should arrange a government press conference on 3 May 2013 to address the matter, and all communication with the media should only take place through GCIS.
- (x) Directors-General should immediately brief their respective Ministers on the outcomes of the meeting (Source: NICOC Report 1 May 2013).

2.3.4 A meeting of JCPS Ministers took place on 2 May 2013. Ministers set up a team of Directors-General to investigate the incident. A framework media statement was drafted.

2.3.5 On 2 May 2013 the Jet Airways Airbus A330-200 was moved from the FAWK base to O.R. Tambo International Airport on the instructions of the Minister of Defence and Military Veterans. The transfer was done in accordance with normal procedure (Source: ACSA Report). The Civil Aviation Authority (CAA) imposed a fine of R80 000 on the airline for the flight not having had a Foreign Operators Permit (Source: CEO CAA 10 May 2013).

2.3.6 On 2 May 2013 the Director-General of DIRCO had a telephone discussion with the Indian High Commissioner, Mr V. Gupta. The High Commissioner stated that there were no Union (national) Ministers on the flight, but only state ministers. He added that the Gupta family had not asked him to assist with the arrangements for the visiting delegation (Source: DIRCO Report dated 2 May 2013).

*etc*

2.3.7 SAPS undertook a criminal investigation. On 3 May 2013 two Metro Police officials were arrested for using their official firearms during the escort and protection of the Gupta family wedding; it was determined that the registration plates of three of the vehicles used to escort the wedding party to Sun City were false; the private security company which protected the convoy on the way to Sun City was not registered with the Private Security Industry Regulatory Authority (PSIRA) as a service provider; and it was determined that the security officials at the wedding were using their own firearms. It was also determined that an individual working for a bogus company had invoiced Mr Tony Gupta for the sum of R512 000 for protection services. Criminal investigations are taking place in all of these cases (Source: SAPS Report 5 May 2013). The Gupta family indicated that they had made it clear that they were prepared to pay for all services rendered by the state, and repeated that they are still prepared to do so (Source: Response from the Gupta family lawyer Mr G. van der Merwe dated 14 May 2013).

2.3.8 On 3 May 2013 the Director-General of DIRCO called in the Indian High Commissioner to discuss circumstances and procedures followed regarding the landing. It was pointed out to the High Commissioner that a Note Verbale had not been presented prior to the landing consistent with diplomatic protocol. The Indian High Commissioner responded that the failure to present a Note Verbale had been a lapse and that the point made was a valid one (Source: DIRCO Report 3 May 2013).

## 2.4 Exit Phase

During the exit phase the following transpired:

2.4.1 Six check-in counters were set aside at ORTIA to process the visitors (Source: DHA Report 7 May 2013). Immigration procedures were complied with, except that the seven state ministers had left on a chartered flight to Cape Town and would leave on a commercial Emirates flight to return to India (Source: DIRCO Report 3 May 2013). It was also determined that one of the arriving visitors originally listed as crew had in fact not yet left South Africa (Source: DHA Departure and Reconciliation List 7 May 2013).

2.4.2 SARS reported that no customs transgressions, apart from the late declarations, had taken place (SARS Report 10 May 2013).

2.4.3 On 8 May 2013 it was determined that the diplomatic passport numbers of three of the arriving visitors differed from the passport numbers provided to the South African High Commission in New Delhi by Sahara Computers (Pty) Ltd (Source: Undated Sahara Computers letter to the South African High Commission New Delhi; DHA Departure and Reconciliation List attached to DHA e-mail dated 7 May 2013).

*atd*

### 3. CHAPTER 3: ANALYSIS

The analysis pertains to each of the four phases.


#### 3.1 Pre-Arrival Phase

The first interaction occurred in February 2013 between Tony Gupta, the Chief of State Protocol, Ambassador Koloane, Minister Ben Martins and the Acting CEO of ACSA. The conclusion of this meeting was that it was not possible for ACSA to accede to the request to allow the Gupta family and their wedding guests exclusive access to the arrivals area for the purposes of their welcoming ceremony. The hosting of the arrival ceremony would not be possible as the Gupta-charted Airbus would land during the peak arrival time of international inbound flights.

Shortly thereafter the Gupta family approached the Minister of Defence and Military Veterans and the Minister's Political Advisor. This direct approach and request for the use of a strategic entry point for a wedding was improper because this amounted to a request for untoward assistance. The refusal by the Minister based on the advice by officials was therefore correct, as she is not ordinarily involved in these approvals.

The subsequent interaction on 2 April 2013 between the Chief of State Protocol and the Political Advisor to the Minister of Defence and Military Veterans on the wedding of the Gupta family was again improper. During the interaction the Chief of State Protocol abused the name of the President of the Republic in an effort to exert pressure on the Political Advisor. This amounts to misrepresentation.

Between 2 and 4 April 2013, the approach transitioned from one characterised by the involvement of government officials in a family matter to an official diplomatic approach. This transition was effected by Mr Ashu Chawla, a fact confirmed by the Gupta family lawyer. This approach, which led to the abuse of the diplomatic channel, was a deliberate manipulation of the system to further wedding objectives couched as official business. The collusion between Chawla and an individual in the Indian High Commission to abuse the diplomatic channel to request flight clearance on 4 April 2013 is of concern, and improper in a number of respects. Firstly, the Indian High Commission failed to provide a Note Verbale to the Department of International Relations and Cooperation; this was a serious infringement of diplomatic protocol. The Indian High Commission admitted as much to the DG DIRCO in a subsequent interaction. Secondly, the request was one for "Diplomatic Overflight and Landing Clearance"; this amounts to a misrepresentation of the nature of the visit. Thirdly, the purpose of the flight was listed as "Delegation Visit"; this was again a misrepresentation of what was a wedding. It must be noted that the glossary of diplomatic terms found at [www.eDiplomat.com](http://www.eDiplomat.com) defines a delegation as "an



official party sent to an international conference or on some other special diplomatic mission". The United Nations Institute for Training and Research's 2005 "Glossary of Terms for Diplomats" defines a delegate as "a representative of a state or organisation who has been authorised to speak and act on its behalf and who has been duly accredited to a conference".

The occurrences of 9 April 2013 are the key to understanding the subsequent developments. They revealed a number of serious concerns. It cannot be coincidental that after this abuse of diplomatic channels, the Chief of State Protocol took it upon himself to facilitate an illegal request for landing. First, the Chief of State Protocol spoke directly to the Command Post; it was not normal practice for the Chief of State Protocol to interact directly with the Command Post to enquire as to progress with a specific clearance. Second, the Chief of State Protocol stated that there would be four to five Ministers on the flight; this was a misrepresentation of the facts, as the Ministers in question are State Ministers, the equivalent of Members of the Executive Council (MEC) in South Africa, not national Ministers which could have been accorded a different status. Third, the Chief of State Protocol mentioned the Minister of Transport, the Minister of Defence and Military Veterans, and the President in an effort to pressure the Command Post to issue the clearance; this was improper and inappropriate, and amounted to abuse of the political clout and office of members of the National Executive. Ambassador V.B. Koloane on 1 May 2013 and 16 May 2013 confirmed that neither the President nor officials in the Presidency whether junior or senior, Ministers and Directors-General in DIRCO and Defence and Military Veterans had instructed him to assist with the landing of the aircraft. He said that he did this because he is obliged to assist official and non-official visits involving Ministers of other countries. Fourth, the Chief of State Protocol stated that this was a unique case in an effort to justify a request with which the responsible official in the Command Post was clearly uncomfortable. Fifth, the Chief of State Protocol retorted that he could not put his sensitive motivation in writing, a clear indication that he was aware of the fact that the request was dubious. Sixth, the Chief of State Protocol indicated that he had interacted with Lieutenant-Colonel Anderson on the matter, and that she could provide clarification; this amounted to abuse of an official working relationship to advance the interests of private parties. Seventh, the Chief of State Protocol admitted that the request was for the "Gupta family wedding", an admission that the status of the visit was clearly not official, diplomatic or military, and that the incoming party was not a delegation in the official understanding of the term. Whilst under normal circumstances, both official and private visits by Ministers, VIPs and VVIPs are afforded protocol services, the numbers of accompanying parties in this instance was out of the ordinary, and therefore did not qualify for such treatment.

The instruction issued by the Chief of State Protocol to Mr William Matjila, Senior Foreign Affairs Assistant in his office at DIRCO, which the Ambassador confirmed in an interview on 16 May 2013, to assist with the clearance of the Indian delegation was the first ever telephone contact from the Chief of State Protocol to this official. The Senior Foreign Affairs Assistant requested

*dtb*

written confirmation for him to execute the instruction of Ambassador Koloane. Mr Matjila subsequently received an e-mail from Ms Marilyn Morris which indicated that Ambassador Koloane had telephonically approved the flight clearance request of the Indian delegation (Source: E-mail from Ms M. Morris to Mr W. Matjila dated 9 April 2013, 08h33). Mr Matjila confirmed in an interview on 13 May 2013 that no Note Verbale was received from the Indian High Commission.

It can be deduced from the opening exchange between Lieutenant-Colonel Anderson and the Command Post that the Lieutenant-Colonel had in the interim spoken with the Chief of State Protocol, because she questioned Sergeant-Major Ntshisi as to why he had rejected a request from the Chief of State Protocol. Ambassador Koloane confirmed the events as recorded. Lieutenant-Colonel Anderson also stated that "Number 1" was aware of this request; this again amounted to misrepresentation of the person of the President and his Office in the matter. The Director-General in The Presidency made it clear that no one in The Presidency ever gave an instruction in this regard. This included the Private Office of the President. Lieutenant-Colonel Anderson's statement cannot be a coincidence in light of the conversation between Sergeant-Major Ntshisi and Ambassador Koloane, which she was not privy to. This had an effect of bringing the person and the Office of the President into disrepute. Lieutenant-Colonel Anderson also undertook to follow up with the Chief of State Protocol to obtain the name of the Minister who would be on the flight; this was an attempt to satisfy the request by the Command Post. When questioned as to the fact that the base only receives flights carrying heads of state and ministers, the Lieutenant-Colonel obfuscated and stated that this would depend on the status of the visit; she then transferred ultimate authority for the decision to DIRCO; this amounts to disregard for official policy as to the use of the base.

The request from an individual in the Indian High Commission on 9 April 2013 to provide for the re-fuelling of the aircraft compounded confusion as to the exact status of the pending visit. The application described the visit as VVIP, which was a clear misrepresentation of the facts in the extreme.

There are a number of concerns with the content of the RSA05 External Clearance issued by the Air Force Command Post on 9 April 2013. The requestor was stipulated as an Indian delegation, despite this being a wedding party. The movements are classified as VIP, again a misrepresentation of the status of the incoming party. Despite the supposed VIP status, security was listed as not applicable. Lieutenant-Colonel S.J. van Zyl who signed the clearance, stated in his submission to the Investigating Team that parking and landing fees were waived as the flight was misrepresented to be official. The misrepresentation of this fact resulted in the base not levying the landing and parking fees, although we note attempts to reverse this through the re-levying of the landing and parking fees. The Standard Operating Procedures of the Air Force Command Post require that if these fees are waived, a reason must be stipulated on the

*std*

clearance, and the clearance should be forwarded to the Secretary of Defence to grant the waiver; this was not done. It must be noted, in addition, that the Officer Commanding Air Force Base Waterkloof does not have the authority to approve or deny clearances for landings; this authority belongs solely to the Air Force Command Post.

One of the conditions for the issuing of the flight clearance was obtaining a Foreign Operators Permit (FOP) from the Department of Transport (DoT).

The absence of SARS at the base when the flight arrived has emerged as a concern. SARS was listed as a recipient of the fax sent by the base on 23 April 2013 to departments to notify them of the arrival of the flight. It has subsequently emerged that the SARS recipient of the fax was using a private fax to e-mail number to receive official communication of this nature, and had in fact left SARS a year prior to this incident. His details had, however, not been removed from the Air Force systems. This may go some way to explaining SARS's absence, as well as statements by personnel at the base that they had experienced difficulty in ensuring SARS's presence in recent months. Upon investigation it was determined that this official had continued to receive faxes about incoming international VVIP and VIP flights during the year since he had departed from SARS. This represented a major risk and could have potentially had far-reaching consequences for the security of incoming and outgoing flights.

An individual in the Indian High Commission requested the Chief of State Protocol on 24 April 2013 to facilitate arrangements for the reception at the base. This amounts to the use of a senior government official to arrange a wedding reception at a strategic entry point and was a major security violation. How this was done without raising alarm raises concern around the vigilance of officers at the base, particularly since the company involved was not vetted.

It is noteworthy that contrary to the statement by the Chief of State Protocol that he attended a meeting at the base on 24 April 2013 with Lieutenant-Colonel Anderson and a member of the Indian High Commission, Lieutenant-Colonel Anderson denies that the meeting took place at all. Clearly, someone is not telling the truth.

On 25 April 2013, an individual in the Indian High Commission applied for clearances for helicopters and fixed-wing aircraft as a continuation of a legend of an official delegation, when all and sundry knew by this point that it was a wedding. The officer responsible approved the landing as this was part of the so-called diplomatic package. This had the potential of compromising national security.

It must be noted that Lieutenant-Colonel S.J. van Zyl, who signed the clearances, stated that this approval was granted because the RSA04 and RSA05 clearances were regarded as a single package and hence approved as one. It was also noteworthy that Lieutenant-Colonel van

*[Handwritten signature]*

Zyl only started working in the Air Force Command Post at the end of February 2013 and was dependent on the advice of junior officers.

Regarding planning by the SAPS, it must be noted that in terms of the Safety at Sports and Recreational Events Act (SSAREA), Act 2 of 2010, the SAPS was obliged to plan for, and secure the wedding as foreign and local Ministers were attending the wedding. The failure to communicate by the two SAPS provinces is cause for serious concern, and was made worse by their non-observance of established protocol in seeking the approval of the National Commissioner. The Gauteng SAPS explanation that they were dependent on the North-West Bojanala plan is disingenuous, as they failed to obtain a copy of the plan they were supposedly dependent on.

### 3.2 Arrival Phase

A number of issues arose during the arrival phase.

The manner in which the aircraft was managed upon entering South African airspace until it landed at the base was in full compliance with all procedures mandated by ATNS in keeping with international conventions, procedures and protocols.

Concerning the supposed late arrival at the base by the Chief of State Protocol, and his subsequent statement to Lieutenant-Colonel Anderson that he had forgotten the date of arrival, Lieutenant-Colonel S.J. van Zyl from the Air Force Command Post stated in his submission that the Command Post informed Ambassador Koloane of the estimated arrival time by e-mail.

It is noteworthy, that during the arrival and welcoming at the lounges, no VIP's were identified or brought to the attention of the officials present to perform this function. This was in contrast to the listing of the flight on the Mission Board as a VIP flight. After the landing of Flight JAI 9900, Colonel Visser noted in the interview with him that he, Colonel Fredrikson and Lieutenant-Colonel Anderson had "agreed that the flight should never have landed there". It is ironic that Lieutenant-Colonel Anderson could agree with the observation of Colonel Visser in light of the fact that she was party from inception to the planning of this visit. Colonel Visser also noted that no celebrations had ever taken place upon the arrival of a foreign flight at the base in his recollection.

The Immigration Act requires that civilians entering the country present themselves physically with their passports to the immigration officials. This was not done, as Lieutenant-Colonel Anderson and the "Indian delegation" facilitated the processing of the passports as a batch in the absence of the visitors. These people were therefore accorded, in keeping with the legend, the diplomatic privilege of having their passports processed in their absence in addition to the use of the two red carpets and officials to welcome them.

*std*

The failure to conduct customs formalities arising from the absence of the SARS at the base was an infringement of the Customs and Excise Act of 1964.

### 3.3 Post-Arrival Phase

Despite the requirement that the flight be issued with a Foreign Operators Permit prior to arrival, this was not done in the case of Flight JAI 9900. It was confirmed by the Department of Transport that no application was brought by the operator for the FOP. The absence of an FOP on arrival resulted in SACAA levying a fine of R80 000 on the airline. This represents an infringement of civil aviation regulations and a condition of the flight clearance

A range of concerns arise from the involvement of the SAPS and a private security company in transporting the visitors to and from Sun City. The predisposition of the SAPS officers involved in the operation left much to be desired. There was no attempt to determine the identities of the individuals providing route protection and escort; there was also no attempt to verify the vehicle licence plates or their use of blue lights. It is clear from subsequent arrests that members of the SAPS and Metro Police were moonlighting during this operation. The use of official firearms during the operation is an infringement of the Firearms Control Act. The use of false vehicle number plates was an infringement of the Road Traffic Act. The use of an unregistered private security company was an infringement of the Private Security Industry Regulatory Authority Act (PSIRA). The use of fitted blue and red lights in private security vehicles was also illegal, especially in the context of the existence of the so-called "Blue Light Gang". In addition, Major-General Taioe of SAPS found two BMW's fitted with blue lights. He also found three VW Golf GTI's and one Isuzu Bakkie which were fitted with blue lights. These belong to a civilian who as such is not entitled to have his vehicles fitted with blue lights. Furthermore, this individual was the subject of various criminal investigations that were subsequently dropped. The charges that had been proffered included two cases of impersonating a police officer and one of fraud.

The investigations conducted by the SAPS into the above matters indicate irregular invoicing of the event organiser using the name of a company that does not exist. It can be surmised that this could have taken place to take certain business transactions off the company's books and evade tax obligations, a common trait in organised crime.

The investigation reveals a number of discrepancies with the diplomatic passport numbers for certain of the visitors that were submitted by Sahara to the South African High Commission in New Delhi, and the actual passports used by these individuals. This matter is under investigation. Further, it has been determined that one of the visitors listed as crew did not leave the Republic with the rest of the visiting group, but is still in the country. This too is the subject of an investigation. Both are extremely irregular and leave much to be desired in the context of national security.

*std*

The reference to an invitation from the Free State Provincial Government was opaque, as no member of this party travelled to the Free State for any such meeting. However, an Indian State Minister was received by the Free State MEC for Agriculture three days prior to the arrival of the Gupta wedding party; this Indian Minister therefore arrived and departed from South Africa completely separate from the Gupta wedding party, despite attending the wedding at Sun City.

The Indian High Commission then stated that the seven Ministers visited Cape Town prior to departing from the Republic on an Emirates flight from there. This raises a question as to compliance with the visa conditions and adherence to the provisions of the Immigration Act. This matter is work in progress.

### 3.4 Exit Phase

During the exit phase, procedures that would normally apply, and those instructed by the extended NICOC Principals Meeting of 1 May 2013, were partially complied with. Not all those who arrived with the flight departed on the outgoing flight; and SARS had not acted against the pilot for failing to comply within three hours of landing with the requirement that he inform SARS of the same in line with Section 7(1A) of the Customs and Excise Act of 1964. Jet Airways must be familiar with these conditions as they operated in South Africa until 2012.

## 4. CHAPTER 4: FINDINGS

The findings of the Investigating Team are the following:

- 4.1 In February 2013 the Gupta family approached the Airports Company South Africa and requested landing rights and an elaborate reception for the wedding party. This would have disrupted the functioning of O.R. Tambo International Airport at the time of landing, particularly the operations of the National Immigration Branch at the airport. As a result, this was turned down. In March 2013 the Minister of Defence and Military Veterans and her advisor were approached by the Gupta family on different occasions. On 3 April 2013 this request was also turned down. The Gupta family then resorted to the use of the diplomatic channel with the support of an individual in the Indian High Commission who re-designated the wedding entourage as an official delegation to enable them to use the Air Force Base Waterkloof under the cover of diplomatic privilege. It is an undisputed fact that there was no official Note Verbale from the Indian High Commission to the Department of International Relations and Cooperation, and therefore due process was not followed. An individual in the Indian High Commission communicated directly with individuals at the Air Force Command Post. The collusion of officials resulted in the irregular approval of the flight clearance.

*ltd*

- 4.2 Members of the National Executive were not required to issue any instructions, did not issue any instructions, and did not create the impression that they ought to have issued any instructions. This is evident in information at our disposal.
- 4.3 The aircraft in question was cleared for landing and the correct clearance procedures were followed, but based on false pretences as a result of the manipulation of the process by the Gupta family, individuals in the Indian High Commission, Chief of State Protocol Ambassador V.B. Koloane, and Officer Commanding Movement Control at the base, Lieutenant-Colonel C. Anderson, who shared a common purpose and acted in concert. This had the potential of damaging the good diplomatic and deep historical relations South Africa enjoys with India on the bilateral, multilateral, international and BRICS levels.
- 4.4 There are seven functions of the Air Force Base Waterkloof. They are operations; training flights; VVIP flights; foreign heads of state, envoys and dignitaries; registered military aircraft; diversion airfield for commercial aircraft; and conducting air shows.
- 4.5 As a result of the nature of these functions, the Air Force Base Waterkloof handles both civilian and military aircraft. This notwithstanding, the landing of the flight was a direct result of manipulation of processes and was undesirable.
- 4.6 The Air Force Base Waterkloof is a strategic military base that resorts under the Defence Act, Act 44 of 1957. The Air Force Base Waterkloof is not a National Key Point and is not governed by the National Key Points Act, Act 102 of 1980, which is managed by the SAPS. This being a strategic military base, which also serves as an entry point into South Africa, it has even more stringent security measures.
- 4.7 The landing of Flight JAI 9900 following the exercise of undue influence had the potential to compromise the credibility of the Government of the Republic, and could have caused severe reputational damage to the state itself. The exercise of this undue influence undermined good governance, legislative stipulations, regulations, departmental protocols and standard operating procedures.
- 4.8 The activities of Ambassador Koloane and Lieutenant-Colonel Anderson were a serious dereliction of duty in that they were advancing the objectives of this project to the detriment of their official responsibilities. Their activities also indicate the bringing to bear of undue influence on state officials, systems, equipment and infrastructure. This influence happened despite the denial of the exercise of undue influence by the legal representative of the Gupta family. The roles of the two individuals had a similar effect in

*std*

that due to their seniority and knowledge of departmental systems and processes in their respective areas, they both grossly abused and undermined these processes.

- 4.9 All requirements in terms of health clearances, baggage scanning and a firearms check were complied with.
- 4.10 The use of private security vehicles to ferry disembarking passengers from the aircraft to the lounges was a security breach.
- 4.11 The use of red carpets to welcome the arriving guests was not in line with protocol prescriptions, which require that these are used to welcome visiting Heads of State and/or Government, the Minister of Defence and other senior diplomatic visitors only.
- 4.12 Further to the above deviations, there were two additional deviations from normal DIRCO processes in this instance: there was no review and/or recommendation from the Political Desk in DIRCO on this particular request; and the interdepartmental coordination process that normally ensues did not take place. In its stead the Chief of State Protocol facilitated a visit for the Indian High Commission and the service provider to the base.
- 4.13 The Chief of State Protocol was assisted by Lieutenant-Colonel Christine Anderson, Officer Commanding Movement Control at Air Force Base Waterkloof. By calling Sergeant-Major Ntshisi at the Air Force Command Post on 9 April 2013, she inverted command and control and unduly influenced the processing of the clearance. She is in a Level 4 post that gets instructions from Level 3. She abused her rank on Sergeant-Major Ntshisi when she said he could go ahead with issuing the clearance. She was just supposed to await the decision of the Air Force Command Post on that application.
- 4.14 In light of the challenges faced during the landing, including poor visibility as a result of cloud cover, as well as the fact that landing guidance systems on the runway are being reconfigured, the situation held potentially catastrophic consequences had there been an unforeseen incident or accident involving the wedding party.
- 4.15 The activities of some of the persons involved were driven by the undesirable practice of the exercise of undue influence, and abuse of higher office. These activities posed a threat to the culture of professionalism that ought to characterise a caring and professional public service rooted in the Batho Pele principle. The incident is antithetical to the notion of a capable state and the requirement that it be served by professional public servants with foresight to understand the implications of their conduct for the reputation of the state.

*ltd*

- 4.16 While the flight was in South African airspace, all procedures, protocols and instructions from air traffic control were complied with. The dramatised reports in the media, including social media, about the flight taking a tour over South African cities and disrupting air traffic are therefore unfounded.
- 4.17 The police, in terms of SSAREA, having initially refused to police the wedding as a private matter, were within their rights to treat the matter as requiring police involvement. However, the lack of involvement of other departments deprived them of information and better insight into this wedding. Consequently, the SAPS in the North-West Province developed a plan for the protection of the event, although there is concern at their failure to report to the National Commissioner, who would have activated the National Joint Operations and Intelligence Structure (NatJOINTS) if deemed necessary, in keeping with established protocols. This could have provided another opportunity for the relevant role players to review the nature of the event and policing plans.
- 4.18 The involvement of law enforcement agencies under the auspices and leadership of the South African Police Services, in providing convoy protection services was authorised, but involved officers who were moonlighting contrary to regulations. The officials from the Metro Police who carried their firearms irregularly to protect the event are only authorised to bear their firearms within their respective Metro jurisdictions. Their use in this instance was a violation of regulations. Some of them also drove vehicles that were fitted illegally with blue lights.
- 4.19 In the interest of the safety of all road users and taking into account that 121 vehicles were deployed by the event organiser, it was necessary that law enforcement officers take charge of the convoy to Sun City. However, due to the lack of vigilance of the SAPS members deployed for escort duty, who did not identify the drivers as non-SAPS members, they placed reliance on those drivers. This made it possible for the cars fitted with illegal blue-lights to push people off the road, cause delays and inconvenience other road users. The public outcry that followed was therefore justified.
- 4.20 The following transgressions of the law took place, amongst others:
- 4.20.1 SAPS Act, Act 68 of 1995: Contravening of Section 67(2)(a): Conspiring or inducing or attempting to induce a member not to perform duty or act in conflict with his duty; and Section 68: Falsely pretending to be a police officer.
- 4.20.2 Road Traffic Act, Act 93 of 1996: Section 89(3) and Section 68(1) and (2): Use of false registration.
- add*

- 4.20.3 Companies Act, Act 71 of 2008: Section 214(1)(b): Person with a fraudulent purpose knowingly provided false or misleading information in any circumstances under this Act; and Section 214(1)(c): Knowingly a party to an act of omission by a company calculated to defraud a creditor or employee of the company, or a holder of the company securities, or with another fraudulent purpose.
- 4.20.4 Firearms Control Act, Act 60 of 2000: Section 120(1)(a): Failure to apply for renewal of a licence/permit/certificate authorisation before end of period determined by the Minister.
- 4.20.5 Common Law Crimes: Fraud, falsely pretending or misrepresenting the existence of a company.
- 4.20.6 Private Security Industry Regulatory Authority Act, Act 56 of 2001: Section 20(1): Conducting of security service contrary to the Act.
- 4.21 The following cases have been registered:
- 4.21.1 Sun City CAS 16/05/2013: Contravention of the Firearms Control Act.
- 4.21.2 Sun City CAS 18/05/2013: Contravention of the National Road Traffic Act.
- 4.21.3 Sun City CAS 19/05/2013: Contravention of the PSIRA Act.
- 4.21.4 Sun City CAS 20/05/2013: Contravention of the PSIRA Act.
- 4.21.5 Lyttelton CAS 71/05/2013: Contravention of the South African Police Act.
- 4.22 It is now confirmed that all helicopters used in the operation were organised and funded by the Gupta family, and were neither SAPS nor SANDF helicopters. All of the black BMW's used in the convoys were hired from a private company.
- 4.23 Overall, the total deployment of government personnel during the operation was 194 persons and 88 vehicles. 296 private security officers were deployed at the expense of the event organiser. The organisers also deployed two fixed-wing aircraft and seven helicopters to ferry their guests from the base to Sun City. This was authorised as a package linked to the already-issued clearance for Flight JAI 9900.

*ddd*

- 4.24 It is commendable, notwithstanding the manipulation by a few, that public servants in affected government departments and structures raised concerns without fear, favour or prejudice, some of them repeatedly, as to what was transpiring. However, their concerns were neither addressed, nor acted upon by those in positions of authority over them bent on manipulating the system.
- 4.25 Overall, the system for the management of foreign visits and the requisite permits, policies and procedures are in place and functioning. That is why flights arrive and depart on a daily basis without incident. The breach in this instance was a consequence of manipulation by the responsible persons, who contemptuously manipulated the system to advance the wedding objectives at all costs.
- 4.26 SANRAL and SAPS reports reveal gross violations of the Road Traffic Act in that a number of the Range Rovers used shared the same registration numbers; three black BMW's had false registration plates; and two Mercedes Benz shared registration numbers. These and other criminal activities uncovered in this investigation are a manifestation of a deep-seated organised crime culture waiting to be unleashed on the country.

## 5. CHAPTER 5: RECOMMENDATIONS

The Investigating Team provides the following recommendations for consideration:

- 5.1. All affected departments and entities must complete their investigations into this matter as soon as possible to ensure that justice is seen to be done, and the required disciplinary measures are fully implemented where deemed necessary. Criminal cases involving public officials or private persons must, as a matter of priority, be pursued to their logical conclusion.
- 5.2 To avoid any overlap of mandates and confusion over the management, command and control of bases including Air Force Base Waterkloof, it is not desirable to declare these National Key Points, as it would subject them to the control of the SAPS. These are military installations that must continue to resort under the Defence Act and serve the existing seven functions listed in paragraph 4.1.4 above.
- 5.3 Government, led by the Department of Public Service and Administration, should develop and implement a public service awareness campaign to discourage the negative culture of name dropping in the form of improper use of names of the National Executive

in the public sector. In addition, the definition of acts of misconduct should be amended across government to include name dropping as gross misconduct.

## 6. CHAPTER 6: CONCLUSION

In conclusion, the landing of flight JAI 9900 at Air Force Base Waterkloof has brought to the fore serious issues that need immediate attention. These include the identified culture of undue influence, underpinned by poor ethical conduct and a lack of professionalism described in this report.

We believe that the unified public voice which condemned the incident, together with decisive government action, serves as a useful basis for the development of a partnership between our people and their government in the fight to combat crime and corruption in our country.

Notwithstanding the negative findings, the work of the Investigating Team has brought to light the many public servants who conscientiously and faithfully perform their duties and daily tasks, and whose work is a credit to the country that they serve.



end