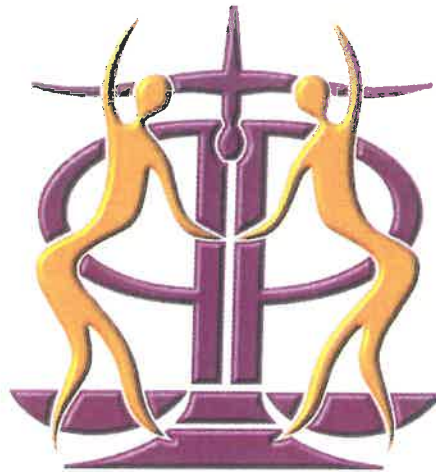

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF
THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE
EXECUTIVE ETHICS CODE THROUGH AN IMPROPER RELATIONSHIP BETWEEN THE
PRESIDENT AND AFRICAN GLOBAL OPERATIONS (AGO), FORMERLY KNOWN AS
BOSASA**

INDEX

Executive Summary	4
1. INTRODUCTION	19
2. THE COMPLAINT	20
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR	21
4. THE INVESTIGATION	26
5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS	39
6. OBSERVATIONS	98
7. FINDINGS	100
8. REMEDIAL ACTION	103
9. MONITORING	104

"One of the crucial elements of our constitutional vision is to make a decisive break from the unchecked abuse of State power and resources that was virtually institutionalised during the apartheid era. To achieve this goal, we adopted accountability, the rule of law and the supremacy of the Constitution as values of our constitutional democracy. For this reason, public office-bearers ignore their constitutional obligations at their peril. This is so because constitutionalism, accountability and the rule of law constitute the sharp and mighty sword that stands ready to chop the ugly head of impunity off its stiffened neck.

It is against this backdrop that the following remarks must be understood: "Certain values in the Constitution have been designated as foundational to our democracy. This in turn means that as pillar-stones of this democracy, they must be observed scrupulously. If these values are not observed and their precepts not carried out conscientiously, we have a recipe for a constitutional crisis of great magnitude. In a State predicated on a desire to maintain the rule of law, it is imperative that one and all should be driven by a moral obligation to ensure the continued survival of our democracy." And the role of these foundational values in helping to strengthen and sustain our constitutional democracy sits at the heart of this application."

Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11

Executive Summary

- (i) This is my report 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.
- (ii) The report communicates my findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution following an investigation into allegations of a violation of the Executive Ethics Code through an improper relationship between the President of the Republic of South Africa, His Excellency, Mr Cyril Ramaphosa (President Ramaphosa) and African Global Operations, formerly known as Bosasa.
- (iii) The first complaint was lodged on 23 November 2018 in terms of Section 4(1)(a) of the Executive Members Ethics Act, 82 of 1998 (EMEA), by Mr Mmusi Maimane, MP (Mr Maimane), leader of the Democratic Alliance (DA) alleging a violation of the Executive Ethics Code by President Ramaphosa.
- (iv) This was followed by a similar complaint lodged by Mr Floyd Shivambu, MP, the EFF Deputy President and Chief Whip (Mr Shivambu) on 26 January 2019. I then decided to consolidate the two complaints into one investigation for administrative purposes.
- (v) Mr Maimane made the following allegations:
 - a) That on 18 October 2017, an amount of R500 000 was paid into the account of "EFG2". The money was paid from a personal account of Gavin Watson, the CEO of Africa Global Operations (formerly known as Bosasa) into the account of Miotto Trading, a company closely associated with Bosasa. From there it was paid to the account "EFG2" said to be a trust foundation account of the son of President Ramaphosa's son, Mr. Andile Ramaphosa.

- b) That on 06 November 2018 during a question session in Parliament, the President violated the Executive Ethics Code by deliberately misleading the National Assembly in his reply to Mr Maimane's question.
- c) In this regard Mr Maimane posed a question to the President as follows: *"Mr President here I hold proof of payment that was transferred to a trust account called EFGR ON 18 October 2017. This was allegedly put for your son, Andile Ramaphosa. [Interjections.] Following on that, I have a sworn affidavit from Mr Peet Venter, stating that he was asked by the chief executive officer of Bosasa to make this transfer for Andile Ramaphosa. Mr President we can't have family members benefiting. [Interjections.] I would like to ask you, right away today, that you bring our nation into confidence and please set the record straight on this matter. Thank you very much. [Applause.]"*
- d) That the President responded to the question as follows: *"Speaker and the hon Maimane, this matter was brought to my attention. It was brought to my attention some time ago. I proceeded to ask my son what this was all about. He runs a financial consultancy business, and he consults for a number of companies, and one of those companies is Bosasa... [Interjections.]... where he provides services on entrepreneurship, particularly on the procurement process. He advises both local and international companies. Regarding this payment, I can assure you, Mr Maimane that I asked him at close range whether this was money obtained illegally, unlawfully- and he said this was a service that was provided. To this end, he actually even showed me a contract that he signed with Bosasa. [Interjections] The contract also deals with issues of integrity, issues of anticorruption, and all that."*

The SPEAKER: *"Order: Order, hon members! Let's listen to the President's answer. [Interjections.]"*

- e) The PRESIDENT OF THE REPUBLIC: *"On this one, I have made sure that I get as much information as I can".*

An HON MEMBER: *Really?*

THE PRESIDENT OF THE REPUBLIC: *"He is running a clear and honest business as an advisory service, as he has been trained as a consultant with his business science qualifications. I have had no idea or inkling whatsoever at what he has informed me, that this money was obtained illegally. If it turns out – Mr Maimane I can assure if it turns out that there is any illegality and corruption in the way that he has dealt with this matter, I will be the first, the absolute first, to make sure that he becomes accountable... [Interjections] ... even if it means ... [Applause] ...I can assure you, even if it means that I am the one to take him to the police station. That I will be able to do. [Interjections]"*

- f) That subsequently, on 16 November 2018, President Ramaphosa sent a letter to the Speaker of the National Assembly purporting to "correct" the answer he gave in the National Assembly ten days earlier. In this letter President Ramaphosa reveals that the payment was actually a donation toward his campaign to be elected ANC President in December 2017.
- g) Mr Maimane in his letter attached below, further stated that it is his concern that the set of facts reveal that there is possibly an improper relationship existing between President Ramaphosa and his family on the one side, and the company, African Global Operations on the other side. The nature of the payment, passing through several intermediaries, does not accord with a straightforward donation and raises the suspicion of money laundering. The alleged donor is further widely reported to have received billions of Rands in state tenders, often in irregular fashion.



PARLIAMENT
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23 November 2018

Office of the Public Protector
Adv. Busisiwe Mkhwebane
175 Lunnnon Street
Hillcrest Office Park
PRETORIA
0083

Electronic message to: registration2@pprotect.org

Dear Madam,

**IN RE: COMPLAINT: RELATIONSHIP OF THE PRESIDENT WITH AFRICAN GLOBAL OPERATIONS,
FORMERLY KNOWN AS BOSASA.**

With reference to the above-mentioned matter.

I attach hereto for your convenience the following documents, marked Annexures "A" to "D";

Together, these documents reveal the followings set of facts:

1. On 18 October 2017, an amount of R 500 000 was paid into the account "EFG2". The proof of payment is attached and marked ANNEXURE "A".
2. The money was paid from the personal account of Gavin Watson, CEO of Africa Global Operations (formerly known as Bosasa) into the account of Miotto Trading, a company closely associated with Bosasa. From there it was paid to the account "EFG2", said to be a "trust or foundation" of the son of President Cyril Ramaphosa's son, Andile Ramaphosa.

In this regard, I will refer your attention to a sworn statement by one Peet Venter, attached hereto as ANNEXURE "B", which corroborates this set of facts.

3. On 6 November 2018, during a question session in the National Assembly, I presented President Ramaphosa with the documentary proof of the payment and the sworn statement that alleges the money was intended for his son Andile. The President confirmed that he was aware of the payment but had been satisfied that it was a lawful payment for services

rendered by a consultancy firm owned or operated by Andile Ramaphosa. Kindly see the attached extract from the Hansard of 6 November 2018, marked ANNEXURE "C".

4. Subsequently, and on or about 16 November 2018, the President sent a letter to the Speaker of the National Assembly purporting to "correct" the answer he gave in the National Assembly ten days earlier. A copy of this letter is attached as ANNEXURE "D". In this letter of correction, the President reveals that the payment was actually a donation toward his campaign to be elected ANC President in December 2017.

It is my concern that the set of facts related above reveal that there is possibly an improper relationship existing between the President and his family on the one side, and the company African Global Operations (formerly Bosasa) on the other side. The nature of the payment, passing through several intermediaries, does not accord with a straightforward donation and raises the suspicion of money laundering. The alleged donor is further widely reported to have received billions of Rands in state tenders, often in irregular fashion.

It is further my concern that the President may have lied to the National Assembly in his reply to my question on 6 November 2018.

I request that you investigate this with the utmost urgency. The reported capture of the state by members of the Gupta family and their associates and connected companies over the past few years have wrought enough damage on the economy of South Africa. We cannot allow another President to be thus captured and the true facts of this matter therefore needs to be established with all due haste.

I trust that you will find the above in order and look forward to your soonest reply.

Yours sincerely,



MUMSI MAIMANE
LEADER OF THE OFFICIAL OPPOSITION

- (vi) However, not long after receipt of Mr Maimane's letter, my office received another similar complaint lodged by Mr Floyd Shivambu, MP, the EFF Deputy President and Chief Whip (Mr Shivambu) on 26 January 2019, (copy of his complaint is attached below), as well as an anonymous complaint from a

whistle-blower on 28 January 2019, who is not a Member of Parliament and therefore precluded from lodging a complaint in terms of EMEA. I then decided to consolidate the two (2) complaints into one investigation for administrative purposes. Mr Shivambu *inter alia* alleged:

- a) That during President Ramaphosa's appearance in the National Assembly on 06 November 2018, President Ramaphosa said his son's company has a contract with African Global Operations for the provision of consultancy services, which deals with issues of integrity, anti-corruption and there was nothing untoward; and
 - b) In that regard, Mr Shivambu also requested my office to investigate whether the above statement by the President stating that he saw the contract between his son's company and African Global Operations is true, and that a contract does exist.
- (vii) Mr Shivambu stated that *"during President Ramaphosa's appearance in the NA when he was answering questions on 6th November 2018, responding to a follow-up question from the leader of the Opposition with reference to a payment of R500 000 from Mr Gavin Watson, the CEO of African Global Operations (formerly Bosasa), President Ramaphosa misled the NA."*
- (viii) President Ramaphosa said his son's company has a contract with African Global Operations for the provision of consultancy services. President Ramaphosa went on to explicitly state that he saw the contract that his son has signed with African Global Operations and the contract also *"deals with issues of integrity, anti-corruption and there was nothing untoward"*.



A7

Office of the Chief Whip

EFF Parliamentary Caucus
Office 1442 2nd Floor, Marks Building, Parliament of South Africa, Cape Town 8000
Tel: +2721 463 9268 • Email: ffmef@pprotect.org • Copy: ffmef@pprotect.org

25 January 2019

Advocate B Mkhwebane
The Public Protector
Public Protector South Africa

By E-mail: apbbramk@pprotect.org
BettyN@pprotect.org

Dear Public Protector,

REQUEST FOR INVESTIGATION INTO PRESIDENT MATAMELA CYRIL RAMAPHOSA

The Economic Freedom Fighters (EFF) writes to request the Public Protector, in terms of Section 4 (1) of the Executive Ethics Act No. 28 of 1998 – which empowers me as a member of the National Assembly (NA) to lodge a complaint directly with you – to lodge a complaint of breach of executive ethics by the President of the Republic, Mr Matamela Cyril Ramaphosa.

During his appearance in the NA when he was answering questions on the 6th November 2018, responding to a follow up question from the Leader of Opposition with reference to a payment of R500 000 from Mr. Gavin Watson, the CEO of African Global Operations (formerly Bosasa), President Ramaphosa misled the NA.

President Ramaphosa said his son's company has contract with African Global Operations for the provision of consultancy services. He went on to explicitly state that he saw the contract that his son signed with Bosasa and the contract also "deals with issues of integrity, anti-corruption and there was nothing untoward."

 Microsoft Word
  Google Docs
  Apple Pages
  LibreOffice Writer

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Section 3(1) and 4(1)(a) of Executive Members' Ethics Act, 1998 provide that the Public Protector must investigate any alleged violation of the Executive Ethics Code by a Cabinet member on receipt of a complaint by a Member of the NA.

I therefore lodge a formal complaint for the Public Protector to investigate:

1. whether the statement made by President Ramaphosa in the NA on the 6th November 2018 that he saw a contract between his son's company and African Global Operations is true, and that a contract indeed does exist.
2. whether President Ramaphosa deliberately misled Parliament in violation of the Executive Ethics Code.

I kindly request that you consider the matter with the urgency and sensitivity it requires.

Regards,



N F Shivambu, MP
EFF Deputy President and Chief Whip

-
- (viii) Based on the analysis of the two (2) complaints lodged by Messrs Maimane and Shivambu (the Complainants), and having taken into account the fact that President Ramaphosa was then the Deputy President and thus a member of the National Assembly, the following issues have been identified to inform the focus of my investigation:
- (a) Whether on 06 November 2018, during question session in Parliament, President Ramaphosa deliberately misled the National Assembly and thereby acted in violation of the provisions of the Executive Ethics Code and the Code of Ethical Conduct and Disclosure of Members' Interests for the National Assembly and Permanent Council Members.
 - (b) Whether President Ramaphosa improperly and in violation of the provisions of the Executive Ethics Code and Disclosure of Members' Interests for the National Assembly and Permanent Council Members exposed himself to any situation involving the risk of a conflict between his official duties and his private interest or used his position to enrich himself and his son through businesses owned by African Global Operations.
 - (c) Whether there is an improper relationship between President Ramaphosa and his family on the one side, and the company African Global Operations on the other side due to the nature of the R500 000,00 payment passing through several intermediaries, instead of a straightforward donation to the CR17 campaign thus raising the suspicion of money laundering.
- (ix) The investigation was conducted by way of correspondence and interviews, an analysis of relevant documentation as well as the consideration and application of relevant laws, related prescripts and case law.
- (x) Key laws and policies taken into account to determine if there was any impropriety in the conduct of President Ramaphosa as alleged in the complaint, were the following:

- (a) Section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution) which bestows upon the Public Protector, the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action. Section 6(4) of the Public Protector Act, 1994, which regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level.
- (b) Sections 3 and 4 of the Executive Members' Ethics Act, 1998 which provides *inter alia* that *"the Public Protector must investigate any 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"*.
- (c) Section 12 of the Prevention and Combating of Corrupt Activities Act, (PACCA), 12 of 2004 which provides as follows:
- (1) *"Any person who, directly or indirectly-*
 - (a) *Accepts or agrees or offers to accept any gratification from any person whether for the benefit of himself or herself or for the benefit of that other person or of another person; or*
 - (b) *Gives or agrees or offers to give to any person any gratification whether for the benefit of that other person or for the benefit of another person*
 - (a) *In order to improperly influence in any way-*
 - (aa) *The promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or*
 - (bb) *The fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or*
 - (ii) *as a reward for acting as contemplated in paragraph (a) is guilty of an offence."*

(xi) In addition, the following case law was used for the purpose of this investigation: -

- (a) *Public Protector v Mail and Guardian Ltd (422/10) (2011) ZASCA 108 (1 June 2011)*;
- (b) *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others*¹,
- (c) *President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017)*; and
- (d) *Minister of Home Affairs v The Public Protector of South Africa (308/217) [2018] ZASCA 15 (15 March 2018)*.

(xii) **Observations**

- (a) The rules of the National Assembly of 2016 clearly stipulate what processes and procedures need to be observed by Members of Parliament in connection with questions and answers they need to provide to the House during the parliamentary proceedings.
- (b) I have however, observed that despite the decorum of the House, some members seem not to make prior consideration of the questions they are required to prepare for and respond to orally, and/or do not pay sufficient attention to consider seriously the oral responses they need to provide to the House, despite being allowed sufficient time to do so prior to the sitting of Parliament.
- (c) I am attributing this observation to the number of EMEA investigations I have had to deal with since taking office, all of which occur during the

¹ CCT 143/15; CCT171/15 [2016] ZACC 11, 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC); 31 March 2016.

Question and Answer session, and emanate from the ill-considered oral responses provided by the Members of Parliament in which consequently, they would have been regarded to have misled the House, inadvertently or deliberately.

- (d) Even the EMEA matter that I have just investigated as lodged by Mr Maimane, was clearly not dealt with in accordance with the Rules of Parliament in that he was allowed to pose a follow-up question which was in no way related to the original question he had asked President Ramaphosa.
- (e) Furthermore the Rules of the National Assembly are also silent on whether the Members of Parliament are allowed to make subsequent written submissions in order to correct or clarify the oral replies they may have provided to the question posed to them during the Question and Answer session of the House.
- (f) I have also observed that it is against any potential manifestation of the capture of the state, which all South African state functionaries, including the President, should guard against exposing himself to a situation involving the risk of a conflict between his official responsibilities and private interests, which is in violation of section 96 of the Constitution.
- (xiii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I now make the following findings:
 - (a) **Regarding whether on 06 November 2018 during question session in Parliament, President Ramaphosa deliberately misled the National Assembly and thereby acted in violation of the provisions of the Executive Ethics Code and Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members.**

-
- (aa) The allegation that on 06 November 2018 during question session in Parliament, President Ramaphosa deliberately misled the National Assembly, is substantiated.
- (bb) President Ramaphosa's statement on 06 November 2018, in his reply to Mr Maimane's question albeit defective in terms of the Rules of the National Assembly, was misleading, as he also conceded in his correspondence to my office on 01 February 2019, and even in his subsequent letter to the Speaker of the National Assembly on 14 November 2018 where he sought to correct the incorrect information he had provided in the National Assembly.
- (cc) Consequently, President Ramaphosa's reply was in breach of the provisions of paragraph 2.3(a) of the Executive Ethics Code, the standard of which includes deliberate and inadvertent misleading of the Legislature. He deliberately misled Parliament, in that he should have allowed himself sufficient time to research on a well-informed response.
- (dd) His conduct referred to above although in good faith, is inconsistent with his office as a member of Cabinet and therefore in violation of section 96(1) of the Constitution, as referred to above.
- (b) Regarding whether President Ramaphosa improperly and in violation of the provisions of the Executive Ethics Code and Disclosure of Members' Interests for the National Assembly and Permanent Council Members exposed himself to any situation involving the risk of a conflict between his official duties and his private interest or used his position to enrich himself and his son through businesses owned by African Global Operations.**
- (aa) The allegation that President Ramaphosa improperly and in violation of the provisions of the Executive Ethics Code and Disclosure of Members' Interests for the National Assembly and Permanent Council Members exposed himself to any situation involving the risk of a conflict between his official responsibilities and his private interests or used his position to enrich himself

and his son through businesses owned by African Global Operations, is substantiated.

- (bb) In light of the evidence before me, it can be safely argued that the campaign pledges towards the CR17 campaign were some form of sponsorship, and that they were direct financial sponsorship or assistance from non-party sources other than a family member or permanent companion, and were therefore benefits of a material nature to President Ramaphosa.
- (cc) President Ramaphosa as a presidential candidate for the ANC political party, received campaign contributions which benefitted him in his personal capacity. He was therefore duty bound to declare such financial benefit accruing to him from the campaign pledges. Failure to disclose the said material benefits, including a donation from AGO constitutes a breach of the Code.
- (dd) I have evidence which indicate that some of the money collected through the CR17 campaign trust account was also transferred into the Ramaphosa Trust Foundation account.
- (ee) President Ramaphosa at the time of receipt of the donations, was the Deputy President of the Republic of South Africa and a Member of Parliament. He was therefore bound by the Code of Ethical Conduct and Disclosure of Members' Interest for Assembly and Permanent Council Members to declare such financial interest.
- (ff) President Ramaphosa's failure to disclose financial interest which accrued to him, as a result of the donations received towards the CR17 campaign constitutes a violation of paragraph 2 of the Executive Ethics Code, and accordingly amounts to conduct that is inconsistent with his office as member of Cabinet, as contemplated by section 96 of the Constitution.
- (c) **Regarding whether there is an improper relationship between President Ramaphosa and his family on the one side, and the company African Global Operations on the other side, due to the nature of the R500 000,00 payment passing through several intermediaries, instead of a**

straightforward donation to the CR17 campaign, thus raising the suspicion of money laundering.

- (aa) The allegation that there is an improper relationship between President Ramaphosa and his family on the one side, and the company African Global Operations on the other side, due to the nature of the R500 000, 00 payment passing through several intermediaries, instead of a straight donation towards the CR17 campaign, thus raising suspicion of money laundering, has merit.
- (bb) I have taken into account of the facts as well as evidence before me, I am therefore of the view that there is merit to the allegation relating to the suspicion of money laundering as alluded to in the complaint lodged with my office.
- (cc) I have however, decided to refer this matter to the relevant institution for further probing as provided for in section 6(4)(c)(i) of the Public Protector Act which states that the Public Protector may, *"at any time prior to, during or after an investigation, if he or she is of the opinion that the facts disclose a commission of an offence by any person, bring the matter to the notice of the relevant authority charged with prosecutions"*.
- (xiv) The appropriate remedial action taken as contemplated in section 182(1)(c) of the Constitution, with a view of remedying the impropriety referred to in this report is the following:
 - (a) **The Speaker of the National Assembly to:**
 - (aa) Within 30 working days of receipt of this Report, refer His Excellency President Ramaphosa's violation of the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members to the Joint Committee on Ethics and Members' Interests for consideration in terms of the provisions of paragraph 10 of the Code.

-
- (bb) Within 30 working days of receipt of this Report, consider within her discretion, for deliberation by Members of Parliament in terms of Rules of the National Assembly, issues relating to my observations under paragraphs 6.1 to 6.6 of this Report for possible review and amendment thereof.
- (cc) Within 30 working days of receipt of this Report, demand publication of all donations received by President Ramaphosa because as the then Deputy President, he was bound to declare such financial interests into the Members' registerable interests register in the spirit of accountability and transparency.
- (b) The National Director of Public Prosecutions to:**
- (aa) Within 30 working days of receipt of this Report, take note of the observations contained in paragraph 7.3.1. as well as the recommendations contained in paragraph 7.3.3 of this report, and in line with section 6(4)(c)(i) of the Public Protector Act, conduct further investigation into the *prima facie* evidence of money laundering as uncovered during my investigation, and deal with it accordingly.
- (c) The National Commissioner of the South African Police Service to:**
- (aa) Within 30 working days of receipt of this Report, investigate criminal conduct against Mr Gavin Watson for violation of section 11 (3) of the Public Protector Act, 23 of 1994 by lying under oath.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS CODE THROUGH AN IMPROPER RELATIONSHIP BETWEEN THE PRESIDENT AND AFRICAN GLOBAL OPERATIONS (AGO), FORMERLY KNOWN AS BOSASA.

1. INTRODUCTION

1.1. This is my report 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 (the Public Protector Act).

1.2. The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation: -

1.2.1. The Speaker of the National Assembly, Ms Thandi Modise;

1.2.2. The President of the Republic of South Africa, his Excellency, Mr Matamela Cyril Ramaphosa;

1.2.3. The Complainants:

1.2.3.1 Mr Mmusi Maimane, MP the Leader of the Democratic Alliance Party (DA);

1.2.3.2 Mr Floyd Shivambu, MP the Deputy President of the Economic Freedom Fighters (EFF); and

1.2.3.3 The third Complainant who wishes to remain anonymous.

1.3. Section 7(9) Notices were sent to the following individuals affording them an opportunity to respond to my intended findings:

1.3.1 His Excellency President Cyril Ramaphosa, MP.

- 1.4 The report relates to an investigation into allegations of a possible violation of the Constitution and the Executive Ethics Code by His Excellency President Cyril Ramaphosa (President Ramaphosa).

2. THE COMPLAINT

- 2.1 The first complaint was lodged on 26 November 2018 in terms of Section 4(1)(a) of the Executive Members Ethics Act, 82 of 1998 (EMEA), by Mr Mmusi Maimane, MP (Mr Maimane), leader of the Democratic Alliance (DA) alleging a violation of the Executive Ethics Code by President Ramaphosa.
- 2.2 This was followed by a similar complaint lodged by Mr Floyd Shivambu, MP, the EFF Deputy President and Chief Whip (Mr Shivambu) on 26 January 2019. I then decided to consolidate the two complaints into one investigation for administrative purposes. Mr Shivambu.
- 2.3 According to the Complainants the President breached the following provisions of the Constitution and the Executive Ethics Code:
- 2.3.1 Section 96(1) and (2) of the Constitution which states that: *"Members of the Cabinet must act in accordance with a code of ethics prescribed by national legislation and may not act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests"*.
- 2.3.2 Paragraph 2.1.(a)-(d) of the Executive Ethics Code, which states that: *"Members must 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 respects in a manner that is consistent with the integrity of their office"*.
- 2.3.3 Paragraph 2.3 of the Executive Ethics Code further states that: *"Members of the Executive may not wilfully mislead the legislature to which they are accountable...(c) act in a way that is inconsistent with their position; (d) use*

their position or any information entrusted to them, to enrich themselves or improperly benefit any other person..."

2.3.4 Section 3(1) of the Executive Members' Ethics Act further provides that: *The Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint contemplated in section 4."*

2.3.5 The Complainants contend that President Ramaphosa ***may have breached the Executive Ethics Code by (i) exposing himself to any situation involving the risk of a conflict between their official responsibilities and their private interests; (ii) acted in a way that is inconsistent with his position and (iii) use his position or any information entrusted to him, to enrich himself or improperly benefit any other person"***, he further stated. (my emphasis).

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional body 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. In ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others***², the Constitutional Court per Chief Justice Mogoeng stated the following when confirming the powers of the Public Protector:

- 3.3.1. Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles;³
- 3.3.2. An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced;⁴
- 3.3.3. Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints which was the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint;⁵
- 3.3.4. The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow;⁶
- 3.3.5. Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action

² CCT 143/15; CCT171/15 [2016] ZACC 11, 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC); 31 March 2016.

³ Para [65].

⁴ Para [67].

⁵ Para [68].

⁶ Para [69].

taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to;⁷

3.3.6. The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of the investigation and the type of findings made;⁸

3.3.7. Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence;⁹

3.3.8. She has the power to determine the appropriate remedy and prescribe the manner of its implementation;¹⁰

3.3.9. "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case.¹¹

3.3.10. The remedial action taken by the Public Protector has a binding effect.¹² The Constitutional Court further held that: *"When remedial action is binding, compliance is not optional, and whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason,*

⁷ Para [70].

⁸ Para [71].

⁹ Para [71(a)].

¹⁰ Para [71(d)].

¹¹ Para [71(e)].

¹² Para [76].

the remedial action taken against those under investigation cannot be ignored without any legal consequences.”¹³

3.3.11. In the matter of the ***President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017)***, the court held as follows, when confirming the powers of the Public Protector:

- 3.3.11.1. The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution;¹⁴
- 3.3.11.2. The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question;¹⁵
- 3.3.11.3. Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers;¹⁶:
 - a) Conduct an investigation;
 - b) Report on that conduct; and
 - c) To take remedial action.

¹³ *Ibid* para [73].

¹⁴ Para [79].

¹⁵ Para [82].

¹⁶ Para [100 – 102].

-
- 3.3.11.4. The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings;¹⁷
- 3.3.11.5. The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court;¹⁸
- 3.3.11.6. The fact that there is no firm findings on the wrong doing, this does not prohibit the public protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct;¹⁹
- 3.3.11.7. *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action;²⁰
- 3.3.11.8. Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.
- 3.3.12. The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.
- 3.3.13. The conduct of President Ramaphosa amounts to conduct in state affairs, and therefore, the matter falls within the ambit of the Public Protector's mandate.

¹⁷ Para [104].

¹⁸ Para [105].

¹⁹ Para [107 – 108].

²⁰ Para [112].

- 3.4 The Public Protector's power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

4. The Investigation

4.1. The Investigation Process

- 4.1.1 As President Ramaphosa is the subject of my investigation, the investigation process commenced by notification to the Speaker of the National Assembly, Ms Baleka Mbete as well as President Ramaphosa himself of the complaints received, and that I intended to conduct a formal investigation into the complaints lodged. I also invited President Ramaphosa to comment on the allegations. My investigation was conducted through meetings and interviews with the Complainants and witnesses as well as inspection of all relevant documents and analysis and application of all relevant laws, policies and related prescripts, followed.
- 4.1.2 As part of the investigation process, I served a notice in terms of section 7(9)(a) of the Public Protector Act (section 7(9) notices), dated 30 May 2019 on His Excellency, President Ramaphosa to afford him an opportunity to respond to my provisional findings by 13 June 2019. However, on 07 June 2019, a request for an extension was received from his attorneys citing several reasons for the request for indulgence until 28 June 2019.
- 4.1.3 Whilst awaiting a response to the section 7(9) notice, I received a request from President Ramaphosa's attorneys to be afforded access and opportunity to question Mr Gavin Watson, Mr Maimane as the Complainant in the matter as well as the bank officials who had been subpoenaed to appear before me in terms of section 7(4) of the Public Protector Act.
- 4.1.4 I then acceded to the request in so far as it related to Mr Watson but with a clear indication to him of his rights as far the request was concerned. However, I advised President Ramaphosa that Mr Maimane is the Complainant in the

matter and therefore could not be questioned as he and the bank officials, had not appeared before me in terms of section 7(4) of the Public Protector Act.

- 4.1.5 Although there were challenges with regard to President Ramaphosa's attorneys to access Mr Watson with whom all contact was through his attorneys, these were in no way attributable to my office as I had given the go-ahead to such an engagement. My office experienced the same challenges in trying to reach Mr Watson to whom a written request was sent to get his co-operation. However, this did not yield any desired response from him.
- 4.1.6 Consequently I even had to resort to my subpoena powers to compel Mr Watson to respond to President Ramaphosa's questions which had been transmitted to him through his attorneys by attorneys acting for the Public Protector.
- 4.1.7 In the end a response dated 04 July 2019 was received from Mr Watson's attorneys which I have attached below for anyone to make a deduction of Mr Watson's version. He is ostensibly stating that he lied under oath whilst responding to questions I posed to him during his interview in my office on 18 March 2019.
- 4.1.8 Mr Watson also deposed of an affidavit through his attorneys dated 03 July 2019, which I have deemed necessary to attach hereto for ease of reference.
- 4.1.9 In this regard Mr Watson has committed an offence under the provisions of the Criminal Procedure Act 56 of 1955 as well as section 11 (3) of the Public Protector Act, 23 of 1994, and the matter will be dealt with accordingly.

Rushmere Noach

ATTORNEYS

Email

Pages including this page:

Date 04 July 2019

To	Email Add	theo@seanego.co.za
SEANEGO INC	Your Ref.	TNS/PUB1/0016
	Our Ref.	MR SK GOUGH/ec/MAT36172 e-mail: steve@rushmere.co.za Direct Line: (041) 399 6733

Dear Sir

RE: REQUEST TO QUESTION WITNESSES IN TERMS OF SECTION 7 (9) (B) (II) OF THE PUBLIC PROTECTOR ACT, 23 OF 1994; INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS CODE THROUGH AN IMPROPER RELATIONSHIP BETWEEN THE PRESIDENT AND AFRICAN GLOBAL OPERATIONS, FORMERLY KNOWN AS BOSASA.

We acknowledge receipt of your letter of 4 July 2019

Our client's instructions are to deny that:

1. His affidavit fails to address or adequately respond to all the questions posed in the HPN letter;
2. His affidavit mistakenly states that he has not made donations to Ms Dlamini-Zuma. We have reviewed the transcription of the hearing prepared in our offices from the audio recording made available by your client and assume you are referring to the following exchange between

Notaries • Conveyancers • Administrators of deceased and insolvent estates Rushmere Noach Inc Reg No 2002018102/21

Directors: SK BOUILLON BA LLB (Admission), W Parker B Juris LLB,
J Theron B Comm LLB, CO Arnold B Comm LLB Kooze LLB
RJ Montgomery B Comm LLB, N Deschamps LLB, S Rubela B Comm LLB
CONSULTANTS: RO Jaffe, 301 B Comm B Proc
Financial Manager: A Williams CA(SA)

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Fax: (041) 374 3110
International Code: + 2741
E-Mail Address:
gough@rushmere.co.za
Website Address:
www.rushmere.co.za

our respective clients (but if we are wrong, then you are invited to refer to the portions of the transcript upon which your client does rely):

"(PP) Yeah because we had two candidates. Hence, I was asking to you in the past I was asking you - did you pay into somebody's campaign or you paid into the ANC? You said you paid into the ANC. It wasn't in this particular instance you had CR campaign and the NDZ campaign. Did you donate to the NDZ campaign? No? [Laughing] You know why?
(GW - in Xhosa) You know my sister, these things that you are asking [chuckles]...I don't want to get myself into trouble [followed by inaudible murmuring]
(GW - in Xhosa) Let me tell you, you've seen what's been said in the newspapers
(PP-in Zulu) Yes, I have
(GW) indeed,
(GW) I am the polony in the sandwich here. I am the polony okay. I mean...you can see that now...
(PP) You are.
(GW) I am being used. If you think what is happening? I am a small, little company in the East Rand, in the West Rand. I was warned 8 months' ago from people from Parliament.
(GW - in Xhosa) Now I am being lambasted
(PP-in Zulu) Indeed you are, because as far as the public is concerned you are taking work away from other people
(PP) You asked why I am asking this question. I am still going back to "your blood is green, black and gold".
(GW) Sure. Ja. Ja.
(PP- in Zulu) I'm asking now, in relation to the statement that you made that your blood is green, black and gold; you had two people coming from the same organisation saying to emerge victorious- have you found yourself in this kind of situation before?
(GW- in Xhosa) You see my sister, I helped them both. I helped them both. So, I don't want to get into the semantics of those things but I helped them both and they are both aware of that- as can be seen from the newspaper reports but I seem to be the one being used as a scapegoat in this whole thing. This whole thing is very wrong. Truly.
(PP) Unfortunately, I wish you all the best." (Our underlining)

(Our client instructs that your client has misconstrued the statement by our client that he "*helped them both*" to mean that he made donations to the NDZ campaign. The assumptions made by your client in that regard are wrong.)

3. he has committed an offence under either the provisions of "the Criminal Procedure Act 56 of 1955", the Criminal Procedure Act, 1977 or the Public Protector Act, 1994;

Rushmere Noach Incorporated

Page 2
04 Sep 2019

4. has any obligation to deliver a further affidavit and in the circumstances given above, our client will not be doing so.

Yours faithfully,
RUSHMERE NOACH INCORPORATED
Per: 

PUBLIC PROTECTOR OF SOUTH AFRICA

File Reference No. 012366/18

In the complaint of:

MR MMUSI MAMANE

Complainant

against

THE PRESIDENCY

Respondent

AFFIDAVIT

I, the undersigned,

GAVIN JOSEPH WATSON,

do hereby make oath and state:

1. I am a major businessman and a director of companies. I am the chief executive officer of African Global Operations Proprietary Limited.
2. The facts deposed to herein by me are true and correct and save to the extent that it is stated or appears from the context to the contrary within my direct knowledge.
3. I have reviewed the copy of the letter written by the attorneys of the President of the Republic of South Africa, Harris Nupen Molebatsi,

Page 2

addressed to the attorneys of the Public Protector, Seanego Attorneys Incorporated, and dated 12 June 2019 ("the HPN Letter").

4. I also received a subpoena *duces tecum* dated 1 July 2019 from the Public Protector ("the Subpoena"). The HPN Letter was attached to the Subpoena. The Subpoena urgently and, it is submitted, unreasonably directs me to submit an affidavit to the Public Protector in response to the HPN Letter. Nevertheless, and not to be seen as obstructive, I respond to the HPN Letter as follows below but subject to the reservation of my rights as recorded in my letter dated 2 July 2019 to the attorneys representing the Public Protector.

5. AD PARAGRAPH 3.1 OF THE HPN LETTER

Miotto Trading is the company of my erstwhile personal accountant and tax advisor, Petrus Venter ("Venter"). In his aforementioned capacity, Venter would on occasion make payments on my behalf. The payment of R500,000.00 was made from my personal bank account and by my secretary in order to enable Venter to effect payment of the donation.

6. AD PARAGRAPH 3.2 OF THE HPN LETTER

No, I did not receive a tax benefit and the entitlement or otherwise to such benefit did not influence my decision.

7. AD PARAGRAPH 3.3 OF THE HPN LETTER

I have never made a donation to Ms. Nkosezana Dlamini-Zuma.

8. AD PARAGRAPH 3.4 OF THE HPN LETTER

I did not inform Venter that the donation was to the Andile Ramaphosa Foundation.



Page 3

9. AD PARAGRAPH 3.5 OF THE HPN LETTER

I have no personal knowledge of the circumstances under which Venter deposed to the affidavit mentioned in this paragraph.

10. AD PARAGRAPHS 3.6.1, 3.6.2, 3.7 AND 3.7.2 OF THE HPN LETTER

Yes, donations have been so made.

11. AD PARAGRAPH 3.7.1 OF THE HPN LETTER

I wore casual clothing when attending the function mentioned herein.

12. AD PARAGRAPH 3.8 OF THE HPN LETTER

I did not attend a CR17 fundraising dinner.


GAVIN JOSEPH WATSON

I CERTIFY that the Deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn to before me at SANDTON on this 3RD day of JULY 2019. In administering the oath, the requirements of Regulation R2477 dated 16 November 1984, as amended, have been fulfilled.


COMMISSIONER OF OATHS

Van Derwater & Van Derwater
Attorneys & Conveyancers
Attorneys & Conveyancers
Quentin Barnard | Attorney
7 Melville Road | Sandton 2146
Phone: 011 635 1220
Email: info@vandervater.com
COMMISSIONER OF OATHS



4.2 On analysis of the complaint, the following were issues considered and investigated:

- 4.2.1 Whether on 06 November 2018 during question session in Parliament, President Ramaphosa deliberately misled the National Assembly and thereby acted in violation of the provisions of the Executive Ethics Code and the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members;
- 4.2.2 Whether President Ramaphosa improperly and in violation of the provisions of the Executive Ethics Code and Disclosure of Members' Interests for the National Assembly and Permanent Council Members exposed himself to any

situation involving the risk of a conflict between his official duties and his private interest or used his position to enrich himself and his son through businesses owned by African Global Operations; and

- 4.2.3 Whether there is an improper relationship between President Ramaphosa and his family on the one side, and the company African Global Operations on the other side, due to the nature of the R500 000,00 payment passing through several intermediaries, instead of a straightforward donation to the CR17 campaign, thus raising the suspicion of money laundering.

4.3 The Key Sources of information

4.3.1 Documents

- 4.3.1.1 Letter from H/E President Ramaphosa to the Speaker of the National Assembly, Ms Baleka Mbete, dated 14 November 2018;
- 4.3.1.2 Letter of complaint from Mr Mmusi Maimane, MP, dated 23 November 2019;
- 4.3.1.3 Copy of a document request letter to H/E President Ramaphosa and the Speaker of the National Assembly, Ms Baleka Mbete, dated 13 December 2018;
- 4.3.1.4 Letter to H/E President Ramaphosa dated 18 January 2019;
- 4.3.1.5 Letter of complaint from Mr Floyd Shivambu, MP dated 26 January 2019;
- 4.3.1.6 Letter from H/E President Ramaphosa dated 01 February 2019;
- 4.3.1.7 Letter to Mr Floyd Shivambu, MP dated 04 February 2019;
- 4.3.1.8 Letter to the Director of Financial Intelligence Centre (FIC), Adv. Xolisile Khanyile, dated 11 February 2019;

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- 4.3.1.9 Copy of subpoenas to the FNB and ABSA banks dated February 2019;
 - 4.3.1.10 Copy of an affidavit from Mr Nainesh Desai of FNB dated 08 February 2019;
 - 4.3.1.11 Copies of subpoenas to Messrs Petrus Venter, Gavin Watson and Ms Natasha Olivier dated, 12 February 2019;
 - 4.3.1.12 Copies of subpoenas to Messrs Bejani Chauke, James Motlatsi, Andile Ramaphosa and Ms Donne Nicol, dated 12 February 2019;
 - 4.3.1.13 Copy of an affidavit from Mr Petrus Venter, dated 21 February 2019;
 - 4.3.1.14 Copy of an affidavit from Mr Andile Ramaphosa, dated 21 February 2019;
 - 4.3.1.15 Copies of affidavits from Messrs Bejani Chauke, James Motlatsi and Ms Donne Nicol, dated 25 February 2019;
 - 4.3.1.16 Copy of a supplementary statement by H/E President Ramaphosa, dated 11 March 2019;
 - 4.3.1.17 Letter from Rushmere Noach Inc, dated 15 March 2019;
 - 4.3.1.18 Letter from the Director of the FIC, Adv. Xolisile Khanyile addressed to the Public Protector, titled "*Information Security Application*", dated 19 March 2019;
 - 4.3.1.19 Copy of an Advisory Mandate between Blue Crane Capital (Pty) Ltd and African Global Operations (AGO), dated 06 December 2017;
 - 4.3.1.20 Copy of an Anti-Bribery and Corruption Policy between Blue Crane Capital (Pty) Ltd and AGO;
 - 4.3.1.21 Copy of a legal opinion from Seanego Incorporated, dated 12 April 2019;

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- 4.3.1.22 Letter from Mr Mmusi Maimane, MP dated 27 March 2019;
 - 4.3.1.23 Letter from EFG attorneys, dated 04 April 2019;
 - 4.3.1.24 Letter to EFG attorneys, dated 10 April 2019;
 - 4.3.1.25 Letter from Mr Mmusi Maimane, MP dated 23 April 2019;
 - 4.3.1.26 Letter to Mr Mmusi Maimane; dated 24 April 2019;
 - 4.3.1.27 Section 7(9) notice to H/E President Ramaphosa, dated 30 May 2019;
 - 4.3.1.28 Letter from Mr Mmusi Maimane, MP dated 31 May 2019;
 - 4.3.1.29 Letter to Mr Mmusi Maimane, MP dated 06 June 2019;
 - 4.3.1.30 Letter from HNM attorneys, dated 07 June 2019;
 - 4.3.1.31 Letter from HNM attorneys, dated 10 June 2019;
 - 4.3.1.32 Letter from Mr Mmusi Maimane, MP dated 11 June 2019;
 - 4.3.1.33 Letter to Mr Mmusi Maimane, MP dated 11 June 2019;
 - 4.3.1.34 Letter from HNM attorneys, dated 19 June 2019;
 - 4.3.1.35 Letters from Seanego attorneys to Rushmere Noach Inc, dated between 13 June 2019 and 01 July 2019;
 - 4.3.1.36 Letters from Rushmere Noach Inc. to Seanego attorneys dated between 14 June 2019 and 05 July 2019;

4.3.2 Notices issued in terms of section 7(9) of the Public Protector Act, 1994 to:

4.3.2.1 His Excellency President Cyril Ramaphosa, MP, dated 30 May 2019.

4.3.3 Response to the notice in terms of section 7(9) of the Public Protector Act, 1994, from:

4.3.3.1 His Excellency President Cyril Ramaphosa, dated 27 June 2019.

4.3.4 Interviews, meetings and *in loco* inspections

4.3.4.1 Interview conducted with Mr Petrus Venter on 14 March 2019;

4.3.4.2 Interviews conducted with Mr Gavin Watson and Ms Natasha Olivier on 25 March 2019;

4.3.4.3 Interviews conducted with Messrs Bejani Chauke and James Motlatsi on 06 March 2019;

4.3.4.4 Interview conducted with Ms Donne Nicol on 08 March 2019;

4.3.4.5 Interviews conducted with Mr Barry Farber, and Ms Ronel Grobler, the directors of Edelstein, Farber and Grobler (EFG) attorneys on 25 March 2019; and

4.3.4.6 Meetings held with H/E President Ramaphosa on 01 February 2019 and 30 May 2019.

4.3.5 **Legislation and other prescripts**

4.3.5.1 *The Constitution of the Republic of South Africa, 1996;*

4.3.5.2 *The Public Protector Act, 23 of 1994;*

4.3.5.3 *The Executive Members' Ethics Act 1998;*

4.3.5.4 *The Financial Intelligence Services Act, 2000;*

4.3.5.5 *The Prevention and Combating of Corrupt Activities Act, 2004; and*

4.3.5.6 *The Executive Ethics Code*

4.3.6 **Case Law**

4.3.6.1 *Public Protector v Mail and Guardian Ltd (422/10) (2011) ZASCA 108 (1 June 2011);*

4.3.6.2 *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others*²¹,

4.3.6.3 *Minister of Home Affairs v The Public Protector of South Africa (308/217) [2018] ZASCA 15 (15 March 2018); and*

4.3.6.4 *President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017);*

²¹ [2016] ZACC 11

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

5.1 Regarding whether on 06 November 2018 during question session in Parliament, President Ramaphosa deliberately misled the National Assembly and thereby acted in violation of the provisions of the Executive Ethics Code and Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members.

Common cause issues

- 5.1.1 It is not in dispute that during the question and answer session in Parliament on 06 November 2018, President Ramaphosa responded to a question posed by Mr Maimane regarding the alleged improper payment of R500 000,00 made by African Global Operations (AGO), formerly Bosasa, to his son, Mr. Andile Ramaphosa,
- 5.1.2 The complaint is premised on the above response President Ramaphosa made in Parliament which the complainants contend that the President not only misled the National Assembly, but also acted in breach of his constitutional duties and the Executive Ethics Code.
- 5.1.3 On 14 December 2018, through a letter of inquiry, I informed both President Ramaphosa and the Speaker of the National Assembly, Ms Baleka Mbete, about the complaints received by my office from Mr Maimane and requested the President to respond to the allegations raised against him.
- 5.1.4 The issue for my determination is therefore whether or not President Ramaphosa in responding to Mr Maimane's question in the National Assembly on 06 November 2018, misled Parliament thus acting in violation of the Executive Ethics Code.

Issues in dispute

- 5.1.5 On 20 December 2018, the Deputy Director General (DDG) in the President's office sent an e-mail to my office indicating that the President wanted to meet with me in order to respond to my inquiry letter of 14 December 2018. Consequently a date of 16 January 2019 was proposed and agreed upon, but it was later changed to 21 January 2019.
- 5.1.6 However, on 18 January 2019, at the request of the President's office, the meeting was again re-scheduled to take place on 29 January 2019. As scheduled, the meeting took place wherein President Ramaphosa gave an account of his response to my inquiry letter. He also undertook to submit a written response to my office shortly after our meeting.
- 5.1.7 I enquired from President Ramaphosa why did he feel compelled to respond to Mr Maimane's question as it was a follow-up question that was unrelated to the earlier question on VBS Mutual Bank, which was not in line with the rules of the National Assembly.
- 5.1.8 President Ramaphosa indicated that he had felt the need to respond to what he believed was an attack on his integrity by Mr Maimane which happened in the heat of the moment, and he had to answer on his feet.
- 5.1.9 At the end of our meeting, President Ramaphosa also agreed that I could interview his son, the CR17 campaign managers as well as his adviser for more information and clarity on the matter under my investigation.
- 5.1.10 On 01 February 2019, I received President Ramaphosa's response and in his letter, he indicated that he understood the allegations made by Mr Maimane to be as follows:
- 5.1.10.1 That on 06 November 2018, during a question session in Parliament, he violated the Executive Ethics Code by deliberately misleading the National Assembly in his reply to a question by Mr Maimane; and

-
- 5.1.10.2 That the available set of facts reveal that there is possibly an improper relationship existing between President Ramaphosa and his family on the one side, and the company, AGO on the other side;
- 5.1.10.3 President Ramaphosa proceeded to assert that both above allegations are untrue, since they rely to a large extent on what he knew and when he knew it;
- 5.1.10.4 President Ramaphosa indicated that he has structured his statement in a manner that establishes the facts and the chronology of events as they relate to the information available to him; and
- 5.1.10.5 In as far as the allegation by Mr Maimane of *“improper relationship existing between me and my family on the one side, and the company, African Global Operations on the other side”*, the President stated as follows:
- 5.1.10.5.1 That on or about 05 September 2018, he was informed by one his advisers, Mr Bejani Chauke about a rumour that the President Ramaphosa's son, Mr Andile Ramaphosa had received a payment of R500 000, 00 from AGO; and
- 5.1.10.5.2 That on enquiring from his son, he informed him that:
- (a) In December 2017, his company, Blue Crane Capital (Pty) Ltd had signed an Advisory Mandate with AGO for possible business entry in some East African countries; and
 - (b) In January 2018, his company had signed an Anti-Bribery and Corruption Policy with AGO. The signing of an Anti-Bribery and Corruption Policy was a practice that his son had instituted with all his clients as a precautionary measure following the President's election

as President of the African National Congress (ANC) in December 2017.

- 5.1.10.6 President Ramaphosa stated that his son showed him copies of both the Advisory Mandate and the Anti-Bribery and Corruption Policy.
- 5.1.10.7 He further stated that it was on this occasion, in September 2018, that he first became aware that his son's company had a business relationship with AGO.
- 5.1.10.8 According to President Ramaphosa, from the way it was explained to him, and based on the Advisory Mandate and the Anti-Bribery and Corruption Policy, he had no reason to believe that there was anything untoward about the relationship.
- 5.1.10.9 President Ramaphosa then proceeded to deal with his Parliamentary reply on 06 November 2018 as follows:
 - 5.1.10.9.1 That on 06 November 2018, he appeared in the National Assembly to respond to Questions for Oral Reply;
 - 5.1.10.9.2 That according to the rules of the National Assembly, the President is expected to appear in the National Assembly once a quarter to reply to questions submitted by MPs. The six (6) questions are received in advance and replies are prepared. Once the President has responded on a question, the MP that asked the question has an opportunity for a follow-up question;
 - 5.1.10.9.3 That on this occasion, the first question was from Mr Maimane about VBS Mutual Bank. In his follow-up question, Mr Maimane referred to a payment that had allegedly been made by AGO to my son, Mr. Andile Ramaphosa;

- 5.1.10.9.4 That based on what he had been told of his son's business relationship with AGO just two (2) months earlier, he naturally assumed that the payment to which Mr Maimane was referring related to the Advisory Mandate that had been signed between his son's company and AGO;
- 5.1.10.9.5 President Ramaphosa stated that in his main reply to Mr Maimane's supplementary question in the National Assembly, it was based on the information that he had at the time, and that it was against this background that he reasonably made the assumption that the alleged payment was related to the Advisory Mandate that his son's company had signed with AGO;
- 5.1.10.9.6 President Ramaphosa also stated that upon returning to his office in Tuynhuis following the questions session, that he was informed by one of his advisers, Ms Donne Nicol, that the account that Mr Maimane had referred to, EFG2, was an attorney's trust account that had been used by the 'CR17' campaign to raise funds for the campaign to advocate for his election as President of the ANC at the organisation's 54th National Conference in December 2017;
- 5.1.10.9.7 According to President Ramaphosa, a deliberate decision had been taken by himself and by those leading the campaign that he would not be involved in fundraising even as he would address meetings and have a few dinners with potential funders. These meetings and dinners with potential funders were used as occasions where he would have outlined his vision for the ANC and the country;
- 5.1.10.9.8 They had also decided that he would not be provided with the identity of donors or the amounts pledged, as he did not feel under obligation to them in any shape or form at any time in the future;

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- 5.1.10.9.9 President Ramaphosa stated that he therefore was not aware at the time that he appeared in the National Assembly on 06 November 2018 that Mr Gavin Watson had made a donation to the 'CR17' campaign;
- 5.1.10.9.10 He stated that his immediate response was that this information should be disclosed and that his reply in the National Assembly should be corrected;
- 5.1.10.9.11 According to President Ramaphosa at a meeting on 08 November 2018, his advisers confirmed that a payment of R500 000,00 had been made on behalf of Mr Gavin Watson into the 'CR17' attorney's trust account on 18 October 2017, and that this donation was distinct from, and unrelated to, the business relationship between his son's company and AGO;
- 5.1.10.9.12 Upon hearing all this information, President Ramaphosa stated that he then decided to write to the Speaker of the National Assembly to inform her that he had inadvertently provided incorrect information to the House on 06 November 2018. He directed his staff to make public his explanation to the Speaker of the National Assembly in a media release. He further requested that the former managers of the CR17 campaign, Messrs Bejani Chauke and James Motlatsi, also prepare a statement in which they clarify the nature of, and circumstances in which, the payment was made;
- 5.1.10.9.13 President Ramaphosa also indicated that he has since been informed by the CR17 campaign managers that after an unsuccessful attempts to meet Mr Gavin Watson in order to arrange for the return of the donation, an amount of R500 000, 00 has been transferred into an attorney's trust account until such time as these matters surrounding AGO are clarified following various concerning disclosures before the Zondo Commission of Inquiry into State Capture. Thereafter, a decision will be made as to whether these monies should be returned to the account where they

came from, passed onto appropriate government authorities, or donated to charity;

- 5.1.10.9.14 President Ramaphosa asserted that as seen from the above evidence, he did not deliberately mislead Parliament and that at the time that he replied to Mr Maimane in the National Assembly on 06 November 2018, he was not aware that a payment had been made on behalf of Mr Gavin Watson to the CR17 campaign. He assumed, understandably, that the payment to which Mr Maimane referred related to the agreement between his son's company and AGO;
- 5.1.10.9.15 He further asserted that once he became aware that the payment was in fact a donation by Mr Watson to the CR17 campaign, he informed the Speaker of the National Assembly by means of a letter dated 14 November 2018 and made a public statement on the matter through the former campaign managers on 16 November 2018;
- 5.1.10.9.16 President Ramaphosa asserted that there was no improper relationship between him and his family on the one side, and African GO on the other side. He was neither aware of, nor involved in, the conclusion of an Advisory Mandate between Blue Crane (Pty) Ltd and African Global Operations; and
- 5.1.10.9.17 In concluding his submission to my office, President Ramaphosa mentioned that he wanted to reiterate the message that he conveyed in the National Assembly on 06 November 2018 that he has discouraged his children from conducting business with government or with any state-owned entity. In this regard, he has told them that if he became aware of any illegality or corruption in their business activities, he will be the first to report them to the authorities.

Application of the relevant case law

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- 5.1.11 In the seminal case of ***Public Protector vs Mail and Guardian Ltd (422/10) (2011) ZASCA 108 (1 June 2011)***, the Supreme Court of Appeal (SCA) held that the Public Protector is not a passive adjudicator between the citizens and the state, relying only upon evidence which is placed before her by the parties. The SCA held further that the Public Protector should not be bound or be limited to the issues raised for consideration and determination by the parties but should, investigate further and discover the truth and also inspire confidence that the truth has been discovered.
- 5.1.12 The court further made it clear that the mandate of the Public Protector is an investigatory one, requiring pro-action in appropriate circumstances. Although the Public Protector may act upon complaints that are made, he or she may also take the initiative to commence an enquiry, and on no more than *'information that has come to his or her knowledge'* of maladministration, malfeasance or impropriety in public life. The court emphasized that the Public Protector has a pro-active function. He or she is expected not to sit back and wait for proof where there are allegations of malfeasance but is enjoined to actively discover the truth.
- 5.1.13 Although the complaint by Mr Maimane had been lodged in terms of the Executive Members Ethics Act, Mr Maimane had in the same complaint, also requested that the suspicion of money laundering should be probed due to the manner in which the transaction relating to the payment to the CR17 campaign went through several intermediaries before reaching its intended beneficiary.
- 5.1.14 In that regard my office discovered during a series of investigative interviews conducted with several key role players between January 2019 and March 2019 a lot of insight into what exactly happened during the CR17 campaign. As an investigatory and oversight body I could not turn a blind eye to this

discovery²² especially as this lent credence to Mr Maimane's second issue relating to the suspicion of money laundering.

5.1.15 Furthermore, in order to deal effectively with the issue relating to the suspicion of money laundering, I could not just investigate selectively the R500 000, 00 donation made by Bosasa to the CR17 campaign in order to establish the veracity or otherwise of the allegation.

5.1.16 I have therefore deliberately decided to cite the above case law and further laid this short background in order to address or dispel any misguided notion or contention that I have unduly extended the scope of this investigation without just cause.

Applicable relevant legal prescripts

5.1.17 Section 96(1) and (2) of the Constitution which states that: *"Members of the Cabinet must act in accordance with a code of ethics prescribed by national legislation and may not act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests"*.

5.1.18 Paragraph 2.1.(a)-(d) of the Executive Ethics Code, which states that: *"Members must 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 respects in a manner that is consistent with the integrity of their office"*.

5.1.19 Paragraph 2.3 of the Executive Ethics Code further states that: *Members of the Executive may not wilfully mislead the legislature to which they are accountable...(c) act in a way that is inconsistent with their position; (d) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person..."*

²² Turning a blind eye to such would be tantamount to complicity or defilement of justice on my part.

- 5.1.20 According to Rule 140 of Rules of the National Assembly, 2016 questions to the President must be submitted to Speaker at least 16 calendar days before the question day on which they are to be answered, for the Speaker's approval and compliance with the rules by the Rules Committee. The number of questions is limited to six (6) questions per day.
- 5.1.21 Rule 141 (1) provides that a member may request the Speaker in writing to allow an urgent question to be put to the President or the Deputy President on the next applicable question day. Furthermore, a member who wants to put an urgent question in terms of subrule 1 must deliver a signed copy of the question to the Speaker before 12:00 on the day preceding the question day on which the question is to be answered, clearly indicating that it is an urgent question.
- 5.1.22 According to rule 142(4) of the Rules, in respect of each question, four supplementary questions may be asked, the member in whose name a question stands or who takes charge of a question in terms of rule 137(10) being given first opportunity to ask a supplementary question.
- 5.1.23 Rule 142(6) provides that a supplementary question must arise directly from the original question and the reply given thereto and may not constitute a new question.
- 5.1.24 President Ramaphosa's heat of the moment response is of concern because I believe that Parliamentary questions are an important means used by Members of Parliament to ensure that Government is accountable to the Parliament for its policies and actions and, through the Parliament to the people.
- 5.1.25 Therefore President Ramaphosa's provocation by the question from the leader of the opposition cannot justify giving poorly prepared answers and creating a risk of misleading Parliament as he did in this case.

- 5.1.26 As the South African law is silent on whether Cabinet Members or Presidents may amend or make corrections to statements made in their oral reply to Parliament, it is a grey area which calls for attention to the Parliament's rules.
- 5.1.27 It therefore goes without saying that although President Ramaphosa may have been justified to correct the earlier statement he had made on erroneous or incomplete information at his disposal, but he did mislead Parliament.
- 5.1.28 However, in the absence of such explicit rules dealing with such corrections or amendments, regard must be had to section 2.3 of the Code which states that: Members may not – *“Deliberately or inadvertently mislead the President, or the Premier, or as in this case, the Legislature”*.

Applicable relevant case law

- 5.1.29 In the Constitutional Court case between the ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others***²³, the question, regarding the President's obligations was exhaustively dealt with as follows by Chief Justice Mogoeng: *“The President is the Head of State and Head of the national Executive. His is indeed the highest calling to the highest office in the land. He is the first citizen of this country and occupies a position indispensable for the effective governance of our democratic country. Only upon him has the constitutional obligation to uphold, defend and respect the Constitution. He is the constitutional being by design, a national pathfinder, the quintessential commander-in chief of State affairs and the personification of this nation's constitutional project”*.

²³ [2016] ZACC 11

Conclusion

- 5.1.30 It is worth noting that President Ramaphosa in responding to Mr Maimane's question on 06 November 2018, did so to a question that did not meet any of the above criteria of the Rules of the National Assembly, as the original question asked by Mr Maimane related to the VBS Mutual Bank and not African Global Operations (Bosasa).
- 5.1.31 According to the evidence provided to my office, Mr Bejani Chauke had in September 2018, upon hearing rumours about the alleged relationship between Mr Andile Ramaphosa and AGO (Bosasa), alerted President Ramaphosa to the rumour. This was almost two (2) months before Mr Mmusi Maimane could pose the question relating to AGO to President Ramaphosa in Parliament.
- 5.1.32 I therefore submit that nothing stopped President Ramaphosa from objecting to the question, and even to make a request to the Speaker of the National Assembly to be allowed in terms of the Rules, to go and prepare a well-researched response.
- 5.1.33 As indicated above, the statement made by President Ramaphosa on 06 November 2018 in his reply to Mr Maimane's question albeit defective in terms of the Rules of the National Assembly, was misleading, as he also conceded in his correspondence to my office on 01 February 2019, and even in his subsequent letter to the Speaker of the National Assembly on 14 November 2018 where he sought to correct the incorrect information he had provided in the National Assembly.
- 5.1.34 Consequently, President Ramaphosa's reply was in breach of the provisions of paragraph 2.3(a) of the Executive Ethics Code, the standard of which includes deliberate and inadvertent misleading of the Legislature. He inadvertently and/or deliberately misled Parliament, in that he should have

allowed himself sufficient time to consider the question and make a well-informed response.

5.1.35 President Ramaphosa as the head of state and the epitome of the Constitution, should have acted with restraint and not allow Mr Maimane's question to affect his demeanour as he had stated in his response, that he had felt attacked and had to defend himself and his family.

5.1.36 His conduct referred to above, is inconsistent with his office as a member of Cabinet and therefore in violation of section 96(1) of the Constitution, as referred to above.

5.2 Regarding whether President Ramaphosa improperly and in violation of the provisions of the Executive Ethics Code and Disclosure of Members' Interests for the National Assembly and Permanent Council Members exposed himself to any situation involving the risk of a conflict between his official duties and his private interest or used his position to enrich himself and his son through businesses owned by African Global Operations.

Common cause issues

5.2.1 It is not in dispute that a payment of R500 000,00 was made by African Global Operations(AGO), formerly Bosasa, into an EFG2 attorneys trust account towards the CR17 campaign in October 2017 during President Ramaphosa's election campaign towards becoming the President of the ANC in December 2017.

5.2.2 It is also not in dispute that President Ramaphosa's son Mr Andile Ramaphosa had business contracts with AGO for which he was paid large sum of money for the services he rendered to the company.

- 5.2.3 The issue for my determination is whether or not President Ramaphosa as the then Deputy President and member of Parliament was duty bound to declare the financial benefit accruing to him during the campaign, and whether his failure to disclose such financial benefit was in violation of the Executive Ethics Code.

Issues in dispute

- 5.2.4 On 11 March 2019, President Ramaphosa submitted a supplementary statement to my office, which ostensibly set out to clarify the issue of conflict of interest and the obligation of members of the National Assembly to disclose financial interests received in their private capacities as members of political parties as opposed to such gifts and donations received whilst performing their official responsibilities. President Ramaphosa stated the following:

- 5.2.5 *“My statement of 31 January 2019 and our meeting of 29 January refer.*

- 5.2.5.1 *In light of your questions regarding the issue of disclosure of interests I thought it appropriate to address you further in this regard. During our discussion regarding the R500 000 (five hundred thousand rand) donation (“the donation”) that was paid by African Global Operations (Pty) Limited (“AGO”) into a law firm’s ABSA trust account towards my presidential campaign for the presidency of the ANC in 2017 (“the CR17 Campaign”) you seemed to suggest that “the donation amounted to a ‘benefit’ and that it ought to have been disclosed”.*

- 5.2.5.2 *As you are aware I became a Member of Parliament in May 2014 and thereafter was appointed Deputy President of the country. In the capacity I disclosed interests as required by the Executive Ethics Code every year. I continue to do so since my election as President in February 2018.*

- 5.2.5.3 *In so doing and based on the provisions of the Code I disclose share and financial interests in companies and other corporate entities, sponsorships, gifts and other hospitality, benefits of a material nature, foreign travel, land and immovable property (inside or outside South Africa) and pensions. I am also aware of my duty to disclose such information in relation to my spouse and my dependent children, to the extent that I am aware of them. My son Andile Ramaphosa is not dependent upon me for financial support. I therefore am not obliged to disclose any of his financial interests in terms of the Code.*
- 5.2.5.4 *Since becoming a member of Parliament and a member of the executive I have taken care to be guided by Section 2(1) of the Executive Members Ethics Act, 82 of 1998 (“**the Executive Ethics Act**”) which requires the President to publish a code of ethics prescribing standards and rules which “members” must comply with when performing **their official duties** (“**Code of Ethics**”).*
- 5.2.5.5 *In the introduction of the Code of Ethics, the President states the following: “In terms of section 2(1) of the Executive Members’ Ethics Act, 1998 (Act No 82 of 1998), I hereby after consultation with Parliament, publish the Executive Ethics Code with which Members of the Cabinet, Deputy Ministers and Members of Provincial Executive Councils must comply with in performing their official responsibilities.”*
- 5.2.5.6 *It is my humble submission that the above indicates that the target of the Executive Ethics Act is to regulate “members” **in the performance of their official responsibilities**, and not internal political party election donations.*
- 5.2.5.7 *Section 2(2)(c)(ii) of the Executive Ethics Act further states that the Code of Ethics published by the President must require members to disclose:*
- “any financial interests acquired after their assumption of office, including any gifts, sponsored foreign travel, pensions, hospitality and other benefits*

of a material nature received by them or by such persons having a family or other relationship with them as may be determined in the code of ethics.”
(My emphasis).

5.2.5.8 *In accordance, with section 2(2)(c)(ii) of the Executive Ethics Act, paragraph 5.1 of the Executive Ethics Code states the following in relation to the disclosure of financial interests.*

“5.1 Every member must disclose to the Secretary particulars of all the financial interests as set out in paragraph 6...”

5.2.5.9 *Paragraph 6 of the Code of Ethics lists a number of financial interests that are subject to disclosure and states the following in relation to the disclosure of benefits:*

“6 Financial Interests to be Disclosed:

Members must disclose the following interests and details:

6.4 Benefits:

“The nature and source of any other benefit of a material nature and the value of that benefit.”

5.2.5.10 *Paragraph 4.1 of the Code of Ethics prohibits the solicitation or acceptance of a gift or benefit which:*

“ (a) is in return for any benefit received from the member in the member’s official capacity;

(b) constitutes improper influence on the member, or

(c) constitutes an attempt to influence the member in the performance of the member’s duties”. (My emphasis).

5.2.5.11 *I submit that the donation was not in return for any benefit received by myself in my official capacity, nor was it in order to influence me in the*

performance of my duties. Instead the donation was received to support an internal political party election.

- 5.2.5.12 It is my humble view that there is a distinction between donations made towards a campaign fund for a political party's elective conference and gifts and benefits received by "members" in their official capacity or in an attempt to influence the "member" in the performance of their duties – the latter two instances would reasonably be subject to disclosure and/or prohibition.
- 5.2.5.13 Right up to the moment of this donation it could never have been the intention of the legislature to regulate donor funding for internal political party elections. It is clearly the intention of the legislature to regulated the provision of gifts and benefits to members **"in return for a benefit received by the member in their official capacity", or "in an attempt to influence the member in the performance of the member's duties"**.
- 5.2.5.14 The donation relates to an internal political party election, and it has nothing to do with "members" in their official capacity or in the performance of their duties. I submit that it is a different arena.
- 5.2.5.15 Currently in law there is no obligation in South Africa for "members" to disclose their sources of private funding in an internal political party election and it would be unreasonable and irrational to prohibit or to require the disclosure of such donations. Simply put, it cannot be that every person, who may also be a "member", contesting an internal political party election would be expected to disclose their donors.
- 5.2.5.16 I am not aware of any person in any political party, who is also a "member" and who received a donation towards their campaign in an internal party election, being obliged to make public or to disclose the list of donors that contributed to their campaign.

- 5.2.5.17 *Section 2(2)(c)(ii) of the Executive Ethics Act clearly states that the disclosure of a benefit is required, firstly if it is a material benefit, and secondly, if it is received by the “member”. Although the donation may be regarded as material in nature (on the basis that even gifts above the value of R350.00 are subject to disclosure in terms of paragraph 6.3 of the Code of Ethics), the donation was not received by myself, instead, it was received by the CR17 campaign in strict confidence. In essence, the donation was not made to a “member”.*
- 5.2.5.18 *I had no knowledge of the donation and therefore cannot reasonably be expected to have disclosed it when it was made, even if there was an obligation to do so, which there was not.*
- 5.2.5.19 *In the light of the above, it is submitted that paragraph 4.1 of the Code of Ethics only prohibits the solicitation or acceptance of a gift or benefit which is in return for any benefit received by a “member” in their official capacity, or constitutes improper influence on the “member”, or constitutes an attempt to influence the “member”. In such circumstances, it is appropriate to either require the disclosure of an offer of such benefit or to prohibit its solicitation or acceptance (in this case, the Code of Ethics provides for the latter). However, the donation was neither offered, solicited, nor accepted by myself for any of the aforementioned reasons.*
- 5.2.5.20 *As such, I was neither required to disclose the donation, nor was I prohibited from receiving it in terms of paragraph 4.1 of the Code of Ethics, as it was not received by myself in my capacity as a “member” and because the Code of Ethics does not apply to internal political party campaigns.*
- 5.2.5.21 *In addition, although the donation may be regarded as a ‘material benefit’ in terms of paragraph 6.4 of the Code of Ethics, in which case I would have been required to disclose it; because I was unaware of the identity of the donors to the CR17 campaign, since donations were paid towards the CR17 campaign on a confidential basis, it would be unreasonable to expect the donation to have been disclosed by myself when it was made. It would*

be equally unreasonable to expect every person, who may also be a "member" contesting an internal political party election to disclose such donors.

- 5.2.5.22 *Based on the above I do not believe that in this matter I have failed in my duties to disclose interests as required in the Executive Ethics Code".*

Application of the relevant legal prescripts

- 5.2.6 Section 96(1) and (2) of the Constitution which states that: *"Members of the Cabinet must act in accordance with a code of ethics prescribed by national legislation and may not act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests".*
- 5.2.7 Paragraph 2.1.(a)-(d) of the Executive Ethics Code, which states that: *"Members must 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 respects in a manner that is consistent with the integrity of their office".*
- 5.2.8 Paragraph 2.3 of the Executive Ethics Code further states that: *Members of the Executive may not wilfully mislead the legislature to which they are accountable...(c) act in a way that is inconsistent with their position; (d) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person...(d) expose themselves to a situation involving the risk of a conflict between their official responsibilities and their private interests...act in a way that may compromise the credibility or integrity of their office or government".*
- 5.2.9 The Code of Ethical Conduct and Disclosure of Members' Interest for Assembly and Permanent Council Members, which applies to all Members who are Members of the Executive, and which must be read with the

Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act 4 OF 2004, Prevention, Combating of Corrupt Activities Act 12 of 2004 and the Financial Management Act of Parliament Act 10 Of 2009, establish offences on discipline and contempt of Parliament.

- 5.2.10 Paragraph 9 of the Code entitled **“Disclosure of registrable interests”** prescribes *inter alia* that Members of Parliament must disclose to the Registrar of the Committee particulars of all their registrable interests. The term “registrable interests” is defined in the Code as all financial interests listed in paragraph 9.3, including the financial interests of the member’s spouse, dependent child and permanent companion.
- 5.2.11 Registrable interests include the following: shares and other financial interests in companies and other corporate entities; remunerated employment outside Parliament; directorships and partnerships; consultancies; sponsorships; gifts and other hospitality; any other benefits of a material nature, foreign travel, ownership in land and property including immovable property (inside or outside South Africa); pensions; public contracts awarded; trusts and encumbrances.
- 5.2.12 Paragraph 9.18 of the Code stipulates that: *Where any doubt exists as to whether any financial interests must be disclosed, the member concerned must act in good faith”*
- 5.2.13 In terms of paragraph 10.1 .1 a breach occurs if the Member :-
- 3.2.2.1 *“contravenes or fails to comply with the requirements of the provisions for disclosing interests;*
 - 3.2.2.2 *When disclosing registrable interests, wilfully or is grossly negligently, provides the Registrar with incorrect or misleading details; or*
 - 3.2.2.3 *contravenes paragraphs 4.1, 5.1, 5.2, 6.1, 6.2, 6.3, 7.1, 8.1, 9.19.4 and 9.19.5 of this Code;” and*

5.2.14 A former member breaches this Code of Conduct if the former Member contravenes paragraph 8.2 of the Code of Conduct.

5.2.15 Paragraph 4.1 of the Code provides that Members must:

- 4.1.1 *abide by the principles, rules and obligations of this Code;*
- 4.1.2 *by virtue of the oath or affirmation of allegiance taken by all elected Members, uphold the law;*
- 4.1.3 *act on all occasions in accordance with the public trust placed in them;*
- 4.1.4 *discharge their obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above their own interests;*
- 4.1.5 *maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament.*
- 4.1.6 *in the performance of their duties and responsibilities, be committed to the eradication of all forms of discrimination.*

Applicable relevant case law

5.2.16 In the Constitutional Court case between the ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others***²⁴, the question whether the President knowingly or unwittingly exposed himself to “a situation involving the risk of a conflict between his official responsibilities and private interests” was exhaustively dealt with.

5.2.17 The Public Protector’s finding on the violation of section 96 was based on the self-evident reality that the features identified and unrelated to the security of the President, checked against the list of what the South African Police Service (SAPS) security experts themselves determined to be

²⁴ [2016] ZACC 11

security features were installed because the people involved knew they were dealing with the President.

5.2.18 When some government functionaries find themselves in that position, the inclination to want to please higher authority by doing more than is reasonably required or legally permissible or to accede to a gentle nudge by overzealous and ambitious senior officials to do “a little wrong” here and there, may be irresistible.

5.2.19 However, a person in the position of the President should be alive to this reality and guard against its occurrence. Failure to do this may constitute an infringement of this provision. To find oneself on the wrong side of section 96, all that needs to be proven is a risk. It does not even have to materialise.

Public Protector’s Touchstones:

5.2.20 **“State and Party: Blurred Lines”: Report No. 12 of 2015/2016**

5.2.20.1 The issue here, *inter alia*, was about conflation of party political activities and the state events where sometimes members would be regarded or purporting to act in their personal capacities and therefore violating applicable provisions of the Executive Ethics Code due to the blurred lines between their responsibilities in circumstances where state and party’ roles tend to overlap.

Conclusion

5.2.21 Deriving from the above legal prescripts and case law, it can be safely argued that the campaign pledges towards the CR17 campaign were some form of sponsorship, and that they were direct financial sponsorship or assistance from non-party sources other than a family member or permanent companion, and were therefore benefits of a material nature.

President Ramaphosa's failure to disclose the said material benefits, including a donation from AGO constitutes a breach of the Code.

- 5.2.22 President Ramaphosa received *"assistance from any source other than the member's party which benefits the member in his or her personal and private capacity"* because as a presidential candidate for the ANC political party he received campaign contributions which benefitted him in his personal capacity. Being the Deputy President of the country and a Member of Parliament at the time, President Ramaphosa was therefore duty bound to declare financial benefit accruing to him from the campaign activities.
- 5.2.23 It cannot also be argued that the financial benefit did not accrue to President Ramaphosa personally merely because it was deposited in a trust account for the CR17 campaign.
- 5.2.24 I have evidence which indicates that some of the money collected through the CR17 campaign trust account was transferred into the Cyril Ramaphosa Foundation account.
- 5.2.25 I have also established that President Ramaphosa hosted the dinner functions which had been organised for the donors where he addressed them, therefore my conclusion is that he actively participated in the campaign process.
- 5.2.26 Furthermore, I have evidence which confirm regular updates to President Ramaphosa on the operations of the CR17 campaign by the campaign managers, his directives to them about payments of the money into the CR Foundation as well being asked by the campaign managers for him to speak to certain donors.
- 5.2.27 Consequently, political parties are under no express legal obligation to disclose the sources of their private funding, at elections or other times. However, on the contrary different considerations apply when it comes to individual political party members who may be Members of Parliament and

Cabinet Ministers at the same time who in their private capacity, obtain sponsorships, solicit gifts in whatever disguised form or obtain any other benefit of a material nature to aid them in their competition for party leadership position. Therefore they cannot seek refuge behind the party political activity label as they should comply with the applicable ethical codes of conduct governing their conduct as Members of Parliament or the Executive.

5.2.28 Section 96 of the Constitution requires Cabinet Members to act in accordance with the Code and that they should refrain from acting in a way which is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests. Based on the aforesaid, it is therefore my view, that even private activity or interests may cause Cabinet Members to violate the provisions of the Executive Members' Ethics Act.

5.2.29 Further, a person in the position of the Deputy President (as the President was then), is required by the standards of ethical conduct set by the provisions of section 96 of the Constitution and the Executive Ethics Code to have been concerned about the obvious extravagant and expensive donation into a trust account that was used to raise funds for his benefit. In any reasonable person's opinion, it is expected of the President to have interrogated the source of these donations.

5.2.30 Although I have been informed by the CR17 campaign managers that the deliberate concealment of the identity of the donors and the amounts donated by them from President Ramaphosa was to avoid creating a perception that his goodwill can be bought, the primary reason in my view, should have been to avoid any situation of capture of the President that might compromise his decision-making in the future.

5.2.31 Instead, the President just tacitly accepted these donations, amongst which there was this solicited donation of R500 000 by Mr Gavin Watson, the

owner of AGO (Bosasa), the company that had a contract with the Department of Correctional Services.

5.2.32 No matter how one looks at the issue, a conclusion that direct sponsorship of one's political campaign for party leadership, does qualify as declarable "sponsorship" is inescapable.

5.2.33 President Ramaphosa's failure to disclose financial interest which accrued to him, as a result of the donations received towards the CR17 campaign constitutes a violation of paragraph 2 of the Executive Ethics Code, and accordingly amounts to conduct that is inconsistent with his office as member of Cabinet, as contemplated by section 96 of the Constitution.

5.3 Regarding whether there is an improper relationship between President Ramaphosa and his family on the one side, and the company African Global Operations on the other side, due to the nature of the R500 000,00 payment passing through several intermediaries, instead of a straightforward donation to the CR17 campaign, thus raising the suspicion of money laundering.

Common cause issues

5.3.1 It is not in dispute that a payment of R500 000, 00 was made into an EFG2 trust foundation account by Mr Petrus Venter on 18 October 2017 on the instruction of Mr Gavin Watson.

5.3.2 The R500 000,00 was part of about R3 million which had been transferred from Mr Watson's personal account by Ms Natasha Olivier the PA to Mr Watson, into the account of Miotto Trading which was the company of Mr Venter's sister, Ms Margaret Longworth.

5.3.3 The issue for my determination is whether the payment of the said amount as a donation to the campaign was proper, and whether it does not amount

to money laundering due to its having had to pass through several intermediaries before reaching its intended beneficiary.

Issues in dispute

- 5.3.4 In my meeting with President Ramaphosa on 29 January 2019, I had also raised the issue of the transfer of the R500 000, 00 payment into the EFG2 account because according to Mr Venter's affidavit, this account belonged to the President's son, Mr Andile Ramaphosa.
- 5.3.5 President Ramaphosa indicated that he was not involved in the fundraising process for the CR17 campaign and that there were campaign managers who were responsible for it. He stated that he only got to learn about the alleged payment from one of his advisers, Mr Bejani Chauke on or about 05 September 2018. Mr Chauke informed him about a rumour that his son, Mr Andile Ramaphosa had received a payment of R500 000, 00 from AGO.
- 5.3.6 According to President Ramaphosa at a meeting on 08 November 2018, his advisers confirmed that a payment of R500 000,00 had been made on behalf of Mr Gavin Watson into the 'CR17 campaign' attorney's trust account on 18 October 2017, and that this donation was distinct from, and unrelated to, the business relationship between his son's company and AGO.
- 5.3.7 President Ramaphosa informed me that all the information pertaining to the fundraising for the CR17 campaign can be sourced from the campaign managers whose names he provided me with.
- 5.3.8 Having had regard to the broader allegation relating to the suspicion of money laundering, I reviewed the bank records of the EFG2 trust account to establish how the funds which had been collected for the CR17 campaign were disbursed.

5.3.9 I also interviewed the directors of the Edelstein, Faber and Grobbler (EFG) attorneys who were responsible for the disbursement of funds in the CR17 campaign trust account, in order to establish what was their mandate and instructions regarding the EFG2 account.

5.3.10 My investigation team prepared subpoenas for interviews and submission of records by several key role players in the matter under investigation. These included President Ramaphosa's adviser, Ms Donne Nicol, the CR17 campaign managers Messrs James Motlatsi and Bejani Chauke, Mr Andile Ramaphosa, the two (2) banks involved in the transaction, FNB and ABSA, Mr Petrus Venter, two (2) employees of AGO, Mr Gavin Watson and Ms Natasha Olivier and the Financial Intelligence Centre (FIC).

Evidence presented by Mr James Motlatsi during his interview

5.3.10.1 On 06 March 2019, I conducted an interview with Mr James Motlatsi one of the two (2) CR17 campaign managers. As he had submitted a sworn statement prior to the interview, he took us through his prepared statement, giving us the background to the campaign and his specific role in it.

5.3.10.2 Mr Motlatsi indicated that he was one of the members of the fundraising committee, along with Mr Bejani Chauke and Ms Donne Nicol. According to him, they had decided early in 2017 to approach donors for the CR17 campaign with clear condition that the donors should not expect any favours in return for their contributions to the CR17 campaign. There was also a conscious decision by the committee members as well as an agreement with President Ramaphosa that he should not know the identities of the donors nor the amounts they had pledged.

5.3.10.3 As the members of committee, they decided to come up with names of possible donors whom they decided to approach in their individual capacities and not as directors or owners of businesses.

- 5.3.10.4 Mr Motlatsi stated that having known Mr Gavin Watson for more than 20 years, he is the one who identified Mr Watson, even approached and requested him to donate to the CR17 campaign. Mr Watson offered to donate R500 000, 00. Consequently, his business card was given to Ms Nicol by Mr Motlatsi and she then contacted him to provide him with the bank account details to effect the transfer of the money in October 2017.
- 5.3.10.5 Mr Motlatsi indicated that a decision had also been taken by them not to do anything in writing, therefore no records or documentation such as project plan, minutes of meetings were kept of the CR17 campaign.
- 5.3.10.6 According to him, Mr Bejani Chauke was the overall leader of the CR17 campaign whilst Ms Nicol was the facilitator of things for the campaign.
- 5.3.10.7 Mr Motlatsi stated that although he had been responsible for approaching Mr Watson for the donation to the campaign, a decision was taken to return the money to Mr Watson due to the subsequent media hype around Bosasa and the donation itself.
- 5.3.10.8 Mr Motlatsi stated that he knew President Ramaphosa from their days as members of the National Union of Mineworkers (NUM).
- 5.3.10.9 President Ramaphosa was also present at some of the dinners which had been organised by the CR17 campaign managers for the donors, where he would address them and would naturally meet and greet the benefactors.
- 5.3.10.10 Mr Motlatsi also indicated that during their fundraising drive they had raised more than R200 million for the CR17 campaign.

Evidence presented by Mr Bejani Chauke during his interview

- 5.3.10.11 I also conducted an interview with Mr Bejani Chauke (Mr Chauke) who was one of the two (2) CR17 campaign managers, on the same date as Mr Motlatsi. He had his legal representative assisting him during the

proceedings. As he had submitted a sworn statement prior to the interview, he took us through his prepared statement, giving us the background to the campaign, how it was started as an idea until its formalisation in 2017. This was then followed by questions for clarity by myself and the team.

5.3.10.12 Mr Chauke confirmed that he was the one who had alerted President Ramaphosa about the rumour that was doing rounds about the R500 000,00 payment by AGO to Mr Andile Ramaphosa. This was in September 2018, almost two (2) months before the matter was raised by Mr Maimane in Parliament.

5.3.10.13 Mr Chauke stated that he was part of the campaign committee in which he was playing an oversight role, but that there was also a fundraising committee which comprised other members, including Ms Donne Nicol and Mr James Motlatsi who was the leader of the committee.

5.3.10.14 He indicated that he played no role in the finances of the campaign except when he requested funding for accommodation, food and other logistics for the local, provincial and national branch co-ordinators and therefore was unable to talk to the issue.

5.3.10.15 Mr Chauke was unable to shed sufficient light into the issues to assist the focus of the investigation, nor provide any clarity, especially because he indicated that they kept no records of the activities of the campaign. According to him, even minutes of the meetings for the campaign were not recorded as they did not deem it necessary, thus echoing Mr Motlatsi's sentiment.

5.3.10.16 It is worth mentioning that Mr Chauke was not helpful at all to my office. He alleged that he worked with branches both locally and provincially, but when requested to shed light into specific processes and procedures relating to accessing funds by these, he could not. Although he also shared the structure of the team, on how they were constituted, he elected not to

respond to some questions despite having been mentioned earlier by Mr Motlatsi as the leader of the campaign.

Evidence presented by Ms Donne Nicol during her interview

5.3.10.17 On 08 March 2019, I conducted an interview with Ms Donne Nicol who is the adviser of President Ramaphosa, and had been mentioned particularly by the two (2) CR17 campaign managers, as well as President Ramaphosa as having been central in the issue under my investigation. She was also assisted by her legal representative.

5.3.10.18 According to her affidavit, which she took us through, she had been referred to Mr Gavin Watson by Mr Motlatsi in order to provide the former with the banking details into which the R500 000, 00 donation towards the CR17 campaign could be transmitted.

5.3.10.19 She also confirmed virtually all what the other two (2) members of the fundraising campaign had mentioned. For instance the pre-condition made to the donors that they should not expect any favours for having contributed to the campaign, as well as their identities and amounts pledged being deliberately concealed from President Ramaphosa.

5.3.10.20 Ms Nicol also confirmed what President Ramaphosa had stated that she had been the one who alerted him to the inaccuracy of his response in Parliament on 06 November 2018, because she had been the one who was responsible for opening the EFG2 trust account, as well as having facilitated the payment of R500 000, 00 to the CR17 campaign by Mr Watson into the account, and therefore knew all about it.

5.3.10.21 Ms Nicol stated that she knew President Ramaphosa for quite some time, in fact from President Ramaphosa's stint at Shanduka where they both worked. She also indicated that she is the one who approached President

Ramaphosa about the idea of asking for donations for his campaign where the idea was conceived and endorsed by those present.

5.3.10.22 Ms Nicol also indicated that it was agreed that the identity of the donors and the amounts pledged should not be revealed to President Ramaphosa.

5.3.10.23 However, she was unable to sufficiently address a concern I raised about the pre-screening or vetting of donors for purposes of eliminating the ones who might be tainted such as AGO, who would negatively affect the campaign as well as the integrity of President Ramaphosa.

5.3.10.24 Ms Nicol also confirmed what Mr Motlatsi had indicated earlier in his interview that above R200 million was collected for the CR17 campaign.

5.3.10.25 Notwithstanding the unanimous statements by the CR17 campaign managers to me that it had been agreed that the identities of the donors and the amounts donated by them should not be disclosed to President Ramaphosa, evidence adduced has revealed the contrary.

5.3.10.26 Evidence adduced in a form of e-mails, invitations and instructions confirm that President Ramaphosa was constantly informed of the activities of the CR17 campaign by the campaign managers whereupon his advice and approval on specific matters, would from time to time be sought.

5.3.10.27 I have therefore established that in addition to having met with the potential donors during the banquet functions, where he delivered key note addresses, evidence further confirm that President Ramaphosa had had further and broader interactions with the donors, some of whom he knew very well.

Evidence of Mr Andile Ramaphosa

5.3.10.28 Although I did not conduct interviews with Mr Andile Ramaphosa, he made submissions to my office in a form of an affidavit dated 21 February 2019

in which he explained his business relationship with AGO. This was confirmed by the Advisory Mandate and the Anti-Bribery and Corruption Policy signed between his company, Blue Crane Capital (Pty) Limited and AGO in December 2017.

5.3.10.29 Mr Shivambu in his complaint, had made a specific request to me to investigate and confirm whether indeed there was a contract between Mr Andile Ramaphosa's company, Blue Crane Capital and AGO as indicated by President Ramaphosa in his response to Mr Maimane's question in Parliament on 06 November 2018.

Below are the copies of the Advisory Mandate and the Anti-Bribery and Corruption Policy:

Anti-Bribery and Corruption Policy.

1. The "Anti-Bribery and Corruption Policy" is entered into by duly authorised representatives of Blue Crane Capital (Pty) Ltd, Offtake (Pty) Ltd and Africa Global Operations (Pty) Ltd, collectively referred to as "Parties" or individually as "Party". ("Policy")
2. Each Party represents that it is familiar with (i) the South African Prevention and Combating of Corrupt Activities Act, 12 of 2004, (ii) the U.S. Foreign Corrupt Practices Act 1977, (iii) the UK Bribery Act 2010, (iv) other public and commercial antibribery laws which may apply and (v) international anti-corruption treaties such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption ("Anti-Bribery Laws")
3. Each Party represents that its performance vis-à-vis the envisaged and/or existing mandate/s, agreements and all business related activities between the Parties and/or third parties and government officials ("Engagement Activities") have been and will be made in compliance with the Anti-Bribery Laws.
4. Each Party warrants that it and its affiliates have not made, offered, or authorised and will not make, offer, or authorise with respect to all Engagement Activities, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to or for the use or benefit of any officer or employee of the other party or any public official (i.e., any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate the applicable Anti Bribery Laws.
5. Neither Party shall make any unofficial payment to a government employee/s to speed up an administrative process where the outcome is already pre-determined (facilitation payment) in the performance of its obligations in pursuance of Engagement Activities.
6. Each Party agrees to maintain adequate internal controls and to keep accurate and complete records that support the payments due and all transactions pertaining to all Engagement Activities.
7. Each Party represents that, to the best of its knowledge and belief, and save as disclosed to the other Parties, neither it nor any of its personnel have been investigated (or is being investigated or is subject to a pending or threatened investigation) or is involved in an investigation (as a witness or suspect) in relation to any breach of the Anti-Bribery Laws by any law enforcement, regulatory or other governmental agency or any customer or supplier; or has admitted to; or been found by a court in any jurisdiction to have engaged in, any breach of the Anti-Bribery Laws, or been debarred from bidding for any contract or business; or are public officials or persons who might otherwise reasonably be considered likely to exert a corrupt or illegal influence on behalf of the company. Each Party agrees that if, at any time, it becomes aware that any of the representations set out in this Policy are no longer correct, it will notify the other Parties of this immediately in writing.
8. Each Party (the "Indemnifying Party") shall be liable for and shall indemnify, defend and hold the other (the "Indemnified Party") harmless to the maximum extent provided in law from and against any claims, losses, costs, fees, payment of interest, fines or other liabilities incurred in connection with or arising from the investigation of, or defence against, any litigation or other judicial, administrative, or other legal proceedings brought against the Indemnified Party by a regulator or governmental enforcement agency as a result of acts or omissions by the Indemnifying Party or its Affiliates, subcontractors or agents in violation of, or alleged to be in violation of, the Anti-Bribery Laws.

9. Any breach of, or failure to comply with, the provisions of this Policy shall be deemed material and shall entitle the non-breaching Party to terminate all Engagement Activities forthwith.
10. The indemnity contained in this Policy shall survive the termination of all Engagement Activities.
11. Unless otherwise expressly provided for in this Policy and/or any other agreement reduced to writing:
- no Party shall have the authority to represent and/or make decisions on behalf of the other Party or Parties.
 - no Party shall have the right to interact with government officials with respect to the matters which pertain or are the subject of any of the Engagement Activities without the written consent of the other Party or Parties.
12. Each Party may request that the other Party or Parties provide a certification to the effect that neither it nor any of its affiliates, directors, officers, agents or other representatives acting on its behalf in connection with the performance under all Engagement Activities have been engaged in any transaction or activity in violation of these Anti-Bribery Laws. Upon request a Party shall deliver such certification within 10 business days.

Name: Belle Rumphe
 Capacity: Managing Director
 Signature: [Signature]
 On behalf of Blue Crane Capital (Pty) Ltd

Name: CLAUDIA WABSON
 Capacity: CEO
 Signature: [Signature]
 On behalf of Africa Global Operations (Pty) Ltd

Name: SANDU MATHWASA
 Capacity: CEO & FOUNDER
 Signature: [Signature]
 On behalf of Offtake (Pty) Ltd

Advisory Mandate

INSTRUCTIONS:

- 1) Initial each page of the mandate
- 2) Sign the mandate and client information schedule in full where indicated
- 3) Complete and sign either the full discretion schedule or the limited discretion schedule
- 4) Initial all insertions and deletions

The Executive Director
AGO

Company Reg No: 1981/01242807

Dear Sir

I, the undersigned, hereby being duly authorized to enter into agreements and to act on behalf of AGO (and/or transaction/Project), hereby authorize and appoint BLUE CRANE CAPITAL (PTY) LTD (registration number 2016/064227/01) AND OFFTAKE (PTY) LTD (registration number 2016/064227/02) as a Strategic and Financial Advisor, to act and render advisory services to AFRICAN GLOBAL OPERATIONS (PTY) LTD (hereinafter referred to as "AGO") either on a fully discretionary or limited discretionary basis, as set out in the schedules that are attached to this mandate if applicable. This mandate and the applicable attached schedules constitute a mandate as commonly contemplated and intended by both parties to bring about a legal relationship and agreement between the parties hereto. To enable BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD to give effect to this authority, I wish to record that:

- 1 BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD are hereby appointed as AGO's (and/or transaction/Project)'s duly authorized Strategic Advisor to render Strategic Advisory and Financial Advisory services to AGO, in accordance with this mandate.
- 2 BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD are hereby authorised to advise AGO (AND/OR TRANSACTION/PROJECT) in regard to Strategic Advisory and Financial Advisory services to be undertaken on behalf of and for the benefit of AGO subject to the applicable legislation(s).
- 3 Unless otherwise specified in writing by BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD:
 - 3.1 AGO warrants that it is duly authorized to instruct BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD, and that of all such instructions as it may deliver or cause to be delivered to BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD in terms of this mandate that they do not exceed the rights and powers of AGO to issue such, and that they are of good delivery.
- 4 It is specifically recorded that BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD may not exercise the rights attaching to any instruction(s) for its own purpose or interest, but may only act in accordance with AGO's instructions and on the agreed upon projects and/or transactions as identified between the Parties in the Fee Performance Share Agreement.

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Page 1

FEES

5. In consideration for the services to be provided by BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD in terms of this mandate, BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD shall be entitled to the following fees:

5.1 Retainer fee payable by AGO monthly excluding vat at [REDACTED] thousand (and) for the limited period of the advisory as per annexure (retainer shall be capitalized) within the structures of the agreed project. Implying that retainer shall be recouped through the project.

5.2 The payments shall be effected monthly, upon submission of a valid invoice.

5.3 Any other fees as determined from time to time on the basis set out in this mandate will need to be authorised by AGO.

5.4 In terms of an increase, BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD will seek authorization from AGO to vary the fees and charges from time to time. AGO shall be given 30 (thirty) days written notice of such. VAT is payable on all fees charged by BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD. No increase shall be payable unless authorised and/or agreed to by AGO.

TERMINATION

6. Either party may terminate this mandate by written notice to the other party and termination shall be effective upon receipt of such notice. Such termination shall not, however, affect any legal rights or obligations, which may have already arisen.

NOTICES

7. BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD and AGO choose as their respective *domicilium citandi et executandi* for the purpose of the service of all notices and process pursuant to this mandate our respective physical addresses appearing on this, or such other physical and postal addresses as may be stipulated by notice in writing.

8. The words and phrases used in this mandate shall, unless the contrary appears, have the meanings ascribed to them in the relevant legislation, or any replacement act/s and any relevant conditions or directives promulgated under the relevant legislation.

INDEMNITY

9. AGO hereby indemnify and hold harmless BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD and any third party with whom BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD contracts on behalf of AGO, from any loss incurred by AGO, BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD pursuant to any bona fide attainment/rendering of advisory services by BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD in terms of this mandate and against any and all claims, damages, liabilities, costs and expenses arising as a result of BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD execution of this mandate, except where such loss or claim is

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Page 2

a result of the gross negligence or wilful misconduct of BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD and/or its employees.

- 10 Each Party shall be liable for their own taxes payable in terms of the agreed upon fees relating to the transactions and/or projects. The Tax system and its applicable laws to be considered will be the Tax laws applicable in the legal jurisdictional area in which the transaction is taxable.

GOVERNING LAW

- 11 This mandate is governed by and shall be construed in accordance with South African Law.
- 12 In the event that any provision in this mandate is found to be invalid or unenforceable as law, the remaining provisions shall remain of full force and effect and shall be binding upon the parties.

DISPUTE RESOLUTION

- 13 Any disputes arising from or in connection with this mandate shall by BLUE CRANE CAPITAL (PTY) LTD AND OFFTAKE (PTY) LTD giving written notice to that effect to AGO be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA. There shall be a right of appeal as provided for in article 22 of the aforesaid Rules;
- 13.1.1 The parties expressly consent to any arbitration in terms of the aforesaid Rules being conducted as a matter of urgency; and
- 13.1.2 Any party shall have the right to apply to such dispute, in writing, to the secretariat of AFSA in terms of article 23(2) of the aforesaid Rules for any such arbitration to be conducted on an urgent basis.

GENERAL

- 14 No addition to or variation or amendment of this mandate shall be binding unless contained in a written document signed by or on behalf of both of us.
- 15 No term, provision, condition or representation relating to the subject matter hereof, not contained herein or in the schedules annexed hereto shall be binding on either of us.
- 16 Both parties are authorized to record/archive any written correspondence with each other to be used in evidence for the sole purpose of resolving any dispute that may arise.
- 17 Any notice given in terms of this mandate shall be given in writing and shall be deemed, unless the contrary is proved, if:
- 17.1. delivered by hand, to have been received on the date of delivery; and
- 17.2. sent by post, to have been received 10 (TEN) days after the date of posting;
- 17.3. sent by facsimile, electronic mail or any other electronic media referred to in the Electronic Communications Act 25 of 2002 of the Republic of South Africa. Such communication / instruction shall be deemed to have been received upon receipt of confirmation of the communication by the sender.

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17.4. Neither parties shall be liable for any direct, special, indirect or consequential damages or breach of confidentiality arising from any alteration or interception of any communications by third parties.

18 Any Schedule(s) annexed hereto, if signed by or on behalf of both of parties, shall be binding on both parties as if specifically incorporated into this mandate until cancelled by notice in writing as contemplated herein and any reference to this mandate includes a reference to the schedules to this mandate.

FORCE MAJEURE

19 If any Party becomes subject to a Force Majeure Event that substantially prevents, inhibits and/or frustrates its ability to deliver the Services, the parties must use commercially reasonable endeavors to resume full performance of the Affected Services within the shortest time period following the occurrence of the Force Majeure Event.

RETURN OF PROPRIETARY INFORMATION

20 On termination of this mandate or upon AGO's instruction, all proprietary information shall be returned to the owner thereof within 30 (Thirty) days from the date which such request/termination was made.

Domicilium et cetera

AGO (AND/OR TRANSACTION/PROJECT)

whose domicilium address:

Smart Global Campus
Windsor Road
Johannesburg
2001

BLUE CRANE CAPITAL (PTY) LTD

whose domicilium address:

[Redacted address information]

OFFTAKE (PTY) LTD

whose domicilium address:

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[Signature] SSOT [Signature] SM

For and on behalf of: [Signature]
 (Signature)
 Name: DAVID MATHWASA
 Designation: DIRECTOR
 Signed at WILLOWMOOR, SANDTON this 15th day of DECEMBER 2017

BLUE CRANE CAPITAL (PTY) LTD hereby accepts its appointment as AGO LANCER TRANSACTION/PROJECT advisor and agrees to be bound by the provisions of this mandate insofar as legally possible.

For and on behalf of: [Signature]
 BLUE CRANE CAPITAL (PTY) LTD
 (Signature)
 Name: A. J. J. [Signature]
 Designation: [Signature]
 Signed at _____ this _____ day of _____ 2017

OFFTAKES (PTY) LTD hereby accepts its appointment as AGO advisor and agrees to be bound by the provisions of this mandate insofar as legally possible.

For and on behalf of: [Signature]
 OFFTAKES (PTY) LTD
 (Signature)
 Name: SONA MATHWASA
 Designation: DIRECTOR

Printed Name: SONA MATHWASA
 SMT

Page 2

Designation

Signed at Sandton, Sandton this 16th day of December 2017

OFFTAKES (PTY) LTD

For and on behalf of: [Signature]
 OFFTAKES (PTY) LTD
 (Signature)

Name: SONA MATHWASA
 Designation: [Signature]

Signed at WILLOWMOOR, SANDTON this 16th day of DECEMBER 2017

SMT
 MATHWASA
 SMT

5.3.10.30 Mr Andile Ramaphosa also submitted bank records which showed transactions of money received by his company, Blue Crane Capital (Pty) Limited from AGO for the work his company had invoiced them for the services rendered.

5.3.10.31 He also denied having a trust foundation linked to an account which the R500 000, 00 payment was allegedly paid into by AGO, nor did he receive any payment from an entity trading under the name and style of Miotto Trading.

5.3.10.32 He also submitted invoices generated and in respect of services rendered by his company to AGO for the period 05 December 2017 to 28 February 2018, as well as bank statements which confirm payments received by his company from AGO over this period.

5.3.10.33 According to the bank statements provided to my office by Mr Andile Ramaphosa, he received about 4 monthly payments of R171 000, 00 which in total was about R684 000 from AGO for the period mentioned above.

Evidence presented by AGO's employees

5.3.10.34 I then interviewed Mr Petrus Venter whose affidavit was primarily the source of the complaint by Mr Maimane as he was central in the transfer of the R500 000,00 payment to the EFG2 account. I also proceeded to interview Mr Gavin Watson and Ms Natasha Olivier who was AGO's company secretary.

Evidence presented by Mr Petrus Venter during his interview

5.3.10.35 I interviewed Mr Petrus Venter on 21 February 2019 to understand facts relating to his role in the matter under investigation, in particular the transfer of the R500 000, 00 into the EFG2 account.

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- 5.3.10.36 According to him, he had worked for AGO as a Tax Consultant in 2017. He was called by AGO's CEO Mr Watson to his office in October 2017 and upon arrival, was taken to Ms Natasha Olivier's office, who is AGO's company secretary.
- 5.3.10.37 Ms Olivier was instructed by Mr Watson to transfer R3 million into the account of Miotto Trading, a small company which belonged to Mr Venter and his sister.
- 5.3.10.38 Mr Venter was then handed a piece of paper on with banking details by Mr Watson who then instructed him to transfer R500 000, 00 to an EFG2 trust account which he was told was the trust foundation account of Mr Andile Ramaphosa.
- 5.3.10.39 He was informed by Mr Watson that the description of the transfer of the R500 000, 00 should be Social Development, and he did as he was instructed.
- 5.3.10.40 Mr Watson had also instructed him to transfer R2, 5 million to the account of Ms Lindie Gouws which he did on 19 October 2017.
- 5.3.10.41 He informed me that the transaction was however, cancelled and this money was later transferred back into Mr Watson's account in batches of R500 000 x 2; R600 000 x 2 and R300 000 between 07 and 10 November 2017. The said transfer back of R2, 5 million to Mr Watson on these dates is confirmed by the bank records. Apparently Ms Gouws for some unknown reason, was no longer keen to receive it.
- 5.3.10.42 According to him, the affidavit referred to by Mr Maimane in his complaint was prepared on his behalf and that certain parts of what is reflected in it is not all true as certain things have been changed. However, everything

pertaining to the transfer of R500 000, 00 is true. Mr Venter stated that in fact he had signed the affidavit referred to under duress.

5.3.10.43 Mr Venter further indicated that Mr Watson and AGO took advantage of his small company to effect some of their financial transactions, and that he was unable to refuse, hence the instruction to him to transfer the R500 000, 00 instead of using their own accounts.

Evidence presented by Mr Gavin Watson during his interview

5.3.10.44 During my interview of Mr Gavin Watson on 18 March 2019, he admitted that he had donated an amount of R500 000, 00 towards the CR17 campaign after he had been approached by one of the campaign managers, Mr Motlatsi to do so.

5.3.10.45 According to him, there was nothing untoward with his donation as a longstanding member of the ANC because he had over the years contributed financially to the ANC party's election campaigns even during the former presidents before President Ramaphosa.

5.3.10.46 However, Mr Watson also stated that in the past he had donated to the ANC as a party and not to individuals as it was the case now, where he had to donate to both CR17 and NDZ's individual campaigns.

5.3.10.47 He also expressed a concern to me that he thinks that this was a politically motivated attack on him by the opposition party.

5.3.10.48 Mr Watson confirmed although he did not attend all the dinner functions organised by the campaign managers, he was present at the one which was hosted by President Ramaphosa.

5.3.10.49 From the bank records at my disposal there had been several constant transfers of money between AGO, Concilium and Miotto Trading amounting to large sums and over a period of time.

Evidence presented by Natasha Olivier during her interview

5.3.10.50 I also proceeded to interview Ms Olivier who is Mr Watson's PA/Secretary at AGO and was responsible for the transfer of the money, R3 million from Mr Watson's personal account into Miotto Trading before part of it, about R500 000,00 was transferred into the EFG2 trust account.

5.3.10.51 She confirmed that she was instructed by Mr Watson to effect the transfer of the money referred to in my investigation, and that there was nothing extraordinary about this as it was in her scope of work to do the financial transfers for Mr Watson from time to time.

Evidence of Edelstein, Farber and Grobler Inc.

5.3.10.52 On 23 April 2019, I conducted interviews with three directors of the attorneys firm, Edelstein, Farber and Grobler (EFG) in order to get more information on how they administered the EFG2 trust account for the CR17 campaign. They were also assisted by their legal representative during the proceedings.

5.3.10.53 Mr Barry Farber who is the former director of EFG, stated that he had been approached by the CR17 campaign managers, in particular Ms Donne Nicol to open a trust account dedicated to the campaign which he did in compliance with all the legal requirements

5.3.10.54 According to him, it was with a specific mandate and clear forward instructions on how the account would operate.

5.3.10.55 Subsequent to verifying with their bank and their auditors, Levin Howarth, EFG Inc. was given the go-ahead to open the account for the CR17 campaign.

5.3.10.56 Mr Farber indicated that although Ms Ronnel Grobler was not involved in the physical opening of the account, she dealt with the transfer of funds to beneficiaries on instructions from the CR17 campaign managers, mostly from Ms Nicol. However, the bank records reflect her as one of the signatories to the bank mandate when the account was opened.

5.3.10.57 Ms Grobler on her account of what transpired, confirmed what had been said by Mr Farber, and that she would get telephonic instructions from Ms Nicol to pay X, Y or Z which she would comply with.

5.3.10.58 In conclusion the EFG directors indicated that the account was always audited and the balance sheet sent to the Law Society.

5.3.10.59 I need to mention that the advocate who had represented the EFG directors was quite unco-operative, as he from the onset raised unnecessary objections, which he continued to do throughout the proceedings despite having been informed that his clients if implicated, would be afforded an opportunity to rebut any such likely findings if any, against them.

Evidence on the disbursements of funds from the EFG2 trust account to several beneficiaries, including Ria Tenda Trust, Linked Environmental Services and Cyril Ramaphosa Foundation

5.3.10.60 I had also subpoenaed bank records of the EFG2 trust account from the two banks involved in the above transaction, to establish how the alleged trajectory of the money occurred, so as to determine whether such movement was not improper as alleged by the Complainants that there were suspicions of money laundering which also needed probing.

- 5.3.10.61 From the evidence received by my office, I can confirm that the R500 000.00 payment was transferred from Mr Watson's personal account as part of a lump sum of R3 million into the account of Miotto Trading and eventually into the EFG2 trust account, which is an attorneys trust account for the CR17 campaign.
- 5.3.10.62 I can also confirm that large sums of money were transferred by various benefactors into the EFG2 trust account for the CR17 campaign from where it was disbursed by the attorneys to several beneficiaries, including Ria Tenda Trust, Linked Environmental Services and Cyril Ramaphosa Foundation to name a few.
- 5.3.10.63 From the evidence received by my office, an amount of **R191 482 227, 43** was deposited into the EFG2 ABSA trust account between 06 December 2016 and 01 January 2018 and **R190 108 227, 00** was transferred out of this account in the same period.
- 5.3.10.63 Evidence from bank records reflect that an amount of **R388 544 340, 34** was deposited into SBSA Ria Tenda Trust account between 01 January 2017 and 20 February 2019 whilst about **R388 518 464, 55** was transferred out of it in the same period.
- 5.3.10.64 Records also reflect that **R441 179 572, 43** was deposited into the FNB account of Linked Environmental Services between 15 December 2016 and 13 February 2019 and **R441 147 804, 83** was transferred out of this account in the same period.
- 5.3.10.65 About **R335 738 42** was transferred from Linked Environmental Services FNB account into the Cyril Ramaphosa Foundation between 20 July 2017 and 26 March 2018.

Below is the depiction of flow of funds from the EFG2 Trust Account:



84

Prevention and Combating of Corrupt Activities Act, 12 of 2004 (PACCA Act)

5.3.10.68 Section 12 of the PACCA Act provides that:

- (2) *“Any person who, directly or indirectly-*
 - (c) Accepts or agrees or offers to accept any gratification from any person whether for the benefit of himself or herself or for the benefit of that other person or of another person; or*
 - (d) Gives or agrees or offers to give to any person any gratification whether for the benefit of that other person or for the benefit of another person*
- (b) In order to improperly influence in any way-*
 - (cc) The promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or*
 - (dd) The fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or*
- (ii) as a reward for acting as contemplated in paragraph (a)*
Is guilty of an offence.”

5.3.10.69 Section 3 of PACCA also provides for an all-encompassing general offence of corruption. In terms of this section, anybody who accepts (or even agrees to accept or offers to accept) any gratification from anybody else or gives (or even agrees to give or offers to give) any gratification to anybody else to influence the receiver to conduct himself or herself in a way which amounts to the unlawful exercise of any duties, commits the act of corruption.

5.3.10.70 PACCA also criminalises specific corrupt activities relating to, amongst others, public officers, contracts and the procurement of tenders. It also recognises the link between corrupt activities and other forms of crime such as organised crime and financial crimes including money laundering.

5.3.10.71 For instance, a criminal may attempt to integrate the funds he/she received from corrupt activity, such as bribe or kickback, into the financial system by channelling the funds through complex financial transactions during which he/she may involve several entities as conduits and use financial institutions as a means to disguise the corrupt source of funds as well as the ultimate beneficial owner of the proceeds of unlawful activity.

5.3.10.72 My investigation into the issue pertaining to possible money laundering is premised on the above legislation dealing with corruption and applies not only to private individuals who offer bribes, but also to private individuals who accept bribes.

Conclusion

5.3.10.73 It would therefore have been remiss of me not to deal with this aspect of the complaint so as to be able to confirm or dispel with any such suspicion as referred to in the allegations brought before me by the complainants.

5.3.10.74 Section 6(4)(c)(i) of the Public Protector Act provides that the Public Protector may, *“at any time prior to, during or after an investigation, if he or she is of the opinion that the facts disclose a commission of an offence by any person, bring the matter to the notice of the relevant authority charged with prosecutions”*.

5.3.10.75 Based on the facts before me as well as evidence adduced during my investigation, I have come to the conclusion that there is merit to the allegation relating to the suspicion of money laundering as alluded to in the complaint lodged with my office.

5.3.10.76 However, this feature of the investigation will be dealt with in conjunction with the provisions of section 6(4)(c)(i) of the Public Protector Act.

5.4 A response by H/E President Ramaphosa to the section 7(9) notice presented to him on 30 May 2019.

5.4.1 Section 7(9) of the Public Protector Act provides that *“if it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances”*.

5.4.2 The response provided by President Ramaphosa regarding the section 7(9) notice is considered herein. I have however, not dealt with each and every aspect raised in the response but that should not be construed as an admission of any kind of the averments contained therein.

5.4.3 President Ramaphosa’s response which was submitted through his attorneys, is prefaced by the following:

At paragraphs 9-12 of the attorney’s letter

“In our Client’s response, we indicate that we do not accept that you have jurisdiction to investigate the CR17 campaign and to make any findings in relation to it. Specifically, we point out that section 6 of the Public Protector Act, 23 of 1994, limits the powers of the Public Protector to investigate matters which concern public administration and improper exercise of public or statutory powers. The CR17 campaign and its fundraising operations do not concern public administration or the exercise of public or statutory power. Therefore the Public Protector has no jurisdiction in terms of the Public Protector Act to investigate the matter at all.

Furthermore, to the extent that you rely on the Executive Members’ Ethics Act, 82 of 1998, we draw your attention to section 3(1) of that Act, which

states that the Public Protector may only investigate alleged breaches of the Act, "on receipt of a complaint " contemplated in section 4 of the Act. The Notice and provisional report concedes that complaints under investigation relate to the alleged "misleading" statements made by our Client in Parliament on 6 November 2018. There is no complaint concerning CR17 campaign, its operations and fund-raising endeavours.

You have improperly and unilaterally extended the scope of the investigation to include CR17 and whether anything done by our Client in relation to CR17 breached the Executive Members' Ethics Act.

The entire investigation into CR17 and its activities is unlawful. Should you persist and make any finding in relation to CR17 and our Client's alleged conduct or omissions in relation to the CR17 campaign, the matter will be taken on judicial review in due course.

Nevertheless, in light of the gratuitous and false "findings" contemplated in the provisional report, our Client, while reserving his rights, has decided to address all your intended findings to demonstrate there is no legal or factual basis for the preliminary conclusions set out in the provisional report".

5.4.4 I wish to deal extensively with the foregoing which also forms the first part of the introduction of President Ramaphosa's response and seems to be the underlying tone of the stance taken by the authors thereof, which traverse the whole response document. Although I had previously addressed this in the section 7(9) notice, I refer once more to the seminal Supreme Court judgement in the matter of ***The Public Protector v Mail & Guardian Ltd (422/10) [2011] ZASCA 108 (1 JUNE 2011)***.

5.4.5 The above case had its origins in the investigation conducted by the then Public Protector as a consequence of a complaint which was based in the

issue of the M&G published on 20 May 2005 where an article appeared that had been written jointly by Mr Brümmer, Mr Sole and Mr Wisani wa ka Ngobeni under the heading 'The ANC's Oilgate'. The tenor of the article appears from its opening paragraphs, which are expanded on in the remainder of the article hereunder:

'A Mail and Guardian investigation into covert party funding has revealed how R11- million of public money was diverted to African National Congress coffers ahead of the 2004 election.

In what may be the biggest political funding scandal since 1994 the M&G has established that South Africa's state oil company, PetroSA, irregularly paid R15-million to Imvume Management – a company closely tied to the ANC – at a time when the party was desperate for funds to fight elections.

The M&G possesses bank statements and has seen other forensic evidence proving that Imvume transferred the lion's share of this to the ANC within days. PetroSA this week said it was unaware of this. The ANC denied impropriety and said it was not obliged to discuss its funders'

- 5.4.6 A member of the National Assembly had consequently asked the Public Protector to investigate the information that had been disclosed in the two newspaper articles. As the story unfolded over the following weeks the leader of the official opposition in parliament also asked the Public Protector on two occasions to expand his investigation to include the further revelations. The Public Protector acceded to the requests and produced a report within a short time. He called a press conference when he released the report, which he said had been necessitated by the importance and enormity of the matter. A spokesman in his office expressed the opinion that it had been the second most important investigation that had been conducted by the Public Protector. The report was tabled in the National

Assembly, where it evoked some debate, and it was adopted by a majority of its members.

5.4.7 The proprietor of the M&G (Mail & Guardian Limited, the first respondent), its then editor (Ms F Haffajee, the second respondent), and the two journalists, brought review proceedings against the Public Protector in the North Gauteng High Court. They asked for orders setting aside the report and ordering the Public Protector to investigate and report afresh. The orders were granted by Poswa J and the Public Protector appealed against them.

5.4.8 The office of the Public Protector is declared by the Constitution to be one that is independent and impartial, and the Constitution demands that its powers must be exercised 'without fear, favour or prejudice'.²⁵ Those words are not mere material for rhetoric, as words of that kind are often used. The words mean what they say. Fulfilling their demands will call for courage at times, but it will always call for vigilance and conviction of purpose.

5.4.9 The national legislation that is referred to in s 182 is the Public Protector Act 23 of 1994. The Act makes it clear that while the functions of the Public Protector include those that are ordinarily associated with an ombudsman²⁶ they also go much beyond that. The Public Protector is not a passive adjudicator between citizens and the state, relying upon evidence that is placed before him or her before acting. His or her mandate is an investigatory one, requiring pro-action in appropriate circumstances. Although the Public Protector may act upon complaints that are made, he or she may also take the initiative to commence an enquiry, and on no more than 'information that has come to his or her knowledge' of maladministration, malfeasance or impropriety in public life.²⁷

²⁵ Section 181(2).

²⁶ Concise Oxford Dictionary: 'An official appointed to investigate individuals' complaints against maladministration, especially that of public authorities'.

²⁷ Section 7 (1)(a) of the Act.

5.4.10 The Act repeats in greater detail the constitutional jurisdiction of the Public Protector over public bodies and functionaries and it also extends that jurisdiction to include other persons and entities in certain circumstances. In broad terms, the Public Protector may investigate, amongst other things, any alleged improper or dishonest conduct with respect to public money,²⁸ any alleged offence created by specified sections of the Prevention and Combating of Corrupt Activities Act 12 of 2004 with respect to public money,²⁹ and any alleged improper or unlawful receipt of improper advantage by a person as a result of conduct by various public entities or functionaries.³⁰

5.4.11 But although the conduct that may be investigated is circumscribed I think it is important to bear in mind that there is no circumscription of the persons from whom and the bodies from which information may be sought in the course of an investigation. The Act confers upon the Public Protector sweeping powers to discover information from any person at all. He or she may call for explanations, on oath or otherwise, from any person, he or she may require any person to appear for examination, he or she may call for the production of documents by any person,³¹ and premises may be searched and material seized upon a warrant issued by a judicial officer.³² Those powers emphasise once again that the Public Protector has a proactive function. He or she is expected not to sit back and wait for proof where there are allegations of malfeasance but is enjoined to actively discover the truth".

5.4.12 In conclusion the court held that *"the Public Protector is not a passive adjudicator between the citizens and the state, relying only upon evidence which is placed before her by the parties. The Supreme Court of Appeal*

²⁸ Section 6(4)(a)(iii).

²⁹ Section 6(4)(a)(iii). The offences are those referred to in 'Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2' of the Act.

³⁰ Sections 6(4)(a)(iv) and 6(5)(c).

³¹ Section 7(4).

³² Section 7A(1).

SCA held further that the Public Protector should not be bound or be limited to the issues raised for consideration and determination by the parties but should, investigate further and discover the truth and also inspire confidence that the truth has been discovered”.

5.4.13 Similarly the powers of the Public Protector to investigate matters before her/him are accentuated in the SCA judgement of **Minister of Home Affairs v The Public Protector of South Africa (308/217) [2018] ZASCA 15 (15 March 2018)** as follows: *“the office of the Public Protector is a unique institution designed to strengthen constitutional democracy. It doesn’t fit into the institutions of public administration but stands apart from them. It is a purpose-built watch-dog that is independent and answerable not to the executive branch of government but to the National Assembly. Its function is not to administer but to investigate, report on and remedy maladministration. The Public Protector is given broad discretionary powers as to what complaints to accept, what allegations of maladministration to investigate, how to investigate them and what remedial action to order – as close as one can get to a free hand to fulfil the mandate of the Constitution”.*

5.4.14 It is therefore unfortunate that despite the longstanding legal views expressed in the above cases, as well as empowering the legal prescripts, investigations of the matters before my office are still met with resistance and legal challenges by those against whom they are conducted.

5.4.15 In light of the foregoing I strongly dispute President Ramaphosa's assertion that the entire investigation into CR17 campaign and its activities is unlawful. The issues raised by the Complainants are based on the donation made by Bosasa towards the CR17 campaign and were lodged against President Ramaphosa in terms of Executive Members' Ethics Act as he was the Deputy President at the time. In terms of the Executive Members' Ethics the Public Protector must investigate all complaints lodged in line therewith.

At paragraphs 22-91: The nature, purpose and operations of CR17

5.4.16 The response gave an overview of the CR17 campaign follows: *"The CR17 campaign brought together the like-minded individuals to support the renewal of the ANC and the candidature of the President as the ANC president, and many others for election to the ANC's NEC. The campaign had broad political objectives, including the unity of the ANC and the restoration of its values and character. Through its communication and messaging, the CR17 sought to engage ANC members and supporters in political debate and promote organisational development and unity in the ANC. While the core audience that the campaign sought to reach were ANC members, the campaign also sought to galvanize an anti-corruption movement and presented a particular vision and policy outlook to the broader progressive community, including civil society, faith-based organisations, traditional leaders, business, trade unions, students and the media".*

5.4.17 I have taken note of the foregoing and the explanations in so far as it relates to the genesis of the CR17 campaign as presented on paragraphs 22-91 of the response and wish to state that I do not have any no qualm with that.

5.4.18 However, it is worth noting that when asked during interviews for any records, project plan, minutes of meetings of the CR17 campaign, the managers all stated under oath that no records of the activities thereof were kept.

At paragraphs 92-123: Payments to EFG2, the Ria Tenda Trust, Linkd and CRF

5.4.19 In the response it is stated that: *"That the Public Protector states that she subpoenaed the bank records of the EFG2 account from two banks in order to establish whether the movement of the money between the bank*

accounts was improper, as alleged by the complainant, and if there was a suspicion of money laundering. She reaches the following conclusion:

'I can also confirm that large amounts of money were transferred by various benefactors into the EFG2 trust account for the CR17 campaign from where it was disbursed by the attorneys to several beneficiaries, including Ria Tenda Trust, Linked Environmental Services and Ramaphosa Foundation Trust to name a few'

- 5.4.20 We have explained what the Ria Tenda Trust, Linkd and CRF are, as well as why payments were made to them.
- 5.4.21 *It should be noted that CR17 funds were spent on a variety of items, including office rental and administration, travel and accommodation, salaries, marketing and communication campaigns, media monitoring, research and security. Expenses were incurred at both national and provincial level, since the campaign included mobilisation and campaign activities across the country".*
- 5.4.22 As far as the trajectory of payments into the EFG2, Ria Tenda, Linkd and CRF accounts is concerned, although having been dealt with during my investigation and subsequent conclusions, I have made observations in this regard instead of findings. I will request the National Director of Public Prosecutions as the relevant institution, in terms of section 6(4)(c)(i) of the Public Protector Act, to deal with the matter, accordingly.
- At paragraph 124-145: The President did not mislead Parliament
- 5.4.23 The response incorrectly states as follows: *"The Public Protector has correctly found that the President acted in good faith. That should be the end of the matter. Any suggestion that that the President contravened the Executive Ethics Code is incompatible with the Public Protector's own finding that his response to Mr Maimane was given honestly and in good faith".*

5.4.24 *But it goes further than that. The President in fact did not mislead Parliament at all. Mr Maimane told Parliament that he had proof that the payment was one Bosasa made to Andile. He was the one who misled Parliament, albeit that he did so innocently”*

5.4.25 I have taken note of the preposterous argument advanced in this regard, and I do not agree therewith because nowhere in the section 7(9) notice did I make the purported finding. Furthermore, the Rules of the National Assembly are very clear on the procedures to be followed during the question and answer sessions in Parliament.

5.4.26 I have also dealt sufficiently with my reasons for the finding in this regard and save to say I do not agree with argument raised, I do not wish to reiterate what is already in the report which I had canvassed at length in the section 7(9) notice.

At paragraph 146 -151: No conflict of Interest

5.4.27 It is further contended as follows: “...*The President never contravened any of these provisions. He never placed himself at a risk of a conflict of interest between his official responsibilities and his private interest:*

5.4.27.1 *Many people made donations to CR17. Mr Watson was one of them. There were no strings attached to any of the donations.*

5.4.27.2 *The President moreover took the precaution to agree with CR17 that they would not tell him of any of the donations they received from anybody. It was probably not necessary for them to go that far but it was a wise precaution. It precluded any suggestion that the President’s goodwill can be bought.*

5.4.27.3 *The President never had any relationship of any kind with Mr Watson or his company. He also never did anything to exploit such a relationship.*

5.4.27.4 *Mr Watson never attended any CR17 fundraising dinners.*

5.4.27.5 *There was accordingly never any risk whatsoever of any conflict between the President's responsibilities on the one hand and his relationship with Mr Watson or his company on the other".*

5.4.28 I have since analysed the response provided and the argument advanced in this regard, I am of the belief that their essential averments can best be addressed by revisiting the rationale advanced in the section 7(9) notice and relevant case law in which the President's constitutional duties and responsibilities are clearly spelt out. I therefore do not deem it necessary to belabour the point further save to highlight that the issue under investigation has been comprehensively dealt with.

5.4.29 Furthermore, I have evidence which confirm regular updates to President Ramaphosa on the operations of the CR17 campaign by the campaign managers, his directives to them about payments of the money into the CR Foundation as well being asked by the campaign managers for him to speak to certain donors.

At paragraph 152 -169: No duty to declare the CR17 donations

5.4.30 The response argued as follows: *"The Executive Ethics Code only requires members to disclose their own financial interests. The President never had any financial interest in the donations made to CR17. The money was donated to CR17. The President did not have any claim to the money or any say over it, with the exception of amounts he himself loaned to the campaign. He never received any of it. It thus remained CR17's money alone.*

- 5.4.31 *This understanding accords with the common practice of all politicians across party lines. Many of them, which they never declared. They were not required to do so”.*
- 5.4.32 I wish to submit that this response pertaining to the President’s failure to declare the donations has been sufficiently dealt with in the section 7(9) notice and therefore despite the arguments advanced in response thereto, nothing dispels of the finding and conclusion canvassed in the notice. I therefore with due regard, do not agree with the assertion that there was nothing untoward and thus nothing to declare by him, in the funding made towards the CR17 campaign.
- 5.4.33 I have also established that some of the donors to the CR17 campaign could have been doing business with the state, and just like AGO (Bosasa) with several long-standing government contracts, stood to benefit substantial financial returns from such big government contracts. However, the risk in these circumstances is the potential that we would be having a President that would be beholden to such donors, thereby causing the manifestation of capture of the state.
- 5.4.34 It is therefore against such potential capture, that all South African state functionaries, including the Executive, should guard against exposing themselves to a situation involving the risk of a conflict between their official responsibilities and private interests in violation of section 96 of the Constitution.
- 5.4.35 President Ramaphosa at the time of receipt of the donations, was the Deputy President of the Republic of South Africa and a Member of Parliament. He was therefore bound by the Code of Ethical Conduct and Disclosure of Members’ Interest for Assembly and Permanent Council Members, to declare such financial interest.

At paragraph 170 -174: No money laundering

- 5.4.36 The response further makes the following assertion: *"The only basis upon which the Public Protector raises this suspicion is that Mr Watson apparently routed his donation to CR17 via Miotto Trading, a small company that belongs to Mr Petrus Venter.*
- 5.4.37 *If there is any basis for the Public Protector's suspicion, then the suspects would be Mr Watson, (who routed his donation through Miotto Trading), his PA Ms Olivier,(who made the transfer to Miotto Trading), Mr Venter,(who made the transfer to CR17). The Public Protector interviewed all three of them but does not disclose the explanation they gave for routing the donation via Miotto Trading. It means that she either did not ask them or that she asked them but chooses not to disclose their answers. Either explanation is intriguing. If the Public Protector harboured any suspicion and interviewed the suspects then it would be very odd for her not to ask them for an explanation. If, on the other hand, she asked and they offered an explanation, it would be equally intriguing and inexplicable that she chooses not to disclose it.*
- 5.4.38 *Be that as it may, neither CR17 nor the President had any knowledge of the route by which the Watson donation reached the CR17's bank account. The President did not even know of the donation itself, least of all the route by which the money had ended up with CR17".*
- 5.4.39 Save to refer to paragraphs 4.1.3 - 4.1.9 and 5.4.15 above, I do not intend to engage with the argument advanced and every aspect raised in the response in this regard which I should however, hasten to state that this should not be construed as an admission of any kind of the averments contained therein. However, the transfer of funds from the EFG2 account to Ria Tenda Trust then later to Linkd reflects the intention to conceal original sources thereof and raises suspicion of commission of a crime.

6. OBSERVATIONS

- 6.1. The rules of the National Assembly of 2016 clearly stipulate what processes and procedures need to be observed by Members of Parliament in connection with questions and answers they need to provide to the House during the parliamentary proceedings.
- 6.2. I have however, observed that despite the decorum of the House, some members seem not to make prior consideration of the questions they are required to prepare for and respond to orally, and/or do not pay sufficient attention to consider seriously the oral responses they need to provide to the House, despite being allowed sufficient time to do so prior to the sitting of Parliament.
- 6.3. I am attributing this observation to the number of EMEA investigations I have had to deal with since taking office, all of which occur during the Question and Answer session, and emanate from the ill-considered oral responses provided by the Members of Parliament in which consequently, they would have been regarded to have misled the House, inadvertently or deliberately.
- 6.4. Even the EMEA matter that I have just investigated as lodged by Mr Maimane, was clearly not dealt with in accordance with the Rules of Parliament in that he was allowed to pose a follow-up question which was in no way related to the original question he had asked President Ramaphosa.
- 6.5. Furthermore the Rules of the National Assembly are also silent on whether the Members of Parliament are allowed to make subsequent written submissions in order to correct or clarify the oral replies they may have provided to the question posed to them during the Question and Answer session of the House.
- 6.6. I have also observed that it is against any potential manifestation of the capture of the state, which all South African state functionaries, including the President, should guard against exposing himself to a situation involving the

risk of a conflict between their official responsibilities and private interests, which is in violation of section 96 of the Constitution.

7. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, including the response to the section 7(9) notice, I now make the following findings:

7.1. Regarding whether on 06 November 2018 during question session in Parliament, President Ramaphosa deliberately misled the National Assembly and thereby acted in violation of the provisions of the Executive Ethics Code and Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members.

7.1.1 The allegation that on 06 November 2018 during question session in Parliament, President Ramaphosa deliberately misled the National Assembly, is substantiated.

7.1.2 President Ramaphosa's statement on 06 November 2018 in his reply to Mr Maimane's question albeit defective in terms of the Rules of the National Assembly, was misleading, as he also conceded in his correspondence to my office on 01 February 2019, and even in his subsequent letter to the Speaker of the National Assembly on 14 November 2018 where he sought to correct the incorrect information he had provided in the National Assembly.

7.1.3 Consequently, President Ramaphosa's reply was in breach of the provisions of paragraph 2.3(a) of the Executive Ethics Code, the standard of which includes deliberate and inadvertent misleading of the Legislature. He deliberately misled Parliament, in that he should have allowed himself sufficient time to research on a well-informed response.

7.1.4 I therefore find President Ramaphosa's conduct as referred to above although ostensibly in good faith, to be inconsistent with his office as a member of Cabinet and therefore in violation of section 96(1) of the Constitution, as referred to above.

7.2 Regarding whether President Ramaphosa improperly and in violation of the provisions of the Executive Ethics Code and Disclosure of Members' Interests for the National Assembly and Permanent Council Members exposed himself to any situation involving the risk of a conflict between his official duties and his private interest or used his position to enrich himself and his son through businesses owned by African Global Operations.

7.2.1 The allegation that President Ramaphosa improperly and in violation of the provisions of the Executive Ethics Code and Disclosure of Members' Interests for the National Assembly and Permanent Council Members exposed himself to any situation involving the risk of a conflict between his official responsibilities and his private interests or used his position to enrich himself and his son through businesses owned by AGO, is substantiated.

7.2.2 In light of the evidence before me, it can be safely concluded that the campaign pledges towards the CR17 campaign were some form of sponsorship, and that they were direct financial sponsorship or assistance from non-party sources other than a family member or permanent companion, and were therefore benefits of a material nature to President Ramaphosa.

7.2.3 President Ramaphosa as a presidential candidate for the ANC political party, received campaign contributions which benefitted him in his personal capacity. He was therefore duty bound to declare such financial benefit accruing to him from the campaign pledges. Failure to disclose the said material benefits, including a donation from AGO constitutes a breach of the Code.

- 7.2.4 I have evidence which indicate that some of the money collected through the CR17 campaign trust account was also transferred into the Cyril Ramaphosa Foundation account from where it was also transferred to other beneficiaries.
- 7.2.5 President Ramaphosa at the time of receipt of the donations, was the Deputy President of the Republic of South Africa and a Member of Parliament. He was therefore bound by the Code of Ethical Conduct and Disclosure of Members' Interest for Assembly and Permanent Council Members, to declare such financial interest.
- 7.2.6 I therefore find President Ramaphosa's failure to disclose financial interest which accrued to him, as a result of the donations received towards the CR17 campaign to be in violation of paragraph 2 of the Executive Ethics Code, and accordingly amounts to conduct that is inconsistent with his office as member of Cabinet, as contemplated by section 96 of the Constitution.
- 7.3 **Regarding whether there is an improper relationship between President Ramaphosa and his family on the one side, and the company African Global Operations on the other side, due to the nature of the R500 000, 00 payment passing through several intermediaries, instead of a straightforward donation to the CR17 campaign, thus raising the suspicion of money laundering.**
- 7.3.1 The allegation that there is an improper relationship between President Ramaphosa and his family on the one side, and the company African Global Operations on the other side, due to the nature of the R500 000, 00 payment passing through several intermediaries, instead of a straight donation towards the CR17 campaign, thus raising suspicion of money laundering, has merit.
- 7.3.2 I have taken into account of the facts as well as *prima facie* evidence before me, I am therefore of the view that there is merit to the allegation relating to the suspicion of money laundering as alluded to in the complaint lodged with my office.

7.3.3 However, I have decided to refer this matter to the relevant institution for further probing as provided for in section 6(4)(c)(i) of the Public Protector Act which states that the Public Protector may, *“at any time prior to, during or after an investigation, if he or she is of the opinion that the facts disclose a commission of an offence by any person, bring the matter to the notice of the relevant authority charged with prosecutions”*.

8. REMEDIAL ACTION

The appropriate remedial action taken as contemplated in section 182(1)(c) of the Constitution, with a view of remedying the impropriety referred to in this report is the following:

8.1 The Speaker of the National Assembly to:

- 8.1.1 Within 30 working days of receipt of this Report, refer His Excellency President Ramaphosa's violation of the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members to the Joint Committee on Ethics and Members' Interests for consideration in terms of the provisions of paragraph 10 of the Code.
- 8.1.2 Within 30 working days of receipt of this Report, consider within her discretion, for deliberations by Members of Parliament in terms of the Rules of the National Assembly, issues relating to my observations under paragraphs 6.1 to 6.6 of this Report for possible review and amendment thereof.
- 8.1.3 Within 30 working days of receipt of this Report, demand publication of all donations received by President Ramaphosa because as he was the then Deputy President, he is bound to declare such financial interests into the Members' registerable interests register in the spirit of accountability and transparency.

8.2 The National Director of Public Prosecutions to:

- 8.2.1 Within 30 working days of receipt of this Report, take note of the observations contained in paragraph 7.3.1. as well as the recommendations contained in paragraph 7.3.3 of this report, and in line with section 6(4)(c)(i) of the Public Protector Act, conduct further investigation into the *prima facie* evidence of money laundering as uncovered during my investigation, and deal with it accordingly.

8.3 The National Commissioner of the South African Police Service to:

- 8.3.1 Within 30 working days of receipt of this Report, investigate criminal conduct against Mr Gavin Watson for violation of section 11 (3) of the Public Protector Act, 23 of 1994 by lying under oath.

9. MONITORING

- 9.1 The Speaker of the National Assembly of South Africa must, within 30 working days of the issuing of this report, provide the Public Protector with the Implementation Plan indicating how the remedial action referred to in paragraph 8.1.1 of this report will be implemented.
- 9.2 The Speaker of the National Assembly of South Africa must, within 30 working days of the issuing of this Report provide the Public Protector with the Implementation Plan indicating how the remedial action referred to in paragraph 8.1.2. of this Report will be implemented.
- 9.3 The Speaker of the National Assembly of South Africa must, within 30 working days of the issuing of this report provide the Public Protector with an Implementation Plan indicating how the remedial action referred to in paragraph 8.1.3. of this Report will be implemented.

- 9.4 The National Director of Public Prosecutions must, within thirty (30) days from the date of the issuing of this Report and for approval of the Public Protector, submit an Implementation Plan to the Public Protector indicating how the remedial action referred to in paragraph 8.2.1 of this Report will be implemented.
- 9.5 The National Commissioner of the South African Police Service must within thirty(30) days of the issuing of this Report, submit an Implementation Plan to the Protector indicating how the remedial action referred to in paragraph 8.3.1 of this Report will be implemented.
- 9.6 In line with the Constitutional Court decision in ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others*** [2016] ZACC 11, and in order to ensure the effectiveness of the office of the Public Protector, the remedial action prescribed in this Report is legally binding on the President of the Republic of South Africa, unless a court order directs otherwise.



ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 19 July 2019