



**REPORT**  
**of the**  
**Section 89**  
**Independent Panel**  
**Appointed to Conduct A Preliminary Enquiry on the Motion**  
**proposing a Section 89 Enquiry**

**30 November 2022**

**VOLUME 1**

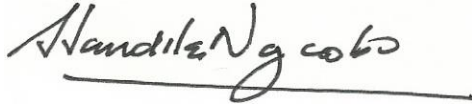
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## MEMBERS OF THE PANEL

30 November 2022



**JUSTICE S SANDILE NGCOBO**  
**RETIRED CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA**  
**CHAIRPERSON: SECTION 89 INDEPENDENT PANEL**



**JUSTICE THOKOZILE MASIPA**  
**RETIRED JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**MEMBER: SECTION 89 INDEPENDENT PANEL**



**ADVOCATE MAHLAPE SELLO, SC**  
**MEMBER: SECTION 89 INDEPENDENT PANEL**

## GLOSSARY OF TERMS

“**General Rhoo**de” refers to Major General Walther Peter Rhoo

“**Mr. Fraser**” refers to Mr. Arthur Joseph Peter Fraser

“**The Constitution**” refers to the Constitution of the Republic of South Africa, 1996

“**The CC**” refers to Ntaba Nyoni Estates

“**The farm**” refers to Phala Phala Wildlife Game Farm

“**The Motion**” refers to the Notice of Motion submitted in terms of Rule 129A (1) the National Assembly Rules for the Removal of President from Office in Terms of Section 89 of the Constitution

“**The Panel**” is the Independent Panel, established in terms of Section 89 of the Constitution

“**The Rules**” refers to the National Assembly Rules for the Removal of President from Office in Terms of Section 89 of the Constitution

## ABBREVIATIONS

### ANC

African National Congress

### ATC

Notice in the Announcements, Tablings and Committee

### ATM

African Transformation Movement

### DPCI

Directorate for Priority Crime Investigation

### EFF

Economic Freedom Fighters

### FSD

Financial Surveillance Department

### Lt Gen

Lieutenant General

### PPU

Presidential Protection Unit

### PRECCA

Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)

### SAPS

South African Police Service

### SARB

South African Reserve Bank

### SARS

South African Revenue Services

### VAT

Value Added Tax

### UDM

United Democratic Movement

### US\$

United States Dollar

## CHAPTER 1: INTRODUCTION

1. The President, as the Head of State and Head of the executive branch of government, holds the ultimate public trust. He is required to “uphold, defend and respect the Constitution as the supreme law of the Republic.”<sup>1</sup> He swears an oath to “be faithful to the Republic”, and to “obey, observe, uphold and maintain the Constitution and all other laws of the Republic.”<sup>2</sup> Mindful of the fallibility of human nature and that too much power corrupts, the Constitution<sup>3</sup> has, among other safeguards, a built-in safety valve: the impeachment and removal from office process.
2. The power of impeachment is an important check on the executive branch. It is a tool for holding the President accountable for violations of the law and abuse of power. The National Assembly is the only entity that has the power to impeach and remove the President from office. The Constitution gives the National Assembly the authority to impeach and remove the President from office for a serious violation of the Constitution or the law, serious misconduct, or inability to perform the functions of office. But these enormous powers of the National Assembly are limited, they may only be exercised where the President has been shown to have committed any of the grounds of impeachment listed in section 89(1) of the Constitution.
3. When presented with a substantive Notice of Motion alleging that the President has violated the Constitution or the law or has committed a serious misconduct, the National Assembly, as the representative of the People, must investigate, in the first instance, whether to formally initiate the impeachment enquiry. It does this by establishing an Independent Panel to conduct a preliminary enquiry into the Motion and thereafter make a recommendation on whether sufficient evidence exists to show that the President has committed the acts alleged in the Motion.
4. This Report concerns the question whether sufficient evidence exists to show that the President has committed a serious violation of the Constitution or the law, or a serious

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<sup>1</sup> Section 83(b)

<sup>2</sup> Schedule 2 Item 1

<sup>3</sup> Constitution of the Republic of South Africa, 1996

- misconduct. It arises out of a substantive Notice of Motion<sup>4</sup> (the Motion) that was submitted to the Speaker of the National Assembly, Honourable Mapisa-Nqakula, by the President of the African Transformation Movement, Honourable V Zungula, MP. This Report is submitted to the Speaker of the National Assembly pursuant to the referral by the Speaker in terms of Rule 129G(1)(b).
5. This Report consists of three Volumes, Volume 1 is this report, and Volumes 2 and 3 comprise information that was placed before the Panel by the African Transformation Movement (ATM), the Economic Freedom Front (EFF), the United Democratic Movement (UDM) and the President.
  6. In this Report, we address the following issues:
    - 6.1. The Notice of Motion
    - 6.2. The Establishment of the Panel
    - 6.3. The Referral of the Motion to the Panel
    - 6.4. The Enquiry Process
    - 6.5. Background to the Enquiry
    - 6.6. The Purpose of Impeachment
    - 6.7. The legal framework for removal from office
    - 6.8. The Terms of Reference
    - 6.9. General observation on the information placed before the Panel and the approach to it
    - 6.10. Information relevant to the charges
    - 6.11. Source of the foreign currency
    - 6.12. The instructions that were given to General Rhooode
    - 6.13. Charges alleged against the President
    - 6.14. Seriousness of the violation and misconduct
    - 6.15. The Recommendation
  7. This Report was due on 17 November 2022, this being the expiry of the 30-day period allowed to the Panel by the Rules. The amount of time that the Panel had budgeted for the preparation of the Report turned out to be woefully inadequate. The process required

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<sup>4</sup> Annexure IP2, pages 2-4

a great deal of work, bearing in mind the importance of the Report to the People of South Africa.

8. Over the weekend preceding 17 November 2022, the Panel assessed the prospects of complying with the deadline in light of the work that was still outstanding then. On Monday, 14 November 2022, the Panel came to the conclusion that it would be impossible to meet the deadline. The Chairperson of the panel accordingly approached the Speaker for an extension of time until 30 November 2022. The Speaker obliged. The Panel is indeed indebted to the Speaker for the indulgence.



## CHAPTER 2: THE NOTICE OF MOTION

9. The Motion that was presented to the Speaker read as follows: –

“That the House -

- (1) notes that, in terms of section 89(1) of the Constitution of the Republic, 1996, the National Assembly, by a resolution adopted by a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of –
  - (a) a serious violation of the Constitution or the law;
  - (b) serious misconduct; or
  - (c) inability to perform the functions of office;
- (2) further notes that the Assembly adopted a Report of the Rules Committee on 22 November 2018, on procedures to give effect to section 89 of the Constitution on Removal of President; and
- (3) resolves to initiate an inquiry into the removal from Office of President of the Republic, Mr. M C Ramaphosa, on the grounds of serious violation of the Constitution or the law, and serious misconduct, charges of which are set out and substantiated as follows:

### 3.1 Charge 1: Serious Violation of the Constitution - Violation of section 96 (2)(a), read with section 83 (b) of the Constitution

The President is guilty of serious violation of section 96(2)(a) of the Constitution, which provides that members of the Cabinet and Deputy Ministers may not undertake any other paid work, in that:

- (a) He, in response to allegations by Mr. Arthur Fraser, told delegates to a Conference of the African National Congress in Limpopo that “*I’m a farmer, I am in the cattle business and the game business... I buy and I sell animals.... This that is being reported was a clear business transaction of selling animals.*”;
- (b) The statement by the President confirms that he is actively running his farming business and this also means the President misled the nation when in 2014, on assuming office as Deputy President, he said that all his business interests would be managed by a blind trust; and
- (c) By violating section 96(2)(a) of the Constitution, he failed to uphold, defend and respect the Constitution as the supreme law of the Republic, as required of him by section 83(b) of the Constitution.

### 3.2 Charge 2: Serious Violation of the Law - Violation of section 34(1) of the Prevention and Combating of Corrupt Activities Act 2004 (Act No 12 of 2004), read with the South African Police Service Amendment Act, 2012 (Act No 10 of 2012)

The President is guilty of serious violation of section 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) (the Act), which places a duty on any person to report corrupt transactions to any police official, in that:

- (a) The President failed to report the theft on his farm to any police official as required by the Act;
- (b) Reporting the matter to General Wally Rhoode, a member of the Presidential Protection Unit, is not in compliance with the South African Police Service Amendment Act, 2012 (Act No 10 of 2012) which directs that reporting should be made to the police official in the Directorate for Priority Crime Investigation in terms of Section 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004); and
- (c) The fact that there is no case number to date is proof that the manner in which the purported reporting was made was irregular and unlawful.

### **3.3 Charge 3: Serious Misconduct - Violation of section 96 (2)(b) read with section 83 (b) of the Constitution**

The President is guilty of serious misconduct by violating section 96(2)(b) of the Constitution, which provides that Members of the Cabinet and Deputy Ministers may not, *inter alia*, expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests, in that:

- (a) A member of the Presidential Protection unit, General Wally Rhoode, was directed to deal with security issues in the private farm (of the President) in violation of the provisions of section 96(2)(b) of the Constitution;
- (b) President Ramaphosa's life and limb was not threatened by the burglary and thus General Wally Rhoode had no business to be investigating anything at the Phala Phala Farm as unlawfully directed by the President; and
- (c) By violating section 96 (2) (b) of the Constitution, he failed to uphold, defend and respect the Constitution as the supreme law of the Republic, as required of him by section 83(b) of the Constitution.

### **3.4 Charge 4: Serious Misconduct - Violation of section 96 (2)(b) read with section 83 (b) of the Constitution**

The President is guilty of serious misconduct by violating section 96(2)(b) of the Constitution, which provides that Members of the Cabinet and Deputy Ministers may not, *inter alia*, act in a way that is inconsistent with their office, in that:

- (a) The President gave an unlawful instruction to General Wally Rhoode, a member of the Presidential Protection Unit, to investigate the burglary in his private farm and the instruction to investigate rather than to report the

matter in terms of the law shows dishonesty and constitutes misconduct and unlawfulness on the part of the President; and

- (b) By violating section 96(2)(b) of the Constitution, he failed to uphold, defend and respect the Constitution as the supreme law of the Republic, as required of him by section 83(b) of the Constitution.”

10. On 10 October 2022, Mr. Zungula, MP, submitted supplementary evidence on same Charges 1 and 3<sup>5</sup>. In relation to Charge 1, it was said that:

“Mr. Ramaphosa is on record admitting that a certain amount of dollars was stolen in his Phala Phala Farm but was evasive about the exact amount and how that foreign currency got into the country. This was laid bare by the letter from the South African Reserve Bank which also sought answers about the origins of this foreign currency and the underlying transaction. If this money had come to the country lawfully the SARB systems would reflect all the pertinent details and there would have been no need for the SARB to be writing to him.

In addition to the irregularity of how this money came into the country, it constitutes concrete evidence of payment for the work or business that he conducts in his farm himself in violation of the Constitution. The fact that it’s him personally that is accounting to the South African Reserve Bank is further evidence that indeed there is no Blind Trust or any other entity that is trading independently without his involvement.”

11. In support of these allegations, Mr. Zungula, MP, attached a letter from the South African Reserve Bank (SARB) dated 30 August 2022 by the Governor of the SARB, Mr. Kganyago, addressed to the Honourable Mr. N.F. Shivambu MP.<sup>6</sup>

12. Charge 3 was supplemented by referring to the suspension of the Public Protector, Advocate B Mkhwebane. It was alleged that:

- “2.1 Mr. Ramaphosa acted in bad faith and was conflicted when he suspended Advocate Busisiwe Mkhwebane, the Public Protector.

ATM contends that he was triggered by the 31 questions relating to the Phala Farm scandal.

Mr. Ramaphosa had known for months about the pending suspension and he did not act, the matter was also subjudice as there was a pending judgment of the issue of suspension of the Public Protector.

- 2.2 The matter is reported as the Public Protector vs The President of the Republic of South Africa, judgment delivered on 9<sup>th</sup> September 2022, (8500/2022) (2022ZAWCHC 180).

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<sup>5</sup> Annexure IP 6, pages 16-18

<sup>6</sup> Annexure IP 8, pages 98-99

2.3 The full bench held that at paragraph 157:

“[157] In our view, the hurried nature of the suspension of the Applicant in the circumstances, notwithstanding that a judgment of the full court was looming on the same subject matter, leads this court to an ineluctable conclusion that the suspension may have been retaliatory, and, hence unlawful. It was certainly tainted by bias of disqualifying kind and perhaps an improper motive. In our view, the President could not bring an unbiased mind to bear as he was conflicted when he suspended the Applicant”.

13. For these allegations, the African Transformation Movement (ATM) relied on the judgment of the full bench of the Western Cape.<sup>7</sup>

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<sup>7</sup> Annexure IP 7, pages 19-97

## **CHAPTER 3: THE ESTABLISHMENT OF THE PANEL**

14. On 14 September 2022, the Speaker of the National Assembly, Honourable Mapisa-Nqakula, appointed Justice S Sandile Ngcobo, Retired Chief Justice, Judge T Masipa, retired Judge of the South Gauteng High Court, and Advocate M. Sello SC, a practicing Advocate, as members of the Independent Panel (the Panel) to conduct the preliminary enquiry on the Motion.<sup>8</sup>

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<sup>8</sup> Associate Professor Richard Calland was initially appointed as one of the three Panel members but subsequently withdrew from the Panel

## **CHAPTER 4: THE REFERRAL OF THE MOTION TO THE PANEL**

15. On 19 October 2022, the Speaker formally referred the Motion to the Panel in terms of Rule 129C<sup>9</sup>. That date also marked the commencement of the 30-day period within which the Panel was to submit its report to the Speaker.
  
16. The Motion proposes an enquiry into the removal of the President of the Republic of South Africa, His Excellency, Mr. M C Ramaphosa, from office in terms of section 89(1) of the Constitution. It alleges that the President has committed a serious violation of the Constitution and the law, and serious misconduct. These allegations arise out of the house breaking and theft that occurred at the Phala Phala Wildlife Game Farm (“the farm”).

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<sup>9</sup> Annexure IP1, page 1

## CHAPTER 5: THE ENQUIRY PROCESS

17. Shortly after the referral of the Motion to it, the Panel issued a Timetable to Conduct the Preliminary Enquiry, setting out the timelines for its work. In addition, the Panel issued a Notice in terms of Rule 129G(1)(c)(i) of the National Assembly Rules for the Removal of President from Office in Terms of Section 89 of the Constitution (the Rules) inviting additional information from members of the National Assembly within 6 (six) days of the publication of the Notice in the Announcements, Tablings and Committee (ATC).
18. The Timetable, the Notice and the ATC are reflected in Annexure IP10.<sup>10</sup> The deadline for the delivery of the information was 27 October 2022. The Economic Freedom Fighters (EFF), United Democratic Movement (UDM) and ATM delivered their submissions on time. The ATM submission contained “Supplementary Evidence”. Consistent with the Rules, on 28 October 2022, the additional information was forwarded to the President requesting him to respond to this information within 10 days. The response was due on Sunday, 6 November 2022 and was delivered on time.
19. The Panel is indebted to the President, the EFF, the UDM, and the ATM for complying with the deadline, notwithstanding their other pressing commitments.
20. The deadline for the submission of the Panel’s Report was on Thursday, 17 November 2022. On 14 November 2022, the Panel requested the Speaker for an extension of 13 days. The complexity of the enquiry process, the novelty of the nature of work involved, and the need to transcribe some video and audio evidence, delayed the Panel in finalising the Report expeditiously. The Speaker subsequently extended the deadline for submitting the Report to 30 November 2022.

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<sup>10</sup> Annexure IP, 10 pages 337, 339-341

## **CHAPTER 6: BACKGROUND TO THE ENQUIRY**

21. The President is a farmer and is involved “in the cattle business and game business”.<sup>11</sup> He buys and sells animals. The farming operations are conducted from Phala Phala Wildlife Game farm, a farm situated in Limpopo in the Bela Bela Municipality. The registered owner of the farm on which the farming operations are conducted is the Tshivhase Trust, a family Trust. The farm is the operating entity of Ntaba Nyoni Estates CC (the CC), a close cooperation in which the President is the sole member. Its operations are managed and run by the employees of the CC. At the time of the event relevant to this Report, Mr. Hendrik von Wielligh was the General Manager.
22. The farm keeps an assortment of wild animals such as buffalo, impalas, and wildebeests. In addition, the farm keeps and breeds Ankole cattle. It sells or culls excess animals to manage the increasing number of animals on the farm.
23. The farm has local and foreign customers. Some customers come to the farm to buy animals while others come for hunting. Customers pay by cash or money transfers. The farm has a number of buildings including a private residence for use by the President and his family. The farm is also used for extended family gatherings and other activities including educational camps.
24. On 9 February 2020 a burglary took place at the farm. During the housebreaking, an undisclosed amount of foreign currency in US\$ was stolen from the farm. This money had been hidden in a sofa in the private residence of the President. At the time, the President was attending an African Union Summit in Addis Ababa. On being advised of the housebreaking, the President reported the incident to the Head of the Presidential Protection Unit (PPU) of the South African Police Services (SAPS), Major General Walther Peter Rhooode (General Rhooode). General Rhooode set up an investigating team which included General Rhooode, Sergeant Rekhoto, and a Mr. Trevor Fredericks, a social worker. The information provided by the EFF also suggests that there was an investigator from the National Prosecuting Authority, namely Mr. Terrence Joubert. There is no record of any case being opened or registered at the SAPS station in Bela Bela, Limpopo,

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<sup>11</sup> Annexure IP82, page 1635



following the housebreaking and theft.

25. The fact of the housebreaking and theft only became public knowledge following a media statement issued by Mr. Arthur Joseph Peter Fraser, the former National Commissioner for the Department of Correctional Services (Mr. Fraser), on 1 June 2022 announcing criminal charges that he had laid against the President and others.<sup>12</sup>
26. In a sworn statement dated 1 June 2022, Mr. Fraser requested the SAPS to investigate the conduct of the President. He alleged, among other things, that “[t]he mere fact that President Ramaphosa had large undisclosed sums of foreign currency in the form US\$ concealed in his furniture at his Phala Phala residence is *prima facie* proof of money laundering in contravention of section 4 of the Prevention of Organised Crime Act No. 121 of 1998...”.<sup>13</sup> He urged the SAPS “to establish the origins of these large sums of foreign currency.”
27. Apparently, the case was transferred to the Directorate for Priority Crime Investigation (DPCI) for investigation. Following a meeting with members of the DPCI on 15 June 2022, Mr. Fraser also furnished the DPCI with a statement dated 23 June 2022.<sup>14</sup> This statement provided the DPCI with further details of the alleged money laundering, pointed out further areas of investigation, and gave contact details of individuals who could assist with the investigation of the alleged crime. In particular, this statement dealt with the source of the foreign currency that was stolen from the farm residence of the President.
28. Following the publication of the allegations by Mr. Fraser in the press, a number of institutions became interested in the allegations made. One of those institutions was the Financial Surveillance Department of the South African Reserve Bank (SARB), which administers the Exchange Control Regulations and investigates contraventions of these Regulations. It commenced investigating the origin of the stolen foreign currency and any underlying transaction to which it relates. This appears from the letter by the Governor of the SARB, Mr. Kganyago, dated 30 August 2022 addressed to Mr. NF Shivambu, MP

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<sup>12</sup> Annexure IP14, pages 369-416

<sup>13</sup> Sworn Witness Statement of Arthur Joseph Peter Fraser, Annexure IP14, page 378 at para 15

<sup>14</sup> It appears that the first statement was made to the SAPS. On 15 June 2022 Mr. Fraser and his legal representative held a meeting with Brigadier Basi and Colonel Schneller of the DPCI

(the Governor's Letter).<sup>15</sup> We do not know whether the SARB has concluded its investigation and if so, the outcome of the investigation.

29. What is apparent from the Governor's Letter is that the Parliamentary Standing Committee on Finance had also become interested in the matter. We have not been furnished with a record of the proceedings of that Committee. Nor do we know what transpired in the course of the proceedings of the Committee. As matters stand now, we understand the Public Protector is conducting her own investigation into the matter<sup>16</sup>, and the SAPS is conducting an investigation into the conduct of General Rhooe.<sup>17</sup> We do not know whether these investigations have since been completed. More significantly, we have not been made aware of progress, if any, that has been made by the Hawks with regards to their investigation into the allegations made by Arthur Fraser against the President.
30. We understand from the submission of the ATM that other state institutions are investigating the allegations made by Mr. Fraser. These include the South African Revenue Services (SARS), the FIC, and the Department of Home Affairs.<sup>18</sup> We do not know what these institutions are investigating and how the investigations have progressed.
31. The revelation of the crime at the farm in the media put some pressure on the President to respond to the allegations attributed to Mr. Fraser, in particular the criminal case. Understandably, the President's response was measured in light of the ongoing investigations. But the President made some comments at various forums such as the African National Congress (ANC) provincial conference in Limpopo. His office also issued media statements on the matter. These media statements have been made available to the Panel and have been confirmed by the President.
32. In all probability it is the revelation of the housebreaking in the media that triggered the Motion that is now under consideration in this Report.

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<sup>15</sup> Annexure IP8, at page 98

<sup>16</sup> President's statement

<sup>17</sup> *The Public Protector v The Speaker of the National Assembly and others*, Unreported Decision of the Western Cape High Court, delivered on 9 September 2022, at para 143, Annexure IP17 at page 19.

<sup>18</sup> Annexure IP20, page 1340

33. The Motion proposes that the National Assembly initiate an impeachment enquiry into the removal from office, the President of the Republic of South Africa, on the grounds of a serious violation of the Constitution and the law as well as a serious misconduct.

## CHAPTER 7: THE PURPOSE OF IMPEACHMENT

34. Under our Constitution, the President wields enormous powers. The position of the President has been described as follows by the Constitutional Court<sup>19</sup>:

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 as the supreme law of the Republic been expressly imposed. The promotion of national unity and reconciliation falls squarely on his shoulders. As does the maintenance of orderliness, peace, stability and devotion to the wellbeing of the Republic and all of its people. Whoever and whatever poses a threat to our sovereignty, peace and prosperity he must fight. To him is the executive authority of the entire Republic primarily entrusted. He initiates and gives the final stamp of approval to all national legislation. And almost all the key role players in the realisation of our constitutional vision and the aspirations of all our people are appointed and may ultimately be removed by him. Unsurprisingly, the nation pins its hopes on him to steer the country in the right direction and accelerate our journey towards a peaceful, just and prosperous destination that all other progress-driven nations strive towards on a daily basis. He is a constitutional being by design, a national pathfinder, the quintessential commander-in-chief of state affairs and the personification of this nation's constitutional project.

35. Concentration of these powers in a President who transgresses the political bounds of his office could pose a fundamental threat not only to the separation of powers but also to the foundation of our constitutional democracy. To meet this threat, the Constitution adopts the impeachment and removal process as one of the safeguards. This process is aimed at presidential misconduct and abuses of power. The Constitution gives the National Assembly the authority to impeach and remove a President from office for serious violation of the Constitution or the law, or serious misconduct, or inability to perform the functions of office.<sup>20</sup>

36. The power of impeachment is an important check on the executive branch of government. Impeachment and removal from office represent the ultimate sanction that the People can impose on a Head of State. The authority to impeach and remove the President from office exists essentially to protect our constitutional democracy from behaviour that endangers our Constitution and the rule of law.

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<sup>19</sup> *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016) at para 20

<sup>20</sup> Section 89(1) of the Constitution

37. The authority to impeach is deeply rooted in the principle of accountability. This principle is one of our foundational values and is given effect to, in the text of the Constitution.<sup>21</sup> The impeachment and removal from office process is an important tool for holding the President to account.<sup>22</sup> The importance of this process is underscored by the protection given to members of Parliament to ensure that they are not subject to outside influence. In this regard, the Constitutional Court has noted:

[139] To enable members of the Assembly to exercise its powers without outside influence, the Constitution insulates them from repercussions from any quarter. Section 58 of the Constitution guarantees freedom of speech in the Assembly which is subject only to its rules and orders. Not even legislation may limit free speech in the Assembly. Members are immune from civil and criminal liability, arrest or imprisonment for performing their functions in the Assembly. Without this protection some of the functions of the Assembly could easily be frustrated by those who would be adversely affected by the Assembly's decisions.<sup>23</sup>

38. The removal of a President from office is governed by section 89(1) of the Constitution and the Rules of the National Assembly.

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<sup>21</sup> Sections 92, 55, 89(1) and 102 of the Constitution.

<sup>22</sup> *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* 2018 (2) SA 571 (CC) at para 134

<sup>23</sup> *Id* at para 139

## CHAPTER 8: THE LEGAL FRAMEWORK FOR REMOVAL FROM OFFICE

### A. THE CONSTITUTIONAL PROVISIONS FOR REMOVAL FROM OFFICE

39. Section 89(1) of the Constitution provides:

The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of:

- (a) a serious violation of the Constitution or the law;
- (b) serious misconduct; or
- (c) inability to perform the functions of office.

40. This provision gives the National Assembly, and to it only, the power to remove the President from office. But the exercise of this power too, is subject to certain constitutional safeguards prevent its abuse. To prevent abuse, the President may only be removed from office if one of the grounds listed in section 89(1) is established. As the Constitutional Court has pointed out, the removal of the President by means of impeachment “must have, as its foundation, at least one of the grounds listed in s 89(1)”.<sup>24</sup> What this means is that the grounds for impeachment must first be established before the Motion to remove the President from office is debated and voted on.<sup>25</sup>

41. Both the violation and the misconduct are qualified by the word “serious”, a word which imports value judgment. The Constitution deliberately left the grounds upon which a President may be removed from office undefined and sufficiently vague so as to gather meaning with experience.

42. In the event, initially, there was no process to implement section 89(1). The Constitutional Court in *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* decried the situation, holding that without rules defining the entire process, it is impossible to implement section 89(1).<sup>26</sup> It found that the use of *ad hoc committees* had significant shortcomings. These shortcomings included:

[188] Significantly, the Acting Speaker does not tell us the meaning assigned to

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<sup>24</sup> Id at para 138

<sup>25</sup> Id at para 106

<sup>26</sup> *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* 2018 (2) SA 571 (CC) at para 182

'serious' by the Assembly. Nor does he say what would happen if each member of the ad hoc committee attaches a meaning to that crucial word which is different from the interpretation of other members. All that he says is that the committee's recommendation will have to state whether the breach is serious enough to warrant the President's removal.

[189] On this approach it is the initiator of the process who determines whether the President has committed a serious misconduct or a serious violation of the Constitution or the law. If the initiator holds that opinion, he or she may request that an ad hoc committee be established to investigate and recommend to the Assembly that the President be removed from office. This process lacks a sifting mechanism which would determine whether there is a case for the President to answer. (Underlining added)

43. It concluded that, (a) section 89(1) implicitly imposes an obligation on the National Assembly to make rules specially tailored for an impeachment process; and (b) ad hoc committees do not constitute a mechanism contemplated in section 89(1). It ordered the National Assembly to make rules regulating the removal of a President from office that are specially tailored for an impeachment process. The National Assembly adopted the Rules in order to give effect to section 89.

44. The grounds that are relevant for the purposes of this Report are the serious violation of the Constitution and the law, and the serious misconduct.

45. The passage cited above is relevant because it gave birth to the institution of an Independent Panel and provides some guidance on why the Panel was established.

## **B. THE NATIONAL ASSEMBLY RULES GOVERNING REMOVAL FROM OFFICE**

46. The Rules for the Removal of the President are contained in Part 3 of the Rules. These Rules make provision for a Notice of Motion proposing the initiation of a Section 89 Enquiry, establishment of the Panel to conduct a preliminary enquiry on the Motion, the referral of the Motion to the Panel, the functions and powers of the Panel, the establishment of the Impeachment Committee to consider the Motion as well as its powers, and the consideration of the reports of the Panel and the Impeachment Committee by the National Assembly, and a vote by the National Assembly on the Motion.

47. While this Report is concerned with the Panel, to contextualise the functions and powers of the Panel, we consider it necessary to sketch the regulatory scheme for the

impeachment and removal of a President from office as set out in section 89(1) and the Rules.

### **C. THE SCHEME FOR THE REMOVAL OF THE PRESIDENT FROM OFFICE**

48. In broad outline, the scheme for the removal of the President from office can be described as follows. Any member of the National Assembly may submit a substantive Motion to the Speaker proposing a Section 89 Enquiry for the removal of the President from office.<sup>27</sup> If the Speaker is satisfied with the Motion and that it “is in order”, she must immediately refer the Motion to the Panel, which must be established for this purpose.<sup>28</sup> She is also required to inform, without delay, both the President and the National Assembly that she has done so.<sup>29</sup> The Panel is required to “consider any preliminary enquiry relating to a motion” and thereafter “make a recommendation ... whether sufficient evidence exists to show that the President ... committed” any of the acts which constitutes a ground for removal.<sup>30</sup>
49. The Panel may, “in its sole discretion”, provide any member of the National Assembly “an opportunity to place before [it] any relevant written or recorded information” and specify the timeframe within which such information may be submitted.<sup>31</sup> It must provide the President with copies of all information made available to it<sup>32</sup> and provide the President with “a reasonable opportunity to respond, in writing to all relevant allegations”.<sup>33</sup> The Panel may not hold oral hearings.<sup>34</sup> It must “limit its enquiry to the relevant written and recorded information placed before it by members [of the National Assembly].”<sup>35</sup>
50. The Rules do not say so, but it seems to us obvious that the Panel is bound to also consider information placed before it by the President. Otherwise, there would be no point in

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<sup>27</sup> Rule 129A (1)

<sup>28</sup> Rule 129C (1)

<sup>29</sup> Rule 129C (2)

<sup>30</sup> Rule 129G(1)(b)

<sup>31</sup> Rule 129G(1)(c)(i)

<sup>32</sup> Rule 129G(1)(c)(ii)

<sup>33</sup> Rule 129G(1)(c)(iii)

<sup>34</sup> Rule 129G(1)(c)(iv)

<sup>35</sup> Id



providing the President with copies of the information that was made available to the Panel and providing the President “with a reasonable opportunity to respond to allegations against him.”

51. Once the Panel has enquired into the matter, it must make a recommendation to the Speaker.<sup>36</sup> This recommendation must state “whether sufficient evidence exists to show that the President...committed a serious violation of the Constitution or the law, or committed a serious misconduct or suffers from inability to perform the functions of office.”<sup>37</sup> The recommendation must be supported by findings and the reasons therefor.<sup>38</sup> Once the Speaker has received the report, she must schedule the report for consideration by the National Assembly.<sup>39</sup> The President must be notified of this fact.<sup>40</sup> The recommendation made by the Panel “is not final and binding on the [National] Assembly”.<sup>41</sup> What that means is not relevant for the purposes of this Report.
52. If, after the consideration of the Panel’s report, the National Assembly resolves to proceed with the Section 89 Enquiry, the matter must be referred to the Impeachment Committee.<sup>42</sup> The Speaker determines the number of members of the National Assembly who will constitute the Committee.<sup>43</sup> This of course, is subject to the proviso that all parties represented in the National Assembly must be represented on the Committee.<sup>44</sup> This committee enjoys the same powers as any Parliamentary Committee.<sup>45</sup> The powers of Parliamentary Committees are set out in Rule 167. They include the power to summon any person to appear before it to give evidence on oath or affirmation, or to produce documents<sup>46</sup>, and to hold public hearings.<sup>47</sup>
53. The Committee is required “to establish the veracity and, where required, the seriousness

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<sup>36</sup> Rule 129G(1)(b)

<sup>37</sup> Id

<sup>38</sup> Rule 129G(1)(c)(v)

<sup>39</sup> Rule 129I(1)

<sup>40</sup> Rule 129I(2)

<sup>41</sup> Rule 129P(2)

<sup>42</sup> Rule 129I (3)

<sup>43</sup> Rule 129K(1)

<sup>44</sup> Id

<sup>45</sup> Rule 129M(4)

<sup>46</sup> Rule 167(a)

<sup>47</sup> Rule 167(b)

of the charges” and thereafter report to the National Assembly.<sup>48</sup> The report must set out the findings and recommendations, which must be supported by the reasons therefor.<sup>49</sup> The report must be scheduled for “consideration and debate” by the National Assembly.<sup>50</sup> If the report recommends that the President should be removed from office, the question, presumably whether the President must be removed from office, “must be put to the National Assembly directly for a vote in terms of the Rules.”<sup>51</sup> And if the question is supported by at least two thirds of the members of the National Assembly, the President is removed from office with immediate effect.<sup>52</sup>

54. It is within this scheme that the terms of reference for the Panel must be understood and construed.

#### **D. THE LISTED GROUNDS OF REMOVAL FROM OFFICE**

55. The grounds for removal from office that are relevant for the purposes of this report are:

- 55.1. a serious violation of the Constitution or the law; and
- 55.2. serious misconduct.

56. The National Assembly has made the Rules which define the meaning of the phrases “serious violation of the Constitution or the law”, and “serious misconduct.” They did so because the Constitutional Court in *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* held that “[section] 89(1) implicitly imposes an obligation on the Assembly to make rules specially tailored for an impeachment process contemplated in that section” and the National Assembly was in breach of s 89(1) of the Constitution because “it failed to make rules regulating the impeachment process envisaged in that section.”<sup>53</sup>

57. Significantly, the Court also said:

[178] And since the determination of these matters falls within the exclusive

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<sup>48</sup> Rule 129M(1)

<sup>49</sup> Rule 129O(2)

<sup>50</sup> Rule 129O(3)

<sup>51</sup> Rule 129O(4)

<sup>52</sup> Id

<sup>53</sup> *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* 2018 (2) SA 571 (CC) para 196

jurisdiction of the Assembly, it and it alone is entitled to determine them. This means that there must be an institutional pre-determination of what a serious violation of the Constitution or the law is. The same must apply to serious misconduct and inability to perform the functions of the office. The Acting Speaker describes the first two grounds as exhibiting wrongdoing on the part of the President. I could not agree more. This is evident from the language of s 89(2), which stipulates that a President removed from office on any of these two grounds may lose benefits. Once more, it is left to the Assembly to determine circumstances under which the President removed from office on one of those grounds may forfeit benefits.

58. These Rules define the phrase “serious violation of the Constitution or the law” to mean “behaviour by the President amounting to an intentional or malicious violation of the Constitution or the law performed in bad faith”. Similarly, “serious misconduct” is defined to mean “improper behaviour performed by the President in bad faith”. These grounds connote “wrongdoing on the part of the President”, said the Court agreeing with the Acting Speaker at the time.<sup>54</sup> The Panel must then make sense of this definition bearing in mind the limits of our mandate.
59. What is implicit, if not explicit from both the Constitution and the Rules, is the recognition that not every violation of the Constitution or the law, or misconduct constitutes a ground for impeachment and removal from office. The line between violations that are tolerable and those that are intolerable is delineated by the seriousness of the violation or misconduct.
60. The National Assembly Rules limit impeachable conduct to “improper behaviour performed by the President in bad faith”, in the case of a misconduct or, “behaviour... amounting to an intentional or malicious violation of the Constitution or the law performed in bad faith”, in the case of the violation of the Constitution. The common thread running through both definitions is that they import the element of bad faith and abuse of power.
61. In *Public Protector v South African Reserve Bank* Chief Justice Mogoeng considered the meaning of bad faith in the context of whether the Public Protector had acted in bad faith in the course of conducting her investigation.<sup>55</sup> In his minority decision, he cited with

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<sup>54</sup> Id at para 78

<sup>55</sup> *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC)

approval the dictionary meaning of “bad faith” and said:

[71] A proper starting point is in my view to remind ourselves of what the ordinary meaning of bad faith is. A dictionary meaning is '(i)ntent to deceive'. The meaning of bad faith or malicious intent is generally accepted as extending to fraudulent, also known to extend to gross illegality. Here too the perverse, seriously dishonest or malicious conduct must link up, not merely with the seniority of the person or high office occupied, but also with the seriousness of the actual or reasonably foreseeable consequences of that conduct.

62. He went on to set out the proper approach in determining the existence of bad faith and said:

[72] The correct approach to determining the existence of bad faith is therefore one that recognises that bad faith exists only when the office-bearer acted with the specific intent to deceive, harm or prejudice another person or by proof of serious or gross recklessness that reveals a breakdown of the orderly exercise of authority so fundamental that absence of good faith can be reasonably inferred and bad faith presumed. This is so because the mischief sought to be rooted out by rendering bad faith so severely punishable, particularly within the public sector space, is to curb abuse of office which invariably has prejudicial consequences for others. Abuse of office undermines the efficacy of state machinery and denies justice and fairness to all people and institutions.

63. We think that bad faith can be inferred from the nature and the circumstances surrounding the violation of the Constitution or the law and misconduct. An example of bad faith that comes to mind is where the President dismisses a Director-General because he wants to appoint, in his place, his relative. A violation or misconduct that occurs in good faith does not come within the grounds listed in section 89(1). Thus, if the President brings an Act into force in circumstances where it is irrational and unlawful to do so, such conduct is unlawful and in violation of the Constitution.<sup>56</sup> But if the President was wrongly advised and mistakenly thought it was appropriate to bring the Act into force, his conduct can hardly be said to have been performed in bad faith.

64. We think that the circumstances under which a violation or a misconduct occurs are relevant considerations in determining whether a violation or a misconduct is serious.

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<sup>56</sup> *Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC)

65. Conduct that is perfectly constitutional may, if done with an impermissible motive, constitute a serious violation or serious misconduct, as the case may be. Perhaps by way of illustration, one needs to look at the power afforded to the President to grant pardon. Where the President grants pardon to a business associate, this could be an impeachable abuse of the power to pardon. This is so because it is not the granting of a pardon which is an abuse of power, but rather it is the motive for granting the pardon, which indicates that the action is a gross abuse of power and similarly a serious misconduct.
66. There is some issue on the scope of the mandate of this Panel. The EFF and the ATM have taken the stance that this Panel must determine whether the President has a case to answer. The UDM appears to suggest that this Panel should investigate the veracity of the information provided and the allegations made in the letter by Mr. Fraser. The UDM goes on to argue that the “Hawks should shed some light on what transpired in terms of their actions taken subsequent to receiving this additional information.” It is therefore necessary determine the scope of our mandate.

## CHAPTER 9: THE TERMS OF REFERENCE

67. In terms of Rule 129G(1)(b) the Panel is required:

“[to] consider the preliminary enquiry relating to the motion, proposing a Section 89 enquiry, referred to it by the Speaker, and must make a recommendation to the Speaker, within 30 days, whether sufficient evidence exists to show that the President

- i. committed a serious violation of the Constitution or the law;
- ii. or committed a serious misconduct; or”

68. The question is what is the scope of the enquiry that the Panel must conduct. The answer to this question must be determined in light of the scheme for the removal of the President set out above.

69. From the scheme described above, removal from office involves a three-stage process: namely, a preliminary enquiry by the Panel; a full-scale enquiry by the Impeachment Committee; and a debate and a vote on the Motion. The first stage commences with the consideration of the Motion by the Panel. This stage commences after the referral of the Motion to the Panel by the Speaker. The Panel may not hold any oral hearing. Its enquiry is limited to the information placed before it by members of the National Assembly and the President’s response to this information.<sup>57</sup> It may not summon any person to appear before it to give evidence or to produce documents. Nor can it request information from any person or a state institution other than a member of the National Assembly or the President.

70. The powers of the Panel must be contrasted with those of the Impeachment Committee. The Committee’s mandate is “to establish the veracity and, where required, the seriousness of the charges”. The Committee has been given extensive powers to inquire into the Motion. It has the same powers as those of any Parliamentary Committee including the power to summon any person to appear before it to give evidence on oath or affirmation or to produce documents. Significantly, it has the power to receive representations or submissions from interested persons or institutions, and to hold public hearings. In addition to these powers, it has the powers “provided for in the Constitution,

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<sup>57</sup> Rule 129G(1)(c)(iv)

application law and the Rules of the Assembly.”<sup>58</sup> This Committee has the power to recommend that the President be removed from office.<sup>59</sup> Implicit, if not explicit from this is that the Committee is empowered to determine whether the President is in fact guilty of a serious violation of the Constitution or the law, or a serious misconduct.

71. It is inconceivable that the National Assembly would have given both the Panel and the Impeachment Committee the same powers, namely, to recommend whether the President is in fact guilty on any of the grounds for the removal of the President from office. Were this to be the case, the work of the Impeachment Committee would be superfluous. We think that the lack of the power to test the reliability of the information placed before it, in particular the absence of the power to hear evidence from persons or institutions that might have information relevant to the removal of the President from office, ineluctably leads to the conclusion that it was never intended that the Panel should make a finding on whether the President is in fact guilty of any of the acts listed in section 89(1).
72. We have compared the Terms of Reference for this Panel to those of the Panel established for the removal of the Public Protector. The powers and functions of these two Panels are substantially the same save for one noticeable difference, the wording of the Terms of Reference. The Terms of Reference for the removal of the Public Protectors require the Panel to “conduct and finalise a preliminary assessment relating to the Motion proposing a section 194 enquiry to determine whether there is *prima facie* evidence to show that the holder of a public office” is guilty of any of the grounds listed in section 194 of the Constitution. By contrast this Panel is required to “make a recommendation whether sufficient evidence exists to show that the President committed” one of the grounds for removal from office.
73. We have considered whether there is any significance to be attached to the difference in language used in these Terms of Reference. We think in each case the Panel is required to conduct a preliminary assessment of the Motion proposing a section 194 enquiry or a section 89(1) enquiry, as the case may be, and to make a recommendation as to whether the office bearer or the President, as the case may be, has a case to answer. It does not

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<sup>58</sup> Rule 129M (4)

<sup>59</sup> Rule 129O(4)

detract from the essential nature and scope of the preliminary enquiry to be conducted by these Panels.

74. Nor does the use of the word “evidence” instead of “information” in the Terms of Reference for this Panel matter. The provisions of Rule 129G(1)(c)(iv) are clear and admit of no ambiguity; the Panel “must limit its enquiry to the relevant written and recorded information placed before it by members in terms of this rule”. To this, must be added the response of the President. In the context, “evidence” must be construed to mean information referred to in the Rules.
75. In the context of the scheme for the removal of the President from office, we therefore construe the phrase “whether sufficient evidence exists” to mean whether, based on the information received, the President has a case to answer. Put differently, we construe the phrase to require the Panel to determine whether there is a *prima facie* case against the President. It is not the function of the Panel to enquire into whether the President is guilty of a serious violation of the Constitution or the law, or a serious misconduct. That is the function of the Impeachment Committee, which is empowered to investigate the matter fully, including summoning persons to give evidence before it or to produce documents and hold public hearings.
76. We think that the purpose in interposing the Panel in the scheme of the impeachment process and entrusting it with the power to conduct a preliminary enquiry into the Motion, was intended to ensure that the President is not required to undergo a full-scale section 89 impeachment enquiry in circumstances where the President has no case to answer. That step must never be taken lightly. It is a momentous act, justified only when sufficient evidence exists to show that the President has a case to answer for his conduct. The Panel therefore functions as a filter to ensure that only a Motion which establishes, *prima facie*, that the President has a case to answer, is considered by the Impeachment Committee.
77. In the next section we set out a general observation of the information placed before the Panel and the Panel’s approach to this information.



## **CHAPTER 10: GENERAL OBSERVATION ON THE INFORMATION PLACED BEFORE THE PANEL AND THE APPROACH TO IT**

78. We begin by outlining the general nature of the information placed before us. It consists of an assortment of sources including sworn statements, unsworn statements, newspaper articles referring to named and unnamed sources who spoke on condition of anonymity, press statements, police reports and submissions by the ATM, EFF, UDM and the President (collectively referred to as “the interested parties”). Broadly speaking, the information that is relevant for our purposes converges at certain points but diverges sharply on material points. In some respects, the information is vague and leaves revealing gaps at crucial points.
79. In reviewing the information before us we are mindful that we are dealing with events that occurred some two and half years ago. Memories may have faded over the years, a factor complicated by the fallibility of memory. We also understand that there are other institutions that are investigating some of the issues that are the subject of this Report. The ones that come to mind are the criminal investigations that are in progress against the President, General Rhooode and certain individuals. With the exception of a sworn statements made by General Rhooode, General Masemola and Mr Fraser to the Public Protector, we do not have statements that have been made in the course of these investigations.
80. We are concerned that we have not been given all the information that is presently available on the Phala Phala issue. We know that the SARB has been investigating the matter since around June 2022, yet we have not been furnished with the outcome of the investigation. Officials of the SARB and the SAPS appeared in one of the Committees of Parliament, yet the record of those proceedings has not been made available to us. The President indicates that about eight institutions that are investigating the Phala Phala issue<sup>60</sup>, yet we have not been furnished with reports on the outcome of these investigations. Nor have we been told how far these investigations are. Furthermore, there are persons who have personal knowledge of the issues we are investigating but who, for unexplained reasons, have not provided statements to tell us what happened. We are equally mindful of the time constraints within which the parties had to present information

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<sup>60</sup> Annexure IP82, page 1688

to the Panel.

81. But what cannot be gainsaid is the importance of this process. This process was initiated by the National Assembly, as a body that represents the People of South Africa. The National Assembly is carrying out its constitutional duty to determine whether the President should be held accountable for his conduct. Mindful of the impact that the Section 89 Enquiry might have on the President, it has appointed this Panel to conduct a preliminary investigation into the Motion to determine whether the President has a case to answer. This process is therefore no less important than any other process carried out in the name of the People.
82. That said, we believe the truth of what really happened lies beneath the unanswered questions that are foreshadowed by what we are told from the information placed before us. We neither have the tools nor the power to excavate beneath the information that we have been provided with to uncover the answers to the unanswered questions. However, based on what we have been told by the information placed before us, information that is either common cause or undisputed, as well as inherent probabilities, we are able to make our findings, provide reasons therefor and make our recommendation.
83. The President has rightly criticised the evidence contained in Mr. Fraser's statements as full of hearsay, in particular, information from undisclosed sources.<sup>61</sup> But some aspects of the evidence proffered by the President, in particular, pertaining to the source of foreign currency is also hearsay. For example, Mr. Sylvester Ndlovu is the person who is alleged to have received the foreign currency and can therefore testify on the source of the foreign currency. What the President says of and concerning the source of the foreign currency is based on what he was told by Mr. Ndlovu. We are mindful of the dangers of relying on hearsay and the caution to be applied in approaching such evidence. However, we are only concerned here with a preliminary enquiry and not the enquiry itself.
84. We think the proper approach, is for us to be satisfied that there is some other independent information which tends to support the hearsay evidence complained of. For example, both Mr. Fraser and General Rhooode agree that General Rhooode was in Cape Town and

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<sup>61</sup> Annexure IP82, page 1640, para 29.2.6

in Namibia, but differ as to why General Rhooode travelled to these places; the President and Mr. Fraser agree that US\$ were kept inside a sofa but differ on whether the money was “stored” or “concealed” in the sofa; there is agreement that General Rhooode carried out an investigation but there is a dispute as to whether he was investigating the theft of money or a “breach of security” only. Of course, inherent probabilities and improbabilities too, have a role to play in resolving the factual disputes where they occur, always bearing in mind that this is a preliminary enquiry into a motion to determine whether the President has a case to answer.

## CHAPTER 11: INFORMATION RELEVANT TO THE CHARGES

85. The information on which our findings and recommendation are based emanates mainly from:
- 85.1. Information submitted by the ATM in support of the proposed charges as well as the information furnished to us pursuant to the invitation to submit information.
  - 85.2. The statements made by Mr. Fraser to the SAPS in support of the charges that he has laid against the President, General Rhoode and other individuals, as well as his statement to the Public Protector. The statements also include annexures. These statements were submitted to us by the ATM and EFF. The first statement was made on 1 June 2022<sup>62</sup> (the first statement), while the other is the statement which was made to the DPCI, dated 23 June 2022<sup>63</sup> (the second statement).
  - 85.3. The annexures that are particularly important, are those that appear in a statement made by Mr. Fraser to the Public Protector and dated 26 September 2022, which was submitted to the Panel by the ATM. These annexures include the press statement by the Namibian Police<sup>64</sup>, the confidential report by the Namibian Police pertaining to Mr. Imanuwela David,<sup>65</sup> who is described as the mastermind behind the housebreaking and theft at the farm, and the media statement issued by the Namibian Presidency.<sup>66</sup>
  - 85.4. Statements made by the President and his office in response to the media reporting on the allegations made by Mr. Fraser in laying criminal charges against the President<sup>67</sup>. These statements were made in Parliament in response to questions directed at the President, while others were made at an ANC conference in Limpopo and to the congress of the South African Communist Party.
  - 85.5. The response of the President to the allegations made by the ATM, EFF and the UDM.<sup>68</sup>

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<sup>62</sup> Annexure IP14, pages 369-416

<sup>63</sup> Annexure IP13, pages 355-368

<sup>64</sup> Annexure IP21, pages 1389-1391

<sup>65</sup> Annexure IP21, pages 1392-1398

<sup>66</sup> Annexure IP21, pages 1299-1401

<sup>67</sup> Annexures IP53 & IP54

<sup>68</sup> Annexure IP82

- 85.6. The sworn statements by General Rhooode<sup>69</sup> and Mr. Bejani Chauke<sup>70</sup>, including a statement made by General Rhooode to the Public Protector<sup>71</sup>. As we will show later, General Rhooode refers to certain portions of the statement he made to the Public Protector.
86. While Mr. Fraser has not disclosed the source of his information, given the seriousness of the allegations he is making and the potential harm they can cause if untrue, we assume that at an appropriate forum and when the need arises, he will, when called upon to do so, disclose the source or sources of his information. We also take note of the fact that this information is contained in a sworn statement and in the second statement, which was made to the DPCI<sup>72</sup>. They must therefore have been made with full knowledge of the consequences if found to be untrue. These considerations apply equally to the sworn statements made by General Rhooode and Mr. Chauke.
87. The information placed before us concerns two issues which form the foundation of the proposed charges. The one issue is the source of the foreign currency that was stolen and the other is the instruction that was given to General Rhooode by the President following the report of the housebreaking and theft. The resolution of these issues can provide a crucial explanation for (a) the presence of the foreign currency which was “stored” or “concealed” inside a sofa; (b) how much was “stored” or “concealed” in the sofa; (c) how much money was stolen; (d) the role, if any, played by General Rhooode in the investigation of the housebreaking and theft; (e) the failure to open or register a case of house breaking and theft, with the SAPS station in Limpopo; (f) why did Mr. Hazim buy buffaloes and not take them away; and (g) why no one was charged, prosecuted and convicted following the housebreaking and theft. Indeed, the resolution of these two issues can provide the missing links in the chain of events that we are grappling with in this Report.
88. In the next two chapters, we consider these two issues.

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<sup>69</sup> Annexure IP82, pages 1715-1719

<sup>70</sup> Annexure IP82, pages 1663-1665

<sup>71</sup> Annexure IP19

<sup>72</sup> Annexure IP13

## **CHAPTER 12: SOURCE OF THE FOREIGN CURRENCY**

### **A. PRIMARY SOURCES OF INFORMATION ON THE SOURCE OF THE FOREIGN CURRENCY**

89. The information concerning the source of the foreign currency is provided by the ATM, EFF and UDM, statements made by Mr. Fraser to the SAPS and the Public Protector, and the President. The secondary sources of information on this aspect are media statements attributed to the Presidency and the President. While the President has made a statement on this aspect relying on what he was told by Mr. Ndlovu, the latter has not made any statement. The President has also referred to the evidence of Mr. Chauke, who has emphatically denied the allegations made by Mr. Fraser.

### **B. THE ALLEGATIONS BY MEMBERS OF THE NATIONAL ASSEMBLY**

90. The statements by Mr. Fraser which supplemented his complaint to the SAPS and the Public Protector are the main source of information.<sup>73</sup> Together they suggest that the money which was stolen from the private residence of the President on the farm was not the proceeds of the sale of animals as alleged by the President. Rather Mr. Fraser suggests that this money was illegally brought into the country after the President's advisor, Mr. Chauke, collected the money for both him and the President on certain trips he undertook to the Middle Eastern and African countries, on behalf of the President.

91. Mr. Fraser alleges the following:

- 91.1. This money was brought to South Africa by the President's closest advisor, Mr. Bejani Chauke from certain Middle East and African countries.
- 91.2. The money was not declared with either the SARS or the SARB. Mr. Chauke concealed an undisclosed amount of US\$ in one of his couches at his personal residence in Hyde Park, Johannesburg.
- 91.3. This money was later transferred in a couch to the President's residence at the farm with the assistance of General Rhooode.
- 91.4. The money was transported to the farm "with the full knowledge and acquiescence of the President."<sup>74</sup>

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<sup>73</sup> Annexure IP13

<sup>74</sup> Annexure 1P 13, page 356 at para 5.1-5.3

92. While Mr. Fraser has not disclosed the source of his information, he has nevertheless indicated what information can be obtained to verify his allegations. For example, he has drawn attention to the following records that may be obtained to verify his allegations and suggests that:
- 92.1. In relation to money that was allegedly brought into the country by Mr. Chauke, he says “the movement control records of Mr. Chauke's international travels, along with his mode of transport and the associated costs thereof ought to be established.”
  - 92.2. In relation to the concealment of money in a couch, and the involvement of General Rhooode in transporting the money to the President's residence at Phala Phala, Mr. Fraser suggests that “[a]n analysis of the mobile telephone and tower networks of both Mr. Chauke and Major Rhooode's mobile telephones and vehicle tracking devices would shed some light hereon.”
  - 92.3. “[B]usiness records of the President's sale of animals (including auctions and private sales) and hunting that took place at Phala Phala and on other farms through which the President conducts business, must be obtained for the period 1 March 2019 to 29 February 2020, detailing all transactions and all invoices, receipts and communications (including e-mail) in relation to sales and purchases.
  - 92.4. Both the business banking records and personal banking records of the President for the period 1 March 2019 to 29 February 2020 must be obtained, detailing all credits and debits.
  - 92.5. Obtaining witness statements from the Phala Phala farm manager and/or sales manager and/or any other person(s) responsible for the day-to-day business activities relating to the sales (and auctions) of animals and the hunting of animals at Phala Phala and or any of the President's associated entities on which such business activities are said to have taken place during the period 1 March 2019 to 29 February 2020.
  - 92.6. All cash business transactions be identified, and confirmed with the purchaser(s), including person(s) having hunted on the property.
  - 92.7. It must be established what the business practice is in relation to the handling of cash business transactions and where the monies are ordinarily kept.

- 92.8. The company registration documents in relation to Phala Phala and any of the President's associated entities through which business activities such as the sale (and auctions) of animals and the hunting of animals are said to have taken place during the period 1 March 2019 to 29 February 2020, must be obtained.
- 92.9. It must further be established from the SARB whether the President and/or Phala Phala, and/or any of the President's farming, animal or hunting entities had declared the possession of any foreign currency or any business transactions in foreign currency and/or had obtained any authorization from the Reserve Bank in this regard, in particular, the US Dollars.
- 92.10. It must be established from SARS whether the President and/or Phala Phala, and/or any of the President's farming, animal or hunting entities had declared any income through foreign currency, particularly US\$ in the submission of business and personal tax returns for the period concerned.
93. Significantly, he states that “[a]pproximately 3 weeks ago, after charges were laid against the President, Mr. Chauke is said to have moved US\$20 million in cash to a South African citizen, Mr. Zahir Vallie...”. He provides contact details of Mr. Vallie and other relevant information about him.<sup>75</sup>
94. While Mr. Fraser’s statements provide information that may help to verify the truthfulness or otherwise of his allegations, the present process does not permit the Panel to investigate these matters. This of course does not mean that we must blindly accept the information contained in Mr. Fraser’s statements in the hope that it may, and probably will, be verified. Nor does it mean these allegations must be ignored. Fairness dictates otherwise.

### **C. THE PRESIDENT’S RESPONSE TO THE ALLEGATIONS**

95. The President has denied these allegations and maintains that the money represents the proceeds of the sale and hunting of game, and he provides the following explanation for the foreign currency:

13. On 26 December 2019, I went to Phala Phala. While there, the Lodge Manager, Mr. Ndlovu, informed me about what had transpired the previous day at the farm. At the time, the General Manager Mr. von Wielligh was on leave. Mr.

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<sup>75</sup> Annexure IP13, page 358, para 5.15-5.16



Ndlovu said that:

- 13.1. Mr. Mustafa Mohamed Ibrahim Hazim, a citizen of Sudan (“Mr. Hazim”), came to the farm to view buffaloes that were for sale. Mr. Ndlovu showed Mr. Hazim the buffalos in Camp 6 and Mr. Hazim identified those that he liked the look of. Mr. Hazim made payment in cash in the sum of US\$580,000 to Mr. Ndlovu. It was a payment for purchase of a number of the buffalo referred to above, based on information Mr. Ndlovu gave Mr. Hazim regarding the price of each of the animals he had identified and decided to buy.
- 13.2. Mr. Ndlovu, upon receipt of the money, gave Mr. Hazim an acknowledgement of receipt and informed him that he would inform me about what had transpired. A copy of this receipt is attached marked “MCR 1”. After Mr. Hazim had left Phala Phala, Mr. Ndlovu took the money and locked it in the safe at the Bayeto Centre office.
14. When Mr. Ndlovu spoke to me on 26 December 2019, the cash he had received was still in the safe at the Bayeto Centre. I was heading to Cape Town for the remainder of the festive season and since Mr. von Wielligh was away, I said the money ought to be kept on the farm until Mr. von Wielligh would have the opportunity to process matters related to the transaction and thereafter have the money banked. I left the farm on 27 December 2019.
15. Mr. Ndlovu was due to go home on leave on 30 December 2019. He felt uncomfortable about leaving the money in the safe at the Bayeto Centre because he was concerned that several staff members had access to the safe. He decided that the safest place to store the money was inside my private residence on the farm. He stored the money below cushions of a sofa in a spare bedroom that is hardly ever used, inside my private residence, because he thought it was the safest place, as he believed nobody would break into the President’s house.<sup>76</sup>  
(Our underlining)

#### **D. ANALYSIS OF THE INFORMATION ON SOURCE OF FOREIGN CURRENCY**

96. A comparison between the two versions on the source of the foreign currency reveals that:
  - 96.1. Mr. Fraser alleges that Mr. Chauke illegally brought into this country large sums of US\$ from countries such as Saudi Arabia, Egypt, Morocco, and Equatorial Guinea.
  - 96.2. The President claims that the foreign currency was the proceeds of the sale of a parcel of buffalo to a Sudanese businessman.
  - 96.3. Both however, agree that the foreign currency was in a sofa in the President’s private residence at the farm but differ not on how it got there but also whether

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<sup>76</sup> Annexure IP 82 at page 1632-1633

it was concealed or stored in the sofa.

97. However, both differ sharply on the source of the foreign currency. Mr. Fraser does indicate the basis of his allegations. Nor does he claim that he obtained this information from a source or was advised of this. Given the limited power given to the Panel, we are unable to verify these allegations. They can only be tested against the version of the President and the probabilities. We think that to take these allegations at face value in these circumstances would be unfair.
98. But the President does not have personal knowledge of the source of the foreign currency either. As pointed out earlier, in this regard, he relies on what he was told by Mr. Ndlovu and on the acknowledgement of receipt, MCR1<sup>77</sup>, that Mr. Ndlovu gave him as proof of the sale of the buffaloes. But as we noted previously, Mr. Ndlovu has not made a statement, sworn, or unsworn, confirming the allegations made by the President. Furthermore, the buffaloes are still at the farm, more than two years after the sale. The President has not told us why Mr. Ndlovu has not made any statement. Nor has he explained to us why the buffaloes are still at the farm.
99. In these circumstances the evidence of the President must be approached with caution. Indeed, there are troubling unsatisfactory features in the explanation of the source of the foreign currency given by the President. We do not propose to list all the unsatisfactory aspects. It will be sufficient to refer, for example, how Mr. Hazim came to visit the farm, to the acknowledgement of receipt; storage of the money inside a sofa; how the money entered the border; the fact that the buffaloes are still at the farm two and a half years after the sale; knowledge of the foreign currency by Mr. von Wielligh and how much was stolen. We consider each of these aspects below.

### **Mr. Hazim's visit to the farm**

100. On the President's version, Mr. Hazim walked into the farm on the Christmas Day of 2019, carrying at least an amount of US\$580,000 in cash. The purpose of this visit was to view animals. On this version, Mr. Hazim came to the farm without any prior arrangement to come and view the animals. How did Mr. Hazim know that there were

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<sup>77</sup> Annexure IP81, page 1662

- buffaloes for sale at the farm? Was the sale advertised? There are further difficulties about the large amount of cash he was carrying. And if he came to the farm without prior arrangement, how did he know that the purchase price would be US\$580,000, unless he was carrying more than US\$580,000 in cash.
101. Furthermore, there are a number of questions that arise from the money that Mr. Hazim carried. How did he get this huge amount of cash into South Africa? When he entered the country, did he declare to the South African authorities at the point of entry that he was carrying this amount of cash? What is the source of this cash he had in his possession? Did he produce any document indicating that he had authority from his country to take out of his country this amount of money? How did Mr. Hazim carry this money into South Africa? We find the behaviour of Mr. Hazim in carrying more than half a million US\$ in cash into South Africa and thereafter transporting it to the farm to be un-businessmen-like. We understand that customers pay cash or use money transfer for transactions. Why did Mr. Hazim not pay by money transfer?
102. It is difficult to understand that a foreigner carrying US\$580,000 would randomly come on a Christmas Day without making prior arrangements. We would have expected that Mr. Hazim would have made arrangements with the General Manager or the President to come and view the animals; the farm would make arrangements for someone with knowledge of buffalo to receive Mr. Hazim and show him the animals and negotiate the price and conclude the sale transaction. Yet no such arrangements were made, and he was met by a Lodge Manager whose expertise in buffaloes is not known. Indeed, it is not clear to us how Mr. Ndlovu knew what buffaloes to sell and at what price each.
103. We raise these questions not because it is unheard of for a person to buy a parcel of buffaloes at US\$ 580,000. These questions arises because as a businessperson we would not have expected Mr. Hazim to go about the country carrying more than half a million US\$ in cash. We would have expected him to pay by means of a money transfer. Our concern in this regard must of course be viewed in light of the absence of a normal tax invoice.
104. We are raising the issue of how the money entered this country because the ATM has raised this issue in its Motion. The ATM referred the Panel to a letter from the Governor

of the SARB, Mr Kganyago, dated 30 August 2022 addressed to Mr. NF Shivambu, MP. The Governor reports that following the allegations in the media regarding the alleged theft of foreign currency, the Financial Surveillance Department (FSD) “has requested legal advisors of the President to provide information and details regarding the origin of the foreign currency and the underlying transactions that it may pertain to.”<sup>78</sup> The FSD is a department of the SARB which administers the Exchange Control Regulations and investigates contraventions of these regulations.

105. The investigation by the FSD suggest that the SARB is probably not aware of the sum of US\$ 580,000 entering this country or being reported. We do not know the outcome of this investigation, if it has been completed, or how far the investigation has proceeded. Nor do we know what explanation was provided to the FSD for the origin of the foreign currency and the underlying transaction.

### **Acknowledgement of receipt**

106. The President has furnished us with “an acknowledgement of receipt”, MCR1<sup>79</sup>, as proof of the source of the foreign currency that was stolen. While we accept that this document is what it purports to be, there are a number of difficulties with this document which stand in our way to accepting it as conclusive evidence of the sale. We highlight some of these difficulties below.
107. First, other than the names of Messrs Hazim and Ndlovu, no further particulars of these individuals are provided such as their Passport or Identity Document numbers. Nor does MCR1 reflect the address of the buyer. Mr. Hazim is said to be a Sudanese businessman. Yet no particulars are given of his business or the business he is involved in, the address where he conducts business from, or any particulars that will enable anyone wishing to identify him or establish his whereabouts. It is therefore not surprising that a journalist with News24, Mr. Kyle Cowan, reported that “[d]espite extensive searches, utilising various databases and online tools, News24 was not able to immediately verify [Mr.] Hazim's identity.”<sup>80</sup>

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<sup>78</sup> Annexure IP8, page 98

<sup>79</sup> Annexure IP81, page 1662

<sup>80</sup> Annexure IP57, page 1460-1470

108. Second, the ATM submission has raised questions about the issue of Value Added Tax (VAT), in particular, whether the President charged VAT on his trading activities, and he paid VAT over to SARS<sup>81</sup>.
109. The amount involved in the transaction is a sum of US\$580,000, which, as at 25 December 2019, would have translated into about R8,777,458. We do not know whether Phala Phala Wildlife is a VAT Registered Vendor. In his response, albeit in a different context, the President states that “Phala Phala Wildlife has just finalised a transaction for disposing of a parcel of buffalo that will soon be exported to a country in the Middle East...”<sup>82</sup> If the purchase price of a parcel of buffaloes in December 2019 was US\$580,000, we would expect that the recent transaction to which the President has referred would involve in excess of R10 million. The farm may well be making more than R1 million per year.
110. In terms of section 23 of the VAT Act, 1991 (Act No 89 of 1991), any person who earns R1 million per year is liable to be registered as a VAT vendor. Once you are so registered, you are required to comply with a number of statutory requirements, including the provisions of section 20(4). You are required, for instance, to “issue a tax invoice “within 21 days of the day of the supply”. Furthermore, your “tax invoice” must contain particulars that are specified in section 20(4). Significantly, it must include the words “tax invoice”; “VAT invoice” or “invoice”; the name, address, and VAT registration number of the recipient, if any, and an “individual serialized number” and the “date upon which the tax invoice is issued”<sup>83</sup>.
111. If Phala Phala Wildlife is a registered vendor, we would expect an invoice which complies with the Act. Even if it is not, we would expect a proper invoice containing an individual serialised number and the date of the sale as well as the costs of exporting the animals.
112. According to Mr. Vincent Magwenya, the President’s Spokesperson, invoices are issued by Phala Phala Wildlife for any transaction. In this regard, he is reported as having said:<sup>84</sup>,

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<sup>81</sup> Annexure IP20, page 1347, para 46

<sup>82</sup> Annexure IP81, page 1632 at para 12

<sup>83</sup> Section 20(4)(d) of the Value Added Tax Act, 89 of 1991

<sup>84</sup> Annexure IP56, page 1464

“during this particular time.....it was just a transaction that took place at the farm. And there are some cash payment.....”

“so once the cash is received it will then get managed accordingly against the invoices raised and so on.”

113. Whether Phala Phala Wildlife is a registered VAT vendor and was therefore required to comply with the provisions of the VAT Act, is a question that we cannot answer on the information presented to us. Nor can we say, having regard to the amount of the transaction, that Phala Phala Wildlife is not a registered VAT vendor. Until these questions are answered serious doubt is cast on the alleged acknowledgement of receipt as proof of the sale. What compounds the problem is where the money was “stored”, the reason for storing the money in the sofa, why it was kept for more than 40 days without being banked, and the reason why it was not banked.

#### **Storage of the money inside a sofa**

114. It is common cause that there was foreign currency that was “stored below the cushion” (according to the President) or “concealed” in a leather sofa (according to one of the suspects who was interviewed by the investigators). The President said the following, concerning where the money was kept:

Mr. Ndlovu was due to go home on leave on 30 December 2019. He felt uncomfortable about leaving the money in the safe at the Bayeto Centre because he was concerned that several staff members had access to the safe. He decided that the safest place to store the money was inside my private residence on the farm. He stored the money below cushions of a sofa in a spare bedroom that is hardly ever used, inside my private residence, because he thought it was the safest place, as he believed nobody would break into the President’s house.<sup>85</sup> (Our Emphasis)

115. The impression we get from this statement is that it was Mr. Ndlovu’s idea that the money be stored “below cushions of a sofa”. Was the money stored in the sofa with the knowledge of the President?
116. We assume that Phala Phala Wildlife has a safe to keep cash safe until it can be banked. Indeed, the money was first stored in the safe. Why is it that “several staff members” have access to the safe which increases the risk of the safety of cash? Does this mean that “several staff members” have keys to the safe or access to code for the safe? The money

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<sup>85</sup> Annexure IP 82 at page 1632-1633

was kept in the safe on 25 December 2019, it was still in the safe on 26 December 2019. When did Mr. Ndlovu's concerns about keeping the money in the safe arise? Perhaps it was because he was going away on holiday on 30 December 2019. On his return, why did he not take it out of the safe? At what stage was he going to give Mr. von Wielligh a report about the sale and the cash in the safe? Why was the money not taken to the bank before Mr. Ndlovu left for the holiday on 30 December 2019? Why did the President not take the money to the bank in light of the concerns expressed by Mr. Ndlovu and the fact that Mr. Ndlovu was going away on holiday. Perhaps, the decision to "store" the money in the safe was taken after the President had left the farm. But why did he not give Mr. Ndlovu instruction to have the money banked pending the return of Mr. von Wielligh?

117. The information presented by the President on the storage of the money is vague and leaves unsettling gaps. On his version, it would appear that he instructed Mr. Ndlovu to have the money stored on the farm pending the return of Mr. von Wielligh. Mr. Ndlovu decided that the money must be stored in the President's private residence in a safe below cushions. It is not clear whether the money was stored below the cushions or inside the safe. If a sum of US\$ 580,000 in cash money was "stored below the cushions" it would have been visible to anyone passing by.
118. On a probability, the money was carefully stored inside the safe in such a manner that no-one would be notice that there was money in the safe. This means that the safe would have been opened up underneath, and the money stored inside the frame of the safe. Thereafter, the underneath cover would have had to be carefully replaced otherwise the money would fall out on to the floor. But why go through process of turning the safe upside down, opening it up and stuffing the inside a safe to store money that was destined for the bank shortly? This was a leather safe, one suspect said.
119. In these circumstances, we find, as a matter of probability, that the money was in fact concealed inside a leather safe, as the suspect who was interviewed stated in the audio clip provided to us.
120. On a probability, we do not think that Mr. Ndlovu, a Lodge Manager, would have defied the President's instruction to keep the money on the farm and in the safe, as is normal business practice, and decide on his own to store the money inside the President's private

residence and in the sofa without the knowledge of the President. Mr. Ndlovu was too junior to have made such a decision and carried it out without the President's permission. In all probability, the money was stored in the sofa with the full knowledge and approval of the President.

121. Significantly, when the theft of money to the President told the President that "the amount that he had kept in [the President's] house had been stole. This like Mr. Ndlovu was making a report to a person who knew that the money was stored in the house. And the President did not express surprise at being told that the money had not been kept in the safe.
122. We are raising these questions because it is not uncommon for such a huge sum of money in cash to be stuffed inside a sofa and to remain there for more than 40 days without being banked. The normal practice is to bank the money on the next available banking day. These questions must of course be viewed in light of the behaviour of Mr. Hazim, who has left his buffaloes on the farm for over two and a half years.

**Mr. Hazim did not remove the buffaloes from the farm**

123. We are left with the impression that Mr. Hazim decided to come to the farm on Christmas day in 2019 to view buffaloes carrying more than half a million US\$ in cash. After paying \$580,000 for the buffaloes, Mr. Hazim left with no indication when he would return to collect his buffaloes. In fact, there is no indication that he returned at all. We are not told what arrangements, if any, were made with Mr. Hazim to collect the buffaloes or have them exported to him. Why would anyone pay such a huge sum of money in cash and thereafter leave the goods without indicating when he would come back to collect the buffaloes or leaving an address for the delivery of the animals? Perhaps Mr. Ndlovu did not discuss any of these aspects with Mr. Hazim.
124. The President does not tell us what arrangements were made with Mr. Hazim to collect his buffaloes, let alone why the buffaloes have not been collected to date. We understand from the President that buffaloes are not bought today and the following day they ship them to the country of export. We learn from the recent sale of another parcel of buffaloes, to which the President refers in his response, that there are regulations and requirements



that would need to be complied with animals are exported.<sup>86</sup> There is no indication how long this process takes.

125. However, a journalist with News24, Mr. Kyle Cowan, reports that the President’s explanation for the buffaloes still being at the farm more than two years since they were purchased is “due to the high costs of administration and facilitation of the export of the animals and that the burglary affected this.”<sup>87</sup> However, to the extent that this is the explanation, we find it difficult to understand why the costs of administration and facilitation of the export of the animals would be considered “High” in light of the amount that was paid for the 20 buffaloes. We would have expected Mr. Hazim to have carried sufficient cash to pay for the costs of administration and facilitation of export of these animals. Who was to be responsible for these costs, Mr. Hazim or the farm? Regrettably, the acknowledgment of receipt is silent on whether the purchase price included other costs associated with the export of the animals or who was to be responsible for those costs. Nor do we understand how the housebreaking affected the delivery of the buffaloes. Without more information, we are unable to accept this explanation.
126. The leaving of animals on the farm for over two years after paying more than half a million US\$ for them, the absence of particulars of Mr. Hazim in the acknowledgement of receipt, the lack of explanation as to what was to become of these animals, raise substantial doubt about the sale transaction itself. There are two individuals who can remove this doubt, Mr. Ndlovu and Mr. Hazim. A simple confirmatory affidavit from either of these individuals would have been sufficient to put our minds at rest. There is no explanation as to why these confirmatory statements could not be provided as both Mr. Chauke and General Rhooide did.
127. Mr. von Wielligh, a General Manager, and whom Mr. Ndlovu reports to could have shared some light on some of these questions. But he has not provided a confirmatory statement either. The money was kept in the sofa for him to return from holiday and process the transactions and thereafter bank the money. But did he? Or did he know that among herd of buffaloes on the farm, at 20 were no longer for sale?

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<sup>86</sup> Annexure IP82, page 1632, para 12

<sup>87</sup> Annexure IP 57, page 1470

### **Did Mr. Von Wielligh know about the stolen money?**

128. The money was supposed to be kept on the farm “until the General Manager, Mr. von Wielligh would have the opportunity to process matters relating to the transaction and thereafter have the money banked.” Did Mr. von Wielligh eventually return to the farm, if so, when? We know that Mr. von Wielligh was at the farm by 10 February 2020, because he reported the “security breach” to the President. Yet he did not report the stolen money, only Mr. Ndlovu did. Why not?
129. Does this mean that as of 10 February 2020, Mr. von Wielligh, the General Manager, had not yet been told about the sale of buffaloes and the cash in the sofa that was awaiting his return, for it to be processed and banked? If Mr. von Wielligh had not yet been told about the money by 10 February 2020, what was the cause of the delay? Did he know anything about the alleged sale? Did he know about the money that was hidden inside the sofa? If he did know, why was he not told about the money?
130. We would expect that Mr. von Wielligh would be told about the sale of the buffaloes and the cash received for this sale. After the cash in the sofa was awaiting his return. Otherwise, Mr. von Wielligh, not being aware of the sale of these buffaloes, would sell them to another game enthusiasts. There is nothing to suggest that Mr. von Wielligh had been told about the sale and the money as of 10 February 2020. This raises substantial doubt about the existence of the alleged sale.
131. The persons who could provide answers to these questions are Mr. Ndlovu and Mr. von Wielligh. Regrettably, they have not made any statements to us.
132. The concerns that we have raised in this regard must of course, be viewed in light of the fact that we do not know whether the whole amount of cash that was in the sofa was stolen or only a portion of the amount was stolen.

### **How much was stolen?**

133. Mr. Ndlovu reported the theft of the money to the President. He knew how much had been “stored” in the sofa. We assume that Mr. Ndlovu, who reported the theft of the

money to the President, first went to the sofa where the money was hidden before making a report to the President. It is not immediately clear how Mr. Ndlovu gained entry into the house as the house was locked. According to General Rhooode, SAPS officials who were dispatched to the private residence of the President on 10 February 2020, informed him that “the President’s house was locked and there was no one present with access to open the house and accordingly the SAPS officers did enter the house.” Perhaps Mr. Ndlovu had just stepped out of the farm when the police arrived.

134. On the version of the President, the only foreign currency that was in the sofa was a sum of US\$ 580,000 in cash. There are, in our view two possibilities, either the whole amount that was inside the sofa was stolen, or a portion of it was stolen. The report that the President received from Mr. Ndlovu suggests that the whole amount was stolen. Yet, no-one is prepared to tell us that. We are left to speculate about how much was stolen. Given the lapse of time since the theft occurred, by now it should have been established whether the whole amount was stolen or whether some of it was stolen. Furthermore, the Presidency was reported to have said that a reconciliation was being performed for money or transactions that occurred over the weekend of the theft.<sup>88</sup> Yet to date, the exact amount that was stolen has not been made known.
135. We consider answers to the question of how much was stolen significant in light of the following allegations:
- 135.1. Mr. Fraser alleges that “the quantum [of the amount stolen] was speculated to be in the region of approximately US\$4 million to US\$8 million.”<sup>89</sup>
- 135.2. The President at the Limpopo Provincial Conference of the ANC said, “The amount involved is far less than what has been bandied in the press.”<sup>90</sup>, which referred to US\$ 4 million.
- 135.3. There is an audio clip of a suspect or suspects being interrogated about the theft. One of the suspects told the investigators that the woman who told them about the money concealed in a leather sofa warned them not to take all because “you are dealing with the President here.”<sup>91</sup> The suspect is recorded as saying they

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<sup>88</sup> Annexure IP55, page 1461

<sup>89</sup> Annexure IP 14, page 374 at para 13.9

<sup>90</sup> Annexure IP82, page 1635, para 20

<sup>91</sup> Annexure IPV10, 01:35

took US\$800,000. If this is true, this suggests that there was more money at the residence than the US\$580,000 alleged to have been paid by Mr. Hazim. If there was more than US\$580,000 concealed in the sofa, this raises the question of the source of the additional amount.

- 135.4. The interviewer on the audio clip is recording as having told the suspect took that they knew that the suspects took about 20 million to Namibia, although the suspect disputed this. Although in the audio clip is it not entirely clear, what currency they were referring to when the amount of 20 million was mentioned. Whether the investigator was referring to US\$ or ZAR, this amount is far more than US\$ 580,000 that was alleged to have been hidden inside the sofa.
- 135.5. If what the suspect and the investigator were saying is true about the money stolen, then there was more than US\$ 580,000 hidden in the sofa. The question is where did this additional foreign currency come from?

## **E. CONCLUSION**

136. There are weighty considerations which leave us in substantial doubt as to whether the stolen foreign currency is the proceeds of sale. We say this for the following reasons:
  - 136.1. There is no evidence as to how this money came into the Republic.
  - 136.2. The exact amount of foreign currency stolen is yet to be disclosed.
  - 136.3. The investigation by the SARB suggests strongly that it had no records of this money entering this country or being reported as having been received.
  - 136.4. Other than his name, there are no other particulars of Mr. Hazim such as his physical address, telephone numbers, business address, and other personal details such as his passport number.
  - 136.5. Having bought 20 buffaloes, Mr. Hazim has not collected these buffaloes for the past two and a half years.
  - 136.6. Instead of keeping the money in the safe until the next banking day, the money is kept concealed in a sofa for well over a month.
  - 136.7. The theft of the money was not reported to the SAPS and no case number or docket is registered.
  - 136.8. Information placed before the Panel suggests that more than US\$ 580,000 was stolen.
  - 136.9. Suspects were arrested, interrogated and cooperated with the investigating team and yet no one is charged, prosecuted, and convicted. This occurs amid

allegations that the suspects were paid R150,000 each to buy their silence.

137. The cumulative effect of these factors renders it difficult to accept the acknowledgement of receipt as conclusive proof of the source of the foreign currency. Indeed, there is substantial doubts as to whether the foreign currency that was stolen is from the proceeds of the sale of 20 buffaloes. We are unable to investigate or verify the source of the foreign currency. All we have is the information that the President obtained from Mr. Ndlovu and the acknowledgement of receipt. Mr. Ndlovu himself has not confirmed this information.
  
138. We think that the President has a case to answer on the origin of the foreign currency that was stolen, as well as the underlying transaction for it.

## CHAPTER 13: THE INSTRUCTIONS THAT WERE GIVEN TO GENERAL RHOODE

140. Under this section, we consider the instructions given to General Rhoode in Addis Ababa, and at Hyde Park, the nature of the investigation that General Rhoode carried out at the farm and in Cape Town, and whether General Rhoode was in Namibia, as part of the investigation.

### A. INSTRUCTION IN ADDIS ABABA

141. There are two versions that have been presented to the Panel by the President and General Rhoode. The President stated that when he reported the theft to General Rhoode, he was reporting a crime to a SAPS official and expected him to investigate as with any crime. Indeed, the Presidency issued a statement on 2 June 2022<sup>92</sup> which was reported as follows:

The Presidency can confirm that a robbery took place at the President's farm in Limpopo on or about 9 February 2020, in which proceeds from the sale of game were stolen.

The President was attending an African Union summit in Addis Ababa at the time the incident occurred. On being advised of the robbery, President Ramaphosa reported the incident to the head of the Presidential Protection Unit of the South African Police Service for investigation.<sup>93</sup> (Underlining added)

142. And on 29 September 2022, in response to a question by Mr. Zungula MP, at the sitting of the National Assembly, the President stated:

“Soon after it happened, I was informed that theft had been committed and my manager informed me, and I immediately informed General Rhoode as we were travelling and in Addis Ababa.”<sup>94</sup>

143. Later at the same sitting, in response to Mr. Malema, MP, the President is reported as having said:

Once the theft had occurred I was informed as I said. I guess I may be repeating myself but I also need to answer that. I don't believe I abused my power because I am surrounded by police officials and when I informed the General I was informing a police official. Even at the time, on the farm, my manager interacted with police officials who were involved with the whole process. I want to dispute the argument that I abused my

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<sup>92</sup> Annexure IP53, page 1457

<sup>93</sup> Annexure IP 82, page 1632 at para 21

<sup>94</sup> Annexure IP 82, page 1683

power. I am not the type of person who will abuse my position or my power. So I did not, and having reported it to the police official I did believe that they will do what they need to do to ensure that this matter is properly handled. That is the extent to which I was able to handle this matter. So, in my book, hon Speaker, it was reporting the crime to the police when I informed a police General. Thank you very much.<sup>95</sup> (Underlining added)

144. These statements convey the impression that the housebreaking and the theft of money were reported to the President while he was in Addis Ababa, the President “immediately” reported this crime to General Rhoode for investigation while both the General and the President were in Addis Ababa. And to paraphrase what the President said, when he reported the housebreaking and theft to General Rhoode, he was reporting a crime to a SAPS official so that the crime could be investigated.
145. However, in his statement to the Panel, the President now refers to “a security breach” being reported first by Mr. von Wielligh and the report of theft of money “soon after the security breach was reported [to him]”. This is how he explains these reports:
- 16.1. On 10 February 2020 – the day after the theft – I was advised by Mr. von Wielligh that there was a security breach at Phala farm. At the time, I was in Addis Ababa, to chair the African Union Assembly Summit Meeting. Mr. von Wielligh sent footage to me from the CCTV cameras situated outside my private residence at Phala Phala, which shows intruders who were seeking to enter my private residence. I then arranged for Major-General Rhoode, the head of the Presidential Protection Service (“PPS”), to visit me in my room, at our hotel in Addis Ababa. At our meeting, I informed Major-General Rhoode that I had received information that there had been a breach of security at Phala Phala and requested him to attend to the matter and report back to me. I had a lengthy session of the African Union Heads of State Summit meeting ahead of me, which in fact only ended at 3am the following morning.
- 16.2. Soon after the security breach was reported to me, Mr. Ndlovu contacted me to tell me that the money that he had kept in my house had been stolen.
- 16.3. On my return from Addis Ababa I went straight to Cape Town to attend a Cabinet meeting and thereafter to prepare for the State of Nation Address.
146. From this statement, the President appears to have been told of the theft while he was still in Addis Ababa. He only reported the security breach to General Rhoode but not the theft. Nor did he report it to General Rhoode “during the second half of February 2020” when he went to Phala Phala “for the purpose of examining and being fully briefed on what had

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<sup>95</sup> Annexure IP 82, page 1695-1696

happened and confirming that money was stolen.”<sup>96</sup> General Rhooe was only told of the theft “some days after returning from Phala Phala.”<sup>97</sup> In his statement to the Panel, General Rhooe does not mention being told of the theft by the President. He says he was not involved in the investigation of the theft “other than the preliminary inquiry” and he refers to the statement he made to the Public Protector. In that statement, General Rhooe says he was told of the theft only on 2 March 2020.

147. We are unable to accept that General Rhooe was only told of the theft of foreign currency in March 2020 and at Hyde Park. This is inconsistent with the statements made by the President in Parliament, as well as the statement issued by the Presidency. We find, as a matter of probability, that General Rhooe was told of the theft of foreign currency while the President and General Rhooe were in Addis Ababa.

148. He says upon being told of the theft, he immediately reported the security breach to and consulted with one of his superiors, the Deputy National Commissioner, Lieutenant General (Lt. Gen.) Mfazi, who is since deceased. He then says:

I was not involved in any investigation following the theft, other than the preliminary inquiry I speak to in my affidavit (IP19). It is not my job to open criminal cases. I followed proper procedures according to my reporting and accountability lines. As indicated in my previous affidavit, the Deputy National Commissioner, Lt Gen Mfazi, instructed me to conduct a preliminary inquiry and determine if any threat existed to the President. Depending on its results, he would institute the full-scale investigation. He determined this procedure in the light of the fact that we were dealing with the office of the President. The purpose of the preliminary inquiry was to determine whether there was any immediate threat to the President's safety, which is within my remit. It is beyond the remit of my duties to conduct a criminal investigation or open a docket.<sup>98</sup> (underlining added)

149. It is not immediately clear to the Panel why General Rhooe did not report the “breach of security” to Lt. Gen. Mfazi when he was first told of the security breach. He only reported the security breach after there had been a theft of foreign currency. Given that Lt. Gen. Mfazi only instructed him to conduct a preliminary inquiry to determine if there was any threat to the President. Following this instruction, General Rhooe says he put together an investigating team to conduct this preliminary inquiry.

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<sup>96</sup> Annexure IP 82, page 1634 at para 16.4

<sup>97</sup> Annexure IP82, page 1634, para 16.5

<sup>98</sup> Annexure IP 82, page 1717, at para 9



150. It is this “preliminary inquiry” which took him to Phala Phala where he “interviewed” Ms. Joseph, her brother as well as another person, whom he referred to as Thomas, about the house breaking and later to Cape Town and, as a probability to Namibia. In the course of conducting the preliminary inquiry General Rhooode “interviewed a temporary employee in housekeeping Ms Floriana Joseph...to ascertain whether she had any information regarding the house breaking.”<sup>99</sup> He goes on to state that Ms Joseph stated that her brother; Mr. David Joseph had information. “Mr. Joseph voluntarily subjected himself to an interview.”<sup>100</sup> And thereafter, with the assistance of Sergeant Rekhoto he compiled a report for Lt. Gen. Mfazi.

151. But how did General Rhooode end up in Cape Town?

## **B. GENERAL RHOODE IN CAPE TOWN**

152. Explaining why he was in Cape Town, General Rhooode says:

“12. On or about 10 or 11 March 2020 I was in Cape Town. While I was there, I received a call from a member of the PPS. Sergeant Rekhoto informing me that he had found out from certain sources that the perpetrators of the theft had bought new cars. He said the car had been bought from a dealership named Barons, in Culemborg, Cape Town. I viewed this information worth assessing as my role was to determine whether the perpetrators or their actions represented a threat to the safety and security of the President and his family.”

153. Shortly after receiving this telephone call, General Rhooode says “Sergeant picked me up at my office in Garmor House” and they “drove to Barons and spoke to the manager who confirmed that on 14 February 2020, a Mr. Mukekeni had purchased a 2019 Ford Ranger and he supplied further details in relation to the purchase of the vehicle”. Sergeant Rekhoto compiled a report of the information which was handed over to Deputy Commissioner Lieutenant General Mfazi.<sup>101</sup>

154. Thus, General Rhooode’s version is that he happens to have been in Cape Town when Sergeant Rekhoto received information from a “certain source” that the perpetrators of the theft had bought new cars. He viewed this information worth assessing as his role was

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<sup>99</sup> Annexure IP 19, page 1325 at para 23

<sup>100</sup> Annexure IP 19, page 1325 at para 23

<sup>101</sup> Annexure IP 82, page 1718 at para 11-12

- to determine whether the perpetrators or their actions represented a threat to safety and security of the President and his family. He proceeded to a car dealership named Barons in Cape Town “to determine whether the perpetrators or their actions represented a threat to the security of the President”.<sup>102</sup>
155. But according to Mr. Fraser, General Rhooode travelled to Cape Town after the domestic worker he had interrogated at the farm, revealed that the individuals who had broken into the farm, had returned to Cape Town. General Rhooode’s team then contacted individuals within the SAPS in Cape Town and falsely claimed that they had information on individuals who were involved in drug smuggling. It is alleged that using this fictitious drug smuggling claim, Major General Rhooode’s informal investigation team then provided the details of some of the suspects involved in the Phala Phala theft to the SAPS Detective services to track the individual's concerned.<sup>103</sup> As a result of “this subterfuge”, the suspects were traced to a house in Milnerton, Cape Town. He attached photographs of “four males laying handcuffed on the floor”. A list of telephone numbers, extracted from the devices are alleged to have been provided to Major General Rhooode and his team.
156. All the individuals arrested and interrogated happen to be suspects in the theft of foreign currency.
157. On the affidavit by General Rhooode, it is apparent that he was now investigating the house breaking and theft of money and how it had been used. The breach of security and the theft of money were inextricably linked. It is not immediately clear why General Rhooode would be so anxious to distance himself from investigating the theft of money, something that was inextricably linked to the breach of security. We are satisfied, on a probability, General Rhooode was in Cape Town, following the tip-off that the suspects were in Cape Town.
158. Subsequently, General Rhooode travelled to Namibia. Why he travelled to Namibia is a contested issue.

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<sup>102</sup> Annexure IP82, page 1718, para 11

<sup>103</sup> Annexure IP13, page 365, para 5.53-5.55

## C. GENERAL RHOODE IN NAMIBIA

159. According to General Rhooode, he accompanied Mr. Chauke to Namibia on 25 June 2020. This was an official trip of the President's envoy for Africa. They drove up to the border post where they completed the necessary documentation. From there they drove to what is described as “No Man's land” where they waited for the Namibian police to meet them. They were picked up in a helicopter and went to Windhoek arriving there in the evening. They went to see the President of Namibia in the morning. He remained outside as he was not part of the meeting. While he cannot say what was discussed at the meeting, he is adamant that the meeting had nothing to do with the alleged robbery.<sup>104</sup>
160. But Mr. Fraser provides a different explanation for why General Rhooode and Mr. Chauke travelled to Namibia. In a sworn statement dated 1 June 2022, Mr. Fraser says, one of the suspects in the theft case was traced to Namibia. The President sought assistance from President Hage Geingob of Namibia in apprehending this suspect.<sup>105</sup> This, according to Mr. Fraser, resulted in “Mr. Rhooode travelling to Namibia where the suspect was interviewed, and stolen money seized.”<sup>106</sup> He says General Rhooode used official government resources and that they were not “legally processed through the border control to have left the country nor that he returned to the country.”<sup>107</sup>
161. In a statement dated 26 September 2022, submitted to the Public Protector, he gives further details of the Namibian visit by General Rhooode. For these details, he relies on the Namibian Police Crime Intelligence Report (Namibian Police Report). He says, according to this Report, General Rhooode contacted the Namibian Police Special Branch, Crime intelligence to set up a meeting in “No man’s land at Ariamsvlei border post.”<sup>108</sup> At this meeting, General Rhooode confirmed to the Namibian Police that “**something** took place at President Ramaphosa's Phala Phala farm and that Mr. Imanuwela David was the mastermind behind the burglary.”<sup>109</sup> General Rhooode supplied names and photographs

<sup>104</sup> Annexure IP19, page 1326-127, para 28

<sup>105</sup> Annexure IP 14, page 376 at para 13.23 – 13.24

<sup>106</sup> Annexure IP 14, page 376 at para 13.23 – 13.24

<sup>107</sup> Annexure IP 14, page 376 at para 13.23 – 13.24

<sup>108</sup> Annexure IP 13, page 363 at para 5.44

<sup>109</sup> Annexure IP 13, page 363 at para 5.45

of Mr. David's accomplices and advised his Namibian counterparts that "due to the sensitivity of the matter and the envisaged fallout that it will create in South Africa, that the matter be handled with discretion."<sup>110</sup>

162. The Report that Mr. Fraser referred to was attached to his statement. Significantly, it records, the following:

The South African authorities, particularly a [NAME BLOCKED] contacted commissioner [NAME BLOCKED] of the Special Branch and set up a meeting in "no man's land" at Ariamvlei border post. Comm [NAME BLOCKED] flew there and met him and he confirmed that something took place on the farm, but no cases were registered. He confirmed that ID was the mastermind behind the burglary and supplied some names and photographs of his accomplices. Due to the sensitivity of the matter and the envisaged fallout it will create in South Africa they requested that the matter is handled with discretion.

And the report added that "Discussions are allegedly going on between the countries two Presidents."<sup>111</sup>

163. Mr. Fraser's sworn statement, as well as the Press Statement of 1 June 2022, was widely publicised in the South African media and the Namibian media. The focus appears to have been the portion of the statement which stated that: "President Ramaphosa sought the assistance of the President of Namibia, President Hage Geingob in apprehending the suspect in Namibia." The publication of this statement evoked an angry response from The Namibian Presidency.<sup>112</sup> It is necessary to cite passages from this document which is titled:

**Presidency, Following Unfounded Allegations That President Of The Republic Of Namibia May Have Assisted President Ramaphosa in apprehending A Suspect Connected To The Phala Phala Farm Burglary.**

164. The Namibian Presidency dismissed as "slandorous", "outrageous and unfortunate" the allegations that the President of Namibia "may have used his office, in a manner incompatible with the laws of the Republic of Namibia, to assist President Ramaphosa", adding that "there is absolutely no truth in the allegation that President Geingob inappropriately used his office to assist President Ramaphosa."

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<sup>110</sup> Annexure IP 13, page 364 at para 5.46

<sup>111</sup> Annexure IP 21, page 1397

<sup>112</sup> Annexure IP 21, pages 1399-1401

165. After quoting the relevant passage in Mr. Fraser’s sworn statement, the Presidency wrote:

As can be seen from the above-quoted part of Mr. Fraser's statement, it does not make any allegation of criminality on the part of President Geingob except a suggestion that President Ramaphosa “sought” assistance from President Geingob “in apprehending”- which literally means “assistance in arresting”- the concerned suspect, who is a South African citizen and who at the time was alleged to have unlawfully entered Namibia. The portion referred to above in Mr. Fraser’s statement, if properly considered on an objective basis simply suggests that President Ramaphosa “sought assistance in apprehending the concerned suspect.”<sup>113</sup>

166. After referring to the arrest and the prosecution of the suspect on immigration related offences in Namibia as well as the conviction of the suspect, the statement continues and says:

It follows from the above-stated facts that except for those who (motivated by bad faith and ulterior motives) would be quickly [sic] to unnecessarily read something more into the statement of Mr. Fraser, clearly, the statement does not suggest criminality. It also does not suggest that President Geingob may have in anyway participated in and/or abated foreigners in kidnapping and torturing any person, as maliciously and recklessly suggested by certain individuals in Namibia and South Africa. Such suggestions and insinuations are devoid of any truth in their entirety, and these were simply made to score cheap political points.<sup>114</sup>

167. And the Presidency concluded:

The President is not a repository of power when it comes to the apprehension of suspects, alleged to have committed offences in foreign countries. Accordingly, the mischief-riddled and politically motivated statements by individuals and media houses in Namibia and South Africa against President Geingob have no factual or legal basis. The Presidency finds the politically motivated statements by some political leaders in South Africa, that criminal investigation be conducted against the President of the Republic of Namibia to be absurd and downright non-sensical. The President of the Republic of Namibia liaises with other Heads of State on official matters within established State to State diplomatic protocols in accordance with the constitutional powers of the President and upon the dictates of international practice on mutual cooperation between Heads of State and government. The Presidency therefore categorically denies insinuations that President Geingob may have acted inappropriately, and/or participated or abetted in the apprehension of the individuals concerned. The above stated facts exhaustively and demonstrably clarify the matter.<sup>115</sup>

168. Significantly, the statement does not deny that President Ramaphosa “sought assistance in apprehending the concerned suspect.” Nor does it deny that the request was acceded

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<sup>113</sup> Annexure IP 21, page 1399

<sup>114</sup> Annexure IP 21, page 1400

<sup>115</sup> Annexure IP 21, page 1401

to. Indeed, what was vigorously denied in the statement is that President Geingob “may have acted inappropriately and/or participated or abated in the apprehension of the individuals concerned.” This statement suggests that the President Ramaphosa sought the assistance of the President of Namibia in apprehending one of the suspects in the Phala Phala housebreaking. We are not aware of any statement by the Presidency in South Africa refuting the contents of the statement from the Namibian Presidency. Nor did President Ramaphosa deal with this statement in his response to the material placed before the Panel.

169. Mr. Imanuwela David is the ID who is referred to in the Namibian Police report.

170. We are satisfied, as a matter of probability, that the South African authorities that met the Namibian police authorities at the “no man’s land” was the team that was investigating the burglary and theft at Phala Phala. On the information presented to us this was General Rhooede’s team. They went to Namibia as part of their investigation of the crime committed at Phala Phala.

#### **D. CONCLUSION**

171. The information placed before us by the ATM, EFF, UDM and the President, *prima facie*, discloses that:

171.1. On or about 10 February 2020, there was a housebreaking and theft (the crime) at the private residence of the President at Phala Phala and an undisclosed sum of money in US\$ that was concealed in a leather sofa was stolen.

171.2. This crime was not reported to the SAPS in Bela Bela, Limpopo, where the farm is located. As a consequence, there was no case number or a docket pertaining to this crime. There was a deliberate decision to keep the investigation secret.

171.3. Following the commission of this crime, the President instructed General Rhooede to investigate the burglary and theft from his Phala Phala farm.

171.4. General Rhooede put together an investigating team which included a former SAPS official who happens to be a social worker.

171.5. This investigating team did not follow the normal SAPS practice of investigation as there was no case number or a docket. The investigation was carried out using the state resources.

- 171.6. President Ramaphosa requested the President of Namibia to assist with the apprehension of Mr. Imanuwela David, the mastermind behind the farm housebreaking and theft.
- 171.7. A SAPS official, whose name is readily ascertainable, set up a meeting with the Commissioner of the Namibian Special Branch, whose name is readily ascertainable, in “No man’s land” at Ariamsvlei. At this meeting, this SAPS official provided the Namibian Police with information pertaining to the housebreaking and theft at the farm and confirmed that Mr. Imanuwela David, who at the time had been arrested by the Namibian Police, was the mastermind behind the housebreaking. This SAPS official also supplied photographs and names of the accomplices.
- 171.8. No other investigation was authorised in connection with this crime committed at Phala Phala.
- 171.9. There is no information of any other SAPS official who was investigating the housebreaking and theft other than General Rhoode.
- 171.10. General Rhoode accompanied Mr. Chauke to Namibia on 25 June 2020. They were met by the Namibian Police at “no man’s land”. They travelled to Windhoek where Mr. Chauke held a meeting with President Geingob.
172. It remains a disturbing feature of the investigation conducted by General Rhoode and his team that the President’s private residence was broken into and an undisclosed sum of money in US\$, probably more than US\$580,000 was stolen; suspects or at least one of them, the mastermind behind the housebreaking and theft was detained, interviewed, and confessed to the crime including stealing about US\$800,000; yet no one was either convicted of this crime pertaining the housebreaking and theft at the farm. And the investigation was carried out without a case being registered and without opening a docket.
173. In the next section, we consider the charges proposed against the President.

## **CHAPTER 14: CHARGES ALLEGED AGAINST THE PRESIDENT**

174. Broadly speaking, the proposed charges against the President can be divided into three categories, namely, those that allege: (a) serious violation of the Constitution; (b) serious violation of the law; and (c) serious misconduct. There is a significant overlap between (a) and (c) which allege violations of section 96(2) read with section 83(b) of the Constitution. These allegations form the basis of charges 1,3 and 4. Category (b) alleges a violation of the provisions of section 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) (PRECCA) and it relates to charge 2.
175. We consider it convenient to first consider charges 1, 3 and 4, which concern the violation of section 96(2) of the Constitution; and thereafter consider charge 2, which concern the contravention of section 34(1) of the PRECCA.

### **A. CHARGES BASED ON SECTIONS 83(b) AND 96(2) OF THE CONSTITUTION SECTION 83(b)**

#### **The provisions of Section 83(b) of the Constitution**

176. Section 83(b) imposes an obligation on the President to “uphold, defend and respect the Constitution as the supreme law of the Republic.” This provision must of course be read with the oath of Office that the President is required to swear before he, or she assumes office. In terms of Item 1 of Schedule 2:

The President ...must swear...that [he or she] will be faithful to the Republic of South Africa, and will obey, observe, uphold, and maintain the Constitution and all other law of the Republic.”<sup>4w</sup>

177. Implicit, if not explicit in the oath of office is the obligation to “be faithful to the Republic of South Africa, and [to] obey, observe, uphold and maintain the Constitution and all other law of the Republic.”

#### **The provisions of section 96(2) of the Constitution**

178. Section 96(2) of the Constitution reads:
96. Conduct of Cabinet members and Deputy Ministers



- (1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.
- (2) Members of the Cabinet and Deputy Ministers may not –
  - (a) undertake any other paid work;
  - (b) act in 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; or
  - (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

179. The provisions that are relevant for present purposes are contained in section 96(2)(a) and (b). In terms of these provisions Cabinet Members may not (i) undertake any other paid work; (ii) act in a way that is inconsistent with their office; or (iii) expose themselves to a situation that creates a conflict of interest.

180. There are three charges that based on the provisions of section 96(2) of the Constitution, namely, charge 1 is based on section 96(2)(a); charges 3 and 4 are based on section 96(2)(b): charge 3 relies on the aspect which prevent Cabinet Members from exposing themselves to a situation that creates a conflict of interest, while charge 4 is based on acting in a way that is inconsistent with office.

## **B. CHARGE 1: CONTRAVENTION OF SECTION 96(2)(a) READ WITH SECTION 83(b) OF THE CONSTITUTION**

### **The facts pertaining to this charge**

181. The President is involved in the cattle and game farming business. He buys and sells animals. Customers also come to the farm for hunting. He has local and offshore customers. Customers either pay cash or pay by money transfer. Phala Phala Wildlife is the operating entity of the Ntaba Nyoni CC, a close corporation. The President is the sole member of the close corporation. The cattle and game farming business are run through this entity. Explaining the large sum of foreign currency stolen from his residence, the President told the ANC Conference in Limpopo that:

However, I would like to say that I'm a farmer. I am in the cattle business and the game business. And through that business, which has been declared in Parliament and all over, I buy, and I sell animals. Sometimes people buy these animals – and some of the people who bought some of the animals some of them are here – I do it yes, through, the sales are sometimes through cash or sometimes through transfers.<sup>116</sup>

<sup>116</sup> Annexure IP 82, page 1635 at para 20

182. He repeated this statement in response to the allegation made by the ATM, the EFF and the UDM.

### **The contentions of the parties**

183. The EFF contended:

[The President] has either been ill advised or fails to understand that Section 96(2)(a) of the Constitution provides that Cabinet members cannot do any other paid work. In his explanation that he declared he fails to appreciate that section 96(2)(a) does not say that a Cabinet member has any option or that he/she can violate the provision if he/she has declared. Such condition or exception is not contained in the section at all. Where Mr. Cyril Ramaphosa has claimed that he declared and therefore within the law, we submit that he has misconceived Section 96(2)(a). We ask the Panel to look closely to Section 96(2)(a), and will find that on his own version, the President has a case to answer to Parliament about his paid work or farming activities.

184. In response to this charge, the President stated that:

Ntaba Nyoni, which operates as Phala Phala Wildlife, is a separate legal entity. I am the sole member of the close corporation, but I do not work for it and do not get any remuneration from Ntaba Nyoni. From the inception of Ntaba Nyoni in and around 2001, I have invested my and my family's money to fund its operations largely at a loss. To suggest that I undertake paid work on or through the farm is mistaken. I plainly do not. While I have an interest in Ntaba Nyoni as a game and cattle farming operation, I do not conduct any paid work on or in relation to the farm as referred to in section 96(2)(a) of the Constitution.<sup>117</sup>

185. And the President contended:

I am entitled to retain assets or financial interests where no conflict of interest would arise if these were declared. The ATM and EFF's proposition that I have misconstrued my obligations in this regard is entirely without merit. I do not perform paid work for Ntaba Nyoni – nothing I said has ever suggested as much – nor do I receive remuneration for work or service other than my functions as President in the service of the people of South Africa. Much like a shareholder of a company, who receives no remuneration, I am not on any payroll other than that of the Presidency.<sup>118</sup>

186. These contentions raise the question of the meaning of the words “undertake any paid work” in section 96(2)(a) of the Constitution.

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<sup>117</sup> Annexure IP 82, page 1646 at para 38

<sup>118</sup> Annexure IP 82, page 1646 at para 38

## **Meaning of the words “undertake paid work”**

187. Neither the Constitution nor the Executive Ethics Act, 1998 (Act No. 82 of 1998) as well as the Executive Code<sup>119</sup> define the words “paid work”. Nor have we found, within the limited time at our disposal, any case law which has considered these words. These words must be construed purposively and teleologically in order to give effect to the provision.
188. The manifest purpose of section 96 is to regulate the behaviour or conduct of Members of the Cabinet by prescribing a code of conduct to which they must adhere. It does this by setting out conduct in which they may not be engaged. The expectation that Members of Cabinet are expected to devote their undivided attention to their constitutional responsibilities without any interference either from part-time or full-time employment, or their business interests. They may not put themselves in a situation where there is a risk of a conflict of interest between their official responsibilities or their private interest. They may not act in a manner that is inconsistent with their office. This is a broad and an all-compassing prohibition. It requires Members of Cabinet to respect their office and refrain from engaging in conduct that will detract from the integrity of the office they occupy.
189. Their official position, places members of Cabinet in a position where they have access to information that others do not have access to, and they may be tempted to use this information to further their own private interests or that of their relatives or friends. And in the pursuit of their business interest, they may find themselves crossing the divide between official and private interests. The prohibition on undertaking paid work must be seen in this context. When private interests are involved, they may be put to a choice of either following the proper procedures to protect their interest or use their office to pursue their private interest.
190. The provisions of section 96(2) do not make an except where a Cabinet Members declare his or her work. It prohibits them from undertaking any paid work. We are unable to accept the proposition that a Cabinet Member is excused from complying with the provisions of section 96(2)(a).

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<sup>119</sup> Published in Government Gazette No 21399 dated 8 July 2000, Proclamation No 41 of 2000

191. In our view, the provisions of section 96(2)(a) puts a Member of Cabinet to a choice: You either remain in business and do not become a Member of Cabinet or you become a Member of Cabinet and relinquish your business interest during your membership of Cabinet.
192. The common thread that runs through all the conduct that a cabinet member may not engage in, is to prevent abuse of power or abuse of office and interference with official responsibilities. That business interest may be declared matters not.
193. We think that the submission by the President has adopted a narrow view of the words “paid work”. We think the words “paid work” means work for financial gain or reward whether as employees or self-employed. Had the Drafters of the Constitution intended to limit the prohibition to employment or business, they would have said so clearly. Instead, they used paid work, words of wider meaning.
194. By way of comparison, the Directives that are applicable to the Public Service refers to “other remunerative work”.<sup>120</sup> They define these words to mean “any business carried out or services rendered for gain or personal benefit by an employee outside of his or her employment in the relevant department, for which remuneration is received.” The word “business” is defined to include, any business, trade, occupation, profession, calling, industry, or undertaking of any kind or any activity carried out for gain or for profit by any person within the Republic or elsewhere, and includes all property derived from or used in or for the purpose of carrying on such other activity, and all rights in liabilities arising from other such other activity.
195. We see no warrant in limiting “paid work” to employment. In our view those words include running a business. We think it would defeat the purpose of the provision to permit a member of Cabinet to operate a business and derive profits while prohibiting another member of Cabinet from earning a salary.

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<sup>120</sup> Directive on Other Remunerative Work Outside the Employee’s Employment in the Relevant Department, issued by the Minister for Public Service and Administration in terms of Section 30 of the Public Service Act, 1994, as amended

196. Construed purposively, we conclude that the words “paid work” are neither limited to employment nor being in a business. They refer to both employment and running a business.

### **Is the President engaged in paid work?**

197. It is common cause that the President is involved in the business of cattle and game farming. In this regard, the President confirms that Phala Phala Wildlife is a game farm conducting farming operations in Limpopo. Accordingly, the farm is owned by his family trust, the Tshivase Trust. And Phala Phala, which is managed by a Mr. von Wielligh, is the operating entity of Ntaba Nyoni Estates CC. Ntaba Nyoni is a close corporation, of which he (the president) is the sole member.

198. At an ANC conference in Limpopo, he told the delegates that: “I’m a farmer, I am in the cattle business and the game business... I buy and sell animals.” While the President’s active involvement in the business of cattle and game farming is confirmed repeatedly in his various statements that he made, he nevertheless denies that what he is doing amounts to ‘undertaking paid work.’ However, his degree of involvement in the operations of the business confirms that he is running the business. He says that:

“12. For some time in late 2019, Mr. von Wielligh and I had discussions about disposing of buffalo that were substandard and were a financial drain on the operations of Phala Phala Wildlife in that they were costing a great deal of money in terms of veterinary services and feeding. The view that had been taken was that they should be sold as a parcel because this made better financial sense than selling them individually. I had advised Mr. von Wielligh there were potential buyers of these buffalo from the Middle East and other African countries.”

199. The nature of the discussion that the President had with Mr. von Wielligh shows that the President is indeed actively involved in the running of the farm. He seems to have first-hand knowledge of buffalo which were substandard and were costing the farm money. He even informed Mr. von Wielligh that he knew of potential buyers from the Middle East and “other African countries”. On the President’s version, he is the one who instructed Mr. Ndlovu to keep the money on the farm until the General Manager, Mr. von Wielligh, returned to work. After the alleged sale of buffaloes to Mr. Hazim, Mr. Ndlovu told Mr. Hazim that would report the sale to the President.

200. The fact that the President clears sale transactions, can give instruction on how to manage cash sales, and discuss potential buyers, suggests strongly that he oversees operations in the business.

201. Quite apart from disputing that the words “paid work” refer to the running of a business, the President contended that he is not engaged in paid work because he does not get paid for running the business. The President denies that he gets remuneration from the CC and states the following:

“38. Ntaba Nyoni, which operates as Phala Phala Wildlife, is a separate legal entity. I am the sole member of the close corporation, but I do not get any remuneration from Ntaba Nyoni. From the inception of Ntaba Nyoni and around 2001 I have invested my and my family’s money to fund its operations largely at a loss. To suggest that I undertake paid work on or through the farm is mistaken. I plainly do not. While I have an interest in Ntaba Nyoni as a game and cattle farming operation, I do not conduct any paid work on or in relation to the farm as referred to in section 96(2)(a) of the Constitution.”

202. The President continues and says:

“39.1 I am entitled to retain assets or financial interests where no conflict of interest would arise if these are declared. The ATM and EFF’s proposition that I have misconstrued my obligations in this regard is entirely without merit. I do not perform paid work for Ntaba Nyoni - nothing I said has ever suggested as much - nor do I receive remuneration for work or service other than my functions as President in the service of the people of South Africa. Much like a shareholder of a company, who receives no remuneration, I am not on any payroll other than that of the Presidency.”

203. But the fact that the CC may be running at a loss is irrelevant. Paid work remains paid work irrespective of whether the entity may be running at a loss. The President has not provided us with any record showing the that the business is running at a loss. The farm has recently sold another parcel of buffaloes. In any event, his remuneration is what he is entitled to as a member of the CC such as the dividends.

### **Conclusion**

204. Accordingly, we are satisfied that the evidence discloses, *prima facie*, a violation of section 96(2)(a) read with section 83(b) of the Constitution. In all the circumstances, we are satisfied that the President has a case to answer in relation to Charge 1.

**C. CHARGES 3 & 4: SERIOUS MISCONDUCT - VIOLATION OF SECTION 96(2)(b) READ WITH SECTION 83(b) OF THE CONSTITUTION**

205. Save for the allegation relating to the conduct of the President pertaining to the Public Protector, Charges 3 and 4 are based on the same facts and circumstances, namely, the instruction given to General Rhooode to investigate the housebreaking and theft at the President's farm. It is alleged that the President is guilty of serious misconduct in that he violated section 96(2)(b) of the Constitution. Charge 3 alleges that the President has exposed himself to a situation involving the risk of a conflict between his official responsibilities and his private interests, while Charge 4 alleges that in giving such instructions, the President acted in a manner that is inconsistent with his office.
206. The gravamen of the complaint is that the President gave an unlawful instruction to General Rhooode, a member of the PPU, to investigate the housebreaking and theft on his farm, instead of reporting the matter to the SAPS. The PPU is a unit of the SAPS that is responsible for the protection of the President. The function of the Unit is to protect the person of the President and his family. It is not to investigate theft from the farm or investigate theft of money belonging to the President's private business. These charges allege that this conduct on the part of the President shows dishonesty, constitutes a misconduct and was unlawful.
207. It would be convenient at this stage to deal with the evidence pertaining to the Public Protector.

**Public protector evidence**

208. As pointed out earlier, the ATM subsequently supplemented its motion by submitting "supplementary evidence to charge 3". This supplementary evidence alleges, among other things, that the President "acted in bad faith, unlawfully and was conflicted when he suspended Advocate Busisiwe Mkhwebane, the Public Protector." The underlying premise of the allegation is that the President had a conflict of interest because of the Phala Phala investigation that the Public Protector was investigating at the time.
209. For its contention in this regard, the ATM relied on the judgment of the Full Court of the Western Cape High Court in the matter between the *Public Protector v The President of*

*the Republic of South Africa*, delivered on 9 September 2022 (the First Judgment). In particular, the ATM placed reliance on paragraph 157 of that judgment, which reads as follows:

In our view, the hurried nature of the suspension of the applicant in the circumstances, notwithstanding that a judgment of the Full Court was looming on the same subject, leads this court to an ineluctable conclusion that the suspension may have been retaliatory and hence unlawful. It was certainly tainted by bias of disqualifying kind and perhaps improper motive. In our view, the President could not bring an unbiased mind to bear as he was conflicted when he suspended the applicant.

210. In terms section 167(5) of the Constitution:

The Constitutional Court makes the final decision on whether an Act of Parliament, a Provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or a court of similar status before that order has any force.

211. Section 172(2)(a) of the Constitution is to the same effect, and provides:

This Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a Provincial Act, or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.

212. These provisions have been considered in the judgments of the Constitutional Court, in particular, in *Pharmaceutical Manufacturers Association of South Africa: In Re Ex Parte President of the Republic of South Africa*, where the Court explained these provisions and said:<sup>121</sup>

[56] This is the context within which section 172(2)(a) provides that an order made by the SCA, a High Court or a court of similar status “concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President” has no force unless confirmed by the Constitutional Court. The section is concerned with the law making acts of the legislatures at the two highest levels, and the conduct of the President, who as head of state and head of the executive is the highest functionary within the state. The use of the words “any conduct” of the President shows that the section is to be given a wide meaning as far as the conduct of the President is concerned. The apparent purpose of the section is to ensure that this Court, as the highest court in constitutional matters, should control declarations of constitutional invalidity made against the highest organs of state. That purpose would be defeated if an issue concerning the legality of conduct of the President, which raises a constitutional issue of considerable importance, could be characterised as not falling within section 172(2)(a), and thereby removed from the

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<sup>121</sup> *Pharmaceutical Manufacturers Association of South Africa: In Re Ex Parte President of the Republic of South Africa*, 2000 (2) SA 674 (CC) at para 56.



controlling power of this Court under that section.

213. The order made by the High Court in the first judgment is therefore subject to confirmation by the Constitutional Court and until confirmed by the Constitutional Court, it has no force. Indeed, the Full Court of the Western High comprising of the same members who sat in the first judgment, in *The Public Protector v The Speaker and Others*, delivered on 11 October 2022, accepted its order declaring invalid the suspension of the Public Protector is subject to confirmation. In this regard, the High Court said:

“[74] Since the Constitutional Court makes the final decision whether or not the conduct of the President is constitutional, it follows that this Court's order declaring the President's decision to be inconsistent with the Constitution has to be confirmed before it can be of any force or effect. The Judgment, while valid, is inchoate and has no effect. Of course, the Judgment had not yet been referred to the Constitutional Court when this application was brought.”<sup>122</sup>

214. Accordingly, the Court concluded that its decision in the first judgment declaring the decision of the President to suspend the Public Protector invalid, is subject to confirmation by the Constitutional Court.<sup>123</sup>

215. In our view, it is therefore premature to rely on the First Judgment because the order made by that Court has “no force”. This Panel cannot pronounce on the First Judgment without pre-empting decision of the Constitutional Court in confirmatory proceedings.

216. For these reasons, the Panel cannot entertain this supplementary evidence based on the findings of the First Judgment.

#### **Facts pertaining to charges 3 and 4**

217. These charges turn on the instructions that were given to General Rhooode by the President.

218. On the information presented to the Panel, the following facts have been established:

218.1. The housebreaking and theft of money were reported to the president while he was still in Addis Ababa and he immediately reported the theft to General

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<sup>122</sup> Annexure IP82, page 1755

<sup>123</sup> Annexure IP82, page 1762, para 89

Rhooode.

- 218.2. On 2 June 2022, a tweet was issued on the President’s behalf, stating that “[o]n being advised of the robbery, President Ramaphosa reported the incident to the head of the Presidential Protection Unit of the South African Police Service for investigation”.<sup>124</sup>
- 218.3. In answer to the question in Parliament on 29 September 2022, the President told the National Assembly that “[s]oon after it happened I was informed that theft had been committed and my manager informed me and I immediately informed General Rhooode as we were travelling and in Addis Ababa”.<sup>125</sup>
- 218.4. In his statement to the Panel, the President states that Mr. von Wielligh reported that “there was a security breach”. He requested General Rhooode to “attend to the matter and report back to him”.<sup>126</sup> Soon after the security breach was reported to him by Mr. von Wielligh, Mr. Ndlovu contacted him and reported that the money that he had kept in my house had been stolen.<sup>127</sup>
219. These statements, prima facie, show that the President reported the theft of the money to General Rhooode because he wanted General Rhooode to investigate the crime.
220. Any doubt on this score, is removed by his answer to a question by Mr. Malema, MP, as to why he did not report the crime to a SAPS Station<sup>128</sup>. The President responded as follows:<sup>129</sup>
- Once the theft had occurred I was informed as I said. I guess I may be repeating myself but I also need to answer that. I don’t believe I abused my power because I am surrounded by police officials and when I informed the General I was informing a police official. Even at the time, on the farm, my manager interacted with police officials who were involved with the whole process. I want to dispute the argument that I abused my power. I am not the type of person who will abuse my position or my power. So I did not, and having reported it to the police official I did believe that they will do what they need to do to ensure that this matter is properly handled. That is the extent to which I was able to handle this matter. So, in my book, hon Speaker, it was reporting the crime to the police when I informed a police General.
221. This statement is clear and unequivocal, once the theft was reported to him, he reported

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<sup>124</sup> Annexure IP82, page 1637, para 21

<sup>125</sup> Annexure IP82, page 1683

<sup>126</sup> Annexure IP82, page 1633, para 16.1

<sup>127</sup> Annexure IP82, page 1633, para 16.2

<sup>128</sup> Annexure IP82, page 1692-1693

<sup>129</sup> Annexure IP82, page 1695-1696)

- the theft to General Rhoode his capacity as a police official. He “was reporting the crime to the police when [he] informed a police General.” The President was expecting General Rhoode to investigate the house breaking and theft.
222. As pointed out earlier, the version that General Rhoode was only told of theft of the money in early March is inconsistent with the version given by the President in Parliament and his statement to the Panel. The President said he was told of the theft by Mr. Ndlovu while he was still in Addis Ababa. We are unable to accept that the President would have been told of both the security breach and theft, albeit at different times, while both the President and General Rhoode were in Addis Ababa, and only report the “security breach” to General Rhoode and not the theft.
223. The information placed before the Panel, *prima facie*, establishes that:
- 223.1. The President was told of the theft of money while he was in Addis Ababa with General Rhoode, and he instructed General Rhoode to investigate the matter and to report to him. The General was not given instructions to report the matter to any SAPS police station and that is why no case was registered with any police station and no docket was opened. The investigation was deliberately conducted outside of the normal procedures for investigating crime. General Rhoode put together an investigating team consisting, among other persons, Sergeant Rekhoto and an ex-SAPS and social worker, Mr. Fredericks.
- 223.2. The team went to Phala Phala where they interrogated some of the farm worker and suspects. In the course of the interrogation, they were told that the suspects were in Cape Town. They went to Cape Town as part of this investigation.
- 223.3. When General Rhoode went to Baron’s car dealership in Cape Town, he was still pursuing the investigation of the house breaking and theft.
224. Furthermore, the information before the Panel also establishes, *prima facie*: that the President sought assistance from the President of Namibia in apprehending the suspect who was in Namibia at the time and General Rhoode went to Namibia in the pursuit of the investigations of the house breaking and theft of money.
225. In a statement laying criminal charges against the President and others, Mr. Frasers wrote that “President Ramaphosa sought the assistance of the President of Namibia, President

Hage Geingob in apprehending the suspect in Namibia.” The publication of this statement in the media drew some criticism against the President of Namibia for his role the apprehension of Mr. Imanuwela David. Explaining the import of this statement, the Namibian Presidency said:

As can be seen from the above-quoted part of Mr. Fraser's statement, it does not make any allegation of criminality on the part of President Geingob except a suggestion that President Ramaphosa “sought” assistance from President Geingob “in apprehending”- which literally means “assistance in arresting”- the concerned suspect, who is a South African citizen and who at the time was alleged to have unlawfully entered Namibia. The portion referred to above in Mr. Fraser’s statement, if properly considered on an objective basis simply suggests that President Ramaphosa “sought assistance in apprehending the concerned suspect.”<sup>130</sup>

226. The statement added:

It follows from the above-stated facts that except for those who (motivated by bad faith and ulterior motives) would be quickly [sic] to unnecessarily read something more into the statement of Mr. Fraser, clearly, the statement does not suggest criminality. It also does not suggest that President Geingob may have in anyway participated in and/or abated foreigners in kidnapping and torturing any person, as maliciously and recklessly suggested by certain individuals in Namibia and South Africa. Such suggestions and insinuations are devoid of any truth in their entirety, and these were simply made to score cheap political points.<sup>131</sup>

227. This statement from the Namibian Presidency does not deny that President Ramaphosa “sought assistance in apprehending the concerned suspect.”

228. The information also establishes, *prima facie*, that following the request for assistance, General Rhoode’ team proceeded to Namibia as part of their investigation.

229. First, the Press Release issued by the office of the Inspector General, Namibian Police Force dated 16 June 2022, confirms that the SAPS authorities met with the Namibian Police authorities “on 19 June 2020 at what is termed “no mans” land near Noordoewer...Karas Region to share operational information pertaining to Mr. David Imanuwela and other Namibian nationals suspected to have studied money in South Africa and fled to Namibia.”<sup>132</sup> And significantly, at that meeting it was resolved that

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<sup>130</sup> Annexure IP 21, page 1399

<sup>131</sup> Annexure IP 21, page 1400

<sup>132</sup> Annexure IP 21, page 1391

“the two police authorities [resolved] to investigate the matter within their jurisdiction.”<sup>133</sup> This establishes that the SAPS authorities went to Namibia as part of the investigation of the house breaking and theft of the currency.

230. Second, the Press Release also stated that the “Namibian Police Force identified individuals, bank accounts and various properties and vehicles suspected to have been purchased with the proceeds of crime.”<sup>134</sup> Namibia was therefore a fertile ground for investigation. The Namibian Police authorities subsequently obtained a preservation order. A formal request to the Ministry of Justice in this country was requested “to confirm whether or not a crime was registered in South Africa.”<sup>135</sup> Not unexpectedly, there was no response from the South African authorities because no crime was registered resulting in the cancellation of the preservation order and the release of the assets.<sup>136</sup>

231. Third, the facts set out in the Namibian Police Press Release as well as the Media Release of the Namibian Presidency are confirmed in the confidential Report of Commissioner, Commissioner Criminal Investigation Department dated 21 June 2020. This report not only confirms the meeting at “no mans” land but also states that “Discussions are allegedly going on between the country's two Presidents.”<sup>137</sup> We think it will be convenient to refer to the relevant paragraph in the report. It states:

The South African authorities, particularly a [NAME BLOCKED] contacted commissioner [NAME BLOCKED] of the Special Branch and set up a meeting in “no man's land” at Ariamvlei border post. Comm [NAME BLOCKED] flew there and met him and he confirmed that something took place on the farm, but no cases were registered. He confirmed that ID was the mastermind behind the burglary and supplied some names and photographs of his accomplices. Due to the sensitivity of the matter and the envisaged fallout it will create in South Africa they requested that the matter is handled with discretion.<sup>138</sup>

And the report added that

“Discussions are allegedly going on between the countries’ two Presidents.”<sup>139</sup>

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<sup>133</sup> Id

<sup>134</sup> Id

<sup>135</sup> Id

<sup>136</sup> Id

<sup>137</sup> Annexure IP 21, page 1397

<sup>138</sup> Annexure IP 21, page 1397

<sup>139</sup> Annexure IP 21, page 1397

232. This report confirms that South African authorities, in particular, a person whose name is blocked contacted the Commissioner of the Special Branch, whose name is also blocked and set up a meeting in “no man's land” at Ariamvlei border post.<sup>140</sup> The Commissioner flew to the appointed spot to this police official. This police official confirmed that “something took place on the farm, but no cases were registered.”<sup>141</sup> He also confirmed that ID (which probably refers to Mr. Imanuwela David) was the mastermind behind the burglary. He also supplied the Commissioner with some names and photographs of the accomplices. The South African contingent specifically requested that “the matter be handled with discretion” because of “the sensitivity of the matter and the envisaged fallout it will create in South Africa.”<sup>142</sup>
233. The request to the Namibian Police to handle the matter “with discretion” was intended to convey to them that they should keep this investigation secret. This is consistent with the manner in which the investigation was conducted, in particular, as it was not reported to the SAPS.
234. We are not aware of any other investigation that was carried out at the time following the house breaking and theft. At least we can confidently say that there was no official investigation that was conducted by any member of the SAPS. There was no docket, and no case was registered, this is what the Namibian police were told by the SAPS authorities. Indeed, in this regard General Rhooode has this to say in his statement to us:
10. Any work that I did after the house breaking and theft was in relation to the breach of security and to fulfil my responsibility to assess any threat to the President's safety or that of his family.
  11. As far as I am aware, there was no other operation authorised in connection with this incident.”<sup>143</sup>
235. We are satisfied, that no other police official carried any official investigation of the Phala Phala house breaking and theft. The only police official who conducted an investigation following the burglary and theft is General Rhooode and his team.

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<sup>140</sup> Annexure IP 21, page 1397

<sup>141</sup> Id

<sup>142</sup> Annexure IP 21, page 1397

<sup>143</sup> Annexure IP 82, page 1717 – 18, at paras 10 and 11

236. We think that the Press Releases by the Presidency of Namibia and the Office of the Inspector-General for the Namibian Police Force, and the Confidential report by the Commissioner, Criminal Investigation Department established, *prima facie*, that:
- 236.1. President Ramaphosa contacted President Geingob and “sought assistance in apprehending the concerned suspect.”
  - 236.2. Following this request, General Rhoode’s team that was investigating the house breaking and theft at Phala Phala travelled to Namibia for the purpose of their investigation. They met with the Commissioner of the Namibian Special Branch at “no mans” land.
  - 236.3. They confirmed that they were investigating the crime that had occurred at the President’s residence and that Mr. Immanuel David was the mastermind behind this crime. They also supplied the Namibian Commissioner with names and photographs of Mr. David’s accomplices. They requested that the matter be handled “with discretion” because of its “sensitivity” and “the envisaged fall out it will create in South Africa.”
  - 236.4. They confirmed to their Namibian counterpart that no case was registered for regarding this crime.
237. The SAPS authorities who travelled to Namibia were members of the team that was investigating the house breaking and theft at the President’s private residence. This team was led by General Rhoode, or he was part of those authorities. This team was pursuing the instructions that were given to General Rhoode by the President to investigate the Phala Phala incident. The reference in the Inspector-General Press Release and the confidential report to “South African police authorities” refers to General Rhoode’s team.
238. Based on all the information placed before the Panel, we think that the evidence presented to the Panel, *prima facie* establish that the President:
- 238.1. thrust himself into a situation where there was a conflict of interest between his official responsibilities as the Head of State and as businessperson involved in cattle and game farming; and
  - 238.2. acted in a manner that was inconsistent with his office.

## **Conclusion**

239. In all the circumstances, we think that the evidence presented to the Panel, *prima facie*, establishes that the President may be guilty of a serious violation of the sections 96(2) misconduct involving a violation of section 96(2)(a) as alleged in charge 1; and committing a serious misconduct by violating the provisions of section 96(2)(b) read with section 83(b) of the Constitution as alleged in Charges 3 and 4 in that:

**D. CHARGE 2: SERIOUS VIOLATION OF THE LAW - VIOLATION OF SECTION 34(1) OF THE PRECCA, READ WITH THE SAPS AMENDMENT ACT**

240. The gravamen of the complaint is that the President reported the theft to General Rhoode instead of reporting it to a South African Police Service official in the DPCI, as required by section 34(1) of PRECCA. Section 34(1) of PRECCA provides:

**Section 34(1)**

**34 Duty to report corrupt transactions**

(1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed-

(a) an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or

(b) the offence of theft, fraud, extortion, forgery or uttering a forged document,

involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service Act, 1995, (Act 68 of 1995).

241. The declared purpose of PRECCA is “To provide for the strengthening of measures to prevent and combat corruption and corrupt activities...” and “to provide for the offence of corruption and offences relating to corrupt activities.” Parts 1 - 4 lists various offences in respect of corrupt activities.

**The duty to report the theft**

242. PRECCA imposes a statutory duty on “[a]ny person who holds a position of authority”. That which must be reported is any person who has committed any of the offences set out in subsection (1)(a) or subsection (1)(b). Subsection(1)(a) deals with the reporting of



- persons who have committed the offences listed in Part 1- 4. These are offences in respect of corrupt activities. Subsection (1)(b) requires the reporting of any person who has committed “the offence of theft, fraud, extortion, forgery or uttering a forged document”. And you are required to report these offences if you happen to know or ought reasonably to have known or suspected” that a person has, for example, committed theft. For the offence to be reportable, it must “involve an amount of R100,000 or more”. Furthermore, failure to report is an offence punishable by imprisonment for either three or ten years or a fine, depending on the court that hears the case.
243. Admittedly the offences mentioned in subsection (1)(b) do not appear to fit appropriately into the scheme of the Act. The legislature, in its wisdom must have had good reasons for including theft as one of the reportable offences. But why would the legislature be concerned about people who do not report the theft of R100,000 or more? One reason for forcing people to report theft of R100,000 or more is to stamp out money laundering or organized crime by forcing individuals to report theft of large sums of money that the owners of the money may be reluctant to report for fear of being called upon to account for the stolen money.
244. A person who keeps huge sums of illicit money concealed at his or her house is unlikely to report the theft of such money for fear of being discovered that he or she is involved in money laundering. This would be too much to expect of human nature. For this reason, the legislature considered it prudent to require any person who has knowledge of the commission of the offence of theft to report it. If you happen to know or ought reasonably to have known or suspected that this money has been stolen from the owner, the law requires you report this theft so that the owner of the money can be called upon to explain the source of the money as well as why he or she did not report the theft.
245. The owner of the money stolen is also required to report theft of his or her money. That you happen to be a victim of crime yourself, matters not. You must report the theft.
246. Furthermore, the legislature takes a serious view of the reporting. This is manifest from the penalties prescribed for the violation of section 34(1) as well as the SAPS official to whom the report must be made.

247. Previously these offences could be reported to a police official. The provision was amended to require the report to be made to “the police official in the Directorate for Priority Crime Investigation”. The function of this Directorate is to prevent, combat and investigate national priority offences.<sup>144</sup> This reflects the seriousness in which the legislature views the offences that must be reported.
248. The seriousness of failure to report is further illustrated by criminalising such failure as well as the heavy penalty imposed for failure to report. Failure to report these offences is an offence in terms of section 34(2) and the penalty imposed for such failure is provided for in section 26(1)(b). If your case is heard by the High Court or the Regional Court, you may be sentenced to a fine or imprisonment for ten years, or three years or a fine, if your case is heard by the magistrates’ court.

### **Who is required to report?**

249. The statutory duty to report is imposed on “[a]ny person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed an offence of corrupt activities”. Section 34(4) defines a person who holds a position of authority to include “member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984).” And the amount involved must at least be R100,000. The President is the sole member of the CC and is therefore a person who holds a position of authority within the meaning of section 34(1) read with section 34(4).

### **Was the President obliged to report?**

250. It is common cause that an offence of housebreaking and theft was committed at the private residence of the President. It is undisputed that the amount stolen was in excess of R100,000. In terms of section 34(1)(b), this offence should have been reported under PRECCA. The President was *prima facie* obliged to report the theft of the foreign currency to a *police official in the Directorate for Priority Crime Investigation*” as required by the provisions of section 34(1)(b) of PRECCA.

### **Did the President report to the DPCI?**

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<sup>144</sup> Section 17D (1) (aA)

251. It is common cause that the President reported the house breaking and theft to General Rhooe. He expected the General to process the report in accordance with police procedures. But on being told of the theft of money, General Rhooe reported the matter to the late Lieutenant General Mfazi, who instructed him to “conduct a preliminary inquiry” into the incident. However, General Rhooe has distanced himself from investigating the theft and has emphatically denied that he investigated the theft of money. “It was beyond the remit of my duties”, General Rhooe emphasised, “to conduct a criminal investigation or open a docket”.<sup>145</sup> And “[a]ny work that [he] did after the housebreaking and theft was in relation to the breach of security and to fulfil my responsibility to assess any threat to the President's safety or that of his family.”<sup>146</sup> General Rhooe must have reported this to the President.
252. But neither the report to General Rhooe nor the report to the late Lieutenant General Mfazi was a report contemplated in section 34(1). Neither is a *police official in the Directorate for Priority Crime Investigation*.” Given the high rank in the police hierarchy that these senior police office hold, we can assume they knew that theft which involves such huge amount had to be reported to the police official in the Directorate for Priority Crime Investigation. Why they did they not do so? We do not have an explanation for failure to report the offence under Section 34(1).
253. On the information presented to us, the housebreaking and theft of US\$580,000 was not reported to a police official in the Directorate for Priority Crime Investigation as required by Section 34(1). Nor was it reported to any SAPS station as no case was opened or a docket registered for this offence. In our view this information, *prima facie*, discloses that the President violated section 34(1) read with section 34(2) of PRECCA.

## **Conclusion**

254. We conclude, therefore, that the President has a case to answer on the proposed charge 2.

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<sup>145</sup> Annexure IP82, page 1717, para 9

<sup>146</sup> Annexure IP82, page 1717, para 10

## CHAPTER 15: SERIOUSNESS OF THE VIOLATION AND MISCONDUCT

255. These charges arise from the same incident, namely, housebreaking and theft of foreign currency from the private residence of the President. The enduring questions are the following:
- 255.1. The source of the money stolen.
  - 255.2. Why was the house breaking and theft not reported in terms of section 34 (1) of PRECCA or to any other police officer for investigation?
  - 255.3. Why did the South Africa police request the Namibian police requested to handle the matter with “with discretion”?
256. On this source of the foreign currency, we only have the statement by the President, which is based on what he was told by Mr. Ndlovu, who did not confirm this information. It is true the President's version is supported by the acknowledgement of receipt. Admittedly, on its face, the acknowledgement of receipt states that Mr. Sylvester Ndlovu received a sum of US. \$580,000 from a Mr. Hazim as payment for 20 buffaloes.
257. But as we have pointed out earlier, there are a number of important questions relating to this transaction that remain unanswered. These questions relate to Mr. Hazim’s visit to the farm; the acknowledgement of receipt itself; concealment of the money inside a sofa; the fact that for over two years the buffaloes are still on the farm; the fact that Mr. von Wielligh, the General Manager, did not know about the money; and the amount that was stolen. It is significant that the origin and the transaction pertaining the foreign currency became the subject of an investigation by the SARB. This suggests that the SARB had no records of this currency coming to South Africa. The Panel has no information whether this investigation has been concluded, and if so, what the outcome was.
258. Furthermore, the information presented to the Panel establishes, *prima facie*, the money that was stolen was probably more than US\$ 580,000. As one of the suspects stated, they stole about US\$800,000. Furthermore, the Namibian police reported that they had identified individuals, bank accounts in various and properties including lodges, houses and vehicles suspected to have been purchased with the proceeds of the crime.<sup>147</sup>

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<sup>147</sup> IP21, page 1391, at para 13

259. Another troubling feature about the source of the stolen foreign currency, is that the theft was never reported to the South African Police Services for investigation as an ordinary crime. Nor was the theft reported under the section 34(1) of PRECCA. Furthermore, General Rhode suggested that the suspects or some of them, cooperated with their investigation. Indeed, as pointed out earlier, one suspect is heard in an audio recording confessing, in effect, to stealing US\$800,000.
260. The cumulative effect of all of this is that there is a substantial doubt about the legitimacy of the source of the currency that was stolen. This is a very serious matter, which, if established, renders the violation of section 96 of the Constitution and PRECCA, a serious violation, and a serious misconduct.
261. Quite apart from this, the President’s private residence is broken into and more than half a million US dollars in cash is stolen. The crime is not reported to the SAPS for investigation in the normal course. Nor is it reported under section 34(1) of PRECCA. Instead, a team led by the President’s Head of Presidential Protection Unit is put up. Included in the team is an ex-SAPS member whose particular expertise is not known other than that he is a social worker. This team surreptitiously conducts its investigation and requests the Namibian Police officials to handle the matter “with discretion” because of its “sensitivity” and “the envisaged fall out it will create in South Africa.” The President gets involved in the investigation by seeking “assistance in apprehending the concerned suspect” from the President of Namibia. And the investigation yields no prosecution or conviction.
262. All of this occur amid accusations of torture and bribery of the suspects to by their silence. And if these accusations are established, they make the violations and the misconduct involved in the charges, very serious indeed.
263. Viewed as a whole, the information presented to the Panel, *prima facie*, establishes that:
- 263.1. There was a deliberate intention not to investigate the commission of the crimes committed at Phala Phala openly.

- 263.2. The misconduct based on violations of the provisions of section 96(2)(b) and the violation of section 34(1) of PRECCA were committed to keep the investigation a secret.
- 263.3. The request to the Namibian Police to “handle the matter with discretion” confirms this intention.
- 263.4. The President abused his position as Head of State to have the matter investigated and seeking the assistance of the Namibian President to apprehend a suspect.
- 263.5. There was more foreign currency concealed in the sofa than the amount reflected in the acknowledgement of receipt. This raises the source of the additional currency.

## CHAPTER 16: THE RECOMMENDATION

264. In light of all the information placed before the Panel, we conclude that this information discloses, *prima facie*, that the President may have committed:
- 264.1. A serious violation of sections 96(2)(a).
  - 264.2. A serious violation of section 34(1) of PRECCA.
  - 264.3. A serious misconduct in that the President violated section 96(2)(b) by acting in a way that is inconsistent with his office.
  - 264.4. A serious misconduct in that the President violated section 96(2)(b) by exposing himself to a situation involving a conflict between his official responsibilities and his private business. of the Constitution.