

Please quote this references in your reply: 7/2-005084/22

His Excellency MC Ramaphosa
The President of the Republic of South Africa
Union Buildings
Government Avenue
PRETORIA
0001

Dear President Ramaphosa

**INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE
ETHICS CODE AGAINST THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA HIS EXCELLENCY MR MC RAMAPHOSA**

1. On 3 June 2022, the Public Protector received a complaint from the Member of Parliament (MP) Honourable Vuyo Zungula, the President of African Transformation Movement (“the Complainant”) in connection with allegations that you have violated the Executive Ethics Code 2000 published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853 (“Code”) in that on 09 February 2020 there was a theft of millions of US dollars, (in excess of four million US dollars) stashed within your premises at Phala Phala farm in Waterberg, Limpopo.
2. Mr Zungula alleges that criminals colluded with your domestic worker and that you concealed this crime from the South African Police Service (SAPS) and/or South African Revenue Services (“SARS”) and thereafter paid the culprits for their silence.

3. The Complainant filed this complaint based on public information that Mr Arthur Fraser (Mr Fraser), the former Director General of the State Security Agency laid alarming criminal charges against you at the Rosebank SAPS in Gauteng. Mr Fraser's allegations are said to include a video footage, photographs, bank accounts and names in the statement that he filed at the Rosebank police station in Gauteng. The Complainant further submitted in a media statement issued on the 2nd June 2022, that you confirmed the robbery in your property as per the statement of Mr Fraser.

4. **PLEASE BE ADVISED THAT** the Public Protector is conducting a preliminary investigation in terms of section 7(1) of the Public Protector Act, read with Rules 20 to 22 of the Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018 ("Public Protector Rules") into the allegations, to determine the merits of the complaint and how the matter should be dealt with.

5. The investigation is conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (Constitution), read with section 3 of the Executive Members' Ethics Act, 82 of 1998 ("EMEA") and sections 6 and 7 of the Public Protector Act, 23 of 1994 ("the Public Protector Act").

6. The Public Protector may exercise her discretion in terms of section 6(9) of the Public Protector Act to entertain matters which arose more than two (2) years from the date of occurrence of the incident. In deciding the "special circumstances" that may be taken into account in exercising such discretion favourably in accepting complaints, consideration is given to the nature of the complaint and the seriousness of the allegations, whether the matter can be successfully investigated and with due consideration to the availability of evidence and / or records relating to the incident(s).

7. In the context of section 6(9) of the Public Protector Act, the Public Protector will need to be satisfied that the circumstances are truly exceptional before entertaining a matter not reported within two years from the date of occurrence of the incident. This section is intended to enable the Public Protector to deal

with a situation where otherwise injustice might result. It is not merely to indulge complainants who lodged complaints outside the prescribed time frames.

8. Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a wild discretion, rather the existence of special circumstances is a matter of factual enquiry which must be decided accordingly.
9. What is ordinarily contemplated by the words '*exceptional circumstances*' is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different. To be exceptional the circumstances concerned must arise out of, or be incidental to the particular case.
10. It suffices to add in support of the exercise of the discretion vested to the Public Protector by section 6(9) of the Public Protector Act that the huge public interest generated by this case both in the country and in diaspora as evidenced by various media reports¹ and an opportunity to address injustice which may result if the matter is not investigated, were amongst the determinative factors considered. Furthermore the availability of supporting evidence or records

¹ <https://www.iol.co.za/pretoria-news/news/cyril-ramaphosa-denies-involvement-in-crime-after-r60m-stolen-from-his-phala-phala-farm> accessed on 06 May 2022;
<https://www.sabcnews.com/sabcnews/alleged-theft-at-president-ramaphosas-farm-under-investigation-deputy-minister> accessed on 06 May 2022;
<https://www.citizen.co.za/news/south-africa/politics/3113330/ive-never-stolen-money-from-our-taxpayers-ramaphosa-on-theft-of-game-farm-millions> accessed on 06 May 2022;
<https://www.jacarandafm.com/news/news/opposition-parties-demand-ramaphosa-come-clean-phala-phala-millions> accessed on 06 May 2022;
<https://www.ghanamma.com/za/2022/06/05/watch-video-of-thieves-stealing-millions-at-president-cyril-ramaphosas-farm-phalaphala> accessed on 06 May 2022;
<https://www.dailysun.co.za/dailysun/news/how-r62m-was-stolen-from-ramaphosas-farm> accessed on 06 May 2022;
<https://www.heraldlive.co.za/news/2022-06-06-watch-inside-ramaphosas-rare-game-farm-and-previous-controversy> accessed on 06 May 2022;
<https://www.dailymaverick.co.za/article/2022-06-04-ramaphosas-stolen-millions-the-namibian-connection> accessed on 06 May 2022;
<https://www.enca.com/news/ramaphosa-farm-theft-watch-udm-calls-probe-stolen-millions> and many more media reports.

furnished by Mr Fraser also made it practical to entertain this matter, and lastly, the seriousness of the allegations involved namely; money laundering, tax evasion, kidnapping and defeating the ends of justice are all too mammoth to let go without investigating.

11. Section 182(1) of the Constitution provides for the functions of the Public Protector as follows:
12. The Public Protector has the power, as regulated by national legislation - “(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; (b) to report on that conduct; and (c) to take appropriate remedial action. (2) The Public Protector has the additional powers and functions prescribed by national legislation. (3) The Public Protector may not investigate court decisions”.
13. Section 96 of the Constitution of provides that:
 - (1) *“Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.*
 - (2) *Members of the Cabinet and Deputy Ministers may not—*
 - (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.”*
14. **PLEASE TAKE NOTE** that the national legislation referred above is the EMEA.
15. Section 4 of EMEA reads thus:
 - (1) *“The Public Protector must investigate, in accordance with section 3, an alleged **breach of the code of ethics** on receipt of a complaint by—*

- (a) *the President, a **member of the National Assembly** or a permanent delegate to the National Council of Provinces, if the complaint is against a **Cabinet member** or Deputy Minister: or*
 - (b) *the Premier or a member of the provincial legislature of a province, if the complaint is against an MEC of the province.*
 - (2) *The complaint must be in writing and must contain—*
 - (a) *the **name and address of the complainant**;*
 - (b) ***full particulars of the alleged conduct of the Cabinet member, Deputy Minister or MEC**; and*
 - (c) *such other information as may be required by the Public Protector or prescribed in the code of ethics.*
16. It is important to note that the Public Protector is ostensibly required in terms of section 3(2) of EMEA to “*submit a report on the alleged breach of the code of ethics within 30 days of receipt of the complaint*”.
 17. Section 3(4) of EMEA reads: “*When conducting an investigation in terms of this section, the Public Protector has all the powers vested in the Public Protector in terms of the Public Protector Act, 1994.*”
 18. **PLEASE NOTE** that section 1(ii) of the EMEA provides that a Cabinet member includes the President. Therefore, the Public Protector can investigate breach of the Code attributable to the President in terms of section 3 of EMEA.
 19. It is also important to note that the investigation envisaged in section 4(1) of the EMEA must relate to the violation of the Code, by Cabinet members, Deputy Ministers and members of the Executive Council (MECs).
 20. Paragraph 1 of the Code provides that “*member of the Executives means a Cabinet member, a Deputy Minister or a Member of a Provincial Executive Committee, and 'member' and 'Executive' have corresponding meanings.*”
 21. Paragraph 2.1 of the Code encapsulates the general standards which the members of the Executive must comply with, to the satisfaction of the President or the Premier which ever case is applicable.

22. Further thereto, paragraph 2.3 of the Code prohibits members of the Executive from:

- (a) *“wilfully mislead the legislature to which they are accountable;*
- (b) *wilfully mislead the President or Premier, as the case may be;*
- (c) ***act in a way that is inconsistent with their position;***
- (d) *use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;*
- (e) *use information received in confidence in the course of their duties otherwise than in connection with the discharge of their duties;*
- (f) ***expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;***
- (g) ***receive remuneration for any work or service other than for the performance of their functions as members of the Executive; or***
- (h) *make improper use of any allowance or payment properly made to them, or disregard the administrative rules which apply to such allowances or payments.”*

23. In paragraph 11 of the ***Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC [19]*** the court denoted that:

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

24. **PLEASE ALSO TAKE NOTE THAT** section 7(4)(b) of the Public Protector Act provides that, the Public Protector or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information on a matter being or to be investigated

25. THE COMPLAINT

25.1 In his complaint, the Complainant informed the Public Protector that on 09 February 2020 there was a theft of millions of US dollars, (in excess of four million US dollars) stashed within your premises at Phala Phala farm in Waterberg, Limpopo by criminals who colluded with your domestic worker and that you concealed this crime from the South African Police Service (SAPS) and/or South African Revenue Services (“SARS”) and thereafter paid the culprits for their silence. The Complainant further stated the following in his complaint:

“Section 96 of the Constitution demands that members of the Cabinet must act in accordance with a code of ethics set out by national legislation. As the President is the head of the Cabinet, he is bound by the Act and the Code. In particular the ATM draws your attention to s96(2)(a) of the Constitution which prohibits members of Cabinet from undertaking any other paid work. It is the view of the ATM that anyone with cash amounting to millions of US Dollars can only be involved in trading whose legitimacy needs to be established. Whether the trading is legit or not it constitutes paid work and thus a violation of the said section of the Constitution. Please investigate.

In addition, s96(2)(b) of the Constitution, prohibits Members of Cabinet from acting in a 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. It is not clear whether the information in the public domain that Mr Ramaphosa stopped his business dealings upon assuming his role as Deputy President in the 5th administration is true or not. If indeed the President is no longer actively pursuing his private interests, why then did it become the President’s direct responsibility to report the robbery to the Head of the Presidential Protection Unit (PPU)? Also, does the mandate of the Presidential Protection Unit include looking after security matters of the farm of the President? Does the use of the PPU for the President farm security not constitute abuse of state resources? Please investigate.

Should you find other transgressions that may not be within your mandate to investigate, please do not hesitate to refer those to appropriate authorities as you see fit.

If after your investigation you find that the allegations of Mr Fraser are substantiated, we request you to recommend appropriate remedial actions.

Given the seriousness of this complaint, the ATM wishes to remind you that S3(2) of the Executive Members Ethics Act compels you to report on alleged breaches of the Code within 30 days (sic)".

26. Having analysed the complaint, the following issue was identified to inform and focus the investigation:

26.1 Whether the President of the Republic of South Africa violated the Executive Ethics Code and the Constitution in that on 09 February 2020 there was a theft of millions of US dollars, (in excess of four million US dollars) stashed within his premises at Phala Phala farm in Waterberg, Limpopo by criminals who colluded with his domestic worker and that he concealed this crime from the South African Police Service (SAPS) and/or South African Revenue Services ("SARS") and thereafter paid the culprits for their silence.

27. To assist the Public Protector in expediting the finalisation of the investigation on this matter and issue a report on the outcome thereof, you are kindly requested to provide a detailed response to the above allegations mentioned above as well as documentation and/or information listed hereunder which may be in your possession and/or under your control which may have a bearing on the investigation:

27.1 A detailed statement providing an explanation regarding whether your conduct was in contravention of the Code of Ethics, section 96 of the Constitution or any other legal obligation as may be imposed by other relevant legislations;

27.2 Kindly indicate if you have any financial interests in the Phala Phala farm in Waterberg and if yes, whether you have declared such interest to Parliament

as required by the Code of Ethics;

- 27.3 You are further requested to indicate the nature and value of any financial interests held by you in the Phala Phala farm in Waterberg as a commercial entity;
- 27.4 Whether the said premises or the property at Phala Phala farm in Waterberg, Limpopo belong to you or is registered under your name or under the name of any of your company where you own a stake; kindly explain the nature of this business;
- 27.5 Whether there was any cash to the tune of millions of US dollars, (in excess of four million US dollars) stashed within your premises at Phala Phala farm in Waterberg, Limpopo and if yes, please clarify the following:
- (a) The source of such cash,
 - (b) Any register, receipt or other proof to indicate the source of such cash, the nature of the trade transaction from which it emanated or the purpose of such cash;
 - (c) The name of the countries and persons you were trading with and who paid the money in this regard;
 - (d) The permits for such trade at the time and if there is any please attach copy thereof;
 - (e) Does such permit or regulations allow an auctioneer to accept hard cash on site;
 - (f) The exact amount in Rands of such other Foreign Currency and proof thereof;
 - (g) The date(s) on which such cash was received at Phala Phala farm in Waterberg and the name of the person(s) who received it;
 - (h) The exact manner in which this cash was kept or stored at Phala Phala farm in Waterberg e.g. safe or furniture;
 - (i) The reason(s) as to why the cash was kept or stored at Phala Phala farm in Waterberg and not at the bank;
 - (j) How long has that cash been kept on premises;
 - (k) Was the cash declared to South African Revenue Services (SARS) and if

- yes please attach proof;
- (l) Does the Phala Phala farm pay the tax as required by SARS for sales or auction of any stock, if yes please provide proof;
- (m) Does Phala Phala farm in Waterberg hold any bank account and if yes, please provide the Public Protector with the name of the details of the bank account;
- 27.6 Whether there was a robbery and/or theft of cash at the Phala Phala farm in Waterberg on 9 February 2020, and if yes, how much was stolen;
- 27.7 Whether the theft or crime in connection with this cash was reported to the SAPS and if yes, please provide the date on which the matter was reported, the name of the police station and the CAS number. If not, please explain why was the matter was not reported the police station;
- 27.8 Whether the stolen money was recovered or not, and if yes:
- (a) how much was recovered;
- (b) when was it recovered;
- (c) where was it recovered;
- (d) who recovered it;
- (e) from whom was it recovered and
- (f) was any person(s) interviewed, interrogated, arrested and charged for such crime;
- 27.9 You are also requested to provide the Public Protector with the name(s) of your domestic worker(s) who were then based on the said farm, including the one(s) that were present on the premises on the day of the alleged robbery/theft;
- 27.10 Clarity as to whether you gave the Head of Presidential Security Unit, Major-General Wally Rhooode, specific instructions to deal with this matter without reporting it to the police station and if yes, what were those instructions and please explain whether General Rhooode gave you regular updates on his investigation of this matter;
- 27.11 Any other steps you have taken to ensure that the alleged theft of cash is

thoroughly investigated;

- 27.12 Any other information you may deem appropriate to bring to the attention of the Public Protector in order to assist in speedy finalisation of this matter.
28. We are at an information gathering stage of the investigation with a view of assessing the information and evidence obtained in the matter and will be approaching you with a request for further assistance with regard to interviews, which we intend conducting as soon as possible, should it be necessary.
29. We will appreciate receipt of your response and the requested information and documentation at your earliest convenience but **not later than fourteen (14) working days** upon receipt of this correspondence to enable the Public Protector to conclude the investigation and issue the report on the outcome thereof as soon as possible.
30. For any further enquiries regarding this matter, kindly contact my Personal Assistant, Mr Ephraim Kabinde at 012 366 7108 or e-mail Ephraimk@pprotect.org or the Investigations Branch of the Public Protector South Africa, Chief Investigator: Mr Vusumuzi Xolani Dlamini, at (012) 366 7244 or email at vusumuzid@pprotect.org

Yours sincerely,



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

DATE: 07/06/2022