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**PRIVATE OFFICE**

Private Bag X677, Pretoria 0001 • 175 Lunnon Street • Hillcrest Office Park, 0083

Tel: (012) 366 7108 • Fax: (012) 362 8918 • tollfree: 0800 11 20 40

Ephraimk@pprotect.org

Public Protector South Africa @PublicProtector

Report No: 11 of 2017/2018

Mr. Kevin Mileham  
P.O Box 15  
Cape Town  
8000

Dear Mr. Mileham

**INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS  
CODE BY THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL  
AFFAIRS, MR DAVID DOUGLAS VAN ROOYEN, MP**

Attached hereto is my report on an investigation into the above matter, for your attention.

This report is provided to you in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 and section 8(3) of the Public Protector Act, 1994

Best wishes

  
ADV. BESSISIWE MKHWEBANE

PUBLIC PROTECTOR OF SOUTH AFRICA

DATE: 09/02/2018

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



PUBLIC PROTECTOR  
SOUTH AFRICA

**Report 11 of 2017/2018**

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***“Allegations of a violation of the Executive Ethics Code in the matter between Mr Kevin Mileham, MP of the Democratic Alliance (DA), and the Minister of Co-operative Governance and Traditional Affairs, Mr David Douglas Van Rooyen, MP.”***

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE  
EXECUTIVE ETHICS CODE BY THE MINISTER OF CO-OPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS, MR DAVID DOUGLAS VAN ROOYEN, MP**



<b>INDEX</b>		
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>PAGE NO</b>
	<b>Executive Summary</b>	<b>3</b>
<b>1.</b>	<b>Introduction</b>	<b>7</b>
<b>2.</b>	<b>The Complaint</b>	<b>7</b>
<b>3.</b>	<b>Powers and Jurisdiction of the Public Protector</b>	<b>8</b>
<b>4.</b>	<b>The Investigation</b>	<b>12</b>
<b>5.</b>	<b>The determination of the issues in relation to the evidence obtained and conclusions made with regard to the applicable law and prescripts</b>	<b>16</b>
<b>6.</b>	<b>Findings</b>	<b>22</b>
<b>7.</b>	<b>Observation</b>	<b>23</b>
<b>8.</b>	<b>Remedial Action</b>	<b>23</b>
<b>9.</b>	<b>Monitoring</b>	<b>24</b>



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## Executive Summary

- i. This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), section 3(2) of the Executive Members' Ethics Act, (the Executive Members' Ethics Act) and section 8(1) of the Public Protector Act, 1994.
- ii. The report relates to an investigation into the alleged violation of the Executive Ethics Code by the Minister of Co-operative Governance and Traditional Affairs, Mr D Van Rooyen MP (Minister Van Rooyen). The complaint was lodged with the Public Protector on 21 November 2016 by Mr Kevin Mileham, MP of the Democratic Alliance (the Complainant) in terms of Section 4(1)(a) of the Executive Members' Ethics Act, 82 of 1998.
- iii. The Complainant alleged that:

*"It has recently been reported in several media outlets that Minister Des Van Rooyen visited the Gupta family residence in Saxonwold several times in the run up to his short lived tenure as Finance Minister. The reports claim that the Minister visited the Gupta family home on consecutive days between 2 December and 8 December 2015. In contract (sic) in reply to a Democratic Alliance Parliamentary question the Minister had denied ever visiting the residence of the Gupta family. It is thus clear that the Minister lied and intentionally misled parliament; (sic) in so doing he has contravened the Executive Ethics Code to which all cabinet members are bound."*
- iv. On analysis of the complaint, the following issues were identified and investigated:



- 
- a) Whether Minister Van Rooyen deliberately or inadvertently made a misleading statement to the National Assembly when he replied to the question of ever having met with and visited the residence of the Gupta family since taking office; and if so;
  - b) Whether Minister Van Rooyen's conduct violated the provisions of paragraph 2.3(a) of the Executive Ethics Code.
- v. The investigation process was conducted by analysis of the relevant documentation and correspondence with Minister Van Rooyen as well as consideration and application of the relevant laws, regulatory framework and prescripts.
- vi. Key laws taken into account to determine whether Minister Van Rooyen misled the National Assembly were principally the Constitution and the Executive Members' Ethics Act which imposes a code of ethics that should have been complied with by the Minister, in particular:
- a) Section 96(1) of the Constitution provides that Members of the Cabinet must act in accordance with a code of ethics prescribed by national legislation.
  - b) Section 96(2)(b) of the Constitution in terms of which Members of the Cabinet, *inter alia* may not act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests.
  - c) Paragraph 2.3(a) of the Executive Ethics Code which provides that Members of the Executive may not "*intentionally or inadvertently mislead the President, or the Premier or, as the case may be; the Legislature.*"
  - d) Paragraph 2.3(b) of the Executive Ethics Code stating that Members of the Executive may not act in a way that is inconsistent with their position.



- vii. Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:
- a) **Whether Minister Van Rooyen deliberately or inadvertently made a misleading statement to the National Assembly when he replied to the question of ever having met with and visited the residence of the Gupta family since taking office.**
    - aa) The complaint that Minister Van Rooyen deliberately made a misleading statement to the National Assembly when he replied to the question of ever having met with and visited the residence of the Gupta family since taking office is substantiated.
  - b) **Whether Minister Van Rooyen's conduct violated the provisions of paragraph 2.3(a) of the Executive Ethics Code.**
    - aa) The complaint that Minister Van Rooyen violated paragraph 2.3(a) of the Executive Ethics is therefore also substantiated.
    - bb) His conduct was also in violation of section 96(1) and 96(2)(b) of the Constitution.
- viii. The Public Protector is required, in terms of section 8(1) of the Public Protector Act, 1994 (Act No. 23 of 1994), to make known to any person her point of view or recommendation in respect of a matter she investigated.
- ix. During the investigation, the Public Protector made the observation that her office has been inundated with complaints of allegations of a violation of the Executive Ethics Code. These complaints emanate from Parliamentary questions and answers, which

she has noticed that due to questions which are vague or unclear, Members often answer those questions in a manner which requires extensive legal interpretation.

- x. In order to ensure the effectiveness of the Parliamentary questions and answers, it is recommended that the Speaker of the National Assembly should ensure that questions asked in Parliament are very clear before the Member is required to answer.
- xi. In light of the above findings, the Public Protector is taking the following remedial action as contemplated in section 182(1)(c) of the Constitution.
  - a) The President to take the appropriate action against Minister Van Rooyen for violating the Executive Ethics Code and the Constitution.
  - b) The President must within a reasonable time, but not later than 14 days after receiving this report, submit a copy thereof and any comments thereon together with a report on any action taken or to be taken in regard thereto, to the National Assembly.
- xii. The Director-General in the Department of the Presidency, to advise the Public Protector of action taken by the President within 60 days of publication of this report.



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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, MR DAVID DOUGLAS VAN ROOYEN, MP**

**1. INTRODUCTION**

- 1.1. This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), section 3(2) of the Executive Members' Ethics Act, 1998 (the Executive Members' Ethics Act) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of section 3(2)(a) of the Executive Members' Ethics Act to President Jacob Gedleyihlekisa Zuma.
- 1.3. The report is also provided to Mr Kevin Mileham, MP of the Democratic Alliance (the Complainant) and the Minister of Co-Operative Governance and Traditional Affairs, Mr David Douglas Van Rooyen, MP (Minister Van Rooyen) in terms of section 8(3) of the Public Protector Act.
- 1.4. The report relates to an investigation into the alleged violation of the Executive Ethics Code by Minister Van Rooyen in 2016.

**2. THE COMPLAINT**

- 2.1. The complaint was lodged with the Public Protector on 21 November 2016 in terms of Section 4(1)(a) of the Executive Members' Ethics Act.
- 2.2. The Complainant alleged that:





2.2.1. *"It has recently been reported in several media outlets that Minister Des Van Rooyen visited the Gupta family residence in Saxonwold several times in the run up to his short lived tenure as Finance Minister. The reports claim that the Minister visited the Gupta family home on consecutive days between 2 December and 8 December 2015. In contract (sic) in reply to a Democratic Alliance Parliamentary question the Minister had denied ever visiting the residence of the Gupta family. It is thus clear that the Minister lied and intentionally misled parliament; (sic) in so doing he has contravened the Executive Ethics Code to which all cabinet members are bound."*

2.3. The Complainant contends that Minister Van Rooyen violated the provisions of paragraph 2.3(a) of the Executive Ethics Code, which provides that:

*"Members may not deliberately or inadvertently mislead the President, or the Premier or, as the case may be; the Legislature."*

2.4. He requested the Public Protector to investigate his complaint.

### **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

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

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

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



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

(b) to report on that conduct; and

(c) to take appropriate remedial action.”

- 3.3. Section 182(2) directs that the Public Protector has the additional powers and functions prescribed by national legislation.
- 3.4. Section 4(1)(a) of the Executive Members` Ethics Act, provides *inter alia* that, the Public Protector “...must investigate in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet Member or Deputy Minister...”
- 3.5. The complaint was lodged by a Member of the National Assembly against a Cabinet Member and therefore had to be investigated by the Public Protector.
- 3.6. In terms of section 3 of the Executive Members` Ethics Act the Public Protector must submit a report on the alleged breach of the Code by a Cabinet Member within 30 days of the receipt of the complaint. If the Public Protector reports at the end of this period that the investigation has not yet been completed, she must submit another report when the investigation has been completed.
- 3.7. The Public Protector accordingly reported to the President on 6 February 2017 that her investigation of the complaint had not been completed and that she would submit the report when it was finalized.



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- 3.8. Section 3(5)(a) of the Act provides that the President must within a reasonable time, but not later than 14 days after receiving the report of the Public Protector, submit a copy thereof and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the National Assembly.
- 3.9. In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others*<sup>1</sup> the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect. The Constitutional Court further held that: “*When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.*”
- 3.10 In the above-mentioned judgment, the Chief Justice Mogoeng stated the following, when confirming the powers the Public Protector:
- 3.10.1 **Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);**
- 3.10.2 **An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced. (para 67);**
- 3.10.3 **Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take**

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<sup>1</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)



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**action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);**

- 3.10.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow. (para 69) ;
- 3.10.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to. (para 70);
- 3.10.6 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made. (para 71);
- 3.10.7 Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence; (para 71(a));
- 3.10.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d));
- 3.10.9 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (para 71(e));



3.11 The Public Protector's power and jurisdiction to investigate the complaint and take appropriate remedial action was not disputed by Minister Van Rooyen.

#### 4. THE INVESTIGATION

##### 4.1. Methodology

4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 3 and 4 of the Executive Members' Ethics Act, read with sections 6 and 7 of the Public Protector Act.

4.1.2. As indicated above, section 4(1)(a) of the Executive Members' Ethics Act, provides that the Public Protector "*...must investigate in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet Member or Deputy Minister...*"

##### 4.2. Approach to the investigation

4.2.1. The approach to the investigation included analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

4.2.2. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

- What happened?
- What should have happened?

- Is there a discrepancy between what happened and what should have happened and does that deviation amount to a violation of the Executive Ethics Code?
- In the event of a violation, what action should be taken?

4.2.3. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct of Minister Van Rooyen constitutes a violation of the Executive Ethics Code.

4.2.4. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by Minister Van Rooyen to prevent a violation of the Executive Ethics Code.

4.3. **On analysis of the complaint, the following issues were considered and investigated:**

4.3.1. Whether Minister Van Rooyen deliberately or inadvertently made a misleading statement to the National Assembly when he replied to the question of ever having met with and visited the residence of the Gupta family since taking office, and if so;

4.3.2. Whether Minister Van Rooyen's conduct violated the provisions of paragraph 2.3(a) of the Executive Ethics Code.

#### **4.4. The Key Sources of information**

4.4.1. The following key source of information were considered during the investigation, although some of these key source of information may not have influenced the findings and remedial actions taken by the Public Protector.

4.4.2. The relevant information and documents obtained and analyzed, were primarily:

4.4.2.1. National Assembly: questions for written reply: Question no. 927 asked by Mr JH Steenhuisen, MP to Minister Van Rooyen and his written response.

#### **4.5. Correspondence sent and received**

4.5.1. Letter from the Complainant to the Public Protector, dated 31 October 2016.

4.5.2. Letter from the Public Protector to President J Zuma, dated 01 March 2017, informing him of the investigation.

4.5.3. Letter from the Public Protector to Minister Van Rooyen, dated 01 March 2017 requesting his response to the complaint.

4.5.4. Acknowledgement received from the Presidency, dated 10 March 2017.

4.5.5. A response received from Minister Van Rooyen dated 24 March 2017.

#### **4.6. Websites consulted/ electronic sources**

4.6.1. <http://thetimes.trendolizer.com/2016/10/van-rooyen-visited-guptas-7-days-in-a-row-prior-to-appointment-as-finance-minister.html>; The Times News, "Van Rooyen visited Gupta 7 days in a row prior to appointment as Finance Minister", by Mzilikazi, 30 October 2016.



- 4.6.2. <http://www.polity.org.za/article/i-did-not-meet-guptas-in-dubai-van-rooyen-2016-04-11> Polity, "I did not meet Guptas in Dubai – Van Rooyen" by News24Wire 11 April 2016.
- 4.6.3. <http://www.sowetanlive.co.za/news/2016/10/30/des-van-rooyen-visited-guptas-7-days-in-a-row-prior-to-appointment-as-finance-minister>; The Sowetanlive, "Des van Rooyen visited Guptas 7 days in a row prior to appointment as finance minister" by TMG Digital, 30 October 2016.
- 4.6.4. <http://www.politicsweb.co.za/news-and-analysis/des-van-rooyen-misled-parliament-over-gupta-visits>; Politics Web, "Des van Rooyen misled parliament over Gupta visits - Kevin Mileham" by Kevin Mileham 30 October 2016.
- 4.6.5. <http://www.enca.com/south-africa/van-rooyen-sworn-despite-falling-rand-and-outcry>; eNCA.com, "WATCH: Finance Minister Van Rooyen sworn in", Thursday 10 December 2015 - 1:09pm
- 4.7. **Legislation and other prescripts**
- 4.7.1. The Constitution of the Republic of South Africa, 108 of 1996.
- 4.7.2. The Public Protector Act, No 23 of 1994.
- 4.7.3. The Executive Members` Ethics Act, No 82 of 1998.
- 4.7.4. The Executive Ethics Code.
- 4.8. **Public Protector Report**
- 4.8.1. "State of Capture" Report No: 6 of 2016/17, 14 October 2016 [Pages 104-106]





4.9. A notice in terms of section 7(9)(a) of the Public Protector Act, 1994 issued on 21 August 2017 to Minister Van Rooyen.

4.10. Minister Van Rooyen's response to the section 7(9) notice, dated 3 September 2017.

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

**5.1 Whether Minister Van Rooyen deliberately or inadvertently made a misleading statement to the National Assembly when he replied to the question of ever having visited the residence of the Gupta family since taking office;**

Common cause issues

5.1.1 Mr J H Steenhuisen, MP asked a question for a written reply to Minister Van Rooyen under National Assembly Question No 927 in 2016. The question was:

*"Has (a) he and/or (b) his Deputy Ministers ever (i) met with any (aa) member, (bb) employee and/or (cc) close associate of the Gupta family and/or (ii) attended any meeting with the specified persons (aa) at the Gupta's Saxonwold Estate in Johannesburg or (bb) anywhere else since taking office; if not, what is the position in this regard; if so, in each specified case, (aaa) what are the names of the persons who were present at each meeting, (bbb)(aaaa) when and (bbbb) where did each such meeting take place and (ccc) what was the purpose of each specified meeting?"*

5.1.2 Plainly put, Minister Van Rooyen was asked:

5.1.2.1 Whether he, since taking office ever met with any member, employee or close associate of the Gupta family; and/or,

5.1.2.2 Whether he since taking office, ever attended any meeting with any member, employee or close associate of the Gupta family at the Gupta's Saxonwold Estate or anywhere else.

5.1.3 Minister Van Rooyen responded in a written reply only that:

*"The Minister and his Deputy Ministers have never met with members, employees and/or close associates of the Gupta family in their official capacities."*

Issues in dispute

5.1.4 The Public Protector had to determine whether Minister Van Rooyen's response to Mr Steenhuisen's question in the National Assembly was deliberately or inadvertently misleading.

5.1.5 The Complainant contends that Minister Van Rooyen lied and intentionally misled the National Assembly when he denied ever visiting the Gupta family residence in Saxonwold. The Complainant further alleged that it was reported in the media that Minister Van Rooyen visited the Gupta family residence consecutively during the period, 02 to 08 December 2015.

5.1.6 Minister Van Rooyen took office as Minister of Finance on 10 December 2015. He was redeployed by President Zuma on 13 December 2015 and took office as the Minister of Cooperative Governance and Traditional Affairs on 14 December 2015.

5.1.7 In his response to the complaint, dated 24 March 2017 Minister Van Rooyen stated, *inter alia* that:



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*"During the period between 4 December 2015 to 11 December 2015, I was in Durban with my family. I was not a Minister at that stage so I did not have VIP protection. On the 07<sup>th</sup> of December I flew from Durban to Johannesburg at 13h55 for MKMVA meetings where we also met with the Gupta family."*

*"I am a Treasurer General of the MKMVA and part of my responsibility is to meet business people to enlist their support into our programmes, it is in that capacity that I have met the members of the Gupta family*

5.1.8 The Public Protector addressed a letter to Minister Van Rooyen in terms of section 7(9)(a) of the Public Protector Act on 21 August 2017 affording him an opportunity to respond to the evidence obtained during the investigation that may implicate him.

5.1.9 Referring to Minister Van Rooyen's written reply to Mr Steenhuisen's question, the Public Protector stated as follows:

*"This assertion was not consistent with the investigation done in the State of Capture report in which your cell phone records were reviewed and confirmed that your cell phone was in the Saxonwold area on 8 December 2015, the day prior to your appointment as Minister of Finance. The records further show that calls were further made from your cellular phone from within the Saxonwold area in the weeks post your appointment as Minister of Finance."*

5.1.10 Minister Van Rooyen responded on 3 September 2017 submitting, *inter alia* that the Public Protector could not use "the said cell phone records as evidence contained in the State of Capture report which is under judicial review until the conclusion of a judicial process."



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- 5.1.11 Whilst the evidence obtained during the investigation of the State of Capture Report has not been challenged or set aside by the Court, it should be noted that the Public Protector does not rely on those cell phone records for the conclusions made in this report. In fact Minister Van Rooyen did not deny that he met with and visited the Gupta family residence before and after he took office as Minister of Finance.
- 5.1.12 Accordingly, Minister Van Rooyen admitted, in paragraph 4 of the his response to the Public Protector's section 7(9) notice, that he met the members of the Gupta Family in his capacity as the Treasurer General of MKMVA.
- 5.1.13 Minister Van Rooyen emphasized that he confined his response to Mr Steenhuisen's question to meetings in his capacity as Minister of Finance. He notably stated in this regard that:
- "If the question was phrased to include whether I visited the said family in my official capacity as a Minister OR in any other capacity, the answer would have been YES."*
- 5.1.14 He denied having misled the National Assembly.
- 5.1.15 There was conversely no reference in the question Minister Van Rooyen was asked, to him meeting with members, employees or associates of the Gupta family in his capacity as a Minister. The question specifically related to the period since he took office as a Minister. The emphasis of the question was clearly on when he met with the Guptas and visited their residence and not in which capacity.
- 5.1.16 During that time, it was widely reported in the media that members of the Gupta family allegedly unduly influenced the appointment of Members of the Executive and that Minister Van Rooyen's appointment as Minister of Finance was a product of such influence.

5.1.17 News24, for example reported on 11 April 2016 that:

*"Claims have emerged over the last few months that the Guptas had influenced President Jacob Zuma's appointment of Mineral Resources Minister Mosebenzi Zwane and that of Van Rooyen, as well as offering ministerial posts to Deputy Finance Minister Mcebisi Jonas and former ANC MP, Vytjie Mentor. Van Rooyen was appointed by Zuma to take over the position following the removal of Nhlanhla Nene in December. Zuma removed Van Rooyen from the post a few days later, replacing him with Pravin Gordhan."*

- 5.1.18 The reason for Mr Steenhuisen asking the question as he did, clearly related to the allegations in the public domain. The likely inference drawn was to determine whether Minister Van Rooyen's meetings with and visits to the Gupta family residence were linked to his appointment as a Minister.
- 5.1.19 As it was a written question and Minister Van Rooyen had to reply to the National Assembly in writing, he was afforded ample opportunity to formulate a properly considered response.
- 5.1.20 In his reply, Minister Van Rooyen conveniently structured his answer to favour a distorted interpretation of the phrase '*since taking office*' to mean only in his official capacity. The Minister tailored his response in order to evade answering a question that was clear and straightforward.
- 5.1.21 In answering the question, Minister Van Rooyen had an ideal opportunity to inform the National Assembly and the public of his meetings with the Gupta family and visits to their residence since taking office and to explain the reasons therefore. Instead, he opted not to do so and deliberately made a misleading statement to the National Assembly.



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- 5.2 Whether Minister Van Rooyen`s conduct violated the provisions of paragraph 2.3(a) of the Executive Ethics Code.**
- 5.2.1** Section 96(1) of the Constitution provides that Members of the Cabinet must act in accordance with a code of ethics prescribed by national legislation.
- 5.2.2** In terms of section 96(2)(b), Members of the Cabinet, *inter alia* may not act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests.
- 5.2.3** The Executive Members` Ethics Act provides for a code of ethics governing ethical conduct of Members of the Cabinet, Deputy Ministers and Members of Provincial Executive Councils.
- 5.2.4** Paragraph 2.3(a) of the Executive Ethics Code states that Members of the Executive may not "*deliberately or inadvertently mislead the President, or the Premier or, as the case may be; the Legislature.*"
- 5.2.5** In terms of paragraph 2.3(b) Members may not act in a way that is inconsistent with their position.
- 5.2.6** By deliberately making a misleading statement to the National Assembly, Minister Van Rooyen violated the provisions of paragraphs 2.3(a) and 2.3(b) of the Executive Ethics Code.
- 5.2.7** Minister Van Rooyen`s conduct was also in violation of section 96(1) and 96(2)(b) of the Constitution.



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## 6 FINDINGS

The following findings of the Public Protector are not based on the cell phone records obtained during the State of Capture investigation, but based on the admissions by Minister Van Rooyen. Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

- 6.1 Whether Minister Van Rooyen deliberately or inadvertently made a misleading statement to the National Assembly when he replied to the question of ever having met with and visited the residence of the Gupta family since taking office:**
- 6.1.1** The complaint that Minister Van Rooyen deliberately made a misleading statement to the National Assembly when he replied to the question of ever having met with and visited the residence of the Gupta family since taking office, is substantiated;
- 6.2 Whether Minister Van Rooyen's conduct violated the provisions of paragraph 2.3(a) of the Executive Ethics Code:**
- 6.2.1** The complaint that Minister Van Rooyen violated paragraph 2.3(a) of the Executive Ethics is therefore also substantiated.
- 6.2.2** Minister Van Rooyen's conduct was also in violation of section 96(1) and 96(2)(b) of the Constitution.





## **7 OBSERVATION**

- 7.1 The Public Protector is required, in terms of section 8(1) of the Public Protector Act, 1994 (Act No. 23 of 1994), to make known to any person her point of view or recommendation in respect of a matter she investigated.
- 7.2 The Office of the Public Protector is has been inundated with complaints of allegations of a violation of the Executive Ethics Code. These complaints emanate from Parliamentary questions and answers, which I have noticed that due to questions which are vague or unclear, Members often answer those question in a manner which requires extensive legal interpretation.
- 7.3 In order to ensure the effectiveness of the Parliamentary question and answers, it is recommended that the Speaker of the National Assembly should ensure that questions asked in Parliament are very clear before the Member is required to answer.

## **8 REMEDIAL ACTION**

- 8.1 The remedial action to be taken, as envisaged by section 182(1)(c) of the Constitution, 1996, is as follows:
- 8.1.1 The President must, within thirty (30) days of publication of this report, take the appropriate action against Minister Van Rooyen for violating the Executive Ethics Code and the Constitution.
- 8.1.2 The President must within a reasonable time, but not later than 14 days after receiving this report, submit a copy thereof and any comments thereon together with a report on any action taken or to be taken in regard thereto, to the National Assembly.





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**9 MONITORING**

- 9.1 The Director-General in the Presidency must, within sixty (60) days of publication or receipt of this report, provide the Public Protector with progress report in the implementation of the remedial action.
- 9.2 Each remedial actions listed in paragraph 8.1.1 and 8.1.2 is legally binding on the person directed to implement, unless it has been reviewed and set aside by the Court or an appropriate interim Court Order to stay the implementation of the remedial action is obtained within the prescribed period herein.

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

DATE: 09/02/2018

*Assisted by: Good Governance and Integrity*