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ATTENTION: Mr Zakhele Mbhele (MP)
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Dear Minister Mbhele

**CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF
MALADMINISTRATION AND IMPROPER CONDUCT IN CONNECTION WITH THE
PROVISION OF SAPS VIP PROTECTION SERVICES TO FORMER AFRICAN
UNION CHAIRPERSON DR. NKOSAZANA DLAMINI-ZUMA, BY THE FORMER
MINISTER OF POLICE**

1. This is a closing report in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 7(1) of the Public Protector Act, 1994 (the Public Protector Act), on an investigation conducted into a complaint in connection with allegations of maladministration and improper conduct by the Minister of Police, in the provision of SAPS VIP

Protection Services to Dr Nkosazana Dlamini-Zuma (Dr Dlamini-Zuma), after the expiry of her term of office as Chairperson of the African Union in October 2016.

2. The investigation of the complaint was conducted in terms of Section 182 of the Constitution which gives the Public Protector the power to investigate any alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and take appropriate remedial action, and in terms of sections 6 and 7 of the Public Protector Act, 1994.
3. You lodged the complaint with my office, on 19 April 2017, for an investigation into allegations of maladministration and improper conduct by the former Minister of Police, Mr Fikile Mbalula (former Minister of Police), alleging that:
 - 3.1 The media reported during April 2017 that Dr Dlamini-Zuma, despite being a private person who held no high office, was enjoying the protection of the South African Police Service's (SAPS) VIP Protection Services due to the alleged security threats against her;
 - 3.2 The spurious security threats were being used by the former Minister of Police as a justification to afford Dr Dlamini-Zuma SAPS VIP Protection Services, which she would not otherwise have qualified for and the former Minister of Police had failed to adequately and transparently make clear the basis of his decision to offer Dr Dlamini-Zuma VIP Protection Services; and that
 - 3.3 Policing resources and public funds were being used, and possibly abused to protect an ordinary citizen, when South African citizens face threats from criminals in their homes and on the streets on a daily basis.

4. THE ISSUE CONSIDERED AND INVESTIGATED

4.1 On analysis of the complaint and information and documents received during the preliminary enquiry, the following issues were considered and investigated:

4.1.1 Whether the Minister of Police improperly provided SAPS VIP Protection Services to Dr. Dlamini-Zuma, and if so, whether such conduct constitutes improper conduct and maladministration?

5. THE INVESTIGATION

5.1 Scope of the investigation

5.1.1 The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1.2 The scope of the investigation focused on the issues referred to in paragraph 4 above.

5.2 The investigation approach

5.2.1 The approach to the investigation commenced by analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

5.2.2 The allegations were raised in a letter addressed to the former Minister of Police, on 14 June 2017, prior to his departure from office, for a response.

5.2.3 The former Minister of Police responded to my enquiry in a letter dated 14 August 2017, which referred to certain classified information relating to the provision of SAPS Protection Services to Dr Dlamini-Zuma.

- 5.2.4 After the Cabinet reshuffling which led to the appointment of new Minister of Police, Mr Bheki Cele, and replacement of the former Minister of Police, I requested a meeting with Mr Cele through a letter dated 19 March 2018, to clarify the facts and to verify certain classified information, with reference to the response received on 14 August 2017 from the former Minister of Police, and to discuss the confidential documents referred to in the above-mentioned letter.
- 5.2.5 On 01 October 2018, I wrote a letter to the National Commissioner of Police, General K J Sitole (General Sitole), requesting him to make available the documents referred to in the former Minister of Police's letter dated 14 August 2017, for perusal and verification.
- 5.2.6 I have also invoked the powers conferred to me in terms of section 7 of the Public Protector Act, 1994 and issued notices in terms of Section 7(4)(a) against the Minister of Police and the National Commissioner of Police, on 15 June 2018 and 14 November 2018 respectively, during my investigation in sourcing the necessary information.

6. KEY SOURCES OF INFORMATION

6.1 Applicable Legislation and Prescripts:

- 6.1.1 The Constitution of the Republic of South Africa, 1996;
- 6.1.2 The Public Protector Act, 23 of 1994; and
- 6.1.3 Ministerial Handbook, 07 February 2007.

6.2 CASE LAW

- 6.2.1 The Economic Freedom Fighters v The Speaker of the National Assembly and Others and Democratic Alliance v The Speaker of the National Assembly and Others (CCT 143/15 and CCT 171/15).

6.2.2 Certification of the Constitution of the Republic of South Africa, 1996 (CCT 23/96) [1996] ZA CC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (6 September 1996).

6.3 Correspondence between the Public Protector and the Ministry of Police

6.3.1 Letter from the Public Protector to the former Minister of Police, dated 14 June 2017;

6.3.2 Letter from the Public Protector to the former Minister of Police, dated 25 July 2017;

6.3.3 Letter from the former Minister of Police of Police to the Public Protector, dated 14 August 2017; and

6.3.4 Correspondence (emails) between the Public Protector and the Ministry and the National Commissioner of Police, during the period April 2017 and December 2018.

6.4 Documents received and considered:

6.4.1 Complaint form, dated 18 April 2017;

6.4.2 Complaint letter, dated 19 April 2017;

6.4.3 Confidential letter from Acting Divisional Commissioner: Crime Intelligence, Major-General MA Makhele dated 20 April 2017;

6.4.4 Handing-over Certificate for Protection of Dr Nkosazana Dlamini-Zuma to VIP Protection Services, dated 13 June 2017;

6.4.5 Former National Commissioner, Lieutenant General Mothiba's Direction letter from former Divisional Commissioner: Protection and Security Services,

(Lieutenant) General K J Sithole to all Component Heads and Provincial Heads Protection and Security Services; and

6.4.6 Information document from Divisional Commissioner: PPS, Lieutenant General S Sitlhabane, dated 13 December 2018.

6.5 Notices issued in terms of the Public Protector Act, 1994

6.5.1 Section 7(4)(a) notice issued against the Minister of Police on 15 June 2018; and

6.5.2 Section 7(4)(a) notice issued against the National Commissioner of Police on 14 November 2018.

6.6 Classified documents examined and considered:

6.6.1 Risk Management Support System prescripts (RIMAS), classified top secret;

6.6.2 State Security Agency document dated 22 August 2016, classified as secret;

6.6.3 Threat and risk Assessment Report dated 24 July 2017, classified as confidential;

6.6.4 Standard Operational Procedure, dated 01 March 2017;

6.6.5 Standing Orders (SO): SO(S) 5.5 (1,2 & 3) and SO 256 (3 & 4); and

6.6.6 SAPS National Instruction 13/2006.

7. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS

7.1 Whether the Minister of Police improperly provided SAPS VIP Protection Services to Dr Dlamini-Zuma, and if so, whether such action constitutes improper conduct and maladministration.

Common cause issues

7.1.1 It is not in dispute that Dr Dlamini-Zuma was the Chairperson of the African Union prior to the expiry of her term of office in October 2016, and that she was afforded VIP Protection Services (Executive Protection) by the SAPS as a package prescribed by the Department of International Relations and Cooperation (DIRCO), which is customarily afforded to certain identified dignitaries.

7.1.2 Dr Dlamini-Zuma's term of office as Chairperson of the African Union ended in October 2016 and she was replaced on 30 January 2017. Her Executive Protection package was extended until the end of March 2017.

7.1.3 It is also common cause that after the expiry of her term of office, Dr Dlamini-Zuma continued to receive SAPS protection services until she was appointed Minister during February 2018.

Issues in dispute

7.1.4 The essence of the allegation is that SAPS VIP Protection Services, namely, the Presidential Protection Services (PPS) was improperly accorded to Dr Dlamini-Zuma when she was a civilian, after the expiry of her term as Chairperson of the African Union, and that the protection improperly continued until her appointment as Minister in February 2018.

- 7.1.5 The allegations also received media attention and publication, amongst others, the Sunday Times on 02 April 2017 and the Times Live on 14 April 2017, outlining an outcry by various political party leaders, amongst others, yourself on behalf of the Democratic Alliance (DA), Mr Mosioa Lekota of the Congress of the People (Cope) and Mr Pieter Groenewald of the Freedom Front Plus (FFP).
- 7.1.6 The question for my determination was whether or not, the provision of SAPS VIP Protection Services to Dr Dlamini-Zuma was improper, as alleged.
- 7.1.7 The former Minister of Police was reported in the Times Live of 14 April 2017, as dispelling the allegations of impropriety regarding the provision of SAPS VIP Protection Services to Dr Dlamini-Zuma, asserting that she as a person of stature had to be provided with police protection, as informed by the threat analysis conducted against her. He asserted that the same practice, of affording protection services, was followed with other high profile figures and suggested that such action was lawful.
- 7.1.8 On 14 June 2017 and 25 July 2017, I addressed a letter to the former Minister of Police of Police, Mr Fikile Mbalula (former Minister of Police), in connection with the allegations of the improper provision of SAPS VIP Protection Service to Minister Dlamini-Zuma.
- 7.1.9 The former Minister of Police denied the allegations of impropriety in his response, dated 14 August 2017 (Response) and asserted that Dr Dlamini-Zuma was granted Executive Protection by the Presidential Protection Services (PPS) when she was Chairperson of the African Union.
- 7.1.10 He further asserted that after Dr Dlamini-Zuma's term of office had ended, the PPS continued with her protection based on the threat that was identified against her and confirmed by the State Security Agency (SSA) in the documents dated 22 August 2016, classified secret, the Threat and Risk assessment Report, dated 24 July 2017 and top secret document approved by Cabinet.

- 7.1.11 Pursuant to the former Minister of Police's Response, I met with the current Minister of Police on 12 September 2018, with a view to inspect and ascertain, for purposes of my investigation, the classified documents, amongst others, the State Security Agency dated 22 August 2016 classified secret; the Threat and Risk Assessment Report dated 24 July 2017 classified as confidential; and the Risk Management Support System (RIMAS) document, classified as top secret and Dr Dlamini-Zuma as Ad-Hoc.
- 7.1.12 I have further sought clarity and further information from General Sitole, during our meeting on 14 December 2018 and verified the information on the classified documents on the basis of which the provision of SAPS security services were accorded to Dr Dlamini-Zuma.
- 7.1.13 According to General Sitole, Minister Dlamini-Zuma was recognised in terms of the prescript, the RIMAS, when she was accorded the security and protection service concerned.
- 7.1.14 The evidence provided by General Sitole indicates that the provision of PPS to Dr Dlamini-Zuma was continued for a period of three months, after the expiry of her terms of office as Chairperson of the African Union, based on the threat and risk review conducted by SSA, which categorised the risk against her as having been high.
- 7.1.15 I have also established that SAPS Crime Intelligence (Crime Intelligence) thereafter conducted a threat review which led to the Protection and Security Services (PSS) being effected and the handing over of the protection of Dr Dlamini-Zuma from PPS to PSS being commissioned.
- 7.1.16 According to the evidence from General Sitole, DIRCO gave a directive to SAPS to provide Executive Protection to Dr Dlamini-Zuma, as a dignitary. I have established from the evidence concerned that, generally, when the dignitary's term expires, or where there is a threat or risk, an assessment is made and if the risk is high, then such protection should continue. However, if

the risk is low, then the person under risk is placed on protection according to the classification of the risk concerned.

- 7.1.17 General Sitole asserted that a bench mark was conducted with other dignitaries, like the former African Union Chairpersons, who remain protected under Executive Protection, as well as per DIRCO's directive. He further said the threat review would also indicate the level of risk and a decision would be taken based on the outcome of the review concerned.
- 7.1.18 According to General Sitole, the categorisation of protection into PPS or PSS depends on the level of risk identified. When the risk is high, the security is elevated and when the risk scales down, the security is scaled down accordingly. Dr Dlamini-Zuma's security was accordingly scaled down to one mentor and two protectors when she was handed over from PPS to PSS in June 2017.
- 7.1.19 A threat review was done regarding Dr Dlamini-Zuma's protection in January 2017, which indicated the risk against her as having been high and hence her protection was continued. However, after the Crime Intelligence had conducted a threat review, the security was scaled down as assessed according to the South African situation.
- 7.1.20 The evidence from General Sitole further indicated that when a quarterly threat review was done, the risk was still present and high and PSS continued to be offered to Dr Dlamini-Zuma until she became a Minister in February 2018. The RIMAS read with the Ministerial Handbook was applied.
- 7.1.21 General Sitole affirmed that Dr Dlamini-Zuma qualified to be afforded SAPS protection services due to the threats and risks that were identified against her during the assessments and reviews by SSA and Crime Intelligence respectively. She was protected as Ad Hoc, subject to the mitigation of the threat, prior to her appointment as Minister.

- 7.1.22 According to documents from the Divisional Commissioner: PSS, Lieutenant General S Sitlhabane, dated 13 December 2018, which were obtained from General Sitole, Dr Dlamini-Zuma was accorded PPS by virtue of her status as manifested in the Standard Operational Procedure (SOP), dated 01 March 2017 and the Threat and Risk Assessment of 22 August 2016, which led to her extended protection for three months, which ended on 13 June 2017 when she was handed over to PSS.
- 7.1.23 General Sitole clarified that any person who is under threat may approach the Minister of Police, Commissioner of Police or the President of the Republic of South Africa to request protection, whereby the SSA or Crime Intelligence would normally conduct a threat assessment against such person and take an operational discretion regarding such protection.
- 7.1.24 The former Minister of Police asserted in his response that, on 19 April 2017, the former Acting Divisional Commissioner: Crime Intelligence conducted an urgent threat and risk assessment of Dr Dlamini-Zuma on the instruction of the former Acting National Commissioner of the SAPS.
- 7.1.25 A letter from former Acting Divisional Commissioner: Crime Intelligence, Major-General M A Makhele, addressed to the Divisional Commissioner: PSS, dated 20 April 2017, classified confidential, which I obtained during the investigation, confirms the assertion made above, regarding the instruction for the conducting of an urgent threat and risk review regarding Dr Dlamini-Zuma.
- 7.1.26 I have also noted from the letter concerned that a preliminary assessment report of possible threats and risks on the security of Dr Dlamini-Zuma was provided to the Divisional Commissioner: PSS.
- 7.1.27 According to the Handing Over Certificate for the protection of Dr Dlamini-Zuma from PPS to PSS, dated 13 June 2017, issued in terms of the SAPS Standing Orders (SO), SO(S) 5.5 (1,2&3) and SO (256 (3&4), read with the National Instruction 13/2006, issued pursuant to the conclusion of the preliminary threat and risk assessment process which triggered the handing

over process as necessitated by policy considerations, the PPS hand-over to the PSS was based, amongst others, on:

7.1.27.1 The threat analysis conducted by SSA;

7.1.27.2 Threat review conducted by Crime Intelligence; and

7.1.27.3 The profile of the dignitary, Dr Dlamini-Zuma.

7.1.28 The hand over process was effected on 15 June 2017 through the direction of the former Divisional Commissioner: PSS, General K J Sitole, to all component Heads and Provincial Security Services.

7.1.29 Former Minister of Police affirmed that the threat against Dr Dlamini-Zuma manifested, amongst others, due to her potential as a presidential candidate.

7.1.30 According to the evidence received, Dr Dlamini-Zuma assumed office as the Minister for Planning, Monitoring and Evaluation from February 2018, and the PSS had since been rendered to her as a Minister in terms of the Ministerial Handbook and SAPS prescripts.

7.1.31 I have assessed the evidence obtained during the investigation and have established that same does not support the allegation that the provision of VIP Protection to Dr Dlamini-Zuma was improper.

8 OBSERVATIONS AND CONCLUSION

8.1 Dr Dlamini-Zuma's protection by PPS, as African Union Chairperson, was in accordance with the practice prescribed by DIRCO, of according Executive Protection to dignitaries of her calibre.

8.2 The protection by PPS was suitably continued after the expiry of the term of office of Dr Dlamini-Zuma, due to the threats identified by the SSA, which also manifested during the assessment review conducted by Crime Intelligence.

- 8.3 Dr Dlamini-Zuma was recognised in the RIMAS as a person entitled to be accorded SAPS VIP Protection, immediately after the expiry of her term of office as African Union Chairperson, and during the hand over from PPS to PSS after the conducting of the threat and risk review, when the level of risk had scaled down up to the time she became a Minister for Planning, Monitoring and Evaluation.
- 8.4 Having considered the complaint you raised, the relevant provisions of the RIMAS and other prescripts relied upon in providing Dr Dlamini-Zuma with the relevant PPS and PSS, I could not find any reason to conclude that Dr Dlamini-Zuma was improperly accorded VIP Protection Services by the Minister of Police.
- 8.5 The constitutional principle of separation of powers was reiterated by Mogoeng CJ at paragraph 91 in **The Economic Freedom Fighters v The Speaker of the National Assembly and Others and Democratic Alliance v The Speaker of the National Assembly and Others (CCT 143/15 and CCT 171/15)**, quoting from the court case in the **Certification of the Constitution of the Republic of South Africa, 1996 (CCT 23/96) [1996] ZA CC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (6 September 1996)** that:
- “The principle of separation of powers, on the one hand, recognises the functional independence of branches of government. On the other hand, the principles of checks and balances focuses on the desirability of ensuring that the constitutional order, as a totality, prevents the branches of government from usurping power from one another...”*
- 8.6 Where the state institution has taken action based on its practise and prescripts within its sphere of administration, it would not be prudent for the Public Protector to interfere with the process concerned, unless where improper conduct or maladministration, through an act of commission or omission manifests.

- 8.7 Having regard to the evidence received, and for the reasons advanced herein above, I am unable to pursue the matter any further and am inclined to conclude that the allegations of improper provision of VIP Protection Service to Dr Dlamini-Zuma are not substantiated.
9. Based on the abovementioned reasons, I intend to close the investigation. However, should you wish to engage my Office on any aspect of the conclusion referred to above, I would welcome your approach in the next ten (10) working days of receipt hereof.
10. Kindly take note that in terms of section 7(2) of the Public Protector Act, the contents of this closing report are confidential and no person may disclose them without the authorisation of the Public Protector.
11. Contravention of section 7(2) is in terms of section 11 (1) of the Public Protector Act an offence and upon conviction, punishable in terms of subsection (4) to a fine not exceeding R40 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.
12. Should I not hear from you, I shall conclude the investigation on the basis of the information and reasons stated in this report and proceed to close the file.

Best regards



ADV. BUSISIWE MKHWEBANE

PUBLIC PROTECTOR OF SOUTH AFRICA

DATE: 27/03/2019