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**Committee for Section 194 Enquiry**

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| Written questions to the Public Protector from members of the Committee on s194 Enquiry into the Removal of the Public Protector, Adv. Busisiwe Mkhwebane  24 June 2023 |

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# 1. Introduction

This document contains questions to the Public Protector, Adv Mkwhebane, as submitted by members of the Committee on Section 194 Enquiry in accordance with Addendum 2 to the Amended Directives of 28 July 2022, as issued on 15 June 2023.

Whilst all members were invited to submit questions not all members availed themselves of the opportunity to do so.

These questions (and all answers submitted in respect hereof) will be made available to the public in accordance with Parliament’s constitutional duty to facilitate public participation.

Adv Mkwhebane is required to personally respond to the questions. She has been duly sworn in before the Committee in accordance with the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004. Accordingly, any answers provided to these questions will be deemed as being provided under oath.

The questions have been collated in no particular order and no changes have been made to any members’ questions. However, to assist Adv Mkwhebane, the secretariat has, in limited places, inserted broad subject matters in red.

In light of the fact that the secretariat has not edited the substance of members’ or evidence leaders’ questions, there are several questions which are repeated. In this regard Adv. Mkwhebane has the option to simply cross-reference her answers so as not to repeat the same information.

When questions are answered they may be done on the word document by answering directly below a question using an italicised font or different font colour for ease of identifying the answers. Alternatively, questions may be answered by referencing the members name and the section name with the question number as contained in this document.

Adv Mkwhebane is reminded that the entire record is available on the Dropbox. In addition, the Committee webpage contains salient information including all witness statements, the record before the independent panel and the audio-visual recordings of meetings. It can be accessed at <https://www.parliament.gov.za/committee-section-194-enquiry>.

Should Adv Mkwhebane require any assistance in locating any records, the secretariat will avail themselves to assist.

# 2. Members Questions

# Part A- Questions from Mr Brett Herron (Good)

**Evidence of Mr Kekana:**

(Witness statement - Bundle D; Item 11)

1. Why was Mr Kekana, and or any other staff member, instructed not to record the meeting with the SSA?
2. If the meeting was, as per the evidence, necessitated by the fact that there were no notes or transcripts for the meeting the former Public Protector (Adv Madonsela) held with the SSA: why would you expect notes or transcripts for the Madonsela meeting with the SSA but not allow notes or recordings for your meeting with the SSA?
3. Why was Mr Nyembe described as a “Political Advisor”?
   1. Does the Public Protector have a Political Advisor?
   2. If yes, then why?
4. With regards to the proposals to amend the role of the South African Reserve Bank. Mr Mpofu put it to Mr Kekana that he could not deny that Mr Goodson was:
   * 1. Speaking with authority in his book
     2. Was well researched (referred to references)
     3. Was an expert in his field
5. Why was Mr Goodson selected as the expert?
6. Where did the suggestion to interview Mr Goodson come from?
7. In assessing the credibility of Mr Goodson was there not a duty to consider some of his other opinions and work, like his books: “Hendrik Verwoerd SA Greatest PM” and “An Illustrated Guide to Adolf Hitler and the Third Reich”, together with his denial of the Holocaust?
   1. If not, why not?
   2. If yes, how did his central banking expertise out-weight his other controversial positions?
8. If the CIEX investigation led you to conclude that Parliament should consider amending the Constitution in respect of the Reserve Bank’s role as a central bank did you consider researching for the expertise of other economics and central banking experts?
9. Did you consider taking advice, interviewing experts, from opposing viewpoints so that you could consider other opinions in formulating your remedial action?
   1. If not, why not?

**Evidence of Mr Samuel**

1. When did the PPSA get served with the summons for damages?
2. The email from Mr Nemisisi is dated November 2017 and alerts the PP and the CEO.
   1. 2017 is 6 years after the event?
   2. Did the summons get served for the first time 6 years after the incident?

**Evidence of Mr Neshunzi**

1. With regards to Mr Moodley at the SSA – he was regarded as an IT “whizz-kid” and presented a new case management system.
   1. Why was he regarded by you as an “economist”?
   2. Why did you rely on Mr Moodley for the drafting of the proposed constitutional amendment?
2. Who replaced Mr Neshunzi as Security Manager?
   1. What is the replacement’s relationship with the PP?

**Evidence of Mr Pillay**

1. When you exercised your discretion in terms of Sec 6(9) to investigate a 2010 matter what were the “special circumstances” that informed that decision?
2. With regards to the OIGI report – why did you not disclose, expressly, that you had possession or sight of the report?

**Evidence of Mr Sithole**

1. Why did you get a legal opinion on the use of crowd funding for the personal legal costs awards against you?
2. With regards to the Vrede Dairy matter and the OUTA documents of 13 July 2017 – what happened to the OUTA Report?
3. Mr Paul Ngobeni was disbarred from practising as an attorney in the USA – why was he appointed to give advice?

**Questions of a general natures (Legal Argument):**

1. In your evidence you raise questions about the courts making findings against you, in the various review applications, instead of referring the matters back to you for reconsideration:
2. What is the legal rule on this?
3. When the courts review and set aside decisions (i) when do they refer the matter back to the decision-maker for reconsideration and (ii) when do they review and set aside the finding or decision without doing so?
4. Have you analysed the extent to which the Nkandla Judgment, which made the PP’s remedial action binding, resulted in a number of your reports being taken on review – can you argue, with evidence, that previous public protectors’ reports were not subject to the same level of scrutiny because their remedial action was, at the time, regarded as a recommendation only?
5. Prior to the Nkandla Judgment were EMEA reports, and their recommendations of remedial action, also mere recommendations or was EMEA remedial action binding?

**END OF QUESTIONS BY MR HERRON**

# PART B - Questions from Mr Kevin Mileham (Democratic Alliance)

**General**

1. Do you agree that Parliament - the National Assembly - is not obliged to follow the exact recommendations of the Independent Panel? That it has the right and the authority to make up its own mind in this regard?
2. Isn't this exactly what happened recently with the S89 committee into the Phala Phala matter, where there was a clear recommendation, but Parliament decided on a different approach?
3. Accordingly, doesn't that mean that Parliament is not obliged to limit itself strictly to the recommendation of the Independent Panel, but could indeed implement the original motion unaltered?
4. You indicated that this impeachment enquiry was an original process - in that it was something that has never been done before. Would you agree that there are going to be learnings about the process along the way?
5. And that therefore, the rules for process were bound to be a work in progress?
6. Do you acknowledge that this committee has, at every turn, attempted to reconcile the need for fairness with the need to make progress on this matter? If not, why not?
7. Do you deny the right and/or authority of Parliament to hold you accountable and, if necessary, dismiss you from office, through an appropriate parliamentary process?
8. Do you agree that the rules for the impeachment process are separate from and subordinate to the constitutional provision for the removal from office of the head of a Chapter 9 institution, contained in s194?
9. Would you then agree that the matter of retrospectivity that you raise is one of process, rather than one of fact and your fitness to hold office?
10. Has anyone prevented you from investigating any matter? Particularly with regard to the so-called "untouchables"?
11. Isn't it a fact that you completed your investigations unhindered, but were found to be incompetent and/or ignorant of the law when those investigation reports were taken on review?
12. Isn't it true that the Supreme Court of Appeal ordered you to hand over your "application for the post of Analyst: Domestic Branch: DBO1 in the State Security Agency ... by no later than 1 April 2021" to Glynnis Breytenbach MP, and that you did not do so, resulting in your defamation case against Breytenbach remaining dormant since then?
13. Do you further acknowledge that you are in contempt of a court order in this regard?
14. You spoke about the appointment of a panel of attorneys being one of the reasons you obtained a clean audit. Is it not true that you gave a disproportionate amount of work to Seanego Attorneys as a percentage of the total amount billed by the panel of attorneys?
15. How would you respond to the allegation that your chosen attorneys had to align to a particular political ideology?
16. There is evidence before the committee that your initial responses to Parliament's rules for this process were drafted and/or advised by Paul Ngobeni, who isn't allowed to practice law in South Africa. What is your response to this?
17. Why did you instruct that Paul Ngobeni be briefed for a legal opinion?
18. Why did you instruct him to write articles critical of judges who had made adverse findings against you and/or approve such articles?
19. Were you aware that your own office had previously made an adverse finding against Paul Ngobeni and his fitness to provide legal services to government?
20. You made the point about your own registration with the Legal Practices Council. Are you aware that Mr. Ngobeni is not registered with the LPC? Did you check?

**Staff and PP Operations**

1. Since you started at the OPP, what is the staff turnover percentage?
2. Throughout this enquiry, Mr. Mpofu has tried to pin the blame on your subordinates for the fact that numerous reports issued by your office were set aside, or found to be factually and/or legally incorrect. Do you agree with that defense?
3. If so, doesn't that point a finger straight at you? After all, in signing off on them, either you didn't read them, or you didn't understand them?
4. Mr. Mpofu kept telling witnesses to take this inquiry seriously, as your career was at risk. But isn't it true that your leadership and management style has jeopardized numerous individuals' careers?
5. Would you agree that the public protector’s role is to be an impartial ombudsman? If so, what would you define as “impartial”?
6. When and where were advertisements placed for Mr. Nyembe’s positions ((i) as your special advisor and (ii) as your chief of staff)?
7. What process was followed in his appointment/s? How many applicants were considered in each case? Who conducted the interviews?
8. Do you acknowledge introducing Mr. Sibusiso Nyembe as your “political advisor”?
9. Would you agree that introducing Mr. Nyembe as your “political advisor”, and his own admissions on social media, call into question your impartiality?

**CR17/Bosasa**

1. According to Ms. Baloyi, the CR17 investigation was moved from the Office of the PP to “external investigators”. Who were these external investigators?
2. Ms. Baloyi noted that "The Public Protector is sometimes required to rely on external investigators to aid her with reports. But that is only when the skills or capacity are lacking in the office. That was not the case here. There was no legitimate reason why the complaints could not have been reviewed through the ordinary process." Why did you not permit the investigation to continue internally?
3. During your investigation of this matter, you interviewed Mr. Gavin Watson, who informed you that, in addition to donating to the CR17 campaign, he also donated to the NDZ campaign. Why did you not consider that important to note in the report, or referral for further investigation, given that you had found Mr. Ramaphosa implicated in “money-laundering”?
4. We have heard evidence that the CR17/Bosasa report was not subjected to quality control and that you exercised final review over it. That report was successfully challenged in court, and found to contain numerous factual and legal errors. Why should you not be held accountable for these issues?
5. Mr Mpofu made a big deal about how speedily you issued the Bosasa and SARS "Rogue Unit" reports. Would you agree that the lack of quality assurance and the rush to complete these contributed to their being found wanting by the courts?
6. We heard, from Ms. Thejane, that media briefings would be scheduled before the final report was signed off, resulting in pressure to complete internal processes timeously. Was that normal practice? Surely it makes more sense to finalize the report first, and then schedule the media briefing?
7. With regard to the CR17 matter: you found in your report that there was prima facie evidence of money laundering. Are you aware that legally, money laundering must involve the proceeds of a crime?
8. What crime was committed that gave rise to the funds in question?
9. Would you agree that in this case, your report was wrong in law and that there was no such prima facie evidence? For reference, I include the relevant portions of the judgment below:

*[110]  The Public Protector held in her report that the allegation made in the complaint of the leader of the official opposition had merit.  The complaint had stated that facts set out in it revealed a possibility of an improper relationship between the President and his family on the one side, and African Global Operations on the other, due to how the payment of R500 000 was made, which gave rise to a suspicion of money laundering.  According to this allegation, what raised suspicion was the manner in which the donation to the CR17 campaign was made. The evidence summarised in the Public Protector’s own report indicates that neither the President nor his family participated in the transfer of that amount.  The transfer was made by an employee of African Global Operations, on the instructions of its CEO, Mr Watson.  The R500 000 was part of the sum of R3 million which was transferred from Mr Watson’s personal account into the account of a company called Miotto Trading which belonged to the employee who was instructed to transfer R500 000 to a trust account held on behalf of the CR17 campaign.  It is puzzling that despite the evidence placed before her, the Public Protector would conclude that the allegation has merit.*

*[111]  It appears that she disregarded all that evidence and reached a conclusion that was devoid of any factual foundation. The Constitution and relevant legislation require that the Public Protector must conduct proper investigations, rightly evaluate the evidence placed before her and make findings which are supported by established facts. Here the Public Protector’s approach falls short of this standard.  I agree with the following observation by the High Court:*

*“Clearly the Public Protector had no foundation in fact and in law to arrive at her finding that the President had involved himself in illegal activities sufficient to evoke a suspicion of money laundering.  In addition the Public Protector based her finding on legislation that has nothing to do with the offence of money laundering.  The conclusion is inescapable that in dealing with this issue the Public Protector completely failed to properly analyse and understand the facts and evidence at her disposal.  She also showed a complete lack of basic knowledge of the law and its application.  She clearly did not acquaint herself with the relevant law that actually defines and establishes the offence of money laundering before making serious unsubstantiated findings of money laundering against a duly elected head of state.  Had she been diligent she would not have arrived at the conclusion she did.”*

Furthermore, the Concourt held that:

*[112]  But the absence of facts is not the only defect.  The Public Protector once again misconstrued the empowering legislation. The complaints to her were made in terms of section 4 of the Members Act which stipulates that the complaints should relate to an alleged breach of the Code.  The Code does not refer to money laundering and yet the Public Protector treated the allegation as separate and dedicated a large portion of the report to addressing it and making a finding specifically on it.  It appears that the Public Protector was aware that the Members Act did not empower her to investigate the money laundering allegation and she invoked the Prevention and Combating of Corrupt Activities Act*[*[42]*](http://www.saflii.org/za/cases/ZACC/2021/19.html#_ftn42)*(PCCA), whose specific provisions were cited and interpreted in her report.*

*[113]  The Public Protector’s report concludes its analysis of the PCCA by stating:*

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

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

*[114]  Having interpreted the PCCA, the Public Protector concluded that it criminalises corrupt activities and other forms of organised and financial crimes including money laundering. But as the High Court rightly pointed out, the PCCA does not create the crime of money laundering.  Before us, counsel for the Public Protector attempted to explain this as the innocent reference to the incorrect Act.  There is no merit in this submission.  The report quotes extensively from the provisions of the PCCA which the Public Protector interpreted to be criminalising financial crimes including money laundering.  This illustrates plainly that she misconstrued the PCCA.  In fact, a reading of the report shows that she equated money laundering to corruption and bribery.*

*[115]  Having investigated the money laundering allegations, the Public Protector decided to dispose of them in terms of*[*section 6(4)(c)(i)*](http://www.saflii.org/za/legis/num_act/ppa1994199/index.html#s6)*of the*[*Public Protector Act.*](http://www.saflii.org/za/legis/num_act/ppa1994199/)[*[44*](http://www.saflii.org/za/cases/ZACC/2021/19.html#_ftn44)*]  Once more the Public Protector overlooked the fact that this provision is triggered where the facts disclose the commission of an offence during the course of dealing with a matter that properly falls within her competence.  This disclosure must occur at any time, before, during or after an investigation of an issue listed in*[*section 6(4).*](http://www.saflii.org/za/legis/num_act/ppa1994199/index.html#s6)*Money laundering is not one of the matters listed in*[*section 6(4)*](http://www.saflii.org/za/legis/num_act/ppa1994199/index.html#s6)*as falling within the competence of the Public Protector.  And apart from specified offences under the PCCA, crime is not reported to the Public Protector for investigation.  The Constitution empowers the police service to investigate crime. Yet here the Public Protector undertook to investigate an allegation on money laundering made by the leader of the official opposition.  This differs from stumbling upon money laundering facts during an investigation.*

*[116]   With regard to the allegation that the President and his family were involved in illegal activities that gave rise to the suspicion of money laundering, the High Court held that the finding lacked legal and factual foundation.  This conclusion is unassailable.*

1. Jaftha J, in the Concourt, held that:

[*83]  In the entire report the Public Protector has not even once referred to any evidence that indicates that the President benefitted personally from the CR17 campaign donations.  The absence of such evidence was expressly raised in the representations made by the President in response to the interim report.  As recorded in the final report, the President had submitted:*

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

*[84]  In rejecting this argument, the Public Protector did not refer to a single piece of evidence which showed that the President had in fact received money or a personal benefit from the CR17 campaign. Instead she stated:*

*“I have also established that some of the donors to the CR17 campaign could have been doing business with the state, and just like AGO (Bosasa) with several long-standing government contracts, stood to benefit substantial financial returns from such big government contracts.  However, the risk in these circumstances is the potential that we would be having a President that would be beholden to such donors, thereby causing the manifestation of capture of the state.*

*It is therefore against such potential capture, that all South African state functionaries, including the Executive, should guard against exposing themselves to a situation involving the risk of a conflict between their official responsibilities and private interests in violation of section 96 of the Constitution.*

*President Ramaphosa at the time of receipt of the donations, was the Deputy President of the Republic of South Africa and a Member of Parliament.  He was therefore bound by the Code of Ethical Conduct and Disclosure of Members’ Interest for Assembly and Permanent Council Members, to declare such financial interest.”*

Do you acknowledge that your finding was fundamentally flawed and that there was no personal benefit to the President?

1. You indicated that you supported the minority viewpoint of former CJ Mogoeng Mogoeng in the CR 17 judgement. Do you acknowledge that this is a merely an opinion and has no force of law?
2. Do you agree with it in its entirety? Specifically, do you agree with his statement that:

*"There can be no doubt that the Public Protector was wrong in certain respects.  For that, she deserves to be dealt with appropriately.  And it is for this reason that I have to reiterate my support for Jafta J’s assertion that she went overboard in making the supervisory order against the Police, the National Prosecuting Authority and Parliament.  It was wrong of her to conclude that the President deliberately misled Parliament, and to use “wilful” and “inadvertent” interchangeably when the two are mutually exclusive.  The same applies to aspects of her remedial action, alluded to above, that manifest some overzealousness."*

1. Mr. Mataboge gave evidence to this committee that he had used the correct terminology with regard to the Executive Ethics Code, and that you subsequently changed it, or had it changed, on the basis of a legal opinion drafted by Paul Ngobeni. Do you dispute this?
2. Did you not, in your replying affidavit to the President's challenge of your report, admit that this was an error on your part?
3. Your suggestion that Adv Madonsela had utilised the same version (i.e. the 2007 version) is not supported by the wording of her 2016 Secure in Comfort report - the so-called Nkandla report.

*"While his conduct could accordingly be legitimately construed as misleading Parliament, it appears to have been a bona fide mistake and I am accordingly unable to find that his conduct was in violation of paragraph 2 of the Executive Ethics Code. His statement is also consistent with those made by the Ministers of Public Works throughout the public outcry over the Nkandla expenditure. I am accordingly unable to find that his conduct was in violation of paragraph 2 of the Executive Ethics Code."*

Does that suggest to you that the 2007 version was the one used by her? Especially considering that the 2007 version specifically references to "deliberately and inadvertently mislead".

1. You indicated that you had previously used the 2007 version of the Executive Ethics Code in the Des van Rooyen matter and the Lynn Brown matter. Would you agree that this compounds your error, rather than excusing you?
2. You ordered the NDPP to investigate "prima facie" evidence of money-laundering in the CR17 accounts and report back to you. Would you agree that this very different from notification of a matter for investigation? Would you further agree that it is a clear breach of the principle of separation of powers, as the NPA is an independent body that makes its own determination on what it investigates?

For reference, your report states:

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

That is very different from how then PP Thuli Madonsela referred the issues for criminal prosecution in the State of Capture report, is it not?

*"8.11. The Public Protector, in terms of section 6 (4) (c) (i) of the Public Protector Act, brings to the notice of the National Prosecuting Authority and the DPCI those matters identified in this report where it appears crimes have been committed."*

1. In fact, you wrote to the NDPP, Shamila Batohi, stating that the order is a referral to the NPA, based on her opinion that the facts disclose a commission of an offence and that the order requiring the NDPP to submit a report for her approval is a logical and legal consequence.

*"The NDPP understands that response to mean that the Public Protector persists with the orders,"* Batohi's response reads. *"These orders impact on and infringe the constitutional and statutory mandate of the NPA to investigate and prosecute crime, free of supervision or interference by another party and without fear or favour."*

She further noted that the Public Protector's mandate in terms of the Constitution and the Public Protector Act is restricted to notifying the NPA of his or her opinion that the facts disclose the commission of an offence. Do you acknowledge that your order exceeds such a notification?

1. You indicated that it was an inadvertent mistake to refer to the Prevention and Combatting of Corrupt Activities Act, instead of the Prevention of Organized Crime Act. How does a mistake like that arise, if your reports are properly quality assured?
2. In your report, you do not merely refer to the Prevention and Combatting of Corrupt Activities Act or “mention it” as you said in your evidence in chief. Instead, you quote it extensively, at para 5.3.10.68 through para 5.3.10.71. How do you justify this as "inadvertent" and a mere referral to the incorrect legislation?

**Vrede Dairy**

1. At the meetings with Ace Magashule, in both situations, he was an implicated person. In both cases, you had private, unrecorded meetings with him, which you claim were unrelated to the matters under investigation. Do you stand by that claim?
2. Why would you meet with an implicated person privately, at a meeting organized expressly for the purposes of furthering the investigation by one of your senior investigators? Can you see how such meetings might be considered inappropriate?
3. If there was outstanding information that you sought from the DA or any government department, why did you not request such information prior to issuing the report?
4. You made a claim that this hearing was, in part, an attempt by the DA to get rid of you because you were fighting for the Gogo Dlaminis, and that the DA were/are a racist party who have no interest in economic justice or transformation. How do you justify this claim in light of the fact that it was the DA who brought the Vrede Dairy matter to the PP? And that it was your office who failed to interact with the beneficiaries - the real Gogo Dlaminis?
5. Do you still assert (as Mr. Mpofu did “with contempt”) that Mr. Sphelo Samuel was not present at the site visit to Vrede Dairy?
6. If there was no harm (as evidenced by your email in 2017) to using the information contained in the Gupta leaks, why did you not do so?
7. Why were the draft findings against Mr. Ace Magasule and Mr. Mosebenzi Zwane removed from the final report?
8. Why was the draft report not included in the Rule 53 record when this matter was taken on review?
9. Why did you cut short the interview with Mr. Magashule, when your investigator (Mr. Raedani) still had questions unanswered?
10. How do you explain the comment made by Mr. Raedani that “Before I could persist with questions, Mr Ndou and I were informed by the PP that we were excused from the meeting and directed to leave. The PP indicated that she wanted to "have a constructive discussion with the SG"?
11. Is it appropriate for the Public Protector to refer to the then premier of the Free State by his political party position (“SG”)? Doesn’t this indicate some form of political affiliation and bias towards this witness?

**CIEX**

1. In the CIEX matter, you had private meetings with former President Jacob Zuma, which you initially claimed "had nothing to do with the content or substance of the report". And yet you also confirmed that the handwritten notes of the meeting of & June 2017 reflect what was discussed at the meeting, and include remedial action on the CIEX matter. In fact, this is confirmed by the ConCourt in paragraph 202 of the SA Reserve Bank judgment. Why then should we believe you with regards to your meetings with Mr Magashule?
2. The CIEX matter was successfully challenged in the ConCourt. And not only did you concede in that case that your order that Parliament amend the Reserve Bank's constitutional mandate was unconstitutional, you were also hit with a personal costs order for dishonesty and bias in the investigation. How do you respond to this finding?
3. Have you, at any point since taking office as the Public Protector, taken instruction, suggestions or advice from the State Security Agency, or any of its operatives, officials, personnel or the Minister of State Security? If so, what was the nature of such instruction, suggestions or advice?
4. Why would you seek wording from an SSA official (Mr. Moodley) for a proposed Constitutional Amendment? Why not the Reserve Bank, academics or well-known economists?
5. Did you or your team at any time consult the SA Reserve Bank or any of its officials regarding the proposed change of mandate? If so, (i) who? and (ii) what were the inputs received from those consultations? If not, why?
6. Whose idea was it get a CFO seconded from the SSA?
7. What were the qualifications of Mr. Vusumuzi Menzelwa to serve as the CFO of the Office of the Public Protector?
8. Why was it necessary to get someone seconded from the SSA? Would it not make more sense to go the Department of Justice or even the Department of Finance?
9. During his cross-examination of Mr. Tyelela, Mr. Mpofu stated that “In order to mitigate that cost, the Public Protector proposed that, rather than employing someone, having lost the money paid to Mr Kaposa, to mitigate that, we should rather have a seconded person. Because if a person was seconded from a different department, then the cost would not accrue to the Public Protector's Office.” Do you agree with that statement?
10. How do you reconcile this assertion with the statement of Public Protector spokesperson Oupa Segalwe, who noted that "He (Menzelwa) was paid by the SSA. The PPSA later reimbursed the SSA."?
11. In his minority judgment on this matter, Mogoeng CJ noted:

*[64] The Public Protector got the law completely wrong by acting as if it was open to her to direct Parliament to amend the Constitution and even in a specific way. She, like any other citizen, could of course suggest, but most certainly could not take remedial action, to that effect.*

*[65] I believe it is context-specific. And that context is that not even this Court, with all its extensive powers, may effectively direct Parliament to amend the Constitution. Therefore, any endeavour to that end may rightly be criticised and dismissed as bereft of seriousness given the nature or intricacies of law-making or constitutional amendment and Parliament’s functional independence. The Public Protector’s remedial action was a known or predictable non-starter in legal circles. The Reserve Bank has access to the best of the best lawyers who could, as urgently as was considered necessary, have calmed their unnecessarily and unreasonably aroused nerves or jitters, and those of the markets, that there really was nothing to worry about. Sentiments and sensationalism aside, an objective, reasoned and calm approach to the Public Protector’s ill advised or overzealous proposal must inevitably lead to the conclusion that it was inconsequential, never posed any real, but only an imaginary, threat to the well-being of the Reserve Bank, and all other interested parties, including the reasonably informed economic forces or markets. The remedial action was bound to be set aside with ease. Unsurprisingly, the Public Protector did not even oppose its setting aside.* (my emphasis)

Do you agree with this assessment of your report?

**“Rogue Unit”**

1. Did you, at any time, have in your possession or under your control, the OIGI report?
2. At the time, were you authorised to have it in your possession? If so, who authorised such possession?
3. The Gauteng High Court noted that "the possession or use of a classified report would clearly constitute criminal conduct on the part of advocate Mkhwebane who, as a former State Security Agency operative, remains bound by national security and intelligence legislation.” Do you agree that this is a legal impediment to you possessing the document?
4. How do you reconcile this statement with Mr Mpofu’s assertion that there is “nothing in law” preventing you from possessing the report?
5. How was this document secured?
6. What is the current status of the copy of the OIGI report on which you relied? In other words, where is it currently and how is it stored?
7. Were there other classified documents in your possession or control? If so, what investigations did they relate to? Where did you source them?
8. Kindly advise whether there are any matters involving classified documents or information currently before your office?
9. Can you point to any investigations where such documents or information were considered and/or handled by your staff?
10. Noting that the various investigation reports into the so-called “Rogue Unit” were subsequently either discredited or withdrawn, on what basis did you rely on them?
11. Did you make any effort to verify the nature and purpose of the so-called “spy equipment” which you claim was used by the High-Risk Investigations Unit?
12. Did you at any point note that such equipment was purchased for and operated by other units within SARS and not the High-Risk Investigations Unit?
13. Do you concede that it was unfair for Mr. van Loggerenberg to be an implicated party in your report, and yet you had not availed yourself of reasonable measures to contact him or afford him *audi*? Especially in light of the fact that he and his attorneys of record had been in contact with your office on several occasions.
14. Why did you not contact Mr. van Loggerenberg through his attorneys?

**Conclusion**

1. There are essentially three basic aspects of inquiry as to whether you are competent to hold office as Public Protector. These are:
   1. Misconduct;
   2. Incompetence; and
   3. Ignorance of the law.

Ignoring the first, for the moment, and noting the comments of the various judgments against you, how would you plead to the second and third aspects? Why?

**END OF QUESTIONS BY MR MILEHAM**

# PART C - Questions from Ms Doris Dlakude (African National Congress)

**SARS Unit Report**

1. Part of your finding in the report relied on the Office of the Inspector General of Intelligence (OIGI) report. You further made remedial action to the effect that the NPA must implement the OIGI report. Did you confirm the authenticity and/or veracity of the contents of this report before making your findings?
2. In **para 334** of your affidavit, you indicate that no where did you say in your report that you did not see the OIGI report. You indicate in the report that “…*Apparently the then Inspector-General, Adv Faith Radebe, conducted an investigation on the intelligence unit within SARS and issued a report on 31 October 2014, which I was reliably informed that it was in the custody of the former Minister of State Security, Ms Dipuo Letsatsi-Duba from whom I tried to get a declassified copy of the report without success”.* It is quite explicit that you do not acknowledge that you have seen or have possession of the classified report, in maintaining the integrity of the investigation, the PPSA, and the report. Why didn’t you disclose this in the report as you made remedial actions pertaining to it?
3. What was the reason for not putting the information before the court that you had possession of and you had seen the report, understanding that courts take decisions based on the information before it?
   1. In **para 5.2.29** of the report, you indicate that, “*I had also subpoenaed the Minister... for submission of the report which led to a meeting with her on 15 February 2019. At the said meeting, the Minister undertook to request her Director-General to avail a declassified copy of the report to my office. I have yet to receive the report as promised”.* At no point do you acknowledge that you have possession of the classified report nor do you acknowledge that you have seen it. Why didn’t you indicate that you informed the Minister that you had possession of the classified report?
   2. You further go on at **para 5.2.30** “As per my letter dated 25 June 2019, I will be requesting the new Minister of State Security... to avail the declassified report to my office”. Why did you seek to get a declassified copy of the report?
4. In your s 7(9) notice and other engagements to with Mr Gordhan you did not make mention of any remedial action directed at the Minister of State Security relating to the classified IGI report.
   1. Why did you not mention this to Mr Gordhan?
   2. On what legal basis did you rely not to do so?
5. Why did you insist that the IGI report be implemented by the Minister of State Security yet still seek that the OIGI furnish your office with the declassified report? This can be found in **para** **8.3.1 and 8.3.3** of your report.
6. Do you believe you were lawfully in possession of the IGI report? **If yes** please lay out the legal basis upon which you rely, and **if not** why did you use it to take remedial action knowing you possessed it unlawfully?
7. Adv Jay Govender deposed an affidavit indicating that at no point did she nor Dr Dintwe have sight of the report you had in your possession as per your discussions on 31 January 2019. In other words, they did not authenticate the report you had (**see paragraphs 6, 11 & 14 of affidavit**).
   1. How certain are you that the report that was in your possession, was the same as the report the OIGI and Minister had in their possession?
   2. What was the legal and factual basis for relying on the contents of the report when this had not been authenticated by the OIGI?

1. In terms of section 4 of the Protection of Information Act 84 of 1982, it is unlawful to possess or disseminate a classified report. It is common cause that the report was not declassified at the time you were conducting your investigation. You were advised of this by the OIGI and further requested to surrender the report. Why did you continue to possess the report while you were warned of the unlawfulness of possessing the report? (**see paragraph 12 of Jay Govender affidavi**t) What is the legal basis upon which you relied to possess the report notwithstanding its classification?

**END OF QUESTIONS BY MS DLAKUDE**

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# PART D - Questions from Mr Bhekizwe Nkosi (African National Congress)

**SARS UNIT MATTER**

1. In terms of section 6(9) of the PP Act you may not entertain a complaint more than two years after the event at issue, except where special circumstances existed prompting you to exercise your discretion. There was an extraordinary time lapse when you decided to investigate the SARS unit matter. What were the specific special circumstances that existed that justified your investigating the matter? Please list the facts and basis on which you relied on to assert jurisdiction over the complaint.
2. Mr Pillay gave evidence before the committee that you failed to provide him with the opportunity to respond to the proposed remedial action you took against him. Why did you not provide Mr Pillay with the opportunity to respond to your proposed remedial action in terms of the audi alteram partem rule of natural justice?
3. Mr Pillay gave evidence that he had a meeting with you wherein you questioned his matric qualification which he clarified to you that he did possess a matric certificate, yet in your report **para 5.6.26**, you found that he did not possess a degree nor a matric certificate or the necessary qualifications to be appointed deputy commissioner of Sars. On what factual basis did you arrive at the conclusion that he did not possess a matric certificate or the necessary qualifications?
4. What were the requirements of the position for you to conclude he did not possess the necessary qualifications?
5. How was your conclusion rationally connected to the information before you?
6. It is common cause that you did not interview the anonymous whistle-blower on the allegations made in this matter. What were the reasons for not interviewing the whistle-blower and how did you authenticate the information you received from the whistle-blower?
7. It is common cause that on 3 April 2016, the Sunday Times that initially started reporting on the SARS Investigating Unit, withdrew all its publications on the unit, and rendered an apology, acknowledging that the stories were rife with errors and misinformation. When investigating the matter did you at any moment take this into account? What contradicting information did you have before you so as to dismiss this acknowledgment of falsity by the Sunday Times?
8. At **Para 331** in your affidavit, you express that you treated the Nugent report the same as all the other reports, however, Judge Nugent found that there was nothing in the report that persuaded the commission that Adv Sikhakhane was correct to conclude that the Unit was unlawful. In addition, Adv Sikhakhane was asked to elaborate on his finding but simply reiterated his position as articulated in the report. What was the basis for rejecting and /or ignoring this finding by the Nugent Commission?
9. You indicate in your affidavit **(para 332)** that the Sikhakhane report was not set aside neither was the KPMG report, however, the authors of the KPMG report withdrew the contents thereof and indicated that the conclusions, recommendations, and legal opinions in the report should not be relied on. What was the basis for using and accepting some of the information in the findings of this report even though the writers of the report disavowed it?
10. You made findings that at **para 7.4.5** in your report indicating that the Sikhakhane report including the Gene Ravele dossier confirms that Mr Gordhan played a role in the recruitment of the individual who became manager of the unit. However, Mr Ravele before the Nugent Commission described the unlawfulness of the Unit as “*hogwash*”.
11. Did you interview Mr Ravele to determine the factual basis of his Dossier in contradistinction to his evidence at the Nugent Commission?
12. Did you, at any moment, consider the utterance he made about the Unit at the Nugent Commission dismissing the rogue unit narrative?
13. What was the legal basis and rationality upon which you relied to give notices [s 7(9)] to Mr Gordhan on YouTube and not directly to him or through his attorneys? Secondly, is it standard practice in the Office of the PP to give notices to implicated on social media/ platforms?
14. Do you believe that the approach you took was in keeping with the decorum demanded of a Chapter 9 institution?
15. Mr Mataboge indicated in his evidence that you did not interview nor request an affidavit from any one of the members of the unit nor any other interested parties like Mr Peega, Mr Manyike or Mr Modiane, when conducting your investigation. What are the reasons for not doing so?
16. How did you determine the unlawfulness of the activities of the unit when you did not interview any of its members? What were the facts that you relied on in this regard to arrive at that conclusion?
17. In the evidence of Mr Mateboge, it became apparent that the report done on the SARS unit matter was evaluated by external counsel.
    * 1. Does this not undermine the independence of the PPSA?
      2. Substantiate why you needed to do so?
      3. What is the purpose of having internal quality assurance mechanism within the PPSA when these were not utilized?
      4. Did this not amount to fruitless and wasteful expenditure?

**CR17**

1. You made findings that there is prima facie evidence of money laundering regarding the CR17 donations. What is the factual and legal basis for arriving at this conclusion?
   1. Do you know what was the source of the money for you to conclude that money laundering was at play?
   2. The court admonished you for conflating the PRECCA and POCA which regulate money laundering.
2. The evidence we received from witnesses is that final reports are signed off by you after quality assuring them. Did you at any moment confirm whether money laundering is regulated by PRECCA as you found in your report? Did you at any point satisfy yourself that the contents of the report were correct?

**End of Questions from Mr Bhekizwe Nkosi**

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# PART E - Questions from Ms Heloise Denner (Freedom Front Plus)

**USE OF CONSULTANTS AND EXTRNAL LEGAL PRACTITIONERS**

1. How did Paul Ngobeni, who is apparently not allowed to practice law in South Africa, come to be involved at the Office of the Public Protector?
2. Did Paul Ngobeni provide the legal advice that led to the use of the 2007 Executive Code of Ethics, that added the “inadvertently”-word, which mislead parliament, in the CR17 / Bosasa report?
3. Did the office of the Public Protector make use of advocate Dali Mpofu’s services while under your tenure and if so for what purposes and at what cost?
4. On how many occasions was Paul Ngobeni used for consultation work? On what did he consult? What was the cost of this consultation work?
5. On how many occasions was Kim Heller contracted for consultation work? What did she consult on? What was the cost of the consultation work?

**VREDE DAIRY**

1. The previous Public Protector, Adv. Madonsela confirmed that she did not release a preliminary report of the Vrede Dairy investigation, but that the investigation did take into account the role played by certain politicians in the debacle. Yet, the final report omits the involvement of said politicians. Did you narrow the scope of the investigation after taking over the office as Public Protector and if so, why?
2. Why was the proposed remedial action in the draft report on the Vrede Dairy investigation materially altered?

**GENERAL**

1. Why did you pay for articles written by people such as one of your so-called legal advisors, Mr. Paul Ngobeni with the specific purpose of “bashing” the judiciary?
2. Was the purpose of this judiciary-bashing exercise an attempt to disguise findings of incompetence on your part by said judges?
3. Have you, as Public Protector, always acted in a procedurally and substantively fair manner towards all the staff in your office and organisation during your tenure?
4. Did you break all ties with National Intelligence when you took up your position as Public Protector at the start of your tenure?
5. What is the nature of your relationship with Kasi Broadcasting?

**End of Questions from Ms Heloise Denner**

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# PART F - Questions from Mr Boyce Maneli (African National Congress)

**SARS UNIT MATTER**

1. On the SARS Investigative Unit matter in **para 5.3.34** and **7.3** of your report, you find that SARS Investigative Unit engaged in the unlawful procurement of intelligence equipment. In para **7.3.2** you draw this conclusion from the alleged failure by SARS to provide you with records of procurement. How then did you make the conclusions you made on procurement when there was outstanding information or evidence relevant to the investigation? What evidence was produced of such equipment?
2. In **para 344** of your affidavit, you rely on Ms Mvuyana ‘s evidence relating to your investigators having sight of the spy equipment. Why was this not reflected in your report? What was the reason for indicating in your report that SARS failed to provide you with records of procurement if you relied on Ms Mvuyana’s evidence?
3. You are required by law, in terms of the *audi alteram partem* rule, to extend the opportunity to make representations, to individuals who may have adverse findings made against them. You did not extend this to Mr Pillay and Mr Gorhdan. What were the reasons for this?
4. What were the reasons for not providing Mr Gordhan and Mr Pillay the OIGI report to make submissions on when you relied on it to make your findings and take remedial action?
5. What was the factual basis upon which you relied to find that Mr Magashula had perjured himself and thereby referred him to the NPA for investigation?
6. In **para 8.5.1** of your report, you took remedial action that the Commissioner of SAPS must within 60 days commence investigations into criminal conduct by Messrs Gordhan and Pillay and officials involved in the SARS Investigative Unit for violation of section 209 of the Constitution and section 3 of the National Strategic Intelligence Act. Neither of these provisions creates a criminal offence. What was the legal and factual basis for this remedial action? Where did you derive the powers and what was the rationale to direct that investigations be commenced within a certain timeframe by other institutions?
7. Ms Mvuyana testified that she was a drafter and investigator of the report, however, she was not part of the team that assisted counsel to prepare answering affidavits. What was the reason for this as she sought to take responsibility for the report and the flaws in it?
8. Ms Myuvana gave evidence indicating that you incorporated a submission received from Mr Manyike into the report. She indicated that this was not done under oath, and you did not interview him. What did you do to authenticate and/or verify the information received from Mr Manyike?
9. Why did you reject the evidence of Mr Pillay and Mr Gordhan which was under oath and accepted the evidence of Mr Manyike that was not under oath?
10. Ms Mvuyana confirmed that the report did not go through the Think Tank to assess the quality of the report. She indicated that the decision not to have the report taken through the normal structure of quality assurance rested with you. What were the reasons for not having the report go through the normal structures such as the Think Tank?

**CIEX REPORT**

1. In the CIEX report, you recommended that a process that will result in a constitutional amendment should be initiated by the Chairperson of the Portfolio Committee on Justice and Correctional Services. You went as far as prescribing the text. In your evidence, you outlined what it was that you were trying to achieve.
2. The remedial action ordered delved into the policy-making space which is not within the function of the Office. Do you think that this act was ultra vires and that someone with your knowledge, understanding, and position should have known this and reasonably foreseen the consequences and refrained from it? Kindly elaborate.
3. Do you think that you misinterpreted the powers of the Public Protector?
4. For a Chapter Nine institution, which has a specific mandate, was it appropriate to interfere with the mandate of the South African Reserve Bank?
5. The Public Protector has a constitutional duty to act independently and impartially. According to Adv Van der Merwe’s evidence, when he was requested to prepare a submission on behalf of the institution to the Constitutional Review Committee, he cautioned that the drafts would effectively amount to the support of the political agenda of a specific party (Ubuntu Party). This is upon his realisation that the draft proposals were a manifesto of a political party. Considering the constitutional duty of independence of the Office and how the policy articulation found its way into the CIEX report, how do respond to this? Did you reconcile with the facts presented to you by Adv Van der Merwe? If so, why did you insist on directing that the Constitution be amended? If not, why? This is considering the implications this remedial action had for the country?
6. Mr Kekana provided evidence (**See para 26-28 of Kekana affidavit**) indicating that the wording in the final CIEX report regarding the amendment of the Constitution came from the SSA and not the PPSA. Did you apply yourself to the wording received from the SSA?
7. Why did you permit another state institution to write a remedial for your office? Noting that you did not dispute this in your affidavit (see para 54 of your affidavit). Does this not undermine the independence and impartiality of the PPSA?
8. In your evidence in **para 32**, you concede that you did not recirculate the provisional report and indicate that “*with the benefit of hindsight, it may well be so that after making all the adjustments from the inputs received it would have been a good idea to revise the provisional report and recirculate it to the parties.”*  You also indicate that your failure to do so did not stem from any ill intent.As genuine as your intentions may have been, as a legally trained person with the requisite skills and experience, how did you reconcile your intention with the required basic legal principle of law that “both sides must be heard”?
9. The constitutional court took exception with you not having granted the SARB the opportunity to make representations as agreed with them. Why did you renege on this undertaking? Does this not undermine the integrity and standard expected of the PPSA?

**End of Questions from Mr Boyce Maneli**

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# PART G - Questions from Ms Marie Sukers (African Christian Democratic Party)

**Paragraph 10 of Charge 4**

1. In respect of evidence heard in relation to paragraph 10 of charge 4- misconduct, the Committee heard about *audi* letters being issued. Adv. Mpofu asked Ms. Baloyi in 'cross-examination' if she was "saying there was an *audi* environment for example. In other words, there was an environment of obeying the rule of natural justice.”
   1. Do you agree with the above- characterisation and what is your description of the nature of an *audi* letter?
   2. Which policy or prescript of the PPSA make provision for the issuing of an *audi* letter? What does it provide?
   3. If provision is not made in any policy or prescript for the issuing of an "*audi* letter" why did it not and why was this, then still used?
   4. Did you take any steps to formalise the *audi* process to ensure everyone understood and shared the view that this was a form of natural justice?
   5. A number of witnesses stated that the *audi* culture was feared and impacted negatively on staff morale. Were you aware of that and if so how did you try to manage this?
2. If an employee in the PPSA is of the view that you are abusing your office, who should they report this to and how?
3. Does or did a whistle blower's line exist at the office of the PP and how are or were calls to that line handled? If there was not such a line, why was that so?
4. What systems were in place within the PPSA to protect staff, the public and public funds against abuse of the office by a Public Protector?

**General- Role and accountability of a Public Protector**

1. The public protector's role can be described as an "apex" guardian. Would you agree and please elaborate if you choose?
2. Parliament is the "upper guardian" of the office of the Public Protector. Do you agree and if not, why not?
3. What measure or steps have you personally taken to ensure that methods are in place to allow staff to report to guardian institutions (be it Parliament or any other institution as you may have identified above)?
4. If such measures were not in place is there a responsibility on you as the PP to have put such measures into place to guard against possible abuse of the office by yourself?
5. The PP is a human being who can make errors or mistakes. Do you believe you put proper mechanisms in place to ensure proper quality control to minimise the possibility of errors? If so, what were these?

**Para 11.2 of Charge 4**

1. What mechanisms exist in the PPSA to ensure these litigation decisions (including the decision to appeal a judgement) are prudent and do not lead to a waste of funds? Were there any structures to ensure that the PP was not making these decisions alone and that there was regard to prospects of success and availability of funds to litigate?

**Evidence of Mr Van Loggerenberg – SARS Unit Report**

1. Is it your view there was nothing wrong with the way the investigation pertaining to Mr. van Loggerenberg unfolded?

**Motive for your impeachment and the manner in which the impeachment process has been handled**

1. The impeachment has been described as a DA and ANC witch-hunt by you because you touched the ‘untouchables’. You have stated that the media is against you, that there are staff members within the PP who are disgruntled individuals who do not have genuine grievances and that some judges harbour "professional jealousy" towards you "because "they think I want to be a judge."
   1. Do you believe that there is a co-ordinated campaign against you that involves all these role players i.e the media, certain staff members, certain political parties and some of the judiciary?
   2. If there is such a coordinated campaign against you what is the benefit to these role-players, who is spearheading and co-ordinating this effort and who initiated it or on whose instructions is it happening?
2. As the head of the institution do you see the defence of this impeachment hearing as part of your job as the head of the institution as opposed to a personal matter?
3. Would it be fair to say that you have worked closely with your legal team in mounting your defence?
4. Do you support the way in which your legal team has conducted your defence and how they treated the witnesses and the Committee?

**Evidence of Professor Madonsela**

1. As a matter of law (as opposed to good practice) must an affidavit be signed by the Commissioner of Oaths on every page? What is the authority for same?
2. Did you know this when Prof. Madonsela was being "cross-examined"?
3. If you did not know that an affidavit need not be signed on every page, is this not something that you as the Public Protector should know?
4. If you did know that an affidavit need not be signed on every page, then why did you not stop your counsel arguing this and wasting the committee's time and the public's money?

**End of Questions from Ms Marie Sukers**

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# PART H - Questions from Dr Mimmy Gondwe (Democratic Alliance)

**Evidence of Mr Johan van Loggerenberg- SARS Unit Matter**

1. Why did you have a meeting with Dr Dintwe and Adv Govender on 30 January 2019? What was the purpose of this meeting?
2. By the time you had the meeting with the OIGI on 30 January 2019, for how long had you been in possession of the classified OIGI report?
3. In the recording of the meeting held on 30 January 2019 with the OIGI we heard you say to Dr Dintwe and Adv Govendor “we didn’t just want to rely on the report dropped in our reception” with reference to the classified OIGI report you had in your possession - in saying this were you not admitting that you relied on the classified OIGI report to arrive at the findings made in the report of the OPP on the Unit?
4. In the recording of the same meeting, we heard you referring to the Unit as “rogue” and “as a monster that has to be destroyed” what did you mean by this? Why did you refer to the Unit as “rogue” during this meeting even though the report on the Unit had not been being finalised by the OPP at this stage?
5. You have previously stated that you believed that your possession of the OIGI report was lawful, if this was indeed the case why did you not then disclose the fact that you were in possession of the report to the SARS officials you investigated and in the relevant Rule 53 record?
6. In his evidence before the Enquiry Mr van Loggerenberg maintained that he submitted reams of evidence to the OPP which were not taken into consideration in the course of the investigation. He further maintains that he was not once heard by the OPP during the course of its investigation into the Unit – in fact his exact words were “I was disregarded as if I did not exist and was irrelevant” – please confirm why you disregarded Mr van Loggerenberg’s evidence despite him being an implicated party in terms of the investigation?

**Evidence of Tebogo Kekana- CIEX and VREDE**

1. Why did you allow Black Land First to make submissions, to the OPP, on the CIEX matter despite it not being involved in the matter?
2. Do you acknowledge writing to Mr Kekana in an email dated 10 April 2017 and instructing him to set up a meeting with Mr Stephen Goodson because “our remedial action might come from him”?
3. Why did you instruct Mr Kekana, on 10 April 2017, to set up a meeting with Mr Goodson?
4. Did your interactions with Mr Goodson in any way influence your findings in the CIEX report?
5. Was Mr Goodson an economist?
6. When you instructed Mr Kekana to set up a meeting with Mr Goodson in April 2017, were you, at the time, aware that Mr Goodson was a Holocaust denialist?
7. Why are there no notes or recording of the meeting held that you held with Minister of State Security on 3 May 2017 on the CIEX matter?
8. What was the purpose of the meeting that you held with the Minister of State Security on 3 May 2017?
9. Why did you have a meeting with Mr Maiendra “Mai” Moodley in June 2017 in relation to the CIEX report?
10. For how long have you known Mr Maiendra “Mai” Moodley and what is the nature of your relationship with Mr Moodley?
11. Please confirm if Mr Moodley is an economist?
12. Did you instruct Mr Kekana to insert a recommendation effectively altering the mandate of the Reserve Bank in the CIEX report?
13. Did Mr Moodley input the recommendation on altering the mandate of the Reserve Bank in the CIEX report?
14. Did your office conduct an investigation into the leaked preliminary report on the CIEX investigation? If yes, when was this investigation conducted and what were the outcomes of this investigation. If no, why was there no investigation conducted into the leaked preliminary CIEX report?
15. Your legal counsel has suggested that you sought the inputs of the SSA on the wording of the amendment in order to prevent the economic stability of the country and if this was the case why did you not also solicit inputs of the SARB or Treasury in this regard?
16. Does the inclusion of the recommendation ordering Parliament to amend the Constitution so that the mandate of the Reserve is altered, contained in the CIEX report, not undermine certain provisions of the Constitution, and also infringe on the powers of Parliament?
17. Did any of the findings in relation to the CIEX investigation, by the OPP, warrant a recommendation that the Constitution be amended to alter the mandate of the Reserve Bank? Please be specific and indicate which of the findings warranted or called for such a recommendation.
18. Did you instruct Mr Kekana and other investigators working on the Vrede Diary investigation to ignore information contained in the Gupta Leaks emails?
19. Why did the Vrede Diary report not take into consideration the information contained in the Gupta Leaks emails?

**Evidence of Mr Baldwin Neshundzhi**

1. Were you involved in the recruitment of Mr Neshunzhi as the Head of Security for the OPP?
2. Whom, in the OPP, organised for someone from the SSA to sit on the panel that appointed Mr Neshunzhi as the Head of Security for the OPP? Were you comfortable and happy with this arrangement?
3. Whom, in the OPP, wrote to Mr Fraser and requested that Mr Neshunzhi receive training on security breaches and security management with the SSA? Were you comfortable and happy with this arrangement?
4. Please describe your relationship with Mr Arthur Fraser and Mr Ramabulana? And confirm how you came to know them?
5. Did Mr Fraser or Mr Ramabulana occasionally provide advice to you on the affairs or operations of OPP? If yes, why would you need this advice and what sort of advice would they provide in this regard?
6. Whom, in the OPP, informed Mr Fraser about the incident involving the documentation from the Presidency that was subsequently leaked?
7. In what capacity did Mr Fraser call Mr Neshunzhi following this incident and told him he was failing in his duty to support you and should “pull up his socks”?
8. Did you require Mr Neshunzhi to regularly interact or engage with Mr Fraser as part and parcel of his duties as the Head of Security for the OPP?
9. Did you instruct Mr Neshundzhi to solicit the assistance of the SSA, more specifically that of Mr Moodley, in relation to the development of a case management system for the OPP?
10. How often would Mr Ramabulana and Mr Moodley attend meetings at the OPP and to what extent did you allow them to be involved in the affairs and operations of the OPP?
11. Why was Mr Mahlangu not able to obtain top secret security clearance?
12. Did his inability to obtain top secret security clearance present a problem for his continued employment at the OPP?
13. Did you suspect that Mr Neshunzhi had leaked the information about the inability of Mr Mahlangu to obtain top secret security clearance?
14. Did you ask Mr Neshunzhi to be your “eyes and ears” in the OPP? In other words, did you expect him to spy on the staff of the OPP on your behalf?

**Evidence of Adv Raedeni**

**Vrede Dairy**

1. Why did you instruct Mr Raedeni to re-investigate the Vrede Diary matter?
2. Did you instruct Adv Raedeni as well as other investigators working on finalising the Vrede Diary investigation report to remove the findings of financial misconduct made against politicians from the draft report?
3. Did you instruct Adv Raedeni and the other investigators working on finalising the Vrede Diary report to also remove photographs and the information on the inflated prices from the draft report?
4. Why did you excuse Adv Raedeni and Mr Mothupi from the meeting you held with Mr Magashule in relation to Vrede Diary investigation and the section 7(9) sent to him by the OPP?
5. Why did you not allow Adv Raedeni and Mr Mothupi to ask Mr Magashule any questions during this meeting?
6. Why did you effect last minute changes to the Vrede Diary report on the eve of the release of the report?
7. Why did you respond to say “aginandaba” when Adv Raedeni warned that the last-minute changes you wanted effected to the Vrede Diary report would result in a lot of criticism from commentators and legal experts?
8. Do you believe that you were unbiased, impartial and open minded in the manner in which you wanted the Vrede Diary investigation to be conducted by the OPP?

**Audi Letters and staff issues**

1. Whom, in the OPP, initiated the practice of issuing of *audi* letters to staff members?
2. Under which circumstances would *audi* letters be issued to staff members at the OPP?
3. Did you ever instruct a senior manager, at the OPP, to issue an *audi* letter to a staff member?
4. Did you ever instruct the CEO or senior managers, at the OPP, to institute disciplinary action against specific staff members?
5. Did you ban staff members, at the OPP, from watching specific news channels?
6. Why did you redeploy most of the people that you found in the private office of the PP to other units as soon as you assumed office in 2016?
7. How would you describe the working environment in the OPP under your leadership?
8. How would you describe your managerial or leadership style? Do you think your managerial or leadership style fostered a healthy and toxic free environment at the OPP?

**Think Tank**

1. When and why did you abolish the Think Tank?

**Kevin Malunga**

1. What roles and responsibilities did the former DPP Adv Kevin Malunga assume under your leadership?
2. Why did you exclude the former DPP Adv Malunga from taking part in the smaller and more exclusive committee that subsequently replaced the Think Tank?

**Evidence of Ms Basani Baloyi**

1. Please explain the circumstances that led to Ms Baloyi exiting the employment of the OPP?
2. Prior to her exit from the OPP, was Ms Baloyi appraised of her performance during her probationary period or given reasonable guidance or assistance to enable her to successfully complete her probationary period?
3. Did Ms Baloyi underperform in terms of her duties and responsibilities at the OPP?
4. Did you instruct Mr Mahlangu to purge Ms Baloyi from the OPP?
5. Why did you, and not the CEO, initiate settlement discussions around Ms Baloyi’s exit from the OPP?
6. Did you send Ms Baloyi a text telling her not to trust Ms Mogaladi?
7. Did you and Mr Mahlangu victimise, intimidate or harass Ms Baloyi or any other staff member of the OPP? What motive would Ms Baloyi and others at the OPP have for accusing you and Mr Mahlangu of victimising, intimidating and harassing them?
8. Did you threaten to take disciplinary action against Ms Baloyi for failing to meet a deadline even though she had explained and provided proof that her daughter had taken seriously ill?
9. Why was Ms Baloyi removed from the BOSASA/CR17 investigation?
10. What was the impact of the long hours that investigators at the OPP were expected to work, on the quality of their investigations and reports?
11. Did you and Mr Mahlangu interfere in any of the investigations?
12. Were you and Mr Mahlangu motivated by ulterior motives in relation to how you wanted investigations conducted and reports written?
13. Why were you obsessed with eradicating the backlog of investigations and not with the quality of investigations and reports of the OPP?
14. Did you expect investigators to commit to unattainable or unrealistic deadlines in relation to eradication of the backlog of investigations?
15. Why did the OPP refuse to investigate the issue of the donations made to the NDZ campaign despite Mr Gavin Watson indicating during an interview that he made donations to both the CR17 campaign and the NDZ campaign?
16. Why did you involve yourself in operational and administrative matters in the OPP?

**Evidence of Ms Ponatshego Mogaladi**

1. Would you agree that factors such as the lack of human resources and the technical and complex nature of some of the investigations contributed towards the backlog of investigations at the OPP?
2. Were you aware that the complainant in the SARS Investigative Unit matter had a meeting with Ms Mogaladi on 8 December 2018 and in course of that meeting the complainant sent her a classified version of the OIGI report on the Unit via email and WhatsApp?
3. Why did you not inform Ms Mogaladi that you were in possession of the classified OIGI?
4. Why do you think you received the classified OIGI report after it was dropped at the reception of the OPP yet Ms Mogaladi received the same report via email and WhatsApp from the complainant?
5. Please confirm if it was legal for you to share the classified OIGI report with Mr Mataboge, the late Mr Nyembe and Mr Nkabinde and why you chose to share the report with them instead of Ms Mogaladi?
6. Please confirm if Mr Mataboge, Mr Nyembe and Mr Nkabinde all had top secret security clearance?
7. What was the average turn- around time, in the OPP, for GGI matters which are not only complex in nature but also politically sensitive?
8. Did you demand a report from Ms Mogaladi a day after her niece passed away?
9. Did you threaten the late Mr Madiba with disciplinary action after he failed to meet a deadline due to ill health?
10. Since you assumed office in 2016 as the PP, do you think you have consistently displayed the competency, professionalism and integrity that is required of one charged with leading an institution such as the OPP?

**Evidence of Mr Muntu Sithole**

1. Why was the Rule 53 record for the Vrede Diary investigation incomplete in that it excluded the documents submitted by OUTA as well as the information on the Gupta Leaks emails?
2. Did you instruct the investigators on that investigation to omit this information from the Rule 53 record?
3. Why did you on 18 April 2018 give the instruction that the opposition to all pending judicial review matters be withdrawn save for those that had already been allocated court hearing dates?
4. Whom, in the OPP, recommended that you engage the services of Mr Paul Ngobeni?
5. Please confirm if you instructed Seanego Attorneys to engage the services of Mr Ngobeni which services included writing and publishing articles in your defence on various websites.
6. Please explain the nature of the services that Mr Ngobeni provided to the OPP via Seanego Attorneys and how Mr Ngobeni came to provide these services.
7. Was the OPP aware that Mr Ngobeni is not registered with any bar in the country and as such not permitted to practice law let alone even provide legal advice in the country when it instructed Seanego to engage his services?
8. Please confirm if you agree with the idea first mooted by Mr Ngobeni and endorsed by the late Mr Nyembe around the reading of the Nkandla Judgment to mean that the OPP could institute legal action against government alleging that it was breaching the Constitution by failing to adequately fund the OPP?
9. Please explain how an opinion written by Mr Ngobeni on the CR17/BOSASA investigation found its way onto the letterhead of Seanego Attorneys.
10. Please explain how and why in July 2018 the OPP was billed R22 800 by Seanego Attorneys and R77 500 by Mr Ngobeni for assisting Seanego Attorneys to amend a legal opinion.
11. Please confirm why the courts in the CIEX, CASAC, SARS and Pravin Gordhan matters ordered personal costs orders against you in your personal capacity and not against the OPP.
12. Please confirm if you also shared the classified OIGI report with Mr Sithole.
13. Please confirm how many attorneys were engaged in relation to the CIEX matter and how much each of these attorneys were paid in this regard?

**Evidence of Mr Neels Van Der Merwe**

1. Please confirm if Ms Kim Heller and Professor Seepe provided “strategic communication services” for your benefit and if the OPP paid for these services via Seanego Attorneys?
2. Please also confirm why the communications department of the OPP, which was at the time staffed by 4 to 5 persons, could not have provided these “strategic communication services”?
3. Please confirm why you wrote an email to the late Mr Nyembe and requested that the costs quoted by Ms Heller and Prof Seepe of R120k for their services be broken down and Mr Ngobeni be involved in the provision of these services?
4. Why did you refer to Mr Ngobeni as “Adv Ngobeni” in some of the correspondence written by yourself?
5. Please confirm if the position of special advisor formed part of the staff complement of the OPP.
6. Is Mr Muntu Sithole, the Manager for Legal Services at the OPP, an admitted attorney with the right of appearance in a court of law?
7. The OPP spent close to R16 million litigating against Mr Gordhan; R3 million defending the Vrede report; R4,2 million defending the CR17/BOSASA matter; and R2 million litigating against Adv Glynnis Breytenbach (a matter which the OPP has no vested interest) – please confirm how and why of these costs were justified in the circumstances.
8. Please confirm whom initiated Project Promise which concerned the development of an electronic case management system for the OPP by the SSA? Also confirm the total cost of Project Promise and if the SSA stood to benefit from this amount.
9. Please explain the nature of Mr Moodley’s involvement in Project Promise? Please also confirm who else from the SSA was involved in Project Promise?
10. Please confirm why Project Promise was later abandoned?
11. Please confirm if the OPP currently has an electronic management system and who developed the system behalf of the OPP and how much the OPP spent on this system.

**Evidence of Mr Rodney Mataboge**

1. You sent an email to Mr Mataboge, in relation to the Gordhan/Pillay matter, in which you stated amongst other things that Mr Pravin Gordhan “must face his day in court on 8 November” and that he was “a threat to democracy” and “must be stopped before he causes more harm under the guise of cleaning up”. Please explain what you meant when you stated this in an email to Mr Mataboge.
2. Please confirm if this email was not tantamount to an instruction to Mr Mataboge and other investigators working on the matter to ensure that they arrived at a particular and predetermined conclusion in relation to their investigation on the matter.
3. Which SC were you referring to when you instructed that the CR17/BOSASA draft report be shared with “SC” and Mr Mataboge responded to say he agreed with you?
4. Why did you not question the fact that not a single person belonging to the SARS Investigative Unit was interviewed by the OPP in the course of its investigation into the matter?
5. Did the rules of natural justice and the audi partem rule not necessitate that the OPP hear from all the affected parties including persons belonging to the Unit?
6. Why was the meeting with Mr Flyod Shivambu, of December 2018, not recorded or minuted so that it can form part of the Rule 53 record for the investigation on the Unit?
7. Why were you not concerned that the meeting, in question, was not recorded or minuted as per the usual practice in the OPP?
8. Why did the complaint by the anonymous whistle blower; the OIGI report and the Nugent Commission report not form part of the Rule 53 record for the investigation into the Unit?
9. Were you not concerned that they did not form part of the Rule 53 record?

**End of Questions from Dr Mimmy Gondwe**

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# PART I - Questions from Ms Violet Siwela (African National Congress)

1. Does the PP regard herself as having to wage war against certain politicians, requiring moves on a *chess board*? If not what was the reason for the use of the word in text message to Ms Baloyi relating to investigations involving Mr. Gordhan Is this a proper approach for PP to take, or is it tantamount to misconduct?
2. The PP sought Mr. Ngobeni’s assistance in respect of the Gordhan-related litigation, i.e the “rogue” unit litigation even though Mr. Ngobeni had previously taken the view that Mr Gordhan was a “*serial offender*” and advised the PP to inform the public about serious matters in the pipeline relating to Mr. Gordhan which was under investigation. Is that not a reflection of a lack of independence and impartiality tantamount to misconduct?
3. Your report relies heavily on the Sikhakhane Report in making your findings, relating to the SARS investigative unit. What was the factual basis for relying on this report to reach your conclusions? Notwithstanding the apology and withdrawal on Judge kroon in endorsing the Sikhakhane Report you still relied on this, what connecting information was before you to insist on relying on the report?
4. In relation to the application of the executive ethics court as a matter of law even if the PP's predecessor relied on the 2007 executive ethics code as she testified, and irrespective of what the CC may have been led to believe in the Nkandla matter, is it not so that before this committee the PP testified orally under oath that the 2000 code was the correct law and the applicable law and on her written affidavit also under oath that the 2000 code was repealed by the 2007 code is this not a contradiction?
5. It appeared from the evidence of Mr. Mataboge that the PP directed him to refer to the opinion of Mr. Ngobeni provided on Mr. Seanego’s letterhead in preparing the section 7(9) notice and in doing so she expressly directed him to refer to the wrong 2007 code rather than the correct 2000 code on the basis of Mr. Ngobeni's opinion, and not as alleged based on any purported reliance put on the 2007 code by Prof Madonsela or any CC judgment. Why should the committee not reach the conclusion that the PP was deliberate in using the wrong code with a particular outcome in mind and therefore misconducted herself?
6. Given that the PP has admitted to several errors made in the investigation of the complaints against the President to this Committee and that there are others apparent that emerge from other cases including getting laws wrong. On what basis can the judiciary be blamed for reviewing and setting aside these PP reports in particular those that reflect a failure repeatedly to give implicated parties hearing?
7. The PP has consistently in her evidence compared herself to a judge indicating that other judges had not been impeached for getting the law wrong and therefore she should also not be impeached. Does the PP think that this comparison is helpful to this Committee as it misses the point entirely as this process is not about what others did or whether they had been held to account in a particular manner and that the test to be applied by this Committee is not a comparative exercise but to consider whether in the context of the motion there is incompetence or misconduct?

7.1. Is it the PPs position that even if she committed misconduct because her predecessors also made some of the same mistakes the PP should not be sanctioned? [to do a comparative analogy it's like a thief saying why should I go to jail for theft when I am caught tried and convicted when other people also steal and are never caught or not convicted on what basis can this be construed as a bona fide defence}?

1. Before the PP can rely on the Mail and Guardian case to follow the evidence and uncover the truth she must have the power to investigate first. Money laundering is a crime that the SAPS has the power to investigate. Does the PP not know that she does not have the power to investigate crimes? On what basis did the PP make a finding regarding the crime of money laundering having been committed by the President? Where do you believe you derived the powers from? Should Mr. Maimane not have been told to take his suspicions of money laundering to SAPS because the PP has no powers to investigate rather than the PP embarking on such an investigation?
2. The PP indicated in her evidence that she found suspicions of money laundering because monies were being transferred between different accounts. Irrespective of the number of accounts involved it does not in and of itself form part of the definition of the crime of money laundering and that the PP got the law wrong in thinking that it did and still says to this Committee that she was correct in her finding.
3. The PP admitted to the Committee that she made a mistake in relying on the Prevention and Combating of Corrupt Activities Act, so, how could she and can she still have prima facie suspicions of money laundering when she relied on the wrong law to come to that conclusion?
4. Given all the mistakes in the CR17 report as highlighted in both the High Court and the Constitutional Court does that not in and of itself reflect incompetence? If the PP relied of the advice of counsel in this regard, is it not a reflection of incompetence on the part of counsel rather than an excuse for getting the law wrong?
5. You have indicated on several occasions that the President has undertaken technical defenses in challenging the CR 17 report in his court papers should that be understood to be defenses such as a “*new hearing*”, “*no jurisdiction”* and “*errors of law*” being committed if so does it apply equally to the PP as it does to other litigants? if not why?
6. The PP takes exception with the President having taken technical defenses in her court papers, does this mean that the PP will not rely on technical defenses to avoid accountability but will answer the questions of the Committee and evidence leaders and not deliberately misconstrue them and allow the committee to conclude its work?

**End of Questions from Ms Violet Siwela**

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# PART J - Questions from Ms Manketsi Tlhape (African National Congress)

1. In the evidence of Adv Van der Merwe, he indicated that the you had rigid deadlines but were not inflexible in the face of good reasons. Ms Mogaladi gave evidence that her niece was in hospital and yet was asked for reports. Ms Basani Baloyi also gave evidence to the effect that her child was in hospital and worked while she was in hospital. The reasons for not meeting deadlines were communicated to the PP. The PP, gave evidence that she has shown compassion to her members of the organisation. The evidence of the said witnesses and her own evidence seem contradictory. Does the PP not believe that her approach was heavy-handed and therefore may be concluded as intimidating?
2. You pride yourself in having significantly reduced the backlog of cases. This is something which cannot be disputed as the evidence speaks for itself; and is indeed commendable. Can you confidently say that, through your leadership, you were able to effectively and diligently balance the reduction of backlogs while producing reports of a high quality? Bearing in mind that the courts have made some scathing remarks.
3. In your evidence, you indicated that this inquiry is based on, inter alia, a few court judgments as a result of a few reports which were taken on review. The argument you have advanced is that the greater part of the reports produced have not been set aside. As we know, many people who approach the Public Protector SA do not have resources and rely on the institution to fight their cause. Those parties who have challenged your reports are those who have the necessary resources. The courts have made scathing remarks on your understanding of the law. It could well be that some of the reports produced which affect the poorest of the poor had errors but because they were unchallenged, remain valid. Kindly comment.
4. Part of your remedial action in this matter related to your directing the Special investigations unit (SIU) to reopen its investigation and recover the misappropriated public funds from ABSA. What was the rational basis for taking such remedial action? How did you connect this to the facts before you?
5. When the PP consistency fails to grant commonplace hearing of two affected parties can a court be blamed for concluding that it was deliberate and conclude when looking at it together with other grounds that the PP was biased in the manner in which she conducted her investigation?
6. What role should mutual cooperation and intergovernmental relations play when the PP is being asked to allow input or comments before reports are finalized?
7. When Mr. Pillay testified he gave evidence of another case findings were again made against him without any Audi and the report was set aside, yet knowing that such Audi was not given the PP persists in lodging appeals only for the higher courts to dismiss these appeals.Does the PP accept that there is a cost of taking these matters with no prospects of success on appeal repeatedly and that these costs are incurred at the expense of the institution and are fruitless and wasteful?
8. In paragraph 60 of your written statement you indicate that “*during the investigation there was a further uncontested e-mail from president Ramaphosa to a person named Donald*” was it not the PPs oral evidence to the committee that the emails were not given to the President and that a further section 7(9)notice should have been issued but was not so issued and that this was a lesson to be learned for the future?
   1. if so and the president was not given Audi in relation thereto it means that the president was not afforded any opportunity to contest this before the PP finalized her report so why does the PP say it's “uncontested”?
   2. Is this statement not untrue and misleading to the committee?
   3. if the PP says that the statement is incorrect she is to correct it and also to advise, when and how did the people get this e-mail?
   4. Was it relied on for the report? what did the PP do to authenticate it before so relying on it?
   5. how does the committee know that the PP had it authenticated before relying on it for purposes of the report? is it not so that in accordance with what the male and guardian judgment says about investigations the PP is enjoined to follow up on the e-mail did she do so? what did she find out? who is the Donald referred to in the e-mail did the PP seek this out?
   6. The news24 article to which the PP referred the committee to indicated that he was possibly the President's private banker if that were so then the e-mail simply reflects that of the President is instructing his personal banker to put money into the Ria Tenda trust, if so precisely what is the relying on it for?

**End of Questions from Ms Manketsi Matlhape**

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# PART K - Questions from Mr Xola Nqola (African National Congress)

1. In the Gordhan / SARS unit, CR17 and Vrede matters where applications for leave to appeal persisted until ultimately dismissed by the Constitutional Court. This was despite the obvious grounds of review. It appears that the PP was taking legal advice from a third party, Mr Ngobeni, knowing he did not have a legal degree from South Africa. This was done secretly, save for a selected few at the PPSA, Seanego Inc, and certain counsel. In relation to the wrong EMEA being utilized; the misdirection that there were prospects of success in appealing the judgment of Judge Potterill; the misdirection that there were prospects in the application for leave to appeal in the Vrede matter and the rescission in the CR17 matter, could at the very least, emanated from the advice rendered by Mr Ngobeni?
2. Is it correct that that Mr Ngobeni’s services were engaged at the instruction of Adv Mkhwebane and that this was done in a manner that circumvented any procurement processes and for the ulterior purposes of writing media articles, provided to the PP to approve and which, inter alia, vilified members of the judiciary whom the PP is constitutionally obligated to respect and support, and those who criticize others PP?
3. Is it correct that the PP granted approval for such to be disseminated using “alliances to do so” even though some of those articles reflected a bias against politicians whom the PP is or could conceivably be asked to investigate?
4. Does the engagement, involvement and payments made to Mr Ngobeni at the behest of the PP not in itself amount to a contravention of the charges articulated in 11.2 and 11.3 of the motion?
5. It became apparent during the inquiry that the PP used the services of consultants in the form of Ms Kim Heller and Mr Sipho Seepe to conduct interviews and commentary to undermine court judgments and launch attacks on the judiciary. As an officer of the court do you believe your conduct is one expected of the holder of a public office?
6. What was the object for appointing Ms Kim Heller and Mr Sipho Seepe to conduct interviews and write posting on social media to attack the judiciary and subjects of your investigation at an amount of R120 000? Were Ms Kim Heller and Mr Sipho Seepe part of the panel of consultants at the PPSA?
7. Is it appropriate for the PP to instruct staff to do research on the judgments handed down by a judge, as was the case with Judge Potteril, and then engage third parties to write articles she approves of to vilify such judges in the public domain?
8. In your view can this be construed as misconduct – especially because the PP should be impartial and independent?
9. The presence of President Ramaphosa at fundraising Dinners, the singular donation of Mr. Watson and his presence at one dinner [Which he said was not a CR17 fundraiser] A few emails at a particular point in time appeared to be evident being deliberately misconstrued for purposes of coming to a particular outcome is that not what the core complaint is against the CR17 report, added to this is that the transfer of funds between several accounts does not constitute money laundering and that there was nothing unlawful in donors making huge contributions to the CR 17 campaign does not in and of itself constitute any wrongdoing or unlawful steps. As such Rationally of the PP should not as pointed out by the courts for these reasons and others have made findings against the president. Given the obvious and many misinterpretations, was the court not right in reaching the conclusions of bias?
10. The PP testified that she had already been “*mulct with a cost order*” and that the impeachment proceedings mean that she would be punished twice for the same offence. This would be in contravention of the double jeopardy principle. Can the PP confirm whether or not, to date, that she has paid any of the personal costs out of her own pocket?
11. Furthermore, the evidence before the committee was that other state bodies that have orders in their favour against the PPSA did not execute these orders. So even if the double jeopardy principle was of application and it appears from the report of the independent panel that it does not appear so, even if it was if the PP had not paid any cost on what basis can she even rely on double jeopardy principle?
    1. Regarding the cost award in respect of the CIEX matter that was executed was paid by crowdfunding and not by the PP. On what basis is it alleged that she had been punished twice when in fact there was no punishment?
    2. Was the PP entitled to use the funds of the PPSA to pay for a legal opinion on whether she personally could accept crowdfunding to pay the personal cost order against her? If so was this not an abuse of resources, especially because the cost of this opinion almost matched what had to be paid? Was this not an irregular expenditure? Was there value for money derived by the PPSA?
    3. Does the fact that the PP seeks to rely on double jeopardy not reflect the PP is not able to understand basic legal principles?
    4. In relation to the CR 17 matter the PP referred to a *News 24* article in bundle H which, when read in its entirety, showed that the journalist claimed to have verified certain information as contained in the emails. Did the PP do the same kind of verification? if so, why is such not apparent from the report? Is it available in the Rule 53 record? if not, can it be said that there were no steps taken to follow up, verify or investigate any of the evidence contained on the emails?
12. Were steps taken to verify the contents of the emails or the accuracy thereof prior to relying on them for purposes of the CR17 report? If so, what steps were taken? If not, why not?
13. Why was such great reliance placed on President Ramaphosa speaking at dinners when it would not be known who at those dinners would-be donors and how much they would be given as they can only be construed as potential to donors?
14. Was it not an indication of incompetence alternatively misconduct to continue using the 2007 code despite courts telling the PP it was the wrong law and where this was indeed so was readily ascertainable with regard to the government Gazette? if it is common cause that the 2000 code is the correct code then surely the PP in attributing what can only be interpreted as an improper motive to the President for relying on the incorrect law as the PP does in paragraph 292 of her part one statement is an indication that the courts were entirely correct in attributing bias to her?
15. In her oral evidence before the committee the PP testified that there was *massive confusion* as to whether the 2000 code or the 2007 code was applicable. What was the cause of the confusion? Neither the courts nor the litigants who took their PP reports on review reflected confusion. They were cleared that the 2000 executive code applied given that the PP and those she directed such as the investigators were represented differently. This was not a reflection of any confusion but incompetence for not having confirmed the law even when the court indicated that the 2000 code applied. How do you respond to this? Could it be that reliance on the 2007 code was done deliberately?
16. How does the PP implicate the President of the country and his family as the PP report is not limited to the President’s son, to whom no section 7(9) notice was issued, in a crime when she could not establish what the law is that set out the crime?

**End of Questions from Mr Xola Nqola**

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# PART L - Questions from Ms Jane Mananiso (African National Congress)

1. You place heavy reliance on the minority judgment of CJ Mogoeng for the purpose of reaching the conclusion that the PP’s findings were “*neither farfetched or irrational*”. Given the lack of status of a minority judgment, why should the committee have any regard to it?
   1. Given that the majority disagrees with him does it not stand to reason that Mogoeng’s reasoning, were flawed where he differed with the majority?
   2. There was much evidence before this committee as to who received the funds from the CR17 campaign. Did this form part of the complaint?
   3. Why was this relevant? Was there any proof that the President had any part in deciding who got the funds?
   4. Did the PP investigate any of this or interview any of the recipients? If not, then is referring to it not simply a ploy given that among those who were paid from the CR17 Campaign were members of the ANC and was it an attempt to cause embarrassment? Why did you infer that the funding of CR17 gave rise to some sort of state capture, how did you arrive at such findings with no evidence to support them? Is this consistent with conducting an investigation without fear, favor or prejudice when you make far-reaching conclusions not supported by evidence?
2. In your investigations relating to the main causes related to the charges i.e. SARS/ Gordhan, CIEX, VREDE, FSCA, and CR 17 matters. You have never outrightly come out to accept the shortcomings highlighted in this judgment in terms of the manner in which the report was done, rather you sought to rely on minority Judgements to justify your approach and findings. Do you still maintain that the investigations relating to those reports that were set aside are beyond reproach? Is there anything that you believe you could have done different relating to the reports?
3. A number of employees of the PPSA gave evidence before this committee to the effect that Audi letter were weaponized and used to intimidate employees. Ms Mogaladi was disciplined and suspended regarding the FSCA Tsidi matter which was set aside by the High Court, however, the same treatment was not extended to Ms Myuvana and Mr Mataboge. The courts have severely admonished you for the manner in which you made errors of law and misconstruing facts as well as not doing your due diligence relating to the matters they handled, have you ever taken disciplinary action against Ms Mvuyana and Mr Mataboge? Do you think you treated everyone fairly and equally?
   1. Why have you characterized the employees who came to assist the committee with its work as disgruntled? Some of the employees expressed that the manner in which they felt victimized had a negative impact on their mental health and general morale of staff, considering all this evidence is there anything that you think you could have done differently? Do you accept that the environment that was created of fear and intimidation as attested to in the committee at the PPSA is indicative of your inability to manage the internal affairs of the PPSA and create a conducive environment for employees of the PPSA?
4. An independent panel as per the constitutional requirement found there was a prima facie case of misconduct and incompetence that you have to answer to, you have indicated in your affidavit that this is a witch hunt without substantially indicating the basis thereof except for indicting that you took on the untouchables without effectively responding to the facts of the alleged prima facie evidence. Why are you interpreting this process as a witch hunt rather than a process to vindicate you from wrongdoing? Don’t you think parliament has a constitutional responsibility to hold you accountable for your conduct?
5. Do you think you upheld the principles of management, leadership governance, and ethics in the manner in which you conducted your investigations relating to the reports that are before this committee? If yes what is the basis upon which you believe so if no, how did you learn from these reports and judgements to improve the manner in which your management investigations in the PPSA?

**End of Questions from Ms Jane Mananiso**

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**END OF ALL MEMBER QUESTIONS**