

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



**PUBLIC PROTECTOR  
SOUTH AFRICA**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE  
EXECUTIVE MEMBERS ETHICS CODE AND THE SOUTH AFRICAN CITIZENSHIP ACT  
88 OF 1995 BY THE FORMER MINISTER OF HOME AFFAIRS, MR. MALUSI  
KNOWLEDGE GIGABA, MP**

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## Executive Summary

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector Act, 1994.
- (ii) The report relates to an investigation into the alleged violation of the Constitution, the South African Citizenship Act 88 of 1995 (the South African Citizenship Act), the Executive Ethics Code published by proclamation in terms of section 2(1) of Executive Members' Ethics Act, 1998, Government Gazette: No 21399 Notice No 41 Regulation 6853 and the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members, 2014 ("the Code") by the former Minister of Home Affairs, Mr. Malusi Knowledge Gigaba, MP (Minister Gigaba).
- (iii) The investigation originates from two (2) complaints lodged in terms of section 4(1)(a) of the Executive Members' Ethics Act, 1998 [Act No. 82 of 1998], by the Democratic Alliance Member of Parliament, Mr Haniff Hoosen (Mr Hoosen, MP) and the Economic Freedom Fighters Member of Parliament, Mr Nyiko Floyd Shivambu (Mr Shivambu, MP) on 3 November 2017 and 13 March 2018 respectively.
- (iv) In his complaint, Mr Hoosen alleged that Minister Gigaba failed to comply with the provisions of section 5(9)(b) of the South African Citizenship Act 88 of 1995, which requires the Minister of Home Affairs "*within 14 days after the commencement of the sittings of Parliament in each year*", to table in Parliament the names of persons granted South African citizenship because of "*under exceptional circumstances...*" and in doing so, violated the Executive Ethics Code, to which all Cabinet Members are bound.

- (v) On the other hand, Mr Shivambu, MP alleged that former Minister Gigaba abused the provisions of the South African Citizenship Amendment Act No 17 of 2010 when he granted his acquaintances, the Gupta family early naturalization.
- (vi) Further that, “*On the 6th of March 2018, Gigaba called a press conference to continue spreading fabrications and dishonesties regarding the Guptas’ citizenship status. Gigaba together with the DG of Home Affairs told the media that Mr. Atul an Ajay Gupta are not citizens of South Africa.*”
- (vii) **Based on the analysis of the complaint and the allegations contained therein, the following issues were identified to inform and focus the investigation:**
  - (a) Whether Minister Gigaba, in his capacity as Minister of Home Affairs, abused his powers afforded in terms of the South African Citizenship Amendment Act, 2010 when granting certificates of early naturalisation to his alleged acquaintances, Mr Ajay Gupta and family, without proper validation of the requisite exceptional circumstances;
  - (b) Whether Minister Gigaba, in his capacity as Minister of Home Affairs, failed to table in Parliament the names of those persons granted South African citizenship “...*under exceptional circumstances...*” contrary to section 5(9)(b) of the South African Citizenship Act, 1995, and in doing so violated the provisions of the Executive Ethics Code; and
  - (c) Whether Minister Gigaba misrepresented facts in a press conference held on 6 March 2018, when he informed the media that Mr. Atul and Ajay Gupta were not citizens of Republic of South Africa.
- (viii) The investigation process included the exchange of correspondence and documentation between the Public Protector and the former Minister of the Department of Home Affairs, Mr Malusi Gigaba, Mr. Richard Sikakane, Deputy

Director: Travel Documents and Citizenship, Mr N Ramashia, Chief Director: Back Office Status Service, Mr. Vusumusi Mkhize, the former Deputy Director-General, Mr Mkuseli Apleni, former Director-General and the Acting Director General of the Department of Home Affairs, Mr. Thulani Mavuso as well as the application of the relevant laws, regulatory framework and prescripts.

- (ix) Notices issued in terms of the provisions of section 7(4) and (5) of the Public Protector Act, 1994, were issued to the Deputy Director: Travel Documents and Citizenship: Department of Home Affairs, Mr. Richard Sikakane, the former Deputy Director-General: Department of Home Affairs, Mr. Vusumusi Mkhize, and the Acting Director General: Department of Home Affairs, Mr. Thulani Mavuso.
- (x) Key laws taken into account to determine whether former Minister Gigaba acted in violation of the Executive Ethics Code were principally the Constitution, the Executive Members` Ethics Act and Parliament Code of Ethics in particular:
  - (a) **The Constitution of the Republic of South Africa, 1996 [Act No. 108 of 1996]**, which provides that Members of the Cabinet must act in accordance with a code of ethics prescribed by national legislation.
    - (aa) In terms of section 195(1)(f) of the Constitution, public administration must be accountable
    - (b) **The Executive Members` Ethics Act, 1998 [Act 82 of 1998]**, which provides for a code of ethics governing ethical conduct of Members of the Cabinet, Deputy Ministers and Members of Provincial Executive Councils.
      - (aa) Section Paragraph 2.1 of the Executive Ethics Code which states that, “*Members [of the Executive] must... (a) perform their duties and exercise their powers diligently and honestly and (d) act in all respects in a manner that is consistent with the integrity of their office or the government.*”

- (bb) Paragraph 2.1(b) of the Executive Ethics Code which states that, “*Members must...fulfil all the obligations imposed upon them by the Constitution and law;*”
- (cc) Paragraph 2.3 of the Executive Ethics Code which states that, “*Members may not (b) act in a way that is inconsistent with their position*”.
- (c) **The South African Citizenship Amendment Act, 2010 [Act No. 17 of 2010]**, which states that the Minister may under exceptional circumstances grant a certificate of naturalisation as South African citizen to an applicant who does not comply with the requirements of subsection (1)(c) relating to residence or ordinary residence in the Republic.
- (d) **Regulations on the South African Citizenship Act, 1995**, which states that the period of ordinary residence referred to in section 5(1)(c) of the Act is ten (10) years immediately preceding the date of application for naturalisation.
- (aa) Sub-regulation (b) states that any person who lodges an application for naturalisation must, at the time of his or her application, not have been absent from the Republic for a period of more than 90 days in any year during the five-year period of ordinary residence immediately preceding the date of application for naturalisation.
- (bb) In terms of sub-regulation (c), any person who has been absent from the Republic for a period of more than 90 days in any year during the five-year period of ordinary residence immediately preceding the date of application for naturalisation does not qualify for naturalisation.
- (e) **The Public Service Regulations, 2001**, which states that an employee shall inter alia promote sound, efficient, effective, transparent and accountable administration;
- (f) **The Code of Ethical Conduct and Disclosure of Members’ Interests for Assembly and Council Members**, which outlines the minimum ethical standards of behaviour that South Africans expect of public representatives, including upholding propriety, integrity and ethical values in their conduct;

- (aa) Paragraph 4.1.3 of the Parliament Ethics Code, which provides that a Member of the Assembly must act on all occasions in accordance with the public trust placed upon them.
- (xi) **During the investigation of the matter, I made the following observations:**
- (a) Ms. Grace Naledi Mandisa Pandor was Minister of Home Affairs from 2012 to 2014, while Mr. Malusi Knowledge Gigaba served as Minister of Home Affairs from 2014 to 2017 and from 27 February 2018 until his resignation 13 November 2018.
- (b) I noted with concern that between the period of 2013 to 2017 both Ministers, failed to comply with the provisions of section 5(9)(b) of the South African Citizenship Act, 1995 which obligates them to submit the names of persons naturalised under exceptional circumstances, to the National Assembly every year within 14 days after commencement of the sittings of Parliament. (Own Emphasis)
- (c) The process of naturalisations in terms of Section 5(9)(a) of the South African Citizenship Act, 1995 appears to be inadequately regulated and as such, due diligence is compromised resulting in inadequate submissions by officials to Ministers. In this regard, Ministers are put at risk of exercising their discretion on insufficient information.
- (xii) Having regard to the evidence as well as the regulatory framework determining the standard that should have been complied with by the former Minister of Home Affairs and officials of the Department that were involved in the naturalisation of the Gupta family, I am making the following findings;
- (a) **Regarding whether Minister Gigaba, in his capacity as Minister of Home Affairs, abused his powers afforded in terms of the South African Citizenship Amendment Act, 2010 when granting certificates of early naturalisation to his**

**alleged acquaintances, Mr Ajay Gupta and family, without proper validation of the requisite exceptional circumstances**

- (aa) The allegation, that the former Minister Malusi Knowledge Gigaba "...abused his powers afforded in terms of the South African Citizenship Amendment Act, 2010 when granting certificates of early naturalisation to his alleged acquaintances, Mr Ajay Gupta and family, without proper validation of the requisite exceptional circumstances, **is unsubstantiated.**
- (bb) Section 5(9)(a) of the South African Citizenship Amendment Act, 2010 bestows upon Minister of Home Affairs, the discretion to waive the requirements of section 5(1)(c) if, in his opinion, exceptional circumstances exist that warrants the applicants continued residence within the Republic of South Africa.
- (cc) The information obtained during the investigation indicates that the former Minister exercised his discretion in terms of section 5(9) of the Act, to waive the requirements set out in section 5(1)(c) following him taking into consideration the motivation submitted by officials of the Department, who were responsible for processing the early naturalisation application of the Gupta family, namely, the Deputy Director: Travel Documents and Citizenship, Mr Richard Sikakane, the Chief Director, Back Office Status Services, Mr N Ramashia, the former Deputy Director-General, Mr Vusumuzi Mkhize and the former Director-General, Mr Mkuseli Apleni.
- (dd) It was established that the verification process, undertaken by the department, upon instructions of the Portfolio Committee on Home Affairs, revealed, material misrepresentations and inaccuracies with the information contained in the motivation, relied upon by the former Minister, in approving and granting the certificates for naturalisation in terms of section 5(9)(c) of the South African Citizenship Act, to Mr Ajay Gupta and family.

- (ee) It was further established that Home Affairs officials who were tasked with processing of the early naturalisation application of the Gupta family, failed to *inter alia*, exercise due diligence, in that, they failed to verify the accuracy of the information contained in the motivation which was relied upon by the former Minister, in approving and granting the certificates for naturalisation to Mr Ajay Gupta and family.
- (ff) In the circumstances, I find that the former Minister exercised his discretion in terms of the provisions of section 5(9) of the Act, and in the process did not abuse his powers. Nonetheless, I find that the failure by the officials of the Department to exercise due diligence and verify the accuracy of the information contained in the motivation which was relied upon by the former Minister amounts to maladministration and in violation section 195(1)(f) of the Constitution, 1996 and regulation C4.9 of the Public Service Regulations, 2001.
- (b) **Regarding whether Minister Gigaba, in the execution of his duties and functions, failed to table names in Parliament of persons who were granted South African citizenship under exceptional circumstances contrary to section 5(9)(b) of the South African Citizenship Amendment Act, 2010 [Act No 17 of 2010], and in doing so violated the provisions of the Executive Ethics Code;**
- (aa) The complaint that former Minister Gigaba acted in breach of the Executive Ethics Code when he failed to comply with the provision of section 5(9)(b) of the South African Citizenship Act, 1995, **is substantiated.**
- (bb) Former Minister Gigaba conceded to failing to submit the names of persons who were granted South African citizenship under exceptional circumstances to Parliament every year, as required in terms section 5(9)(b) of the South African Citizenship Act, 1995.
- (cc) By failing to comply with the provisions of section 5(9)(b), former Minister Gigaba violated the provisions of paragraph 2.1(b) of the Executive Ethics Code, which

provides that Members of the Executive must fulfil all the obligations imposed upon them by the Constitution and the law.

- (dd) Therefore, by breaching the above provisions of the Executive Ethics Code, former Minister Gigaba also violated section 96(1) of the Constitution, which provides that, “Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.”
- (c) **Regarding whether former Minister Gigaba misrepresented facts in a press conference held on 6 March 2018 when he informed the media that Mr. Atul and Ajay Gupta were not citizens of Republic of South Africa;**
- (aa) The allegation that former Minister Gigaba misrepresented facts in a press conference held on 6 March 2018 when he informed the media that Mr. Atul Kumar Gupta was not a citizen of Republic of South Africa, **is substantiated.**
- (bb) Former Minister Gigaba conceded to furnishing incorrect information during the aforesaid press conference and even though he rectified his error in a press briefing the following day, the former Minister broke the public trust placed upon him to which he was held to uphold in terms of Paragraph 4.1.3 of the Parliament Ethics Code.
- (cc) By misrepresenting the facts to the public, former Minister Gigaba contravened paragraph 4.1.3 of said Code.
- (dd) By dispensing inaccurate information on the citizenship status of Mr. Atul Gupta, former Minister Gigaba breached provisions of paragraph 2.1(a) and (d) and paragraph 2.3(b) of the Executive Ethics Code.
- (ee) Therefore, by breaching the Parliament Ethics Code and the Executive Ethics Code, former Minister Gigaba also violated section 96(1) of the Constitution.

- (ff) I could not find evidence indicating that the former Minister Gigaba misrepresented facts to the public through the media regarding the citizenship status of Mr. Ajay Gupta, as a consequence, I am not making a finding in this regard.
- (xiii) In light of the above findings, I am taking the following appropriate remedial action as contemplated in section 182(1)(c) of the Constitution, with a view to remedying the maladministration and improper conduct referred to in this report:
- (a) Notwithstanding the fact that I have made adverse findings against former Minister Gigaba, any remedial action I decide to take against him, as envisaged by section 182(1)(c) of the Constitution, 1996, would serve no judicious purpose, in light of the former Minister's resignation as Minister of Home Affairs on Tuesday, 13 November 2018 and as Member of Parliament on Thursday 15 November 2018, effective Tuesday, 13 November 2018.
- (b) **The Minister of Home Affairs, to;**
- (aa) Take cognisance of the findings on the improprieties identified in this report and ensure that such conduct is not repeated and appropriate corrective action is taken to prevent the recurrence of the improprieties referred to in this report;
- (bb) In line with the provision of section 23(f) of the South African Citizenship Amendment Act, 2010, the Minister must consider incorporating the following necessary regulations in order to ensure compliance and effective administration of section 5(9):
- i. A descriptive framework for "exceptional circumstances", which does not encroach on the Minister's discretion, but allows for a guideline to facilitate a fair and uniform approach;
  - ii. The applicant must provide a motivation which outlines the reasons why he must be considered for early naturalisation in terms of section 5(9)(a) of the South African

Citizenship Amendment Act, 2010 and substantiate his motivation with applicable and relevant evidence;

- iii. Ensure that the responsible officials within the Department of Home Affairs consider verifying the accuracy of the reasons provided in the motivation so as to present a submission with recommendations to the Minister which is based on verified facts; and
- iv. When presenting the list of approved early naturalisation applications for tabling to the Parliament of the Republic of South Africa in terms of section 5(9)(b) of the South African Citizenship Amendment Act, 2010, the Minister should consider attaching, in his/her submission, all relevant information and documentation considered for each case so as to satisfy Parliament of the deliberation behind each decision.

(c) **The Director-General of the Department of Home Affairs, to;**

- (aa) Take cognisance of the findings on the improprieties identified in this report and ensure that such conduct is not repeated and appropriate corrective action is taken to prevent the recurrence of the improprieties referred to in this report;
- (bb) Consider taking appropriate action against Departmental officials who were involved in the naturalisation of Mr Ajay Gupta and family for their failure to exercise due diligence by verifying the accuracy of the information contained in the motivation for early naturalisation which was relied upon by the former Minister, in approving and granting the certificates for naturalisation to Mr Ajay Gupta and family.

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE MEMBERS ETHICS CODE AND THE SOUTH AFRICAN CITIZENSHIP ACT 88 OF 1995 BY THE FORMER MINISTER OF HOME AFFAIRS, MR. MALUSI KNOWLEDGE GIGABA, MP**

**1. INTRODUCTION**

- 1.1. This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of section 3(2)(a) of the Executive Members' Ethics Act to the President of the Republic of South Africa, Mr Matamela Cyril Ramaphosa.
- 1.3. In terms of section 8(3) of the Public Protector Act 1994, the report is also submitted to the following people to note the outcome of my investigation:
  - 1.3.1. The Minister of Home Affairs, Dr Pakishe Aaron Motsoaledi,
  - 1.3.2. The Acting Director-General of the Department of Home Affairs, Mr Jackie McKay;
  - 1.3.3. The Complainants, Mr. Haniff Hoosen, MP of the Democratic Alliance (DA) and Mr. Nyiko Floyd Shivambu, MP of the Economic Freedom Fighters (EFF),
  - 1.3.4. The former Minister of Home Affairs, Mr. Malusi Knowledge Gigaba (former Minister Gigaba),
  - 1.3.5. Mr. Richard Sikakane, Deputy Director: Travel Documents and Citizenship, Mr. Vusumusi Mkhize, the former Deputy Director-General (DDG) and the Acting Director General (ADG) of the Department of Home Affairs, Mr. Thulani Mavuso.

- 1.4. The report relates to an investigation into the alleged violation of the South African Citizenship Act 88 of 1995 (the South African Citizenship Act), the Executive Ethics Code and the Executive Ethics Code and the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members, 2014 by the former Minister of Home Affairs, Mr. Gigaba.

## 2. THE COMPLAINT

- 2.1. The investigation originates from two (2) complaints lodged in terms of section 4(1)(a) of the Executive Members' Ethics Act, 1998 [Act No. 82 of 1998], by the Democratic Alliance Member of Parliament, Mr Haniff Hoosen (Mr Hoosen, MP) and the Economic Freedom Fighters Member of Parliament, Mr Nyiko Floyd Shivambu (Mr Shivambu, MP) on 3 November 2017 and 13 March 2018 respectively.
- 2.2. In terms of section 4(1)(a) of the Executive Members' Ethics Act, the Public Protector must investigate an alleged breach of the code of ethics on receipt of a complaint from the President, a Member of the National Assembly and a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister.
- 2.3. In his complaint, Mr Hoosen alleged the following;

*“Mr. Ajay Gupta and his family applied for naturalisation to the Department of Home Affairs in 2013. Mrs. A Gupta (mother) and Mrs. S Gupta (wife) did not meet the naturalisation requirements of the country due to the fact that they were outside the country for a length of time exceeding the prescribed 90 days per year within the last 5 years prior to their application.*

*Mr. Ajay Gupta and his two sons, Mr. K and S Singhala met the requirements for naturalisation but were rejected due to the rest of family failing to meet these requirements.*

*The family subsequently applied to Minister Gigaba, to get approval based on the exceptional circumstances clause in the South African Citizenship Act 88, however, this was only for the mother and wife and not for Ajay Gupta or his sons.*

*Minister Gigaba granted approval of their naturalisations on the 30th May 2015. Section 5(9)(b) of the South African Citizenship Act 88 of 1995, requires the Minister of Home Affairs “within 14 days after the commencement of the sittings of Parliament in each year”, to table in Parliament the names of persons granted South African citizenship because of “under exceptional circumstances...” and must include the reasons for the early granting of those citizenship.”*

2.4. Mr. Hoosen stated in his complaint that, *“In a letter this week from the Director General of the Department of Home Affairs, Mr. Mashile [Mr. Mkuseli Apleni], he states that: ‘It was an omission on the part of the department to not have tabled the names’ ”* (sic).

2.5. Mr. Hoosen therefore contends that Minister Gigaba failed to comply with the provisions of section 5(9) of the South African Citizenship Act, 1995 and in doing so, violated the Executive Ethics Code, to which all Cabinet Members are bound.

2.6. In his complaint, Mr Shivambu, MP alleged the following;

*“...Minister Gigaba who misled the Portfolio Committee on Home Affairs on the matter around the status of citizenship of members of the Gupta family. In July 2017, the Economic Freedom Fighters (EFF) received reliable information that Gigaba as Minister of Home Affairs unduly granted the Gupta family South African citizenship. After the departmental processes had essentially rejected the Guptas’ application, Gigaba abused the legislation clauses of the South African Citizenship Amendment Act No 17 of 2010, to favour his friends in a situation where there were absolutely no exceptional circumstances to bypass the law.*

*On the 6th of March 2018, Gigaba called a press conference to continue spreading fabrications and dishonesties regarding the Guptas' citizenship status. Gigaba together with the DG of Home Affairs told the media that Mr. Atul and Ajay Gupta are not citizens of South Africa.*

*Contrary to what Gigaba told the press conference, all evidence shows that Mr. Atul Kumar Gupta (ID Number: 6806145105080) and Rajesh Tony Gupta (ID Number: 7208056345087) appear on the Electoral Commission's voter registration roll, registered to vote at Saxonworld Primary School in Johannesburg, Gauteng.*

*According to Electoral Act No 73 of 1998 Section 6 (1), "any South African citizen in possession of an identity document may apply for registration as a voter..." For Mr. Atul Gupta to register as a voter, he had to have a South African green barcoded ID book (a South African Identity Document). In addition to appearing in the voters roll and being an ID book holder, Mr. Atul Gupta, who Gigaba lied and said he is not a citizen, has a South African passport (Passport Number: M00154401)"*

- 2.7. Mr Shivambu, MP therefore contends that Minister Gigaba abused his power as Minister of Home Affairs when he granted members of the Gupta family early naturalisation certificates.
- 2.8. He further contends that contrary to his continued '*fabrications*' and '*dishonesties*' in the media about the citizenship status of Mr. Atul and Ajay Gupta, *prima facie* evidence exist that they are in fact citizens of the Republic of South Africa.
- 2.9. Both complainants requested me to investigate their complaints.

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

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

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

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

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

*(b) to report on that conduct; and*

*(c) to take appropriate remedial action.”*

3.3. Section 182(2) directs that the Public Protector has the additional powers and functions prescribed by national legislation.

3.4. Section 4(1)(a) of the Executive Members` Ethics Act, provides *inter alia* that, the Public Protector “...*must investigate in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet Member or Deputy Minister...*”

3.5. These complaints were lodged by Members of the National Assembly against a Cabinet Member and therefore these complaints had to be investigated by the Public Protector.

3.6. In terms of section 3 of the Executive Members` Ethics Act, the Public Protector must submit a report on the alleged breach of the Executive Ethics Code by a Cabinet Member within 30 days of the receipt of the complaint. If the Public Protector reports at the end of this period that the investigation has not yet been completed, she must submit another report when the investigation has been completed.

- 3.7. The Public Protector accordingly reported to the President on 28 March 2018 that her investigation of the complaint had not been completed and that she would submit the report when it is finalised.
- 3.8. Section 3(5)(a) of the Executive Members` Ethics Act provides that the President must within a reasonable time, but not later than 14 days after receiving the report of the Public Protector, submit a copy thereof and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the National Assembly.
- 3.9. In the constitutional court, (in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016)*, Chief Justice Mogoeng stated the following, when confirming the powers the public protector:
- 3.9.1. Complaints are lodged with the Public Protector **to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles** (para 65);
- 3.9.2. An appropriate remedy must mean **an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced** (para 67);
- 3.9.3. Taking appropriate remedial action is much more significant than making a mere endeavor to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, **she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint** (para 68);

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

*optional, and whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”*

3.11. In the matter of the ***President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017)***, the Court held as follows:

3.11.1. *“The Public Protector, in appropriate circumstances, have the power to direct the president to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective; (paragraphs 85 and 152 of the judgment)*

3.11.2. *There is nothing in the Public Protector Act that prohibits the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4) (c) (ii) of the Public Protector Act; (paragraphs 91 and 92 of the judgment)*

3.11.3. *Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers; (paragraphs 100 and 101 of the judgment):*

3.11.3.1. *Conduct an investigation;*

3.11.3.2. *Report on that conduct; and*

3.11.3.3. *To take remedial action.*

3.11.4. *The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings; (paragraph 104 of the judgment)*

- 3.11.5. *The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court; (paragraph 105 of the judgment).*
- 3.11.6. *The fact that there is no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute prima facie findings that point to serious misconduct; and (paragraphs 107 and 108 of the Judgment).*
- 3.11.7. *Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action. (Paragraph 112 of the judgment).*
- 3.11.8. The Public Protector's power and jurisdiction to investigate the complaint and take appropriate remedial action was not disputed by Minister Gigaba.

## 4. THE INVESTIGATION

### 4.1. Methodology

- 4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

### 4.2. Approach to the investigation

- 4.2.1. The approach to the investigation included analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.
- 4.2.2. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

#### 4.2.2.1. What happened?

4.2.2.2. What should have happened?

4.2.2.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to a violation of the Executive Ethics Code?

4.2.2.4. In the event of a violation, what action should be taken?

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

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

4.3. **Based on the analysis of the complaint and the allegations contained therein, the following issues were identified to inform and focus the investigation:**

4.3.1. Whether Minister Gigaba, in his capacity as Minister of Home Affairs, abused his powers afforded in terms of the South African Citizenship Amendment Act, 2010 when granting certificates of early naturalisation to his alleged acquaintances, Mr Ajay Gupta and family, without proper validation of the requisite exceptional circumstances;

4.3.2. Whether Minister Gigaba, in the execution of his duties and functions, failed to table names in Parliament of persons who were granted South African citizenship under exceptional circumstances contrary to section 5(9)(b) of the

South African Citizenship Amendment Act, 2010 [Act No 17 of 2010], and in doing so violated the provisions of the Executive Ethics Code; and

4.3.3. Whether Minister Gigaba misrepresented facts in a press conference held on 6 March 2018 when he informed the media that Mr. Atul and Ajay Gupta were not citizens of Republic of South Africa.

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

##### 4.4.1. **Documents**

The relevant documents obtained and analysed were primarily:

4.4.1.1. Home Affairs: written reply signed on 21 April 2016: National Assembly Question no. 1007 asked by Mr. H. Hoosen (DA), MP to Minister Gigaba;

4.4.1.2. Home Affairs: written reply signed on 31 October 2016: National Assembly Question no. 2146 asked by Mr. H. Hoosen (DA), MP to Minister Gigaba;

4.4.1.3. List of approved early naturalization applications for 2016 and 2017 in terms of section 5(9) of the South African Citizenship Act, 1995 (Act No 88 of 1995)

4.4.1.4. Declaration of Renunciation of Indian Citizenship: Angoori Gupta, Passport No. Z2305944: Consulate General of India, Johannesburg; No S/4763/2015 dated 22 September 2015;

4.4.1.5. Declaration of Renunciation of Indian Citizenship: Shivani Gupta, Passport No. H8561539: Consulate General of India, Johannesburg; No S/4764/2015 dated 22 September 2015;

4.4.1.6. Declaration of Renunciation of Indian Citizenship: Kamal Kant Singhala, Passport No. H8557773: Consulate General of India, Johannesburg; No S/4765/2015 dated 22 September 2015;

- 4.4.1.7. Declaration of Renunciation of Indian Citizenship: Surya Kant Singhala, Passport No. K2868074: Consulate General of India, Johannesburg; No S/4766/2015 dated 22 September 2015;
- 4.4.1.8. Home Affairs: Application for early naturalization: Mr. AK Gupta and family signed 30 May 2015;
- 4.4.1.9. Home Affairs: Application for Certificate of naturalization: Adjudication Committee: Angoori Gupta, Ajay Kumar Gupta, Shivani Gupta, Kamal Kant Singhala and Surya Kant Singhala dated 23 December 2014;
- 4.4.1.10. Report on granting of naturalization to the Gupta family to the Chairperson of the Portfolio Committee on Home Affairs: Mr. L Mashile dated 22 June 2017;
- 4.4.1.11. Home Affairs: Media statement on naturalization of Ajay Gupta`s family, Atul Gupta and other members of the Gupta family dated 7 March 2018;
- 4.4.1.12. Home Affairs: Letter to Mr. AK Gupta and family: Granting of early naturalization, dated 30 May 2015;
- 4.4.1.13. Home Affairs: Letter to Mr. Lemias Mashile, MP, Chairperson of the Portfolio Committee on Home Affairs: Evidence of Gupta family investments and charitable contributions in support of the naturalization of the Gupta family, submitted as per request of the Portfolio Committee on Home Affairs, dated 07 February 2018;
- 4.4.1.14. Oakbay Investments (Proprietary) Limited: Letter to Minister Gigaba: Early naturalization request dated 29 April 2015;
- 4.4.1.15. Oakbay Investments (Proprietary) Limited: Letter to Mr. Mkuseli Apleni: Request for further clarity on submitted documents, dated 26 February 2018;

4.4.1.16. Memorandum of association and Articles of association of a company having a share capital: Oakbay Investments (Proprietary) Limited; 2006/017975/07 dated 6 June 2006;

4.4.1.17. Certificate of Incorporation of a Company having a share capital: Oakbay Investments (Proprietary) Limited; 2006/017975/07 dated 8 June 2006;

#### 4.4.2. **Correspondence sent and received**

4.4.2.1. Letter to Minister Malusi Gigaba from the Public Protector, dated 30 January 2018 requesting his response to the complaint received from Mr. Hoosein, MP;

4.4.2.2. Letter to President Ramaphosa from the Public Protector, dated 30 January 2018 informing him of the complaint received from Mr. Hoosein, MP;

4.4.2.3. Response received from Minister Malusi Gigaba addressed to the Public Protector, dated 15 March 2018 [Hoosein];

4.4.2.4. Letter to Mr. Shivambu from the Public Protector, dated 13 March 2018 acknowledging receipt of his complaint;

4.4.2.5. Letter to Minister Malusi Gigaba from the Public Protector, dated 12 April 2018 requesting his response to the complaint received from Mr. Shivambu, MP;

4.4.2.6. Letter to President Ramaphosa from the Public Protector, dated 12 April 2018 informing him of the complaint received from Mr. Shivambu, MP;

4.4.2.7. Response received from Minister Malusi Gigaba addressed to the Public Protector, dated 09 May 2018 [Shivambu];

4.4.2.8. A notice in terms of section 7(9)(a) of the Public Protector Act, 1994 issued on Minister Gigaba, dated 16 October 2018 [Hoosen];

4.4.2.9. A second notice in terms of section 7(9)(a) of the Public Protector Act, 1994 issued on Minister Gigaba, dated 16 October 2018 [Shivambu];

4.4.2.10. Response received from Minister Gigaba to both of the Public Protector's section 7(9) notices, dated 2 November 2018.

4.4.2.11. Subpoenas issued to Mr. Richard Sikakane, Deputy Director: Travel Documents and Citizenship, Mr. Vusumusi Mkhize, the former Deputy Director-General (DDG) and the Acting Director General (ADG) of the Department of Home Affairs, Mr. Thulani Mavuso, dated 25 January 2019,

4.4.2.12. Notices in terms of section 7(9)(a) of the Public Protector Act, 1994 issued on the following officials and former officials of the Department of Home Affairs, dated 27 February 2020;

4.4.2.12.1. Mr. Richard Sikakane, Deputy Director: Travel Documents and Citizenship,

4.4.2.12.2. Mr N Ramashia, Chief Director: Back Office Status Service,

4.4.2.12.3. Mr. Vusumusi Mkhize, the former Deputy Director-General (DDG),

4.4.2.12.4. Mr Mkuseli Apleni, former Director-General (DG)

4.4.2.13. Correspondence received on the aforesaid notices from the Office of the State Attorney on 11 March 2020, requesting an extension until 20 March 2020.

#### 4.4.3. **Interview conducted**

4.4.3.1. The Public Protector interviewed Minister Gigaba and the Director General of the Department of Home Affairs and Mr Mkuseli Apleni, on 12 March 2018 upon request of Minister Gigaba.

4.4.3.2. The Office of the Public Protector interviewed Mr. Richard Sikakane on 7 February 2019, Mr. Vusumusi Mkhize on 19 February 2019 and the former Acting Director-General, Mr. Thulani Mavuso on 20 February 2019.

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

4.4.4.1. <https://www.timeslive.co.za/politics/2017-06-27-gigaba-did-nothing-wrong-in-gupta-naturalisation-home-affairs-director-general>; *“Gigaba did nothing wrong in Gupta naturalisation: home affairs director general”* by Babalo Ndenze, 27 June 2017,

4.4.4.2. <https://businesstech.co.za/news/government/178941/nothing-illegal-about-fast-tracking-gupta-citizenship-gigaba>; *“Nothing illegal about fast-tracking Gupta citizenship: Gigaba.”* a staff writer dated 13 June 2017.

#### 4.4.5. **Legislation and other prescripts**

4.4.5.1 The Constitution of the Republic of South Africa, 1996,

4.4.5.2 The Public Protector Act, No 23 of 1994,

4.4.5.3 South African Citizenship Act, No 88 of 1995,

4.4.5.4 South African Citizenship Amendment Act, No 17 of 2010,

4.4.5.5 Regulations on the South African Citizenship Act, 1995,

4.4.5.6 The Executive Members` Ethics Act, No 82 of 1998,

4.4.5.7 Executive Ethics Code published by proclamation in terms of section 2(1) of Executive Members` Ethics Act, 1998, Government Gazette: No 21399 Notice No 41 Regulation 6853,

4.4.5.8 Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members (5<sup>th</sup> Parliament), 2014,

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

**5.1 Regarding whether Minister Gigaba, in his capacity as Minister of Home Affairs, abused his power in terms of the South African Citizenship Amendment Act, 2010 when granting certificates of early naturalisation to his alleged acquaintances, Mr Ajay Gupta and family, without proper validation of the requisite exceptional circumstances.<sup>1</sup>**

Issues that are Common Cause

5.1.1 It is common cause that members of the Gupta family applied for South African citizenship by naturalisation in 2013. The applications of two members were rejected by the Minister of Home Affairs on the basis of them not complying with the requirements of section 5(1)(c) of the South African Citizenship Act, 1995, as amended, which states that the Minister, if so satisfied, may on application grant a certificate of naturalisation to a foreigner who has been ordinarily resident within the Republic of South Africa for a continuous period of not less than five years, immediately preceding the date of their application.

5.1.2 It is not in dispute that one member (Mrs Angoori Gupta) left the country for more than 90 days preceding her application for naturalisation, contrary to regulation 3(2)(c) of the Regulations of the South African Citizenship Act, 1995, which states that, "*Any person who has been absent from the Republic for a period of more than*

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<sup>1</sup>Former Minister Malusi Gigaba resigned as Minister of Home Affairs on Tuesday, 13 November 2018 and as Member of Parliament on Thursday 15 November 2018, effective Tuesday, 13 November 2018.

*90 days in any year during the five-year period of ordinary residence immediately preceding the date of application for naturalisation does not qualify for naturalisation.”*

- 5.1.3 Another member, Mrs Shivani Gupta’s application for naturalisation was also rejected on the basis of her not being ordinarily resident within the Republic of South Africa for a period of not less than 5 years preceding her application for naturalisation as required in terms of section 5(1)(c) above.
- 5.1.4 Subsequently, the applications for citizenship by naturalisation of all members of the Gupta family were rejected on the basis of regulation 3(4) of the Regulations of the South African Citizenship Act, 1995, which states that, *“All members of the family of the applicant included in the application for naturalisation, including the applicant, must qualify to be issued with a certificate of naturalisation.”*
- 5.1.5 It is common cause that in April 2015, the Gupta family applied for early naturalisation in terms of section 5(9)(a) of the South African Citizenship Act, 1995, as amended, which states that the Minister of Home Affairs may under exceptional circumstances grant a certificate of naturalization as a South African citizen to an applicant who does not comply with the requirements of subsection (1)(c) relating to residence or ordinary residence in the Republic.

#### Issues that are in dispute

- 5.1.6 The issue for my determination is whether, during his tenure as Minister of Home Affairs *“...Gigaba abused the legislation clauses of the South African Citizenship Amendment Act No 17 of 2010, to favour his friends in a situation where there were absolutely no exceptional circumstances to bypass the law.”*
- 5.1.7 In an internal submission, dated 22 May 2015 it was recommended that former Minister Gigaba consider granting Mr Gupta and family, certificates of naturalisation

in terms of section 5(9) of the South African Citizenship Act, 1995<sup>2</sup>, based on their motivation to the former Minister, of *inter alia*, their family business, investments and other related activities in various sectors of the economy as well as their number of employees and charitable contributions. This recommendation was supported by former Deputy Director-General of Home Affairs Mr. Vusumusi Mkhize, on 25 May 2015 and approved by the former Director-General of the Department of Home Affairs, Mr Mkuseli Apleni on 27 May 2015.

- 5.1.8 The former Minister Gigaba approved the aforesaid recommendation on 30 May 2015 and issued letters to Mr Ajay Gupta and his family on even date, waiving the residential requirements that were not met by the two members of the Gupta family and granting the family early naturalization as recommended. This was followed by another letter from an unidentified official within the department, informing Mr Ajay Gupta and family of the condition attached to the approval of their South African Citizenship, which was to provide proof of renunciation of their Indian citizenship followed by a Declaration of Allegiance.
- 5.1.9 Letters of renunciation from the Consulate General of India, Johannesburg were provided in which the Consulate General indicated that there were no objections raised against Mrs Angoori Gupta, Mr Kamal Kant Singhala, Mrs Shivani Gupta and Mr Surya Kant Singhala applying for South African citizenship. Mr Ajay Gupta failed to provide proof of his renunciation of his Indian citizenship and could not be naturalised, thus remained a permanent resident permit holder.
- 5.1.10 In an Internal Parliamentary Question Paper number 30 of 2016, published on 14 October 2016, Mr. MH Hoosen of the Democratic Alliance, requested former Minister Gigaba to explain the concept of '*exceptional circumstances*'. In a written reply, signed on 31 October 2016, former Minister Gigaba stated that section 5(9)(a) of the South African Citizenship Amendment Act, 2010 bestows upon the Minister of Home

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<sup>2</sup> The Minister of Home Affairs may under exceptional circumstances grant a certificate of naturalization to an applicant who does not comply with the requirements of subsection (1)(c) relating to residence or ordinary residence in the Republic.

Affairs, the right to waive certain requirements and grant early naturalisation to an applicant if, in his opinion, exceptional circumstances exist that warrants the applicants continued residence within the Republic of South Africa.

- 5.1.11 The former Minister stated that, *“The fact that Mr Gupta and family contribute to the economy of South Africa, provided substantive grounds for consideration of their application for naturalisation under exceptional circumstances...”*
- 5.1.12 Mr. Gupta and family submitted a motivation in their application which listed details of the family business, Oakbay Investments (Pty) Ltd and its interests in various sectors of the economy such as media, information technology, real estate, mining and other related activities. They also provided supporting documentation in this regard, which reflected a Department of Trade and Industry (DTI) company registration, formal registration and shareholding coupled with tax payments to and registration with the South African Revenue Services (SARS).
- 5.1.5 In addition, provided further supporting documentation which reflected employment of approximately 7000 permanent employees as well as a program which supported 75 schools with sports, clothing and equipment reaching a total of 50 000 pupils in the North West Province.
- 5.1.6 On 8 September 2017 the Portfolio Committee on Home Affairs requested the Department of Home Affairs to provide the evidence of the Gupta Family’s investments and charitable contributions following their report to the Committee on 27 June 2017. In a letter to the Chairperson of the Portfolio Committee on Home Affairs, Mr. Lemias Mashile, MP, dated 7 February 2018, Mr Mkuseli Apleni, in his former capacity as DG of the Department, presented the following evidence ( which was also provided to the Public Protector) of the Gupta family’s investments and charitable contributions to further indicate exceptional circumstances for consideration:

- 5.1.6.1 Sponsorships to Odi Primary School and Tebogo Primary School in 2013 to the value of R12 000, through the ‘Walk the talk shoe campaign’,
- 5.1.6.2 Renovations (painting of classrooms) at Chaneng Primary School in 2014 amounting to R8 000,
- 5.1.6.3 15 Computers given to Molelwaneng Primary School in 2013 for use by the learners;
- 5.1.6.4 Sponsorships to 75 schools from local communities (cash prizes and school sports kit) in 2013,
- 5.1.6.5 Confirmation of employment from the Department of Labour and the Unemployment Insurance Fund (UIF),
- 5.1.6.6 Certificates from the Companies and Intellectual Property Commission (CIPC) issued to Oakbay Investments (Pty) Ltd and a Memorandum of Understanding,
- 5.1.6.7 A letter that lists companies under Oakbay Investments (Pty) Ltd.
- 5.1.6.8 Also attached to the aforesaid submission of evidence, was an email from Mr. Richard Sikakane to Mr. Teboho Maruping of the Department of Labour, dated 1 September 2017 requesting confirmation on the “...7000 jobs that the Gupta family said they had created when they were considered for the early naturalisation...” In a response from the Department of Labour, dated 23 September 2017, the following employment information was provided:

UIF REFERENCE NUMBER	REGISTRATION NAME	TRADE NAME	NUMBER OF EMPLOYEES DECLARED
1667537/3	WESTDAWN INVESTMENTS	JIC MINING SERVICES	12 434
0102528/4	MIGRATION PROXY VALUE	SHIVA URANIUM LIMITED	4 106
2008987/9	TNA MEDIA PTY LTD	TNA MEDIA PTY LTD	230
0520673/4	SAHARA COMPUTERS PTY LTD	SAHARA COMPUTERS PTY LTD	164
2042258/2	BLACKEDGE EXPLORATION (PTY) LTD	BLACKEDGE EXPLORATION (PTY) LTD	50
2054533/0	OAKBAY INVESTMENTS PTY (LTD)	OAKBAY INVESTMENTS PTY (LTD)	1

1871505/9	TEGETA EXPLORATION AND RESOURCES (PTY) LTD	TEGETA EXPLORATION AND RESOURCES (PTY) LTD	1
1860219/6	ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY PTY LTD	ISLANDSITE INVESTMENTS ONE HUNDRED AND EIGHTY PTY LTD	1
<b>Total</b>			16 987

- 5.1.7 It is evident from the foregoing information provided by the Department of Labour that the information in the motivation, of approximately 7000 jobs allegedly created by the Gupta family businesses, was understated, but nevertheless inaccurate.
- 5.1.8 Further inaccuracies were revealed in newspaper articles which reported, that details of the *Gupta's* contributions to schools in the North West Province were not precise and that some of the schools on the supposed list of '77 schools' that benefited from the family did not even exist.
- 5.1.9 In an interview with Mr Sikakane on 7 February 2019, he stated that when Mr. Ajay Gupta and family decided to apply for early naturalisation in terms of section 5(9) of the South African Citizenship Act, 1995, as amended, their motivation for early naturalisation required an executive decision that could not be rejected or refuted by any official administratively.
- 5.1.10 Further, that due to the small percentage of early naturalisation applications per year, no policy and/or standard operating procedure was formulated to regulate the process and that it was standard practice for early naturalisation applications to have a motivation to the Minister. Based on the content of the motivation the Minister can use his discretion to either approve or reject the applications accordingly.
- 5.1.11 It was Mr Skakane's contention that no criteria existed to inform the process and that the information contained in any motivation provided are generally accepted and not verified. He confirmed that the information contained in the motivation provided by the Gupta family were not authenticated and accepted on face value.
- 5.1.12 Mr. Vusumusi Mkhize, former Deputy Director-General of the Department of Home Affairs, confirmed this during an interview on 19 February 2019, in which he also

conceded that the submission for early naturalisation of Mr. Ajay Gupta and family did not contain any verification details when he processed the application. He explained that the verification process should normally be concluded by the time the application reaches his desk. Mr Mkhize confirmed that he nonetheless supported the recommendation for early naturalisation of Mr Ajay Gupta and family without a verification process being undertaken.

- 5.1.13 Additionally, in an interview with the former Acting DG of the Department of Home Affairs, Mr. Thulani Mavuso on 20 February 2019, he stated that notwithstanding the fact that he was not party to the process, his understanding was that there was no verification done on the information contained in the motivation and that the recommendation in the submission was nevertheless approved by the former Minister on 30 May 2015.
- 5.1.14 Mr. Mavuso confirmed that a verification process was only embarked upon by the department following a request from the Chairperson of the Portfolio Committee on Home Affairs, Mr. Lemias Mashile, MP, to provide evidence of the Gupta family investments and charitable contributions which was provided by the former DG of the Department of Home Affairs, Mr. Mkusile Apleni in a letter dated 7 February 2018.
- 5.1.15 Mr Mavuso indicated that it was established by the department during the aforesaid verification process that the information provided in the initial motivation was not accurate and did not reflect the actual investments and charitable contributions.
- 5.1.16 The Portfolio Committee on Home Affairs Inquiry on State Capture in Granting of Citizenship to Non South Africans was established and finalised in March 2019. The recommendations were *inter alia*, that:
- 5.1.17 Criminal charges be laid against Ashu Chawla and members of the Gupta family relating to false information submitted in their motivation for early naturalisation.

5.1.18 Misrepresentation of social contributions as well as the improper procedure being followed as far as the renunciation of Indian Nationality should be considered by the Minister as grounds for Ajay Gupta's family to be revoked of South African citizenship in terms of Section 8(1) of the Citizenship Act.

Application of the relevant legal prescripts

5.1.19 **The Constitution of the Republic of South Africa, 1996 [Act No. 108 of 1996]**, which is the supreme law of the Republic and all other laws should conform to the Constitution.

5.1.19.1. Section 195(1)(f) thereof provides that, "*public administration must be accountable*".

5.1.20 **The South African Citizenship Amendment Act, 2010[Act No. 17 of 2010]**, which provides for the acquisition, loss and resumption of South African citizenship; and for matters incidental thereto.

5.1.20.1. Section 5(1) thereof provides that, "*the Minister may upon application, grant a certificate of naturalisation as a South African citizen to any foreigner who satisfies the Minister, that:*

*a) he or she is not a minor; and*

*b) he or she has been lawfully admitted to the Republic for permanent residence therein; and*

*c) he or she is ordinarily resident in the Republic and that he or she has been so resident for a continuous period of not less than five years immediately preceding the date of his or her application; and*

*d) he or she is of good character; and*

*e) ...*

*h) He or she is a citizen of a country that allows dual citizenship, provided that in the case where dual citizenship is not allowed by his or her country, such person renounces the citizenship of that country and furnishes the Minister with the prescribed proof of such renunciation”.*

5.1.21 Section 5(8) of the Act provides that, *“if the Minister has refused an application for a certificate of naturalisation by or on behalf of any person, the Minister shall not be obliged to reconsider such application at any time, but shall not consider another application for a certificate of naturalisation by or on behalf of such’ person until the expiration of a period of at least one year from the date upon which the person in question was advised of the Minister’s decision, provided that the Minister shall at any time reconsider an application if he or she receives any new information regarding the applicant which may influence his or her original decision”.*

5.1.22 In terms of section 5(9)(a) the Minister may under exceptional circumstances grant a certificate of naturalisation as South African citizen to an applicant who does not comply with the requirements of subsection (1)(c) relating to residence or ordinary residence in the Republic.

5.1.23 **The Regulations on the South African Citizenship Act, 1995**, which provides that the Minister of Home Affairs in consultation with the Minister of Finance has under section 23 of the South African Citizenship Act, 1995, drafted regulations regulating citizenship in the Republic of South Africa.

5.1.23.1. In terms of regulation 3(2)(a), the period of ordinary residence referred to in section 5(1)(c) of the Act is ten (10) years immediately preceding the date of application for naturalisation.

5.1.23.2. Sub-regulation (b) states that any person who lodges an application for naturalisation must, at the time of his or her application, not have been absent from the Republic for a period of more than 90 days in any year during the five-year period

of ordinary residence immediately preceding the date of application for naturalisation.

5.1.23.3. In terms of sub-regulation (c), any person who has been absent from the Republic for a period of more than 90 days in any year during the five-year period of ordinary residence immediately preceding the date of application for naturalisation does not qualify for naturalisation.

5.1.23.4. Sub-regulation (4) states that all members of the family of the applicant included in the application for naturalisation, including the applicant, must qualify to be issued with a certificate of naturalisation.

5.1.24 **Public Service Regulations, 2001**, which provides that, the Minister for the Public Service and Administration has, under section 41 of the Public Service Act, 1994 drafted regulations that regulate the public service. In order to give practical effect to the relevant constitutional provisions relating to the Public Service, all employees are expected to comply with the Code of Conduct ('the Code') provided for in Chapter II of the regulations.

5.1.24.1. In terms of regulation C4.9, an employee shall *inter alia* promote sound, efficient, effective, transparent and accountable administration.

**The Conclusions that could be made based on the application of the law to the facts**

5.1.25 Based on the information and evidence obtained during the investigation and the application of the legal framework to the facts of the matter, it can be concluded that:

5.1.25.1. Section 5(9)(a) of the South African Citizenship Act, 1995 empowers the Minister to grant naturalisation to any applicant who does not comply with the period of ordinary residence as contemplated in section 5(1)(c), which relates to the time spent in South Africa and each and every year not having been out of the country for more

than 90 days. A foreigner who does not meet that requirement set out in the section 5(1)(c) of the Act, may approach the Minister on the prescribed form to waive this requirement. The fact that the Minister had been approached by the Gupta family in this regard, set in motion the processing of the application for early naturalisation.

5.1.25.2. Consideration of same was based on the motivations the family advanced and submitted which, among other things included the number of people they employed in the country, their investments and charitable contributions.

5.1.25.3. Two members of the Gupta family failed to comply with the provisions of section 5(1)(c) above, hence the application for early naturalisation in terms of section 5(9)(a) of the South African Citizenship Amendment Act, 2010. As stated above section 5(9)(a) allows the Minister to exercise his discretion to waive the requirements of section 5(1)(c) and approve the applications for early naturalisation if he is convinced, based on the motivation provided, that there are exceptional circumstances which warrants it.

5.1.25.4. Mr Sikakane, Deputy Director: Travel Documents and Citizenship in the Department of Home Affairs, recommended, in a submission that the former Minister consider granting Mr Gupta and family certificates of naturalisation in connection with their applications for early naturalisation in terms of section 5(9)(a) of the South African Citizenship Amendment Act, 2010. The recommendation in the submission was supported and approved by the Chief Director, Back Office Status Services, Mr N Ramashia, the former DDG, Mr Mkhize and the former DG, Mr Apleni.

5.1.25.5. Former Minister Gigaba considered the recommendations made in the aforesaid submission and deemed the family's contribution to the economy of South Africa as exceptional circumstances and as such granted them early naturalization certificates. In this regard the former Minister acted within the confines of the provisions of section 5(9)(a) of the South African Citizenship Amendment Act, 2010 in terms of which he executed the powers bestowed upon him by the provision.

5.1.25.6. However, it is evident that none of the former Minister's administrative officials, who concurred with the recommendation in the submission, including Mr Sikakane, exercised due diligence and verified the accuracy of the information contained in the motivation, thereby creating an enabling environment where the department could be induced by the misrepresentations contained in the application for naturalisation, by the Gupta family. This conduct is tantamount to maladministration.

5.1.25.7. Verification of information is an important due diligence exercise, which promotes sound, efficient, effective and accountable administration in line with regulation C4.9 of the Public Service Regulations, 2001 and the provision of section 195(1)(f) of the Constitution, which is to promote accountable administration.

5.1.26 The verification process only occurred after the approval and granting of certificates of naturalisation, which, under normal circumstances, would not have taken place, was it not for the instructions of the Portfolio Committee on Home Affairs.

5.1.25.8. This verification process, undertaken by the department, after the fact, revealed, material misrepresentations and inaccuracies with the information contained in the motivation, relied upon by the former Minister, in approving and granting the certificates for naturalisation in terms of section 5(9)(c) of the South African Citizenship Act, to Mr Ajay Gupta and family.

**5.2 Regarding whether Minister Gigaba, in the execution of his duties and functions, failed to table names in Parliament of persons who were granted South African citizenship under exceptional circumstances contrary to section 5(9)(b) of the South African Citizenship Amendment Act, 2010 [Act No 17 of 2010], and in doing so violated the provisions of the Executive Ethics Code.**

Issues that are Common Cause

5.2.1 It is common cause that former Minister Knowledge Malusi Nkanyenzi Gigaba served as Minister of Home Affairs of the Republic of South Africa from 25 May 2014 until 31

March 2017 and re-appointed on 27 February 2018 until his resignation on 13 November 2018. It is also not in dispute that Minister Nkosazana Dlamini-Zuma served in this portfolio from 22 April 2009 to 3 October 2012, succeeded by Minister Naledi Pandor, who served from 4 October 2012 to 6 May 2014

- 5.2.2 It is not in dispute that a Minister of Home Affairs is required to table in Parliament the names of those individuals granted South African citizenship under exceptional circumstances<sup>3</sup> including the reasons for the early granting of those certificates of naturalization after the commencement of the sittings of Parliament in each year.<sup>4</sup>

#### Issues that are in dispute

- 5.2.3 The issue for my determination is whether Mr Gigaba, during his tenure as the former Minister of Home Affairs, failed to table in Parliament the names of those persons granted South African citizenship under exceptional circumstances
- 5.2.4 In his complaint, Mr. Hoosen contended that former Minister Gigaba failed to comply with the provisions of section 5(9)(b) of the South African Citizenship Amendment Act, 2010 and in so doing violated the Executive Ethics Code, to which all Cabinet Ministers are bound.
- 5.2.5 I informed the former Minister on 30 January 2018 of the allegations raised against him. The former Minister provided a response on 15 March 2018 following a meeting with me on 12 March 2018.
- 5.2.6 In his response the former Minister stated *inter alia* that the failure to table the names dates back to 2013, before his tenure as Minister of Home Affairs and that the applications granted by him were only during 2015 to 2016. He contended that these omissions were rectified in August 2017 when a submission was made to Parliament of all the names for the periods 2013 to 2016.

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<sup>3</sup> section 5(9)(a) of the South African Citizenship Amendment Act, 2010

<sup>4</sup> section 5(9)(b) of the South African Citizenship Amendment Act, 2010

- 5.2.7 In this regard former Minister Gigaba conceded to failing to comply with the provisions of section 5(9)(b) of the South African Citizenship Amendment Act, 2010 between 2013
- 5.2.8 A notice in terms of section 7(9) of the Public Protector Act, 1994 dated 16 October 2018, was served on the former Minister, in which I afforded him an opportunity to respond to the findings of a violation of the Executive Ethics Code regarding his failure to comply with the provisions of section 5(9)(b) above.
- 5.2.9 In his response, dated 2 November 2018, Minister Gigaba stated that, *“On the non-submission, this was a clear glitch on the part of the department as was explained in Parliament that even the Minister prior to my tenure did not submit accordingly.”*

Application of the relevant legal prescripts

- 5.2.10 The Constitution of the Republic of South Africa, 1996 [Act No. 108 of 1996], which is the supreme law of the Republic and all other laws should conform to the Constitution.
- 5.2.10.1. Section 96(1) of the Constitution provides that, *“Members of the Cabinet must act in accordance with a code of ethics prescribed by national legislation”*.
- 5.2.11 **The Executive Members` Ethics Act, 1998 [Act No. 82 of 1998]**, which provides for a code of ethics governing ethical conduct of Members of the Cabinet, Deputy Ministers and Members of Provincial Executive Councils.
- 5.2.11.1 Paragraph 2.1(b) of the Executive Ethics Code states that, *“Members must...fulfil all the obligations imposed upon them by the Constitution and law;”*
- 5.2.12 **The South African Citizenship Amendment Act, 2010 [Act No...of 2010]**, which provides for the acquisition, loss and resumption of South African citizenship; and for matters incidental thereto.

5.2.12.1 Section 5(9)(a) states that notwithstanding anything to the contrary contained in subsection (1)(c), the Minister may under exceptional circumstances grant a certificate of naturalisation as a South African citizen to an applicant who does not comply with the requirements of subsection (1)(c) relating to residence or ordinary residence in the Republic.

5.2.12.2 In terms of section 5(9)(b) the Minister shall within 14 days after the commencement of the sittings of Parliament in each year table in Parliament the names of any person whom certificates of naturalisation were granted under paragraph (a) in the immediately preceding year, include the reasons for the granting of any such certificates.

**The Conclusions that could be made based on the application of the law to the facts**

5.2.13 Based on the information and evidence obtained during the investigation and the application of the legal framework to the facts of the matter, it can be concluded that:

5.2.13.1 Former Minister Gigaba's failure to comply with the provisions of section 5(9)(b) of the South African Citizenship Amendment Act, 2010, during his tenure as Minister of Home Affairs, is a violation of paragraph 2.1(b) of the Executive Ethics Code which states that Members of the Executive must fulfil all the obligations imposed upon them by law.

5.2.13.2 The aforesaid conduct is also in violation of paragraph 2.3(b) read with section 96(2)(b) of the Constitution, which states that, "*Members may not act in a way that is inconsistent with their position,*" and/or their office.

5.2.13.3 By breaching the above provisions of the Executive Ethics Code, former Minister Gigaba also contravened section 96(1) of the Constitution, which states that,

*“Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.”*

**5.3 Regarding whether former Minister Gigaba misrepresented facts in a press conference held on 6 March 2018 when he informed the media that Mr. Atul and Ajay Gupta were not citizens of Republic of South Africa.**

Issues that are Common Cause

5.3.1 It is common cause that former Minister Gigaba stated in a press briefing on Tuesday, 6 March 2018 that, *“Ajay Gupta is not a South African citizen. He is a permanent resident permit holder which he received in 2008, but he is not a South African citizen. Mr. Atul Gupta also is not, but he was not one of the five who had applied for citizenship. That is why their citizenship at South Africa is non-existent, it’s null and void because they could not renounce their citizenship in India”* (sic).

Issues that are in dispute

5.3.2 The issue for my determination is whether Mr Gigaba misrepresented facts in a press conference held on 6 March 2018 when he informed the media that Mr. Atul and Ajay Gupta were not citizens of Republic of South Africa.

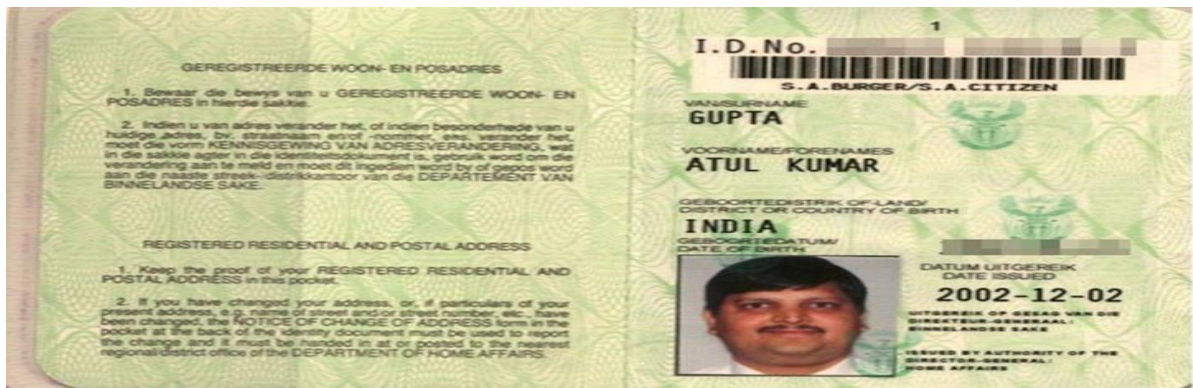
5.3.3 Mr. Shivambu stated in his complaint that the above statement to the press was a fabrication and dishonest since Mr. Atul Kumar Gupta possessed a South African green barcoded identity document, a South African passport and appears on the Voter Registration Role of the Electoral Commission; all of which serves to confirm his citizenship.

5.3.4 On 12 April 2018, I informed former Minister Gigaba of the allegations raised against him by Mr. Shivambu. The former Minister responded on 9 May 2018.

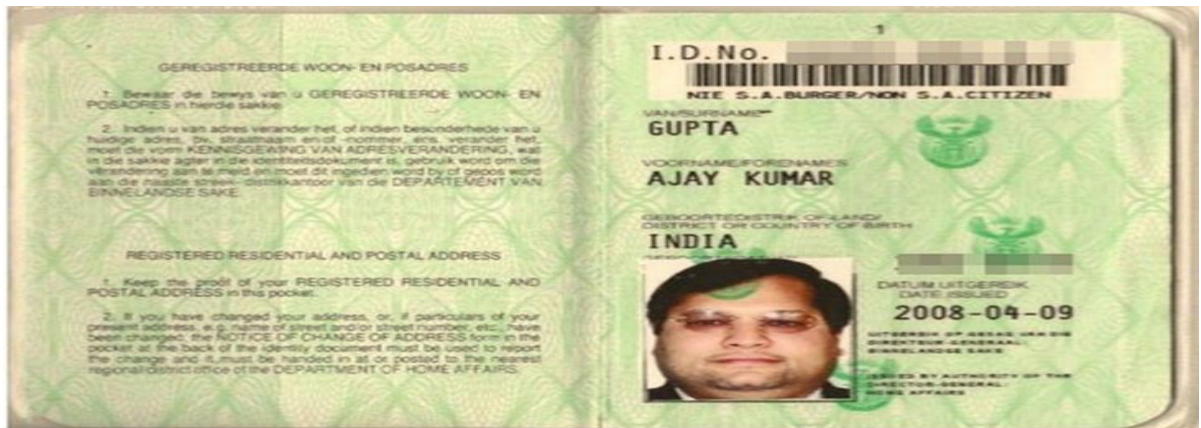
5.3.5 In his response, the former Minister provided validating evidence pursuant to the non-South African citizenship status of Mr. Ajay Gupta. He further conceded that during

the press briefing of 6 March 2018, he *'inadvertently'* indicated that Mr. Atul Gupta was only a permanent resident permit-holder and not a citizen of the Republic of South Africa.

- 5.3.6 Further to his response the former Minister provided a list, titled the Gupta List, which contained the names of persons that were naturalised in addition to those that were not naturalised. Mr. Atul Gupta's name appeared amongst the names of those that were naturalised. In fact, the list indicated that Mr. Atul Kumar Gupta was naturalised in November 2002.
- 5.3.7 The aforementioned information was confirmed in a release of the South African green barcoded identity document of Mr. Atul Gupta in a newspaper article by News24 on 7 March 2018, titled *"Citizen Gupta: Finally clarified. Sort of."* The newspaper article displayed the South African green barcoded identity document of Mr. Atul Gupta in which it is evident that he is a South African citizen.



- 5.3.8 The former Minister also asserted in his response to the section 7(9) notice I issued on 16 October 2018 that, *"To this end I had issued a media statement dated 7 March 2018 clarifying the error..."*



- 5.3.9 The above newspaper article also displayed the South African green barcoded identity document of Mr. Ajay Gupta in which it is evident that he is a non-South African citizen.

#### Application of the relevant legal prescripts

- 5.3.10 **The Constitution of the Republic of South Africa, 1996 [Act No. 108 of 1996]**, which is the supreme law of the Republic and all other laws should conform to the Constitution.
- 5.3.10.1 Section 96(1) of the Constitution provides that Members of the Cabinet must act in accordance with a code of ethics prescribed by national legislation.
- 5.3.11 **The Executive Members` Ethics Act, 1998 [Act No. 82 of 1998]**, which provides for a code of ethics governing ethical conduct of Members of the Cabinet, Deputy Ministers and Members of Provincial Executive Councils.
- 5.3.11.1 Paragraph 2.1 of the Executive Ethics Code states that, *“Members [of the Executive] must... (a) perform their duties and exercise their powers diligently and honestly and (d) act in all respects in a manner that is consistent with the integrity of their office or the government.”*

5.3.11.2 Further thereto, that in terms of paragraph 2.3, “ *Members may not (b) act in a way that is inconsistent with their position*”

5.3.12 Code of Ethical Conduct and Disclosure of Members’ Interests for Assembly and Permanent Council (“**Parliament Ethics Code**”), which outlines the minimum ethical standards of behaviour that South Africans expect of public representatives, including upholding propriety, integrity and ethical values in their conduct.

5.3.12.1 Paragraph 4.1.3 provides that a Member of the Assembly must act on all occasions in accordance with the public trust placed upon them.

**The Conclusions that could be made based on the application of the law to the facts**

5.3.13 Based on the information and evidence obtained during the investigation and the application of the legal framework to the facts of the matter, it can be concluded that:

5.3.13.1 Members of the Executive must be meticulous with information to the public and not dispense with it injudiciously, especially through the media. Inaccurate information can be prejudicial to the implicated and can potentially have serious legal ramifications that can have colossal cost implications for the State. Dispensing inaccurate information on the citizenship status of Mr. Atul Gupta is a violation of the above provisions of paragraph 2.1(a) and (d) and paragraph 2.3(b) of the Executive Ethics code.

5.3.13.2 The media is a medium through which information is disseminated to the public to inform the public, *inter alia* on matters of State. When a Member of the Executive dispenses inaccurate information through this medium, the member tarnishes and displaces public trust, contrary to paragraph 4.1.3 of the Parliament Ethics Code, which states that, a Member of the Assembly must act on all occasions in accordance with the public trust placed upon them.

5.3.13.3 By breaching the above provisions of the Parliament Ethics Code and the Executive Ethics Code, former Minister Gigaba violated section 96(1) of the Constitution, which states that, “*Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.*”

## 6 OBSERVATION

6.1 Ms. Grace Naledi Mandisa Pandor was Minister of Home Affairs from 2012 to 2014, while Mr. Malusi Knowledge Gigaba served as Minister of Home Affairs from 2014 to 2017 and from 27 February 2018 until his resignation 13 November 2018.

6.2 During my investigation I noted with concern that between the period of 2013 to 2017 both Ministers, failed to comply with the provisions of section 5(9)(b) of the South African Citizenship Act, 1995 which obligates them to submit the names of persons naturalised under exceptional circumstances, to the National Assembly every year within 14 days after commencement of the sittings of Parliament.

6.3 The process of naturalisations in terms of Section 5(9)(a) of the South African Citizenship Act, 1995 appears to be inadequately regulated and as such, due diligence is compromised resulting in inadequate submissions by officials to Ministers. In this regard, Ministers are put at risk of exercising their discretion on insufficient information.

## 7 FINDINGS

Having considered the evidence obtained during the investigation weighed against the relevant regulatory framework as well as the complaints received when weighed against the standard that was expected to be upheld by the former Minister of Home Affairs, I now make the following findings:

- 7.1 **Regarding whether Minister Gigaba, in his capacity as Minister of Home Affairs, abused his power in terms of the South African Citizenship Amendment Act, 2010 when granting certificates of early naturalisation to his alleged acquaintances, Mr Ajay Gupta and family, without proper validation of the requisite exceptional circumstances;**
- 7.1.1 The allegation, that the former Minister Malusi Knowledge Gigaba “... *abused the legislation clauses of the South African Citizenship Amendment Act No 17 of 2010, to favour his friends in a situation where there were absolutely no exceptional circumstances to bypass the law.*”, **is unsubstantiated.**
- 7.1.2 Section 5(9)(a) of the South African Citizenship Amendment Act, 2010 bestows upon Minister of Home Affairs, the discretion to waive the requirements of section 5(1)(c) if, in his opinion, exceptional circumstances exist that warrants the applicants continued residence within the Republic of South Africa.
- 7.1.3 The former Minister exercised his discretion, upon consideration of the motivation provided and approved their application for early naturalisation under exceptional circumstances on the grounds of the family’s contribution to the economy of South Africa.
- 7.1.4 It was established that the verification process, undertaken by the department, upon instructions of the Portfolio Committee on Home Affairs, revealed, material misrepresentations and inaccuracies with the information contained in the motivation, relied upon by the former Minister, in approving and granting the certificates for naturalisation in terms of section 5(9)(c) of the South African Citizenship Act, to Mr Ajay Gupta and family.
- 7.1.5 It was further established that Home Affairs officials, Deputy Director: Travel Documents and Citizenship, Mr Sikakane, the Chief Director, Back Office Status

Services, Mr N Ramashia, the former DDG, Mr Mkhize and the former DG, Mr Apleni, tasked with the processing of the early naturalisation application of the Gupta family, failed to exercise due diligence, by failing to verify the accuracy of the information contained in the motivation which was relied upon by the former Minister, in approving and granting the certificates for naturalisation to Mr Ajay Gupta and family. This conduct amounts to maladministration and in violation of the provision of section 195(1)(f) of the Constitution, which promotes accountable administration read with regulation C4.9 of the Public Service Regulations, 2001, which promotes sound, efficient, effective and accountable administration.

**7.2 Regarding whether Minister Gigaba, in the execution of his duties and functions, failed to table names in Parliament of persons who were granted South African citizenship under exceptional circumstances contrary to section 5(9)(b) of the South African Citizenship Amendment Act, 2010 [Act No 17 of 2010], and in doing so violated the provisions of the Executive Ethics Code;**

7.2.1 The complaint that former Minister Gigaba acted in breach of the Executive Ethics Code when he failed to comply with the provision of section 5(9)(b) of the South African Citizenship Act, 1995, is substantiated.

7.2.2 Former Minister Gigaba conceded to failing to submit the names to Parliament every year, of those individuals that were naturalised under exceptional circumstances as required in terms section 5(9)(b).

7.2.3 By failing to comply with the provisions of section 5(9)(b), former Minister Gigaba violated the provisions of paragraph 2.1(b) of the Executive Ethics Code which states that Members of the Executive must fulfil all the obligations imposed upon them by the Constitution and the law.

- 7.2.4 By breaching the above provisions of the Executive Ethics Code, former Minister Gigaba also violated section 96(1) of the Constitution, which states that, “*Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.*”
- 7.3 **Regarding whether former Minister Gigaba misrepresented facts in a press conference held on 6 March 2018 when he informed the media that Mr. Atul and Ajay Gupta were not citizens of Republic of South Africa;**
- 7.3.1 The allegation that former Minister Gigaba misrepresented facts in a press conference held on 6 March 2018 when he informed the media that Mr. Atul Kumar Gupta was not a citizen of Republic of South Africa, is substantiated.
- 7.3.2 Former Minister Gigaba conceded to furnishing incorrect information during the aforesaid press conference and even though he rectified his error in a press briefing the following day, the former Minister broke the public trust placed upon him to which he was held to uphold in terms of Paragraph 4.1.3 of the Parliament Ethics Code.
- 7.3.3 By misrepresenting the facts to the public, former Minister Gigaba contravened paragraph 4.1.3 of the Code.
- 7.3.4 By dispensing inaccurate information on the citizenship status of Mr. Atul Gupta, former Minister Gigaba breached provisions of paragraph 2.1(a) and (d) and paragraph 2.3(b) of the Executive Ethics code.
- 7.3.5 By breaching the Parliament Ethics Code and the Executive Ethics Code, former Minister Gigaba also violated section 96(1) of the Constitution.
- 7.3.6 The allegation that former Minister Gigaba misrepresented facts to the public through the media regarding the citizenship status of Mr. Ajay Gupta was unfounded.

## 8 REMEDIAL ACTION

In light of the above findings, I am taking the following appropriate remedial action as contemplated in section 182(1)(c) of the Constitution, with a view to remedying the maladministration and improper conduct referred to in this report:

8.1. Notwithstanding the fact that I have made adverse findings against former Minister Gigaba, any remedial action I decide to take against him, as envisaged by section 182(1)(c) of the Constitution, 1996, would serve no judicious purpose, in light of the former Minister's resignation as Minister of Home Affairs on Tuesday, 13 November 2018 and as Member of Parliament on Thursday 15 November 2018, effective Tuesday, 13 November 2018.

### 8.2. **The Minister of Home Affairs, to;**

8.2.1. Take cognisance of the findings on the improprieties identified in the report and ensure that such conduct is not repeated and appropriate corrective action is taken to prevent the recurrence of the improprieties referred to in the report;

8.2.2. In line with the provision of section 23(f) of the South African Citizenship Amendment Act, 2010, the Minister must consider incorporating the following necessary regulations in order to ensure a more compliance and effective administration of section 5(9):

8.2.2.1. A descriptive framework for "exceptional circumstances", which does not encroach on the Minister's discretion, but allows for a guideline to facilitate a fair and uniform approach;

8.2.2.2. The applicant must provide a motivation which outlines the reasons why he must be considered for early naturalisation in terms of section 5(9)(a) of the South African

Citizenship Amendment Act, 2010 and substantiate his motivation with applicable evidence;

8.2.2.3. Ensure that the responsible officials within the Department of Home Affairs verifies the accuracy of the reasons provided in the motivation so as to present a submission with recommendations to the Minister which is based on verified facts;

8.2.2.4. Ensure that the responsible officials within the Department of Home Affairs consider verifying the accuracy of the reasons provided in the motivation so as to present a submission with recommendations to the Minister which is based on verified facts; and

8.2.2.5. When presenting the list of approved early naturalisation applications for tabling to the Parliament of the Republic of South Africa in terms of section 5(9)(b) of the South African Citizenship Amendment Act, 2010, the Minister should consider to attach, in his submission, all relevant information and documentation considered for each case so as to reassure Parliament of the deliberation behind each decision.

**8.3. The Director-General of the Department of Home Affairs, to;**

8.3.1. Take cognisance of the findings on the improprieties identified in the report and ensure that such conduct is not repeated and appropriate corrective action is taken to prevent the recurrence of the improprieties referred to in the report;

8.3.2. Consider taking appropriate action against Departmental officials who were involved in the naturalisation of Mr Ajay Gupta and family for their failure to exercise due diligence, verifying the accuracy of the information contained in the motivation for early naturalisation which was relied upon by the former Minister, in approving and granting the certificates for naturalisation to Mr Ajay Gupta and family.

## 9 MONITORING

- 9.1. The Minister of Home Affairs must within thirty (30) days of receipt of this report provide me with an action plan, indicating timelines, in respect of the above-mentioned recommendation.
- 9.2. The Director-General of the Department of Home Affairs to submit an implementation plan indicating how the remedial action taken in paragraph 8.2 above will be implemented, within 30 days working days from date of the report.
- 9.3. All actions directed in this report as part of the remedial action taken by the Public Protector in terms of the Public Protector's powers under section 182(1)(c) of the Constitution must be finalised within six (6) months from date of the report.



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**ADV BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**  
**DATE:** 9/12/2020

***Assisted by: Mr Godwin Kock, Gauteng***