IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

Case no: 59529/2013

In the matter between:

THE MINISTER OF POLICE	First applicant
THE MINISTER OF PUBLIC WORKS	Second applicant
THE MINISTER OF DEFENCE	Third applicant
THE MINISTER OF STATE SECURITY	Fourth applicant

and

THE PUBLIC PROTECTOR	Respondent

OPPOSING AFFIDAVIT

I, the undersigned,

THULISILE NOMKHOSI MADONSELA

hereby make oath and state as follows:

1. I am the Public Protector, and an advocate of this Honourable Court. The facts to which I depose are within my own knowledge, save where otherwise indicated, and are true and correct. Where I make legal submissions, I do so on the advice of the attorneys and counsel acting for me.

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2. I have read the application filed in this matter. It is opposed on the bases set out below.

A. Introduction

3. At the outset it is necessary to draw the attention of the Court to six matters.

4. The first is that, as I shall show below, the applicants have omitted to disclose a series of meetings held by me with them and senior officials since April addressing, in particular, the meeting of any security issues regarding the investigation by my office into the Nkandla project. It follows that the applicants – constituting the security cluster in Cabinet – have been alive for many months to the imminent need for them to identify any supposed security issues regarding my office's investigation of the Nkandla project. Indeed, for a period of nearly four years now allegations regarding contended irregularities relating to the Nkandla project have not only been in the public domain, but have received in particular wide publicity in the national media. From the earliest stages there has been a reliance by one or more of the departments in the security cluster on suggested security concerns as regards disclosure pertaining to Nkandla. In short, the applicants have had a considerable period to identify precisely what constitute security concerns. Moreover, they through their legal advisors would be acquainted with the procedure consistently adopted by my office to afford any persons implicated in the provisional report with an opportunity to respond – *inter alia* properly claiming confidentiality or secrecy in relation to specific material on valid grounds. Accordingly, the four applicants and their senior officials might be

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expected to have identified in advance of my letter of 1 November 2013 any areas of legitimate concern regarding disclosure, and in any event be able very speedily to mark these up in a first reading of the provisional report. This is especially so given (I shall show) an arrangement agreed over three months ago by me with the applicants in terms of which they were on notice to expect my provisional report, and themselves *personally* to respond with specific concerns.

5. Second, as I shall show, my office has been alive from the outset to contended issues of security relating to the President's private dwelling. The provisional report has been carefully compiled precisely with a view to ensuring that concerns of a legitimate kind regarding security do not arise. I repeat that the exercise of scrutinising the report with this in mind would be a confined matter requiring a few hours and, at most, two days.

6. Third, despite the aforegoing, the application was brought in extraordinary circumstances. It was served on my offices at approximately 09h00 on Friday 8 November 2013 – calling upon me to file any notice of opposition by 09h00, and with the answering affidavit to be filed by 10h00. For reasons I understand is a matter for argument, this procedure does not comply with the trite requirements of this Honourable Court in urgent matters. This is all the more so given the fact that no rule *nisi* was sought, but immediate relief. Yet in the immediate hearing at 14h00 on Friday, the applicants agreed to a timetable in terms of which this affidavit would be filed by late Tuesday 12 November, any reply by Wednesday 13 November and heads of argument to be exchanged by noon on Thursday 14 November, with a hearing on Friday 15 November 2013. Notably they did not suggest the need for, and seek the

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Court's authority, to amplify their founding affidavit in any respect, nor to amend their notice of motion. (While themselves evidently asking the Court to make an order relating to a report which they themselves had not placed before the Court, no order or directive was sought inhibiting the placing of the report by me before the judge hearing the matter.) There will be no reason, it is submitted, why the applicants (having now already had ten days since my letter of 1 November 2013, and drawing on their evident focus for a period of nearly four years on contended security concerns) could not by now have identified exactly what it is that prompts the anxiety.

7. Fourth, the applicants' own notice of motion asked for such an opportunity by 15 November 2013 – which they have now agreed to as an appropriate date for the hearing. Thus on their own papers, even if there was any reason why the suggested concerns could not have been specified within the timeframe I had indicated in my letter of 1 November 2013, or in the ten days since, clearly they would have had a more than adequate opportunity to do so by the date on which they have agreed to file any replying affidavit.

8. Fifth, this affidavit itself contains (like the founding papers) not a single reference to any conceivable security issue. I say this because, appropriately, the applicants have not suggested that their application is to be heard *in camera*, on the basis that this would be justified by extraordinary and compelling circumstances (as section 34 of the Constitution read with section 16 of the Supreme Court Act 59 of 1959 would require as a minimum). It is, however, obviously essential that this Court itself be able to adjudge whether any proper basis for the applicants' concerns exists in terms of the content of the provisional report to be disclosed to interested parties.

Accordingly I attach the draft report (marked "A") to a confidential version of this affidavit. That version will provisionally (thus subject to any subsequent ruling by the Court) only serve before the Court itself. (On request, copies will of course be available to the applicants' attorneys of record; of course they and their clients already have it – as I shall show, most unfortunately the applicants have seen fit to distribute it more generally in their respective departments.) I am advised that my attorneys of record will ensure that the confidential version of this affidavit (i.e. that attaching annexure "A") is placed in the hands of the allocated judge or his or her secretary while a non-confidential version is filed and served in the ordinary course.

9. I consider it critical to interpose at this stage to point out that I am constrained by the circumstances to place the report before the Court. I do so to demonstrate the absence of any factual foundation for the applicants' alleged concerns and to eliminate any doubt that may otherwise have been created in this respect through their failure to place the provisional report before the Court. I consider this necessary to avoid further delays in the release of the report to the complainants and implicated persons, who are being increasingly prejudiced by every moment for which the present state of affairs persists. The discretion, however, to determine whether the provisional report deals appropriately with any potentially security sensitive information remains that of the Public Protector, and in placing the provisional report before the Court I do not purport to abrogate my constitutional role, function, responsibility, discretion and independence from other organs of State. The Constitution is clear: no person or organ of State may dictate to, or interfere with, the functioning of my office. My decision to place the provisional report before the Court must be viewed in this light.

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10. Sixth, the application consistently misrepresents my clearly-conveyed intention *not* to release the provisional report generally, but only (in accordance with procedural fairness and the standard procedure of my office) to do so to affected and implicated parties. (See for instance paragraph 8 of the founding affidavit read with prayer 2.1 of the notice of motion: "and any other person and/or organisation".) Even those parties, I made quite clear in my public statement published on 5 November 2013 (attached, marked "B") would "only be invited [to] view the report at the Public Protector's offices in the presence of members of the investigation team". It is inexplicable that the applicants should have predicated this application on a wider release, as they have done.

11. I turn now to a brief summary of the factual background to the provisional report. This is constrained by the urgency with which this affidavit must be prepared; the fuller factual background is set out in detail in the provisional report.

B. Factual background

12. At a critical stage of the investigation into the Nkandla project, I regret to say that my office and its investigating team were frustrated, and in many instances obstructed, in our efforts. Many of these frustrations are detailed in the executive summary to the provisional report. These include only being given sight of certain documents for short periods and in the presence of government officials and key members of the investigation team being excluded from important meetings.

13. In this regard, the following factual details are relevant.

14. I held an initial meeting with two members of the security cluster, the Ministers of State Security and Police, as well as the Minister of Public Works, on 22 April 2013. I did this because it was already apparent that the resistance to the investigation into the Nkandla Project was premised on suggested concerns regarding the impact which the release of the report might have on the President's security. It was also hinted (then and later) that there were security risks with the Public Protector's office conducting, or continuing with, the investigation. During the meeting a powerpoint presentation detailing the constitutional and statutory powers, functions and obligations of the Public Protector was presented to attendees. In particular it was indicated that the investigation was peremptory under the Executive Members Ethics Act 82 of 1998. A copy of this presentation is attached (marked "C"). Resistance to the investigation was very strong at this stage and there were separate attempts by the Minister of Police, and thereafter collectively by the Ministers of Police, Public Works and State Security (with the assistance of the Acting State Attorney and the Chief State Law Adviser) to stop the investigation. Details are spelt out at pages 13 to 15 of the provisional report (see paragraphs (xiii) to (xxi)). As regards the latter attempt, what was mooted was that my investigation should be suspended pending the outcome of investigations by the Auditor-General (who has no constitutional power to investigate) and Special Investigating Unit, which investigations had not yet commenced. As recorded (para xvii) the Auditor-General advised my office that he had declined the request by Public Works at the outset. The Minister of Public Works thereafter told me (on 31 May 2013) that he had nonetheless since persuaded the Auditor-General to conduct an investigation, but this has not to my knowledge materialised nor has the SIU yet been authorised to conduct any investigation.

Evidently it was contemplated that such investigations, had they been initiated, would have reported to the President regarding the contended irregularities at his own private dwelling.

15. I attended a subsequent meeting on 31 May 2013 with the Ministers of Police, Public Works, Justice and Constitutional Development, Defence and Military Veterans and State Security and top officials in their departments. One of the officials present at the meeting, Lieutenant General Ramlakan (who was the main coordinator: he is a former Surgeon-General of the SANDF, not to my knowledge a security expert) suggested that the concerns raised with regard to security issues may be addressed by granting officials from the security cluster access to the provisional report. I acceded to the request, as I was concerned about the way the investigation to date had been impeded by reliance on contended security issues. It was understood that one official from each of the security cluster ministries would meet with investigation officials from my office to look at possible security concerns in the provisional report, and clarify issues. (This is to be contrasted with the assertion in the current application that a "dedicated team of departmental officials" working "day and night" would be required to identify "a plethora of breaches of State security" in the provisional report: para 17 of the founding affidavit.)

16. The security Ministers thereafter agreed to cooperate with the investigation and agreed to provide the information requested. It is, indeed, surprising that claims of possible security breaches were ever raised at all given that the President's privately appointed architect, with absolutely no security expertise, let alone clearance, was

tasked with overseeing the entire Nkandla project on behalf of the Department of Public Works (this is described in further detail in the provisional report).

17. During a further meeting, held on 8 August 2013 with the security cluster, one of the Ministers present asked whether the understanding reached at the May 2013 meeting was still in place. I replied in the affirmative. The Minister then requested that the security cluster Ministers personally be granted access to the preliminary report (rather than the officials, as was previously agreed). I agreed to this. I would point out that of course in doing so, I acted under no statutory obligation, but pursuant to the power accorded by section 7(1)(b)(i) read with section 6(4)(d) of the Public Protector Act to determine an appropriate procedure. I wished to gather any further information concerning any genuine security concern relating to the investigation of the construction and related work at the President's private dwelling in order to enhance the exercise of my discretion.

18. The process of determining whether the provisional report contains what the applicants describe (para 17 of the founding affidavit) as "a plethora of breaches of State security" is an objective exercise. The security cluster would be required to employ the same assessment criteria to identify security breaches and risks as me and my investigators employed when determining what information to include in the provisional report. In particular, cognisable threats to the personal safety of a serving president at his private home, or threats to the security of the State itself (the applicants now suggest that the latter is their concern) would have to be identified on a clear factual basis.

19. During the course of the investigation, my team and I were granted access to numerous documents containing security sensitive information. When formulating the report, and with the assistance of my team, I specifically applied my mind to possible security concerns. Information and/or annexures which, in my view, could constitute a breach of security, were specifically excluded. I submit that this would be evident to the Court itself on reading the provisional report. It will be evident that no such detail is included. Where there is reference to particular structures and services (for instance, in the table under para 6.1.1 on p 36 of the report) it will be noted that no details are given of the exact location of the structures, nor any details regarding the nature, location and functioning of a single security measure. It will further be noted that the structures themselves – including the private dwelling units, the clinic, tuck shop, "crew pavilion", and (on p 30) kraal, and swimming pool – have for a considerable period of time been disclosed in the national media, with photographs and diagrams.

20. I agreed (pursuant to their request at the meeting of 8 August 2013) to allow the Ministers in the security cluster an opportunity themselves to consider the provisional report and raise any security concerns which they might identify, despite the steps taken (as I have described) to ensure that no basis existed for such. I did so in good faith and in a spirit of cooperation in the circumstance I have described above.

21. Contrary to the suggestion created by the founding affidavit, more particularly given the omission of the sequence of events described above, at no point did I abrogate to the security cluster or any other State officials any entitlement to interrogate the exercise of my function in this respect. That of course would be unlawful and

ineffective: the duty to ensure that any report I ultimately issue should be open to the public is one imposed solely on me, and specifically requires "exceptional circumstances" to exist in my opinion for any report to be kept confidential (section 8(2A) of the Act). This, the security cluster Ministers, their legal advisors and I knew. We also knew that the applicants themselves have an obvious interest in the report at both an official and personal level. This of course has now been exacerbated despite what was agreed on 8 August 2013, the provisional report has (the applicants disclose in their founding affidavit) been disseminated amongst certain of their officials who themselves may hardly be in a position to avoid a conflict of interest.

22. In the circumstances I have described, it was to be expected that the reading of the provisional report by (I had been given to understand) just the individual Ministers would at most yield a quick list of suggestions (with a justification for these) of perhaps a few particular references to be masked. This exercise would not have required an extensive period of time and was, as indicated above, intended to be an additional safeguard and verification of my own security precautions. Against the background of our meetings, each Minister was aware that the matter was pressing, and that my provisional report was to be expected.

23. The covering letter which accompanied the delivery of the provisional report to the individual Ministers set out the basis on which the report was provided. A copy of this is attached as annexure "NEM1" to the application. I draw attention to the fact that paragraphs 2, 6, 8 and 9 all specify that, as had been agreed on 8 August 2013, it was any response by each Minister by name which was awaited. As paragraph 8

records, a personal password was provided to the Minister of Police for communication to the other Ministers, personally. There was no suggestion that any "dedicated team" drawn from the departments would permissibly perform the exercise. This is confirmed by the response ("NEM2") by the Minister of Public Works on 4 November 2013 that the "Ministers referred in [sic] your letter ... would need to properly analyse the report" (paras 2 and 3). It was for this reason that Minister Nxesi advanced the "respectable [sic] view" that the deadline should be extended to 15 November 2013 – describing this as "an indulgence" (para 4).

24. The covering letter (annexure "NEM1") enclosing the provisional report was provided to the Ministers on the basis that the report is a confidential document which, in terms of section 7(2) of the Public Protector Act, may only be provided to other persons with the consent of the Public Protector. None of the Ministers has sought that consent from me. From the application papers, however, it is clear, as already noted, that the applicants have subsequently distributed the provisional report to various officials within their departments, without consent. This is in conflict with the scheme of the Act.

25. Moreover, the process embarked upon by the Ministers delays the finalisation of the report. It also increases obvious risks which the scheme of the Public Protector Act seeks to avoid. The longer it takes for the provisional report to be presented to interested parties and the final report to be released to the public, the greater the risk that the provisional report will be leaked.

26. It is alleged in paragraph 18 of the founding affidavit that the Public Protector is not entitled to release the provisional report to third parties without prior authorisation of the applicants, who are entrusted by relevant legislation to grant authorisation for classified and/or confidential information. In this regard, the following facts are relevant.

27. First, it is striking that only restricted claims of materials being "top secret" were made – and these by the Minister of Public Works, and not any security agency or member of the security cluster (see paras 5.3.9.6, 6.78.4 and 6.78.9 of the provisional report). The proper legal basis for such a claim was carefully considered, and is addressed in the report (see the executive summary at paras (xxii) and (xxiii)). It is again noteworthy that for almost four years the issue of the Nkandla project has been a matter ventilated in the public domain, according security agencies ample opportunity to make specific, justified claims. The conflation in the founding affidavit of the personal safety of a serving president with the "security of State" has already been noted, and suggests that even after all this time security agencies have not been able to itemise particular areas of well-founded concern.

28. Second, the Minimum Information Security Standards, (attached as annexure "D"), to the extent it applies (being a matter, I understand, further for legal argument), provide that the author of a document is responsible for its classification. Accordingly in the present case that function vests in me in relation to my report. I reiterate that it will be apparent to the Court on a mere reading that I do not in my own provisional report quote or otherwise disclose facts impinging in any way on a legitimate claim to State security.

29. The third is the contradictory conduct of the second applicant in litigation last week. This is relevant for three reasons:

(1) it suggests that the self-same documentation (bar one or two redactions) in truth does not on any measure compromise State security;

(2) the Department of Public Works in that litigation at the eleventh hour abandoned the contrary stance it had hitherto advanced under oath; and

(3) inexplicably these facts were not disclosed to this Honourable Court despite the effectively *ex parte* nature of the application brought last Friday.

30. In an affidavit (attached, marked "E") deposed to by Phillip Masilo on behalf of the Department of Public Works in the application brought under case number 67574/2012 by the M & G Centre for Investigative Journalism NPC against *inter alios* the Minister of Public Works, the Department of Public Works very shortly before the hearing tendered access to various documents relating to the Nkandla project. These are detailed in annexure "BM2" to those affidavits (internally paginated as pp 638 to 711).

31. To a very limited extent, some of the documents were redacted by the Department of Public Works to obscure references to claimed security-sensitive information. From this it is to be inferred that the remainder of the documents (and information contained therein) do not contain any security-sensitive information.

32. The only documents to which access was not tendered in that matter were the initial security assessments at Nkandla conducted by the SAPS and the SANDF. These

carry a "top secret" security classification and identified weaknesses in the security measures at Nkandla. Likewise, sketches and/or maps that disclose the location of the security control rooms and intruder alarms, emergency evacuation routes and other security related measures, were not disclosed.

33. It is my understanding that the same documents as were provided to me have been provided to the applicants in the aforesaid application. It is not apparent to me that this would have happened had there been any concern regarding secrecy such as is now suggested as a reason for my provisional report not to be disclosed only to those whom it affects.

34. It is accordingly submitted that the provisional report was prepared with a view to eliminating any genuine claim related to security concerns; that the applicants have had every opportunity to specify, and justify, focused security concerns; that the report itself and the recent conduct in the *Mail & Guardian* application suggests that no proper basis exists for these concerns. I however reiterate that were the applicants even now, in their replying affidavit, to be filed nearly two weeks after my letter (which they must have expected at least since our meeting on 8 August 2013), to specify and justify such concerns, I would consider the exercise of my powers in terms of section 8(2A) of the Act.

35. It is a curious aspect of the founding papers in this matter (due, as I have already noted, on the applicants' timing to be heard effectively *ex parte*) that the third page of my letter of 5 November 2013 was omitted from "NEM3". I attach this marked "F". It will be noted that in the last paragraph I specifically recorded my preparedness to

receive submissions regarding what should not be disclosed (on legitimate grounds) in the final report. This was no proper bar to the provisional report being disclosed to the two complainants, comprising the leader in Parliament of the official opposition and a professor of law, and the implicated parties in accordance with the procedure consistently adopted by my office.

C. Traversal of founding affidavit

36. I turn now to deal *seriatim* with the contents of the founding affidavit. I do so to the extent that I am advised these possibly raise issues of fact requiring traversal. Given the urgent circumstances of this answering affidavit, I record that any contention in the founding affidavit not specifically admitted in this affidavit is denied as if separately set out and traversed.

Ad paragraphs 1 to 5

37. The contents of these paragraphs are noted. I regret that for the reasons set out in this affidavit it is not accepted that the contents of the founding affidavit are correct.

Ad paragraph 6

38. The full facts preceding 1 November 2013 not disclosed in the founding affidavit are set out above. Subject to these, what is stated in this paragraph is not in issue.

Ad paragraph 7

39. The deponent omits to state that the extension sought by the applicants was for *them* to respond to the provisional report (pursuant to the arrangement of 8 August 2013). I again note that the applicants themselves not only contemplated that, even by their lights, this period would suffice, but have since agreed (before the hearing on 8 November 2013) to file a replying affidavit by 13 November 2013 and for the matter to be argued on 15 November 2013.

Ad paragraph 8

40. The contents of this paragraph are denied. The contents of particularly paragraph 8 of my letter are misstated. It was quite clear that I intended only to provide access to the provisional report to implicated parties and complainants (in accordance with the usual procedure). The statement that I would release the provisional report on Saturday 9 November 2013 whether or not I received comments from the security cluster is also incorrect. If I had received comments, I would have considered and integrated (as appropriate) such comments before finalising the provisional report and granting implicated parties and complainants access to the report. A proper reading of the statement indicates that the only basis on which I would have released the report on Saturday 9 November 2013 was in the event that I did not receive any comments.

Ad paragraph 9

41. Given the purpose for which the report was provided to the applicants, it is disputed that an extremely short timeframe was provided. The assessment with regard to

possible security risks required no more than a reading of the provisional report. The applicants were not required to interrogate security matters or the formulation of the report. They have had months if not years to be acquainted with what they see as potential security issues, and were on notice from at the latest 8 August 2013 to consider a provisional report with this in mind.

Ad paragraph 10

42. Again the facts are not properly stated. As appears from my public statement of 5 November 2013 (annexure "B"), the intended access was limited to the complainants and implicated individuals, and would also take place subject to strict security constraints such as to prevent copying and wider dissemination.

Ad paragraph 11

43. The contents of this paragraph are noted. (It is however to be pointed out that the reference to "VIPs which include the President" is not to be found in section 218(1)(l) of the interim Constitution.)

Ad paragraph 12

44. The contents of this paragraph are admitted. It is precisely by virtue of my duties in terms of Chapter 9 of the Constitution, read with the Public Protector Act, that I seek to do that which the applicants wish to interdict. I would point out that the Supreme Court of Appeal in *Public Protector v Mail & Guardian Ltd* 2011 (4) SA 420 (SCA)

in paras 8, 19, 20 and 23 stressed that the statutory provisions relating to my office "mean what they say. Fulfilling their demands would call for courage at times, but it will always call for vigilance and conviction of purpose" (para 8).

Ad paragraph 13

45. The contents of this paragraph are admitted, save to state that these exceptional circumstances are limited to those set out in section 8(2A)(c) of the Public Protector Act. Moreover, the applicants do not draw attention to the fact that the existence of "exceptional circumstances" (itself defined as entailing a high hurdle) is a matter for my discretionary determination (section 8(2A)(a)), and thereafter must be capable of being justified by me. In contrast, the applicants imply that the disclosure is a matter subject to their veto.

Ad paragraph 14

46. Again it is a misportrayal of the facts to suggest that I "whilst unprompted" released the provisional report "to the applicants because [I] was aware that the provisional report in its current form contains classified, top secret and confidential matters which may impact on the security of the State and the President."

47. As is apparent from the above, the applicants have failed to disclose the series of meetings which led to my releasing the provisional report to them personally. The terms of our correspondence, "NEM1-3" (which they attach themselves), contradict the suggestion that I considered the provisional report to contain secret material.

Ad paragraphs 15 and 16

48. The contents of these paragraphs are denied. Again it is significant that the applicants misportray what is required. The provisional report was not provided for the "attention by at least [sic] four departments". The clear arrangement of 8 August 2013 was for the four Ministers personally to access the provisional report by means of a password. The timeframe indicated by my letter of 1 November 2013 was hardly "wholly unreasonable and untenable to achieve". In fact, as I have noted, what was sought by way of extension was described by the Minister of Public Works himself as being an "indulgence" in the circumstances.

Ad paragraph 17

49. I have carefully scrutinised the report and I have satisfied myself that there are no "security breaches". Although this paragraph alleges there being a "plethora of breaches", the applicants find themselves unable to mention one. This is unsurprising, because my team and I were from the outset alerted to the contended concern. In the event of the applicants drawing my attention to specific aspects of the report that allegedly breach state security, I would be open to consider these in exercising my discretion, as has at all times been my position.

Ad paragraphs 18 and 19

50. These paragraphs are denied. It is a fundamental misconception that "prior authorisation of the applicants" is required for the release of the provisional report to implicated parties and complainants (which is the issue here). There is no suggestion of a wider release to "third parties" generally. The applicants enjoy no constitutional or statutory powers to veto the exercise of the Public Protector's functions under either sections 7 or 8 of the Public Protector Act.

Ad paragraph 20

51. The contents of this paragraph are denied. Significantly the applicants again are unable to advance a single fact, this time to illustrate the "irreparable harm" and "compromis[ing]" of "the security of the State and the safety of the President" which are suggested to arise if the provisional report is shown to the persons who made the complaints and the persons who are implicated, and this under the strictly supervised conditions indicated in my public statement of 5 November 2013. In any event, the applicants are wrong to contend that what the Minister of Public Works previously sought in his letter ("NEM2") as an indulgence has now become a matter of entitlement. Moreover, as between preparing this application and filing their replying affidavits, the applicants have had a further week – which is what this paragraph suggests they required.

Ad paragraph 21

52. This paragraph is denied, and is addressed by what has already been stated.

Ad paragraphs 22 and 23

53. These paragraphs, I am advised, constitute matters of legal argument and have already been addressed. As regards the leak to the media, the suggestion that it has taken place "from the office of the respondent" rests on no factual footing. If anything, the unfortunate dissemination by the applicants of the provisional report to an undisclosed number of officials in their own departments (as admitted to in the founding affidavit, despite the arrangement of 8 August 2013 and the terms of our correspondence) may well have occasioned the leak, which I myself deplore.

Ad paragraph 23

54. This is repetitive and has already been addressed.

Ad paragraph 24

55. I have already addressed the manner in which this application was instituted.

Ad paragraph 25

56. The contents of this paragraph are denied. The applicants have no clear right. It is also denied that any irreparable harm would or will arise, or that they have no "other alternative [sic] remedy". The applicants' approach to the matter shows no regard for the rights and interests of the complainants or those implicated by the provisional report and, on their own version, instead focuses on the applicants' interests. This

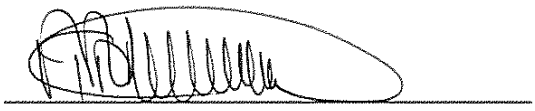
stands in contrast to the applicants' duty to exercise their powers in the interests of all. The balance of convenience does not enter the matter since the relief sought has not been couched as an interim interdict pending any return day. In any event, the balance of convenience is in favour of those affected by the provisional report – namely those who laid the complaint and those who are implicated in it – having a fair opportunity under strictly supervised circumstances to answer the provisional conclusions. It is clearly not in the public interest for either those who have made a complaint of this nature or those who stand accused of misdoings to be left in uncertainty and deprived of what fairness on first principle requires. The balance of convenience also favours the completion of a significantly delayed investigation regarding serious allegations of irregularities pertaining to public expenditure at a private residence of the President of the country.

Ad paragraph 26

57. This entails no allegation of fact but further argument. It is however to be observed that what the applicants now request is very different from either the arrangement agreed on 8 August 2013, or what the correspondence between us reflects. They now seek that this Court order me to submit "the revised provisional report, if any" to them for a yet second round of "determining whether or not the security concerns raised by the applicants have been addressed", prior even to the affected parties seeing it. For reasons to be argued, this is contrary to law and fundamentally inconsistent with the Constitution.

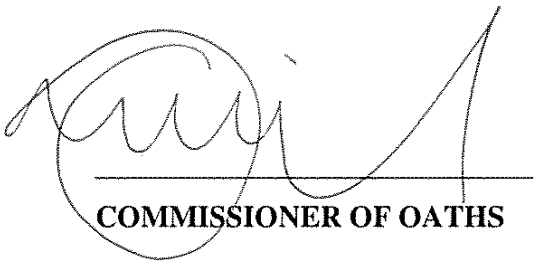
D. Conclusion

58. I accordingly ask that the application be dismissed with an appropriate costs order against the four applicants, jointly and severally, the one paying the others to be absolved.



THULISILE NOMKHOSI MADONSELA

I HEREBY CERTIFY that the deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and sworn on before me at PRETORIA on the 12th day of November 2013, the regulations pertaining to the administering of an oath having been observed.



Before me: **COMMISSIONER OF OATHS**

Name:

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