



South African Institute of Race Relations
The power of ideas

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Dear Acting Public Protector Kholeka Gcaleka,

We write to request that you publish the answers given by President Cyril Ramaphosa to your office on 22 July, 2022, to thirty-one questions posed by the office of the Public Protector on 7 June, 2022, as a matter of utmost urgency.

We request that you publish President Ramaphosa's answers by no later than noon, Monday 12 December, either on the Public Protector website or a similar open platform.

We note that shortly after the President submitted his answers to your office, he was instructed by your office to keep those answers secret from the public. As is noted in the Heads of Argument before the Constitutional Court the President "was unable to meet his intended deadline for a response to the Acting Public Protector...on 18 July 2022, and that his request for a further extension had been refused; 22 (b) his response was submitted to the APP on 22 July 2022; 23 (c) he had intended placing his response before Court, but had been advised by the APP that there must be no leakage of the documents so as to avoid compromising and jeopardising the investigation; 24 (d) in light thereof, he did not make his response available to the Court, but had no objection to doing so..." [CC Case No. 251/2022, Second Appellant Heads of Argument, Paragraph 10.1]

Since submitting his answers to the court would have placed the President's answers to the 31 questions on the public record, and since the Acting Public Protector opposed such a submission to court only on the basis that it would place these answers on the public record, it follows that the President has no objection to the publication of the 31 answers that might otherwise have blocked them from being placed on the public record, and secondly if it is in the public interest the Acting Public Protector must place these answers on the public record expeditiously.

We further note that the suspended Public Protector protested in the intervening period, calling for the answers to the 31 questions to be placed on the public record.

The danger of "jeopardising the investigation" posed by publishing the President's 31 answers has reduced substantially in the 140 days since those answers were submitted to your office. The questions have allegedly been leaked and published in the press as early as July 2022, which would have tipped off potentially implicated persons and witnesses to the likely content of the answers. In addition the President made extensive written submissions both

to Parliament's Independent Panel, chaired by former Chief Justice Sandile Ncobo, and to the Constitutional Court in his review application against the Ncobo Panel, that lay out his version of events regarding the Phala Phala scandal about which the original 31 questions inquired. These submissions are public.

Insofar as the President's disclosure of his version of the Phala Phala scandal posed a risk of "jeopardising the investigation" into that scandal the buffalo has very much bolted.

Moreover, even if the risk of "jeopardising the investigation" were the same today as it was 140 days ago, which it is not, the public interest in having those answers disclosed is much greater now than it was then. The National Assembly is scheduled to vote on whether to investigate the President pursuant to Section 89 of the Constitution, Removal of President, on Tuesday 13 December, which is the basis for urgency. It is in the public interest that those MPs have every piece of information available to them that is relevant to that vote on whether to proceed under Section 89. It is beyond dispute that the President's answers to the questions are relevant.

If the Acting Public Protector were to refuse to supply all MPs President Ramaphosa's 31 answers before those MPs decide whether to prosecute the matter in terms of Section 89 of the Constitution, or not, this would be akin to a refusal by police to hand over evidence relevant to a case to the National Prosecuting Authority (NPA) at the time when the NPA is attempting to decide whether or not to prosecute that very case.

The IRR submits that pursuant to the constitutional imperatives of openness and transparency and in order to ensure proper and informed political accountability that President Ramaphosa's answers to the 31 questions should be published as a matter of urgency and great importance.

If for any reason the Acting Public Protector maintains that publishing one or more answers would pose such a danger to ongoing investigations into the Phala Phala scandal that this risk outweighs the public interest in MPs making as informed a decision as possible on whether to impeach the President of the Republic of South Africa we request that your office publishes the answers to the remaining questions.

Regards,

IRR Head of Campaigns,

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