



ISBN: 978-1-920692-48-3



**PUBLIC PROTECTOR
SOUTH AFRICA**

Accountability • Integrity • Responsiveness

UP IN THE AIR

Report on a complaint into allegations and counter allegations of a violation of the Executive Ethics Code by the former and current Minister of Defence and Military Veterans, the Hon. Ms Lindiwe Sisulu, MP and the Hon. Ms Nosiviwe Mapisa-Nqakula, MP in connection with Hon. Sisulu's utilisation of the South African Airforce Gulfstream Aircraft as well as allegations of improper conduct against Hon. Mapisa-Nqakula

Report No: 13 of 2015/16



@PublicProtector



www.publicprotector.org



0800 11 20 40



REPORT ON A COMPLAINT INTO ALLEGATIONS AND COUNTER ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE FORMER AND CURRENT MINISTERS OF DEFENCE AND MILITARY VETERANS, THE HON. MS LINDIWE SISULU, MP AND THE HON. MS NOSIVIWE MAPISA-NQAKULA, MP IN CONNECTION WITH HON SISULU'S UTILIZATION OF THE SOUTH AFRICAN AIRFORCE GULFSTREAM AIRCRAFT AS WELL AS ALLEGATIONS OF IMPROPER CONDUCT AGAINST HON MAPISA-NQAKULA.

1. I have been investigating complaints into allegations and counter allegations of the violation of the Executive Ethics Code by the former and current Minister of Defence and Military Veterans, the Hon. Ms Lindiwe Sisulu MP and Hon. Nosiviwe Mapisa-Nqakula, MP in connection with Hon Sisulu's utilization of the South African Air force Gulfstream Aircraft and allegations of improper conduct against Hon Mapisa-Nqakula.
2. The investigation was conducted in terms of the provisions of section 3 of the Executive Members' Ethics Act, section 182 of the Constitution, 1996 as well as sections 6 and 7 of the Public Protector Act.
3. On 19 November 2012, I received a complaint from Hon Sisulu stating that she noted reports in the media indicating that the Congress of South African Trade Unions requested me to investigate what was termed "*abuse of state resources*" with reference to a Parliamentary Reply tabled by the Minister of Defence and Military Veterans and subsequently withdrawn by the Acting Minister of Defence and Military Veterans at the time, the Hon Ms Bathabile Dlamini, MP in connection with flights that Hon Sisulu undertook with a SAAF Gulfstream Aircraft. In her complaint, Hon Sisulu also stated that:
 - 3.1 The allegations against her attracted a lot of public interest and had a potential of tarnishing her integrity and as a consequence thereof, she requested me to investigate the allegations and undertook to furnish me with all necessary information and thus requested me to prioritize the investigation.

-
4. On 26 November 2012, I also received a complaint from the General Secretary of the Congress of South African Trade Unions (COSATU), Mr Zwelinzima Vavi with a request for me to investigate allegations circulating in the media to the effect that the SAAF was spending approximately R68000 an hour to fly Hon Sisulu.
 5. According to Mr Vavi, it was alleged that by "*Military Sources*" that the Air Force was frequently chartering the luxurious Gulfstream Aircraft for flights from Pretoria to Cape Town and back on the same day. It was alleged in Mr Vavi's complaint that:
 - 5.1 The *Mail & Guardian* newspaper publication was informed that a return flight from *Lanseria Airport* via *Waterkloof Air Force Base* to *Ysterplaat Airforce Base* in Cape Town on a Gulf Stream Aircraft cost more than R200 000 excluding the cost of the pilot and cabin crew, food and landing costs. He compared the cost to the current price of a return trip from Johannesburg to Cape Town which according to him amounts to approximately, R4899.00. Mr Vavi thus contended that if the allegations are correct then the conduct of the Minister in this regard amounted to a monstrous waste of public funds by an elected public representative and thus requested me to investigate the matter with a view to establishing the veracity or otherwise of the allegation.
 6. Subsequently, and on 14 January 2013, I received a further complaint from Hon Sisulu ostensibly in terms of the provisions of section 2(b)(v) of the Executive Members Ethics Act, 199. In her complaint, Hon Sisulu requested that in addition to her complaint regarding the usage of a SAAF Gulfstream Aircraft and the damage done to her integrity, I must launch an investigation into the conduct of the Minister of Defence and Military Veterans, Hon Mapisa-Nqakula. In this regard, Hon Sisulu was of the view that;
 - 6.1 Hon Mapisa-Nqakula violated the provisions of section 2(b)(v) of the Executive Members Ethics Act, 1998 which prohibits members of the Executive from acting in a manner that may compromise the credibility or integrity of their office or the government. She thus attached copies of correspondence from then Acting Minister of Defence and Military Veterans at the time, the Hon. Ms Bathabile Dlamini, MP, withdrawing parliamentary reply 2284 of 2012 which also sought to apologize for the inconvenience caused by submitting the reply to Parliament;

-
- 6.2 The insistence of Hon Mapisa-Nqakula that the information contained in parliamentary reply number 2284/2012 is incorrect and same has thus nullified the withdrawal and apology issued by the Acting Minister of Defence and Military Veterans at the time and had thus continue to cause serious and irreparable damage to Hon. Sisulu's integrity; and
- 6.3 The fact that the Minister of Defence and Military Veterans distanced herself from the withdrawal and any apology tabled, undermined a parliamentary process as well as a collective decision that had been taken and the authority of an Acting Minister appointed by the President.
- 6.4 This according to Hon. Sisulu, constituted a further attack on her integrity which put her in a worse situation than she was before. Minister Sisulu concluded her complaint by contending that the Minister of Defence and Military Veterans, Hon. Mapisa-Nqakula violated the provisions of section 2(b)(v) of the Executive Members Ethics Act, 1998 and thus requested that I investigate the matter.
7. On 14 December 2012 and 5 February 2013 respectively, I acknowledged receipt of Mr Vavi and Hon Sisulu's complaints and thus undertook to investigate the matters that they raised. The dispute between Hon Sisulu and Hon Mapisa-Nqakula arose as a result of a parliamentary question number 2284 of 2012 which was posed by the Democratic Alliance's Member of Parliament, the Hon. Mr D J Maynier. In his question paper published on 15 September 2012, Hon Maynier asked the Minister of Defence and Military Veterans, Hon. Mapisa Nqakula the following questions;
- " (1) *How many (a) flights and (b) ferry flights were undertaken by her predecessor using Gulfstream Executive Jet operated by the SA Air Force Reserve Squadrons in the (i) 2009-10, (ii) 2010-11) and 2011-12 financial years;*
- (2) *What (a) was the (i) date and (ii) location of (aa) departure and (bb) arrival for each specified flight in each specified financial year and (b)(i) was the cost and (ii) is the breakdown of the cost in each specified case? NW2865E"*

8. Hon Mapisa-Nqakula responded to Hon Maynier's questions as follows;

"(1)

FINANCIAL YEAR	FLIGHTS	FERRY FLIGHTS
2009/10	04	08
2010/11	67	33
2011/12	63	28

(2) *Unfortunately the details requested will not be availed as it is classified information."*

9. It appears that Hon Mapisa-Nqakula and in her reply to the questions also attached a table with dates, location of departure and arrival of each specified flight in each specified financial year as well as attached the costs and breakdown of each specified case. Neither of the two Honourable Members of the Executive provided me with this information during the preliminary investigation or when they submitted their information and documentation.
10. It was however noted that in his approval of the reply, the Director General responsible for the SANDF who also serves as a Secretary for Defence, Dr S M Gulube raised a concern that this information about the SAAF flights undertaken by the Minister should be classified.
11. On 14 November 2012 and whilst Hon Mapisa-Nqakula was on official visit abroad, Hon Dlamini in her official capacity as the Acting Minister of Defence and Military Veterans, corresponded with the former Deputy President of the Republic of South Africa and Leader of Government business in Parliament, His Excellency, Deputy President Kgalema Motlanthe withdrawing the response submitted to Parliament. In her correspondence to the Deputy President, Hon Dlamini stated that;



"The Ministry of Defence and Military Veterans is in the process of reviewing the answer that was provided by Hon N N Mapisa-Nqakula, MP, Minister of Defence and Military Veterans to Parliament in relation to the question related to the usage of aircraft by the Minister of Public Service and Administration during her tenure as Minister of Defence and Military Veterans

It has been noted that the answer provided in response to Parliamentary Question 2284 (NW2865E) by Mr D J Maynier of the Democratic Alliance, was too technical in nature and did not respond to the specific question asked.

The response initially given to Parliament has been referred back to the Department of Defence and Military Veterans to look into details of the records of the South African Air force and provide the Minister with the specific data that is presently under discussion.

The required details will be provided by Minister Mapisa Nqakula on her return from an official visit abroad"

12. A similar letter was forwarded by Hon Dlamini to the Speaker of the National Assembly, the Hon Mr Max Sisulu on 15 November 2012 where she requested the withdrawal of the reply until the Department provides the appropriate reply thus apologizing for any inconvenience caused to anyone in respect of the reply given to the House of Parliament.
13. On 9 November 2012, Hon Lindiwe Sisulu corresponded with the Leader of Government Business in Parliament, His Excellency, Deputy President Kgalema Motlanthe attaching a copy of her correspondence addressed to the Minister of Defence and Military Veterans on the same date. In her correspondence to the Deputy President, Hon Sisulu lamented and said;

"I am extremely perturbed by the reply supplied by the Minister of Defence and Military Veterans and have resolved to pass a motion against her misleading Parliament in the National Assembly on 13 November 2012. A copy of her reply is attached. THIS IS NOT TRUE. The Minister could have checked her facts and even approached me if she was not certain, should she have had any intention.



My integrity is important to me. I am taking this step because I believe that the Rules of Parliament and the related convention are there to ensure that the honour of each Member of Parliament is respected.

14. Subsequently and on 10 November 2012, Hon Mapisa-Nqakula corresponded with the Speaker complaining that Hon Lindiwe Sisulu appear to have lodged a complaint to Parliament alleging that she, Hon Mapisa-Nqakula misled Parliament in her written response to the National Assembly question number 2284.
15. In her correspondence, Hon Mapisa-Nqakula provided the Speaker with the contents of the question paper as well as her responses which are the same as the ones dealt with in paragraphs 6 and 7 of this communication.
16. Hon Mapisa-Nqakula thus confirmed with the Speaker that her reply to the parliamentary questions were based on statistics provided to her by the SAAF and signed off by the Chief of the SAAF thus confirming the validity of the information provided to Parliament.
17. She took exception to allegations by Hon Lindiwe Sisulu that she misled Parliament or deliberately misled Parliament in providing a response to the questions thus emphasizing that the information has been verified afresh and as such she could confirm to the Speaker that the information provided to Parliament was indeed correct.
18. Having received all the above information and during my preliminary investigation into the dispute, I deemed it appropriate to arrange a meeting with Hon Lindiwe Sisulu so that I could familiarize myself with the intricacies of this matter as I felt at the time that using a doctrine of cooperative governance, the dispute between the two members of the Executive could be resolved amicably. I thus arranged a meeting with her to be held on 4 February 2013. Unfortunately, I could not meet with the Minister on that day. Again, I tried inviting both Hon Mapisa-Nqakula and Hon Sisulu to a meeting to be held on 17 September 2013 so as to proceed with the investigation into the allegations of wasteful and fruitless expenditure by Hon Sisulu in connection with flights taken during her tenure as Minister of Defence and Military Veterans. This gesture also failed as both Ministers refused to meet with me for one reason or another.



-
19. Having failed to convene a meeting with Hon Mapisa-Nqakula and Hon Sisulu with a view to reaching a consensus on a more meaningful and expedient manner of resolving the matter I resorted to communicating with them through correspondence on 6 March 2014 wherein I put the allegations to them in writing with a request for responses and that they provide me with specified information and documentation. Hon Mapisa-Nqakula responded to my enquiries on 12 March 2014. In her correspondence to me she indicated that on 9 November 2012, Hon Sisulu had referred the matter to his Excellency, Deputy President Kgalema Motlanthe in his official capacity as the Leader of Government Business in Parliament.
20. In her understanding, so she said, the matter was being handled and managed by that office and thus respectfully requested that same be allowed to be brought to finality by that office who in her opinion were best placed to resolve a matter of this nature.
21. In her further response to my enquiries, Hon Mapisa-Nqakula reiterated that she did not mislead parliament in her reply to Parliamentary Question 2284 (NW2865E) and to prove that she did not mislead Parliament she stated that;
- "No Minister can respond to Parliamentary Questions of a technical nature based on information purely falling within their knowledge. Parliamentary responses to questions of a technical nature such as the question under discussion require the bureaucrats/technocrats within the relevant section of the Department to compile the information in response to the said question. In this instance, the information required to respond to this Parliamentary Question had to be compiled by the VIP Protection Air Force Base."*
22. She attached to her response, a reply to the Parliamentary Question prepared and received from Lt Col Hanekom which was signed off as correct on 8 October 2012 by the Chief of SAAF, Lt. Gen Msimang and recommended for submission to the Minister on 18 October 2012 by the Chief of the SANDF, General Shoke and the final recommendation with comments that SAAF flights of Principals needs to be classified was made by the Secretary of Defence, Dr Gulube.
-



-
23. Hon Mapisa-Nqakula continued in her response and stated that;
- "As a result of Dr Gulube's comment, the response provided to Parliament only dealt with section 1 of the Parliamentary Question and in reference to section 2 it merely stated, 'Unfortunately the details requested will not be provided as it is classified information.'"*
24. According to Hon Mapisa-Nqakula, in comparing the response provided to Parliament on section 1 to that provided by Lt Col Hanekom and all subsequent signatories, there is no discrepancy and as such it cannot be alleged that she misled Parliament as the information was duly provided and signed off by all the relevant role-players. She further stated that, after the response to the Parliamentary Questions was withdrawn due to contestations by Hon Sisulu, she engaged the Department on various occasions to obtain explanations in connection with the response.
25. Hon Mapisa-Nqakula further submitted that the questions was again resubmitted to Parliament by Hon Maynier on 22 February 2013 under Parliamentary Question number 214 and on 3 March 2014, in a reply to Parliamentary Question number 84, she outlined her reasons for not replying to Parliamentary Question number 214 and stated that;
- "I have consistently received contradicting information from the Department in respect of the Parliamentary Question and have resultantly not been able to assertively provide the requisite reply in this regard."*
26. Hon Mapisa-Nqakula concluded her response to my enquiries by declining my offer to meet with her on 17 March 2014 and insisted that I give a proper consideration to her request for to hold my investigation into the matter with a view to letting same be handled and resolved by the Office of the Leader of Government Business, Deputy President Kgalema Motlanthe or that I conclude the matter based on the information that she provided to me. On 14 March 2014, Hon Sisulu also responded to my enquiries of 6 March 2014 and commenced her response by lamenting that this is the first time she received a response from me despite my consistent requests for me to meet with her and Hon Mapisa-Nqakula with a view to us agreeing on a more meaningful and expedient manner of resolving this matter which was in vain.
-



27. In her response, Hon Sisulu undertook to find a mutually convenient time for us to meet and promised that the information that I requested will be made available as soon as possible as well extensive responses given to further questions that were asked in Parliament with regard to the matter. She concluded her response to me by stating that;

"In light of the fact that I felt strongly about this matter as indicated in my letter to you, I have taken the decision to take the legal route. As you may be aware, the matter has been reported in the public domain extensively thus causing harm to my reputation and integrity. However, I am willing to hear this matter out with you and would like an assurance that you will deal with it in an expedited fashion so that I would know how to proceed with the legal action already underway."

28. Following this correspondence, there has been no further meaningful communication exchanged between myself and the two Members of the Executive. I have neither received a confirmation of a resolution of the matter by the Leader of Government Business as advised by Hon Mapisa-Nqakula nor the information or meeting arrangements made by Hon Sisulu to date.

29. I have accordingly decided to close the investigation and leave the matter to your discretion in terms of the Executive authority vested in you in terms of section 85 of the Constitution of the Republic of South Africa

ADV T N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 31 March 2016

Assisted by: Good Governance and Integrity Branch (GGI)