SHE DID NOT KNOW

Report on an investigation into allegations of a breach of the Executive Ethics Code by the Minister of International Relations and Cooperation, Minister Maite Nkoana-Mashabane, MP

Report No: 12 of 2015/16
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Executive Summary

(i) SHE DID NOT KNOW is my report as the Public Protector that is issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), sections 3(2)(a) and 3(3) of the Executive Members' Ethics Act, 1998 ("Executive Members' Ethics Act") and section 8(1) of the Public Protector Act, 1994 ("the Public Protector Act").

(ii) The report communicates my findings and appropriate action to remedy any wrong I may have found as envisaged in section 182(1) (c) of the Constitution, following an investigation into a complaint lodged by Hon Bill Eloff, MP of the Democratic Alliance ("the Complainant"), on 10 February 2012 in terms of section 4(1) of the Executive Members Ethics Act, 1998 ("EMEA") against Minister Nkoana-Mashabane, requesting an investigation into allegations of a breach of the Executive Ethics Code by the Minister responsible for the Department of International Relations and Cooperation, the Minister Maite Nkoana-Mashabane.

(iii) In his complaint, Hon Eloff alleged that Minister Nkoana-Mashabane received a benefit amounting to approximately R100 000 in respects of payments towards security services at her private residence in Polokwane which she failed to declare in the Parliament's Register of Members Interests.

(iv) The gist of the complaint was that Premier Fishing Company (Pty) Limited paid a sum of R103 856 to Urban Africa Security Services CC towards the security services rendered by the said security company at Minister Nkoana-Mashabane's private home situated in Polokwane. It was Hon Eloff's contention that the conduct of the Minister in failing to declare the benefit in the Parliament's Register of Members Interests constituted a possible violation of the Executive Ethics Code.

(v) Hon Eloff's complaint was based on an article published in the Mail&Guardian newspaper of 25 November 2011 under the heading; "Tycoon pays for minister's guards". In the article it was reported inter alia that:

"International Relations Minister Maite Nkoana-Mashabane has not declared to Parliament a R100 000 payment for around-the-clock private security at her private residence in Polokwane."
Cape Town-based Premier Fishing picked up Nkoana-Mashabane’s R8 654.76-a month security tab for 12 months in 2010-2011. Premier Fishing is a subsidiary of JSE – listed Sekunjalo Investments.

(vi) The Mail & Guardian further reported that:

"The benefit is absent from the Minister’s declaration of interests released by Parliament’s registrar of members’ last week. Nkoana-Mashabane, through spokesperson Clayson Monyele, said that her brother, Harry Nkoana, was the “caretaker” of the property and that she was obliged to declare only benefits accruing to herself and her children. She referred all further questions to her brother."

(vii) On 23 February 2012, enquiries were made with the Minister with a view to soliciting her response to the allegations and to obtain information and documentation that would assist in the investigation of the matter. She was also informed of my decision to investigate the complaint in terms of the provisions of Section 3 of the Executive Members Ethics Act. In response to my enquiries, Minister Nkoana-Mashabane informed me that the matter is the subject of another investigation by the Parliament’s Joint Committee on Ethics and Members Interests.

(viii) Subsequently and on 26 June 2012, I approached the Committee with a request for it to advise me of the progress and or outcome of their investigation which I received on 16 August 2012. The cooperation of the Committee with my investigation made it easy for me to identify the issues that would be relevant for purposes of my investigation. Due to capacity constraints, I was unable to conclude the investigation within the stipulated period as envisaged by the Act. I advised the President accordingly, in compliance with section 3(3) of the EMEA.

(ix) During its investigation, the Parliament’s Joint Committee on Ethics and Members Interests considered Minister Nkoana-Mashabane’s sworn statement in which she denied any knowledge of the benefit accrued by her brother in respect of security for her property. Minister Nkoana-Mashabane did not deny that she is the owner of the property. She however stated that since her appointment as a Minister, she left her brother to take care of the property.
(x) The Committee also considered the submission by the private security company which confirms that the contracts for the provision of security by them were signed by Mr Nkoana. Ultimately, the Committee accepted the Minister’s sworn statement that she was not aware of the benefit given to her brother. The Committee found that there was no breach of the Code of Conduct for Members of Parliament. However, the Committee noted that as the matter was in the public domain, the Minister should address the perception that she may have benefitted indirectly as the service provided relates to her private property. The Committee therefore required that the Minister amend her disclosure to reflect the indirect benefit received from Premier Fishing.

(xi) In arriving at my findings, I was also guided by the standard approach adopted by my office, which simply asks: What happened? What should have happened? Is there a discrepancy between what happened and what should have happened? If there’s a discrepancy, whether the conduct amount to improper conduct or in this case maladministration and unethical conduct?

(xii) My investigation process included an analysis of applicable laws and policies, exchange of correspondence, securing and an analysis of relevant documents. I also took into account Parliament’s Joint Committee on Ethics and Members Interests had already commenced with the investigation and actually issued its report on the outcome of same. My report therefore is by no way an act of seeking to review the investigation and the report of the Ethics Committee of Parliament.

(xiii) As is customary, the “what happened” inquiry is a factual question settled on the assessment of evidence and making a determination on a balance of probabilities. The question regarding what should have happened on the other hand relates to the standard that the conduct in question should have complied with. In determining such standard I was guided, as is customary, by the Constitution, national legislation and applicable policies, guidelines and related benchmarks.

(xiv) The principles developed in relevant previous reports of the Public Protector, referred to as touchstones, were also taken into account. Key reports consulted in this regard were those dealing with the Code of Ethics and conflict of interest investigations such as “In the Extreme”, “Costly Moves”, and “Costly letters”, Submissions made to the Ethics Committee.
by relevant parties, including Minister Nkoana-Mashabane and the Urban Africa Security that was responsible for rendering security services at Minister Nkoana-Mashabane's private residence, were also considered.

(xv) On analysis of the complaints, the following issues were identified and investigated;

(a) Whether Premier Fishing (Pty) Limited made a payment amounting to R103 856 in respect of security arrangements at Minister Nkoana-Mashabane's private residence in Polokwane, including whether the Minister accepted such a benefit and if so; whether it was improper and unethical to do so; and

(b) Whether Minister Nkoana-Mashabane failed to declare the benefit of R103 856 in respect of security arrangements at her private home in the Parliamentary Register of Members’ Interests as required in law.

(xvi) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

(a) I elect to make no findings in connection with the allegations against Minister Nkoana-Mashabane as the Parliament’s Joint Committee on Ethics and Members Interests had already investigated the matter and found that there was no evidence that Minister Nkoana-Mashabane personally and directly received the benefit. However, the Committee found and accepted that the benefit relates to her property and therefore benefited indirectly.

(xvii) The appropriate remedial as envisaged by section 182(1)(c) of the Constitution is the following:

(a) I will not take any further remedial action against Minister Nkoana-Mashabane as the Parliament’s Joint Committee on Ethics and Members Interests had already investigated the matter and recommended that “now that the Minister is aware of the benefit which accrued in respect of the security to her property, she is required to amend her disclosures to reflect the indirect benefit received from Premier Fishing Company”.

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(xviii) President to note the Parliament's Joint Committee on Ethics and Members Interests' findings and engage the cabinet about paying attention to the requirements of the Executive Ethics Code in so far as disclosures are concerned.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A BREACH OF THE EXECUTIVE ETHICS CODE BY THE MINISTER OF INTERNATIONAL RELATIONS AND COOPERATION, HON MAITE NKOANA-MASHABANE, MP

1. INTRODUCTION

1.1 "SHE DID NOT KNOW" is my report as the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), section 3(2)(a) of the Executive Members' Ethics Act, 1998 (Executive Members' Ethics Act) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted to the President of the Republic of South Africa, His Excellency, Mr J G Zuma

1.3 To take cognizance of the report; copies thereof are submitted to:

1.3.1 The Speaker of the National Assembly;

1.3.2 Minister Nkoana-Mashabane, MP The Minister responsible for the Department of International Relations and Cooperation; and

1.3.3 The Complainant, Hon Bill Eloff, MP, Member of Parliament of the Democratic Alliance.

1.4 The report relates to an investigation into an allegation of a breach by the Minister of International Relations and Cooperation Minister M Nkoana-Mashabane of the Executive Ethics Code, published in terms of the Executive Members’ Ethics Act.

1.5 The Executive Ethics Code was published on 20 July 2000 and amended on 7 February 2007, by virtue of the provisions of section 2(1) of the Executive Members’ Ethics Act. It regulates the ethical conduct of Members of the Executive, as contemplated by the provisions of section 96(1) of the Constitution.
1.6 The Executive Ethics Code prescribes standards and rules aimed at promoting open, democratic and accountable government with which Cabinet members must comply in performing their official responsibilities.

1.7 Minister Malie Nkona-Mashabane was appointed to the Cabinet in the portfolio of Minister responsible for International Relations and Cooperation and assigned her powers and functions on 11 May 2009 by the President of the Republic of South Africa, His Excellency, Mr J G Zuma.

2. THE COMPLAINT

2.1 A Member of Parliament representing the Democratic Alliance (DA), Mr Bill Eloff MP, lodged a complaint with the Public Protector, in terms of Section 4 (1) of the Executive Members Ethics Act, on 14 February 2012. In his complaint, Hon Eloff stated as follows:

"The Minister of International Relations and Cooperation, Malie Nkona-Mashabane, reportedly failed to include a R100 000 payment for security at her private home in Polokwane in her declaration of interests". He requested that the Minister's possible breach of the Executive Ethics Code be investigated. He went further and stated that...

"The Executive Ethics Code states that ministers 'may not solicit or accept a gift or benefit which is in return for any benefit received from the member in the member's official capacity' and that 'any gift with a value of more than R350' must be disclosed".

"Gifts with a value of more than R1000 may only be accepted with permission from the President."

2.2 Hon Eloff stated in his complaint that the Minister appears to have transgressed this Code and not only does it appear that the Minister transgressed the Code, but the payments made to the security company raise a number of other questions such as:

"The R103 856 tab for the Minister's security arrangements was picked up by Premier Fishing, a subsidiary of Sekunjalo Investments."
Premier Fishing Director and Sekunjalo Investments’ Executive Chairperson, Iqbal Survé, is a regular member of official business delegations accompanying President Jacob Zuma, Minister Nkoana-Mashabane and other government leaders on overseas state visits.


2.3 Hon Eloff further argued that the only inference that can be drawn is that Dr Iqbal Survé was paying the Minister’s security bill in return for places on prized trade delegations and as such, the Executive Ethics Code is in place to help protect members of the public against Ministers’ influence being bought.

2.4 He further argued that Ministers must at all times act in a way that promotes the interests of the South African people, not individuals or companies seeking to leverage state resources for personal gain. He thus requested that the matter be investigated in terms of the Executive Members’ Ethics Act, 1998.

2.5 During the assessment of the complaint, it transpired that the allegations made by Hon Eloff were based on an article published by the Mail&Guardian on 25 November 2011 under the heading: “Tycoon pays for minister's guards”.

2.6 In essence, it was reported in the Mail&Guardian newspaper that Minister Nkoana-Mashabane failed to declare to Parliament a R100 000 payment for the around-the-clock private security at her private residence in Polokwane. It was reported that:

"Cape Town- based Premier Fishing picked up Nkoana-Mashabane’s R8 655- a month security tab for 12 months in 2010-2011. Premier Fishing is a subsidiary of JSE – listed Sekunjalo Investments. It’s Executive Chairperson, Iqbal Survé, has travelled overseas with the official business delegation accompanying President Jacob Zuma, Nkoana-Mashabane and other minister on other state visit and government business. Survé is also a director of Premier Fishing.”
2.7 The Mail & Guardian further reported that:

"The benefit is absent from the Minister’s declaration of interests released by Parliament’s registrar of members’ last week. Nkoana-Mashabane, through spokesperson Clayson Monyele, said that her brother, Harry Nkoana, was the "caretaker" of the property and that she was obliged to declare only benefits accruing to herself and her children. She referred all further questions to her brother."

2.8 With regard to the ownership of the property, the Mail & Guardian reported that Mr Harry Nkoana stated that "although his sister still owned the property he took loan from Survé without her knowledge because he had taken over the responsibility of caretaker."

2.9 Mr Nkoana is however reported to have conceded that Minister Nkoana-Mashabane visited her Polokwane residence when she was in the province on government business. However, he could not recall the number of time that Minister Nkoana-Mashabane visited but estimated that she spent the nights, "less than 10 times during the 12 months that Premier Fishing paid for security."

2.10 When he was asked whether Minister Nkoana-Mashabane would return to take up residence once her time in the Cabinet was over, Mr Nkoana is alleged to have stated that the Minister would let him know what she intended to do.

2.11 In the article it has been reported that the Mail & Guardian newspaper had sight of an invoice, dated 01 May 2011 and sent by Urban Africa Security; a Polokwane based private security company to Premier Fishing. The said invoice was for a monthly payment of R8 654.76 in respect of the provision of armed security officers, one for the day and one for the night, at an undisclosed Polokwane address.

2.12 The service was confirmed by a visit by the newspaper publication to the residence which was indeed patrolled by Urban Africa Security. It was further reported that Premier Fishing began paying for the security on September 1, 2010 and paid the same amount for 12 months, until 31 August 2011 totaling a sum of R103 856.88.
2.13 In addition to the above allegations, the *Mail & Guardian* newspaper gave the following timeline of events:

<table>
<thead>
<tr>
<th>DATE</th>
<th>OCCASION</th>
</tr>
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<tbody>
<tr>
<td>10 May 2009</td>
<td>Ms Maite Nkoana-Mashabane appointed Minister of International Relations and Cooperation</td>
</tr>
<tr>
<td>2-5 March 2010</td>
<td>Mr Iqbal Survé amongst 200 - strong business delegation accompanying President Jacob Zuma &amp; Minister Nkoana-Mashabane on State visit to the United Kingdom</td>
</tr>
<tr>
<td>24-26 August 2010</td>
<td>Mr Iqbal Survé amongst 200 - strong business delegation accompanying President Jacob Zuma &amp; Minister Nkoana-Mashabane on State visit to China</td>
</tr>
<tr>
<td>1 September 2010</td>
<td>Premier Fishing’s R8 654.76 per-month arrangement to pay Urban Africa Security to guard Minister Nkoana-Mashabane’s Polokwane home begins</td>
</tr>
<tr>
<td>31 August 2011</td>
<td>Premier Fishing’s R8 654.76 per-month arrangement to pay Urban Africa Security to guard Minister Nkoana-Mashabane’s Polokwane home ends</td>
</tr>
<tr>
<td>14-16 September 2011</td>
<td>Mr Iqbal Survé attends the World Economic Forum’s annual meeting of New Champions in Dalian, China In his capacity as co-chair of the forum’s Global Growth Companies</td>
</tr>
<tr>
<td>18-21 September 2011</td>
<td>President Jacob Zuma accompanied by Minister Nkoana-Mashabane in New York for the 66th session of the United Nations General Assembly</td>
</tr>
<tr>
<td>22 September 2011</td>
<td>Mr Iqbal Survé attends UN General Assembly meeting on racism in New York as part of the ANC’s centenary delegation. President Zuma and Minister Nkoana-Mashabane in Houston, Texas</td>
</tr>
<tr>
<td>18-24 October 2011</td>
<td>Mr Iqbal Survé in business delegation accompanying Deputy President Kgalema Motlanthe on working visit to the Nordic Countries (comprising of Finland, Sweden and Denmark)</td>
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2.14 On receipt of the complaint, I immediately approached Minister Nkoana-Mashabane advising her of the complaints lodged with my office against her. The response from the Minister is dealt with hereunder.
3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

3.1. The Public Protector was established under section 181(1) (b) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2. Section 182 of the Constitution provides that:

"(1) The Public Protector has the power as regulated by 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 additional powers prescribed in legislation.

3.4. The Public Protector is further given power by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act further mandates him or her to resolve, at his or her discretion, related disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5. Sections 3(1) and 4(1)(a) of the Executive Members’ Ethics Act provide that the Public Protector must investigate any alleged breach of the Executive Ethics Code on receipt of a complaint by a Member of Parliament against a Cabinet member.

3.6. When investigating an alleged breach of the Executive Ethics Code, I, by virtue of section 3(4) of this Act, have all the powers vested in terms of the Public Protector Act. Section 4 of the Executive Members’ Ethics Act further states that nothing in this Act may prevent me
from investigating any complaint by a member of the public in accordance with the Public Protector Act.

3.7. The conduct of Minister Nkoana-Mashabane’s of the Department of International Relations and Cooperation, which is a state organ, amounts to conduct in state affairs and as a result the matter falls within the remit of the Public Protector.

3.8. Jurisdiction and investigative powers were not disputed by any of the parties.

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182 of the Constitution, sections 3 and 4 of the Executive Members’ Ethics Act and sections 6 and 7 of the Public Protector Act.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, or in this case, unethical conduct?
4.2.1.4 In the event of unethical conduct, what would it take to remedy the wrong?

4.2.2 The question regarding “what should have happened”, relates to the standard that should have been met based on the regulatory framework regulating the conduct in such circumstances. Such standard is determined on the basis of relevant constitutional provisions, in this particular case, section 96 of the Constitution which regulates conduct of Cabinet Members and Deputy Ministers is the case in point; the Executive Members’ Ethics Act, Executive Ethics Code, policies, guidelines and related benchmarks, including international benchmarks and previous Public Protector decisions.
4.2.3 The Executive Ethics Code was naturally part of the instruments considered to determine the standard that should have been complied with. Findings are made on the basis of establishing whether the impugned conduct deviated from the standard that should have been upheld. Appropriate remedial action is determined on the basis of the consideration of what would reasonably remedy the wrong occasioned by the deviation from the applicable standard. In this regard court jurisprudence and other benchmarks, including international benchmarks, are employed.

4.2.4 The scope of the investigation was limited to the period May 2009 to May 2014. The subject matter focus was the provision of security measures at the private home of Minister Nkoana-Mashabane situated in Limpopo; whether a private company paid for security services at the Minister’s home; whether she accepted such a benefit as well as whether she declared receipt of such a benefit in the Parliament’s Register of Members’ Interests.

4.2.5 Note was also taken of the fact that the Parliament’s Joint Committee on Ethics and Members’ Interests conducted its own investigation into the matter and made it's a finding and took appropriate remedial action on same.

4.3 On analysis of the complaint, the following were issues considered and investigated:

4.3.1 Whether Premier Fishing (Pty) Limited made a payment amounting to R103 856 in respect of security provisions at Minister Nkoana-Mashabane’s private residence in Polokwane, including whether the Minister accepted such a benefit and if so; whether it was improper and unethical to do so; and

4.3.2 Whether Minister Nkoana-Mashabane declared the benefit of R103 856 in respect of security arrangements at her private home in the Parliamentary Register of Members’ Interests as required in law.
4.4 The Key Sources of information

4.4.1 Documents

4.4.1.1 Documents received from the Complainant, Minister Maite Nkoana-Mashabane and the Joint Chairpersons of the Parliament’s Joint Committee on Ethics and Members’ Interests.

4.4.1.2 The following documents were received and analysed:

4.4.1.2.1 Media Article published in the *Mail & Guardian* newspaper on 25 November 2011 regarding allegations relating to the payment by Premier Fishing Company (Pty) Limited of an amount of R103 856 in respect of security arrangements at Minister Nkoana-Mashabane’s private home situated in Limpopo;

4.4.1.2.2 The report of the Joint Committee on Ethics and Members’ Interests on the media allegations against Minister Nkoana-Mashabane;

4.4.1.2.3 A document entitled, “Sections of the Joint Rules pertaining to the Committee on Ethics and Members’ Interests” which provides for the establishment and functions of the Committee;

4.4.1.2.4 Parliament’s Code of Conduct for Assembly and Permanent Council Members which provides for the Members Disclosure of registrable interests as well as consequences for breaches of the Code;

4.4.1.2.5 Copies of communications with the Registrar of Members Interests in respect of investigation of the Joint Committee on Ethics and Members’ Interests and also provided an individual statement.

4.4.1.2.6 Minister Nkoana-Mashabane’s records in respect of her disclosures in the Register of Members Interest for the period March 2010 to April 2011; and

4.4.1.2.7 Minister Nkoana-Mashabane’s sworn statement signed on 27 February 2012.
4.4.2 Correspondence sent and received

Correspondence was exchanged with:

4.4.2.1 Hon B Eloff, MP the Democratic Alliance Deputy Shadow Minister of International Relations and Cooperation, the complainant in the matter who lodged the complaint on 10 February 2012;

4.4.2.2 Minister Maite Nkoana-Mashabane, the Minister responsible for the Department of International Relations and Cooperation, wherein letters informing her about the allegations against or concerning her regarding the payment and acceptance of a benefit amounting to R103 856 in respect of security arrangements at her private home in Limpopo and requesting responses and supporting documentation dated 23 February 2012;

4.4.2.3 The Hon Lemias Mashile MP and Dr Ben Turok, MP; The Joint Chairpersons of the Parliament’s Joint Committee on Ethics and Members Interest requesting them to provide me with information and documentation pertaining to the Committee’s investigation of the matter following Minister Nkoana-Mashabane’s response to the effect that the matter is under investigation by the Committee dated 26 June 2012;

4.4.2.4 Various confidential correspondences exchanged between the Committee and Minister Nkoana-Mashabane;

4.4.2.5 Minister Nkoana-Mashabane’s response to the preliminary investigation by the Joint Committee on Ethics and Members Interests dated 4 January 2012;

4.4.2.6 Correspondence received from the Complainant dated 10 February 2012;

4.4.2.7 Correspondence received from the Legal Advisor to the President, Adv B Makhene dated 29 February 2012;

4.4.2.8 Correspondence from Urban Africa Security CC dated 29 February 2012 confirming that the company is rendering security services at the Minister’s Polokwane house;

4.4.2.9 Correspondence received from Minister Nkoana-Mashabane dated 3 March 2012;
4.4.2.10 Various e-mails received from the Executive Secretary to the Co-Chairpersons of the Joint Committee on Ethics and Members Interests dated 26 and 27 June 2012 respectively; and

4.4.2.11 Correspondence received from the Co-Chairpersons of the Joint Committee on Ethics and Members Interests dated 14 August 2012.

4.4.3 Legislation and other prescripts

Relevant provisions of the following legislation and other prescripts were considered and applied, where appropriate:

4.4.3.1 The Constitution of the Republic of South Africa, 1996;

4.4.3.2 The Public Protector Act, 23 of 1994;

4.4.3.3 The Public Management Finance Act, 1 of 1999;

4.4.3.4 The Executive Members Ethics Act, 82 of 1998;

4.4.3.5 The Executive Ethics Code, 2000

4.4.3.6 The Ministerial Handbook approved by the Cabinet on 7 February 2007; and,

4.4.3.7 Principles in previous findings of the Public Protector in similar investigations (Touch Stones).

5. THE STANDARD THAT SHOULD HAVE BEEN COMPLIED WITH

5.1 The Constitution of the Republic of South Africa

5.1.1 Section 96(1) of the Constitution provides that members of Cabinet must act in accordance with a Code of Ethics prescribed by National Legislation;

5.1.2 In terms of Section 96(2), members of Cabinet may not
(a). Undertake any other paid work,

(b). Act in any way that is inconsistent with office, or expose themselves to any situation involving the risk of a conflict between their officer responsibilities and private interest or

(c). Use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

5.1.3. Minister Nkoana-Mashabane is bound by the Constitution as the supreme law of the land in the performance of her duties and therefore may not act in any way that is inconsistent with provisions of the constitution and national legislation supporting provisions of the Constitution.

5.2. The Executive Members' Ethics Act

5.2.1. The preamble to the Act states that its aim is to provide for a Code of Ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of Provincial Executive Councils.

5.2.2. In terms of section 2, the President must publish a Code of Ethics prescribing standards and rules aimed at promoting open, democratic and accountable government.

5.2.3. Section 3(5)(a) of the Act provides that the President must within a reasonable time, but not later than 14 days after receiving a report from the Public Protector on an investigation into allegations of a violation of the Code by a Cabinet member, submit a copy of the report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the National Assembly.

5.3. The Executive Ethics Code

5.3.1. The Executive Ethics Code made and issued in terms of the Executive Members' Ethics, was published by the President on 28 July 2000 and amended on 7 February 2007.
5.3.2. It is “a guideline for benefits and privileges, to which Members of the Executive, Presiding Officers and members of their families are entitled, in the execution of their duties.” (emphasis added)

5.3.3. The Preface of the Ministerial Handbook states that: “Anything not mentioned in these guidelines does not form part of the benefits, allowance and support services envisaged for Political Office Bearers.” (emphasis added)

5.3.4. The relevant provision of the Code with which Cabinet Ministers must comply in performing their official responsibilities, provide as follows:

“General Standards:

2.1 Members of the Executive must to the satisfaction of the President:

(a) perform their duties and exercise their powers diligently and honestly;

(b) fulfil all the obligations imposed upon them by the Constitution and law;

(c) act in good faith and in the best interest of good governance, and

(d) act in all respects in a manner that is consistent with the integrity of their office or the government.

2.2 In deciding whether members complied with the provisions of clause (paragraph) 2.1 above, the President.... must take into account the promotion of an open, democratic and accountable government.

2.3 Members may not-

(a) Deliberately or inadvertently mislead the President, or the Premier or as the case may be; the legislature;

(b) act in a way that is inconsistent with their position;

(c) using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;
(e) expose themselves to a situation involving the risk of a conflict between their official responsibilities and their private interests; ...

3. Conflict of Interest

3.2. A Member must withdraw from the proceedings of any committee of the Cabinet or an Executive Council considering a matter in which the Member has any personal or private financial or business interest, unless the President or the Premier decides that the Member’s interest is trivial or not relevant.” (Emphasis added)

5.3. Section 4 relates to gifts received and provides that:

“4.1. A Member may not solicit or accept a gift or benefit which –

a. is in return for any benefit received from the Member in the Member’s official capacity;

b. constitutes improper influence on the Member, or

c. constitutes an attempt to influence the Member in the performance of the Member’s duties.

4.2. When a Member, in the course of the Member’s duties, has received or has been offered a gift with a value of more than R1000, the Member must request permission from the President or the Premier, as the case may be, to retain or accept the gift. If the permission is granted, the Member may retain or accept the gift, but must disclose particulars thereof in terms of paragraph 6.3 of this Code. Where such permission has not been requested or granted the Member must either –

a. return the gift or decline the offer; or

b. donate the gift to the State.

4.3. For the purposes of paragraph 4.2 “gift” does not include travel facilities or hospitality arising from attendance at meals, functions, meetings, cocktail parties,
conventions, conferences or similar events attended by the Member as part of the Member’s executive duties."

5.3.6. Section 6 relates to financial interests to be disclosed as follows:

"Members must disclose the following interests and details:

6.3 Gifts and hospitality other than that received from a spouse or permanent companion or family Member. A description, including the value, source and date of any-
   a. gift with a value of more than R500;
   b. gifts received from a single source which cumulatively exceed the value of R500 in any calendar year;
   c. hospitality intended as a personal gift and with a value of more than R500; and
   d. hospitality intended as a gift and received from a single source, and which cumulatively exceeds the value of R500 in any calendar year."

5.4. The Code of Conduct for Assembly and Permanent Council Members.

5.4.1. Section 45 of the Constitution provides for the establishment by the National Assembly and the National Council of Provinces of a joint rules committee that would amongst others, establish joint committees composed of representatives from both the Assembly and the Council to consider and report on Bills envisaged in sections 74 and 75 that are referred to such a committee.

5.4.2. Part 11, paragraph 121 of the Joint Rules of Parliament provides for the establishment of the Joint Committee on Ethics and Members’ Interests

5.4.3. The Code of Conduct for Assembly and Permanent Council Members regulates the conduct for the Assembly and Permanent Council Members. It directs Members on matters pertaining to ethics and disclosure of financial interests as well as the disclosure of conflict of interests. It guides Members on how to conduct themselves as public representatives
and seek to outline and establish acceptable and minimum standards of behaviour. Through disclosure of financial interests, the Code seeks to reduce secrecy and ensure that Members personal interests are open to public scrutiny.

5.4.4. Paragraph 2 of the Code provides that where any doubt exists as to the scope, application or meaning of any aspect of the Code, the good faith of the Member concerned must be the guiding principle. Paragraphs 3 and 4 of the Code regulates the establishment of the Office of the Registrar of Members Interests as well as the functions of that office in particular the opening and keeping of a Register of Members interests for record purposes.

5.4.5. Paragraph 6 of the Code regulates the disclosure of Registrable Interests and provides that;

1. Members must disclose to the Registrar, on the form prescribed for this purpose by the Committee, particulars of all their registrable interests.

2. The first disclosure must be within 30 days of the opening of Parliament or appointment as a Member. If a Member has no registrable interests, a “nil” return must be submitted.

3. After the first disclosure Members must disclose annually at a time determined by the Committee.

5.4.6. Paragraph 7 of the Code details the kinds of financial interests that are registrable interests and list them as the following;

(a) shares and other financial interests in companies and other corporate entities;

(b) remunerated employment outside Parliament;

(c) directorships and partnerships;

(d) consultancies;

(e) sponsorships;

(f) gifts and hospitality from a source other than a family Member or permanent companion;

(g) any other benefit of a material nature;
(h) foreign travel (other than personal visits paid for by the Member, business visits unrelated to the Member’s role as a public representative and official and formal visits paid for by the state or the Member’s party);

(i) ownership and other interests in land and property; and

(j) Pensions.

5.4.7. Paragraph 8 of the Code provides for the details of registrable interests that Members must disclose and lists them as follows:

(a) **Shares and other financial interests in companies and other corporate entities:**

   (1) The number, nature and nominal value of shares of any type in any public or private company;

   (2) The name of that company; and

   (3) The nature and value of any other financial interests held in a private or public company or any other corporate entity.

(b) **Land and property:**

   (1) A description and extent of the land or property;

   (2) Area in which it is situated;

   (3) Nature of interest;

   (4) Properties outside the state.

5.4.8. Paragraph 12 of Part 2 of the Code regulates the ethical conduct expected of the Members in particular in connection with the declaration of private interests to parliamentary committees and forums. It provides that a Member must;

(a) declare any personal or private financial or business interest that that Member or any spouse, permanent companion or business partner of that Member may have in a matter before a joint committee, committee or other parliamentary forum of which that Member is a Member; and
(b) Withdraw from the proceedings of that committee or forum when that matter is considered, unless that committee or forum decides that the Member's interest is trivial or not relevant.

5.4.9. Paragraph 16 of Part 3 regulates offences that constitute breaches of the Code and provides that a Member breaches the Code if he or she:

(a) contravenes or fails to comply with a provision of this Code;

(b) When disclosing registrable interests, wilfully provides the Registrar with incorrect or misleading details.

5.4.10. Paragraph 17 provides for investigations by the Joint Committee on Ethics and Members' Interests in the event of allegations of a breach of the Code by a Member. It provides the Committee with powers to investigate on own initiative or on receipt of a complaint; make findings and appropriate recommendations for the imposition of penalties where a Member has been found to have contravened the provisions of the Code. [Paragraphs 18 and 19]

5.5. Report of the Parliamentary Joint Committee on Ethics and Members' Interests on an investigation into allegations against Minister Pule.

5.5.1. The Parliamentary Joint Committee on Ethics and Members' interests conducted an investigation into allegations of a breach of Code of Conduct for Members of Parliament against the erstwhile Minister of Communications, Minister Dina Pule pursuant to allegations in the media and issued a report on 7 August 2013.

5.5.2. The issues investigated by the Committee were inter alia, whether;

5.5.2.1 Minister Pule did not disclose the interests of her permanent companion/spouse as required in terms of paragraph 9(g) of the Code.

5.5.2.2 Minister Pule failed to declare her private interests as required by paragraph 13 of the Code. The paragraph requires that a member must declare private interests when making representations as a member to a Cabinet member or any other organ of state with regard
to a matter in which that member or any spouse, permanent companion or business partner of that member has a personal or private financial or business interest.

5.5.2.3 Minister Pule received a pair of Christian Louboutin shoes as a gift from Mr Mngqibisa which was not disclosed as required in terms of paragraph 8(f) of the Code.

5.5.3. The Committee found that:

5.5.3.1 Minister Pule breached Paragraph 9 (g) of the Code as she did not disclose the financial interests of her permanent companion/spouse. In this regard Minister Pule wilfully provided the Registrar with incorrect and misleading details. The Panel finds that the evidence presented on the material aspects of the case by Minister Pule, Mr Mngqibisa, Mr Vilakazi and Mr Phiri was unreliable and untrustworthy. The Panel accordingly rejects this evidence.

5.5.3.2 Minister Pule breached paragraph 13 of the Code. Paragraph 13 of the Code requires that a member must declare private interests when making representations as a member to a Cabinet Member or any other organ of state with regard to a matter in which that member or any spouse, permanent companion or business partner of that member has a personal or private financial or business interest. The Panel is satisfied, on the evidence available to it, that Minister Pule did not disclose to Telkom that her permanent companion had a financial interest in the ICT Indaba which Telkom was sponsoring. Minister Pule as an Executive Member should not have put herself in a position where she had a conflict of interest. In this matter, there was a clear overlap between Minister Pule’s official duties in her oversight role of Telkom and her facilitation of funding for the ICT Indaba.

5.5.3.3 On the allegation that Minister Pule breached paragraph 7(f) of the Code in that she received a pair of Christian Louboutin shoes as a gift from Mr Mngqibisa, the Panel finds that there is no breach. There was not sufficient evidence to prove the allegation.

5.5.3.4 Minister Pule breached paragraph 16(b) of the Code by providing the Registrar with incorrect or misleading details. Minister Pule denied that Mr Mngqibisa was her permanent companion. However, the facts prove otherwise. The evidence proves that
Hon Pule, through her conduct, publicly acknowledged Mr Mngqibisa as her longstanding and permanent companion. This conduct was demonstrated as follows:

5.5.3.4.1 Her admission that she had a relationship of “comradeship and friendship” with him;

5.5.3.4.2 Through her association with him in both the public arena and in her official capacity;

5.5.3.4.3 Sharing hotel accommodation/suites with him;

5.5.3.4.4 Travelling with him on numerous international trips;

5.5.3.4.5 Nominating him as her spouse or companion; and

5.5.3.4.6 Sharing hired cars during official trips, to wit exclusive use of one car, while the rest of the delegation travelled separately. The Committee notes that the concealment of the relationship by Hon Pule enabled Mr Mngqibisa to gain improper financial benefit. In particular Mr Mngqibisa, through Minister Pule’s influence, benefited improperly by receiving R6 million for his company and enjoyed the benefit of the DOC paying for his overseas trips and accommodation. The continued denial of the relationship during the proceedings further reflects the intent to wilfully mislead the Panel. Minister Pule should rectify the non-disclosure of interests and make complete declaration on the interests as required in terms of the Code.

5.5.4. The Committee recommended that Minister Pule is:

5.5.4.1 Issued with a reprimand in the House;

5.5.4.2 Fined 30 days’ salary; and

5.5.4.3 Suspended of her privileges and right to a seat in parliamentary debates or committees for a period of 15 days.

5.5.4.4 She must furthermore submit full details in respect of any non-disclosure and correct the incomplete declarations for the years 2009 to 2013.
5.6. Principles from Previous Reports of the Public Protector (Touchstone)

5.6.1. "In the Extreme", Report No: 11 of 2011/2012 of the Public Protector on an investigation into allegations of a breach of the Executive Ethics Code by the Minister of Cooperative Governance and Traditional Affairs, Mr Sicelo Shiceka, MP.

5.6.1.1 In the report, titled "In the Extreme", it was found that extending benefits to persons not provided for in the Ministerial Handbook amounted to a violation of the Executive Ethics Code. In the case in point the Minister concerned flew a person he classified as his father though not his father and booked him at for hotels for non-official trips. The remedial action included a requirement that the money be repaid to the state.

5.6.1.2 The reasoning was that the general standards determined by paragraph 2 of the Executive Ethics Code require a Minister to act in good faith, in the best interest of good governance and in a manner that is not inconsistent with the integrity of his/her office or the government. Even though Members of the Executive are entitled to leave their travel and accommodation arrangements to the administration of their offices, they are expected to ensure that the provisions of the Ministerial Handbook were adhered to by their administrative staff.

5.6.2 "Costly Letters", Report No: 4 of 2012/2013 of the Public Protector on an investigation into allegations of the improper involvement of Deputy President of the Republic of South Africa in a business transaction with the Islamic Republic of Iran.

5.6.2.1 The report titled "Costly Letters" related to a similar issue that arose where an organ of state issued letters of support for private business and I found that the issuing of the letter of support, though not unlawful, was ill advised as it risked the potential of unintentionally supporting a prohibited conduct. I recommended that there is an urgent need for the regulation, not only the process, but also the circumstances of issuing such letters of support and designating specific persons to do so.
6. EVIDENCE AND INFORMATION OBTAINED

It is common cause that all Members of Parliament have to disclose their interests in compliance with section 5 of the Code for public record. The Minister has alluded to ownership of the house in contention and that Premier Fishing Company (Pty) Limited paid a sum of R103 856 to Urban Africa Security Services CC towards the security services rendered by the said security company at Minister Nkoana-Mashabane’s private home situated in Polokwane, currently occupied by the Minister’s brother. It was Hon Eloff’s contention that the conduct of the Minister in failing to declare the benefit in the Parliament’s Register of Members’ Interests constituted a possible violation of the Executive Ethics Code.

On 23 February 2012, I corresponded with Minister Nkoana-Mashabane informing her about the allegations as well as my decision to investigate the matter in terms of the Executive Members Ethics Act and the Public Protector Act. On 3 March 2012 she responded through her Chief of Staff who informed me that Minister Nkoana-Mashabane was on official duty abroad and that my correspondence will be brought under her attention.

Minister Nkoana-Mashabane’s Chief of Staff advised me further that the matter is currently serving before Parliament’s Joint Committee on Ethics and Members interests who are also investigating same. On receipt thereof and on 26 June 2012, I decided to approach the Committee with a request for them to advise me of the status and/or outcome of their investigation as well as a request for relevant information and documentation that would be of assistance to me in the investigation of the matter. The Committee responded on 4 August 2012 and attached to their response, the information and documentation as requested.

6.1 Whether Premier Fishing Company (Pty) Limited made a payment amounting to R103 856 in respect of security arrangements at the Polokwane private home of Minister Nkoana-Mashabane;
6.1.1 The Complainant’s submission was very brief and directed the investigation to focus on relevant media reports. It was the complainant’s view that based on the contents of the media report; Minister Nkoana-Mashabane transgressed the Executive Ethics Code by accepting a benefit amounting to approximately R100 000 and failed to declare such a benefit in the Parliament’s Register of Members’ Interests.

6.1.2 On 25 November 2011, the Mail&Guardian newspaper published an article entitled, “Tycoon pays for minister’s guards”. In the article it is reported that Minister Nkoana Mashabane failed to declare a benefit of R100 000 in respect of payment for the around-the-clock private security at her private residence in Polokwane. The key contents of such media reports were the following:

“Cape Town-based Premier Fishing picked up Nkoana-Mashabane’s R655-a-month security tab for 12 months in 2010-2011. Premier Fishing is a subsidiary of JSE-listed Sekunjalo Investments.

Its executive chairperson, Iqbal Survé, has travelled overseas with the official business delegation accompanying President Jacob Zuma, Nkoena-Mashabane and other ministers on state visits and other government business. Survé is also a director of Premier Fishing. The benefit is absent from the minister’s declaration of interests released by Parliament’s registrar of members’ interests last week.

Nkoana-Mashabane, through spokesperson Clayson Monyela, said that her brother, Harry Nkoana, was the “caretaker” of the property and that she was obliged to declare only benefits accruing to herself and her children. She referred all further questions to her brother.

6.1.3 Ownership

Nkoana said that although his sister still owned the property he took the loan from Survé without her knowledge because he had taken on the responsibility of caretaker. These explanations were contradicted by the version of events provided by Sekunjalo spokesperson Kaveer Bharath, who told the Mail&Guardian that Nkoana had solicited the
payments on behalf of his sister. Nkoana conceded that the minister visited her Polokwane residence when she was in the province on government business.

...

Paying for private security at the minister's house raises questions about whether Survé has attempted to curry favour with her to buy privileged access to global business and political leaders.

6.1.4 The evidence

'The M&G has seen an invoice, dated May 1 2011 and sent by Urban Africa Security—a Polokwane-based private security company—to Premier Fishing. The invoice, for a monthly payment of R8 654.76, was for the provision of armed security officers, one for the day and one for the night, at an undisclosed Polokwane address. The M&G visited Nkoana-Mashabane's home in Polokwane and confirmed that it was indeed patrolled by Urban Africa Security.

Premier Fishing began paying for the security on September 1 last year and paid the same amount for 12 months, until August 31. The company's payments totalled R103 856.88. Less than a week before Premier Fishing started paying, Survé was among the 200-strong South African business delegation who accompanied Zuma, Nkoana-Mashabane and other ministers to China from August 24 to 26 last year.'

6.1.5 Other than his complaint, dated 10 February 2012, attaching a copy of the media report, no further evidence was received from Complainant. His complaint was acknowledged and accepted on 20 February 2012 with a confirmation that it would be investigated in terms of the Executive Members Ethics Act.

6.1.6 According to the Mail & Guardian newspaper article of 25 November 2011, Premier Fishing Company paid Urban Africa Security, a Polokwane based private security company an amount of R103 856.88 in respect of an around-the-clock security services rendered at a private residence in Polokwane.
6.1.7 The payments were made in instalments of R6 654.76 per month effective from 1 September 2010 until 31 August 2011. It has been established that the private residence in Polokwane is owned by Minister Nkoana-Mashabane.

6.1.8 During the investigation conducted by the Parliament’s Joint Committee on Ethics and Members’ Interests, Minister Nkoana-Mashabane confirmed the ownership of the property though she denied knowledge of the payments for security services as she left her brother Mr Harry Nkoana to take care of the property on her appointment in the portfolio of Minister responsible for the DIRCO.

6.1.9 In its report, the Committee also confirmed that Minister Nkoana-Mashabane did not deny that her brother, Harry received the benefit or loan obtained from Premier Fishing Company. There is therefore no dispute that the said payments were made in respect of the services rendered at Minister Nkoana-Mashabane’s private dwelling in Polokwane.

6.2 Whether Minister Nkoana-Mashabane accepted such a benefit and if so; whether it was improper and unethical do so;

6.2.1 On 29 November 2011, Parliament’s Joint Committee on Ethics and Members’ Interests corresponded with Minister Nkoana-Mashabane requesting her to respond to the allegations contained in the *Mail & Guardian* publication of 25 November 2011 in connection with a payment of approximately R100 000 made by Premier Fishing Company in respect of security arrangements at her private residence in Polokwane as well as allegations that she failed to declare the said benefit in the Parliament’s Register of Members’ Interests.

6.2.2 Minister Nkoana-Mashabane responded to the Committee’s enquiries and stated that:

“...

2. THE MAIL & GUARDIAN ARTICLE

2.1 In the article it is alleged, in brief, that a Cape Town based company called Premier Fishing Company paid an amount R8 655-00 per month for a period of twelve months for two security guards of my private property in Polokwane. A letter from your Office makes mention of this allegation obtained from the newspaper as an act which constitutes a benefit to me. It is on this basis that I, therefore, have to respond as it
appears that I committed non-disclosure of a benefit as required by the Code of Conduct for Members of Parliament promulgated in terms of the Executive Members' Ethics 82 of 1998 ["the Act"].

6.2.3 In the response, Minister Nkoana-Mashabane acknowledged that she was aware of the Code of Ethics which was promulgated in terms of the Executive Members Ethics Act as well as the fact that the Code engenders upon her as a Member of the Executive, certain standards and rules aimed at promoting open, transparent, democratic and accountable government.

6.2.4 She further confirmed the Code required her in the fulfilment of her official duties, "to avoid any situation which will expose me to a risk of conflict of interest between my official responsibilities and my private interests".

6.2.5 She also stated that in terms of the Code, she is required not to act in any manner which will comprise the credibility and integrity of her office or which may be perceived as such. She went further and said, "Of importance, I am required to disclose financial interest or benefits as are specified in the code".

6.2.6 The circumstances pertaining to the property are as follows:

4.2.1 I am indeed the owner of the property which is used for residential purposes.

4.2.2 Pursuant to my appointment as the Minister of International Relations and Cooperation of the Republic of South Africa in 2009 I became entitled to two state residential properties for use during my tenure as the Minister. In the premises, I had to vacate my property aforesaid to occupy the two residential properties provide to me by the state as the Minister with effect from my appointment.

4.2.3 As a result of the foregoing, I decided to appoint my younger brother Pheegane Harry Nkoana, as a caretaker of the property and left same in his custody and care. I believe the property is under his capable care and custody.
4.2.4 The above is so say that it is all in the powers of my brother aforesaid to decide on whether the property required security guards or cleaners and any other services provider to the property and for him to, if he required any such services, procure same at his own initiatives with the ancillary contractual arrangements pertaining to payments of remuneration for any such services as he might have procured and their condition of employment.

4.2.5 I am personally provided with security guards/bodyguards by the state. The fact that I am provide with such security by the State as well the two residential properties I referred to above makes it superfluous to say that I required a further and third residential property and another set of security guards personally.”

6.2.7 In connection with the security arrangements at her private home in Polokwane, Minister Nkoana Mashabane explained that:

5.2 I am not personally aware of any contractually relationship which my brother may have initiated with the security company that provides for the security guards on the property nor anything that has to do either their remuneration or any other condition of their employment. I am further not aware of any other service provider that my brother may need for the property.”

6.2.8 Minister Nkoana-Mashabane concluded her submission to the Committee by reiterating that she did not breach the Code of Ethics in her failure to disclose an interest in respect of the security arrangements at her private home in Polokwane as she did not receive a benefit in respect of payments made by Premier Fishing Company.

6.2.9 According to Minister Nkoana-Mashabane, there is no validity in the allegation that she breached the code of conduct and as such it was her wish that the Committee would find the allegations as baseless and without substance.

6.2.10 The Committee reported that Minister Nkoana-Mashabane responded to the enquiries made during the investigation and stated that;

6.2.11 The Minister indicated that after her appointment she was allocated two residential properties and vacated her residential premises. The Minister appointed her brother Harry
Nkoana as caretaker of the property and gave him full responsibility for maintaining the property.

6.2.12 In her response the Minister submitted a declaration under oath denying any knowledge of the benefit accrued.

6.2.13 The Minister also submitted a signed affidavit from Mr Kaveer Bharath in which he denies telling the Journalist that Mr Nkoana solicited the services on behalf of the Minister.

6.2.14 The Minister also provided a letter from Urban Security the company which provide the security services to the residence; they state that the Minister’s brother signed the contract and was responsible for payment of the services. They had no interaction with the Minster.

6.2.15 The Committee considered Minister Nkoana-Mashabane’s sworn statement in particular the fact that she denied any knowledge of the benefit accrued by her brother in respect of security for her property. The Committee also considered the submission by the private security company which confirms that the contracts for the provision of security by them were signed by Mr Nkoana, the Ministers brother.

6.2.16 In this regard, the Committee took into account that;

6.2.17 Minister does not deny that her brother received the loan/benefit.

6.2.18 She has stated under oath that she was not aware of the benefit.

6.2.19 The letter from the security company, Urban Africa Security cc dated 29 February 2012 corroborates the Minister’s response in that it confirms that the company entered into the contract solely with the Minister’s brother, Mr Pheegane Harry Nkoana, who is responsible for the payment and that they have never interacted with the Minister in respect of the services rendered.

6.2.20 There is no evidence that the Minister directly received the benefit.
6.2.21 The benefit relates to her property and therefore she benefits indirectly.

6.2.22 The Committee made the following recommendations;

6.2.23 There is no evidence that the Member was unduly influenced or that there was unduly any improper conduct.

6.2.24 Section 2 of the Code of conduct for assembly and permanent council members states that where any doubt exists as to the scope, application or meaning of any aspect of the Code, the good faith of the Member must be the guiding principle.

6.2.25 The Minister is now aware of the benefit accrued in respect of the security to her property; she is required to update her disclosure to reflect the benefit.

6.3 Whether Minister Nkoana-Mashabane declared the benefit of R103 856 in respect of security arrangements at her private home in the Parliamentary Register of Members’ Interests as required in law.

6.3.1 In response to the media report, Minister Nkoana-Mashabane stated that;

"4.1 In the media report aforesaid it is alleged that I failed to disclose an interest to the effect that Premier Fishing Company ["the Company"] paid an amount of R8 655-00 per month for a period of twelve months for the security guards at my property Polokwane. It is stated that this constitutes a benefit which I should have disclosed in my declaration of interest. I have read the article from the newspaper and shall restrict my response to this specific allegation.

4.2 In my response I must state that in the context of the Code it is clear that members of the Executive are prohibited from illicitly acquiring favourable or helpful factors or circumstances or advantages or profits by virtue of their office. It is of cardinal importance that I deny that I received any benefit as stated in the Code and state that, therefore, I am guilty of breach of the Code."

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6.4 The report of the Parliament's Joint Committee on Ethics and Members' Interests on an investigation into the media allegations against Minister Maite Nkoana-Mashabane.

Independent evidence obtained

6.4.1 Following the investigation by the Parliament's Joint Committee on Ethics and Members' Interests into the media allegations against Minister Maite Nkoana-Mashabane, the Committee issued its report on 7 March 2012. In essence, the allegations that the Committee investigated as contained in the Mail&Guardian Publication of 25 November 2011 were that;

6.4.2 Minister Nkoana-Mashabane did not disclose benefits accrued in respect of payments amounting to R103 856.88 made by Premier Fishing Company to a private security company for around the clock security at her private residence in Polokwane.

6.4.3 The Minister's brother in his response to the Committee stated that he took a loan from Dr Survé (Premier Fishing) without the Minister's knowledge.

6.4.4 In the report, it is stated that the requirements of the Code of Conduct in particular paragraph 8 (g) requires that that a Member must disclose Benefits;

6.4.4.1 The nature and source of a benefit a material nature; and

6.4.4.2 The value of the benefit.

6.4.5 The Minister is now aware of the benefit accrued in respect of the security to her property; she is required to update her disclosure to reflect the benefit.

6.4.6 According to the information and evidence obtained from the Parliament's Joint Committee on Ethics and Members' Interests, Minister Nkoana-Mashabane did not disclose in the Parliament's Register of Members' Interests as required in law, the benefit of R103 856 accrued to her in respect of payments towards security services rendered at her private home situated in Polokwane.
6.4.7 In her submission during the investigation by the Parliament's Joint Committee on Ethics and Members' Interests, Minister Nkoana-Mashabane stated that she was not aware of the payments in respect of the security services rendered at her private property in Polokwane.

6.4.8 She denied that she personally received a benefit in that regard and as such she had no obligation to disclose same in her Register of Members Interests as she was not aware of the payments and no benefit accrued to her personally in that regard as she was not aware in the first place of security arrangements initiated and made by her brother Harry. This is despite the fact that she admitted ownership of the property.

6.4.9 In its report, the Parliament's Joint Committee on Ethics and Members' Interests accepted the Minister's explanation that she did not deny that her brother received the loan and or benefit and that she stated under oath that she was not aware of the benefit. The Committee also accepted that the letter from Urban Africa Security CC dated 29 February 2012 corroborated the Minister's version and as such, there was no evidence that the Minister received the benefit.

7. MEASURING CONDUCT AGAINST THE RULES

7.1 Regarding the allegation of payment by Premier Fishing Company (Pty) Limited of an amount of R103 856 in respect of security services rendered by Urban Africa Security CC at the Polokwane private home of Minister Nkoana-Mashabane

7.1.1 There is no dispute that Premier Fishing Company paid the money to Urban Africa Security in respect of security services rendered by that security company at the Polokwane private home of Minister Nkoana-Mashabane.

7.1.2 She also admitted that during the investigation into the matter by the Parliament's Joint Committee on Ethics and Members Interests. She however denied knowledge of the payments and stated that at the time her property was under the custody and caretaker ship of her brother Harry.
7.1.3 She further denied having benefitted from the said payments. She however did not deny to the Committee that her brother receive the payments towards the security services though it was alleged to have been made in a form of a loan or benefit.

7.2 On whether Minister Nkoana-Mashabane accepted a benefit of R103 856 and if so; whether it was improper and unethical do so;

7.2.1 During the investigation conducted by the Parliament’s Joint Committee on Ethics and Members Interests, Minister Nkoana-Mashabane denied receiving and/or accepting a benefit in the form of payments made by Premier Fishing Company towards security services rendered at her own private residence in Polokwane.

7.2.2 She has been adamant that no benefit accrued to her as a result of such payments as well as the protection of her property whilst she was provided alternative accommodation by the State by virtue of her occupying the position of a Minister. She steadfastly denied that she received any benefits and only admitted that her brother received the loan and/or benefit. She however confirmed ownership of the property and the fact that she had to vacate it on her appointment as a Minister.

7.2.3 I do not agree with Minister Nkoana-Mashabane’s reasoning in this regard. The fact of the matter is that she is the owner of the property and her brother is just an occupier and caretaker of the property on behalf of the owner which in this case is the Minister. It therefore goes without saying that if the property is being guarded and protected, it is the owner who benefits in that her property is safe from harm whilst she is away on her official duties as a Minister.

7.2.4 She therefore indirectly benefited and I concur with the findings of the Parliament’s Joint Committee on Ethics and Members Interests that “the benefit relates to her property and therefore she benefits indirectly”
7.3 Regarding the allegation of failure by Minister Nkoana-Mashabane to declare the benefit of R103 856 in respect of security arrangements at her private home in the Parliamentary Register of Members’ Interests as required in law.

7.3.1 Indeed, Minister Nkoana-Mashabane failed to declare the benefit in the Register of Members Interests. Whilst I accept that she may not have known that the benefit accrued to her by virtue of being the owner of the property, failure to disclose the benefit on her part was ill-advised.

7.3.2 It would have been expected of her to have known that whatever security measures are put in place in one’s property the person who stands to benefit is the owner whether directly or indirectly.

7.3.3 I therefore support the recommendation of the Parliament’s Joint Committee on Ethics and Members Interests that; now that Minister Nkoana-Mashabane is aware of the benefit which accrued in respect of the security to her property, it would be prudent for her to update her disclosure to reflect the benefit.

8. FINDINGS

Having considered the evidence revealed during the investigation against the relevant regulatory framework, I make the following findings:

8.1 I elect to make no findings in connection with the allegations against Minister Nkoana-Mashabane. The Minister has since disclosed the interest in the Register of Members’ interests as directed by Parliament’s Joint Committee on Ethics and Members Interests. The Minister is aware of the benefit which accrued in respect of the security to her property, she is required to amend her disclosures in the Register of Members Interests to reflect the indirect benefit received from Premier Fishing Company.

9. REMEDIAL ACTION

The appropriate remedial as envisaged by section 182(1)(c) of the Constitution is the following:
9.1. I will not take any further remedial action against Minister Nkoana-Mashabane as the Parliament’s Joint Committee on Ethics and Members Interests had already investigated the matter and recommended that “now that the Minister is aware of the benefit which accrued in respect of the security to her property, she is required to amend her disclosures to reflect the indirect benefit received from Premier Fishing Company”.

9.2. President to note the Parliament’s Joint Committee on Ethics and Members Interests' findings and engage the cabinet about paying attention to the requirements of the Executive Ethics Code in so far as disclosures are concerned.

10. MONITORING

10.1. I will not monitor the remedial actions of this report as I am not taking any further remedial action against Minister Nkoana-Mashabane

ADV THULI N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2016

Assisted by: The Good Governance and Integrity Branch (GGI)