



IN THE EXTREME

***Report No 11 of 2011/12 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***

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In The Extreme: Report 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

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EXECUTIVE SUMMARY

- (i) *IN THE EXTREME* is the report of the Public Protector in response to complaints lodged with her office from 10-14 April 2011, in connection with the alleged violation by the Minister of Cooperative Governance and Traditional Affairs, Mr S Shiceka, of the Code of Ethics (the Executive Ethics Code), published by virtue of the provisions of the Executive Members' Ethics Act, 1998. These complaints originated from a newspaper article published on 10 April 2011, alleging that Mr Shiceka misappropriated public funds for his own benefit.
- (ii) The essence of the allegations made against Mr Shiceka were that he incurred the following expenditure at the cost of the Department of Cooperative Governance and Traditional Affairs (the Department):
 - (a) R367 000 in respect of travelling and accommodation for him and his Personal Assistant (Private Secretary) to visit Switzerland. According to the newspaper report, Mr Shiceka went to Switzerland in December 2008 to visit his "*then girlfriend*", Ms P Masilela who was incarcerated at the Anstalten Hindelbank Prison in Bernë, "*while pretending to be on an official visit on World Cup duties*".
 - (b) R640 000 in one year in respect of accommodation for him and his immediate staff at the One and Only Hotel in Cape Town.
 - (c) R55 793 for the accommodation of Mr Shiceka and Mr and Mrs Mntambo on 9 May 2009 at the One and Only Hotel in Cape Town. It was at the time of the official opening of Parliament. Mr Shiceka reportedly justified the accommodation of Mr Mntambo (an alleged *sangoma*) at state expense by saying that he was his "*father figure*".
 - (d) More than R160 000 in travelling expenditure (flights) over a period of eight months for Mr Shiceka's family members, including "*his estranged wife and current girlfriend*".



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- (iii) It was further alleged that, whilst officially on sick leave in March 2011, Mr Shiceka “*tried to get his department to pay a hotel bill for the Lesotho Sun in Maseru where he spent four nights with his mother and bodyguard, Bheki Mthethwa.*”..
- (iv) Media reports also suggested that Mr Shiceka was assisted through municipal resources in connection with the construction of his house in the Eastern Cape.
- (v) The investigation of the Public Protector that forms the basis of this report was conducted over a period of 5 months and included interviews of current and former officials of the Department, the Ministry of Cooperative Governance and Traditional Affairs and the Department of International Relations and Cooperation. The former Chief Executive Officer of the FIFA Local Organising Committee for the 2010 World Cup and individuals involved in the matters investigated, were also interviewed.
- (vi) Voluminous correspondence and documentation relating to the matters concerned were perused and the relevant provisions of the Constitution, 1996, the Executive Members’ Ethics Act, the Executive Ethics Code, the Public Protector Act and the Handbook for Members of the Executive and Presiding Officers (Ministerial Handbook) considered and applied.
- (vii) The conclusion of the investigation was delayed by the non-availability of Mr Shiceka to be interviewed by the Public Protector, ostensibly due to ill health. Written questions had to be submitted to him in respect of his required response to the evidence obtained during the investigation, to which his advisory team responded on his behalf. Media reports issued during the period of the investigation however, quoted Mr Shiceka as having stated that he was ready to go back to his office, was playing tennis and felt “*on top of the world.*”
- (viii) It was noted during the period of the investigation that Mr Shiceka travelled to different destinations in and outside of the country after he was placed on sick leave by the President in February 2011. It also transpired that he stayed in different hotels at the cost of the Department on certain such occasions.



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(ix) The Public Protector's general findings are that:

- (a) The total expenditure incurred by the State in respect of Mr Shiceka's visit to Switzerland in December 2008 amounted to approximately R 546 864 and not R367 000, as was reported by the media.
- (b) The purpose of Mr Shiceka's visit to Switzerland did not relate to the FIFA 2010 World Cup. Its only aim was to visit Ms Masilela at the *Anstalten Hindelbank* prison in Berne Switzerland, which he did on two occasions.
- (c) Mr Shiceka stayed at the One and Only Hotel in 2009 at a total cost to the Department of R280 716. In addition he stayed at the hotel in February 2011 for one night at a cost to the Department of R13 600.
- (d) The total cost to the Department in respect of the staff of Mr Shiceka's private office that stayed with him at the One and Only Hotel in 2009, amounted to R 226 746.
- (e) The amount of R 55 793 that was reportedly spent in respect of the accommodation of Mr Shiceka and Mr and Mrs Mntambo on 9 May 2009, was in fact spent on the accommodation of Mr Shiceka and three of the staff members of his Private Office. It is included in the amounts referred to in sub-paragraphs (c) and (d) above.
- (f) Due to a lack of proper record keeping by Mr Shiceka's Private Office and the travel agency contracted by the Department, it could not be determined with certainty whether the traveling expenditure incurred by the Department in respect of Mr Shiceka's family, exceeded the travel privileges afforded to him by the Ministerial Handbook. Mr Shiceka, however, indicated that he is aware that his travel privileges have been abused and that the matter is being investigated.
- (g) Mr Shiceka stayed at the Lesotho Sun Hotel in March 2011, whilst he was on sick leave. The Department provided an accommodation voucher to the



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hotel in respect of his stay, at Mr Shiceka's insistence, but declined payment when it transpired that his visit was of a private nature. He was advised to pay for his stay in person. To date, the Lesotho Sun had not been paid.

- (h) The failure by Mr Shiceka's Private Office to keep proper records and to adequately control the travel benefits afforded to him by the Ministerial Handbook, amounted to maladministration.

(x) The Public Protector's findings in relation to the conduct of Mr Shiceka are that:

Finding 1: Mr Shiceka's conduct in respect of his visit to Switzerland in December 2008 constituted a violation of the Executive Ethics Code, the Public Protector Act and the Constitution

- (a) Mr Shiceka deliberately and inadvertently misled the President when he presented the purpose of his visit to Switzerland. In so doing, Mr Shiceka acted in violation of paragraph 2.3 of the Executive Ethics Code. His actions were accordingly unlawful and constituted maladministration.
- (b) Mr Shiceka travelled to Switzerland under false pretences and at state expense. In so doing, Mr Shiceka violated the provisions of paragraph 2.3 of the Executive Ethics Code. His actions were accordingly unlawful and constituted maladministration, dishonesty in respect of public money and improper conduct.
- (c) By denying to the Public Protector during the investigation that he visited any prison during his trip to Switzerland whilst knowing that he in fact did so, Mr Shiceka acted in violation of paragraph 2.3 of the Executive Ethics Code and section 11 of the Public Protector Act.



- (d) Mr Shiceka's conduct referred to in sub-paragraphs (a), (b) and (c) above was not in the best interest of good governance, not performed in good faith and inconsistent with the integrity of his office and of the Government, as contemplated by paragraph 2.1 of the Executive Ethics Code and section 96(2)(b) of the Constitution.
- (e) The expenditure incurred by the Department in respect of Mr Shiceka's visit to Switzerland constituted a financial loss to the Department as it was of no benefit or any value to the state.

Finding 2: Mr Shiceka's conduct in respect of his repeated stay at the One and Only Hotel in Cape Town constituted a violation of the Executive Ethics Code and the Constitution

- (f) Although the Ministerial Handbook provides that members of the Cabinet can be accommodated in any hotel during official travels, it also requires of them to act responsibly, in good faith and in a manner that is consistent with their office.
- (g) By staying in one of the most expensive hotels during his official visits to Cape Town, repeatedly, before and after an official residence was allocated to him, and without requesting his Private Office to take steps to ensure that the expenditure incurred by the Department is reasonable and justifiable in terms of his responsibility to act in good faith and with integrity, Mr Shiceka violated the provisions of paragraph 2.3 of the Executive Ethics Code and section 96(2)(b) of the Constitution.

Finding 3: Mr Shiceka's conduct in respect of inviting Mrs Mntambo to travel to Cape Town at state expense constituted a violation of the Executive Ethics Code and the Constitution

- (h) Mr Shiceka was not entitled to cause the state to incur the travel expenses of Mrs Mntambo. By inviting her to travel at state expense to



visit him in Cape Town on 2 June 2009, Mr Shiceka failed to act in a manner that is responsible, in good faith, with integrity and that is consistent with his office. His actions therefore violated the provisions of paragraph 2.3 of the Executive Ethics Code and section 96(2)(b) of the Constitution.

- (i) The definition of “family” in the Ministerial Handbook is unclear as to the meaning of the word “parent”, which could lead to an abuse of the travel privileges of members of the executive.

Finding 4: Mr Shiceka’s conduct in respect of his stay at the Lesotho Sun Hotel constituted a violation of the Executive Ethics Code and the Constitution

- (j) Mr Shiceka’s insistence that the Department provides the Lesotho Sun Hotel with an accommodation voucher in respect of his private stay during March 2011, whilst he was on sick leave and not entitled to such a privilege, constituted fraudulent misrepresentation. Mr Shiceka failed in his responsibility to act in good faith, with integrity and in a manner that is consistent with his office and therefore violated the provisions of paragraph 2.3 of the Executive Ethics Code and section 96(2)(b) of the Constitution. His actions further amounted to dishonesty in respect of public money, and were improper.

Finding 5: Mr Shiceka’s conduct in respect of his private accommodation at the expense of the Department whilst on sick leave constituted a violation of the Executive Ethics Code and the Constitution

- (k) By requesting the Department to pay for his private accommodation whilst on sick leave and not entitled to such privilege, Mr Shiceka failed to act in good faith and with integrity. His conduct was also inconsistent with his office and therefore violated the provisions of paragraph 2.3 of the Executive Ethics Code and section 96(2)(b) of the Constitution.



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(xi) The remedial action that is to be taken, as envisaged in section 182(1)(c) of the Constitution, is the following:

- (a) The President to consider taking serious action against Mr Shiceka for his violation of the Executive Ethics Code and the Constitution, referred to in this report.
- (b) The Secretary to the Cabinet to ensure that definition of “*family*” in the Ministerial Handbook is reconsidered with a view to effect an amendment that will eliminate any uncertainties as far as the meaning and interpretation of the word “*parent*” is concerned.
- (c) The Director-General of the Department to take the appropriate action to recover from Mr Shiceka the expenditure incurred by the Department in connection with:
 - (aa) His visit to Switzerland in December 2008;
 - (bb) His accommodation at the One and Only Hotel after he took occupation of his official residence in Cape Town; and
 - (cc) The traveling expenses incurred by the Department in respect of Mrs Mntambo when she visited him in Cape Town in June 2009.
- (d) The Director-General of the Department, in consultation and with the assistance of the Department of Public Service and Administration, to take steps to ensure that no retaliatory action is taken against any of the officials of the Department and the Ministry of Cooperative Governance and Traditional Affairs that cooperated with the Public Protector in the investigation referred to in this report.



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- (e) The Director-General of the Department to take urgent steps to improve the controls and record keeping by the Private Office of the Minister of Cooperative Governance and Traditional Affairs in respect of travel and accommodation privileges provided for in the Ministerial Handbook.
- (f) The Director-General of the Department to take urgent steps to ensure that the investigation into the alleged abuse of Mr Shiceka's travelling privileges is concluded and that appropriate measures are taken to deal with its findings and recommendations.



REPORT 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

1 INTRODUCTION

1.1 This is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), section 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).

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

1.3 Copies of the report are also circulated to:

1.3.1 The Speaker of the National Assembly;

1.3.2 The Chairperson of the National Council of Provinces;

1.3.3 The Minister of Finance;

1.3.4 The Minister of Public Service and Administration;

1.3.5 The Secretary to the Cabinet;

1.3.6 The Director General of the Department of Cooperative Governance and Traditional Affairs (the Department);

1.3.7 The complainants:

1.3.8.1 Prof B Turok MP and Mr L Mashile MP, the Co-Chairpersons of the Parliamentary Joint Committee on Ethics and Members' Interests;

1.3.8.2 Mr H Hoosen MP, the Secretary-General of the Independent Democrats; and

1.3.8.3 Ms J February of IDASA; and



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1.3.9 Mr S Shiceka, the Minister of Cooperative Governance and Traditional Affairs (COGTA).

1.4 The report relates to an investigation into an allegation of a breach of the Code of Ethics (Executive Ethics Code), published in terms of the Executive Members' Ethics Act, by the Minister of Cooperative Governance and Traditional Affairs, Mr S Shiceka, MP.

2 BACKGROUND

2.1 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' Act. It regulates the ethical conduct of Members of the Executive, as contemplated by the provisions of section 96(1) of the Constitution.¹

2.2 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.

2.3 Mr Shiceka was appointed to the Cabinet in the portfolio of Minister responsible for Provincial and Local Government and assigned his powers and functions on 25 September 2008 by the then Acting President, Mr K Motlanthe, in terms of Section 91(2) of the Constitution.

2.4 Following the April 2009 general elections and on 10 May 2009, President J G Zuma appointed Mr Shiceka as the Minister of COGTA.

3 THE COMPLAINTS LODGED WITH THE PUBLIC PROTECTOR

3.1 The Co–Chairpersons of the Parliamentary Joint Committee on Ethics and Members' Interests, lodged a complaint with the Public Protector, in terms of Section 4 (1) of the Executive Members Ethics Act, on 14 April 2011.

¹ See more detailed discussion on the relevant provisions in paragraph 6.3 below



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- 3.2 The complaint was based on allegations published by the *Sunday Times* on 10 April 2011, under the heading: “*Minister splurges public money*”.
- 3.3 In addition, Mr H Hoosen MP and Ms J February of *Idasa*, lodged complaints with the Public Protector, also based on the contents of the said newspaper article, on 10 and 13 April 2011, respectively. Their complaints were lodged in terms of the Public Protector Act.
- 3.4 The essence of the allegations published by the *Sunday Times* were that Mr Shiceka, in his capacity as a member of the Cabinet, misappropriated public funds for his own benefit, by incurring, *inter alia*, the following expenditure at the cost of the Department:
- 3.4.1 R367 000 in respect of travelling and accommodation for him and his Personal Assistant (Private Secretary) to visit Switzerland. According to the newspaper report, Mr Shiceka went to Switzerland in December 2008 to visit his “*then girlfriend*”, Ms P Masilela who was incarcerated at the Anstalten Hindelbank Prison in Bernë, “*while pretending to be on an official visit on World Cup duties*”. The article stated that: “*After initially admitting he’d visited Masilela in prison, Minister Shiceka later denied the visit when asked to explain why the Embassy would ask him to visit Masilela in particular, a woman with whom he was having an affair.*”
- 3.4.2 R640 000 in one year in respect of accommodation for him and his immediate staff at the One and Only Hotel in Cape Town. According to the newspaper report, Mr Shiceka admitted that an amount of R280 000 was spent on him alone in this regard.
- 3.4.3 R55 793 for the accommodation of Mr Shiceka and Mr and Mrs Mntambo on 9 May 2009 at the One and Only Hotel in Cape Town. It was at the time of the official opening of Parliament. Mr Shiceka reportedly justified the accommodation of Mr Mntambo (an alleged *sangoma*) at state expense by saying that he was his “*father figure*”.



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- 3.4.4 More than R160 000 in travelling expenditure (flights) over a period of eight months for Mr Shiceka's family members, including "*his estranged wife and current girlfriend*". According to the newspaper article, the Ministry of COGTA justified the expenditure as allowed in terms of the Ministerial Handbook.
- 3.5 It was further alleged that, whilst officially on sick leave in March 2011, Mr Shiceka "*tried to get his department to pay a hotel bill for the Lesotho Sun in Maseru where he spent four nights with his mother and bodyguard, Bheki Mthethwa, after which, the bill was inflated from R25 277 to R357120*". According to the said article published by the Sunday Times, Mr Shiceka was booked in at the Lesotho Sun Hotel under a false name. The Department refused to honour the payment.
- 3.6 Mr Shiceka reportedly denied that he checked into the Lesotho Sun Hotel or submitted an inflated invoice to his department despite having been shown a travel claim with his name on it.
- 3.7 Media reports also suggested that Mr Shiceka was assisted through municipal resources in connection with the construction of his house in the Eastern Cape.

4 POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT LODGED AGAINST MR SHICEKA

- 4.1 Section 182(1) of the Constitution provides that the Public Protector has the power 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. It further mandates the Public Protector to report on the conduct investigated, and to take appropriate remedial action. Section 182(2) of the Constitution provides that the Public Protector has additional powers and functions prescribed by national legislation.
- 4.2 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



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- Code on receipt of a complaint by a member of the National Assembly against a member of Cabinet.
- 4.3 The complaints of a violation of the Executive Ethics Code against Mr Shiceka, (a member of the Cabinet) were lodged by members of the National Assembly.
- 4.4 In terms of section 3(2)(a) of the Executive Members' Ethics Act, the Public Protector must report to the President on an investigation into a violation of the Executive Ethics Code by a member of the Cabinet.
- 4.5 Section 3(4) of the Executive Members' Ethics Act states that when conducting an investigation, the Public Protector has all the powers vested in her/him under the Public Protector Act.
- 4.6 In terms of section 6(4) of the Public Protector Act, the Public Protector has the powers to investigate, on his or her own initiative or on receipt of a complaint, *inter alia*, any maladministration in connection with the affairs of government at any level and any abuse or unjustifiable exercise of power or other improper conduct by a person performing a public function. The Public Protector can also investigate any alleged improper or dishonest act with respect to public money.
- 4.7 The complaints lodged and the allegations made against Mr Shiceka referred to in this report, fall within the jurisdiction and powers of the Public Protector.

5 THE INVESTIGATION

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.

5.1 Scope of the Investigation

The scope of the investigation was limited to the period September 2008 to September 2011.



5.2 Methods of gathering evidence

The following methods of gathering and analysing information were employed:

5.2.1 Interviews conducted

Interviews were conducted with the following identified witnesses:

- 5.2.1.1 Ten officials and former employees of the Department and the Ministry of COGTA;
- 5.2.1.2 The Director General of the Department;
- 5.2.1.3 The Chief Financial Officer of the Department and his predecessor;
- 5.2.1.4 Ms P Masilela;
- 5.2.1.5 The Chief Executive Officer and senior managers of *Travel with Flair*, the Department's contracted travel agent;
- 5.2.1.6 Dr D Jordaan, the Co-Chairperson of the South African Football Association and former Chief Executive Officer of the FIFA Local Organising Committee for the 2010 World Cup;
- 5.2.1.7 Mr S Tshivhula, Counsellor for Department of International Relations and Cooperation, formerly based at the South African Embassy in Switzerland;
- 5.2.1.8 The South African Ambassador to Switzerland (telephonic interview) and a member of his staff; and
- 5.2.1.9 Mr J Mntambo.

5.2.2 Analysis of documentation and / or information

Particular attention was paid to the following documentation, correspondence, legislation and other prescripts that were examined and scrutinized:

Documentation

- 5.2.2.1 Report of Mr Shiceka on his visit to Switzerland in December 2008;



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- 5.2.2.2 Voluminous documentation obtained from *Travel with Flair*;
- 5.2.2.3 Documentation obtained from the Director General of the Department;
- 5.2.2.4 Documentation obtained from two former and current Chiefs of Staff of the Ministry of COGTA;
- 5.2.2.5 Documentation obtained from the South African Embassy in Switzerland;
- 5.2.2.6 Documentation obtained from the *Anstalten Hindelbank* prison in Switzerland;
- 5.2.2.7 Documentation obtained from the FIFA Local Organising Committee; and
- 5.2.2.8 The EURO 2008 SA Executive Report issued in November 2008.

Correspondence

Correspondence between the Public Protector and;

- 5.2.2.9 The President of the Republic of South Africa;
- 5.2.2.10 Mr Shiceka and his advisory team;
- 5.2.2.11 The South African Ambassador to Switzerland;
- 5.2.2.12 The Ombudsman for the State of Zurich;
- 5.2.2.13 The Director General of the Department;
- 5.2.2.14 Dr D Jordaan, the Co-Chairperson of the South African Football Association;
- 5.2.2.15 The Chief Executive Officer of *Travel with Flair*; and
- 5.2.2.16 Mr N Nkontwana, the Special Advisor to the Minister of COGTA.

Legislation and other prescripts:

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

- 5.2.2.17 The Constitution;
- 5.2.2.18 The Public Protector Act; and



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5.2.2.19 The Executive Members Ethics Act;

5.2.2.20 The Executive Ethics Code; and

5.2.2.21 The Ministerial Handbook.

6 THE LEGAL AND POLICY FRAMEWORK REGULATING ETHICAL CONDUCT BY MEMBERS OF THE EXECUTIVE

6.1 The Constitution

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

6.1.2 In terms of section 96(2), members of the Cabinet may not:

“(a) undertake any other paid work;

*(b) act in **any way that is inconsistent with their office**, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or*

(c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.” (emphasis added)

6.2 The Executive Members’ Ethics Act

6.2.1 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.

6.2.2 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.



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6.2.3 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.

6.3 The Executive Ethics Code

6.3.1 The Executive Ethics Code contemplated by the Executive Members' Ethics Act was published by the President on 28 July 2000 and amended on 7 February 2007.

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

“2. *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) fulfill 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;*
- (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;*
- (d)
- (e) *expose themselves to a situation involving the risk of a conflict between their official responsibilities and their private interests; ...”(emphasis added)*

6.4 The Handbook for Members of the Executive and Presiding Officers (Ministerial Handbook)

6.4.1 The Ministerial Handbook that was applicable at all material times referred to in this report, was approved by the Cabinet on 7 February 2007.

6.4.2 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)

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

6.4.4 For the purposes of interpreting the provisions of the Ministerial Handbook:

“**‘family’** in relation to any person, means his or her parent, child or spouse and includes a person living with that person as if they were married to each other, i.e. a spouse/life partner and/or the following dependents;

Any child recognised as a dependant for the purposes of the Parmed Medical Aid Scheme; and



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Any relative (child, parent brother or sister, whether such a relationship results from birth, marriage or adoption) who resides permanently with the member and is of necessity dependent, and whose income, from whatever source, does not exceed the amount of the applicable maximum basic social pension prescribed in regulations made under the Social Pension Act, 1973.”

6.4.5 In terms of paragraph 7.1.2 of Chapter 3, the relevant department meets the reasonable costs of domestic travel and subsistence for official purposes. Members, their spouses and dependent children, who out of necessity cannot stay at home, are entitled to accommodation and subsistence at expense of the department, when the member is fulfilling official duties away from their ordinary places of residence.

6.4.6 As far as international travel is concerned, paragraph 7.2.5 provides that:

*“Accommodation and subsistence expenses should be kept as low as possible by making use of hotels which suit the status of Members, **but which have reasonable tariffs**”.* (emphasis added)

6.4.7 Paragraph 9 deals with the additional benefit of domestic air travel. It provides that members and their spouses are jointly entitled to 30 single domestic business class flight tickets per annum at the expense of the relevant department. The use of these tickets is at the discretion of the member and may in some cases be exchanged for use by a child minder or domestic assistant.

6.4.8 The said flight tickets may, in terms of paragraph 9.1.2 be utilised by family members of the member on an exchange basis.

6.4.9 The Chief of Staff of the Ministry is, in terms of paragraph 2.1 of Chapter 8 of the Ministerial Handbook, in charge of the management of the Minister’s Private Office.



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- 6.4.10 In terms of paragraph 3 of Chapter 8, Private Secretaries and/or a Member of the Private Office fulfilling the duties of a Private Secretary may accompany the member on official and private visits at Government expense **to render assistance in official matters relating to the work of the member.**
- 6.4.11 In cases where members perform official functions by virtue of their office, and where this is in their opinion warranted, a member (or members, as the nature of the official duties prescribe) of the Private Office staff may accompany them and stay in the same hotel or hostelry and travel in the same class, at Government expense.
- 6.4.12 Annexure A to the Ministerial Handbook consists of guidelines in respect of official travel by Ministers. Paragraph 1.1 provides that a Minister should approach the President in writing two weeks in advance of a planned official visit abroad, to request approval for the intended visit and the appointment of an Acting Minister.
- 6.4.13 Paragraph 1.3 provides that international visits should offer real value and benefit to the Republic of South Africa. The status and importance of the people met must be on par with that of the visiting member and have special merit.

7 THE INITIAL RESPONSE OF MR SHICEKA TO THE IMMEDIATE ENQUIRY MADE BY THE PUBLIC PROTECTOR

- 7.1 On 29 April 2011, the Public Protector addressed a letter to Mr Shiceka in connection with the complaints lodged against him, referred to in paragraph 3 above.
- 7.2 In his response, dated 9 June 2011, Mr Shiceka stated that:

*“All the costs associated with all my official duties, including travel and accommodation costs where necessary **were fair and reasonable** and incurred in accordance with the guidelines for such travel” **“I categorically refute all claims that I was involved in any act(s) of dishonesty whatsoever regarding the accounts rendered for any service provided to me or in respect of any***



claim submitted by me or on my behalf in connection with my official duties. I also deny that I ever undertook any official duty under false pretences.

“I further refute any claims that I abused my office in any way or that I violated the Executive Members’ Ethics Act when discharging my official duties. I have performed my duties in accordance with the Constitution, the Executive Members’ Ethics Act, all prescripts, rules and regulations and on the advice given to me by officials”.

Contrary to what was reported in the Sunday Times, I did not do anything else while in Switzerland as alleged by the media. I therefore can confirm that I did not visit any prison during my visit to Switzerland”. (emphasis added)

- 7.3 With reference to his visit to Switzerland in December 2008, Mr Shiceka explained that he was a member of the Board of the FIFA Local Organising Committee (LOC) and the Chairperson of the Host Cities Forum, which coordinated preparations for the 2010 FIFA World Cup.
- 7.4 He decided, on the advice of, inter alia, Dr Danny Jordaan (the Chief Executive Officer of the LOC) to travel to Switzerland to view the EURO 2008 sites and stadia and to discuss the preparations for the soccer event.
- 7.5 Mr Shiceka also stated that: *“I also observed their transport system and the way it had been used during the Euro 2008. I visited their fan parks, their stadia and held discussions with officials who were involved in the preparations for that soccer event. Initially, the officials of the Department of International Relations and Cooperation mentioned the possibility of not finding the relevant persons due to December season as many people were on holiday. I nevertheless went as I thought that it was necessary for me to travel to that country for the purposes of sharing experiences about the Euro 2008 event.”*(emphasis added)

7.6 Mr Shiceka concluded in this regard that:

*“My **only reason** for visiting Switzerland was to hold discussions on the experience of hosting Euro 2008 and assess the additional budgetary requirements for host cities, especially on disputable matrices.”* (emphasis added)

7.7 A report on the said visit to Switzerland entitled: *“Minister’s Report to Public Protector,* was attached to Mr Shiceka’s response.

7.8 Pertaining to his accommodation at the One and Only Hotel in Cape Town, Mr Shiceka explained that he did stay at the hotel during the third quarter of 2009/10 financial year, whilst waiting for official house allocation in Cape Town. He further stated that:

“The process of deciding which hotel to be booked at was undertaken by the private office under the supervision of the Chief of Staff. The amount spent by my office for 2009/10 financial year was way below R359 556 not R640 000 as claimed by the print media.”

7.9 Mr Shiceka responded to the allegation relating to the transportation and accommodation of members of his family at the expense of the Department, by referring to the benefits that he is entitled to in terms of the Ministerial Handbook. According to him, members of his family visited him whilst he was on official duty in Cape Town or accompanied him on other official trips in compliance with the relevant guidelines.

7.10 He however, further indicated that it recently came to his attention that the travel benefits to which he is entitled were abused by his staff and that an independent investigation into the matter has been commissioned.

7.11 As far as the allegations pertaining to the construction of his house in the Eastern Cape with the aid of municipal resources is concerned, Mr Shiceka stated that the property referred to is his family home. He further denied that any state resources were used in its construction.



8 ANALYSIS OF EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

The following is an analysis of information and evidence relied upon as supported by the relevant documentation obtained from witnesses, the Ministry of COGTA, the Department, *Anstalten Hindelbank* prison in Switzerland, the South African Embassy in Switzerland and *Travel With Flair*, the contracted travel agency of the Department. A number of the witnesses interviewed during the investigation expressed their concerns about being victimized should their identities and/or the information that they provided be disclosed. Some of them indicated that they believe that they would be dismissed on Mr Shiceka's return to office for having cooperated with the investigation. This was taken into account in respect of the analysis of the evidence and information provided by the said witnesses.

8.1 Mr Shiceka's visit to Switzerland in December 2008

8.1.1 The position of Chairperson of the Host Cities Forum of the LOC of FIFA

8.1.1.1 The Minister of Provincial and Local Government, by arrangement with the FIFA LOC, assumed the position of Chairperson of the Host Cities Forum that was responsible for coordinating and facilitating the preparation and readiness of the host cities for the 2010 FIFA World Cup.

8.1.1.2 By virtue of his appointment as the Minister of Provincial and Local Government (and later as the Minister of COGTA), Mr Shiceka assumed the position of Chairperson of the Host Cities Forum, as from 25 September 2008.

8.1.1.3 According to Dr Jordaan, the LOC would not have requested the Chairperson of the Host Cities Forum to undertake any visits abroad, as the involvement of the Government in the preparation for the World Cup was not under its control. He further stated that:



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“If Mr Shiceka travelled on World Cup activities, he would have done so in his capacity as Minister, which is a National Government matter.”

8.1.1.4 The Host Cities Forum was not expected to submit any reports on its activities to the LOC, particularly in respect of visits abroad.

8.1.2 Presidential approval for the trip

8.1.2.1 On 9 December 2008, Mr Shiceka applied to the then Acting President for permission to visit Switzerland from 16 to 20 December 2008.

8.1.2.2 In his letter of application, Mr Shiceka, stated, *inter alia*, the following:

“I have been advised by the LOC members in general and Mr Danny Jordaan in particular that I should visit many countries that have significance in the hosting of this soccer extravaganza, as to put myself up to speed with my role as the Chairperson. Therefore, I will be starting with Switzerland, the FIFA Headquarters.”

8.1.2.3 When the letter of application was prepared for Mr Shiceka, he was asked by the Chief of Staff of the Ministry whether he would not consider travelling with someone from his Department who was already involved in the preparations for the 2010 World Cup. He refused.

8.1.3 Initial correspondence between the Ministry of COGTA and the Department of Foreign Affairs

8.1.3.1 On 10 December 2008 and **prior to the granting of approval by the Acting President for Mr Shiceka’s travel to Switzerland**, Mr Shiceka’s Private Secretary wrote to the Private Secretary of the then Minister of Foreign Affairs. She requested that tentative arrangements be made for Mr Shiceka’s visit to Switzerland, accompanied by her (Ms A Mdala). The following itinerary was attached to the request:



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16 December 2008	20:00	Depart O R Tambo International Airport
17 December 2008	06:10	Arrival at Zurich; S A Embassy to receive Minister and drive to Berne
20 December 2008		Departing Berne to Zurich by car “we are looking at getting a direct flight from Zurich to Johannesburg. We will “(sic)
21 December 2008	09:05	Arrival at O R Tambo International Airport

8.1.4 The approval by the Acting President

8.1.4.1 The Acting President granted permission on 11 December 2008 for Mr Shiceka to travel to Switzerland, as requested.

8.1.5 The changes made to the itinerary

8.1.5.1 On 11 December 2008, Mr Shiceka’s Private Secretary, in an e-mail message under the heading: “CHANGE OF ITINERARY: VISIT PHUMLA CONSTANCE MASILELA” informed the South African Embassy in Switzerland as follows:

*“When we are there, we would also like to visit Phumla Constance Masilela who is at a centre **somewhere there**. As I told you yesterday, we have forgotten what this centre is called, but we have been informed that you (Embassy) are aware of the whereabouts of this person. Please make necessary arrangements for us to see her.”*



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8.1.5.2 Mr Shiceka's Private Secretary informed the South African Embassy on 12 December 2008 that his itinerary was changed as follows:

16 December 2008	20:20	Depart O R Tambo International Airport
17 December 2008	06:10	Arrival at Zurich; S A Embassy to receive Minister and drive to Berne
19 December 2008		Depart Berne by car to Zurich
(no date provided)	22:45	Depart Zurich
21 December 2008	10:15	Arrival at O R Tambo International Airport

8.1.5.3 The Private Secretary further advised in her e-mail message entitled "*CHANGE TO THE ITINERARY/MEETING/MS PHUMLA MASILELA*" that:

"During our stay in Berne, we would like to visit Ms Phumla Masilela who is at Anstalten Hinelbank, tel: 034-4117878. Mr Straub is the person that is responsible for her.

It would be highly appreciated if you could facilitate that we visit Ms Madiba (sic) (should have read Masilela) daily.

Please arrange meetings for the 18th, on the 19th meetings should happen in the morning as we departing at 22h45 from Zurich."

8.1.5.4 It was noted during the investigation that an official of the South African Embassy in Switzerland made the following handwritten note addressed to Counsellor Solly Tshivhula and dated 12 December 2008, on a copy of the e-mail message referred to in paragraph 8.1.5.2 above:

*"Solly, will discourage **as visit is personal.**"(emphasis added)*



8.1.6 The advice provided by the South-African Embassy in their response

8.1.6.1 In his response, dated 12 December 2008, Counsellor Tshivhula advised that the Embassy contacted their “*erstwhile partners during the EURO 2008*”. It was established that most of the EURO 2008 infrastructure was only meant for the tournament after which it was “*disbanded*”. The officials that were involved have since moved on and to trace them would take some time.

8.1.6.2 The Ministry was further advised that at that time of the year (December) the majority of people have gone on holiday. Proceeding with Mr Shiceka’s intended visit might therefore not have been beneficial. It was also stated that:

*“As a Mission, **we would like to advise** that the visit be postponed to a later date **when sufficient time would have been given to organise a detailed programme** so as to derive maximum benefit of such a trip.*

With regards to Ms Phumla Masilela, contrary to your assertion that she works at some rehabilitation centre here in Switzerland, she one (sic) of the South African persons in prison at Anstalten Hinelbank (sic), tel: 034 411 7878.” (emphasis added)

8.1.7 The granting of the visit to Ms P Masilela by the *Anstalten Hindelbank* prison

8.1.7.1 On 16 December 2008, the *Anstalten Hindelbank* prison informed Mr Shiceka’s Private Secretary that on occasion of first visits to inmates, “*the ‘Application for a Visit’ form must be received by the visits service 14 days before the desired date of the visit. Your application was very short on time. Because you are travelling from South Africa I’ll give a special permission to visit Ms P. M. on the following days:*



Wednesday Dec. 17th, between 4.30 pm – 6.30 pm

Thursday Dec. 18th, between 4.30 pm – 6.30 pm

Friday Dec. 19th, between 4.30 pm – 6.30 pm.”

8.1.8 The accommodation of Mr Shiceka in Switzerland

8.1.8.1 The South African Embassy in Switzerland made reservations for Mr Shiceka and his Personal Secretary to stay at the Allegro Kursaal Hotel in Berne. According to the official based at the Embassy assigned to take care of Mr Shiceka during his visit, Mr S Tshivhula, the Minister indicated on their arrival that he was not satisfied with the accommodation as it was a four star rated hotel. Mr Shiceka insisted that his reservation be changed to a five star rated hotel and a booking was therefore made at the expensive five star rated Bellevue Palace Hotel in Bern.

8.1.8.2 The official of the South African Embassy involved in the accommodation arrangements made for Mr Shiceka, indicated that the Embassy had a good working relationship with the Allegro Kursaal Hotel and was embarrassed at the sudden changes that had to be made, especially as the reservations were made at short notice.

8.1.8.3 The late cancellation of the reservations at the Allegro Kursaal Hotel in Berne resulted in wasted costs for the Department in the amount of 632 Swiss Franks (approximately R 5340).

8.1.8.4 The South African Embassy arranged ground transport for Mr Shiceka whilst in Switzerland with a private service provider, at the expense of the Department.

8.1.9 Mr Shiceka's visits to Ms P Masilela at the *Anstalten Hindelbank* prison

8.1.9.1 According to Mr Shiceka's former Private Secretary, Mr S Tshivhula of the Embassy, Mr Shiceka visited Ms P Masilela, who was incarcerated at the prison, on 18 and 19 December 2008. On the first occasion, he was accompanied by his Private Secretary and by Mr Tshivhula. The latter also went with Mr Shiceka to the prison on the second occasion.



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8.1.9.2 Mr Shiceka's visits to Ms Masilela were confirmed in writing on 13 July 2011, by Ms M Lorenzo of the *Anstalten Hindelbank* prison.

8.1.9.3 Mr Shiceka and his Private Secretary left Berne for South Africa on 19 December 2008.

8.1.10 Official engagements of Mr Shiceka in Switzerland

8.1.10.1 The South African Embassy in Switzerland confirmed during the investigation that no prior arrangements were made for Mr Shiceka to meet with officials from the EURO 2008 or to visit stadiums, as their prior enquiries in that regard proved fruitless.

8.1.10.2 No supporting evidence could be found during the investigation of any official engagements of Mr Shiceka during his visit to Switzerland.

8.1.11 The total expenditure incurred for the visit to Switzerland

8.1.11.1 According to the records of *Travel With Flair* (TWF) (the travel agency of the Department), Mr Shiceka wanted to return to South Africa on an earlier flight than the one that was already booked for him and his Private Secretary. The result was that the return flight had to be cancelled and new reservations had to be made at extra costs to the Department.

8.1.11.2 The TWF documents and invoices presented during the investigation by the South African Embassy in Switzerland indicate that the total expenditure incurred by Mr Shiceka's visit to Switzerland, including air travel, accommodation, car hire, chauffeur, and subsistence allowance, amounted to approximately R 546 864.

8.1.12 The complaint lodged with the Press Ombudsman

8.1.12.1 Ms P Masilela lodged a complaint with the Press Ombudsman in connection with the article published by the *Sunday Times* on 10 April 2011 (referred to above). The basis of her complaint was that it was reported that she had



confirmed that Mr Shiceka visited her in prison in Switzerland in December 2008. She denied ever having made such a confirmation.

8.1.12.2 The Deputy Press Ombudsman found that the recorded conversation between Ms Masilela and a journalist of the *Sunday Times* which was, inter alia, relied on for the purposes of the article, did not “*sound like an admission*” in respect of the alleged prison visit.

8.1.12.3 He further stated that: “*Note that the question is not whether Shiceka visited Masilela in jail or not, but if she confirmed that he had visited her.*” (emphasis added).

8.2 Mr Shiceka’s stay at the One and Only Hotel in Cape Town

8.2.1 The allocation of an official residence for Mr Shiceka in Cape Town

8.2.1.1 According to the records of the Department of Public Works, the former Minister of Public Works allocated an official residence in Cape Town to Mr Shiceka on 27 May 2009.

8.2.1.2 However, Mr Shiceka could not take immediate occupation of his residence as the former resident Minister requested an extension of his stay, due to health reasons.

8.2.1.3 Mr Shiceka’s date of occupation of his official residence in Cape Town was 21 October 2009.

8.2.2 The reservations made for Mr Shiceka and the costs incurred

8.2.2.1 Reservations were made for Mr Shiceka by TWF, to stay at the One and Only Hotel on 10 occasions (19 nights) during the period from May 2009 to February 2011 at a total cost of approximately R294 316.

8.2.2.2 The records of TWF that were perused during the investigation indicate that members of Mr Shiceka’s Private Office in the Ministry accompanied him on

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several occasions during his stay at the said hotel, at a total cost of approximately R226 746.

8.2.2.3 The total cost for the Department for the accommodation of Mr Shiceka and members of his Private Office at the One and Only Hotel for the period referred to above, amounted to approximately R521 062.

8.2.2.4 The documents further disclose that Mr Shiceka also stayed in the following 5 star rated hotels in Cape Town during the periods and at the cost to the Department indicated in the table below:

NAME OF HOTEL	DATES	COST
15 on Orange	20-23 April 2010	R 12 754
The Westin	20-24 October 2008	R 26 197
Le Vendome	18-20 November 2008	R 19 695
	Total	R 58 646

8.2.2.5 Since he took occupation of his official residence in Cape Town, Mr Shiceka was accommodated at state expense at the One and Only Hotel for seven nights at a total cost of approximately R90 475. The total costs of the accommodation of the members of Mr Shiceka's Private Office (a total of 15 nights) that accompanied him amounted to approximately R56 004. The expenditure incurred by the Department in this regard was approximately R146 479.

8.2.2.6 The documents also disclose that Mr Shiceka was accommodated at the One and Only Hotel on 10-11 February 2011 (one night) at a total cost of R13 781. The reasons for his stay provided in the requisition forms sent to TWF, at a time when he had already taken occupation of his official residence in Cape Town, was that alternative accommodation had to be arranged for Mr Shiceka *“due to influx of mosquitoes that the Minister experienced on the evening on the 9th February 2011.”* The same reasons were advanced in the Minister's Special Advisory Team's response to the Public Protector on 26 August 2011.



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8.2.2.7 No explanation was provided for the other six nights that Mr Shiceka stayed at the One and Only Hotel after he took occupation of his official residence, as referred to above.

8.2.2.8 The TWF documents disclose that Mr and Mrs Mntambo travelled from Johannesburg to Cape Town on 2 June 2009 at the expense of the Department. Notwithstanding that no records could be found that they were accommodated at the expense of the Department, the response provided on behalf of Mr Shiceka indicated that Mr and Mrs Mntambo stayed with him in a hotel at state expense, on 2 June 2009.

8.2.2.9 The response of the Minister's Advisory Team justified the said expenditure incurred by the Department for the travel and accommodation of Mr and Mrs Mntambo on the grounds that: *"The Minister was raised by Mr Mntambo, in terms of traditional practice, when he was young as he does not have a biological father. Therefore, the Minister invited him as a member of his family, in particular his parent."*

8.2.2.10 When approached telephonically during the investigation, Mr Mntambo confirmed the explanation provided by Mr Shiceka by specifically stating that he is Mr Shiceka's uncle.

8.2.2.11 Due to the absence of records of the accommodation of Mr Shiceka and Mr and Mrs Mntambo for the 2nd of June 2009, the total cost of Mr and Mrs Mntambo's visit to Cape Town at the expense of the Department could not be determined. However, the cost of the 2 economy class return flight tickets amounted to R 9972.



8.3 The expenditure incurred by the Department for the air travel of Mr Shiceka's family

- 8.3.1 According to the records of the Department, 15 members of Mr Shiceka's family were listed as individuals that are entitled to air travel at the expense of the Department, in terms of the provisions of the Ministerial Handbook.
- 8.3.2 The names of Mr and Mrs Mntambo, referred to in paragraph 8.2.2.9 above, do not appear on the list of Mr Shiceka's family members provided to the Public Protector by Mr Shiceka's Private Office.
- 8.3.3 According to the records of TWF, 5 individuals who travelled at the expense of the Department are not on the list of family members that was submitted by the Department during the investigation.
- 8.3.4 The total expenditure incurred by the Department in respect of air travel by members of Mr Shiceka's family and the 5 individuals referred to above, from October 2008 to July 2011, amounted to approximately R 446 329.
- 8.3.5 It was not possible to determine from the records of the Department and TWF which flights were undertaken for official purposes and how many of the other flights were reserved and paid for in terms of Mr Shiceka's travel privileges, as provided for by the Ministerial Handbook.
- 8.3.6 In his letter addressed to the Public Protector on 9 June 2011, Mr Shiceka indicated that it had come to his attention that his travel benefits were abused by his staff and that an independent investigation into the matter had been commissioned. At the time of the conclusion of the investigation referred to in this report, the internal investigation instituted by Mr Shiceka had not been completed.



8.4 Mr Shiceka's visit to the Republic of Lesotho in March 2011

8.4.1 Mr Shiceka's leave of absence due to ill health

8.4.1.1 On 24 February 2011, Mr Shiceka was granted leave of absence by the President due to ill health. According to a public statement issued by the Ministerial Media Liaison Officer of the Department on 7 March 2011, *"all functions of the Ministry and the Department that would normally be carried out by Minister Shiceka will continue under the interim leadership of Minister Mthethwa, with the full support of Deputy Minister Yunus Carrim. Minister Mthethwa's acting responsibilities commenced on 24 February 2011."* At the time of the conclusion of the investigation referred to in this report, Mr Shiceka had not returned to his office.

8.4.2 The confirmation of accommodation for Mr Shiceka at the Lesotho Sun Hotel

8.4.2.1 On or about 24 March 2011, Mr Shiceka informed his office that he would be travelling to Maseru in Lesotho on a private visit. He was accompanied by his mother and bodyguard.

8.4.2.2 Mr Shiceka's office was not requested to arrange any accommodation for him in Lesotho prior to his departure.

8.4.2.3 Mr Shiceka checked into the Lesotho Sun Hotel on 24 March 2011 under the (fictitious) name of, Mrs Nkagisang Ngesi, in whose name reservations for room numbers 501, 420 and 328 were made.

8.4.2.4 Officials of Ministry and the Department responsible for travel arrangements stated during the investigation that Mr Shiceka called his office on 25 March 2011, requesting that arrangements in respect of payment by the Department for his accommodation at the Lesotho Sun Hotel be made urgently.



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8.4.2.5 The said officials found it difficult to convince TWF to issue an accommodation voucher due to the fact that no prior reservations were made by the Ministry, the short notice and the absence of presidential approval for his visit to a foreign country. The latter is a requirement for accommodation of Ministers at state expense during official travels abroad.

8.4.2.6 According to the Chief Financial Officer (CFO) of the Department, Mr Shiceka's persistence that an accommodation voucher should be sent to the hotel resulted in him approving the request with a view to dealing with the matter on the Monday after the weekend. The written authorisation to TWF by the CFO was for *the "payment for the Minister, Mrs Oscarina Shiceka and Mr Bheki Mthethwa in Lesotho Sun"*.

8.4.2.7 TWF advised that, on approaching the hotel, they established that no reservation was made in the name of Mr Shiceka. It was only after Mr Shiceka was approached directly to request his room numbers that it transpired that the three rooms referred to by the CFO, were booked under the name Nkagisang Ngesi.

8.4.2.8 Evidence indicates that TWF subsequently issued the voucher, in the name of Mr Shiceka, in the morning of 27 March 2011, the date of his departure. At the time, Mr Shiceka was allegedly "*held hostage*" by the hotel as no payment had been made for his accommodation and that of his mother and body guard.

8.4.2.9 According to the invoice issued by the hotel, the total cost of Mr Shiceka's stay relevant to the accommodation voucher that was issued by TWF, amounted to R25 277.

8.4.2.10 According to TWF, the CFO of the Department confirmed on Monday, 1 April 2011, that Mr Shiceka's visit to Lesotho was of a private nature. He then instructed TWF to "*withhold payment for the hotel accommodation booked for Minister Shiceka, Ms Oscarina Shiceka and Mr Bheki Mthethwa booked in Lesotho Sun on 23 to 27 March 2011.*"

8.4.2.11 According to the Director-General of the Department, it was decided not to pay for Mr Shiceka's accommodation at the Lesotho Sun Hotel from the funds of the



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Department because, “as far as I was concerned, the Minister was still on sick leave and therefore could not reasonably be on official business in another country. Furthermore, the absence of evidence of Presidential Approval was another consideration.”

8.4.2.12 The Director-General further indicated that Mr Shiceka was informed accordingly, and that he was personally liable for the expenditure incurred at the Lesotho Sun Hotel. However, at the time of the conclusion of the investigation referred to in this report, the hotel had not been paid.

8.5 Other travels undertaken by Mr Shiceka at the expense of the Department, whilst he was on leave of absence due to ill health

8.5.1 According to the departmental records, Mr Shiceka went on sick leave as from 24 February 2011 and had not returned to his office at the time of the finalisation of the investigation.

8.5.2 The records of TWF indicate that Mr Shiceka undertook the following domestic flights during the period that he was on sick leave:

Date of travel	Destination	Cost to Department
3 March 2011	JHB to Durban	R 2608
11 March 2011	Richards Bay to JHB	R 1639
3 June 2011	JHB to Durban (return)	R 5076
6 July 2011	JHB to Kimberley	R 1702
22 July 2011	JHB to Richards Bay/Durban to JHB	R 4396
26 August 2011	JHB to Durban (return)	R 5076
	Total	R 20 497

8.5.3 The same TWF records show that Mr Shiceka stayed at the expense of the Department at the hotels and for the periods indicated in the table below during the said period that he was on sick leave :

Stated reasons for visit (according to approved requisition)	Name of hotel	Period of stay	Costs
Engagement in Durban	Hilton Hotel Durban	3-10 March 2011 (7 nights)	R 41 347
Engagement in Durban	Protea Hotel Waterfront Richards Bay	3 June 2011	R 7071
Engagement in Richards Bay	Protea Hotel Waterfront Richards Bay	22 July 2011	R 6237
		Total	R 54 655

8.6 The responsibility for approving the expenditure incurred by the Department in respect of the travels and accommodation of Mr Shiceka and members of his family

8.6.1 In terms of paragraph 2, Chapter 8 of the Ministerial Handbook, the Chief of Staff of the Ministry is in charge of the overall management of a Minister's Private Office.

8.6.2 The Chief of Staff of the Ministry of COGTA has been delegated powers by the accounting officer in terms of section 44 of the PFMA, by virtue of which she is/was accountable for the expenditure incurred by the Minister.



8.6.3 At all material times relevant to the investigation, the Chief of Staff of the Ministry of COGTA was responsible and accountable for the travel and accommodation reservations that were made via TWF for Mr Shiceka and members of his family.

8.7 The alleged utilisation of municipal resources in the construction Mr Shiceka's house in the Eastern Cape

8.7.1 Allegations made in regard to the use of municipal resources in the construction of Mr Shiceka's house could not be substantiated through evidence. The matter was therefore not pursued any further.

9. ATTEMPTS MADE TO INTERVIEW MR SHICEKA IN CONNECTION WITH THE INFORMATION AND EVIDENCE OBTAINED DURING THE INVESTIGATION

9.1 The proposed interview on 6 August 2011

9.1.1 The Public Protector approached the Private Office of Mr Shiceka on 1 August 2011 to arrange an interview with him in connection with the information and evidence obtained during the investigation, to be held on 6 August 2011.

9.1.2 According to information provided by officials of Mr Shiceka's Private Office at the time, his health had sufficiently improved for him to be interviewed. However, due to the fact that he was still on sick leave, the Public Protector proposed that the interview be held at his residence in Pretoria, so as to inconvenience him as little as possible. This request was not acceded to and the meeting was not confirmed.

9.1.3 On 3 August 2011, the Public Protector received an unsigned letter in response to the request for an interview, ostensibly on behalf of Mr Shiceka. It read, *inter alia*, as follows:

“As you are aware, Minister Shiceka is on sick leave until he is declared medically fit to resume duties by a registered medical practitioner. The Honourable President of the Republic of South Africa, Mr J G Zuma, has since put the Minister on leave of absence and pending his recovery.

In the circumstances, Minister Shiceka is not in the position (sic) to meet with your good self, as per your request.”

9.2 Further attempts to arrange an interview

9.2.1 On 12 August 2011, an article appeared in the *Sowetan*, quoting Mr Shiceka’s spokesperson as having stated that he (Shiceka) was ready and able to go back to his office and that the Public Protector was *“dragging her feet in finalising the investigation against him.”*

9.2.2 In response to the media report that he was ready to go back to his office, the Public Protector again approached Mr Shiceka in writing on 12 August 2011, with a request for an interview. However, on 15 August 2011, the Public Protector received a letter from Mr Shiceka’s Special Advisor, Mr Nkontwana, denying the contents of the said media report and stating that Mr Shiceka had not sufficiently recovered to be interviewed.

9.2.3 On 17 August 2011, the Public Protector again approached Mr Shiceka directly in a letter, hand delivered to his residence in Pretoria, on the same day. The letter stated *inter alia* that:

“Due to the conflicting versions received from the Ministry regarding whether or not you are in a position to meet with me regarding my investigation, I have decided to take the liberty of approaching you directly.

It would be appreciated if you could kindly, but urgently advise as to whether you are in a position to meet with me, and if not, whether there is any

indication from the medical practitioners treating you as to when they will be satisfied that you can be interviewed.”

Kindly note that it is not my intention to put any pressure on you should your health indeed be such that you cannot resume duties and cannot be interviewed at this time. The purpose of this letter is merely to clarify the issue and to enable me to report to the President accordingly.”

9.2.4 Mr Nkontwana again responded to the Public Protector on behalf of Mr Shiceka on 18 August 2011, *inter alia*, as follows:

“By direction of Minister Shiceka, I wish to advise (sic) that Minister Shiceka is still on sick leave and will be able to resume his duties upon receipt of medical advice from a medical practitioner and directed to by the Honourable President of the Republic of South Africa. The Minister is still awaiting the medical practitioner to advise him of his health condition to ascertain as to when he will be fit to resume his duties.

.....

*In the circumstance, **the Minister humbly requests that a provisional report be issued to him for comment, as per established rule.**”*

9.2.5 In news item broadcast by Talk Radio 702 on 15 September 2011, Mr Shiceka personally announced that he has recovered from his illness, that he was playing tennis and travelling a lot² and felt *“on top of the world.”*

9.3 **Written questions presented to Mr Shiceka as an alternative to an interview**

9.3.1 As it appeared from Mr Nkontwana’s response that Mr Shiceka was in a position to comment on a provisional report, the Public Protector decided to present him

² See the travels undertaken by Mr Shiceka since he went on sick leave referred to in paragraph 8.5.2 above



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with written questions as an alternative to an interview, in order to finalise the investigation.

9.3.2 In a letter addressed to Mr Shiceka on 19 August 2011, the Public Protector stated the following:

*“A provisional report will include findings, which can only be made on all the evidence and information obtained during the course of the investigation. **All that is outstanding in this regard is information and evidence required from you to clarify and explain some of the matters investigated.**”*

Under the circumstances, I assume that you would be in a position to respond in writing to the questions below to enable me to conclude my investigation and the provisional report, a copy of which will be presented to you for your comments.”

9.3.3 The written questions put to Mr Shiceka, were the following (numbering replaced by bullets):

The trip to Switzerland

- *Apart from your visit to Switzerland, which other countries did you visit in your capacity as the Chairperson of the Host Cities Forum?*
- *When did such visits take place?*
- *Were any reports prepared on such visits and if so to whom were they submitted? Can you provide copies of such reports?*
- *To whom was the report relating to your visit to Switzerland submitted and when?*
- *Were your reports on the visits to Switzerland and other countries discussed by the Host Cities Forum or the Local Organising Committee? If so when and can you provide me with copies of the Minutes of the relevant meetings?*
- *Who prepared the report on your visit to Switzerland?*



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- *Why did you decide to travel to Switzerland in December 2008 despite the advice of officials of the Department of International Relations and Cooperation? Was there any particular reason why your visit could not be postponed to 2009?*
- *Who arranged your meetings with the organisers, referred to in your said letter?*
- *Who did you meet, where and when? Who else attended these meetings? Can you provide me with the Minutes of such meetings and indicate who was responsible for taking such Minutes?*
- *According to information obtained during the investigation, reservations were made for you to stay at Hotel Allegro in Berne, Switzerland. On your arrival at the hotel, the reservation was cancelled on your instruction and you were booked at the Hotel Bellevue. Why did you cancel the reservation at Hotel Allegro?*

Stay at the One and Only Hotel

- *When did you take occupation of your official residence in Cape Town?*
- *Did you at any time thereafter stay in any hotel in Cape Town during your official visits? If so, kindly indicate the reasons for not staying at your official residence, the dates and the names of the relevant hotels.*
- *Did it not bother you that the Chief of Staff made reservations for you and your immediate staff to stay at this very expensive hotel on several occasions at the expense of your Department and that you were not afforded a less expensive option to consider?*
- *According to an article that appeared in the Sunday Times on 10 April 2011, you were allegedly accompanied by Mr Mntambo and his wife during your stay at the One & Only Hotel when you attended the 2009 opening of Parliament. You are alleged to have justified the stay of Mr Mntambo at your Department's expense indicating that he is your "father figure" Can you explain the reasons why Mr and*



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Mrs Mntambo were accommodated at the One & Only Hotel at the expense of your Department?

Trip to Lesotho

- *Did you stay at the Lesotho Sun Hotel in March 2011?*
- *Was your visit of a private or official nature?*
- *Did you obtain Presidential approval to visit Lesotho? If so, kindly furnish me with a copy thereof.*
- *Who arranged your visit to Lesotho?*
- *At whose expense was the visit undertaken?*
- *Was the expenditure that you incurred at the Lesotho Sun Hotel paid for? If so when and by whom? Kindly provide me with copies of the relevant invoices and proof of payment.*
- *Did you involve your Department in arranging payment for your stay at the Lesotho Sun during the said visit? If so, what was the purpose of involving the Department? Who are the officials in your Department that you contacted in this regard?*
- *Who is Mrs Nkagisang Ngesi?*

Transport expenses for family members

- *In paragraph (iii) of your letter, addressed to me on 9 June 2011, you stated that you have ascertained that the transport privileges in respect of your family have been abused by your staff. Can you provide me with the details in this regard and the current status of the investigation that you instituted. “*



9.4 The response of the Minister's Special Advisory Team to the written questions

9.4.1 The "Minister's Special Advisory Team" responded to the written questions on behalf and at the request of Mr Shiceka, in a letter dated 26 August 2011, as follows;

"TRIP TO SWITZERLAND

The only relevant visit is Brazil. The visit to Brazil was about participatory budgeting, but issues related to preparation for hosting the World Cup were discussed. The visit took place during the month of November 2009....

The Minister's draft notes for Switzerland visit were given to the Minister's office to prepare a report; unfortunately the said notes could not be located since this took place more than two (2) years ago and most of the Ministry staff that were there at the time are no longer in the employ of the Ministry.

The Switzerland and Brazil reports were never discussed at the Host Cities Forum, but COGTA representatives at the Host City Technical Committee utilized the material for engagement with the LOC in preparation for the 2009 Confederation and 2010 FIFA World Cup. It should be stated that no advice was given by DIRCO official(s), only a comment was made.

The Unit responsible for 2010 FIFA World Cup facilitated meetings. The said meetings were held at the hotel where the Minister stayed and the details of those that met with the Minister must have been contained in the drafts notes, which unfortunately could not be located. Furthermore, the arrangement for accommodation in Berne was undertaken by DIRCO, in consultation with the Minister's private office. The Minister did not have a role in this administrative task.



One and Only Hotel

The Minister took residence in Cape Town after re-appointment during the month of November 2009 and this information has already been communicated to you by the Administrative Secretary, Mr Tafita Mokoena (see the attached communiqué for reference purposes). Occasionally, the Minister did stay in hotel(s) after occupying the house in Cape Town, due to technical challenges experienced at the house.

Mr and Mrs Mntambo were the Minister's guests as Member of the Executive at the State of the Nation Address in Parliament and were housed at the same hotel with the Minister. Mr Mntambo is regarded as a father to the Minister. The Minister does not deal with administrative related issues and is not apprised of the circumstances that led to the booking of that particular hotel.

Trip to Lesotho

The Minister is off duty and there is an acting Minister in the Department duly appointed to ensure continuity of the execution of the executive responsibilities. Accordingly, the Minister did not require permission from the President to travel

*to Lesotho. However, the officials in the office of the President were accordingly apprised of his whereabouts. **In view of the fact that this was not an official trip, the details thereof are confidential.***

Transport expenses for family members

The Minister is of the view that certain staff members abused transport privileges for his family members and the investigation on this matter is pending his return on duty.” (emphasis added)



9.5 Confirmation that the Minister's Special Advisory Team acted by direction of and in consultation with Mr Shiceka

9.5.1 Mr Nkontwana, Mr Shiceka's Special Advisor, was approached on 31 August 2011 and requested to indicate the following

9.5.1.1 The details of the signatory of the letter dated 26 August 2011 addressed to the Public Protector, referred to in paragraph 9.4 above;

9.5.1.2 The sources of the responses provided on behalf of Mr Shiceka;

9.5.1.3 The authority for accommodating Mr and Mrs Mntambo at the expense of the Department.

9.5.2 In their response dated 1 September 2011, the Minister's Special Advisory Team advised, *inter alia*, that:

*"The team takes direction from the Minister in carrying (sic) its duties. All correspondence to the PP's office was compiled collectively by the team **and in consultation with the Minister**. Therefore, it is the availability of team members that would normally dictate who end (sic) up being the ultimate signatory on behalf of the team.*

The information submitted to the PP as part of cooperation to the investigation, was sourced from the departmental records, colleagues and other persons who are familiar with the issues raised in various communiqué from the PP's office.

The Minister was raised by Mr Mntambo, in terms of traditional practice when he was young as he does not have a biological father. Therefore, the Minister invited him as a member of his family, in particular his parent." (emphasis added)



10. PERTINENT ISSUES ARISING DURING THE INVESTIGATION

The following pertinent issues arose during the course of the investigation:

10.1 The trip to Switzerland

10.1.1 From the information obtained during the investigation, it was apparent that Mr Shiceka's visit to Ms Masilela at the *Anstalten Hindelbank* prison was planned for and arranged by his Private Office prior to his departure for Zurich. Officials of the Private Office and of the then Department of Foreign Affairs expressed their concerns about the timing of Mr Shiceka's visit to Switzerland for the reasons that he advanced to the President, but Mr Shiceka persisted.

10.1.2 The said officials were further concerned about whether the sole purpose of Mr Shiceka's trip was to visit Ms Masilela and was therefore of a private and personal nature. It was furthermore disconcerting that Mr Shiceka denied having visited Ms Masilela at the said prison, whilst all the other persons involved and the documentary evidence obtained confirmed that he did so twice.

10.2 The accommodation at the One and Only Hotel

10.2.1 The pertinent issues that arose in this regard were whether it was appropriate for a Minister to allow his Private Office to repeatedly accommodate him and members of his Private Office at the expense of the Department in an extremely expensive hotel in a city such as Cape Town where alternative accommodation was readily available. Furthermore, whether it was in order for Mr Shiceka to stay at a hotel in Cape Town at the Department's expense after he had been allocated an official residence in that city.

10.3 The travel expenditure of family members

10.3.1 Mr Shiceka is entitled to certain privileges in terms of the Ministerial Handbook in respect of the travel expenditure incurred by the Department on behalf of members of his family. The pertinent issue that arose was whether the



expenditure that was indeed incurred by the Department in this regard could be justified by and was in compliance with the said prescripts.

10.4 The trip to Lesotho

10.4.1 It was not disputed that Mr Shiceka's trip to Lesotho was of a private nature and was undertaken during a time when he was on sick leave. All the officials involved in Mr Shiceka's official travel arrangements expressed their discomfort during the investigation about his insistence that the Department should pay for the accommodation expenditure incurred. When this matter was raised with Mr Shiceka during the investigation, his only response was that the matter was private.

11 EVALUATION OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

11.1 The trip to Switzerland

11.1.1 According to Mr Shiceka, he undertook an "official study visit" to Switzerland from 17 to 20 December 2008 "in order to learn more about the Euro 2008 Soccer extravaganza experience."

11.1.2 He explained that as the Chairperson of the Host Cities Forum of the FIFA LOC, he was tasked with the responsibility of "co-ordinating the Host Cities in preparation of the Soccer Spectacular and had to understand the intricacies of hosting bigger events and learn from those countries and organizations that have done it before".

11.1.3 In support of his explanation regarding his trip to Switzerland, Mr Shiceka submitted a document entitled: "Minister's Report to the Public Protector". No other official report on the Minister's trip could be found at the Ministry, the Department or the FIFA LOC.



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- 11.1.4 According to Mr Shiceka's report, submitted to the Public Protector, consisting of only 5 pages, his study visit involved meetings with the Embassy, the EURO 2008 management team and site visits to fan parks. *"The engagements focussed on the process towards hosting the event, preparatory arrangements and event management."*
- 11.1.5 The meeting with the EURO 2008 management team and the visits to the fan parks referred to in the report, were not supported by the evidence of the officials that accompanied Mr Shiceka during his visit to Switzerland. No names of officials met nor Minutes of the said meetings or any other corroborating documentation could be obtained from Mr Shiceka's Advisory Team during the investigation.
- 11.1.6 The following are the salient points made in Mr Shiceka's report in respect of the value of the study tour, stated under the heading: *"LESSONS FOR SOUTH AFRICA"*
- 11.1.6.1 The Management and Administrative Board (of the EURO 2008 event), comprised of experts from different countries;
- 11.1.6.2 The joint hosting of the soccer event by Austria and Switzerland was to tap on the unprecedented opportunity to enhance and promote their status and image.
- 11.1.6.3 Hospitality and entertainment were organised for spectators during the opening and closing ceremonies.
- 11.1.6.4 The sustainability strategy focussed mainly on four key issues, namely: the utilisation of resources and waste management, climate protection, mobility and energy.
- 11.1.6.5 The spectators were encouraged to travel to EURO 2008 using public transport.



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- 11.1.6.6 Fan parks were fitted with giant screens and live concerts by national and international artists.
- 11.1.6.7 The hosting of the event promoted the image of host countries as tourist destinations and encouraged spectators to stay after the event.
- 11.1.6.8 All necessary facilities were provided for at the stadia to ensure easy access by persons with disabilities.
- 11.1.6.9 No alcohol was allowed.
- 11.1.7 Mr Shiceka's report concluded that the study tour was "*a resounding success in terms of the lessons learnt for South Africa.*"
- 11.1.8 It was noted during the investigation that comprehensive information on the organisation of the EURO 2008 event was made available on the Internet. This included a 271 page Executive Report of the *Chief Operating Officer Euro 2008 SA*, released in November 2008, that covered all aspects of the organising of the event, the lessons learnt from it as well as observations made and recommendations on how the organising of such an event could be improved.
- 11.1.9 The information relevant to the organising of the World Cup 2010 in South Africa referred to in Mr Shiceka's report, was therefore readily available, as a matter of fact, such information was much more comprehensive and informative than the lessons that were, according to Mr Shiceka, learned from his trip to Switzerland. Mr Shiceka's response to this observation is dealt with later in this report.
- 11.1.10 Written questions were presented to Mr Shiceka during the investigation on, *inter alia*, the details of the EURO 2008 management team that he claimed to have met during his visit, the venue where the meetings were held, who else attended, the Minutes of the meetings, who prepared the report and to whom it was submitted.



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11.1.11 The Minister's Special Advisory Team responded, on behalf of Mr Shiceka that:

*"The Minister's draft notes for Switzerland visit (sic) were given to the Minister's office to prepare a report; **unfortunately the said notes could not be located since this took place more than two(2) years ago** and most of the Ministry staff that were there at the time are no longer in the employ of the Ministry."*

11.1.12 The response also stated that reports on the visit were not discussed at the Host Cities Forum.

11.1.13 The details of the EURO 2008 management team that Mr Shiceka, according to his explanation, met during his visit, could also not be provided.

11.1.14 It was not clear how the report on the visit that was submitted to the Public Protector on 9 June 2011³ was compiled in the absence of the Minister's "draft notes". It was also not clear why Mr Shiceka's Personal Secretary did not attend the official meetings to assist him in keeping minutes of what was discussed, as is required by the Ministerial Handbook.

11.1.15 No other evidence could be found during the investigation supporting Mr Shiceka's explanation in respect of the meetings that he held and the EURO 2008 sites visited during his visit to Switzerland. It was further noted from the evidence that no official arrangements were made for him to meet with the EURO 2008 management team prior to his departure from South Africa, as could have been expected.

11.1.16 Documentary evidence disclose that Mr Shiceka insisted to visit Switzerland in December 2008, for the reasons that he presented to the President, despite having been advised by the South African Embassy that he should rather postpone his plans as the officials involved in the EURO 2008 has since moved

³ See paragraph 11.1.4 above



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on and to trace them might take some time. The Embassy concluded that: “To proceed with the visit might not be beneficial.”

- 11.1.17 The Ministerial Handbook required that Mr Shiceka’s visit should have offered “real value and benefit to the Republic of South Africa.”
- 11.1.18 The observations that Mr Shiceka claimed to have made during his visit were general and not specific to any discussions held. The information referred to could easily have been obtained by e-mail, accessing the Internet or telephonic discussions. It therefore failed to offer real value and benefit, as required by the relevant prescript referred to above.
- 11.1.19 As the details of the persons that Mr Shiceka, according to him, met in Switzerland are not known, it could not be determined whether they had “special merit” as required by the Ministerial Handbook.
- 11.1.20 Mr Shiceka’s denial that he visited “**any prison during my visit to Switzerland**” in a written response to the Public Protector and to the media during an interview held on 15 September 2011 and broadcast on Talk Radio 702, is inconsistent with the evidence obtained from the prison during the investigation. It is also inconsistent with the evidence of Ms Masilela and all the other witnesses that were involved in arranging and those present during his visits to her at the *Anstalten Hindelbank* prison in Switzerland. (See paragraph 8.1.9 above)
- 11.1.21 The findings of the Deputy Press Ombudsman referred to in paragraph 8.1.12 above referred only to what Ms Masilela allegedly told the *Sunday Times* as against what was reported. It had no bearing on whether or not Mr Shiceka visited her in prison. It is therefore disingenuous for Mr Shiceka to seek reliance on the ruling of the Deputy Press Ombudsman to support his denial.
- 11.1.22 Mr Shiceka misled the Public Protector (and the public) when he denied during the investigation that he met with Ms Masilela at the prison. The evidence clearly shows that he met with Ms Masilela at the *Anstalten Hindelbank* prison



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on two occasions during December 2008. This raises the question why Mr Shiceka would misrepresent the facts about his visit to Switzerland if it was genuinely for the purposes of preparing for the 2010 FIFA World Cup.

- 11.1.23 In terms of section 181(3) of the Constitution, all organs of state must assist and protect the Public Protector (as a constitutional institution) to ensure its dignity and effectiveness. “*Organs of state*”, in terms of section 239, includes all members of the Executive.
- 11.1.24 Section 2 of the Constitution provides that all conduct that is inconsistent with the Constitution is invalid.
- 11.1.25 Members of the Cabinet are required, in terms of section 96(2) of the Constitution, not to act in a manner that is inconsistent with their office. This provision is also to be found in paragraph 2.3(b) of the Executive Ethics Code.
- 11.1.26 Section 11(3) of the Public Protector Act provides that it is a criminal offence for any person to, without just cause, give an answer to the Public Protector which to his or her knowledge is false.
- 11.1.27 By providing an answer to the Public Protector which he knew to be false and misleading, Mr Shiceka acted in violation of the provisions of the Constitution, the Public Protector Act and the Executive Ethics Code, referred to above.
- 11.1.28 The only reasonable conclusion that can be made from the evidence obtained during the investigation is that Mr Shiceka’s trip to Switzerland was not of an official nature and that its only purpose was for him to visit Ms Masilela in prison.
- 11.1.29 It is therefore reasonable to conclude that Mr Shiceka wilfully misled the President when he presented the purpose of his travel to Switzerland to him. This is supported by the evidence that the visit to Ms Masilela was in the process of being arranged even before Mr Shiceka’s request was approved.

11.1.30 No indication could be found of the reason why Mr Shiceka requested to be accompanied by his Private Secretary on the trip to Switzerland.

11.2 Mr Shiceka's accommodation at the One and Only Hotel and Mr and Mrs Mntambo's journey to Cape Town

11.2.1 Following his appointment to the Cabinet in September 2008, Mr Shiceka was allocated an official residence in Cape Town on 27 May 2009. His residence was however, only ready for occupation by him from 21 October 2009.

11.2.2 Paragraph 7.1.2 of Chapter 3 of the Ministerial Handbook provides that ministers, their spouses and dependent children who out of necessity cannot remain at home, are entitled to accommodation and subsistence at expense of the relevant Department in any hotel when fulfilling official duty away from their ordinary places of residence.

11.2.3 Prior to the allocation of his official residence in Cape Town and during the period after it was allocated, but before he could take occupation, Mr Shiceka was entitled to be accommodated at hotels during his official visits to Cape Town, as his ordinary place of residence was Pretoria.

11.2.4 Paragraph 3.2 of Chapter 8 provides that:

"In cases where Members perform official functions by virtue of their office, and where this is in their opinion warranted, a member (or members, as the nature of the official duties prescribe) of the Private Office staff may accompany them and stay at the same hotel or hostelry and travel in the same class, at Government expense."

11.2.5 Section 96 of the Constitution requires members of the Cabinet not to act in a way that is inconsistent with their office.

- 11.2.6 The general standards determined by paragraph 2 of the Executive Ethics Code furthermore, 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.
- 11.2.7 The average expenditure incurred by the Department for Mr Shiceka's stay at the One and Only Hotel in Cape Town amounted to approximately R 12 000 per night (excluding the accommodation of his staff). This amount translated into approximately 3 times more than the accommodation costs of the other five star rated hotels that Mr Shiceka stayed at on occasion during official visits to Cape Town.
- 11.2.8 It is not in dispute that the One and Only Hotel is one of the most expensive, if not the most expensive hotel, in Cape Town. It is also not disputed that Mr Shiceka could have been accommodated at other less expensive hotels which could cater adequately for members of the Cabinet.
- 11.2.9 Due to the fact that Mr Shiceka stayed at the One and Only Hotel on numerous occasions, it is reasonable to conclude that he was aware of the exorbitant expenditure incurred by the Department. Mr Shiceka was aware, as indicated in paragraph 8.2.2.4 above, that there are other luxurious hotels in Cape Town that could have accommodated him and his staff at far less expenditure to the Department
- 11.2.10 The above conclusion is supported by the fact that during his visit to Switzerland in December 2008, Mr Shiceka allegedly refused to stay in a four star rated hotel and insisted to be accommodated in a highly expensive five star rated hotel. The evidence shows that he was transferred causing fruitless expenditure to the state.
- 11.2.11 Although the Ministerial Handbook provides that members of the Cabinet can be accommodated in any hotel during domestic official travels, it also requires of them to act in good faith and in a manner that is consistent with their office. It is expected of Ministers to act responsibly and in an accountable manner, when



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expending public funds. Even though Mr Shiceka is entitled to leave his accommodation arrangements to the administration of his office, he was expected to ensure that the provisions of the Ministerial Handbook were adhered to by his staff.

11.2.12 The majority of the former and current officials of the Department that were interviewed during the investigation, particularly those based at the Ministry, indicated that they were reluctant to oppose Mr Shiceka's instructions relating to authorising the departmental expenditure in respect of his accommodation, for fear of being victimised. The general perception of officials interviewed during the investigation was: *"What the Minister wants, the Minister gets or else you are gone."*

11.2.13 It is furthermore not in dispute that Mr Shiceka stayed at the One and Only Hotel on several occasions together with members of his Private Office, after an official residence was allocated to him, at a cost to the Department of approximately R146 479.

11.2.14 In terms of Chapter 3 of the Ministerial Handbook, a member of the Cabinet that has official residences in both Pretoria and Cape Town is not entitled to accommodation and subsistence paid for by the Department when traveling to these cities on official business.

11.2.15 On one such occasion, the only reason provided by Mr Shiceka for not staying at his official residence was that there were *"mosquitoes"* in his house. No explanation could be provided by the Private Office of the Minister during the investigation for the other six occasions on which he requested to be accommodated at the One and Only Hotel in Cape Town.

11.2.16 Mr Shiceka was therefore prepared to incur expenditure for his Department in the amount of approximately R13 000 for accommodation, simply because of the reason that there were mosquitoes in his house.



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11.2.17 The question that arises is, was Mr Shiceka's accommodation at the One and Only Hotel after he was allocated an official residence in Cape Town, in accordance with the Ministerial Handbook? As a member of the Cabinet, Mr Shiceka was aware of these provisions and therefore that he acted in violation thereof.

11.2.18 It was not disputed that Mr and Ms Mntambo travelled from Johannesburg to Cape Town on 2 June 2009 at the expense of the Department. It was explained on behalf of Mr Shiceka that Mr Mntambo is regarded by him as his "parent".

11.2.19 A parent of a member of the Cabinet is regarded as "family" for the purposes of the Ministerial Handbook.

11.2.20 "Parent" is not defined by the Ministerial Handbook. It is trite that in the absence of a defined meaning, words should be interpreted in accordance with its ordinary meaning. According to the *Collins Concise Dictionary*, "parent" means "father or mother or a person acting as father or mother". The *Oxford Online Dictionary* includes adoptive parents under the meaning of the word.

11.2.21 Paragraph 9 of Chapter 3 of the Ministerial Handbook provides that family members of Ministers are entitled to utilise flight tickets that form part of the their additional benefits. However, as far as accommodation is concerned, only spouses and dependent children are entitled to be accommodated at state expense when they accompany a Minister whilst he/she is on official duty. No provision is made for the accommodation of parents at state expense.

11.2.22 The Preface to the Ministerial Handbook states that anything that is not mentioned in Ministerial Handbook does not form part of the benefits, allowances and support services envisaged for political office bearers.

11.2.23 According to the records of the Ministry, Mr Mntambo's name does not appear on the list of Mr Shiceka's family members that was provided for record and control purposes in respect of the utilisation of his privileges.



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11.2.24 The records of TWF also indicate that Mr Mntambo only travelled once at the expense of the Department.

11.3 The travel expenditure incurred by Mr Shiceka's family

11.3.1 Mr Shiceka is entitled in terms of Chapter 3 of the Ministerial Handbook to travel privileges that can be exchanged with members of his family for private purposes.

11.3.2 His dependent children are in addition entitled to travel privileges to reunite with their parents during their regular travels between Cape Town and Pretoria.

11.3.3 The Minister's Private Office failed to keep proper records of whether the flights of family members paid for by the Department were for official purposes or qualified under the said travel privileges. It was therefore not possible to determine during the investigation whether Mr Shiceka had exceeded the privileges afforded to him in respect of his family.

11.3.4 It was further noted that Mr Shiceka publicly confirmed that his travel privileges had been abused and that the matter was being investigated internally.

11.4 Mr Shiceka's trip to Lesotho

11.4.1 It is not in dispute that Mr Shiceka's trip to Lesotho was of a private nature.

11.4.2 The Ministerial Handbook does not provide for ministers and their family to be accommodated at state expense during private travels.

11.4.3 According to the evidence, Mr Shiceka insisted that the Department provide the Lesotho Sun Hotel with an accommodation voucher indicating that it would be responsible for the accommodation expenditure incurred by him during his stay.

11.4.4 Mr Shiceka therefore required of the Department to make a fraudulent misrepresentation to a hotel in a foreign country. By doing so, the Department caused the hotel to act to its detriment by allowing Mr Shiceka, his mother and



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- body guard to leave on the understanding that the Department would be liable for their expense.
- 11.4.5 If it was not for the observant and responsible action taken by the Chief Financial Officer when the invoice for payment was submitted by the hotel, the Department would have suffered another substantial financial loss.
- 11.4.6 Evidence obtained indicates that Mr Shiceka was informed by the Department that he is personally liable for the expenditure incurred at the Lesotho Sun Hotel. It furthermore shows that the hotel has not been paid.
- 11.4.7 Mr Shiceka's behaviour potentially embarrassed the Government of the Republic of South Africa as the Minister stayed in a hotel in a foreign country and left without paying, under misleading circumstances.
- 11.4.8 The question that arises is whether Mr Shiceka's conduct in this regard complied with the standard of good faith, integrity and acting in a manner that is consistent with his office, as was required of him in terms of the Executive Ethics Code and the Constitution.

11.5 Other travels undertaken by Mr Shiceka whilst he was on sick leave

- 11.5.1 Due to the lack of proper record keeping by the Private Office of the Minister and TWF, it was not possible to determine during the investigation whether the six flights that he undertook since he was placed on sick leave, were paid for by the Department in terms of his travel privileges.
- 11.5.2 However, his accommodation in hotels at the expense of the Department whilst on sick leave is not provided for by the Ministerial Handbook.
- 11.5.3 As a member of the Cabinet, Mr Shiceka was aware that he was not entitled to be accommodated in hotels at the expense of the Department whilst on private visits.



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11.5.4 The question that arises is whether or not by requesting the Department to pay for his accommodation under the circumstances, Mr Shiceka acted in good faith and with integrity. Further thereto, was his conduct consistent with his office and therefore compliant with the standard for conduct of ministers as set out in the Executive Ethics Code and the Constitution?

12 THE PROVISIONAL REPORT OF THE PUBLIC PROTECTOR

12.1 The Public Protector issued a Provisional Report on the investigation to the complainants and other relevant parties involved (including Mr Shiceka), on 22 September 2011.

12.2 The Provisional Report was distributed on the basis of confidentiality to provide the recipients with an opportunity to respond to its contents.

12.3 Mr Shiceka's attention was specifically directed at the provisions of section 7(9)(a) of the Public Protector Act, which provides as follows:

*“If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector **shall afford such person an opportunity to respond in connection therewith in any manner that may be expedient under the circumstances.**”* (emphasis added)

12.4 On 28 and 29 September 2011 the *Business Day* and the *New Age* newspapers respectively, published articles on the contents of the Provisional Report that was unfortunately leaked to them by unknown persons. The Public Protector immediately condemned this as being not in the public interest and having the potential to undermine the integrity of the investigation and the effectiveness of her office.



12.5 The recipients of the Provisional Report were requested to submit their responses thereto by 3 October 2011.

13 RESPONSES TO THE PROVISIONAL REPORT

13.1 Mr Shiceka's response

On 3 October 2011, a document titled "*RESPONSES: PROVISIONAL REPORT NO 11 OF 2011/12 OF THE PUBLIC PROTECTOR ON AN INVESTIGATION INTO ALLEGATIONS OF A BREACH THE EXECUTIVE CODE BY THE HONOURABLE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, MR SICELO SHICEKA, MP*" was delivered to the Public Protector by Mr Shiceka's office. The covering letter was signed on behalf of Mr Shiceka by the Ministerial Advisory Team.

13.1.1 Procedural issues raised by the response

Mr Shiceka's response raised the following procedural issues relating to the investigation:

13.1.1.1 The names of all the witnesses interviewed were not stated in the Provisional Report;

13.1.1.2 He was not informed about investigation process to be followed, nor given a list of the witnesses to be interviewed;

13.1.1.3 The procedure adopted in the investigation deviated from the process prescribed by the "*founding legislation and the well established rules of natural justice.*"

13.1.1.4 The Public Protector must, in terms of section 7(5) of the Public Protector Act, invite a person to appear before her/him by way of a subpoena containing particulars of the matter. "*It has come to the Honourable Minister's attention that some of the witnesses never received subpoenas but were invited through third parties.*" Reference was made in this regard to an e-mail sent by a member of



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the investigation team assisting the Public Protector, to the Minister's Advisory Team on 12 September 2011.

13.1.1.5 Witnesses interviewed were not requested to give evidence under oath or affirmation;

13.1.1.6 *"...at no stage did the Public Protector afford the Honourable Minister an opportunity to seek legal representation despite her insistence to proceed with this investigation when the Honourable Minister is on sick leave."*;

13.1.1.7 He was not afforded the opportunity to peruse the testimony of the witnesses interviewed in order to test the veracity of their evidence;

13.1.1.8 Witnesses reported to him that they were not afforded the opportunity to seek legal representation or peruse the statements of other witnesses;

13.1.1.9 Mr Shiceka concluded in this regard as follows:

"The procedure adopted by the Public Protector is unlawful and unconstitutional as it deprived the Honourable Minister his constitutional right to a fair procedure. Furthermore, the evidence used to support the Public Protector's findings should be dismissed because it was not given under oath and the Honourable Minister was not afforded an opportunity to challenge it."

13.1.1.10 Mr Shiceka furthermore questioned the powers of the Public Protector to issue a Provisional Report on her findings relating to an investigation.

13.1.1.11 In addition, the response stated that:

"The Honourable Minister believes also that the provisional report and the findings there in amount to fiat accompli (sic). Therefore the request for his response to the provisional report is a procedural cover-up for the glaring procedural irregularities."

....



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The Honourable Minister submits that the Public Protractor (sic) in her finding that the Honourable Minister breached the relevant regulation and ordering that he should reimburse the State when the amounts referred thereto are disputed (sic). Furthermore, the Public Protector has not shown any violation of any law in terms of quotation of clauses and the Ministerial Handbook.

Finally, the President of the Republic of South Africa and Parliament should reject this report solely on the procedural irregularities and/or on the basis that it lacks evidence to support its findings.”

13.1.2 Evaluation of the procedural issues raised by the response

13.1.2.1 The contents of the procedural issues raised by Mr Shiceka, show a failure to understand the Public Protector Act. Its provisions are simple and clear. Mr Shiceka's response, which purports to rely on the Act and even suggests that the process followed in the investigation violated its provisions, actually distorts the Act and its provisions, which clearly envisage an inquisitorial process.

13.1.2.2 As indicated in paragraph 4.5 above, the Public Protector has all the powers vested in her/him by the Public Protector Act, when conducting an investigation in terms of the Executive Members' Ethics Act.

13.1.2.3 Section 7(1)(b)(i) of the Public Protector Act provides that: “***the format and procedure to be followed in conducting any investigation shall be determined by the Public Protector with due regard to the circumstances of each case.***” (emphasis added)

13.1.2.4 No provision in the Executive Members' Ethics Act, the Public Protector Act, the principles of natural justice or any other law justifies the expectation raised by Mr Shiceka that he had to be informed of the investigation process to be followed and given a list of the witnesses to be interviewed. In other words, the Public



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Protector had no duty to present her investigation plan or the names of witnesses to Mr Shiceka.

13.1.2.5 After the interviews were conducted, a list of the witnesses was provided in the Provisional Report.

13.1.2.6 As indicated above, Section 7(9) of the Public Protector Act provides that:

*“If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector **shall afford such person an opportunity to respond in connection therewith in any manner that may be expedient under the circumstances.**”* (emphasis added)

13.1.2.7 The Public Protector’s investigation process is regulated by section 7 of the Public Protector Act and none of it refers to the requirements that Mr Shiceka’s response mentions. It almost appears that his response relied on a different Public Protector Act than the one on the statute book.

13.1.2.8 Mr Shiceka was afforded more opportunity to respond to the evidence obtained during the investigation than envisaged in section 7(9) of the Public Protector Act. The Public Protector went even further than Mr Shiceka’s request to be provided with a provisional report to respond to. Right at the beginning of the process he was requested to respond to questions relating to the complaints that were lodged. After the witnesses were interviewed and documentary evidence perused, he was asked to avail himself for an interview. When he failed to do so and asked to be provided with a provisional report, the Public Protector presented him with written questions twice, in pursuit of the *audi alteram partem* principle.



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13.1.2.9 The invitation addressed to Mr Shiceka to meet with the Public Protector in connection with the evidence and information obtained during the investigation was never retracted.

13.1.2.10 Mr Shiceka and the witnesses interviewed during the investigation were approached by members of the investigation team assisting the Public Protector (**and not third parties as alleged**), in terms of section 7(4)(b) of the Public Protector Act, which provides as follows:

*“The Public Protector or **any person duly authorised thereto by him or her** may request an explanation from any person whom he or she reasonably suspects of having information on a matter being or to be investigated.”*
(emphasis added)

13.1.2.11 Sections 7(4)(a) and 7(5) of the Public Protector Act were not applied during the investigation, as contended by Mr Shiceka. The Public Protector is not obliged to invite witnesses by means of subpoenas to appear before her or to take their evidence under oath or affirmation. The provision in question refers to “*may*” and not “*must*”. Witnesses were not called to appear before the Public Protector and therefore sections 7(6) and 7(8) were also not applicable.

13.1.2.12 The right to legal representation as envisaged by section 7(8) of the Public Protector Act, applies to persons appearing before the Public Protector. Mr Shiceka never appeared before the Public Protector. However, the Public Protector never did or could stop Mr Shiceka from obtaining or using legal advice. In fact his responses were prepared by a professional team of advisers led by his *Special Advisor*.

13.1.2.13 The issuing of the Provisional Report was also in pursuit of the provisions of section 7(9) of the Public Protector Act, referred to above. In response to challenges identified in previous investigations, the Public Protector decided to



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- provide a provisional report not only to implicated parties, but also to the complainants. The idea is to give context to the provisional findings and to indicate contested evidence. One would have expected Mr Shiceka to have welcomed rather than contested the opportunity.
- 13.1.2.14 It should also be noted that the United Nations Ombudsman Guidelines require the issuing of a provisional report, which is regarded globally by the ombudsman community as good practice.
- 13.1.2.15 It should furthermore be noted that Mr Shiceka requested, on 18 August 2011, to be provided with a provisional report for him to comment on “*as per established rule.*” Mr Shiceka’s contention in his response under discussion, that the issuing of a provisional report by the Public Protector is unlawful, is therefore perplexing.
- 13.1.2.16 Mr Shiceka’s assertion that the statements of witnesses were not provided to him, is equally perplexing. Firstly, his Advisory Team at no stage requested such statements. Secondly, section 7(8) of the Public Protector Act only entitles persons appearing before the Public Protector to peruse such documents or records as are reasonably necessary to refresh their memory. This does not include the statements of witnesses.
- 13.1.2.17 All the witnesses that were approached during the investigation cooperated voluntarily and at no stage indicated that they objected to the questions put to them.
- 13.1.2.18 The Public Protector has noted with concern that Mr Shiceka or his advisory team approached witnesses interviewed by the investigation team that assisted the Public Protector during the investigation, after he received the Provisional Report and that they were questioned in connection with the information that they provided and the process that was followed in respect of the said interviews. No information was provided in respect of the circumstances where these witnesses were questioned and to what extent they were safeguarded



against perceptions of victimisation and occupational detriment. That these witnesses were approached by Mr Shiceka despite the fact that it was specifically stated in the Provisional Report that witnesses interviewed during the investigation feared victimisation, is especially disconcerting.

13.1.2.19 It is of further concern that Mr Shiceka in his response purports to speak on behalf of these witnesses. Of particular concern is that Mr Shiceka laments not being given the opportunity to cross examine witnesses when his own response suggests that he or his advisory team did indeed do so. This on its own raises ethical issues, especially in the light of the provisions of the Protected Disclosures Act, 2000.

13.1.2.20 On behalf of the said witnesses, Mr Shiceka in his response raises the issue of their right to legal representation. Firstly, none of the witnesses appeared in terms of section 7(4)(a) and (5) of the Public Protector Act and accordingly the provisions of section 7(8) did not apply. Secondly, none of the witnesses requested the opportunity for legal representation or were implicated at any stage of the proceedings. The Minister's concerns are accordingly misplaced.

13.1.2.21 As indicated in paragraph 5 above, the investigation was conducted in compliance with the provisions 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.

13.1.3 The response in respect of Mr Shiceka's visit to Switzerland

13.1.3.1 In his response to the Provisional Report, Mr Shiceka did not deny that he visited Ms Masilela at the *Anstalten Hindelbank* prison in Switzerland in December 2008.

13.1.3.2 His response furthermore does not deny that Mr Shiceka misled the Public Protector during the investigation in respect of his visit to Ms Masilela.



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13.1.3.3 The response claimed that an internal investigation report compiled by *Manase and Associates* chartered accountants was not considered during the investigation. This report found that the expenditure in respect of Mr Shiceka's visit to Switzerland only amounted to R 355 000 and not R 546 864 as indicated in the Provisional Report.

13.1.3.4 Reference is also made to the so-called: "*disputable matrices*" which apparently constituted the basis of the need to obtain more information in preparing the Host Cities for the 2010 FIFA World Cup. In this regard, the Minutes of a meeting held between Mr Shiceka, representatives of the Ministry of COGTA, a representative from the Department and representatives from the LOC, on 6 November 2008, was referred to The "*dispute*" was minuted as follows:

"The Host Cities and LOC have not agreed on the following eight issues, which have been escalated to a higher level:

- 1) *Additional video screens*
- 2) *Cableways, paths ducts, etc*
- 3) *Floodlights/lux requirements*
- 4) *Backup Power*
- 5) *Scoreboards*
- 6) *Partitioning and fitting out of office space*
- 7) *Stadium fencing*
- 8) *Ground preparation in respect of temporary structures"*

13.1.3.5 The key decision taken at the meeting in respect of the dispute was: "*National Government to assist in resolving the issue.*"

13.1.3.6 Mr Shiceka's response further stated that:

"The Honourable Minister's learning's (sic) revealed that the so called 'disputable matrices' were indeed complex to resolve and these are documented in the report produced after the visit, which is at your disposal at



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this stage. A close out report on Euro 2008 clearly spells out these matrices, an original copy of which is available for observation.

The allegation that the report was downloaded is untruthful and misleading.”

13.1.3.7 The response denied that Mr Shiceka’s report on his visit to Switzerland was “*constructed upon request by the Public Protector.*” and also indicated that Dr Jordaan was approached by Mr Shiceka in connection with the information provided by him during the investigation, as referred to in the Provisional Report⁴. He (Dr Jordaan), according to the response, disputed “*the evidence contained in the provisional report.*”

13.1.3.8 The response claims that Mr Shiceka’s visit to Switzerland benefitted the country during the hosting of 2010 FIFA World Cup and that it was official.

13.1.3.9 Reference was again made in the response to the findings of the Deputy Press Ombudsman, referred to in paragraph 8.1.12 above. It stated that:

“It (the Provisional Report) also fails to take into account the legal basis of the Media Ombudsman’s (sic) verdict against the Sunday Times newspaper on the matter. It must be noted that the Newspaper allegations (sic) on Switzerland visit (sic) form the basis of the investigation.”

13.1.3.10 In conclusion, the response refers to a recent reply by the President to a Parliamentary question confirming that Mr Shiceka’s visit to Switzerland was official.

13.1.4 Evaluation of the response in respect of Mr Shiceka’s visit to Switzerland

13.1.4.1 The report compiled by *Manase and Associates*, titled: *Report on the allegations against the Minister*, was dated May 2011. It related to an internal investigation

⁴ See paragraph 8.1.1.3 above



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into alleged irregular expenditure by the Ministry of COGTA that was commissioned by the Department.

13.1.4.2 The contents of the report were qualified by the following disclaimers:

“It is pertinent to note that whilst every endeavour has been made to review all available evidence, it is likely, given the relatively short period of time that Manase has been mandated to investigate the issues forming the subject of this report that further evidence to which our team has yet to have access, exists.

We did not perform an audit in accordance with International Financial Reporting Standards. Accordingly, we do not express an opinion on the fairness and/or accurateness of the financial information contained in this report.

Further work needs to be done to verify these expenses with the financial records of the Department and with other third parties.

We have also not been able to interview relevant department officials.”

13.1.4.3 The report was considered by the Public Protector, but in light of the above, no significant reliance could be placed on its contents for the purposes of the investigation. It was however noted that the report found that the amount spent on Mr Shiceka’s trip to Switzerland was R 335 000, which is approximately R 200 000 less than the actual expenditure that was incurred.

13.1.4.4 On the “*disputable matrices*” referred to in the response, it must be noted that reference to this is not in Mr Shiceka’s report that was submitted to the Public Protector at the commencement of the investigation. Indeed there are contradictions between this and his report raising the question regarding the authenticity of both documents.



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13.1.4.5 The response furthermore still did not indicate the details of the EURO 2008 officials that Mr Shiceka allegedly met during his visit.

13.1.4.6 The additional documents presented to support Mr Shiceka's claim that the trip was beneficial still did not link any information gathered to any meeting he attended, assisting the Public Protector to conclude that if it were not for the trip and the meetings attended the lessons learned would not have been possible. It was also noted that these documents are dated 24 February 2010 and 25 May 2010, i.e. more than a year after Mr Shiceka's visit to Switzerland.

13.1.4.7 It must be noted that the Provisional Report did not state that the EURO 2008 Executive Report "was downloaded", as suggested in Mr Shiceka's response. It indicated that the contents of the report that Mr Shiceka submitted to the Public Protector did not provide any evidence to back his assertion that he had to go to Switzerland and gained valuable information from meetings held during such a visit.

13.1.4.8 The evidence of Dr Jordaan referred to in the response is contained in paragraph 8.1.1.3 above and was confirmed by his written response provided to the Public Protector on 2 August 2011.

13.1.4.9 Mr Shiceka's response makes reference to the ruling of the Deputy Press Ombudsman. It must be noted that no ruling in respect of whether or not Mr Shiceka visited Ms Masilela at the *Anstalten Hindelbank* prison was made.⁵

13.1.4.10 Mr Shiceka's response further makes reference to President Zuma's response to a Parliamentary question, implying that the trip was official. It must be noted that the President's response was obviously based on the information provided to him by Mr Shiceka. All the evidence and information contained in this report was not available to the President at the time.

⁵ See paragraph 8.1.12 above

13.1.5 The response in respect of Mr Shiceka's stay at the One and Only Hotel in Cape Town

13.1.5.1 The response states that the official residence in Cape Town allocated to Mr Shiceka was and still is *"uninhabitable"*. It further asserted that:

"The Public Works (sic) has confirmed that the problems in the Honourable Minister's house were detected 2 years ago but it is only now that they are attending to the issue as per architectural recommendations." (sic)

13.1.5.2 The Public Works inspection report referred to in the response found the *"unit is reasonable, but carries the age of development."*

13.1.5.3 Mr Shiceka relies on a letter addressed to him on **31 August 2011** signed by the Minister of Public Works, Ms G L Mahlangu-Nkabinde, in support of the assertion that his official residence was and is uninhabitable. This letter, a copy of which is attached as Annexure A, stated the following:

"Kindly be advised that your official residence is now due for a total upgrade.

*The evaluation and adjudication process has been finalised and the contractor has been appointed. It is envisaged that the contractor will be on site beginning of **April 2011** and the completion of the total upgrade will be on or before **November 2011**.*

*My Department is intending to relocate you to Sunrise Villas Penthouse No 126 in Muizenberg, a four bedroom flat with double lockable garage for the duration of the upgrade. It would be appreciated if you could relocate on or before **31 March 2011**."*

13.1.5.4 Furthermore, it was stated that Mr Shiceka *"slept at the Hotel because his Cape Town house was uninhabitable..."*



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13.1.5.5 Mr Shiceka's accommodation arrangements were made by officials and he was entitled to stay at the One and Only Hotel as it is allowed in terms of the *"Honourable Ministerial Handbook."*

13.1.5.6 The response also referred to *"your statement that the Honourable Minister spent R 55 000 at the One and Only is extremely misleading because you have put it as if the whole amount was spent on the Honourable Minister."*

13.1.5.7 The response also claims that the provisional findings made against Mr Shiceka contradict findings made by the Public Protector in an investigation into Minister Mthethwa's stay in five star hotels. *"This once more is one of the many examples of your desperation to find the Honourable Minister guilty to an extent that the Public Protector is prepared to even compromise her office's integrity"*.

13.1.6 Evaluation of the response in respect of Mr Shiceka's stay at the One and Only Hotel

13.1.6.1 The explanation provided in the response that Mr Shiceka had to stay at the One and Only Hotel because the official residence that was allocated to him was uninhabitable, is inconsistent with the explanation provided by Mr Shiceka's office in previous responses and verifiable evidence.

13.1.6.2 As indicated in paragraph 8.2.1.3 above, the records of the Department of Public Works show that the date of Mr Shiceka's occupation of his official residence in Cape Town was 21 October 2009.

13.1.6.3 For the most part, Mr Shiceka thereafter stayed at his official residence and only at Cape Town hotels occasionally. The records of TWF show that no accommodation was booked for Mr Shiceka in Cape Town during the period November 2009 to December 2010, except for 20-23 April 2010 when he stayed at 15 on Orange Hotel. This is inconsistent with the suggestion that his residence was uninhabitable.

- 13.1.6.4 The Minister's Special Advisory Team confirmed during the investigation that Mr Shiceka took occupation of his official residence in Cape Town during the month of **November 2009**. He was in fact staying at his official residence when he requested alternative accommodation to be reserved for him due to an "*influx of mosquitoes*" on 9 February 2011. It is worth noting that the response makes no reference to "*mosquitoes*".
- 13.1.6.5 The contents of the letter of the Minister of Public Works referred to in the response are confusing. Although it was only sent to Mr Shiceka on 31 August 2011, it states that he is requested to relocate on or before 31 March 2011 and that upgrading of the residence will commence in April 2011 and be completed in November 2011. In any event, this bears no relevance to Mr Shiceka's questionable accommodation at Cape Town hotels at state expense after he took occupation of his official residence.
- 13.1.6.6 It is also worth noting that this letter of the Minister of Public Works was not made available to the investigation team, despite several requests to the Department to be informed in regard to Mr Shiceka's occupation of his official residence in Cape Town.
- 13.1.6.7 The Provisional Report did not suggest that Mr Shiceka was not entitled in terms of the Ministerial Handbook to be accommodated in a five star rated hotel, **whilst on official business**. The provisional findings of the Public Protector related to the **exorbitant expenditure** incurred by the Department for Mr Shiceka's repeated stay in one of the most expensive hotels in Cape Town, which could and should have been avoided by him. The Provisional Report also specifically took issue with the stay that was justified because of mosquitoes.
- 13.1.6.8 The reference in the response to the accommodation costs of R 55 000 is clearly based on a misunderstanding of what was stated in the Provisional Report, i.e. that: "*The amount of R 55 793 that was reportedly spent in respect of the accommodation of Mr Shiceka and Mr and Mrs Mntambo on 9 May 2009, was in fact spent on the accommodation of Mr Shiceka and three of the staff*"

members of his private office.” The expenditure incurred by Mr Shiceka only during the 3 nights stay was in fact R 35 335.

13.1.6.9 The evaluation of the veracity of the alleged contradictions between the provisional findings made against Mr Shiceka and those made in respect of Minister Mthethwa, are dealt with in paragraph 13.3.8 below.

13.1.7 The response in respect of Mr and Mrs Mntambo

13.1.7.1 In his response, Mr Shiceka insisted that Mr Mntambo’s name was listed as one of his family members for the purposes of travel privileges in terms of the Ministerial Handbook. He also repeated his earlier explanation that Mr Mntambo is his father in terms of customary practice and therefore qualify to be regarded as a “parent” in terms of the definition of “family” in the Ministerial Handbook.

13.1.7.2 The response was supported by an affidavit made by Mr Mntambo on 28 September 2011, stating that Mr Shiceka is his sister’s son: He also stated that: *“I confirmed that Minister Shiceka invited me to accompany him to the State of the Nation address as his father.”*

13.1.7.3 The response also indicates that according to the records of the Department and TWF, no accommodation costs were incurred for Mr and Mrs Mntambo’s stay in Cape Town by the Department.

13.1.8 Evaluation of the response in respect of Mr and Mrs Mntambo

13.1.8.1 Mr Shiceka’s insistence that Mr Mntambo should be regarded as his “parent” for the purposes of the definition of “family” in the Ministerial Handbook and that he therefore qualified for the travel privileges afforded to Mr Shiceka as a Minister, raises legal questions regarding the definition of “parent”. Unlike the meaning of “spouse” that has been defined by a court of law, this area has no precedent. If the meaning of “parent” is extended, how far should the extension go? Does the extension also apply to the children of one’s sister? For example,

if a member of the executive has been a mother or father figure to those children?

13.1.8.2 Furthermore, Mr Shiceka's response did not indicate the reason why Mrs Mntambo travelled to Cape Town at state expense and provided no indication that she is also regarded as his "*mother figure*" or "*parent*". During the investigation it transpired that Mrs Oscarina Shiceka is Mr Shiceka's mother and that her name was listed as a family member by the Department. If the Mntambo's are to be regarded as Mr Shiceka's parents, does the state then pay for two mothers?

13.1.8.3 It must be noted that Mr Mntambo's affidavit attached in support of Mr Shiceka's response only states that Mr Shiceka is his sister's son, thus only confirming that they are related.

13.1.8.4 The question that arises is whether Mr Shiceka knew or ought to have known that Mr Mntambo did not qualify to travel at state expense in terms of the Ministerial Handbook.

13.1.9 The response in respect of Mr Shiceka's stay at the Lesotho Sun Hotel

13.1.9.1 Mr Shiceka disputed that he booked in at Lesotho Sun Hotel under the name, Mrs Ngesi. However, he conceded that he knows Mrs Ngesi and indicated that she acknowledged the expenditure incurred at the hotel having made the reservations. No details of who Mrs Ngesi is and why she was responsible for the hotel booking were provided in the response. Similarly, there is no explanation why the hotel invoice issued in the name Mrs Ngesi related to the accommodation voucher issued by TWF in the name of Mr Shiceka.

13.1.9.2 In the response, Mr Shiceka denied that he stayed at the Lesotho Sun Hotel and called upon the Public Protector to produce evidence to the contrary. The response stated that:



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“Once more, the Honourable Minister disputes that he stayed at the Lesotho Sun. If the Public Protector refutes this fact, she must produce evidence to the contrary”.

13.1.9.3 He concluded by reiterating that his trip to Lesotho was private and that *“the details thereof bare (sic) no relevance to this investigation”*

13.1.10 Evaluation of the response in respect of Mr Shiceka’s stay at the Lesotho Sun Hotel

13.1.10.1 The Lesotho Sun Hotel confirmed during the investigation that Mr Shiceka stayed in room 501, the luxurious Presidential Suite in the hotel during the period 24 to 27 March 2011. His mother stayed in room 420.

13.1.10.2 Mr Shiceka’s response does not deny that he requested and insisted that the Department issue an accommodation voucher for his stay at the hotel.

13.1.10.3 The evidence of departmental officials further indicated that at the time of the issuing of the voucher, the hotel refused to allow Mr Shiceka to leave as the accommodation bill was not paid. It was further noted that the reference number of the accommodation voucher corresponds with the voucher number stated on the hotel invoice. (See Annexure C)

13.1.10.4 Officials of the Ministry and the Department interviewed during the investigation also stated that Mr Shiceka called them, indicating that he was staying at the Lesotho Sun Hotel and thus demanding that an accommodation voucher is urgently issued by the Department.. As a consequence of the said demand, an accommodation voucher number **A/HAV12692** was issued by the Department’s travel agency, TWF with client details **“SICELOMR SHICEKA (DPLG – DEPT PROVINCIAL AND LOCAL GOVERNMENT)”** (see Annexure B)



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13.1.10.5 The evidence also shows that Mr Shiceka provided TWF with the room numbers at the hotel which corresponds with the room numbers on the final invoice issued

13.1.10.6 The invoice further shows that telephone calls were made from room 328 by the SAPS VIP Protector that accompanied Mr Shiceka, the late Mr B Mthethwa to:

- (a) Mr Shiceka's Private Secretary, Ms Z Mabuza (Mogala),
- (b) Ms G Ncube an official of Kwela Fleet Management and, ostensibly to arrange for a petrol card for Mr Shiceka's transport in his official vehicle; and
- (c) Mr V Mokadi, a SAPS VIP Protector assigned to Mr Shiceka.

13.1.10.7 Notwithstanding Mr Shiceka's denial that he booked in and stayed at the hotel, evidence and information obtained during the investigation therefore indicate the contrary.

13.1.11 The response in respect of other travels undertaken by Mr Shiceka at the expense of the Department whilst he was on sick leave

13.1.11.1 The response in this regard states that:

*"Whilst the Honourable Minister is still in office as a member of the executive and he is employed by the state, he remains the **property of the state** and all benefits are available during his term of office irrespective of his condition.*

In this instance, all the Honourable Minister's trips to KZN are for some medical practitioners who are part of the team attending to his health issues are based in there (sic). In most of those trips the Honourable Minister used his own accommodation and private air tickets allocated to him for this purpose." (emphasis added)



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13.1.11.2 It must be noted that Mr Shiceka's response did not dispute that the Ministerial Handbook does not provide for a Minister to be accommodated at state expense whilst on **unofficial journeys and on leave of absence**. The findings made in the Provisional Report in regard to the impropriety of his conduct in charging such accommodation to the state whilst on sick leave are accordingly not contested.

13.2 The comments of the Minister of Finance

13.2.1 The Minister of Finance commented on the Provisional Report on 3 October 2011. He stated in respect of the proposed monitoring of the implementation of remedial action that:

"Whilst the National Treasury is willing to provide assistance as may be requested, section 38 of the Public Finance Management Act vests the primary responsibility for collecting money due to a department on the accounting officer. I am therefore concerned that the monitoring mechanism proposed in paragraph 14.1 of the report may effectively shift the aforementioned responsibility from the accounting officer to the National Treasury. I therefore request that the monitoring mechanism be excluded from the final report in as far as the National Treasury is concerned."

13.3 The comments of Mr H Hoosen, MP

13.3.1 Mr Hoosen, one of the complainants in this matter, commented in writing on 3 October 2011.

13.3.2 Of particular significance in Mr Hoosen's comments were the following:

13.3.2.1 That the scope of the investigation went beyond the period stipulated in the complaints;



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13.3.2.2 Whether Mr Shiceka's stay at the Lesotho Sun Hotels and other accommodation whilst on sick leave formed part of the complaints, and if not, the need to investigate such matters; and

13.3.2.3 *"I note with concern that there are glaring inconsistencies in the your (sic) findings and comments on Minister Mthethwa's use of five star hotels notwithstanding the fact that Minister Shiceka's basis of defence was somewhat similar to that of Minister Mthethwa's viz both claim that they were not responsible for which hotel was booked by their staff.*

13.3.3 Mr Hoosen concluded as follows:

"Note that the purpose of my comments in items 2 and 3 is to avoid a situation where the Public Protector conducts investigations in situations where (sic) complaints were not lodged, unless my understanding of the Act is misguided."

13.3.4 The scope of the investigation, referred to by Mr Hoosen, was limited to the period from when Mr Shiceka was appointed to the Cabinet (September 2008) until the conclusion of the investigation (September 2011). In determining the scope of the investigation, the discretionary powers vested in the Public Protector to conduct investigations, referred to in paragraphs 4.5 and 4.6 above, were applied. Complaints from the four complainants were consolidated and additional information that transpired during the investigation incorporated with a view to avoiding the initiation of another investigation on similar matters relating to the same person. It was on this basis that information regarding Mr Shiceka's stay at hotels at state expense whilst on sick leave that came to the Public Protector's attention, was incorporated in the investigation.

13.3.5 Mr Shiceka's stay at the Lesotho Sun Hotel formed part of the allegations made in the article published by the *Sunday Times* on 10 April 2011, which was the basis of the complaints that were investigated, referred to in paragraph 3 above and part of the information attached to the complaints submitted to the Public Protector.



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13.3.6 The “findings and comments on Minister Mthethwa’s use of five star hotels” referred to by Mr Hoosen relate to the *Report of the Public Protector into an allegation of a breach of the Executive Ethics Code by the Minister of Police, Mr M Mthethwa* (Report No 7 of 2011/12) that was issued on 28 September 2011.

13.3.7 Mr Hoosen did not identify the “inconsistencies” that he raised in his comments. However, it should be noted that the findings contained in the Provisional Report did not relate to Mr Shiceka’s stay in five star hotels. Instead, it specifically addressed Mr Shiceka’s accommodation in one of the most expensive hotels in Cape Town, repeatedly before and after an official residence was allocated to him, and without requesting his Private Office to take steps to ensure that the expenditure incurred by the Department was reasonable and justifiable, as was required of him.

13.3.8 In this regard, Mr Shiceka’s accommodation is distinguishable to Mr Mthethwa’s not only in respect of the amounts, but primarily in respect of the reasons for such stay, the repeated nature of Mr Shiceka’s stays and his failure to note and address the obvious impropriety.

13.3.9 The findings made in the Provisional Report therefore related to exorbitant expenditure that could and should have been avoided by Mr Shiceka.⁶ The findings in the Mthethwa matter included that:

13.3.9.1 The amount that was spent on the accommodation of Mr Mthethwa and his entourage was unreasonably high and did not comply with the provisions of the Ministerial Handbook; and

13.3.9.2 Mr Mthethwa was not aware of the amounts involved and as soon as he became aware took corrective action. In fact, Mr Mthethwa issued a policy forbidding the use of use of five star hotels unless inevitable.

⁶ See paragraph 11.1.7 above



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13.3.10 In the Provisional Report it was concluded that Mr Shiceka was aware that there are other luxurious hotels in Cape Town that could have accommodated him and his staff at far less expenditure to the Department. The reasons for his stay were also questioned.

13.3.11 There are accordingly no inconsistencies between this report and the report relating to Mr Mthethwa, as suggested by Mr Hoosen. In fact, the Public Protector uses previous reports as touchstones for new reports and this practice was applied in this case.

13.4 The response of the Co-Chairperson of the Joint Committee on Ethics Members' Interest

13.4.1 In his response, dated 5 October 2011, Prof B Turok stated that:

'The findings are conclusive and commendable, I support them fully. When the report is finalized I shall table it before the Ethics Committee and thereafter to Parliament as a whole.'

14 FINDINGS

14.1 The Public Protector's general findings are that:

14.1.1 The total expenditure incurred by the State in respect of Mr Shiceka's visit to Switzerland in December 2008 amounted to approximately R 546 864 and not R367 000, as was reported by the media.

14.1.2 The purpose of Mr Shiceka's visit to Switzerland did not relate to the FIFA 2010 World Cup. Its only aim was to visit Ms Masilela at the *Anstalten Hindelbank* prison in Berne Switzerland, which he did on two occasions.

14.1.3 Mr Shiceka stayed at the One and Only Hotel in 2009 at a total cost to the Department of R280 716. In addition he stayed at the hotel in February 2011 for one night at a cost to the Department of R13 600.



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- 14.1.4 The total cost to the Department in respect of the staff of Mr Shiceka's private office that stayed with him at the One and Only Hotel in 2009 amounted to R 226 746.
- 14.1.5 The amount of R55 793 that was reportedly spent in respect of the accommodation of Mr Shiceka and Mr and Mrs Mntambo on 9 May 2009, was in fact spent on the accommodation of Mr Shiceka and three of the staff members of his private office. It is included in the amounts referred to in paragraphs 14.1.3 and 14.1.4 above. The expenditure incurred in respect of Mr Shiceka only amounted to R 35 335.
- 14.1.6 Due to a lack of proper record keeping by Mr Shiceka's Private Office, it could not be determined with certainty whether the traveling expenditure incurred by the Department in respect of Mr Shiceka's family, exceeded the travel privileges afforded to him by the Ministerial Handbook. Mr Shiceka, however, indicated that he is aware that his travel privileges have been abused and that the matter is being investigated.
- 14.1.7 Mr Shiceka stayed at the Lesotho Sun Hotel in March 2011, whilst he was on sick leave. The Department provided an accommodation voucher to the hotel in respect of his stay, at Mr Shiceka's insistence, but declined payment when it transpired that his visit was of a private nature. He was advised to pay for his stay in person. To date, the Lesotho Sun had not been paid.
- 14.1.8 The failure by Mr Shiceka's Private Office to keep proper records and to adequately control the travel benefits afforded to him by the Ministerial Handbook amounted to maladministration.



15. The Public Protector's findings in relation to the conduct of Mr Shiceka are that:

Finding 1: Mr Shiceka's conduct in respect of his visit to Switzerland in December 2008 constituted a violation of the Executive Ethics Code, the Public Protector Act and the Constitution

- 15.1 Mr Shiceka deliberately and inadvertently misled the President when he presented the purpose of his visit to Switzerland. In so doing, Mr Shiceka acted in violation of paragraph 2.3 of the Executive Ethics Code. His actions were accordingly unlawful and constituted maladministration.
- 15.2 Mr Shiceka travelled to Switzerland under false pretences and at state expense. In so doing, Mr Shiceka violated the provisions of paragraph 2.3 of the Executive Ethics Code. His actions were accordingly unlawful and constituted maladministration, dishonesty in respect of public money and improper conduct.
- 15.3 By denying to the Public Protector during the investigation that he visited any prison during his visit to Switzerland whilst knowing he in fact did so, Mr Shiceka acted in violation of paragraph 2.3 of the Executive Ethics Code and section 11 of the Public Protector Act.
- 15.4 Mr Shiceka's conduct referred to in paragraphs 15.1, 15.2 and 15.3 above was not in the best interest of good governance, not performed in good faith and inconsistent with the integrity of his office and of the Government, as contemplated by paragraph 2.1 of the Executive Ethics Code and section 96(2)(b) of the Constitution.
- 15.5 The expenditure incurred by the Department in respect of Mr Shiceka's visit to Switzerland constituted a financial loss to the Department as it was of no benefit or any value to the state.

Finding 2: Mr Shiceka's conduct in respect of his repeated stay at the One and Only Hotel in Cape Town constituted a violation of the Executive Ethics Code and the Constitution

- 15.6 Although the Ministerial Handbook provides that members of the Cabinet can be accommodated in any hotel during official travels, it also requires of them to act responsibly, in good faith and in a manner that is consistent with their office.
- 15.7 By staying in one of the most expensive hotels during his official visits to Cape Town, repeatedly, before and after an official residence was allocated to him, and without requesting his Private Office to take steps to ensure that the expenditure incurred by the Department is reasonable and justifiable in terms of his responsibility to act in good faith and with integrity, Mr Shiceka violated the provisions of paragraph 2.3 of the Executive Ethics Code and section 96(2)(b) of the Constitution.

Finding 3: Mr Shiceka's conduct in respect of inviting Mrs Mntambo to travel to Cape Town at state expense constituted a violation of the Executive Ethics Code and the Constitution

- 15.8 Mr Shiceka was not entitled to cause the state to incur the travel expenses of Mrs Mntambo. By inviting her to travel at state expense to visit him in Cape Town on 2 June 2009, Mr Shiceka failed to act in a manner that is responsible, in good faith, with integrity and that is consistent with his office. His actions therefore violated the provisions of paragraph 2.3 of the Executive Ethics Code and section 96(2)(b) of the Constitution.
- 15.9 The definition of "*family*" in the Ministerial Handbook is unclear as to the meaning of the word "*parent*", which could lead to an abuse of the travel privileges of members of the executive.



Finding 4: Mr Shiceka's conduct in respect of his stay at the Lesotho Sun Hotel constituted a violation of the Executive Ethics Code and the Constitution

- 15.10 Mr Shiceka's insistence that the Department provides the Lesotho Sun Hotel with an accommodation voucher in respect of his private stay during March 2011, whilst he was on sick leave and not entitled to such a privilege constituted fraudulent misrepresentation. Mr Shiceka failed in his responsibility to act in good faith, with integrity and in a manner that is consistent with his office and therefore violated the provisions of paragraph 2.3 of the Executive Ethics Code and section 96(2)(b) of the Constitution. His actions further amounted to dishonesty in respect of public money and were improper.

Finding 5: Mr Shiceka's conduct in respect of his private accommodation at the expense of the Department whilst on sick leave constituted a violation of the Executive Ethics Code and the Constitution

- 15.11 By requesting the Department to pay for his private accommodation whilst on sick leave and not entitled to such privilege, Mr Shiceka failed to act in good faith and with integrity. His conduct was also inconsistent with his office and therefore violated the provisions of paragraph 2.3 of the Executive Ethics Code and section 96(2)(b) of the Constitution.

16. REMEDIAL ACTION

The remedial action that is to be taken, as envisaged in section 182(1)(c) of the Constitution is the following:

- 16.1 The President to consider taking serious action against Mr Shiceka for his violation of the Executive Ethics Code, referred to in this report.



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- 16.2 The Secretary to the Cabinet to ensure that definition of “*family*” in the Ministerial Handbook is reconsidered with a view to effect an amendment that will eliminate any uncertainties as far as the meaning and interpretation of the word “*parent*” is concerned.
- 16.3 The Director-General of the Department to take the appropriate action to recover from Mr Shiceka the expenditure incurred by the Department in connection with:
- 16.3.1 His visit to Switzerland in December 2008;
- 16.3.2 His accommodation at the One and Only Hotel after he took occupation of his official residence in Cape Town; and
- 16.3.3 The traveling expenses incurred by the Department in respect of Mrs Mntambo when she visited him in Cape Town in June 2009.
- 16.4 The Director-General of the Department, in consultation and with the assistance of the Department of Public Service and Administration, to take steps to ensure that no retaliatory action is taken against any of the officials of the Department and the Ministry that cooperated with the Public Protector in the investigation referred to in this report.
- 16.5 The Director-General of the Department to take urgent steps to improve the controls and record keeping by the Private Office of the Minister of COGTA in respect of travel and accommodation privileges provided for in the Ministerial Handbook.
- 16.6 The Director-General of the Department to take urgent steps to ensure that the investigation into the alleged abuse of Mr Shiceka’s travelling privileges is concluded and that appropriate measures are taken to deal with its findings.

17. MONITORING

- 17.1 The Director-General of the Department to submit action plans in respect of the implementation of the remedial action referred to in paragraphs 16.3, 16.4, 16.5 and 16.6, above within 30 days of the date of this report.
- 17.2 The Director-General in the Presidency to advise the Public Protector of action taken by the President within 60 days of receipt of this report.
- 17.3 The remedial action referred to in paragraph 16 above to be implemented within 90 days of the date of this report.
- 17.4 The Director-General of the Department to submit an implementation progress report to the Public Protector within 60 and 80 days of the date of this report.



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

Date: 11 October 2011

Assisted by : Adv C H Fourie: Executive Manager
Branch: Good Governance and Integrity
Public Protector South Africa

Mr A Madiba: Senior Manager
Branch: Good Governance and Integrity
Public Protector South Africa

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ANNEXURE "A"



Private Bag X802, PRETORIA, 0001, RSA • 6th Floor Airtel Building, 201 Skinner Street, PRETORIA • Tel: +27 12 310 5178, Fax: +27 12 310 5182
Private Bag X2155, CAPE TOWN, 8001, RSA • 2nd Floor Parliament Building, 120 Place Street, CAPE TOWN • Tel: +27 21 456 6900, Fax: +27 21 452 4982 • www.publiworks.gov.za

31 August 2011

Mr S. Shiceka, MP
Minister of Cooperative Governance and Traditional Affairs
Private Bag X802
PRETORIA
0001

Dear Colleague

CAPE TOWN: GYDO: UPGRADE OF THE OFFICIAL RESIDENCE OF THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS: MR S SHICEKA


Kindly be advised that your official residence is now due for a total upgrade.

The evaluation and adjudication process has been finalized and the contractor has been appointed. It is envisaged that the contractor will be on site beginning of April 2011 and the completion of the total upgrade will be on or before November 2011.

My Department is intending to relocate you to Sunrise Villas Penthouse No 126 in Muizenberg, a four bedroom flat with double lockable garage for the duration of the upgrade. It would be appreciated if you could relocate on or before 31 March 2011.


Should you have any queries regarding the above, please do not hesitate to contact the Director Prestige: Mr D. Olifant at 021-402 2180 or on 071 470 6912.

Kind Regards,


MS G.L. MAHLANGU-NKABINDE, MP
MINISTER OF PUBLIC WORKS
DATE: 31.08.2011

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ANNEXURE "B"

		Travel With Flair Call Centre: 0860 777 747 International Calls: +27 12 424 33 00	ACCOMMODATION VOUCHER VOUCHER NUMBER: A/HAV12692
RESPONSIBLE BILLING BRANCH Travel With Flair Pretoria PRIVATE BAG 11291 MABESANA 016: Tel: 0860 777 747 Fax: (012) 460 6747		Hotel Reservation: MAGGIE/MALETSATSI Our Ref: Maggy Dhlomo Date issued: 2011/03/27 08:18	
Service Provider Details Lesotho Sun Address: Maseru Lesotho		Tel: 09266-313111 Fax: 09266-310104	
Client Details (PAX) SICELOMR SHICEKA (DPLG - DEPT PROVINCIAL AND LOCAL GOVERNMENT)			
Services Required 3 Room/s for 4 Night/s @ R 29760 per Room = R 357120			
Check-In Date 2011/03/23 01:00	Check-Out Date To 2011/03/27 01:00		
Payment - Booked Services Agency to pay Supplier on behalf of the Client	Payment - Client Extras Direct Settlement by Client	Payment - Method Bill Back	
Special Instructions Dinner, Bed, Breakfast, Parking, Laundry			
Remarks FULL BICK TO TWF INCLUDING EVERYTHING.			
ALL ORIGINAL SIGNED SLIPS MUST BE SEND TO OUR OFFICES BEFORE PAYMENT WILL BE MADE. OUR VOUCHER NUMBER MUST BE INSERTED ONTO ALL INVOICES			
Disclaimer: Travel With Flair act as an agent only on behalf of the client and is not liable for any loss, damage, incident, delay or inconvenience caused by the provider.			



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ANNEXURE "C"



LESOTHO
SUN

Private Bag 666
Maseru 100 Lesotho
Telephone +266 222 43000
Facsimile +266 223 223 10104
www.suninternational.com

TRAVEL WITH FLAIR
P.O BOX 11291
MARDELANA GAU 0161
South Africa

Guest Name	Mrs Nkagisang Ngesi	Departure Date	27/03/11
Arrival Date	24/03/11	Group	
Room No.	501	AR Number	TWF001
Payment	CL	Rate Code	WKIRATE
Room Nights	3	ORS Res No.	9116448
Invoice No.	19667	PMS Res No.	7897913
Voucher No.	A/HAV12692	VAT Reg. No.	
Member No.			

COPY OF INVOICE

Date	Description	Reference	Amount (LSL)
24/03/11	Nala Breakfast Food	CHECK# 0124408 Ngesi Nkagisang #420=>Ngesi	120.00
24/03/11	Nala Breakfast Food	CHECK# 0124431 Ngesi Nkagisang #328=>Ngesi	120.00
24/03/11	Nala Breakfast Food	CHECK# 0124438	120.00
24/03/11	Room Service Lunch Beverage 14%	CHECK# 0511754	52.00
24/03/11	Room Service Gratuities	CHECK# 0511754	8.00
24/03/11	Telephone	10:15 Room# 328 : Dialed# 0027828429635 Inter	10.35
24/03/11	Room Service Lunch Food	CHECK# 0511764	305.00
24/03/11	Room Service Lunch Beverage 14%	CHECK# 0511764	60.00
24/03/11	Room Service Gratuities	CHECK# 0511764	35.00
24/03/11	ACCOMMODATION	Ngesi Nkagisang #328=>Ngesi Nkagisang #501	1,490.00
24/03/11	ACCOMMODATION	Ngesi Nkagisang #420=>Ngesi Nkagisang #501	1,490.00
24/03/11	ACCOMMODATION		4,660.00
25/03/11	Nala Breakfast Food	012450620110325070828 Ngesi Nkagisang #420=	120.00
25/03/11	Telephone	10:15 Room# 328 : Dialed# 0027828429635 Inter	6.90
25/03/11	Nala Lunch Food	CHECK# 0124556 Ngesi Nkagisang #420=>Ngesi	120.00
25/03/11	Nala Lunch Beverage 14%	CHECK# 0124556 Ngesi Nkagisang #420=>Ngesi	13.00
25/03/11	Room Service Dinner Food	CHECK# 0511787	305.00
25/03/11	Room Service Gratuities	CHECK# 0511787	20.00
25/03/11	Telephone	10:15 Room# 328 : Dialed# 0027828429635 Inter	17.25
25/03/11	Telephone	10:15 Room# 328 : Dialed# 0027828107182 Inter	6.90
25/03/11	Telephone	10:15 Room# 328 : Dialed# 0027824471027 Inter	51.75
25/03/11	ACCOMMODATION	Ngesi Nkagisang #328=>Ngesi Nkagisang #501	1,490.00
25/03/11	ACCOMMODATION	Ngesi Nkagisang #420=>Ngesi Nkagisang #501	1,490.00
25/03/11	ACCOMMODATION		4,660.00
26/03/11	Nala Breakfast Food	012463520110326075858 Ngesi Nkagisang #420=	120.00
26/03/11	Nala Gratuity	CHECK# 0124636 Ngesi Nkagisang #328=>Ngesi	10.00
26/03/11	Nala Lunch Food	CHECK# 0124692 Ngesi Nkagisang #328=>Ngesi	85.00
26/03/11	Nala Lunch Beverage 14%	CHECK# 0124692 Ngesi Nkagisang #328=>Ngesi	13.00