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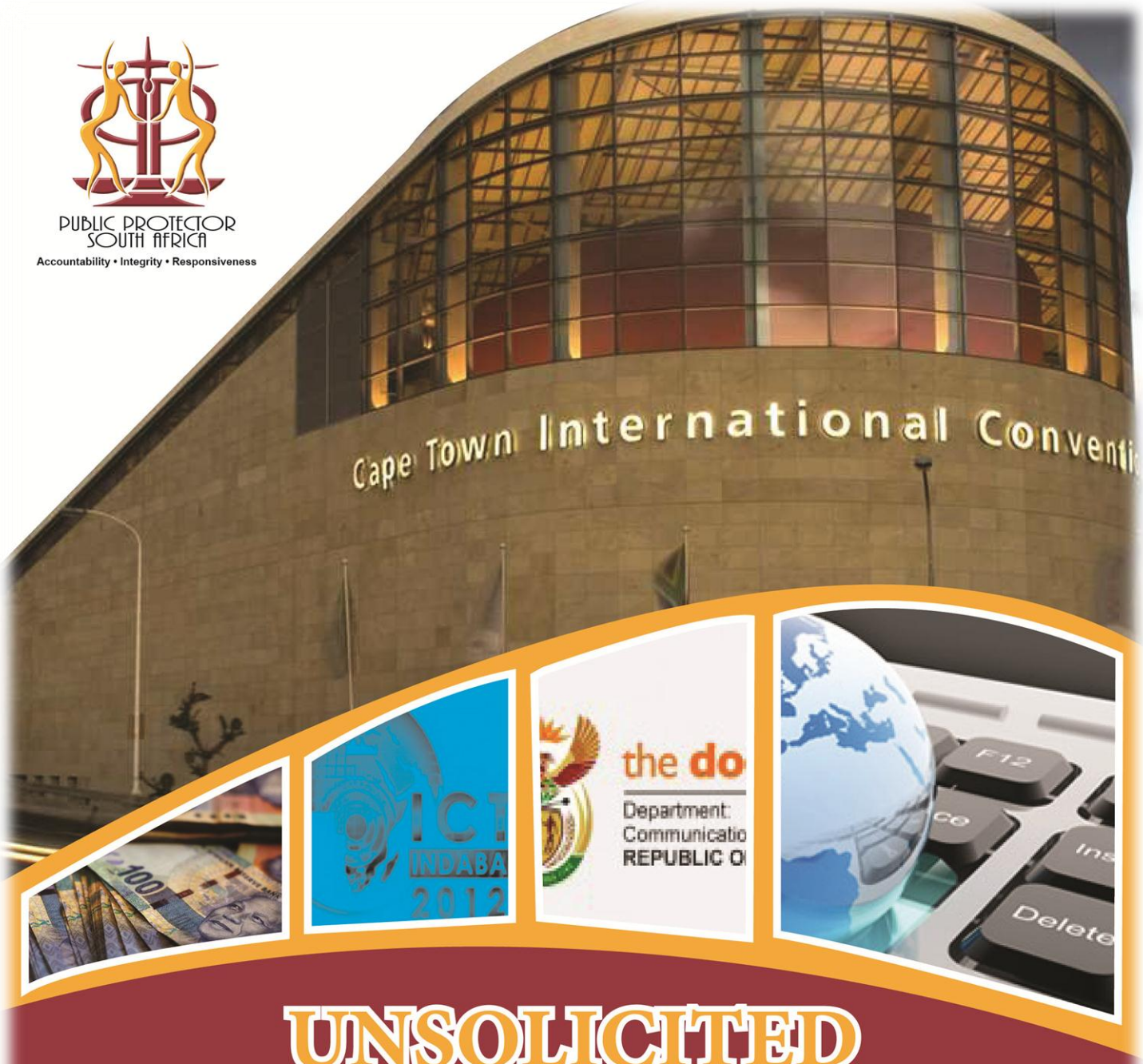

UNSOLICITED DONATION

Report No. 22 of 2013/14

Report of the Public Protector on an investigation into allegations of maladministration, corruption and a potential conflict of interest against the former Minister of Communications, Hon Dina Pule, MP in connection with the appointment of service providers to render event management services for the hosting of the ICT Indaba held in Cape Town from 4 to 7 June 2012

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Executive Summary

(i) ***"UNSOLICITED DONATION"*** is my report as the Public Protector that is issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), sections 3(2)(a) and 3(3) of the Executive Members' Ethics Act, 1998 (Executive Members' Ethics Act) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

(ii) The report relates to an investigation into allegations of maladministration, corruption and a potential conflict of interest made against the former Minister of Communications, Hon. Ms Dina Pule, MP (Hon Pule), in connection with the appointment of service providers to render event management services for the hosting of the Department of Communications' ICT Indaba (The ICT Indaba) held in Cape Town from 4-7 June 2012.

(iii) The investigation followed a complaint lodged by Hon Marian Shinn, MP of the Democratic Alliance (Complainant), on 20 June 2012 in terms of section 4(1) of the Executive Members Ethics Act, 1998, (EMEA) against Hon Pule who was Minister of Communications at the time and is said to have abused her position as Minister to improperly influence decisions in her department and entities under her departmental supervision to improperly benefit a certain Mr Mngqibisa and later to cover her tracks.

(iv) The gist of the complaint was that a man known as Mr Phosane Mngqibisa (Mr Mngqibisa), reported to be romantically linked to Hon Pule had irregularly withdrawn millions of Rand estimated at R6 million (R6m), from sponsorship funds meant for the ICT Indaba held in Cape Town from 4 to 7 June 2012. It was further alleged that Hon Pule's Department, the Department of Communications (DOC) improperly paid R10 million (R10m) to Carol Bouwer Productions (CBP). It was also alleged that Hon Pule should have known about Mr Mngqibisa's involvement in organizing the event and that such involvement posed a potential conflict of interest. It was also alleged that Hon Pule received a pair of *Christian Louboutin* shoes as a gift from Mr Mngqibisa, bought in Spain and paid for with the ICT Indaba funds through his agency, Khemano Productions (Khemano), subcontracted for the Indaba by CBP at the instance of Hon Pule's Department. Subsequent allegations included that Hon Pule had undertaken several overseas trips with Mr Mngqibisa, with her Department paying for his expenses as her spouse or official companion.

(v) By the time the investigation was finalised, Hon Pule, who had been Minister of Communications since October 25, 2011, had relinquished her position as Minister and assumed the position of ordinary Member of Parliament. The allegations relating to the relationship with Mr Mngqibisa date back to Hon Pule's brief stint as Deputy Minister of Communications from 11 May 2009 until her transfer to the Presidency where she served as Deputy Minister until her appointment as Minister of Communications.

(vi) The complaint was based on an article that appeared in the *Sunday Times* newspaper publication of 17 June 2012 titled, *"It's just not ayoba!"* Several articles were published on the matter thereafter leading to Parliament initiating its own investigation on the same issues in terms of the Parliamentary Code of Ethics. In response to those allegations, Hon Pule persistently denied any romantic link to Mr Mngqibisa or involvement in the subcontracting of his company, attacking both the media and its sources as inspired by improper motives.

(vii) Hon Pule's decision to suspend cooperation with this investigation to focus on the Parliamentary investigation that had commenced after this investigation was one of the reasons the investigation was not concluded expeditiously. Another key reason for the delay in finalising the investigation was that shortly after I was asked to investigate, Hon Pule announced that she had requested the Auditor-General (AG) to investigate. I then agreed with the AG that I would wait for that process to be concluded and then decide what my process would entail at the conclusion of his process. I advised the President accordingly, in compliance with section 3(3) of the EMEA.

(viii) It was only upon receiving the AG report and establishing that due to remit limitations, he had not covered certain aspects of the impugned ICT Indaba deal that we were able to scope our work and commence with the investigation. The investigation was further delayed by the unavailability of Hon Pule and her officials for interviews and requests for postponement of dates for submission of documents. Hon Pule and others also requested long extensions for the submission of comments to the provisional report.

(ix) The investigation process included an analysis of applicable laws and policies, exchange of correspondence, securing and analysing relevant documents and conducting interviews and/or meetings with Hon Pule, Officials in her Department, Mr

Mngqibisa and his business associates, Ms Carol Bouwer of CBP and representatives of co-sponsors of the Indaba, being Vodacom, MTN and Telkom.

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

(xi) As is customary, the "what happened" inquiry is a factual question settled on the assessment of evidence and making a determination on a balance of probabilities. The question regarding what should have happened on the other hand relates to the standard that the conduct in question should have complied with. In determining such standard I was guided, as is customary, by the Constitution, national legislation and applicable policies, guidelines and related benchmarks. Among such benchmarks were general Public Service Guidelines and guidelines contained in the July 2006 report of the Public Service Commission on managing conflict of interest in the public service. I also sought guidance from international benchmarks, particularly the OECD (Organisation for Economic Co-operation and Development) Guidelines on Managing Conflict of Interest.

(xii) Principles developed in relevant previous reports of the Public Protector, referred to as *touchstones,* were also taken into account. Key reports consulted in this regard were those dealing with the Code of Ethics and conflict of interest investigations such as "*In the Extreme"*, "*Costly Moves"*, "*Costly letters"*, "*To be Or Not To Be In Conflict"* and "*Inappropriate Moves.* I also took into account the observations of the first public Protector of South Africa, Advocate Selby Baqwa when he was called upon to adjudicate on the propriety of the conduct of the then Premier of Mpumalanga Hon Ndaweni Mahlangu following allegations that he had said that *lying was a normal part of being a politician.*

(xiii) I also took into account submissions made by relevant parties, including Hon Pule and the Complainant, following the receipt of my provisional report made available to them on 17 September 2013 with an opportunity to respond to its contents by 25 September 2013. In compiling their responses to the provisional report, Hon Pule and the DOC were assisted by their attorneys, *Malan & Mohale Attorneys* whilst Mr Mngqibisa was

assisted by *Messrs F R Pandelani Incorporated Attorneys.* The "legal" assistance included correspondence from the attorneys requesting extension of time for the submission of responses to the provisional report. I acceded to these requests and responses were finally received on 25 and 28 October 2013 respectively.

(xiv) On analysis of the complaints, the following issues were identified and investigated:

(a) Did the DOC irregularly appoint CBP to coordinate the 2012 ICT Indaba, in violation of the prescribed procurement processes, rules and prescripts?

(b) Did Hon Pule issue endorsement letters under the authority of the DOC for private companies to support and sponsor the hosting of the 2012 ICT Indaba and if so, was such conduct improper?

(c) Did Hon Pule direct the payment of an amount of R10m to CBP by the DOC as a contribution towards the hosting of the 2012 ICT Indaba and if so, were such directives and payment improper?

(d) Was the MTN sponsorship of R15m irregularly diverted by Mr Mngqibisa into ABR Consulting (ABR) bank account instead of the CBP account specifically designated for the Indaba funds and did he subsequently improperly transfer R6m of this money into his Khemano?

(e) Did Hon Pule represent to her Department that Mr Mngqibisa was her official companion and travelled with him overseas at state expense and if so, was this conduct improper and in violation of the Executive Ethics Code?

(f) Did Hon Pule benefit from a pair of red *Christian Louboutin* shoes, from Mr Mngqibisa, the owner of Khemano, a company subcontracted for and benefited from the ICT Indaba?

(g) Was there a potential conflict of interest occasioned by an alleged romantic relationship between Hon Pule and Mr Mngqibisa as a consequence of which, the latter benefitted improperly out of the financial sponsorships contributed by private companies towards the hosting of the DOC's ICT Indaba held in Cape Town from 4 to 7 June 2012?

(h) Did Hon Pule improperly cause or allow her Department to benefit Mr Mngqibisa improperly in the execution of the ICT Indaba?

(i) Was the conduct of Hon Pule inconsistent with the Executive Ethics Code?

(xv) My findings are the following:

(i) Regarding the lawfulness and propriety of the appointment of CBP by the DOC to coordinate the 2012 ICT Indaba:

1. My finding is that CBP was not appointed by the DOC to coordinate the Indaba. The Indaba was CBP's project that could have been executed by CBP without the DOC's consent; though needing the DOC's blessing for the desired industry support and impact. There was accordingly no unlawfulness or impropriety on the part of the DOC or CBP in regard to CBP coordinating the hosting of the ICT Indaba.

(ii) Regarding the lawfulness or propriety of the alleged issuing by Hon Pule of endorsement letters under the authority of the DOC for private companies to support and sponsor the hosting of the 2012 ICT Indaba:

1. My finding is that Hon Pule did solicit sponsorship support for the ICT Indaba but that such conduct *per se* was not unlawful or improper. I further find that Hon Pule was not the first to issue sponsorship support letters on behalf of CBP and the ICT indaba and that Deputy Minister Bapela (Hon Bapela) had already done so.

2. The allegation that Hon Pule pressured Telkom and the affected mobile phone companies to sponsor the event is not substantiated by evidence as event sponsors denied this allegation during interviews. I must point out though that Hon Pule should have been circumspect with regard to actively encouraging entities under her supervision to donate funds as they may have found it difficult to go against her wishes as a figure with authority over them.

(iii) Regarding the allegation that Hon Pule improperly directed the payment of an amount of R10m to CBP by the DOC as a contribution towards the hosting of the 2012 ICT Indaba:

1. My finding is that Hon Pule did commit her Department to *"donate"* R10m as financial assistance to the ICT Indaba through her letter dated 15 December 2011, addressed to Ms Carol Bouwer. However, on the basis of evidence before me, my finding is that such financial assistance was unsolicited. The process was also not executed in accordance with Treasury Regulation 21 regulating the granting of gifts, donations and sponsorships by the state. Her conduct and that of her Department was accordingly, unlawful, improper and constitutes maladministration.

2. I further find that as CBP innocently accepted the *"donation"* and integrated the money in the ICT Indaba coordination operations, it would be unjust to require that the money be refunded. It is also clear that the state derived some value from the event and related activities although a lot of that value was later undermined by the negative publicity.

(iv) Regarding the allegation that Hon Pule improperly, and in violation of the Executive Ethics Code, represented to her Department that Mr Mngqibisa was her spouse or companion and travelled with him overseas at state expense:

1. My finding is that despite numerous denials at various *fora*, Hon Pule did represent to her Department that Mr Mngqibisa was her official companion, the key evidence being a form completed upon her appointment as Deputy Minister of Communications.

2. I further find that, by her own admission during the interview on 28 June 2013, Hon Pule and Mr Mngqibisa had a romantic relationship. She added that he was, however, not her spouse as he was married to someone else under civil law and was therefore not entitled to spousal benefits. She offered to ensure that all Departmental expenditure on Mr Mngqibisa's trips would be reimbursed before this investigation was finalised.

3. In this regard, Hon Pule made good on her promise as Mr Mngqibisa paid back on 18 July 2013, an amount of R89 326.35 that was inappropriately spent on him by the DOC in respect of the September 2009 trip to Mexico where he accompanied Hon Pule on her official visit to that country.

4. However, my finding is that Hon Pule was not entirely honest as she stated that the relationship ended before she became the Minister of Communications while evidence relating to trips undertaken as Minister of Communications confirms a relationship. I can also not reasonably accept her submission that she did not know that her office unilaterally reflected and funded Mr Mngqibisa as her spouse during her trips as Deputy Minister and later as Minister. Hon Pule's conduct in this regard was unlawful and unethical. The act of trying to pass the buck onto staff is, on its own, grossly improper and unethical.

(v) Regarding the allegation that the MTN sponsorship of R15m was irregularly diverted by Mr Mngqibisa into ABR banking account instead of the CBP account specifically designated for the ICT Indaba funds and that he subsequently improperly transferred R6m of this money into his Khemano:

1. My finding is that the allegation is substantiated by evidence and that Mr Mngqibisa's conduct in this regard was unlawful and improper. His conduct points to abuse of the power he enjoyed due to his special relationship with the DOC and Hon Pule. There was neither authorisation from CBP for the siphoning of MTN sponsorship funds to ABR, nor agreement for a management fee of R6m nor authorisation of the appropriation of that money.

2. I further find that the appropriation of R6m or a substantial part thereof constitutes improper enrichment on the part of Mr Mngqibisa's company and that the siphoning of this money was made possible through the surplus funds caused by the unsolicited and unlawful "*donation"* of R10m from Hon Pule.

(vi) Regarding the allegation that Hon Pule improperly benefitted from a pair of *Christian Louboutin* shoes worth R10 000 from Mr Mngqibisa, owner of Khemano which was subcontracted for and benefited from the ICT Indaba:

1. My finding is that although Hon Pule was wearing new red soled *Christian Louboutin* shoes at the event, no concrete evidence linked the shoes to Mr Mngqibisa or Khemano. I accordingly, find no justifiable reason to reject her explanation that she bought the shoes for herself and owns several shoes from this exclusive brand.

(vii) Regarding the allegation that Hon Pule's alleged romantic relationship with Mr Mngqibisa created a potential conflict of interest which benefitted him improperly from the financial sponsorships contributed by private companies towards the hosting of the DOC ICT Indaba held in Cape Town from 4 to 7 June 2012:

1. My finding is that there was a real and not just a potential conflict of interest on the part of Hon Pule regarding her duty to act in the best interest of the DOC and her loyalty to Mr Mngqibisa on account of their relationship. Faced with divided loyalties, as is always the case in a conflict of interest situation, I am convinced that Hon Pule chose Mr Mngqibisa's interests above those of her Department and ultimately, the State.

2. It was Hon Pule's Department that brought Mr Mngqibisa and his company to the ICT Indaba fold without CBP's request, which had indicated clearly in its prior communication to the DOC that it already had an execution partner by the name of *Hunta Live*, an agency that was eventually elbowed out as Khemano and its subcontractors took over the 2012 ICT Indaba coordination processes.

(viii) On the allegation that Hon Pule caused her Department to benefit Mr Mngqibisa improperly in the ICT Indaba:

1. My finding is that this allegation is substantiated. Through actions and omissions, Hon Pule caused her Department to benefit Mr Mngqibisa and his company Khemano improperly. Contrary to what had been said to CBP about Khemano's

profile, neither Khemano nor Mr Mngqibisa had done any work for the DOC before or done any project of the magnitude of the ICT Indaba. Mr Mngqibisa and his company further benefited from the R15m diverted towards ABR and ultimately, the R6m siphoned to Khemano allegedly as management fees but without the authorisation of the principal, CBP.

2. I further find that Hon Pule acted in breach of paragraph 2.3(g) of the Executive Ethics Code in that her unlawful extension of spousal benefits to Mr Mngqibisa amounted to making improper use of allowances available to her.

(ix) Regarding whether or not Hon Pule's conduct was inconsistent with the provisions of the Constitution and the Executive Ethics Code:

1. My finding is that Hon Pule's conduct was grossly at odds with the provisions of section 96(2) of the Constitution as well as the Executive Ethics Code, particularly paragraphs 2 and 3 thereof. Not only did she violate the code by failing to manage the conflict of interest arising from her relationship with Mr Mngqibisa, the preponderance of evidence indicates that Hon Pule directed and/or allowed her staff, particularly her PA and Mr Themba Phiri, to violate the law and departmental policies by inserting Mr Mngqibisa into the ICT Indaba coordination and irregularly extending other favours to Mr Mngqibisa. She also caused or allowed her staff members to lie to Parliament, the AG and my office during these institutions' respective investigations.

2. I further find that due to the conflict of interest referred to in this report; it was difficult if not impossible for any of the parties, particularly officials in the DOC and CBP management to reign in Mr Mngqibisa. Hon Pule's conduct was, accordingly, improper and in violation of the Executive Ethics Code and brought the eminence of both the Executive and Parliament into disrepute.

3. I also find that, by wilfully misleading Parliament during the investigation and in offering a half-hearted apology on the day Parliament decided on the findings of the Parliamentary Joint Committee on Ethics and Members' Interests into her conduct, Hon Pule violated paragraph 2.3(a) of the Code which specifies that

"Members of the Executive may not wilfully mislead the legislature to which they are accountable."

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

(a) The Hon Dina Pule

(i) To make good on her promise made on 28 June 2013 to quantify all amounts spent by the DOC on Mr Mngqibisa's overseas trip to Mexico in September 2009 and all other destinations and to ensure that every cent is paid back to the state by 31 January 2014.

(ii) It was noted that on 18 July 2013, Mr Mngqibisa only refunded the DOC an amount of R89 326.35 which was reprehensively spent on him by the department in respect of his trip to Mexico, undertaken in September 2009 where he accompanied Hon Pule on her official visit to that country.

(iii) To issue an open apology to Ms Carol Bouwer, for subjecting her to a hidden agenda placing her in an untenable position; The Sunday Times, for the persistent insults and denial of the truth that she eventually admitted to me on 28 June 2013; affected members of Staff of the DOC, for placing them in an unethical situation involving persistent lies and deceit and to Parliament, for persistently misleading this *august* constitutional pillar and never admitting the truth right until the end.

(iv) To consider vacating her seat in Parliament to minimise the damage caused by her undermining this institution, particularly by never admitting the truth even after having done so to me.

(b) The President

(i) To take note of the findings and expedite the finalisation of the review of the Executive Members' Ethics Act and the Executive Ethics Code to eliminate various *lacunae* identified in my previous and predecessors' reports.

(c) The Speaker of the National Assembly

(i) To take note of the findings and remedial action directed to the President and Hon Pule and ensure Parliament takes this into account in its ordinary oversight work.

(ii) To monitor that Hon Pule makes good on her promise to repay state funds irregularly spent on Mr Mngqibisa.

(d) The Minister of Communications

(i) To ensure that funds owed by Mr Mngqibisa are urgently calculated and reclaimed from him.

(ii) To consider commissioning an audit with a view to verify all the trips abroad undertaken by Mr Mngqibisa at state expense whilst accompanying Hon Pule and recover from him all what the department would have improperly paid for him.

(iii) To ensure expeditious execution of the disciplinary processes in respect of employees that acted unlawfully and in violation of the Public Service Code of Ethics in relation to the 2012 ICT Indaba and the conduct of this investigation.

(e) The Minister of Public Service and Administration

(i) To urgently consider subjecting all Members of the Cabinet and Provincial Executives to an Ethics Seminar and ensure that all new Ministers attend an ethics seminar within 2 months of assuming office.

(ii) To ensure that the Executive Ethics Code is turned into a pocket booklet to be provided to all members of the Executive on assumption of office and also captured in posters to be placed in all Executive Offices.

(iii) The Law Enforcement Agencies already seized with the matter to proceed expeditiously on matters already referred to them by Parliament

***"UNSOLICITED DONATION"*: A REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, CORRUPTION AND A POTENTIAL CONFLICT OF INTEREST AGAINST THE FORMER MINISTER OF COMMUNICATIONS, HON. DINA PULE, MP IN CONNECTION WITH THE APPOINTMENT OF SERVICE PROVIDERS TO RENDER EVENT MANAGEMENT SERVICES FOR THE HOSTING OF THE ICT INDABA HELD IN CAPE TOWN FROM 4-7 JUNE 2012**

1 INTRODUCTION

1.1 ***"UNSOLICITED DONATION"*** is my report as the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), section3(3) of the Executive Members' Ethics Act, 1998 (EMEA) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted in terms of section 3(3) of the Executive Members' Ethics Act to:

1.2.1 The President of the Republic of South Africa, H E Mr J G Zuma.

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

1.3.1 The Speaker of the National Assembly, Hon. Mr M V Sisulu, MP

1.3.2 The Chairperson of the National Council of Provinces, Hon. Mr M J Mahlangu;

1.3.3 The Minister of Communications;

1.3.4 The Minister of Public Service and Administration

1.3.5 Hon Dina Pule, MP; and

1.3.6 The Director General of Communications.

1.4 Further copies of the report have been made available to Mr Phosane Mngqibisa, Ms Carol Bouwer and all persons likely to be directly affected by the findings made hereto.

1.5 The report relates to an investigation into allegations of maladministration, corruption and a potential conflict of interest against the then Minister of Communications, Hon Dina Pule, MP in connection with the appointment of service providers to render event management services for the hosting of the Department of Communications ICT Indaba held in Cape Town from 4-7 June 2012, following a complaint lodged by Hon Shinn, MP a Member of the Democratic Alliance (DA) on 20 June 2012.

1.6 The Complaint was lodged appropriately by a Member of Parliament in terms of section 4 of the Executive Members' Ethics Act, which together with the Executive Ethics Code of 2000 regulates the ethical conduct of members of the Executive, as contemplated in the provisions of section 96(1) of the Constitution. However, by the time the investigation was concluded, Hon Pule who had been Minister of Communications from 25 October 2011 had been relieved of her duties as a Cabinet Minister and rejoined Parliament as an ordinary member, with effect from 10 July 2013.

1.7 Some of the allegations against Hon Pule in connection with the improper extension of benefits or privileges to Mr Mngqibisa, dates back to her position as Deputy Minister of Communications from 11 May 2009 until 31 October 2010 when she was redeployed by the President to the post of Deputy Minister in the Presidency responsible for Performance, Monitoring, Evaluation and Administration effective from 1 November 2010 until 25 October 2011.

1.8 Hon Pule was accused of violating the Executive Ethics Code, which prescribes ethical standards and rules aimed at ensuring that Members of the Executive perform their duties and exercise their powers diligently and honestly; fulfil all obligations imposed on them by the Constitution and the law; act in good faith and in the best interest of good governance; and act in all respects in a manner consistent with the integrity of their office or government.

1.9 Chief among these standards is the need to identify, eliminate or manage any conflict of interest between a Member of the Executive's personal interests and his or her responsibility to protect the state and the public interest.

1.10 Whereas, the report should have been submitted to the President within 30 days as envisaged in the EMEA, the investigation did not commence immediately because, shortly after I was requested to investigate, Hon Pule announced that she had asked the AG to investigate. I then agreed with the AG that I would wait for that process to be concluded and then decide at its conclusion if this process could still add value.

1.11 The investigation only commenced after receiving the AG's report and establishing that due to remit limitations, he had not covered certain aspects of the impugned ICT Indaba deal. The investigation was further delayed by the unavailability of Hon Pule and her officials for interviews and requests for postponement of dates for submission of documents and conduct of interviews. Further delays occurred due to several requests for extension of time for the submission of comments to the provisional report.

2 THE COMPLAINT

2.1 Hon Marian Shinn, MP of the Democratic Alliance lodged a complaint on 20 June 2012, in terms of section 4(1) of the Executive Members Ethics Act, 1998. Her complaint was based on an article reported in the *Sunday Times* newspaper publication of 17 June 2012 entitled, *"It's just not ayoba!"*, The key allegations were that:

2.1.1 The sponsors for the hosting of the 2012 ICT Indaba, including Telkom, MTN and Vodacom were approached directly by Hon. Pule's office with a request for the mentioned telecommunication suppliers to sponsor the event and co-operate with the appointed service provider, CBP. The funds were allegedly withdrawn by Mr Mngqibisa;

2.1.2 The DOC appointed CBP to put together and oversee the hosting of the event and that in February 2012 Hon Pule informed CBP that her department would make a financial contribution of R10m towards the hosting of the ICT Indaba and that a letter of endorsement would be signed off for use by CBP to draw in other potential sponsorships;

2.1.3 Mr Mngqibisa, who is alleged to be romantically linked to Hon Pule, was a second signatory to CBP's banking account and that he had access to the account until the closure of the ICT Indaba. Mr Mngqibisa's company, Khemano was alleged to have been hired to handle the event management service for the event; and

2.1.4 Mr Mngqibisa and Khemano unilaterally paid himself the sum of R6m claiming it was management fees for the arrangement of the DOC's ICT Indaba held in Cape Town from 4 to 7 June 2012.

2.2 In her complaint to the Public Protector titled, *MINISTER PULE'S POTENTIAL CONFLICT OF INTEREST,* Hon Shinn stated that:

"Reports over the weekend indicated that a man to whom Communications Minister Dina Pule is said to be romantically linked, Mr Phosane Mngqibisa, drew millions in sponsorship fees for the recent ICT Indaba from the account of the event organiser. The sponsorship fees paid for the Indaba by Vodacom, MTN and Telkom, were only paid after the companies were approached directly by Minister Pule's ministry."

2.3 In essence, she requested an investigation into the allegations of a potential conflict of interest against Minister Pule and went further to state that, *"In short, if a man to whom the Minister is linked has misused state funds, the Minister herself could stand to gain."*

2.4 Hon Shinn requested an investigation into whether "*the Minister knew about the involvement of Mr Mngqibisa in the event management of the Indaba and, if so, whether this was raised by the Minister at any stage."*

2.5 Following media reports that Hon Pule requested the AG to investigate the matter and on 28 June 2012, I informed both Hon Shinn and Pule that I had decided to hold my investigation into the matter in abeyance to allow the process of the AG to run its course.

2.6 The AG indicated to Hon Shinn and myself that the scope of his review would only cover auditing of the R10m payment towards the ICT Indaba as part of the 2011/2012 regulatory audit. He further stated that he would "***specifically focus on***

the processes followed by the Department and the review of the role of the Minister. The spending of funds by the event organizer and the basis on which the money was contributed by other institutions were explicitly excluded from the scope." [emphasis added]

2.7 On 3 September 2012, Hon Shinn submitted a further request for the investigation to be extended into further allegations against Hon Pule, which included the following:

2.7.1 That Hon Pule is romantically linked to Mr Mngqibisa who is also listed in the Department's database as her travel companion who continues to travel with her at state expense;

2.7.2 That Hon Pule and Mr Mngqibisa travelled abroad at state expense on several occasions thereby improperly benefiting Mr Mngqibisa financially by virtue of the alleged romantic relationship between them;

2.7.3 On 23 February 2012, Hon Pule and Mr Mngqibisa travelled at state expense to Barcelona in Spain to attend a conference. In this regard, it was alleged that Mr Mngqibisa withdrew a sum of R100 000 from the banking account of the service provider appointed to manage the hosting of the ICT Indaba, CBP; and

2.7.4 During one of Hon Pule's trips abroad, Mr Mngqibisa bought her a pair of French designed *Christian Louboutin* shoes which she wore at the 2012 ICT Indaba, allegedly valued at R10 000 using some of the sponsorship funds which were intended for the event.

2.8 In correspondence dated 3 September 2012 and titled Minister "*PULE'S POTENTIAL CONFLICT OF INTEREST"* Hon. Shinn wrote:

"I write to you again to ask that your office urgently consider investigating the conflict of interest of Communications Minister, Dina Pule, particularly in light of the fact that yet more revelations of alleged misspending of ICT Indaba sponsors' money surfaced over the weekend...

The Sunday Times' reported that the ICT Indaba project management firm Carol Bouwer Productions has an invoice to prove that the expensive designed shoes the Minister wore to the event were paid for with sponsors' contributions is alarming. These allegations add to the growing evidence pointing to financial impropriety by Phosane Mngqibisa, the man reputed to be romantically linked to Minister Pule.

As these funds were solicited by, and paid to, a private firm that was contracted by the Department of Communications, the matter cannot be investigated by the Auditor General, or subjected to public scrutiny."

2.9 Hon Shinn's final request was based on yet another *Sunday Times* newspaper article which appeared on 2 September 2012 and titled, "*Pule's red shoe blues as sponsors seek missing millions".*

3 POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 Mandate of the Public Protector

3.1.1 The Public Protector is an independent institution, established under section 181(2) of the Constitution to support and strengthen constitutional democracy through the powers conferred by section 182 to:

3.1.1.1. **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;

3.1.1.2. **Report** on that conduct; and

3.1.1.3. **Take appropriate remedial action**.

3.1.2 Section 182(2) of the Constitution, states that the Public Protector has the additional powers and functions prescribed by national legislation. Such legislation includes the Public Protector Act 23 of 1994 the Executive Members' Ethics Act 82 of 1998(EMEA) and the Prevention and Combating of Corrupt Activities Act 12 of 2004.

3.1.3 Section 3 of the EMEA provides that *"The Public Protector **must** investigate any alleged breach of the Code of Ethics on receipt of a complaint contemplated in section 4".*

3.1.4 Section 4 of the EMEA provides that *"The Public Protector must investigate, in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by...a member of the National Assembly..."*

3.1.5 The Public Protector Act elaborates on the investigation powers of the Public Protector. Section 6(4) of the Public Protector Act specifically provides that the Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, *inter alia*, any alleged:

3.1.5.1 Maladministration in connection with the affairs of government at any level; or

3.1.5.2 Abuse or unjustifiable exercise of power or other improper conduct by a person performing a public function; or

3.1.5.3 Improper or dishonest act; or

3.1.5.4 Improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or

3.1.5.5 Act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.

3.1.6 Section 6(4)(c)(i) of the Public Protector Act provides that the Public Protector may, during or after an investigation, if he or she is of the opinion that the facts disclose a commission of an offence by any person, bring the matter to the notice of the relevant authority charged with prosecutions.

3.1.7 Section 6(4)(c)(ii) of the Public Protector Act provides that the Public Protector may if he or she deems it advisable, refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an

appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.

3.1.8 Section 7(1)(b)(i) of the Public Protector Act provides that the format and procedure to be followed in conducting an investigation shall be determined by the Public Protector with due regard to the circumstances of each case."

3.1.9 Further thereto, section 7(4)(a) of the Public Protector Act provides that, for purposes of conducting an investigation, the Public Protector may direct any person to submit an affidavit or affirmed declaration to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on a matter being or to be investigated.

3.1.10 The Public Protector Act goes further and provides in section 7(5) that a direction referred to in subsection (4)(a) shall be by way of a subpoena containing particulars of the matter in connection with which the person subpoenaed is required to appear before the Public Protector and shall be signed by the Public Protector and served on the person subpoenaed either by a registered letter sent through the post or by delivery by a person authorized thereto by the Public Protector.

3.1.11 Section 7(4)(b) that, 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 which has a bearing on the matter being or to be investigated.

3.1.12 In her response to the provisional report, Hon Pule and the DOC challenged my jurisdiction and powers to investigate the matter stating that:

3.1.12.1 I am not empowered to investigate matters in respect of private individuals or matters that do not involve public money or those that do not involve public activities. Their argument was purportedly based on the provisions of section 6(4)(a)(i) of the Public Protector Act saying that I am only entitled to investigate maladministration in government affairs or affairs in which government bears responsibility and that I cannot investigate matters that cannot be classified as government affairs or which does not have its origin in government affairs. It was

their view that I can only investigate maladministration in state affairs committed by government employees and that it would be *ultra vires* to investigate issues of maladministration that are considered to be non-governmental in nature.

3.1.12.2 Hon Pule and the DOC also made reference to section 6(4)(a)(ii) of the Public Protector Act arguing that I can only investigate conduct only if a person performs a function on behalf of the public and was accountable for such function stating that the section is not applicable to private individuals who undertook actions in their own interests and in furtherance of their private affairs which were not meant to benefit the public.

3.1.12.3 In addition, Hon Pule and the DOC felt that I can only investigate matters relating to money owned only by the state and at a time when it was still under the ownership or in the hands of the state. She further stated that I can only investigate actions taken by someone performing public administration or conducted state affairs or performed a public function and that I cannot investigate someone who does not fall under that category even if that person benefitted or might have benefited from the state. She argued that the focus of my investigation should only be to the persons who are involved in state affairs or in the public administration and that I was not supposed to have investigated the involvement of individuals falling beyond the public sphere.

3.1.12.4 Hon Pule and the DOC further stated in their submissions that I am not empowered to make legal findings. According to them, I can only make findings of a factual nature as I am empowered by the Public Protector Act to merely investigate a matter contrary to adjudicating such a matter. They stated that I am only empowered by the Act to disclose findings, points of view or recommendations in respect of a matter investigated suggesting that I may not disclose conclusions which are legal in nature or have legal implications as the Public Protector is not a judicial officer. According to her, it would be extraordinary for the legislation to provide the Public Protector with powers that would replicate or substitute those of the court of law as that would constitute a breach of the doctrine of separation of powers.

3.1.12.5 With regard to witness credibility, Hon Pule and the DOC argued that the Public Protector is not empowered to make findings of witness credibility nor probabilities as the conclusions thereof are partly of fact and partly of law. To support their arguments, Hon Pule and the DOC made reference to a decided case dealing with a court's finding on the credibility of witnesses suggesting that, since not only facts are used to reach a determination on credibility, such finding is of a legal as opposed to a purely factual nature.

3.1.12.6 It was a further submitted by Hon Pule and the DOC that an implicated person has a right to cross-examine witnesses who appeared before me. They based their arguments on the provisions of section 7(9)(a) and (b)(ii) of the Public Protector Act which empowers an implicated person to *"question"* witnesses who gave adverse evidence against him or her and made reference to decided cases dealing with the importance of the right to cross-examine in disputed hearings.

3.1.12.7 Despite having received my letter of 12 February 2013 and various other correspondences forwarded to the DOC, informing them of all the allegations against her and the DOC and having been informed of same during her interview held on 28 June 2013 as well as interviews held with departmental officials including the DG and Mr Phiri, Hon Pule and the DOC raised an argument that the Public Protector is required by section 7(9)(a) to inform an implicated person of the allegations against him or her arguing that both Hon Pule and the DOC were not informed of same and on that basis challenged the validity of the investigation on account of what they argued was inadequate procedural fairness.

3.1.12.8 They made reference to the Supreme Court of Appeal judgment in the matter between my office and the *Mail and Guardian* newspaper. They were of the view that the Public Protector must be absolutely sure of the truth of the facts upon which it pronounces and if necessary seek corroboration of same. They further expressed the view that in conducting the investigation, I did not seek out all relevant information that had a bearing on the matter under investigation and as such, I cannot make a determination on whether the pieces fit together or not.

3.1.13 Just like Hon Pule and the DOC, Mr Mngqibisa also contested the Public Protector's powers and jurisdiction to investigate the matter on the basis that he is a private person and businessman who acted in that capacity and was not a public official, working for government nor involved in public administration or state affairs. According to him, CBP to whom he was sub-contracted, ABR and MTN were equally private entities in respect of which the Public Protector lacks jurisdiction and mandate to investigate conduct and/or affairs involving such entities.

3.1.14 According to Mr Mngqibisa, the mandate of the Public Protector does not provide him or her with powers to investigate or act graciously towards private entities more so when her findings in the provisional report are not supported by factual basis. He challenged my impartiality, accused me of making mistakes of law and questioned my impartiality.

3.1.15 Mr Mngqibisa also stated that the Public Protector derives her powers and jurisdiction from the Constitution and the Public Protector Act and as such, she can only do what the law allows her to do and not act in a high-handed manner and as a consequence thereof, the contents of her provisional report are objectionable. In so far as the remedial action contained in the report calling upon law enforcement agencies already seized with the matter to proceed expeditiously on matters already referred to by Parliament, Mr Mngqibisa submitted that there is no basis for him to be expected to express any apologies to either Ms Bouwer or the media as the findings are reviewable.

3.1.16 With respect, the issues raised by Hon Pule and the DOC in their responses indicate a failure to understand the Public Protector Act and the Constitution in so far as those legislations provides for the jurisdiction and mandate of the Public Protector to conduct investigations. Their responses which purport to place reliance on the provisions of the said statutes and even suggest that the process followed in the investigation violated its provisions actually distorts the Act and its provisions which clearly envisage an inquisitorial process of an investigation.

3.1.17 Hon Pule and the DOC's arguments regarding the investigation process applied in the investigation are clearly based on a misconception of the mandate, powers and functions of the Public Protector. The investigative mandate of the Public Protector

is derived from the Constitution in particular section 182(1) which provides the Public Protector with powers 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 have resulted in any impropriety or prejudice, to report on that conduct and to take appropriate remedial action with a view to strengthen and support constitutional democracy in the Republic of South Africa.

3.1.18 Section 7(1)(b)(i) of the Public Protector Act provides that, the format and procedure to be followed in conducting an investigation shall be determined by the Public Protector with due regard to the circumstances of each case.

3.1.19 Further thereto, section 7(4)(a) of the Public Protector Act provides that, "for purposes of conducting an investigation, the Public Protector may direct any person to submit an affidavit or affirmed declaration to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on a matter being or to be investigated"

3.1.20 The Act goes further and provides in section 7(5) that "a direction referred to in subsection (4)(a) shall be by way of a subpoena containing particulars of the matter in connection with which the person subpoenaed is required to appear before the Public Protector and shall be signed by the Public Protector and served on the person subpoenaed either by a registered letter sent through the post or by delivery by a person authorized thereto by the Public Protector"

3.1.21 Contrary to the subpoena proceedings referred to in sections 7(4)(a) and 7(5) of the Public Protector Act, section 7(4)(b) provides that, "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 which has a bearing on the matter being or to be investigated"

3.1.22 In exercising the powers conferred on me by section 7(1)(b)(i) of the Public Protector Act, I determined the format and procedure to be utilized in conducting the investigation of the matter relating to the circumstances surrounding the hosting of the 2012 ICT Indaba and I elected to investigate it in terms of the provisions of section 7(4)(b) in so far as Hon Pule and the Departmental officials are concerned.

3.1.23 My investigation was not conducted by way of a subpoena as envisaged in sections 7(4)(a) and 7(5) of the Public Protector Act. Mr Themba Phiri of the DOC was also advised of this fact during the investigation when arrangements were made requesting him to furnish me with information pertaining to the investigation.

3.1.24 Needless to say that there was no need for me to invoke my subpoena powers as Hon Pule and DOC officials cooperated with my team and I in the investigation of the matter save for instances where they had to appear before the Parliament's Joint Committee on Ethics and Members' Interests which was also investigating similar allegations.

3.1.25 Had I been put in an untenable position of having to use my subpoena powers due to lack of cooperation from Hon Pule and the officials of the DOC, a formal hearing would have been held wherein oath or affirmation would have been administered and witnesses testified and examined by the Public Protector followed by Hon Pule and the DOC, through me as envisaged by section 7(9)(b)(ii) of the Public Protector Act.

3.1.26 As the procedure followed in the investigation was in terms of section 7(4)(b), Hon Pule and the DOC's expectations that they had a right to cross-examine witnesses who appeared before me is thus misleading and in fact, misdirected. I say so because the mandate, powers and functions of the Public Protector as determined by section 182 of the Constitution and the Public Protector Act clearly prescribe a process that is inquisitorial (and not accusatorial) in nature.

3.1.27 It should be noted that the prescribed inquisitorial process of an investigation by the Public Protector does not allow for the *"affected parties having a right to cross-examine and to call witnesses in rebuttal"* as argued by Hon Pule and the DOC in their responses and that would be the case in accusatorial proceedings such as in criminal court cases.

3.1.28 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.

3.1.29 Hon Pule, the DG, Ms Rosey Sekese and Mr Themba Phiri of the DOC were interviewed during the investigation and correspondence requesting information was exchanged with them culminating in a provisional reported which they were provided with for comments as part of the due process with an indication where they were implicated and that I may have to make an adverse finding against them.

3.1.30 Hon Pule and the relevant officials of the DOC were therefore afforded ample opportunity to respond to the contents of the Provisional Report and the intended findings that might be made against them. They used the opportunity, which they did in much detail with the assistance of their legal representatives. Equally, Hon Pule and the DOC were informed of the allegations against them which they responded to in various correspondences exchanged between them and my office.

3.1.31 In connection with Hon Pule and the DOC submission that I cannot investigate matters that cannot be classified as state affairs, I agree with them as I have not investigated matters that fall outside state affairs. The 2012 ICT indaba was a state event which was partly sponsored through a contribution by the DOC and other sponsorships from the private sector that were solicited by Hon Pule in person.

3.1.32 The DOC and Hon Pule in her capacity as the Minister of Communications were directly involved in hosting the Indaba and the role of CBP was that of a service provider who conceptualized the idea and assisted the Department in organizing the hosting of the event. This is confirmed in the 2012/2013 Annual Report of the DOC on page 158 under the heading, "**Information, Communication and Technology Indaba"** where it was reported that,

*"*The Department hosted the inaugural ICT Indaba from the 4th to 7th of June 2012 at the Cape Town International Convention Centre (CTICC). The workshop was hosted by DoC, partnering with the International Telecommunications Union (ITU).The Indaba's main aim was to bring together leading African ICT industry players, labour, civil society and Africa's governments to form a partnership that will shape the African continent's ICT development initiative.

This approach to ICT development will be a catalyst to education, health, business and rural development. The ICT Indaba's ultimate goal was to engage global ICT players, the media, governments, labour and civil societies on the role that all parties could play in propelling the African ICT development agenda. The Indaba also served as the platform to build relations with the African ICT market which presents a good investment opportunity."

3.1.33 It is therefore disingenuous for Hon Pule and the DOC to all of a sudden classify the ICT Indaba as Carol Bouwer's private affair that does not fall under the affairs of the State. Private sector sponsors such as MTN, Vodacom and Telkom also sponsored the event on the understanding that it was the Departmental event that it was after Hon Pule herself in her official capacity as the Minister of Communications, solicited their support.

3.1.34 Had it been known to those sponsors that Hon Pule was misusing his position as Minister to solicit their sponsorships so as to improperly benefit her boyfriend, Phosane Mngqibisa, I doubt if they would have wanted to be associated with such a farce. The subject matter of the Indaba was also related to state affairs. At no stage therefore did I investigate private affairs as suggested by Hon Pule and the DOC.

3.1.35 Further thereto, the jurisdiction and mandate of the Public Protector as provided for by the Constitution and the Public Protector Act also talks of a conduct in state affairs without restrictions. As it happened with CBP, the State outsources some of its functions to private entities and consultants and whatever functions that those private entities perform on behalf of the state, such conduct constitutes state affairs and I have powers to investigate such matters as I investigated the shenanigans surrounding the events leading to; and the hosting of the 2012 ICT Indaba.

3.1.36 The most curious response made by both on Pule and the DOC to my Provisional Report is the submission that I have no authority to make legal findings and/or findings of witnesses' credibility or probabilities. I must say of all strange arguments that have been made about my work this is the most peculiar I have ever come across as a Public Protector. To compound it, Hon Pule and the DOC were assisted by legal practitioners to prepare their response which makes me wonder whether there is something that I am missing in my interpretation of the Constitution and the Public Protector Act.

3.1.37 To say that this view is grossly at odds with the Public Protector Act is an understatement. Section 8(1) of the Public Protector Act provides that, "The Public Protector may subject to the provisions of subsection (3), **in the manner he or she deems fit, make known to any person any finding,** point of view or recommendation in respect of a matter investigated by him or her". More importantly, the conduct is at odds with section 182 of the Constitution which specifies the powers of the Public Protector as including the power to take appropriate remedial action as provided for in section 182(1)(c). How do you take appropriate remedial action if you do not have any power to make a determination on wrongfulness of the conduct first and the legal authority from which you base such a determination?

3.1.38 It therefore goes without saying that the said provision is not restricting my findings to factual findings as suggested by Hon Pule and the DOC. If it were so, I could not make a determination whether or not a conduct is improper, constitutes maladministration or violates the Executive Ethics Code. How could I do so if all I have to say is what probably happened without making a determination regarding the propriety thereof? Further thereto, the Institution of the Public Protector is established in terms of the supreme law of the Republic, the Constitution amplified by other national legislations such as the Public Protector Act which bestow powers and mandate for the Public Protector to investigate; report and take appropriate remedial action.

3.1.39 Section 1(A)(3) of the Public Protector Act also provides that "The Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who-

(a) Is a Judge of a High Court; or

(b) Is admitted as an advocate or attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or

(c) Is qualified to be admitted as an advocate or an attorney and has for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or

(d) has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or

(e) Has, for a cumulative period of at least 10 years, been a member of Parliament; or

(f) Has acquired any combination of experience mentioned in paragraphs (b) to (e), for a cumulative period of at least 10 years."

3.1.40 Therefore, the drafters of the constitution of which I was one of them, had an idea of a person that would be well conversant with the law and public administration to be appointed as a Public Protector. The view was therefore that a person who has been appointed as such should be able to apply the law to facts and make well informed findings. All organs of State are also expected in terms of Section 237 of the Constitution, to perform their constitutional obligations with diligence and in accordance with the laws that govern them.

3.1.41 In so far as the Mr Mngqibisa's arguments regarding the Public Protector's powers and jurisdiction to investigate the matter, The Public Protector's mandate deriving from section 182 of the Constitution is to support and strengthen constitutional democracy by investigating 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; reporting on that conduct; and taking appropriate remedial action.

3.1.42 Further thereto, section 6(4)(a) of the Public Protector Act provides the Public Protector with powers "*to investigate, on his or her own initiative or on receipt of a complaint, any alleged-*

(i) *Maladministration in connection with the affairs of government at any level;*

(ii) *Abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;*

(iii) *Improper or dishonest act, or omission or offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, with respect to public money;*

(iv) *Improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or*

(v) *Act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person"*

3.1.43 I admit that Mr Mngqibisa is a private person and a businessman whose company, Khemano was sub-contracted by CBP, another private company contracted by the DOC to assist in organizing the Department's 2012 ICT Indaba. I however do not agree with his assertion that the investigation does not extend to him as it does by virtue of his and Khemano's involvement and participation on a matter that related to state affairs.

3.1.44 I received a complaint relating to maladministration in connection with the affairs of government (DOC) where it was alleged that Hon Pule's boyfriend, Mr Mngqibisa was improperly enriched following his improper insertion into the ICT Indaba fold by Mr Themba Phiri, *a* person in the employ of government.

3.1.45 Further thereto, it was alleged that Hon Pule donated an amount of R10m of government money towards the hosting of the Indaba. Similarly, MTN sponsorship of R15m intended for assistance in hosting the ICT Indaba fell in wrong hands on instruction from Mr Mngqibisa as a consequence of which, he was improperly enriched to the tune of R6m.

3.1.46 With respect, the hosting of the ICT Indaba was an event relating to state affairs and the moneys involved therein were intended for the sole purposes of hosting a government event and Mr Mngqibisa's participation and involvement thereof was an involvement in state affairs.

3.1.47 Therefore, the complaints lodged against Hon Pule were correctly lodged in accordance with section 4 of the EMEA and accordingly fall within my remit regarding alleged violations of the Executive Ethics Code. They also fall within my broader remit on investigating improper conduct in terms of section 182 of the Constitution and alleged maladministration under section 6(4) of the Public Protector Act.

4 THE ISSUES CONSIDERED AND INVESTIGATED BY THE PUBLIC PROTECTOR

The investigation focussed on the following issues:

4.1 Did the DOC irregularly appoint CBP to coordinate the 2012 ICT Indaba, in violation of the prescribed procurement processes, rules and prescripts?

4.2 Did Hon Pule issue endorsement letters under the authority of the DOC for private companies to support and sponsor the hosting of the 2012 ICT Indaba and if so, was such conduct improper?

4.3 Did Hon Pule direct the payment of an amount of R10m to CBP by the DOC as a contribution towards the hosting of the 2012 ICT Indaba and if so, were such directives and payment improper?

4.4 Was the MTN sponsorship of R15m irregularly diverted by Mr Mngqibisa into ABR Consulting (ABR) bank account instead of the CBP account specifically designated for the Indaba funds and did he subsequently improperly transfer R6m of this money into his Khemano?

4.5 Did Hon Pule represent to her Department that Mr Mngqibisa was her official companion and travelled with him overseas at state expense and if so, was this conduct improper and in violation of the Executive Ethics Code?

4.6 Did Hon Pule benefit from a pair of red *Christian Louboutin* shoes, from Mr Mngqibisa, the owner of Khemano, a company subcontracted for and benefited from the ICT Indaba?

4.7 Was there a potential conflict of interest occasioned by an alleged romantic relationship between Hon Pule and Mr Mngqibisa as a consequence of which, the latter benefitted improperly out of the financial sponsorships contributed by private companies towards the hosting of the DOC's ICT Indaba held in Cape Town from 4 to 7 June 2012?

4.8 Did Hon Pule improperly cause or allow her Department to benefit Mr Mngqibisa improperly in the execution of the ICT Indaba?

4.9 Was the conduct of Hon Pule inconsistent with the Executive Ethics Code?

5 THE INVESTIGATION

5.1. The basis for the Investigation

5.1.1 The investigation was conducted in terms of section 182 of the Constitution and section 3 of the Executive Ethics Code. In accordance with section 4 of the Executive Members' Ethics Act, powers vested in me under the Public Protector Act were invoked where appropriate.

5.2 Scope of the investigation

5.2.1 The scope of the investigation was limited to the period May 2009 to August 2013. The subject matter focus was the ICT Indaba. Other aspects of Hon Pule's alleged relationship with Mr Mngqibisa, particularly those that relate to the manner in which the relationship impacted on interactions with the South African Broadcasting Corporation (SABC) Board and staff are dealt with in my report on alleged governance, procurement and employment irregularities at the SABC.

5.3 Approach to the Investigation

The following methods of gathering and analysis of evidence and information were employed:

5.3.1 Interviews

Interviews (including telephonic interviews) were conducted with:

5.3.1.1 Journalists that broke the story or wrote about the issue;

5.3.1.2 Ms Carol Bouwer of Carol Bouwer Productions;

5.3.1.3 Mr Shauket Fakie of MTN Group;

5.3.1.4 The Director-General (DG), Ms Rosey Sekese;

5.3.1.5 Mr Themba Phiri, the Deputy Director-General (DDG) responsible for ICT Policy Development;

5.3.1.6 Ms Primrose Moloantoa, former Projects Manager of Khemano;

5.3.1.7 Mr Phosane Mngqibisa of Khemano;

5.3.1.8 Ms Sheryl Manchisi of ABR Consulting;

5.3.1.9 Hon Dina Pule, MP; and

5.3.1.10 The Corporate Executive of the AG, Ms Alice Muller

5.3.2 Correspondence

Correspondence was exchanged with:

5.3.2.1 Hon Marian Shinn (Hon Shinn), the Democratic Alliance Shadow Minister of Communications (the complainant in the matter concerned) who lodged the complaint.

5.3.2.2 Letters informing them about allegations against or concerning them regarding the hosting of the ICT Indaba and requesting responses and documents were issued to the following:

5.3.2.2.1 Hon Dina Pule on 12 February 2013;

5.3.2.2.2 Ms Carol Bouwer, owner of CBP on 13 February 2013 ;

5.3.2.2.3 Mr Mohamed Shameel Aziz Joosub (Mr Joosub), the Group Chief Executive Officer (GCEO), Vodacom Group on 14 February 2013;

5.3.2.2.4 Ms Nombulelo Moholi, the Group Chief Executive Officer (GCEO) of Telkom SA SOC Limited on 13 February 2013;

5.3.2.2.5 Mr RS Dabengwa (Mr Dabengwa), the Group Chief Executive Officer (GCEO), MTN Group on 13 February; and

5.3.2.2.6 Mr Robert Wilke, the Chief Executive Officer of Travel With Flair (TWF), the DOC's appointed travel agency on 14 February 2013.

5.3.2.2.7 Ms Alice Muller, the Corporate Executive of the AG was also sent correspondence dated 23 April 2013 requesting clarity on what the AG had covered.

5.3.3 Documents

Voluminous documents from the entities involved with the ICT Indaba, were received and included from the DOC, CBP, Telkom, Vodacom, MTN and TWF. The following documents were received and analysed:

5.3.3.1 Media Articles published in the Sunday Times regarding allegations relating to the ICT Indaba and the former Minister of Communications, Hon Pule;

5.3.3.2 Correspondence between Hon Shinn and the Public Protector;

5.3.3.3 Various e-mails, letters and Affidavits;

5.3.3.4 Travel documentation and travel invoices;

5.3.3.5 Response from Hon Pule and supporting documentation to the response (including, but not limited to Agreements, correspondence, invoices, etc.);

5.3.3.6 Response from Ms Bouwer and supporting documentation to the response (including, but not limited to Agreements, correspondence, invoices, etc.);

5.3.3.7 Responses from Khemano and ABR Annual Financial Statements;

5.3.3.8 Various Bank account statements;

5.3.3.9 Presentations and reports (including, but not limited to the report from Werksmans Attorneys commissioned by MTN);

5.3.3.10 Response from Telkom and supporting documentation to the response (including, but not limited to Agreements, correspondence, invoices, etc.); and

5.3.3.11 Response from Vodacom and supporting documentation to the response (including, but not limited to Agreements, correspondence, invoices, etc.).

5.3.3.12 Responses from the AG.

5.3.4 Legislation, prescripts and precedents

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

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

5.3.4.2 The Public Protector Act, 23 of 1994;

5.3.4.3 The Executive Members' Ethics Act,82 of 1998;

5.3.4.4 The Executive Ethics Code, 2000;

5.3.4.5 The Public Finance Management Act, 1 of 1999;

5.3.4.6 The Treasury Regulations issued in terms of the Public Finance Management Act, 1 of 1999 (PFMA);

5.3.4.7 The Ministerial Handbook approved by the Cabinet on 7 February 2007;

5.3.4.8 The Public Service Commission's report on managing Conflicts of Interest in the Public Service issued in July 2006

5.3.4.9 The OECD Guidelines on Managing Conflict of Interest;

5.3.4.10 Applicable Jurisprudence : Case Law and

5.3.4.11 Public Protector Touchstones.

5.4 Due Process

The obligation of the Public Protector to follow due process

5.4.1 All parties were afforded an adequate opportunity to answer to allegations directed at them, advised on the right to legal assistance and those who chose to be assisted by lawyers, allowed to utilise such assistance. In this regard Hon Pule's correspondence was handled by lawyers and she was assisted by an attorney and Advocate during her interview. This was also the case with Mr Mngqibisa.

5.4.2 The investigation further complied with the stipulation in the Public Protector Act 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 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, in terms of section 7(9)(a) of the Public Protector Act, afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.

5.4.3 Affected parties were also afforded an opportunity to respond to the contents of the Provisional Report of the Public Protector pertaining to the matters investigated to ensure fairness and transparency.

5.5 Approach employed to determine improper or unethical conduct

5.5.1 The determination regarding the propriety of a conduct or violation of the Executive Ethics Code and the standard enquiry used in Public Protector Investigations was employed. The questions asked are:

5.5.1.1 What happened?

5.5.1.2 What should have happened?

5.5.1.3 Is there a discrepancy between the two and if so, does it amount to improper conduct, maladministration, or in this case, unethical conduct?

5.5.1.4 If there is a violation, what should be the remedy?

5.5.2 The "What happened" part of the enquiry is a factual enquiry resolved on the balance of probabilities based on the preponderance of evidence, mainly documentary evidence sourced during the investigation.

5.5.3 The question regarding "what should have happened", relates to the standard that should have been met based on the regulatory framework regulating the conduct in such circumstances. Such standard is determined on the basis of relevant constitutional provisions, for example section 96 of the Constitution which regulates conduct of Cabinet Members and Deputy Ministers is the case in point; legislation, Codes, policies, guidelines and related benchmarks, including international benchmarks and previous Public Protector decisions.

5.5.4 The Executive Ethics Code was naturally part of the instruments considered to determine the standard that should have been complied with. Findings are made on the basis of establishing whether the impugned conduct deviated from the standard that should have been upheld. Appropriate remedial action is determined on the basis of the consideration of what would reasonably remedy the wrong occasioned by the deviation from the applicable standard. In this regard court jurisprudence and other benchmarks, including international benchmarks, are employed.

6. INFORMATION AND THE EVIDENCE OBTAINED DURING THE INVESTIGATION

6.1. The Complainant's submission

6.1.1. The Complainant's submission was very brief and directed the investigation to focus on relevant media reports. The key contents of such media reports were the following:

6.1.1.1. In the *Sunday Times* newspaper publication of 17 June 2012 entitled, "*It's just not Ayoba*", it was reported that:

"Times has established that millions paid in "sponsorships" by Telkom, MTN and Vodacom were withdrawn within days by Phosane Mngqibisa, who is said to be romantically linked to Pule. The minister personally lobbied Telkom, MTN and

Vodacom to sponsor the event, held in Cape Town last week. Vodacom, MTN and Telkom together forked out R25.7-million, with her department chipping in another R10.5-million.

The money trail followed by the Sunday Times shows that Telkom paid R5.7-million and Vodacom R5-million into a First National Bank account in the name of Carol Bouwer Designs, while ***MTN paid R15-million into the bank account of a company called ABR Consulting.***

Pule's department appointed Carol Bouwer Designs, a company owned by former Generations star and businesswoman Carol Bouwer, who is close to President Jacob Zuma, to put the Indaba together. ***All three telecoms companies confirmed that they paid those amounts only after they were approached directly by Pule's ministry and asked to sponsor the event.*** *In February 2012, Pule sent a letter to Bouwer, seen by the Sunday Times, in which* ***the minister said her department "will make a financial contribution amounting to R10-million". She said she would "sign off a letter of endorsement, which Carol Bouwer Productions will use to approach other potential sponsors".*** (emphasis added)

6.1.1.2. Ms Bouwer of CBP was reported in the article as having confirmed that "*Mngqibisa was a 'second signatory' to her company bank account and that he had "access to the account until the conclusion of the [ICT Indaba]".* Further thereto, it was reported in the article that, "*Bouwer admitted she hired Mngqibisa's company, Khemano, to handle the 'event management' part of the Indaba." It was clear most of the payments would have to be effected by him, so I entrusted this responsibility to him to ensure ... suppliers can be paid timeously. She would not reveal how much money Mngqibisa withdrew from her account or confirm whether he did pay the suppliers, saying only that 'a full financial reconciliation is under way'."*

6.1.1.3. In connection with the alleged relationship between Hon Pule and Mr Mngqibisa, Ms Bouwer was reported as having denied knowledge of the relationship. On the other hand, the Sunday Times reported that Mr Mngqibisa refused to reveal the exact nature of his relationship with Hon Pule and preferred to keep his private personal life as such, as he is not a public figure. He further refuted allegations of impropriety.

6.1.1.4. The Sunday Times also reported that Mr Mngqibisa would not reveal "*whether the money he withdrew was spent appropriately to pay the suppliers, saying: 'I have an obligation to maintain the privacy of my clients."*

6.1.1.5. The DOC duly represented by its spokesperson, Mr Siya Qoza was reported in the article as having confirmed that the budget for the Indaba was R102-million, which was largely raised *"through sponsorships"*, and it was necessary for the Department to partner with Bouwer *"because the ICT indaba is in the domain of the department".* He was reported to have confirmed that the Department had paid R10.5-million for *"…securing the venue, conference speakers, the audio systems and interpreters."*

6.1.1.6. In connection with the payment of sponsorships, the Sunday Times reported that, MTN, Vodacom and Telkom confirmed that they were told by Hon Pule's Ministry to deal with Ms Bouwer's company. However, with regard to the payment of MTN sponsorship towards hosting the event, MTN was reported as having stated that it deposited the money into the ABR account because the original account it was given, that of CBP, *"did not comply with MTN's procurement requirements".*

6.1.1.7. It was further reported that, ***"ABR Consulting president Sheryl Manchisi said MTN's R15-million was used to pay suppliers. Everything is accounted for and in black and white."***

6.1.2. In the article, "*Pule's red shoe blues as sponsors seek missing millions"* the Sunday Times reported on 2 September 2011 that:

"Minister Dina Pule's eagerness to show off a pair of expensive Christian Louboutin shoes, with their distinctive red soles, has confirmed her link to the ICT Indaba's missing millions. When Pule, the Minister of Communications, walked onto the stage to open the ICT Indaba in Cape Town in June, she was wearing a pair of the French designer shoes - now understood to have been bought with some of the R25.7-million that sponsors pumped into the event.

The shoes were bought in Barcelona, Spain, by her romantic partner, Phosane Mngqibisa, during one of their international trips together. Mngqibisa's company,

Khemano, had been hired by event organiser Carol Bouwer Productions to help stage the ICT Indaba.

Bank statements confirm that Mngqibisa took R10 0000 from the bank account of Carol Bouwer Productions before flying to Barcelona, Spain to attend the GSMA Mobile World congress from February 25 to 29. While there, he lobbied people to attend the ICT Indaba to be held in Cape Town from June 4 to 7."

6.1.2.1. The Sunday Times reported Mr Mngqibisa as having stated that he used the *"marketing allocation budget"* to attend the Barcelona conference so that he could market the inaugural ICT Indaba and denied travelling to Barcelona with Hon Pule stating only that, *"I do not recall even seeing her at the GSMA conference".*

6.1.2.2. Mr Mngqibisa was also reported in the article as having refused to clarify the nature of his relationship with Hon Pule and denied buying her the *Christian Louboutin* shoes. The Sunday Times reported that Mr Mngqibisa said, *"I purchased men's shoes for myself. I have the receipt to prove this,"* but could not provide a copy of the receipt when asked for one.

6.1.2.3. In addition, the Sunday Times reported that the MTN's R15m sponsorship was mysteriously transferred to the account of a company called ABR Consulting, rather than that of CBP.

6.1.3. As the media reports continued to flow, Hon Pule actively refuted the allegations of a romantic relationship or any impropriety on her part. According to media reports, both print and electronic, Hon Pule persistently denied the allegations against her, going on to allege that the Sunday Times and its informants were engaged in an unjustified smear campaign against her. She was reported to have alleged that it was all a conspiracy against her motivated by dishonest motives.

6.1.4. In a media briefing held on 22 April 2013 at the instance and request of Hon Pule, a statement titled, *"Statement by Minister of Communications in response to Sunday*

Times smear campaign" was issued and read out at the briefing by Hon Pule where she stated that:

"For the past 10 months, the Sunday Times has published a series of fabricated stories about me. I have kept quiet since the onslaught started. After careful consideration, I have now decided to reveal the real reasons behind this persistent smear campaign against me. This campaign is not and was never a genuine journalist endeavour. It was a highly sophisticated plot to blackmail me. It is all about business and political interests related to the multi-billion rand set-top-box tender and related issues.

The Sunday Times handlers, who are high profile business people and politicians, thought that they could coerce me into a corner by threatening to make injurious revelations or accusations against me. The intention was to force me to make decisions in their favour. When they realized that their threat of revealing accusations against me did not work, they then escalated their campaign with the hope that I will resign or that the President would fire me.

We have witnessed an extraordinary call by a newspaper that is supposed to be objective to the President to fire me. This is despite the fact that I should be presumed innocent until proven otherwise. So far, the campaign has failed to achieve its objectives.

However, the handlers of the Sunday Times are becoming even more desperate because they have now realized that none of the spurious allegations against me will stick.

I respect and continue to cooperate with the investigations of the Parliament's Ethics Committee and the Public Protector. Similarly, I have answered all the questions that the Ethics Committee requested me to answer. I will appear as directed before the Ethics Committee in Parliament on the 2nd and 3rd of May 2013. I have not sought to frustrate these processes in any way. I will readily avail myself so that we can bring finality to these processes. I remain confident that I will be vindicated by these formal processes.

I want to make an appeal to the handlers of the Sunday Times to exercise patience and await the outcomes of these formal processes instead of churning out spurious and baseless allegations week in and week out in the hope of influencing the on-going investigations. It is common cause that the Sunday Times, in the main, has sought to project me as a corrupt minister who is hell bent on manipulating tender processes for the benefit of my alleged boyfriend, his friends and relatives. They have not provided any shred of evidence that I have broken the law. They have failed to point to any wrongdoing on my part.

All what the Sunday Times has been doing over the past 10 months was to present allegations as fact, and misleading the public into believing the following (in the main):

1) That I am a corrupt minister who was bribed with a pair of shoes;

2) That I gave tenders to a boyfriend;

3) That I meddled in tender processes in order to benefit my boyfriend;

4) That I have ceded control of my department to a boyfriend; and

5) That I interfered in strategic appointment of officials and board members of state entities in order to appoint friends of the boyfriend." (emphasis added)

6.1.4.1. With regard to the hosting of the 2012 ICT Indaba, Hon Pule stated that "*I have never tried to escape scrutiny or inquiry. Indeed, immediately after the first allegations relating to the inaugural ICT Indaba appeared in the Sunday Times I personally invited the Auditor General to conduct an investigation into the matter. Whilst I knew I had done nothing wrong as I am not involved in any tender processes, I needed to establish that the tender processes that were followed by the officials in relation to the ICT Indaba were beyond reproach.*

It is now common cause that after investigating the allegations, the Auditor General did not find any wrongdoing either on my part or on the part of the officials. The departmental processes are clean and will remain clean despite repeated and recycled lies in the Sunday Times. As I have said before, I intend taking up this

matter with the Press Ombudsman as there has been so many breaches of the Press Code by the Sunday Times.

The Sunday Times has crossed the line.

The newspaper and its editors have effectively charged me and found me guilty in the court of public opinion whilst they are fully aware of the ongoing investigations by the Public Protector and the Parliament's Ethics Committee. The recent call made by the Sunday Times for the President to fire me even before the conclusion of these processes clearly demonstrates that the Sunday Times is not an objective and innocent messenger that it seeks to portray itself.

I was surprised that, when confronted about the controversial headline calling for my firing, the journalist who wrote the story distanced himself from the headline saying that it was done by his editor without his knowledge.

The Sunday Times editors know there is no evidence of wrongdoing on my part. If they do, they must tell the public and the law enforcement agencies. Their intention is to sway public opinion against me. They also hope to influence the outcomes of the formal investigations currently underway in Parliament and by the Public Protector.

My responses to all Sunday Times questions have never been taken into account in the 10 months of this smear campaign. My responses were always quoted selectively, out of context and largely presented at the tail end of the stories. The inclusion of my comments in the stories was to simply maliciously comply with the requirements of fair and objective journalism. My version has not been adequately and fairly represented. The Sunday Times has refused to allow facts to stand in the way of their campaign. This is yellow journalism; a desperate campaign to ensure my downfall." (emphasis added)

6.1.5. In a section of the media statement entitled, *"Journalism Malpractice on the part of the Sunday Times",* Hon Pule stated that:

"Today, I intend to reveal the real reasons the Sunday Times and its handlers have decided to concoct a story line to project me as this devious Minister hell bent on meddling in tender processes.

…this so-called expose is nothing but a highly sophisticated campaign to blackmail me. I believe that freedom of expression and the right to freedom of speech must be upheld. But freedom of expression should not be a one way street and should never be abused by those who control media platforms. This unusual step I am taking today of revealing the unbecoming conduct of journalists should not be interpreted as an attack on the media in general or on the right of South African journalists to do their work.

Despite the way I have been treated by the media, being hounded and mistreated, I will continue to hold many South African journalists in high esteem due to their dedication to bringing out the ills of society. I am doing this because the public has the right to be informed about the unacceptable behaviour of some Sunday Times journalists whose conduct, I believe, has blemished the noble profession of journalism."

6.1.5.1. In explaining what she termed, intricate 10-month-long smear campaign against her by the *Sunday Times,* Hon Pule stated that, *"The campaign began in June last year, just under a week after we had hosted the most successful ICT Indaba in Cape Town in June last year.*
The first of the articles in the Sunday Times claimed that sponsors were furious that millions in sponsorship fees were drawn from the account of the event organizer by a man who is alleged to be romantically linked to me. Now the Sunday Times no longer talk about the missing millions because it has been proven that sponsors of the ICT Indaba received value for money."

6.1.5.2. In her statement, Hon Pule linked the media reports by the Sunday Times in connection with allegation of irregularities in the hosting of the 2012 ICT Indaba with the set-top-box tender and stated as follows:

"Immediately after the first story came out, the smear campaign was swiftly taken over, with the collaboration of Sunday Times journalists, by business people and politicians with interests in the tender for the manufacture of set-top boxes as part of

digital migration. It was later also joined by opportunistic individuals, including current and former officials in the Department and in the state owned companies under my watch. It is common knowledge that the set-top-box tender involves billions of rand. The process to finalise the tender is still underway having been delayed by litigation from interested parties.

The stakes are very high and some unscrupulous individuals are so desperate to secure the set-top-box tender. They are willing to do anything, including using journalists to smear the minister. Shockingly, they found a willing partner in the Sunday Times. Their plan was simple yet highly sophisticated in its implementation. These people are desperate and they will not allow anything to stand in their way. In their fantasy world, they believed that I, as the Minister, have the power to decide who should be awarded the tender. It appears their theory was that if they could get me to cooperate with them they will have a better chance of winning the tender."

6.1.5.3. Hon Pule accused the *Sunday Times* of effectively becoming a vehicle to drive the campaign against her as part of sophisticated scheme to get her to cooperate with bidders for the set-top-box tender thus calling them, *unscrupulous business people*. She did not name them in her statement based on legal considerations.

6.1.5.4. She however stated that they are known to her and the *Sunday Times* and accordingly named the journalists that she accused as having been behind the media reports and stated that:

"… The three Sunday Times journalists behind the fabricated stories against me, namely Leonard Ndzhukula aka Mzilikazi wa Afrika, Rob Rose and Stephan Hofstatter, are associated with a network of business people, politicians and other roles players with vested interests in the work that we do. For the past 10 months, before their stories would be published in the Sunday Times, mostly on the front page, these journalists usually report and boast to their handlers that they have 'again nailed me'. I have been provided with proof of this unethical correspondences between Sunday Times journalists and their handlers, which is a shame for South African journalism."

6.1.5.5. Hon Pule called the said journalists "*mercenaries for powerful business people"* and went further in her statement by saying;

"I will start with Wa Afrika, a journalist with a highly questionable and colourful background. He has a close association with business people and politicians who have bid for the set-top-box tender in the Department. You will recall that a few years ago, Wa Afrika was fired by the former Sunday Times editor Mondli Makhanya for conflict of interest because of his tendency to develop unsavoury ties with sources.

While he was out of work, Wa Afrika became involved in many business ventures and pursued various business opportunities. It is these extensive business networks that Wa Afrika pursued that have now come back to disgrace the Sunday Times.

We have established that one of the business opportunities Wa Afrika pursued involved importing cheap cellphones from China. The Department oversees the regulation of the cellphone industry. At the centre of the cellphone venture were these prominent business people who have developed an insatiable appetite in the set-top-box tender. Officially, Wa Afrika is supposed to be no longer involved in business. However, he has maintained networks with prominent business people. Wa Afrika's return to the Sunday Times as a journalist, has given his network of associates and friends a media ally whom they use to further their financial interests.

On the Sunday when the Sunday Times published their first article against me, I received a call from Wa Afrika's associates proposing to facilitate a meeting between me and Wa Afrika, and promising to assist me to make the story disappear. These are the very same people who have submitted a bid for the set-top-box tender. In their own words, they said to me, and I quote: "Minister, we can help you manage that young man, Mzilikazi, because he is our man. We raised him" They explained that because of their close ties with Wa Afrika they had the ability to prevail upon him to leave the story against me.

On 18 June 2012, the day after the first story was published; I received another telephone call from Wa Afrika's associates inviting me to attend a meeting at a Sandton hotel. They indicated to me that Wa Afrika had been invited to the same meeting. Despite my initial reservations, and after careful consideration, I decided to

attend the meeting which took place on 19 June 2013. The reason I attended the meeting was to establish the issues that were behind the story. I, however, decided that I will not go to such a meeting alone and therefore asked one of the officials in the department to accompany me to the meeting.

During the said meeting, in the presence of his associates, Wa Afrika claimed to have a pile of information pointing to wrongdoing on my part. He said he was willing to quash the information he had in his possession on condition that I considered the following startling proposals that he made to me in the presence of his associates:

1) That I should provide incriminating information about the President; and

2) That I should give him another story about corruption either in the department or the state owned companies that report to me.

Wa Afrika said he could not just let the story against me die as his comrades are already running the story. He said he would have to give them something else in order to divert their attention away from me.

For the record, I rejected all of the proposals made by Wa Afrika and his associates during the meeting in Sandton as I found them to be highly unethical and inappropriate. I also felt offended by the fact that Wa Afrika and his associates saw nothing wrong in making such proposals to me.

It is important to note that at that stage when we had the meeting in Sandton, I had not met with Wa Afrika and/or his colleagues before in relation to the story. In fact, the Sandton meeting was the first and only meeting I have ever had with Wa Afrika in relation to these matters.

After the said encounter with Wa Afrika, I lost respect and regard for this journalist. I was utterly disappointed that Wa Afrika had become entangled in party political issues which were raging ahead of the Mangaung Elective Conference of the ANC and that he and his associates had thought that based on threats of spreading injurious accusations against me I would stoop so low in my engagements with them."

6.1.5.6. With regard to other *Sunday Times* journalists who were listed in the media reports about the 2012 ICT Indaba, Hon Pule stated that:

"…In one such instance, a woman who claimed to be an associate of Mr Stephan Hofstatter, another of the Sunday Times journalists, misrepresented her intentions to me, offering to work for me as my Special Advisor. She claimed to be close to Hofstatter, which we now know is true, and offered to assist me to "manage" the journalist. She said she could even arrange for me to meet with Hofstatter over tea.

She said because of her close relationship with Hofstatter, she could make the story disappear within weeks. In return, she asked that I appoint her as Special Adviser to the Minister. The said woman held a series of meetings with the Sunday Times journalists, occasionally briefing them about my conversations with her. I learned of her nefarious activities after she was overhead by an official who work in the Social Development. The woman had asked to have a meeting with me. This official had overhead her conversation with me. Immediately after I had agreed to meet with her, the woman phoned Hofstatter to report that she had successfully managed to secure a meeting with me. Fortunately, all of this was overhead and I was warned to be cautions when dealing with this woman. Out of curiosity and to develop a better understanding the smear campaign I went to meet with this woman in Johannesburg.

During the meeting, the woman appeared to know much of the DoC and the officials who work there. She indicated that she had in the past received business from the department.

After this meeting, I managed to confirm that the real intention of this woman and Hofstatter was to plant her in my office as Special Adviser with the hope that they would be able to find some wrongdoing on my part. Fortunately, I was able to uncover her real intentions and broke ties with her. We also equally aware that Sunday Times journalists have friends within my department and in the various state-owned entities, some of whom have an axe to grind for whatever reason.

We know that the first story in which the Sunday Times alleged that millions donated by sponsors for the ICT Indaba were missing, an allegation which has since been shown to be untrue, came from a close-friend of Mr Rob Rose, another journalist

involved in the smear campaign against me. The close-friend of Rose is actually a high-ranking official in the one of the companies which sponsored the ICT Indaba. This high-ranking official has friends with business interests in the ICT sector."

6.1.6. Coming back to the hosting of the 2012 ICT Indaba and in her statement, Hon Pule stated that

"…For the record, the ICT Indaba held last year, which the Sunday Times has sought to vilify, was a resounding success. The conference placed Africa on the global ICT map. The partnerships with the UN's International Telecommunication Union (ITU) and all the various sponsors attest to that and it was hailed internationally as a success.

A first of its kind, the event attracted 1 500 delegates, among them the world's leading ICT experts, more than 20 ministers and deputy ministers from across Africa and the rest of the world, and 89 international media organisations. They discussed ways Africa could claim its rightful place in the technology revolution and use ICT to achieve developmental goals.

…The concept of the ICT Indaba was proposed by Carol Bouwer Designs (CBD) as early as August 2010. The DoC saw value in the proposal and then established an internal committee to work towards hosting such an event. To assist in making this event a reality, R10 million was committed to secure the venue, conference speakers, the audio systems and interpreters. The rest of the funds were expected to be raised from sponsors. To aid the securing of sponsorships, endorsement letters were also issued as is required by the industry.

Due process in-line with procurement policies and processes as prescribed by National Treasury were followed in appointing Carol Bouwer Designs as the service provider for the ICT Indaba 2012. These guidelines are contained in the Practice Note SCM 11 of 2008. As expected for a project of this magnitude Carol Bouwer Designs duly submitted a preliminary close-out report and an audited report on the finances to the DoC.

As stated before, the Auditor General audited the processes and found that the Minister and all the officials of the DoC followed proper processes and procedures in

engaging the service provider and in executing the Indaba. I believe it is important that the ICT Indaba must be seen for what it was - an opportunity for South Africa to create a positive legacy for the continent and its people. The event attracted R16,3-million worth of positive global publicity, and has helped position South Africa as being at the forefront of driving access to ICT in Africa.

When I assumed my duties at the end of October 2011 the ICT Indaba was already a departmental project and in March 2012 the project assumed national importance after Cabinet approval. Hence Deputy President Kgalema Motlhanthe opened the Indaba on 05 June 2012. It is interesting that in their first story about the ICT Indaba, the Sunday Times had stated as a fact that President Zuma had addressed the conference when it was not so. They have never corrected the inaccuracy. One has to wonder whether such slipups and the failure to correct them are a reflection of the standard of journalism at the Sunday Times.

For my part, I believe the DoC delivered a quality conference of international standing. I would like to thank Telkom SA, Vodacom, MTN, SABC, MultiChoice and all the other sponsors for their support of the Indaba through sponsorships. We value the relationships we have with the private sector. Without these companies' input and support, the ICT Indaba would not have been possible.

I would also like to acknowledge the Office of the Auditor General for their work in assisting the DoC in adhering to good corporate governance. The DoC has always believed that the processes we followed were open and transparent."

6.1.7. Hon Pule concluded her statement by informing members of the media that she together with her Department would no longer take any further questions on these matters so as to allow space for the Public Protector and the Parliament's Ethics Committee to conduct their investigations without any hindrance.

6.2. Evidence and information obtained from Ms Carol Bouwer

6.2.1. In her written submissions and interview Ms Bouwer maintained that the idea of the ICT Indaba was her intellectual property and that she had brought the DOC on board as a partner because ICT policy and regulation resorts under its domain.

6.2.2. She conceived the idea of an ICT Indaba during her interface with Hon Pule's predecessors in pursuit of support for her idea of a women's television channel named *"Lindiwe".* She further stated that on the basis of her numerous years of experience in the television industry and her discussions with the DOC, she quickly realised that there was a lack of readiness around the Digital migration (DTT) and regulation of various ICT matters. She said she suggested a need for more engagement with the public and any other industry stakeholders in South Africa.

6.2.3. After conducting research on experiences in other countries, she came up with the ICT indaba concept as a vehicle for bringing stakeholders together annually to discuss ICT matters and keep abreast of the rapidly changing ICT environment. She prepared and forwarded a proposal to the DOC in this regard while simultaneously commencing to register an intellectual property claim on the ICT Indaba as her idea.

6.2.4. Her discussions with the DOC were progressing to a point where there were negotiations underway for a contract. She said that whilst finalising matters with the former Ministry she discovered that the Deputy Minister had already jump-started the processes for the ICT Indaba and that terms of reference had been drafted and a MoU was underway. She further stated that Deputy Minister Bapela had even sent out letters to prospective sponsors to help with the ICT Indaba but the progress was halted by a Cabinet reshuffle.

6.2.5. She never saw the proposed ICT Indaba as a DOC event, but rather as something that was crucial for her industry and as a platform where rising concerns such as the DTT migration, its impact and transformation issues such as broadband and telecommunications developments would be addressed.

6.2.6. She advised that CBP was the sole originator of the ICT Indaba and willing to go ahead without the involvement of the DOC but thought it be best to have the DOC play the role of sponsoring with policy not finance, for industry role-players to have confidence to participate in the Indaba. As such the arrangement was that DOC would engage the industry and develop policy and CBP would in turn sell or market the idea to potential delegates around the world.

6.2.7. Various parties were brought on board to partner with her, although this was done when the process was already far along. It was during this period that Mr Themba Phiri, the DDG of the DOC suggested that Ms Bouwer signs on a company by the name Khemano to aid her in her work, as it had allegedly worked with the DOC before and had an impressive track record. She further stated that she didn't suspect that there was anything untoward underway.

6.2.8. She was informed that Khemano had delivered great service during the World Cup, but she later discovered that the DOC was being rather economical with the truth as it was later discovered that Khemano had worked on minor side events during the World Cup. She alluded to the fact that she had a responsibility to check the facts but didn't feel the need to but with the DOC having clearly vouched for Khemano, she accepted its word on good faith. She only started enquiring when she became concerned about Khemano's performance.

6.2.9. She further stated that she had not been given a CV or company profile but rather given a sensational speech on the company. She, however, later asked for the company profile. Upon realising that Khemano had capacity constraints, Mr Mngqibisa then contracted the service of other service providers, namely ABR, which was run by Mrs Sheryl Manchisi and her husband.

6.2.10. Until Khemano was brought in, her co-executing agency was *Hunta Live*, brought on board by CBP, not only because Ms Bouwer was buying into the company but because it had the necessary experience and know-how to organise an event of that magnitude, as it is the second largest events management company in South Africa.

6.2.11. The DOC was aware of the fact that *Hunta Live* was the execution partner as this had been indicated in the paper work on the ICT Indaba proposal, and that Khemano's services were not requested by her.

6.2.12. While the initial budget for the ICT Indaba was R100m, only R40m was secured through sponsorships and the amount sufficed for a successful event.

6.2.13. When no progress was forthcoming from the DOC following a Cabinet reshuffle that brought Hon Pule to the DOC as the new Minister, she made written representations to the DOC to see if the new Minister and Deputy Minister would embrace the idea

as their predecessors had. She said she eventually realised that Mr Phiri would be the way to get access to the Minister and communicated through him.

6.2.14. Ms Bouwer alleged that Mr Phiri suggested at a meeting with her at Palazzo Hotel in Monte Casinoon11 Nov 2011. At that meeting he suggested that the ICT Indaba could be expedited by bringing in a BEE partner, suggesting Mr Mngqibisa as an ideal candidate in this regard. Within hours of Mr Mngqibisa being suggested, he was brought by Mr Phiri to join the meeting and introduced to Ms Bouwer.

6.2.15. She had never asked for money from the DOC but sought direction instead. On taking in Mr Mngqibisa and his Khemano, Ms Bouwer clarified that she never felt pressured at the time but later started to feel uncomfortable and later felt that her situation was untenable.

6.2.16. A progressively souring relationship with Mr Mngqibisa ensued, including accusations of racism thrown about, which prompted her, among other things, to let go of her original implementation partner, *Hunta Live* for the sake of the success of the event. She felt like Khemano had an upper hand with the DOC, although she didn't know the nature of the relationship.

6.2.17. In terms of the agreed terms of reference, liaison with sponsors was her domain but soon Mr Mngqibisa took over. She also found Mr Mngqibisa increasingly assuming the role of the go-between with the DOC contrary to the role allocation plan that had been agreed to.

6.2.18. It was a source of concern to her that the Minister's and the DG's offices seemed to work only with Khemano while CBP was, according to the contract with the DOC, the principal coordinator of the event and the official point of contact with the DOC.

6.2.19. Regarding the diversion of sponsorship funds, she gave Khemano permission to deal with MTN, but gave no permission to any of the contracted service providers, to receive funds on behalf of CBP. She denied that her company was not in a position to meet MTN's financing requirements while admitting there had been a hiccup in this regard at the beginning.

6.2.20. On the issue of the shoes, she agreed that her company had initially received an invoice for *Christian Louboutin* shoes bought in Barcelona but that she had accepted Mr Mngqibisa's explanation that the invoice, which did not specify if the shoes were for a male or a female, had been sent in error. She also did not consider the amount of R100 000 spent on the business trip to Barcelona by Mr Mngqibisa as excessive.

6.2.21. Ms Bouwer's testimony during the interview is broadly consistent with her written submissions which are captured in the following paragraphs.

6.3 The written submission of Ms Carol Bouwer

6.3.1 In her response to my letter dated 5 March 2013, Ms Bouwer began by placing on record that "…*the ICT Indaba is conceptualized and owned by Carol Bouwer Productions ("CBP") and the DOC was invited to partner with CBP as* ***the DOC are the policy custodians of the sector****".* (emphasis added)

6.3.2 She further explained that:

> "*The involvement of the DOC in the ICT Indaba occurred after we had approached them* ***to participate precisely as the custodians of communications and the broader sector in the country****. We considered it to be of strategic importance to partner with the DOC in a project of this magnitude, given that* ***the DoC would introduce the concept to all, and in particular, to the ICT industry.***
>
> *I deem it necessary to also record that in view of the various allegations made which concern CBP, we had to engage an auditor post the original audit. These audits came back clean, except the fact that the auditors highlighted an amount of R1.3m which Mr. Mngqibisa of Khemano productions ("Mngqibisa") needed to return to CBP. Mngqibisa subsequently did this at the close of 2012. Accordingly, we submit that we have had an independent audit of the Event's financial statements conducted."* (emphasis added)

6.3.3 In connection with allegations regarding payment of sponsorship towards hosting the event by the DOC, Ms Bouwer confirmed that, indeed *"we did receive a letter from the Minister informing us that the DOC would contribute R10 million to the event, and not R10,5m as stated in your letter. In the letter, which is attached marked Annexure A;* ***the Minister confirmed that the DOC would partner with us in organising the event as well as provide a letter encouraging the industry to come on board."*** (emphasis added)

6.3.4 Ms Bouwer also stated that, *"On 30 January 2012, the DOC made payment of the sum of R10m electronically to the bank account of CBP"* Whereas MTN had made *a "commitment that an amount of R15 million would be paid to assist with the event, the funds were not transferred to the CBP's bank account. I learnt that the money had been paid into one of Mngqibisa's accounts' when I called him to alert him to the fact that time was running out and that I was drafting an e-mail requesting MTN to explain the delay in payment*."

6.3.5 In response to allegations that Mr Mngqibisa withdrew money from CBP banking account, Ms Bouwer confirmed that, *"Mngqibisa was granted access to the bank account in accordance with his role as our lead event supplier.*

> *We did not require of him to sign anything on the account but merely to transact via internet banking on the CBP bank account dedicated to the ICT Indaba in order to pay suppliers, and his ICT Indaba related costs."*

6.3.6 She went further and stated that *"…we admit that Mr Mngqibisa is not a director of CBP. However, we repeat the contention…that Mngqibisa had access to the bank account on the clear understanding that he would pay his ICT Indaba suppliers and ICT Indaba related expenses incurred while discharging his duties."*

6.3.7 In her response to allegations of payment of an amount of R6m to Mr Mngqibisa, Ms Bouwer informed the Public Protector that, *"…Mr Mngqibisa's payment of R6m seems to arise from the MTN report to which we have not had access so I cannot comment on it. We bear no knowledge of the Minister's travels but can confirm that Mngqibisa withdrew R100 000 for his trip to Barcelona."*

6.3.8 In her correspondence, Ms Bouwer stated that *"The payment of R6 million to Khemano Productions (Pty) Ltd was made out of the ABR account, the same bank account we later learnt received the MTN funds. It was also revealed on the Audit report that payments by delegates and exhibitors to the event were also deposited into that account. I received this information from the audited financial statements at the conclusions of the audit."*

6.3.9 She went further and said, *"Mngqibisa informed me that he forgot to tell me about this payment. I was rather taken aback since we were speaking regularly but I focussed on the job at hand. This struck me as irregular as I had been requested to submit my Tax Clearance Certificate to MTN as I was not willing to submit 3 year audited financial statements as they had requested. Once the money was received from MTN and Mngqibisa's apology for not notifying had been accepted, the R15m was never deposited into the appointed ICT Indaba account."*

6.3.10 She explained the circumstances surrounding her finding about the ostensible disappearance of the MTN sponsorship and stated that, *"Upon enquiry during the audit, I was informed by the auditors that the funds had been transferred into the bank account of ABR Consulting at the request of Mngqibisa and Ms Sheryl M. Manchisi-Olsen of ABR Consulting.*

The audited financial statements for the event reflect that the amount of R15 million was received and applied for expenditure of the project."

6.3.11 With regard to reasons for the diversion of MTN sponsorship in violation of a standing agreement between CBP and the DOC, Ms Bouwer explained that she was informed by the auditors, that the information they received from Mngqibisa was that, *"the reason for the diversion of funds was because CBP was not registered on* that *database of suppliers of MTN and it would have taken too long to receive the funds if the process of registering CBP was to be observed. Also, CBP was not willing to submit their financial statements, which was a requirement from MTN. He also reported to the auditors that I had given approval for such diversion of funds. I confirm that I did not approve the diversion of the money to the ABR Consulting bank account, nor did I have access to the bank account, and neither are the reasons for diversion given to the auditors true."*

6.3.12 In response to allegations about the trip allegedly undertaken by Hon Pule and Mr Mngqibisa to Barcelona, Ms Bouwer reported that; *"Upon Mngqibisa's return from Barcelona, I pointed out to him that he had withdrawn the R100 000 without submitting an invoice for the trip. I did not query the amount but wanted for all of us to account properly for the application of the Indaba funds, to which he agreed. Shortly thereafter, he instructed his PA to submit his invoice but what I received was a number of slips including one which reflected purchase of a pair of shoes in Barcelona. I asked Mngqibisa about those trips and he told me that his Personal Assistant, one Bulelwa sent those slips in error and that he would have the correct invoice sent to me. I honestly believed Mngqibisa's explanation. Save for having had sight of the receipt for the purchase of the shoes, we bear no knowledge as for whom such shoes were purchased and neither do we know where the funds for such purchase came from."*

6.3.13 On allegations that the DOC forced her to work with Mr Mngqibisa in organizing the hosting of the ICT Indaba, Ms Bouwer stated that; *"I understood the* request *to appoint Khemano Productions to assist in the hosting of the ICT Indaba as a recommendation by a client who had a trusted supplier.*

Because of the level of respect I had for Mr Phiri, I did not believe he was attempting to do anything that could be viewed as corrupt or untoward at the time."

6.3.14 She advised that; *"Khemano was recommended to me by Mr Phiri of the DOC. Upon engagement, Khemano seemed to understand the mandate and CPB was not aware of the nature of the Minister's relationship with Mr Mngqibisa."*She said *"her understanding was that the Minister requested the ICT companies to co-operate with CPB in order to make the event a success."*

6.3.15 She attached various documents to substantiate her version of events, including a pledge by the Minister to sponsor the event to the tune of R10 million, the agreement between the DOC and CBP, the agreement between her company and Khemano, letters of endorsements of the event signed by former Deputy Minister, Obed Bapela and Hon Pule addressed to MTN, Vodacom, Telkom as well as various correspondences exchanged between her, Hon Pule and Mr Themba Phiri of the DOC, amongst others.

6.3.16 These are dealt with extensively in the paragraphs below detailing the information and evidence obtained from different role players.

6.4 Correspondence from Ms Carol Bouwer of CBP addressed to Hon Pule dated 25 November 2011

6.4.1 On 25 November 2011, Ms Bouwer addressed a letter to Hon Pule. In her letter under the heading, *"ICT Indaba 2012"* Ms Bouwer referred to an earlier meeting she held with Hon Pule and stated as follows:

***"Our meeting regarding this ground-breaking proudly South African initiative refers**.*

As explained Minister, *I approached the Department almost a year ago with a proposal to launch the first paperless ICT Indaba that reclaims South Africa' s erstwhile leading role in the sector. The IP of such an indaba rests with us, however we believe it is critical that we do not pursue this on our own but in partnership with the department of communications.*
Numerous meetings took place, some including the former Deputy Minister of Communications, DM Obed Bapela. Out of these meetings, it was agreed that amongst other things, the following should happen:

1. *CBP together with DoC should work towards launching the ICT Indaba in 2012, which will become an annual event convened in South Africa with the best minds in the ICT sector*;
2. *The month of June was agreed upon as we did not want to interfere with ITU or ATU calendars for international activities that would attract the same participants. Due to the numerous delays we encountered along the way, the availability of the CTICC, which we believed would attract the leading delegates and speakers for the indaba. June was also important.*

3. *Crucially, the DoC needed to occupy a central role in this initiative as South Africa worked towards re-enforcing its status as the gateway to Africa. The emergence of BRICS also a block that included SA meant we wanted to*

have government at the heart of such an important venture as a country for critical messaging to be realized.

4. *The DoC furthermore would ensure that the priorities of the INDABA are fully aligned with government's priorities.*

5. *We further agreed that the Minister would be the preferred face of the Indaba in an attempt to distinguish this indaba from any other hosted by the other role players in the sector.*

6. *It was agreed that the CBP team would secure the premises, the experts required, internationally speakers of the highest calibre a well as ensuring the best Indaba ever hosted on our shores.*

7. *Our expertise also meant together with the DoC, we are poised to deliver the best media support package for this event.*

8. *We believe the mining and tourism indabas fully illustrate the benefit of hosting these events and ensuring local reach with a global view. These events allow for critical interaction between government and industry but also they allow for government to be at the heart of branding the country around the affected sector. This platform allows South Africa to emerge yet again as the leading ICT node in Africa, while taking the continent along."*

6.4.2 Ms Bouwer concluded her letter by requesting Hon Pule to support the initiative and become its patron and sponsor. She informed Hon Pule that CBP sought the signing of the MOU with the DOC before the end of 2011 to enable it to secure best speakers for the event and other critical artisans to deliver the very first ICT Indaba on South African shores. .She advised that Hon Pule's Department was in possession of all requisite documents and availed herself for any further enquiries with regard to the ICT Indaba.

6.5 Response of Hon Pule as Minister of Communications to CBP offering Sponsorship to the tune of R10m

6.5.1 CPB provided a copy of a letter from Hon Pule dated 15 December 2011, offering R10m in sponsorship funds and stating it was doing so in response to CBPs request for sponsorship articulated in the letter of 25 November 2013.

6.5.2 Ms Bouwer was quick to point out that her letter of 25 November 2011 said nothing about financial sponsorship and that financial contribution by the DOC had never been part of her requests both orally and through correspondence.

6.6 Agreement entered into between CBP and the DOC on 12 January 2012.

6.6.1 On 12 January 2012, CBP and the DOC entered into an agreement in respect of the hosting of the ICT Indaba thus giving effect to the commitment made by Hon Pule in her correspondence of 15 December 2011 wherein she informed Ms Bouwer that the DOC would make a financial contribution of R10 million and that an MOA will be signed to facilitate the relationship that will ensure the success of their partnership in hosting the 2012 ICT Indaba. The agreement was signed by Ms Bouwer in Johannesburg duly representing CBP and Ms Rosey Sekese in her representative capacity as the DG responsible for the DOC.

6.6.2 Paragraph 1 of the agreement deals with definitions and interpretation and Intellectual Property Rights are defined in the agreement to include but without limitation *"all current and future intellectual property rights of any kind whatsoever and however embodied, including (without limitation) patents, trademarks present and future rights of copyright, rights in and to trade secrets, rights in and to databases (including rights of extraction), and all rights and forms of protection of a similar nature or having equivalent effect to any of them whether or not any of these is registered and including applications for any such right or registration thereof".*

6.6.3 In the agreement, it was recorded as follows:

> ***"i. CBP is the intellectual property owner of the concept of ICT Indaba which is an exhibition and conference on all ICT and related issues with worldwide participation and will be held annually in the Republic.*** *The launch ICT Indaba was to be held in 2012.*
>
> *ii.* ***DoC is the custodian of the ICT matters in the Republic as mandated by the Electronic Communications Act (No. 36 of 2005).***
>
> *iii. The parties wish to establish a strategic relationship in relation to the planning and hosting of the ICT Indaba.*
>
> *iv.* ***CBP had already procured the sponsorship of Telkom as a Platinum sponsor for the ICT Indaba.***
>
> *v. The purpose of the Agreement was to* ***record the respective rights, responsibilities and obligations of the parties with regard to the organising and hosting of the ICT Indaba."*** *(Emphasis added)*

6.6.4 The duration of the agreement was for a period of not more than five years effective from 12 January 2012 when the agreement was signed and the primary objectives of same were to *"establish a structure of participation between the parties in respect of each annual ICT Indaba".*

6.6.5 According to the agreement, CBP was responsible for *logistical, advertising and fundraising activities related to the hosting and assembling of the ICT Indaba* annually as well as ensuring the protection of the integrity and intellectual property rights related to the ICT Indaba.

6.6.6 Further thereto, it was recorded that the role of the DOC in furthering the objectives of the agreement would be to assist CBP with each annual Indaba with specific emphasis on:

(i) *Establishing co-operation between the Department of Communications and CBP to manage the entire process of each annual ICT Indaba;*

(ii) Facilitating *the participation of relevant stakeholders from government, business, academia and civil society in relation to the activities of the ICT Indaba; and*

(iii) *Facilitating the involvement of all communications spheres in the Republic of South Africa including, but not limited to television, telecommunications and web based communications."*

6.6.7 It was further agreed that the parties shall develop a Joint Task Team that would establish and oversee the implementation of agreements that may be concluded between the parties within the framework provided by the Agreement with terms on when the parties shall meet as well as the fact that representatives from each party shall be well resourced to enable them to implement the agreement.

6.6.8 According to paragraph 8 of the agreement which dealt with financial arrangements, the parties agreed that *"for the duration of this agreement, each party shall bear its own costs in fulfilling its involvement, except as otherwise provided for in this agreement".*

6.6.9 Further thereto, it was a material term of the agreement that the financial implications for both parties in terms of any joint assignments, projects or initiatives shall be agreed to in writing between the parties before commencement of such assignment, project or initiative.

6.6.10 Under the general terms of the agreement, it was recorded as having been agreed that *the agreement* is for the benefit of the parties in particular *and no right/s or obligation/s may be ceded, transferred, made over, delegated or assigned in whole or in part by any party without prior consent of other parties that may be affected by such cession.*

6.6.11 Note was taken of the fact that there was no mention in the agreement of the R10 million financial contribution by the DOC, which Hon Pule committed to, prior to the DOC and CBP signing the agreement.

6.7 The agreement entered into between CBP and Khemano subsequent to the latter's introduction to Ms Bouwer by Mr Themba Phiri of the DOC.

6.7.1 On 18 November 2011, a meeting was held at *Palazzo Hotel,* Monte Casino in Johannesburg between Ms Bouwer and Mr Phiri to discuss the ICT Indaba. It was was reported that at this meeting, Mr Phiri recommended and introduced Mr Mngqibisa and his company, Khemano to Ms Bouwer as a potential service provider who would assist CBP in organizing the hosting of the 2012 ICT Indaba.

6.7.2 According to Ms Bouwer, she did not know Mr Mngqibisa prior to that meeting and was not forewarned by Mr Phiri before calling Mr Mngqibisa to introduce him to her. The agreement was that CBP would subcontract some of its work relating to the coordination of the ICT Indaba to Khemano.

6.7.3 Subsequently, an agreement was entered into by CBP and Khemano with the former represented by Ms Bouwer and the latter by Mr Mngqibisa respectively. Worth noting is that, during the investigation, a copy of the agreement provided by Ms Bouwer was not dated and it was only signed by her. The document appeared to have been signed in 2011 as the year is recorded as such.

6.7.4 However, when Mr Mngqibisa was interviewed during the investigation, he provided a signed version of the agreement. There were no material differences on the two documents except that one was signed and perhaps the unsigned document was just a copy. Further thereto, it was worth noting that in Paragraph 2 of the agreement, CBP is acknowledged as the originators of the ICT Indaba.

6.7.5 The material terms of the agreement were that:

"i. CBP will have the right to be billed as the creators of the Indaba;

ii. CBP and Khemano will be billed as the producers of the Indaba;

iii. CBP and Khemano agree to honour the agreement with Hunta Live as the technical supplier to the Indaba on work set out and agreed upon by both CBP and Khemano;

iv. Khemano will appoint a suitable candidate to partner on services to be rendered at supplier level, wherein Hunta Live sits;

v. Khemano and CBP will jointly facilitate further efforts towards finalising a fundraising strategy for the Indaba for which both entities will fully participate;

vi. Prompt payment of the first annual fee from the lead sponsor will be facilitated by Khemano and thereafter both parties will endeavour to assist in efforts to attract investment into the project as set out in the agreement;

vii. Payment of the first annual fee from the lead sponsor shall be effected into the nominated bank account of CBP due to time constraints and resultant financial pressure. Further payments will be made into a soon to be opened joint account administered by both Khemano and CBP;

viii. The CBP offices in Cape Town will be the home to the Indaba in Cape Town while the Khemano offices will be the home in Johannesburg; and

ix. CBP, together with Khemano jointly agree to produce, organise, manage and host the annual ICT Indaba to a professional and world class standard and shall accordingly be responsible for all technical and operational issues."

6.8 Correspondence from Hon Bapela dated 5 October 2011 and Mr Phiri dated 7 May 2012 addressed to MTN, Vodacom and Telkom inviting them to participate in the upcoming 2012 ICT Indaba.

6.8.1 Amongst the documents submitted by Ms Bouwer were identical letters dated 5 October 2011 signed by Hon Bapela addressed to the GCEO's of MTN and Vodacom, Messrs Dabengwa and Peter Uys.

6.8.2 In the letters, Hon Bapela was respectively requesting the said companies to participate in the forthcoming ICT indaba to be held in South Africa, Cape Town International Convention Centre in June 2012. At the time that the letters were sent to the Executives referred to above, Hon Pule was not in the DOC but occupying a position of a Deputy Minister in the Presidency.

6.8.3 In his correspondence, Hon Bapela envisaged that *MTN Group Limited participation through sponsoring and buying of exhibition space would go a long way in achieving legacy programmes to be associated with the Africa ICT Indaba event.*

6.8.4 He stated in his correspondence that *the concept of the event is the trade mark of Carol Bouwer Production, the Department of Communication as government and policymaker, is positioned to provide credence to the Indaba, the company would project manage and drive the Africa ICT Indaba event.*

6.8.5 He concluded by advising the Executives that he looks forward to their participation at the event and informed them that invitations have also been extended to other Telecommunications operators and ICT Indaba.

6.8.6 Further to the invitations extended by Hon Bapela, Mr Themba Phiri and on behalf of the Minister of Communications, addressed correspondence to the same Executives dated 7 May 2012, inviting them to the Africa ICT Indaba, and International ICT conference ***"that will be hosted by the Government of South Africa and organized in partnership with the International Telecommunications Union.***

6.8.7 In paragraph 5 of his correspondence, Mr Phiri stated that "*The DOC and ITU take pleasure in inviting the Executives of these companies to partner with us, the ICT industry and civil society as we enter into a bold partnership that seeks to shape the development of the continent."* He confirmed in the correspondence written under the letterhead containing logos of the Ministry of Communication and International Telecommunications Union (ITU) that *South Africa is ready to host the ICT Indaba 2012 in June.*

6.8.8 It was noted from Mr Phiri's correspondence addressed to the Executives of the companies that there was no mention of the DOC's partnership with CBP or the 2012 ICT Indaba being the brainchild and innovation of that company.

6.8.9 During the Cabinet reshuffle announced by President Zuma in October 2011, Hon Bapela was redeployed to take up the portfolio of Deputy Minister in the Presidency thus leaving the preparations for the 2012 ICT Indaba that he was driving unfinished. Hon Pule was appointed during the same Cabinet reshuffle as Minister of

Communications following the sudden passing on of the late Minister Roy Padayachee.

6.9 The version of the Department of Communications

6.9.1 Evidence and information obtained from the DG of the DOC, Ms Rosey Sekese

6.9.1.1 Ms Rosey Sekese the DG of the DOC since June 2011 was interviewed on 26 April 2013, where she was asked and presented the DOC's version regarding the hosting of the 2012 ICT Indaba from the point when Ms Bouwer introduced the concept to the Department, and the sponsoring of same by the Department as well as the private sector telecommunications companies.

6.9.1.2 Miss Sekese stated that she was introduced to the process through the former Deputy Minister Bapela, who informed the DOC that Ms Bouwer contacted him, that Telkom was involved as a main sponsor of the ICT Indaba and that the event would benefit the DOC. It was the DOC's view that it did not have this kind of initiative where all critical stakeholders could come together and engage on issues of ICT at strategic level.

6.9.1.3 She further stated that Hon Bapela instructed the DOC to engage with Ms Bouwer and a task team was established which included Telkom and was headed by Dr Bandile Hadebe and Hon Bapela undertook to inform former Minister, the late Mr Roy Padayachee of the project with a view to soliciting political support of same.

6.9.1.4 Due to a cabinet reshuffle announced by President Zuma in October 2011 and after the sudden passing on of Minister Padayachee, Hon Pule was appointed to the portfolio of Minister of Communications. Ms Sekese indicated that she was approached by Mr Themba Phiri soon after the appointment of Hon Pule and advised her that Ms Bouwer owns intellectual property rights to the ICT Indaba concept and added that Hon Pule had issued instructions that the DOC enters into an agreement with CBP with a view to hosting the ICT Indaba. She said that during this period she was interacting with Mr Phiri on whom she principally relied.

6.9.1.5 According to Ms Sekese, Ms Bouwer was requested to submit a budget estimate and projections which was in the region of R120m. The DOC used an *unsolicited bid* procurement process as this was an initiative of Ms Bouwer and no tender advertisements were issued as she sold her idea to the DOC. They then entered into a Memorandum of Agreement (MOA) with CBP with a view to giving effect to Hon Pule's comment of the DOC to financially contribute R10m towards the hosting of the ICT Indaba.

6.9.1.6 Ms Sekese did not, however, regard the DOC's financial contribution as sponsorship but it was according to her, a partnership as the DOC saw the event as their own hence they dictated their terms to Ms Bouwer to enable the DOC to be the main driver of the event.

6.9.1.7 She reiterated that the DOC considered itself as the main driver of the event and that it wanted to take full control of same. She further confirmed that the DOC had no budget to host the event on its own and decided to join CBP realizing that it would be able to change the rules of the game as it saw fit.

6.9.1.8 When asked on reasons why the DOC shifted the accountability function in respect of the R10 million financial contribution, Ms Sekese stated that there was an understanding with CBP that it would, on conclusion of the event, furnish the DOC with audited financial statements indicating how the funds were utilized and that those were the terms agreed upon with Ms Bouwer.

6.9.1.9 On whether she did not consider it as having been irresponsible and reckless for the DOC to shift the role to account for taxpayers money to a private company, Ms Sekese felt this arrangement was because the DOC contributed just a fraction of the cost of hosting the event and that the bulk of the money was in anyway going to be coming from private sponsors who would be depositing their sponsorship funds directly into the CBP banking account.

6.9.1.10 Ms Sekese was further asked whether it was not in violation of Treasury Regulations for sponsorship funds for a government event to be deposited into a private company's banking account instead of being deposited in the revenue fund as is envisaged by Treasury Regulation 21 regulating how gifts, donations and sponsorships should be administered. She stated that it was her understanding but,

she would have to check again. However she also felt the time factor played a crucial role as everything had to be done on an urgent basis to ensure that the event which was initially planned for April could take place in June 2012.

6.9.1.11 She further stated that she was only involved at the initial stages of the planning and if she recalls well, she only signed the memorandum of agreement and thereafter, all her delegations and powers as the DG were taken by Hon Pule and Mr Phiri was the one who was running the show directly from the Minister's office.

6.9.1.12 Thereafter, emotions reduced Ms Sekese to tears as she recounted the treatment allegedly meted out at her by both the late Minister Padayachee and Minister Pule with whom she alleged to have had a frosty relationship which led to the latter unfairly suspending her until she had to seek the intervention of the Courts.

6.9.1.13 At the time of the interview, Ms Sekese had no delegations and neither did she have an employment contract as both Ministers did not sign her contracts. The interview could not at this stage continue any further and was accordingly terminated.

6.9.2 **Evidence and information obtained from Mr Themba Phiri of the DOC**

6.9.2.1 On 22 April 2013, correspondence was addressed to the Chief Director responsible for the ICT Policy and Strategy in the DOC, Mr Themba Phiri requesting him to provide the Public Protector with information in connection his role in the ICT Indaba processes.

6.9.2.2 Mr Phiri responded on 9 May 2013, and submitted a statement in which he detailed his and the DOC's participation in organizing the event. His response commenced with a background on the conceptualization of the ICT Indaba, stating that:

*"**The intellectual concept of an ICT Indaba is wholly owned, according to its Chairperson Ms Carol Bouwer, by Carol Bouwer Productions.** I would add that the concept of an ICT Indaba, as I understand it, is an initiative aimed at bringing together people (from both the public sector as well as the private sector) who are interested in information communication technology. Hence the acronym ''ICT Indaba''. My understanding of such an event is that it among other things aims at*

stakeholders arriving at agreement/s on policy matters in the sphere of information communications technology. I believe that it was recognized that unless the government was a party to the formulation of a policy none could be implemented.

From the point of view of the Department of Communications, I see the ICT Indaba, which was intended to take place annually, as a dynamic opportunity to achieve the participation of various entities having an interest in and who are able to contribute to issues relating to information communication technology. In my view an event such as the ICT Indaba would not only provide a forum where information communication technology issues are discussed by various stakeholders; it also encourages the private sector to participate in discussions concerning issues, including policy issues that affect them.

I formed the view that, already at the time when Honourable Mr Bapela was the Deputy Minister of the Department of Communications, the Government considered the ICT Indaba as a good opportunity to partner with CBP an event that would initiate interaction with other governments around information communication technology"

6.9.2.3 In connection with meetings held within the DOC in preparation for the hosting of the ICT Indaba, Mr Phiri stated that the first meeting was held as far back as March 2011. According to him, Ms Carol Bouwer met with Hon Bapela. Also present at the meeting were Mr Manelisi Mavuso from Telkom and Mr Bandile Hadebe at the time employed in the DOC as a Director for Planning and Foresight.

6.9.2.4 Mr Phiri was not present at this meeting, neither did he attend the meeting held in July 2011. However, he was made to believe that it was at this meeting that Ms Bouwer first introduced the idea of an ICT Indaba to the DOC. According to Mr Phiri, several other meetings took place between March and November 2011. He stated that the first time in which he was invited to a meeting was around July 2011

6.9.2.5 Regarding the meeting held in July 2011, Mr Phiri stated that he was briefly presented with the terms of reference for the Indaba by Mr Hadebe with a request for him to refine these and present them at a future meeting. On 4 August 2011 an EXCO meeting was held, chaired by Hon Bapela as is usual in the absence of the

Minister at the time, the late Hon Padayachee. It was at this meeting that the ICT Indaba was discussed very briefly. Mr Phiri said that the ICT Indaba served as an urgent item for inclusion on the agenda.

6.9.2.6 In connection with the appointment of CBP, Mr Phiri informed the Public Protector that the only official in the DOC that, in terms of the Departmental Supply Chain Management Policies of the DOC and the PFMA had the authority to appoint CBP was the accounting officer, namely the DG.

6.9.2.7 The Executive Authority in the DOC rests with the Minister who oversees the implementation of Departmental strategy.

6.9.2.8 Ms Bouwer, on behalf of CBP and the DG of the DOC, Ms Rosey Sekese signed the agreement. Prior thereto, senior officials of the DOC including Mr Phiri provided Hon Pule with a submission recommending that CBP be appointed to host the DOC's 2012 ICT Indaba.

6.9.2.9 According to Mr Phiri, the officials who were part of the DOC's team tasked with driving and facilitating the hosting of the 2012 ICT Indaba were himself, the DG, Dr Bandile Hadebe, and Dr Sam Vilakazi, the DDG responsible for supply chain compliance and payment processing. Dr Vilakazi had the authority to approve expenditure up to R10m. **Any expenditure above that amount required approval from the National Treasury.**

6.9.2.10 Mr Phiri also stated in his correspondence that in the meeting held on 4 August 2011, the DOC took a decision to support the hosting of the ICT Indaba with CBP as the sole owner and holder of the *Intellectual Property rights* to the concept. He further stated that, CBP's total budget for the event was R102 Million.

6.9.2.11 Regarding the Department's sponsorship of the event, Mr Phiri stated in his correspondence that the ***"Department decided to contribute R10 Million, which is slightly less than 10% of the total budget and proper approval for this contribution was obtained as is supported by correspondence forwarded to the National Treasury and Auditor General."*** He attached to his statement, copies of the correspondence he was referring to such as Ms Bouwer's letter of 25

November 2011 and Hon Pule's response thereto of 15 December 2011 where Hon Pule offered the R10m financial contribution as well as the contract signed by the DOC and CBP on 12 January 2012 giving effect to Hon. Pule's committal.

6.9.2.12 In addition to the above, Mr Phiri stated that there was 60 % saving on the estimated budget of R102 Million for the ICT Indaba and that sponsors indicated that they felt that their money was well spent.

6.9.2.13 In so far as his relationship with Mr Mngqibisa and his Khemano, how Mr Mngqibisa met with Ms Bouwer as well as the meeting held in November 2011 at *Palazzo Hotel* in Monte Casino, Mr Phiri detailed the events as follows:

"Insofar as Khemano and Mr Mngqibisa are concerned, ***the name Khemano was mentioned in the course of the Indaba being organized.*** *I came to meet Mr Mngqibisa in our activities as members of the ANC. This occurred in either 2001 or 2002. I do not consider us friends, but rather acquaintances who share a similar background. We have intermittently had contact with each other.*

Insofar as Ms Carol Bouwer is concerned, I first met her on the 11 November 2011 in Midrand. She had phoned me with a request for a meeting. I agreed to meet her. She told me for the past 6 months (i.e. between June-November 2011), no or little progress had been made by the Department in furthering the organization of the Indaba. I informed Mrs Bouwer that although there had been meetings on the subject, I was not aware of the originating concept documents. She told me that such documents had been presented to the Department and that she would give these to me some time in the future.

I had another meeting with Ms Bouwer. It was on the 18 November 2011 at Monte Casino. She gave me three concept documents; two regarding the ICT Indaba and one regarding Lindiwe TV production. She wanted advice on the latter. She was concerned that her concept ideas would be stolen and presented by someone else as his/her original idea. Based on my understanding of her concerns and my concern that if the ICT Indaba was to be held as had been decided in August 2011, time was running out I felt that the lack of progress had to be brought to the

Minister's attention. A submission was prepared and a briefing was made to the Minister.

At a subsequent meeting Ms Bouwer tabled all issues that concerned her, particularly the financial support from the Department. The venue for the ICT Indaba had by that time already been arranged by CBP so too was the IT system. ***She was concerned that if money was not immediately forthcoming the venue and IT system may be lost.***

Mr Mnqqibisa and I had chatted telephonically on 17 November 2011. As I recall it he suggested we should get together at some time. I planned to be in Fourways on Saturday (18 November 2011). I suggested that we could perhaps meet a Monte Casino at the Palazzo Hotel.

I have recollection that he called me on Saturday wanting to know where I was and also to establish whether I was still planning to be at Monte Casino on that day. I told him that I was going to be at Monte Casino later in the day and that we could meet up there. I had planned to meet Ms Bouwer there.

When Mr Mngqibisa arrived, we were discussing the founding concept documents of the ICT Indaba as well as other documents unrelated to the ICT Indaba, namely the Lindiwe TV document. Mr Mngqibisa did not join us immediately.

He left us to complete our discussions. He was seated at another table making telephone calls. ***Some time passed before he asked whether he could join us at our table for dinner.*** *We had no objection thereto****. I introduced Ms Bouwer to Mr Mnqqibisa*** *just as he was about to take his seat at the table.*

After Mr Mngqibisa joined us at the dinner table, Ms Bouwer and I did not speak about ICT Indaba or the Lindiwe TV production. After Ms Bouwer left Mr Mngqibisa and I chatted for a while. I then left."

6.9.2.14 He concluded his relationship with Mr Mngqibisa by stating that, *"Mr Phosane Mngqibisa as I have said is an acquaintance. I do not share a business relationship nor, a personal one. I have never been to Mr Mnqgibisa's house nor to any family*

events. I have seen him in various meetings of the African National Congress of which we have both been active since the early years. I do know though that he was involved with events related to the 2010 FIFA World Cup."

6.9.2.15 Mr Phiri further stated in his response that on 5 October 2011 Hon Bapela wrote letters to Telkom, Vodacom and MTN indicating that the DOC supported the hosting of the Indaba. He reiterated that the appointment of CBP was procedurally correct and it was fair and thus confirmed as well that Hon Pule also wrote letters inviting these companies to support the event. When questions were raised in the media, Hon Pule requested the AG to conduct an investigation and a clean audit report was issued by the AG.

6.9.2.16 Mr Phiri stated as well that the Indaba was not a sponsorship event as referred to in the correspondence to him from the Public Protector. According to him, a sponsorship event has to pass a different procedure and has a number of limitations attached thereto. Often, no written agreement is signed.

6.9.2.17 He averred that the partnership between the DOC and CBP in the hosting of the ICT Indaba was a concept event that belonged to CBP. A formal agreement was necessary if the Department was to be involved in such a partnership. The partnership was the result of an ***unsolicited bid*** **procurement** procedure which is entirely permissible. It is clearly outlined in the document procedure.

6.9.2.18 He supported his averment and reasons why the Department had to use an *unsolicited bid* procurement process by stating that the reasons why an *unsolicited bid* was entertained were:

"Because of the originality of the idea of the ICT indaba with its design and planning for implementation as well as it's social and developmental perspectives. Parties such as Telkom for instance were already agreeable to or supported the idea of such an Indaba. It would not have been sensible for the department to take a proposal of a company branded for collaboration with other companies to open tender.

The Department could have faced litigation by the organizers (CBP) if it took the concept and requested open bidding process. The concept itself was original from the presenters of the idea to the department. The concept since its trading period almost a year ago had not been challenged in the open market as a non-original concept for patent registration belonging to CBP. Based on the information presented to me as DDG and also to the Director-General and the Minister, I can say that the Department had no reason to disbelieve that the CBP was the originator of the idea. That the intellectual property was that of CBP is confirmed in letters as well as in an expert's view on this."

6.9.2.19 In his correspondence, Mr Phiri attached a copy of an undated letter which he received from CBP giving explanation regarding the Intellectual Property Registration for the ICT Indaba. In her letter, Ms Carol Bouwer of CBP addressed the concerns apparently raised by Mr Phiri and stated that:

"Further to our communication regarding the ICT Indaba IP, I hereby wish to confirm that the IP regime of SA does not recognize the copyright, trademark nor patent of the concept due to there being already an Indaba – in the form of the mining one

However, I wish to submit to you that we can confirm that CB Productions are the originators of the ICT Indaba. We are currently in the process of securing the patent for the ICT Indaba logo. …. We have secured the URL for the Indaba, which further attests to the availability of the ICT Indaba as a concept."

6.9.2.20 Another document attached to Mr Phiri' s statement which sought to explain the existence of CBP' s Intellectual Property Rights to the ICT Indaba was a letter from Spoor and Fisher patents, trade mark and copyright Attorneys dated 19 July 2012 addressed to Mr Phiri.

6.9.2.21 In the document, Spoor and Fisher explained the ownership of the concept by CBP as follows:

"We hereby confirm that we have applied for the registration of the trade mark ICT Indaba & Device in class 41 in the name of Carol Bouwer Designs CC t/a Carol Bouwer Productions. An application for resignation of the trade mark ICT Indaba

was also lodged by Ms Carol Bouwer on 5 March 2012 in the name of Mr Edward Bouwer.

6.9.2.22 Spoor & Fisher concluded their correspondence by informing Mr Phiri that *there appears to be no reason why our client cannot claim to be the true proprietor of and to have the exclusive right to use the trade mark ICT INDABA & its accompanying device.*

6.9.2.23 With regard to the DOC's failure to account for government funds amounting to R10 million injected into the hosting of the event, Mr Phiri stated that *"the Department paid the money into an account held in the name of Carol Bouwer's company. The Department relied on the financial accounting reports of CBP which were submitted as had been required".*

6.9.2.24 He then concluded his statement by stating that he was of the *considered view and opinion that the government has obtained value for money for its contribution. The information and experiences of more that 60 (sixty) local and international experts on the development of information communication technology was shared with those not only who attend the Indaba, but with greater South Africa through television and radio broadcasts. Information was also accessible on the website of the event. All of this bears testimony of the benefits that such an event can yield.*

6.9.3 **The Interview with Mr Phiri.**

6.9.3.1 Mr Phiri was interviewed on 9 May 2013. During the interview, he confirmed the information and documentary evidence that he had already given to me in writing. He stated that the concept was introduced to former Deputy Minister Obed Bapela by Ms Bouwer. In turn, Hon Bapela officially introduced the ICT Indaba concept to the DOC in a meeting held in March 2011 where a task team was established to coordinate it. He did not attend this particular meeting.

6.9.3.2 According to Mr Phiri, a further meeting in which he was present was convened in July 2011 where Hon Bapela again introduced this issue which he stated that he had found it important that the DOC should be hosting this big international event and possibly it could target specifically the African policy makers and business people.

6.9.3.3 He also stated that following the departure of Hon Bapela, in October 2011, he received a call from Ms Bouwer requesting an urgent meeting with a view to resuscitating the ICT Indaba and they met together with Dr Sam Vilakazi of the Department. In the meeting Ms Bouwer complained about the progress in respect of the event and Mr Phiri advised her that he will look into that.

6.9.3.4 In connection with the sponsorship of R10m by the DOC, Mr Phiri stated that there was nothing untoward and in fact it was not sponsorship but partnership. He stated further that the procurement of the services of CBP towards the event was in accordance with the PFMA and Treasury Regulations. He confirmed that the DOC paid the money directly into CBP account in violation of the provisions of the Treasury Regulation 21 which regulates granting and acceptance of gifts, donations and sponsorships. He further stated that the DOC did not take the responsibility and accountability for such funds as it was agreed that CBP would account for the manner in which the funds were utilized.

6.9.3.5 In connection with the meeting held on 18 November 2011 at *Palazzo Hotel* in Monte Casino, Mr Phiri stated that he had arranged a meeting with Ms Bouwer for that day at the said hotel. Earlier, he had an arrangement with Mr Mngqibisa for them to meet at the same venue on the same day. It was just a coincidence that he called the two meetings on the same day at the same venue. The initial plans were for two different meetings.

6.9.3.6 He stated that Mr Mngqibisa arrived whilst he was meeting with Ms Bouwer and he asked him to wait until they were finished. They then had dinner the three of them. He only introduced Mr Mngqibisa and never strong-armed Ms Bouwer to appoint him and Khemano to assist in the preparations for the hosting of the 2012 ICT Indaba.

6.9.3.7 Regarding his relationship with Mr Mngqibisa, Mr Phiri stated that they have known each other way back in the ranks and structures of the ANC and that he also met him socially. When asked about the relationship between Hon Pule and Mr Mngqibisa, Mr Phiri was non-committal and requested to remain silent in that regard. He stated that he knew them politically as members of the ANC and that they work together closely and this is how he understood their relationship.

6.9.3.8 Mr Phiri was asked whether there is a romantic relationship between Mr Mngqibisa and Hon Pule and whether Mr Mngqibisa was registered in the DOC's records as Hon Pule' s travel companion. He responded that Mr Mngqibisa is not registered in the Department's records as such.

6.9.3.9 When he was confronted with documentary evidence proving that Mr Mngqibisa was registered in the records of the Department as the Minister's companion and that they travelled to Mexico together in September 2009 and that Mr Phiri was also part of the delegation, he became extremely agitated and was literally shaking. He just refused to cooperate for fear of losing his job.

6.9.3.10 He did not want to make any comments and directed the Public Protector to Hon Pule and Mr Mngqibisa for that question.

6.10 The Provisional Report: Responses of the DOC represented by the DG, Ms Rosey Sekese, DDG, Mr Themba Phiri and Chief Director, Dr Sam Vilakazi

6.10.1 On 17 September 2013, I issued a provisional report on the investigation which was presented to the DOC in particular, the current Minister, Mr Yunus Carrim, the DG, Ms Sekese and Mr Themba Phiri. The Provisional report was distributed on the basis of confidentiality to provide the recipients with an opportunity to respond to its contents by 25 September 2013.

6.10.2 Following the release of the provisional report, I received correspondence from Malan Mohale Attorneys dated 25 September 2013 advising me that they are acting on behalf of the DOC as well as Hon Pule and requested an extension until 2 October 2013. After an extensive exchange of correspondence which is reported under the evidence obtained from Hon Pule, the DOC finally responded to the provisional report on 22 October 2013.

6.10.3 In their response, the DOC also commenced its response by citing statutes governing the functioning of the Public Protector in particular the Constitution and the Public Protector Act in so far as the provisions of such legislations in respect of the establishment and powers of the Public Protector; remedial action that the Public Protector is empowered to take; the investigative process to be adopted; the jurisdiction of the Public Protector to investigate or not to investigate; findings that

can be made by the Public Protector; the implicated person's right to cross-examine witnesses who appeared before the Public Protector; the right to inform an implicated person of the allegations against him or her; the additional powers as well as how statutes are to be interpreted thus quoting decided cases in that regard as precedents.

6.10.4 According to the DOC, I am not empowered to investigate any matter in respect of private individuals or non-public money or matters that do not involve public activities or public money. Having cited section 6 of the Public Protector Act, the Department argued that only a government employee can administer government affairs and stating that to allow the Public Protector to investigate allegations of maladministration in non-governmental matters would be to bestow on her powers that she otherwise does not have.

6.10.5 Incidentally, just like Hon Pule, the Department curiously cited the *Mail and Guardian* judgement but somehow arrived at the conclusion that state affairs are limited to acts of state employees and money that is still in the ownership of the state. It boldly argued that I only have a say when the money is still within the state and once in private hands, I cannot follow that money. The Department went further to state that private persons who benefited or might have benefited from such conduct are beyond my remit.

6.10.6 Another curious submission by the Department, shared with Hon Pule, is that I have no authority to make legal findings as I am only empowered by the Public Protector Act to investigate a matter and not necessarily adjudicate such matter. They are of the view that mine is only to establish and examine facts with a view to extracting the truth from those facts. According to the DOC, I am only empowered to disclose findings or points of view in respect of a matter that I investigated suggesting that conclusions of a legal nature are not in my domain since my investigations are aimed at establishing facts and as such my findings cannot be legal in nature and that I am not in law empowered to act as a judicial officer. Presumably that means I have no power to call something maladministration or an ethical violation because that would mean contrasting facts with rules.

6.10.7 Another intriguing submission by the DOC was a contention that I had no authority to make findings on witnesses' credibility nor probability. The Department did not indicate how am I to resolve the contrasting statements of witnesses or decide what probably happened.

6.10.8 The Department reiterated Hon Pule's contention that an implicated person has a right to cross-examine witnesses who appeared before me, an opportunity which was not provided to them; an implicated person is entitled to cross-examine a witness who implicated him/her in any way and that I am required to inform an implicated person of the allegations against him/her. Incidentally no request was made during the investigation for an opportunity to cross examine any witness, particularly at the time those accused of wrong doing were being interviewed.

6.10.9 In its submission, the DOC further argued what the requirements of a valid investigation are as cited in the SCA judgment in the matter between the *Public Protector and the Mail and Guardian* newspaper thus arguing that the Public Protector's exercise of powers during the investigation and in respect of her findings must be rationally connected to the purpose of its undertakings which is essentially to discover the truth. They went further and stated that the Public Protector and in the exercise of her functions must approach a matter with an open and enquiring mind and that my findings must be supported by clear factual evidence that serves as a corroboration.

6.10.10 In connection with the procurement of the CBP's services using an *unsolicited bid* process, the DOC disagreed with the Public Protector's finding that the said company was not appointed by the DOC to coordinate the Indaba. They stated that a contract was entered into between the DOC and CBP in respect of which the latter was to coordinate the Indaba. The DOC explained that the rationale behind the conclusion of the aforesaid agreement was due to the fact that CBP held the intellectual property rights to the Indaba and the DOC was of the view that the Indaba would advance South Africa's communication image. The DOC therefore entered into a partnership with CBP with a view to implementing the Indaba.

6.10.11 According to the DOC, I was incorrect in finding that the payment was not made in compliance with the law, arguing that the payment was a legal obligation that the DOC owed to CBP in terms of a valid *unsolicited bid*, which was correctly submitted

to and approved by the DOC. The DOC argued that the parties had entered into a contract in terms of the *unsolicited bid* process and thus supported their argument by making reference to the Practice Note No.11 of 2008/2009 which regulates the handling of *unsolicited bids* and suggested that the practice note is a guideline and not necessarily an instruction as provided by section 76 of the PFMA – in respect of *unsolicited bids*. They stated that Departments are not obliged to follow the letter of the Practice Note, but merely to endeavour to comply with it as far as is possible in the circumstances.

6.10.12 In applying the Practice Note, the DOC stated that the CBP proposal met the requirements for an unsolicited bid as it had proof that it was the sole supplier; the projections as to the financial benefits it holds for the DOC as well as its costs and the proposal had information in respect of the product and services which CBP was going to supply and owned the intellectual property right to the Indaba and that it could, therefore not be held without CBP's participation.

6.10.13 According to the DOC, it approved the *unsolicited bid* process in a correct manner after CBP approached it with the bid and internal DOC meetings were held in respect thereof. The DOC further stated that Ms Bouwer and CBP had submitted the documentation required in the case of the submission of an unsolicited bid. After considering the submitted documentation, the DOC decided to approve the bid and upon this decision, the Information, Society and Development Unit in the DOC approached the Supply Chain Management Unit ("SCMU") with a request that the Department Bid Adjudication Committee consider and approve the bid. SCMU advised that the bid was indeed an *unsolicited bid* and should be treated as such.

6.10.14 In its response, the DOC confirmed that on submission of a memorandum by Mr Phiri in his capacity as the project manager for the Indaba, the DG approved and signed the agreement with CBP which was also supported by Hon Pule in her official capacity as the Minister of Communications and Dr Sam Vilakazi as the DDG, gave the consent that is required by the PFMA for the payment of the R10m. A formal payment order was issued to CBP on 27 January 2012 and the R10m was paid on 30 January 2012.An Addendum to the Agreement was duly entered into by DOC and CBP. Ms Bouwer for and on behalf of CBP duly accepted in writing the terms and conditions of the said Addendum in a letter she addressed to the DG, Ms Rosey Sekese.

6.10.15 The DOC concluded that it felt obliged to pay the money in compliance with the said agreement and in compliance with the Practice Note. CBP's appointment was reported in writing to the AG and National Treasury. Later on, Hon Pule, as Minister, requested the AG to audit the transaction and the audits revealed that the R10m had not been irregular, nor in breach of the PFMA and as a result thereof, the DOC felt that the payment had been made lawfully.

6.10.16 With regard to the transfer of an amount of R6m from ABR bank account to Khemano's bank account the DOC held a view that I lack jurisdiction to investigate that transaction and that I misdirected myself in investigating the R6m transfer as neither sections 6(4)(a) nor 6(5) of the Public Protector Act provides that I may investigate a matter involving private persons, businesses or privately owned money.

6.10.17 According to the DOC, I can only investigate matters involving maladministration or malfeasance in state affairs or conduct by public officials and the amount of R6m came from MTN which is a private company and was paid to ABR which is also another private company that later transferred to another private entity which is Khemano represented by a private individual in the form of Mr Mngqibisa and there was no government or state department or officials involved in that transaction and neither was the money, public money.

6.10.18 In connection with my investigation, the DOC felt that my investigation approach was flawed in the sense that I failed to obtain affidavits or sworn statements or summon witnesses to give evidence and did not interview officials such as Dr Sam Vilakazi and other role-players such as the AG in connection with his investigation of the R10m payment and I failed to consider submissions by Hon Pule, Mr Phiri or Ms Sekese and that I unequivocally accepted the version presented by Ms Bouwer of CBP and that i did not afford these officials an opportunity to confront Ms Bouwer in connection with her evidence presented to me.

6.10.19 Despite having been given the provisional report to challenge any version, it considered untrue, the DOC concluded its response by stating that I misdirected myself by not calling persons who could have provided me with information and evidence in respect of the R10m payment; I made credibility findings despite that fact that I am not empowered to make legal findings; I did not provide the implicated

persons with an opportunity to cross-examine witnesses; I did not put Ms Bouwer's version of events to implicated persons despite my duty to do so; I did not comply with my general mandate to actively seek out the truth and I did not observe the provisions of the Public Protector Act and the duty imposed on me by the Supreme Court of Appeal in the *Mail & Guardian* judgment and that my provisional report which is the culmination of my shambolic investigation is fatally flawed.

6.10.20 The DOC ends with a submission that my provisional findings were patently incorrect and that both Hon Pule and the DOC's actions in the hosting of the 2012 ICT Indaba were lawful and concluded by stating that the remedial action proposed in respect of Mr Mngqibisa set out in paragraph 11.4.1 of the provisional report under the heading, *"MINISTER OF COMMUNICATIONS"* is without basis in law and as a consequence thereof, the DOC will not pursue same against Mr Mngqibisa.

6.10.21 My reply to the DOC response is dealt with under the section dealing with evaluation of the responses made by Hon Pule and the DOC.

6.11 Information and evidence obtained from the Auditor-General of South Africa

6.11.1 Shortly after I was asked to investigate, Hon Pule announced that she had requested the AG to investigate the allegations that surfaced in the media. I then approached the AG who confirmed having been asked by Hon Pule to investigate the allegations. We agreed with him that I would wait for his process to be concluded and then decide what my process would entail at the conclusion of his process. Various engagements were held with the AG in particular, Ms Alice Muller, the Corporate Executive of the Auditor-General.

6.11.2 On 23 April 2013 Ms Muller was requested to provide me with a report on the outcome of the AG's investigation conducted at the instance and request of Hon Pule in connection with the payment of R10m by the DOC in respect of the hosting of the 2012 ICT Indaba.

6.11.3 Ms Muller responded on 25 April 2013 and informed me that the AG neither compiled nor issued a report on the matter as it was reviewed as part of the AG's regulatory audit. She further informed me that during their investigation, they obtained the following evidence/verbal communication from the DOC;

6.11.3.1 The original communication for the ICT Indaba was between Hon Bapela and Ms Bouwer before the appointment of the current Minister of Communications-documentation dated June 2010 was provided to this extend.

6.11.3.2 Evidence was provided where he considered the proposal and discussed the concept with the DOC, it was clearly indicated that this would have been the first ICT Indaba and that it was pitched at an international level.

6.11.3.3 The relationship with Ms Bouwer was formalized via a Memorandum of Understanding (MOU)

6.11.3.4 As for the DOC's involvement, it was limited to contributing to the event and that the DOC will not host the event but will only contribute to cover certain costs.

6.11.3.5 The MOU was signed on 12 January 2012. In the signed MOU it clearly stated that Ms Bouwer had the intellectual property rights to the ICT Indaba. It was noted that Ms Bouwer signed the MOU stating this as a fact. During the AG's audit this fact was questioned and the AG recommended that the DOC engage with Ms Bouwer on the misrepresentation and take required action. The fact that she claimed to have intellectual property rights indicated that she is the sole provider of the service.

6.11.3.6 The factual correctness regarding the intellectual property was not questioned by the DOC as per DG's comment, that the Indaba *"ictindaba.com"* was not challenged either prior to or post the event.

6.11.3.7 The AG he did not have the mandate to audit Ms Bouwer (service provider) and to verify the legitimacy of the expenses incurred. He was advised that the DOC would disclose this matter clearly and transparently in the annual report of the Department.

6.11.4 Ms Muller and in her correspondence also confirmed that the matter was discussed with Hon Pule who commented as follows;

6.11.4.1 She found the ICT Indaba proposal in the DOC when she was appointed;

6.11.4.2 She did encourage other entities to support the ICT Indaba and that she also sought support for the event internationally due to its importance to the country.

6.11.5 According to the AG, the amount paid for the ICT Indaba by the DOC was disclosed in the financial statements to draw the reader's attention to the fact that included in the expenditure for the department for the 2011/2012 year is an amount of R10m paid for the Indaba. The AG did not specifically mention the fact that the AGSA did an investigation in the report as the review was conducted as part of the regulatory audit.

6.11.6 The AG also stated that the DOC did not provide them with the letter from Hon Pule addressed to Ms Carol Bouwer dated 15 December 2011 wherein Hon Pule committed her Department to financially contribute an amount of R10m towards the hosting of the ICT Indaba. She stated that the DOC only provided them with the MOU signed on 12 January 2012 and the AG's audit of the R10m was therefore based on the contents of the MOU. They only found out late that there was a commitment which preceded the signing of the MOU.

6.11.7 Ms Muller concluded her correspondence by stating that the conversation with Hon Pule covered the fact that the AG will not focus on any possible impropriety by her and that the scope of the AG would be limited to the processes followed by the Department as the Public Protector had the mandate to review all possible ethical breaches.

6.11.8 She further stated that following the release of the Public Protector's report and based on the outcomes of the AG's report, the AGSA will ensure that appropriate disclosure is made on the 2013/2014 annual report of the DOC.

6.11.9 The Public Protector also noticed from the 2012/2013 annual report of the DOC that there payment of R10m was not reported in either the section dealing with the AG's audit report or the section dealing with the DG's report. The only reference made of the 2012 ICT Indaba was on page 158 where it was reported under the heading, "**Information, Communication and Technology Indaba"** that:

> "The Department hosted the inaugural ICT Indaba from the 4th to 7th of June 2012 at the Cape Town International Convention Centre (CTICC). The workshop was hosted by DoC, partnering with the International Telecommunications Union (ITU).

6.11.10 Upon receiving the Auditor General's report and establishing that due to remit limitations, the Auditor General had not covered certain aspects of the impugned ICT Indaba deal, I was able to scope my work and commence with the investigation.

6.12 Evidence and information obtained from the other sponsors such as MTN, Vodacom and Telkom

6.12.1 Background information pertaining to the sponsorship provided by MTN

6.12.1.1 On 14 February 2013, a letter was addressed to the CEO of MTN Group, Mr Sifiso Dabengwa, requesting an explanation on the involvement and the sponsorship by that company towards the hosting of the 2012 ICT Indaba as well as the allegations in connection with the diversion of MTN R15m sponsorship paid into ABR account instead of CBP accounts as advised by the DOC.

6.12.1.2 MTN duly responded on 5 April 2013 and their submission principally contained the following:

6.12.1.2.1 An internal Investigation report entitled "*Report on Full Investigation into alleged Sponsorship Maladministration"* compiled by MTN SA Forensic Services;

6.12.1.2.2 A report prepared by Werksmans Attorneys dated 1 November 2012 and entitled, "*Mobile Telephone Networks ("MTN"): Final Report of investigation into the circumstances surrounding MTN's sponsorship of the ICT Indaba"*;

6.12.1.2.3 An unsigned sponsorship agreement ostensibly entered between MTN and ABR;

6.12.1.2.4 Professional Services Consulting Agreement entered into by and between ABR and Khemano;

6.12.1.2.5 A statement submitted to the Parliamentary Joint Committee on Ethics and Members' Interests dated 6 February 2013; and

6.12.1.2.6 Proof of payment of R15m sponsorship by MTN to ABR bank account on 25 May 2012.

6.12.1.2.7 Various other documents were submitted by MTN to the Public Protector in support of their submissions.

6.12.2 **A report on a full investigation into alleged sponsorship maladministration" compiled by MTN SA Forensic Services**

6.12.2.1 Amongst the documents submitted by MTN to the Public Protector was a report entitled, "*Report on Full Investigation into alleged Sponsorship Maladministration"* compiled by MTN SA Forensic Services under reference number SA 09/06/2012 dated 26 July 2012.

6.12.2.2 According to MTN, the report was commissioned in response to media reports of impropriety in connection with ICT Indaba sponsorship by MTN of R15 million. The report concludes that there was no wrongdoing and that MTN got value for money.

6.12.2.3 What is worth mentioning is the fact that this agreement reveals what appears to be an electronic signature of Ms Sheryl Manchisi in her capacity as ICT Indaba Organiser and on behalf of ABR ostensibly signed in Johannesburg on 30 April 2012. There is no signature of a representative of the sponsor which would have been expected to be MTN.

6.12.2.4 The purpose of the agreement was to define the terms and conditions for sponsoring the parties in the event and the organizer was tasked with an obligation of affording MTN the status of a *Diamond Partner* at the event. It was an express term of the agreement that MTN would make a financial support towards hosting the event for an amount of R15 million that would be paid in full on 11 May 2012.

6.12.2.5 According to the agreement, the sponsorship amount of R15 million was to be paid into an ***ICT Indaba Account.*** However despite the agreement to pay into that banking account, MTN and in violation of the agreement paid their sponsorship contribution on 25 May 2012 into **ABR Consulting bank account, which was not the nominated bank account.**

6.12.2.6 It has further been noted from the MTN report that on 5 May 2012, CBP submitted two invoices for payment by MTN. One invoice was for R15 million and the other one was for R17.1 million representing the former amount with VAT.

6.12.2.7 On 17 May 2012 and despite the invoice submitted by CBP, ABR also submitted two invoices of R15 million each which were submitted under the letterheads of ABR with a description, ***MTN ICT Indaba sponsorship*** **with an amount of R13 157 894.74 and VAT amounting to R1 842 105.26 totalling R15 million**, all inclusive of VAT. The banking account where the money had to be deposited was in the name of ***ABR Consulting.***

6.12.2.8 In the end, the forensic investigation came to *inter alia* the following findings and/or conclusions;

6.12.2.8.1 *At the request of the DoC, MTN agreed to sponsor the ICT Indaba, and become a Diamond Sponsor, for R15million*

6.12.2.8.2 *The DoC advised MTN that Carol Bouwer Production was the event organizer;*

6.12.2.8.3 *On 3rd May 2012, MTN entered into a sponsorship agreement with ABR, contrary to DoC's advice that Bouwer was the organizer;*

6.12.2.8.4 *There is no documentation or record to support the claim that Bouwer's documentation did not have a valid tax clearance certificate, as it was not received by MTN;*

6.12.3 **A report on an investigation commissioned by MTN and prepared by Werksmans Attorneys in connection with an investigation into circumstances surrounding MTN's sponsorship of R15 million towards the hosting of the 2012 ICT Indaba.**

6.12.3.1 MTN mandated Werksmans Attorneys to investigate the alleged misspending of the R15 million sponsorship provided by MTN towards the ICT Indaba. The scope and objective of the investigation was to:

6.12.3.1.1 *Establish whether the R15 million sponsorship was properly spent and if not, who should be held accountable and the prospects of recovering any of the misspent monies;*

6.12.3.1.2 *Establish whether MTN was involved in or party to any acts of corruption surrounding the ICT Indaba; and*

6.12.3.1.3 *Identify any other issues that arose during the course of the investigation.*

6.12.3.2 Werksmans Attorneys prepared and provided MTN with a Final Report on the outcome of the investigation on 1 November 2012. Werksmans Attorneys made the following findings:

6.12.3.2.1 *That there was no signed contract between MTN and any of the other entities involved in the ICT Indaba, being CBP, Khemano Productions and ABR Consulting. The draft contract between MTN and ABR Consulting was never concluded and MTN paid an amount of R15 million with no contract being in place.*

6.12.3.2.2 *The ICT Indaba was said to be the brainchild of Ms Bouwer and was introduced to the former Deputy Minister of Communications, Mr Bapela. During this period Mr Bapela introduced Ms Bouwer to MTN as the organiser of the ICT Indaba and MTN was invited to become one of the sponsors.*

6.12.3.2.3 *During an interview with Ms Bouwer, she acknowledged that the ICT Indaba was her idea and approached the Department of Communications in order to sell the idea to them.*

6.12.3.2.4 *The version of Ms Bouwer regarding the payment of the R15 million by MTN to ABR Consulting differed from that of the other role players. Ms Bouwer indicated that she was unaware of the payment until the reports in the media came to light. Ms Bouwer was of the opinion that MTN should explain why they paid the R15 million to ABR Consulting and apologise to her for effecting payment to the wrong party.*

6.12.3.2.5 *During an interview with Ms Olsen, she stated that she was surprised to learn that Ms Bouwer had no knowledge of the R15 million being paid to ABR. She stated that MTN required Ms Bouwer to furnish three years audited financial statements in order to be loaded onto the MTN Database of Suppliers and Ms Bouwer refused. As such, it was clear that Ms Bouwer would not be loaded as a*

supplier and the ICT Committee, consisting of Ms Bouwer, Ms Olsen and Mr Mngqibisa, made a joint decision that MTN would contract with ABR Consulting. ABR Consulting furnished MTN with three years audited financial statements as an alternative to the Tax Clearance Certificate and as a result was loaded onto the MTN Database of Suppliers.

6.12.3.2.6 *Ms Olsen understood that all payments would be made to Ms Bouwer, but due to the difficulties experienced with MTN and the procurement requirements, it was agreed that MTN would contract with ABR Consulting and therefore the sponsorship payment was made to ABR Consulting.*

6.12.3.2.7 *Ms Olsen provided Werksmans Attorneys with an unsatisfactory payment schedule, as most of the numbers (amounts) reflected was rounded amounts.*

6.12.3.2.8 *It was found that the arrangements surrounding the ICT Indaba did not contain sufficient and proper controls to ensure diligent financial accounting, but it was further found that the R15 million sponsored by MTN was properly spent.*

6.12.3.2.9 *Mr Mngqibisa confirmed in an interview that Ms Bouwer approached him during 2010 with the idea of an ICT Indaba, which was in a concept stage and invited him to get involved.He was brought on board by Ms Bouwer after she was awarded the contract by the Department of Communications.*

6.12.3.2.10 *Mr Mngqibisa confirmed that R6 million from the R15 million sponsored by MTN was paid to him as a management fee. Mr Mngqibisa stated that an Indaba of such a magnitude does not lend itself to payment on an hourly basis. However, in a document provided to Werksmans Attorneys and listed as "Flow of Funds between ABR Consulting and Khemano Productions" dated 12 October 2012, Mr Mngqibisa sets out a schedule of payments making up the R6 million. In an explanatory note to the schedule, Mr Mngqibisa noted that "The above amounts were paid to Khemano Productions as progress payments for project management fees based on time sheets and at charge-out rates at the date of the payments."*

6.12.3.2.11 *Mr Mngqibisa further stated that a normal fee for a project of this nature would be 20% of the value of the project and the budget provided for a profit.*

6.12.3.2.12 *Mr Mngqibisa confirmed having provided MTN with a full report after conclusion of the ICT Indaba and provided a copy of same to Werksmans Attorneys. Werksmans Attorneys found the full report from Mr Mngqibisa to be more in the form of promotional material, as it does not address the expenditure of sponsorship money and return on investment. The full report further does not address the financial aspects of the ICT Indaba.*

6.12.3.3 **Werksmans Attorneys concluded that:**

6.12.3.3.1 *Whilst the ICT Indaba was by all counts a success, proper controls around the sponsorship and expenditure were not instituted nor enforced; and*

6.12.3.3.2 *The MTN sponsorship of R15 million was properly spent and no need to consider recovery of any monies or actions against any outside parties.*

6.12.3.4 *From the documents provided by MTN, it is evident that Brian Kahn Incorporated Attorneys (Bryan Kahn Incorporated), on behalf of ABR corresponded with Werksmans Attorneys. The correspondence dated 10 September 2012 was in respect of the R15 million sponsorship payments received from MTN into the account of ABR Consulting on behalf of CBP for the ICT Indaba.*

6.12.3.5 *The correspondence from Brian Kahn Incorporated made reference to an amount of R7 million that was transferred to Khemano Productions who then transferred it to their Investment account, Matlo Investments. R1 million was then transferred back to the ICT Indaba account. R6 million was stated as paid as part of Khemano Production's fees.*

6.12.3.6 *The correspondence further referred to a schedule of payments paid from the R15 million received from MTN. The salient details regarding transfers are as follows:*

Date	Description	ABR (ICT Indaba) Bank Account		ABR Investment Account
		Payment	Receipt	
25 May 2012	MTN	-	R15 000 000.00	-
30 May 2012	Transfer	-	-	R14 000 000.00
1 June 2012	Supplier Payments	-	-	-R5 000 000.00
5 June 2012	Internal Transfer	-	-	-R5 000 000.00
5 June 2012	Supplier Payments	R2 000 000.00	-	-
5 June 2012	Supplier Payments	R3 000 000.00	-	-
6 June 2012	Supplier Payments		-	-R3 000 000.00
6 June 2012	Supplier Payments	R2 000 000.00	-	-
Totals		**R7 000 000.00**	**R15 000 000.00**	**R1 000 000.00**

6.12.4 **Professional Services Consulting Agreement entered into by and between ABR Consulting CC and Khemano Productions**

6.12.4.1 MTN provided a copy of a Professional Services Consulting Agreement - Contract number: ICT/2012/01 between ABR and Khemano. The Agreement was signed by both parties (being Ms Manchisi and Mr Mngqibisa) on 20 February 2012. The salient details contained in the Agreement are as follows:

6.12.4.1.1 *The Agreement reflects the contract start date as 1 February 2012 and the contract end date as 30 June 2012.*

6.12.4.1.2 *A rate of R180, 000.00 monthly.*

6.12.4.1.3 *ABR assumes the full support of Khemano staff and management in this project.*

6.12.4.2 The MTN response indicated that ABR submitted a proposal addressed to Ms Primrose Moloantoa (Ms Moloantoa) dated 2 February 2012 and purportedly signed by Ms Manchisi, aka Ms Manchisi-Olsen.

6.12.4.3

6.12.4.4 In this proposal ABR referred to their willingness to join Khemano as a supplier and partner to see the achievement of the event. As event Project Managers, ABR would ensure that services are rendered *via* sub-contractors and short term project staff under the supervision of ABR.

6.12.5 **Payment of sponsorship by MTN of a sum of R15 Million paid to ABR bank account on 25 May 2012**

6.12.5.1 According to the information and evidence obtained from MTN, the initial sponsorship was fixed at R25 million and the DOC at the time indicated that Telkom had shown interest in being the lead sponsor. During the discussions MTN agreed in principal to sponsor the initiative.

6.12.5.2 MTN stated that various ways of financing were explored and at the end the sponsorship fee was determined at R15 million which would afford MTN the category of lead sponsor and a Diamond status. Senior Executives of MTN were assigned as the Accountable Executives the responsibility for the execution of the ICT Indaba 2012.

6.12.5.3 The General Manager responsible for the execution and facilitation of the ICT Indaba was authorized to sign the motivation as a requester with a view to opening New Vendor in the name of ABR Consulting with Vendor number 664472. The Motivation is not dated and in respect of Order number 239074 with the description 'ICT Indaba – Invoice 00133 – Inaugural ICT Indaba Cape Town' in the amount of R13, 157,894.72 with the date required as 25 May 2012.ABR Consulting provided MTN with a letter from FNB dated 15 May 2012 as confirmation of ABR's bank account detail as **ABR Consulting t/a ICT Indaba.**

6.12.5.4 Despite ABR having invoiced MTN, it was confirmed that on 5 May 2012 Ms Bouwer also invoiced them for payment of the sponsorship in the amount of R17, 1 million (inclusive of VAT). The Tax Invoice was in the name of CBP with invoice number ICT 2012/0001 and dated 5 May 2012. It is evident from the invoice that the amount is derived by adding VAT to the amount of R15m. The account detail on the Tax Invoice is reflected as **Carol Bouwer Productions.**

6.12.5.5 On the same date, MTN received a second invoice from Ms Bouwer in respect of the same sponsorship thus requesting payment thereof in the amount of R15 million (inclusive of VAT). The Tax Invoice was also in the name of CBP with invoice number ICT 2012/0001 and dated 5 May 2012. It contained the same banking details as stated above.

6.12.5.6 MTN confirmed that a third invoice was submitted for payment of the sponsorship fee in the amount of R15 million (inclusive of VAT). The Tax Invoice was in the name of **ICT Indaba 2012 (including banking details for ICT Indaba)** with invoice number 00133 and dated 17 May 2012.

6.12.5.7 A fourth invoice was submitted to MTN for payment in the same amount of R15 million (inclusive of VAT). The Tax Invoice was in the name of **ABR Consulting** (including banking details) with invoice number 514 and dated 17 May 2012.The VAT Registration numbers on both the Tax Invoices from ICT Indaba and ABR Consulting (with different bank account numbers) are the same.MTN effected payment on 25 May 2012 in the amount of R15 million from the MTN account to ABR Consulting t/a ICT Indaba with reference 2012146004.

6.12.6 **The bank statements for Khemano**

6.12.6.1 The bank statements of Khemano for the period 29 February 2012 to 31 May 2012 reflect several credit payments/transfers to this account with the statement description as 'Internet Transfer From – Supplier Payment'.

6.12.6.2 The bank statements (for the period provided, being 29 February 2012 to 31 May 2012) does not reflect any significant payments from the CBP or the ICT Indaba bank accounts in respect of Event Management fees, i.e. a payment or transfer in the amount of R6 million.

6.12.6.3 As alluded to in the response from MTN in respect of correspondence between Brian Kahn Incorporated Attorneys and Werksmans Attorneys, it is confirmed that ABR Consulting paid an amount of R6 million to Khemano as part of fees. This was supported by a Khemano invoice No ICT08 dated 6 August 2012 in the amount of R6 069 157.08.

6.12.6.4 It was noted from the invoice that Khemano claimed an amount of R2 053 866.00 in respect of services rendered by Primrose Moloantoa and a further amount of R150 000 for A-List Investments, a company owned by Ms Moloantoa. This is despite the fact that during the investigation, Ms Moloantoa denied having received a payment of R2 053 866.00 as invoiced by Khemano. Instead, she only received R150 000 for services rendered in her capacity as Project Director of Khemano. She stated that A-List Investments never played a role in organizing the ICT Indaba as the company was dormant. Mr Mngqibisa could not explain reasons why he claimed for services that were not rendered and for an entity that is dormant.

6.12.7 **Information and evidence obtained from Vodacom**

6.12.8 Vodacom also responded to enquiries made by the Public Protector during the investigation in connection with the amount and circumstances surrounding that entity's sponsorship of the ICT Indaba.

6.12.9 Mr Thomas Jason Beale (Mr Beale), the Chief Ethics and Compliance Officer, of Vodacom Group responded on 26 February 2013 and furnished the Public Protector with a copy of an affidavit dated 4 March 2013 which was initially provided to the Parliament's Joint Committee on Ethics and Members' Interests. Ethics Committee. In his response, Mr Beale stated that Vodacom receives requests for sponsorships from government institutions in three basic contexts:

6.12.9.1 Government Relations;

6.12.9.2 Commercial Relations; and

6.12.9.3 Corporate Social Investments.

6.12.10 He stated that the former Deputy Minister of Communications, Hon Obed Bapela requested and had a meeting with the former CEO of Vodacom, Mr Pieter Uys on 18 August 2011 to discuss the ICT Indaba. Mr Bapela was accompanied by Ms Carol Bouwer. The meeting was followed up by a formal letter dated 5 October 2011 requesting Vodacom's support for the ICT Indaba noting that:

"The concept of the event is the trade mark of Carol Bouwer Productions. The Department of Communications as government and policy maker is positioned to provide credence to the Indaba, the company would project manage and drive the Africa ICT Indaba production."

6.12.11 On 2 September 2011, a detailed presentation on the ICT Indaba and financial benefits to Vodacom was made by CBP at Vodacom precinct. In November 2011, President Zuma announced a cabinet reshuffle which included changes to the Ministry of Communications. Vodacom required the new Ministry to confirm the Ministry's/Department's support for the ICT Indaba and partnering with CBP in hosting the event.

6.12.12 Hon Pule confirmed the latter in a letter dated 15 December 2011. The letter indicated that the *Department would contribute R10 million and Ms Carol Bouwer was given a mandate to speak to potential sponsors for the additional resources*.

6.12.13 The ICT Indaba team convened a briefing meeting at the CELL C offices where Vodacom and the other companies (representatives of the industry) in principle indicated their support for the ICT Indaba. A letter of sponsorship was prepared and submitted to Ms Bouwer, informing her that Vodacom would sponsor the ICT Indaba to the value of R5 million inclusive of VAT.

6.12.14 Vodacom indicated that no-one in the team felt pressured to make any donation towards the ICT Indaba.

6.12.15 Subsequent to this letter, consultations between the CEO's and other executives of Vodacom, MTN, Telkom and other industry players in respect of the proposed funding levels took place. Vodacom eventually settled on a R5 million (Gold)

sponsorship and the sponsorship request was approved by the GCEO on the advice of the Group Chief Legal and Regulatory Officer.

6.12.16 Vodacom drafted correspondence dated 15 May 2012 to Ms Bouwer regarding the Inaugural ICT Indaba 2012 to indicate their participation from 4-7 June 2012 in Cape Town. Due to the fact that the event was hosted by the DOC, *Vodacom recorded their sponsorship as a "donation" to the State Treasury in compliance with the Treasury Regulations issued under the Public Finance Management Act of 1999 as amended.*

6.12.17 Vodacom entered into a Sponsorship Agreement with CBP setting out the terms and conditions for sponsoring an amount of R5 million towards the ICT Indaba event. The Sponsorship Agreement was purportedly signed by the Managing Director of Vodacom, Mr Sipho Maseko (the MD) and Ms Carol Bouwer from CBP.

6.12.18 CBP submitted a Tax Invoice with invoice number ICT 2012/0002 to Vodacom in the amount of R5 million (Incl. of VAT) dated 30 May 2012 and Vodacom Group Limited subsequently made the payment on 1 June 2012.

6.12.19 Vodacom's Ethics and Compliance team and other executives involved in the ICT Indaba and sponsorship matter initiated an internal review on 20 June 2012 of the engagement of Ms Bouwer's company to establish whether due diligence and contracting processes were followed. The review by Vodacom revealed that due diligence and contracting processes were followed.

6.12.20 The Vodacom internal reviews and external enquiries continued for a period of approximately four months. Vodacom was reasonably satisfied that the R5 million sponsorship had been expended by Ms Bouwer's company for legitimate purposes associated with the management and execution of the ICT Indaba event.

6.12.21 In conclusion, Mr Beale stated that Vodacom had noted with concern that Mr Mngqibisa's company received R6 million in management fees, particularly when viewed against the fact that CBP and ABR Consulting had received significant management fees.

6.12.22 **Information and the evidence obtained from Telkom in connection with their sponsorship of the event**

6.12.23 Ms Nombulelo Moholi (Ms Moholi), the Group Chief Executive Officer, Telkom SA SOC Limited at the time responded in writing dated 8 March 2013 to a request for information dated 14 February 2013.

6.12.24 She stated that Minister Dina Pule addressed a letter to her dated 15 December 2011, regarding the endorsement of the ICT Indaba. The letter contained the following detail:

"That the Department of Communications entered into a partnership agreement with CBP regarding the concept of hosting the first ever ICT Indaba in South Africa;

The DOC views the ICT Indaba as strategic vehicle for advancing the agenda of government of accelerating development through ICT's and is therefore committed, both financially and administratively to ensure a great success of the ICT Indaba; and

The DOC invited Telkom to co-operate with the DOC and CBP, together with other stakeholders in ensuring that the ICT Indaba is a success"

6.12.25 Ms Moholi stated that Telkom SA entered into contract with CBP in respect of sponsorship in the amount of R5 million towards the hosting of the ICT Indaba event. The contract was entered into and duly signed by both parties on 10 May 2012.

6.12.26 The contract indicated that Telkom undertook to be a Gold sponsor of the ICT Indaba at the tune of R5 million, which amount would be paid over to CBP within three (3) days of signing the contract and into a nominated bank account of CBP.

6.12.27 Telkom, via e-mail correspondence by Ms Mavuso to Ms Bouwer, dated 29 March 2012, stated that Telkom would only sponsor the ICT Indaba to a tune of 50% of the offered sponsorship and would only commit for a period of one year as opposed to the originally proposed period.

6.12.28 Telkom was invoiced by CBP for the ICT Indaba 2012 in the amount of R5.7 million (Inclusive of VAT), with Invoice number Telk002012001 and dated 10 May 2012. A handwritten note on the Tax Invoice reflected the Vendor number as 309295. The bank account details provided was for **Carol Bouwer Productions.** Telkom effected payment on 29 May 2012 in the amount of R5.7 million to CBP.

6.12.29 Telkom provided the Public Protector with an Affidavit of Ms Moholi dated 10 December 2012. The Affidavit appears to contain a response to two (2) questions raised by the Parliament's Joint Committee on Ethics and Members' Interests. The response from Ms Moholi on these questions was as follow:

6.12.30 Question 1: Did you call any of the sponsors or any other person to express reservations on Mr Mngqibisa's involvement in the ICT Indaba?

6.12.30.1 Ms Moholi had no personal knowledge surrounding the ICT Indaba prior to the media attention (Sunday Times article on 17 June 2012) and has never met Mr Mngqibisa or had personal dealings with him. She has no knowledge of the alleged relationship between Mr Mngqibisa and Hon Pule.

6.12.30.2 Ms Moholi confirmed telephonically contacting Mr Uys from Vodacom on 15 June 2012 in connection with the allegations surrounding the ICT Indaba and the involvement of Mr Mngqibisa.

6.12.30.3 The call came as a result of an alert from Telkom's Corporate Communications department about the upcoming article to be published in the Sunday Times on the ensuing Sunday. This after a Journalist, Mr Rob Rose who authored the article in the Sunday Times, contacted Telkom's Corporate Communications.

6.12.30.4 The contact with Mr Uys was merely because of the questions posed regarding, amongst others, the sponsors of the ICT Indaba.

6.12.31 Question 2: Do you have any information pertaining to the allegations related to the Committee's investigation?

6.12.31.1 Ms Moholi has no knowledge of the extent or ambit of neither the Committee's investigations nor the specific allegations related the ICT Indaba and Mr Mngqibisa.

6.13 The evidence and information obtained in connection with international travel and accommodation for Hon Pule whilst she was Deputy and Minister responsible for the DOC.

6.13.1 **Travel with Flair (TWF), the DOC's official travel agency in connection with reservations made for the international travel and accommodation for Hon Pule.**

6.13.1.1 On 14 February 2013, the Public Protector addressed correspondence to the Managing Director of TWF, Mr Robert Wilke requesting information relating to travel and accommodation reservations made by that travel agency for the Ministry in the DOC and Presidency where Hon Pule served in her capacities as Minister and Deputy Minister respectively.

6.13.1.2 TWF responded to the Public Protector and provided her with the information and attached copies of contracts entered into between them and the two respective Departments.

6.13.1.3 According to the information provided by TWF, it was initially appointed as official travel agency for the Presidency of the Republic of South Africa under contract number PT06/04/2007 for the period October 2007 to 31 October 2010 when the contract expired.

6.13.1.4 On 4 November 2010, the DOC entered into a service level agreement with TWF for the period 1 December 2010 to 31 November 2012 for that company to render travel and accommodation services for the DOC for a period of two years subject to review of performance bi-annually. This contract was signed by the DOC on 26 October 2010 and TWF signed same on 4 November 2010 respectively.

6.13.1.5 The contract was extended for a period of six months and was signed by the DOC on 4 December 2012 and TWF in their capacity as the appointed service provider signed on 5 December 2012. At the time of the investigation, this contract was still in existence.

6.13.2 **Hon Pule's official visit to Mexico during the period 2 to 4 September 2009.**

6.13.2.1 On 2 September 2009 and whilst occupying the position of Deputy Minister for the DOC, Hon Pule visited Monterrey in Mexico. The purpose of the visit was to attend the 2009 World Summit Awards Winners Event to be held on 2 to 4 September 2009.

6.13.2.2 Deputy Minister Pule at the time was accompanied by Mr Mngqibisa, Mr Phiri of the Department as well as her Executive Secretary, Ms Rebotile Zondo. According to an internal departmental communication prepared by Ms Zondo dated 18 August 2009 and addressed to the former Acting Chief Operations Officer, Ms Basani Baloyi, Ms Zondo wrote that:

"Deputy Minister Pule has nominated her Spouse Mr Phosane Mngqibisa to accompany her on an official visit to Mexico to attend the WSA 2009 winners events (sic) in Mexico on 2 to 4 September 2009"

6.13.2.3 In her correspondence Ms Zondo made reference to Chapters 3 and 6 of the Ministerial Handbook and her request was approved by Ms Baloyi on 24 August 2009.

6.13.2.4 In an accompanying minute to the Minister prepared by Ms Raenette Pelser dated 19 August 2009 and supported by Ms Moseamo Sebola on 20 August 2009 under the heading *"WORLD SUMMIT AWARDS (WSA) 2009 WINNERS EVENTS 2 – 4 SEPTEMBER 2009 MONTERREY MEXICO"* and addressed to the Minister, the purpose of the minute was to obtain approval for Mr Phiri and Ms Zondo to accompany *"the Deputy Minister and her companion, Mr Phosane Mngqibisa to attend the World Summit Award (WSA) 2009 Winners Events from 2 – 4 September 2009 in Monterrey, Mexico."*

6.13.2.5 The total cost to the State for the trip was R275 778 and it was approved by the Minister Siphiwe Nyanda on 26 August 2009.

6.13.3 **Hon Pule's official visit to the United States during the period 31 August to 5 September 2009.**

6.13.3.1 During the investigation, the Public Protector obtained information and evidence from a company called *Distinctive Choice*; the former travel agency of the DOC responsible for making travel and accommodation reservations for Hon Pule whilst she occupied the position of Deputy Minister.

6.13.3.2 During the investigation, *Distinctive Choice* confirmed that they handled Hon Pule's reservations and bookings and the contact person who would instruct them at the DOC in that regard Hon Pule's Personal Assistant, Ms Rebotile Zondo. According to their contract, DOC would instruct them to make reservations for flights and hotel accommodation for Hon Pule. After an order number has been generated and issued by the DOC, the travel agency would go ahead and issue the actual travel and accommodation documents.

6.13.3.3 When requested to furnish the Public Protector with information containing travel and accommodation reservations for Hon Pule, *Distinctive Choice* stated that it has gone through all its documentation from 01 Jan 2009 until 01 Dec 2009 when its contract with the Department was terminated for operational reasons. They confirmed in their response to the Public Protector that Hon Pule was appointed as Deputy Minister in May 2009 and they could only find 23 pages of hotel accommodation, flight reservations and tickets, travel insurance and chauffeur drive invoices, copies of the Lodges American Express Credit Card to show how payment was made as well as copies of Travel Forms with the DOC's Order numbers 1387 and 1388 respectively.

6.13.3.4 Distinctive Choice duly attached the information and evidence referred to above and it was noted from a document entitled, ***"Department of Communications Travel Form"*** that on 31 August 2009 travel and accommodation reservations were made by Ms B Baloyi for Hon Pule to travel to the United States. The Personal Particulars of Applicant Section of the form records Hon Pule as having

been the applicant with the Deputy Ministry being the cost centre that would be responsible for payment for the travel and accommodation which was under Order Number 1387.

6.13.3.5 Further thereto and according to the ITINERARY Section of the DOC's travel form, Hon Pule was going to depart on a flight from OR Tambo International Airport to Monterrey via Atlanta in the United States and back on the same route. The trip was classified as International and Hon Pule travelled in the business class section of the flight.

6.13.3.6 It has also been recorded on the form that Hon Pule was going to depart on 31 August 2009 at 20h45 with flight number DL 201 and return on 5 September 2009 at 07h00 with flight number DL 942. According to the form, it has been recorded that whilst in the United States, Hon Pule would be accommodated at Mariott Airport Hotel, and Holiday Inn, Parque Fundidora.

6.13.3.7 In another form identical in nature and under Order Number 1388 and also approved by Ms B Baloyi on the same date as referred to above, and in the section of the form that is entitled, Personal Particulars of Applicant, the applicant is recorded as **"Mngqibisa Phosane"** whose status, rank and/or position is detailed as **"Deputy Minister's Companion"**

6.13.3.8 The details reported in the Itinerary section of the form are identical with the reservations made for the travelling and accommodation of Hon Pule as bookings were made for them to travel together on the same flights using the same route and Mr Mngqibisa was to be accommodated at the same hotels as Hon Pule.

6.13.3.9 Invoices dated 27 and 31 August 2009, 3 and 14 September 2009 as well as 14 October 2009 were rendered by *Distinctive Choice* and paid for using the DOC's American Express credit card.

6.13.4 **Hon Pule's official visit to Mexico during the period 26 to 29 June 2011.**

6.13.4.1 During the investigation, information was obtained from the South African Ambassador in Mexico, H E Sandile Nogxina who responded to the Public

Protector and confirmed that indeed, Hon Pule visited that country and was received by the Embassy.

6.13.4.2 He provided copies of invoices for hotel accommodation, ground transportation as well as information on flight itineraries for Hon Pule and her entourage, Mexico Study Tour Programme, Delegation List, Mexico – Columbia study tour and a statement providing explanation whether Hon Pule undertook the official trip to visit Mexico in the United Mexican States during the period 26 to 29 June 2011.

6.13.4.3 In his correspondence, Ambassador Nogxina also attached an affidavit deposed to by Mr S P Hadebe, the only official in the Mission who was present at the time when Hon Pule visited the country in her capacity as the Deputy Minister in the Presidency. Mr Hadebe confirmed that in 2011, Hon Pule visited Mexico in the company of Ms Tsakane Mahlaule.

6.13.4.4 Ambassador Nogxina confirmed that Hon Pule indeed visited Mexico. However, in their records, there is no indication that she was accompanied by any companion. He attached a copy of the delegation list which does not have Mr Mngqibisa's name on it. However, Ms Tsakane Mahlaule is on the list in her capacity as the Deputy Ministry's Media Liaison Officer.

6.13.5 **Hon Pule's official visit to Prague, Czech Republic during the period 21 to 24 June 2011**

6.13.5.1 The South African Embassy in Prague, Czech Republic was also approached during the investigation. H E Ms F C Verwey is the current Ambassador for South Africa in Prague who responded to the enquiries made by the Public Protector.

6.13.5.2 In her response, H E Verwey stated that former Ambassador Sandra Botha was the Head of the Mission at the time of Hon Pule's visit to Prague from 21 to 24 June 2011 in her capacity as the Deputy Minister in the Presidency. Hon Pule's delegation consisted amongst others, Ms Tsakane Mahlaule in her capacity as the Media Liaison Officer in the Presidency. Despite Ms Nthabiseng Agnes Borotho having been listed as part of the delegation, she, however, was not included in the visit to Prague.

6.13.5.3 According to Ambassador Verwey, the Mission under the leadership of former Ambassador Sandra Botha hosted a *business lunch* for Hon Pule and her delegation during her visit to Prague. A copy of a guest list provided by Ambassador Verwey during the investigation was as follows;

GUEST LIST		
NAME	**POSITION/CAPACITY AND FIRM/ORGANIZATION**	**NATIONALITY**
Ambassador C S Botha	Ambassador, S A Embassy	South African
Ms Dina Pule	**Dep. Minister, The Presidency**	**South African**
Mr Joseph Phosane Mngqibisa	**Companion**	**South African**
Ms Tsakane Mahlaule	Media Liaison Officer, The Presidency	South African
Mr Wouter Zaayman	Counsellor, S A Embassy	South African
Mr S.P. Khanyi	CSM, S A Embassy	South African
Mr Martin Pohl	Ambassador of the Czech Republic	
	In South Africa	Czech
Ms Blanka Fajkusova	Director, Sub-Saharan Africa Dept,	
	Ministry of Foreign Affairs	Czech
Mr Radek Nedved	Southern African Desk Officer,	
	Ministry of Foreign Affairs	Czech

6.13.5.4 Ambassador Verwey concluded his correspondence to the Public Protector by stating that the only reference to Mr Mngqibisa is what appears on the guest list above where he has been listed as Hon Pule's companion.

6.13.5.5 To verify the information obtained from Ambassador Verwey, her predecessor, Ambassador Sandra Botha was approached to verify whether she hosted a business lunch for Hon Pule and her delegation during her visit to Prague in June 2011 whilst she was the Head of the Mission and whether Mr Phosane Mngqibisa was accompanying her during the said visit.

6.13.5.6 Hon Sandra Botha confirmed that indeed Mr Mngqibisa was present during Hon Pule's visit to Prague in the Czech Republic from 21 to 24 June 2011. She further informed the Public Protector that Mr Mngqibisa was indeed with Hon Pule as well as other members of the delegation. In her response to the enquiries by the Public Protector, Hon Botha stated that:

"I can confirm that the luncheon was hosted by me and attended, inter alia, by Mr Mnggabisa,(sic) as companion of Deputy Minister Pule. The luncheon was hosted in my capacity as Ambassador to the Czech Republic at the time"

6.13.5.7 Hon Botha concluded by stating that she never questioned why Hon Pule was in the company of Mr Mngqibisa or why was she with him as her companion as that was not her call and besides, it is normal that people would visit with companions and it was therefore not her call to question Hon Pule about that. She just presumed that they were in a relationship of whatever kind and that the nature of the Minister's relationship with Mr Mngqibisa was not her concern.

6.13.6 **Hon Pule's official visit to the United States of America during the period 7 to 13 July 2011.**

6.13.6.1 On 27 May 2013, the South African Ambassador in the United States of America (US), H E Mr Ebrahim Rasoole was approached with a requesting for information in connection with Hon Pule's visit to that country during the period July 2011. Ambassador Rasoole responded to the enquiries by the Public Protector and advised her that they have referred the matter to the DIRCO Head Office for guidance on same whether the request to the Embassy in Washington DC and Consulate in New York should be mediated upon.

6.13.6.2 On 29 July 2013, the DG of DIRCO, Ambassador J Matjila provided information on the former Minister's visit to the US. In his response, including copies of completed internal departmental travel and accommodation forms, official order forms, e-mail correspondences exchanged between the Presidency and the Embassy in Washington DC, invoices from hotels in New York and Washington DC, ground transport invoices, electronic tickets and expenditure vouchers.

6.13.6.3 The arrangements for the trip were co-ordinated and arranged by the Chief of Staff in the Presidency responsible for the Deputy Ministry of Performance Monitoring and Evaluation, the late Ms Bonakele Dlamini as well as Ms Fandiwe Fadane of the South African Embassy in the US and commenced on 18 June 2011.

6.13.6.4 According to the information obtained during the investigation, Hon Pule visited Washington DC and New York in the US as part of a South African delegation on a study tour focusing on performance, monitoring and evaluation. At the time,

Hon Pule was occupying a portfolio of Deputy Minister in the Presidency responsible for Performance Monitoring and Evaluation.

6.13.6.5 In an e-mail transmitted on 21 June 2011 by Ms Dlamini addressed to Ms Fadane of the Embassy, the people that would be travelling with the Minister were listed as follows:

6.13.6.5.1 *Mr Joseph Phosane Mngqibisa (Partner);*

6.13.6.5.2 *Ms Bonakele Dlamini (Chief of Staff)*

6.13.6.5.3 *Ms Agnes Borotho or Ms Tsakane Mahlaule.*

6.13.6.6 A request was made with the embassy to facilitate on arrival, departure lounges, a ministerial vehicle as well as one vehicle for Ms Dlamini, and Ms Borotho or Mahlaule who would be sharing the use of the vehicle. Further thereto and on 6 July 2011, Ms Fadane addressed a confirmation letter to Ms Kirsten Ste. Maria of the Willard Continental Hotel. In the letter she wrote:

"*This is to confirm that the following officials will be accommodated at your hotel from 6 – 11 July 2011.*

- *Deputy Minister Ms Dina Deliwe Pule & her Partner – July 7 – 11, 2011. Will occupy the Executive Suite @ the rate of $ 569.00 to include breakfast.*
- *Ms Tsakane Mahlaule – July 6 – 11, 2011, will occupy standard room @ $349.00 with breakfast.*

6.13.7 **Hon Pule's official visit to Kuala Lumpur, Malaysia during the period 23 to 27 April 2012**

6.13.7.1 On 23 May 2013, correspondence was addressed to the South African High Commissioner in Malaysia, His Excellency, Mr Thami Mseleku requesting information in connection with Hon Pule's visit to that country in April 2012.

6.13.7.2 Ambassador Mseleku responded on 29 May 2013 and provided the Public Protector with amongst others; copies of documentation relating to arrangements for accommodation and ground transportation for Hon Pule and her delegation which were facilitated by the High Commission; copies of correspondence exchanged with the DOC as well as a copy of a sworn statement signed on 9 May 2013 by his 3rdPolitical Secretary at the South African High Commission to Malaysia, Ms S Henry which was also submitted to the Parliament's Joint Committee on Ethics and Members Interests.

6.13.7.3 The trip was co-ordinated from the DOC's side by the Chief of Staff, Mr Mduduzi Masuku and Mr Moseamo Sebola and from the High Commission's side it was facilitated by Ms Shevonne Henry, the 3rd Political Secretary.The delegation that accompanied Hon Pule during her visit consisted of Mr Phosane Mngqibisa, Mr Roy Kruger and Ms Nthabiseng Borotho. In her sworn statement, Ms Henry confirmed the visit by Hon Pule and the fact that she co-ordinated the visit from the High Commission's side stating that the purpose of the visit was to;

"gain first-hand knowledge of the Malaysian approach to issues that have been successfully traversed by that country's governmental institutions and telecommunication enterprises".

6.13.7.4 She further stated that Hon Pule and her delegation left South Africa on 21 April 2012 via Hong Kong to Kuala Lumpur and arrived on 22 April 2012. They returned on 26 April 2012. Whilst in Kuala Lumpur, they were accommodated at the Intercontinental Hotel in Kuala Lumpur and the ground transportation was provided by Lero Travel and Tours with Hon Pule transported in a Mercedes-Benz S Class and the two officials accompanying her in a Toyota Alphard.

6.13.7.5 In her statement, Ms Henry stated that the Hon Pule and her delegation were received at the Kuala Lumpur Airport by High Commissioner Mseleku on Sunday, 22 April 2012. When they met Hon Pule on arrival with her delegation, Ms Henry noticed that the delegation no longer consisted of just Hon Pule and two officials as there was a fourth person for whom no accommodation arrangements were made.

6.13.7.6 On enquiry as to whether there had to be amendments to accommodation reservations so as to cater for the fourth official who it later transpired was Mr Mngqibisa, she was informed that the arrangements made earlier would suffice and that one of the additional officials had made arrangements via their in-house travel agent.

6.13.7.7 Ms Henry stated that Mr Mngqibisa was not introduced to her and she did not know in what capacity was he part of the delegation. On the evening of the same date of arrival, Hon Pule hosted a de-briefing in her room with her delegation including Mr Mngqibisa as well as the High Commissioner Mseleku. She prepared a programme and briefing documents and explained the nature of the organisations to be met. According to Ms Henry, the programme commenced on 23 April 2012 Hon Pule and the three officials attended their meetings as planned.

6.13.7.8 She confirmed having accompanied the delegation throughout the programme with High Commissioner Mseleku accompanying them on the first and third days. She also stated that on 25 April 2012 Ms Bouwer and Mr Mngqibisa joined the delegation and attended the meetings in the latter half of the day. They did not utilise the arranged transport and the visit was concluded on the same date with part of the delegation leaving on 26 April 2012 and the remaining delegation departing on 27 April 2012.

6.13.7.9 Ms Henry concluded her statement by stating that High Commissioner Mseleku extended the necessary protocols to Hon Pule and her delegation and thus accompanied them to the airport. She however could not say whether Hon Pule and Mr Mngqibisa shared accommodation since she did not enquire about Mr Mngqibisa's accommodation. She did not frequent Hon Pule's room and therefore was not in a position to witness her and Mr Mngqibisa sharing accommodation if indeed they did so.

6.13.7.10 Invoices and meal slips attached to High Commissioner Mseleku's response were examined wherein it emerged that the Kuala Lumpur Intercontinental Hotel allocated Hon Pule an Executive Suite with room number 3016. Meals charged for breakfast and dinners were for two people in that room with some signed for

by Hon Pule herself and others by Ms Borotho and Mr Kruger. There was no specific room allocated to Mr Mngqibisa during the said visit.

6.14 The affidavit of Ms Tsakane Mahlaule, the former Personal Assistant to Hon Pule

6.14.1 To verify the information and evidence provided by TWF as well as South African Missions abroad as reported in paragraph 6.13 above, an affidavit made by Ms Tsakane Mahlaule, the former Media and Parliamentary Liaison Officer of Hon Pule whilst she served as a Deputy Minister in the Presidency, was obtained. Ms Mahlaule also confirmed in her affidavit that she was later appointed as Hon Pule's Personal Assistant prior to her resignation from the public service.

6.14.2 Ms Mahlaule attested to the affidavit at SAPS Jeppe Police Station and same was commissioned at that police station on 14 May 2013. In the affidavit, Ms Mahlaule confirmed that she is "*aware that Minister Pule and Mr Mngqibisa were in a romantic relationship. My awareness of such is confined to at least the period before I joined her office (2009) and up until I resigned in July 2012."*

6.14.3 She further stated in her affidavit that in August 2009 she was approached telephonically by Mr Mngqibisa with a request for her to join Hon Pule as her Personal Assistant. She declined the request.She stated that it was during this telephonic conversation that she initially became aware of their romantic liaison as she enquired from Mr Mngqibisa how he happened to be aware of Hon Pule' s staffing needs and his response was, *"Ke motho wa ka"* which she understood to mean *"she's mine" or "she's my woman".* It was therefore within that context that she and Mr Mngqibisa had communicated with reference to Hon Pule.

6.14.4 Ms Mahlaule further detailed how she knew Mr Mngqibisa from the ANC Youth League for a number of years where they served together in varying structures of the organization as comrades and activists. In 2010 she became aware that Hon Pule had been moved from the DOC to the Presidency and was looking to fill vacancies in her office. She informed Mr Mngqibisa of her interest to move from her then post at Ministry of Sport and Recreation to join Hon Pule.

6.14.5 According to Ms Mahlaule, the vacant positions at Hon Pule' s Department at the time were that of Personal Assistant and Media/ Parliamentary Liaison Officer to the Minister. She was then requested by Mr Mngqibisa to forward her curriculum vitae to the former Chief of Staff in Hon Pule's office at The Presidency, the late Ms Mabel Dlamini. She later communicated constantly with Hon Pule in connection with the desired appointment, underwent an interview and was subsequently appointed in the position of Media/ Parliamentary Officer.

6.14.6 Ms Mahlaule further confirmed international travel and accommodation of Hon Pule and Mr Mngqibisa as she also travelled together with them on a number of trips abroad. She detailed the trips abroad in which she was present as follows:

6.14.6.1 **Prague, Czech Republic (21 June 2011 to 24 June 2011)**

"The purpose of this trip was to attend a youth conference dealing with youth service/ volunteerism and skills development. Honourable Minister, Mr Mngqibisa and I flew in the same flight. Upon landing in Prague we were met by Counselor Wouter Zaayman from the SA Embassy in Prague, we had two vehicles with drivers, one for use by Minister Pule and Mr Mngqibisa and another allocated to me.

Accommodation for the duration of our stay was the Prague Marriot Hotel. Honourable Pule and Mr Mngqibisa were sharing accommodation. Ambassador Sandra Botha hosted us (Minister Pule's entourage, SA Embassy officials and a lady who was due to start as Czech Republic Ambassador to RSA accompanied by her husband) for a lunch at a restaurant where Mr Mngqibisa was introduced as Minister Pule's companion/ partner."

6.14.6.2 **Paris, France (24 June 2011 to 26 June 2011)**

"Honourable Minister, Mr Mngqibisa and I were in the same flight from Prague to Paris. In Paris we did not have any official meetings from arrival until departure and our time there was spent generally resting and shopping. Road travel arrangements were the same as was in Prague, two vehicles: one for me and the other for the Minister and Mr Mngqibisa.

Accommodation was the Renaissance Hotel. Minister Pule and Mr Mngqibisa were sharing a suite. On Sunday, 26 June we left Paris for Mexico while Mr Mngqibisa travelled back to South Africa via London."

6.14.6.3 **Mexico, Mexico City (26 June 2011 to 29 June 2011)**

"The purpose of the visit was to attend the "Programme to Support Pro-Poor Policy Development (PSSD), a partnership between the Presidency of South Africa and The European Union "which delegation Minister Pule was heading. The DG in the Presidency: PME, Dr Sean Phillips was part of the delegation. Accommodation for myself and Minister Pule was at the Hotel Intercontinental Presidente. As is the official norm, Minister had her own vehicle with a driver. I travelled in one vehicle with the other delegates that we joined in Mexico. The Honourable Minister travelled back to South Africa, while I was left in Mexico to continue with the study tour."

6.14.6.4 **Washington DC, USA (07 July 2011 to 11 July 2011)**

"The trip to Washington DC was a continuation of the Presidency Study Tour. I arrived in Washington DC, in the afternoon of 07 July a few hours after Minister Pule had arrived from South Africa that day. Mr Mngqibisa arrived in DC an hour or so after my arrival. Road travel arrangements were the same as they were in Prague and Paris; one vehicle for me and another for the Minister and Mr Mngqibisa. Accommodation was at the Willard Hotel in Pennsylvania Avenue not far from White House. Mr Mngqibisa and Honourable Minister Pule shared accommodation in a suite."

6.14.6.5 **New York City, USA (11July 2011 to 13 July 2011)**

"We left Washington DC for New York where Honourable Minister had wanted to meet with the Deputy Secretary General of the United Nations on Tuesday at 4pm, this meeting did not materialize.

Honourable Minister, Mr Mngqibisa and myself were in the same flight. Road travel arrangements were the same as they were in Prague and Paris and Washington DC. Our accommodation was at the Ritz-Carlton Hotel in Central Park. Honourable Minister Pule and Mr Mngqibisa were again sharing accommodation in a suite. We left New York City for South Africa on 13 July 2011, arriving in Johannesburg on 14 July 2011. Minster Pule left the airport in her official vehicle for an ANC NEC meeting at the St George Hotel in Irene, Pretoria, while Mr Mngqibisa left in a private vehicle for a different destination."

6.14.7 According to the information and evidence obtained during the investigation, TWF made reservations for Minister Pule to embark on these trips. Further arrangements regarding ground transport and accommodation at the visiting countries, the South African Embassies and Consulates in the respective countries in conjunction with the Department of International Relations and Cooperation received Minister Pule and her entourage at the countries that she visited.

6.15 The interview with Mr Phosane Mngqibisa

6.15.1 Mr Mngqibisa was interviewed on 24 May 2013. During the interview, Mr Mngqibisa stated that he has been a businessman, for the past fifteen years and that he is in marketing and communication business based in Johannesburg. He confirmed that Khemano is his company.

6.15.2 He further confirmed that he was involved in organizing the hosting of the 2012 ICT Indaba as his company was subcontracted by CBP having started their negotiations with regard thereto around November 2011 which culminated in the parties entering into an agreement whereby Khemano would project manage the organizing of the ICT Indaba.

6.15.3 Due to pressure and time constraints, his company had to stop everything and concentrate on the preparations for the event. He stated that with regard to payments, CBP and Khemano agreed that the former's banking account would be used which would be specifically for the ICT Indaba and that he was a secondary signatory to the account to ensure that as and when there had to be payments made to the suppliers no problems would be encountered.

6.15.4 With regard to the meeting held on 18 November 2011 at *Palazzo Hotel*, Monte Casino, Mr Mngqibisa confirmed the meeting. He stated that he was due to meet Mr Phiri who was his acquaintance following a social telephone call they had earlier. He stated that he knew Mr Phiri very well as a comrade in the ANC.

6.15.5 When he arrived at the venue he found Mr Phiri with Ms Bouwer and he greeted both of them and waited for them to finish. Thereafter, they had dinner and the issue about the ICT Indaba was discussed wherein Ms Bouwer indicated her willingness to work with him and his company in organizing the event. He indicated that he knew Ms Bouwer very well from his Soweto neighborhood. On the issue of organizing the event, Mr Mngqibisa stated that he and his company went all out to ensure that the event succeeded and avoid any embarrassment to the government.

6.15.6 In connection with the withdrawal of R100 000 from CBP account, Mr Mngqibisa stated that the account was also used to pay for his travelling expenses. He confirmed that he travelled to Barcelona in Spain to market the ICT Indaba. He further confirmed that the invoice for the shoes that was sent to Ms Bouwer was sent erroneously by his PA and that invoice was taken from his personal file and it had nothing to do with Barcelona. He confirmed having purchased shoes whilst in Barcelona. When he was asked whether the shoes were for male or female, Mr Mngqibisa refused to answer and stated that, that was a personal matter and he was not obliged to answer that question. He later stated that he bought male shoes and what was sent to Ms Bouwer by her PA was not an invoice but a credit card slip which served as a proof of purchase.

6.15.7 When asked about the diversion of MTN sponsorship funds, Mr Mngqibisa stated that MTN needed some documentation from CBP which included tax clearance certificates and audited financial statements for payment to be made. Unfortunately Ms Bouwer, at the time did not have the tax clearance certificate and MTN refused to pay because it is not a listed company.

6.15.8 Because they wanted the money to pay suppliers and so forth, it was agreed that ABR, who was on the database of MTN group, would use its account and that the MTN sponsorship would be deposited into ABR to facilitate the payment of all the service providers. He stated that Ms Bouwer knew of the payment of MTN

sponsorship into ABR banking account. However, he confirmed that Khemano is the one which sub-contracted ABR and CBP had no contract with ABR.

6.15.9 Mr Mngqibisa confirmed that he claimed R6 million in respect of professional management fees for his work towards hosting the 2012 ICT Indaba which was paid from ABR banking account which was payable in portions into one of his investment accounts. In connection with invoices where he claimed for payments in respect of services rendered by Ms Primrose Molantoa and A – List Investment company, Mr Mngqibisa stated that such a company was owned by Ms Moloantoa and that both were sub-contracted by Khemano with Ms Moloantoa being a project director responsible for the ICT Indaba. He confirmed that he never paid to Ms Molaontoa what was invoiced claimed in respect of A-List investments. The amount paid to her totalled a sum of R150 000 in respect of her services as Project Director.

6.15.10 Mr Mngqibisa was also questioned about his relationship with Hon Pule. He was non-committal in his responses and refused to confirm the existence of a romantic relationship between them and only stating that the matter was of a personal nature. He could only confirm that they have a long standing relationship as comrades in the ANC. He further confirmed having travelled with Hon Pule on international trips.

6.15.11 With regard to a trip to Barcelona in Spain, Mr Mngqibisa stated that he met Hon Pule there. He also confirmed the trip to Prague which he said was a youth conference. He also confirmed a trip to Paris in France which he stated, was a connecting flight via Paris. With regard to Mexico, Mr Mngqibisa stated that from Paris he returned back to South Africa whilst Hon. Pule proceeded to Mexico.

6.15.12 Mr Mngqibisa also confirmed having been to the US but could not recall the dates when he would meet with Hon Pule as he travelled to that country on numerous occasions at his own expense by virtue of him being a member of an organization called Junior Chamber International and he attends a UN summit every July of the year. He therefore could not deny having been in New York.

6.15.13 Mr Mngqibisa submitted that he did not understand why or who listed him as Hon Pule's travelling companion in the DOC's records as he never instructed the Department to do that. Mr Mngqibisa stated that in most instances he would cover

his own travelling expenses. Mr Mngqibisa also confirmed that he speaks with Hon Pule on the phone regularly as comrades.

6.16 The Provisional Report: Mr Mngqibisa's response

6.16.1 Mr Mngqibisa was also provided with a copy of the provisional report with an invitation for him to comment on the contents of same. In compiling his response, Mr Mngqibisa was assisted by his legal representatives, F R Pandelani Incorporated Attorneys who furnished me with his responses on 24 October 2013.

6.16.2 Mr Mngqibisa commenced his response by stating that he is replying to the contents of the provisional report in his personal capacity as well as in his representative capacity as the Director of Khemano, as affected parties. He further stated that he is a private individual and businessman and that ordinarily, the investigation does not extend to him except for those aspects in the provisional report that are applicable to him and Khemano.

6.16.3 In connection with the conceptualization of the ICT Indaba and negotiations that may have been held between CBP and the DOC, Mr Mngqibisa stated that he bears no knowledge of same as he was not privy to that information. He, however, confirmed that he was aware that CBP conceived and were said to have been the innovators of the ICT Indaba, and that CBP had invited the DOC to partner with it as a key governmental department responsible for ICT issues.

6.16.4 He also stated that to his knowledge and understanding, the right to the ICT vested on CBP and not on the DOC.

6.16.5 With regard to his relationship with Mr Themba Phiri of the DOC, Mr Mngqibisa said that he knew Mr Phiri before he commenced his duties with the DOC. They were both members of the ANC Youth League. Even after assuming his role as an employee of the DOC, he had maintained cordial relations with Mr Phiri purely on a social basis. The meeting referred to in the provisional report which was held at the Palazzo Hotel in Montecasino was on 11 November 2011.According to him, It was factually incorrect to underline that meeting with their official capacities as it was just

a social meeting and that he met Mr Phiri in his own personal capacity and not as a representative of Khemano.

6.16.6 He stated that there were no business transactions to be executed at the said meeting and equally, he held the view that Mr Phiri met with him in his personal capacity and not as a representative of the Department. He further stated that he has never rendered any services to the department with which he is attached. He further confirmed that on the date in question he presented himself at the said hotel where he found Mr Phiri in the company of *Lindiwe Mogale*, common referred to as Carol Bouwer.

6.16.7 According to him, when he arrived at the venue, Mr Phiri and Ms Bouwer appeared to be in the penultimate stages of their meeting as at the time he arrived and after exchanging some pleasantries, he albeit for a brief moment excused himself to enable them, after the introductions, to finalize the discussions that they were having. He stated that at the conclusion of their discussions, Mr Phiri indicated to him that they were done and invited him over to the table where they were sharing a bottle of wine. Mr Mngqibisa also confirmed that he and not Mr Phiri arranged the meeting and he never intended to meet with Ms Bouwer and the fact that he arrived at the venue whilst they were in a meeting was coincidental and had nothing or little to do with the issue under investigation.

6.16.8 He provided his credentials that he is an independent businessman and have been so in business for a considerable period of time before the planning and execution of the 2012 ICT Indaba.

6.16.9 In follow-up meetings and conversations between him and Ms Bouwer it transpired that she required value add in the facilitation, planning and execution of the 2012 ICT Indaba. Some of the deliverables that were outlined as key for the successful implementation of the indaba were attributes and resources that he believed he and his company could be able to offer and later, they agreed that his company, Khemano would co-joint CBP to package a team that would seamlessly render the services envisaged in the 2012 ICT Indaba.

6.16.10 He stated that Khemano was invited by CBP for certain considerations to partake in the implementation of the services delivery. He also held a view that CBP is equally an independent and/or private business.

6.16.11 He was uncertain whether, beyond the arrangements held between the respective parties and the consensus reached for participation by Khemano in the preparation, management and hosting of the 2012 ICT Indaba, there are laid "processes and procedures" that would have preceded the appointment of Khemano as sub-contractor to CBP.

6.16.12 In connection with the involvement of Ms Sheryl Manchisi and her ABR in organizing the event, Mr Mngqibisa stated that ABR, represented by Ms Manchisi is also an independent corporate entity that was, circumstantially, drawn as an entity that would strategically add value to the 2012 ICT project and that there was never a requirement nor a need for the DOC to enter into any secondary agreement with any of the parties that partook or were sub-contracted to partake in the organization, management and/or hosting of the ICT Indaba. He also indicated that there were a number of other entities that were either sub-contracted and/or engaged to render services towards the hosting of the 2012 ICT Indaba and ABR is just but one of them. All of the entities were independent of government and or the DOC.

6.16.13 With regard to the sponsorship of R15m from MTN, which was paid to ABR ICT Indaba bank account in contravention of a standing and explicit agreement between the DOC and CBP for all sponsorship funds paid by the event sponsors such as MTN to be remitted into CBP's account, Mr Mngqibisa stated that he is not aware of the standing order referred to, and neither was such a standing order brought to his attention at the time when he contracted with CBP. He also felt that the said payment was never a diversion as stated in the provisional report.

6.16.14 Mr Mngqibisa stated that the role played by Khemano in negotiating the MTN sponsorship fell within the realm of what Khemano had to deliver in the preparations for the hosting of the ICT Indaba and is best covered in the service metrics agreed to by and between CBP and Khemano.

6.16.15 He also denied purchasing the Christian Louboutin shoes for Hon Pule and in connection with the payment of R6m to Khemano for services rendered in organizing the hosting of the event, Mr Mngqibisa confirmed the payment as well as the fact that Khemano billed for an amount over R6m as part of its project participation for the event as contracted by CBP. He further stated that the agreement between Khemano and CBP did not specifically provide for the quantum of payment, as both parties accepted the risk associated with the project. Once there was a surplus on the amount generated (after payment to creditors and service providers as well as recovery of disbursements),

6.16.16 According to Mr Mngqibisa, it was within the contemplation of the parties that a sharing ration of 50% each would be justified and Khemano found it prudent to charge based on the time necessarily spent on the project by its staff at rates recommended by the Auditor-General for work carried out in the Public Services. The rates recommended by the Auditor-General were considered generally lower than the call out metric used in the private sector. He stated that the billable amount for services rendered on the part of Khemano amounted in total to R13 573 948.08. However, the amount was capped at 15% of the project revenue, resulting in an amount of R6 069 157.08 inclusive of VAT. Mr Mngqibisa was of the view that the figure of R6 million is overstated.

6.16.17 In response to the Public Protector's intended findings contained in the provisional report, Mr Mngqibisa was of the view that the findings were biased towards Ms Bouwer and denied having resisted the jurisdiction of the Public Protector to investigate the matter. He further denied having travelled abroad at state expense. He also denied that Khemano had an upper hand with the DOC by virtue of his close relationship with Hon Pule. He further stated that Ms Bouwer knew and agreed with MTN and ABR that the funds would be deposited in the latter's account and that she had a team of employees who were part of the process and attended meetings on her behalf and even commended ABR for their impressive track record in handling matters of this nature.

6.16.18 With regard to the payment of R6m, Mr Mngqibisa stated further that such payment fell within the realm of the partnership between his company and CBP and that the charging of a management fee in the said amount was her own and that amount

was amongst others, to be utilized towards payment for all expenses incurred by Khemano on the account of the ICT Indaba, which was done and the amount is recorded in the accounting records.

6.16.19 He also stated that Ms Bouwer was provided with each and every expense, which she then approved. Equally and in line with the operational agreement, she also withdrew in excess of R2 million after receipt of the Vodacom sponsorship, which was initially attributed to VAT and later recorded as videography expense, which videography has never been produced. He thus cried foul that this aspect is not covered anywhere in the provisional report of the Public Protector.

6.16.20 In connection with his travelling at state expense, Mr Mngqibisa stated that after being furnished with an invoice by the DOC's accounting officer and prior to the issuing of the provisional report, he paid back to the DOC such amount that could have been due to the State. In his response, he furnished the Public Protector with a proof of payment of R80 326.35 in respect of the Mexico trip. He stated that, after reconciliation of all trips that he travelled, it was discovered that the only trip where he travelled at the cost or benevolence of the State related to the Mexico trip that Hon Pule asked me him to travel with her.

6.16.21 He had no knowledge of the details of an official within the DOC who would have completed the form requesting him to accompany Hon Pule in the capacity of a companion. Whilst he recalls that he was requested to accompany the former Minister as a friend, he conceded that the reflection and/or nomination for companion would have related to the Mexico trip, which was erroneous.

6.16.22 In connection with his visit to Kuala Lumpur in Malaysia, Mr Mngqibisa stated that Ms Bouwer arranged all business meetings for him and that she had to leave early because she had another engagement elsewhere. He also said that Ms Bouwer had a cordial relationship with the Malaysian High Commissioner, Thami Mseleku and staff in the embassy to an extent where she publicly referred to the Embassy as her second home.

6.16.23 He further stated that whilst in that country, both of them used vehicles that were provided for by the State (embassy) for all their business visits and in connection with his accommodation whilst in Kuala Lumpur, a friend accommodated him and he never a benefited from the State with regard to the Kuala Lumpur visit.

6.16.24 In traversing the interview I had with Ms Bouwer as contained in the provisional report, Mr Mngqibisa felt that Ms Bouwer contradicted herself in many respects and cited the contents of her correspondence to Vodacom dated 27 August 2012 in which Ms Bouwer praised Khemano for the manner and the role they played in ensuring that the event was successful and accused Ms Bouwer of being economical with the truth when she was interviewed by the Public Protector. He was of the view that the contents of this letter should have been considered and not rely on Ms Bouwer's evidence. According to him I was predisposed to making adverse findings against him.

6.16.25 With regard to CBP's acceptance of the R10m donation from the DOC, Mr Mngqibisa felt that Ms Bouwer was being projected as an innocent victim of circumstance. He also felt that the provisional report projected him as an insider to a circle of people in the DOC that possessed sensitive information through which his involvement in the ICT indaba was facilitated and according to him, that was incorrect and ill-founded. He felt that the provisional report portrayed him and his company's participation in organizing the event as having been facilitated by some form of illegality or proscribed conflict of interest.

6.16.26 In his observation of the contents of the provisional report, Mr Mngqibisa felt that the report seeks to project him as a person who without the conduit of Hon Pule would not have been able to participate in organizing the 2012 ICT Indaba despite the fact that his company is a duly registered business that has been in existence years before the conceptualization and implementation of the event. By extension, so said Mr Mngqibisa, the report seems to portray him as someone who lacks the requisite skills and ability to have partaken in the event.

6.16.27 Mr Mngqibisa considered the manner in which the investigation had been conducted as having been a witch-hunt aimed at finding dirt against Hon Pule and to be able to do that, he had to be projected as someone who did not possess the required

credentials that would have made him suitable to participate in the event and in so doing, Mr Phiri of the DOC is placed as a conduit through which Mr Mngqibisa was accorded a lifeline to link with Ms Bouwer. He confirmed his refusal to comment on the nature of the relationship between him and Hon Pule and stated that the enquiry into the nature of their relationship falls outside my mandate and particularly because he is an ordinary private citizen.

6.16.28 According to Mr Mngqibisa, the mandate of the Public Protector does not provide he/him with powers to investigate or act graciously towards private entities more so when her findings in the provisional report are not supported by factual basis. He challenged my impartiality, accused me of making mistakes of law and questioned my impartiality.

6.16.29 He contended that the findings of an existence of a romantic relationship between him and Hon Pule are without basis as such findings rely purely on untested allegations. He felt that his evidence was not considered by the Public Protector.

6.16.30 In conclusion Mr Mngqibisa stated that the Public Protector derives her powers and jurisdiction from the Constitution and the Public Protector Act and as such, she can only do what the law allows her to do and not act in a high-handed manner and as a consequence thereof, the contents of her provisional report are objectionable. In so far as the remedial action contained in the report calling upon law enforcement agencies already seized with the matter to proceed expeditiously on matters already referred to by Parliament, Mr Mngqibisa submitted that there is no basis for him to be expected to express any apologies to either Ms Bouwer or the media as the findings are reviewable.

6.17 The evaluation of Mr Mngqibisa's response to the provisional report.

6.17.1 In his response to the contents of the provisional report, Mr Mngqibisa reiterated that he is a private businessman and that my investigation does not extend to him in his private capacity except for those aspects of the investigation which implicated him and Khemano in organizing for the hosting of the DOC Indaba as well as any irregular payments that may have been made to Khemano.

6.17.2 He further was of the view that Mr Phiri of the DOC was his personal friend and that it was a coincidence that she met Mr Phiri in the company of Ms Bouwer at the Palazzo Hotel in November2011. He confirmed that his company was sub-contracted by CBP to assist in organizing the event. He challenged my findings in respect of the payment of R15 million into ABR Consulting banking account; that the said payments were diverted into that account; an amount of R6 million was irregularly paid into his banking account ostensibly for services rendered in organizing and hosting the event; that my findings were biased towards Ms Bouwer; that he travelled abroad in the company of Hon Pule at state expense; that I projected him as a person who without the conduit of Hon Pule and Mr Phiri would not be able to participate in organizing the event; that I am not empowered to investigate private entities that I can only investigate what the Constitution and the law authorizes me to investigate.

6.17.3 The Public Protector's mandate deriving from section 182 of the Constitution is to support and strengthen constitutional democracy by investigating 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; reporting on that conduct; and taking appropriate remedial action.

6.17.4 Further thereto, section 6(4)(a) of the Public Protector Act provides the Public Protector with powers "*to investigate, on his or her own initiative or on receipt of a complaint, any alleged-*

(vi) *Maladministration in connection with the affairs of government at any level;*

(vii) *Abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;*

(viii) *Improper or dishonest act, or omission or offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, with respect to public money;*

(ix) *Improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or*

omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or

(x) *Act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person"*

6.17.5 In addition to the powers vested in the Public Protector by section 6(4)(a) of the Act, section 6(5) also empowers the Public Protector with a mandate to investigate on his or her own initiative or on receipt of a complaint any of the allegations referred in subsections (i) to (v) of paragraph 7.10.2.4 above. Section 6(4)(c) of the Act also provides that the *"Public Protector shall, be competent, at a time prior to, during or after an investigation-*

(i) … or

(ii) If he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other appropriate recommendation he or she deems expedient to the affected public body or authority"

6.17.6 I admit that Mr Mngqibisa is a private person and a businessman whose company, Khemano was sub-contracted by CBP, another private company contracted by the DOC to assist in organizing the Department's 2012 ICT Indaba. I however do not agree with his assertion that the investigation does not extend to him as it does by virtue of his and Khemano's involvement and participation on an event that related to state affairs.

6.17.7 With respect, his involvement and participation in organizing the hosting of the 2012 ICT Indaba was an occasion related to state affairs with the DOC having been the host of the event and also being an organ of state involved in the affairs of government who also happens to be the custodian and policy holder of ICT matters in the Republic as mandated by the Electronic Communications Act 36 of 2005.

6.17.8 In connection with the meeting held at Palazzo Hotel in November 2011, there is no dispute that the meeting took place as all the three parties that were involved admitted that indeed, the attended the meeting.

6.17.9 It is also not in dispute that Mr Mngqibisa and Mr Phiri are bosom friends having a close relationship spanning a period of time whilst they were members of the ANC Youth League. During the investigation, Mr Phiri also confirmed the existence of this cordial relationship between them.

6.17.10 I however do not agree with Mr Mngqibisa's assertion that meeting Mr Phiri on that day whilst he was having another meeting with Ms Bouwer was coincidental. All indications point to a planned meeting with a view to inserting him in organizing the hosting of the event. Mr Mngqibisa himself confirmed that they had planned to meet socially and he enquired from Mr Phiri when they could meet until the telephonic arrangements him to meet at the said hotel.

6.17.11 In as much as the meeting may have been private and social in nature, the meeting resulted in a formal business transaction involving Mr Phiri's employer the DOC that benefited Mr Mngqibisa to the tune of R6 million. In the event that this meeting was not arranged, all probabilities indicate that Mr Mngqibisa would not have been involved in organizing the hosting of the DOC ICT Indaba, as Ms Bouwer did not have him and his Khemano in mind as a sub-contractor until it was made possible by Mr Phiri who introduced him to Ms Bouwer and the rest is history.

6.17.12 In connection with the involvement of Ms Sheryl Manchisi and her ABR Consulting, the information and evidence obtained during the investigation indicates that it is Mr Mngqibisa who brought her and ABR Consulting on board to assist in organizing the hosting of the event. Khemano's Project Manager at the time, Ms Primrose introduced Ms Manchisi to Ms Bouwer. Ms Manchisi herself confirmed that she was approached by Mr Mngqibisa and had a contract with his company, Khemano. The bring in of ABR Consulting into the picture also benefited Mr Mngqibisa in that he pocketed an amount of R6 million that was deposited into one of his investments account by that company on instructions the said amount was paid into his account via a schedule with approximate amounts of R3 and 4 million having been paid to him over a period. The money was transferred into Mr Mngqibisa's Matlo Investments account. He did not deny this fact during the investigation.

6.17.13 With regard to the payment of R15 million MTN sponsorship into ABR Consulting banking account instead of CBP account, I do not agree with Mr Mngqibisa' s argument that the said payment did not constitute a diversion.

6.17.14 The money was diverted on instruction from Mr Mngqibisa himself. This was confirmed by the owner of the banking account to which the money was deposited, Ms Manchisi, who also testified that the money was paid into her account on instruction of Mr Mngqibisa and R6m of it was also transferred into one of Mr Mngqibisa's investment accounts on his directive.

6.17.15 MTN, the sponsors of the R15 million towards an event related to state affairs also confirmed during the investigation that the sponsorship was offered at the request of the DOC and MTN agreed to sponsor the ICT Indaba and become a Diamond Sponsor for R15 000 000.00. They further confirmed that the DOC advised them that Ms Bower and not Manchisi or ABR was the event organizer.

6.17.16 MTN also confirmed that on 3 May 2012, they entered into a sponsorship agreement with ABR contrary to the DOC's advice that Ms Bouwer was the event organizer and ultimately, R6 million of MTN sponsorship was pocketed by Mr Mngqibisa. I also do not share the sentiments of Hon Pule, the DOC and Mr Mngqibisa that the money was private money as it ceased to be so when MTN paid the money into ABR account in fulfilment of their decision to sponsor the ICT Indaba following the request of the DOC. That is despite the fact that the money was not deposited into the state. Needless to say the arrangement between the DOC and the CBP was that monies and sponsorship should be deposited in the latter's banking account.

6.17.17 The evidence indicates that Mr Mngqibisa improperly benefited from state money that MTN intended to sponsor an event related to state affairs which was shrewdly diverted from its intended recipient, the state and irregularly deposited to ABR banking account resulting in Mr Mngqibisa pocketing an amount of R6 million. Just as Mr Mngqibisa carefully orchestrated his and Khemano insertion into the Indaba fold in cohorts with Themba Phiri, he also deviously brought ABR Consulting in to the picture as a consequence of which he was improperly and unjustly enriched to the tune of R6 million from the MTN sponsorship of R15 million meant to sponsor an event related to state affairs.

6.17.18 Therefore, MTN paid the R15 million sponsor because it was solicited by the DOC to enable the Department to hold the ICT Indaba that related to state affairs. However the manner in which it was paid remains an issue as it was not paid in accordance with legal prescripts and it was paid to the account of ABR Consulting contrary to the Department's advice that Ms Bouwer was the event organizer.

6.17.19 With regard to Mr Mngqibisa' s denial that she travelled abroad in the company of Hon Pule at state expense, the information and evidence obtained during the investigation indicate that he indeed travelled at state expense. It is immaterial how many times the state paid for his travelling expenses abroad. The fact is, he improperly benefited from the state that paid for his travels despite him being a private person and businessman as he bragged.

6.17.20 Mr Mngqibisa also confirmed that the South African Government in particular the DOC paid for his travelling expenses to Mexico in September 2009 when he accompanied Hon Pule. He furnished me with a proof of payment of a sum of R89 326.35 paid into the DOC account on 18 July 2013.

6.17.21 It has been noted that Mr Mngqibisa refunded the money to the state three years, two months later .and long after the investigation commenced. The questions that arise from that are;

6.17.21.1 Whether Mr Mngqibisa would have refunded the state had it not been for this investigation;

6.17.21.2 When he boarded an aeroplane to Mexico, who did he think was going to pay for his trip prior to him taking the business class seat

6.17.22 Another issue of concern is Mr Mngqibisa's averment that he reconciled all his trips abroad and discovered that the only trip where he travelled at state expense was in respect of the Mexico trip. The questions that arise in this regard are reasons why Mr Mngqibisa embarked on such reconciliation when he denied that the state ever paid for his travelling and whether he would have embarked on such a reconciliation had the matter not been brought under my attention for investigation as well as whether the money would ever have been refunded to the state as he did if it was not for this investigation and the fact that I am in possession of a proof of payment

by the state for this particular trip which was presented to him during the investigation.

6.17.23 With regard to Mr Mngqibisa's averment that whilst in Kuala Lumpur in Malaysia, he and Ms Bouwer were ferried around in state vehicles that were used for that purpose by the embassy and that a friend accommodated him whilst in Malaysia and therefore did not benefit from the state with regard to that visit. With respect, I totally disagree with Mr Mngqibisa as he improperly benefited when he was transported in state vehicles whilst in Malaysia. What Mr Mngqibisa does not also say is who his friend that accommodated him is. What he also does not say is that he was part of Hon Pule's delegation that visited Malaysia and on arrival; he also attended a debriefing session in her hotel room and attended meetings held on 25 April 2012 where Ms Bouwer was also present.

6.17.24 With regard to Mr Mngqibisa' s accusation that I am projecting him as a person who without the conduit of Hon Pule would not have been able to participate in organizing the Indaba despite his company having been in existence years before the conceptualization of the Indaba. I deny having projected Mr Mngqibisa in the manner suggested. The fact is, had Mr Mngqibisa not been introduced into the Indaba fold at the Palazzo Hotel meeting wherein his friend Mr Phiri was also present, he would not have participated in the organizing of the event as Ms Bouwer had other plans on who to sub-contract to assist her.

6.17.25 Mr Mngqibisa also contends that the investigation was a witch-hunt aimed at finding dirt against Hon Pule and for me to do so, I am placing Mr Phiri as a conduit in that regard. I deny these accusations as I have nothing to do with the people that he mentioned that would make me compromise my integrity and that of my office. It is Mr Mngqibisa himself who informed me during the investigation that he has a longstanding friendship with both Hon Pule and Mr Phiri which they also confirmed and as a result thereof, in conducting my investigation, my enquiry had to consider these relationships' relevance in the procurement of service providers that were to assist in organizing an event related to state affairs which was the ICT Indaba in this case. The focus of the investigation was solely on the service providers contracted one way or another to provide the state with services that related to state affairs.

6.17.26 In conclusion, the mandate of the Public Protector extends to an investigation into any conduct related to state affairs and it does not matter whose conduct it is whether it is a private person as long as what he does is related to state affairs.

6.18 The interview with Ms Primrose Moloantoa

6.18.1 When Ms Moloantoa was interviewed on 19 May 2013,the interview focused on the allegation of corruption in the involvement of ABR Consulting to participate in organizing the hosting of the 2012 ICT Indaba and the subsequent diversion of MTN sponsorship funds amounting to R15 million and the subsequent payment of R6 million to Mr Mngqibisa.

6.18.2 She was also questioned about the role played by her company, A-List Investments in organizing the event as well as the amounts claimed by Mr Mngqibisa in respect of services rendered by that company in organizing the event, whether the amounts claimed were subsequently paid to her as the owner of A-List Investments.

6.18.3 Ms Moloantoa stated that she was officially appointed by Mr Mngqibisa and his Khemano Investments to be a project leader responsible for organizing the event on behalf of Khemano. She understood herself to be employed by that company during that period. She stated that there was no role played by A-List Investments as the company was not active. She only received a remuneration R150 000 for her work as a project leader of Khemano.

6.18.4 Ms Moloantoa was presented with an invoice from Khemano dated 6 August 2012 where CBP was invoiced a sum of R2 053 866.00 in respect of services she rendered and asked whether she received such payments. She denied having received the said amount and reiterated that the only amount representing a salary that she received was R150 000.

6.18.5 Her understanding was that she was going to work together with CBP in their capacity as a main service provider contracted with the DOC. She stated that there was a time where Khemano did not receive funds from CBP and used its own money to pay service providers. Because they did not have funds for two months, Ms Moloantoa wrote a letter to the DG of the DOC, asking to use the DOC's advertising credit line.

6.18.6 She stated that in a meeting with Ms Bouwer at the offices of the DOC, she explained to them the background of the ICT Indaba idea and how CBP came to be appointed for the job. Ms Bouwer further explained that the DOC will assist her in acquiring the venue with an amount of R5 million and a further R5 million for any other event management requirements. It was not stated as to what other requirements were going to be.

6.18.7 She stated that she only received R50 000 for her services monthly and the event was managed jointly with the DOC, wherein the Department had to invite Ministers because she was not able to do so, although she wrote all the letters. As stakeholder manager, she was required to manage relations with the DOC and to make sure that they are on board.

6.18.8 On the issue of the sponsors she said that before the sponsors came on board, they first wrote proposals to the sponsors. Letters inviting sponsorships were drafted by her in consultation with Mr Mngqibisa, Ms Bouwer and Ms Manchisi of ABR. Those letters were then forwarded to the DOC for signature by the Minister. When letters were sent to sponsors, no one was on board as to what the ICT indaba was all about, but after the letters the sponsors started to show understanding.

6.18.9 They then went on a sponsorship drive to explain to the sponsors the structure and purpose of the event and to ensure that the sponsors had the date where and when would the event take place.

6.18.10 She submitted that it is her belief that sponsors were alerted prior to letters being sent to them but as a matter of protocol, were supposed to be signed by the Minister. She said that no one was committed to the ICT Indaba. That it's only after the proposal where people started to understand what the event was all about.

6.18.11 The prospectus that was used for marketing the event contained the logo of all companies that were expected to participate in making the event happen through sponsorships, but the main logo was that of the ICT Indaba.

6.18.12 On 11 April 2012 she sent an email to MTN and the contents of the e-mail were as follows

"To this end, the South African Department of Communications has entered into a five year partnership with the ICT Indaba Organization, as an anchor supporter. The South African Government will be broadly represented in the event, led by the President of South Africa, His Excellency Jacob Zuma, Honourable Minister of Communications Ms Dina Pule, who will be hosting other African Ministers. However, the Indaba will not be successful without active participation of industry leaders such as your company. We therefore invite you to participate as a sponsor."

6.18.13 Her understanding was that Ms Bouwer was hired as an event manager to manage the ICT Indaba. Khemano's role was that of a host and project leader but not the owner of the event. She understood CBP as having proposed the idea of the Indaba to the DOC. She believed that it was given an endorsement by the President and Hon Pule.

6.18.14 Ms Moloantoa stated that for a while they didn't receive any money from sponsors, except from the DOC. Mr Mngqibisa had to use his own money to keep the organising of the event going and to pay people who were working towards the realization of the Indaba. They had to use the DOC's name as liaison to get sponsors on board, because the event belonged to the Department and the ICT Indaba account was still empty.

6.18.15 She submitted that she did not sub contract her Company (A List) with anyone. She said that she was not interviewed in any investigation, be it MTN or the DOC. Her interview with the Public Protector Investigators was the first interview in connection with the investigation into the organising of ICT Indaba. She only spoke to the Auditor who thought she was the owner of Khemano.

6.18.16 She stated that she was the one who introduced Ms Sheryl Manchisi to Ms Bouwer in a meeting held at Khemano offices. Ms Manchisi was then hired to work on the Indaba from March2012. Ms Manchisi was very instrumental in organizing the event as she had a database of people that they wanted to invite to the Indaba. It therefore became critical that they had e-mails and contacts of relevant people and stakeholders that they wanted to invite to the event.

6.18.17 When allegations of irregularities regarding the utilization of funds meant for the hosting of the Indaba surfaced, Mr Mngqibisa and Ms Bouwer appointed an Auditor to investigate the allegations. The purpose for the audited report was to set it out as to who received how much money, for what and whether that money was used properly or not.

6.18.18 She confirmed that the R15m sponsorship from MTN was paid into ABR bank account. She together with Mr Mngqibisa knew on the same day when MTN transferred money into the ABR account. Ms Manchisi informed them. She stated that the payments were made as per arrangements with Ms Bouwer due to problems experienced with CBP account.

6.18.19 However, Ms Bower was not involved with negotiations with MTN in that regard as she gave her and Ms Manchisi a go ahead as she trusted them. She stated that she was not aware of the R6m paid into Mr Mngqibisa's account as she had no access to that information. Mr Mngqibisa and Ms Manchisi would be the appropriate persons to answer in that regard.

6.19 The interview with Ms Sheryl Manchisi

6.19.1 The interview with Ms Manchisi on 31 May 2013 focused on the appointment of ABR to participate in organizing the 2012 ICT Indaba; the role played by that company in organizing the event; circumstances surrounding the diversion of MTN sponsorship of R15m paid into ABR account instead of the nominated banking account of CBP, and the subsequent payment to Mr Mngqibisa of an amount of R6 million.

6.19.2 Ms Manchisi confirmed her ownership of ABR. She stated that there was no potential conflict of interest in the appointment of ABR as a service provide rto assist in organizing the hosting of the ICT Indaba. Ms Manchisi confirmed that her company was brought on board by Khemano and had a contract with that company. She subsequently met with Ms Bouwer of CBP through Khemano.

6.19.3 According to her, ABR commenced its duties in February 2012 and was charged with the duty of project management, concept development, contracts and invoicing in respect of organizing the hosting of the event. The terms of their contract included a retainer fee of R180 000 a month and an unspecified final fee.

6.19.4 She stated that monies in the form of sponsorships and other sources were apparently paid into the principal account of ABR, a course which was met with incessant scepticism and query. She further stated that, later on, she opened a separate account, referred to as the "sub- account" or "special account" as per Khemano and CBP's directive. She further stated that she had listed Ms Primrose Moloantoa, who played various roles in the consulting companies and the event itself, as a co-signatory to the said account. According to Ms Manchisi, she decided to open the separate account in the interest of transparency, which is contradictory to her prior statement that she had done it on the instruction of Khemano and CBP.

6.19.5 Ms Manchisi further stated that one of the would-be sponsors, MTN had requested financial statements, among other things from CBP as part of their strict requirements and CBP's tax clearance certificates had expired and that Ms Bouwer outrightly refused to comply with the request, stating that she would look into getting the requirement waived instead.

6.19.6 She confirmed that the R15 million sponsorship from MTN was paid into her account on instruction from Mr Mngqibisa of Khemano. She also stated that Mr Mngqibisa was paid via schedule, with an approximate amount of R3 million and 4million being paid respectively to him over a period. She stated that the residue of the sub-account was paid to the principals, with an amount of nearly R7 million having been transferred for the account of *Matlo Investments* as per Khemano directive. This was one of Mr Mngqibisa's investment accounts.

6.19.7 She indicated that CBP was not hands-on with this project, and only attended status meetings. She stated that the distance between the places of business of the different role-players may have been to blame. She concluded her interview by reiterating that ABR had not taken any money received from sponsors and other sources save for the R180 000 retention fee due to it.

6.20 The evidence and information obtained from Hon Dina Pule

6.20.1 A written submission by Hon Pule

6.20.1.1 A letter was addressed on 12 February 2013, Hon Pule advising her of the complaint lodged and allegations made against her and the DOC and requesting her response and documents. She responded on 8 March 2013 *expressing her willingness to cooperate fully with the investigation in so far as it relates to her and the Department to which she was appointed as Minister.*

6.20.1.2 In her written submission, Hon Pule, stated *inter alia, the following:*

"There is no tender document or request for a proposal as this was an unsolicited bid by Carol Bouwer Productions ("CBP").

6.20.1.3 To substantiate her submission, Hon Pule attached a copy of the National Treasury Practice Note No 11 of 2008/2009 which provides guidelines for Institutions dealing with unsolicited proposals and/or concepts. She further explained that;

"*CBP came up with the idea of the ICT indaba and approached the DoC to partner CBP for the hosting of the Indaba. As provided for in the aforesaid practice note, any proposal received by government department outside its normal procurement process by a sole supplier can be considered if it is innovative and unique. The concept by CBP was considered as an unsolicited bid in terms of the aforesaid practice note and was accordingly approved by the DoC resulting in the signing of an agreement with CBP in January 2012.*

The idea and approach by CBP to the DoC took place before I was appointed as Minister of Communications in October 2011 and I am advised that this approach dated back to approximately May 2011. The then Deputy Minister of the Department was pivotal in dealing with the issues relating to the holding of the Indaba and the suggestion that CBP be appointed.

6.20.1.4 In supporting her averments that the Indaba was conceptualised before her appointment as Minister, Hon Pule attached a copy of minutes of the *"coordinating machinery meeting"* of the DOC held on 4 August 2011 confirming that;

"there should be an inaugural ICT Indaba next year 2012" the aim of which would be to "reposition the Department in the ICT sector" as well as correspondence forwarded by the Department to potential sponsors before she was appointed as Minister in October 2011.

6.20.1.5 Hon Pule confirmed that her office did approach sponsors directly but certainly *did not have dealings with Mr Mngqibisa or the way in which CBP worked with him in preparing for the Indaba.* She also attached correspondence from CBP to the DDG in the Ministry of Communications, Mr Themba Phiri which confirmed that *CBP were the originators of the ICT Indaba and conceptualised the Indaba.* In explaining her involvement in the preparations for the hosting of the event, Hon Pule stated that;

"*Shortly after my being appointed as Minister in October 2011, I was briefed by various representatives of the Department regarding the discussions which had taken place between Mr Bapela and CBP. This culminated in a "minutes to the Minister" being drafted on 21/11/2011 and sent to me.*

This minute sets out the background to the DoC's participation in the ICT Indaba and the detailed discussion which took place with Telkom regarding their involvement in the Indaba. Additionally, the minute contains the terms of reference for the Indaba. The minute deals further with the financial implications of the Indaba and recommends that I support the content of the minute, approve the signing of the agreement between CBP and the DoC and consider inviting Telkom to participate in the Indaba. The Minister attached to her statement a copy of the minute and stated that: *"at the time of receiving the minute I had no contact with CBP."*

6.20.1.6 With regard to the Intellectual Property rights to the ICT Indaba, Hon Pule confirmed that,

"*CBP was the originator of the ICT Indaba concept, to which the DoC was invited to partner. It was my understanding that the appointment of service providers and third parties, who played a role in the organisation of the Indaba, were the sole responsibility of CBP. It was also my understanding that the CBP team would invite other partners and sponsors to become involved. This included particularly companies from the private sector."*

6.20.1.6.1 In confirmation of her statement above, Hon Pule referred to Ms Bouwer' s correspondence to her dated 25 November 2011 wherein she stated that

"I approached the Department almost a year ago with a proposal to launch the first paperless ICT Indaba that reclaims South Africa's erstwhile leading role in the sector. The IP of such an Indaba rests with us, however we believe it is critical that we do not pursue this on our own but in partnering with the department of communications"

and further:

It was agreed that the CBP team would secure the premises, the experts required, international speakers of the highest calibre as well as ensuring the best Indaba ever hosted on our shores".

6.20.1.7 Hon Pule advised that she sought the approval of the Cabinet and in this regard she stated that

"I took the ICT Indaba event to Cabinet through a Cabinet Memorandum, in order to obtain support as an important event that would attract foreign participants, from Ministers of external governments, to public officials as well as experts and private companies. To ensure the Indaba's success the DoC also encouraged the Private sector, civil society; labour as well as ordinary citizens to support the event by providing support CBP" She thus attached a copy of the Cabinet Memorandum that she was referring to.

6.20.1.8 With regard to the involvement and support of her Department towards the hosting of the event, Hon Pule stated that;

"The DoC did everything in its power to support CBP, as a small black empowered company, to host the Indaba with the necessary support from the industry. The DoC only provided its financial support to the tune of R10 000 000.

…I again emphasise that the appointment of suppliers and other third parties was the sole responsibility of CBP. As is evident from the Agreement, by the time the Agreement was signed in January 2012, CBP had already secured Telkom as a Platinum sponsor for the Indaba.

I reiterate that when I was appointed as Minister I was advised that the DoC (and particularly the previous Deputy Minister) had been negotiating with CBP regarding the hosting of the Indaba and that these negotiations had been on-going for quite some time.

On my appointment, I was briefed about the idea of arranging the Indaba and CBP's involvement. Officials of the DoC stated that they wanted to continue the relationship with CBP who had already made numerous requests for sponsorships from companies such as MTN and Vodacom. I was advised that matters with CBP and the organisation of the Indaba were at an advanced stage. Having considered this advice, including the minute of 21 November 2011 and having questioned the DoC officials about the matter, I agreed that the DoC should proceed with its discussions with CBP which culminated in the agreement.

Insofar as I was aware the relationship between CBP and the DoC started in approximately May 2011 when Carol Bouwer came to the DoC with a proposal for the hosting of the ICT Indaba.For the reasons set out above, it was decided that the DoC should continue with CBP for the organisation of the ICT Indaba.
I reiterate that, at the time this happened, I had no links whatsoever to Carol Bouwer or CBP and I certainly did not know her personally. I subsequently did meet her when the Deputy Director General of Communications introduced me to her so that she could deal with specific issues relating to the positioning of the ICT Indaba in South Africa. This was after relevant agreement with CBP was concluded.

As is normally the case, when a contractor is awarded a particular contract, that contractor is able to independently sub-contract various aspects of the project to other parties within the frame work of the contract and state procurement rules. Insofar as any such decision for the sub contacting of the original contract was made, it was made solely by CBP and did not involve me in any way.

I was never involved in any discussion regarding sub-contracting or how CBP managed the organisation of the Indaba or its own sub-contractors. Accordingly, if Mr Mngqibisa was allowed by CBP to deal with the administration of funds, this was done solely at the discretion of CBP and was not within my Knowledge. I also have no knowledge of what Mr Mngqibisa or Khemano investments Holdings was paid by CBP as a fee for assisting with the Indaba.

At no stage when entering into the agreement did I have information relating to the business relationship between CBP and Mr Mngqibisa. The decision taken to appoint him and his company as a sub-contractor of CBP was taken solely by CBP."

6.20.1.9 In support of her averment, Hon Pule attached a letter from CBP to Vodacom dated 27 August 2012 in which CBP stated as follows regarding the appointment of Khemano;

"Mr Mngqibisa's company came to work with us at the back of their proven track record in the events management and most notably their work on the 2010 FIFA World Cup. Amongst the companies considered they seem to have the required depth of understanding of our brief, and were comfortable with the unrealistic deadline we were setting for this exercise. The resultant success of the ICT Indaba in our view vindicates us that we made the right choice. It is important to dispel the allegation that Minister Pule introduced us to Mr Mngqibisa"

6.20.1.10 In connection with reports to the effect that the matter was investigated by the AG, Hon Pule submitted that;

"The Departmental appointment procedure was investigated by the Auditor – General and his report found that the appointment process met all required steps in terms of the unsolicited bids procedure as per the National Treasure Practice Note No: 11 of 2008/2009 and therefore no discrepancies were found."

6.20.1.11 Further to the above and in response to allegations that Mr Mngqibisa bought her a pair of French designed *Christian Loubotin* shoes which she wore at the ICT Indaba using sponsorship funds, Hon Pule stated that;

"I have never received shoes as a gift from anyone, including Mr Mngqibisa. I bought the shoes personally. I accordingly cannot comment further on the allegations. The shoes were not declared as a gift as, quite simply, they were not a gift. I have disclosed all gifts received by me in the required submissions to Parliament."

6.20.1.12 Hon Pule further responded to allegations that she travelled abroad at state expense in the company of Mr Mngqibisa by saying,

"While I have been on international trips, to events where Mr Mngqibisa was among those present, I have not taken any trips specifically in his company at the state's expense. [emphasis added]

6.20.1.13 Hon Pule further denied having unduly influenced the awarding of the ICT Indaba proposal so as to improperly benefit Mr Mngqibisa stating that such allegations were baseless. In connection with allegations regarding her personal relationship with Mr Mngqibisa concluded as follows;

"The allegations concerning my personal relationship with Mr Mngqibisa are unfounded. While I have a long standing friendship with Mr Mngqibisa having originally met him through the ANC, he is neither my permanent companion nor life partner. Despite my friendship with Mr Mngqibisa, he did not receive any improper financial benefit through his dealings with the DoC. Indeed all his dealings were with CBP and not with me or the DoC."

6.20.2 **Correspondence from Hon Pule addressed to Ms Carol Bouwer dated 15 December 2011.**

6.20.2.1 On 15 December 2011 Hon Pule addressed a letter to Ms Bouwer under the heading, "*Request for partnership in hosting of the International ICT Indaba".*

6.20.2.2 In her correspondence. Hon Pule outlined the role that will be played by her Department in the hosting of the 2012 ICT Indaba and thus committed the DOC as follows:

1. *That the Department will partner as a main role player in taking responsibility for all diplomatic related responsibilities;*

2. *That the Department will work with you in formulating the agenda of the conference to inform on topical issues to be discussed during the ICT Indaba;*

3. *That the Department will make a financial contribution of R10 million, which part will be used to secure the venue for the ICT Indaba;*

4. *In this regard, an MOA will be signed to facilitate the relationship which will ensure the success of this partnership;*

5. *That the Department will reserve a right to invite the President and or the Deputy President"*

6.20.2.3 Hon Pule concluded her correspondence by informing and reminding Ms Bouwer that her Department would not be able to contribute the full amount for hosting the ICT Indaba. However she advised her that they are willing to offer their support to Ms Bouwer to enable her to secure other sponsors. In this regard she offered to sign off a letter of endorsement which CBP would use to approach other potential sponsors for purposes of ensuring that the ICT Indaba is a success that it must be.

6.20.3 **Endorsement letters issued by Hon Pule in respect of the 2012 ICT Indaba addressed to the Chief Executive Officers of Telkom, MTN and Vodacom.**

6.20.3.1 Following her appointment to the portfolio of Minister responsible for the DOC in November 2011 and on the same date that she committed to CBP, her Department's support and financial contribution of R10 million towards hosting of the ICT Indaba, Hon Pule addressed a letter dated 15 December 2011 to the CEO of Telkom Ms Pinky Moholi. This was despite CBP introduction of Telkom to the DOC as a main sponsor of the event rated under platinum sponsorship.

6.20.3.2 In her correspondence under the subject, *"Endorsement of the Information Communication Technology (ICT) Indaba for 2012 onwards "*Hon Pule informed Ms Moholi that;

"The DoC has entered into partnership with Carol Bouwer Productions regarding the concept of hosting the first ever Information Communication Technology (ICT) Indaba in South Africa."

6.20.3.3 She further informed her that the event would be hosted annually starting in June 2012 and again committed her Department both financially and administratively to ensure a great success of the event. She concluded her correspondence by inviting Telkom to cooperate with the DOC and CBP together with other ICT stakeholders in ensuring that the ICT Indaba is a success.

6.20.3.4 In another letter of invitation to support the event, Hon Pule addressed correspondence dated 5 March 2012 to the Managing Director of MTN Group Limited, Mr Karel Piennar inviting him to partake in the hosting of the event thus advising him of her Department' s support for same.

6.20.3.5 Hon Pule also requested MTN to join hands with the DOC in supporting the initiative with a view to ensuring that it is successful. Other than her own invitation, Hon Pule informed Mr Piennar that she trusts that he will be receiving his invitation to participate from Ms Bouwer and her team.

6.20.3.6 On 20 March 2012, Hon Pule addressed a further correspondence to the CEO of Vodacom, Mr Pieter Uys under the subject and heading, *"Invitation to support the ICT Indaba 2012 to be held at the Cape Town International Convention Centre"*

6.20.3.7 In her correspondence Hon Pule informed Mr Uys that the Cabinet of the Republic of South Africa supports the hosting of the first international based ICT Indaba 2012 which will be held in Cape Town in June 2012.

6.20.3.8 She further informed him that the DOC has entered into a Memorandum of Agreement with the event organizers without naming who the organizers were and stated that *the* ***DoC has committed to play a key role in coordinating government related processes to ensure that the event is a success*** thus advising him as well that the Department's commitment include paying for basic event cost requirements, including the venue.

6.20.3.9 Hon Pule thus invited Vodacom to *participate and contribute to* the success of this initiative for the benefit of the Country's electronics' manufacturing, ICT market and for the country's economic growth in particular.

6.20.3.10 There were other similar letters from Hon Pule addressed to other potential sponsors such as South African Post Office and NLB which the Public Protector did not consider necessary for purposes of this investigation other than saying, according to the event's post Indaba report, the main sponsors were reported as the DOC with MTN rated as a diamond partner.

6.20.3.11 Gold partners were reported as Vodacom, and Telkom with Multichoice, SABC, Forbes, IT Web and CNBC Africa classified as headline partners. Further thereto and according to the report, there were twelve associate sponsors which included the Post Office and SITA amongst others.

6.21 Documentary evidence obtained from Hon Pule in support of her case

6.21.1 **Minutes of the DOC Coordinating Machinery Meeting held on Thursday, 4 August 2011 at the Ficus Rooms Conference Centre, Sunninghill, Sandton**

6.21.1.1 According to the information and evidence obtained from Mr Phiri and Hon Pule, a series of meetings to discuss the hosting of the ICT Indaba were held as far back as March 2011 under the chairmanship of Hon Bapela. Another meeting was held in July 2011. However, minutes of these meetings could not be obtained during the investigation.

6.21.1.2 On 4 August 2011, a further meeting of the DOC's Coordinating Machinery was held under the chairmanship of Hon Bapela to discuss the ICT Indaba. During this meeting, it was decided that there should be an Inaugural ICT Indaba in 2012 and the aim of which would be to reposition the DOC in the ICT sector. The relevant resolutions taken from the said meeting were that:

"***There should be an Inaugural ICT Indaba next year 2012 and bring the whole world and Africa in particular together. The intention of the ICT Indaba would be to reposition the Department in the ICT sector.***"

6.21.1.3 Hon Bapela was quoted in the minutes of the meeting as having stated that the matter was brought about as a result of the perception that part of the work of the DOC was taken by other people. It concluded by stating that Hon Bapela made a submission to the DG with regard to the proposed hosting of the ICT Indaba.

6.21.2 **The Department's Minute submitted to the Minister on 29 November 2011 with a view to briefing Minister Pule in connection with the hosting of the 2012 ICT Indaba**

6.21.2.1 According to the DOC Minute route form dated 21 November 2011; Dr Bandile Hadebe prepared the Minute under the supervision of Mr Phiri with a view to briefing Hon Pule of the processes that had been initiated to facilitate the participation of the DOC in planning for the hosting of the 2012 ICT Indaba.

6.21.2.2 Dr Hadebe duly submitted the draft minute to Mr Phiri on 22 November 2011 who in turn, forwarded it to the DG on 25 November 2011 for her to recommend approval by Hon Pule. The DG duly recommended the approval of the Minute on 14 December 2011. It is recorded in the minute that same was submitted to the Minister for approval on 29 November 2011. However, it is recorded in the minute that Hon Pule only approved the Minute on 15 December 2011.

6.21.2.3 In her written submission to the Public Protector Hon Pule confirmed having been briefed by various representatives of the DOC regarding the discussions which had taken place between Hon Bapela and CBP.

6.21.2.4 Hon Pule stated that these discussions culminated in a "Minute to the Minister", dated 21 November 2011 which was submitted to her. The minute sets out the background to the DOC's participation in the ICT Indaba and detailed discussions that took place with Telkom and their involvement in the ICT Indaba.

6.21.2.5 The mentioned minute further sets out and deals with the financial implications of the ICT Indaba and recommends that Hon Pule support the content of the minute, approve the signing of the agreement between CBP and the DOC and and consider inviting Telkom to participate in the ICT Indaba.

6.21.2.6 The minute was signed by Mr Phiri on 14 December 2011 and submitted to the DG for approval. The DG subsequently recommended approval by the Minister and signed the minute on 14 December 2011. Hon Pule approved the minute on 15 December 2011.

6.21.3 **The Memorandum number 5 of 2012 submitted by Hon Pule with a request for the Cabinet to approve for South Africa to host the International ICT Indaba from 4 to 7 June 2012**

6.21.3.1 Hon Pule sought the approval of the Cabinet to host the International ICT Indaba and in this regard, submitted a request to Cabinet dated 9 March 2012 under file number DOC3/03/2012. The strategic focus of the Memorandum was that:

"The Cabinet memorandum proposes that Cabinet approves the hosting of the ICT Indaba which will require government's collective effort across the various Departments, and industry stakeholders with an over-arching vision to position South Africa as a leader in harnessing ICT's and technology diffusion for socio-economic development and a critical player in the global knowledge economy."

6.21.3.2 The Cabinet Memorandum was distributed to all Administrative Secretaries of Ministers, Deputy Ministers and to DG's in a letter from the Ministry: Communications dated 9 March 2012. Despite Hon Pule' s submission to the Cabinet dated 9 March 2012, there has been no evidence submitted by the DOC during the investigation confirming that the Cabinet approved the hosting of the 2012 ICT Indaba in South Africa following the Cabinet meeting held on 14 March 2012.

6.22 The interview with Hon Pule

6.22.1 Hon Pule was interviewed on 28 June 2013 after numerous failed attempts to secure a date when she would meet the Public Protector. She confirmed during the interview that she was a Minister responsible for the DOC from November 2011. Prior to that she was a Deputy Minister in the Presidency responsible for Performance, Monitoring, Evaluation and Administration.

6.22.2 With regard to the coordination of the hosting of the 2012 ICT Indaba, Hon Pule stated that most of the ICT Indaba preparatory functions were executed by the administration in the DOC. Her participation was restricted to signing correspondence addressed to Ministers inviting them to attend the event. She stated that on her arrival at the DOC, she found the ICT Indaba issue already there and the department only requested her to process the ICT Indaba and to approve it. She denied having played any role in the appointment of service providers for the ICT Indaba.

6.22.3 She further stated that the concept of Indaba was introduced to her by Hon Bapela and thereafter, Mr Phiri introduced her to Ms Bouwer as the owner of the intellectual property rights to the ICT Indaba and the fact that it was her innovation. When she arrived at the DOC everything about the ICT Indaba was

already agreed about and hers was to only formalise the process. She stated that the DOC informed her that Ms Bouwer brought an *unsolicited bid* which is why they did not advertise a tender for the event as the Department received a proposal from Ms Bouwer.

6.22.4 Regarding a contract entered into by and between CBP and the DOC, Hon Pule said she was not involved in the drafting of same and neither was she involved in the appointment of service providers. According to her, she only knew about the appointment of CBP. Other than that, she had no clue about the appointment of Khemano, *Hunta Live* or ABR.

6.22.5 She stated further that if CBP subcontracted other companies to assist in organizing the event, she would not have been aware of that as that would have been beyond the scope of the DOC. Nevertheless, she was not involved in administration; perhaps administrators may have been aware but not her in her capacity as the Minister. She confirmed that on hearing the media reports about the allegations, she immediately requested the AG to investigate the matter and the DOC was exonerated of any wrongdoing.

6.22.6 With regard to allegations that she received a kickback in the form of a pair of *Christian Louboutin* Shoes from Mr Mngqibisa of Khemano, Hon Pule denied the allegation and advised that she possesses a few of those designer shoes which she purchased herself and never received such a gift.

6.22.7 In connection with allegations of a romantic relationship with Mr Mngqibisa, Hon Pule stated that she knew Mr Mngqibisa from the ANC for some time now and she interacted with him during the period of the 2009 general elections. At the time, they had a friendly relationship well before and after the ICT Indaba. She has never had a spousal relationship with Mr Mngqibisa as she is still looking for a spouse. She further denied having registered anyone as a spouse or a travel companion in the Departments that she worked in and denied having registered Mr Mngqibisa as such.

6.22.8 With regard to allegations that she travelled to Mexico in September 2009 in the company of Mr Mngqibisa, Hon Pule stated that she never nominated Mngqibisa as a spouse in her trip to Mexico. She was only accompanied by Mr Mngqibisa as a friend. She did not participate in the drafting of the travel plan as that is an

administrative function. She pointed out that I would find no evidence in the form of a document where she signed or nominated anyone or instructed anyone to nominate someone to be her travel spouse. She denied having instructed the department to nominate Mr Mngqibisa as her travel spouse or pay for Mr Mngqibisa travelling with her.

6.22.9 She stated that she was not aware that the Department paid for Mr Mngqibisa' s travelling and accommodation and according to her knowledge and understanding, Mr Mngqibisa paid for himself and not the Department. She made an example about travelling officially with her children and stated that the costs thereof are for her own account and not her Department. She advised that I request Mr Mngqibisa to reimburse the Department for his travelling and accommodation costs which were allegedly paid for by the Department as she understood him as having paid for such trips himself.

6.22.10 Hon Pule could not recall how many times did she travel abroad at state expense in the company of Mr Mngqibisa and only stated that she travelled with him several times and she was under the impression that Mr Mngqibisa paid for himself.

6.22.11 She explained having requested Mr Mngqibisa to accompany her in those trips as she needed someone to come and join her as she was never used to travel abroad for private or official purposes. She stated that she was apprehensive and she did not know what was going to happen. This was the period when she was initially appointed as a Deputy Minister in 2009 and she needed someone that she knew.

6.22.12 When asked about the Department's possession of the copies of Mr Mngqibisa's passports, Hon Pule said she did not know how it came about that the Department had those passports neither did she know reasons why the Department arranged flights for Mr Mngqibisa nor where they got his contact numbers, banking details and passport numbers in arranging for the trip to Mexico.

6.22.13 She reiterated that she never asked or requested anyone from the department to pay for Mr Mngqibisa. She refused to answer a question whether she shared a room with Mr Mngqibisa whilst in Mexico or anywhere else.

6.22.14 With regard to the trip to Prague, Hon Pule confirmed her visit to Prague in June 2011 to attend a conference and stated that Mr Mngqibisa also attended the same conference. She denied having travelled with Mr Mngqibisa as a spouse and also denied that Mr Mngqibisa attended the said conference on her invitation. She could not recall whether they shared a state sponsored chauffeur driven car or hotel accommodation. She was on the understanding that Mr Mngqibisa was accommodated at his own expense as they did not share a hotel room. In connection with her trip to Paris in June 2011, Hon Pule confirmed that she only visited Paris in transit *en route* to Mexico the following day. She was travelling from Prague on her way to Mexico. She denied having travelled with Mr Mngqibisa as his spouse to the United States in July 2011.

6.22.15 After denying the relationship for a long time, Hon Pule finally admitted towards the end of her testimony that, she had had an intimate relationship with Mngqibisa. She stated that she nominated him as her companion during trips and shared a room with him. However, she denied that Mr Mngqibisa had a special access to her at any point which may have been as a result of that romantic relationship. She also said that the relationship ended before she became a Minister and her nomination of him to accompany her once she became a Minister was as a friend. She stated that during the time of the 2012 ICT Indaba, she had no intimate relationship with Mr Mngqibisa and that they are just friends now. Together with her lawyers, they offered to arrange payments of all state funds used in respect of Mr Mngqibisa before the investigation was concluded.

6.22.16 On the question of peddling influence, she contended that a relationship of a very personal nature did not necessarily mean that the other person has a unique access to and influence on the person's professional capabilities and actions. She indicated that she was not expressly aware of the individual roles of the different role-players in the organizing and hosting of the ICT Indaba. She has never requested anybody to pay anyone money all she did was just participate In

the ICT Indaba. She does not know how much Telkom, MTN, Vodacom paid anybody and she has never collected money from either CBP or Khemano.

6.23 The Provisional Report: Response of Hon Pule.

6.23.1 On 17 September 2013, I issued a provisional report on the investigation which was presented to Hon Pule and the DOC. The Provisional report was distributed on the basis of confidentiality to provide her with an opportunity to respond to its contents by 25 September 2013.

6.23.2 Hon Pule was specifically directed at the provisions of section 7(9)(a) of the Public Protector Act which 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)

6.23.3 Following the release of the provisional report, I received correspondence from Malan and Mohale Attorneys dated 25 September 2013 advising me that they are acting on behalf of the DOC as well as Hon Pule and requested an extension until 2 October 2013.

6.23.4 On 2 October 2013, I received a further correspondence from Malan and Mohale Attorneys wherein they complained about the fact that they could not respond to a plethora of allegations made against his clients without considering the testimony of all the witness interviewed during the investigation.

6.23.5 They filed a request for records or information relied upon in investigating the matter in terms of the Promotion of Access to Information Act 2000. (PAIA)

6.23.6 Malan and Mohale Attorneys also challenged the process followed in the investigation citing Section 7(9)(a) and (b) of the Public Protector Act thus intimating that their clients cannot respond to the Provisional Report without

having been heard in connection with the evidence led before me that implicates them indicating that they need to examine witnesses that appeared before me as they were not afforded such an opportunity.

6.23.7 They thus requested that I shelve *sine die* the submission of responses to the provisional report until I have considered their request in terms of PAIA.

6.23.8 I responded to Malan Mohale Attorneys on 7 October 2013 and advised them that my investigation was conducted in terms of the provisions of section 7(4)(b) of the Public Protector Act. It was my considered view that sufficient information based on the evidence obtained during my investigation was provided in the provisional report to enable his clients to respond.

6.23.9 I further indicated to him that his clients were never directed by way of a subpoena to appear before me as contemplated in sections 7 (4) (a) and 5 of the Act as a consequence of which, they were not entitled to the information requested as there was no formal hearing held wherein they would have been afforded an opportunity to examine witnesses that appeared before me.

6.23.10 Further thereto, Malan and Mohale Attorneys were informed that his clients had no legal right to the provisional report; the purpose of which was solely to afford them an opportunity to point out any factual inaccuracies in the contents thereof to enable me to consider same prior to issuing my final report.

6.23.11 With regard to his request in terms of the PAIA, I advised him that the said piece of legislation is not applicable to his clients as they did not qualify to be a "*requester"* as defined in section 1 of that Act. I informed him that according to the legislation in question, *a requester cannot be another public body or a Department and/or any other functionary or institution.* The issues investigated and reported on in my provisional report occurred when his clients acted in their respective official capacities within the DOC.

6.23.12 I concluded by reiterating my expectation for his clients to submit their responses by 9 October 2013. Whilst expecting receipt of same, on 8 October 2013, I received yet another request for an extension to file responses on 15 October 2013. The reasons advanced were the fact that his clients were in Cape Town

and would only be available on the 10th of October 2013 and they would not have enough time to consult with them.

6.23.13 They further requested copies of recordings of interviews held with their clients. These requests were acceded to and on receipt of their clients' consent, the recordings were provided to them and finally, Hon Pule the responded to the provisional report on 28 October 2013.

6.23.14 Hon Pule's response commenced with the citation of statutory provisions governing the Public Protector in particular section 181 of the Constitution and the provisions of the Public Protector Act. In interpreting the said legislations, they made references to Supreme Court of Appeal decided cases. For the first time, Hon Pule challenged my jurisdiction to investigate the issues raised in the complaint stating that I am not empowered to investigate matters in respect of private individuals or matters that do not involve public money or those that do not involve public activities.

6.23.15 The argument was purportedly based on the provisions of section 6(4)(a)(i) of the Public Protector Act saying that I am only entitled to investigate maladministration in government affairs or affairs in which government bears responsibility and that I cannot investigate matters that cannot be classified as government affairs or which does not have its origin in government affairs. It was their view that only maladministration in state affairs committed by government employees can be investigated by the Public Protector and that it would be *ultra vires* to investigate issues of maladministration that are considered to be non-governmental in nature.

6.23.16 In her response, Hon Pule also made reference to section 6(4)(a)(ii) of the Public Protector Act arguing that I can only investigate conduct only if a person performs a function on behalf of the public and was accountable for such function stating that the section is not applicable to private individuals who undertook actions in their own interests and in furtherance of their private affairs which were not meant to benefit the public.

6.23.17 In addition, Hon Pule felt that I can only investigate matters relating to money owned only by the state and at a time when it was still under the ownership or in the hands of the state. She further stated that I can only investigate actions taken by someone performing public administration or conducted state affairs or performed a public function and that I cannot investigate someone who does not fall under that category even if that person benefitted or might have benefited from the state. She argued that the focus of my investigation should only be to the persons who are involved in state affairs or in the public administration and that I was not supposed to have investigated the involvement of individuals falling beyond the public sphere.

6.23.18 Hon Pule stated in her submission that I am not empowered to make legal findings. According to her, I can only make findings of a factual nature as I am empowered by the Public Protector Act to merely investigate a matter contrary to adjudicating such a matter. She stated that I am only empowered by the Act to disclose findings, points of view or recommendations in respect of a matter investigated suggesting that I may not disclose conclusions which are legal in nature or have legal implications as the Public Protector is not a judicial officer. According to her, it would be extraordinary for the legislation to provide the Public Protector with powers that would replicate or substitute those of the court of law as that would constitute a breach of the doctrine of separation of powers.

6.23.19 In her submission, Hon Pule also stated that the Public Protector is not empowered to make findings of witness credibility nor probabilities as the conclusions thereof are partly of fact and partly of law. To support her argument, Hon Pule made reference to a decided case dealing with a court's finding on the credibility of witnesses suggesting that, since not only facts are used to reach a determination on credibility, such finding is of a legal as opposed to a purely factual nature.

6.23.20 It was a further averment of Hon Pule that an implicated person has a right to cross-examine witnesses who appeared before me. She based her argument on the provisions of section 7(9)(a) and (b)(ii) of the Public Protector Act which empowers an implicated person to "question" witnesses who gave adverse

evidence against him or her and made reference to decided cases dealing with the importance of the right to cross-examine in disputed hearings.

6.23.21 Despite having received the letter of 12 February 2013, informing her of all allegations against her and having been informed of same during her interview of 28 June 2013, Hon Pule submitted that the Public Protector is required by section 7(9)(a) to inform an implicated person of the allegations against him or her arguing that she was not informed of same and on that basis challenged the validity of the investigation on account of what she argued was inadequate procedural fairness.

6.23.22 She made reference to the Supreme Court of Appeal judgment in the matter between my office and the Mail and Guardian newspaper. She was of the view that the Public Protector must be absolutely sure of the truth of the facts upon which it pronounces and if necessary seek corroboration of same. She further expressed the view that in conducting the investigation, I did not seek out all relevant information that had a bearing on the matter under investigation and as such, I cannot make a determination on whether the pieces fit together or not.

6.23.23 Despite Hon Pule having personally admitted to me in a recorded interview that she had had an intimate relationship with Mr Mngqibisa, had nominated him as her companion for trips and offered to pay the state for wrongful billing for his expenses and despite having been shown the documentary evidence on him having been represented as her spouse/companion/partner, Hon Pule contested the finding that she acted in violation of the Executive Members Ethics Code in representing to the DOC that Mr Mngqibisa was her spouse or companion and travelled with him overseas at state expense. She stated that in making such a finding I relied on hearsay evidence as I never interviewed or called the witnesses to give evidence before me and that the DOC's use of both the words "spouse" and "companion" created doubt as to exactly what was said to whom and under what circumstances in 2009.

6.23.24 She further stated that neither she nor Mr Mngqibisa was provided with an opportunity to cross-examine the witnesses despite their implication by virtue of the allegations against them. She further argued that I did not approach the investigation with an open and enquiring mind and insisted that I relied on hearsay evidence which was contradictory.

6.23.25 She stated that I did not seek all information to convincingly establish the truth to enable me to make a finding suggesting that, all in all I did not investigate the facts properly and chose to rely on untested evidence. She made an example about a trip to Prague in respect of which she submitted that Mr Mngqibisa attended a business lunch hosted by the then Ambassador to Prague, Ambassador Botha and that cannot as a matter of logic set as proof that a relationship between Mr Mngqibisa and Hon Pule existed. She was of the view that the information and evidence relied upon is at best circumstantial as it is untested evidence.

6.23.26 Hon Pule further stated that her admission that she had an affair with Mr Mngqibisa did not equate to inferences that I drew from the information and evidence obtained during the investigation and reiterated that I overstepped the boundaries of my enquiry by making a credibility finding against her despite the fact that I did not afford her an opportunity to confront the witnesses who gave evidence against her.

6.23.27 With regard to a finding that Hon Pule caused or allowed the DOC to benefit Mr Mngqibisa in the ICT Indaba, she responded that my finding is not based on facts and it appeared as if I was accepting the version of Ms Bouwer as opposed to evidence of a number of other witnesses suggesting that I failed to invoke the provisions of sections 7(4) and (9) of the Public Protector Act. She further challenged my finding to the effect that she was economical with truth when she stated that she had no knowledge of people who received which form of remuneration for playing whichever role in the ICT Indaba suggesting that I again overstepped my boundaries by making legal findings in the form of credibility and probability findings.

6.23.28 In so far as the role played by Mr Themba Phiri in inserting Mr Mngqibisa's Khemano into the process and his recommendation of that company as a service provider to assist CBP, Hon Pule stated that I failed to invoke the provisions of 7(4)(a) and 7(9) of the Public Protector Act as the versions of both Ms Bouwer and Mr Phiri are divergent as to what actually happened. Hon Pule felt that I did not establish the whole truth and seemed to accept the version of Ms Bouwer above that of Mr Phiri. She further stated that my finding to the effect that the DOC and herself were unduly influenced by Mr Mngqibisa was without any factual basis and that I misdirected myself, so is the finding that Hon Pule allowed or caused her staff to lie to Parliament.

6.23.29 With regard to findings of a violation of the Executive Ethics Code, Hon Pule stated that she did not violate section 5 of the Code as there was no obligation on her to disclose Mr Mngqibisa and his financial interests. Hon Pule also questioned my finding that she misled the Parliamentary Joint Committee on Ethics and Members' Interests as she testified before the Committee on a confidential basis and could therefore not understand how I was privy to such information. In connection with a finding of an existence of a romantic relationship between her and Mr Mngqibisa, Hon Pule reiterated that I had no evidence to support such a finding.

6.23.30 Hon Pule concluded her comments to the provisional report by stating that same is fatally flawed and that I rode roughshod over the provisions of the Public Protector Act and in the process violated her rights as conferred on her by the Act such as the right to be informed about the case against her; right to cross-examine witnesses who implicated her as well as a right to respond to adverse evidence placed before me.

6.23.31 She further stated that in conducting my investigation as well as making my findings, I acted *ultra vires* instead of taking necessary steps to determine the factual truth of what happened. She also stated that I did not seek corroborating evidence to support my findings and that my findings are questionable and they cannot inspire confidence on the part of the public that the truth has really been discovered during my investigation and accused me of not approaching the investigation with an open and enquiring mind.

6.24 The evaluation of the responses of Hon Pule and the DOC to the contents of the provisional report.

6.24.1 I decided to evaluate the responses of Hon Pule and the DOC jointly as both of them appeared to be similar in content and the manner in which they are couched perhaps because they were prepared with the assistance of the same legal practitioners, Messrs Malan & Mohale Attorney. Reference to either Hon Pule or the DOC will however be made in instances where the responses differ.

6.24.2 In essence, both Hon Pule and the DOC challenged my jurisdiction and mandate to investigate the issues raised in the complaint stating that, I am not empowered to investigate matters that cannot be classified as government affairs or conduct which was not committed by government employees. They felt that I am not empowered to make legal findings; I am not empowered to make findings on witnesses' credibility; that I did not afford them an opportunity to cross-examine witnesses who appeared before me; I did not inform them of the allegations against them; my findings are not based on facts; I did not establish the whole truth; I am not empowered to investigate actions of private individuals who are not in government; I cannot investigate a financial transaction that does not involve public money and stated that my findings were incorrect in that their actions in the hosting of the 2012 ICT Indaba were lawful and that they were not going to implement my remedial action in so far as the DOC is concerned in respect of expenditure incurred on Mr Mngqibisa.

6.24.3 The issues raised by Hon Pule and the DOC in their responses indicate a failure to understand the Public Protector Act and the Constitution in so far as those legislations provides for the jurisdiction and mandate of the Public Protector to conduct investigations. Their responses which purport to place reliance on the provisions of the said statutes and even suggest that the process followed in the investigation violated its provisions actually distort the Act and its provisions which clearly envisage an inquisitorial process of an investigation.

6.24.4 Hon Pule and the DOC's arguments regarding the investigation process applied in the investigation are clearly based on a misconception of the mandate, powers and functions of the Public Protector. The investigative mandate of the Public Protector is derived from the Constitution in particular section 182(1) which

provides the Public Protector with powers 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 have resulted in any impropriety or prejudice, to report on that conduct and to take appropriate remedial action with a view to strengthen and support constitutional democracy in the Republic of South Africa.

6.24.5 Section 7(1)(b)(i) of the Public Protector Act provides that, "***the format and procedure to be followed in conducting an investigation shall be determined by the Public Protector with due regard to the circumstances of each case."*** [Emphasis added]

6.24.6 Further thereto, section 7(4)(a) of the Public Protector Act provides that, *"for purposes of conducting an investigation, the Public Protector may direct any person to submit an affidavit or affirmed declaration to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on a matter being or to be investigated"*

6.24.7 The Act goes further and provides in section 7(5) that ***"a direction referred to in subsection (4)(a)***[as quoted in paragraph 7.10.1.6 above] ***shall be by way of a subpoena*** *containing particulars of the matter in connection with which the person subpoenaed is required to appear before the Public Protector and shall be signed by the Public Protector and served on the person subpoenaed either by a registered letter sent through the post or by delivery by a person authorized thereto by the Public Protector"* [emphasis added]

6.24.8 Contrary to the subpoena proceedings referred to in sections 7(4)(a) and 7(5) referred to above, the Act provides in section 7(4)(b) that, ***"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 which has a bearing on the matter being or to be investigated"***

6.24.9 In exercising the powers vested in me as the Public Protector in terms of section 7(1)(b)(i) of the Public Protector Act, I determined the format and procedure to be utilized in conducting the investigation of the matter and elected to investigate it

in terms of the provisions of section 7(4)(b) in so far as Hon Pule and the Departmental officials are concerned.

6.24.10 My investigation was not conducted by way of a subpoena as envisaged sections 7(4)(a) and 7(5) of the Public Protector Act. Mr Themba Phiri of the DOC was also advised of this fact during the investigation when arrangements were made requesting him to furnish me with information pertaining to the investigation.

6.24.11 Needless to say that there was no need for me to invoke my subpoena powers as Hon Pule and DOC officials cooperated with my team and I in the investigation of the matter save for instances where they had to appear before the Parliament's Ethics Committee which was also investigating similar allegations.

6.24.12 Had I been put in an untenable position of having to use my subpoena powers due to lack of cooperation from Hon Pule and the officials of the DOC, a formal hearing would have been held wherein oath or affirmation would have been administered and witnesses testified and examined by the Public Protector followed by Hon Pule and the DOC, through me as envisaged by section 7(9)(b)(ii) of the Public Protector Act.

6.24.13 As the procedure followed in the investigation was in terms of section 7(4)(b), Hon Pule and the DOC's expectations that they had a right to cross-examine witnesses who appeared before me is thus misleading and in fact, misdirected. I say so because the mandate, powers and functions of the Public Protector as determined by section 182 of the Constitution and the Public Protector Act clearly prescribe a process that is inquisitorial (and not accusatorial) in nature.

6.24.14 It should be noted that the prescribed inquisitorial process of an investigation by the Public Protector does not allow for the *"affected parties having a right to cross-examine and to call witnesses in rebuttal"* as argued by Hon Pule and the DOC in their responses and that would be the case in accusatorial proceedings such as in criminal court cases.

6.24.15 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.

6.24.16 Hon Pule, Ms Rosey Sekese and Mr Themba Phiri of the DOC were interviewed during the investigation and correspondence requesting information was exchanged with them culminating in a provisional reported which they were provided with for comments as part of the due process with an indication where they were implicated and that I may have to make an adverse finding against them.

6.24.17 Hon Pule and the relevant officials of the DOC were therefore afforded ample opportunity to respond to the contents of the Provisional Report and the intended findings that might be made against them. They used the opportunity, which they did in much detail with the assistance of their legal representatives. Equally, Hon Pule and the DOC were informed of the allegations against them which they responded to in various correspondences exchanged between them and my office.

6.24.18 In connection with Hon Pule and the DOC submission that I cannot investigate matters that cannot be classified as state affairs, I agree with them as I have not investigated matters that fall outside state affairs. The 2012 ICT indaba was a state event which was partly sponsored through a contribution by the DOC and other sponsorships from the private sector that were solicited by Hon Pule in person.

6.24.19 The DOC and Hon Pule in her capacity as the Minister of Communications were directly involved in hosting the Indaba and the role of CBP was that of a service provider who conceptualized the idea and assisted the Department in organizing the hosting of the event. This is confirmed in the 2012/2013 Annual Report of the DOC on page 158 under the heading, "***Information, Communication and Technology Indaba"*** where it was reported that:

> *"**The Department hosted the inaugural ICT Indaba from the 4th to 7th of June 2012 at the Cape Town International Convention Centre (CTICC).***

The workshop was hosted by DoC, partnering with the International Telecommunications Union (ITU)*.The Indaba's main aim was to bring together leading African ICT industry players, labour, civil society and Africa's governments to form a partnership that will shape the African continent's ICT development initiative.*

This approach to ICT development will be a catalyst to education, health, business and rural development. The ICT Indaba's ultimate goal was to engage global ICT players, the media, governments, labour and civil societies on the role that all parties could play in propelling the African ICT development agenda. The Indaba also served as the platform to build relations with the African ICT market which presents a good investment opportunity."

6.24.20 It is therefore disingenuous for Hon Pule and the DOC to all of a sudden classify the event as a private affair that does not fall under the affairs of the State. Private sector sponsors such as MTN, Vodacom and Telkom also sponsored the event on the understanding that it was the Departmental event that it was. The subject matter of the Indaba was also related to state affairs. At no stage therefore did I investigate private affairs as suggested by Hon Pule and the DOC.

6.24.21 Further thereto, the jurisdiction and mandate of the Public Protector as provided for by the Constitution and the Public Protector Act also talks of a conduct in state affairs without restrictions. As it happened with CBP, the State outsources some of its functions to private entities and consultants and whatever functions that those private entities perform on behalf of the state, such conduct constitutes state affairs and I have powers to investigate such matters as I investigated the shenanigans surrounding the events leading to; and the hosting of the 2012 ICT Indaba.

6.24.22 The most curious response made by both Pule and the DOC to my Provisional Report is the submission that I have no authority to make legal findings and/or findings of witnesses' credibility or probabilities.

6.24.23 I must say of all strange arguments that have been made about my work as the Public Protector, this is the most peculiar I have ever come across.

6.24.24 To say that this view is grossly at odds with the Public Protector Act is an understatement. Section 8(1) of the Public Protector Act provides that, *"The Public Protector may subject to the provisions of subsection (3), in the manner he or she deems fit,* ***make known to any person any finding,*** *point of view or recommendation in respect of a matter investigated by him or her"*

6.24.25 More importantly, the conduct is at odds with section 182 of the Constitution which specifies the powers of the Public Protector as including the power to take appropriate remedial action as envisaged by section 182(1)(c) of the Constitution. How do you take appropriate remedial action if you do not have any power to make a determination on wrongfulness of conduct first?

6.24.26 It therefore goes without saying that the said provision is not restricting my findings to factual findings as suggested by Hon Pule and the DOC. If it were so I could not make a determination whether or not conduct is improper, constitutes maladministration or violates the Executive Ethics Code. How could I do so if all I have to say is what probably happened without making a determination regarding the propriety thereof? Further thereto, the Institution of the Public Protector is established in terms of the supreme law of the Republic, the Constitution amplified by other national legislations such as the Public Protector Act which gives powers and mandate for the Public Protector to investigate; report and take appropriate remedial action.

6.24.27 *Section 1(A)(3) of the Public Protector Act also provides that "The Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who-*

(g) Is a Judge of a High Court; or

(h) Is admitted as an advocate or attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or

(i) Is qualified to be admitted as an advocate or an attorney and has for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or

(j) has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or

(k) Has, for a cumulative period of at least 10 years, been a member of Parliament; or

(l) Has acquired any combination of experience mentioned in paragraphs (b) to (e), for a cumulative period of at least 10 years."

6.24.28 Therefore, the drafters of the constitution of which I was one of them, had an idea of a person that would be well conversant with the law and public administration to be appointed as a Public Protector. The view was therefore that a person who has been appointed as such should be able to apply the law to facts and make well informed findings. All organs of State are also expected in terms of Section 237 of the Constitution, to perform their constitutional obligations with diligence and in accordance with the laws that govern them.

6.24.29 In connection with the submission that it was correct for the DOC to utilize an unsolicited bid process in its procurement of the CBP's services as well as the subsequent payment to CBP of an amount of R10 million, I disagree with that sentiment. As stated in the provisional report, there was no bid, full stop.

6.24.30 The Department did not invite CBP to submit a proposal. Ms Bouwer approached the DOC out of her own volition with a view to realizing her concept. The Department accepted her proposal and the appropriate process that the Department ought to have utilized under the circumstances was as provided in Treasury Regulation 21 relating to gifts and sponsorships.

6.24.31 My view is also supported by the contents of Hon Pule's correspondence to Ms Bouwer of 15 December 2011 where she stated that***, "That the Department will make a financial contribution amounting to R10 Million, which will part will be used to secure the venue for the ICT Indaba"***

6.24.32 It is therefore clear that Hon Pule committed her Department to the amount of R10 million prior to the DOC entering into an agreement on 12 January 2012. At no stage did the Hon Pule in her commitment talk of a bid, unsolicited or otherwise, she talked of a financial contribution.

6.24.33 The agreement between the DOC and CBP that the Department seeks reliance on makes reference to the establishment of a *strategic relationship in relation to the planning and hosting of the ICT Indaba* with the DOC being the *custodian of ICT matters in the Republic as mandated by the Electronic Communications Act 36 of 2005*. The request by CBP was therefore a request for collaboration on a venture of mutual interest between the parties. The DOC therefore voluntarily decided to make the donation with a view to realizing the hosting of the Indaba.

6.24.34 In fact, it was a conduct constituting maladministration to pay R10m of state money to a private entity to deal with it as it pleases and thereafter, a government department (DOC) shifts its primary responsibility of accounting for such money on how it was used to a private entity and only think that you will rely on the private entity to account. It is like signing that private entity a blank cheque to use the money as it pleases.

6.24.35 Similarly, it was grossly irresponsible for Hon Pule and the DOC to solicit sponsorships from private entities in respect of an event related to state affairs and allow such sponsorships to be paid into other private entities' bank accounts instead of the revenue fund, in total violation of the laws regulating the handling of such sponsorships made to the state intended to assist on an event related to state affairs.

6.24.36 In connection with the payment of R15 million by MTN into ABR banking account and the subsequent payment of R6 million of that amount into Khemano, I do not agree with the DOC in their submission that the said funds were private in nature involving private persons, businesses or that it was a privately owned money. The rationale behind my rejection of that argument is the fact that the intention of MTN in making such payments was with a view to contributing to a DOC' s event at the instance of Hon Pule. The purpose of making such a sponsorship was that the money would be utilized for the sole purposes as was indicated to them by the Minister when such funds were solicited.

6.24.37 According to the information, documentation and evidence provided to me by MTN, they sponsored the event on the strength of the requests made to them by former Deputy Minister Bapela and Hon Pule who resuscitated the initiative following the departure of Hon Bapela from the DOC and her subsequent appointment as the Minister of Communications. In a report compiled by MTN BRM Forensic Services issued on 26 July 2012 under the reference number SA 09/06/2012, it was found *inter alia* that;

"At the request of the DoC, MTN agreed to sponsor the ICT Indaba, and become a Diamond Sponsor for R15 000 000.00

The DoC advised MTN that Carol Bouwer Production was the event organizer

…

On 3rd May 2012, MTN entered into a sponsorship agreement with ABR, contrary to DoC' s advice that Bouwer was the organizer …

…"

6.24.38 Other corporations such as Vodacom and Telkom also sponsored the event on the understanding that it was a Departmental event as the DOC was the custodian of the ICT policy in South Africa as well as a letter provided to them by Carol Bouwer signed by Hon Pule on 15 December 2011.

6.24.39 Due to the fact that the event was hosted by the DOC, Vodacom for instance accordingly elected to record their sponsorship of the event as a donation to the State Treasury in compliance with the Treasury Regulations issued under the Public Finance Management Act of 1999, as amended. It is therefore condescending that the DOC opted to record their contribution as an unsolicited bid.

6.24.40 In conclusion, I find it incomprehensible that Hon Pule and the DOC are challenging my findings and remedial action intended to be taken in my provisional report in the manner that they did whereas, the Parliament's Joint Committee on Ethics and Members' Interests investigated similar issues, issued a report on 7 August 2013 with almost similar findings and imposed a sanction on her which she never challenged.

7 EVALUATION OF EVIDENCE OBTAINED DURING THE INVESTIGATION

7.1 Did the DOC appoint CBP to coordinate the hosting of the 2012 ICT Indaba?

7.1.1 It is common cause that CBP initiated, conceptualized and owned the ICT Indaba and the DOC was invited to partner with CBP as the policy custodians of the ICT sector. The ownership of the concept of the ICT Indaba was not disputed by any of the parties and confirmed through IP records.

7.1.2 A matter for my determination was whether or not the DOC appointed CBP to coordinate the ICT. No evidence backs this allegation. The contract between the two points to a partnership and not to a relationship between a principal and an agent as would be the case if the DOC had appointed CBP to coordinate the Indaba on its behalf. I am surprised that the DOC continues to argue the contrary even in the provisional report. This raises serious concerns regarding the DOC's capacity to handle procurement properly.

7.1.3 The agreement between CBP and the DOC states that the parties wish *to establish a strategic relationship* in relation to the planning and hosting of the ICT Indaba, which relationship remains undisputed. The agreement does not mention any monetary compensation by the DOC.

7.1.4 It may be noted in the discussion on evidence above, that the DOC actors, including Hon Pule, the DG, Ms Sekese and Mr Phiri submitted that CBP's approach to the DOC was treated as an *unsolicited bid*. The documentary evidence submitted by CBP and the DOC does not support this view. It was never a bid, unsolicited or otherwise but a simple request for a partnership on a venture of mutual interest. I

will deal with this further in my findings on the DOC's *"donation"* of R10m towards the ICT Indaba.

7.2 Did Hon Pule issue endorsement letters under the authority of the DOC for private companies to support and sponsor the hosting of the 2012 ICT Indaba?

7.2.1 It is common cause that letters of endorsement for the event, addressed to various stakeholders were signed by former Deputy Minister, Obed Bapela, and Hon Pule.

7.2.2 The contents of the letters are undisputed.

7.3 Did Hon Pule direct her Department to pay an amount of R10m to CBP as a financial contribution towards the hosting of the 2012 ICT Indaba?

7.3.1 It is common cause that the DOC, on instruction of Hon Pule paid an amount of R10m to CBP. By her own admission, Hon Pule signed a letter dated 15 December 2011, offering CBP an amount of R10m as financial assistance towards the Indaba. In the said correspondence, Hon Pule wrote:

"That the Department will make a financial contribution amounting to R10 Million, which part will be used to secure the venue for the ICT Indaba"

7.3.2 It is undisputed that Ms Bouwer requested Hon Pule to sponsor the initiative, support it and become its ambassador. Also not disputed is that the R10m was paid to CBP for securing the venue, conference speakers, the audio systems and interpreters.

7.3.3 The dispute of fact for my determination was whether or not the assistance was ever solicited by CBP and if it also flowed naturally from the agreement between the DOC and CPB. CBP has consistently disputed that the donation was requested and indeed none of her documents refer to a request for funds. The contract between the DOC and CBP also does not refer to the possibility of such a donation. In any event if the DOC's argument that this was an unsolicited bid should be accepted, then the R10m could not have been a donation but the payment of fees on the basis of a clear contract between principal and agent.

7.3.4 The issue was compounded by the fact that the evidence presented by the DOC actors on the categorization of the R10m was inconsistent. For example, Ms Sekese submitted that the payment was in pursuit of CBP's *unsolicited bid*. Hon Pule on the other hand, regarded the payment as financial assistance or contribution of the DOC as a sponsor and partner. This is evident in her letter of 15 December 2011 referred to in paragraph 7.3.1 purporting to respond to Ms Bouwer's letter of 25 November 2011.

7.3.5 An analysis of the accounts points to a voluntary decision by the DOC to donate the amount. The accounts also converge on the fact that time was running out as the original Lead Sponsor, Telkom, had apparently changed its mind. In fact Telkom eventually downgraded from lead sponsor to ordinary sponsor, only providing R5m instead of the R25m originally anticipated.

7.3.6 Was it reasonable for the Department to step in and pay? Payment *per se* does not appear unreasonable as the DOC had a legitimate interest in minimising the risk of the ICT Indaba falling apart once it represented it as a government venture. But the pledging of the amount of R10m on December 15, 2011 is not supported by any evidence, documentary or otherwise, that indicates that the donation was requested or required by CBP.

7.3.7 Regarding the DOC and Hon Pule's allegation that I seem inclined to take Ms Bouwer's version and not theirs; I feel compared to do so as that is the only version that is corroborated by the documentary evidence submitted by both the DOC and CBP, principally comprising Ms Bouwer's letter of 25 November 2011, Hon Pule's letter of 15 December 2011, the Memorandum of Agreement reached between the DOC and CBP and the internal DOC memorandum used as a basis for releasing the R10m.

7.4 Was the MTN sponsorship of R15m irregularly diverted by Mr Mngqibisa into ABR bank account instead of the CBP account specifically designated for the Indaba sponsorships and did he subsequently improperly receive the transfer of R6m of this money into his Khemano bank account?

7.4.1 The DOC and Hon Pule make a shocking point regarding it not being my place, and presumably any other administrative oversight agency to follow government money once it exits the states gates. While the Mail and Guardian case is cited to support this view, the principle in that case in fact is the opposite of what is being argued. I will deal with this in the legal analysis. However, I must admit that ordinarily what a private company does with its sponsorship money should not concern the state. In this case I followed the money on account of the possibility that the R10m from the DOC may have been laundered into some of the MTN money that was allegedly siphoned irregularly. I deal with this point in the analysis and findings.

7.4.2 It is common cause that the amount of R15 million was diverted by Mr Mngqibisa into ABR bank account instead of the bank account provided by CBP. During the investigation, the Director of ABR and owner of the account where the money was deposited confirmed that Mr Mngqibisa instructed that the money must be deposited by MTN into her ABR account.

7.4.3 It is further common cause that the amount was paid into ABR bank account by MTN as CBP did not comply with MTN's procurement requirements.

7.4.4 It is further worth noting that the agreement between CBP and Khemano authorises the latter to engage with the Lead Sponsor but stipulates that all funds should go into CBP's bank account until a joint bank account is opened.

7.4.5 What is disputed is that CBP was unaware of the diversion of funds and did not give permission for the diversion of funds.

7.4.6 I am persuaded on the basis of the preponderance of evidence before me that the diversion was never authorised by CBP. One of the things that persuaded me to resolve the factual dispute in favour of CBP is the fact that there is nothing in writing that has been submitted, even in the form of an e-mail correspondence that shows that CBP authorised the diversion of the R15m to ABR. In their responses, the other parties accuse me of being biased in favour of CBP but do not submit evidence that corroborates their view. A letter written by Ms Bouwer that Mr Mngqibisa says I should consider as evidence, does not corroborate the contention by him and his partners that CBP authorised the channelling of the money into the ABR account nor

that from there the funds were to be channelled into his accounts, including paying himself R6m from such funds.

7.4.7 The CBP version is also corroborated by the fact that ABR issued MTN with an invoice requesting payment of the sponsorship. Subsequently, CBP also submitted invoices for the same payment of the same sponsorship. Had there been an agreement that the sponsorship would be paid into ABR account, CBP would not have also rendered invoices to MTN for the same sponsorship. This is a clear indication that CBP was not aware that ABR had also rendered an invoice for MTN sponsorship.

7.4.8 Regarding the alleged unauthorised appropriation of R6m of MTN sponsorship by Mr Mngqibisa, it is common cause that R7mof the R15m sponsored by MTN was transferred to Khemano. It also common cause that after R1m was paid back the remaining R6m was explained by Khemano as management fees.

7.4.9 It also common cause that there was no agreement written or otherwise that entitled Mr Mngqibisa or Khemano to R6m which makes up about 40% of the MTN sponsorship funds.

7.4.10 What is disputed is whether the payment was properly authorised and deserved. The only party that could authorise payment would have been CBP and not ABR as submitted by Khemano. ABR being Khemano's subcontractor could not pay Khemano. It had to be the other way round.

7.5 Did Hon Pule represent to her Department that Mr Mngqibisa was her companion and travelled with him overseas at state expense and if so, was this conduct improper and in violation of the Executive Ethics Code?

7.5.1 Hon Pule admitted during her interview that she and Mr Mngqibisa had a romantic relationship. She also admitted to nominating Mr Mngqibisa as her travel companion on various trips she undertook both as Deputy Minister and Minister of Communications.

7.5.2 Furthermore, DOC records show that Hon Pule nominated Mr Mngqibisa as her official companion in the DOC's register.

7.5.3 What is disputed is whether Hon Pule represented to her Department that Mr Mngqibisa was her spouse and that she intentionally caused him, based on the representation, to travel abroad at state expense. Hon Pule has also insisted that nominations of Mr Mngqibisa for trips after she became Minister were as a friend and not an official companion.

7.5.4 I am not persuaded by Hon Pule's submission that she did not intend for Mr Mngqibisa to be regarded as her spouse and to benefit as such. I am also not persuaded by her submission that she was not aware that he was getting travel privileges for spouses. I am satisfied, on the balance of probabilities that Hon Pule knew that Mr Mngqibisa was benefitting from privileges meant for spouses.

7.5.5 Hon Pule undertook, with the assistance of her lawyers, during the interview held with her on 28 June 2013 to ensure that Mr Mngqibisa reimbursed the money immediately, before the investigation was concluded. It is accordingly surprising that both the DOC and herself appear to renege from this undertaking in the response to the provisional report which is characterised by the total denials that pervaded the investigation until the admission at the very end of the process.

7.5.6 I can however confirm that as promised, Mr Mngqibisa refunded the state an amount of R89 326.35 that the DOC paid for him in respect of the trip to Mexico in September 2009 when he accompanied Hon Pule on an official visit to that country. The money was paid into the DOC account on 18 July 2013 and Mr Mngqibisa furnished me with a proof of payment in that regard.

7.5.7 I must say that I am however not satisfied that the said amount was in respect of the only incident where the DOC paid for Mr Mngqibisa's international travel. Information and evidence obtained indicate that Mr Mngqibisa was one way or another with Hon Pule on visits to overseas countries and this was not only once but approximately, six times when he visited the *United States* twice; *Mexico* twice, *Czech Republic*, *Malaysia* and *France*. In all these visits, Mr Mngqibisa was with Hon Pule.

7.5.8 In as much as the DOC concealed evidence proving that they paid for Mr Mngqibisa's travelling, he also failed to produce evidence in rebuttal of the allegations that the state paid for him.

7.5.9 In view thereof, it is my considered opinion that there is a necessity for a forensic audit of all these trips with a view to establishing and verifying whether indeed the DOC did not improperly pay for Mr Mngqibisa resulting in him receiving an improper benefit by virtue of his close association with Hon Pule and the DOC.

7.6 Did Hon Pule benefit from a pair of red *Christian Louboutin* shoes, from Mr Mngqibisa, the owner of Khemano which was subcontracted for and benefited from the ICT Indaba?

7.6.1 It is common cause that Hon Pule wore a pair of red soled *Christian Louboutin* shoes during the ICT Indaba as alleged.

7.6.2 Hon Pule admitted during the interview that she owns several pairs of shoes from this exclusive brand.

7.6.3 In dispute was whether the pair of *Christian Louboutin* shoes Hon Pule wore during Indaba was a gift she had received from Mr Mngqibisa that were allegedly bought with funds provided by Khemano and which formed part and parcel of the funds that can be linked to the ICT Indaba.

7.6.4 No evidence was presented to substantiate the allegation that the shoes Hon Pule owns and/or wore at the ICT Indaba were a gift from Mr Mngqibisa bought through the ICT Indaba funds he withdrew for his trip to Spain. I have no reason to doubt Ms Pule when she alleges that she bought the pair she wore at the ICT Indaba.

7.7 Was there a potential conflict of interest occasioned by an alleged private relationship between Hon Pule and Mr Mngqibisa as a consequence of which, the latter benefitted improperly out of the financial sponsorships contributed by private companies towards the hosting of the DOC ICT Indaba held in Cape Town from 4 to 7 June 2012.

7.7.1 It is common cause that there was a romantic between Hon Pule and Mr Mngqibisa.

7.7.2 Despite protestations, there is ample evidence showing that the staff members close to Hon Pule were made aware of the relationship in addition to Mr Mngqibisa having been officially nominated as Hon Pule's official companion in the DOC's register and treated accordingly.

7.7.3 Hon Pule has denied that the relationship continued during the ICT Indaba while evidence particularly in the form of the PA's affidavit, the Ambassador to Prague and an eye witness in Malaysia say the relationship was subsisting during the ICT Indaba and at the time Mr Phiri persuaded CBP to rope in Khemano into the Indaba process.

7.7.4 In their response to the provisional report, Hon Pule and the DOC argued that I should resolve this dispute in favour of Hon Pule. The reality is that I should go with the most reasonable or probable version. I am convinced that the only reasonable conclusion that can be reached is that the relationship was in place at all material times during the organizing of the ICT Indaba. I must indicate that this conclusion is reached because of the convergence of human accounts with documentary evidence.

7.7.5 I have ignored the issue of credibility of witnesses, which would not help Hon Pule. In this regard. It is common cause that Hon Pule has by her own admission to me consistently lied to the nation, Parliament and to me about never having had a relationship with Mr Mngqibisa other than that of comrades. Am I qualified to make this judgement? Certainly! It took over 2 hours for Hon Pule to tell the truth about the nature of her relationship with Mr Mngqibisa during our interview.

7.7.6 Hon Pule has further contended that although they shared an intimate relationship, this did not give Mr Mngqibisa special access to Hon Pule's professional rank, at any point, which might have led to a conflict of interest and undue benefit by Mr Mngqibisa. This is contradicted by the evidence, which points to Mr Mngqibisa doing as he pleased with both CBP and DOC staff being unable to rein him in. Judging by what happened at MTN, it would appear that even sponsors struggled to rein Mr Mngqibisa in.

7.7.7 Hon Pule disputes knowing who received which form of remuneration for playing whichever role in the ICT Indaba and that she had any involvement in the collection of funds from neither CBP nor Khemano. Knowing what we know now and despite protestations, including in the response to the Provisional Report, I cannot help but conclude that Hon Pule, is again being economic with the truth, a conduct constituting an act of dishonesty on her part.

7.7.8 It is common cause that Hon Pule attended meetings with including briefings with Mr Mngqibisa. One of those meetings was held in her hotel room on the evening of 22 April 2012 when she hosted a debriefing meeting attended the Malaysian Embassy staff and Mr Mngqibisa whose capacity to attend such a meeting remains a mystery. This was only 42 days before the hosting of the ICT Indaba. How could she have not known he was involved for gain in the ICT Indaba? Briefing documents further indicated what companies were involved in the processes. What may be possible is that Hon Pule may not have known about the exact amounts that Mr Mngqibisa siphoned from the MTN sponsorship and labelled it as his consultation fees.

7.7.9 Did Hon Pule get Mr Mngqibisa involved? Hon Pule assumed her position as Minister of Communications at the end of October 2011 and effectively, in the beginning of November 2011. Her prompt and foremost delivery of significance as a Minister since her appointment was the delivery of the ICT Indaba. On 18 November 2011, Mr Mngqibisa was introduced to Ms Bouwer at *Palazzo Hotel* by the official of the DOC, Mr Themba Phiri who also happened to be responsible for ICT Policy and Strategy in the Department and a long time bosom friend of Mngqibisa.

7.7.10 Mr Phiri is also a known close confidante of Hon Pule in the DOC and this has been confirmed during the investigation by both of them as he was playing a role of a go-between in facilitating engagements between Hon Pule and Ms Bouwer as well as Mr Mngqibisa on the other hand. During the investigation, both Mngqibisa and Phiri confirmed the existence of a venerable relationship between them.

7.7.11 However, it is difficult to conclude that Hon Pule actively inserted or instructed her Department to involve Mr Mngqibisa in the ICT Indaba. It may well be that Mr Phiri zealously pursued that agenda on his own. That Mr Phiri brought Mr Mngqibisa into the ICT Indaba fold is corroborated by evidence, despite his protestations.

7.7.12 Evidence also clearly backs CBP's allegation that Khemano and Mr Mngqibisa's credentials were inflated by Mr Phiri as evidence shows objectively that it was a lie that Khemano had done work for the DOC before or that it had done projects of this magnitude, including the 2010 FIFA world cup. The extensive reliance on subcontractors with Khemano only claiming for "consultancy work" further shows that it did not have prior capacity for this project. This is evidenced by Mr Mngqibisa bringing in Ms Manchisi and her ABR to assist in organizing the event. I am also not persuaded that Mr Mngqibisa's *"gate crashing"* of Mr Phiri's meeting with Ms Bouwer was a coincidence as he and Mr Phiri would have us to believe.

7.7.13 After the Palazzo meeting and when Mr Mngqibisa was certain of his participation in the forthcoming ICT Indaba, Ms Bouwer forwarded a letter to Hon Pule on 25 November 2011 referring to a meeting that they had previously regarding this ground-breaking South African initiative. In the letter, Ms Bouwer requests partnership with the DOC as policyholders and custodians of ICT matters in the RSA. This is despite Hon Pule's consistent denial and even in writing, that she ever met Ms Bouwer prior to her receipt of the 25 November 2011 correspondence.

7.7.14 On 15 December 2011, Hon Pule responds to Ms Bouwer and commits the DOC to financially contribute R10m towards the hosting of the event. Thereafter, the rest is history as the DOC, and in giving effect to Hon Pule's committal, signed an agreement with CBP on 12 January 2012, the material terms of which did not make reference to the R10m commitment made by Hon Pule prior to the signing of the agreement nor addendum in respect thereof.

7.8 Did Hon Pule cause her Department to benefit Mr Mngqibisa improperly in the ICT Indaba?

7.8.1 It is undisputed that Mr Phiri brought the lack of progress on the DOC's commitment to partnering with CBP on the Indaba under Hon Pule's attention, before Mr Mngqibisa and his Khemano were inserted into the process.

7.8.2 It is undisputed that Ms Bouwer did not have a relationship with or knowledge of Mr Mngqibisa prior to being introduced to him by Mr Phiri at a meeting. Mr Mngqibisa's evidence is the only version alleging he knew Ms Bouwer before, which is clearly disputed by Ms Bouwer and contradicted by Mr Phiri whose evidence , consistent

with Ms Bouwer' reveals that Mr Mnqgibisa was introduced to Ms Bouwer for the first time at the Palazzo meeting. I also find no reason why I should reject Ms Bouwer's version that says Mr Phiri recommended Mngqibisa's company as a service provider to be used for the Indaba as it is consistent with Mr Phiri's previous evidence, though his version has changed in the response to the provisional report.

7.8.3 It is disputed by Hon Pule that she was aware or made aware of the business relationship between CBP and Mngqibisa. But it is clear that Hon Pule did know about Mr Mngqibisa's involvement. Apart from the relationship, the two were together in Malaysia on a trip relating to the ICT Indaba.

7.8.4 It is disputed that the Department or Hon Pule was unduly influenced by Mr Mngqibisa with regard to his involvement in the ITC Indaba. However, evidence, points relating to the fact that towards the crunch time for the Indaba, she and her department primarily interacted with Mr Mngqibisa and made decisions through that channel despite the MOU placing CBP in that space. In the circumstances, I am inclined once gain to g with the version that points to undue influence as the corroborated and accordingly, most probable version..

7.9 Was the conduct of Hon Pule consistent with the Executive Ethics Code?

7.9.1 It is undisputed that Hon Pule and Mr Mngqibisa had a romantic n relationship.

7.9.2 It is however, disputed that the said romantic relationship amounted to a conflict of interest and which ultimately resulted in Khemano being appointed as a contractor during the ICT Indaba.

7.9.3 Evidence indicates that Khemano had an upper hand with the DOC, particularly demonstrated in the conduct of Khemano, a subcontractor of CBP, displacing CBP as the link with the DOC. More importantly, it has since turned out that the DOC had never worked with Khemano; Khemano had never undertaken a project of this magnitude and sub-contracted twice to get someone to do the work. Despite Mr Mgqibisa's strong protestations, in his response to the Provisional Report, It is difficult not to conclude that the only reason Khemano was brought in was because of the relationship in question.

7.9.4 This conclusion is further corroborated by the fact that CBP had, until the insertion of Khemano, partnered with *Hunta Live*, whose claim to being the second largest events management company in the country, has not been disputed by any of the parties.

7.9.5 The issue regarding whether or not Hon Pule's conduct was inconsistent with the Executive Ethics Code amounts to a legal inquiry and therefore not a matter of fact. The issue is accordingly dealt with under the legal and regulatory framework and the section titled, "Analysis and Conclusion."

8 LEGAL AND REGULATORY FRAMEWORK

8.1 Legal Framework regarding the alleged appointment of Carol Bouwer Productions by the Department

8.1.1 **Unsolicited Bids**

8.1.1.1 Circular issued by National Treasury on 27 October 2004

8.1.1.1.1 Section 2 of this circular relates to unsolicited bids and provides that:

"2.1 An accounting officer/authority is not obliged to consider unsolicited bids received outside a normal bidding process.

2.2 If an accounting officer/authority decides to consider an unsolicited bid, he or she may do so only if –

(a) The product or service offered in terms of the bid is a unique innovative concept that will be exceptionally beneficial to, or have exceptional cost advantages for the institution;
(b) The person who made the bid is the sole provider of the product or service; and
(c) The need for the product or service by the institution has been established during its strategic planning and budgetary processes."

8.1.1.2 National Treasury Practice Note No 11 of 2008/2009

8.1.1.2.1 Section 2 provides for the criteria to be considered when evaluating if an unsolicited bid is compliant:

> The criteria for the consideration of an unsolicited proposal indicate that institutions are not obliged to consider an unsolicited proposal, but may consider such a proposal if it complains with *inter alia:*
> Innovative design;
> (a) Innovative approach;
> (b) A cost-effective method of service delivery.
>
> It is important to note the essential elements that should be contained in an unsolicited proposal are *inter alia:*
> (a) Title and abstract of the product or service offered;
> (b) Description of the fact that the supplier is the sole supplier;
> (c) A statement of the anticipated benefits or cost advantages to the institution, including the **proposed price or total estimated cost for providing the product or service**in sufficient detail.

8.2 Legal Framework regarding the payment of R10 million by the Department as a contribution to the 2012 ICT Indaba

8.2.1 Treasury Regulation 21: Gifts, Donations and Sponsorships

8.2.1.1 Guide for Accounting Officers, Public Finance Management Act issued by National Treasury in October 2000

> (i) *"To record and control gifts (which includes donations and sponsorships) granted and received by the state, accounting officers must maintain a register of the date, persons involved, detailed descriptions and approvals given (if applicable), and the location or the application of the proceeds."*

(ii) With regard to the granting of sponsorships: *"The relevant treasury may approve the granting of gifts of state money and other movable property in the interest of the state provided that, should the amount exceed R100 000, funds must first be voted by the legislature."*

8.2.1.2 Treasury Regulation 21.1 in Part 8 of the Treasury Regulations for departments, constitutional institutions and public entities issued in terms of the Public Finance Management Act, 1999 (April 2001)

(i) *"The accounting officer may approve gifts, donations and sponsorships of state money and other movable property in the interest of the state. When such cash amounts exceed R100 000, the approval of the relevant legislature must be sought by including the item separately in the estimations of expenditure."*

8.3 Legal Framework pertaining to the issuing of endorsement letters to private companies sponsoring the ICT Indaba

8.3.1 In a previous report of the Public Protector, *Costly letters,* it was concluded that there is currently no legal framework pertaining to the issuing of endorsement letters.

8.4 Legal Framework pertaining to the payment of R15 million by MTN to ABR and the transfer of R6 million to Khemano Productions

8.4.1 It should be noted in this instance that the above transactions are not regulated by laws pertaining to government institutions as MTN is a private company.

8.4.2 The provisions of the Companies Act 71 of 2008 apply, read together with the Memorandum of Incorporation of MTN. The aptness of the R15 million paid to ABR should be determined in relation thereto within the private sector.

8.4.3 The relationship between the R10 million contributed by the Department and the transfer of R6 million to Khemano Productions should, however, has to be scrutinised. Such relationship is dealt with in the analysis and conclusion.

8.5 Legal Framework pertaining to the overseas travel of Mr Mngqibisa at state expense

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

8.5.1.1 The terms "spouse" and "permanent companion" with regards to the contents of the Ministerial Handbook can be defined as:

> ***"'Spouse'*** *means person legally married to the member including a spouse in a polygamous marriage or a permanent companion/life partner."*
>
> ***"'permanent companion"*** *means a person who is cohabiting with the member and is publicly acknowledged by the member as a permanent companion, provided the member has informed his/her Department in writing of such a companion."*

8.5.1.2 The definition of the term "bigamy" should be taken into account when determining if a person is the life partner/permanent companion of a government official within the Ministry.

8.5.1.3 The term bigamy in civil law can be defined as the criminal offence of marrying one person while still being legally married to another. Therefore a person cannot be legally married to one person and be the permanent companion of another.

8.5.1.4 **Annexure A: Guidelines for Official Travel Abroad: Ministers and Deputy Ministers**

> *"**1 General***
>
> *1.7 The absolute minimum number of officials should accompany members. Taking the necessity of financial discipline into account, **Members should exercise their discretion and apply their minds cautiouslyin determining** the number of officials, and **the feasibility of their spouses accompanying them abroad**. South Africa Missions abroad are available, within the constraints of their capabilities, to render support services to*

travelling Members, provided prior notice of the visit is given." (Emphasis added)

8.6 Legal Framework pertaining to the pair of red *Christian Louboutin* shoes

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

8.6.1.1 The term "spouse" and "permanent companion" with regards to the contents of the Ministerial Handbook can be defined as:

***"'Spouse'** means person legally married to the member including a spouse in a polygamous marriage or a permanent companion/life partner."*

***"'permanent companion'** means a person who is cohabiting with the member and is publicly acknowledged by the member as a permanent companion, provided the member has informed his/her Department in writing of such a companion."*

8.6.1.2 The definition of the term "bigamy" should be taken into account when determining if a person is the life partner/permanent companion of a government official within the Ministry.

8.6.1.3 The term bigamy in civil law can be defined as the criminal offence of marrying one person while still being legally married to another. Therefore a person cannot be legally married to one person and be the permanent companion of another.

8.6.2 **The Executive Ethics Code as contained in Chapter 1 of the Ministerial Handbook provides *inter alia:***

8.6.2.1 Section 4 relates to gifts received and provides that:

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

a. *is in return for any benefit received from the Member in the Member's official capacity;*
b. *constitutes improper influence on the Member, or*
c. *constitutes an attempt to influence the Member in the performance of the Member's duties.*

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

a. *return the gift or decline the offer; or*
b. *donate the gift to the State.*

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

8.6.2.2 Section 6 relates to financial interests to be disclosed as follows:

"*Members must disclose the following interests and details:*

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

c. *hospitality intended as a personal gift and with a value of more than R500; and*

d. *hospitality intended as a gift and received from a single source, and which cumulatively exceeds the value of R500 in any calendar year*."

8.7 Legal Framework pertaining to the conflict of interest

8.7.1 **The Constitution**

8.7.1.1 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.

8.7.1.2 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*****."**

8.7.2 **The Executive Members' Ethics Act**

8.7.2.1 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.

8.7.2.2 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.

8.7.2.3 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.

8.7.3 **The Executive Ethics Code**

8.7.3.1 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.

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

"*General Standards:*

*2.1 Members of the Executive **must** to the satisfaction of the President-*

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

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

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

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

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

*2.3 Members **may not-***

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

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

(c) *using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;*

(d) …..

(e) *expose themselves to a situation involving the risk of a conflict between their official responsibilities and their private interests; …*

3. Conflict of Interest

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

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

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

8.8.2 **The issues investigated by the Committee were *inter alia,* whether**;

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

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

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

8.8.3 **The Committee found that:**

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

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

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

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

8.8.3.4.1 her admission that she had a relationship of *"comradeship and friend-ship"* with him;

8.8.3.4.2 through her association with him in both the public arena and in her official capacity;

8.8.3.4.3 sharing hotel accommodation/suites with him ;

8.8.3.4.4 travelling with him on numerous international trips;

8.8.3.4.5 nominating him as her spouse or companion; and

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

8.8.4 **The Committee recommended that Hon Pule is:**

8.8.4.1 issued with a reprimand in the House;

8.8.4.2 fined 30 days' salary; and

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

8.8.4.4 She must furthermore submit full details in respect of any non-disclosure and correct the incomplete declarations for the years 2009 to 2013.

8.8.5 **Further recommendations made by the Committee were:**

8.8.5.1 **That the Executive consider measures to address the relationship between the DOC and other entities:**

8.8.5.1.1 In its deliberation on the complaint, the Panel found that there were no appropriate measures in place to ensure that when the DOC raises funds for various activities that this does not impact on its oversight role of the entities it oversees.

8.8.5.1.2 It is crucial that protocols are developed to ensure that the fundraising efforts of the department do not undermine its constitutional role. It is also important for the department to be circumspect in the manner in which it approaches industry role-players in its sector for funding, so as to ensure that such approaches do not undermine the role of the department.

8.8.5.2 **That the lack of cooperation by DOC officials be referred to the Public Service Commission for further investigation into whether the officials committed misconduct in respect of the following:**

8.8.5.2.1 Officials who ignored the Panel's Notice of Hearing and did not appear for the hearing, despite confirming receipt of the notice.

8.8.5.2.2 The DOC submitted incomplete information relating to a number of trips and employed delaying tactics when required to produce documentation. Documents requested by the Panel had "disappeared".

8.8.5.3 **That the Assembly refers to the South African Police Service and the National Prosecuting Authority the alleged breach of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures, Act 4 of 2004.**

8.8.5.3.1 **Breach of Section 16(3)**

The persons named in this report who are alleged to have wilfully furnished a Parliamentary Committee with misleading information.

8.8.5.3.2 **Breach Sections 7(a)(d) and 26**

That steps be taken against those persons responsible for threatening the Chairperson and Registrar, based on the information obtained by SAPS in respect thereof.

8.8.5.4 That this report be referred to the South African Police Services and National Prosecution Authority for the consideration of matters in this report that fall within their mandate.

8.8.5.5 That the revision of the Code be expedited.

8.8.5.6 That the penalties in the Code be increased. Paragraph 20 of the Code of Conduct requires that the Committee must report its findings and recommendations in regard to penalties to the National Assembly. Following a discussion by the Committee and some minor amendments to the panel's report, the Committee, on the proposal of Hon Dreyer, seconded by Hon Van der Merwe, unanimously adopted the report as the report of the Committee to be presented to the Assembly for consideration.

8.9 Conflict of interest, The General Principles

8.9.1 The Public Protector and in her report issued on 18 February 2009 titled, *"Report on an investigation into allegations of improper conduct by the former Chairperson of the Board of Directors of Eskom Holdings Limited, Mr Valli Moosa,"* relating to the awarding of a contract: *Report Number: 30 of 2008/2009* under the heading, *"Conflict of Interests: General Principles"* made the following observations about the conflict of interest;

8.9.2 The identification and management of a conflict between the personal interests of a decision maker in the private and public sector and that of the entity that he/she serves, has been the subject of much discussion and debate in academic, business and public administration circles for centuries.

8.9.3 Some writers on the issue claim that the identification and management of conflicts of interests is merely a part of sound and proper business ethics, which originated in the application of everyday moral or ethical norms to business and public service dealings, since times immemorial.

8.9.4 Currently, the global discussion on the prevalence and impact of conflicts of interests in the public service is more alive than ever. Wilson R Abney, in his paper entitled: "A brief history of public service ethics in the United States: 1787-1997, 2007 Ethics Counts, LLC for example, stated the following in this regard:

"Every recent study of the American electorate has found that most citizens do not believe that government officials make decisions in the public interest. Instead, Americans are convinced that the campaign donations which politicians and political parties have solicited from, and which have been provided by special interest groups, are more important to the politicians and parties in deciding positions on issues of public policy than the achievement of the common good. Because people no longer trust the politicians, the politicians call the people 'cynical', but history and current events demonstrate that politicians have provided ample reason for the public's lack of trust."

8.9.5 The sentiments referred to by Abney equally apply in many other parts of the world and some of it also finds expression in the views and perceptions of many South Africans.

8.9.6 M H Kanyane of the University of Limpopo and in his work, "Conflict of Interest in South Africa: Unravelling the revolving door" published in the October 2005 Journal of Public Administration, supports the notion that conflict of interest is becoming more and more prevalent in our present day society:

"Its affects are disastrous to an institution or a department in as far as bothfinances and reputation risks are concerned. This obviously affects the country as a whole.

…

One of the achievements of the first term of the post-1994 era is the enactment, in the wake of ethical concerns, of legislation, codes of conduct, and the establishments of institutional mechanisms, as a basis for resolving ethical questions of governance. However, conflict of interests proved to be a resilient test to the government and contributed to corroding the moral and economic fabric of the country. In spite of these shortcomings, the institutional and legislative mechanisms put in place should be turned into potent weapons for combating conflict of interests.

The public is entitled to feel confident that their power or sovereignty is being exercised for their benefit. For as the famous counsel, Archibald Cox, has noted, the stability of government rests on the maintenance of public confidence. Both a free society and democratic government require a high degree of public confidence in the integrity of those chosen to govern.

However, the confidence is sometimes eroded by the appearance of a conflict of interest. For this reason, the ethical requirements for legislators, ministers and officials are apparent and imperative to build public confidence. In this way a politician or official who creates the appearance of a conflict of interest is simply inviting the closer inspection of his or her motive." (Emphasis added)

8.9.7 There are many different views on the definition of 'a conflict of interest'. However the common theme present in all definitions relates to a clash between the official or business duties of the decision maker concerned and his/her personal interests.

8.9.8 According to Dr M J Mafunisa, Senior Lecturer at the School for Public Management and Administration at the University of Pretoria in his work, "Conflict of interest: Ethical Dilemma in politics and administration, South African Journal of Labour Relations": Winter 2003, stated that interest includes:

"…all those influences, emotions and loyalties that could influence a public functionary and compromise the exercise of his or her competent judgment. Conflict of interest involves a clash between influences of this nature and the interests of the public that the functionaries serve."

8.9.9 Judy Nadler and Miriam Schulman of the Markkula Center for Applied Ethics at the Santa Clara University in California,(see: http://www.scu.edu/ethics/practising/focuseareas/government_ethics/introduction/conflicts) give a very simple definition to the concept:

"Conflict of interest occurs when an officeholder puts his or her personal or financial interest ahead of the public interest."

8.9.10 They also hold the view that the law regulating conflict of interests is aimed at the perception as well as the reality, that a public official's personal interest may influence a decision. ***"Even the appearance of impropriety undermines the public's faith that the process is fair."*** *(Emphasis added)*

8.9.11 *Dr Mafunisa (supra) supports this view, as follows:*

"The concept (of conflict of interests) is applicable not only to situations where a conflict of interest actually exists, but also to situations where it appears to exist. A charge of conflict of interest may arise not only when public duty clashes with private interest, but also when they appear to converge."

8.9.12 Nadler and Schulman (supra) further stated in this regard that:

*"Another common misconception about conflicts of interest is that office holders are absolved of their responsibility merely by being transparent about their stake in the issue**. It is not sufficient for government officials to make conflicts public. They must take themselves out of the decision-making process altogether."*** *(Emphasis added)*

8.9.13 The South African Public Service Commission (PSC) conducted a comprehensive study into to occurrence and management of conflicts of interest in the Public Service. In its report, issued in July 2006 and entitled, *'Report On Managing Conflicts Of Interest In The Public Service',* Public Service Commission, July 2006, from page 15, the PSC referred to the generally accepted definition of a conflict of interest in the public service i.e. "a conflict between the public duties and private interests of a public official, in which the public official has private capacity interests

which could improperly influence the performance of his/her official duties and responsibilities", and stated that:

"The above mentioned is a rather narrow approach when looking at conflicts of interest. One needs to look at conflicts of interest more comprehensively. In this respect it needs to be mentioned that the interaction between the private and public sectors has made the issue of conflicts of interest much more complex. In recent years, especially in South Africa, a great velocity between the public and private sectors was evident. In South Africa, for example, the government promotes mechanisms such as Black Economic Empowerment. This interaction has given rise to the fact that whilst conflicts of interest in the past focused on traditional sources of influence such as nepotism, gifts and hospitality, conflicts of interest in recent years are more directed on:

- *a public official having private business interests in the form of partnerships, shareholdings, board membership, investments and government contracts;*
- *a public official leaving to work in a private company or a Chief Executive Officer taking up a key position in a government department with a commercial relationship with his/her former company; and*
- *a public official having affiliations with other organizations."*

8.9.14 In dealing with the question as to whether it is wrong to have a conflict of interests, the Report of the PSC makes the following important observation:

"There are many misconceptions about conflicts of interest. Some of them are that it is something to be ashamed of and should be hidden or ignored. In terms of media commentary on the matter it would appear that in the South African context we have fallen into these misconceptions. Conflicts of interest are not wrong in themselves. It is how they are managed that is important. In this regard it should be noted that public officials are also private individuals, and there will be occasions when an official's own private interests may come into conflict with his/her public duty which is to put public interest first at all times. Where reasonably possible, a public official should avoid conflicts between his/her personal interest and the public interest. However, where conflicts of interest

cannot reasonably be avoided, an official has a responsibility to identify and effectively manage any conflicts of interest he/she may have, in consultation with his/her supervisor." (Emphasis added)

8.9.15 The King Report on Corporate Governance for South Africa-2002 from page 47 stated the following in regard to conflict of interests of directors of companies:

"The personal interests of a director, or persons closely associated with the director, must not take precedence over those of the company and its shareowners. A director should avoid conflicts of interest, even when these could only be perceived as such. ***Full and timely disclosure of any conflict, or potential conflict, must be made known to the board.*** *Where an actual or potential conflict does arise, on declaring their interest, a director can participate in the debate and/or vote on the matter, but must give careful consideration to their own integrity in such circumstances and the potential consequences it may have for the board, company and themselves personally."* (Emphasis added)

8.9.16 In his book "The Corporate Citizen" published by Penguin Books, South Africa, 2006 and from page 51, Mervyn King SC dealt extensively with the duties of good faith, care, skill and diligence of directors of companies11 and the fact that courts in the twenty-first century are applying more objective tests to compliance with these duties. The modern test therefore, according to King, is what a reasonable director who acted honestly, diligently and with skill would have done in the circumstances of each case.

8.9.17 King emphasized that the average director cannot be expected to apply these legal tests in the heat of the boardroom. This is particularly true when one considers the different aspects of these duties gleaned from American, English and Commonwealth jurisprudence.

8.9.18 In order to address this dilemma, King developed 10 pertinent questions that every director should ask himself/herself in regard to the issues before the board. The very first question is:

"*Do I as a director of this board have any conflict in regard to the issue before the Board?"*

8.9.19 As remote as the conflict might be, King recommends that it (the conflict) is disclosed.*"This disclosure is not the end to the enquiry. The following question should then be asked: 'Should I excuse myself from the remainder of the board meeting or should I make my contribution, having regard to the fact that I was asked to be a member of the board either for my practiced ability or because of my representatively?"*

8.9.20 The tenth question that King suggests a director should ask is:

"Will the board be embarrassed if its decision and the process employed in arriving at its decision were to appear on the front page of a national newspaper?"

8.10 Conflict of Interest as defined by the OECD Guidelines for Managing Conflict of Interest in the Public Service, 2003

8.10.1 According to the OECD guidelines a conflict of interest may be defined as: "*A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities."*

8.11 THE PUBLIC PROTECTOR TOUCHSTONES: Previous reports of the Public Protector applicable to Ethical Conduct expected from Members of the Executive as well as the management of Conflict of Interest.

8.11.1 Conflict of interest

8.11.1.1 The most relevant investigation reports dealing with conflict of interest are those on former Minister Valli Moosa commonly known as the *"Hitachi"* report; "*To be or not to be in conflict"* report and the IEC report titled*, "Inappropriate Moves".*

8.11.2 ***"Inappropriate Moves"*** **Report Number 13 of 2013/2014**

8.11.2.1 The conflict of interest concern was whether or not a business partner in a different company than the one bidding presented a conflict of interest for the Chief Electoral Officer who was central to the bid process.

8.11.2.2 The finding was that it would have been prudent to disclose such a relationship despite the fact that it was not related to the bid in question so as to eliminate any suspicions of conflict of interest and that officials performing a public function should understand that things that can undermine objectivity transcend financial interests.

8.11.3 ***"To Be Or Not To Be In Conflict"*** **Report Number 9 of 2011/2012**

8.11.3.1 The conflict of interest question was whether or not being a President of a powerful professional body presented a potential conflict of interest for a Director-General of the Department of Labour.

8.11.3.2 The finding was that there was a perceived conflict of interest that needed to be managed.

8.11.4 ***"Hitachi Report"*** **A Report of the Public Protector on an investigation into allegations of improper conduct in connection with the awarding of a contract: Report Number: 30 of 2008/2009.**

8.11.4.1 The allegations of improper conduct related to a contract by a public entity that was awarded to a company in which a political party had an interest.

8.11.4.2 At the time of the awarding of the contract, the Chairperson of the Board of the public entity was also a member of the highest decision making body of the political party and as a result thereof, it was alleged that he had a conflict of interest.

8.11.4.3 The finding was that there was an unmanaged conflict of interest between the personal interest of the public official in the political party and his duty towards the public entity at the time when a resolution was taken to award the contract to the Hitachi Consortium, in which the political party had an interest.

8.11.4.4 It was further held that it is desirable that the conducting of business between government institutions or public entities and political parties should be regulated by legislation.

8.11.5 **Abuse of benefits and privileges for Members of the Executive: *"In the Extreme"* Report Number 11 of 2011/2012**

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

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

8.11.6 **Lying and other forms of Dishonesty: The Ndaweni Mahlangu Report**

8.11.6.1 In a report following allegations in the media to the effect that the former Premier of Mpumalanga Province said it was acceptable and normal for politicians to lie to members of the public.

8.11.6.2 The Public Protector found that the statement issued by the former Premier of Mpumalanga was unbecoming of a Member of an Executive Council. The statement was also found to have been inconsistent with the office of the Premier in that it compromised the credibility and integrity of that office and of government.

8.11.6.3 The finding was also that the former Premier's statement was in violation of the provisions of sections 136(2)(b) and 182(1)(a) of the Constitution read with section 6(4)(a)(ii) of the Public Protector Act.

9 ANALYSIS AND CONCLUSION

9.1. Regarding the appointment of CBP by the DOC to coordinate the 2012 ICT Indaba

9.1.1 The ICT Indaba was the initiative of CBP and the DOC was approached to participate as the custodian and the face of the Indaba.

9.1.2 Had the DOC appointed CBP, there would have been no legal impediment as such appointment could have been done as an *unsolicited bid*.

9.1.3 However, since evidence suggests there was no such appointment, the legal question falls away.

9.2. Regarding the propriety of the alleged issuing of endorsement letters by Hon Pule under the authority of the DOC for private companies to support and sponsor the hosting of the 2012 ICT Indaba and if so, was such conduct improper?

9.2.1. In the absence of a clear legal framework regulating the issuing of endorsement letters, the conduct of Hon Pule in issuing endorsement letters under the patronage of the DOC for private companies to support and sponsor the hosting of the Indaba could not have been unlawful.

9.2.2. As the question of proper conduct transcends lawfulness, we must ask if the conduct was proper. In the absence of the relationship with Mr Mngqibisa, nothing seems to suggest any impropriety.

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

9.3. Regarding the allegation that Hon Pule directed her Department to pay a financial contribution of R10m to CBP towards the hosting of the 2012 ICT Indaba and if so, was such a directive and payment improper?

9.3.1. The amount contributed by the DOC was not part of the agreement with CBP, but subsequent to the payment thereof, the DOC indicated that the agreement between CBP and the DOC is an *unsolicited bid*.

9.3.2. The legal framework pertaining to *unsolicited bids*, particularly section 2 of National Treasury Practice Note 11 of 2008/2009, clearly states that the financial implications to the Department should be set out in the bid document, together with all other prescribed details.

9.3.3. Hon Pule and in his letter to CBP dated 15 December 2011, voluntarily offered to donate a sum of R10m as a financial contribution towards preparations for the hosting of the ICT Indaba. In her own words, she wrote that: *the Department will make a financial contribution amounting to R10 Million, which part will be used to secure the venue for the ICT Indaba".*

9.3.4. The agreement between the DOC and CBP which was entered into after the Minister committal of the DOC to pay R10m could therefore not be an *unsolicited bid* as it was simply giving effect to the commitment made by Hon Pule.

9.3.5. If the amount could not be accounted for under the *unsolicited bid* regime, how then do we justify its payment? Another possibility, as presented by Hon Pule, is that of a sponsorship. Unfortunately there seems to be a discrepancy between requirements of a donation as outlined in Treasury Regulation 21 and the manner in which this particular "donation" was dealt with. For example, the "donation" did not satisfy the requirement of Treasury regulation 21.1, Part 8 which states that *"The accounting officer may approve gifts, donations and sponsorships of state money and other movable property in the interest of the state. When such cash amounts exceed R100 000, the approval of the relevant legislature must be sought by including the item separately in the estimations of expenditure."*

9.3.6. The amount contributed by the DOC, accordingly, cannot be defined as a sponsorship in terms of the legal framework pertaining to sponsorships, as the amount is more than R100 000 and the authorization was not obtained from the Legislature.

9.4. Regarding the alleged irregular diversion of the R15m MTN sponsorship, ostensibly by and on the instruction of Mr Mngqibisa, paid into ABR bank account instead of the CBP account specifically designated for the Indaba funds and the subsequent improper transfer of R6m into his Khemano bank account:

9.4.1. The issue of MTN's choice of channel for payment of its funds is not an issue of conduct in state affairs and accordingly falls outside my remit.

9.4.2. I am nonetheless persuaded that the diversion of funds was not supported by any cessionary note signed by Ms Bouwer as one would expect in terms of the law of contract and principles of good governance. I am further unable to conclude that the diversion of these funds orphaned them in a manner that allowed Mr Mngqibisa to find a home for part thereof.

9.4.3. Regarding the R6m paid to Khemano, from MTN sponsorship, with ABR being Mr Mngqibisa's subcontractor, it could not have been up to ABR to make that call. Accordingly, it can only be reasonably concluded that it was Mr Mngqibisa who paid himself that money.

9.4.4. I am also of the view that the amount of R10m provided by the DOC created an excess of sponsorship money and made it possible for Mr Mngqibisa to pay himself the amount of R6 million. If I am correct, it was laundered state money that Mr Mngqibisa siphoned away and not MTN funds.

9.5. Regarding the allegation that Hon Pule improperly represented to her Department that Mr Mngqibisa was her spouse and travelled with him overseas at state expense

9.5.1. Having decided that Hon Pule and Mr Mngqibisa had the alleged romantic relationship and travelled overseas together at state expense, the issue for determination was the propriety of Hon Pule's conduct in this regard.

9.5.2. By Hon Pule's own admission, Mr Mngqibisa could not be classified as a spouse or permanent companion in terms of the legal framework pertaining to overseas travel of Ministers. By her own admission, Mr Mngqibisa could not travel and should not have travelled with her at state expense.

9.5.3. Having decided that Hon Pule represented or was negligent in allowing a misrepresentation in her Department of Mr Mngqibisa as her spouse or companion leading to the extension of benefits to him that he would otherwise have only been entitled to if he were a spouse, it stands to reason that her conduct was improper and to the extent that this led to the abuse of state recourses, amounts to a violation of paragraph2.3 (g) of the Executive Ethics Code.

9.6. Regarding Hon Pule's alleged benefit from a pair of red soled *Christian Louboutin* shoes, from Mr Mngqibisa, owner of Khemano which is a company that was sub-contracted for and benefited from the ICT Indaba

9.6.1. The donation of the pair of shoes to Hon Pule could not be proved as no receipts could be found thereof.

9.6.2. The legal framework pertaining to gifts of this nature would provide that the shoes be declared and permission obtained from the President to keep the gift as it was not given by a spouse or permanent companion.

9.7. Regarding the possibility of a potential conflict of interest occasioned by an alleged romantic relationship between Hon Pule and Mr Mngqibisa as a consequence of which, the latter benefitted improperly out of the financial sponsorships contributed by private companies towards the hosting of the DOC's ICT Indaba held in Cape Town from 4 to 7 June 2012

9.7.1. Having concluded that there was a romantic relationship between Hon Pule and Mr Mngqibisa, the issue for determination was whether such relationship presented a conflict of interest in the context of the coordination of the ICT Indaba.

9.7.2. To resolve this issue, a question to be asked was whether Hon Pule found herself in a position of divided loyalty. In view of her position as the Executing Authority for the DOC, did she place herself in a position where her duty to protect the interest of the DOC and government clashed with her loyalty to Mr Mngqibisa as her special friend?

9.7.3. In answering this question I drew some lessons from section 96 of the Constitution, paragraphs 2 and 3 of the Executive Ethics Code and principles laid down in the Public Protector *touchstones* in the cases I have referred to earlier. *"The Hitachi"* Report and the more recent reports titled, "*To be or Not to be in Conflict",* and "*Inappropriate Moves"* provided useful benchmarks on the interpretation of situations that present a conflict of interest.

9.7.4. As indicated earlier, conflict of interest arises when the a decision maker is placed in a position of protecting the opposing interests of two masters or persons that she or he is attached to or where her personal interests and those of her organisation are at odds. Clearly Hon Pule placed or found herself in a position whether she had to protect the opposing interests of her Department and those of her special friend Mr Mngqibisa.

9.8. Regarding the possibility that Hon Pule improperly caused or allowed her Department to benefit Mr Mngqibisa improperly in the ICT Indaba and the propriety of her conduct in that regard:

9.8.1. Having decided that Mr Mngqibisa benefited from the ICT Indaba and that through her actions and omissions, Hon Pule caused or allowed the DOC to benefit Mr Mngqibisa during the ICT indaba, the question for determination was the legality and consequently, the propriety of her conduct in that regard.

9.8.2. Clearly if Mr Mngqibisa qualified as a spouse there would be no questions regarding him benefitting from overseas trips. As Hon Pule has admitted that he was not meant to benefit, she clearly had a duty to ensure he did not get spousal benefits, having been the one nominating him as an official companion.

9.8.3. However, Hon Pule's failure to step in and stop her Department from inserting him into the ICT Indaba coordination can reasonably be understood as amounting to allowing Mr Mngqibisa to improperly benefit. At the very least Hon Pule has to take responsibility for negligently allowing a misrepresentation of Mr Mngqibisa as her spouse. As I indicated earlier, no reasonable person can accept that she was not aware of the representation.

9.8.4. It can therefore be deduced that Mr Mngqibisa improperly benefited from the DOC and that his relationship with Hon Pule created the opportunity for this to occur. In the light of the above it is not unreasonable to conclude that Hon Pule through her romantic relationship caused the DOC to improperly benefit Mr Mngqibisa.

9.8.5. My view is also confirmed by the fact that during the interview I held with Hon Pule on 28 June 2013, she undertook to ensure that what may have been paid for Mr Mngqibisa by her department would be reimbursed and indeed, despite the fact that the undertaking was made by Hon Pule in the absence of Mr Mngqibisa, he paid back an amount R89 326.35 that was improperly spent on him by the DOC in respect of a trip to Mexico in September 2009 where he accompanied Hon Pule.

9.9. Regarding the question of Hon Pule's conduct being inconsistent with the provisions of the Executive Ethics Code

9.9.1 I have answered this question by testing or measuring Hon Pule's conduct in connection with the ICT Indaba and during the investigation against the standard required in compliance with the Executive Ethics Code, including the requirement that Members of the Executive should act in good faith and not wilfully mislead the legislature to which they are accountable. In her case she clearly did not ct in good faith and until very late during my interview, denied ever having a personal relationship with Mr Mngqibisa.

10. FINDINGS

My findings are the following:

10.1. Regarding the lawfulness and propriety of the appointment of CBP by the DOC to coordinate the 2012 ICT Indaba:

10.1.1. My finding is that CBP was not appointed by the DOC to coordinate the Indaba. The Indaba was CBP's project that could have been executed by CBP without the DOC's consent; though needing the DOC's blessing for the desired industry support and impact. There was accordingly no unlawfulness or impropriety on the part of the DOC or CBP in regard to CBP coordinating the hosting of the ICT Indaba.

10.2. Regarding the lawfulness or propriety of the alleged issuing by Hon Pule of endorsement letters under the authority of the DOC for private companies to support and sponsor the hosting of the 2012 ICT Indaba:

10.2.1. My finding is that Hon Pule did solicit sponsorship support for the ICT Indaba but that such conduct per se was not unlawful or improper. I further find that Hon Pule was not the first to issue sponsorship support letters on behalf of CBP and the ICT indaba and that Deputy Minister Bapela (Hon Bapela) had already done so.

10.2.2. The allegation that Hon Pule pressured Telkom and the affected mobile phone companies to sponsor the event is not substantiated by evidence as event sponsors denied this allegation during interviews. I must point out though that Hon Pule should have been circumspect with regard to actively encouraging entities under her supervision to donate funds as they may have found it difficult to go against her wishes as a figure with authority over them.

10.3. Regarding the allegation that Hon Pule improperly directed the payment of an amount of R10m to CBP by the DOC as a contribution towards the hosting of the 2012 ICT Indaba:

10.3.1. My finding is that Hon Pule did commit her Department to "donate" R10m as financial assistance to the ICT Indaba through her letter dated 15 December 2011, addressed to Ms Carol Bouwer. However, on the basis of evidence before me, my finding is that such financial assistance was unsolicited. The process was also not executed in accordance with Treasury Regulation 21 regulating the granting of gifts, donations and sponsorships by the state. Her conduct and that of her Department was accordingly, unlawful, improper and constitutes maladministration.

10.3.2. I further find that as CBP innocently accepted the "donation" and integrated the money in the ICT Indaba coordination operations, it would be unjust to require that the money be refunded. It is also clear that the state derived some value from the event and related activities although a lot of that value was later undermined by the negative publicity.

10.4. Regarding the allegation that Hon Pule improperly, and in violation of the Executive Ethics Code, represented to her Department that Mr Mngqibisa was her spouse or companion and travelled with him overseas at state expense:

10.4.1. My finding is that despite numerous denials at various *fora,* Hon Pule did represent to her Department that Mr Mngqibisa was her official companion, the key evidence being a form completed upon her appointment as Deputy Minister of Communications.

10.4.2. I further find that, by her own admission during the interview on 28 June 2013, Hon Pule and Mr Mngqibisa had a romantic relationship. She added that he was, however, not her spouse as he was married to someone else under civil law and was therefore not entitled to spousal benefits. She offered to ensure that all Departmental expenditure on Mr Mngqibisa's trips would be reimbursed before this investigation was finalised.

10.4.3. In this regard, Hon Pule made good on her promise as Mr Mngqibisa paid back on 18 July 2013, an amount of R89 326.35 that was inappropriately spent on him by the DOC in respect of the September 2009 trip to Mexico where he accompanied Hon Pule on her official visit to that country.

10.4.4. However, my finding is that Hon Pule was not entirely honest as she stated that the relationship ended before she became the Minister of Communications while evidence relating to trips undertaken as Minister of Communications confirms a relationship. I can also not reasonably accept her submission that she did not know that her office unilaterally reflected and funded Mr Mngqibisa as her spouse during her trips as Deputy Minister and later as Minister. Hon Pule's conduct in this regard was unlawful and unethical. The act of trying to pass the buck onto staff is, on its own, grossly improper and unethical.

10.5. Regarding the allegation that the MTN sponsorship of R15m was irregularly diverted by Mr Mngqibisa into ABR banking account instead of the CBP account specifically designated for the ICT Indaba funds and that he subsequently improperly transferred R6m of this money into his Khemano:

10.5.1. My finding is that the allegation is substantiated by evidence and that Mr Mngqibisa's conduct in this regard was unlawful and improper. His conduct points to abuse of the power he enjoyed due to his special relationship with the DOC and Hon Pule. There was neither authorisation from CBP for the siphoning of MTN sponsorship funds to ABR, nor agreement for a management fee of R6m nor authorisation of the appropriation of that money.

10.5.2. I further find that the appropriation of R6m or a substantial part thereof constitutes improper enrichment on the part of Mr Mngqibisa's company and that the siphoning of this money was made possible through the surplus funds caused by the unsolicited and unlawful "donation" of R10m from Hon Pule.

10.6. Regarding the allegation that Hon Pule improperly benefitted from a pair of Christian Louboutin shoes worth R10 000 from Mr Mngqibisa, owner of Khemano which was subcontracted for and benefited from the ICT Indaba:

10.6.1. My finding is that although Hon Pule was wearing new red soled Christian Louboutin shoes at the event, no concrete evidence linked the shoes to Mr Mngqibisa or Khemano. I accordingly, find no justifiable reason to reject her explanation that she bought the shoes for herself and owns several shoes from this exclusive brand.

10.7. Regarding the allegation that Hon Pule's alleged romantic relationship with Mr Mngqibisa created a potential conflict of interest which benefitted him improperly from the financial sponsorships contributed by private companies towards the hosting of the DOC ICT Indaba held in Cape Town from 4 to 7 June 2012:

10.7.1. My finding is that there was a real and not just a potential conflict of interest on the part of Hon Pule regarding her duty to act in the best interest of the DOC and her loyalty to Mr Mngqibisa on account of their relationship. Faced with divided loyalties, as is always the case in a conflict of interest situation, I am convinced that Hon Pule chose Mr Mngqibisa's interests above those of her Department and ultimately, the State.

10.7.2. It was Hon Pule's Department that brought Mr Mngqibisa and his company to the ICT Indaba fold without CBP's request, which had indicated clearly in its prior communication to the DOC that it already had an execution partner by the name of Hunta Live, an agency that was eventually elbowed out as Khemano and its subcontractors took over the 2012 ICT Indaba coordination processes.

10.8. On the allegation that Hon Pule caused her Department to benefit Mr Mngqibisa improperly in the ICT Indaba:

10.8.1. My finding is that this allegation is substantiated. Through actions and omissions, Hon Pule caused her Department to benefit Mr Mngqibisa and his company Khemano improperly. Contrary to what had been said to CBP about Khemano's profile, neither Khemano nor Mr Mngqibisa had done any work for the DOC before or done any project of the magnitude of the ICT Indaba. Mr Mngqibisa and his company further benefited from the R15m diverted towards ABR and ultimately, the R6m siphoned to Khemano allegedly as management fees but without the authorisation of the principal, CBP.

10.8.2. I further find that Hon Pule acted in breach of paragraph 2.3(g) of the Executive Ethics Code in that her unlawful extension of spousal benefits to Mr Mngqibisa amounted to making improper use of allowances available to her.

10.9. Regarding whether or not Hon Pule's conduct was inconsistent with the provisions of the Constitution and the Executive Ethics Code:

10.9.1. My finding is that Hon Pule's conduct was grossly at odds with the provisions of section 96(2) of the Constitution as well as the Executive Ethics Code, particularly paragraphs 2 and 3 thereof. Not only did she violate the code by failing to manage the conflict of interest arising from her relationship with Mr Mngqibisa, the preponderance of evidence indicates that Hon Pule directed and/or allowed her staff, particularly her PA and Mr Themba Phiri, to violate the law and departmental policies by inserting Mr Mngqibisa into the ICT Indaba coordination and irregularly extending other favours to Mr Mngqibisa. She also caused or allowed her staff members to lie to Parliament, the AG and my office during these institutions' respective investigations.

10.9.2. I further find that due to the conflict of interest referred to in this report; it was difficult if not impossible for any of the parties, particularly officials in the DOC and CBP management to reign in Mr Mngqibisa. Hon Pule's conduct was, accordingly, improper and in violation of the Executive Ethics Code and brought the eminence of both the Executive and Parliament into disrepute.

10.9.3. I also find that, by wilfully misleading Parliament during the investigation and in offering a half-hearted apology on the day Parliament decided on the findings of the Parliamentary Joint Committee on Ethics and Members' Interests into her conduct, Hon Pule violated paragraph 2.3(a) of the Code which specifies that "Members of the Executive may not wilfully mislead the legislature to which they are accountable."

11. REMEDIAL ACTION

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

11.1. The Hon Dina Pule

11.1.1. To make good on her promise made on 28 June 2013 to quantify all amounts spent by the DOC on Mr Mngqibisa's overseas trip to Mexico in September 2009 and all other destinations and to ensure that every cent is paid back to the state by 31 January 2014.

11.1.2. It was noted that on 18 July 2013, Mr Mngqibisa only refunded the DOC an amount of R89 326.35 which was reprehensively spent on him by the department in respect of his trip to Mexico, undertaken in September 2009 where he accompanied Hon Pule on her official visit to that country.

11.1.3. To issue an open apology to Ms Carol Bouwer, for subjecting her to a hidden agenda placing her in an untenable position; The Sunday Times, for the persistent insults and denial of the truth that she eventually admitted to me on 28 June 2013; affected members of Staff of the DOC, for placing them in an unethical situation involving persistent lies and deceit and to Parliament, for persistently misleading this *august* constitutional pillar and never admitting the truth right until the end.

11.1.4. To consider vacating her seat in Parliament to minimise the damage caused by her undermining this institution, particularly by never admitting the truth even after having done so to me.

11.2. The President

11.2.1. To take note of the findings and expedite the finalisation of the review of the Executive Members' Ethics Act and the Executive Ethics Code to eliminate various lacunae identified in my previous and predecessors' reports.

11.3. The Speaker of the National Assembly

11.3.1. To take note of the findings and remedial action directed to the President and Hon Pule and ensure Parliament takes this into account in its ordinary oversight work.

11.3.2. To monitor that Hon Pule makes good on her promise to repay state funds irregularly spent on Mr Mngqibisa.

11.4. The Minister of Communications

11.4.1. To ensure that funds owed by Mr Mngqibisa are urgently calculated and reclaimed from him.

11.4.2. To consider commissioning an audit with a view to verifying all the trips abroad undertaken by Mr Mngqibisa at state expense whilst accompanying Hon Pule and recover from him all what the department would have improperly paid for him.

11.4.3. To ensure expeditious execution of the disciplinary processes in respect of employees that acted unlawfully and in violation of the Public Service Code of Ethics in relation to the 2012 ICT Indaba and the conduct of this investigation.

11.5. **The Minister of Public Service and Administration**

11.5.1. To urgently consider subjecting all Members of the Cabinet and Provincial Executives to an Ethics Seminar and ensure that all new Ministers attend an ethics seminar within 2 months of assuming office.

11.5.2. To ensure that the Executive Ethics Code is turned into a pocket booklet to be provided to all members of the Executive on assumption of office and also captured in posters to be placed in all Executive Offices.

11.5.3. The Law Enforcement Agencies already seized with the matter to proceed expeditiously on matters already referred to them by Parliament.

12 MONITORING

12.1. All administrative heads of affected organs of state are to submit action plans within 30 days indicating how the remedial action in 11 above will be implemented.

12.2. All remedial action to be implemented within 6 months of the issuing of this report.

ADV. T N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
5 DECEMBER 2013