

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

ORIGINAL

Case No.: 4067/2020

In the matter between:

DEMOCRATIC ALLIANCE

ROY JANKIELSOHN

and

MEC FOR AGRICULTURE AND RURAL DEVELOPMENT

**HEAD OF DEPARTMENT, AGRICULTURE
AND RURAL DEVELOPMENT**

**FREE STATE DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT**

FREE STATE DEVELOPMENT CORPORATION

First Applicant

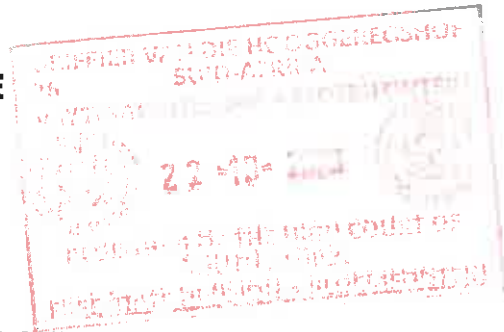
Second Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent



NOTICE OF MOTION

TAKE NOTICE that the applicants intend to make application to this Court, on a date to be determined by the Registrar, for an order in the following terms:

1. Declaring that the failure by the first to third respondents to verify, approve and appoint the identified beneficiaries to the Vrede Dairy Project is unconstitutional and unlawful.
2. Directing the first to third respondents to undertake a lawful and rational process in which they verify, approve and appoint the identified beneficiaries to the Vrede Dairy Project within 90 days of the date of this order.

3. Directing the first to third respondents, together with any other respondent that opposes this application, to pay the applicants' costs.
4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the affidavit of **ROY JANKIELSOHN**, together with the annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that the applicants have appointed the address of their attorneys, detailed below, at which they will accept notice and service of all process in connection with this application.

TAKE NOTE FURTHER that the applicants are prepared to accept service of all further pleadings and notices in this application by email at elzanne@mindes.co.za and dmoller@symok.co.za.

TAKE NOTICE FURTHER that should any respondent wish to oppose the order prayed for in the notice of motion, it is required:

- (a) Within fifteen (15) days after receipt of this notice of motion to deliver notice to the applicants that it intends so to oppose and, in such notice, to appoint an address within eight kilometres of the office of the Registrar at which they will accept notice and service of all process in these proceedings;
- (b) Within ten (10) days of delivery of the notice of intention to oppose, to deliver any affidavit that it may desire in answer to the allegations made by the applicants.

TAKE NOTICE FURTHER that if no notice of intention to oppose is delivered as aforesaid, the application will be heard on **26 NOVEMBER 2020** at 09h30 without any further notice to you.

DATED at BLOEMFONTEIN on this 22nd day of OCTOBER 2020.

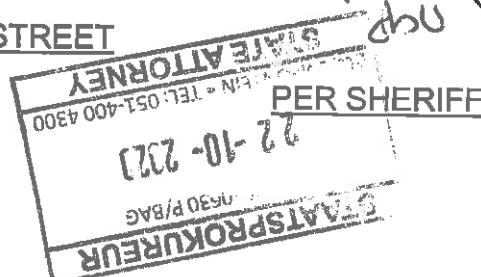
MINDE SCHAPIRO & SMITH INC.
Attorney for Applicants
(Ref: DEM16/0800/E JONKER/ks)



Care of: **SYMINGTON & DE KOK**
169B Nelson Mandela Drive
Westdene
BLOEMFONTEIN
Tel.: (051) 505 6600
Ref: D MÖLLER / jjvr / FMD0106
E-mail: dmoller@symok.co.za

TO: THE REGISTRAR OF THE HIGH COURT
FREE STATE DIVISION
BLOEMFONTEIN

AND TO: **MEMBER OF THE EXECUTIVE COUNCIL**
FREE STATE PROVINCIAL DEPARTMENT
Care of STATE ATTORNEY
49 CHARLOTTE MAXEKE STREET
BLOEMFONTEIN



**AND TO: HEAD OF DEPARTMENT
AGRICULTURE AND RURAL DEVELOPMENT
CHEMISTRY BUILDING FLOOR 1
GIELIE JOUBERT STREET
GLEN
BLOEMFONTEIN** PER SHERIFF

**AND TO: FREE STATE DEPARTMENT OF AGRICULTURE AND RURAL
DEVELOPMENT
CHEMISTRY BUILDING FLOOR 1
GIELIE JOUBERT STREET
GLEN
BLOEMFONTEIN** PER SHERIFF

**AND TO: FREE STATE DEVELOPMENT CORPORATION
33 KELLNER STREET
BLOEMFONTEIN** PER SHERIFF

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Case No.:

In the matter between:

DEMOCRATIC ALLIANCE

First Applicant

ROY JANKIELSOHN

Second Applicant

and

MEC FOR AGRICULTURE AND RURAL DEVELOPMENT

First Respondent

**HEAD OF DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT**

Second Respondent

**FREE STATE DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT**

Third Respondent

FREE STATE DEVELOPMENT CORPORATION

Fourth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

ROY JANKIELSOHN

Hereby declare under oath and state that:

- 1 I am an adult male residing at House No. 7, Roth Street, at the MPL Village in Bloemfontein. I represent the Democratic Alliance ("DA") as a member of the Free State Provincial Legislature (the "FSL"), and currently serve as the Leader of the Official Opposition in the FSL. I was previously a Member of Parliament



between 2000 and 2006. I am duly authorised to depose to this affidavit on behalf of the DA.

- 2 The contents of this affidavit are within my personal knowledge, unless the context indicates otherwise, and are to the best of my knowledge both true and correct. I respectfully submit that any unconfirmed facts that are not in my personal knowledge are consistent with and corroborated by evidence of which judicial notice may be taken, and are in any event admissible under section 3 of the Law of Evidence Amendment Act, 1988.
- 3 Where I make legal submissions, I do so on the advice of the DA's legal representatives, whose advice I accept as correct.

PARTIES

- 4 The first applicant is the **DEMOCRATIC ALLIANCE**.
 - 4.1 The DA is a political party that enjoys representation in national, provincial and local government, including representation in every provincial legislature, including the FSL.
 - 4.2 In terms of its federal constitution, the DA is established as a body corporate with perpetual succession, capable of suing and being sued in its own name. A copy of the DA's federal constitution is attached as annexure "RJ1".



- 4.3 As a political party represented in the FSL, the DA and its elected representatives have a constitutional duty to exercise oversight of the executive government of the Free State Province.
- 5 I am the second applicant.
- 5.1 I have served as a Member of the Free State Portfolio Committee for Rural Development and Agriculture since 2006. In that capacity, I have played an active role in exercising oversight in various agricultural projects undertaken by the Free State government, including the Vrede Dairy Project.
- 5.2 I was also the complainant to the Public Protector in respect of the Vrede Dairy Project. I submitted three complaints to the Public Protector in respect of the Vrede Dairy Project on 12 September 2013, 28 March 2014 and 10 May 2016.
- 5.3 The DA subsequently successfully reviewed and set aside the Public Protector's report on the basis, *inter alia*, that she failed properly to investigate the role of high-ranking public officials in the project, and that she ignored the side-lining of beneficiaries.
- 5.4 I recently appeared at the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (the "**State Capture Commission**"), where I gave evidence regarding *inter alia* the Vrede Dairy Project.



- 6 The applicants bring this application pursuant to their constitutionally mandated function of conducting oversight and holding the executive to account. They accordingly bring the application:
 - 6.1 in their own interest, as the main opposition party in the FSL;
 - 6.2 in the public interest, under section 38(d) of the Constitution; and
 - 6.3 in the interests of the DA's members, under section 38(e) of the Constitution.

- 7 The first to third respondents are officials within the Free State Department of Agriculture and Rural Development.
 - 7.1 The first respondent is the **MEMBER OF THE EXECUTIVE COUNCIL ("MEC")** for the Department.
 - 7.2 The second respondent is the **HEAD OF DEPARTMENT ("HOD")** for the Department.
 - 7.3 The third respondent is the **FREE STATE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT** itself.

- 8 The first to third respondents, which I refer to collectively as "**the Department**", have their principal address at Gielie Joubert Street, Glen, Bloemfontein, 9360.

- 9 The fourth respondent is the **FREE STATE DEVELOPMENT CORPORATION ("FDC")**.

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- 9.1 The FDC is a specialist economic development agency established as a juristic person under section 2 of the Free State Development Corporation Act 6 of 1995.
- 9.2 The FDC is cited only for its interest in the matter. No relief is sought against it, save for costs in the event of opposition.
- 9.3 The FDC has its principal place of business at 33 Kellner Street, Bloemfontein.

THE PURPOSE OF THIS APPLICATION

- 10 This application arises out of the notorious Vrede Dairy Farm Project (the “**Project**”). As I explain below, the Project has received wide publicity, has been the subject of numerous court proceedings, and has received harsh (and, I respectfully submit, fully deserved) judicial criticism.
- 11 However, the purpose of this application is different to the proceedings that have come before it.
- 12 While previous proceedings have focused on the extent of unlawful, improper and/or irregular conduct on the part of those within the provincial government in the implementation of the Project, the focus of this application is the intended beneficiaries of the Project – poor, black farmers in the Free State Province, who were promised, but were never given, a stake in the Project and the benefits of training, upskilling and empowerment.

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- 13 The Department has still failed – an astonishing eight years after the Project ostensibly began – to verify, approve and appoint beneficiaries after they were identified years ago. All the while, it continues to funnel approximately R20 million per year towards the Project.
- 14 The purpose of this application is to ensure that those who are supposed to benefit from the Project do so. The Department has delayed this for many years. It cannot delay any longer.
- 15 The applicants accordingly seek declaratory and mandatory relief, namely:
- 15.1 an order declaring that the Department's failure, eight years after the commencement of the Project, to verify, approve and appoint the identified beneficiaries is unconstitutional and unlawful;
- 15.2 an order directing the Department to undertake a lawful and rational process, and pursuant to that process, to verify, approve and appoint the identified beneficiaries to the Project within 90 days of the date of this court's judgment.
- 16 The remainder of this affidavit is structured as follows:
- 16.1 First, I provide the factual background of the Project, including the intended role for beneficiaries and the various investigations into the Project.

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- 16.2 Second, I explain – primarily with reference to responses to replies to parliamentary questions – that the Department continues to put money into the Project, despite its failure to appoint beneficiaries.
- 16.3 Third, I demonstrate that, as a matter of law, the Department is obliged to appoint the beneficiaries.
- 16.4 Lastly, I set out the grounds for the declaratory and mandatory relief that the applicants seek.

FACTUAL BACKGROUND

The Vrede Dairy Project

- 17 During 2012, the Department launched a provincial initiative, known as *Mohoma Mobung*, purportedly aimed at revitalizing the Free State agricultural sector through investment in various initiatives.
- 18 The initiative was described by the MEC for Finance in the 2012/13 Budget Speech (which I attach marked “**RJ2**”) as the provincial growth and development strategy for the agriculture and rural development sector, and as a multi-year, mega public and private partnership business concept that promotes income generation in rural areas, the creation of on- and off-farm agri-business, value chain enterprises and Black Economic Empowerment.



- 19 The Integrated Vrede Dairy Project was identified as a flagship project of this intervention. Its ostensible purpose was to uplift the Vrede community through, *inter alia*, sustainable job creation opportunities.
- 20 In April 2012, Estina (Pty) Ltd ("**Estina**") submitted a business proposal (attached marked "**RJ3**") for the establishment and management of the Project at the Krynaauwslust farm.
- 20.1 Estina presented itself as being in partnership with an Indian company with technical expertise, called Paras Dairy.
- 20.2 The business proposal noted that the Department had met with Paras in India and had agreed in principle to partner with them on the Project.
- 20.3 The business proposal stated that Estina had, in turn, signed a Memorandum of Understanding with Paras to deploy a flagship Dairy Project in Vrede.
- 20.4 The business proposal described the Project and its aims in lofty terms, claiming that the Project would be highly sustainable, and would continue to generate development in the area, including by creating small enterprises and alleviating poverty in the surrounding communities.
- 20.5 In accordance with "*AgriBEE business norms*", Estina proposed the establishment of a new special purpose vehicle, in which Estina would hold a 49% share and the remaining 51% share would be distributed to selected grant recipients.



- 20.6 The financial commitment sought from the Department was R100 million per year for five years.
- 21 On or about 5 July 2012, the Department submitted a request for the approval to accept Estina's business proposal, and to enter into a Memorandum of Agreement with Estina for the establishment and management of the Project. On the same day, the Department appointed Estina, and entered into a Memorandum of Agreement for the establishment and management of the Vrede Dairy Project. I attach the Agreement with Estina marked "RJ4".
- 21.1 The parties recorded, *inter alia*, that the Department had met with Paras, and that the Project would give effect to black economic empowerment in accordance with the AgriBEE Charter.
- 21.2 Annexure A to the Agreement provided that the identification of beneficiaries – defined as '*persons from the Vrede area which meet the requirements of the AgriBEE Charter*' – was one of the "First Phase" obligations of the parties. In terms of clause 7.3, the identification of the beneficiaries for the AgriBEE entity was the Department's responsibility.
- 21.3 Once they had been identified by the Department, Estina was expressly obliged to ensure that "*beneficiaries owned 51% of the AgriBEE entity*".
- 21.4 Estina was then required to perform its obligations in accordance with its proposal.
- 21.5 The Department undertook to pay up to R342 million towards the project, and Estina was required to pay R228 million.



22 On 10 July 2013, the erstwhile MEC, Ms Qabathe, provided a report to the Portfolio Committee for Rural Development and Agriculture, which I attach marked "RJ5" (which was strikingly similar to Estina's business proposal). She specifically indicated that the Department was *'in the process of facilitating the identification of 100 members of the community who will be participating in the Project.'*

Beneficiaries

23 The precise manner in which the Department was to identify and support beneficiaries was always unclear.

24 In reply to a written question from me in the FSL on 13 November 2013 (which I attach marked "RJ6"), in which I asked about the nature of the agreement between the Province and the private sector partner, former MEC Qabathe again confirmed that, *'farmers will hold 51% shares'* in the Project. She also explained that Estina would be obliged, *inter alia*, to:

24.1 *'train beneficiaries according to need analysis and marketing of produce and the products both locally and internationally'; and*

24.2 *'provide beneficiaries with aftercare or mentorship, in conjunction with extension support from the Department, according to the scope of work for each project'.*

25 Indeed, an agreement was concluded between the Department and an entity identified as "Vrede Dairy Project 2013/14" (the "**Beneficiary Agreement**") which appeared, at least on its face, to be intended to give effect to the former MEC's



statements regarding training, mentorship and support for beneficiaries. I attach the Beneficiary Agreement marked "RJ7".

26 The Beneficiary Agreement was signed by the HOD on behalf of the Department, and by Mr Jun David Mahlaba on behalf of Vrede Dairy Project 2013/14 – which was defined in the Beneficiary Agreement as "the Beneficiary".

27 The Beneficiary Agreement contained the following material terms:

27.1 It recorded, *inter alia*, that:

27.1.1 the Comprehensive Agricultural Support Programme ("CASP") had as its long term goal the enhancement of the living conditions of low-income households in rural and peri-urban communities in the Free State through the use of capital funding to establish economically viable and sustainable food and income generating activities, focusing in particular on the agricultural sector (clause 2.1).

27.1.2 the Department would make available funds – including for planning and implementation, training, materials and equipment, services, transport, capital expenditure, working capital and sundries – to the Beneficiary for purposes of funding the Project (clause 2.2 read with the definition of "Project Funds").

27.2 It described the purpose of the agreement as being to provide for and govern the implementation and disbursement of funds, and to create a



framework for the successful and sustainable development, implementation and management of the Project (clause 4).

27.3 It obliged the Department to, *inter alia*, provide specified funds and assets to the Beneficiary; to provide "Extension Services" to the Beneficiary (ancillary services, including technical, financial and management information and training); to provide "Aftercare Services" to the Beneficiary (further assistance and support after the completion of the Project).

28 Clause 5.1 of the Beneficiary Agreement provided that it was subject to a suspensive condition, namely that the Beneficiary would, on or before the date of approval by the Department, have valid legal ownership of the Project Site, or have legal access and use thereof in the form of a valid and duly executed lease or similar agreement. In the event that the condition was not met, the Beneficiary Agreement was automatically cancelled and of no force and effect.

29 I am not aware whether steps were taken to implement the Beneficiary Agreement. In particular, I am not aware whether the suspensive condition in clause 5 was fulfilled, or whether the Beneficiary Agreement was instead cancelled and rendered of no force and effect by virtue of its non-fulfilment. I call upon the Department to provide a full and frank account of whether and the extent to which the Beneficiary Agreement was complied with.

30 In sum, the Project was intended to entail agricultural investment by the provincial government and Estina, and the vesting of ownership rights, and developmental benefits, in poor, black emerging farmers in the Free State Province.



31 As I explain below, that, however, is not what happened.

The National Treasury Report

32 In October 2013, National Treasury investigated the Department's contracts with Estina. The investigation was triggered by reports in the Mail & Guardian newspaper to the effect that the Department had not adhered to supply chain management prescripts, and that the involvement of the Gupta family had corrupted the Project.

33 ENS Forensics (Pty) Ltd was contracted to assist with the investigation. Part of ENS's mandate was to verify *whether there were any beneficiaries identified for the AgriBEE vehicle and, if so, who they were.*

34 National Treasury published its report in January 2014 (the "**Treasury Report**"). I attach the Treasury Report marked "**RJ8**". The Treasury Report made serious and wide-ranging findings and revealed irregularities involving senior officials within the Department, including the erstwhile HOD Mr Thabethe.

35 My concern for present purposes is the Treasury Report's damning findings regarding the exclusion of beneficiaries from the Project:

35.1 The Department provided ENS with a copy of the list of project beneficiaries, but only 80 instead of the projected 100 beneficiaries had been identified. The Report expressed '*serious concerns about the manner in which the beneficiaries were identified*' and the fact that they had not been properly included in the Project. In particular:



35.1.1 the AgriBEE entity was only incorporated on 11 October 2013;

35.1.2 the only director of the AgriBEE entity was Mr Vasram, Estina's director; and

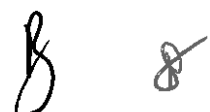
35.1.3 none of the beneficiaries were listed as directors of the AgriBEE entity and it was not clear if the beneficiaries would become directors (Executive Summary and paras 2.2.48- 2.2.49, 3.2.1 and 4.1.5 of the Treasury report).

35.2 The Treasury Report explained that when the former HOD, Mr Thabethe, was questioned about why beneficiaries were only identified after the project had been initiated, he stated that the identification of beneficiaries was an "on-going process". However, according the CASP coordinator in the National Department of Agriculture Forestry and Fisheries ("DAFF"), Ms Elder Mtshiza, the Department "*only started to scramble to find beneficiaries for this project when DAFF indicated that it would be withdrawing its approval for this project and would not disburse CASP funds in respect of this project.*" This raises serious questions about whether it was ever intended – genuinely and in good faith – that beneficiaries would be involved in the Project.

35.3 The Treasury Report also described the criteria that were apparently used to exclude beneficiaries, namely:

35.3.1 The beneficiaries should not be government officials.

35.3.2 They should not have criminal records.



- 35.3.3 There should be no double-dipping.
- 35.3.4 The beneficiaries should be of a suitable age to farm.
- 35.3.5 They should be South African citizens that reside in the Vrede, Memel or Warden area.

36 The Treasury Report made plain that there was simply no plan for the beneficiaries, that they had been side-lined from the outset, and that their inclusion was essentially a sham to give the Project the appearance of being development-oriented.

37 In other words, not only was the Project fundamentally irregular, but its very purpose – community development, income generation and empowerment – could never have been achieved, because the beneficiaries were never properly involved.

Takeover by the Free State Development Corporation

38 On 13 August 2014, pursuant to the findings of the National Treasury investigation, the Department cancelled its contract with Estina. However, as the MEC made clear, notwithstanding the cancellation of the agreement with Estina, the Department nevertheless intended to pursue the Project and – most importantly – to prioritize beneficiaries.

39 On 28 April 2015, the MEC explained in response to a question in the FSL (which I attach marked “RJ9”), that the agreement with Estina has been cancelled on 13 August 2014. She explained that beneficiaries had been identified on the



basis of their prior farming experience and confirmed that: *"The beneficiaries that were prioritized are coming from nearby farming areas such as Vrede, Memel and Warden"*.

- 40 Indeed, as early as 16 April 2014, management of the Project was taken over by the fourth respondent, the FDC. The takeover of the Project by the FDC was confirmed in minutes of the FDC dated 27 May 2014 (which I attach marked "RJ10"), as well as the agreed list of assets being handed over to the FDC in August 2014, which I attach marked "RJ11". The latter revealed that assets valued in excess of R150 million were transferred.
- 41 Various media reports (an example of which I attach marked "RJ12") indicated that, upon assuming responsibility for the project, the FDC found –
- 41.1 that the cow housing shed was inadequate, and that the processing plant that was built by Estina would require additional investment, if it was viable at all; and
- 41.2 more importantly, that none of the 80 beneficiaries purportedly identified for the project were involved in it.
- 42 Nevertheless, as at 28 April 2015, the Department had paid R183 950 000 towards the Project (as confirmed by the MEC's answer to a question in the FSL, attached as RJ9 above).

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Complaints to the Public Protector

43 Between 2014 and 2016, I made three complaints to the Public Protector. I attach the complaints marked "RJ13".

43.1 My first two complaints (of 12 September 2013 and 28 March 2014) focused on the issues of inflated costs; the secrecy in the Free State provincial government surrounding the project; Estina's disproportionate benefit from the project; non-compliance with environmental requirements; and the unexplained death of cattle purchased for the project.

43.2 In the third complaint, I raised broader and more serious concerns over the role of the provincial government and the Premier in the initiation and implementation of the project. By then, National Treasury had concluded its investigation, which revealed that it was riddled with irregularities.

43.3 In particular, I called upon the Public Protector to investigate the role of the provincial government and the Premier in failing to comply with procurement processes, allowing Estina to abscond from the Project without accountability, and the like.

43.4 Most importantly for present purposes, I sought the investigation of –

43.4.1 The Mahoma Mobung part of the project (i.e. the ostensible "farm empowerment" partner), as this was unclear and appeared to be irregular (paragraph 7).



43.4.2 The side-lining of the purported community beneficiaries of the project, who, I said, appeared to have been “*used as pawns to justify the project*” (paragraph 8).

43.5 Moreover, during the course of the Public Protector’s investigation, the DA furnished her with the Department’s list of intended beneficiaries, together with a letter of complaint from representatives of the Beneficiaries’ Steering Committee. I attach these documents marked “**RJ14**”, together with the cover letter that the DA addressed to the then Public Protector, Adv. Thuli Madonsela on 27 August 2015.

44 The Public Protector (then Adv Busisiwe Mkhwebane) published the Report on 8 February 2018. The Public Protector Report suffered from numerous flaws, most of which are not relevant for present purposes.

45 Perhaps most unfortunately, she failed to investigate the exclusion and side-lining of beneficiaries.

46 The DA therefore successfully applied to review and set aside the Public Protector’s Report. The failure to investigate the side-lining of beneficiaries was the aspect that most animated the Court. Her Ladyship Justice Tolmay described this as the Public Protector’s ‘*most blatant failure*’ and said it was ‘*an absolute disgrace that some as yet unidentified people benefited, while the poor and marginalised were yet again robbed of an opportunity to better their circumstances*’.

47 In addition, in awarding punitive and personal costs against the Public Protector, Justice Tolmay explained that the beneficiaries *'were deprived of their one chance to create a better life for themselves. The intended beneficiaries of the Estina project were disenfranchised by the very people who were supposed to uplift them.'*

THE ONGOING FAILURE TO VERIFY, APPROVE AND APPOINT THE BENEFICIARIES

Delays in appointing the beneficiaries

48 As I have explained above, the Project has been marred by impropriety and irregularity from the outset.

49 Nevertheless, the Department appears to be intent on persisting with it. There is no suggestion that the Project has been cancelled or abandoned. This is not a decision I take issue with. Indeed, significant funds have been spent, and the asset transfer to the FDC suggests that valuable capital infrastructure has been acquired. I am therefore sympathetic to the view that the Department ought to put those assets to good use.

50 That also appears to be the view of the former Finance MEC, Ms Elzabe Rockman, who gave evidence at the State Capture Commission to the effect that she sympathises with the beneficiaries, who got nothing from the project, and that there may yet be something to be gained for them:

"I - I have a lot of appreciation and empathy for the feelings and the sentiments of the intended beneficiaries who have gained nothing from this project. I do not think it is too late. I think the project to some extent is viable with the correct skills and knowledgeable people. Maybe not at the level that it was envisaged but certainly there



is benefit. There - there is inherent benefit to involve beneficiaries in the - on a project of this nature. I do not think it should simply be closed down completely. I think three - there is still something that - that can be salvaged from the project and slowly built and to be expanded into a better - better income opportunities for knowledgeable people who have interest in agriculture. Not random people that - that does not have agriculture - a love for agriculture at heart.”

51 I attach the relevant portion of the transcript of Ms Rockman’s evidence marked “RJ15”.

52 While the applicants do not challenge the decision to persist with the Project in some form, what the applicants do challenge is the Department’s persistent, ongoing and obdurate failure to identify, appoint to the Project, and support beneficiaries.

53 Below I detail the vague, contradictory and non-committal versions that the Department has given – including in the FSL – regarding the identification of beneficiaries.

54 On 4 March 2015, the question was posed to the MEC what criteria were used to identify local beneficiaries for participating in the Project. The answer given on 28 April 2015 was as follows:

‘A criteria used were based and focused on the following: focused on those people who demonstrated as having experience in working in dairies farms, those who were engaged in dairy farming business before and those who are currently in the dairy farming businesses. The beneficiaries that were prioritized are coming from nearby farming areas such as Vrede, Memel and Warden.’



55 Quite clearly, by 30 April 2015 at the latest, a list of beneficiaries had been drawn up. On that date, then-Acting MEC, Ms Mlamleli, replied to written questions submitted in the FSL and confirmed that:

“(1) Beneficiaries were residents from the areas surrounding the project, previously disadvantaged and with a keen interest in farming.

(2) The beneficiaries thus far identified are: Kindly refer to Annexure ‘A’”

56 I attach Ms Mlamleli’s response, together with its annexure listing the intended beneficiaries of the Project, marked “RJ16”.

57 More recent responses to parliamentary questions indicate that, while the Project is still ongoing, beneficiaries have still not been verified or appointed to the Project. Indeed, far from having appointed beneficiaries to the Project, the Department has said that it only began the process of verifying them in January 2020. And notwithstanding having begun that process in January 2020, there is still, to date, no indication that the beneficiaries have been verified and appointed.

58 In the FSL’s first session of 2019, I asked the MEC the following question:

In view of the announcement Mohoma Mobung has been allocated R6 million in this financial year:

15.1 What does the Mohoma Mobung initiative comprise in this financial year;

15.2 What are the intended outcomes of this initiative in this financial years; and

15.3 How much money has been spent on this initiative in previous financial years since its inception and what were the objectives and outcomes of this initiative in previous financial years respectively?



59 The MEC responded on 7 August 2019 by explaining that Mohoma Mobung had been budgeted not R6 million but R60 million, and that R20 million had been allocated to the Vrede Dairy Project.

60 He explained further that the objective of the initiative was to “*promote integrated beneficiation of primary producers throughout the commodity value chain i.e. to support the farmer/producers from primary production up to agro- processing.*” As far as expenditure in previous years was concerned, the MEC indicated that according to the BAS audited figures:

60.1 In 2016/17, the budget under Mohoma Mobung was R80 million of which R72 262 384.00 was spent;

60.2 In 2017 /18, the budget was R61 430 000.00 of which R32 662 165.00 was spent;

60.3 In 2018/19, the budget was R20 000 000.00, of which R14 946 725.00 was spent.

61 In the same session, I asked the following question:

In view of the MEC's announcement in his budget speech that he would finalize the management issues relating to beneficiaries in this financial year:

23.1 Whether any budget has been allocated to this, if not, why not, if so, what are the relevant details;

23.2 Whether the beneficiaries have been contacted regarding their exclusion from the project thus far, if not, why not, if so, (a) which beneficiaries have been contacted and (b) what were the outcomes of such meetings; and

23.3 Whether any partners have been procured to assist with this project, if so, what are the relevant details?



- 62 In response on 7 August 2019, the MEC confirmed that the budget (of R20 million) would come from Mohoma Mobung “as an allocation assigned to Vrede Dairy projects”. The MEC also said that “[b]eneficiaries have not yet been contact, a visit to the project has been scheduled for August 2019 which will be followed by a meeting with the beneficiaries to determine the qualifying beneficiaries.”
- 63 Also in the first session of 2019, I asked the following question:
- “In view of the meeting held with the Phumelela Council regarding the beneficiaries of the Vrede Dairy Project:
- 64.1 Whether all the existing beneficiaries will be incorporated into the project, if not, why not, if so, when will this take place?
- 64.2 Whether any other beneficiaries will be identified, if so, (a) when will this take place, and (b) what procedure will be followed to identify such beneficiaries?”
- 64 The MEC responded on 20 September 2019, indicating that “[t]he qualifying beneficiaries will be incorporated, the process of incorporating qualifying beneficiaries will be completed before end of January 2020”.
- 65 I attach the relevant portions of Internal Question Paper from the FSL’s first session of 2019 marked “RJ17”.
- 66 Then, in the FSL’s second session of 2020, I posed the question on 4 March 2020 whether beneficiary lists had been finalised, if not, why not, and if so:
- 66.1 Whether any of the beneficiaries on the previous list have been removed, if so, (a) whom respectively and (b) what are the respective reasons;



66.2 Whether any new names of beneficiaries have been added to the list, if so, (a) whom respectively and (b) what are the respective reasons; and

66.3 Please supply us with the final list?

67 On 20 March 2020, the MEC replied as follows:

The process of finalizing the list of Vrede Dairy project was initiated in January 2020 and was followed by the consultation meeting with Community of Memel, Warden and Vrede on the 12th March 2020 at Phumelela Local Municipality Municipal Hall at 10h00.

(a): No beneficiary has been removed, the process of verifying the actual people that will participate has started and not yet completed. (b) The process has just started.

(a) the verification process has just started process.

The final list will be provided once the process has been completed.


68 I attach the relevant portion of Internal Question Paper from the FSL's second session of 2020 marked "RJ18".

69 In short, the answers to the various questions posed by me in FSL demonstrate that:

69.1 the Project is ongoing;

69.2 significant funds from the fiscus are allocated to the Project on an annual basis;

69.3 most alarmingly, eight years after the Project began, the beneficiaries have nevertheless still not been properly verified or appointed, and indeed the process for verifying the beneficiaries has "just started".



70 On 11 August 2020, I wrote to the first and second respondents, requesting the Department to develop and implement a beneficiary incorporation plan to involve the beneficiaries in the Vrede Dairy Project. I attach the letter marked "RJ19". To date, I have not received a response to this letter.

Ongoing expenditure on the Project

71 As explained above, by April 2015, the Department had invested over R183 million in the Vrede Dairy Project.

72 Moreover, as the responses to the parliamentary questions make clear, in 2019/20 Mohoma Mobung was budgeted a total of R60 million, and the Vrede Dairy Project received the most substantial allocation from that budget: R20 million.

73 I am not aware of the portion of the Mohoma Mobung budget that was allocated to the Vrede Dairy Project in 2016/17 and 2017/18. I hereby call upon the first to third respondents to place this information before the Honourable Court. In the absence of them doing so, I respectfully submit that it would be reasonable for this court to draw the inference that a similar proportion of the total Mohoma Mobung budget was allocated to the Vrede Dairy Project in 2016/17 and 2017/18.

74 While all this money has been spent, the intended beneficiaries of the Project have not benefited. That is because they have still not yet been properly verified and appointed to the Project.

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THE DEPARTMENT IS OBLIGED TO VERIFY AND APPOINT THE BENEFICIARIES

- 75 I am advised that, as a matter of law, the Department bears an obligation to verify and appoint beneficiaries for the Project. These are primarily matters for argument, and will be addressed as such, but for present purposes I am advised and respectfully submit as follows.
- 76 The Department's obligation is sourced, in the first instance, in the Constitution.
- 76.1 Section 195 of the Constitution requires the public administration (which, in terms of section 195(2) includes provincial government) to be governed by *'high standards of professional ethics'*, the *'efficient, economic and effective use of resources'*, the need to be *'development-oriented'*, and accountability. I respectfully submit that the Department's ongoing failure to allocate beneficiaries to the Project does not constitute the efficient, economic and effective use of resources, is not development-oriented and does not display a high standard of professional ethics or accountability.
- 76.2 Section 215 of the Constitution requires provincial budgets to promote transparency, accountability and effective financial management. There could hardly be anything less transparent, accountable and effective than budgeting and allocating an amount to the Project every year, where the identification and allocation of beneficiaries – a central component of the Project – is delayed interminably.



77 Second, the respondents also bear a legislative obligation to appoint the beneficiaries.

77.1 Section 38(1)(c) of the Public Finance Management Act 1 of 1999 ("PFMA") requires the accounting authority (i.e. the HOD) to take 'effective and appropriate steps' to prevent fruitless and wasteful expenditure.

77.2 To the extent that funds are being budgeted, allocated and spent on a Project, the very purpose of which is to benefit beneficiaries, but without those beneficiaries being identified and allocated to the Project, such expenditure is plainly fruitless and wasteful. The Department is required to take effective and appropriate steps – including the identification and appointment of beneficiaries – to ensure that the expenditure is not fruitless and wasteful.

77.3 The failure to appoint beneficiaries is also contrary to the purposes of the Free State Development Corporation Act 6 of 1995, which – for as long as the FDC managed the Project – required it, inter alia, to promote and develop small, medium and micro enterprises.

78 Third, the Beneficiary Agreement entitled the beneficiaries to participation in the Project, and obliged the Department to provide them with various training and upskilling. To the extent that the Beneficiary Agreement came into force, it obliges the Department to honour the rights of the beneficiaries, including by appointing them to the Project.

Handwritten signature and initials in the bottom right corner of the page.

79 Fourth, and finally, the Department is required by basic principles of rationality to verify and appoint the beneficiaries.

79.1 I am advised that rationality is about testing whether there is a sufficient connection between the means chosen and the objective sought to be achieved.

79.2 On the Department's own version, among the central objectives of the Project was to benefit and uplift communities and provide opportunities to the beneficiaries.

79.3 Clearly, failing to appoint beneficiaries bears no rational relationship to this objective. The failure to appoint beneficiaries is therefore axiomatically irrational. The purpose of the Project cannot be achieved until and unless beneficiaries are appointed.

80 The first to third respondents have failed to act in accordance with their obligations. For eight years, despite ongoing public expenditure, they have failed to undertake what should be a straightforward task: verifying and appointing beneficiaries who are to benefit from the Project.

RELIEF

Declaratory order

81 There can be no dispute as to the fact that the first to third respondents bear a legal obligation to verify and appoint beneficiaries, and that they have failed to comply with the obligation for an unreasonable period of eight years.

82 The applicants are entitled, at a minimum, to a declaration to that effect.



83 The applicants seek the declaration because it is necessary to vindicate the rights of the many beneficiaries who have been denied any empowerment opportunities under the Project, and the many taxpayers, particularly in the Free State Province, whose tax money has been wasted. They are entitled to recognition that their rights have been violated by the respondents' inaction.

84 Moreover, it is vital that state actors, as well as those affected by their decisions (or, as in this case, their inaction) understand what the law requires. Declaratory relief serves this important function.

Mandamus

85 In addition to declaratory relief, the applicants seek an order directing the first to third respondents to verify and appoint the beneficiaries already identified according to a procedure that is reasonable and fair, within a stipulated period.

86 In other words, the applicants seek a *mandamus*.

86.1 The applicants do not seek to stipulate precisely what process the Department ought to follow, or what steps it ought to take in order to ensure the lawfulness or fairness of the process. That is for the Department to decide.

86.2 However, the Department has now delayed for such an unreasonable period, that it is necessary to hold its officials to a time period.

86.3 I submit that 90 days from the date of this Court's order is a fair and reasonable period within which to complete the process of verifying and

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appointing the beneficiaries identified to the Project so that they can begin to see the fruits of hundreds of millions of Rands of taxpayer money.

87 Regarding the requirements for relief of this kind, I am advised and respectfully submit that:

87.1 The applicants have demonstrated a clear right in that the first to third respondents bear statutory and constitutional obligations to the public which they have plainly breached.

87.2 The fiscus and the beneficiaries have suffered and continue to suffer significant injury and prejudice. There is every possibility, in the absence of an order from this Court, that the Department will simply go on allocating funds to the Project for years to come, without ever appointing beneficiaries. That should not be allowed to happen.

87.3 Lastly, the applicants have no alternative remedy. I am advised that there is no other remedy that could adequately address the harm that the fiscus and the intended beneficiaries have suffered and are likely to continue suffering.

88 To the extent that the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”) is held to be applicable to the appointment of beneficiaries to the Project, I am advised and respectfully submit that the Department should be compelled to appoint the beneficiaries to the Project in terms of section 6(2)(g) read with section 6(3) of PAJA, in that:

88.1 the Department is under a legal duty to verify and appoint the beneficiaries;



88.2 the Department has failed to verify and appoint the beneficiaries; and

88.3 the Department has plainly delayed unreasonably in failing to verify and appoint the beneficiaries.

CONCLUSION AND COSTS

89 For the reasons set out above, the applicants seek an order in terms of their notice of motion.

90 We submit that, if the application succeeds, the first to third respondents should be ordered to pay the applicants' costs, including the costs of two counsel.

91 However, if the application is dismissed, then, in accordance with the *Biowatch*¹ principle, no costs order should be made against the applicants. The applicants are acting in the public interest in these proceedings, in the pursuit of matters of important constitutional principle. They have not acted vexatiously, frivolously or unprofessionally.



ROY JANKIELSOHN

Signed and sworn before me at Bloemfontein on this the 21st day of October 2020 after the deponent declared that the deponent is familiar with the contents of this statement and regards the prescribed oath as binding on the deponent's conscience and has no objection against taking the prescribed oath. There

¹ *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (6) SA 232 (CC)




has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated July 1972 (as amended).

COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:



NEO MADLALA
PRAKTISERENDE PROKUREUR RSA
PRACTISING ATTORNEY RSA
Kommissaris van Ede • Commissioner of Oaths
Markgraaffstr 35 • 35 Markgraaff Street
Westdene • Bloemfontein



DEMOCRATIC ALLIANCE FEDERAL CONSTITUTION

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CHAPTER ONE

FOUNDING PROVISIONS AND POLITICAL PRINCIPLES

1.1 NAME

1.1.1 The name of the Party is the Democratic Alliance.

1.1.2 The Democratic Alliance is a political party that will register for and participate in elections and in political activities in the national, provincial and local spheres of government in the Republic of South Africa.

1.2 OUR VALUES

We stand together with all South Africans who share a community of values embodied by these words:

Freedom, Fairness, Opportunity and Diversity

In particular, we believe:

South Africa

- South Africa is a special country because of our people and must take our rightful place among the great nations of the world;
- Ours is not yet the fair society envisioned in the Constitution. Our historic mission is to establish, for the first time in our history, a fair society which will enable the South African people to unleash their talents and ingenuity so that they can realise their full potential. We call this the Open, Opportunity Society For All;
- The inalienable rights of every South African are recorded in the Bill of Rights;
- The Bill of Rights is a victory over South Africa's unjust past. Apartheid was an evil system which denied generations of South African citizens the freedom, rights and opportunities to improve their lives and fulfil their potential. South Africans, working individually and collectively through many different organisations, freed themselves when they defeated the system of Apartheid;
- The injustices suffered by previous generations harm those who follow. The effects of the past are therefore still felt by many born after 1994;
- We cannot undo the past, but as a nation we have a duty to redress any disadvantages caused by our past, so that all South Africans may make equal use of their opportunities;
- A prosperous future for South Africa can only be assured when every South African child receives a quality education, and when all adults have sufficient skills for dignified employment.

The South African people

- Our Party is uniquely founded in faith in the South African people. Through our individual and collective efforts, and enabled by a capable state, the South African people hold the power to make our country a shining beacon for Africa and the world;
- We stand with the hardworking, freedom-loving people of our country who want to live and raise their families in safe communities, support each other, work hard, play by the rules, reap the rewards for their efforts and build a country where all South Africans, regardless of our backgrounds, make progress together;
- Strong people and strong social structures such as families, in all their different manifestations, flourish in strong communities. We have a duty to do everything in our power to strengthen and support the building of durable social structures that promote cooperation in our communities, for history has shown that when South Africans work together, we are unstoppable.
- Families, however uniquely structured, help build successful individuals and provide them a foundation with which to make sense of the world and to realise their full potential as individuals;
- A successful nation must have strong family structures, no matter how they are constituted, because no government can replace the role of family;
- When individuals are deprived of the opportunity to work, their independence and dignity, as well as their ability to provide for their families and those they care for, is undermined. Therefore, our country needs an economy capable of creating jobs.

Freedom and opportunity

- Freedom is not a favour from government, it is a right. The freedoms intended by the framers of our Constitution were hard won for us all, are precious and must be guarded;
- Throughout history, the responsible exercise of freedom has been the only true engine of progress. The South African people must therefore have the maximum amount of individual freedom consistent with law and order. This includes the freedom to earn a living and accumulate wealth in the way of our choosing, live where we want, love who we want, say what we believe, develop our talents and pursue our dreams;
- Access to opportunity gives life and meaning to our hard won freedoms. We believe every South African must have the chance to succeed in life. That is why we believe in spreading opportunity as broadly as possible.

Fairness

- A fair society is one in which our achievements are determined by our own choices and hard work, not by the circumstances of our birth;
- Integral to a fair society are the requirements that opportunity is plentiful and not concentrated in the hands of the few, that everyone has the means to make use of their opportunities, that the strong do

not exploit the weak, that we are free from unfair discrimination and that we remove the barriers erected by Apartheid which are still felt today;

- For South Africa to be fair, justice must be applied to all in a consistent, fair and impartial manner;
- A society cannot be fair if there exists large-scale inequality. A fair society requires a growing economy and access to opportunities for all South Africans.

Diversity

- South Africa is a richly diverse society. Though our people come from different origins, worship in different ways and have different cultures and customs, we are all unique individuals;
- Diversity is one of South Africa's greatest assets. The Party celebrates diversity, and recognises the right of each individual to be who they want to be, free from domination by others;
- The Party solemnly subscribes to the preamble to the Constitution of South Africa which recognizes the injustices of our past, and affirms that South Africa belongs to all who live in it, united in diversity;
- The Party will continue to take active steps to promote and advance diversity in its own ranks.

Government

- The government is accountable to the people. Its purpose is to enable the South African people to use their freedoms. It has no power except that which is assigned to it by the people and the Constitution. The government must reflect the will of the people and our elected representatives must be directly accountable to the people. Those to whom we entrust our nation's highest offices have a sacred duty to live up to that trust;
- Government must always act honestly, transparently and in the best interests of all South Africans;
- All South Africans pay tax, and every cent of government money belongs to the South African people. Taxpayers' money should be spent for the benefit of the people, not the connected few;
- To represent the needs and wishes of all South Africans, government needs to be close to those who are affected by its actions. Officials and representatives in government must be put into these positions by the people whose lives their positions affect, thereby ensuring that the people can hold them accountable for their actions;
- Government must always stand ready to help those who need it, but its primary function is to empower the people to make use of their freedoms, so that they may progress in their own lives;
- Central to empowering South Africans is ensuring that they are free from the deprivations that rob them of their ability to use their opportunities. This requires:
 - A system of social security to protect people from extreme poverty;
 - The delivery of high quality basic services;

- Excellent education and healthcare;
- A functional criminal justice system to keep people safe;
- A growing economy to enable people to access jobs, and
- Measures to level the playing field of opportunities, as quickly as possible, for people who today are still at a disadvantage because of the injustices of the past.

1.3 PRINCIPLES

The vision of the Democratic Alliance is grounded on the defence, promotion and extension of the following principles:

- 1.3.1 the fundamental rights and freedoms of every person - including the right to freedom of conscience, speech, association, and movement;
- 1.3.2 the rejection of unfair discrimination on any grounds and the redress of past discrimination, without recourse to rigid formulae or quotas;
- 1.3.3 the supremacy of the South African Constitution and the rule of law;
- 1.3.4 the language, cultural and religious rights of individuals and the communities they create through free association;
- 1.3.5 equality before the law;
- 1.3.6 the separation of legislative, executive and judicial power;
- 1.3.7 a judiciary, justice system and prosecuting authority that is independent;
- 1.3.8 elections that are regular, transparent, credible, free and fair;
- 1.3.9 representative and accountable government elected on the basis of universal adult suffrage;
- 1.3.10 the devolution of power to locate government as close as possible to the people;
- 1.3.11 the clear division between the ruling party and the state;
- 1.3.12 respect for the right of a vibrant civil society and a free media to function independently;
- 1.3.13 the rejection of violence and intimidation as a political instrument;
- 1.3.14 the right of all people to private ownership and to participate freely in the market economy;
- 1.3.15 the progressive realisation of access to housing, health services and social security for all people who are unable to help themselves;

- 1.3.16 the protection and conservation of the environment;
- 1.3.17 the right of all people to protection by the state from crime and violence;
- 1.3.18 access to education and training.

1.4. PROGRAMME OF ACTION

- 1.4.1 The Party will promote its growth in all communities with the intention of realising its vision and advancing its principles either as government or opposition in all spheres.
- 1.4.2 The programme of action must include provisions aiming at, but not be limited to, the following:
 - 1.4.2.1 serving the needs of the people of South Africa through the structures and resources of the Party;
 - 1.4.2.2 endeavouring to gain control of governments in all spheres of government;
 - 1.4.2.3 being an effective government when in power;
 - 1.4.2.4 being an effective opposition when not in government;
 - 1.4.2.5 holding its public representatives to account;
 - 1.4.2.6 holding our DA governments accountable through appropriate policies adopted by the Federal Council.
- 1.4.3 The Party must seek to co-operate with other political formations, both foreign and domestic, which share its commitment to the vision of an Open Opportunity Society for All and its passion for freedom, dignity, equality and democracy, or which support the Party in government.

1.5 LEGAL PERSONALITY AND POWERS

- 1.5.1 The Party is a body corporate with perpetual succession.
- 1.5.2 The Party is capable of suing and being sued in its own name and it may own, purchase, sell, hire, lease, mortgage, pledge or in any other way acquire, alienate or deal with movable and immovable property and may perform all legal activities authorized by this Constitution as well as legal activities normally associated with a body corporate.
- 1.5.3 The Party shall only be legally bound in the exercise of its competencies set out in this Constitution by a person or persons authorized in advance, in writing, by the Chairperson of the Federal Council or a person or Party formation delegated by him or her in writing.

- 1.5.4 The Federal Executive represented by the Chairperson of the Federal Council, carrying the mandate of the Federal Executive, may act on behalf of and legally bind the Party in all matters. He or she may authorise in writing another member of the Party to act on the Party's behalf in all legal proceedings by and against the Party.
- 1.5.5 No other member or formation of the Party may act on behalf of and legally bind the Party. Any person or persons who purport to do so in contravention of the provisions of this Constitution, shall be personally liable therefor, and such decision or action shall be considered misconduct.
- 1.5.6 The Chairperson of the Federal Executive or someone authorised by him or her in writing represents the Party in all legal proceedings by or against the Party.
- 1.5.7 All monies and goods received and collected in the name of the Party vest in the Party itself.
- 1.5.8 Income and assets of the Party are not distributable to members or office bearers, except as reasonable compensation for services rendered.

CHAPTER TWO

GENERAL ORGANISATIONAL PRINCIPLES OF THE PARTY

2.1 GENERAL STRUCTURE OF THE PARTY

- 2.1.1 The Party consists of members who are organised in and function democratically through the organisational formations of the Party.
- 2.1.2 The organisational formations of the Party are set out in this Constitution, and consist of formations at federal, provincial, regional, constituency, local and international level.
- 2.1.3 At local level the Party must establish branches with democratically elected branch committees and/or branch executive committees, and strive to establish a branch in every ward within the Republic of South Africa.
- 2.1.4 Branches are the basic organisational formations of the Party and every member of the Party must be a member of a branch and must exercise his or her rights and privileges as a member through his or her branch and its elected representatives and delegates.
- 2.1.5 The Party must establish constituencies as organisational formations. These may include contiguous municipal wards or any specific interest group, defined institution(s) or societal sector(s). In the case of geographic constituencies, such constituencies must be delimited taking local circumstances into account and must cover all of the wards within the geographical area concerned.
- 2.1.6 Where constituencies have been delimited and allocated by the regional or provincial structures concerned, a democratically elected constituency committee and/or constituency executive committee assumes responsibilities as provided for in the Provincial Constitution.
- 2.1.7 The formations may also include formations at regional and sub-regional level depending upon the circumstances of each province and the provisions of the Provincial Constitution.
- 2.1.8 At provincial level the Party must establish a provincial congress for every province in the Republic of South Africa.
- 2.1.9 Provincial Congresses must establish Provincial Councils, Provincial Executives and other committees as may be provided for in their Provincial Constitutions.
- 2.1.10 At national level the Party must establish a Federal Congress and the other formations provided for in this Constitution.

- 2.1.11 The Party is assisted and supported by ancillary organisations established in terms of Chapter 11.
- 2.1.12 The Federal Congress is the highest level at which the democratically expressed will of the members is stated and the Federal Congress is thus the highest authority in respect of all matters in the Party, subject to the provisions of this Constitution.
- 2.1.13 Formations in the Party have the authority, powers and functions set out in this Constitution and in the Provincial Constitutions.
- 2.1.14 Wherever a formation of the Party is entitled to representation on higher formations, it will only be entitled to that representation if it is validly constituted in terms of this Constitution and any validly adopted Rules. Such representation will be determined by a formula adopted by the Federal Council, and subject further to the provisions of section 3.11.3.

2.2. NOMINATION AND SELECTION OF CANDIDATES

- 2.2.1 The Federal Council must adopt regulations for the nomination and selection of candidates.
- 2.2.2 Those regulations may make provision for provincial and local variations to suit the circumstances of the provinces. Detailed written grounds must be supplied motivating variations by the province and/or local formation concerned.
- 2.2.3 Regulations for the nomination and selection of candidates for the National Assembly must provide for provincial lists and may also provide for a national list.
- 2.2.4 Any member of the Party wishing to make themselves available for election as any office-bearer in any structure in the Party or as a public representative, must be a member in good standing with the Party.

2.3 VOTING

- 2.3.1 Subject to the provisions of this Constitution, voting at meetings of all bodies of the Party is by a show of hands, unless secret ballot is required by the person presiding or by one-tenth of the members present.
- 2.3.2 Decisions at all meetings are taken by a majority of members present and voting, provided that:
- 2.3.2.1 a teleconference shall only be regarded as a meeting if a quorum of the participants is present and if notice of such a teleconference has been given to the members; and further provided that, where a secret ballot is requested, voting shall take place at a special meeting called thereafter; and

- 2.3.2.2 the presiding officer at a meeting has a casting as well as a deliberative vote, provided that they are a voting member of that body.
- 2.3.2.3 the Federal Council may prescribe procedures for early voting and distance voting for regional, provincial and federal congresses only, and then only in exceptional circumstances for good cause shown.
- 2.3.3 All elections to office within the Party involving the election of more than two people to an office must be by a proportional voting system approved by the Federal Council, provided that where this is practically impossible, permission may be granted by the Regional Executive when it relates to branches, Provincial Executive when it relates to constituencies and Regions, and Federal Executive or the chairperson of Federal Council when it relates to Provinces to deviate from this on good cause shown. Internal elections will be conducted in terms of standards set by the Federal Council.
 - 2.3.3.1 Ballots for office bearers' election must be kept by the Party for at least 30 days: except where an appeal has been lodged in which case the ballots will be kept until the appeal has been disposed of.
 - 2.3.3.2 Objections to the outcome of office bearer's elections must be lodged within 48 hours after the announcement of results.
- 2.3.4 A staff member who is a member of a structure of the Party in that capacity, shall not have voting rights on that structure unless provided in this Constitution; provided that in respect of matters involving candidate selection or election of office-bearers on any party structure, no staff member shall have voting rights.

2.4 POLICY

- 2.4.1 The supreme policy-making body of the Party is the Federal Congress in session. Proposals affecting the Values or the Principles of the Party as contained in this Constitution shall not be debated or decided upon unless four weeks prior written notice has been given to delegates to Congress, or in the event of such notice not having been given, by a four-fifths majority vote of all those present and voting, the Federal Congress agrees to debate and decide upon such proposals.
- 2.4.2 When the Federal Congress is not in session, the Federal Council may formulate policy in matters where no policy has been stated or where the stated policy is not clear or needs to be specifically applied, expressed, amended or expanded in accordance with the Values and the Principles of the Party.

2.4.3 When the Federal Congress and Federal Council are not in session, the Federal Leader and the Caucuses have policy functions that are dealt with elsewhere in this Constitution.

2.4.4 Provincial Congresses and Councils of the Party may adopt policy on matters that are within the competence of the provinces in terms of the Constitution of South Africa provided that such policies must not contradict the Values and the Principles of the Party or a policy decision of the Federal Congress or Federal Council.

2.5 STANDARDS OF CONDUCT OF PARTY MEMBERS

2.5.1 All Party members are subject to the discipline of the Party and submit to the provisions of this constitution in regard to rules on conduct and to the disciplinary procedures set out in Chapter 10.

2.5.2 All Party members including public representatives, submit to the right of the Party, to terminate their membership, to remove them from office in any executive or legislative sphere of government or office within the Party, or to be moved to a position deemed to be suitable by the Party, on the grounds of incapacity owing to poor performance and/or ill health, which includes but is not limited to incompetence and/or inefficiency and/or incapability, but only in terms of processes and procedures prescribed by the Federal Council.

2.5.3 Action against any public representative on the grounds of incapacity, which could result in that person's membership being terminated or his or her privileges being curtailed, can only be taken in terms of the processes and procedures as prescribed by the Federal Council.

2.5.4 Any member, including a public representative, is guilty of misconduct if he or she:

2.5.4.1 publicly opposes the Party's principles or repeatedly opposes published Party policies, except in or through the appropriate Party structures;

2.5.4.2 acts in a way which impacts negatively on the image or performance of the Party;

2.5.4.3 acts in any manner whatsoever which results in him or her being found guilty of a serious criminal offence by a court of first instance;

2.5.4.4 fails to carry out his or her duties and/or responsibilities according to standards set by the Federal Council of the Party or of the relevant Provincial or Regional Council, or to standards required by any statutory rules of conduct required by the public office he or she holds;

- 2.5.4.5 acts in any manner whatsoever which brings the good name of the Party into disrepute or harms the interests of the Party;
- 2.5.4.6 acts in any manner whatsoever that is unreasonable and detrimental to internal co-operation within the Party;
- 2.5.4.7 unreasonably fails to comply with or rejects decisions of the official formations of the Party;
- 2.5.4.8 submits or attempts to submit false membership forms or commits or attempts to commit membership fraud in any way;
- 2.5.4.9 contravenes any of the explicit Party decisions or regulations for the appropriation of Party finances;
- 2.5.4.10 collects money on behalf of or in the name of the Party or any of its structures or for any political activity without depositing such money in a bank account opened and operated in terms of procedures approved by the Federal Finance Committee and/or operates a bank account in which Party money is deposited without the approval of the Federal Finance Committee or a structure of the Party authorized by it;
- 2.5.4.11 in any election for office, or in opposing any proposed or existent Party policy or process, mobilises or attempts to mobilise opposition to the policy or process, or opposition to or discrimination against any person on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth;
- 2.5.4.12 publicly alleges or implies that he or she, or any group of members, have been unfairly prejudiced, or any member or group of members unjustifiably preferred, as a consequence of that member's or those members' race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth;
- 2.5.4.13 being a public representative, in any meeting of any legislative body, disparages, belittles or insults the Party or any member of the Party, or another Party or any member of another Party with which the Party is in a coalition in that legislative body;
- 2.5.4.14 in any way intimidates or sexually harasses in any manner, any member of the Party or staff members;

2.5.4.15 discloses in any way any sensitive and/or confidential information discussed in a closed meeting with anybody outside that meeting other than a person authorised to receive it in terms of a policy adopted by the Federal Council.

2.5.5 A public representative may be removed from office or moved to a position deemed to be suitable by the Party on the grounds of incapacity owing to poor performance and/or ill health, which includes but is not limited to incompetence and/or inefficiency and/or incapability, but only in terms of processes and procedures prescribed by the Federal Council.

CHAPTER THREE

MEMBERSHIP AND BRANCHES

3.1 MEMBERSHIP

3.1.1 Every person wishing to become a member of the Democratic Alliance must:

3.1.1.1 be 16 years of age or older: provided that all members 16 years or older until they attain the age of 31, will automatically be members of the Democratic Alliance Youth unless they indicate to the contrary;

3.1.1.2 be a citizen or a permanent resident of South Africa;

3.1.1.3 subscribe to the Values, the Principles and the Programme of Action of the Party;

3.1.1.4 agree to abide by the Constitution of the Party;

3.1.1.5 apply to become a member of the Party, by signing the prescribed membership application form, or by making application electronically online or in other ways approved by the Federal Council;

3.1.1.6 comply with any condition set by the Federal Council or Federal Executive from time to time; and

3.1.1.7 personally pay the membership subscription applicable to the period of membership applied for. What constitutes personal payment will be regulated by the Federal Executive from time to time.

3.1.2 Membership takes effect when a person complies with the requirements for membership as set out in section 3.1.1, and pays the membership fee in accordance with regulations approved by the Federal Council from time to time.

3.1.3 A person may enrol as a member at any time during the year. A member of the Party who is a member on the audit date, is entitled to vote at all meetings of the Party subsequent to that date until the next audit date, unless their membership is formally terminated or suspended. Members who join the Party shall be entitled to vote at all meetings 30 days after the date of joining until the next audit date: provided that the Provincial or Regional Executive, as provided in the Provincial Constitution, may determine an appropriate cut-off date for voting by members at inaugural or annual general meetings of branches.

- 3.1.4 The membership of the Party is audited on 31 March or such other date as Federal Council from time to time decides, for the purposes of:
- 3.1.4.1 monitoring the integrity of the membership of the Party; and
 - 3.1.4.2 establishing a cut-off upon which representation to structures of the Party in the forthcoming year can be determined.
- 3.1.5 A province, region, constituency or branch that fails to pass its membership audit may lose its right to participate fully in federal or provincial congresses or regional or branch annual general meetings.
- 3.1.6 Any member who fails to renew his or her membership on or before the due date resumes membership only from the date upon which he or she pays the prescribed membership subscription and is subject to the 30 day requirement and other provisions referred to in section 3.1.
- 3.1.7 Anyone who applies for membership or renews their membership via the online website application shall not be required to sign a membership form.
- 3.1.8 A donor to the Party whose donation in that period exceeds the prescribed membership subscription, and who wishes to become a member, of the Party, must comply with all requirements of section 3.1.1, save that the membership subscription will be deemed to be included in the donation.
- 3.1.9 A donor who is already a member, and whose donation in that period exceeds the prescribed membership subscription, continues as a member and the donation is deemed to include the membership subscription.
- 3.1.10 A public representative whose compulsory contribution to the Party in that period exceeds the membership subscription, continues as a member and the membership subscription is deemed to be included in their compulsory contribution.
- 3.1.11 The Party may provide for honorary life membership of the Party, given at the discretion of the Federal Council.

3.2 REFUSAL OF MEMBERSHIP

- 3.2.1 A Regional or Provincial Executive may itself or at the recommendation of a branch or constituency refuse to accept the application for membership of any person other than a public representative, who joined the Party in terms of section 3.1.1. within 60 days of the payment of the membership subscription by such a person at the relevant regional or provincial office.

3.2.2 No person (other than a public representative) may be readmitted to membership if he or she has been charged for misconduct by a disciplinary committee established in terms of Chapter 10, until the disciplinary committee has made its finding and any appeals have been disposed of, or if his or her membership has previously ceased or been terminated in terms of this constitution, unless permission is given by the Federal Executive acting on the advice of the relevant Provincial Executive or Constituency Executive.

3.2.3 A person whose membership application has been refused in terms of section 3.2.1 may appeal that decision to the Provincial Executive, or, if the decision was taken by the Provincial Executive, to the Federal Executive. The decision of the Provincial or Federal Executive, as the case may be, is final.

3.2.4 Public representatives from other parties may only be accepted as members of the Party with the prior approval of the Federal Executive or a person designated by the Federal Executive, after consultation with the Provincial or Regional Executive concerned: provided that the Branch Executive must also be consulted in respect of a local government representative.

3.3 MEMBERSHIP SUBSCRIPTIONS

3.3.1 The Federal Council determines from time to time the minimum membership subscription of the Party and the date for payment. That minimum will be uniform for all members.

3.3.2 A branch may request members to pay a voluntary contribution in addition to the prescribed membership subscription, in which case the amount in excess of the prescribed fee shall be deemed to be a donation and will be allocated to the branch in accordance with the Policy of the Federal Finance Committee.

3.3.3 A member may pay the membership fee for his or her spouse(s), partner, child, parent or dependant(s) living at the same address. Sponsored membership in any form or for any person or class of persons other than in terms of this section or of section 3.1.1.6 is not allowed.

3.4 DUAL MEMBERSHIP

A member or category of members of the Party may also be a member or members of another party or parties approved by the Federal Council for the period and on conditions determined by the Federal Council.

3.5 CESSATION OF MEMBERSHIP

3.5.1 A member ceases to be a member of the Party when he or she:

- 3.5.1.1 fails to renew his or her membership on or before the date stipulated in s 3.1.4;
- 3.5.1.2 publicly declares his or her intention to resign and/or publicly declares his or her resignation from the Party;
- 3.5.1.3 publicly declares his or her intention to join another party and/or publicly declares that he or she has joined another party;
- 3.5.1.4 becomes or remains a member of another party other than one approved under this Constitution;
- 3.5.1.5 has his or her membership application refused in terms of s 3.2.1 and any appeal in terms of s 3.2.3 has been dismissed or the time period for lodging an appeal has expired;
- 3.5.1.6 canvasses other Party members to resign from the Party;
- 3.5.1.7 canvasses other Party members to join or support another Party;
- 3.5.1.8 stands or accepts nomination against an official candidate of the Party in any public election;
- 3.5.1.9 after having been warned to desist, publicly and unreasonably disparages the Party or decisions taken by its structures;
- 3.5.1.10 fails to resign his or her position after the procedures stipulated in s 6.2.6.3 have been followed;
- 3.5.1.11 is found guilty of any offence listed in Schedule 1, 2, 5, 6 or 7 of the Criminal Procedure Act;
- 3.5.1.12 is in default with the payment of any compulsory public representative contribution for a period of 2 (two) months after having been notified in writing that he or she is in arrears and fails to make satisfactory arrangements or fails to comply with such arrangements for payment of the arrears;
- 3.5.1.13 being a public representative of the Party in a legislative body, in any meeting of that legislative body, votes in a manner other than in accordance with a Party caucus decision which is consistent with Party policy, in that legislative body, or being a single public representative in a caucus votes in a manner inconsistent with the instructions of higher Party structures or Party policy: save in the case

where the Party allows a free vote on the issue being voted on, or the caucus has given permission for that member to vote in a particular manner;

3.5.1.14 being a public representative of the Party in a legislative body, introduces a motion of no confidence in any government controlled by the Party, or in which the party is in coalition, or office-bearer in such a government, except with the leave of the Federal Executive;

3.5.1.15 being a public representative of the Party in a legislative body, in any meeting of that legislative body, leaves the meeting at a time a vote is to be taken on a matter that has been agreed by the caucus, in a situation in which leaving the meeting prevents the decision from being taken, or which causes or results in a decision being taken that is contrary to the agreed caucus position.

3.5.2 A member, who ceases to be a member of the Party, loses all privileges of Party membership and, if that member is a public representative, he or she also loses the office which he or she occupies by virtue of his or her membership, with immediate effect.

3.5.3 The process or processes to be followed in the case of cessation under this section will be determined by the Rules of the Federal Legal Commission.

3.6 ONLY MEMBERS CAN SERVE

3.6.1 Only Party members can serve on the representative and other structures of the Party and be public representatives of the Party.

3.6.2 If the membership of a public representative is terminated in terms of section 10.12 or if a public representative ceases to be a member of the Party by virtue of section 3.5.1, the relevant Provincial Managing Director as the case may be, must notify the relevant authorities of the vacancy which has arisen.

3.6.3 Only members in good standing for at least 30 days are eligible to serve in any elected position in the Party.

3.7 BRANCHES

3.7.1 The basic organisational units of the Party are the branches. The Party will strive to establish and maintain a branch or branches for every local government ward in South Africa.

3.7.2 Branches are established to manage and direct the affairs of the Party, to communicate the principles and policy of the Party to the public, to mobilise the public in support of the programme of action of the Party, to

participate in the process of democratic selection of candidates for the Party and to serve as the vehicle for the articulation of the interests of members of the Party and voters in their areas of jurisdiction.

3.8 MEMBERSHIP OF BRANCHES

3.8.1 Members of the Party belong to branches and exercise their voting rights as members in branches, or through representatives elected by branches.

3.8.2 Members belong to the branch established for the ward or voting district in which they live: provided that –

3.8.2.1 if a member is a member of a branch and ceases to live within that branch area by virtue of ward demarcation, he or she may remain a member of the branch to which he or she was a member prior to the demarcation until the next audit date;

3.8.2.2 where no branch has been established in the ward in which a member lives, the Provincial Executive or Regional Executive must, after consulting with him or her, allocate him or her to the closest established branch, for him or her to be included as a member;

3.8.2.3 where a branch in which a member lives has ceased to exist because it has fewer than 25 members as certified by the membership audit, the Provincial Executive or Regional Executive, after consulting with him or her, allocate him or her to the closest established branch for him or her to be included as a member;

3.8.2.4 a public representative may join any branch within the constituency or ward for which he or she is responsible, even if he or she does not live within that area. If he or she exercises this choice, he or she must inform the Provincial Managing Director accordingly;

3.8.2.5 any other member may apply to the Provincial or Regional Executive to join a branch other than the branch within the area in which he or she lives. The relevant Executive shall approve the application only on reasonable grounds.

3.8.3 A member of the Party can be a member and be a delegate from or office bearer of only one branch. Public representatives may attend and speak at all branches in the area of jurisdiction which they represent or which has been allocated to them, but they are entitled to vote only in the branch of which they are a member.

3.8.4 Public representatives shall automatically be members of the Branch Executive of the branch of which they are a member.

3.9 AREA OF JURISDICTION OF BRANCHES

3.9.1 The area of jurisdiction of a branch must not be smaller than a municipal ward. Provided that a provincial or regional executive, where these exist, may permit a branch to be established in an area smaller than a municipal ward on application by members in that branch for compelling reasons and supported by the relevant constituency executive.

3.9.2 The area of jurisdiction of a branch is:

3.9.2.1 the area referred to in terms of 3.9.1; or

3.9.2.2 as many voting districts as the Provincial or Regional Executive may direct if there is more than one branch in a ward; or

3.9.2.3 more than one ward if the Provincial or Regional Executive deems it is not possible to establish and maintain a branch for each ward in the immediate future.

3.10 REPRESENTATION OF BRANCHES

3.10.1 Where there is more than one branch in a ward, the representation to other structures of the Party will be allocated between the branches within the ward according to a formula determined by the Federal Council.

3.10.2 If the branches in a ward are jointly entitled to fewer representatives to higher bodies than the number of branches, or if that representation must be shared between branches, the representatives will be elected using a proportional voting system approved by the Federal Council by delegates from the branches involved at a combined branch meeting held at a date, time and venue approved by the Constituency Committee. Each branch will be represented at that meeting by a number of delegates determined by the formula approved by the Federal Council.

3.10.3 The entitlement of a branch to representation to other structures of the Party is determined by the status of that branch as at the last audit date as provided in s3.1.4, except where an office-bearer of the branch is *ex officio* entitled to be represented on another Party structure.

3.11 FORMATION OF BRANCHES

3.11.1 A branch may only be formed with the prior approval of the body vested with this responsibility in the Provincial Constitution or Regional Rules and Practices, and the branch area of jurisdiction must be determined at the same time. Approval for the formation of a branch must not be unreasonably withheld.

3.11.2 A branch may only be formed if the Provincial Executive or, where applicable, the Regional Executive, certifies that there are at least 25 members within the area of jurisdiction of the branch.

3.11.3 A branch ceases to exist if its members drop below 25 as certified by the membership audit, or if a general meeting of the branch, of which notice was given to all members of the branch, decides to dissolve the branch, or if the branch fails to hold an annual general meeting by a date determined by the Federal Executive in terms of section 6.3.3.5. The members of the branch must then be transferred to an adjoining branch as determined by the Provincial or Regional Executive.

3.12 BRANCH MEETINGS

3.12.1 A Provincial Executive or where there is one, a Regional Executive, or the Constituency Committee as the case may be, may require a Branch Executive, which has failed to carry out its mandate in terms of the constitution, to convene a meeting of members for the purpose of electing a new Branch Executive and, if it fails to do so within 30 days, the Provincial or Regional Executive may itself convene such a meeting.

3.12.2 When a new branch is about to be formed or an existing branch is to hold an annual general meeting a notice indicating the date, time and venue of the meeting and the nature of the business to be transacted must be given to all of the members of the branch resident in the ward, to all public representatives of the Party responsible for the area, and to the office of the Provincial or Regional Executive as the case may be. At least 14 days' notice is required before such a meeting may be held: provided that the Federal Executive may condone a shorter notice period on good cause shown.

3.12.3 The quorum for the holding of an inaugural meeting and for an annual general meeting will in all cases be thirteen (13) members.

3.12.4 The presiding officer at all inaugural and annual general meetings of branches must be a person designated by the Provincial or Regional Executive, as the case may be.

3.12.5 The Chairperson of a Branch Executive must call a general meeting of the branch within twenty one days if one-fifth of the members of the branch so request in writing.

3.13 BRANCH EXECUTIVES

3.13.1 Branch Executives:

3.13.1.1 must meet on a regular basis, but not less than once a quarter, at times, dates and venues determined by the Chairperson;

- 3.13.1.2 in general manage and guide the activities of the Party within their area of jurisdiction and ensure that the programme of action of the Party is implemented as far as possible;
- 3.13.1.3 give effect to the decisions of higher formations of the Party;
- 3.13.1.4 report to the Constituency Committee and, when so required, to other higher formations of the Party on activities and on local ideas and opinion;
- 3.13.1.5 assist the public representatives of the Party in implementing the policy and the programme of action;
- 3.13.1.6 communicate with members of the Party and the broader public in order to mobilise support for the Party.

3.13.2 The ward councillor, or PR councillor allocated to a ward, must give political leadership to the activists of the branch by guiding strategies and activities and participating in these as an identified leader of the Party.

3.14 **FAILURE BY BRANCHES**

3.14.1 If a branch:

- 3.14.1.1 fails to comply with the provisions of any Party Constitution; and/or
- 3.14.1.2 cannot function properly due to internal strife or lack of leadership;

the Constituency, Regional or Provincial Executive may take steps to rectify the situation, provided that the Executive taking such decision shall report to the next Constituency, Regional or Provincial Council meeting as to what steps it has taken.

3.14.2 The steps referred to above may include a directive that the administration of the branch or any aspects thereof may be taken over by a designated Party official or body.

CHAPTER FOUR

CONSTITUENCIES

4.1 DEMARCATION OF CONSTITUENCIES AND COMPOSITION OF CONSTITUENCY COMMITTEES

4.1.1 A Provincial Executive must, in consultation with the Chief Executive Officer of the Party and after due consultation with the Regional Executives where these exist demarcate constituency boundaries.

4.1.2 A constituency must be an area capable of being administered as a unit and must consist of one or more adjacent local municipalities, or, in the case of metropolitan areas or large municipalities, of adjacent wards, forming one geographical area. A constituency can also be a specific interest group, defined institution(s) or societal sector identified by the Federal Council or Federal Executive or as one needing focussed attention.

4.1.3 Every constituency must have a Constituency Committee, the composition of which shall be as provided in the relevant Provincial Constitution.

4.1.4 The duly constituted Constituency Committee must elect a Constituency Executive and Constituency Chairperson, as provided in the Provincial Constitution, provided that the Chairperson must be a member of one of the branches entitled to be represented on that Constituency.

4.1.5 The constituency head allocated to the constituency, as well as all councillors representing wards in the constituency or who are PR councillors who have been allocated to wards in the constituency, are automatically members of the Constituency Committee and the constituency head shall also be a member of the Constituency Executive.

4.2 POWERS AND FUNCTIONS OF CONSTITUENCY COMMITTEES

4.2.1 The Constituency Committee participates in drafting an annual programme for the constituency and all its branches.

4.2.2 The Constituency Committee assists the public representatives and operational structures of the Party in implementing the policies and the programme of action of the Party.

4.2.3 The Constituency Committee shall not deal with financial matters other than –

4.2.3.1 Fundraising permitted by the *Federal Finance, Fundraising and Procurement Policy*; and

4.2.3.2 Ensuring that the constituency expenditure on political activities expends but does not exceed the political activity budget allocated to the constituency or any monies raised by the constituency.

4.3 ALLOCATION AND RESPONSIBILITIES OF CONSTITUENCY REPRESENTATIVES

4.3.1 The Provincial Executive must, after having demarcated as provided in this Constitution, and after consultation with the MPs and MPLs and any councillors which it contemplates allocating as constituency heads, and regional executives where these exist, and the constituency executives, allocate one or more Member/s of Parliament or the Provincial Legislature, to a constituency as the Constituency Head/s. A Provincial Executive may, with the approval of the Federal Executive, assign a councillor as a Constituency Head.

4.3.2 The Constituency Head/s is/are the political leader/s in that constituency and is/are directly responsible to the Regional, Provincial and Federal leadership for the proper political functioning of the constituency and the branches within the constituency.

4.3.3 The constituency allocated to a representative or representatives is the area in which that representative or those representatives must be available to serve the voters and support Party activities in accordance with a job description determined by the Federal Council.

4.3.4 The Regional Executive, or if there is none, the Provincial Executive, shall, after consultation with the PR councillors and the Constituency Executive, allocate PR councillors to wards and/or other specific responsibilities.

4.3.5 Ward Councillors take responsibility for the ward for which they were elected, and they and PR Councillors take such other responsibilities as the regional or provincial organisation may allocate to them in consultation with the relevant caucus leader.

4.3.6 The Constituency Chairperson is administratively responsible for the Constituency.

4.3.7 Staff members assigned to a Constituency or a targeted community in a constituency or constituencies are responsible for executing the operations and political support in the Constituency.

4.4 FAILURE BY CONSTITUENCIES

4.4.1 If a constituency:

4.4.1.1 fails to comply with the provisions of any Party Constitution; and/or

- 4.4.1.2 becomes unable to meet its financial commitments; and/or
- 4.4.1.3 cannot function properly due to internal strife or lack of leadership;

the Regional, Provincial or Federal Executive must take steps to rectify the situation, provided that the Executive taking such decision shall report to the next Regional, Provincial or Federal Council meeting as to what steps it has taken.

- 4.4.2 The steps referred to above may include a directive that the administration of the constituency or any aspects thereof may be taken over by a designated Party official or body.

CHAPTER FIVE

PROVINCES AND PROVINCIAL CONSTITUTIONS

5.1 PROVINCIAL CONSTITUTIONS

5.1.1 Each province must have a provincial constitution that must provide for:

- 5.1.1.1 a Provincial Congress,
- 5.1.1.2 a Provincial Council,
- 5.1.1.3 a Provincial Executive,
- 5.1.1.4 Constituency Committees,
- 5.1.1.5 Constituency Executives, and
- 5.1.1.6 Branch Executive Committees

with all the appropriate and relevant provisions relating to those bodies: provided that a Provincial Constitution may, with the prior approval of the Federal Executive and on good cause shown, make provision for Regions, Regional Executives and Regional Councils as institutional structures between Constituencies and Congresses.

5.1.2 Branches must be represented at Constituency Committee level and Constituency Committees at Provincial Council level: provided that where Regional Councils are created, Constituency Committees must be represented at Regional Council level and Regional Councils at Provincial Council level.

5.1.3 Provincial constitutions are intended to suit local conditions that may differ from province to province, and may therefore with the approval of the Federal Council deviate from this Constitution to the extent that provision is made herein for such departure.

5.1.4 Any departure in a Provincial Constitution from the provisions of this Constitution must be in clear and concise terms.

5.1.5 Provinces must within six months after the acceptance of any amendments to the Federal Constitution which conflict with their Provincial Constitutions, amend their Provincial Constitutions to bring them in line with the Federal Constitution: Provided that if no Provincial Congress takes place within that period, the province must implement the changes by way of rules adopted by the Provincial Council or Provincial Executive, which rules shall have the status and effect of constitutional imperatives: Provided further that the amendments to the Federal Constitution shall take effect immediately after they are passed,

regardless of whether the Provincial Constitutions have been amended unless a special dispensation is granted by the Federal Executive on the basis that it is impossible in the particular circumstances.

- 5.1.6 All Provincial Constitutions or amendments thereof must be submitted to the Federal Legal Commission for certification that they are in accordance with the Federal Constitution immediately after the adoption thereof, or such further limited period as the Federal Council may permit, and thereafter to the Federal Executive for approval.

5.2 BRANCHES AND CONSTITUENCIES

The provisions of Chapter 3 and 4 of this Constitution in regard to branches and constituencies will apply in all respects to all provinces, unless the Federal Council approves of a deviation that conforms to sections 5.1.1. to 5.1.4 above and is clearly set out in a Provincial Constitution.

5.3 REGIONAL STRUCTURE

- 5.3.1 If a Provincial Constitution makes provision for regions and Regional Councils or other regional structures, that constitution must clearly set out the powers and duties of such structures and how such structures are composed in order to comply with sections 5.1.1 to 5.1.4 above

- 5.3.2 The establishment of regional structures is subject to the general principles referred to in sections 5.1.2 and 5.1.3 and a Provincial Constitution must give effect thereto.

- 5.3.3 Any amendment to a Provincial Constitution only takes effect upon the approval of that amendment by the Federal Council.

5.4 CONGRESS, PROVINCIAL COUNCIL AND PROVINCIAL EXECUTIVE

- 5.4.1 A Provincial Congress, Provincial Council and Regional council must be composed subject to the provisions of the Federal Constitution in regard to representation from lower to higher formations of the Party.

- 5.4.2 The Provincial Constitution must clearly set out how its provincial delegates to the Federal Council are determined.

- 5.4.3 A Provincial Council and Provincial Executive must:

5.4.3.1 ensure that all structures of the Party in the province are regularly elected;

5.4.3.2 ensure that all structures function properly and in terms of the requirements of the Federal and Provincial Constitutions;

- 5.4.3.3 prescribe systems that will help to ensure democracy, transparency and good governance;
- 5.4.3.4 make it possible for the Federal Council and the Federal Executive to provide leadership in campaigns and endeavours of a national nature with the co-operation and support of the provinces;
- 5.4.3.5 take responsibility for the financial affairs of the province.

5.5 VOTING AND REPRESENTATION

- 5.5.1 Elections to office and in particular where representatives from a lower to a higher formation are elected, must be in terms of a formula determined by the Federal Council.
- 5.5.2 The system of representation from subordinate bodies to higher formations must provide:
 - 5.5.2.1 for persons who are not public representatives to be active at all levels;
 - 5.5.2.2 for public representatives in all spheres to be present or be represented.

5.6 FAILURE BY PROVINCES OR REGIONS

- 5.6.1 If a province or region:
 - 5.6.1.1 fails to comply with the provisions of this Constitution, its own constitution or any relevant rules of order; and/or
 - 5.6.1.2 becomes unable to meet its financial commitments; and/or
 - 5.6.1.3 cannot function properly due to internal strife or lack of leadership;

the Federal Executive must take steps to rectify the situation, provided that the Federal Executive shall report to the next Federal Council meeting as to what steps it has taken.
- 5.6.2 The steps referred to above may include a directive that the administration of the Province or any aspects thereof may be taken over by a designated Party official or body.

CHAPTER SIX

FEDERAL STRUCTURES

6.1 FEDERAL CONGRESS

6.1.1 The supreme policy-making and governing body of the Party is the Federal Congress in session.

6.1.2 The Federal Congress generally meets at least once every three years, but must be convened at any time by a two-thirds majority vote of the Federal Executive, a two-thirds majority vote of the Federal Council, or when requested by a petition signed by at least five thousand members of the Party.

6.1.3 The Federal Council or Federal Executive shall determine the number of Congress delegates, which shall comprise:

6.1.3.1 the Federal Leader;

6.1.3.2 the Federal Chairperson;

6.1.3.3 the three Deputy Federal Chairpersons;

6.1.3.4 the Chairperson and two Deputy Chairpersons of the Federal Council;

6.1.3.5 the Federal Chairperson of Finance;

6.1.3.6 the Chief Executive Officer, without voting rights;

6.1.3.7 any co-opted members of the Federal Executive;

6.1.3.8 the Provincial Leader, one Deputy Provincial Leader and the Provincial Chairperson, if any, per province;

6.1.3.9 all Members of Parliament and Members of Provincial Legislatures;

6.1.3.10 the balance of Congress shall comprise:

6.1.3.10.1 local government councillors equal to five times the number of Members of Parliament and the Provincial Legislatures in the country, allocated to the provinces on the basis of the proportion of votes obtained by the Party in that province in the last election of a national nature; and

- 6.1.3.10.2 non-public representative delegates allocated to branches and elected by a proportional voting system approved by the Federal Council or Federal Executive, which shall not comprise less than 45% of the total Congress delegates;
- 6.1.3.11 the Federal Leader, the Federal Chairperson and Provincial Chairpersons of the Democratic Alliance Youth;
- 6.1.3.12 the Federal Leader, the Federal Chairperson and Provincial Leaders of the Democratic Alliance Women's Network;
- 6.1.3.13 the Chairperson of the Association of Democratic Alliance Councillors, or his or her nominee, and the Provincial Chairperson of the Association of Democratic Alliance Councillors in each province, if not already a delegate in another capacity;
- 6.1.3.14 the DA Abroad Leader, or his or her nominee;
- 6.1.3.15 9 other delegates from DA Abroad, allocated according to a formula approved by the Federal Council;
- 6.1.3.16 other persons invited by the Federal Leader or the Federal Chairperson, with the approval of the Federal Council, provided that such persons may not vote.
- 6.1.3.17 any members of the Federal Council who are not otherwise delegates.
- 6.1.4 The Federal Congress elects the Federal Leader, the Federal Chairperson and the Deputy Federal Chairpersons.
- 6.1.5 The Federal Chairperson or one of the Deputy Chairpersons, assigned by the Federal Chairperson, acts as the chairperson of the Federal Congress.
- 6.1.6 The Federal Executive must take all decisions relevant to the organisation of the Federal Congress including the date, venue and agenda.
- 6.1.7 The Federal Congress takes decisions on all aspects of policy, organisation, finance and discipline, and all such decisions are binding on the Party, provided that it may not repeal or alter the Values, the Principles or the Programme of Action of the Party as set out in this Constitution unless that repeal or alteration is agreed to by not less than four-fifths of the registered delegates at that Congress.

6.2 FEDERAL COUNCIL

6.2.1 There must be a Federal Council of the Party.

6.2.2 When the Federal Congress is not in session, the Federal Council is the policy-making and governing body of the Party.

6.2.3 The Federal Council comprises:

6.2.3.1 All members of the Federal Executive who are not otherwise members of the Federal Council;

6.2.3.2 the Chairperson of the Federal Legal Commission;

6.2.3.3 the Leader or his or her nominee, of all duly constituted and recognised ancillary organisations;

6.2.3.4 the Provincial Chairpersons;

6.2.3.5 the Provincial Chairpersons of Finance;

6.2.3.6 the Regional Chairpersons of the Party in whose area of jurisdiction at least 80 000 votes were cast for the Democratic Alliance at the most recent national election;

6.2.3.7 twenty four (24) Members of Parliament representing the Party, allocated to the provinces proportionately on the basis of votes cast at the most recent election of a national nature and elected by the Members of Parliament of the province concerned by a proportional voting system approved by the Federal Council, but subject to the condition that each province which elected a Member to Parliament at the most recent election shall be entitled to at least one representative under this section;

6.2.3.8 twenty four (24) Members of Provincial Legislatures representing the Party, allocated to the provinces proportionately on the basis of votes cast at the most recent election of a national nature and elected by the Members of the Provincial Legislature of the province concerned by a proportional voting system approved by the Federal Council, but subject to the condition that each province which elected a Member to a Provincial Legislature at the most recent election shall be entitled to at least one representative under this section;

6.2.3.9 twenty four (24) local government councillors representing the Party, allocated to the provinces proportionately on the basis of the votes cast at the most recent election of a national nature and elected by the provincial organisation

of the Association of Democratic Alliance Councillors by a proportional voting system approved by the Federal Council, but subject to the condition that each province shall obtain at least one representative under this section;

6.2.3.10 twenty four (24) members of the Party who are not public representatives, or their alternates, allocated to the provinces proportionately on the basis of the votes cast at the most recent election of a national nature and elected by the province concerned by a proportional voting system approved by the Federal Council, but subject to the condition that each province must obtain at least one representative under this section;

6.2.3.11 any additional members, up to six, co-opted by the persons referred to above, subject to a two thirds majority of the Federal Council meeting approving each co-option by secret ballot;

6.2.3.12 two staff members from each province designated by the Provincial Chairperson, without voting rights.

6.2.4 Election of Federal Council Office Bearers

6.2.4.1 Members of the Federal Council must, during the Federal Congress, elect its Chairperson, two Deputy Chairpersons, and a Federal Chairperson of Finance.

6.2.4.2 Existing Federal Council office bearers as defined in 6.2.4.1 remain in office until new office-bearers have been elected.

6.2.5 Sub-committees

The Federal Council may establish sub-committees and may assign to them functions, duties and powers consistent with this constitution.

6.2.6 Prescribing rules and regulations

6.2.6.1 The Federal Council must meet at least three times a year at times and places determined by the Chairperson, and is obliged to do so by decision of the Federal Executive or when requested by a petition signed by at least 30% of its members.

6.2.6.2 A majority of the members of the Federal Council constitutes a quorum.

6.2.6.3 If the President, a premier, a mayor, or any other public representative elected or appointed to any executive position in a DA government, has lost the confidence of his

or her caucus, the Federal Executive may, after giving him or her the opportunity to make representations to it, resolve to require him or her to resign from his or her office within 48 hours. Failure by that member to resign will lead to the cessation of his or her membership of the Party in terms of section 3.5.1.10. Any such vote of no confidence requires the leave of the Federal Executive before it is moved in the caucus.

6.2.6.4 In years when no Federal Congress is held, the Federal Council must invite provinces and regions to submit resolutions concerning policy, organisation, finance and discipline for consideration and decision by the Federal Council but those decisions may not repeal or alter this Constitution.

6.2.6.5 Policy resolutions must be submitted in writing to the Federal Council Chairperson, all members of the Federal Council and to the Member of Parliament appointed as national spokesperson for the portfolio to which the policy resolution relates, 14 days before the Federal Council meeting. Similarly, notice should be given to provincial spokespersons or to the Association of Democratic Alliance Councillors if provincial government or local government matters are to be debated.

6.2.6.6 At least once during every period of five years but at least one year before any general election, the Federal Council must convene to debate, refine and update the Party's policies. At this meeting, the Federal Council will be augmented by all premiers and provincial ministers, all mayors, and members of mayoral committees in metropolitan municipalities and all national and provincial spokespersons on portfolios who may speak, but only members of the Federal Council may vote.

6.3 FEDERAL EXECUTIVE

6.3.1 There must be a Federal Executive of the party which comprises:

6.3.1.1 the Federal Leader;

6.3.1.2 the Federal Chairperson;

6.3.1.3 the three Deputy Federal Chairpersons;

6.3.1.4 the Chairperson of the Federal Council, who chairs meetings of the Federal Executive ;

- 6.3.1.5 the Deputy Chairpersons of the Federal Council, one of whom chairs meetings in the absence of the Chairperson of the Federal Council;
- 6.3.1.6 the leaders of the Party in the National Assembly and the National Council of Provinces if they are not already members;
- 6.3.1.7 the Federal Chairperson of Finance;
- 6.3.1.8 the Provincial Leaders or their nominees;
- 6.3.1.9 the Chief Whip of the DA in the National Assembly;
- 6.3.1.10 the Federal Leader of the Democratic Alliance Youth, or his or her nominee;
- 6.3.1.11 the DASO Federal Leader;
- 6.3.1.12 the Federal Leader of the Democratic Alliance Women's Network or her nominee;
- 6.3.1.13 the Chairperson of a structure recognised by the Federal Council which represents the Members of Provincial Legislatures of the Party, or his or her nominee;
- 6.3.1.14 the Chairperson of the Association of Democratic Alliance Councillors, or his or her nominee;
- 6.3.1.15 the Chief Executive Officer, without voting rights;
- 6.3.1.16 up to six members co-opted by a two-thirds majority of the Federal Executive by secret ballot.

6.3.2 Meetings, powers and functions of Federal Executive

- 6.3.2.1 The Federal Executive must meet regularly and whenever the Federal Leader or the Chairperson of the Federal Council so determines, or when at least one half of its members request a meeting.
- 6.3.2.2 The majority of the members of the Federal Executive constitutes a quorum.
- 6.3.2.3 The Federal Executive may invite one or more persons to attend, but not to vote at any of its meetings.

- 6.3.3 **The Federal Executive:**
- 6.3.3.1 performs the functions and exercises the powers of the Federal Council when the Council is not in session; save that only the full Federal Council may approve candidate selection regulations and any amendments thereto and any political performance assessment system for public representatives;
 - 6.3.3.2 implements the decisions of the Federal Council;
 - 6.3.3.3 appoints the Chief Executive Officer of the Party, who is in turn responsible for appointing all other Party staff, subject to the policy and directives of the federal executive;
 - 6.3.3.4 controls and directs activities of the Party;
 - 6.3.3.5 subject to this constitution and the constitutions of the provinces, takes decisions and makes regulations, binding on all party structures, concerning membership administration, organisation, finance, discipline and other matters affecting the welfare of the Party;
 - 6.3.3.6 in consultation with the respective province or region, sets and monitors performance targets for each province and region;
 - 6.3.3.7 after consultation with the Mayor/s or caucus leaders, Premier/s and President respectively, approves the selection of the Mayoral Committee, Provincial Cabinet/s and/or Executive Councils and Cabinet, and all other executive, and in the case of councillors, full-time positions.
 - 6.3.3.8 approves the formation of any coalition government the Party is to enter into.
- 6.3.4 If a province or region fails to implement decisions by the Federal Executive, and further fails to comply with a notice to correct the default within 30 days, the Federal Executive may take corrective measures to ensure the compliance by the province with the requirements of the Federal Executive.
- 6.3.5 The Federal Executive may delegate any of its powers to any person or committee and may establish sub-committees and assign to them such functions, duties and powers not inconsistent with this Constitution, as it may deem fit.
- 6.3.6 The Federal Executive may appoint a commission to enquire into any matter in order to establish the facts relevant to the matter to be referred.

6.3.7 The Federal Executive must take all decisions relevant to the organisation of the Federal Congress including the date, venue and agenda.

6.4 NATIONAL MANAGEMENT COMMITTEE

The day-to-day management of the administration of the Party is entrusted to a National Management Committee consisting of the Federal Leader, the Parliamentary Leader if the Leader is not a Member of Parliament, the Federal Chairperson and Deputy Federal Chairpersons, the Chairperson and the Deputy Chairpersons of the Federal Council, the Chief Executive Officer, the Federal Chairperson of Finance, the Chief Whip of the National Assembly and such other persons as may be co-opted to assist, subject to the agreement of the Federal Executive. The National Management Committee shall report to each Federal Executive meeting on its activities and any decisions taken.

CHAPTER SEVEN

SENIOR OFFICE-BEARERS

7.1 THE FEDERAL LEADER

- 7.1.1 Except when the Federal Congress, Federal Council or Federal Executive are in session, and within the framework of the Values, Principles and Programme of Action of the Party, interprets and makes the policy of the Party, provided that policy-making is limited to decisions urgently required in respect of new matters or new situations and that such decisions are reported to the next meeting of the Federal Council;
- 7.1.2 is the spokesperson of the Party at home and abroad and is charged with ensuring that the image, the good name and the reputation of the Party is advanced and defended;
- 7.1.3 initiates campaigns and programmes of action to implement the Values, Principles, Policy and Programme of Action of the Party;
- 7.1.4 has a meaningful role to play in the selection of candidates for the Party;
- 7.1.5 may appoint a person to act as leader during his or her temporary absence or incapacity if the Federal Chairperson is unavailable, provided that for any period in excess of six weeks the approval of the Federal Executive must be obtained.

7.2 THE FEDERAL CHAIRPERSON

- 7.2.1 presides over the Federal Congress;
- 7.2.2 deputises for the Federal Leader if he or she is absent or incapacitated;
- 7.2.3 performs whatever tasks and functions are delegated to him or her by the Federal Council or Federal Executive from time to time and;
- 7.2.4 is responsible for the co-ordination and alignment of Party policy; and
- 7.2.5 in consultation with the Federal Leader:
 - 7.2.5.1 actively supports the implementation of programmes of action designed to promote the Values, Principles, Policy and Programme of Action of the Party; and
 - 7.2.5.2 assists in the overall promotion of the Party and mobilisation of support for it.

7.3 THE FEDERAL DEPUTY CHAIRPERSONS

may be responsible for:

- 7.3.1 serving as a support to provinces as assigned by the Federal Executive, in consultation with the Provincial Executive Committees;
- 7.3.2 fostering relationships with organisations in civil society;
- 7.3.3 the Party's international relationships;
- 7.3.4 activist training and development; and
- 7.3.5 any other function assigned by the Federal Chairperson and approved by the Federal Executive.

7.4 THE CHAIRPERSON OF THE FEDERAL COUNCIL

- 7.4.1 is expected to perform his or her functions on a full time or virtually full time basis;
- 7.4.2 is entrusted with and responsible for the organisation and administration of the Party, and for developing and maintaining a high degree of efficiency in the Party;
- 7.4.3 implements decisions of the Federal Council and the Federal Executive;
- 7.4.4 works closely with the Federal Leader, the Federal Chairperson, the Federal Chairperson of Finance, and the Chief Executive Officer;
- 7.4.5 performs other functions and duties and exercises powers assigned to him or her, within the provisions of this Constitution, by the Federal Leader, the Federal Council and the Federal Executive;
- 7.4.6 has the power to delegate any of these powers to the Chief Executive Officer or other appropriate persons.

7.5 THE PARLIAMENTARY LEADER

The Parliamentary Leader

- 7.5.1 in the event that the Federal Leader is not a Member of Parliament, and except when the Federal Congress, Federal Council or Federal Executive are in session, and within the framework of the Values, Principles and Programme of Action of the Party, interprets and makes the policy of the Party in Parliament, provided that policy-making is limited to decisions urgently required in respect of new matters or new situations and provided it is done in consultation with the Federal Leader;

7.5.2 is the spokesperson of the Party on matters related to Parliament and is specifically charged with ensuring that the image, the good name and the reputation of the Party is advanced and defended;

7.5.3 initiates campaigns and programmes of action in Parliament to implement the Values, Principles, Policy and Programme of Action of the Party.

7.6 SENIOR OFFICE BEARERS AND MEETINGS

7.6.1 The Federal Leader, the Federal Chairperson and the Chairperson of the Federal Council are members of any Congress, Council, Committee, caucus or sub-committee established in terms of this Constitution, and are entitled to attend meetings of all or any of them as full members.

7.6.2 Provincial Leaders and Deputy Leaders and Provincial Chairpersons have the same rights in their Provinces.

7.6.3 The Federal Leader or his/her nominee shall further be a member of every Electoral College.

7.6.4 Provincial Leaders shall be members of all Electoral Colleges in their own province.

7.7 RESIGNATION, DEATH OR INCAPACITY

7.7.1 If any office bearer resigns, dies, or becomes permanently incapacitated, the office bearer's deputy, if there is one, will fill that position until a successor is elected. Such election shall take place forthwith by the body which elected the office bearer, provided that if this is impracticable the executive of that body may appoint a person to act until a successor can be elected.

7.7.2 In the event of any office bearer being temporarily unavailable, their deputy, if there is a deputy, will fill that position. If there is no deputy, that office-bearer may nominate a temporary replacement for the duration of that unavailability, provided that for any period in excess of six weeks the approval of the Federal Executive must be obtained.

CHAPTER EIGHT

FINANCE

8.1. FEDERAL FINANCE COMMITTEE

- 8.1.1 The Federal Finance Committee comprises:
- 8.1.1.1 the Federal Chairperson of Finance, who chairs meetings;
 - 8.1.1.2 the Federal Leader;
 - 8.1.1.3 the Federal Chairperson;
 - 8.1.1.4 the Chairperson of the Federal Council;
 - 8.1.1.5 the Deputy Chairpersons of the Federal Council;
 - 8.1.1.6 the Chief Executive Officer, without voting rights;
 - 8.1.1.7 the Chief Financial Officer, without voting rights;
 - 8.1.1.8 the Provincial Chair of Finance, or his or her nominee; and
 - 8.1.1.9 up to four persons co-opted by it in consultation with the Federal Executive.
- 8.1.2 The Federal Finance Committee shall:
- 8.1.2.1 Review the financial affairs of the Party to ensure that they are conducted in a prudent and responsible manner.
 - 8.1.2.2 Prescribe financial procedures to be followed by all formations of the Party.
 - 8.1.2.3 Determine and amend as and when required, the *Finance, Fundraising and Procurement Policy* ("the Finance Policy") that must be approved by the Federal Council, and which must be adhered to by all formations of the Party and the professional staff of the Party.
 - 8.1.2.4 Ensure that all national and provincial and/or regional bodies conduct annual audits and table audited statements within 6 months of the financial year end.
 - 8.1.2.5 Ensure that all national and provincial and/or regional formations of the Party, including all legislature caucuses, that are authorised by the Finance Policy to deal with

finances from donors, members and/or statutory sources and, where required by the Policy to do so, conduct annual audits and table audited statements within 6 months of the financial year end.

- 8.1.2.6 Review audited statements of all formations of the Party and report to the Federal Executive on any matters of concern that may arise from the audited statements.
- 8.1.2.7 Review the annual and medium term income and expenditure budget for the activities of the Party which must be tabled before and approved by the Federal Executive.
- 8.1.2.8 Review on a quarterly basis the income and expenditure statements of the Party at a national level and reports to the Federal Executive any matters of concern and from such reviews.
- 8.1.2.9 Resolve disputes of a financial nature which may arise between formations of the Party.
- 8.1.2.10 Deal with any matter relating to the financial affairs of the Party referred to it by the Federal Executive.
- 8.1.2.11 Meet at least once a quarter or more regularly as determined by the Chairperson.

8.1.3 The Chairperson of the Federal Finance Committee shall -

- 8.1.3.1 Submit a report to every Federal Council meeting and to every Federal Congress;
- 8.1.3.2 When requested by the Chairperson of Federal Council, Chairpersons of Provincial Finance Committees or the Chief Executive Officer, interpret the provisions of the Finance Policy. Such interpretations may be referred to the Federal Legal Commission for a ruling on the validity of such interpretations;
- 8.1.3.3 Have free access to all Party financial records held in any and all formations of the Party; and
- 8.1.3.4 Be supplied with any reasonable report on the finances of the Party whether on an ad hoc or a regular basis.

8.1.4 The Chief Executive Officer shall, in addition to his or her other functions –

- 8.1.4.1 be the Accounting Officer of the Party; and

- 8.1.4.2 be responsible for -
- 8.1.4.2.1 drafting the annual and election budgets;
- 8.1.4.2.2 producing financial reports as may be required by -
- The Chairperson of the Federal Council;
 - The Chairperson of the Federal Finance Committee;
 - The National Management Committee;
 - The Federal Executive;
 - The Federal Council; and/or
 - The Federal Congress.
- 8.1.4.3 Obtain a recommendation on affordability from the Federal Finance Committee to present to the Federal Executive for approval -
- On the staff complement, whether permanent and/or on contract, as depicted on an organogram proposed by the Chief Executive Officer; and
 - On any and all appointments of professional staff to posts that have not previously been recommended by the Federal Finance Committee and approved by the Federal Executive.

CHAPTER NINE

CAUCUSES

9.1 ESTABLISHMENT OF CAUCUSES

- 9.1.1 All Members of the National Parliament who are members of the Party are members of the Parliamentary Caucus of the Party.
- 9.1.2 All Members of the Provincial Legislatures who are members of the Party are members of the Provincial Legislature Caucus of the Party in their province.
- 9.1.3 All councillors in local government councils who are members of the Party are members of the Municipal Caucuses of the Party in the councils in which they serve.

9.2 ESTABLISHMENT OF JOINT CAUCUSES

The members of the Party and any other party or parties with which the Party is in coalition for the purposes of forming a government in any sphere, must establish a joint caucus for the purposes of ensuring a co-ordinated response to issues that will serve before that legislative body.

9.3 FUNCTIONING

- 9.3.1 The Chief Whip of any legislative body, if that position is held by a member of the Party, is automatically the Chief Whip of the relevant caucus.
- 9.3.2 Each caucus elects a chairperson and whip or whips from amongst its own members, save that chief whips, where these exist, will be chosen according to a system approved by the Federal Council.
- 9.3.3 The Federal Leader is automatically the leader of the Parliamentary Caucus if he or she is a Member of Parliament. The Premier is automatically the leader of the caucus in the relevant provincial legislature, and the mayor is automatically the leader of the relevant municipal caucus, where these positions are held by members of the Party. In all other cases the caucuses elect a leader from their own ranks, subject to the provisions of section 2.2.4.
- 9.3.4 Each caucus functions and takes decisions in terms of a policy approved by the Federal Council.
- 9.3.5 Members must at all times adhere to and support decisions of the relevant caucus and must not differ publicly from any decision once it has been taken except when it has been decided by the caucus that a member may on a question of conscience exercise a free vote.

9.3.6 Members must attend caucus meetings punctually and no member is excused from attending a caucus meeting except by leave of the Whip.

9.3.7 Members must at all times perform their duties in the relevant forum, their duties towards the voters and particularly their duties towards Party supporters diligently and to the level and standard required by the Party as set out in the applicable code.

9.4 DUTIES AND RESPONSIBILITIES OF CAUCUSES

9.4.1 Caucuses are responsible for the proper functioning of the Party in the relevant forum and may, subject to this constitution and subject to the relevant Party formations, formulate policy if there is no clear policy on a particular matter and then only in their sphere of government, as well as be responsible for ensuring that the Party policies are implemented in the policies of the government in the sphere of government in which the relevant caucus operates and oversee policy formulation by spokespersons.

9.4.2 Portfolio spokespersons shall be designated in each case by the Leader of the Party in the caucus concerned.

9.5 DISCIPLINARY ACTION

9.5.1 The Federal Leader, a Provincial Leader or the relevant caucus Leader or Chief Whip may refer a member of any caucus to the applicable Disciplinary Committee for an enquiry on a charge of misconduct in terms of this Constitution.

9.5.2 Any caucus or caucus executive may, by majority decision, suspend a member from attending meetings of that caucus, pending the finalisation of an investigation and/or a disciplinary hearing referred to in Chapter 11, after having given the member 24 hours to give reasons why they should not be suspended.

9.6 CAUCUS RULES

9.6.1 Each caucus must draft and accept a set of Caucus Rules unless exempted by the Federal Executive.

9.6.2 All Caucus Rules must be submitted to the Federal Legal Commission for certification that they are consistent with this Constitution. They must thereafter be submitted to the Federal Council for approval, whereafter they shall come into force.

CHAPTER TEN

THE FEDERAL LEGAL COMMISSION, DISCIPLINARY PANELS AND MEDIATION

10.1 FEDERAL LEGAL COMMISSION

10.1.1 The Federal Executive must at its first ordinary meeting after each Federal Congress elect the Chairperson and Deputy Chairperson of the Federal Legal Commission. Thereafter, the Federal Executive shall, after consulting with the Chairperson and Deputy Chairperson of the Federal Legal Commission, make recommendations to the Federal Council for the appointment of the other panel members, consisting of up to sixty (60) members of whom at least thirty (30) must be legally qualified, and a further ten (10) who must be accredited mediators.

10.1.2 A member of the Legal Commission must at all times preferably be a member of the Party.

10.1.3 The Federal Legal Commission must develop rules for the selection of panels to hear matters. A panel must consist of three persons. The Chairperson of the panel shall be a legally qualified person, and all members of any panel must be fit and proper persons.

10.1.4 The Federal Legal Commission determines Rules of Procedure, applicable to it which may not be in conflict with this Constitution, and which must be approved by the Federal Council.

10.1.5 The term of office of the Federal Legal Commission only expires when its successor is appointed: provided that a Federal Legal Commission whose term has expired, remains in office for the purpose of completing an uncompleted matter.

10.2 POWERS AND FUNCTIONS OF THE FEDERAL LEGAL COMMISSION

10.2.1 The Federal Legal Commission has all powers as are necessary to exercise its functions in terms of this constitution justly and expeditiously and must, at the request of the Federal Leader or the Federal Executive or the Federal Council:

10.2.1.1 interpret this Constitution and any Provincial Constitution;

10.2.1.2 certify a Provincial Constitution and any amendments thereto as being in accordance with this constitution;

10.2.1.3 determine any dispute referred to it;

- 10.2.1.4 decide on the legality or otherwise of any meeting, action, election or resolution by any Party structure;
 - 10.2.1.5 deal with appeals under this Constitution;
 - 10.2.1.6 review the recommendations of an incapacity process before final submission to the Federal Executive;
 - 10.2.1.7 conduct a hearing in terms of section 11.6, and
 - 10.2.1.8 certify caucus rules and any Rules of any Party structure or Ancillary Organisation and any amendments thereto as being in accordance with this Constitution.
 - 10.2.1.9 conduct any investigation or enquiry referred to it by the Federal Executive.
 - 10.2.1.10 refer a matter for mediation.
- 10.2.2 When any matter is referred to it by the Federal Leader, or the Federal Executive, the Federal Legal Commission -
- 10.2.2.1 determines the date for the consideration of the matter and advises the parties thereof;
 - 10.2.2.2 hears evidence, accepts exhibits and calls for papers and documents;
 - 10.2.2.3 hears argument by and on behalf of all parties with a direct interest in the matter; and
 - 10.2.2.4 makes recommendations or gives a decision as it deems fit under the circumstances.
- 10.2.3 The chairperson of the Federal Legal Commission reports in full to the Federal Executive or the Federal Council upon finalisation of the proceedings.
- 10.2.4 The Federal Legal Commission is funded by the Party.
- 10.3 ESTABLISHMENT OF PROVINCIAL DISCIPLINARY COMMITTEES**
- 10.3.1 A Provincial Executive must at its first meeting after every Provincial Congress elect a Disciplinary Committee.
- 10.3.2 Except where the Federal Council allows otherwise, every Disciplinary Committee must consist of not more than ten (10) members and ten (10) alternates; more than half the number must have suitable legal qualifications or appropriate experience.

10.3.3 Three (3) members, of whom at least one must be legally qualified, will form a quorum, provided that the Committee must at all times be chaired by one of the legally qualified members.

10.4. COMPETENT PROCEDURES

10.4.1 The Federal Legal Commission may, upon receipt of a referral from the Federal Executive for an investigation and upon completion of that investigation, recommend to the Federal Executive that the matter be referred to a Panel or a summary hearing, that it be dealt with by means of formal mediation, or that no further action be taken.

10.5 PROCEDURES APPLICABLE TO PROCEEDINGS OF PANELS

10.5.1 The Rules of Procedure prescribed by the Federal Legal Commission must apply to all proceedings of a panel: Provided that the rules of natural justice must at all times be adhered to. In particular a panel must not make any adverse finding against any person unless:

10.5.1.1 The person has been sufficiently informed of every allegation against him or her and has been given the opportunity to rebut the allegations; and

10.5.1.2 He or she has been given the opportunity to submit evidence of mitigating factors.

10.5.1.3 Persons against whom disciplinary action is taken before a panel are entitled to be represented, at their own cost, on the specific condition that the representative is available on the date and time determined by the Federal Legal Commission for the purpose of proceedings.

10.5.2 In all disciplinary matters conducted by a panel of the Federal Legal Commission, the Party shall prove its case on a balance of probabilities.

10.5.3 Panels of the Federal Legal Commission are held in camera.

10.6 PROCEDURES APPLICABLE TO MEDIATION

10.6.1 The Rules of Procedure of the Federal Legal Commission must make provision for the referral of a matter to formal mediation.

10.6.2 These Rules must prescribe the procedure to be followed during formal mediation, but mediation procedures must be conducted in camera and without legal representation.

10.6.3 Only members of the Federal Legal Commission who are accredited mediators may be involved in mediation procedures.

10.7 PROCEDURES APPLICABLE TO SUMMARY HEARINGS

- 10.7.1 The Rules of Procedure of the Federal Legal Commission must make provision for summary hearings.
- 10.7.2 The Federal Legal Commission may direct that a case that is referred to it be dealt with by means of a summary hearing, provided that, in the event that a summary hearing finds an accused member guilty of misconduct, it may only recommend a penalty of admonishment, a fine or the imposition of community service, or a combination of such penalties, or that the accused member be placed on an incapacity programme.
- 10.7.3 An accused member shall not be entitled to be represented before a summary hearing.

10.8 REFERRAL TO THE FEDERAL LEGAL COMMISSION

- 10.8.1 A Provincial Executive, through the Federal Executive, or the Federal Executive itself, or the Federal Leader may refer a charge of misconduct against any member to the Federal Legal Commission. The Commission may conduct a preliminary investigation into the matter and report to the Federal Executive, or it may refer the matter to a Panel, to a summary hearing or for formal mediation.
- 10.8.2 If the Provincial Disciplinary Committee fails to act within a reasonable time, the relevant Executive may refer the matter to the Federal Legal Commission which will act as if the matter had been referred to it in terms of section 10.8.1.
- 10.8.3 A Provincial Executive may refer a matter for informal mediation if the complainant agrees. However, if a Provincial Executive declines to refer a matter or fails to act within sixty (60) days in terms of section 10.8.1, the Federal Executive, must deal with the matter in terms of section 10.8.1.
- 10.8.4 The Federal Council or Federal Executive may in the interest of justice, direct that a disciplinary hearing be conducted by a panel of another Province or the Federal Legal Commission in which event that panel or commission must follow the procedure prescribed for panels.
- 10.8.5 No provision of the Constitution limits the right of the Federal Executive or a Provincial Executive:
- 10.8.5.1 to temporarily suspend a member from taking part in any or all of the activities of the Party, pending the outcome of a disciplinary hearing in terms of this chapter; or
 - 10.8.5.2 to appoint a commission to enquire into any matter in order to establish the facts relevant to the matter to be referred.

10.9 FINDINGS BY PANELS

10.9.1 A Panel may find that a member is guilty or not guilty of the offence with which he or she has been charged. In the event that the finding is one of guilty, the Panel may recommend that:

- 10.9.1.1** the membership of that person be terminated;
- 10.9.1.2** the membership of that person be suspended for a specified period;
- 10.9.1.3** the member be suspended from any position in the Party or from holding any position in future, or for a specified period, or that all or any of the privileges of a member as stated in this Constitution be suspended;
- 10.9.1.4** the member be admonished;
- 10.9.1.5** the member be fined an amount not exceeding the amount determined by the Federal Council from time to time payable upon such terms and conditions as the committee may recommend;
- 10.9.1.6** The member be ordered to render a period of service, including but not limited to, service to the community or to the Party;

10.9.2 In addition to any of the above penalties, the following penalties may be recommended by a Panel of the Federal Legal Commission only:

- 10.9.2.1** The member be removed or suspended from any executive position they hold in a council, provincial legislature or Parliament: Provided that in the case of a suspension, it must be for a specified period and/or on such terms and conditions as the Panel deems fit. Provided further that in the event that the person fails to comply with the penalty so imposed, and resign his or her position in the relevant body within five (5) days after receipt of notice instructing him or her to do so, their membership shall terminate immediately without further notice;
- 10.9.2.2** The member be prohibited from holding an executive position in a council, provincial legislature or Parliament in the future or for a specified time period, and on such terms and conditions as the Panel deems fit;
- 10.9.2.3** The member be removed from a public representative position and/or prohibited from holding a position as a public representative for the Party in future or for a specified time period.

- 10.9.3 Any penalty recommended by a Panel or Summary Hearing may also contain the recommendation that its imposition be suspended for a specified time period and on such conditions as the Panel or Summary Hearing may deem fit.
- 10.9.4 A caucus or caucus executive may take such disciplinary steps as may be provided for in their caucus rules, which have been approved by the caucus, certified by the Federal Legal Commission and approved by the Federal Council: Provided that no disciplinary action which could lead to the termination of membership or suspension or removal from an executive position or a position in the Party, shall be included in caucus rules.
- 10.9.5 The Federal Legal Commission must report its findings and recommendations to the Federal Council and Executive.
- 10.10 APPEALS TO AND REVIEWS BY THE FEDERAL LEGAL COMMISSION**
- 10.10.1 Any prospective candidate for national, provincial or local government office has the right of appeal to the Federal Legal Commission in respect of the nomination and selection of candidates on the grounds that the proper procedure was not followed or that the nomination was invalid for any other reason.
- 10.10.2 Any public representative who wishes to appeal against the findings of a provincial panel confirmed by a Provincial Executive and which may lead to the termination of membership of that representative, has an appeal to the Federal Legal Commission.
- 10.10.3 The Party, represented by the Federal Executive, or a complainant, shall have the right to appeal to the Federal Legal Commission against any finding of a panel of a provincial disciplinary committee. Where a matter has been heard by the Federal Legal Commission in the first instance, the Party or the member found guilty of misconduct may appeal the decision to an appeal panel of the Federal Legal Commission consisting of five (5) members who have not been involved in the initial hearing, and after the processes referred to in section 10.11.1 have been followed. The decision of the appeal panel is final.
- 10.10.4 In matters other than disciplinary hearings, the decisions of the Federal Legal Commission are not subject to appeal and the findings of the Commission must be implemented by the relevant structures of the Party.
- 10.10.5 Nothing herein shall preclude the Party from taking any matter decided on by the Federal Legal Commission on review to the High Court. A decision to take a matter on review shall be taken by the Federal Executive.

10.10.6 Notwithstanding the provisions of section 10.11, a recommendation that a public representative be removed from office must be confirmed by the Federal Executive.

10.10.7 Any appeal provided for in this section must be lodged with the Chairperson of the Federal Legal Commission within a period of ten (10) working days after the relevant executive has informed the parties of the decision: provided that all Parties involved in the matter shall be informed in writing immediately the Executive has made a decision to terminate the membership of a public representative, and no notification to a Municipal Manager, Speaker or the Independent Electoral Commission may occur until the Federal Executive has confirmed the termination.

10.11 DECISIONS BY THE EXECUTIVE

10.11.1 The Provincial or Federal Executive, as the case may be, must consider the findings and recommendation of the Panel and:

10.11.1.1 must accept the finding of the Committee, subject to any right of review referred to in this Constitution or any law; and

10.11.1.2 must consider the recommendation of the committee regarding the penalty, if any, and may either confirm it, or impose a lesser or greater penalty than that recommended by the Panel, with good reason.

10.11.2 Subject to any appeal or review mechanism referred to in this Constitution or provided for in law, and subject to section 10.10.6, the decision of the relevant executive is final.

10.12 TERMINATION OR SUSPENSION OF MEMBERSHIP

10.12.1 In the event that a member is found guilty of misconduct in terms of section 2.5.4, and a panel recommends the termination of that member's membership, that membership may only be terminated by a Provincial Executive and confirmed by the Federal Executive, and only after a disciplinary hearing in terms of this Chapter.

10.12.2 If a member ceases to be a member in terms of section 3.5, his or her membership ceases immediately and automatically.

10.12.3 In the case of termination of membership on the grounds of incapacity in terms of section 2.5.2, this must be approved by the Federal Executive only after the processes approved by the Federal Council have been complied with, and after the review by the Federal Legal Commission in terms of section 10.2.1.6.

10.12.4 The Party membership of a public representative who is removed from office in terms of section 2.5.2 is not affected by that removal alone,

unless it is accompanied by a recommendation for termination of membership which is approved by the Federal Executive.

10.12.5 A Provincial Executive or the Federal Executive may suspend a Party member from any or all of the activities of the Party, pending the institution or finalisation of an investigation and/or a disciplinary hearing in terms of this Chapter: provided that a caucus or caucus executive may suspend a caucus member from all or any caucus activities, pending the finalisation of such an investigation and/or disciplinary hearing. In both instances, the member shall be afforded a period of 24 hours to make representations as to why they should not be suspended.

10.13 REPORTING TO FEDERAL COUNCIL

The Federal Legal Commission shall report on all its findings and recommendations, as well as all matters referred to it and which are not yet finalised, to every Federal Council meeting. The Provincial Disciplinary Committee shall likewise report to every Provincial Council Meeting.

CHAPTER ELEVEN

ANCILLARY ORGANISATIONS

- 11.1 Federal Council may establish such organisations as it deems fit to complement the work of the Party and to further the Values, Principles, Mission and programme of Action of the Party. Such organisations shall be regulated by rules to be approved by the Federal Council after certification by the Federal Legal Commission.
- 11.2 Any organisation that exists shall continue to exist unless Federal Council decides otherwise and shall continue to enjoy representation to structures of the Party as provided in this Constitution or any Provincial Constitution.
- 11.3 Such organisations may apply to the Federal Council to make use of existing Party structures to elect representation to regional, provincial and federal structures.
- 11.4 No office bearer of an ancillary organisation may act in that position for a period of longer than twelve months without being elected to that position. Within that twelve month period, an election must be held to fill the position.
- 11.5 Ancillary organisations shall exercise their roles and responsibilities through the party structures set out in Chapter 2.

CHAPTER TWELVE

RELATIONSHIP WITH OTHER ORGANISATIONS

12.1 RELATIONSHIP WITH INTERNATIONAL ORGANISATIONS

The Party fosters friendly relations and maintains bonds internationally with organisations and political parties that could promote the aims of the Party. DA Abroad shall be involved to the greatest extent possible in this role.

12.2 AGREEMENT WITH OTHER PARTIES:

12.2.1 An election or any other agreement with any other political party or independent candidate may not be entered into by:

12.2.1.1 any member, aspirant candidate or public representative;

12.2.1.2 a branch, a constituency, a regional sub-structure, Regional Council or Provincial Council, or the executives of any of these bodies;

12.2.1.3 any group of members of the Party;

without the prior consent of the Federal Executive and disregard of this provision is deemed to be misconduct.

CHAPTER THIRTEEN

GENERAL PROVISIONS

13.1 AMENDMENT, MERGER AND DISSOLUTION

Only the Federal Congress may amend this Constitution, or merge or dissolve the Party and consequently dispose of its assets, by vote of not fewer than two thirds of the members present and voting at that particular meeting, provided that notice of that proposal must have been given to each Province not less than four weeks before that Congress.

13.2 INCONSISTENCIES

13.2.1 In the event of inconsistency between the translations of the Constitution into other languages, the English text prevails.

13.2.2 Should any dispute arise on the interpretation of any section of this Constitution, the English text is regarded as the original.

13.3 QUORUMS OF MEETINGS

Any meeting which was quorate at the commencement of the meeting, shall be deemed to remain quorate unless proven otherwise, for which purpose to prove it otherwise the onus shall be on the person alleging the lack of a quorum.

13.4 STATUS OF CO-OPTED MEMBERS

Where co-option is provided for, any member who is co-opted to a structure of the Party shall have voting rights, unless this is specifically excluded in this or any Provincial Constitution.

13.5 DEFINITIONS

In this constitution, unless a different meaning appears from the context, the following words have the meanings ascribed to them:

"Disciplinary Committee" means a Disciplinary Committee provided for in terms of this Constitution, or a panel of the Federal Legal Commission established for the purpose of hearing a matter of a disciplinary nature.

"good standing" means that, at the time of nomination, the member will truthfully declare all details that may be required by the Federal Executive, and that he or she has been a member for at least 30 days, and that he or she is not in arrears with any monies owing to the Party arising from whatever cause, excluding where proof is submitted of the arrears being the result of Party administrative negligence/problems. The

fact that the Party may have entered into a payment arrangement for any arrears shall not render the person in good standing.

“notice” notice for any annual general meeting, inaugural general meeting, special general meeting or any other meeting where any form of election is to take place, means notice in writing and which notice is to be dispatched on the first day of the notice period, if any notice period is prescribed, or no less than 72 hours before the meeting in all other cases.

“presiding officer” means a person appointed by the Federal Executive to preside over the election of office-bearers at any congress of the Party.

“proportional system of voting” means a system of voting as amended by the Federal Council from time to time.

“validly constituted” means that the structure meets the requirements of this Constitution and any other constitution applicable to it, in respect of membership, meetings, quorums and notices.

“votes cast for the Party” means the votes cast for the party in the most recent election of a national nature, whether that was for the National Assembly and the provincial legislatures or for local government in South Africa. If it was an election for the local sphere of government, it refers to both the votes cast on the proportional ballot for the category A or B municipalities as defined in section 155 of the National Constitution. If it was an election for the provincial and national spheres of government, it refers to the votes cast on the national ballot.

“writing” means notice by ordinary post, registered post, fax, email or sms, proof of the notice having been sent being *prima facie* proof of delivery.

(As adopted by the Federal Congress on 13 April 2002, amended by the Federal Congress on 21 November 2004, 5 May 2007, 24 July 2010, 24 November 2012, 9 May 2015 and 8 April 2018)

BUDGET VOTE SPEECH 2012/13

VISION

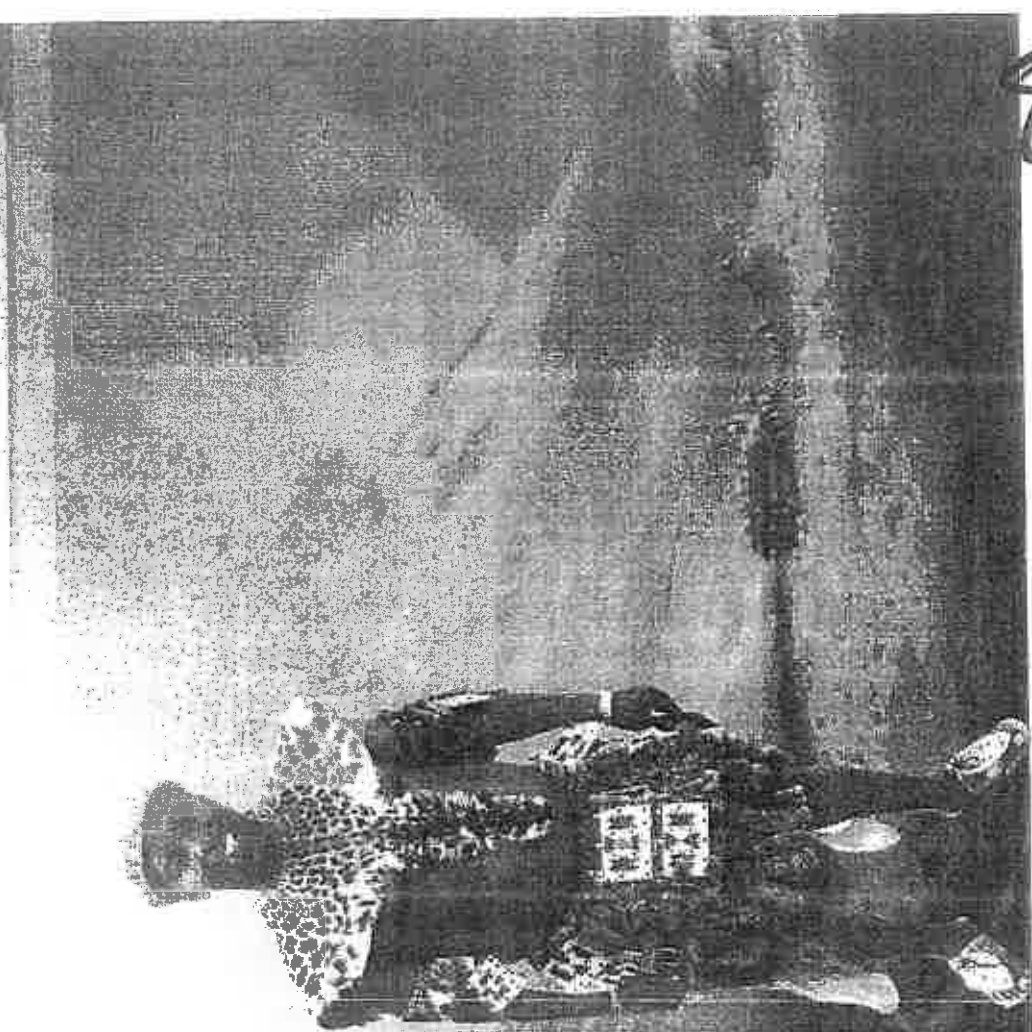
"A dynamic, prosperous agricultural sector and a better life for rural communities"

MISSION

"To empower the agricultural sector through the provisioning and facilitator, of efficient agricultural development support and investment solutions in order to ensure rural development, consistent economic growth and sustainable livelihoods"

VALUES

- Transparency
- Accountability
- Good governance
- Dedication
- Integrity
- Professionalism
- Passion
- Confidentiality



agriculture & rural development

Department of
Agriculture & Rural Development
FREE STATE PROVINCE



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"RJ 2"

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MOHOMA MOBUNG

Honourable Speaker

Honourable Premier Magashule

Honourable Members of the Executive Council

Honourable Members of the Legislature

Chairperson of SALGA in the Province

Mayors, Speaker and Councillors

Chairperson of the Provincial House of Traditional Leaders

Morena e Moholo Morena Thokoana Mopeli

Mme Motswadi

Representatives of Organised Agriculture

Farmers and Farm Workers

Private Sector Partners

Officials of Government

Setjhaba sa Foreistata

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Honourable Speaker, I am honoured to present a Budget Vote for the Department of Agriculture and Rural Development, as the country celebrates the life and times of the third President of the African National Congress (ANC), Z.R. Mahabane under the theme 'All shall have equal rights.' He is remembered for his commitment and contribution to religion, culture, tradition and the national democratic revolution which reminds South Africans about where we come from. Together with other stalwarts they committed this country on a path of freedom for all its citizens.

Speaker, I also wish to indicate that this sitting takes place in the birth place of Ntate Thabo Mofutsanyane, one of our heroes and stalwarts. He is the son of a farmer who during that time went through the hardship of dishonesty and undermining by his fellow white commercial farmers which prompted him to join the struggle. We stand here today as this generation both black and white to correct those imbalances which Thabo Mofutsanyana fought for. Long live the spirit of our forebearers long live!!!

This year we also celebrate the International Year of Cooperatives which seeks to promote vertical integration and enhance competitiveness. Cooperatives are a different way of doing business where the members who own and govern the business collectively enjoy the benefits instead of all the profit going to shareholders. The Department therefore, enjoin all strategic stakeholders and our sister departments to promote the establishment and the enhancement of Cooperatives including those of youth and women with focus on specific projects. Cooperative Enterprises build a Better World.

Speaker, today the 22nd of March is World Water Day. Agriculture, municipalities and industries are amongst the highest water consumers in the country. As part of International Water Month our country celebrated Water Week during the first week of March under the theme "*Water is Life, Conserve it, Respect it and Enjoy it.*" South Africa is a water scarce country. The rural communities also have the right to universal access to water as a basic human right. The Department therefore joins the call for optimal use of this scarce resource by all.

Mr Speaker, the agricultural sector continues to be confronted with various challenges such as realities of a global warming, limited compliance to the Green Economy, negative economy and market trends, financial and social constraints that have a significant impact on farming and rural communities. In partnership with our key stakeholders we will bring about effective planning and innovative ways of doing business to ensure the best possible use of the limited resources available to this sector.

Motsamaisi wa dipuisano, ke qetile boholo ba nako ke hodiswa ke nkgono wa ka **Ntsekiseng Selinah Tsotetsi**, moo ke ileng ka ithuta temo teng. Pele re jala poone, mabele le dinawa tshimong ya nkgono re ne re fina seledu re kenya Mohoma Mobung ka ho pana dipholo di qhojwa ke dinatla tsa banna, e be lerole le ya thunya. Ha re tswa kenya peo ya dinawa, poone le mabele mobung, re thuse ka ho tisa metsi, le ho hlaola, ka nako ya kotulo e monate ya letsema, moo re tlang ho kotula re je dijo ka mefuta ya tsona, le hona ho bina le ho hobela. Rona bashanyana re tla tswa le baholwane ba rona hoya disa dikgomo le dipudi, ele ho etsa bonnete ba hore bana ba lala ba jele lebese. Ha ho hlajuwe habo e mong o tla bona ka dijana ho tswa habo Theko le Thekiso ho tlo lata nama. Bekeng eo, le ha ele mariha re tla bapala feela moyeng ho bata re sa apara-le-ho-apara ka lebaka la tefura la nama.

Motsamaisi wa dipuisano, dikolong tse phahameng re isitswe ke tsona ditjhelete tsa letsema. Sena se bolela hore mobu ke mohloodi wa bophelo. Kahoo ha re hlokomeleng mobu le tsa temo. Kajeno re bua ka Ilima/Letsema ho tswa setsong sa rona seo re hotseng ka sona.

Without agriculture we are naked, hungry and dead. Speaker, agriculture must be placed in the centre of development. Speaker, the Free State processes 11% of its primary agricultural production, but in the process loses the economic opportunities in terms of value adding, as most of the produces are processed outside the province and imported as final demand goods. The province's contribution in terms of field crops is significant for example Sorghum 107 500 tons (56%), Sunflower 375 000 tons (48%), Maize 4 317 000 tons (39.3%), Groundnuts 28 750 tons (34.6%), Soya-beans 189 000 tons (27%) and Wheat 377 400 tons (25.8%) respectively. Regarding livestock resources the province is at 30% of total sheep in South Africa second from Eastern Cape with 31%, cattle (14%), poultry (7%), goats (4%) and ostriches (4%).

These realities ask for considerable reorganisation regarding inter-departmental and stakeholder coordination. It is the intention of the department to take centre stage and lead more aggressively to ensure that primary agriculture contributes to the economy through local beneficiation. Adding value to locally produced agricultural products will accelerate our movement towards import substitution and a higher growth trajectory. Through all of these, I can attest to the commitment of Free State farmers and Agri-business to provide food and jobs for our nation.

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In line with the value adding approach, the Free State Provincial Government introduced **Mohoma Mobung** as the Provincial Growth and Development Strategy for the agriculture and rural development sector. It is a multi-year mega Public and Private Partnership business concept that deals with income generation through farming in the rural area of the province, the creation of on- and off-farm agri-business, value chain enterprises and Black Economic Empowerment. This overarching strategic intent is underscored by a dedication to make the long term more urgent. To give effect to our strategic intent as encapsulated in Mohoma Mobung for the financial year 2012/13 we allocated **R131.8 million** to projects. With this investment we want to break the back of unemployment, poverty and food insecurity.

Mohoma Mobung is supported by both the United Nation (UN) and the African Union (AU) development principles.

According to the **AGRO-INDUSTRIES FOR DEVELOPMENT** document published by The Food and Agriculture Organization of the United Nations (UN) and The United Nations Industrial Development Organization I quote:

"A dynamic agribusiness sector linking farmers to consumers can be a major driver of growth in the agricultural and the rural non-farm sectors, particularly offering opportunities for the rural poor. Market structure trends and the role assigned to small-scale operators, however, will be crucial throughout this process". Close Quote

Similarly the **AFRICAN AGRIBUSINESS AND AGRO-INDUSTRIES DEVELOPMENT INITIATIVE (3ADI)**: framework programme of the African Union (AU) affirms the decision, I quote:

"There has emerged a general consensus that investments in agriculture should go beyond improvements in on-farm productivity to cover agribusiness and agro-industrial development, if agriculture should be the engine of economic growth. As highlighted in the African Economic Report 2009, agriculture has not been sufficiently linked to agribusiness and agro-industries in the Continent. Consequently, innovative programmes for strengthening these linkages are needed". Close quote

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Embracing the principles of the Comprehensive Africa Agriculture Development Programme (CAADP), Mohoma Mobung emerges as a timely initiative, in the light of the recent AU Summit, Sirte Declaration of July 2009, wherein African Heads of State and Government explicitly acknowledge the need for proactive measures and interventions to increase investments in agriculture and the continued improvement of sector policies for accelerated economic growth.

What is the likelihood that agriculture and agro-industry will now be used more effectively for development than they have been over the last 20 years or so? Basically there are two conditions that should hold in order for this to happen. The first for governments and development agencies to do is to change the strategy and a mind shift to better understand what agriculture can do for development. This has, to a large extent, been forgotten over the past 2 decades when we shifted towards an urban based development model, an industry-based model of development or towards high-tech services such as in India. And yet, although we see wealth creation, we also witness continued mass poverty in rural areas and the growth of rural-urban disparities, with an underuse of the potential that agriculture has for poverty reduction.

Second are the possibilities to invest public resources in agriculture competitively, not only for growth, but also for poverty reduction and sustainability. As we have seen, there are important new markets, technological and institutional opportunities for agriculture, but these incentives need to be reconciled with what they can do for development.



AGRICULTURE

Honourable Speaker, the massive investment in infrastructure as announced by **His Excellency President Zuma** in the 2012 State of the Nation Address (SoNA) is good news for the Free State because it will enhance our competitiveness and leverage local advantage in the heart of South Africa by opening new markets and reduce the costs of doing business in the sector.

In line with our strategic intent to unlock the potential of the province and to maximise the involvement of strategic partners, the department has declared Xhariep district as the Fish Hub of the province. A total of 39 Fish Ponds have already been established, thirteen (13) in each of the following towns, Springfontein, Bethulie and Koffiefontein. The department will be involved as the custodian for a period of three years after which the Infrastructure will be alienated to fish farmers.

In the 2012/13 financial year the department has allocated R11 million for further development of aquaculture, and this will address a fish processing plant and more ponds.

Honourable Speaker, an example of where technology (embryo transfers) development has culminated into a practical project is the Brandfort Dorper Stud. The Dorper International project started last year and three (3) commercial farmers were assisted with 784 ewes, infrastructure and pasture establishment. The project has also been assisted to transfer embryos in order to benefit other farmers. The area is managed within the quarantine station guidelines to ensure compliance to export requirements and twelve (12) permanent jobs were created. An amount of R 3 million is allocated for the construction of laboratory facilities for embryo flushing.

Honourable Speaker, the department has identified Thabo Mofutsanyane as a dairy hub and an amount of R17.0 million is allocated for this development. Vrede, QwaQwa and Ficksburg towns will benefit from this initiative. Production and processing plants will be established, and this will create 150 jobs within the value chain.

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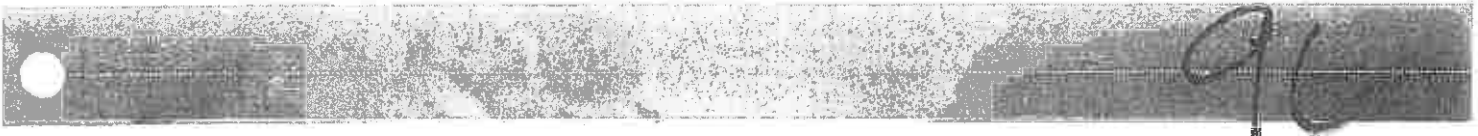
Honourable Speaker, in line with a quest for skills transfer and in recognition of the knowledge and experience of our commercial farmers, we have taken mentorship to a higher level of efficiency. Twenty two (22) mentorship contracts were signed to provide support to 295 farmers. The mentorship programme will be strengthened by partnering with commodity organisations and the Department of Rural Development and Land Reform. We will extend this partnership to Grain SA and other identified mentors to increase diversity and specialisation. An amount of R3.4 million is allocated for this initiative.

Speaker, let me reiterate that our strategic priorities centre around enabling faster economic growth, job creation and food security for all. In this regard we want to maintain the competitiveness of commercial farmers while accelerating the integration of subsistence and smallholder farmers into the main stream economy.

From the previous year, the Department is further enhancing poultry industry by allocating a total of R12.7 million to support and expand the poultry hubs to Fezile Dabi and Lejweleputswa. Poultry is labour intensive; therefore the hub is an incubation of job creation throughout the value chain.

Motsamaisi wa dipuisano, re hlasela tšala ka Mohoma Mobung. Re tša tswela pele ka leano la rona la Re Kgaba Ka Diratswana ditropong tše hlwauweng tša centenary le tša Hlasela. Lefapha le abile tšhelete e kaalo ka dimilione tše tharo feelwane robong tša diranta (R3.9 m) morerong ona.

In supporting Agro-processing an amount of R 61 million is allocated. This investment by the department will benefit amongst others the soya beans processing, fish processing, vegetables processing, poultry hatchery and abattoir, essential oil whereby all the districts will participate




Speaker, the interaction of human beings with animals inevitably present with the possibility of transmission of disease of animal origin. The effects of climate change and globalisation has resulted in an uncharacteristic increase in the emergence of new diseases of animals, which threaten the dependence and/or inter-dependence of mankind on animals and/or animal products.

Animal Health Services therefore continue to promote a healthy animal population in the Province through disease surveillance, disease prevention and control. Through performance of these functions, the unit ensures that diseases of animal origin are not transmitted to humans.

Veterinary Public Health Services continues to ensure hygienic processing of food from animal origin through enforcement of Meat Safety Act covering all abattoirs in the province. Services are also extended to assist the police with the investigations of illegal slaughters.

Provincial Veterinary Laboratory services continue to provide reliable and reputable diagnostic services. An amount of R12 million has been allocated for the upgrade of the two Veterinary Laboratories in Bloemfontein and Kroonstad in order to retain accreditation.

In order to address the crisis of scarce skills for this occupational group the province is currently awarding bursaries to deserving students to study towards this science.



Honourable Speaker, linked to the floods that occurred in December 2010 to February 2011 government has allocated R12.066 million to the Free State for support to farmers that has suffered losses on farms inclusive of infrastructure losses such as irrigation, soil conservation structures and dams.

“n Land wat vir sy landbou sorg, sorg vir sy toekoms”. Om hierdie stelling te ondersteun is 'n begroting van R8.953 miljoen toegeken om negentien (19) projekte te implimenteer wat insluit die uitroei van indringer plante, grond- en water bewaring. In die Junior LandCare program sal deelname van leerders van verskillende skole verkry word waarin omgewings klubs ook gestig sal word.

Honourable Speaker, the province is repositioning Glen College of Agriculture towards an Agricultural Training Institute (ATI) delivering both further and higher education. The number of students has increased from 56 to 100 in this academic year, bursaries have been provided to the lecturers to further their qualifications. The College will further improve capacity by recruiting highly experienced academic and administrative staff. The academic enhancement allocation of R4.593 million by the Department of Agriculture, Forestry and Fisheries (DAFF) and infrastructure enhancement allocation of R29.851 million by the province were allocated as part of the Glen College upgrade.

RURAL DEVELOPMENT

The Department of Rural Development is responsible for the coordination and implementation of the Comprehensive Rural Development Programme (CRDP) throughout the province to enable faster economic growth, job creation and food security for all.

This will be achieved through a co-ordinated and integrated broad-based agrarian transformation as well as the strategic investment in economic and social infrastructure that will benefit the entire rural communities.

Initially the CRDP process followed a site specific approach in Diyatalawa and Kgolokoeng but it was decided to follow a ward approach on the following projects as the data and institutional arrangements better supported this approach.

In terms of the CRDP process the first sites of Diyatalawa and Kgolokoeng projects progressed well and are at an advanced implementation stage. The CRDP sites of Fateng-Tse-Ntsho, ThabaNchu, Botshabelo and Namahadi were also profiled in terms of spatial planning and the intervention supporting the associated planning have progressed well.

Jacobsdal was also identified as a CRDP intervention site and the province together with the National Department of Rural Development and Land Reform (DRDLR) embarked on a set of key projects identified in this area.

Emanating from the visit by the President of the Republic of South Africa the following interventions were undertaken in Maluti-A-Phofung: the supply of water and solar energy in Diyatalawa agri-village; the building of a primary school and connection of supply of water from Sterkfontein dam in Kgolokoeng.

The Provincial Department together with National Department of Rural Development and Land Reform (DRDLR) continue to implement the National Youth Rural Services Corps program, whose aim is to train youth in rural areas in various aspects of skills development in order to build their capacity and participate in socio-economic development.

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To date 14 264 questionnaires were captured on NISIS (National Integrated Social Information System). 50 675 Households in 33 wards were profiled linked to development opportunities.

Speaker, last year rural development paid attention to development of amenities in various communities across the province. This led to building of halls, crèches, schools and much needed municipal buildings for service delivery in deserving communities. The net effect thereof was that even deprived communities could enjoy social activities, pre-schooling for children and health services as promised by this government. The communities of Kgolokoeng, Cornelia, Jagersfontein, Viljoenskroon, and Bethany, amongst others benefited from these amenities.

Speaker, the department acknowledges the marginalisation under which rural people lived for a very long time. There is determination to work through the Comprehensive Rural Development Strategy to change face of rural areas from that of depression and lack of basic infrastructure and services.

Therefore, in the coming 2012/13 financial year R22.7 million is allocated for projects and this calls upon all rural communities to roll up their sleeves to put the "plough in the soil". In so doing we will engage in labour absorbing and value adding sectors. This approach will broaden wealth creation through support to SMME and cooperatives with focus on women and youth.

The Department will continue with the development of Wilheminah to address socio economic infrastructure needs in this community. The province will further roll-out CRDP into new sites focusing on infrastructure development in Jagersfontein, Herschel Farm and Warden.

The department of Rural Development will be establishing cottage industries and the first two towns of Bethlehem and Cornelia will lead this initiative. In Petrus Steyn the Department will provide and support the creation of children's park, in celebrating the centenary (100 years) of the town.

Speaker, Re Jala Peo!!! Youth media cottage centres will be established in Botshabelo and QwaQwa.

In conclusion Mr Speaker, we all agree that the Free State is the bread basket of the country and that must be maintained.

I take pride and honour to thank my esteemed organisation the African National Congress, the Premier of the Free State Government, Members of the Executive Council and Members of the Provincial Legislature for their support

I extend my sincere appreciation for the support the province received from the Minister of the Department of Agriculture, Forestry and Fisheries Ms Tina Joemat Petterson and the Minister of the Department of Rural Development and Land Reform Mr Gugile Nkwinti.

Let me thank the hard working farmworkers, the farmers, Organised Labour and Organised Farmers Organisations.

HODs, Peter Thabethe and Dr Moorosi, Management and the staff of the department, thank you.

Let me thank my entire family, my mother and beloved wife for their unconditional support even in bleak moments. Thank you very much.

Speaker, in conclusion, let me draw inspiration from a man who grew up as a herd boy, a teacher, a horse trainer, a Doctor of Medicine by profession and above all the former President of the glorious movement the ANC, Dr Alfred B Xuma.

I quote:

“The fundamental basis of all wealth and power is the ownership and acquisition of freehold title to land. From land, we derive our existence. We derive our wealth in minerals, food and other essentials. On land we build our homes. Without land, we cannot exist.” Close quote.

Jwale re fina seledu, re kenya Mohoma Mobung, lerole le a thunya, mesebetsi e ya qala, maphelo a batho a ya fetoha!!

MOHOMA MOBUNG!

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Annexure A.

AGRICULTURE: VOTE 11

Programme	Budget Allocation
1. Administration	R121 490
2. Sustainable Resource Management	R30 359
3. Veterinary Services	R286 499
4. Research and Technology	R59 842
5. Development Services	R54 926
6. Agricultural Economic Services	R9 038
7. Structured Agricultural Education and Training	R17 328
Total payments and estimates	R679 482

RURAL DEVELOPMENT: VOTE 14

Programme	Budget Allocation
1. Administration	R6 749
2. Development Planning	R28 313
3. Social Facilitation	R5 538
Total payments and estimates	R40 600



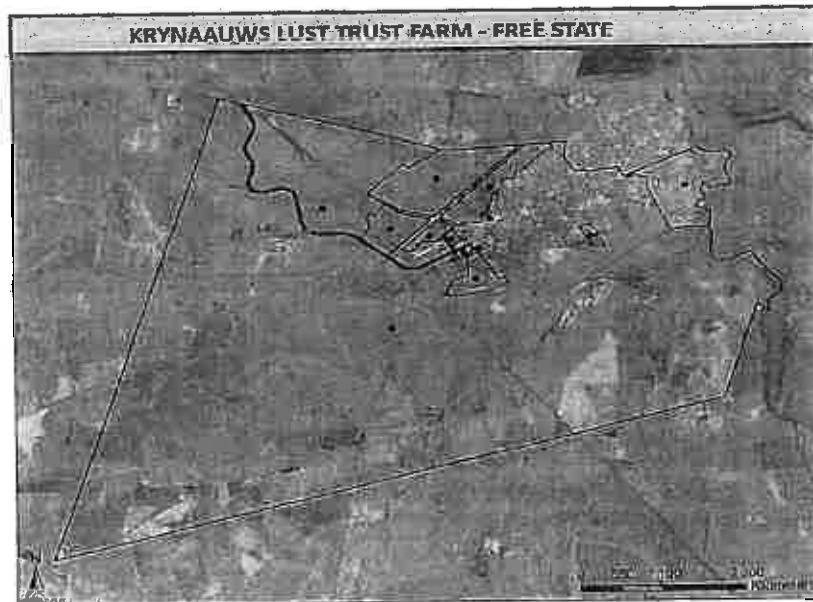
agriculture & rural development

Department of
Agriculture and Rural Development
FREE STATE PROVINCE

PROJECT PROPOSAL

Vrede Integrated Dairy Agribusiness project: Proposed integration of Dairy and other elements of production and processing with the emphasis on value-addition and beneficiation, such as a range of processed dairy products

aligned with the Agri-BEE business norms stipulated by Govt.



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- 3. Proposed DARD flagship project..... 4
- 4. Detailed Project costing for a large scale Dairy Unit: 6
- 5. Phases for Project Deployment..... 7
- 6. Optimising the development potential of this flagship project..... 7
- 7. The viability of the chosen Dairy Project 8



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1. Preamble

The Department of Agriculture and Rural Development (DoARD), in line with the vision of the Mphoma Mubung initiative, has identified the Implementation of a Dairy Project in Vrede as its flagship Project. To this end DoARD had recently commissioned a detailed study which validates the implementation of such a Project. The DoARD subsequently commissioned a high-level team to visit India, the largest milk-producer in the world, to explore the possibilities of attracting investments in this area. The DoARD team met with PARAS Dairy, the largest private milk producer in India and have agreed in principle to work with them on this prestigious project.

2. Executive Summary

ESTINA PTY LTD is proud to inform the Department of Agriculture and Rural Development that it has signed a Memorandum of Understanding with PARAS DAIRY, the largest private milk producer in India, to deploy a flagship Dairy Project in Vrede. The Agreement covers setting up of Dairy Plants to produce milk and related Dairy products in South Africa. Although the DoARD team have already met with PARAS, it may be pertinent to list some of their strengths here :

- **Biggest Private Milk processors** in India & the only Co. in North India to market **Bactofuged Milk**
- **5 State of the Art ISO 9001-2000 and HACCP Certified Manufacturing Facilities**
- **Total Liquid Milk Intake of more than 720 Million Litres Per annum**
- **Processing capacity of 3 million Liters Per Day.**
- **Network Covering more than 5000 villages & a strong procurement base at village level**
- **Amongst the Largest Suppliers of Liquid Polypack Milk (250,000 Litres/Day supplied locally)**
- **Fleet of 300 Stainless Steel Insulated road milk tankers**
- **Modern Dairy Ingredients plant in collaboration with WESTFALIA SEPERATORS, A.G.GERMANY, FILTRATION ENGINEERING Inc. USA., APPLIXION FRANCE, ALFA LAVAL,**
- **Accredited as a 2 Star Export House by the Govt of India**



3. Proposed DARD flagship project

Thabo Mofutsanyana District :: Vrede Integrated Dairy Agribusiness project:
Proposed integration of Dairy and other elements of production and processing with the emphasis on value-addition and beneficiation, such as a range of processed dairy products

A large-scale integrated commercial agribusiness project is being envisioned for implementation at Vrede in the Thabo Mofutsanyana District of the Free State, which would be highly sustainable and which can make a significant contribution towards general development in the area.

The objectives with the project are to:

- Utilise the existing natural and other resources to create a viable large-scale integrated agro-industrial enterprise;
- Broaden the agro-industrial production base of the district;
- Improve the food security situation for a number of rural communities;
- Create a number of small enterprises; and
- Alleviate the poverty of the surrounding communities.

Despite the fact that a large-scale dairy operation is under threat of a number of risks, those risks can be mitigated by the deployment of a highly skilled management team. A well-planned dairy operation presents a number of opportunities for the integration of other activities and downstream value-adding and beneficiation.

For the planned integrated dairy project to be sustainable over the long term, it is planned to ensure that:

- The dairy over the long term, maintains at least 1 000 cows-in-milk, implying that another 1 000 non-producing followers, mainly female animals are fed, namely young or pregnant heifers and dry cows;
- The dairy cows are sheltered against the sun and heat stress during the summer months as well as against extreme cold during the winter months;
- Proper milking equipment and buildings are created;
- Milk processing equipment needed for pasteurising, cold storage, yoghurt, cheese and Amazi production, as well as distribution vehicles are in operation;
- Effluent usage on crop fields to reduce the use of chemical fertilizers;
- Feed production in the form of grains, annual legume crops, hay, lucerne and silage under dry land and 1 000 hectare of irrigation;



- Creation of facilities for the orderly storage, refrigeration, transport and marketing of the respective products; and
- Integration of small holder farmers on the periphery to produce various products under contract to the nucleus project.

In the short-term, the milk will be procured from the local farmers and then processed in-house. This operation will then gradually be expanded to include in-house rearing and milking of cows over the long term. In this manner, the risks envisaged in a large scale dairy operation will be mitigated by the gradual scaling up of the operation.

This project is designed to be the flagship of DoARD developments for the Free State in order to demonstrate the significant advantages to be enjoyed by the skilful integration of various elements in the agro-industrial value-adding system.

In Table 1 below a short summary is provided of the salient figures which apply to the planned project.

Project information table

TM33: Estimated figures for the Vrede Project: Dairy, grains, beans, oilseeds, livestock production, processing, value addition, etc.	Estimated values
Total area available for project operations (hectare):	4 450
Natural veld grazing (hectare):	3 100
Arable area (hectare):	1 950
Irrigable area (hectare):	1 000
Initial Fixed capital to be invested to render project viable (R'million):	500.00
Turnover (R'million):	80.00
Net profit (R'million):	16.00
Employment opportunities:	600

All above figures are excluding VAT



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4. Detailed Project costing for a large scale Dairy Unit:

FIXED & WORKING CAPITAL	UNITS	BUDGET VALUE
Irrigation & mechanisation	1,000 ha	R45,000,000
Rain fed mechanisation	1,350 ha @ R20,000	R32,000,000
Dairy cattle – "Cows in Milk" (CIM)	500 ea @ R25,000	R12,500,000
Dairy cattle – Rest of herd (Followers)	500 ea @ R25,000	R12,500,000
Dairy bulls / A.I		R500,000
Milking parlour – 1,000 CIM unit	1,000 ea @ R5,000	R5,000,000
Bulk cooling tanks		R25,500,000
Dairy products manufacturing		R60,000,000
Pasteurizer		R60,000,000
UHT Long Life Milk PLant		R149,000,000
Other dairy equipment		R15,000,000
Feedlot		R14,000,000
Grain & oilseed mill		R19,000,000
Animal feed plant		R10,000,000
IP/Working Capital Requirement		R40,000,000
Total Funding Required	Excluding VAT	R500,000,000
Total Funding Required	Including VAT	R570,000,000
Proposed Source of funding:		
Capital Injection/IP/Equipment etc	ESTINA / PARAS	R228,000,000
Grants of R114m/yr for 3 Years	DoARD	R342,000,000



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5. Phases for Project Deployment

In discussions with the Department, the Department has brought to the fore the problem of lack of funding for this Project which has been a major stumbling block in the execution of this project in the past. With a view to crystalizing the vision of the Department, Estina together with Paras Dairy are proposing a phased approach to the Project, whereby the Department will release available funds and Estina will ensure the implementation of the project in a modular form with technical know-how inputs from Estina/PARAS and when required, **financial participation** as well. Estina will prepare a project plan with clear deliverables based on the available funds released by the Department and will work with the Project Management Unit of the Department to ensure maximum returns on the amounts invested by the Department over a period of time. It is envisaged that as the project is delivered in phases, additional funding can be procured from various stakeholders when the viability of the project is demonstrated through the actual deployed working model.

6. Business Model

In line with the Agri-BEE business norms stipulated by Government, Estina proposes that a new Special Purpose vehicle (SPV) be created in which ESTINA will hold a 49% share while the remaining 51% shares will be distributed to at least three selected Grant recipients. Estina will provide the required capital injection as well as the technical know-how, which will be provided by Paras. Estina will endeavour to fund the entire Project itself and is requesting the Government to commit to an annual Grant of R100m per year for FIVE years to ensure that the Project remains sustainable and commercially viable.

7. Optimising the development potential of this flagship project

It is envisaged that this DARD integrated agribusiness project will become a centre of excellence for the entire Free State and even the neighbouring provinces.

Eventually this Project will provide:

- On-site, in-service practical agricultural training for aspirant farmers to equip them for the profitable operation and management of their own DARD projects, albeit:
 - Primary production of livestock and agricultural produce, or
 - Value-adding and beneficiation to livestock and agricultural produce
- Basic business, financial and management skills training and in-service application



- Cooperative processing, value-adding and beneficiation of livestock and agricultural produce for all DARD projects in the Free State

Cooperative marketing facilities into the major consumer markets of South and Southern Africa for all DARD projects in the Free State thus creating the necessary critical mass and economies of scale which will unlock additional financial benefit for all DARD project participants

8. The need for the chosen Dairy Project

It can be concluded that there is an urgent need for this project based on the following facts:

- The sale of milk provides extra income on a regular basis to rural people who often have just enough to get by. Milk sales also improve the nutritional status of rural populations, though not necessarily the urban needy. Milk is also one of the few agricultural products which can be supplied and marketed regularly by non-landowners. A dairy plant creates jobs in rural areas, and thus helps check urban migration.
- Milk and milk products are thought of as staple foods in Europe. Favourable production conditions mean that everyone can consume large amounts of milk and dairy products. For many of the world's peoples, however, even though milk plays no role in the diet, if balanced food is available in sufficient quantities, neither health nor welfare should be affected by the lack of milk. Recommended Third World dairy policies fall somewhere between these two extremes. Milk protein can enhance plant protein and in a diet combining several foods, a compensatory balance is established among the various sources of proteins. Animal proteins supply essential amino acids, plant proteins can then economically top up the total supply.

Sanjeev Gautam
Managing Director

Date: May 15, 2012

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AGREEMENT

entered into and between

THE DEPARTMENT OF AGRICULTURE

(the "Department")

and

ESTINA (PTY) LTD

("Estina")

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1. PARTIES

The Parties to this Agreement are -

1.1 THE FREE STATE DEPARTMENT OF AGRICULTURE a provincial Department as contemplated in section 7(2) of the Public Service Act, 1994 (Proclamation No.103 of 1994) read with Schedule 2 thereof (as amended), herein represented by the Head of the Department, being duly authorised thereto (the "Department") for the benefit of beneficiaries to be identified by the Department; and

1.2 ESTINA, a company with registration number 2008/015033/07, duly registered in accordance with the company laws of the Republic of South Africa, with its registered address at Block A, 1st Floor, Grayston Ridge, 144 Katherine Street Sandton, herein represented by Mr Sanjeev Gautam, Managing Director being duly authorised thereto ("Estina"),

who warrant that they are duly authorised hereto.

2. RECORDAL

It is recorded that -

2.1 The Department has in line with the vision of **Mohoma Mobung Initiative** identified the need to establish a Dairy Project in Vrede.

2.2 The Governments of the Republic of South Africa and India entered into a Memorandum of Understanding on agricultural cooperation which include promotion of agricultural trade and investment.

2.3 The Department has met with Paras Dairy the largest private milk producer in India who have the technical know-how and has the rights to the internationally brand names and has agreed to work with the Department.

2.4 Estina is the counterpart of Paras Dairy in South Africa and is therefore sole provider who can execute the Project.

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- 2.5 Estina is willing and able to execute the project (as defined in clause 3.1 hereunder), and has the necessary experience and expertise in connection therewith.
- 2.6 This Project shall also in effect to black economic empowerment in accordance with the AGRIBEE Charter on Black Economic Empowerment issued by the Minister of Trade and Industry on 20 March 2008.
- 2.7 The Parties agree as set out herein.

3. DEFINITIONS AND INTERPRETATION

3.1 Definitions

In this Agreement, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

"Agreement" means this Agreement including Annexures and Addendum;


"AGRIBEE entity" means entity in line with AGRIBEE Charter on Black Economic Empowerment issued by the Minister of Trade and Industry on 20 March 2008;

"beneficiaries" are persons from the Vrede area which meets the requirements of the AGRIBEE Charter on Black Economic Empowerment issued by the Minister of Trade and Industry on 20 March 2008

"Duration of Agreement" three (3) years from date signature of the party signing last

"Estina Proposal" means Proposal in respect of the Project attached hereto as Annexure B;

"Failure" means any failure by Estina to perform its obligation in terms of this Agreement;


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"**Good Industry Practice**" applying, in relation to the manner in which the obligations are rendered, the standards, practices, methods and procedures conforming to applicable Law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;

"**Law**" means all applicable laws, ordinances, regulations, judgments and orders of any competent court, governmental agency or authority in any relevant jurisdiction within the Republic of South Africa;

"**Obligations**" means obligations as set out in clause 6;

"**Parties**" means the Department and Estina, and any reference to "a Party" shall refer to one of the relevant Parties as required by the context;

"**Project**" means the Diary Project at Vrede;

"**the/this Agreement**" means this Agreement between the Parties together with the Annexures thereto.

3.2 Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

- 3.2.1 References to the provisions of any Law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement.
- 3.2.2 References to "**Parties**" shall include the Parties' respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees.
- 3.2.3 References to a "**person**" shall include an individual, firm, company, corporation, juristic person, responsible authority, and any trust, organisation, association or partnership, whether or not having separate legal personality.

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- 3.2.4 References to "clauses", "sub-clauses" and "Annexures" are references to the clauses, sub-clauses and Annexures of this Agreement.
- 3.2.5 References to any other contract or document shall include (subject to all approvals required to be given pursuant to this Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time.
- 3.2.6 Words in parentheses and italics appearing after a clause reference or a reference to a schedule are inserted for ease of reference only. If there is any discrepancy between the clause reference and the words in parentheses and italics, the latter shall prevail.
- 3.2.7 The headings of clauses, sub-clauses and Annexures are included for convenience only and shall not affect the interpretation of this Agreement.
- 3.2.8 The Annexures to this Agreement are an integral part of this Agreement and references to this Agreement shall include the Annexures.
- 3.2.9 The Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it.
- 3.2.10 Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter.
- 3.2.11 References to "this Agreement" shall include this Agreement as amended, varied, novated or substituted in writing from time to time.
- 3.2.12 The number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day.

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3.2.13 If any definition in clause 3.1 (*Definitions*) contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of this Agreement.

3.2.14 In the event of an inconsistency between the provisions of this Agreement and the **Annexures** hereto, the provisions of this Agreement shall prevail,

4. APPOINTMENT

The **Department** agrees that **Estina** will implement and manage the Project in accordance with the terms and conditions of this Agreement for the duration of the Agreement.

5. CO-OPERATION

Each Party shall co-operate with the other in the exercise and performance of their respective rights and obligations under this Agreement.

6. OBLIGATIONS OF ESTINA

6.1 **Estina** shall in phase 1 perform the obligations mentioned in **Annexure A** by 31 December 2012.

6.2 **Estina** shall provide a capital injection of R228 000 000 (South African currency).

6.3 **Estina** ensure that the beneficiaries own 51% of the AGRIBEE entity the remaining shares belongs to **Estina**: Provided that should **Estina** decide to sell its shares, the **Department** will have the right of first refusal.

6.4 No dividends shall be payable before the AGRIBEE entity is self-sustainable.

6.5 **Estina** shall in Phase 2 (setting up and management of dairy) and 3 (setting up and management of processing plant) perform its obligations in line with their Proposal as mentioned in **Annexure B** and in line the agreed milestone as envisaged in **Annexure A** and these must be included to the agreement as an addendum.

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- 6.6 **Estina** shall in execution of the Project, avoid undue hindrance, interruption or interference with the operations of the **Department** or otherwise hinder the activities of the **Department** and its employees, save to the extent entitled to do so in terms of this Agreement or as may be reasonably necessary for the performance of its obligations under this Agreement.
- 6.7 **Estina** shall devote the necessary time and attention to their obligations and not engage in any business or activity that will prevent **Estina** from performing its obligations effectively.
- 6.8 **Estina** shall not be relieved of any obligation, responsibility or liability under this Agreement by the appointment of any sub-contractor to carry out any part of its obligations. As between **Estina** and the **Department**, **Estina** shall be responsible for the payment, performance, acts, defaults, omissions, breaches and negligence of all sub-contractors. All references in this Agreement to any performance, payment, act, default, omission, breach or negligence of **Estina** shall be deemed to include any of the same by a sub-contractor.
- 6.9 The **Department** shall at all reasonable times and with prior written notice have access to the property, all records and documentation (including the right to reproduce) required of **Estina** to be kept in relation to the Project for purposes of auditing, quality control and monitoring of the Project by the **Department**.
- 6.10 **Estina** and the **Department** shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the **Department's** data and to prevent any corruption or loss of the **Department's** data.
- 6.11 In the event that the **Department's** data is corrupted or lost as a result of any default by **Estina** the **Department** shall have the option, in addition to any other remedies that may be available to it either under this Agreement or otherwise, to elect either of the following remedies:
- 6.11.1 The **Department** may require **Estina** at its own expense to restore or procure the restoration of the **Department's** data;

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6.11.2 The Department may itself restore or procure restoration of the Department's data and shall be repaid by Estina.

6.12 Estina shall:

6.12.1 carry out its obligations (each as a separate and distinct obligation);

6.12.2 at its own cost, risk and expense and in accordance with Good Industry Practice;

6.12.3 in a manner which gives priority to health and safety in the performance of the obligations in order to protect life, health, property and the environment;

6.12.4 in compliance with the reasonable policies, procedures, protocols and directives of the Department (as may be amended from time to time) as indicated;

6.12.5 employ persons in connection with the performance of the obligations who have the necessary skills and experience as required by their respective professions, trades and callings and taking into account their roles and responsibilities in relation to the Project;

6.12.6 ensure that all aspects of the Project are supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of its obligations; and

6.12.7 shall upon receipt of a request by the Department within 5 (FIVE) days supply to the Department evidence substantiating its compliance with this clause.

7. GENERAL RIGHTS AND OBLIGATIONS OF THE DEPARTMENT

The Department –

7.1 shall assist Estina with adequate access to information and documentation available to the Department that will be required by Estina to implement the Project;

7.2 shall make payments in terms of clause 13 (Payment);

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- 7.3 shall identify beneficiaries for the AGRIBEE entity;
- 7.4 shall consider and approve the milestones determined by Estina for Phase 2 and 3;
- 7.5 shall inform Estina of its policies, procedures, protocols and directives as may be applicable to the Project and shall timeously inform Estina of any amendments thereto.

8. WARRANTIES


8.1 Estina warranties

Estina warrants that -

- 8.1.1 It is the counterpart of PARAS and the sole provider for the services in the Project;
- 8.1.2 the obligations of Estina under this Agreement are legal, valid and binding and enforceable against it in accordance with the terms of the Agreement;
- 8.1.3 it has satisfied itself as to the nature and extent of the obligations to be provided in terms of the Agreement; and
- 8.1.4 it has the necessary resources, skills, expertise and experience required to carry out the obligations in terms of this Agreement and will use reasonable care and skill in the execution of the same under this Agreement.

9. PERFORMANCE MONITORING

- 9.1 Estina shall monitor its performance in the delivery of the Project, and shall implement appropriate monitoring and management procedures in respect of the Project, including any reasonable monitoring procedures as the Parties may from time-to-time agree.
- 9.2 On the notification of any Failure or complaint regarding the quality of its performance, Estina shall attend to such notification with the urgency appropriate to the nature of the Failure or complaint.

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9.3 **Estina** shall on a monthly basis prepare and submit financial reports to the **Department** and a quarterly performance report in respect of its performance, including any Failures and such other information as the **Department** may reasonably require from time to time.

9.4 The **Department** shall monitor the performance of **Estina** and may at any time in addition to the report in clause 9.3 request any other information.

10. CONFIDENTIALITY

10.1 **Estina** shall not, during the term of this Agreement and thereafter, without the prior written consent of the **Department**, disclose any confidential information relating to the **Department** and the Project to anyone other than those persons who are connected to the **Department** and/or **Estina** and who are required or authorised to have access to such information.

10.2 The obligation to maintain the confidentiality of information shall survive the termination of this Agreement, but will not apply to confidential information which was in the public domain prior to being disclosed by **Estina** and has come into the public domain other than as a result of being divulged by **Estina** or is required to be disclosed by a court of law.

11. OWNERSHIP OF INTELLECTUAL PROPERTY

11.1 Information provided by the **Department** to **Estina** and any studies, reports and documentation produced by **Estina** in the performance, but excluding any materials that contain any of **Estina's** pre-existing intellectual property rights, methodologies or know-how, shall belong to and remain the property of the **Department**, and will not be used by **Estina** for any purpose other than in accordance with this Agreement, unless by written permission of the **Department**.

11.2 Upon termination of this Agreement for any reason whatsoever, **Estina** must return without delay to the **Department** all materials in its possession, which belong to the **Department**, regardless of whether or not such materials were originally supplied by the **Department** to **Estina**.