



**The Official Opposition
Free State Provincial Legislature**

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P.O. Box 81, Bloemfontein 9300

Date:	21 July 2022
To:	Ms. Vanessa Mundree Free State Provincial Representative Office of the Public Protector
Cc:	Adv. Kholeka Gcaleka The Acting Public Protector
From:	Hon Roy Jankielsohn MPL Leader of the Official Opposition Free State Provincial Legislature
Subject:	The ANC's Abuse of State Resources for Party Political Purposes

Dear Ms. Mundree

We would like to request an investigation into the abuse of state resources for party political purposes by the African National Congress (ANC) and their leaders during an event that took place on 23 April 2022. During an event under the ANC banner of the party's Letsema campaign, a house was handed over to Ms Lucia Lerato Ntsaku. The Letsema campaign events on that day were marketed on ANC social media pages as party political events (see Annexure A). In addition to this the events were reported as ANC Letsema events in the media, and confirmed to the media as such by the ANC National Spokesperson Mr. Pule Mabe (see Annexure B). These were deliberate attempts to market all the events in the Free State attached to the launch of the Letsema campaign in the province as ANC party political initiatives, creating the impression that the house was delivered by the ANC and not the Free State Provincial Government. As a consequence of this, the hand-over of the state sponsored house to the beneficiary was done by President Cyril Ramaphosa and Premier Sefora Ntombela, among others, in their respective capacities as ANC functionaries and members. No attempts were made by them to remedy this public perception, if they had regarded it as incorrect. This event involving the delivery of the house, and other events on the day, were clearly ANC Letsema Campaign party political events.



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In a reply to a question in the Free State Legislature, the MEC of the Department of Cooperative Governance, Traditional Affairs and Human Settlements Mr. Dukwana confirmed that a house was handed over as part of the Letsema Campaign to Ms. Lucia Lerato Ntsaku at site 60775 Hillside View, Bloemfontein. The property was allocated to her as beneficiary of the Free State Provincial Government and the cost of this was R133 000 (see Annexure C).

While the Democratic Alliance supports the allocation and transfer of houses to beneficiaries in need, such houses that are sponsored by taxpayers of the state should be transferred to beneficiaries under the auspices of the government and not the governing ANC as a political party.

This abuse is very similar to the abuse referred to in the Public Protector Report No: 1 of 2016/17 *State and Party Colours – Report on an investigation into allegations of maladministration regarding Operation Hlasela and the Hlasela Fund of the Free State Provincial Government and alleged conflation between party and state* (Annexure D).

In the above report the Public Protector sustained the complaint that the Free State government implemented Operation Hlasela in a manner that amounted to conflation of party and state. Furthermore, it was found that other political parties were prejudiced as a result of this. The Public Protector instructed the Premier to develop and circulate a provincial government policy in all government institutions within the province, setting out clear separation between state resources and party activities at all times, and instructed that all provincial state functionaries and employees be made aware of this policy. This action step, in compliance with the required remedial action, was confirmed in a reply to a question in the Free State Legislature by the former premier Ace Magashule (see Annexure E).

Because the previous Public Protector found that the use of Free State Provincial Government's Operation Hlasela during ANC campaigning was a conflation of party and state, the principle can be applied conversely. The handing over of a state sponsored house to a beneficiary of the Free State Provincial Government's housing policy under the ANC's banner as part of the ANC's Letsema Campaign (as political parties begin to campaign for the 2024



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Provincial and National Elections) is also a conflation of party and state and as such also an abuse of state resources for party political purposes.

The President, Premier and any other officials and politicians present deliberately and blatantly abused state resources to promote the ANC. This is a serious contravention and violation of the following:

- An existing Free State government policy regarding separation of party and state
- The spirit of Schedule 2 (Electoral Code of Conduct) in the Electoral Act
- Sections 96, 136, and 195 of the Constitution
- The spirit of Article 17 of the African Charter on Democracy, Elections and Governance
- Article 25 of the United Nations International Covenant in Civil and Political Rights

We therefore request that the actions of the President, Free State Premier and other officials and politicians who were part of this be admonished in a similar manner to the Hlasela Report. These senior representatives of government have many years of political experience and should have reasonably been aware that their actions were a conflation of party and state, yet they deliberately and blatantly ignored this principle in their actions, thereby violating the constitution and the spirit of free and fair electioneering and political canvassing by political parties in a constitutional democracy. Furthermore, if the policy of the Free State Provincial Government was circulated as required by the Public Protector, the Premier and her office should have been aware of this.

We request that remedial action include the following:

- The ANC should pay the R133 000 that was the alleged cost of the house into the coffers of Provincial Treasury.
- A public apology to the people of the Free State by the President, Premier and the ANC as an organisation for abusing their resources for party political campaign purposes.
- An apology to the beneficiary (Ms Lucia Lerato Ntsaku) by the President, Premier and the ANC as an organisation for the embarrassment caused by their abuse of her



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legitimate housing allocation and her unfortunate personal family circumstances for party political campaigning purposes.

- A recommendation that the matter be referred to Parliament and the Free State Legislature for appropriate action against those involved regarding their disregard for their respective constitutionally defined codes of conduct.

Your favourable response in this regard would be highly appreciated.

Yours sincerely

Dr Roy Jankielsohn MPL
Leader of the Opposition
Free State Legislature
082 562 4120
royj@da.org.za



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Annexure A

ANC Social Media Posts

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Annexure A1



ANC Free State

The ANC is a national liberation movement.



Page • Political organisation



21 Cnr Charles & Fichards Street, Bloemfontein, South Africa



ancfsmedia@gmail.com



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ANC Free State

23 April • 49

PRESIDENT CYRIL RAMAPHOSA HANDS OVER KEYS TO A NEWLY BUILT HOUSE FOR THREE ORPHANS

ANC President, comrade Cyril Ramaphosa handed over a newly built home during the official launch of #Letsema in Mangaung, Bloemfontein.

Letsema is an organisational programme that seeks to provoke communities to join hands to build better communities; by advancing and restoring values of Ubuntu, cleanliness, excellence and safe communities for all, particularly, women and children.

The President met Lerato and her two brothers from Freedom Square, Bloemfontein, to hand over keys to their newly built house in Hillside View.

The intervention comes after their home was destroyed by a fire which has left them stranded in an inhabitable space.

Furthermore, both brothers have agreed to be placed in a rehabilitation centre to assist them with their substance abuse. #Letsema #CyrilRamaphosa #ANC



Annexure A2

← Tweet



African National Congress ●
@MYANC

...

Briefing session currently underway in Free State with @MYANC President @CyrilRamaphosa ahead of the launch the #Letsema campaign.



12:42 PM · Apr 23, 2022 · Twitter for iPhone

13 Retweets 7 Quote Tweets 81 Likes

Annexure A3

← Thread



African National Congress
@MYANC

...

@MyANC President @CyrilRamaphosa launches the national #Letsema campaign to strengthen social compact on renewal #BuildingBetterCommunities #ANCFreeState



6:57 PM · Apr 23, 2022 · Twitter for iPhone

1 Retweet · 11 Likes


Annexure A4

**ANC Free State**
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**ANC Free State**
24 April · 🌐

Letsema: Together building better communities.



76

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Annexure A5




ANC Free State



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


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ANC Free State



23 April · 🌐

The ANC President, Cde Cyril Ramaphosa, NEC Members, IPC, IRC & Alliance Partners in the Province publicly pledged to support the ANC to serve our communities and improve service delivery.

President Ramaphosa reiterated the importance of dealing with corruption on local government level, as the ANC aims to get back to basics to be an effective agent of change within our communities.

#BuildingBetterCommunities
#LetsameOfficialLaunch

Photos [See All Photos](#)

Annexure A6

ANC Free State
 Page: Political Organisation
 21 Cnr Charles & Richards Street, Bloemfontein, South Africa
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ANC Free State
23 April - 4

Official launch of the ANC Letsema campaign today at 10h00 Toka Primary School in Turfloop, Bloemfontein. #Letsema #OfficialLaunch #Bloemfontein #ANC #Mangosuthu #FreeState



5 comments 4 shares

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Annexure B

Media Reports on the Letsema campaign

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Annexure B1

“Cyril stel sy #Letsema-projek in modderbad bekend” by
Marietjie Gericke

Published on Netwerk24, 23 April 2022

<https://www.netwerk24.com/netwerk24/nuus/politiek/kyk-cyril-stel-sy-letsema-projek-in-modderbad-bekend-20220423>

KYK | Cyril stel sy #Letsema-projek in modderbad bekend

23 Apr.

Manojo Gencio

NETWERK24

DEEL

CL-4



Bloemfontein moet skoonmaak word sodat mense kan sien dit is nie diere wat hier by nie, maar mense, het pres. Cyril Ramaphosa Saterdag in die stad gesê.

Hy het in die woongebied Turfloop 'n paar honderd mense toegesprek en gesê die ANC gaan diegene wat steel by die vensters uitgooi.

Die program vir die bekendstelling van sy #Letsema-projek, vir die bou van sterker gemeenskappe, is drie ure lank vertraag weens swaar reën wat oor die stad uitgesak het.

Dit het ook daartoe gelei dat die president nie kon help om 'n enkele slagtag te herstel of seif papiere kon opeit nie, soos wat die aanvanklike plan was. Met hul aankoms by die Toka Primary School in Turfloop, waar hy sy projek wou afskop, is hulle deur 'n modderbad begroet.

Pres. Ramaphosa het wel die sleutels van 'n nuwe huis – met meubels – oorhandig aan 'n arm werklose familie wie se woonhuis deur brandskade verwoes is.

Lerato Ntsaku en haar twee kinders, Nathi (2) en Samkelo (12), was sigbaar verheug toe die sleutels aan hulle oorhandig is. Daar is ook werk aan haar belowe in die president se openbare werkskeppingsprogram (PEP). Ramaphosa het sowat R20 miljoen vir die projek gegee sodat tydelike werkers aangestel kan word om Mangaung skoon te maak en slegte te vul.

Vir haar broer, Sebusiso Ntsaku, wat ook werkloos is, is 'n kursus in veiligheidswerk beloof, waarvoor die regering sal betaal, terwyl daar ooreengekom is dat haar ander broer, Xolani Ntsaku, rehabilitasie sal kry vir sy dwelmverslawing.

In die arena waar die president uiteindelik gepraat het, het dit gelyk deur die modder gegaan.

Ramaphosa het gesê die ANC wil vir die mense kom sê dat "ons saam beter gemeenskappe kan bou" en "dat die ANC hier is om die hele Vrystaat te kom regmaak".

"Ons begin vandag met die Letsema-werk, waar ons hande gaan vashou en mekaar sal help om alles wat verkeerd gegaan het, reg te maak.

"Ons moet die dorp (Bloemfontein) skoonmaak en die slagtagte regmaak. Met die verkiesings in November was die dorp baie vuil en het plastieksakke en papiere oral rondgeleë. Ons moet ons oorpakke en stewels aantrek en Mangaung terugleë."

Ramaphosa het gesê wanneer hy die projek hier klaar bekend gestel het, gaan die ANC na KwaZulu-Natal om dieselfde werk daar te begin, waar minstens 434 mense in die vloede dood is.

"Ons wa julle ook om kumbersse, kiere en skoene te skenk aan die mense in KwaZulu-Natal, om solidariteit met hulle te betoon en om vir hulle te bid."

Ramaphosa het ook gesê baie werklose mense kry steeds die Covid-19-toelae van R350 en dit sal tot volgende jaar uitbetaal word.

Daar sal egter ook 'n ondersoek gedoen word, omdat daar staatsampnere is wat ook daarvoor geregistreer het.

Ter afsluiting het hy ook weer gevra dat mense hulle teen Covid-19 laat inset.

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Annexure B2

“Ramaphosa to rehash ANC’s 2002 Letsema social compact campaign to mobilise communities” by Greg Nicolson

Published in the Daily Maverick, 21 April 2022

<https://www.dailymaverick.co.za/article/2022-04-21-ramaphosa-to-rehash-ancs-2002-letsema-social-compact-campaign-to-mobilise-communities/>

DAILY MAVERICK

(/)

SOUTH AFRICA

ANC RENEWAL

Ramaphosa to rehash ANC's 2002 Letsema social compact campaign to mobilise communities



📷 President Cyril Ramaphosa. (Photo: Gallo Images / Volksblad / Mlungisi Louw)

By Greg Nicolson

(<https://www.dailymaverick.co.za/author/gregdailymaverick-co-za/>)


21 Apr 2022

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0

The ANC wants to renew its social compact with communities before the 2024 elections — so it is revitalising a volunteer campaign that Thabo Mbeki launched 20 years ago.

 Listen to this article

0:00 / 6:04 1X

President Cyril Ramaphosa will get his hands dirty this weekend in Bloemfontein, leading a cleanup drive at a primary school in Turflaagte, before helping to fix potholes in the city where the ANC was founded 110 years ago. He expects party members and community volunteers to do the same and to keep it up until the 2024 elections.

Ramaphosa will launch the ANC's Letsema Campaign in Bloemfontein on Saturday. It aims to renew the ANC's social contract with voters, getting party members and local volunteers to address challenges in their communities.



At a press conference on Thursday, ANC spokesperson Pule Mabe said Ramaphosa would outline details of the campaign over the weekend. The party's national executive committee (NEC) said in February that Letsema is "an important building block for the 2024 general elections and will see the ANC engaging with a broad spectrum of stakeholders beyond the confines of its structures".



📷 ANC spokesperson Pule Mabe at the media launch of the Letsema campaign on Thursday, 21 April 2022. (Photo: Twitter / @MYANC)

The ANC will announce monthly themes for the Letsema volunteer drive and will soon take the campaign to KwaZulu-Natal to help rebuild the province after the floods.

“In the ANC, we believe that our people can be able to advance their own democratic gains when they too play an active role in building the society they want,” said Mabe.

“Letsema is exactly about that, making sure that the journey to rebuild our country, making sure that all of our citizens enjoy our democratic gains is one that takes everyone along.”

Mabe said the campaign could help unite the ANC behind the common goal of building “better and safer communities”.

“Now the Letsema campaign provides that kind of space for everyone who calls themselves volunteers of the African National Congress.”

The initiative appears to rehash the Letsema campaign launched by former president Thabo Mbeki in 2002. Reading the ANC NEC's 2002 January 8 statement, Mbeki said the party should encourage people to “be their own liberators, of occupying the frontline in the popular struggle for the reconstruction and development of our country”.

“To help attain our goal, the membership of the ANC will celebrate the 90th anniversary of our movement, the ANC, by taking the lead in rendering voluntary service to the people, to recapture the community spirit of *letsema, ilima*. Historically, this spirit was fundamental to the strengthening of the cohesion of our societies. It

encouraged cooperative effort and a collective commitment to the improvement of both the individual and society,” said Mbeki.



Load shedding is here to stay for (at least) another year, while the government dithers on policy

The lights may stay on undisrupted for a few days or even several weeks, but the reality is that rolling power outages are red-flagged all the way to April 2023 — and quite possibly longer.

Reviewing the campaign at the ANC's 2005 national general council (NGC), then secretary-general Kgalema Motlanthe said thousands of volunteers mobilised behind community improvement projects.

“These were organised into a series of monthly themes, covering areas like education, healthcare, community safety, human rights, women’s emancipation, etc,” said Motlanthe.

“While largely successful in demonstrating the willingness and capacity of the masses to act as the agents of their own community development, the campaign was implemented only sporadically after

2002^{2x} This could be attributed to a lack of national coherence and coordination, volunteer 'fatigue', and the shift of focus among ANC structures to preparations for the 2004 elections."

The ANC has long spoken of getting back to basics and rebuilding its frayed relationship with voters. Deploying members to lead and coordinate local improvement projects is about as back to basics as it gets.

But beyond the photo ops of Ramaphosa picking up trash, the Letsema campaign will face obvious challenges that could undermine its ability to help reverse the ANC's steady electoral decline.

The ANC's 2002 Letsema campaign was criticised as an attempt to distract voters from the party's failure to deliver on its promises. Some communities might balk at being told to empower themselves to address challenges when local infrastructure such as electricity and water provision is crumbling and unemployment is at a record high.

That's much more relevant today than in 2002. Can the ANC seriously mobilise society to collect trash when ANC-led municipalities are failing to manage refuse collection?

Then there's the issue of the ANC's own members. In speeches recently, former president Mbeki has focused on the quality of the party's members, a common theme in its reports after membership numbers exploded.

"Many among our members see their membership of the ANC as a means to advance their personal ambitions, to attain positions of power and access to resources for their own individual gratification," he told

(<https://www.news24.com/news24/southafrica/news/many-see-their-anc-membership-as-a-ticket-to-power-and-resources-thabo-mbeki-20211211>) a gathering in December 2021.

Does the ANC have members who can mobilise volunteers and are dedicated to community upliftment? And even if they do, will communities join Letsema events while the party's leadership at various levels is marred by scandal after scandal more than three years into Ramaphosa's leadership?

Mabe said on Thursday: "The fact that we are now forging ahead with the renewal trajectory, that alone is a demonstration on our part of wanting to put forward, out there in society, a more renewed ANC, an ANC that focuses itself on the responsibility of leading society and making sure that its members serve the people better and work better for the people."

The Letsema campaign is yet another test of whether the ANC can renew itself once again or at the very least avoid further electoral decline. **DM**

Annexure B3

“Ramaphosa hands over the house to a family of three”

Published in the Free State World, 26 April 2022

<https://freestateworld.co.za/ramaphosa-hands-over-the-house-to-a-family-of-three/>

Ramaphosa hands over the house to a family of three

By **Staff Reporter** - April 26, 2022 Modified date: April 26, 2022



ANC President, Cyril Ramaphosa handed over a newly built home to a family of three orphans in Bloemfontein on Saturday.

The house was handed during the ANC's operation Letsema launch, which was launched in Turflaagte in Bloemfontein.

According to the ANC, Letsema is the ANC's programme that seeks to provoke communities to join hands to build better communities by advancing and restoring values of Ubuntu, cleanliness, excellence and safe communities for all, particularly, women and children.

Ramaphosa met Lerato and her two brothers from Freedom Square in Bloemfontein, to hand over keys to their newly built house which is in Hillside View.

The intervention comes after the family's home was destroyed by a fire that has left them stranded in an inhabitable space.

Translate »

Furthermore, two of the family members who are brothers, have agreed to be placed in a rehabilitation centre to deal with their substance abuse problem.

Staff Reporter

<https://freestatemworld.co.za>

Annexure B4

“Is Letsema another Operation Hlasela?”

Published by Step Up SA, 25 April 2022

<https://stepupsanews.co.za/2022/04/25/is-letsema-another-operation-hlasela/>



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Is Letsema another Operation Hlasela?

SHOP (https://stepupsanews.co.za/shop/)

Step Up SA (https://stepupsanews.co.za/author/hummwgm/) • April 25, 2022 • 4 min read



The African National Congress (ANC) launched the much-talked-about Letsema in a wet and muddy Mangaung on Saturday.

According to the party's president Cyril Ramaphosa the reason why this project was launched in Mangaung is that the ANC was founded in Mangaung in 1912 while many say the president is trying to cement and secure his second term in the upcoming national conference.

RECENT POSTS

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(https://stepupsanews.co.za/2022/07/ceo-malefane-sekoboto-agrees-with-auditor-general-on-impact-of-load-shedding/)

Blood in water as Free State prepares for its Provincial Conference while a plan to assassinate Nompondo is thwarted
(https://stepupsanews.co.za/2022/07/in-water-as-free-state-prepares-for-its-provincial-conference-while-a-plan-to-assassinate-nompondo-is-thwarted/)

Will Macufe be another scandal after PPE?
(https://stepupsanews.co.za/2022/07/macufe-be-another-scandal-after-ppe/)

Ramaphosa said the country faced many issues that needed to be dealt with and the ANC leadership was geared to act.

He was speaking at the Letsema campaign launch in Bloemfontein on Saturday.

The initiative was aimed at renewing the organization's social contract with communities.

Ramaphosa moved to ensure residents that government would root out corruption.

Though much is not said about Letsema the little availed information about it, was a social media post on Free State ANC and it reads, "The purpose of Letsema is about the renewal of the organization's social contract with communities to address their challenges in a quest to build better & safer communities."

Prior to the launch, the president handed Lerato keys to her new house in Hillside after their house burned down and thanked Free State Premier, Sefora Ntombela, and the under-fire Mangaung, Executive Mayor, Mxolisi Siyonzana for their contribution.



Lerato's house handed by president Ramaphosa

Furthermore, the president said the Executive mayor will employ Lerato while her two brothers will receive help.

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Free State Fashion Week (FSFW) returns to the business of fashion

([https://stepupsanews.co.za/2022/07.state-fashion-week-fs-fw-returns-to-the-business-of-fashion/](https://stepupsanews.co.za/2022/07/state-fashion-week-fs-fw-returns-to-the-business-of-fashion/))

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CATEGORIES

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It's not clear if the house was built with state resources but if it is presented by the Premier it's safe to assume that the resources used were from the government, not the ANC. ANC has in the past struggled to pay salaries so where will it get money to do government work?

It remains to be seen if Lerato's employment will be linked to the politician term as recruitment processes are not followed.

Step UP SA News found similarities between Letsema and Operation Hlasela which were championed by the former premier and the suspended secretary-general of The ANC, Ace Magashule with the difference being the latter was a government project while the former is a party project.

Hlasela has sent hundreds of not privileged students to universities both locally and globally. A few weeks ago we published an article about five medical doctors who won a court case against the Health Professionals Council of South Africa (HPCSA) and Medical and Dental Board Professionals (MDBP) that ruled the bodies must register them as Doctors following their studies in China. They received bursaries from the Free State government when Ace was the Premier.

Despite all positive stories former Public Protector, Thuli Madonsela in her report titled State and Party Colours found the Free State government guilty of conflating state and party interests with its multi-million rand Operation Hlasela project.

The project, which was run out of Free State Premier Ace Magashule's office, was used by the provincial government as a service delivery vehicle.

Madonsela said she could, however, not find "beyond reasonable doubt" that state funds were used for the private Hlasela initiative.

The investigation into Operation Hlasela was sparked by a complaint laid by all the opposition parties in the provincial legislature at the time and several others from members of the public during a public engagement session in the

Free State.

Her finding allegation of the conflation of party and state:

The allegation of the conflation of party and state is substantiated.

Regardless of the intention and separate ownership, separate sources of funding for initiatives, branding, and marketing of the two were indistinguishable and were marketed and lauded on government platforms.

It did not only confuse the public; the government itself used state communications resources to promote and laud both without always distinguishing the two.

Until two Hlaselas were distinguished, the private one cannot be said to have not benefited from the shared branding and the free advertising of the Government's Operation Hlasela, at state expense.

Much as those in the ANC claim Letsema is a party project why is the Premier and Mayor involved in their official capacity not as deputy president of ANCWL and ordinary member respectively?

Will the Premier go hand over a house in Fauna to an FF+ member?

The president said businessmen also contributed and who those businessmen are and who requested help from them will be followed up.

Moroadi Cholota is hunted by HAWKS for asking Igo Mpambani for donations. Connect the dots, must we teach you everything?

The launch of Letsema saw potholes fixed but it remains to be seen if it was just a PR exercise.



ANC volunteers fixing a pothole in Mangaung

Sello Pietersen, spokesperson to the Free State Premier, Sefora Ntombela, and Oupa Khoabane, spokesperson for the Interim Provincial Committee did not respond to our questions.

If you have news or tips please email us news@stepupsanews.co.za or sent a WhatsApp 0685000246

Previous

ANC leaders eat Premier Ntombela alive after sharing a post endorsing Thabo Manyoni for provincial chairman in the WhatsApp group

(<https://stepupsanews.co.za/2022/04/26/anc-leaders-eat-premier-ntombela-alive-after-sharing-a-post-endorsing-thabo-manyoni-for-provincial-chairman-in-the-whatsapp-group/>)

Next

Secrecy Shrouded in Public Service Commission's Undertaking to Investigate Large Scale Mal-admin in Free State

(<https://stepupsanews.co.za/2022/04/26/secrecy-shrouded-in-public-service-commissions-undertaking-to-investigate-large-scale-mal-admin-in-free-state/>)

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Post Comment

MORE STORIES

Annexure C

Question 153 in IQP No 5, 4th session, 6th legislature

Free State Provincial Legislature

Annexure C

[IQP NO. 5, Jan-Jun. 1st Semester] 4RD SESSION, SIXTH LEGISLATURE

153. Hon. D van Vuuren (DA) asks the Hon. MEC responsible for COGTA&HS: Mr. M Dukwana.

In view of the houses handed over by President Ramaphosa at the launch of the Letsema Campaign in the Free State:

- 1. To whom were the houses delivered?**
- 2. Where are the respective houses?**
- 3. Did the provincial government pay for these houses? If so, what is the cost per house?**

NO RESPONSE

RESPONSE 30/05/2022

The house was allocated to Lucia Lerato Ntsaku. Beneficiary identity number: 8804120345084. The beneficiary was identified as child headed household

The beneficiary was allocated a house at Hillside View, Bloemfontein. Site 60775

The amount that was paid was R133 000

Annexure D

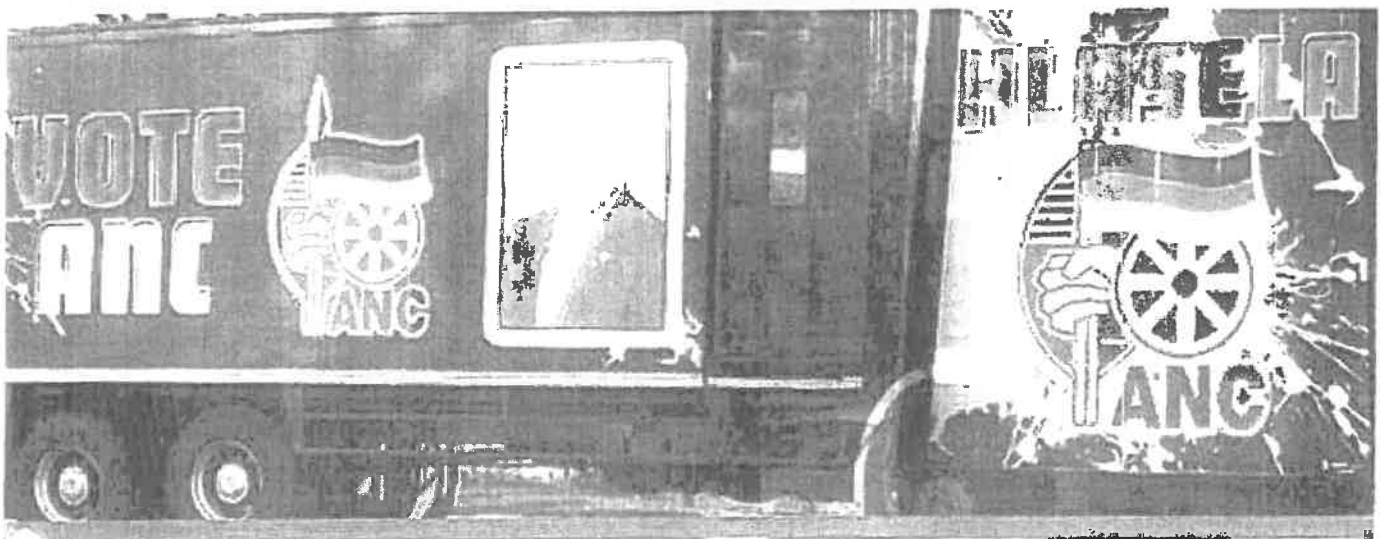
Public Protector Report No: 1 of 2016/17 *State and Party Colours*

Report on an investigation into allegations of maladministration regarding Operation Hlasela and the Hlasela Fund of the Free State Provincial Government and alleged conflation between party and state

STATE AND PARTY COLOURS

*Report on an investigation into allegations of maladministration regarding
Operation Hlasela and the Hlasela Fund of the Free State Provincial
Government and alleged conflation between party and state*

Report No: 1 of 2016/17



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ISBN: 978-1-928366-00-3



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Executive Summary

"The 'misuse of public resources' is widely recognised as the unlawful behaviour of civil servants, incumbent political candidates and parties to use their official positions or connections to government institutions aimed at influencing the outcome of elections"

European Commission for Democracy
through Law (Venice Commission)
Report on the Misuse of Administrative
Resources during Electoral Processes,
December 2013

- (i) *"State and Party Colours"* is my report as the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector Act, 1994.
- (ii) The report communicates my findings and remedial action I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into the alleged abuse of state resources to advance the African National Congress (ANC) election campaign during the 2011 municipal elections and the conflation of party and state through the activities of a programme known as Operation Hlasela, lodged by Mr. R Jankielsohn, Member of the Provincial Legislature (MPL) for the Democratic Alliance (DA) in the Free State Provincial Legislature on 28 July 2011.
- (iii) Other complaints were subsequently lodged on the same matter by the Congress of the People (COPE), represented by Mr. M C Mokitlane and by various members of the public during Public Protector Stakeholder Dialogues from 2012. These complaints went further to allege improprieties, including corruption, in the award of tenders and other contracts under the Operation Hlasela programme.
- (iv) This report confines itself to the alleged use and/or abuse of state resources to advance a party's electoral campaign under Operation Hlasela and the related allegation of conflation of state and party.

State and Party Colours



Report of the Public Protector May 2016

(v) The main allegations were that:

- "(a) Operation Hlasela is a Free State Provincial Government programme marketed by the Free State Premier as such.*
- (b) Large amounts of money are invested into the programme by numerous government departments.*
- (c) The Premier, Mr. Magashule, was praised by the President, Mr. Zuma, for the government programme.*
- (d) Operation Hlasela is merely an ANC election campaign under the pretext of a provincial government department's campaigns and programmes.*
- (e) A truck drove around with photographs of President Zuma and Premier Magashule and a message saying "Vote ANC" and "Hlasela" on it (photographs provided).*
- (f) This amounts to abuse of state resources for party political purposes and conflation of party and state.*

(vi) On analysis of the complaints and information already in the public domain on the matter, the issues to be investigated were:

- (a) Did the Free State government abuse state resources to advance the African National Congress (ANC) election campaign during the 2011 municipal elections?*
- (b) Did the Free State government implement Operation Hlasela in a manner that amounts to conflation of state and party?*
- (c) Was any person or political party prejudiced by the conduct in question?*

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- (vii) The investigation process was conducted through correspondence with relevant parties, meetings and interviews with the complainant and relevant officials of the department as well as the sourcing and analysis of all relevant documents.
- (viii) All relevant laws, policies and related prescripts were considered for the purposes of establishing the standard that was expected with regard to the conduct of the Free State government in the circumstances in question.
- (ix) Key laws and policies that were taken into account to determine if there had been abuse of state resources to advance a party's electoral campaign and a conflation of state and party as alleged, were principally those setting the standards that should have been upheld by public functionaries in the Free State government regarding proper use of public resources and those relating to the requirements of a free and fair election.
- (x) I took into account that the conduct of the Premier of the Free State Province in respect of Operation Hlasela had to comply with section 136 of the Constitution, which prescribes minimum ethical standards for members of the Executive with particular attention paid to section 136(2)(b), which prohibits acting in any way that is inconsistent with the office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests.
- (xi) I further took into account section 195 of the Constitution setting out basic principles of public administration that all public functionaries, regardless of designation, have to comply with and which, accordingly, should have been complied with in the conceptualisation and execution of Operation Hlasela. Of particular relevance to the allegation of abuse of state resources for political party electioneering is section 195, requiring public administration to be governed by the democratic values and principles enshrined in the constitution, in particular the efficient, economic and effective use of resources to be promoted.

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- (xii) Given the context of electoral fairness, the conduct of the Free State government also had to be scrutinised for compliance with electoral laws and related prescripts aimed at ensuring fair play, including the electoral Code of Conduct. For example, prior to elections parties sign the electoral code of conduct, which is provided for in Schedule 2 of the Electoral Act 73 of 1998 and which requires that parties adhere to certain standards of behaviour, specifically during the campaigning period. Ultimately, the code of conduct forbids any political party or person from misusing a position of power or influence to alter the regulation or end result of an election.
- (xiii) With South Africa being a signatory of applicable international instruments seeking to ensure democratic elections, including ensuring equality of opportunities for all electoral candidates and electoral parties, it is my considered view that the conduct of the Free State government had to comply with the objectives and spirit of international standard setting frameworks regarding free and fair elections, with particular emphasis on the prevention of the misuse of public power and resources by any person or party to gain electoral advantages and/or to induce voters to act in a particular way. In this regard ICCPR General Comment No. 25 issued in terms of Article 25 of the International Covenant on Civil and Political Rights (ICCPR), provides, amongst others, the following:

"Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind".

- (xiv) By the time the investigation commenced, it was common cause that the Free State government was implementing a programme referred to as *Operation Hlasela*, which was widely referred in the speeches of Premier Ace Magashule and others as well as advertised in the Free State government's website, newsletter and other communication avenues aimed at accelerating service delivery particularly with a view

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to combatting poverty and enhancing housing service delivery. For example in his speech to the Zion Christian Church (ZCC) mass prayer service in Bloemfontein on 19 March 2011, Premier Magashule said:

"In our State of the Province Address two weeks ago, we reported on the progress we are making to improve the living conditions of our people through our new service delivery strategy dubbed Operation Hlasela.

Operation Hlasela is our new strategy that puts the poor at the centre of key development interventions. We launched Operation Hlasela shortly after we took office in 2009 to improve and fast-track service delivery.

Operation Hlasela is a clarion call to all our social partners and civil society to collaborate with government and to jointly and urgently eliminate duplication and wastage, eradicate poverty, to tackle under-development and to stimulate our economy to improve the lives of our people.

- *Re hlasela bofuma.*
- *Re hlasela bonokwane le manyofonyofo.*
- *Re hlasela thekefetso ya Bo Mme le Bana, Re hlasela kgethollo ya morabe le ya bong.*

We call on the church to partner with us as we attack poverty, and fight criminal elements in our society. Operation Hlasela offers us an opportunity to work together with our social to bring about real, concrete change in the lives of our people.

Through Operation Hlasela we are also working with the private sector. For example, we have launched a programme with the Netcare Group, which operates the largest private hospital network in South Africa. We will jointly implement a nursing training programme aimed at alleviating the shortage of available human resources in this critical occupation.

Operation Hlasela is the concrete manifestation that this ANC-led government is truly a caring government which responds faster to the needs of the poor and the vulnerable in our society."

- (xv) The Free State Branch of the ANC had also communicated about Operation Hlasela, including through a statement issued by the then ANC Provincial Secretary, Sibongile Besani on 17 February 2011, which stated, amongst others that: *"Operation Hlasela is a government programme that has embraced the ANC 2009 election manifesto. Operation Hlasela articulates our manifesto in the best way understood and accepted by Free Staters."*

- (xvi) At the commencement of the investigation, I had a meeting with Premier Ace Magashule at his instance on 28 October 2011 to discuss the nature and funding of

State and Party Colours



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Operation Hlasela. Premier Magashule clarified that there were two programmes using the name *Operation Hlasela*. He explained that one was a government Service Delivery Vehicle while another was a private initiative seeking to reinforce government efforts primarily aimed at housing delivery.

(xvii) He conceded that the logos and colours of the two *Operation Hlaselas* were the same, resulting in confusion. He accepted that this was improper and accepted advice to change the name of one of the programmes. Soon thereafter the private initiative was changed to Friends of the Free State while the government programme retained the name *Operation Hlasela*.

(xviii) I am grateful for the cooperation of Premier Magashule and the steps taken to remedy the problems we both identified at the commencement of the investigation.

(xix) Sadly in the response to the notice served on Premier Magashule on the basis of section 7(9) of the Public Protector Act advising him of evidence implicating him as Premier and the government of the Free State province regarding improper conduct in relation to *Operation Hlasela* received on 12 April 2016 Premier Magashule denied any wrong doing regarding *Operation Hlasela* and specifically denied both that the ANC gained any advantage from the conflated branding of *Hlasela* and that there was conflation of party and state at the time the complaints arose.

(xx) However, Premier Magashule did not deny that the *Hlasela* name had, at the time, been used for both the private ANC-endorsing *Hlasela* and the official programme of the government of the Free State or that a *Hlasela* branded truck with his and President Zuma's photographs and a message saying "Vote ANC" was driving around communities during the 2011 local government elections.

(xxi) While the Premier made a valid point that the government of the day has a right to make whatever lawful means it can to expedite service delivery and that it is inevitable that progress made by the government of the day regarding service delivery will be

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attributable to the governing political party, his contention that the ANC cannot be legitimately said to have benefited from the conflated Hlasela branding, is in my considered view, rather naïve.

Subsequent to his response to the notice issued in terms of section 7(9) of the Public Protector Act, 1994, the Premier was happy to revert to the agreement that there had been a conflation of party and state and reiterated that he had fixed this by changing the name of the programme from Operation Hlasela Fund to Friends of the Free State.

(xxii) Having considered the evidence uncovered during the investigation and the Free State government's submissions, against the relevant regulatory framework, I make the following findings:

(a) Regarding whether the Free State government abused state resources to advance the African National Congress (ANC) election campaign during the 2011 municipal elections, I find that:

(aa) There is no conclusive evidence showing abuse or misuse of state resources to advance the ANC's electoral campaign during the 2011 Local Government Elections;

(bb) Evidence reveals that at the time the complaint arose, there were two Hlasela initiatives, one called *Operation Hlasela*, an official state funded service delivery accelerating vehicle of the Free State Government driven by the Premier and a *Private Hlasela Fund* funded by private individuals, including civil servants and civil society entities to support the state Hlasela initiative. In pursuit of following the Public Protector's advice to the Premier, the Private Hlasela Fund was

renamed *Friends of the Free State* and also now brands its programme as *Friends of the Poor*;

(cc) The *private Hlasela* initiative openly endorsed the ANC's electoral campaign and had a truck advertising "Vote ANC" during the 2011 local government elections;

(dd) Although no state funds were used for the *Private Hlasela* initiative, state platforms and communications resources were used to advertise and laud Operation Hlasela without distinguishing between the government's *Operation Hlasela* and the ANC manifesto-endorsing Private Hlasela Fund, whose benefit to the ANC, in terms of free publicity and skewed implications for electoral fair play cannot be reasonably denied; and

(ee) Regardless of intention, the undermining of fair play in the electoral process was inconsistent with Schedule 2 of the Electoral Act, Sections 136 and 195 of the Constitution and the spirit of article 17 of the African Charter on Democracy, Elections and Governance and article 25 of the ICCPR.

(b) **Regarding whether the Free State government implemented Operation Hlasela in a manner that amounts to conflation of party and state, I find that:**

(aa) The allegation of conflation of party and state is sustained;

(bb) Regardless of intentions and separate ownership as well as separate sources of funding for the two Hlaselas, the branding and marketing of the two was indistinguishable and the two were marketed and lauded at government platforms;

Private
Hlasela
(xvi) to enforce
gov initiatives &

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TW

- (cc) The arrangement not only confused the public regardless of what activities are government sanctioned and funded and which are privately sponsored, government itself used state communication resources to promote and laud both without always distinguishing the two.
 - (dd) Until the two Hlaselas were distinguished, the private initiative cannot be said to have not benefited from the shared branding and the free advertising of the Government's Operation Hlasela, at state expense.
 - (ee) Regardless of intention, the undermining of fair play in the electoral process was inconsistent with Schedule 2 of the Electoral Act, Sections 136 and 195 of the Constitution; the spirit of article 17 of the African Charter on Democracy, Elections and Governance and article 5 of the ICCPR.
- (c) ***Regarding whether any person or political party was prejudiced by the conduct in question, I find that:***
- (aa) Other political parties and independent candidates were indeed prejudiced.
 - (bb) Although I have no reason to doubt the bona fides of Premier Magashule and the Free State government regarding the intention of using the two Hlaselas to accelerate service delivery, the arrangement which allowed use of government platforms to promote the ANC-manifesto— endorsing Private Hlasela Fund, did provide free advertisement for the ANC which was not provided to other parties and independent candidates and accordingly undermined equal access to

State and Party Colours



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advertising and other communications channels, thus compromising fair play between the ANC and other parties.

(xxiii) Having noted that the *Private Hlasela Fund* has since been renamed thus eliminating the confused branding, the remedial action I am taking in terms of section 182(1)(c) of the Constitution is the following:

(a) The Premier is to ensure:

- (aa) That a provincial policy is developed and circulated in all government institutions within the province, setting out a clear separation between state and party activities at all times and that all provincial state functionaries and employees are made aware of this policy; and
- (bb) That no government platform or state functionary is required or allowed to use their position, power and public resources under their control to market political party matters.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION REGARDING OPERATION HLAELA AND THE HLAELA FUND OF THE FREE STATE PROVINCIAL GOVERNMENT AND ALLEGED CONFLATION BETWEEN PARTY AND STATE

1. INTRODUCTION

- 1.1. "State and Party Colours" is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of section 8(1) of the Public Protector Act to the Premier of the Free State Provincial Government, Mr. ES Magashule;
- 1.3. A copy of the report is also provided to the Speaker of the Free State Province, Leaders of the DA and the Congress of the People Free State Province to take note of the outcome of the investigation.
- 1.4. The report communicates the outcomes of an investigation into the alleged abuse of state resources to advance the African National Congress' (ANC) election campaign during the 2011 municipal elections and the conflation of party and state through the activities of a programme known as Operation Hlasela, lodged by Mr. R Jankielsohn, Member of the Provincial Legislature (MPL) for the Democratic Alliance (DA) in the Free State Provincial Legislature on 28 July 2011.

2. THE COMPLAINT

The Complainant primarily alleged that the Free State government allowed the African National Congress, hereinafter referred to as the ANC, to use state resources for party political gain in preparation for the local government elections. Specific questions raised in the complaint included the following:

2.1 From the DA:

- 2.1.1** Operation Hlasela was a Free State Provincial Government Programme marketed by the Free State Premier as such.
- 2.1.2** Large amounts of money were invested into the programme by numerous government departments.
- 2.1.3** The Premier, Mr. Magashule, was praised by the President, Mr. Zuma, for the government programme and provided photographs of both Mr. Zuma and Mr. Magashule next to an ANC election campaign truck with the words "vote ANC" and "Hlasela" on it.
- 2.1.4** Operation Hlasela was merely an ANC election campaign under the pretext of the provincial government department's campaigns and programmes.
- 2.1.5** This amounts to abuse of state resources for party political purposes and conflation of party and state.
- 2.1.6** The DA submitted a copy of an article from the Citizen Newspaper as captured hereunder:

09 March 2011 | The Citizen

Operation Hlasela draws more criticism

A project established by Free State premier Ace Magashule, Operation Hlasela, has again drawn criticism from opposition parties in the province as to its status as a government project or not.



BLOEMFONTEIN - A project established by Free State premier Ace Magashule, Operation Hlasela, has again drawn criticism from opposition parties in the province as to its status as a government project or not.

Democratic Alliance leader Roy Jankielsohn said that Hlasela was a "creating dependency on the premier" campaign. "The private sector are being conned into contributing to the Hlasela fund under the pretext that this was a government programme, while it is in fact the premier's election campaign fund," he said in reply to Magashule's State of the Province speech. Jankielsohn said it was important that service delivery projects should be carried out in the province but there should be "a bigger picture" other than Hlasela.

He said currently the Free State only has "the premier's election plan" and the plan includes using all the provincial government's resources to promote the ANC and creating dependency on the premier. "That is why so many important functions of provincial departments are systematically being centralised in the office of the premier."

Replying, Magashule said Hlasela was a registered non-governmental organisation with private money. "I, the MECs and mayor contribute to the fund. I pay R 1000 into the fund a month." Magashule said the fund had nothing to do with government and he could spend the funds anytime.

Jankielsohn said the DA would support any initiatives to eradicate unemployment and poverty in the province. He said the DA agreed with Magashule that the tax base in municipalities was insufficient. "We also know that a great deal of money is wasted by municipalities on non-core functions. Money is pilfered through tender manipulation and extortion of business people." Jankielsohn said municipalities suffered because senior managers were not appointed for their expertise, but their affiliation to factions within the governing party. These party employed officials' personal agenda's appears to outweigh any service delivery agenda. "That is why the sewerage is running down the streets in our communities."

Freedom Front Plus member Jan van Niekerk said the premier wanted to build a new province but he focused continuously on the past and apartheid. Cope leader in the legislature Casco Mokotlane also called on Magashule to be transparent of the Hlasela Fund project and whether it was run by private money or government funds.

The Free State government website indicates that Operation Hlasela was a campaign to address delivery related obstacles and to ensure that systems would be established to ensure fairness and transparency at local government level. The fund would also ensure that the poor had access to basic services.

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3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

3.2 Section 182(1) of the Constitution provides that:

"The Public Protector has the power as regulated by national legislation –

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action."*

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

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

3.5 The Free State government is an organ of state and its actions equate to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector's mandate.

- 3.6** The Public Protector's power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

4. THE INVESTIGATION

4.1. Methodology

- 4.1.1.** The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

- 4.1.2.** The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2. Approach to the investigation

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

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

4.2.1.4 In the event of maladministration what would it take to remedy the wrong or to place the complainant as close as possible to where he/she would have been but for the maladministration or improper conduct?

- 4.2.2** The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the department acted improperly.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the department or organ of state to prevent maladministration and prejudice.

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

4.3.1 Did the Free State Government abuse state resources to advance the African National Congress' (ANC) election campaign during the 2011 municipal elections?

4.3.2 Did the Free State government implement Operation Hlasela in a manner that amounts to a conflation of state and party?

4.3.3 Was any person or political party prejudiced by the conduct in question?

4.4 The Key Sources of Information

4.4.1 Documents

4.4.1.1 Photographs of the vehicle with Hlasela and 'Vote ANC' branding - date unknown - received from complainant;

4.4.1.2 Press release by the ANC Provincial Secretary for the Province of the Free State issued on 17 February 2011;

4.4.1.3 Registration certificates of the Operation Hlasela Fund and the revised Friends of the Free State Fund received and verified against originals - received from the department of Social Development (SOCDEV);

4.4.1.4 Constitution of Operation Hlasela Fund and the revised Friends of the Free State Fund received and verified against originals, received from SOCDEV;

4.4.1.5 Audited financial statements, bank statements and expenditure proof documents received from the Fund on 3 May 2013;

4.4.2 Interviews conducted

4.4.2.1 Interviewed of the complainant on 17 October 2011 requesting supporting documentation and evidence;

4.4.2.2 Interview of the complainant on 7 November 2011 and received newspaper articles as supporting documentation and evidence;

4.4.2.3 Meeting with the Premier of the Free State on 28 October 2011 about Operation Hlasela and the Hlasela Fund; and

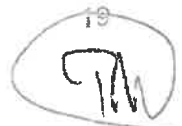
4.4.2.4 Meeting with Board Members of the Friends of the Free State Fund on 24 April 2013.

4.4.3 Correspondence sent and received

4.4.3.1 Letters from the Premier of the Free State responding to allegations about Hlasela and the Fund dated 19 and 23 April 2012;

4.4.3.2 Letter from the Provincial Treasury responding to allegations about Hlasela and the Fund dated 26 July 2012;

4.4.4 Websites consulted/ electronic sources



4.4.4.1 www.agsa.co.za: Audit reports of the Free State Provincial Government and Municipal Entities in respect of Hlasela Projects.

4.4.5 Legislation and other prescripts

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

4.4.5.2 The Electoral Act 73 of 1998;

4.4.5.3 The International Covenant on Civil and Political Rights

4.4.5.4 The African Charter on Democracy, Elections and Governance

5 THE STANDARD THAT SHOULD HAVE BEEN COMPLIED WITH

5.1 All the issues investigated are regulated by the legal principles outlined hereunder:

5.1.1 Section 136 of the Constitution enjoins the Premier and other members of a provincial executive to act in accordance with the Executive Ethics Code proclaimed by the president in July 2000, which elaborates on ethical standards set out in the Constitution and the Executive Ethics Act. A key provision regulating activities is section 136(2)(b), which provides that *"Members of the Executive of a province may not – Act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests."*

5.1.2 The Premier and other public functionaries are further enjoined by section 195(1)(a) and (d) of the Constitution to ensure that the Free State Province is *"governed by democratic values and principles enshrined in the constitution including the following principles – The promotion of a high standard of*

professional ethics; and the provision of services impartially, fairly, equitably and without bias."

5.1.3

Prior to elections, political parties sign the electoral code of conduct, which is provided for in Schedule 2 of the Electoral Act and requires political parties to adhere to certain standards of behaviour, especially during the campaigning period. The code of conduct forbids any political party or person from misusing a position of power or influence to alter the regulation or end result of an election.

5.1.4

Given the context of electoral fairness, the conduct of the Free State Government also had to be scrutinised for compliance with electoral laws and related prescripts aimed at ensuring fair play, including the electoral Code of Conduct. For example, prior to elections, parties sign the electoral code of conduct, which is provided for in Schedule 2 of the Electoral Act 73 of 1998 and which requires that they adhere to certain standards of behaviour, specifically during the campaigning period. Ultimately, the code of conduct forbids any political party or person from misusing a position of power or influence to alter the regulation or end result of an election.

5.1.5

With South Africa being a signatory of international instruments seeking to ensure democratic elections, including ensuring equality of opportunities for all electoral candidates and electoral parties, it is my considered view that the conduct of the Free State government had to comply with the objectives and spirit of international standard setting frameworks regarding free and fair elections, with particular emphasis on the prevention of misuse of public power and resources by any person or party to gain electoral advantages and or to induce voters to act in a particular way.

- 5.1.6 ICCPR General Comment No. 25 issued in terms of Article 25 of the International Covenant on Civil and Political Rights (ICCPR), provides, amongst others, the following:

"Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind".

- 5.1.7 Also Article 17 of the African Charter on Democracy, Elections and Governance provides, amongst others that:

"State Parties reaffirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa".

6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

- 6.1 The evidence and information obtained relates to all three issues investigated.

- 6.1.1 The complainant submitted that Operation Hlasela is a Free State Government Programme that has been marketed as such by the Premier of the Free State.

- 6.1.2 The complainant submitted photographs taken during the 2011 local government election of ANC election vehicles that had Hlasela printed on their vehicles as a form of campaigning strategy as illustrated hereunder:

State and Party Colours

Report of the Public Protector May 2016



- 6.1.3 The complainant regarded the logo of Hlasela on a political party vehicle as an abuse of state resources for party political purposes and a conflation of political party and state.
- 6.1.4 The Office of the Premier responded that the perception that there are two distinct but interlinking Operation Hlasela Programmes is incorrect. The Fund is a registered non-profit organisation with the Free State Department of Social Development, in terms of the Non-Profit Organisation Act, 1997.
- 6.1.5 The Office of the Premier further reported that my office had advised the Premier in a meeting held on 28 October 2011 that the confusion may be created through the terminology used, namely "Operation Hlasela" as a service delivery methodology and the "Operation Hlasela Fund". My office further advised that this apparent confusion could possibly be clarified with a change of the name of the Fund.
- 6.1.6 The Premier duly communicated this notice to the Trustees of the Fund about changing the name and amending of the constitution of the Fund, which is in due process of completion. The Fund is now known as the Friends of the Free State Fund and a copy of the proposed constitution was submitted.
- 6.1.7 On 17 February 2011 the ANC Provincial Secretary for the Province of the Free State issued a press statement indicating that *"Operation Hlasela is a government program that has embraced the ANC 2009 election manifesto. The truck which the DA was referring to was "a donation" which the party received from private businesses and it was made public at a rally in Welkom during January 2011. The truck was in addition to a truck made available by the ANC head office."*

news24

ANC: No arrogance in election slogan

2011-02-17 20:08

Bloemfontein - The ANC in the Free State on Thursday denied being arrogant for using a provincial government slogan "Operation Hlasela", which was painted on an ANC election campaign truck. South Africa was expected to go to polls for its 2011 local government elections before the end of May.

"Operation Hlasela is a government programme that has embraced the ANC 2009 election manifesto," said provincial ANC secretary Sibongile Besani. He was reacting to a local Democratic Alliance allegation that the provincial government's Operation Hlasela had been exposed as a state sponsored ANC activity. Free State DA leader Roy Jankielsohn said local premier Ace Magashule had taken the concept of "abuse of state resources for party political purposes" and the "conflation of political party and state" to new heights with the ANC's election truck seen in Bloemfontein. The DA, which showed photos of the truck, said the ANC vehicle was blatantly painted with "Hlasela" along its sides with ANC slogans and party politicians, including the face of President Jacob Zuma.

"The ANC's Free State election truck is a symbol of how the ANC have destroyed Mediba's dream of a democratic South Africa," said Jankielsohn.

Childish

Besani said it was "childish" to complain that Hlasela ANC was written on the party truck. "Operation Hlasela articulates our manifesto in the best way understood and accepted by Free Staters." He said the truck which the DA was referring to was "a donation" which the party received from private businesses and it was made public at a rally during January 2011. The truck was in addition to a truck made available by the ANC head office, said Besani. However, the DA felt the vehicle represented the arrogance and abuse of the state and people under the ANC government. Jankielsohn said Magashule knew no boundaries when it came to conflating the ANC with the state. "This government program (Hlasela) has now formally been turned into an ANC election campaign". The Free State opposition party said Zuma praised Magashule recently for launching Hlasela within the provincial government and was now a partner in the gross abuse of a state driven and state sponsored provincial election program.

Besani denied that the funds of Operation Hlasela had anything to do with the ANC's "budget". A spokesperson for the premier's office William Bulwane said Hlasela was a programme of action for the present administration adopted by the provincial executive committee. "I am not sure why the DA linked it with the ANC election campaign." Bulwane also said he was not sure which truck the DA was talking about. "The ANC has its election truck with the face of President Jacob Zuma and ANC logos which was meant for campaigning," he said, adding that if the DA wanted one, no one would stop them.

6.1.9 The response of the Premier of the Free State Provincial Government to the Notice issued in terms of Section 7(9) of the Public Protector Act, 1994

6.1.9.1 The Premier responded in a letter dated 12 April 2016 as follows:

ANC Election Campaign: 2011 Municipal Elections

(a) *"As set out in paragraph 6.1.1 you are likely to find that the ANC benefitted during the 2011 Municipal Elections through the use of a single name, uniform branding and integrated activities as a result of which confusion was created regarding Party and State activities. It is also indicated that you are likely to find that the ANC was placed at an advantageous position regarding funding for its Campaign.*

(b) *The only evidence, which appears to support these possible findings is a private vehicle, which had an Operation Hlasela logo on it and which drove around, apparently campaigning for the ANC during the Local Government Elections of 2011. This was a vehicle which was in fact donated by a church to the Friends of the Free State Fund. Apart from the fact that the elections were Local Government elections and had nothing to do with the Provincial Government, as Premier I had absolutely no control over what private entities placed on their vehicles in support of the campaign of the ANC. I also find it extremely difficult to*

accept that through one vehicle, branded with the logo of Operation Hlasela, the ANC benefited unduly and that it was placed at an advantageous position regarding funding for its campaign. I could not find any indication in the Notice that the investigation revealed any other facts in support of this. Although apparently resolved, the mentioning of what the Auditor General reported on the financial statements of Mafube Local Municipality supports my contention that what is contained in your Notice does not take cognizance of the separation of powers between provincial- and local Government.

- (c) As indicated during our meeting Operation Hlasela is a service delivery methodology which was adopted in order to address holistically the needs of a specific community, who is targeted through a specific initiative of the Provincial Government. Such an approach involves intervention by all relevant Departments of the Provincial Government as well as National Departments where necessary. Typically, the construction of houses, upgrading of township roads, issues of water and sanitation, building and upgrading of medical facilities such as Clinics, upgrading of facilities at schools, the involvement of members of the community and in the EPWP and Community Development Worker Programs as well as other interventions such as township gardens and support to SMME's, are implemented in a co-ordinated and meaningful manner. There is no significant difference between the aims and objectives of Operation Hlasela as a service delivery methodology and, for instance, Batho Pele.
- (d) Apart from what was stated in paragraph 4.1(b) above, I find it difficult to understand why a political party may not in an election campaign mention a Policy, which the Government that it had voted into power, has developed. If such a finding is now made by the Public Protector, it

will have serious implications for any election campaign after that, since a political power will not be able to mention any successes of the Government in its campaign for Elections.

- (e) *I also find it incomprehensible how the utilization of a private entity of a Government logo in support of a Party in Local Government Elections transgresses either section 139 or 195 of the Constitution. I also wish to submit that whatever the issue could be with regard to the display of the Operation Hlasela logo on the vehicle, it could not be a conflict between any official responsibility, which I had and any possible definition of private interest as quoted in paragraph 5.1.1 of the Notice. It could neither be a personal, private or business interest as mentioned in the Executive Ethics Code, referred to in the same paragraph."*

7. MEASURING CONDUCT AGAINST THE RULES

- 7.1 The issue regarding whether the Free State government abused state resources to advance the African National Congress' (ANC) election campaign during the 2011 municipal elections and the issue whether the Free State government implemented Operation Hlasela in a manner that amounts to a conflation of state and party is regulated by the following legal principles:
- 7.1.1 Section 136(2)(b) of the Constitution provides that "*Members of the Executive of a province may not – Act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests.*"
- 7.1.2 Section 195(1)(a) and (d) of the Constitution provide that "*public administration must be governed by democratic values and principles enshrined in the*

constitution including the promotion of a high standard of professional ethics; and the provision of services impartially, fairly, equitably and without bias."

- 7.1.3 Schedule 2 of the Electoral Act requires political parties to adhere to certain standards of behaviour, especially during the campaigning period. The code of conduct forbids any political party or person from misusing a position of power or influence to alter the regulation or end result of an election.
- 7.1.4 It has been established in the evidence that the private *Hlasela* initiative openly endorsed the ANC's electoral campaign and provided a truck that advertised "Vote ANC" during the 2011 local government elections.
- 7.1.5 Although no state funds were used for the private *Hlasela* initiative, state platforms and communication resources were used to advertise and laud Operation Hlasela without distinguishing between the government's *Operation Hlasela* and the ANC Manifesto-endorsing private Hlasela Fund, whose benefit to the ANC, in terms of free publicity and skewed implications for electoral fair play cannot be reasonably denied
- 7.1.6 Regardless of intention, the conduct alluded to above undermined fair play in the electoral process and is inconsistent with Schedule 2 of the Electoral Act, Sections 136 and 195 of the Constitution, the spirit of article 17 of the African Charter on Democracy, Elections and Governance and article 5 of the ICCPR.
- 7.2 Regarding whether any person or political party was prejudiced by the conduct in question:
- 7.2.1 The evidence obtained indicates that other political parties and independent candidates were indeed prejudiced.

- 7.2.2 The arrangement which allowed use of government platforms to promote the ANC-Manifesto-endorsing private Hlasela Fund, did provide free advertisement for the ANC which was not provided to other parties and independent candidates and accordingly undermined equal access to advertising and other communication channels thus compromising fair play between the ANC and other parties.

8. FINDINGS

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

- 8.1 Regarding whether the Free State Government abused state resources to advance the African National Congress' (ANC) election campaign during the 2011 municipal elections, I find that:

- 8.1.1 There is no conclusive evidence showing abuse or misuse of state resources to advance the ANC's electoral campaign during the 2011 local government elections;

- 8.1.2 Evidence reveals that at the time the complaint arose, there were two Hlasela initiatives, one called *Operation Hlasela*, an official state funded service delivery acceleration project of the Free State government driven by the Premier and a private *Hlasela Fund* funded by private individuals, including civil servants and civil society entities to support the state's Hlasela initiative. In pursuit of following the Public Protector's advice to the Premier, the Private Hlasela Fund was renamed *Friends of the Free State* and also brands its programme as *Friends of the Poor*.

- 8.1.3** The private *Hlasela* initiative openly endorsed the ANC's electoral campaign and had a truck advertising "Vote ANC" during the 2011 local government elections;
- 8.1.4** Although no state funds were used for the private *Hlasela* initiative, state platforms and communication resources were used to advertise and laud Operation *Hlasela* without distinguishing between the government's *Operation Hlasela* and the ANC Manifesto-endorsing private *Hlasela* Fund, whose benefit to the ANC, in terms of free publicity and skewed implications for electoral fair play cannot be reasonably denied; and
- 8.1.5** Regardless of intention, the undermining of fair play in the electoral process was inconsistent with Schedule 2 of the Electoral Act, Sections 136 and 195 of the Constitution, the spirit of article 17 of the African Charter on Democracy, Elections and Governance and article 5 of the ICCPR.
- 8.2** Regarding whether the Free State government implemented *Operation Hlasela* in a manner that amounts to conflation of party and state, I find that:
- 8.2.1** The allegation of conflation of party and state is sustained;
- 8.2.2** Regardless of intentions and separate ownership as well as separate sources of funding for the two *Hlaselas*, the branding and marketing of the two was indistinguishable and the two were marketed and lauded in government platforms;
- 8.2.3** The arrangement not only confused the public regardless of what activities are government sanctioned and funded and which are privately sponsored, government itself used state communication resources to promote and laud both without always distinguishing the two.



8.2.4 Until the two Hlaselas were distinguished, the private initiative cannot be said to have not benefited from the shared branding and the free advertising of the Government's Operation Hlasela, at state expense.

8.2.5 Regardless of intention, the undermining of fair play in the electoral process was inconsistent with Schedule 2 of the Electoral Act, Sections 136 and 195 of the Constitution, the spirit of article 17 of the African Charter on Democracy, Elections and Governance and article 25 of the ICCPR.¹

8.3 Regarding whether any person or political party was prejudiced by the conduct in question, I find that:

8.3.1 Other political parties and independent candidates were indeed prejudiced.

8.3.2 Although I have no reason to doubt the bona fides of Premier Magashule and the Free State Government regarding the intention of using the two Hlaselas to accelerate service delivery, the arrangement which allowed for the use of government platforms to promote the ANC-Manifesto-endorsing private Hlasela Fund, did provide free advertisement for the ANC which was not provided to other parties and independent candidates and accordingly undermined equal access to advertising and other communications channels thus compromising fair play between the ANC and other parties.

9. REMEDIAL ACTION

The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution is the following:

¹ ICCPR General Comment No. 25: Article 25 (Participation in public affairs and the right to vote) para 19.

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TM

9.1 The Premier

9.1.1 Is to ensure that a provincial policy is developed and circulated in all government institutions within the province, setting out a clear separation between state and party activities at all times and that all provincial state functionaries and employees are made aware of this policy; and

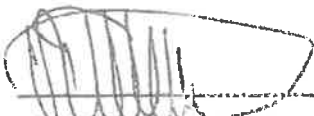
9.1.2 Is to ensure that no government platform or state functionary is required or allowed to use their position, power and public resources under their control to market political party matters.

10. MONITORING

10.1 The Public Protector is to be advised on the Premier's response to this report, including planned action, indicating time lines, within 30 days of the issuing of this report.

10.2 The implementation of the remedial action should be finalised within six months of the date of this report.

10.3 Bi-monthly reports are to be submitted to the Public Protector. A final report should be submitted within six months of the date of the report.



ADV. N. MADONSELA

PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 05/05/2016

Assisted by: Free State Provincial Office

Annexure E

Free State Government Policy on Separation between State and Party Activities

Annexure E

[IQP-2018] FIFTH SESSION: FIFTH LEGISLATURE

6. Hon. R Jankielsohn (DA) asks the Hon. Premier: Dr. ES Magashule.

6.1 Whether a policy was developed, with regards to the remedial action contained in the Public Protector's report titled "State and Party Colours" released in May 2016; if not, why not; if so, (a) when was this completed, (b) when was the policy distributed to all government departments and (c) attach a copy of the policy;

6.2 Whether this policy was communicated to all employees within the provincial government; if not, why not; if so, (a) how was this communicated and (b) when was this communicated to employees in each respective department;

6.3 Whether the implementation of this policy is monitored by the Office of the Premier; if not, why not; if so, what are the relevant details?

RESPONSE

6.1 (a) The Policy was approved by the Executive Council on 02 November 2016.

(b) It was distributed to all Government Departments on 04 November 2016.

(c) A copy of the Policy is attached.

POLICY:

SEPARATION BETWEEN STATE AND PARTY ACTIVITIES

1. PURPOSE

The purpose of this policy is to provide guidance to all members of the Free State Provincial Government on the standard of ethical conduct which must be followed to ensure a clear separation between state and party activities at all times.

2. GOVERNING PRINCIPLES

This policy is underpinned by the following statutory- and other regulatory principles:

2.1 The Constitution

2.2 The Public Service Act and Regulations

2.3 The Executive Ethics Act and the Executive Ethics Code

2.4 The Guidelines on Government Communication issued by GCIS

3. SCOPE OF APPLICATION

This policy applies to all public servants and officials employed by the Free State Provincial Government as well as the Premier and Members of the Executive Council, where applicable.

4. INSTITUTIONAL- AND OTHER LEGISLATIVE RIGHTS AND OBLIGATIONS

4.1 Political Office Bearers

4.1.1 The Constitution provides that Members of the Executive Council must act in accordance with the Code of Ethics which is prescribed by National legislation. It further provides that a Member of the Executive Council may not act in any way that is inconsistent with their office or expose themselves to any situation which may involve the risk of a conflict between their official responsibilities and private interests or use their position or any information entrusted to them to improperly benefit any other person.

In terms of Schedule 2 to the Constitution, the Premier and Members of the Executive Council, when assuming office, swear or solemnly affirm their allegiance to the constitutional- and other legal principles and undertake to hold their respective offices with honour and dignity, to be a true and faithful Counsellor, not to divulge directly or indirectly any secret matter entrusted to them and to perform their functions of their offices conscientiously and to the best of their ability.

4.1.2 Section 195(1) of the Constitution further provides that a public administration, of which officials, other employees and political office bearers are part of, must be governed by the democratic values and principles of the Constitution which include, as far as the purpose of this policy is concerned, the following:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.

- Services must be provided impartially, fairly, equitably and without bias.
- Public administration must be accountable and transparency must be fostered by providing the public with timely, accessible and accurate information.

4.1.3 The Executive Members' Ethics Act provides that the President must, after consultation, publish a Code of Ethics which must prescribe standards and rules directed at promoting open, democratic and accountable government and with which political office bearers must comply. The Code provides that Members of the Executive must:

- perform their duties and exercise their powers diligently and honestly;
- fulfil all obligations imposed upon them by the Constitution and law;
- act in good faith and in the best interest of good governance; and
- act in all respects in a manner that is consistent with integrity of their office or the Government.

In as far as it relates to this policy, it also provides that Members of the Executive may not:

- act in a way that is inconsistent with their position;
- use their position or any information entrusted them to enrich themselves or to improperly benefit any other person;
- use information received in confidence in the course of their duties otherwise than in connection with the discharge of their duties; and
- expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests.

4.1.4 The Public Service Regulations provides that if a conflict of interest arises out of the performance of any act by a functionary in terms of the Regulations, which in the majority of instances are the Executing Authorities of Departments, such conflict of interest must be referred to an independent panel for review. Should the functionary decide to deviate from the panel's recommendations, he/she shall record the reasons for deviation in writing.

4.2 Employees of Government

4.2.1 Provisions of Section 195(1) of the Constitution, referred to in paragraph 4.1, *mutatis mutandis* apply to employees of Government. Section 197 of the Constitution provides, in as far as it is relevant to the purpose of this policy, that the public service must loyally execute the lawful policies of the Government of the day. It also provides that no employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.

4.2.2 The Public Service Regulations regulate obligations of Heads of Department to ensure the highest standard of ethical behaviour. Heads of Department shall comply with Public Service Regulation 22 in as far as it relates to the purpose of this policy by:

- Analysing ethics as part of their Department's system of risk management.
- Developing and implementing an ethics management strategy that prevents and deters unethical conduct.
- Establishing a system that encourages and allows employees and citizens to report allegations of unethical conduct subject to Public Service Regulation 22(c)(i) and (ii).
- Establishing an information system that provides up to date information on all allegations of unethical conduct, tracks the management of such allegations, identifying any systemic weaknesses and recurring risks.

The Head of Department shall also in compliance with Public Service Regulation 23(2) establish an Ethics Committee or designate an existing Committee, Chaired by a Deputy Director General, to provide oversight on ethics management in the Department.

The ethical conduct of employees of Government is regulated by the Code of Conduct published in Chapter 2 of the Public Service Regulations. The Minister for Public Service and Administration is authorised through Section 42 of the Public Service Act to determine conduct expected of employees. In terms of the Act these

provisions are binding upon any Department or employee. The provisions of the Code of Conduct, in as far as they are applicable to this Policy, is regarded to form part of this Policy as if they are repeated herein.

4.2.3 Both the Disciplinary Code and Procedures for the public service and the Disciplinary Code and Procedures for SMS members provide that:

- ☐ an official who misuses his/her position in the public service to promote or to prejudice the interest of any political party; or
- ☐ contravenes the Code of Conduct, prescribed for the public service,

will be guilty of misconduct.

4.2.4 The South African Cabinet agreed on 31 March 1999 that a framework be formulated to guide the Dissemination of Government information during an Election period. The guidelines were adopted during the Local Government Elections of 2000 and the National- and Provincial Elections of 2004 which were reissued prior to the 2016 Local Government Elections. The provisions of these guidelines should be regarded as forming part of this policy. A copy thereof is attached hereto.

5. POLICY DIRECTIVE

All political office bearers and officials of the Provincial Government of the Free State Province are directed to strictly adhere to the statutory and other regulatory provisions as set out in paragraphs 4.1 and 4.2 in this policy. No political office bearer or official may be required or allowed to use their position to market political party matters. Nothing in this Policy will prevent any member of the community, at any event organised by Government, to express allegiance to any political party in any peaceful way whatsoever.

6. EFFECTIVE DATE

This policy is effective from the date of signature thereof by the Premier of the Free State Province.

.....
ES MAGASHULE Date

Premier: Free State Province

6.2 The Policy was communicated to all employees, both electronically as well as manually.

6.3 The Policy is monitored through various processes currently in place in terms of the Public Service Regulations.