



CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE MINISTER OF HUMAN SETTLEMENTS, MS LINDIWE NONCEBA SISULU, MP

1. INTRODUCTION

- 1.1 This is a closing report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), section 8(1) of the Public Protector Act, 1994 (the Public Protector Act) and Section 3 of the Executive Members' Ethics Act, 1998 (the EMEA)
- 1.2 The report relates to an investigation of a complaint of a violation of the Executive Ethics Code by the Minister of Human Settlements, Ms Lindiwe Nonceba Sisulu, MP (hereinafter referred to as Minister Sisulu).
- 1.3 The report is submitted to the President of the Republic of South Africa, in terms of section 3 of the EMEA. Copies of the report are also provided to Mr. Gana, MP (the Complainant) and Minister Sisulu.
- 1.4 The complaint was lodged with the Public Protector by a Member of the National Assembly, Mr Makashule Gana MP, of the Democratic Alliance on 28 July 2016, in terms of Section 4(1)(a) of the EMEA.
- 1.5 In his complaint, Mr Gana, alleged that Minister Sisulu abused state resources by using events of the Department of Human Settlements "as a *tool for political campaigning*".
- 1.6 He referred to two events where this alleged improper conduct by the Minister was displayed:
 - 1.6.1 *"The first event took place in Missionvale, Nelson Mandela Bay on 19th of July 2016 (sic). Nelson Mandela Bay mayor (sic), Danny Jordaan, was also*

in attendance. In further support of this is that there is photographic evidence from media houses which depict people in ANC (African National Congress) regalia both attending and participating in this official Human Settlement Department event. I believe this clearly highlights how this official government event was taken over and used as an ANC campaigning event.

In the second event, the Minister visited Princess Informal Settlement in Johannesburg. The purpose of the event as stated in the press release by the department was for the Minister to `assess service delivery and engage residents in the area on human settlement matters`. At said event, with clear department regalia being displayed, the Minister was seen together with ANC branding. The event had also been marketed via ANC social media”

1.7 Mr Gana contended that “the actions by the Minister in both these events constitute an abuse of state resources and is prohibited by section 195(d) of the Constitution of the Republic. Further to this, I contend that this abuse (the said actions of the Minister) rises to the level of conflict of interest which is in contravention of the Executive Ethics (sic) to which all Cabinet Ministers are bound.” (emphasis added)

1.8 Sections 3(1) and 4(1)(a) of EMEA provide that the Public Protector must investigate any alleged violation of the Executive Ethics Code by a Cabinet member on receipt of a complaint by a Member of the National Assembly.

2. THE ISSUES CONSIDERED AND INVESTIGATED

2.1 On analysis of the complaint and the information and documentation received during preliminary enquiries, the following issues were considered and investigated:

2.1.1 Whether Minister Sisulu improperly used official events of the Department of Human Settlements held on 20 and 25 July 2016 for political campaigning; and if so

2.1.2 Whether Minister Sisulu's conduct constituted a violation of the Executive Ethics Code.

3. THE INVESTIGATION

3.1 Scope of the investigation

3.1.1 The investigation was conducted in terms of section 182(1) of the Constitution, section 3 of the Executive Members' Ethics Act of 1998, and sections 6 and 7 of the Public Protector Act of 1994.

3.1.2 The scope of the investigation focused on the issues referred to in paragraph 2 above.

3.1.3 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.

3.2 The investigation approach

3.2.1 The approach to the investigation commenced by analysis of the complaint and the information the complainant relied upon, relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

3.2.2 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to establish:

- What happened?
- What should have happened?
- Is there a discrepancy between what happened and what should have happened and does that deviation amount to a violation of the Executive Ethics Code?

3.2.3 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 case, the factual enquiry principally focused on whether or not Minister Sisulu improperly used official events of the Department of Human Settlements held on 20 and 25 July 2016, respectively, for political campaigning.

3.2.4 The enquiry regarding what should have happened, focused on the law or rules that regulate the standard that should have been met by Minister Sisulu in compliance with the Executive Ethics Code.

4. KEY SOURCES OF INFORMATION

4.1 Applicable Legislation.

4.1.1 The Constitution of the Republic of South Africa, 1996.

4.1.2 The Public Protector Act, 23 of 1994.

4.1.3 The Executive Members Ethics Act, 82 of 1998.

4.1.4 The Executive Ethics Code.

4.2 Documents and information received.

4.2.1 The relevant information and documents obtained and analyzed, were primarily:

4.2.1.1 A response to the complaint received from Minister Sisulu, dated 23 May 2017.

4.2.1.2 *Politicsweb Online*, "DA to report Lindiwe Sisulu to the Public Protector, again", published on 25 July 2016.

4.2.1.3 *MyPE News Online*, "More joy during Mandela Month", by NMB Communications, published on 20 July 2016.

4.3 : Correspondence sent and received.

4.3.1 Letter from the Public Protector to President J Zuma informing him of the investigation, dated 05 April 2017.

4.3.2 Letter from the Public Protector to Minister Sisulu requesting a response to the complaint, dated 05 April 2017.

4.3.3 A response received from Harris Nupen and Molebatsi Attorneys, acting on behalf of Minister Sisulu, dated 13 April 2017.

4.3.4 A response received from Minister Sisulu, dated 23 May 2017.

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS

5.1 Regarding whether Minister Sisulu improperly used official events of the Department of Human Settlements held on 20 and 25 July 2016, respectively, for political campaigning.

5.1.1 In his complaint, Mr Gana referred to "*photographic evidence from media houses which depict people in ANC regalia both attending and participating*" at the event of the Department of Human Settlements held at Missionvale in Nelson Mandela Bay Municipal area on 20 July 2016. He did not provide details in this regard and also did not suggest that Minister Sisulu was wearing ANC regalia at the event.

5.1.2 As far as the departmental event held on 25 July 2016 at the Princess informal settlement in Johannesburg is concerned, Mr Gana only stated that

the Minister was *“seen together with ANC branding. He further alleged that the event was marketed “via ANC social media.”*

5.1.3 In a letter to Minister Sisulu dated 05 April 2017, the Public Protector requested her to respond to the complaint lodged by Mr Gana.

5.1.4 Minister Sisulu stated in her response, dated 23 May 2017, that:

On 19 July 2016, the Department of Human Settlements (the Department) issued a media statement on its official website providing details of the event that would be taking place in Missionvale on 20 July 2016.”

5.1.5 The media statement referred to, read as follows:

“The Minister of Human Settlements Lindiwe Sisulu, Deputy Minister of Defence and Military Veterans and the Nelson Mandela Bay Municipality Executive Mayor Danny Jordaan will tomorrow, 20 July 2016 handover houses and title deeds at Wells Estate where a total number of 603 units have been delivered.”

5.1.6 Minister Sisulu further referred to the following Parliamentary question put to her by Mr Gana on 24 August 2016 (question no 110), i.e. subsequent to him lodging the complaint with the Public Protector.

“What is her department’s policy position on political party officials in party regalia dominating official government functions, such as at the recent handing out of title deeds by her in the Nelson Mandela Bay Metropolitan Municipality where a certain political party had its colours in full display during the specified official function?”

5.1.7 In her reply, Minister Sisulu stated that:

“...the position of government is that officials and (sic) performance of their public duties must not wear the colours of the political parties to which they’re affiliated, at any time...”

“Regarding the official function in question, no official of the department officiated at the event dressed in the colours of a particular political party. As regards the members of the public however, the department or government does not have the authority to instruct how members of the public should dress. Neither can members of the public be prevented from attending a government function simply because of the way they are dressed.”

5.1.8 She further asserted that:

“... government functions are open to all members of the public and if people choose to wear political regalia, they are well within their rights to do so. Minister Sisulu has no authority to dictate to members of the public as to what they can and cannot wear when they attend a government function

5.1.9 The following images of the event held on 20 July 2016 appeared on the Internet at <http://mype.co.za/new/more-joy-during-mandela-month/72803/2016/07#ixzz4qTYtAr6P>:



5.1.10 These images clearly depict Minister Sisulu without any party political regalia or branding.

5.1.11 Minister Sisulu further stated in her response to the Public Protector that she:

“... is also not in a position to explain why people from the general public who attended the event were dressed in political regalia, although it should be noted that campaigning for the local government elections to be held on 3 August 2016 was at its height. It should also be noted that the decision of any person who is not an official of the Department to wear political regalia to an event of the Department does not contravene any legislation or Departmental policy and it is not unlawful.”

5.1.12 There is no indication in the complaint, Minister Sisulu's response and the information obtained during the investigation that the display of party political regalia by certain persons at the event could be ascribed to Minister Sisulu's conduct. It was further not suggested that Minister Sisulu made any party political comments at this event.

5.1.13 Regarding the event held on 25 July 2016, Minister Sisulu also referred to the following media statement published on the Department's official website on 24 July 2016:

“The Minister of Human Settlements, L N Sisulu, will tomorrow, 25 July 2016 visit Princess Informal settlement in Roodepoort.

The purpose of the Minister's visit is to assess service delivery and engage with residents in the area on human settlement matters.

Prior to the community engagements, Minister will join more than 200 volunteers who will be cleaning the area as South Africa and the World continue to commemorate Nelson Mandela Month.’

5.1.14 She further indicated that she was aware *“that members of the public attended the event and participated in the clean-up initiative at the Princess*

Informal Settlement and that they were wearing their political regalia, however Minister Sisulu wishes to emphasise that ANC regalia was not the only political regalia that was worn at this event, some members of the Economic Freedom Fighters (“EFF”) were also present and they were also wearing their political regalia. It is important to note that only members of the public were wearing their political regalia and officials from the Department, including Minister Sisulu, were not wearing any political regalia. It is the submission of Minister Sisulu that she was not in a position to control what the members of the public and volunteers wore to the above event.”

- 5.1.15 Minister Sisulu emphasized in her response that Mr Gana specifically alleged that she was seen *“together with ANC branding”*, which she denied. She referred the Public Protector to photographs taken at the event from which it is clear that she had not been wearing ANC branding in any form.
- 5.1.16 Mr Gana also stated in his complaint that this event had been marketed via *“ANC social media”*.
- 5.1.17 In her response, Minister Sisulu asserted that she, *“...is not responsible for the content that is shared on the ANC social media page and...did not request the ANC Joburg Region to broadcast the event on its social media page. In fact...the broadcast was made without her knowledge.”*
- 5.1.18 Mr Gana’s complaint referred to the *“actions of the Minister”*. His contentions that Minister Sisulu violated to Executive Ethics Code was only based on her attending two events of the Department of Human Settlements where other persons wore party political regalia. Minister Sisulu confirmed this, but explained that she had no control over what persons who attended the events wore.
- 5.1.19 Both the events related to the business of the Department of Human Settlements and there was no indication in the complaint and the

information that was obtained during the investigation that the Minister campaigned for any political party at any of the two events.

5.1.20 Accordingly, the complaint lodged against Minister Sisulu is not substantiated.

5.2 **Regarding whether Minister Sisulu's conduct constitutes a violation of the Executive Ethics Code**

5.2.1 Due to the conclusion made in paragraph 5.1 above, this issue does not arise.

6. **REASON FOR CLOSURE**

6.1 The complaint lodged by Mr Gana against Minister Sisulu that she improperly used official events of the Department of Human Settlements held on 20 and 25 July 2016, respectively, for political campaigning is not substantiated.

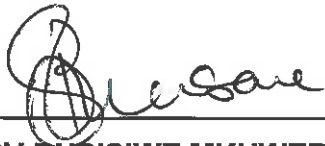
6.2 The allegation that Minister Sisulu abused state resources and that her conduct constitutes a violation of the Executive Ethics Code, is not substantiated.

6.3 Any information contradicting the contents of this closing report may be submitted to the Public Protector's office on or before **Tuesday, 12 December 2017**. Should the Public Protector not receive any contradictory information by the return date, the matter will be considered as finalized.

6.4 Kindly further take note that in terms of section 7(2) of the Public Protector Act, the contents of this closing report are confidential and no person may disclose them without the authorisation of the Public Protector.

6.5 Contravention of section 7(2) is in terms of section 11 (1) of the Public Protector Act an offence and upon conviction, punishable in terms of subsection (4) to a fine not exceeding R40 000 or to imprisonment for a

period not exceeding 12 months or to both such fine and such imprisonment.



ADV BUSISIWE MKHWEBANE

PUBLIC PROTECTOR

REPUBLIC OF SOUTH AFRICA

DATE: 27/11/2017

Assisted by: GGI Investigating Team