
PUBLIC PROTECTOR
SOUTH AFRICA

Report 12 of 2017/2018
ISBN: 978-1-928366-34-8

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT BY THE MINISTER OF SOCIAL DEVELOPMENT, MS BATHABILE DLAMINI, MP AND THE MISAPPROPRIATION OF PUBLIC FUNDS BY THE NORTHERN CAPE DEPARTMENT OF SOCIAL DEVELOPMENT RELATING TO EVENTS THAT WERE HELD AT STRYDENBURG ON 24 NOVEMBER 2011 AND 2 DECEMBER 2011.
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

### INDEX

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive summary</td>
<td>3</td>
</tr>
<tr>
<td>1. INTRODUCTION</td>
<td>10</td>
</tr>
<tr>
<td>2. THE COMPLAINT</td>
<td>11</td>
</tr>
<tr>
<td>3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR</td>
<td>14</td>
</tr>
<tr>
<td>4. THE INVESTIGATION</td>
<td>16</td>
</tr>
<tr>
<td>5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS</td>
<td>22</td>
</tr>
<tr>
<td>6. FINDINGS</td>
<td>32</td>
</tr>
<tr>
<td>7. OBSERVATIONS</td>
<td>33</td>
</tr>
</tbody>
</table>
Executive Summary

(i) This is the report of the Public Protector 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 No 23 of 1994 (the Public Protector Act).

(ii) The report communicates the Public Protector's findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP (Minister Dlamini) and the misappropriation of public funds by the Northern Cape Department of Social Development (Provincial Department) relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

(iii) The complaint was lodged with the Public Protector by Ms P Kopane MP (the Complainant) on 6 December 2011. She referred to the World AIDS Day commemoration event that was held on 2 December 2011 at Strydenburg, shortly before local government by-elections in the area were to take place on 7 December 2011.

(iv) According to the Complainant, Minister Dlamini attended the event where she actively promoted the local ANC by-election candidate, Cllr B Japtha, with whom she shared a stage. She further stated that the event was one of a number of programmes of the National Department of Social Development in an area constituting a highly contested ward in the by-elections.
The Complainant further alleged that community newspapers reported that in the days leading up to the by-elections in Strydenburg, the National Department had:

(a) Launched a provincial *16 days of Activism* campaign with much fan-fare including the handing out of food parcels and T-shirts;

(b) Organized extensive door to door visits by the Northern Cape MEC for Social Development under the pretext that it was a departmental outreach programme;

(c) Launched a programme to assist 40 youths to get drivers licences; and

(d) Handed out toys to children at a local education centre.

She thus requested that the Public Protector investigate "*this most recent incident in the Northern Cape*".

On analysis of the complaint, the following issues were identified and investigated.

(a) Whether Minister Dlamini promoted ANC by-election candidate Cllr B Japhta at the World Aids Day commemoration event held on 02 December 2011 at Strydenburg and if so, whether her conduct in this regard was improper; and
(b) Whether the Provincial Department distributed T-shirts and food parcels at the launch of the 16 Days of Activism for No Violence against Women and Children on 24 November 2011, and if so, whether such conduct was improper, constituted misappropriation of public funds and maladministration.

(viii) The investigation included correspondence with Minister Dlamini, the Northern Cape Member of the Executive Council responsible for Social Development Mr A Botes, MPL (MEC) and senior officials. Documents submitted during the investigation were analysed, research conducted and a previous report of the Public Protector on a similar complaint considered.

(ix) Applicable legislation and relevant prescripts were also considered and applied.

(x) Key prescripts taken into account were those imposing responsibilities and specific standards to be complied with by public functionaries regarding proper use of public power and resources. These include the following:

(a) Section 6(4) of the Public Protector Act prohibiting maladministration in state affairs and section 96 of the Constitution which dictate to members of Cabinet to act in accordance with the Code of Ethics prescribed by national legislation, specifically prohibiting members from acting in a way that is inconsistent with their office and to act in any way that exposes them to a situation involving the risk of a conflict between their official responsibilities and their private interests, were taken into account.
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

(b) The relevant provisions of the Electoral Act, No 73 of 1998 (Electoral Act); and

(c) The principles of public administration set out in section 195 of the Constitution in so far as it provides parameters for the proper use of state power and resources.

(xii) Having considered the evidence uncovered during the investigation against the relevant regulatory frame work, the Public Protector makes the following findings:

(a) Regarding Whether Minister Dlamini promoted ANC by-election candidate Cllr B Japhta at the World Aids Day commemoration event held on 02 December 2011 at Strydenburg and if so, whether her conduct in this regard was improper.

(i) No indication could be found that Minister Dlamini deliberately visited Strydenburg because a local government by-election was to be held shortly after the World Aids Day commemoration event. There is also no evidence that she promoted Cllr Japhta’s ANC candidacy at this event and therefore acted in violation of the provisions of sections 195 or 92(2)(b) of the Constitution or the Electoral Act. The complaint is therefore unsubstantiated.

(b) Regarding whether the Provincial Department distributed T-shirts and food parcels at the launch of the 16 Days of Activism for No Violence against Women and Children on 24 November 2011, and if
so whether such conduct was improper and constituted misappropriation of public funds and maladministration

(i) No indication could be found during the investigation of the misappropriation of public funds at the event held on 24 November 2011. There is also no indication that the National or Provincial Departments abused the event to favour any political party. The complaint was therefore unsubstantiated.

(xii) The Public Protector has observed that the participation of Members of the Executive in events hosted by Departments of Social Development where transport is provided and food parcels and other items are distributed to attendees, at times create the perception of political campaigning on behalf of political parties.

(xiii) In her report titled: State and Party, Blurred Lines (Report No:12 of 2015/16) issued on 5 May 2016, the former Public Protector took the following remedial action following an investigation into allegations of the irregular distribution of food parcels at an event that was organised by the South African Social Security Agency:

"The Minister of Social Development to:

Ensure that a policy is developed and circulated in all government institutions, 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."
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

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; and

Ensure that proper written communication is transmitted to responsible personnel in case an instruction is dispatched in particular when government resources are utilised as well as ensuring that records of such communication are kept for future reference.

The Director-General of Social Development to:

Ensure officials, including high level officials, are capacitated through workshops or memoranda concerning implications of conflation of party and state and integrate in their respective performance agreements in order to ensure maximum compliance.

(xiv) This remedial action was clearly taken to avoid the impropriety of political patronage or the perception thereof, as in this case, in the future.

(xv) The Public Protector was informed on 31 July 2017 by the South African Security Agency (SASSA) that it had updated its policy on social relief of distress and accordingly issued a circular to its Regional Managers emphasising that social relief of distress is not to be provided in any situation where the provisions thereof favours any particular political of social agenda.
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

(xvi) However, these steps taken by the SASSA do not constitute implementation of the remedial action that the Minister and the Director-General by law had to comply with.

(xvii) The Public Protector has to date not received any indication from the Ministry or the Department of Social Development that the remedial action referred to above has been implemented.

(xviii) In order to prevent a recurrence of similar incidents, the Public Protector is pursuing the implementation of the said remedial action.
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT BY THE MINISTER OF SOCIAL DEVELOPMENT, MS BATHABILE DLAMINI, MP AND THE MISAPPROPRIATION OF PUBLIC FUNDS BY THE NORTHERN CAPE DEPARTMENT OF SOCIAL DEVELOPMENT RELATING TO EVENTS THAT WERE HELD AT STRYDENBURG ON 24 NOVEMBER 2011 AND 2 DECEMBER 2011.

1. INTRODUCTION

1.1 This is the report of the Public Protector 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 to:

1.2.1 The Minister of Social Development, Ms B Dlamini, MP;

1.2.2 The Northern Cape MEC for Social Development, Mr G Van Staden, MPL;

1.2.3 The Acting Director-General of the Department of Social Development, Mr T Magwaza

1.3 A copy of the report is provided to:

1.3.1 The Head of the Northern Cape Department of Social Development, Mr I Manyane.
1.4 A copy of the report is also provided to Ms P Kopane, MP, who lodged the complaint, in terms of section 8(1) of the Public Protector Act.

1.5 The report relates to an investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, (MP) (Minister Dlamini) and the misappropriation of public funds by the Northern Cape Department of Social Development (Provincial Department) relating to events that were held at Strydenburg on 24 November and 2 December 2011.

1.6 The two events were hosted by the National Department of Social Development (National Department) and the Provincial Department and took place shortly before a local government by-election in the area was held on 7 December 2011. It was contested by Cllr B Japhta, representing the African National Congress (ANC).

2 THE COMPLAINT

2.1 On 6 December 2011, the Public Protector received a complaint from Ms Kopane MP (the Complainant) in connection with an event held by the National Department at Strydenburg in the Northern Cape Province on 2 December 2011, shortly before local government by-elections in the area were to take place on 7 December 2011.

2.2 According to the Complainant, Minister Dlamini attended the event where she actively promoted the local ANC by-election candidate, Cllr B Japtha, with whom she shared a stage. She further stated that this event was one of a
number of programmes of the National Department in an area constituting a highly contested ward in the by-elections.

2.3 According to the Complainant, community newspapers reported that in the days leading up to the by-elections in Strydenburg, the National Department had:

2.3.1 Launched a provincial 16 days of Activism campaign with much fan-fare including the handing out of food parcels and T-shirts;

2.3.2 Organized extensive door to door visits by the Northern Cape MEC for Social Development under the pretext that it was a departmental outreach programme;

2.3.3 Launched a programme to assist 40 youths to get drivers licences; and

2.3.4 Handed out toys to children at a local education centre.

2.4 The Complainant contended that it was not the first time that the National Department behaved in this fashion as in August 2011, “it flooded the streets of Petrusville in the Northern Cape with volunteers who went door-to-door campaigning with ANC supporters days before the local by-election. The volunteers were joined by the Provincial Social Development Department’s Chief Financial Officer and regional managers”.

2.5 She thus requested that the Public Protector investigate, “this most recent incident in the Northern Cape”.

12
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

2.6 Subsequent to the lodging of the complaint and following the by-elections held on 7 December 2011, the Daily Maverick published an article on 9 December 2011 under the heading, “By-election: the DA and Cope learn how to steal ANC marbles by and by.” In the article it was reported inter alia that:

“...Most of these by-elections are not important in the grander scheme, but at least one of the ANC losses is. The victory in the Strydenburg in the Northern Cape municipality of Thembelihle is highly significant for opposition parties in the province. The balance of power in the municipality, in terms of the number of council seats, was previously held by the ANC by a narrow 4 – 3 margin.

Mr Danny Jonas, the ANC incumbent in the contested ward, successfully defended his seat as an independent. The ANC now only holds three council seats in the municipality and a coalition of opposition councillors (two from the DA, one each from COPE and the independent councillor) will now govern the municipality, with Mr Jonas as mayor.

Make no mistake; this was a very hard-fought by-election. Premier Hazel Jenkins, Gwede Mantashe and Cosatu all visited Strydenburg in the run-up. The national department of social development held a rally in the town, drawing a strong reaction from the DA. Jonas’s campaign was run by the DA and Terror Lekota of Cope personally campaigned on his behalf.

Expect future by-elections in Northern Cape to attract a similar degree of campaigning and resources from the big parties. The DA has identified the province as their place of potential growth. They will fight hard if they feel they
can win more municipalities from the ANC, particularly those municipalities where the ANC rules by a slim majority."

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 the additional powers and functions prescribed by national 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 In the matter of Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.\(^1\) The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences."\(^2\)

3.6 Minister Dlamini is a Member of the National Executive and her conduct amounts to conduct in state affairs, as a result the complaint against her falls within the ambit of the Public Protector to investigate.

3.7 Similarly, the Provincial Department is an organ of state and its conduct amounts to conduct in state affairs that the Public Protector can investigate.

3.8 The Public Protector's power and jurisdiction to investigate the allegations made by the Complainant and to take the appropriate remedial action was not disputed by any of the parties.

---

\(^1\) [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

\(^2\) Supra at para [73].

Report of the Public Protector

September 2017
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. Section 6 of the Public Protector Act confers upon the Public Protector the authority to investigate and report on his or her findings regarding any complaint lodged.

4.2 Approach to the investigation

4.2.1 The Public Protector’s mandate on improper conduct requires an enquiry that transcends scrutinizing the lawfulness of the conduct in question and also poses questions of justice and correctness of such conduct. Likewise, 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 if there is deviation, does that deviation amount to improper conduct or maladministration?
4.2.1.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong or to place the complainant as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual investigation relying on the evidence provided by the parties and independently sourced during the investigation and making a determination based on a balance of probabilities. In this particular case, the factual enquiry principally focused on the alleged improper conduct of Minister Dlamini and the Provincial Department.

4.2.3 The enquiry regarding what should have happened, focused on the law or rules that regulate the standard that should have been met by Minister Dlamini and the Provincial Department to prevent maladministration and prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for correcting conduct failure and/or maladministration and redressing its consequences.

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

4.3.1 Whether Minister Dlamini promoted ANC by - election candidate Cllr B Japhta at the World Aids Day commemoration event held on 02 December 2011 at Strydenburg and if so, whether her conduct in this regard was improper; and
4.3.2 Whether the Provincial Department distributed T-shirts and food parcels at the launch of the *16 Days of Activism for No Violence against Women and Children* on 24 November 2011, and if so, whether such conduct was improper, constituted misappropriation of public funds and maladministration.

4.4 The Key Sources of Information

4.4.1 Correspondence sent and received

4.4.1.1 A letter from the Complainant to the Public Protector, dated 05 December 2011;

4.4.1.2 Written correspondence to the Complainant, dated 6 December 2011;

4.4.1.3 A letter from the Public Protector to Minister Dlamini, dated 07 January 2013;

4.4.1.4 A letter from the Northern Cape MEC of Social Development, Mr Alvin Botes (MEC) to Minister Dlamini, dated 20 March 2013;

4.4.1.5 A letter from Minister Dlamini to the Public Protector, dated 11 April 2013;

4.4.1.6 A letter from the Public Protector to Minister Dlamini, dated 15 April 2013;

4.4.1.7 Letters from the Public Protector in terms of section 7(9) of the Public Protector Act to Minister Dlamini, dated 14 April 2015 and 22 August 2017.

4.4.1.8 A letter from the Public Protector to Minister Dlamini dated 17 June 2015.
4.4.2 Documents

4.4.2.1 An E-mail from Mr C Fortune: Manager Communications (Provincial Department) to several media entities, dated 28 November 2011;

4.4.2.2 A Concept Document of the Provincial Department on the 16 Days of Activism on no violence against Women and Children: November 2011-December 2011;

4.4.2.3 Copies of internal requisitions for the Provincial Department, dated 24 November 2011;

4.4.2.4 A copy of a quotation for bottled water from Hancor Melkery, dated 01 December 2011;

4.4.2.5 A copy of a quotation for bottled water from K M Mini Market, dated 01 December 2011;

4.4.2.6 A copy of a quotation for bottled water from Ha re etse Mosadi, dated 01 December 2011;

4.4.2.7 A copy of a quotation from Ndlela’s Taxi for transportation of community members dated 14 November 2011;

4.4.2.8 A copy of a quotation from MW Taxi’s for transportation of community members, dated 14 November 2011;

4.4.2.9 A copy of a quotation from Msengana Taxi for transportation of community members, dated 14 November 2011;
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

4.4.2.10 A copy of a tax invoice from Ndlela’s Taxi for transportation of community members dated 14 January 2012, remittance slips and invoices;

4.4.2.11 A copy of Every Day Heroes Victim Empowerment Programme of the Provincial Department, dated 24 November 2011;

4.4.2.12 World Aids Day event programme of the Provincial Department dated 02 December 2011; attendance register and the event report;

4.4.2.13 A Joint Project Plan of the National Department and the United Nations Office on Drugs and Crime titled: “Launch of the Every Day Heroes Brand and Provincial Road Shows for the Victim Empowerment Programme: 2011”;

4.4.2.14 A copy of Briefing Notes on the World Aids Day – Community Capacity Engagement Programme by the Northern Cape Provincial Government dated 02 December 2011;

4.4.2.15 An address delivered by MEC Alvin Botes at the launch of the Everyday Heroes Victim Empowerment programme to mark the beginning of the campaign of 16 Days of No Violence Against Women and Children, held on 24 November 2011 at Strydenburg;

4.4.2.16 Minister Dlamini’s address delivered on 2 December 2011 at the commemoration of the World Aids Day event, held at Strydenburg;
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

4.4.3 Websites visited and research conducted

4.4.3.1 http://jutalaw.co.za

4.4.3.2 http://lexisNexis.co.za

4.4.3.3 Media article published by Daily Maverick on 9 December 2011 under the heading, “By-election: the DA and Cope learn how to steal ANC marbles by and by.”

4.4.4 Legislation and other Prescripts

4.4.4.1 The Constitution of the Republic of South Africa, 1996 (the Constitution);

4.4.4.2 The Electoral Act, Act 73 of 1998 (Electoral Act);

4.4.4.3 The Electoral Code of Conduct issued in terms of the Electoral Act (the Electoral Code of Conduct).

4.4.5 Public Protector Reports

4.4.5.1 State and Party, Blurred Lines: Report on an investigation into allegations or irregular distribution of food parcels and a R100 000 South African Security Agency (SASSA) statutory grant by Mr J Malema, former President of the African National Congress Youth League at an event that was organised by SASSA: Report No 12 of 2015/16, issued on 5 May 2016.
5 THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Whether Minister Dlamini promoted ANC by-election candidate Cllr B Japhta at the World Aids Day commemoration event held on 02 December 2011 at Strydenburg and if so, whether her conduct in this regard was improper

Common cause issues

5.1.1 It is not in dispute that Minister Dlamini attended and addressed an event to mark World Aids Day commemoration held on 2 December 2011 at Strydenburg, that it was jointly hosted by the National and Provincial Departments and that it was attended by Municipal Councillors, including Cllr Japhta.

5.1.2 Minister Dlamini did not dispute in her correspondence with the Public Protector that she shared a stage with Cllr Japhta. However, evidence obtained during the investigation merely confirmed the presence of Cllr Japhta at the same event and not the sharing of the stage with Minister Dlamini.

5.1.3 The key issue for the Public Protector’s factual determination was whether or not Minister Dlamini acted in a manner that improperly promoted Cllr Japhta’s ANC candidacy in respect of the forthcoming local government by-elections.
at the said event, and therefore whether her conduct was improper as contemplated by the provisions of section 6(4)(ii) of the Public Protector Act.

**Issues in dispute**

5.1.4 In her response to the allegations addressed to the Public Protector on 11 April 2013, Minister Dlamini, confirmed that the National and Provincial Departments jointly hosted an event to mark the commemoration of World Aids Day on 02 December 2011 at Strydenburg.

5.1.5 She stated that the activities planned by the National Department for such campaigns were implemented in the different provinces on a rotational basis. According to her, it was co-incidental that the National Department’s pre-planned campaign at Strydenburg took place shortly before a local government by-election was to be held in the area. As the activities had already been arranged in advance, it could not be postponed nor cancelled.

5.1.6 Minister Dlamini further explained that:

"Strydenburg is one of the areas where there is a high prevalence of poverty, HIV/AIDS, issues related to seasonal workers and high levels of substance abuse. That is the reason why we went back to that area in 2012 to monitor the effect of our campaign. Clearly, we will not have made another visit if our interest was in the by-elections. Besides, we always go to communities in the various provinces ahead of events by government to facilitate and promote the participation of communities in developmental initiatives."
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

5.1.7 On 28 November 2011, the Provincial Department’s Communications Manager sent an email message to media houses and their representatives under the heading: “Visit by the National Minister of Social Development”.

5.1.8 The e-mail informed the recipients that Minister Dlamini would be visiting the Northern Cape Province on the “Department’s Taking DSD to the Communities Campaign”. The e-mail further stated that the Minister would on 02 December 2011 visit the community of Strydenburg.

5.1.9 The purpose of the visit was indicated as creating further public awareness of the Department’s programmes and services to tackle socio-economic challenges, such as poverty, HIV/AIDS, social exclusion, child protection and substance abuse amongst others.

5.1.10 During the investigation, the MEC was also requested to respond to the allegations made by the Complainant.

5.1.11 In regard to the World Aids Day commemoration event held on 2 December 2011, the MEC stated in his response, dated 20 March 2013, inter alia that:

“It must be stated that this campaign was launched by the Deputy Minister of Social Development in Cassel in the John Taolo Gaetsewe District which is also a poverty stricken area in Social Development Month.

It is important to note that the Northern Cape Department was approached by the National Department of Social Development after the North West indicated that it was not in a position to host the event.
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

The programme of the said day unfolded as follows:

Visit to the Strydenburg Kleuterskool that is registered and funded by the department. The National Minister and her Deputy engaged with the practitioners and the children. Cake and snack packs were procured by the Pixley Ka Seme District office;

Visit to three identified vulnerable households where food parcels which were procured by SASSA were handed over;

Session with Home and Community based caregivers from the district; and

Formal programme which was held at the Strydenburg Sports field in a marquee designed to accommodate 2000 members throughout the district“.

5.1.12 It was indicated that the Minister and the Deputy Minister embarked on these activities as they fall within their mandate and complies with normal government protocol.

5.1.13 Minister Dlamini was the main speaker at the event. No evidence could be found to suggest that she promoted the ANC candidacy of Cllr Japhta, as was alleged.
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

Application of the relevant law

5.1.14 To arrive at a fair answer, the Public Protector had to consider whether or not Minister Dlamini's conduct as indicated by the information and evidence obtained during the investigation was in contravention of section 195(1) of the Constitution, which provides that public administration must be governed by the democratic values and principles enshrined in the Constitution, including, inter alia, the promotion and maintenance of a high standard of professional ethics as well as section 96(2)(b) of the Constitution, which states that Cabinet Ministers and Deputy Ministers may not act in a way that is inconsistent with their office, or expose themselves to any situation involving risk of a conflict between their official responsibilities and private interests.

5.1.15 Furthermore, in terms of section 87(1) of the Electoral Act, political party members are prohibited from the unlawful persuasion, influencing and compulsion of another person to support or not to support any registered party or candidate.

5.1.16 Section 9(2)(iii) of the Electoral Act also precludes a registered party or candidate from offering any inducement or reward to another person to vote or not to vote in any particular way. Furthermore, it compels parties upon submission of candidate lists, to also be accompanied by undertakings binding the party, its agents and its candidates to adhere to the provisions of the Electoral Code of Conduct and that failure to do so create the risk of candidates being disqualified.

Conclusion
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

5.1.17 Minister Dlamini attended the World Aids Day commemoration event at Strydenburg on 2 December 2011, where she participated in the programme jointly organised by the National and Provincial Departments.

5.1.18 Municipal Councillors attended the event, including Cllr Japhta.

5.1.19 The programme for the day included several events that formed part of a campaign of the National Department directed at poverty stricken areas. The event was on the National Departments programme for 2011 and was planned in advance.

5.1.20 No indication could be found that Minister Dlamini deliberately visited Strydenburg because a local government by-election was to be held shortly after the World Aids Day commemoration event. There is also no evidence that she promoted Cllr Japhta’s ANC candidacy at this event and therefore acted in violation of the provisions of sections 195 or 92(2)(b) of the Constitution or the Electoral Act.

5.2 Regarding whether the Provincial Department distributed T-shirts and food parcels at the launch of the 16 Days of Activism for No Violence against Women and Children on 24 November 2011, and if so whether such conduct was improper and constituted misappropriation of public funds and maladministration.

Issues not in dispute
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

It is not disputed that on 24 November 2011 an event to mark the 16 Days of Activism campaign was held at Strydenburg. It is further not in dispute that as part of the said event, food parcels and T-shirts were distributed.

5.2.2 What the Public Protector had to adjudicate upon is whether the Provincial Department utilised public funds for the event and if so, whether it constitutes misappropriation, was improper and/or constitutes maladministration as contemplated by the provisions of section6(4)(i) and (ii) of the Public Protector Act.

5.2.3 The Complainant contended that prior to the holding of by-elections in Strydenburg, the National Department hosted numerous programmes and activities in the area, which she apparently perceived as a pretext to promote the political interests of the ANC.

5.2.4 In her response to the complaint, Minister Dlamini explained that the National and Provincial Departments jointly hosted a Victim Empowerment event at Strydenburg, on 24 November 2011 as a build up to the annual 16 Days of Activism on Violence Against Women and Children.

5.2.5 The MEC indicated in his response that:

5.2.6 "The aim of this event was to market and create awareness in our communities on issues pertaining to gender based violence and other forms of victimisation utilising the communications strategy named Every Day Heroes. The event was held in Strydenburg as it is one of the identified areas of war on poverty. The event was a joint venture between provincial department of Social Development and National Social Development. Two
representatives from National office attended the event. The Provincial Office paid an amount of R5650 for transport and sound (public address system).

While UNODC (United Nations Office on Drugs and Crime) paid for the catering". This is corroborated by the invoices and the project plan (referred to below) that was obtained during the investigation.

5.2.7 He further explained that the purpose of the departments’ taking social development to the people campaign is to allow communities to together come up with concrete plans that would address the challenges experienced in areas such as Strydenburg.

5.2.8 This community based engagement, according to the MEC, gave birth to the formation of a group of youth called “Future Leaders”, that focusses on tackling development challenges in their community.

5.2.9 In order to empower this group of 24 young people, the Provincial Department, inter alia, provided assistance to them to obtain drivers licences. This programme was implemented in five districts and not only in Strydenburg.

5.2.10 The MEC also indicated that the reference by the Complainant to door-to-door visits by senior officials related to the Bapelapa Household Profiling Survey, which was championed by the Deputy President at the time. The information collated from this survey assist the Provincial Department “in providing a basket of services to the community as it is part of the provincial government’s war on poverty campaign”.

Report of the Public Protector  September 2017
Having considered the evidence and information obtained during the investigation and the regulatory framework setting the standards that should have been upheld, the Public Protector’s findings are the following:

6.1 Regarding Whether Minister Dlamini promoted ANC by-election candidate Cllr B Japhta at the World Aids Day commemoration event held on 02 December 2011 at Strydenburg and if so, whether her conduct in this regard was improper.

6.1.1 No indication could be found that Minister Dlamini deliberately visited Strydenburg because a local government by-election was to be held shortly after the World Aids Day commemoration event. There is also no evidence that she promoted Cllr Japhta’s ANC candidacy at this event and therefore acted in violation of the provisions of sections 195 or 92(2)(b) of the Constitution or the Electoral Act. The complaint was therefore unsubstantiated.

6.2 Regarding whether the Provincial Department distributed T-shirts and food parcels at the launch of the 16 Days of Activism for No Violence against Women and Children on 24 November 2011, and if so whether such conduct was improper and constituted misappropriation of public funds and maladministration.

6.2.1 No indication could be found during the investigation of the misappropriation of public funds at the event of 24 November 2011. There is also no indication...
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

5.2.11 It appears from the project plan relating to the launch of the Every Day Heroes Brand and Provincial Road Shows for the Victim Empowerment Programme 2011 that the National Department partnered with a number of other national departments and entities, such as the United Nations Office on Drugs and Crime (UNODC), the European Commission, and UNICEF to create and increase awareness on victim empowerment services and the negative impact of gender based violence in communities.

5.2.12 The total budget for this project in 2011 was R1,950 000 and was jointly funded. The project plan indicates that it was implemented in several provinces, including the Northern Cape.

5.2.13 The activity plan of the project states inter alia, that the UNODC was responsible for the costs of the printing and distribution of Every Day Heroes booklets and T-Shirts at the planned events from 15 November 2011 to 2 December 2011.

Application of relevant law

5.2.14 The Northern Cape Department of Social Development is also bound by the provisions of section 195(1) of the Constitution, which regulates the standards that the Department should have complied with in hosting the event.

5.2.15 Section 195(1) of the Constitution provides that public administration must be governed by the democratic values and principles enshrined in the Constitution including, a high standard of professional ethics which must be
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

maintained and an efficient, economic and effective use of resources which must be promoted as well as a public administration which must be accountable.

Conclusion

5.2.16 The National and Provincial Departments jointly hosted the event at Strydenburg on 24 November 2011.

5.2.17 It was part of a Victim Empowerment Programme that was implemented in several provinces.

5.2.18 The National Department had several partners in the project, such as the UNODC that funded catering for and the distribution of T-Shirts, branding the project at the said event.

5.2.19 The Provincial Department paid for the water and transportation.

5.2.20 No indication could be found during the investigation of the waste off resources or the misappropriation of public funds at the event of 24 November 2011. There is also no indication in the evidence and information obtained during the investigation that the National or Provincial Departments abused the event to favour any political party.

6 FINDINGS
that the National or Provincial Departments abused the event to favour any political party. The complaint was therefore unsubstantiated.

7 OBSERVATIONS

7.1 The Public Protector has observed that the participation of Members of the Executive in events hosted by Departments of Social Development where transport is provided and food parcels and other items are distributed to attendees, at times create the perception of political campaigning on behalf of political parties.

7.2 In her report titled: State and Party, Blurred Lines (Report No:12 of 2015/16) issued on 5 May 2016, the former Public Protector took the following remedial action following an investigation into allegations of the irregular distribution of food parcels at an event that was organised by the South African Social Security Agency:

"The Minister of Social Development to:

Ensure that a policy is developed and circulated in all government institutions, 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"
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

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; and

Ensure that proper written communication is transmitted to responsible personnel in case an instruction is dispatched in particular when government resources are utilised as well as ensuring that records of such communication are kept for future reference.

The Director-General of Social Development to:

Ensure officials, including high level officials, are capacitated through workshops or memoranda concerning implications of conflation of party and state and integrate in their respective performance agreements in order to ensure maximum compliance.

7.3 This remedial action was clearly taken to avoid the impropriety of political patronage or the perception thereof, as in this case, in the future.

7.4 The Public Protector was informed on 31 July 2017 by the South African Security Agency (SASSA) that it had updated its policy on social relief of distress and accordingly issued a circular to its Regional Managers emphasising that social relief of distress is not to be provided in any situation where the provisions thereof favours any particular political of social agenda.

Report of the Public Protector

September 2017
Investigation into allegations of improper conduct by the Minister of Social Development, Ms Bathabile Dlamini, MP and the misappropriation of public funds by the Northern Cape Department of Social Development relating to events that were held at Strydenburg on 24 November 2011 and 2 December 2011.

7.5 However, these steps taken by the SASSA do not constitute implementation of the remedial action that the Minister and the Director-General by law had to comply with.

7.6 The Public Protector has to date not received any indication from the Ministry or the Department of Social Development that the remedial action referred to above has been implemented.

7.7 In order to prevent a recurrence of similar incidents, the Public Protector is pursuing the implementation of the said remedial action.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF SOUTH AFRICA
Date: 27/09/2017
Assisted by: Good Governance and Integrity