



PARLIAMENT
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MEMORANDUM

[Confidential]

TO: Hon E Kholwane, MP
Chairperson: Portfolio Committee on Communications

COPY: Secretary to Parliament

FROM: Constitutional and Legal Services Office
[Dr BE Loots – Parliamentary Legal Adviser]

DATE: 8 April 2013

REF: 96/2013

SUBJECT: COMMITTEE'S MANDATE TO MONITOR CHARGES BROUGHT AGAINST
AN ICASA COUNCILLOR



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INTRODUCTION

1. Our office was requested to provide legal guidance following a letter from the Minister of Communications requesting the Portfolio Committee on Communications to advise on the appropriate action to be taken after it came to light that an ICASA Councillor (Mr Mohlaloga) had been charged with defrauding the Land Bank.

LEGAL ANALYSES

2. The appointment and removal of ICASA Councillors are regulated in terms of the Independent Communications Authority of South Africa Act, 2000 (No 13 of 2000). Sections 5, 6 and 8 are of specific relevance.
3. Section 5 of the Act stipulates that the Minister is the appointing authority and the National Assembly the recommending authority. Following this process the Minister appointed Mr Mohlaloga as an ICASA Councillor in September 2012.
4. A councillor, once appointed can only be removed by the Minister in terms of section 8 following a resolution of the National Assembly based on grounds of misconduct or any one of the disqualification criteria listed in section 6.
5. Sections 5, 6 and 8 read together only allows an individual to be disqualified for appointment purposes or justifiably removed once he/she has been convicted of, for example, fraud.
6. In the case of Mr Mohlaloga, fraud allegations are yet to be proven and the case is still pending. Only a court of law can determine whether Mr Mohlaloga is guilty of fraud. Until such a finding has been made, he is presumed to be innocent.

LEGAL ADVISE

7. At this stage no action can be taken against Mr Mohlaloga. The Committee can however exercise its oversight mandate in requesting the Minister to keep members informed of all matters related to this fraud case and so follow the process to determine what steps (if any) are required once the court process has run its course.



Dr BE Loots
Parliamentary Legal Adviser