

**AT A HEARING OF THE POWERS, PRIVILEGES AND IMMUNITIES COMMITTEE
OF THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA**

Between:

THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

and

MR N F SHIVAMBU (MP) AND 19 OTHER MEMBERS OF PARLIAMENT

**PRINCIPAL SUBMISSIONS – PENALTY OR PENALTIES TO BE IMPOSED ON
THE NAMED HONOURABLE MEMBERS OF PARLIAMENT FOUND GUILTY OF
CONTEMPT OF PARLIAMENT**

Introduction

1. The Powers and Privileges Committee (the Committee), established in terms of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004 (the Act), found the following Members of Parliament (the Honourable Members) guilty of charges relating to contempt of the Parliament of the Republic of South Africa (Parliament):
 - 1.1 The Honourable Shivambu – 7 charges;
 - 1.2 The Honourable Ramakatsa – 7 charges;
 - 1.3 The Honourable Litchfield – Tshabalala – 6 charges;
 - 1.4 The Honourable Gardee – 5 charges;
 - 1.5 The Honourable Ndlozi – 4 charges;

- 1.6 The Honourable Malema – 4 charges;
 - 1.7 The Honourable Louw – 2 charges;
 - 1.8 The Honourable Mashabela – 2 charges;
 - 1.9 The Honourable Matiase – 2 charges;
 - 1.10 The Honourable Maxon – 2 charges;
 - 1.11 The Honourable Moonsamy – 2 charges;
 - 1.12 The Honourable Mngxitama – 2 charges;
 - 1.13 The Honourable Joseph – 1 charge;
 - 1.14 The Honourable Khawula – 1 charge;
 - 1.15 The Honourable Matshobeni – 1 charge;
 - 1.16 The Honourable Mbatha – 1 charge;
 - 1.17 The Honourable Morapela – 1 charge;
 - 1.18 The Honourable Nqwenisa – 1 charge;
 - 1.19 The Honourable Ntobogwana – 1 charge; and
 - 1.20 The Honourable Sonti – 1 charge.
2. The charges of contempt relate to the conduct of the named Honourable Members on 21 August 2014 in the National Assembly.

3. The Committee has found each of the Honourable Members guilty of the charges of contempt of Parliament against them.
4. The charges are all of a serious nature.

The provisions of the Act regarding any possible penalty or penalties

5. Section 12 of the Act reads as follows:

“12. Disciplinary action against members for contempt – (1) subject to this Act, a House has all the powers which are necessary for enquiring into an pronouncing upon any act or matter declared by or under section 13 to be contempt of Parliament by a member, and taking the disciplinary action provided therefore.”

6. Section 12(3) of the Act reads as follows:

“12(3) Before a House may take any disciplinary action against a member in terms of sub-section 1, the standing committee must –

(a) enquire into the matter in accordance with a procedure that is reasonable and procedurally fair; and

(b) table a report on its findings and recommendations in the House.”

7. Section 12(5) of the Act reads as follows:

“12(5) When a House finds a Member guilty of contempt, the House may, in addition to any other penalty to which the Member may be liable under this Act or any other law, impose anyone or more of the following penalties.

(a) A formal warning;

(b) a reprimand;

(c) an order to apologise to Parliament or the House or any person, in a manner determined by the House;

(d) the withholding, for a specified period, of the member's right to the use or the enjoyment of any specified facility provided to members by Parliament;

(e) the removal, or the suspension for a specified period, of the member from any Parliamentary position occupied by the member;

(f) a fine not exceeding the equivalent of one month's salary and allowances payable to the member concerned by virtue of the Remuneration of Public Office Bearers Act, 1998 (Act No.20 of 1998);

(g) the suspension of the member, with or without remuneration, for a period not exceeding 30 day, whether or not the House or any of its committees is scheduled to meet during that period."

8. In terms of the Act, one or more of the penalties set out above may be imposed on any Member of Parliament who is found guilty of contempt of Parliament in terms of the Act (such as any of the Honourable Members).

9. Section 12 (9) of the Act reads as follows:

"12(9) A member may not be suspended under sub-section (5)(g) unless the House has found that –

(a) the member is guilty of serious or repeated contempt; and

(b) none of the other penalties set out in sub-section (5) will be sufficient."

Relevant considerations in respect of any possible penalty or penalties

10. A variety of considerations may be relevant when considering the presence of mitigating or aggravating factors and when determining what penalty or penalties should be imposed.
11. It is respectfully submitted that in the circumstances of this matter, the factors to be considered by the Committee in aggravation or mitigation in determining the appropriate penalty or penalties to be imposed on the named Honourable Members include the following:
 - 11.1 the seriousness of the charges of contempt of Parliament which the named Honourable Members have been found guilty of, as well as the nature and severity of their conduct;
 - 11.2 acknowledgement of wrongdoing and remorse on the part of the named Honourable Members, as well as their co-operation with the work of the Committee;
 - 11.3 any previous incidents involving the named Honourable Members; and
 - 11.4 the interests of Parliament.

The seriousness of the charges of contempt of Parliament which the named Honourable Members have been found guilty of, as well as the nature and severity of their conduct

12. The charges of contempt of Parliament which the named Honourable Members have been found guilty of are serious.
13. The charges of contempt which the Honourable Members have been found guilty of, may be summarised as follows:

13.1 Charge 1

13.1.1 The relevant Honourable Members are guilty of conduct constituting contempt of Parliament in terms of Section 13(a) of the Act in that as a Member of Parliament and during 'Questions to the President' in the National Assembly on 21 August 2014, they contravened Section 7(a) of the Act by improperly interfering with or impeding the exercise or performance by the National Assembly (the House) of its authority or functions when they refused to obey the instruction of the Speaker that they take their seats. This conduct impeded the House from performing its function of exercising oversight over the Executive by posing questions to the President and continuing with its business for that day.

13.1.2 The Honourable Members that have been found guilty of this charge are as follows: The Honourable Shivambu MP, the Honourable Ramakatsa MP, the Honourable Litchfield – Tshabalala, the Honourable Gardee MP and the Honourable Ndlozi MP (5 Honourable Members).

13.1.3 The Speaker required the Honourable Shivambu, the Honourable Litchfield-Tshabalala, the Honourable Gardee, the Honourable Ramakatsa and the Honourable Ndlozi to take their seat on a number of occasions. The Speaker was addressing these Honourable Members. The Honourable Members also knew that the Speaker was addressing them.

13.1.4 The purpose for instructing these Honourable Members to take their seat was that the Speaker wished to allow Honourable Members in the House, who were in the queue, an opportunity to ask supplementary questions. Notwithstanding the Speaker's instruction / requirement the named Honourable Members did not take their seats.

13.1.5 These Honourable Members acted deliberately and wilfully when they refused to take their seats. Their conduct improperly interfered with and / or impeded the exercise or performance by the National Assembly of its authority or functions. This type of contempt of Parliament is very serious.

13.1.6 As a consequence of the conduct of the named Honourable Members the House was unable to complete its business for the day on 21 August 2014.

13.2 Charge 2

13.2.1 The relevant Honourable Members are guilty of conduct constituting contempt of Parliament in terms of Section 13(c) of the Act in that as a Member of Parliament and during 'Questions to the President' in the National Assembly on 21 August 2014, you wilfully failed and / or refused to obey Rule 51 and Rule 53(1), read together, of the Rules of the National Assembly in that you refused to withdraw immediately from the Chamber for the remainder of the day's sitting when you were ordered to do so by the Speaker.

13.2.2 The Honourable Members that have been found guilty of this charge are as follows: The Honourable Shivambu MP, the Honourable Ramakatsa MP, the Honourable Litchfield – Tshabalala, the Honourable Gardee MP, the Honourable Ndlozi MP, the Honourable Malema MP (6 Honourable Members).

13.2.3 The affected Honourable Members (Mr Shivambu, Mr Ramakatsa, Ms Litchfield-Tshabalala, Mr Gardee, Mr Ndlozi and Mr Malema) engaged in conduct that required the invoking of Rule 51 by the Speaker, being the instruction or order that the affected Honourable Members withdraw from the House

immediately. The affected Honourable Members engaged in conduct which was grossly disorderly, in disregard of the Speaker and which would properly result in the invoking of Rule 51.

13.2.4 The said Honourable Members acted deliberately. Their conduct was so serious that it was appropriate and reasonable for the Speaker to instruct that the affected Honourable Members withdraw immediately from the Chamber for the remainder of the day's sitting.

13.2.5 The affected Honourable Members refused to withdraw immediately from the Chamber for the remainder of the day's sitting when ordered to do so by the Speaker. It is respectfully submitted that these conclusions are underscored by the comment of the Honourable Shivambu to the effect that "*we will not be removed.*"

13.3 Charge 3

13.3.1 The relevant Honourable Members are guilty of conduct constituting contempt of Parliament in terms of Section 13(a) of the Act in that as a Member of Parliament and during 'Questions to the President' in the National Assembly on 21 August 2014, you contravened Section 7(b) of the Act by improperly interfering with the performance by a member of his or her functions as a member, in the following manner - when the Speaker requested Mr BH Holomisa (a Member of Parliament) to pose a question (i.e. a supplementary question) to the President, your conduct prevented Mr Holomisa, and other Members of Parliament who might have wished to ask the President further questions, from asking their question/s, thereby preventing them from performing one of their functions as a Member of Parliament (namely to hold the Executive to account by asking the

President questions).

13.3.2 The Honourable Members that have been found guilty of this charge are as follows: The Honourable Shivambu MP, the Honourable Ramakatsa MP and the Honourable Litchfield – Tshabalala (3 Honourable Members).

13.3.3 The affected Honourable Members engaged in conduct which prevented the Honourable Holomisa and other Members of Parliament, who might have wished to ask the President further supplementary questions, from asking their questions. The said conduct prevented the Honourable Holomisa and others who might have wished to ask the President further supplementary questions from performing one of their functions as a Member of Parliament (namely to hold the executive to account by asking the President questions), and was an improper interference.

13.3.4 On a number of occasions the Speaker specifically sought to recognise the Honourable Holomisa as being the next Member who would ask the President a supplementary question. The improper conduct of the Members did indeed have the result that the Honourable Holomisa and other Members who might have wished to ask the President further supplementary questions were prevented from doing so. The affected Members knew and understood that the next Member to speak was the Honourable Holomisa. The Honourable Members conducted themselves so as to prevent the Honourable Holomisa and others who might have wished to do so from asking the President further supplementary questions.

13.3.5 Prior to engaging in their improper conduct the Speaker had on at least two occasions explained to the House, which included the affected Honourable Members, the system of supplementary questions. Notwithstanding their knowledge of the Rules,

notwithstanding the fact of the two prior explanations of the Rules and notwithstanding the fact that the Speaker had specifically referred to her recognising the Honourable Holomisa on a number of occasions, the affected Honourable Members acted improperly so as to prevent the Honourable Holomisa and others who might have wished to do so from asking the President supplementary questions.

13.4 Charge 4

13.4.1 The relevant Honourable Members are guilty of conduct constituting contempt of Parliament in terms of Section 13(c) of the Act in that as a Member of Parliament and during 'Questions to the President in the National Assembly on 21 August 2014, you wilfully failed and / or refused to obey Rule 49 of the Rules of the National Assembly by failing to resume your seat when the Speaker rose while you were speaking or offering to speak, and thereby preventing the Speaker from being heard without interruption.

13.4.2 The Honourable Members that have been found guilty of this charge are as follows: The Honourable Shivambu MP and the Honourable Ramakatsa MP (2 Honourable members).

13.4.3 The Honourable Shivambu and the Honourable Ramakatsa wilfully failed and / or refused to obey Rule 49 of the Rules of the National Assembly by failing to resume their seats when the Speaker rose while they were speaking. In doing so they prevented the Speaker from being heard without interruption.

13.5 Charge 5

13.5.1 The relevant Honourable Members are guilty of conduct constituting contempt of Parliament in terms of Section 13(c) of the Act in that as a Member of Parliament and during 'Questions to the President' in the National Assembly on 21 August 2014, you willfully failed and / or refused to obey Rule 72 of the Rules of the National Assembly by speaking when they were not called upon to do so by the presiding officer (i.e. the Speaker) and / or without the Speaker recognizing them.

13.5.2 The Honourable Members that have been found guilty of this charge are as follows: The Honourable Shivambu MP, the Honourable Ramakatsa MP, the Honourable Litchfield – Tshabalala, the Honourable Gardee MP and the Honourable Malema MP (5 Honourable members).

13.5.3 The affected Honourable Members did indeed wilfully fail and / or refuse to obey Rule 72. The affected Honourable Members spoke when not called upon to do so by the Speaker and / or without the Speaker recognising them.

13.6 Charge 6

13.6.1 The relevant Honourable Members are guilty of conduct constituting contempt of Parliament in terms of Section 13(a) of the Act in that as a Member of Parliament and during 'Questions to the President' in the National Assembly on 21 August 2014, you contravened Section 7(e) of the Act by creating or taking part in a disturbance within the precincts of Parliament while the House was meeting by, *inter alia*, shouting, and/ or banging on tables, and / or refusing to obey the Speaker's instructions, and / or generally conducting yourself in a grossly disorderly manner, thereby interfering with or disrupting the proceedings of the

House forcing the Speaker to suspend proceedings temporarily, and ultimately to adjourn the sitting for the day.

13.6.2 The Honourable Members that have been found guilty of this charge are as follows:

13.6.2.1 the Honourable Shivambu MP, the Honourable Ramakatsa MP, The Honourable Litchfield – Tshabalala, the Honourable Gardee MP, the Honourable Ndlozi MP, the Honourable Malema MP (i.e. Group A); and

13.6.2.2 the Honourable Louw, the Honourable Mashabela, the Honourable Matiase, the Honourable Maxon, the Honourable Moonsamy and the Honourable Mngxitama (i.e. Group B).

13.6.3 The affected Honourable Members conducted themselves in a grossly disorderly manner. The affected Honourable Members rose one after the other in quick succession, and the conduct of the affected Members built up to a crescendo of activity which included a number of them rising to their feet and addressing the Speaker simultaneously, shouting, banging on tables and / or refusing to obey the Speaker's instructions. By the time that course of conduct as engaged in by the affected Honourable Members reaches its zenith their conduct had reached one of the high - watermarks of gross disorderly conduct or behaviour.

13.6.4 The affected Honourable Members were not engaging in robust or healthy debate. Their conduct was persistent and did not tolerate or permit or allow any other voices of Members, let alone the Speaker, to be heard disagreeing with them. The conduct of the affected Honourable Members does not, by any reckoning, approximate debate.

13.7 Charge 7

13.7.1 The relevant Honourable Members are guilty of conduct constituting contempt of Parliament in terms of Section 13(a) of the Act in that as a Member of Parliament on 21 August 2014, they contravened Section 7(a) of the Act by improperly interfering with or impeding the exercise or performance by the House of its authority or functions by remaining in the Chamber, after the sitting of the House had been temporarily suspended by the Speaker so that you could leave, alternatively, be removed from, the Chamber, in order for the House to continue with its business for that day. Your refusal to leave the Chamber resulted in the House being adjourned for the day.

13.7.2 All twenty of the named Honourable Members have been found guilty of this charge, namely:

13.7.2.1 the Honourable Shivambu MP, the Honourable Ramakatsa MP, The Honourable Litchfield – Tshabalala, the Honourable Gardee MP, the Honourable Ndlozi MP, the Honourable Malema MP (i.e. Group A);

13.7.2.2 the Honourable Louw, the Honourable Mashabela, the Honourable Matiase, the Honourable Maxon, the Honourable Moonsamy, the Honourable Mngxitama (i.e. Group B); and

13.7.2.3 the Honourable Joseph, the Honourable Khawula, the Honourable Matshobeni, the Honourable Mbatha, the Honourable Morapela, the Honourable Nqwenisa, the Honourable Ntobogwana and the Honourable Sonti (i.e. Group C).

13.7.3 The affected Honourable Members remained in the Chamber after the sitting had been temporarily suspended, so that they could leave, alternatively, be removed in order for the House to continue with its business for the day.

13.7.4 The affected Honourable Members to leave the Chamber resulted in the House being adjourned for the day. The affected Honourable Members knew and understood that they were ordered to leave the House, and notwithstanding this, the affected Honourable Members refused to obey the Speaker's instruction to leave the House. That refusal was intentional and deliberate. This is further underscored by the statements of the Honourable Shivambu and the Honourable Malema, those statements made it clear that the affected Honourable Members would not be leaving the House. In point of fact the Honourable Malema expressly informed the Sergeant-at-arms that the affected Honourable Members would not leave the Chamber. It would appear that the only way to avoid any forcible removal and a confrontation (perhaps physical) was to adjourn the proceedings of the House for the day.

14. The evidence that serves before the Committee confirms that the nature of the affected Honourable Members' conduct was very serious indeed. It has been described as unprecedented. It is respectfully submitted that the evidence that serves before the Committee confirms that the cumulative effect of the conduct of the affected Members was so grave that Parliament could not continue with its business on 21 August 2014.

15. The affected Honourable Members have been found guilty of a range of contempt. The serious contempt and its consequences would warrant a sufficiently serious penalty or penalties.

Acknowledgement of wrongdoing and remorse on the part of the named Honourable Members, as well their co – operation with the work of the Committee

16. The Chairperson entered a “not guilty” plea on behalf of each of the named Honourable Members in respect of each charge of contempt of Parliament that they had been charged with.
17. The named Honourable Members have not acknowledged any wrongdoing whatsoever. They have also not shown any remorse for their conduct.
18. The hearing commenced on 7 October 2014. The Honourable Members, save for the Honourable Moonsamy, were present at the commencement of the hearing. On 7 October 2014, the Honourable Members confirmed that they had received the charges, that they had read the charges, that they had understood the charges and that they had no objection to the manner in which the charges were being put to them. The Honourable Moonsamy subsequently confirmed the same.
19. Prior to being requested to enter a plea by the Chairperson of the Committee and after a presentation had been made by the Honourable Malema, the Honourable Members left the venue of the hearing informing the Chairperson of the Committee and the other Members of the Committee that they would play no further part in the hearings.
20. The Committee decided to proceed with the hearing and a guilty plea was entered on behalf of each of the Honourable Members, in accordance with the provisions of the Act as read with the Rules of the National Assembly (8th edition (the Rules)).
21. The Committee continued with the hearing on 7 October 2014, 8 October 2014, 9 October 2014, 15 October 2014, 20 October 2014 and 21 October 2014 without the participation of the named Honourable Members.

22. Whilst the affected Honourable Members could not be compelled to remain and participate in the work of the Committee, one of the consequences of their election is that they have not presented any mitigating factors and circumstances.
23. The lack of acknowledgement of wrong doing and the lack of remorse should appropriately inform the penalty or penalties.

Any previous incidents involving the named Honourable Members

24. Whilst it is the case that the affected Members have not prior to 21 August 2014 conducted themselves in similar fashion in the National Assembly, it is respectfully submitted that this is outweighed by the serious nature and severity of their conduct. That conduct was intentional and deliberate. It is further submitted that notwithstanding earlier cautions on 21 August 2014 and having had time to reconsider their conduct, the affected Members persisted with conduct which was gravely disorderly and contemptuous. The Members also acted in defiance of the Sergeant-at-Arms, conduct itself unprecedented.

The interests of Parliament

25. The interests of Parliament (and the public) are advanced by orderly and robust debate and engagement. It is respectfully submitted that the conduct of the affected Members was destructive of orderly and robust debate and engagement. It is respectfully submitted that the conduct had about it the hallmarks of a designed and concerted effort to, *inter alia*, disrupt the proceedings of the House.

Further considerations

26. The Honourable Shivambu stated the following to the Speaker on 21 August 2014 - "*You won't remove us. We are going nowhere*" (Bundle B, Hansard of 21 August 2014, page 34). This is an indication of the attitude and state of mind of the named Honourable Members.

27. The named Honourable Members were fully aware of the Rules of the National Assembly, and notwithstanding such knowledge, disregarded those rules. The Honourable Shivambu indicated on 21 August 2014 in response to another member of Parliament that "*we have dealt with the issue of the rules, we have got that book as well, we know those things*" (Bundle B, Hansard of 21 August 2014, page 28). The evidence which served before the Committee was that members of Parliament had participated in an "on-boarding" session (i.e. an orientation process) which familiarised them with the Rules of the National Assembly and how they should conduct themselves as members of Parliament. There was also evidence before the Committee that the National Assembly rule book and the National Assembly's Guide to Procedure was available on Parliament's website and that a copy of the National Assembly rule book had been given to members of Parliament.
28. No evidence served before the Committee that there has been previous and comparable incidents such as those which transpired on 21 August 2014 in the National Assembly.

Conclusion - possible penalty or penalties to imposed on the named Honourable Members

29. The Committee is now required to consider which penalty or penalties, if any, it will recommend should be imposed by the House on each of the Honourable Members.
30. In accordance with the provisions of clause 12(5) of the Act, the Committee may recommend the imposition of, and the House may impose, one or more of the penalties referred to in clauses 12(5)(a) to (g) of the Act. It is respectfully submitted that this course of action is appropriate in the circumstances.
31. Further, and in accordance with the provisions of clause 12(9) of the Act, the Committee may recommend the suspension of, and the House may impose

the suspension of, any of the named Honourable Members in terms of clause 12(5)(g) of the Act as they have been found guilty of serious contempt by the Committee and none of the other penalties set out in clause 12(5) of the Act would be sufficient. It is respectfully submitted that this course of action is appropriate in the circumstances.

32. It is respectfully submitted that for the reasons as set out herein, the following penalties are appropriate penalties for the Committee to recommend in respect of the named Honourable Members.

Group A

33. The Honourable Shivambu MP, the Honourable Ramakatsa MP, The Honourable Litchfield – Tshabalala, the Honourable Gardee MP, the Honourable Ndlozi MP and the Honourable Malema MP have been found guilty of a number of charges of contempt of Parliament.

34. Each one of those charges and findings of contempt is serious. Taken together they warrant a penalty that is sufficiently serious. It is submitted that the multiple and deliberate acts of serious contempt warrant an appropriately serious penalty. It is further submitted that anything short of a sufficiently serious penalty will signal that that Rules of the National Assembly, which Rules the Members of the House collectively impose upon themselves, may be ignored, observed only in the breach and transgressed without fear or concern of serious consequence. It is respectfully submitted that such an approach is inappropriate and impermissible.

35. It is submitted that a sufficient penalty in respect of these Honourable Members should be a serious penalty or penalties.

Group B

36. The Honourable Louw, the Honourable Mashabela, the Honourable Matiase, the Honourable Maxon, the Honourable Moonsamy and the Honourable

Mngxitama have been found guilty of two (2) charges of contempt of Parliament. Individually, these two (2) charges are serious. Contempt in the form of creating or participating in a disturbance is in and of itself a very serious form of contempt and would warrant a sufficiently serious penalty or penalties. Taken together with the further contempt of improperly interfering with or impeding the exercise or performance by the House of its authorities or functions by remaining in the Chamber after the sitting of the House had been suspended so that they could leave, the contempt of these members is very serious indeed.

37. It is submitted that an appropriately serious penalty is warranted in the circumstances. The members acted intentionally, deliberately and apparently in concert so as to disrupt the proceedings of the House. No amount of reasonable intervention had the effect of the members reconsidering their conduct.
38. It is submitted that a sufficient penalty in respect of these members should be a serious penalty or penalties.

Group C

39. The Honourable Joseph, the Honourable Khawula, the Honourable Matshobeni, the Honourable Mbatha, the Honourable Morapela, the Honourable Nqwenisa, the Honourable Ntobogwana and the Honourable Sonti have been found guilty of contempt which is serious.
40. Their conduct is however, both cumulatively and in its nature and extent different from that of the other groups of Members. Nonetheless, it is submitted that the contempt of which have been found guilty warrants a sufficiently serious penalty.
41. It is submitted that a sufficient penalty in respect of these members should be a serious penalty or penalties.

Dated at **CAPE TOWN** this **07TH** day of **NOVEMBER 2014**.

R Van Voore,

Attorney

Initiator appointed by the Committee

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CAPE TOWN