

COMMITTEE REPORTS

National Assembly

Report of the Ad Hoc Committee to consider the Report by the President regarding the security upgrades at the Nkandla private residence of the President, dated 11 November 2014

Having considered the report of the President, the reports and correspondence presented before it on the security upgrades at the Nkandla private residence of the President, the Committee wishes to report as follows:

1. INTRODUCTION

The *Ad Hoc Committee to consider the Report by the President regarding the security upgrades at the Nkandla private residence of the President* was established through a Resolution of the National Assembly on 19 August 2014.

The Assembly Resolution of 19 August 2014 read as follows:

“The Chief Whip of the Majority Party moved: That the House -

- (1) notes that a Report by the President of the Republic of South Africa to the Speaker regarding the security upgrades at the Nkandla private residence of the President was tabled on 14 August 2014 (Announcements, Tablings and Committee Reports, p 1026); and
- (2) establishes an ad hoc Committee to -
 - (a) consider the Report by the President;
 - (b) make recommendations where applicable;
 - (c) exercise those powers as set out in Rule 138 of the Rules of the National Assembly that are necessary to carry out its task;

- (d) consist of 11 Members as follows: African National Congress 6, Democratic Alliance 2, Economic Freedom Fighters 1 and other parties 2; and
- (e) report to the House by no later than 24 October 2014."

On 12 September 2014 the following correspondence from the President was also referred to the *Ad Hoc Committee* by the Speaker (see Announcements, Tablings and Committee Reports of Friday, 12 September 2014, p1193):

- (a) A letter, dated 12 August 2014, from the Public Protector to the President of the Republic regarding the report that he submitted to the National Assembly in relation to the security upgrades at his Nkandla residence, and
- (b) A letter, dated 11 September 2014, from the President of the Republic to the Public Protector in response to her letter of 21 August 2014.
- (c) A letter, dated 15 September 2015, from the Public Protector to the President.

Also on 12 September 2014, the Final Report of the Special Investigating Unit (SIU) to the President of the Republic regarding the Prestige Project involving the security upgrading of the private residence of the President situated at Nkandla, KwaZulu-Natal, was referred to the *Ad Hoc Committee* (see Announcements, Tablings and Committee Reports document of Friday, 12 September 2014, p1205).

Following this, at a Multiparty Chief Whips Forum [date to be inserted], the political parties agreed that:

- the Public Protector's Report [Report number 25 of 2013/2014];
- the Report(s) of the Special Investigating Unit established in terms of Proclamation R59, 2013 and the submission of the President thereto; and

- all other relevant information and correspondence would be considered.

The following reports and correspondence therefore served as source documents for consideration by the Committee:

- a) The Inter-Ministerial Security Cluster Task Team Report (Also referred to as the Inter-Ministerial Security Cluster Task Team Report);
- b) The Report of the Joint Standing Committee on Intelligence (JSCI) on the Inter-Ministerial Report; and
- c) The Public Protector's Report entitled "Secure in Comfort";
- b) The Special Investigating Unit's Final Report;

The following Members were appointed to the Committee:

AFRICAN NATIONAL CONGRESS (ANC)

Frolick, Mr CT

Diakude, Ms DE

Kubayi, Ms MT

Motshekga, Dr MS

Beukman, Mr F

Ngcobo, Ms BT

Maseko, Ms LM (Alternate)

DEMOCRATIC ALLIANCE (DA)

Maimane, Mr M

Selfe, Mr J

Breytenbach, Adv G (Alternate)

ECONOMIC FREEDOM FIGHTERS (EFF)

Malema, Mr JS

Shivambu, Mr NF (Alternate)

INKATHA FREEDOM PARTY (IFP)

Singh, Mr N

FREEDOM FRONT PLUS (FF +)

Mulder, Dr CP

In line with Assembly Rule 153 the following Members attended some of the Committee's meetings:

AFRICAN CHRISTIAN DEMOCRATIC PARTY (ACDP)

Swart, Mr SN

CONGRESS OF THE PEOPLE (COPE)¹

Lekota, Mr MGP

Madisha, Mr WM

ECONOMIC FREEDOM FIGHTERS (EFF)

Gardee, Mr SM

Ndlozi, Mr MQ

On 23 October 2014 the Assembly, by Resolution, extended the deadline for the *Ad Hoc* Committee to report to 14 November 2014.

¹ The Congress of the People does not have party representatives on the Committee. COPE and other smaller parties as a collective elected the Honourable Mr N. Singh (IFP) and the Honourable Dr C.P. Mulder (FF+) to represent them in the *Ad Hoc* Committee.

2. COMMITTEE DELIBERATIONS

On 29 August 2014 the Committee convened to elect a Chairperson in terms of the Rules of the National Assembly. However, at this meeting, due to differences of opinion on what constituted the Committee's Terms of Reference, a Chairperson was not elected. The opposition parties were of the opinion that the Resolution establishing the *Ad Hoc* Committee should be amended to reflect that the Committee was to consider, and report on, the Report of the Public Protector.

After consultation amongst all political parties at a special meeting of the Multi-Party Chief Whips Forum of the National Assembly, the Committee reconvened, on 9 September 2014, and elected Mr C T Frolick as its Chairperson.

The Committee convened on the following dates to consider the President's Report and the various reports which served before it as source documents:

- 18 September 2014
- 25 September 2014
- 26 September 2014
- 30 September 2014
- 9 October 2014
- 30 October 2014
- 6 November 2014
- 11 November 2014

At the meeting of 25 September 2014, the Members representing the Congress of the People (COPE), although not Members of the Committee, highlighted the party's objections to the constitutionality of the Committee. All other parties disagreed with the interpretation of the COPE MP's and agreed that the Committee was indeed constitutional. The representatives of COPE then left the meeting stating that the party would follow the proceedings of the Committee, but would not participate in its work.

In the subsequent meeting of 26 September 2014, Members of the Committee could not reach agreement on the methodology to follow in performing its mandated task. The key points of deliberation were whether:

- the findings, recommendations and remedial actions in the Report of the Public Protector were binding and enforceable on other organs of State; and
- any person or persons should be invited to present their reports before the Committee or to provide oral evidence.

In its deliberations the issues of contention between Members of the Majority Party and the Opposition Parties were as follows:

The Opposition Parties held the following position:

- a) The Report of the Public Protector was superior to all other reports;
- b) The Public Protector did not make recommendations – her report, “Secure in Comfort”, stated “remedial actions”;
- c) The proposed remedial actions stated in the Public Protector’s Report, “Secure in Comfort”, were binding and enforceable;
- d) The Committee had to invite persons and parties mentioned in the reports of the Public Protector, the Inter-Ministerial Task Team (Security Cluster), and Special Investigating Unit to appear before the Committee as allowed by Rule 138 of the National Assembly Rules; and
- e) The Committee had to seek a legal opinion from senior legal counsel on the status of the Public Protector Report and whether or not its proposed remedial actions were binding and enforceable on the organs of State.

The Majority Party held the following position:

- a) The Committee’s deliberations should remain focused on the Report of the President;
- b) All the reports had to be treated in an equal manner to avoid casting aspersions on any of the government agencies or structures that dealt with the matter at hand;

- c) The Committee had to consider the following source documents to get a proper understanding of the issues raised in it:
 - the Inter-Ministerial Security Cluster Task Team Report;
 - the Joint Standing Committee on Intelligence Report;
 - the Public Protector's Report; and
 - the Special Investigating Unit Report.
- d) The Public Protector makes recommendations and may state remedial actions;
- e) The proposed remedial actions stated in the Public Protector's Report were not binding and enforceable on other organs of State;
- f) The Committee to first consider the Report by the President and other reports prior to deciding whether or not to call witnesses;
- g) The Committee was not reviewing any reports and it was not opening any inquiry;
- h) The Majority Party listed the ten steps as contained in the Cabinet Memorandum of 2003 as guiding the methodology it would follow.

The Committee could not reach consensus at this meeting on the issue of the methodology to be followed. Members of the Opposition Parties withdrew their participation from the Committee and walked out of the meeting.

Assembly Rule 133 states that:

- (1) A majority of the Members of a Committee constitutes a quorum, subject to sub rule (2).
- (2) A Committee may proceed with business irrespective of the number of Members present, but may decide a question only if a quorum is present.
- (3) When a Committee has to decide a question and a quorum is not present, the member presiding may either suspend business until a quorum is present, or adjourn the meeting.

When the Committee again met on 30 September 2014, it was confirmed (in terms of the relevant Rules) that the Members present formed a quorum. The Committee therefore proceeded with its mandated oversight responsibilities to consider the President's Report and the source documents. The Committee adopted the methodology as contained in (a) - (g) above.

In this meeting the technical staff supporting the Committee presented the commonalities and differences in the findings and recommendations of the source documents that served before the Committee. In focusing on this issue, the Committee also considered the Constitutional role of the President, the Executive, Accounting Officers and officials of the respective departments.

In concluding the meeting of 30 September 2014, the Committee once more invited the opposition parties to return and participate in the on-going proceedings towards finalising the work of the Committee.

Given the nature of the Committee's oversight function in considering the President's Report, the Committee decided that it was unnecessary to call witnesses.

The Committee noted that when the Public Protector submitted his Report to the National Assembly in 2004 (Public Protector's Special Report to Parliament 28 May 2004), the National Assembly established an *Ad Hoc* Committee to deal with the matters.

The Committee noted that, in processing its work, the Ad Hoc Committee of 2004 did not call witnesses to give evidence, but instead considered the contents of the report before it. The Committee therefore applied the principle of precedence (*stare decisis*) and focused on the content of the investigative reports that served as source documents before it, rather than initiating its own in-depth investigation into the matter.

The Committee concluded this meeting by agreeing that a draft Committee report should be prepared for consideration at its next meeting.

On 9 October 2014, the Committee met to consider its draft report. After deliberations, the Committee noted that additional time was required to properly prepare the final report for the Committee's consideration.

The Committee again expressed disappointment at the withdrawal of the Opposition Parties from the deliberations of the *Ad Hoc* Committee. The Committee repeated its call for Members of the Opposition serving on the Committee to return to the Committee to complete the task in line with the House Resolution.

3. OBSERVATIONS

During its deliberations the *Ad Hoc* Committee made the following observations:

The status of the Public Protector's Report, remedial actions, and the High Court (Western Cape) Judgement regarding the Public Protector as ombudsman:

- 3.1. The Committee noted that the outcome in the High Court of South Africa in the matter between the Democratic Alliance (DA) and the South African Broadcasting Corporation (SABC) (Case No. 12497/2014) was of relevance to the matter that it was mandated to consider.
- 3.2. This judgement stressed the importance of the Office of the Public Protector as one of six institutions established by the Constitution to strengthen democracy through their independence, impartiality and the exercise of their powers without fear, favour or prejudice.
- 3.3. The Committee noted that, in addition, the judgement provided clarity with regards to the findings and remedial actions of the Office of the Public Protector as it stated that the "powers and functions of the Public Protector are not adjudicative" and that "a finding of the Public Protector is not binding on persons and organs of state." (p. 32 para 51 of the judgement is made in reference to section 182(1) of the Constitution).

- 3.4. The Committee observed that the above mentioned judgment further stated that the power to take remedial action (as described in section 182(1) of the Constitution) “means no more than that the Public Protector may take steps to redress improper or prejudicial conduct. But that is not to say that the findings of the Public Protector are binding and enforceable or that the institution is ineffective without such powers.” (*Ibid*).
- 3.5. The Committee further noted that the investigative reports produced by the Inter-Ministerial Task Team, Joint Standing Committee on Intelligence, and Special Investigating Unit all contained findings and recommendations, but that specifically the latter, legislatively, could initiate punitive legal action to ensure redress and remedial action.

Control and divisions of responsibility – the necessary financial legislative measures are in place:

- 3.6. The Committee observed that the legal framework that was relevant in the matter before it, consisted variously of policy instruments, legislation and regulation; that is the PFMA, the Ministerial Handbook, and the Cabinet Policy of August 2003 dealing with security measures at private residences of the President, Deputy President, Former Presidents and Former Deputy Presidents (referred to as the “Cabinet Memorandum of 2003”).
- 3.7. The Committee observed that the Cabinet Memorandum of 2003 had as its main consideration the safety of the President and that it did not place any limit on the amount to be spent in effecting upgrades for security purposes (p 29, Inter-Ministerial Security Cluster Task Team Report, December 2013).
- 3.8. The regulatory framework guides the actual processes along which officials operationalise the project(s) and consists of both legislation and practice notes from National Treasury on the one hand, as well as Supply Chain Management Policies of the Department of Public Works on the other hand.

- 3.9. The legislation that gives effect to section 216(1) of the Constitution is the Public Finance Management Act (PFMA) which states that national legislation is required to "establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing-
- a) generally recognised accounting practice;
 - b) uniform expenditure classifications; and
 - c) uniform treasury norms and standards."

Divisions of responsibility:

- 3.10. The Committee noted that Section 96 (1) of the Constitution prescribes that "Members of the Cabinet and Deputy Ministers must act in accordance with the code of ethics prescribed by national legislation".
- 3.11. Section 96 (2) (c) of the Constitution lays out the conduct that "Members of the Cabinet and Deputy Ministers may not use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person".
- 3.12. The PFMA, in giving effect to what the Constitution states it should do, ensures that an important division of responsibility between the political head (President, Deputy President, Cabinet Minister or Provincial Member of the Executive Council) on the one hand, and the administrative head of the department, that is, the Director-General or Head of Department of a national or provincial department exists.
- 3.13. The political head - referred to as the Executive Authority - held the responsibility for matters of policy; while the administrative head - referred to as the Accounting Officer - held the responsibility to implement the department's budget and human resources to translate policy into concrete outcomes.

- 3.14. The Executive Authority remains accountable to Parliament for achieving policy matters and outcomes, while the Accounting Officer is accountable for the manner in which he or she utilised the budget and human resources to reach those outcomes.
- 3.15. The Committee observed that an important aspect of the PFMA was the establishment and maintenance in each department of government, of an effective and transparent financial accountability system.
- 3.16. In the matter before the Committee, the reports before it contained evidence that a Roster System through which service providers were contracted, the Special Bid Adjudicating Committee, the Regional Bid Adjudicating Committee, and the Supply Chain Management (SCM) policies were in fact in place and were supposed to be applied in a uniform and transparent manner. (p16, paragraphs 52 and 54, of Department of Public Works (DPW) SCM policy).

Systems of financial control are constitutionally prescribed:

- 3.17. The Committee observed that the PFMA gives appropriate effect to section 216 of the Constitution as it places on Accounting Officers the responsibilities (sections 38 to 44 of the PFMA) to not only establish, but to maintain systems of financial accountability; Accounting Officers are therefore responsible for:
- a. the operation of basic financial systems, internal controls in both the departments and the entities that fall under their control;
 - b. to ensure that budgets are not overspent;
 - c. to report on a monthly and annual basis;
 - d. to publish annual reports in a prescribed manner which should include
 - e. performance reporting.

- 3.18. The Committee observed that Chapter 10 of the PFMA states clearly that Accounting Officers face strict disciplinary sanctions, including dismissals where they do not adhere to the prescripts of the PFMA.
- 3.19. The Committee observed that in her Report the Public Protector states that there were instances where the Executive Authority strained too close to the areas of responsibility of the Accounting Officers and the administration. (Public Protector's Report, p. 61).
- 3.20. The Committee observed that the residences of families that had to be resettled for security purposes, were constructed on land that belongs to the Ingonyama Trust. The President occupies the land through a certificate issued by the local *inkosi* termed "Permission to Occupy". (President's Report to Speaker of the National Assembly, 14 August 2014, p 4; Public Protector's Report p 425 and 426)
- 3.21. The Committee observed with concern that the investigating team of the SIU reported that in spite of the project to secure it, the private residence of the President remained insecure. (SIU Report, p 244).

The rural character of Nkandla affected the provision of security (all information based on the President's Report to the Speaker of the National Assembly, and security assessments as reported on by the JSCI and the Inter-Ministerial Security Cluster Task Team):

- 3.22. The unique rural conditions of the area and the geography of Nkandla had a marked influence on ensuring the security of the sitting President.
- 3.23. In providing security, government must make the necessary physical modification to the particular physical and socio-economic circumstances within which the President's private residence is situated.

- 3.24. The President is the Commander-in-Chief of the Armed Forces and he and his dependents must be provided with:
- a. health care by the South African National Defence Force (SANDF);
 - b. protection by the South African Police Services, (SAPS) supported by the SANDF; and
 - c. transport by the SAPS and the SANDF.

Material conditions at Nkandla that influenced security upgrades:

- 3.25. The President's private residence is geographically located in a deep rural area that is characterised by a low level of infrastructural development with statistics showing that Nkandla rates in the top five poorest areas in the province of KwaZulu Natal (KZN).
- 3.26. Roads are of low quality which influences security due to the need for access roads that enable staff who are responsible for the President's health, protection and transport to quickly reach, and in cases of emergency, evacuate the President and his dependents.
- 3.27. The terrain is steep and mountainous which make any form of transport difficult – especially in bad weather; due to the situation of Eskom pylons, even transport by air (helicopter) has proven to be dangerous.
- 3.28. Health care facilities in Nkandla are too far from the President's residence.
- 3.29. There is a general lack of bulk water and electricity supply, and communication infrastructure that negatively influences the socio-economic condition of the area.
- 3.30. The municipality of Nkandla and surrounding areas has, over a number of years, experienced high political tension with sporadic threats and warnings of a resurgence of political violence.

- 3.31. Rural villages are soft targets for criminals and the security assessment by the Departments of Police and Defence and Military Veterans concluded that Nkandla was a high risk area.

A difficult terrain on which to construct and ensure security:

- 3.32. The land on which the President's private residence has been developed lies at a gradient of 40 to 70 degrees which makes it even more susceptible to flooding during storms.
- 3.33. Due to this gradient all construction activities such as earthworks and landscaping had to include fortifications, buttresses, and paving for proper water-flow and storm-water drainage.
- 3.34. To ensure general security, and a swift flow of traffic in case of emergencies, all structures that could have slowed down traffic or that could have been used as hideaways and strategic attack positions by possible assailants, had to be removed and cleared.
- 3.35. Where structures and other residences had to be removed and cleared, they had to be re-erected elsewhere.

The private expansion and improvements to the Zuma homestead:

- 3.36. In 2008, prior to being elected as President, the Zuma family started expanding and improving the homestead.
- 3.37. At the time of the President's inauguration in 2009, the three houses on which work had started were at various stages of construction; the first house was at roof level with work on the roof at the first stages; the second house was also at roof level just ready for the roof to be installed; and the third house was just below roof level (Inter-Ministerial Security Cluster Task Team Report, p 8).
- 3.38. The Zuma family had appointed its own architect, contractors and engineers for the project and no state funds were used to improve the homestead.

- 3.39. In the Inter-Ministerial Security Cluster Task Team Report, the Department of Public Works made it clear that the Department “did not pay any contractor for the construction of the houses of the President.” (p 31 Inter-Ministerial Security Cluster Task Team Report).

The introduction of Mr Makhanya

- 3.40. The President introduced Mr Makhanya to the DPW team. This was done because there were already advanced construction taking place at the President’s homestead. The President notes that he “...facilitated a meeting between this same grouping of persons and Mr Minenhle Makhanya, the consultant who was already engaged with building work at my home so that they would be apprised of the pre-existing plans for construction at the residences and that there would be as little disruption as possible to the work commissioned.” (President’s Report to the Speaker, 14 August 2014, p 7, para 31).

Regarding allegations that the President’s brothers may have benefitted from the prestige project:

- 3.41. The Public Protector (para 10.5.1, p 431) found no evidence that the President’s brothers benefitted from the prestige project and contractual arrangements that involved the security upgrades at his private residence at Nkandla.
- 3.42. We equally observe that despite the above finding, in para 9.3.2 and 9.3.3. on p 408, the Public Protector continues to allege that, “There is no question that his family benefitted from these as they now form part of the President’s estate”. The question that arises is whether or not the family has and will continue to unduly benefit from the luxurious items not recommended in the security evaluation”.

The Committee holds a different view.

Steps taken by the President to deal with the allegations of maladministration and wastage related to the project to secure his private residence at Nkandla:

- 3.43. Following sustained media allegations of maladministration and wastage that the President used State funds to build his private residence at Nkandla the President took a number of steps to deal with the matter;

- 3.44. These actions by the President as Head of the national executive (Section 83 of the Constitution), took place in addition to the investigation that the Public Protector undertook and reported on in “Secure in Comfort” dated 19 March 2014;

- 3.45. Each of the investigations resulted in reports that included findings and remedial actions that cannot be ignored;

- 3.46. The investigations and reports can be recorded chronologically, as follows:
 - a. On 5 October 2012, the Minister of Public Works announced that an investigation into allegations of maladministration and wastage of public resources would take place by a specially convened Inter-Ministerial Security Cluster Task Team;
 - b. On 20 December 2013, the President signed Proclamation R 59 of 2013 for the Special Investigation Unit (SIU) to investigate the matter and where relevant, institute civil action to recover any state funds that might have been lost due to possible irregular activities;
 - c. The Inter-Ministerial Security Cluster Task Team reported on its investigation on 27 January 2013;
 - d. The President, in his letter dated 2 April 2014 addressed to the Speaker of the National Assembly, noted the Report of the Public Protector its findings and recommendations.

- e. The President in this letter stated that he had requested the SIU to provide him with a provisional report of its investigation as soon as possible, in order to assist him in providing the National Assembly with a further final report (*Ibid*).
- f. On 14 August 2014, the President provided a further report to the National Assembly on the efforts he and the government as a collective had made and were busy making to ensure that whatever state funds might have been lost due to the security upgrades, could be identified and recovered, and that persons who were implicated through evidence, were brought to book.

With regards to whether the President and his dependents benefitted unduly as a result of the security upgrades, the committee noted that:

- 3.48 The security list developed by SAPS and relied upon by the Public Protector in her report, was not developed in accordance with Step 2 of the Cabinet Memorandum of 2003. There was no evidence that it was conducted together with SSA or that it was submitted to the Inter-Departmental Security Coordinating Committee (para 9.1.1.5, p 389, Public Protector's Report). The Committee could thus not rely on the authenticity of this list.

Commonalities across reports on non-compliance with relevant legislation that led to irregular actions and massive cost escalations:

- 3.49 There was agreement across investigative reports on non-compliance with the legislative framework, supply chain management regulations, treasury regulations as well as unnecessary cost escalation.
- 3.50 The reports of the Inter-Ministerial Task Team, the Public Protector and the Special Investigative Unit indicated that costing escalations inflated the project costs in a irregular manner to an amount in excess of R216 million.

- 3.51 Having read and perused the investigative reports, there was agreement in the initial meetings of the Committee between all political parties that the value of the existing structures and work that was performed had been grossly inflated and not worth the amount that was spent in excess of R216 million.
- 3.52 The table that follows shows general agreement across the reports of the Inter-Ministerial Task Team, the Public Protector and the Special Investigating Unit on the issues of non-compliance, unnecessary cost escalations and irregular activities that took place in this project.

Comparative findings across investigative reports		
Public Protector	Security Cluster Task Team	SIU
August 2003 Cab Memo	Same	Same
Area declared National Key Point	Same	National Key Point Act not applicable to this project & investigation
Violation of National Key Point	Same	Not dealt with - found to be irrelevant to the investigation – instead applied the Cabinet Memorandum dated August 2003.
Non Compliance with PFMA, National Treasury Regulations and DPW Supply Chain Management Policy	Same	Same
Project improperly budgeted for	Same	Same
Project improperly managed	Same	Same
Non-compliance with Government Immovable Asset Management Act (GIAMA)	Same	Not applicable
Excessive cost escalations	Same	Same
Department of Public Works officials violated PFMA, NT Regulations and DPW SCM	Same	Same
No public funds were used to build the President's private residence	Same	None
Failure to ensure security clearance for service providers	Same	Not applicable
Failure to comply with National Treasury regulation 16A	Same	Same
Funds transferred from other underspending programmes (Inner City Regeneration and Dolomite) of DPW to fund Project 1	Same	Same

Recommendations		
National Key Point Act should be reviewed	Same	Not applicable
DPW to take steps against officials that violated legislation and policies	Finding of Task Team	Not applicable
Review of SCM to Regional Offices	Same	Not applicable
DPW to apportion costs to SAPS and DD	Same	Not applicable
Development of policy on prestige projects is needed	Same	Not applicable
Lease agreement needed between DPW and Ingonyama Trust	Same	Not applicable

Evidence in the investigative reports of control ceded to the private professional team:

- 3.53 The reports document a process amounting to dereliction of duty with control over the design, costing and the procurement of service providers ceded to the private professional team; this was a process in which DPW's professional team systematically and irregularly ceded control of the budget and the procuring of service providers to the private professional team, namely Makhanya Architects and R&G Consultants.
- 3.54 DPW's cost control system that normally takes place through the Special Bid Adjudicating Committee (SBAC), the Regional Bid Adjudicating Committee (RBAC) and the Supply Chain Management (SCM) was corrupted once the acting Director-General, the Deputy Director-General of Key Accounts Management, the regional manager of the Durban Regional Office, and project manager increased the RBAC cost limitations of R500 000 to an unlimited amount.
- 3.55 This meant that the Makhanya-R&G Consultants combination was able to procure service providers with access to state funds that had no limit set to it through the normal cost control system.

- 3.56 The investigative reports affirm that the Makhanya-R&G Consultants combination continued to do the design and costing on behalf of the DPW's professional team.
- 3.57 The reports provide evidence that Mr Makhanya, the architect of the private renovations at the President's private residence at Nkandla, became the Principal Agent (PA) of the project.
- 3.58 The SIU report further points out that the appointment procedure of the Principal Agent, and the manner of procuring services by ceding control to the Principal Agent, were evidently irregular (para 66 to 70 pp 87 to 89, and para 30, 31, and 32, pp 198 and 199 provide evidence of this).
- 3.59 The SIU report further provided evidence that the ceding of total control into the hands of the Principal Agent, took place in combination with the removal of control of DPW's SCM department. (*Ibid*).
- 3.60 The reports stated that, in this capacity, Mr Makhanya acted on behalf of the DPW, and that he would, in designing and procuring services on behalf of the DPW, ensure the prudent use of project funds.
- 3.61 The Committee observed that as the Principal Agent, Mr Makhanya had a duty to provide regular reports to the DPW Professional Team on matters of design, the procurement of services, and the costing of all parts of the project. (pp 174 and 175 of Public Protector's Report, the SIU report, para 22, 23 and 24, p194 and 195).
- 3.62 The Committee observed that the reports refer to the DPW Professional Team expressing its concerns that the Principal Agent did not prepare and send monthly reports to the DPW professional team (Public Protector's Report, para 6.43.3, p 175 and SIU report, para 66, p 87 and 88).

- 3.63 The reports unanimously refer to evidence collected from persons involved that the operationalisation of the project by the Department of Public Works constituted non-compliance with the Public Finance Management Act (PFMA), National Treasury regulations and the department's own Supply Chain Management policies. The SIU report goes as far as referring to the DPW Project Managers as flouting the SCM policy and going so far as "making the rules as one went along". (para 28, p 197).

Applicable legislation and policy:

- 3.64 The Committee noted that the Public Protector's report stated that "the authority to implement security measures at the private residence of the President is primarily conferred by the Cabinet Policy of 2003" (p 427).
- 3.65 However, because National Key Points Act (Act 102 of 1980) was "inexplicably dragged in halfway through the implementation of the Nkandla Project," it was her opinion that its provisions "had to be complied with" (Public Protector's Report, p 427, para 10.1.3).
- 3.66 The Committee noted that the Special Investigating Unit (SIU) expressed a view that the upgrades were not installed in terms of the National Key Points Act, but in terms of the Cabinet Memorandum of 2003.
- 3.67 The Committee observed that the Cabinet Memorandum of 2003 was adopted by Cabinet after the promulgation of PFMA, and the steps contained in it are aligned to the provisions of the PMFA.

3.68 The Committee observed that the Cabinet Memorandum of 2003 stated the following steps to be followed when security measures had to be installed at the private residence of a President, former President, Deputy President or former Deputy President:

- a. A request from the President followed by an Evaluation by the South African Police Service (SAPS) based on a threat analysis by the State Security Agency (SSA) of structures that the State shall construct to secure the safety of the President and his immediate dependents including their personal property.
- b. Formulation by SAPS and the SSA of a proposal on appropriate measures (staff and structures) to be put in place by the State. These measures shall be submitted to the Interdepartmental Security Coordinating Committee (ISCC) for technical assessment.
- c. The DPW prepares a cost estimate based on the proposed structural security measures and submit this to the SAPS.
- d. The SAPS then advises the Minister of Safety and Security on the proposed security measures and the related costs.
- e. The Minister of Safety and Security approves and communicates such measures to the President for consent.
- f. SAPS submits measures as approved by the President to the DPW which approaches the Minister of Public Works for approval of costs of the structural security measures;
- g. Structural security measures that were approved are then implemented as follows:
 - (i) SAPS personnel and related costs provided and funded by SAPS;
 - (ii) Structural additions and amendments to the property is made, and thereafter maintained, from the DPW budget;
- h. The security situation at the President's private property should from time to time be revisited by SAPS to ensure continued security assessments and threat analyses.

- i. These assessment reports may from time to time necessitate up or down grades or termination depending on the dynamic security requirements of the political principal.
 - j. Where downgrades or termination takes place, any permanent structures become the property of the owner on which said structures were erected who shall then maintain them. (Inter-Ministerial Security Cluster Task Team Report pp. 28 and 29).
- 3.69 The Committee observed that only two of the above steps as set out in the Cabinet Memorandum of 2003 were implemented:
- The two security assessments were done by SAPS (Public Protector's Report p 389), and
 - The DPW cost estimates was done (SIU Report, p 240, para 34).

4. FINDINGS

With regards to the legislation and regulation that guided the security upgrade project, the committee finds that:

- 4.1. The Cabinet Memorandum of 2003 is the appropriate policy document that should have guided the process of securing the private residence of the President;
- 4.2. The National Key Points Act of 1980 was not the applicable piece of legislation that guided the security upgrades of the President's residence at Nkandla.
- 4.3. Neither the National Key Point Act nor the Cabinet Memorandum of 2003 requires the residence to be declared a National Key Point before security upgrades can be effected. The residence was declared a National Key Point after the project started.

- 4.4. It seems as if there was a lack of oversight by the relevant Executive Authority (relevant Ministers) to ensure the proper departmental co-ordination and implementation in compliance with the Cabinet Memorandum of 2003.
- 4.5. From the source documents, it appears as if regular security assessments, as stated in the Cabinet Memorandum of 2003, were not performed by the South African Police Services (SAPS).
- 4.6. The SIU, using the security requirements as set out in the security assessment reports of the SAPS and SANDF, issued a considered view of concern that requires urgent attention; in the final two points of its report (para 46 and 47 on pp 247 and 248), it places urgency on the need for further security assessments by security experts from the State Security Agency (SSA), SAPS and the SANDF; cited here in part, it reads as follows:

“during the inspection in loco, the investigating team noted a number of matters of concern relating to the upgrades that have been effected. ... having regard for what was produced under Makhanya’s stewardship of the project and measuring it against what the security assessment reports set out as requirements, in our respectful view, a further review by SAPS should be undertaken as soon as possible.”

With regards to initiation of security upgrades at the private residences of the President, Deputy President, former Presidents and former Deputy Presidents, the committee finds that:

- 4.7. It is common cause that security upgrades had to be effected at the President’s private residence at Nkandla.
- 4.8. The Public Protector (p 427, para 10.1.1.) and the Special Investigating Unit (pp 68, 69, and 189) both reported that the Cabinet Memorandum of 2003 is the authority for implementing security measures at the President’s private residence.

The Public Protector states as follows:

"However, no evidence has been submitted or found indicating that the Presidency requested the SAPS and State Security services to consider securing the private residence of the President, yet this is the trigger mechanism stipulated in paragraph 8.1.2 (b) (i) of the Cabinet Policy of 2003." (p 20, para 9, Public Protector's Report)

In the light of the aforementioned comments by the Public Protector, it is clear that the President did not request the upgrades.

- 4.9 The Public Protector further states that *"However, I was persuaded by the submissions by various representatives of the State that the normative process is not to wait for a request from the Presidency. I was advised that the action is taken to provide immediate basic security while commencing a process of conducting a comprehensive security evaluation as soon as a President is elected."* (p 20, para 10, Public Protector's Report).

The President in his report to the Speaker states that:

"25. In 2009 I was appointed as President of the Republic. Immediately upon my inauguration, members of the security cluster engaged with me regarding security requirements at my homestead which are commensurate with a Head of State of the Republic."

In view of the above, the Committee finds that the project to secure the President's private residence was correctly initiated.

- 4.10 The President in his Report to the Speaker of the National Assembly indicates as follows:

"30. In the course of the engagements with the security cluster, I initially met with the then Minister of Public Works, Mr. Geoff Doidge, senior SAPS officials and other government officials at my homestead in a consultative process regarding improved security due to my occupying the office of President of the Republic".

The President further states that:

"32. From time to time I received briefings both formally and informally from the various Ministers engaged with the security enhancements. I was advised at some stage of the need to declare the homestead as a National Security Key Point. Whilst I took no exception to such declaration, I was not intimately involved with the finer details".

Whilst the President may not have requested the security upgrades, it is certain that he became aware of them.

- 4.11 It is, however, important to note that the reports contain no evidence that the President in any manner influenced the Executive Authorities or officials to act in ways that may suggest that they should have acted irregularly while securing his private residence at Nkandla.

With regards to the appointment of Mr Makhanya and the Private Professional Team, the committee finds that:

- 4.12 Those officials who were responsible for Mr Makhanya's later appointment as Principal Agent knew the requirements of the legal, regulatory, and supply chain management framework, but did not follow these important prescripts to the letter and therefore it can be alleged that they acted irregularly.
- 4.13 The Private Professional Team was appointed in an irregular manner and the ceding by the DPW officials of their responsibilities to Makhanya and R&G Consultants allowed for "scope creep" and massive irregularities that saw costs soar to in excess of R216 million as highlighted by both the Public Protector's and the SIU reports.
- 4.14 There was gross negligence on the part of the senior officials of the Department of Public Works. The officials who have acted outside of the legal and regulatory financial framework exposed themselves to the consequences as prescribed in the relevant legislation that gives effect to section 216 of the Constitution, which is the Public Finance Management Act (PFMA), National Treasury's Practice Notes, and the DPW's Supply Chain Management Policies.

- 4.15 It appears from the Public Protector's Report that the former Minister and Deputy Minister of Public Works "were at some stages involved in the implementation of the Nkandla project. The involvement albeit for a short period of time appears to have created an atmosphere that was perceived as political interference or pressure, although the evidence does not show any such intent on their part" (Public Protector's Report p 435 para 10.7.1.1.).
- 4.16 The National Key Points Act of 1980 was erroneously applied to deal with the security requirements of the President.
- 4.17 The oversight over the implementation of the 2003 Cabinet Memorandum is the responsibility of the relevant Members of the Executive Authority.

Systems of financial control are constitutionally prescribed

- 4.18 The measures of financial control were flouted that transparency and control was not evident in the manner in which the project was implemented.

With regard to efforts of the President to investigate allegations of maladministration and wastage in the prestige project involving security upgrades at his private residence at Nkandla, the Committee finds that:

- 4.19 The Public Protector alleges that the President failed to act to protect state resources and that this failure constituted a violation of paragraph 2 of the Executive Ethics Code. (Public Protector's Report, p 439 para 10.10.1.6)
- 4.20 The information before the committee shows that the President as Head of the Executive instituted the following actions:
- On 5 October 2012, the Minister of Public Works announced that an investigation into the allegations would take place by a specially convened Inter-Ministerial Security Cluster Task Team. This Task Team would, in all likelihood, have been appointed after consultation with the President.

It is inconceivable that a Task Team would have been appointed without the President being aware of its appointment:

- On 20 December 2013, the President signed Proclamation R, 59 of 2013 for the Special Investigating Unit (SIU) to investigate the matter and where relevant, institute civil action to recover any state funds that might have been lost due to possible irregular activities;
- The Inter-Ministerial Security Cluster Task Team reported on its investigation on 27 January 2013;
- Once the Public Protector's Report, "Secure in Comfort" was made public on 19 March 2014 and was submitted to the National Assembly by the President. The President, adhering to Chapter 9 of the Constitution, noted her report, its findings and recommendations and responded to it through a letter to the Speaker of the National Assembly, on 2 April 2014 (Announcements Tablings and Committee Reports document, p 2418);
- The President in this letter stated he requested the SIU to make a provisional report of its investigation available so that he could respond more fully to the report of the Public Protector (Announcements Tablings and Committee Reports document, p 2419);
- On 14 August, 2014, the President reported to the National Assembly on the efforts he and government as a collective is making to ensure that whatever state funds might have been lost due to the security upgrades, could be identified and recovered, and that persons who were implicated through evidence, were brought to book.

4.21 In light of the above points, the suggestion that the President did not act, is not correct.

With regards to whether the President and his dependents benefitted unduly as a result of the security upgrades, the Committee finds that:

4.22 The Committee finds that the security list developed by SAPS and relied upon by the Public Protector in her report, was not developed in accordance with Step 2 of the Cabinet Memorandum of 2003.

Step 2 of the Cabinet Memorandum of 2003 requires a formulation by the SAPS and the SSA of a proposal on appropriate security measures to be put in place by the State at the President's private residence. These measures must thereafter be communicated to the Interdepartmental Security Coordinating Committee (ISCC) for technical assessment.

- 4.23 In view of the fact that the list compiled by the SAPS was not developed in accordance with the Cabinet Memorandum of 2003, the Committee could not rely on the list.
- 4.24 It is common cause that the Public Protector is not a security expert. The Cabinet Memorandum of 2003 outlines ten steps to be followed when security measures are to be installed at the private residences of a sitting President, Deputy President, former Presidents and Deputy Presidents. All the Reports prepared on the security upgrades at the President's private residence are unanimous that most of the aforementioned steps were not complied with.
- 4.25 A Senior Parliamentary Legal Adviser provided a legal opinion to the Committee on undue enrichment and arrived at the following conclusion:

"Therefore, in my view it would be premature for the Committee to make a finding of undue enrichment prior to the matter having been attended to by the relevant security experts consistently with the Cabinet Memorandum of 2003".

The Committee concurs with this legal advice.

With regards to the ownership of the land, including the structures and amenities that were constructed on it, the committee finds that:

- 4.26 The President's report to the Speaker of the National Assembly provides clarity on the issue of ownership and occupation of land in question. Paragraph 11 of the President's Report reads as follows:

"My family homestead is located some 24 kilometers south of Nkandla town centre. The land on which it is situated is

owned by the Ingonyama Trust, the legal entity that owns traditional land and is administered by His Majesty King Goodwill Zwelithini Ka BhekuZulu. Together with my family, I occupy the land through a certificate issued by the local inkosi termed Permission to Occupy”.

- 4.27 It is evident from the source documents before the committee that both pieces of land where the security upgrades took place belong to the Ingonyama Trust and that the Zuma family occupies one of the pieces of land.

With regards to the question of whether the President was in violation of the Executive Members Code, the Committee finds that:

- 4.28 There were several allegations about the President, amongst others that:
- He lied to Parliament when he said Government did not build his house;
 - Government build a spaza shop for Mrs Zuma;
 - Family benefited from the project (President’s brother)

The Public Protector in her Report has noted that:

“President Zuma improperly benefited from the measures implemented in the name of security which include non-security comforts such as the Visitors’ Centre, such as swimming pool, amphitheater, cattle kraal with culvert and chicken run”. (para 10.5.3, p 431)

The Public Protector cleared the President in all these serious allegations (para 10.5.1, p 431) except that she found that there were according to her, *“non- security related items that were erected or built which the President and his family materially benefited”*. (Public Protector’s Report, p 431, para 10.5.1. and p 432, para 10.5.4.).

- 4.29 In the judgment of the Democratic Alliance v The South African Broadcasting Corporation Limited and Others (Case No: 12497/2014) WC, High Court Judge Schippers referred to the nature and extent of the powers of the Public Protector and stated as follows:

“(51) Further, unlike an order or decision of a court, a finding by the Public Protector is not binding on persons and organs of state. If it was intended that the findings of the Public Protector should be binding and enforceable, the Constitution would have said so”.

- 4.30 Regarding the above, the Committee thus finds that the Constitution, section 167, (4)(e) specifies that “only the Constitutional Court may decide that Parliament or the President has failed to fulfil a constitutional obligation.”

5. RECOMMENDATIONS:

With regards to non-compliance with relevant legislation, policy instruments and regulations that led to irregular actions and massive cost escalations, the committee recommends that:

- 5.1 The President must ensure the implementation of all measures, as outlined in his final Report on the upgrades at his Nkandla private residence to the Speaker of the National Assembly (Announcements, Tablings and Committee Reports, 1026, 14 August 2014).

However, the Committee is of the considered view that the Cabinet Memorandum of 2003 is applicable and not the National Key Points Act (102 of 1980). A report must be made available to Parliament within three months.

- 5.2 The President should consider whether any Member(s) of the Executive Authority failed to implement the provisions of the Cabinet Memorandum of 2003, either through complacency or negligence in the execution of their duties, and, if necessary, take appropriate action.

- 5.3 The President should note the instances where the Executive Authorities i.e. the former Minister and Deputy Minister of Public Works did not act according to the prescripts of the PFMA that sets out precise divisions of responsibility between the Executive Authority and the administration, and, if necessary, take appropriate action.
- 5.4 The Cabinet must strengthen efforts to ensure greater co-ordination of strategic projects pertaining to the security of the President, Deputy President, former Presidents and former Deputy Presidents.
- 5.5 All persons responsible for the loss of state funds should be held accountable and the law should take its course. The committee fully supports the measures that are being implemented by the Special Investigating Unit (SIU) and the relevant authorities.
- 5.6 The Department of Public Works should strengthen its supply chain management processes and key accounts management branches, and include as part of this process, precisely set time frames and cost limits for prestige projects and report to the Portfolio Committee on Public Works within three months.

With regards to the structures and amenities that were constructed on the land adjacent to the Zuma homestead that belongs to the Ingonyama Trust, the committee recommends that:

- 5.7 The relevant Executive Authority should discuss, at the appropriate time, the post-tenure arrangements with the relevant local, provincial and national authorities to facilitate the future use of such structures and amenities by the local communities.
- 5.8 The Department of Public Works, should ensure that the necessary consultations take place with the state security departments so that proper security assessments regularly take place to ensure the ongoing security of the President, Deputy President, former Presidents and former Deputy Presidents and their dependents after they leave office.

With regards to whether the President and his dependents benefitted unduly as a result of the security upgrades, the committee recommends that:

- 5.9 The Committee recommends that the matter of what constitutes security and non-security upgrades at the President's private residence be referred back to Cabinet for determination by the relevant security experts in line with the Cabinet Memorandum of 2003. Cabinet must report back to Parliament on the steps taken to give effect to this recommendation within three months.

With regards to the legislation and regulation that guided the security upgrade project, the committee recommends that:

- 5.10 Policy and regulatory gaps in the current legislative and regulatory framework relating to securing the private residences of political office bearers requires urgent attention to avoid further possible waste of state resources.
- 5.11 A comprehensive review of the National Key Points Act (102 of 1980) should be undertaken to ensure that a new piece of legislation that is relevant to the current Constitutional and Legislative dispensation is promulgated.
- 5.12 The Cabinet Memorandum of 2003, and related regulations such as the Ministerial Handbook must be reviewed by Cabinet;
- 5.13 A technical team of qualified security experts from the State Security Agency (SSA), the South African Police Services (SAPS) should undertake an evaluation of the existing security features at the private residence of the President at Nkandla to assess whether the implemented security features are secure, and to evaluate the concerns raised by the SIU report. The outcome of this evaluation must be reported to Cabinet and Parliament within three months.

- 5.14 All contractors involved in projects that are focused on security upgrades of senior public office bearers, should in future be properly vetted by the relevant security agencies and should comply with the construction industry building standards as set out in the policies and regulation of the Department of Public Works.
- 5.15 The relevant Executive Authorities, after doing the necessary assessment with security experts should, in future report to Cabinet and the Parliament on the implementation of security upgrades of Prestige Projects. Regular reports as per the relevant legislation should be made to the Joint Standing Committee on Intelligence of Parliament.
- 5.16 A private home of the President and the Deputy President that is used for official government accommodation should qualify for the necessary security installations and security improvements.

Report to be considered.

Mr. C T Frolick, MP

Date:

Chairperson

Report of the Powers and Privileges Committee of the National Assembly on the hearing into allegations of conduct constituting contempt of Parliament by members of the National Assembly

1. Referral

On 26 August 2014, the Speaker of the National Assembly referred “an incident of grave disorder in the House (sic)” to the Powers and Privileges Committee (the Committee) for inquiry. The incident, involving 20 members of the National Assembly, took place on 21 August 2014, during Question Time to the President.

In her referral letter, the Speaker requested the Committee to deal with the issue as a matter of urgency and with due regard to the Rules of the National Assembly and the Schedule to the Rules, and to submit to the National Assembly a report on its findings and recommendations in terms of Rule 194(2)(b).

2. Mandate

Rule 191 of the National Assembly Rules establishes the Committee as required by section 12(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No. 4 of 2004 (the Act). The Committee is mandated by section 12(1) of the Act to inquire into and pronounce “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.”

Furthermore, section 12(3) of the Act requires the Committee to inquire into the matter in accordance with a procedure that is reasonable and procedurally fair, and table a report on its findings and recommendations in the National Assembly.

3. Membership of the Committee

3.1 The Committee was constituted as follows-

Chairperson: B L Mashile (ANC)

R M Mdakane (ANC)

M R M Mothapo (ANC)

J D Kilian (ANC)

J Moloi-Moropa (ANC)

C Nqakula (ANC)

A Lotriet (DA)

S Esau (DA)

NF Shivambu (EFF)

M A Mncwango (IFP)

M L Filtane (UDM)

3.2 Alternate members of the Committee-

M Booи (ANC)
B T Bongo (ANC)
S Luzipho (ANC)
N Mthembu (ANC)
K Litchfield-Tshabalala (EFF)
W M Madisha (COPE)

3.3 Members of the Committee present at the Hearing were-

Chairperson: B L Mashile (ANC)
M R Mdakane (ANC)
M Booи (ANC)
BT Bongo (ANC)
M R M Mothapo (ANC)
J D Kilian (ANC)
A Lotriet (DA)
S Esau (DA)
D L Twala (EFF)
M A Mncwango (IFP)
M L Filtane (UDM)

Honourable Shivambu and Litchfield-Tshabalala could not represent their party at the hearing as they were part of the affected members of the National Assembly who were charged. Initially, the party was represented by honourable A M Matlhoko, who was subsequently replaced by honourable D L Twala. Honourable Twala walked out of the proceedings on 30 October 2014.

4. Initiator

The Committee met on 4 September 2014 and resolved to appoint an Initiator in terms of item 5 of the Schedule to the Rules. Three nominations were proposed and considered by the Committee. On the same day, the Committee resolved to appoint Mr Randal Van Voore, an attorney with the law firm Bowman Gilfillan, as the Initiator.

In terms of the Schedule, the Initiator presents the evidence regarding the allegations against the affected members. The evidence presented to the Committee took various forms, including oral evidence by witnesses, documentary evidence and audio-visual recordings.

5. Notice

In terms of the Schedule, charges were finalised against the affected members and notices containing the charges were served on the affected members as follows:

- notices were emailed by the secretariat to both the personal and parliamentary email addresses of the affected members;
- attempts were made by the Protection Services Unit of Parliament to hand-deliver the notices to the affected members; and
- notices of six (6) of the affected members were delivered by the Sheriff of the High Court in line with item 2 of the Schedule.

6. Meetings of the Committee

The Committee convened to hear the allegations of contempt of Parliament against the 20 affected members on the following dates: 7, 8, 9, 15, 20, 21, 28, 30 October 2014 and 3 November 2014.

The Committee also met on 7 November 2014 to consider aggravating and mitigating factors before it considered appropriate penalties. The Committee held its last meeting on 10 November 2014 to adopt the Report.

7. Hearing into allegations of contempt of Parliament

For purposes of the hearing, the 20 affected members were categorised into three groups (A, B & C) in terms of the number of charges leveled against them. To this end, the affected members in Group A faced between four and seven charges, Group B two charges and Group C one charge respectively. In relation to the six

affected members in Group A, the hearing into allegations and charges of contempt were initially scheduled for Tuesday, 30 September, Wednesday, 1 October, and Thursday, 2 October 2014. The six members were honourable N F Shivambu, R P Ramakatsa, G A Gardee, Q Ndlozi, J S Malema and K Litchfield-Tshabalala.

The Committee hearing scheduled for the above dates, however, were postponed out of respect for the court process instituted by the Economic Freedom Fighters in the Western Cape High Court. On 29 September 2014, the court began proceedings in this regard. The Court dismissed the application challenging the legality of the referral by the Speaker of the incident of grave disorder of 21 August 2014, and struck the application off the court roll.

The postponement of the hearing was extended to the hearing that was scheduled for 3 October 2014 in respect of Group B, which was scheduled to inquire into allegations and charges of contempt of Parliament in relation to honourable J A Mngxitama, N S Matiase, O H Maxon, E N Louw, M Moonsamy and R N Mashabela.

The hearing for Group C members, which was scheduled for 6 October 2014, was consequently also postponed. The affected members were honourable A Matshobeni, P N Sonti, S M Khawula, V N Nqweniso, P Ntobongwana, Z K Morapela, B D Joseph and M S Mbatha.

8. Commencement of Hearing

On 30 September 2014, all 20 affected members were notified in writing that they were required to attend the hearing of the Committee as from Tuesday, 7 October 2014. Furthermore, the members were informed that it was anticipated that the hearing, would continue until about 13 October 2014, and that further dates would be determined if required.

The affected members were informed that they were required to remain in attendance until the conclusion of the hearing. They were further advised that should they fail to attend the hearing, the hearing may be conducted and concluded in their absence in terms of the Rules.

All the affected members were present on the first day of the hearing, except honourable Moonsamy. The Committee was informed by honourable Malema that honourable Moonsamy was ill, that she had received the charges, that she understood the charges and that she was willing to appear before the Committee. The Committee was further informed that a medical certificate would be submitted in connection with honourable Moonsamy's absence from the hearing.

The first item of business that the Committee dealt with was whether the hearing should be heard in closed session or whether it should be opened to the public in terms of Rule 193(2) and (3) of the Assembly Rules. All parties agreed that the hearing should be open, and that it was in the public interest to do so.

9. Charges against the affected members

The Initiator put the charges to the affected members as follows:

9.1 Charge 1

Honourable Shivambu, Ramakatsa, Gardee, Ndlozi and Litchfield-Tshabalala were charged with the same charge, namely:

"It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of Section 13(a) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act No 4 of 2004 (the Act) in that as a Member of Parliament and during 'Questions to the President' in the NA on 21 August 2014, you 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 you

refused to obey the instruction of the Speaker that you take your seat. 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 the day.”

This charge appears in the notices of hearing as **Charge 1** in respect of the five (5) members above.

9.2 Charge 2

Honourable Shivambu, Ramakatsa, Litchfield-Tshabalala, Gardee, Ndlozi and Malema were charged with the same charge, namely:

“It is alleged that you 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 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.”

This charge appears in the notices of hearing as **Charge 2** in respect of the six (6) members above.

9.3 Charge 3

Honourable Shivambu, Ramakatsa and Litchfield-Tshabalala were charged with the same charge, namely:

“It is alleged that you 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 or impeding 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)."

This charge appears as **Charge 3** in the notices of hearing in respect of the three (3) members above.

9.4 Charge 4

Honourable Shivambu and Ramakatsa were charged with the same charge, namely:

"It is alleged that you 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 49 of the Rules of the NA 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."

This charge appears as **Charge 4** in the notices of hearing in respect of the two (2) members above.

9.5 Charge 5

Honourable Litchfield-Tshabalala, Shivambu, Ramakatsa, Gardee and Malema were charged with the same charge, namely:

"It is alleged that you 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 NA by speaking when you were not called upon to do so by the presiding officer (i.e. the Speaker) and/or without the Speaker recognizing you."

This charge appears in the notices of hearing as **Charge 5** in respect of honourable Shivambu and Ramakatsa, as charge 4 in respect of honourable Litchfield-Tshabalala, as **Charge 3** in respect of honourable Gardee, and as **Charge 2** in respect of honourable Malema.

9.6 Charge 6

Honourable Shivambu, Ramakatsa, Gardee, Ndlozi, Malema, Matiase, Mngxitama, Litchfield-Tshabalala, Louw, Mashabela, Maxon, and Moonsamy were charged with the same charge, namely:

"It is alleged that you 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 the 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."

This charge appears in the notices of hearing as **Charge 6** in respect of honourable Shivambu and Ramakatsa, as **Charge 5** in respect of honourable Litchfield-Tshabalala, as charge 4 in respect of honourable Gardee, as **Charge 3** in respect of honourable Malema and Ndlozi, as **Charge 1** in respect of honourable Louw, Mashabela, Maxon, Moonsamy, Mngxitama and Matiase.

9.7 Charge 7

All 20 affected members were charged with the same charge, namely:

"It is alleged that you 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(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 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."

This charge appears in the notices of hearing as **Charge 7** in respect of honourable Shivambu and Ramakatsa, as **Charge 6** in respect of honourable Litchfield-Tshabalala, as **Charge 5** in respect of honourable Gardee, as **Charge 4**, in respect of honourable Malema and Ndlozi, as **Charge 2** in respect of honourable Louw, Mashabela, Maxon, Moonsamy, Mngxitama and Matiase, as **Charge 1** in respect of honourable Khawula, Matshobeni, Nqweniso, Ntobongwana, Sonti, Mbatha, Joseph and Morapela.

10. Charges put to the affected members

The Initiator put the charge(s) to the affected members individually, however, at the request of honourable Malema, on behalf of the affected members of his Party, the Initiator deviated from putting the charge(s) to the individual members, instead putting the following affirmation to the members who were asked to confirm the following:

- that they have received the charges;
- that they have read the charges;

- that they understand the charges; and
- that they have no objection to the charges being put in this manner.

After the Initiator had put the charge(s) to the affected members, they affirmed that they understood the aforementioned questions in respect of the charges.

11. Submission made by honourable Malema on behalf of the affected members of the EFF

Before the affected members could plead to the charges, honourable Malema requested to make certain “representations” to the Committee on behalf of the affected members of his Party. The Chairperson, on behalf of the Committee, noted that the Act and the Rules do not provide for the making of such a statement. Nevertheless, the Committee allowed honourable Malema to proceed. Honourable Malema read out a written statement into the record and presented a copy of the written statement to the Chairperson.

Following the submission by honourable Malema, the affected members informed the Committee that they no longer wished to participate in the hearing and proceeded to leave the hearing.

The Committee considered and accepted the legal opinion which was presented as a legal note by the Parliamentary Legal Adviser that the submission does not constitute evidence in terms of items 7 and 8 of the Schedule, which deal with the hearing. It was not given under oath and could not be questioned by the members of the Committee, the Chairperson, the Initiator and the charged member, whether directly or through their legal representative.

It was pointed out that there was no procedure in the rules for the making of such a statement of withdrawal of charges but that no harm would be done in allowing it.

The Rules provide for the Speaker to refer a matter to the Committee and for the Committee to table a report to the House. It is the House that must take the decision on the recommendations of the Committee. The Committee must act strictly in accordance with the Act and the Rules and it has no power to withdraw charges. Presumably, representations to withdraw charges should be made to the Speaker before a hearing commences, as in law. It is only the Speaker that can refer the matter to the Committee. Therefore, presumably, it is only the Speaker that has the power to withdraw such a referral.

The Committee was further advised and noted that the statement by honourable Malema cannot be considered as evidence but that the issues raised in the statement could have been raised as evidence by the charged members at the appropriate time during the proceedings.

12. Pleading to the Charges

The hearing therefore proceeded accordingly from the point where the charged members indicated they will no longer participate and left the meeting. As empowered by the Schedule to the Rules of the National Assembly, the Chairperson entered a plea of not guilty on their behalf. The Committee then proceeded to hearing the evidence against the affected members.

13. Evidence before the Committee

13.1 Witnesses

13.1.1 Mr Masibulele Xaso (Secretary to the NA)

The Initiator led the evidence before the Committee by way of oral evidence provided by Mr Xaso, with reference also to Hansard records, Minutes of the events of the day and with reference to the footage that was available. To this extent Mr Xaso's evidence was factual and objective and was corroborated by the record.

Mr Xaso confirmed that on 21 August 2014 he was present in the House during Question Time to the President. He indicated that as the Secretary to the NA, he was the most senior official present in the House on that day, fulfilling his regular duties as an officer of the House to provide support to the House and to ensure that the House functioned smoothly from a procedural and administrative point of view.

Mr Xaso confirmed that the *Minutes of Proceedings of the NA* correctly recorded that on 21 August 2014 “**BUSINESS SUSPENDED AT 14:58 DUE TO GRAVE DISORDER IN TERMS OF RULE 56 AND RESUMED AT 16:15.**” He added that the Assembly Minutes must be read with the Hansard to obtain a complete picture of what occurred on that day. He further confirmed that on 21 August 2014 the proceedings commenced at 14h10, and was suspended for the first time at 14h58 for a brief reconvening, which was followed by a longer suspension. A resumption of the sitting followed at 16h15 and an adjournment for the day at 16h17.

After the first suspension of the proceedings of the House for about 7 minutes, the Speaker reconvened the sitting to announce that members must vacate the Chamber. Where after, the Speaker suspended proceedings. Mr Xaso submitted that Rule 111 of the Assembly Rules provides that questions to the President must be scheduled at least once per term. In respect of each question, four supplementary questions are allowed, with the first opportunity being given to the member who asked the question. He indicated that there are avenues or recourse available to members who are not satisfied with the answer given by the President during questions for oral reply.

Mr Xaso was in a position to testify to all the charges as they were framed. He was able to identify all the honourable members who appear in the video clips with reference to the video footage and Hansard record.

13.1.2 Mr Ravi Poliah (Section Manager: Information Communication Technology)

The Initiator called as witness Mr R Poliah to give evidence in relation to the technology available and used in the NA. Mr Poliah is employed by Parliament as the Section Manager: Information Communication Technology (ICT).

Mr Poliah is ultimately responsible, among other things, for the technical maintenance and support of Parliament's information technology, audio and video infrastructure equipment and systems. He has both technical and managerial staff responsible for the day-to-day maintenance and support of the various systems. The audio system allows members to speak and be heard in the Chamber. It includes a "request to talk" system which is used primarily during the question and answer sessions.

Mr Poliah indicated that the system used in the NA Chamber is new as it was commissioned for the first time in February 2014.

He said that in the NA Chamber, there are two testing regimes and that reports were produced following the testing of the system. Examples of reports produced were submitted into the evidence. Mr Poliah stated that on 19, 20, 21, and 26 August 2014, tests were conducted and that the reports which were produced indicate that the system and subsystem were functioning properly and that all the systems were operational.

13.1.3 Ms Regina Mohlomi (Serjeant-at-Arms)

Ms Mohlomi testified that on 21 August 2014 she was in the Chamber during the House sitting. She added that she occupies her bench in the Chamber, which is at the back of the House, and which is directly opposite the Presiding Officer's chair.

She said that she was aware whom the Speaker was referring to when the Speaker asked for assistance in removing the members who were not “serious”. She was certain that the Speaker was referring to the affected honourable members of the EFF.

Ms Mohlomi confirmed that when the Speaker had asked for her assistance she initially approached honourable Ndlozi and said to him “*please, the Presiding Officer has spoken; you are requested to leave the Chamber.*” She then approached honourable Malema and Shivambu, and repeated to honourable Malema in Sepedi that the Speaker has spoken, instructed him to leave the House, and informed him that if he did not do so she would have to request security to escort him out of the Chamber, including the members of his Party.

13.1.4 Deputy Chief Whip of the Majority Party (Honourable D E Dlakude)

Honourable Dlakude was present in the House when the Speaker suspended proceedings, first for a short period and thereafter for a longer period. She said that during the longer suspension, she convened an urgent meeting of the Chief Whips’ Forum as she was concerned at the unfolding of events in the Chamber. Most political parties were represented at the meeting, except the EFF as its whips were in the House. She testified that at the meeting all those present had expressed concern at what had transpired in the House and agreed to cooperate.

13.1.5 Chief Whip of the Opposition (Honourable J Steenhuisen)

Honourable Steenhuisen confirmed that he was present at the sitting of the House on 21 August 2014.

He corroborated the evidence of the Deputy Chief Whip of the Majority Party. He said that some members expressed disdain in regard to the behaviour of the affected members and at what had happened in the House, and that their behaviour was unacceptable.

He said that what had happened in the House on that day was a new experience for members who had been in Parliament before. He said it was unprecedented, and parliamentary officials were “*in confusion about what actually need(ed) to take place, probably because this has not really happened in Parliament before.*” He went on to say that “*I don’t think it’s anything we were prepared for*”.

13.2 Affidavits presented to the Committee

As part of the evidence presented to the Committee, the Initiator presented the following affidavits:

- a) Mr Abraham Sheldon, vision mixer / camera operator in the Broadcasting and Audio Visual Technical Support division of the Corporate Services Department. He recorded some of the events which took place in the Chamber, as well as outside the National Assembly, on 21 August 2014. He confirmed that the video footage which he had recorded on 21 August 2014 onto a compact disc was what was presented to the Committee;

- b) Mr Nishkar Maganlal, a vision mixer / camera operator in the Broadcasting and Audio Visual Technical Support division of the Corporate Services Department. Mr Maganlal works in the broadcasting and audio visual control room at the National Assembly and is responsible for controlling various cameras from the control room which record video footage in the Chamber of the National Assembly. The video footage which the various cameras recorded on 21 August 2014 was downloaded onto a compact disc and a video tape;

- c) Ms Cornelia Morecomb, a Control Editor in the Hansard Transcription Service. Ms Morecomb transcribed the audio recordings of the proceedings in the National Assembly on 21 August 2014, and the subsequent corrections;
- d) An affidavit deposed to by the Minister of State Security, Minister M D Mahlobo was also presented to the Committee. The Minister states in his affidavit that on 21 August 2014 he was in the Chamber after the short adjournment of the sitting during the President's reply. He and Minister Cwele, the Minister of Telecommunications and Postal Services, had approached the leaders of the EFF, honourable Malema and Shivambu.

They requested them to co-operate and leave the Chamber to avoid an unnecessary scuffle with the Parliamentary Protection Services. The two leaders flatly refused their plea and vowed that even if the session resumed they would resume where they had left off. They left the two leaders when it became clear that their plea was not favourably received; and

- e) an affidavit deposed to by the Minister of Telecommunications and Postal Services, Minister S Cwele, in which he states that he was in the Chamber on 21 August 2014. He states that during the proceedings of that day, and while President Zuma was attending to the question and answer session, members of the EFF became extremely disorderly and disruptive. They were banging on their desks and were generally causing a major disturbance in the House.

The Minister states that honourable Malema and Shivambu were amongst the EFF members who were involved in the disturbance. In the affidavit the Minister says that he recalls the Speaker at some stage ordering Honourable Malema to

leave the House and the member refusing to do so. He states that the Speaker ordered the Serjeant-at-Arms to remove Honourable Malema but the member still refused.

As a consequence of the behaviour of the EFF members and the refusal of honourable Malema to leave the House, the Speaker suspended the proceedings of the House. It was at that stage that he went over to the leaders of the EFF, honourable Malema and Shivambu, to persuade them and their members to leave the House since it had been brought to his attention that the South African Police were planning to remove the EFF members by force. Notwithstanding his attempt to persuade honourable Malema and Shivambu to leave the House, they refused to leave and stated that they wanted the President to answer their questions.

14. Findings of the Committee

The charges in relation to these findings appear as they were in the notices of hearing that were issued to the affected members.

The Chairperson emphasised that the Committee operated in terms of the standard of a balancing of probabilities. This means that where the Committee has to decide on a finding, that it must consider the evidence and decide on a version that is more probable and reasonable. All the findings made by the Committee are therefore based on a balance of probabilities.

Having considered the charges, the evidence led by the Initiator, the written submission made by the Initiator, the questions posed by Members of the Committee to the witnesses, the Committee makes the following findings in respect of the 20 affected members:

14.1 Honourable N F Shivambu:

Charge 1

The consequence of the member's conduct was that it 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 the rest of the day on 21 August 2014. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, A Lotriet, S Esau and M A Mncwango.
2. **Not guilty** - M L Filtane.

Charge 2

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rules 51 and 53(1) by refusing to withdraw immediately from the Chamber when he was ordered to do so by the Speaker. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian and B L Mashile (the Chairperson exercising his deliberative vote in terms of Rule 129).
2. **Not guilty** - M L Filtane, A Lotriet, S Esau and M A Mncwango.

Charge 3

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(b) of the Act by preventing honourable B H Holomisa MP and other members of

Parliament from asking questions to the President. The consequence of the member's conduct was that it prevented honourable Holomisa and other members of Parliament, who might have wished to ask the President further questions, from asking their questions thereby preventing them from holding the Executive to account. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, A Lotriet, S Esau and M A Mncwango.
2. **Not guilty** - M L Filtane.

Charge 4

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rule 49 by refusing to take his seat when the Speaker rose to speak. The consequence of the member's conduct was that the Speaker was prevented from being heard without interruption. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian and B L Bashile (the Chairperson exercising his deliberative vote in terms of Rule 129).
2. **Not guilty** - M L Filtane, A Lotriet, S Esau and M A Mncwango.

Charge 5

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rule 72 by speaking when he was not called upon to

do so by the Speaker or without the Speaker recognising him. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, A Lotriet and S Esau.
2. **Not guilty** - M L Filtane and M A Mncwango.

Charge 6

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables, or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian and S Esau.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 7

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the

Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House needed to be adjourned before completing its business for that day. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, S Esau and A Lotriet.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.2 Honourable R P Ramakatsa

Charge 1

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(a) of the Act by refusing to obey the instruction of the Speaker to take his seat. The consequence of the member's conduct was that it 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 the rest of the day. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian A Lotriet, S Esau and M A Mncwango.
2. **Not guilty** - M L Filtane.

Charge 2

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rules 51 and 53(1) by refusing to withdraw immediately from the Chamber when he was ordered to do so by the

Speaker. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian and B L Mashile (the Chairperson exercising his deliberative vote in terms of Rule 129).
2. **Not guilty** - M L Filtane, A Lotriet, S Esau and M A Mncwango.

Charge 3

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(b) of the Act by preventing honourable B H Holomisa MP and other members of Parliament from asking questions to the President. The consequence of the member's conduct was that it prevented honourable Holomisa and other members of Parliament, who might have wished to ask the President further questions, from asking their questions thereby preventing them from holding the Executive to account. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian A Lotriet, S Esau and M A Mncwango.
2. **Not guilty** - M L Filtane.

Charge 4

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rule 49 by refusing to take his seat when the Speaker rose to speak. The consequence of the member's conduct was that the Speaker was prevented from being heard without

interruption. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian and B L Mashile (the Chairperson exercising his deliberative vote in terms of Rule 129).
2. **Not guilty** - M L Filtane, A Lotriet, S Esau and M A Mncwango.

Charge 5

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rule 72 by speaking when he was not called upon to do so by the Speaker or without the Speaker recognising him. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, A Lotriet and S Esau.
2. **Not guilty** - M L Filtane and M A Mncwango.

Charge 6

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting.

The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian and S Esau.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 7

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, S Esau and A Lotriet.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.3 Honourable K Litchfield-Tshabalala

Charge 1

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(a) of the Act by refusing to obey the instruction of the Speaker to take her seat. The consequence of the member's conduct was that it 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 the rest of the day. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge**— M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, S Esau, A Lotriet and M A Mncwango.
2. **Not guilty** - M L Filtane.

Charge 2

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(c) of the Act in that she wilfully failed or refused to obey Rules 51 and 53(1) by refusing to withdraw immediately from the Chamber when she was ordered to do so by the Speaker. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian and B L Mashile (the Chairperson exercising his deliberative vote in terms of Rule 129).
2. **Not guilty** - M L Filtane, M A Mncwango, S Esau and A Lotriet

Charge 3

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(b) of the Act by preventing honourable B H Holomisa MP and other members of Parliament from asking questions to the President. The consequence of the member's conduct was that it prevented Honourable Holomisa and other members of Parliament, who might have wished to ask the President further questions, from asking their questions thereby preventing them from holding the Executive to account.

The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge**— M RMdakane, B T Bongo, M R M Mothapo, J D Kilian A Lotriet, S Esau and M A Mncwango.
2. **Not guilty** - M L Filtane.

Charge 4

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(c) of the Act in that she wilfully failed or refused to obey Rule 72 by speaking when she was not called upon to do so by the Speaker or without the Speaker recognising her. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge**—M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, A Lotriet and S Esau.
2. **Not guilty** - M L Filtane and M A Mncwango.

Charge 5

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge**—M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian and S Esau.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 6

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** – M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, A Lotriet and S Esau.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.4 Honourable G A Gardee

Charge 1

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act by refusing to obey the instruction of the Speaker to take his seat. The consequence of the member's conduct was that it 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 the rest of the day. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, A Lotriet, S Esau and M A Mncwango.
2. **Not guilty** - M L Filtane.

Charge 2

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rules 51 and 53(1) by refusing to withdraw immediately from the Chamber when he was ordered to do so by the Speaker. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian and B L Mashile (the Chairperson exercising his deliberative vote).
2. **Not guilty** - M L Filtane, S Esau, A Lotriet, and M A Mncwango.

Charge 3

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rule 72 by speaking when he was not called upon to do so by the Speaker or without the Speaker recognising him. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M Mothapo, and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

Charge 4

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 5

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, M R M Mothapo, A Lotriet and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.5 Honourable Q Ndlozi

Charge 1

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act by refusing to obey the instruction of the Speaker to take his seat. The consequence of the member's conduct was that it 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 the rest of the day. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** – M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian, S Esau, A Lotriet and M A Mncwango.
2. **Not guilty** - M L Filtane.

Charge 2

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rules 51 and 53(1) by refusing to withdraw immediately from the Chamber when he was ordered to do so by the Speaker. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, M R M Mothapo, J D Kilian and B L Mashile (the Chairperson exercising his deliberative vote in terms of Rule 129).
2. **Not guilty** - M L Filtane, A Lotriet, S Esau and M A Mncwango.

Charge 3

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 4

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on a balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, M R M Mothapo, A Lotriet and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.6 Honourable J S Malema

Charge 1

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rules 51 and 53(1) by refusing to withdraw immediately from the Chamber when he was ordered to do so by the Speaker. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** – M R Mdakane, B T Bongo, M R M Mothapo and J D Kilian and B L Mashile (the chairperson exercising his deliberative vote in terms of Rule 129).
2. **Not guilty** - M L Filtane, A Lotriet, A Esau and M A Mncwango.

Charge 2

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(c) of the Act in that he wilfully failed or refused to obey Rule 72 by speaking when he was not called upon to do so by the Speaker or without the Speaker recognising him. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, M R M Mothapo, A Lotriet and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

Charge 3

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane, A Lotriet, and M A Mncwango.

Charge 4

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.7 Honourable J A Mngxitama

Charge 1

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 2

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.8 Honourable N S Matiase

Charge 1

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** – M R Mdakane, B T Bongo, S Esau, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 2

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day.

The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.9 Honourable O H Maxon

Charge 1

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 2

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the

Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** – M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.10 Honourable E N Louw

Charge 1

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 2

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that

the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.11 Honourable M Moonsamy

Charge 1

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** – M R Mdakane, B T Bongo, S Esau, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 2

The Committee deliberated on this charge based on the evidence presented to the Committee, and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** – M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.12 Honourable R N Mashabela**Charge 1**

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instruction or behaving in a grossly disorderly manner. The consequence of the member's conduct was that it interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane, A Lotriet and M A Mncwango.

Charge 2

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.13 Honourable A Matshobeni

Charge 1

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day.

The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.14 Honourable P N Sonti

Charge 1

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.15 Honourable S M Khawula

Charge 1

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the Chamber in order for

the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.16 Honourable V N Nqweniso

Charge 1

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.17 Honourable P Ntobongwana

Charge 1

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or

impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.18 Honourable Z K Morapela

Charge 1

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.19 Honourable B D Joseph**Charge 1**

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** - M R Mdakane, B T Bongo, S Esau, A Lotriet, M R Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

14.20 Honourable M S Mbatha**Charge 1**

The Committee deliberated on this charge based on the evidence before it and found the member guilty of contravening section 13(a) read with section 7(a) of the Act in that the member interfered or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of the member's refusal was that the House was adjourned before completing its business for that day. The Committee found that, on the balance of probabilities, the evidence before it proved the charge, and it had not been rebutted.

The following honourable members agreed as follows:

1. **Guilty on this charge** – M R Mdakane, B T Bongo, S Esau, A Lotriet, M R M Mothapo and J D Kilian.
2. **Not guilty** - M L Filtane and M A Mncwango.

15. Mitigating, aggravating and other factors

The affected members were informed in writing on 4 November 2014 of the findings of the Committee on the allegations of conduct constituting contempt of Parliament. The letters were emailed on 4 November 2014 and hand-delivered on 5 November 2014. The members were also informed that, notwithstanding the fact that on 7 October 2014 they aligned themselves with the decision to withdraw from the proceedings, the Committee was affording them, in terms of item 9 of the Schedule, an opportunity to present mitigating factors in respect of sanctions to the Committee on Friday, 7 November 2014. The affected members did not take up the opportunity to present mitigating factors.

They were further advised that should they not make representations in mitigation of sanctions, the process would continue without their inputs.

16. Presentation by Initiator on aggravating and other factors

The Committee proceeded to hear the Initiator's presentation on aggravating or other factors inclusive of recommended sanctions, which is attached as Annexure A.

17. Penalties recommended by the Committee

Following the findings by the Committee and the presentation by the Initiator the Committee proceeded to deliberate on the appropriate penalties for the members found guilty on the charges.

17.1 Group A

Affected members in this group are:

Hon N F Shivambu (7 charges)
Hon R P Ramakatsa (7 charges)
Hon K Litchfield-Tshabalala (6 charges)
Hon G A Gardee (5 charges)
Hon Q Ndlozi (4 charges)
Hon J S Malema (4 charges)

The following honourable members: B T Bongo, M R Mdakane, M Booii, M R M Mothapo and J D Kilian agreed that the members be suspended for a period of 30 days without remuneration, in terms of section 12(5)(g) of the Act.

The following members disagreed: A Lotriet and S Esau and instead recommended a reprimand.

The Committee recommends that:

The National Assembly suspends the members for a period of 30 days without remuneration in terms of section 12(5)(g) of the Act.

17.2 Group B

Hon E N Louw (2 charges)
Hon R N Mashabela (2 charges)
Hon O H Maxon (2 charges)
Hon M Moonsamy (2 charges)
Hon J A Mngxitama (2 charges)
Hon N S Matiase (2 charges)

The following honourable members: BT Bongo, M R Mdakane, M Booii, M R M Mothapo and J D Kilian agreed that the members be suspended for a period of 14 days without remuneration, in terms of section 12(5)(g) of the Act.

The following honourable members disagreed: A Lotriet and S Esau and instead recommended a reprimand.

The Committee recommends that:

The National Assembly suspends the members for a period of 14 days without remuneration in terms of section 12(5)(g) of the Act.

17.3 Group C

Hon B D Joseph (1 charge)
Hon M S Mbatha (1 charge)
Hon Z K Morapela (1 charge)
Hon S M Khawula (1 charge)
Hon A Matshobeni (1 charge)
Hon V N Nqweniso (1 charge)
Hon P Ntobongwana (1 charge)
Hon P N Sonti (1 charge)

The following honourable members concurred: B T Bongo, M R Mdakane, M R M Boo, M Mothapo and J D Kilian agreed that the members be suspended for a period of 14 days without remuneration, in terms of section 12(5)(g) of the Act. In addition, the members should be ordered to give an apology in the House.

The following honourable members disagreed: A Lotriet and S Esau and instead recommended a reprimand.

The Committee recommends to the National Assembly:

- a) **an order for the members to apologise to the House in a manner determined by the House, in terms of section 12(5)(c) of the Act; and**

- b) a fine equivalent to 14 days' salary and allowances payable to the member concerned by virtue of the Remuneration of Public Office Bearers' Act, in terms of section 12(5)(f) of the Act.

18. Summary of Recommendations to the National Assembly

18.1 The Committee makes the following recommendations in terms of the Findings:

18.1.1 The following honourable Members be found 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:

Honourable Shivambu MP

Honourable Ramakatsa MP

Honourable Litchfield – Tshabalala MP

Honourable Gardee MP

Honourable Ndlozi MP

18.1.2 The following Honourable Members are found 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, they wilfully failed and/or refused to obey Rule 51 and Rule 53(1), read together, of

the Rules of the National Assembly in that they refused to withdraw immediately from the Chamber for the remainder of the day's sitting when ordered to do so by the Speaker:

Honourable Shivambu MP

Honourable Ramakatsa MP

Honourable Litchfield – Tshabalala MP

Honourable Gardee MP

Honourable Ndlozi MP

Honourable Malema MP

- 18.1.3 That the following Honourable Members be found **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(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 B H Holomisa (a Member of Parliament) to pose a question (i.e. a supplementary question) to the President, their conduct prevented honourable 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):

Honourable Shivambu MP

Honourable Ramakatsa MP

Honourable Litchfield – Tshabalala MP

- 18.1.4 That the following honourable Members be found **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, they wilfully failed and/or refused to obey Rule 49 of the Rules of the National Assembly by failing to resume their seat when the Speaker rose while they were speaking or offering to speak, and thereby preventing the Speaker from being heard without interruption:

Honourable Shivambu MP

Honourable Ramakatsa MP

- 18.1.5 That the following honourable Members be found **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, they 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:

Honourable Shivambu MP

Honourable Ramakatsa MP

Honourable Litchfield – Tshabalala MP

Honourable Gardee MP

Honourable Malema MP

- 18.1.6 The following honourable Members be found **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(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 themselves 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:

Honourable Shivambu MP

Honourable Ramakatsa MP

Honourable Litchfield – Tshabalala MP

Honourable Gardee MP

Honourable Ndlozi MP

Honourable Malema MP

Honourable Louw MP

Honourable Mashabela MP

Honourable Matiase MP

Honourable Maxon MP

Honourable Moonsamy MP

Honourable Mngxitama MP

- 18.1.7 That the following honourable Members be found 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 they could leave, alternatively, be removed from, the Chamber, in order for the House to continue with its business for that day. Their refusal to leave the Chamber resulted in the House being adjourned for the day.

Honourable Shivambu MP
Honourable Ramakatsa MP
Honourable Litchfield – Tshabalala MP
Honourable Gardee MP
Honourable Ndlozi MP
Honourable Malema MP
Honourable Louw MP
Honourable Mashabela MP
Honourable Matiase MP
Honourable Maxon MP
Honourable Moonsamy MP
Honourable Mngxitama MP
Honourable Joseph MP
Honourable Khawula MP
Honourable Matshobeni MP
Honourable Mbatha MP
Honourable Morapela MP
Honourable Nqwenisa MP
Honourable Ntobogwana MP
Honourable Sonti MP

- 18.2 That the Committee makes the following recommendations in terms of **Penalties**:

The Committee recommends that the following honourable members be suspended for a period of 30 days without remuneration in terms of section 12(5)(g) of the Act:

Hon N F Shivambu (7 charges)
Hon R P Ramakatsa (7 charges)
Hon K Litchfield-Tshabalala (6 charges)
Hon G A Gardee (5 charges)
Hon Q Ndlozi (4 charges)
Hon J S Malema (4 charges)

The Committee recommends that the following honourable members be suspended for a period of 14 days without remuneration in terms of section 12(5)(g) of the Act:

Hon E N Louw (2 charges)
Hon R N Mashabela (2 charges)
Hon O H Maxon (2 charges)
Hon M Moonsamy (2 charges)
Hon J A Mngxitama (2 charges)
Hon N S Matiase (2 charges)

The Committee recommends that the following honourable members be ordered to apologise to the House in a manner determined by the House, in terms of section 12(5)(c) of the Act; and be fined an equivalent of 14 days' salary and allowances payable to the member concerned by virtue of the Remuneration of Public Office Bearers' Act, in terms of section 12(5)(f) of the Act:

Hon B D Joseph (1 charge)
Hon M S Mbatha (1 charge)
Hon Z K Morapela (1 charge)
Hon S M Khawula (1 charge)
Hon A Matshobeni (1 charge)
Hon V N Nqweniso (1 charge)
Hon P Ntobongwana (1 charge)
Hon P N Sonti (1 charge)

19. Adoption of the Report

On the proposal of honourable M R Mdakane, seconded by the honourable M R M Mothapo, the Committee **agreed** to adopt the Report. The proposal by honourable A Lotriet that the Report not be adopted was not seconded, and it therefore fell away.

Report to be considered.