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NATIONAL COUNCIL OF PROVINCES

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PROCEEDINGS OF THE NATIONAL COUNCIL OF PROVINCES

The Council met at 14:09

The Deputy Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

The DEPUTY CHAIRPERSON OF THE NCOP: Hon members, I have been informed that the Whippery has agreed that there wont be any ... What is the point of order, hon member?

Ms N P KONI: Am I on the floor, Chair?

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: I am recognising you.

Ms N P KONI: Deputy Chairperson, you consistently come late to House. You must tell us now what must happen? As the Deputy Chairperson, coming late to the House sitting, leaves us with no

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choice but to escalate this matter, but firstly, I will give you the opportunity to tell us what must happen. Thank you, Chair.

The DEPUTY CHAIRPERSON OF THE NCOP: Hon members, hon Koni that is not a point of order in the first place and secondly, your last part of the statement that you have concluded to escalate the matter, can I give you that opportunity to do that?

Hon members I have been informed by the Whippery that they have agreed that there won't be any motions and at the same time, I will therefore call upon the Chief Whip on the statement for the amendment on the Order Paper. Can I recognise you? What point is that? Can I respond to that before you do? The member is in the House. Can we proceed with the business of the day?

The CHIEF WHIP OF THE NCOP: Deputy Chairperson, I move that Order No 11 on the Order Paper be deferred.

LATE DISCLOSURES FOR 2016

(Voting On Second Report Of Joint Committee On Ethics And Member's Interests)

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Mr A S SINGH: Deputy Chairperson, the Report on the Joint Committee On Ethics and Member's Interests on the complaint against hon Figlan, MP, dated 2017. The background on 18th July ...

[Interjections.]

Ms T J MOKWELE: On a point of order!

The DEPUTY CHAIRPERSON OF THE NCOP: Yes, can I recognise that?

Ms T J MOKWELE: Chair, I am rising on a point of order. You didn't ask us why we are seating where we are seated. This matter has been debated in the House. We decided that we do this to alert you as a Chair that this House has never been consistent in the Rules that govern it.

Last time, there was an issue about me. I was seated where I am supposed to be seating, in my province. I was told to move. Today, I am seated in a wrong province where I don't belong. No one is saying anything. My colleague is seated there; still no one is saying anything. My colleagues is here seating next to me, no one is saying anything. I want to caution this House about its inconsistency with regard to making ruling and the decorum of this House. I thank you, Chair.

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The DEPUTY CHAIRPERSON OF THE NCOP: I don't need to make a ruling on that matter. I have already made a ruling on it. Can we continue with the debate hon member?

Mr A S SINGH: ... the Report on Joint Committee On Ethics and Member's Interests ... [Interjections.]

The DEPUTY CHAIRPERSON OF THE NCOP: Hon Singh, can you just take your seat, please? Hon Singh, can I just address ... Let me just assist. Which report are you reading?

Mr A S SINGH: I am reading the report of the Joint Committee on Ethics and Member's Interests - complaint against hon Figlan.

The DEPUTY CHAIRPERSON OF THE NCOP: A matter has just been brought to my attention. In terms of the Order Paper, the second reading of the Joint Committee on Ethics and Member's Interests Report was dealt with and presented in the House, in the last sitting but voting did not take place because the matter had to be referred back to the committee for the Ethics Committee to finalise it in so far as ... [Inaudible.] So, what we need to do before we even get to the second item on the Order Paper, is to conclude the voting on that

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report that was presented to the House on the last sitting. We first need to dispose off that one, and then get to ... [Inaudible.]

With that understanding, shall I then call upon the secretary to read the First Order? Oh, you have read it already.

Now, hon members, on the basis that explanation, I will therefore put the question and the question is that the report be agreed to? I shall first ascertain whether if all delegation heads are present in the House. Are they?

Ms C LABUSCHAGNE: On a point of clarity. What report are we voting on now?

The DEPUTY CHAIRPERSON OF THE NCOP: The First Order on the Order Paper. Let me explain it again so that all of us are on the same page. The report was read and presented in the House in the last sitting. The report was then not adopted on the basis that it had to be referred back to the committee so that the committee could close gaps that were there. One of them was the extensions that the committee had to present to this House. The House agreed that the report be referred back to the committee. That's exactly what happened. What we need to do after all those processes have been

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concluded by the committee ... [Inaudible.] to vote and not to receive the same report that we received the last time. That's where we are now - to vote on the report that we received in the last ... [Inaudible.]

Mr M KHAWULA: Hon Chairperson, what you are saying is that after it had been referred back to the committee, there are no changes in what they were going to report today from what they ... [Inaudible] ... the last time.

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES:

Whatever it may be, what the committee did, we are proceeding as agreed to. For now, we will be voting on the report.

Ms T J MOKWELE: I don't know why we are debating. Which Rule are we using today to debate whether the report must be read to us or not read to us? What does the Order Paper say? Are we not prepared for today's sitting? If we are not prepared, why are we debating it? I am just checking because we cannot just discuss this matter like this. It's either is voting or not or we let a member read that report and then vote. That's the only thing that we need to ... We cannot just seat here and debate whether the report was read to us or not. He must know as the chairperson of that committee whether he

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is presenting to us something that he presented to us before. Please Chair, let us not waste time.

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: Hon Mokwele, I don't think that there is any waste of time because you agree with us. There is nothing different that you are raising and therefore that order is not carried. Hon members, shall we proceed with the voting on the order! Hon Mokwele, can you please withdraw the word that you just used, can you please withdraw?

Ms T J MOKWELE: I withdraw!

In Favour: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Report accordingly adopted in accordance of section 65 of the Constitution.

Agreed to.

CONSIDERATION OF REPORT OF JOINT COMMITTEE ON ETHICS AND MEMBERS' INTERESTS - COMPLAINT AGAINST HON FIGLAN, MP, DATED 29 NOVEMBER 2017

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The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: Hon Singh, no. Mokwele, hon Mokwele, hon Mokwele, I have not recognised you. Order! Order, hon members. I have called hon Singh and I noted ... [Interjections.] No, I am recognising hon Labuschagne on a point of order that she is raising. [Interjections.]

Ms C LABUSCHAGNE: Chairperson, on a point of order: On the report that is now in the NCOP for consideration, the Code of Ethical Conduct and Disclosure of Members' Interests, Chapter 10.7.8 reads as follows:

The committee to report to appropriate House: The committee must report its findings and recommendations as to penalties, if any, to the appropriate House. If the committee recommends a penalty, the House must either accept or reject the recommendation or refer the matter back to the committee for further consideration.

If the House has accepted the committee's recommendation, the findings become final and the Speaker or the Chairperson of the Council must act on such a decision promptly.

I just want to draw to your attention that hon Figlan is not a member of the NCOP but a member of the NA. The member is not in the

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House today and therefore, I don't think it is correct to table the report in the NCOP. This is first objection.

The second objection is that hon Figlan's report was part of a thick pack of reports. If that hon member's report is being tabled in the NCOP, where are the other reports? Thank you.

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: Hon members, ordinarily, the issue raised by hon Labuschagne would have been much more appropriate if it was given as a declaration after the report because there are two issues that have been served before this House. The first one is that the ethics committee is a joint committee of Parliament, made up of these two House - the National Assembly and the National Council of Provinces. Whatever is happening or served before that committee, must be appraised by both Houses. That brings us back to what we, as a House, has received even before. We dealt with an ethics committee report on the issues around the Speaker of the NA and this House received that report. There was no objection to that. The Speaker is not a member of this House, but the House received that report.

So, this report that is being presented to us is a report that has been generated by a joint sitting or a joint committee of Parliament

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made up of the NA and NCOP. And in this instance, the NCOP is affording itself an opportunity to be brought up to speed with the report that came from that committee. So, that is exactly what we are doing here. I think I have responded to that. Can we continue with the business of the day? [Applause.]

Mr A S SINGH: Hon Deputy Chairperson, thank you for the explanation. This is the report of the Joint Committee on Ethics and Members' Interests on the complaint against hon Figlan, MP, dated 29 November 2017. With regard to the background, on 18 June 2015, the Office of the Registrar received a complaint submitted by the Chief Whip of the Majority Party to the Joint Committee on Ethics and Members' Interests.

The complaint referred to an incident regarding an allegation of sexual harassment of a member of the public by hon Figlan, which took place during a protest march in Cape Town, ahead of the state of the nation address in 2015.

Regarding the consideration of the code, in respect of the allegation against hon Figlan in terms of paragraph 10.3.2 of the code, the Registrar collated the necessary information and made an

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informed recommendation to the Joint Committee on Ethics and Members' Interests.

Media reports reflected that the Democratic Alliance found hon Figlan guilty of sexual harassment and imposed sanctions on him in respect of the matter.

Notwithstanding same, the code addresses the conduct of members in their capacity as Members of Parliament, rather than a representative of a particular political party. There is accordingly no reason why a member who has undergone a disciplinary process within his or her party should be exempted from such a process in terms of the code.

The allegation against hon Figlan can be considered on the following basis: Chapter 2 of the Constitution, the supreme law of South Africa, provides that all persons have rights not to be treated in a degrading way, the right to bodily integrity and the right to human dignity. Sexual harassment constitutes infringement of these rights and a failure on the part of a member to uphold these rights of the alleged victim. The member has accordingly not upheld the law.

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The member's conduct, although at a nonparliamentary event, is in breach of the code, which demands members to act, at all times, in accordance with the public trust placed in them. A member who has committed an act of sexual harassment throws that trust into question.

An act of sexual harassment committed by a Member of Parliament, especially one that has been made public, has the effect of eroding public confidence and trust in the integrity of Parliament.

The Registrar recommended that, as the alleged victim was found, and had agreed to appear before the committee, a hearing be held to consider the facts.

At its meeting on 28 October 2015, the committee agreed that a subcommittee be established to consider the facts. The subcommittee was duly constituted with nominations from different political parties.

Hon Figlan's attorney submitted correspondence questioning the aspects of the procedure and the committee's decision to hold a hearing. Further correspondence was sent to Mr Figlan explaining the committee's procedure.

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The member was charged with sexual harassment and contravention of the following provisions of the code: The Registrar stated that, in terms of paragraph 2.3 of the Code of Ethical Conduct, members have a duty to create public trust and confidence in the public representatives and to protect the integrity of parliament.

The hearing, on 1 March 2016, concluded the facts, and the member was found guilty. The Registrar recommended that the member be fined 30 days salary and suspension of privileges for 15 days. Thank you.

Debate concluded.

Declaration(s) of vote:

Ms C LABUSCHAGNE: Chairperson, on behalf of the Western Cape, I want to make a declaration on the procedures and processes of the Joint Committee on Ethics and Members' Interests. I rise on the point that the Code of Ethical Conduct and Disclosure of Members' Interests exactly stated that the report has to be dealt with in the appropriate Houses. The Chairperson ruled that it is a joint committee. It does not make reference to the joint committee because a member of the NA is not a member of the NCOP and a member of the NCOP is not a member of the NA.

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The fact that it slipped through cannot be seen as a justification because that is the role of the chairperson of that committee and the Chief Whip. The fact that other NA members were wrongfully discussed in this House is not a justification.

If I have to rise in this House on everything that is wrong, I will have to stand permanently on a point of order. Therefore, we will not support this report. Thank you.

Mr E MAKUE: Chairperson, on behalf of Gauteng, we need to make it clear, firstly, that I have been appointed as a member of the Joint Committee on Ethics and Members' Interests in this Parliament. One of the big challenges that we have in this committee is to be ethical. Being ethical is therefore not something that applies to one House and not to the other. It applies to both.

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: Hon member, this is a declaration.

Mr E MAKUE: I am making my declaration.

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: Just hold it, hon member.

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Ms T J MOKWELE: Chairperson, on a point of order: I want to check if the member has a mandated declaration from the province. By the look of things, Gauteng does not have a mandate. We have a member in Gauteng who told us that they do not have a mandate on this matter. So, I want to check whether it is a mandated declaration that he is giving to us.

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: Hon members, I will not sustain that point of order. We have just received a declaration from the Western Cape and nobody rose to check whether it is a mandated declaration. On the basis of that, can you continue with the declaration? [Interjections.]

Mr E MAKUE: Chairperson, we want to say ...

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: Hon Mokwele, order, please! [Interjections.] I asked for a province and Gauteng is making a declaration. Can you allow the province to make a declaration? Can you continue?

Mr E MAKUE: We want to say that it is for me, in this declaration, very important that we not be diverted from the matter that is before us. We were, as members of this ethics committee, extremely

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perturbed by what has happened and therefore consider the matter that is before us with that sensitivity, also in terms of the patriarchy that is such a big challenge for us in this country. That is what we wanted to say. Thank you. [Interjections.]

Setswana:

Moh T J MOKWELE: Modulasetilo, ka tsweetswee. Rre o fetsang go bua o ne a sa bue jaaka leloko la kwa porofenseng ya Gauteng mme o ne a bua jaaka leloko la komiti.

English:

So, he is not speaking on behalf of the province; he is speaking on behalf of the committee on ethics. So, that declaration cannot be noted. It is an individual declaration, like I said before. It is not a declaration from the province.

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: Order! Order, hon members! Order! Hon Mokwele, once more, ... Order! Hon Lewis, can you please be in order? Hon Lewis! Hon Lewis. Hon members, I asked for a declaration. There was a declaration by the Western Cape. I asked for a declaration from any other province. A Gauteng permanent delegate rose on behalf of the province.

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Therefore, that is what we are taking now. Can we proceed with the voting on the question?

Mr L B GAHLER: Chairperson, hon Lewis is not respecting you. Ask him to leave the House, please.

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: No, I am not going to do that. Is that a declaration?

Setswana:

Moh T J MOKWELE: Polelo ya Bokone Bophirima ke gore pelelo ya Gauteng ga e tseiwe ... [Tsenoganong.]

English:

The DEPUTY CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES: No, that is a point of order. Can you take your seat, hon member?

Mr B G NTHEBE: Chair, the member rising and speaking on behalf of the North West is not properly and adequately mandated to speak on behalf of the North West. As the leader of the delegation, I would request that we don't afford her that opportunity. [Interjections.]

Question put: That the Report be adopted.

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IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West.

AGAINST: Western Cape.

Report accordingly adopted in accordance of section 65 of the Constitution.

CONSIDERATION OF REPORT OF SELECT COMMITTEE ON PETITIONS AND EXECUTIVE UNDERTAKINGS - HEARING OF THE LOVE KNYSNA PETITION, HELD ON 10 FEBRUARY 2016, 16 MARCH 2016 AND 24 MARCH 2016, AT PARLIAMENT.

Mr D L XIMBI: Thank you very much Chairperson. Chairperson, the love Knysna petition was submitted to the NCOP by Mr M Hampton, a community activist from Knysna, in the Western Cape.

The petition is supplemented by Ms S Campbell, who is also a community activist from Knysna, in the Western Cape. The petition was referred to the Select Committee on Petitions and Executive Undertakings by the Office of the Chairperson of the Council on 28 April 2015.

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The petition levels complaints against Knysna Local Municipality in relation to the following: The alleged criminal funding of Knysna Tourism with tax payers' money;

The alleged illegal awarding of the Integrated Strategic Development Framework tender of the Municipality to Knysna Creative Heads, a consortium, which had not scored the highest points during the tender process and is headed by a conflicted local property developer;

The alleged illegal appointment of Mr Grant Easton, as Municipal Manager by the Municipality and the irregularities committed following his appointment as Municipal Manager as well as in his previous appointment as Chief Financial Officer, CFO of the Municipality;

The alleged unconstitutional blocking of his communication at both a local and provincial level as a result of the allegations contained in the petition; and

In the petition, Mr Hampton seeks the intervention of the NCOP in investigating the complaints he levels against the Municipality. The Committee held a total of 3 hearings on the petition.

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The first hearing on the petition was held on 10 February 2016, the second hearing was held on 16 March 2016 and the final hearing on the petition was held on 24 May 2017.

Before the Committee held the final hearing on the petition, it tabled on a preliminary report on the petition in this House, on 19 May 2016, wherein it requested the Western Cape Provincial Treasury together with the Western Cape Department of Local Government and the Office of the Public Protector to furnish their findings on some of the issues raised in the petition.

Chairperson, the Committee made this request in order to avoid a situation wherein it finds itself running parallel processes with these two bodies.

The Committee is happy to report that after the tabling of the preliminary report on the petition, both the Western Cape Department of Local Government and the Office of the Public Protector, subsequently, shared their findings on the petition with the Committee.

It is also important to point out that after the tabling of the preliminary report; the Committee took a resolution to hold a third

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and final hearing on the petition after the petitioner indicated that he had new information or evidence to share with the Committee on the petition.

That having being said, after holding all 3 hearings on the petition the Committee makes the following observations and key findings: Aspects of the new information or evidence that Mr Hampton submitted to the Committee during the third hearing on the petition built on the submissions he had already made to the Committee during the first hearing on the petition.

The Municipality later suspended and charged Mr Easton, the former Municipal Manager of the municipality, at the instance of Ms Campbell's complaints against his appointment as Municipal Manager.

Numerous charges were drawn up against Mr Easton, by the municipality and these charges included, amongst others: The failure to ensure the implementation of recommendations from the Auditor General South Africa in relation to awarding of tenders or contracts to local suppliers and breaching supply chain management and procurement and procedures in allowing the continuous use of the local premium preference policy. Mr Easton resigned, from his

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position as Municipal Manager, before his disciplinary hearing could be concluded.

Chairperson, it is against these key findings and observations that the Committee also makes the following recommendations: That the National Office of the Public Protector investigates all the issues raised in the petition. That the National Office of the Public Protector further investigates the reluctance on the part of its Provincial Office to investigate the complaints raised in the petition.

That the National Office of the Public Protector report to the Committee on the progress it has made in investigating the issues raised in the petition, within 60 days of the tabling of this report in the House.

Chairperson, in conclusion, the Select Committee on Petitions and Executive Undertakings recommends as follows: That the House adopt the Final Report on the Love Knysna Petition, as tabled by the Committee today. I so move. Thank you Chairperson.

Debate concluded.

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The DEPUTY CHAIRPERSON OF THE NCOP: Hon member, on what point are you rising?

Mr L V MAGWEBU: Thank you very much hon Chairperson. Hon Chairperson, the issue that hon Ximbi has raised on this report is very problematic even before he got into a debate. The Public Protector - if you look at his recommendations that the Public Protector must investigate this matter. I want to assist him, the public Protector has no jurisdiction because this matter happened more than two years ago. That was 2015, now this is 2018, so that recommendation is not going to work. It is outside the jurisdiction. Secondly and lastly, let me assist also the Petitions Committee - may I be protected Chair I'm on the floor.

The DEPUTY CHAIRPERSON OF THE NCOP: Hon member, hon member!

Mr L V MAGWEBU: Can I be protected Chair I'm still speaking. I can only be ruled out by you not by hon Dlamini. She must not be exited.

The DEPUTY CHAIRPERSON OF THE NCOP: I don't know why members are doing this. I don't know why members are doing this. You are not supposed to do that. You are not supposed to do that.

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Please, allow the Presiding Officer to determine whether if the member is already making a declaration or a member is debating or a member is doing whatever that he is doing.

And at the point, as you are raising now hon member, I think you are now at the point of debate. It is no longer a point of order. So therefore, can we proceed with the business of the day; and in section 71, if it permits you, it will allow you to make a declaration.

Mr L V MAGWEBU: I have no problem Chair. I have made my point. Thank you.

The DEPUTY CHAIRPERSON OF THE NCOP: Thank you very much. Eh, are all delegates - can you take your seat hon member. I tried to caution members even yesterday, but members keep on doing this. I don't know why you are doing this. Please, can we just treat each other - can we look at each other and treat each other with the greatest of respect.

Hon Dlamini, hon Dlamini I'm addressing the House! Can we please address each other with the greatest of respect as hon members? You might differ with another member yes, this is a multiparty

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democracy. This is a policy House. We differ, whether ideologically, theoretically and otherwise. We will have our own differences, but let's respect one another on the basis of our differences. Thank you very much.

Mr C F B SMIT: It is hon Smit Deputy Chair. I want to hear if it is parliamentary for the hon Cathy Dlamini to play Candy Crush on her computer while we are busy in the House?

The DEPUTY CHAIRPERSON OF THE NCOP: It will not be and if it is true hon Cathy that is what you are doing, please stop that.

Voting:

Question put: That the Report be adopted.

[TAKEN FROM MINUTES.]

Report accordingly adopted in accordance of section 65 of the Constitution.

The DEPUTY CHAIRPERSON OF THE NCOP: I wonder if a member can be asked in terms of what section was that we ought to vote on, whether

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if members would remember - especially those members who do not listen and continue to engage with each other, you know, in a very aggressive way.

Ms N P KONI: [Inaudible.]

The DEPUTY CHAIRPERSON OF THE NCOP: Okay, okay I referred - hon Koni, hon Koni, you know I just want to make things simple because yesterday I didn't necessarily leave it out. I presented it to the House; but let me just remind members ... [Interjections.]

Ms T J MOKWELE: [Inaudible.]

The DEPUTY CHAIRPERSON OF THE NCOP: No, can you be in order please and be respectful. You can't tell me that you don't have to.

Ms T J MOKWELE: [Inaudible.]

The DEPUTY CHAIRPERSON OF THE NCOP: No, it is not about you. It is not about you. It is about the House.

Ms T J MOKWELE: [Inaudible.]

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The DEPUTY CHAIRPERSON OF THE NCOP: Hon Mokwele, hon Mokwele!

Ms T J MOKWELE: [Inaudible.]

The DEPUTY CHAIRPERSON OF THE NCOP: Hon members, I want to take the opportunity to address ourselves to the Rule Book: Chapter 1 Part one, where it says that members have a right of freedom of speech in the Council and its Committees and Sub-committees subject to this Rule.

Members are not liable to any civil or criminal proceedings, arrest, imprisonment or damages for anything they have said produced before a Sub-committee of a Council or any of its Committees or sub-committees; anything revealed as a result of anything said produced before or submitted to the Council of any such Committee or Sub-committee.

Therefore, members one, (3)32, says that during a debate in the Council, no member may converse. It doesn't say members should not converse, but converse is allowed to a point where a member does not become disruptive. You can converse there is nothing wrong in conversing.

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Now, I'm reading this out risking a situation of turning this House into Rules workshop, and I don't want to do that. I have just raised it to remind members. What is the point of order?

Ms N P KONI: Chairperson, the Rule that you have just raised does it only apply to EFF members and not ANC members? Clarify me on that. Thank you.

The DEPUTY CHAIRPERSON OF THE NCOP: I read it to the House.

Ms N P KONI: Because yesterday it was only applied to the hon member of the EFF only.

The DEPUTY CHAIRPERSON OF THE NCOP: I requested to address the House on the matter. So I was not addressing any political party or any individual. I addressed the House, meaning therefore all members of this House.

**CONSIDERATION OF REPORT OF SELECT COMMITTEE ON SECURITY AND
JUSTICE - WITHHOLDING OF REMUNERATION OF MAGISTRATE MS J F VAN
SCHALKWYK, CHIEF MAGISTRATE AT KEMPTON PARK, TABLED IN TERMS OF**

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**SECTION 13(4A) (B) OF THE MAGISTRATES ACT, 1993 (ACT NO 90 OF
1993)**

Mr S G MTHIMUNYE: Deputy Chair, The Select Committee on Security and Justice, having considered the Magistrates Commission report dated 29 November 2017, as tabled by the Minister for Justice and Correctional Services, on their determination to withhold the remuneration of magistrate Ms J F Van Schalkwyk, Chief Magistrate at Kempton Park, tabled by the Minister for Justice and Correctional Services, in terms of section 13(4) of the Magistrates Act 90 of 1993

The committee therefore reports as follows just by way of background: The Magistrates Commission at its meeting held on 11 May 2013, agreed to provisionally suspend Ms Van Schalkwyk pending an investigation into her fitness to hold office as contemplated in terms of section 13(3) (a) of the Magistrates Act 90 of 1993. Parliament on 12 November 2013 confirmed Ms Van Schalkwyk's provisional suspension from office.

After a preliminary investigation, the Magistrates Commission charged Ms Van Schalkwyk with 18 counts of misconduct. Ms Van Schalkwyk's then attorney acknowledged receipt of the charge sheet

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on 01 August 2013 on her behalf. The Magistrates Commission holds the view that Ms Van Schalkwyk is deliberately delaying the disciplinary process against her and that a determination by the Commission to withhold her remuneration is justified.

Due process has been followed and the High Court dismissed her applications. The judgments in this regard are clear. Her representations not to withhold her remuneration therefore have no substance. Having regard to the fact that it is evident that Ms Van Schalkwyk deliberately delayed the continuation of the disciplinary process against her and the serious nature of this misconduct charges preferred against her, the Commission, at its meeting held on 24 November 2017, determined to withhold Ms Van Schalkwyk's remuneration in terms of section 13(4) of the Magistrates Act, pending the conclusion of the disciplinary inquiry against her with immediate effect.

The Select Committee on Security and Justice, having considered the Minister's report on the Magistrates Commission's determination to withhold the remuneration of magistrate Ms J F Van Schalkwyk, Chief Magistrate at Kempton Park, tabled by the Minister for Justice and Correctional Services, in terms of section 13(4) of the Magistrates Act.

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The committee recommends to Council to confirm the determination of the Magistrates Commission.

I therefore table the report for consideration.

Debate concluded.

Question put: That the Report be adopted.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Report accordingly adopted in accordance of section 65 of the Constitution.

CONSIDERATION OF REPORT OF SELECT COMMITTEE ON SECURITY AND JUSTICE

**- SUSPENSION FROM THE OFFICE OF MAGISTRATE OF MR I W O M MORAKE,
MAGISTRATE AT LICHTENBURG, TABLED IN TERMS OF SECTION 13(4) (a) (i) OF
THE MAGISTRATES ACT, 1993**

Ms G G OLIPHANT: Chairperson, the Select Committee on Security and Justice, having considered the Magistrates Commission's report dated 8 February 2018, as tabled by the Minister for Justice and

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Correctional Service, on the suspension and removal from office of Mr I W O M Morake, Magistrate at Lichtenburg, on the ground of misconduct in terms of section 13(4)(a)(i) of the Magistrates Act, 1993, Act 90 of 1993, hereinafter the Act, reports as follows:

Mr Morake is the Magistrate and Judicial Head at Lichtenburg. The Commission charged Mr Morake with six counts of misconduct which are contained in a charge sheet which was served on Mr Morake on 29 December 2010. One of the counts related to the fact that the Regional Court, Lichtenburg, on 18 October 2010 convicted him on two counts of theft. On 13 July 2007, Mr Morake appeared in the Lichtenburg Regional Court on three charges of theft.

On 21 July 2011 the court sentenced him to four years imprisonment on each count in terms of section 276(i) of the Criminal Procedure Act. The presiding officer delivered judgment on 23 June 2017 and found Mr Morake guilty of five counts of misconduct. The presiding officer imposed a sanction on 16 November 2017 and in terms of Regulation 26(17)(b) of the Regulations for Judicial Officers in the Lower Courts, 1994, the Regulations recommended to the Commission that Mr Morake be removed from office as contemplated in section 13 of the Act.

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Having duly considered all the required documentation presented to it, the Commissions Executive Committee on 30 January 2018 resolved to recommend that Mr Morake be removed from office in terms of Section 13(4) (a) of the Act. Concerning the legal position, in terms of section 13(4) (a) of the Magistrates Act, 90 of 1993, the Minister on the advice of the Magistrates Commission must suspend that magistrate from office or, if the magistrate is at that stage provisionally suspended in terms of subsection (1) (a), confirm the suspension.

A report in which the suspension in terms of paragraph (a) of a magistrate and the reason therefore are made known, must be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session in terms of section 13(4) (b) of the Act.

Parliament must then as soon as is reasonably possible, pass a resolution as to whether or not the restoration of his or her office of a magistrate so suspended is recommended in terms of section 13(4) (c) of the Act. After a resolution has been passed by Parliament as contemplated in paragraph 4.3, the Minister shall

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restore the magistrate concerned to his or remove him or her from office, as the case may be.

Concerning the committee recommendation to the NCOP for approval, the Select Committee on Security and Justice, having considered the Magistrates Commission's report dated 8 February 2018, as tabled by the Minister for Justice and Correctional Services, on the suspension from office of Mr I W O M Morake, magistrate at Lichtenburg, on the ground of misconduct in terms of section 13(4) (a) (i) of the Magistrates Act, 1993, recommends that the NCOP does not restore Mr Morake to the office of the magistrate.

Debate concluded.

Question put: That the Report be adopted.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

The DEPUTY CHAIRPERSON OF THE NCOP: Is that a point of order?

Ms T J MOKWELE: I just want to check with you, Chair, - by the way, this is the fifth question I'm posing to you today - about the

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processes and procedures of the House. Is it permissible for a province to be given two chances of voting?

The DEPUTY CHAIRPERSON OF THE NCOP: Hon member, Mokwele, I don't know why are you asking this question. So far as the records of this Parliament is concerned, the person mandated to be a leader of the delegation on behalf of the Premier of the Northern Cape, is hon Stock. That is what the records of this Parliament know. If he is unavailable, - let me explain this process, can you take your seat? - Okay!

Hon member, this is in terms of the Constitution, not even of the Rules. In the absence of the delegated member of the permanent delegates by a legislature, that member can then delegate that responsibility to any member of the permanent delegates to the NCOP.

Ms T J MOKWELE: On that matter ... [Interjections.]

The DEPUTY CHAIRPERSON OF THE NCOP: Is that a point of order?

Ms T J MOKWELE: Yes! According to the observation today, hon Oliphant has been in the House, and she has been voting on behalf of Northern Cape in the presence of the leader of delegation. You never

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highlighted or alluded to us as the House that hon Stock in his presence, is absent. But it's fine, I'm just sharing with you. When we come back, don't say we didn't warn you. Thank you.

The DEPUTY CHAIRPERSON OF THE NCOP: That is a side comment. What makes it even worse is that hon Stock is in the House. What he has arranged with his delegation, I don't know. So, hon member ...

[Interjections.]

Ms T J MOKWELE: May I address you again? You see, when you take decisions out of emotions, you'll forever commit mistakes. You don't know what was the arrangement of the Northern Cape, right? But hon Koni has voted on behalf of the Northern Cape, but then you turn that voting right of hon Koni, yet you don't know what was the arrangement amongst them as delegates. So, again, Chair, you are wrong! Thank you. No, it's fine, I'm just bringing that to your attention.

The DEPUTY CHAIRPERSON OF THE NCOP: No! For the purpose of your ease, I don't want us to get out of the House having different and wrong understanding, let me clarify that whilst hon Stock is in the House, I then called for the voting of the Northern Cape, but hon Koni voted. Hon Stock arose to speak, so, I recognised hon Stock

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because I'm looking at him, whereas hon Koni didn't see hon Stock. Therefore, I recognised hon Stock. Hon members ... [Interjections.]

No, I am speaking for myself. [Interjections.] Okay, fine! I recognised hon Stock - Hon Oliphant, no! That is the other thing that we need to address - I mean, I tried earlier on ...

[Interjections.] Can you take your seat, hon member? I tried to address this thing of respect amongst us earlier on. Hon Oliphant, you are speaking to another member and you are pointing at that member, it's not good! No, no, no! If they do that, it is for me to caution them not to do it! Don't ...

Setswana:

... o se ka wa busetsa bosula ka bosula, gonne seo se ka se go thuse ka sepe. Bosula bo tla fetelela.

English:

So, please let's not do that! Hon members, nine provinces ...

[Interjections.]

Ms T J MOKWELE: Chair, I'm going back to that issue of the Northern Cape on processes, with due respect. I'm not disputing your ruling. But I think you saw hon Stock standing up from his seat, going and

give hon Koni an instruction on voting, you saw him, whilst mama Oliphant was busy there. Hon Stock stood up and went to hon Koni, he even saluted you. He went to hon Koni to say, "on my absence whilst I'm present in the House, you must vote on behalf of Northern Cape." It's just for you to know that. Thank you very much!

The DEPUTY CHAIRPERSON OF THE NCOP: Hon members, I've made a ruling on this matter. Can we just proceed? I'm not going to entertain this issue. All nine provinces voted in favour. I therefore declare the report as agreed to in terms of section 65 of the Constitution.

CONSIDERATION OF REPORT OF SELECT COMMITTEE ON SECURITY AND JUSTICE

**- WITHHOLDING OF REMUNERATION OF MAGISTRATE MS R M MALAHLELA, AN
ADDITIONAL MAGISTRATE AT DELMAS, TABLED IN TERMS OF SECTION
13(4) (A) (B) OF THE MAGISTRATES ACT, 1993**

Mr S G MTHIMUNYE: Deputy Chairperson, The Select Committee on Security and Justice, having considered the Magistrates Commission's report dated 29 November 2017, as tabled by the Minister of Justice and Correctional Services, on their determination to withhold the remuneration of magistrate, Mrs R M Malahlela, an aspirant additional magistrate at Delmas, tabled by the Minister of Justice

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and Correctional Services, in terms of section 13(4A)(b) of the Magistrates Act, Act 90 of 1993, reports as follows:

Hon Deputy Chair, some background: Mrs Malahlela is an aspirant additional magistrate at the Delmas District Court. She is 54 years of age and has been appointed to the lower court bench on 01 November 2004. She is still on probation. The Minister, on the advice of the commission, provisionally suspended Mrs Malahlela from office with effect from 17 July 2014. The provisional suspension was confirmed by both Houses of Parliament on 06 and 18 November 2014 respectively.

Her permanent appointment could not be finalised due to poor performance, irregularities in her work, absenteeism from office, refusal to execute lawful orders, major delays in handing down judgments, failure to finalise matters and poor utilisation of court time. Her evaluation reports indicated that she is not a fit and proper person for appointment as a magistrate.

Mrs Malahlela was, for considerable periods, absent from work and in default to explain her absence, she could not satisfy the commission that she is a fit and proper person to be appointed as a magistrate. Medical reports indicated that she suffered from major depressive

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disorder and panic disorder. The condition, however, does not render her unfit to work, but she has to continue with monthly psychotherapy and medication.

A report dated 18 October 2011 recommended that she does not have the capacity to carry out her duties of office in an efficient manner due to continued ill-health and that she should furnish reasons in terms of Regulation 29 of the regulations – this is the regulation regulating the judicial officers of lower courts. The Committee on Ethics, on 6 September 2012, resolved that she be exposed to an additional six months of probation under the guidance of an onboard mentor, namely the then acting Judicial Head of Office. However, thereafter, further charges were brought against her.

The investigation report recommended that the Magistrates Commission charge Mrs Malahlela with misconduct. A charge sheet comprising of 29 counts of alleged misconduct was served on her on 05 March 2014.

On 8 June 2014, Mrs Malahlela filed a notice of motion at the North Gauteng High Court for a court order, *inter alia* to declare the commission's decision to charge her with misconduct to be wrongful

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and unlawful. The application was opposed by the Magistrates Commission.

At its meeting held on 31 October 2014, the commission considered Mrs Malahlela's attorney's request not to proceed with the disciplinary hearing, pending the outcome of the High Court review application since the relief sought, *inter alia*, is to set aside the decision by the Magistrates Commission to charge Mrs Malahlela with misconduct. The commission resolved to stand by its earlier decision that the misconduct hearing must proceed.

Having regard to the fact that it is evident that Mrs Malahlela is deliberately delaying the continuation of the disciplinary process against her and the serious nature of the misconduct charges preferred against her, the commission, at its meeting held on 21 November 2017, determined to withhold Mrs Malahlela's remuneration in terms of section 13(4A)(a) of the Act, pending the conclusion of the disciplinary inquiry against her with immediate effect.

The Select Committee on Security and Justice, having considered the Minister's report on the Magistrates Commission's determination to withhold the remuneration of magistrate Mrs R M Malahlela, an aspirant additional magistrate at Delmas Mpumalanga, tabled by the

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Minister of Justice and Correctional Services, in terms of Section 13(4A) (b) of the Magistrates Act, recommends to the National Council of Provinces to confirm the determination.

I therefore table the report on behalf of select committee to the House for consideration.

Debate concluded.

Question put: That the Report be adopted.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Report accordingly adopted in accordance of section 65 of the Constitution.

CONSIDERATION OF REPORT OF SELECT COMMITTEE ON SECURITY AND JUSTICE

**- WITHHOLDING OF REMUNERATION OF MAGISTRATE MR M J KGOMO, AN
ADDITIONAL MAGISTRATE, RANDBURG, IN TERMS OF SECTION 13(4) (A) (B) OF
THE MAGISTRATES ACT, 1993**

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Mr J M MTHETHWA: Chairperson, the Report of the Select Committee on Security and Justice on the Withholding of Remuneration of Magistrate Mr M J Kgomo, an Additional Magistrate, Randburg, in terms of Section 13(4A) (b) of the Magistrates Act, 1993, Act No 90 of 1993, reported by the committee on 23 May 2018 and published in Announcements, Tablings and Reports, ATC on 23 May 2018. The Select Committee on Security and Justice, having considered the Magistrates Commission's report dated 21 November 2017, as tabled by the Minister for Justice and Correctional Services, on their determination to withhold the remuneration of magistrate Mr M J Kgomo, an additional magistrate at Randburg, tabled by the Minister for Justice and Correctional Services in terms of Section 13(4A) (b) of the Magistrates Act, 1993, Act No 90 of 1993, reports as follows; criminal proceedings and reason for long delay in finalising the matter; Mr Kgomo was an additional Magistrate at Randburg and was appointed to the lower court bench in July 2000. He was arrested on 5 December 2013 and appeared in the Randburg Regional Court the following day on a charge of corruption.

It is alleged that he demanded and received R150 000 in exchange for positively influencing the outcome of an appeal for extradition brought by the complainant in the particular matter. The complainant had to face charges of corruption in another country amounting to

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R20 million. The money was recovered in Mr Kgomo's briefcase in his office and in his presence. The Regional Court convicted Mr Kgomo on two counts of corruption on 23 October 2017 and postponed the matter to 07 and 08 February 2018 for sentencing. Mr Kgomo is on provisional suspension since 18 February 2014. The misconduct inquiry against him has been kept in abeyance pending the progress made in the criminal matter. Mr Kgomo has now been convicted on two counts of corruption. He has been provisionally suspended from office for almost four years and with full remuneration. The commission holds the view that the mere fact that he has been convicted on two counts of corruption, on its own, justifies the withholding of his remuneration, pending the finalisation of the misconduct inquiry against him. Having regard to the fact that it is evident that Mr Kgomo is deliberately delaying the continuation of the disciplinary process against him and the serious nature of his criminal convictions, the commission determined to withhold Mr Kgomo's remuneration in terms of Section 13(4A)(a) of the Act, pending the conclusion of the disciplinary inquiry against him with immediate effect.

The Select Committee on Security and Justice, having considered the Minister's report on the Magistrates Commission's determination to withhold the remuneration of magistrate Mr M J Kgomo, an additional

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magistrate at Randburg, tabled by the Minister for Justice and Correctional Services, in terms of Section 13(4A) (b) of the Magistrates Act, 1993, Act No 90 of 1993, recommends to the National Council of Provinces to confirm the determinations. I present this report Chair.

Debate concluded.

Question put: That the Report be adopted.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Report accordingly adopted in accordance of section 65 of the Constitution.

CONSIDERATION OF REPORT OF SELECT COMMITTEE ON SECURITY AND JUSTICE

- PROVISIONAL SUSPENSION OF MAGISTRATE MS F K JASONE-TWALA, AN ACTING ADDITIONAL MAGISTRATE, GEORGE, IN TERMS OF SECTION 13(4a) (B)

OF THE MAGISTRATES ACT, 1993

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Mr D L XIMBI: Chairperson, the Select Committee on Security and Justice, having considered the Magistrates Commission's Report dated 21 November 2017, as tabled by the Minister for Justice and Correctional Services, on the provisional suspension from the office of magistrate Ms F K Jasone-Twala, an acting additional magistrate at George, pending the outcome of an investigation into her fitness to hold office as a magistrate, as required by section 13(3)(b) of the Magistrates Act, Act 90 of 1993, reports as follows:

The Magistrates Commission deliberated the matter and reported the following: one, prima facie evidence exists that she suffers from alcohol dependency which has a continuous detrimental effect on her daily work performance as a judicial officer; two, Ms Jasone-Twala is on probation since 2012 and that her probation period has been extended twice by the commission's appointments committee; and lastly, there seems to be a progressive deterioration in her conduct.

That without anticipating the outcome of the investigation into her fitness to hold the Office of Magistrate, the available evidence against Ms Jasone-Twala is of such a serious nature that it would justify her removal from office should she be found guilty of the misconduct charges which are preferred against her. The commission

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holds the view that it would be in the interest of the administration of justice that Ms Jasone-Twala be provisionally suspended from office pending the conclusion of the inquiry into her fitness to hold office.

Chairperson, the Select Committee on Security and Justice, having considered the Magistrates Commission's report dated 21 November 2017, as tabled by the Minister of Justice and Correctional Services, on the provisional suspension from office of Ms F K Jasone-Twala, an acting additional magistrate at George, pending the outcome of a misconduct hearing into her fitness to hold the Office of Magistrate as is required by section 13(3) (b) of the Magistrates Act 90 of 1993, recommends the national Council of Provinces confirms Ms F K Jasone-Twala's provisional suspension from the Office of Magistrate. Thank you, Chairperson.

Debate concluded.

Question put: That the Report be adopted.

In favour: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Report accordingly adopted in accordance of section 65 of the Constitution.

**CONSIDERATION OF REPORT OF SELECT COMMITTEE ON SECURITY AND JUSTICE
- WITHHOLDING OF REMUNERATION OF MAGISTRATE MS F K JASONE-TWALA, AN
ACTING ADDITIONAL MAGISTRATE, GEORGE, IN TERMS OF SECTION 13(4A) (b)
OF THE MAGISTRATES ACT, ACT 90 OF 1993**

Mr D L XIMBI: Hon Chairperson, again the Select Committee on Security and Justice, having considered the Magistrates Commission's report dated 21 November 2017, as tabled by the Minister of Justice and Correctional Services, on their determination to withhold the remuneration of Magistrate Ms F K Jasone-Twala, ac Acting Additional Magistrate at George, tabled by the Minister of Justice and Correctional Services in terms of section 13(4A) (b) of the Magistrate Act, Act 90 of 1993, reports again as follows: The Magistrate Commission deliberated the matter and reported the following:

Prima facie evidence exist that she suffers from alcohol dependency which has a continuous detrimental effect on her daily work performance as a judicial officer; she is on probation since 2012

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and that her probation period has been extended twice by the Commission's Appointment Committee.

Despite her having been admitted for rehabilitation on three different occasions during the period of her probation and having been counselled by her colleagues, her conduct has a detrimental effect on the smooth running of the courts, since she would on numerous occasions, and without advising her Judicial Head of Office timeously, or not at all, not report for duty; there seems to be a progressive deterioration in her conduct.

That, without anticipating the outcome of the investigation into her fitness to hold the Office of the Magistrate, the available evidence against Ms Jasone-Twala is of such a serious nature that it would justify her removal from office, should she be found guilty of the misconduct charges which are preferred against her.

Chairperson, the Commission holds the view that it would be in the interest of the administration of justice that Ms Josone-Twala's remuneration be withheld, whilst she is provisionally suspended from office pending the conclusion of the inquiry into her fitness to hold office.

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Therefore, the Select Committee on Security and Justice, having considered the Minister's report on the Magistrates Commission's determination to withhold the remuneration of Magistrate Ms F K Jasone-Twala, an Acting Additional Magistrate at George, tabled by the Minister of Justice and Correctional Services, in terms of section 13(4A) (b) of the Magistrate Act, Act 90 of 1993, recommends to the NCOP to confirm the determination. Thank you very much, Chairperson.

Debate concluded.

Question put: That the Report be adopted.

In favour: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Report accordingly adopted in accordance of section 65 of the Constitution.

CONSIDERATION OF REPORT OF SELECT COMMITTEE ON SECURITY AND JUSTICE

- PROVISIONAL SUSPENSION FROM THE OFFICE OF MAGISTRATE OF MR M D HINXA, CHIEF MAGISTRATE, BLOEMFONTEIN, TABLED IN TERMS OF SECTION

13(3) (B) OF THE MAGISTRATES ACT, 1993 (Act No 90 of 1993)

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Dr H E MATEME: Deputy Chairperson, thank you very much for this opportunity. The Select Committee on Security and Justice, having considered the Magistrates Commission's report dated 29 November 2017, as tabled by the Minister for Justice and Correctional Service, on the provisional suspension from office, of Mr M D Hinxa, the Chief Magistrate at Bloemfontein, pending the outcome of a misconduct hearing into his fitness to hold the Office of Magistrate, as is required by section 13(3)(b) of the Magistrates Act 90 of 1993, reports as follows.

With regards to its background, the complainant in the matter is a 42-year-old woman from Botshabelo. On 29 July 2016, she lodged a complaint with the Minister alleging that she was raped by Mr Hinxa in his flat in Bloemfontein after he made false pretences to her. Her complaint was submitted to the department, and on 2 November 2016, the complaint was referred to the Commission for attention.

The Commission holds the view that: The existing evidence against Mr Hinxa is of such a serious nature as to make it inappropriate for him to perform the functions of a Magistrate while the allegations are being investigated; Mr Hinxa's conduct tarnishes the good name, dignity and esteem of the Office of Magistrate and the administration of justice; and without anticipating the outcome of

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the investigation into his fitness to hold the Office of Magistrate, the available evidence against Mr Hinxa is of such a serious nature that it would justify his removal from office, should he be found guilty of the misconduct charges which are preferred against him.

The committee recommendation to the NCOP for approval follows. The Select Committee on Security and Justice therefore, having considered the Magistrates Commission's report dated 29 November 2017, as tabled by the Minister for Justice and Correctional Services, on the provisional suspension from office, of Mr M D Hinxa, the Chief Magistrate of Bloemfontein, pending the outcome of a misconduct hearing into his fitness to hold the Office of Magistrate, as is required by section 13(3)(b) of the Magistrates Act 90 of 1993, recommends the National Council of Provinces confirms Mr M D Hinxa's provisional suspension from the Office of Magistrate. We hereby table the report. Thank you.

Debate concluded.

Question put: That the report be agreed to.

Voting.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Agreed to.

Report accordingly adopted in accordance of section 65 of the Constitution.

PLANT IMPROVEMENT BILL

(Consideration of Bill and Report of Select Committee on Land and Mineral Resources thereon)

Mr O J SEFAKO: Thank you very much, hon Chair. Hon members, we have an opportunity to table before this House the Report of the Select Committee on Land and Mineral. The NCOP referred the Plant Improvement Bill [B 8D - 2015] to the Select Committee on Land and Mineral Resources on 17 November 2016.

The Bill is one of a number of sections 76 Bill referred to the committee during this period. The department briefed the committee on 1 August 2017; the delay in commencing the processing of these Bills was as a result of the committee at that time focusing

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extensively on the processing of the Mineral and Petroleum Resources Development Act, MPRDA.

The committee successfully applied for the extension of the six-week cycle from the NCOP in order to process the Bill effectively. The Bill together with the Plant Breeders' Rights Bill was referred to provinces for the development of mandate, while public inputs were also sort. From the inputs received it was clear that the public was concerned about the policy direction of the department, particularly questions were asked regarding the departments' perceived support of policy development with multi-nurturing large-scale of commercialised approach.

It was felt by those who commented on the legislation that the significant number of small-scales and the traditional farmers would not benefit significantly from the legislation, and that the upliftment of this farming sector was more important than adhering to international agreements that benefit a handful of seed producers.

These concerns were debated in the committee and referred to the department for comments. Robust discussions about the objective of both pieces of legislations followed. The department was confident

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that the proposed amendments to the Plant Improvement Bill, would not impact negatively on the development of small-scale farmers, and the traditional practice of subsistence farmers.

The amendments are required to strengthen the rise of seed producers and the plant breeders in South Africa as well as to enforce our international commitment towards safeguarding plant breed rights. The committee held two meetings to deal with deliberations on the negotiation mandate received from provinces on 21 and 28 November 2017.

The committee was satisfied that the department would clarify most matters of concern as in the submissions received from the public as well as the proposals contained in the negotiating mandates of provinces. The bill was adopted during the final mandate meeting held on 22 May 2018. I move for the adoption of this Report.

Debate concluded.

Declaration of vote:

Mr M M CHABANGU: This is the declaration of the Free State with regard to Plant Improvement Bill, as the EFF we categorically reject

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this Plant Improvement Bill that is before this House. The Bill is ... [Interjections.]

The DEPUTY CHAIRPERSON OF THE NCOP: Hon Chabangu, hon Chabangu, can you take your seat - can I take this point of order.

Ms M L MOSHODI: Chairperson, on a point of order, I am the leader of the delegation, we don't have a declaration. I didn't even allow the hon Chabangu to make a declaration on behalf of the province. Thank you.

The DEPUTY CHAIRPERSON OF THE NCOP: Hon Chabangu, can you take your seat hon Mokwele. Hon Chabangu, a matter has been brought to my attention that the province does not have a declaration, which matter has been brought to my attention by the leader of the delegation. [Inaudible.] She says the province does not have a declaration.

Mr M M CHABANGU: We have never agreed with her that she has never allowed me to do so ... [Interjections.]

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The DEPUTY CHAIRPERSON OF THE NCOP: Hon Chabangu let us not reduce this thing now to another thing. This is a provincial declaration and the leader says that the province does not have a declaration.

Ms T J MOKWELE: Chair, on a point of order, you know, when we are in the House I expect those people who are seated on that table not to be partisan. We have seen Advocate - I don't know his surname - pushing hon Moshodi to stand up. [Interjections.] Hon, hon - English is not my language I don't care how I pronounce it - hon Makhosini was already on his third sentence of the declaration before hon Moshodi could stop him. So, I am again, don't care whether you take the declaration or you don't take it, it is fine. I am just highlighting to you again that if you take the decision now, you are going to take the sixth decision today - which is wrong. It's fine you can take it. He will stop - you will not do the declaration if you say so, but it will be the sixth illegal decision that you would have taken today only.

The DEPUTY CHAIRPERSON OF THE NCOP: Well, maybe it should have been the 10th or the 100th decision but the fact of the matter is that ... [Interjections.] ... hon Mokwele, hon Mokwele, I want to address a very substantive issue that you raised. These other side issues for

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me are not so much important; whether it's a 100th or a 2 000th times or what it is immaterial.

What is important for me here is that the leader of the delegation rose to say that the province does not have a declaration! I listened to what -whether what happened here or whatsoever, I am looking at you. And my attention was wrong. [Interjections.] Hon Mokwele, I have made a ruling on the matter. Are you on this subject matter?

Ms T J MOKWELE: No, it's not me. I am seated

The DEPUTY CHAIRPERSON OF THE NCOP: Or Sorry. My apology, my apology. Are you on this subject matter?

Ms N P KONI: No! Chair, I saw Adv Mbebe with my own two eyes, directing the hon member from the Free State like this ... [Interjections.] ... but [Inaudible.]

The DEPUTY CHAIRPERSON OF THE NCOP: Hon Mokwele you are ... [Interjections.] Hon Koni, hon Koni, hon Koni

Ms N P KONI: But Mama Dlamini wanted to ... [Inaudible.]

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The DEPUTY CHAIRPERSON OF THE NCOP: Hon Koni, hon Koni, hon Koni, I made a ruling on the matter. [Interjections.]

Ms N P KONI: She wants' to ... [Inaudible

The DEPUTY CHAIRPERSON OF THE NCOP: Hon member, can you take your seat please, hon member can you take your seat! Hon Chabangu, on what matter are you rising - on the same subject matter?

Mr M M CHABANGU: Yes.

The DEPUTY CHAIRPERSON OF THE NCOP: No, if it's on the same subject matter I am not going to allow you because I have made a ruling on the matter.

Mr M M CHABANGU: But Chair, it's unfair.

The DEPUTY CHAIRPERSON OF THE NCOP: Hon Member I have made a ruling on that matter. Hon member, I have made a ruling on the matter and it's as simple as if you have seen it. I had not seen it. There are processes that can be followed that any member could lodge a complaint. Okay, thank you very much, Western Cape.

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Mr O S TERBLANCHE: Thank you, hon Deputy Chair. This Bill penalises farmer-to farmer exchange of seeds and plant materials, and restrict space for exchange and sharing in the future. It goes against long-held practices of sharing plants and seeds between farmers, especially smaller and less commercial producers. It further places a restriction on diversity ranges and innovation by smallholders and small enterprises.

The processes followed during the provincial mandates were flawed and minimum amendments were made by the Select Committee on Land and Mineral Resources. In fact, there was chaos and confusion during the voting process. Chairperson, even the Western Cape ANC from the legislature there also opposed this Bill. Therefore, the Western Cape Province cannot support the Bill. Thank you.

The DEPUTY CHAIRPERSON OF THE NCOP: Thank you very much. I don't see any other declaration.

Question put: That the Bill be agreed to.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo and Mpumalanga.

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AGAINST: Western Cape.

NO MANDATE: North West and Northern Cape.

Bill accordingly agreed to in accordance with section 65 of the Constitution.

The DEPUTY CHAIRPERSON OF THE NCOP: Hon Mokwele, hon Mokwele, I am not addressing you, I am addressing hon Stock, that the province did not submit a voting mandate.

Ms T J MOKWELE: No, I wanted to check, Chair, if hon Stock was he aware of the position of the province because by the look of things he was voting. So, we just want to check and then you alerted him that there was no mandate from the province. Thank you.

The DEPUTY CHAIRPERSON OF THE NCOP: Hon member, that is not a point of order, and I would not even subject myself to debate on that matter.

**CONSIDERATION OF PLANT BREEDERS' RIGHTS BILL AND REPORT OF SELECT
COMMITTEE ON LAND AND MINERAL RESOURCES THEREON**

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Mr O J SEFAKO: Hon Chair, these two Bills were submitted simultaneously and deliberated upon on the same day, also with the extensions sought from the NCOP. I attest that the committee held two meetings to deal with deliberations on the negotiating mandate received from provinces on 21 and 28 November 2017. The committee was satisfied that the department would clarify most matters of concern raised in the submissions received from the public as well as in proposals contained in the negotiating mandate of provinces.

The Bill was adopted during the final mandate meeting held on 22 May 2018 and moved for the adoption of this Bill as well.

Debate concluded.

Question put: That the Bill be agreed to.

Declaration of vote:

Mr O S TERBLANCHE: Deputy Chair, this Bill favours the extension of control and power of multinational corporations over plant breeding and agriculture at the expense of farmers, especially smallholder farmers. It limits the extension of diversity of seed systems and criminalises long-standing practices of seed exchange which is

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totally inappropriate in relation to intellectual property rights and the protection thereof.

Further, the legislative process followed by the Select Committee on Land and Mineral Resources was fundamentally flawed and leaves the Bill open to legal challenges. Once again, even the ANC in the Western Cape oppose this Bill. Therefore, once again, the Western Cape province cannot support the Bill. I thank you, Deputy Chair.

Voting

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga.

AGAINST: Western Cape.

The DEPUTY CHAIRPERSON OF THE NCOP: No, hon members. Hon members. Hon Koni and hon Mokwele, allow me to ... [Inaudible.] ... we don't have a final voting mandate. [Interjections.] Hon members. Hon members. Hon members, I am bringing you to the attention of the leader of the delegation. There is no final voting mandate from the province. [Interjections.]

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Motion accordingly agreed to in accordance with section 65 of the Constitution.

UNPARLIAMENTARY LANGUAGE

(Ruling)

The DEPUTY CHAIRPERSON OF THE NCOP: Hon members, may I bring the following to your attention that on 30 May 2018 I committed to the House that I would come to a ruling on a point of order raised by the hon Essack against hon Wana during a debate on Vote No 20 and Vote No 23. The hon Essack rose on a point of order and stated that the hon Wana was misleading the country by stating that the DA under the Nationalist Party killed groups of people and individuals. I undertook to consult Hansard transcript and revert back with a ruling as I did not hear what the hon member was alleging.

The question before the House is whether or not the hon Wana has made such statements as alleged by the hon Essack, and if so, did he deliberately mislead the House. Having consulted Hansard transcript, the hon Wana is recorded to have said the following and I quote: "Shame on DA for selling their manifesto, after killing innocent people during the time of the National Party programmes."

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Hon members, the hon Wana did not say sounded similar and could have been interpreted as having said the DA killed. Hon members, we have previously ruled in this House that all Members of Parliament have freedom of speech which is expressly constitutionalised in section 71 and further embedded on Council Rule 30. We have further ruled that references to political parties are not unparliamentary. The courts have favoured the use of robust and emotive language during parliamentary debates as held in the Constitutional Court judgement of the *Democratic Alliance v the African National Congress and Another* and I quote: "Political life in democratic South Africa has seldom been polite, orderly and restrained, it has always been loud, rowdy and fractious, that is not a bad thing within the boundaries of the Constitution sets, it is good for democracy, good for social life and good for individuals to permit as much open and vigorous discussion of public affairs as possible."

It is evident from the judgement laid by the courts that members' freedom of speech is tantamount to the promotion of an environment that is representative and of open and democratic society. I therefore rule that the point of order as raised by the hon Essack is not sustained, hence I see it fit not to proceed into further legal analysis of whether or not the hon Wana statement had misled the House. I would like to take this opportunity to caution members

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to take heed of previous rulings delivered in this House and further to encourage members to advocate for an environment that promotes robust debates rather than to rise on spurious points of orders. That is my ruling.

UNPARLIAMENTARY LANGUAGE

(Ruling)

The DEPUTY CHAIRPERSON OF THE NCOP: On the ruling of a point of order raised by the hon Mthethwa against the hon Faber on 17 May 2018 during the policy debates Budget Vote No 26 of Energy, the hon Mthethwa rose on a point of order and alleged that the hon Faber was misleading the public when he said and I quote: "Where did he see Zuma looting?" I undertook to consult Hansard transcript and revert with the ruling as I did not hear what the hon member was alleging. Having consulted Hansard transcript, the hon Faber is recorded to have said the following and I quote: "We will condemn and actual imprison President Zuma and the Guptas and Brian Molefe for looting from government through inflating the controversial R164 000 locomotive tender to which the Gupta-linked businesses scored from R38 billion to R54,5 billion with these in picture." This is Hansard and this is what he said, it is not what I say. The

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question is therefore whether the statement made by the hon Faber can be deemed as unparliamentary.

In section 71, the Constitution is read with the Powers and Privileges and Immunities of Parliament and Provincial Legislatures Act and National Council of Provinces' Rule 30 affords members of the Council the right to freedom of speech. The fundamental right is crucial as it recognises that members should be free to speak their minds in debates without fear or favour. It was held in the Supreme Court of Appeal case of *Chairperson of the National Council of Provinces v Malema* that the Constitution does not allow the presiding officer to limit a members' freedom of speech unless authorised by the Rules of Parliament or a standing order.

In our previous rulings as presiding officers, we have discouraged rather than make a ruling to members from referring to persons who are not Members of Parliament and who are unable to reply in their own defence because they are not Members of Parliament. Both in the Westminster system and in our own South African system, Members of Parliament have a responsibility to protect the public not only from outright slander but also from any slur directly or indirectly implied upon them as Members of Parliament.

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Therefore, the ruling is as follows, while making an allegation against a nonmember of Parliament is not unparliamentary, however, I - not only alone, but on behalf of all presiding officers, appeal once more to members to avoid, as much as possible during the course of the debate, mentioning people outside Parliament who are by any chance unable to reply in their own defence as they are not Members of Parliament. That is the conclusion of the ruling.

The Council adjourned at 16:11.