



## REPORT OF DEPUTY SPEAKER, MR SL TSENOLI, MP

### REFERAL TO THE RULES COMMITTEE, IN TERMS OF ASSEMBLY RULE 92(12), OF RULINGS MADE ON 23 MAY 2018

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#### A. BACKGROUND

1. During the course of the debate on the Presidency's Budget Vote in the National Assembly on 23 May 2018, I made two rulings in response to comments made by Hon J S Malema from the Economic Freedom Fighters (EFF) –
  - (i) The first was that Mr Malema's allegation that the Deputy Minister of Intelligence was: *"the one who is number one in defending the corruption taking place in the intelligence: crime intelligence, military intelligence, including the intelligence department itself..."* was unparliamentary; and
  - (ii) The second, that Mr Malema's call for *"our people to occupy the unoccupied land..."* raised serious questions in light of the oath taken by members to uphold the laws of the Republic. Given this, I indicated that the issue should be taken up in the appropriate structures and I referred the matter to the Speaker accordingly.
2. In a letter to the Speaker, dated 25 May 2018, Hon N F Shivambu (EFF) wrote to express his party's dissatisfaction with these rulings and contended that, with reference to Section 58 of the Constitution, which affords Members of the Assembly the right to freedom of speech –

*“...there is no law or rule which prevents members of Parliament from saying that Ministers or Deputy Ministers are defending corruption or (from making) a call to our people to occupy empty land....”*

Based on this argument, the Member requested that Speaker refer the rulings to the Rules Committee.

3. On 31 May, Speaker wrote to Hon Shivambu to indicate that she had referred the following matters to the Rules Committee –

- (i) the principle of the prohibition on unparliamentarily language; and
- (ii) the question of whether a Member can, given their oath of office, advocate unlawfulness in Parliament, and the implications this may have for the Assembly Rules, to the Rules Committee to consider in terms of Rule 92.

## **B. SUMMARY OF PROCEEDINGS AND RULINGS**

1. During his speech, Hon Malema said, *“the Deputy Minister (Ms E Molekane) is the one who is number one in defending the corruption taking place in the intelligence...”*

In response to this comment, Hon Z Dlamini-Dubazana, of the African National Congress (ANC), rose on a point of order and argued that Hon Malema’s comment that the Deputy Minister was “defending corruption” was unparliamentary and that any such allegations should be brought to the House by way of a substantive motion.

I sustained the point of order on the basis that the remark that the Deputy Minister was a defender of corruption implied that she was corrupt: a remark that was in conflict with the Rules. I then ordered Hon Malema to withdraw the comment. After an exchange the Hon Malema withdrew the statement.

2. Earlier during the speech, Hon Malema had said, *“...we have made a call, and we make it even here, for our people to occupy the unoccupied land. It is their land because the ANC is not going to give them land anytime soon...So, our people must continue to occupy land.”*

At the conclusion of his speech, I indicated that I would request that this matter be considered by the Rules Committee and stated *“the hon Malema swore to abide by the Constitution and all other laws. When he said what he said there, I think it raises very crucial questions....”*

Members of the EFF proceeded to contest this ruling and argue, events, which culminated in me requesting the members of the party to leave the House. After further exchanges, the members of the EFF left the Chamber.

### **C. LEGAL AND PROCEDURAL FRAMEWORK**

1. Section 58 of the Constitution gives Members of the National Assembly the privilege of freedom of speech, subject only to the rules and orders of the House. Freedom of speech is essential for democracy in that it enables Members to raise matters of public interest without fear of prosecution.
2. The Rules were formulated in accordance with Section 57 of the Constitution, which states that the Assembly may determine its own internal arrangements, proceedings and procedures; such rules being subject only to the Constitution. In terms of freedom of speech, the rules make it possible for Members to fulfill their duties as public representatives, while ensuring that reasoned and measured debate can occur without recourse to personal insults and threats.
3. Concerning the above, Rule 84 states that: *“No member may use offensive, abusive, insulting, disrespectful, unbecoming or unparliamentary words or language, nor offensive, unbecoming or threatening gestures”*; and Rule 85, that *“No member may impute improper motives to any other member or cast personal reflections upon a member’s dignity, or verbally abuse a member in any other way, except by way of a separate substantive motion....”*
4. Rules 92, relating to points of order, provide, *inter alia*, that, *“the presiding officer’s ruling on a point of order is final and binding and may not be challenged or questioned in the House.”* The rule, however, goes on to state that, *“a member who is aggrieved by a Presiding Officer’s ruling on a point of order may subsequently in writing to the*

*Speaker request that the principle or subject matter of the ruling be referred to the Rules Committee.*” The Rules Committee, in turn, must confine its deliberations to the principle of the ruling concerned.

5. Schedule 2(4) to the Constitution prescribes that, upon assuming office, members of Parliament must swear or affirm that they, *“will be faithful to the: Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic....”*
6. With respect to the permissibility of Mr Malema's comment itself, much would depend on the interpretation of the scope and limitations of Section 58 of the Constitution, and the obligations placed on Members by Schedule 2(4), of the oath. Given that this involves the interpretation of statute, a legal opinion was sought on the matter.
7. In essence, the opinion states that, *“Members of the National Assembly have freedom of speech in the Assembly and in its committees, subject to the rules and orders. This means that members can say anything in Parliament unless constitutionally valid rules or orders of the Assembly regulate or prohibit such speech. Nothing could be found in the rules or orders of the NA that specifically and directly regulates or prohibits the kind of speech attributed to Mr Malema”*.

The opinion, however, adds that, while the Member may not be prosecuted for his utterances, this does not preclude the Assembly from inquiring into the conduct of Mr Malema, insofar as he may have abused his privilege and breached his oath of office. Notwithstanding this, the opinion concludes that, given the lack of specificity in the rules, any such action may be subject to a legal challenge and therefore recommends that rules be drafted to deal with such matters.

8. Given the arguments above, I support the Speaker's referral of the question of whether, and to what extent, a Member's oath of office places limitations on freedom of speech, and the possible implications for the rules of the Assembly, to the Rules Committee.



**Mr SL Tsenoli, MP**  
**Deputy Speaker of the National Assembly**

### **ATTACHMENTS**

1. Unrevised Hansard (23 May 2018)
2. Minutes of Proceedings (23 May 2018)
3. Legal Opinion on the Conduct of Mr Malema