**REPORT OF THE POWERS AND PRIVILEGES COMMITTEE ON MATTERS REFERRED BY THE SPEAKER**

**A. INTRODUCTION**

1. The Powers and Privileges Committee (the Committee) is established in terms of Section 12(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (No 4 of 2004) (the Act) to enquire into and pronounce upon any act or matter declared by the Act to be contempt of Parliament by a member, and recommend disciplinary actions in terms of the Act. After completing its enquiry, the Committee is required to report to the House.
2. Between 24 October 2014 and 20 June 2018, the Speaker referred 11 matters relating to allegations of contempt of Parliament, breach of privilege and requests to have responses recorded in terms of Section 25 of the Act to the Committee for consideration and report to the House.
3. In terms of Assembly Rule 214, the Committee must consider any matter referred to it by the Speaker relating to allegations of contempt of Parliament or misconduct by a member or a request to have a response recorded in terms of Section 25 of the Act, except a breach of the Code of Conduct for Assembly and Permanent Council Members contained in the Schedule to the Joint Rules of Parliament. The Committee must table a report in the Assembly on its findings and recommendations in respect of any alleged contempt of Parliament, as defined in Section 13 of the Act, or misconduct.
4. Following the adoption by the Assembly of the Committee’s report on 27 November 2014 in respect of the incident of grave disorder that occurred in the House on 21 August 2014, the Economic Freedom Fighters (EFF) brought an urgent interdict in the Western Cape High Court to prevent the Assembly from imposing the sanctions against its members. On 23 December 2014, the court granted a temporary interdict that came into effect immediately. The court delivered the final judgment in which it dismissed in this matter on 29 January 2018. The Committee is aware that the applicant is currently appealing the High Court judgment to the Supreme Court of Appeal (SCA). The Committee was mindful of this court challenge brought by the applicant and its potential impact on its functioning especially its ability to recommend the sanctions contained in Section 12(5) of the Act.
5. Following the declaration of invalidity of Section 11 of the Act by the Constitutional Court, the Assembly on 19 May 2016, resolved to establish an Ad hoc Committee to review the entire Act, to bring it in line with the Constitution, developments relating to parliamentary powers and privileges, and introduce a Bill in accordance with the Assembly Rules. To some extent, the uncertainty in terms of which other sections of the Act would be singled out for review somewhat impacted on the work of the Committee. The Assembly passed an amended Bill on 28 August, and transmitted it to the National Council of Provinces for concurrence.

**B. MATTERS REFERRED TO THE COMMITTEE**

1. **Incident involving Mr N F Shivambu**

An incident in the Assembly on 17 September 2014 involving Mr N F Shivambu was referred to the Committee for consideration and report on 24 October 2014.

1. **Incident involving Ms B P Mabe**

An unparliamentary remark by Ms B P Mabe on 16 September 2014, the remainder of her speech and a personal explanation in terms of Rule 69(2) were referred to the Committee for consideration and report on 10 December 2014.

1. **Incident involving Mr M A Maimane**

An unparliamentary remark by the Leader of the Opposition, Mr M A Maimane, on 13 November 2014, and his subsequent conduct was referred to the Committee for consideration and report on 10 December 2014.

1. **Incident involving Mr M Waters**

An unparliamentary remark by Mr M Waters on 13 November 2014, and his subsequent conduct was referred to the Committee for consideration and report on 10 December 2014.

1. **Request by Mr N Howa to have response recorded**

On 12 September 2016, the Chief Executive Officer of Oakbay Investments (Pty) Ltd, Mr N Howa, wrote to the Speaker alleging that members had made defamatory statements in the House on 8 September 2016 against Oakbay Investments (Pty) Ltd. He requested to have a response recorded in terms of Section 25 of the Act.

On 20 October 2016, the Speaker referred Mr Howa’s request to the Committee for consideration and report.

1. **Incident involving alleged contempt of Parliament by former Minister of State Security**

On 18 November 2016, the Economic Freedom Fighters (EFF) submitted a complaint to the Speaker alleging that the then Minister of State Security, Mr M D Mahlobo, was guilty of breach and abuse of privilege in terms of Section 13 of the Act by being dishonest in the House on 16 November 2017. The party alleged that the former Minister’s statement in the House on that day contradicted a statement he had previously made in public regarding meetings he was alleged to have had with a student activist and leader of the “Fees must fall” campaign at his house.

On 28 November 2016, the Acting Speaker referred the matter to the Committee for consideration.

1. **Allegation of breach of privilege raised by Mr J H Steenhuisen**

The allegation of breach of privilege raised by Mr J H Steenhuisen on 9 March 2017 during Questions to the Deputy President regarding a failure to inform Parliament about the deployment of the South African National Defence Force during 2016 in accordance with the Constitution and the Defence Act, 2002 (Act No. 42 of 2002) was referred to the Committee for investigation and report on 13 April 2017.

1. **Request by Secretary to Parliament to have response recorded**

On 29 May 2017, during the debate on Budget Vote 2, Parliament, Mr N F Shivambu made certain remarks about the Secretary to Parliament, Mr G Mgidlana. Mr Shivambu made a statement that Mr Mgidlana was corrupt.

On 24 July 2017, the Speaker referred a complaint by Mr Mgidlana charging Mr Shivambu with contempt of Parliament to the Committee for consideration and report.

1. **Incident involving Mr M A Dirks regarding deliberate misrepresentation**

On 31 August 2017, Mr M A Dirks was alleged to have shown members an inappropriate gesture in the House – a middle finger. After being asked by the Presiding Officer whether he had done so, the member denied having done so. The video footage however showed that the member had made the inappropriate gesture.

The Speaker, on 4 September 2017, referred the matter to the Committee for consideration and report.

1. **Incident involving Mr M A Dirks regarding threats against a member**

On 1 December 2017, the Chief Whip of the Majority Party, Mr J M Mthembu, wrote to the Speaker, requesting an investigation into an incident which occurred in the Assembly the previous day, on 30 November 2017. The Chief Whip alleged that Mr M A Dirks insulted and threatened to assault a member, Ms T Mantashe.

The Speaker referred the matter to the Committee for consideration and report on 20 June 2018.

1. **Incident involving Messrs T R Majola and T J Brauteseth allegedly preventing Mr S Emam from returning to his seat**

On 25 May 2018, after making a declaration on the Second Reading of the Appropriation Bill, Mr S Emam was making his way to his seat when he was allegedly prevented from doing so by Messrs T R Majola and T J Brauteseth.

The matter was referred to the Committee on 1 June 2018 for consideration and report.

**C. PROCESS**

1. The Committee held two meetings on 8 and 15 November 2018. At its first meeting of 8 November 2018, the Committee received a briefing from the legal adviser on the status of the EFF matter as requested by the Chairperson of the Committee. The Committee was informed that the EFF had sought leave to appeal to the SCA the entire judgment of the Western High Court delivered on 29 January 2018 dismissing its application to set aside the suspension of its members from the Assembly, and the disciplinary proceedings and findings of the Committee in relation to the incident in the Assembly on 21 August 2014. The Committee was mindful of the EFF appeal to the SCA, but agreed to proceed to consider all the pending matters before it.
2. In deciding to proceed to consider all the pending matters before it, the Committee also took into account the fact that the Assembly had completed amending the Act, and referred it to the National Council for concurrence. The amendments to the Bill did not impact on the mandate, and functioning of the Committee and the sanctions it could impose.
3. At the same meeting, the Committee also received a briefing by the Secretary to the National Assembly with regard to the pending cases before it, following the request from the Committee Chairperson to the Speaker. The presentation indicated the date of referral of the matter to the Committee, provided a summary of each incident and also gave an indication of the status of each matter. In addition, the Secretary briefed the Committee with regard to the Speaker’s letter, dated 7 November 2018, addressed to the chairperson of the Committee. The Speaker’s letter dealt with proposals with regard to the processing of certain matters for the Committee’s consideration.
4. The Committee deliberated at length on the Secretary’s presentation with regard to the pending cases and the Speaker’s proposals, and resolved that members be given seven days to process all the documents and information presented in order for them to take a position on each of the pending matters at its next meeting.
5. At its second meeting held on 15 November 2018, the Committee resumed deliberations in respect of the matters before it and made the following recommendations for consideration by the Assembly.

**D. RECOMMENDATIONS**

1. In light of Mr Shivambu’s request to make a personal explanation in terms of the Rules, and his apology in the House on 4 November 2014 for showing the middle finger to the then Deputy President, Mr C M Ramaphosa, the Committee recommends that the matter be considered closed.
2. The matters with regard to Mr Maimane and Mr Waters fell within the powers of the presiding officer and could have been dealt with at the time. The Rules have since changed, and the matter therefore should be considered closed.
3. With regard to Ms Mabe’s matter, the Committee acknowledged that it could have been dealt with by a Disciplinary Committee had it been in existence at the time. In light of Ms Mabe’s apology regarding her reference to the Leader of the Opposition as a “bloody bastard”, which the Committee accepted and therefore the matter should be considered closed.
4. In light of the Oakbay Investments (Pty) Ltd request that they be allowed to reserve their position with regard to any engagement with the Committee, and since there has been nothing forthcoming from the company since then, the matter is regarded as obsolete.
5. Regarding the allegation of contempt of Parliament against the former Minister of State Security, Mr M D Mahlobo, it is recommended that the Committee should determine the process required to investigate and deal with the matter in terms of the Schedule to the National Assembly Rules.
6. In light of Mr Steenhuisen’s indication not to continue with the matter regarding his complaint of breach of privilege against former President J G Zuma and the fact that President Zuma was no longer president and therefore not bound by the Rules, the matter should be considered closed.
7. Regarding the request from the Secretary to Parliament to have a response recorded in terms of Section 25 of the Act, the Committee agreed that the request be granted provided there is agreement between it and the Secretary to Parliament on the nature of the statement.
8. With regard to the allegation that Mr M A Dirks deliberately misled the House by denying when asked whether he had shown the middle finger to members, the Committee resolved that it is a matter of discipline, and not of abuse of privilege or contempt of Parliament.
9. Similarly, regarding the allegation that Mr M A Dirks insulted and threatened to assault Ms T Mantashe in the House, the Committee resolved that it is a matter of discipline, and not of abuse of privilege or contempt of Parliament.
10. Regarding the allegation that Messrs T R Majola and T J Brauteseth prevented Mr S Emam from returning to his seat after making a declaration, the Committee resolved that it is a matter of discipline, and not of abuse of privilege or contempt of Parliament.

Report to be considered.