

REPORT OF THE JOINT COMMITTEE ON ETHICS AND MEMBERS' INTERESTS ON THE WORK UNDERTAKEN DURING THE 6TH PARLIAMENT

(9 NOVEMBER 2019 – 18 MARCH 2024)

LEGACY OVERVIEW

First Meeting: The inaugural meeting of the Joint Committee on Ethics and Members' Interests, ("the Joint Committee") took place on 9 November 2019.

Focus/ Functions of the Joint Committee: The work of the Joint Committee is set out in Joint Rule 124 and includes the functions contained in the Code of Ethical Conduct and Disclosure of Members' Interests ("the Code"). The Joint Committee acts proactively in the process of the annual disclosure of members' financial and registrable interests and then acts reactively when there is an allegation of breach of the Code against a Member of Parliament. Even though the work of the Joint Committee is confidential, and meetings are "closed", the aim of the Joint Committee is always aimed at promoting transparency and openness so that members of the public may hold the Members of Parliament accountable to act in the interests of the public and not their individual interests.

Key Challenge: The Joint Committee being comprised of members of the National Assembly and the National Council of Provinces, faces a constant challenge of meeting dates and times, which clashes with Portfolio and Select Committees. This results in meetings not being able to quorate. Meetings were scheduled on a Monday to ensure that a quorum was reached and to ensure that members did not have clashes with other meetings. However, because a Monday is a constituency day, it resulted in members of the Committee having to attend to constituency duties on certain Monday's and thereby not being available to meet.

Process of Committee work: The Joint Committee does not meet as frequently as portfolio or select committees. The meeting dates of the Joint Committee is determined by the nature of the complaints lodged with the Office of the Registrar of Members' Interests. On the basis that the Joint Committee must adhere to principles of natural justice in the processing of complaints, committee meetings are convened four to five weeks apart.

Recommendation: That meetings of the Joint Committee should take priority over Portfolio and Select committee meetings when there are scheduling clashes. This is needed because the Joint Committee does not meet that often and it must comply with the provisions of the Code. Extensive training for Members of Parliament on the Code must be undertaken as a new Code was adopted in April and May 2024 by the Houses, which will be in operation from the start of the term of the 7th Parliament.

INTRODUCTION

"Ethics is to know the difference between what you have the right to do and what is right to do." Potter Stewart

The above excerpt by Potter Stewart crystalizes the fine line between that which one may think is right and that which is right. For this reason, "*Ethics* is the discipline that examines one's moral standards or the moral standards of society. It asks how these standards apply to our lives and whether these standards are reasonable or unreasonable." [*Manuel Velasquez: Business Ethics, Concepts and Cases, 6th Edition*]

In the context of the Parliament of the Republic of South Africa, Members of Parliament ("Members") are required to uphold ethical standards. These standards are contained in the Code of Ethical Conduct and Disclosure of Members' Interests ("the Code").

In terms of Item 4 of the Code, the Standards of Ethical Conduct are as follows:

- 4.1 Members must:
- 4.1.1 abide by the principles, rules and obligations of this Code;
 - 4.1.2 by virtue of the oath or affirmation of allegiance taken by all elected Members, uphold the law;
 - 4.1.3 act on all occasions in accordance with the public trust placed in them;
 - 4.1.4 discharge their obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interests above their own interests;
 - 4.1.5 maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution; and
 - 4.1.6 in the performance of their duties and responsibilities, be committed to the eradication of all forms of discrimination.

The Code also directs that financial and business interests of a Member may not present a conflict of interest to the Members' position as a holder of public office. The Joint Committee is therefore, the proverbial "*watch-dog*" for Members' Ethics and Members' Interests. This report sets out the work of the Joint Committee over the term of the 6th Parliament, that is, from November 2019 to March 2024.

1. THE JOINT COMMITTEE:

The Joint Rules of Parliament, in Chapter 3, Part 11, establishes the Joint Committee on Ethics and Members' Interests. Joint Rule 122 (1) provides that the Joint Committee consist of 14 National Assembly members and 9 Council members. The Joint Committee consists of 23 members. Two Co-Chairpersons, one from the National Assembly (NA) and one from the National Council of Provinces (NCOP), chair the Committee. During the term of the 6th Parliament, the following Co-Chairpersons held this position:

Mr. Bekizwe Simon Nkosi, MP (NA): November 2019 to March 2024
Ms. Moji Lydia Moshodi MP (NCOP): November 2019 to March 2024

The Joint Committee receives administrative support from the Registrar of Members' Interests and the staff assigned to support the Joint Committee. The appointment of this staff is provided for in item 11.2 of the Code. The position of Registrar of Members' Interests has been vacant since 2016. During the term of the 6th Parliament the Joint Committee was supported by an Acting Registrar of Members' Interests, namely, Adv Anthea Gordon (Acting): 1 October 2018 – to date.

2. THE FUNCTIONS OF THE JOINT COMMITTEE

Joint Rule 124 provides for the functions of the committee. In terms of Joint Rule 124

“(1) the committee must-

- (a) implement the Code;
- (b) develop standards of ethical conduct;
- (c) serve as an advisory and consultative body (to Members and generally);
- (d) regularly review the Code and make recommendations for its amendment to both Houses;
- (e) perform other functions reasonably assigned to the Joint Committee.

In terms of Joint Rule 124 (2), the Committee must report on the effectiveness of the Code to both Houses. Broadly, the Committee seeks to guide and advise Members rather than being punitive in its approach. Rehabilitation of members remains a critical task.

3. THE COMMENCEMENT OF THE 6TH PARLIAMENT

(Training on ethics) During 2019 the Ethics Institute together with the Acting Registrar of Members' Interests conducted training for Committee Members on the broad concept of ethics and on the provisions of the Code.

4. DISCLOSURE OF MEMBERS' INTERESTS

In terms of item 9.2.2 of the Code, the first disclosure by Members must be done within 60 days of the opening of Parliament. The first disclosure occurs by automatic operation of the Code under the administration of the Registrar of Members' Interests. Thereafter, disclosure of Members' Interests takes place annually at a time determined by the Joint Committee. This function of the Joint Committee requires the Committee to act proactively to ensure that the disclosure of Members' Interests happens timeously within the guidelines of the Code.

The obligation upon a Member to disclose her or his financial interests ensures that the Parliament of the RSA can uphold the constitutional imperative of openness and transparency. In this way, members of the public can hold their public representatives accountable. During the 6th Parliament, the first disclosure of Members' Interests took place during September 2019. Annually thereafter disclosures took place as follows:

Date determined by the Committee annually:

2020: November 2020 _ Done via email due to hard lock restrictions during Covid

2021: November 2021_Done via email because Covid restrictions were not completely lifted.

2022: November 2022_ New E-disclosure system was introduced.

2023: September 2023_ E-disclosure process continued.

With the introduction of the new e-disclosure system during 2022, the Acting Registrar engaged in extensive virtual training with Members of Parliament.

Every disclosure period over the term of the 6th Parliament saw several Members submitting their disclosures after the due date. In terms of the Code a disclosure made after the due date is considered an alleged breach of the Code. The Registrar of Members' Interests is required to write to each of the late submitters and request of them to reply to an allegation of a breach of the Code. The Joint Committee considers each member's reason for her or his late disclosure on a case-by-case basis and at the same time must ensure consistency in the approach adopted by the Joint Committee. The Joint Committee under the 6th Parliament has taken a no tolerance approach toward members who do not meet the deadline. Generally, the Joint Committee considers explanations such as, grave or terminal illness and bereavement as valid reasons for submitting a disclosure after the due date.

However, once again this is not a blanket approach but considered on a case-by-case basis. The number of late submitters per year, was as follows:

2019: 16 late submissions

2020: 8 late submissions

2021: 4 late submissions

2022: 4 late submissions

2023: 11 late submissions.

5. BREACH OF THE CODE

The Office of the Registrar of Member's Interests received 41 (forty-one) complaints of alleged breaches of the Code over the term of the 6th Parliament. Of the 41 complaints, the Joint Committee has finalised 35 (thirty-five) complaints. Six (6) matters were not completed. Of the 6 (six) matters, 3 (three) relate to current members of Parliament and 3 (three) relate to persons who are no longer members of Parliament. Essentially therefore, there are only 3 (three) active complaints before the Joint Committee.

The 41 complaints cover a wide range of matters such as -

- Violation of the standards of ethical conduct
- Not declaring gifts, hospitality, consultancies and directorships.
- Allegations of accepting bribe money or soliciting bribes.
- Acting in a racially discriminatory manner toward another.
- Derogatory language used on social media platforms such as WhatsApp group chats and facebook.

The 41 (forty-one) complaints do not include alleged breaches of the Code in respect of late disclosure of Members' Interests where members failed to meet the annual disclosure deadline. The late disclosures were tabled by the Acting Registrar in the Joint Committee and processed as alleged breaches of the Code. In total the late submissions amount to 43 (forty-three) cases of additional breaches of the Code as reported by the Committee to the Houses year-on-year. In total therefore, the Joint Committee dealt with 84 (eighty-four) complaints over the term of the 6th Parliament. During the 5th Parliament, the Joint Committee dealt with 36 (thirty-six) complaints. The 6th Parliament therefore saw a 133% increase in the volume of complaints from the 5th to the 6th Parliament.

6. REPORT OF THE STATE CAPTURE

During the term of the 5th Parliament, the then President of the Republic of South Africa constituted a Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State. This Commission became known as the "Zondo" Commission. The Report (various parts and volumes) indicated that certain members of Parliament may be implicated in corruption. The Joint Committee dealt with the cases of members of Parliament who were referred to the Joint Committee by the Presiding Officers and complaints laid by members of the public. Some of the matters took place many years ago and therefore the Joint Committee had to deal with matters of breaches of the Code that were not committed during the term of the 6th Parliament.

7. LITIGATION

The term of the 6th Parliament saw the work of the Joint Committee being challenged in a court of law. The Joint Committee (Parliament of the RSA) successfully opposed two urgent matters before the High Court in 2023 and 2024. The two Members attempted to interdict the implementation of the sanction and attempted to review the finding by the Joint Committee as adopted by the House(s). Currently, there are three matters before the High Court that must still be determined.

8. REVIEW OF THE CODE

The Joint Committee is required to review the Code regularly as contemplated in the Joint Rule 124(1)(d). The Joint Committee reviewed the Code which was in existence since 2014 (that is, for the past 10 years). The Joint Committee recommended that a new reworked Code be adopted by the Houses. It is anticipated that the new Code will be in operation for the start of the 7th Parliament in 2024. The new Code was adopted by the National Council of Provinces on 25 April 2024 and by the National Assembly on 09 May 2024.

9. SOME KEY CHALLENGES

The Joint Committee is constantly challenged in respect of what day of the week to meet. Mondays have proved beneficial but not the most optimal. Fridays, which are scheduled for joint committees is problematic because other committees, House sittings and workshops are also scheduled on a Friday.

10. MEMBERSHIP OF THE JOINT COMMITTEE OVER THE TERM OF THE 6TH PARLIAMENT

African National Congress (ANC)

1. Nkosi, Bekizwe (Co-Chairperson)
2. Moshodi, Lydia (Co-Chairperson)
3. Pilane-Majake Makgathatso Charlotte Chana
4. Capa, Ndumiso
5. Landsman, Eric
6. Mahlangu, Dikeledi
7. Shabalala, Nomvuzo
8. Masiko, Fikile
9. Moela, Desmond
10. Ngwenya, Winnie
11. Rayi, Mandla
12. Siwela, Violet
13. James, Tyoto

Democratic Alliance (DA)

14. Breytenbach, Glynnis
15. Cachalia, Ghaleb
16. Labuschagne, Cathy
17. Lotriet, Annelie
18. Smit, CF Beyers

Economic Freedom Fighters (EFF)

19. Mokause, Mmabatho
20. Shivambu, Floyd
21. Malema, Julius

Inkatha Freedom Party (IFP)

22. Van der Merwe, Liezel
23. Mfayela, Simo

Membership changes during the 6th Parliament:

Hon Mfayela replaced by Mr Ngwezi
Hon Pilane- Majake replaced by Hon Lesoma
Hon NF Shabalala replaced by Hon Manganye
Hon Landsman replaced by Hon Dodovu
Hon Ngwezi replaced by Hon Bebee
Hon Lotriet replaced by Hon Gondwe
Hon Bebee replaced by Hon Hadebe
Hon James replaced by Hon Mashele
Hon Cachalia replaced by Hon Masango

The final composition of the Joint Committee**African National Congress (ANC)**

1. Nkosi, Bekizwe (Co-Chairperson)
2. Moshodi, Lydia (Co-Chairperson)
3. Lesoma, Regina Mpontseng
4. Capa, Ndumiso
5. Dodovu, Thamsanqa
6. Mahlangu, Dikeledi
7. Manganye, Jane
8. Masiko, Fikile
9. Moela, Desmond
10. Ngwenya, Winnie
11. Rayi, Mandla
12. Siwela, Violet (deceased)
13. Mashele, Timothy

Democratic Alliance (DA)

14. Breytenbach, Glynnis
15. Masango, Bridgit
16. Labuschagne, Cathy
17. Gondwe, Mimmi
18. Smit, CF Beyers

Economic Freedom Fighters (EFF)

- 19. Mokause, Mmabatho
- 20. Shivambu, Floyd
- 21. Malema, Julius

Inkatha Freedom Party (IFP)

- 22. Van der Merwe, Liezel
- 23. Hadebe, Nhlanhla

HON. BEKIZWE SIMON NKOSI, MP

HON. MOJI LYDIA MOSHODI, MP

CO-CHAIRPERSONS OF THE JOINT COMMITTEE ON ETHICS AND MEMBERS' INTERESTS