**Report of the Powers and Privileges Committee into allegations of conduct constituting contempt of Parliament by members of the Economic Freedom Fighters during the State-of-the-Nation Address on 13 February 2020**

1. **Background**
2. On 14 February 2020, the Speaker of the National Assembly and the Chairperson of the National Council of Provinces referred “Allegations of conduct constituting contempt of Parliament by members of the Economic Freedom Fighters (EFF) during the Joint Sitting on Thursday, 13 February 2020” to the Powers and Privileges Committee (the Committee) of the Assembly in terms of Rule 214 and the Privileges Committee of the Council, when established, for consideration and report, together with the unrevised Hansard, Minutes of Proceedings of the Joint Sitting and a video recording of the proceedings. The incident took place during the President’s State-of-the-Nation Address to Parliament.
3. In terms of Assembly Rule 214, the Committee must consider any matter referred to it by the Speaker relating to contempt of Parliament or misconduct by a member or a request to have a response recorded in terms of section 25 of the

 Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act,

 2004 (Act No 4 of 2004) (the Act), except a breach of the Code of Conduct

 contained in the Schedule to the Joint Rules. The Rule further provides that 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.

1. **Consideration of the SONA incident by the Committee**
2. The Committee met on 11 March 2020 to, amongst others, consider the allegations relating to the SONA incident. Members observed the video footage of the incident and then deliberated on it. The Committee observed that members of the EFF raised several points of order objecting to the presence in the gallery of former President F W de Klerk, and asked that he be requested to leave the Chamber. They raised further points of order objecting to the presence of Minister P J Gordhan in the Chamber. The presiding officers repeatedly ruled the points of order to be invalid, but the members persisted in raising the same points of order. At some point during the sitting, the Speaker ordered Ms N P Sonti to leave the Chamber, but she failed to comply with the Speaker’s order.
3. The points of order and rulings/interventions by the presiding officers lasted for just over an hour, after which the proceedings were briefly suspended and resumed by the presiding officers. At the resumption of the proceedings, and after parties were given an opportunity to make statements on what had transpired during the sitting up to that stage, the Leader of the EFF, Mr J S Malema, made a brief statement on behalf of his party. Following the statement by Mr Malema, all the members of the EFF left the Chamber on their own volition.
4. The Committee could not reach unanimity on whether the conduct of the EFF members constituted contempt of Parliament or not. The Committee therefore resolved that:
	1. Parliament must procure the services of an external person with a legal background to investigate the matter and advise the Committee on whether the members committed contempt of Parliament;
	2. If so, which members were to be charged; and
	3. It would consider the legal advice and make a decision on whether to proceed and to deal with the matter in terms of the Schedule to the Assembly Rules.
5. Due to the impact of the Covid-19 pandemic and the lockdown, and the time it took to procure the legal advice, the Committee scheduled its next meeting on 15 September 2020, at which it received a presentation from the Parliamentary Legal Services on the legal opinion.
6. The question which the legal opinion had to address and determine was whether: a) the conduct of the members constituted contempt of Parliament as contemplated in the Act, and b) whether the Committee had jurisdiction to consider the matter. To this end, the legal advice stated that, on the facts provided, section 7(a) or (e) of the Act may be relevant to the matter referred to the Committee. Section 7(a) states that a person may not improperly interfere with or impede the exercise or performance by Parliament or a House or committee of its authority or functions, while 7(e) states that a person may not, while Parliament or a House or committee is meeting, create or take part in any disturbance within the precincts. In terms of the legal advice, a final determination as to whether the members had committed contempt or not would require the members to be given an opportunity to put their version of the events to the Committee in line with the procedure stipulated in the Schedule. As regards the question of jurisdiction, the Committee was advised that Assembly Rule 214 provides that the Committee must consider any matter referred to it by the Speaker involving contempt of Parliament, and deal with it in terms of the procedure contained in the Schedule, and table a report on its findings and recommendations in respect of any alleged contempt of Parliament. The issue of jurisdiction therefore is based on a referral of a matter by the Speaker to the Committee. On this aspect, the advice concluded that the Committee had jurisdiction to deal with the matter.
7. In light of the legal opinion and the subsequent presentation by the Parliamentary Legal Services, the Committee agreed that a preliminary investigation was needed in order to determine whether any members should be charged, and which members to charge. The Committee agreed to view the video footage again with a view to identifying members involved in the incident and, who were, on the face of it, in contempt of Parliament.
8. On 13 November 2020, the Committee convened to inquire and determine, after viewing the video footage of the incident, whether members committed contempt or not during the SONA of 13 February 2020. The Committee invited Advocate N Mayosi (external), who was appointed to assist the Committee, to the meeting for her inputs on the matter.
9. Based on the video footage of the incident, the Committee observed that members of the EFF objected to the presence of former President F W de Klerk and Minister Gordhan at the Joint Sitting. The objections were repeatedly raised as points of order, which the presiding officers repeatedly ruled as invalid. After each ruling, the members were instructed to take their seats, which they ultimately did.
10. At some point during the sitting, the presiding officers suspended the proceedings. At the resumption of proceedings, the Chairperson of the Council set out the process to be followed for the remainder of the sitting as follows: a) members were reminded of the provisions of Joint Rule 14G and that the presiding officers would invoke the rule, b) each party would be given an opportunity to comment on the incident, and c) thereafter the SONA would proceed. Joint Rule 14G provides that if in the opinion of the presiding officer a member is deliberately contravening a provision of the Joint Rules or is in contempt of or disregarding the authority of the Chair, or is grossly disorderly, he or she may order the member to withdraw for the remainder of the sitting.
11. After Mr Malema had made a statement on behalf of his party, members of the EFF left the Chamber. On their way out, bottles were thrown in the direction of the members sitting in the backbenches, apparently by the members leaving the Chamber. However, the member(s) throwing the bottles could not be identified from the video footage as they were obscured.
12. **Observations by External Legal Adviser (Adv N Mayosi)**
13. The presiding officers invoked Joint Rule 14F to deal with the repetitive points of order raised by the members. The presiding officers were lenient and patient with the members. Joint Rule 14F empowers the presiding officers, after having called attention to the conduct of a member who persists in irrelevance or repetition of arguments, to direct the member to discontinue his or her speech. The presiding officers repeatedly instructed the members to desist with their points of order and arguments, and to take their seats. The members concerned ultimately obliged by discontinuing their points of order and arguments, and took their seats.
14. While the presiding officers could have invoked Joint Rule 14G, which deals with ordering of a member to withdraw from the House, to deal with the members raising persistent and repetitive points of order, which were repeatedly ruled as invalid, they elected not to invoke the rule and instead opted to invoke Joint Rule 14F to rule that they would not take further points of order on the matters raised.
15. The only instance Joint Rule 14G was used was when Ms Sonti was ordered to leave the Chamber. However, after Mr Malema raised an objection to the manner in which she was ordered to leave, i.e. not called by her name, the order to withdraw from the Chamber was not pursued any further. Ms Sonti left the Chamber only when members of her party decided to leave.
16. **Findings**
17. The Committee agreed that the presiding officers were fully within their rights to attempt to restore order to the proceedings by invoking Joint Rule 14F and exercising patience in doing so.
18. Furthermore, the Committee was of the view that the presiding officers were empowered to form an opinion that the members were deliberately contravening the Joint Rules, in contempt or disregarding the authority of the presiding officers, or that their conduct was grossly disorderly, and accordingly order the members to leave the Chamber in terms of Joint Rule 14G. However, the presiding officers elected not to do so and invoked Joint Rule 14F which was their prerogative.
19. Joint Rule 14G was invoked in respect of Ms Sonti, but the instruction for her to leave the Chamber was not followed through, and the matter seemed to have been superseded by the chaotic events taking place in the Chamber at the time. It could therefore be reasonably inferred that she was in a sense absolved from having to comply with the instruction to leave the Chamber, as the matter was not followed through.
20. The Committee observed that the Joint Rules on Order and Rules of Debate in Joint Sittings were not as explicit and developed as the National Assembly Rules, which, amongst others, provides that a ruling of a presiding officer is final and may not be challenged in the House. Consequently, the tools given to the presiding officers by the Joint Rules are inadequate to deal with the problems experienced during the SONA incident.
21. **Recommendations**

 In the light of its findings, the Committee recommends for the consideration of the

 House that:

1. The referral of the SONA incident of 13 February 2020 does not have a reasonable prospect of success and therefore should not be proceeded with;
2. Since the order for Ms Sonti to leave the Chamber was not pursued, it could be reasonably inferred that she was probably absolved from having to comply with the instruction;
3. The thrower/s of the water bottles could not be identified from the video footage as they were obscured, and therefore it is not possible to take that matter further; and
4. In view of the inadequacy of the Joint Rules to deal with challenges as experienced during the Joint Sitting of 13 February 2020, a process to update the Joint Rules should be embarked upon as a matter of urgency.

The Committee adopted the report with the Economic Freedom Fighters abstaining.

Report to be considered