

NATIONAL COUNCIL OF PROVINCES



RULINGS OF PRESIDING OFFICERS

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6th DEMOCRATIC
PARLIAMENT

Contents

1.	Unparliamentary language.....	4
2.	Unparliamentary language.....	5
3.	Unparliamentary language.....	5
4.	Unparliamentary language.....	7
5.	Use of mother tongue languages during debates.....	8
6.	Motions, amendments, and withdrawals	10
7.	Motions, amendments, and withdrawals	11
8.	<i>Sub judice</i> rule	12
9.	Matters before courts.....	13
10.	Casting aspersions on the Presiding Officer.....	14
11.	Unparliamentary language.....	16
12.	Unparliamentary language.....	17
13.	Participation of special delegates in the Council	19
14.	Unparliamentary language.....	20
15.	Unparliamentary language (Joint Sitting)	21
16.	Reflecting upon the competence or honour of judges (Joint Sitting).	22
17.	Amendment to minutes of the House (Joint Sitting)	23
18.	Rule 81 of the NCOP Rules	25
19.	Rule 49 (1) of the NCOP Rules.....	27
20.	Question of privilege in terms of Joint rule 14 L (a) (Joint Sitting)	28
21.	Unparliamentary language (Joint Sitting)	30
22.	Gross disorderly conduct	32
23.	Removal of a Member from the House	34

24.	Unparliamentary language.....	35
25.	Unparliamentary language.....	37
26.	Statement by Deputy Chairperson on behaviour of Members	39
27.	Statement by Chairperson of the NCOP on unparliamentary language and behaviour of Members	42
28.	Unparliamentary language.....	44
29.	Deliberately misleading the House	46
30.	Unparliamentary language.....	48
31.	Statement by the Chairperson of the NCOP on disorderly conduct...	50
32.	Deliberately misleading the House	59
33.	Statement by the Deputy Chairperson on the conduct of the Members	62
34.	Ruling by the Chairperson of the NCOP on the proposed amendments to Electoral Laws Amendment Bill [b 33b – 2018] (National Assembly – sec 75) in terms of Rule 212 of the NCOP	64
35.	Unparliamentary expressions	69

1. Unparliamentary language

FACTS

A member at the podium said a previous speaker was speaking “nonsense”. Another member rose on a point of order to ask whether it was parliamentary for one member to say another member is speaking “nonsense”. As the Presiding officer did not hear the statement, she reserved her ruling on the matter.

QUESTION TO BE CONSIDERED

Whether it is parliamentary for a member to say another member is speaking “nonsense”?

RULING

Use of the word “*nonsense*” does not amount to unparliamentary language *per se*; however, the context and the tone in which the word was used should be taken into account when making a ruling. Therefore, the context within which the word was used was deemed unparliamentary, as it was meant to demean a member’s integrity. (Chairperson of the NCOP)

2. Unparliamentary language

FACTS

A member objected to another member referring to him as a “coward” and requested the Presiding officer to rule whether it was parliamentary for a member to be called a “coward”.

QUESTION TO BE CONSIDERED

Whether it is parliamentary for a member to call another member a “*coward*”?

RULING

Calling a member a “*coward*” is unparliamentary, as it is not in keeping with the decorum of the House. (Chairperson of the NCOP)

3. Unparliamentary language

FACTS

A member rose to object to a remark made by another member, who said “*if all the Ministers could be so honest, it could be a better country*”.

QUESTION TO BE CONSIDERED

Whether it was parliamentary for a member to say that “if all the Ministers could be so honest, it could be a better country”.

RULING

In terms of rule 30, a member of the Council has freedom of speech in the Council and its committees. However, it is subject to rule 46(a), which stipulates that “no member may use offensive or unbecoming language in the Council”.

It is the function of the presiding officer to determine whether a particular remark made in the debate is offensive and contrary to the rules or not. In arriving at the decision, the presiding officer will be guided by any precedent Parliament has set for itself. On a number of occasions since the inception of the Council, presiding officers have ruled that members may not imply improper motives or cast personal reflections on the integrity of other members or members of the national executive, nor verbally abuse them in any other way. If such allegations, whether made directly or indirectly, were to be generally allowed in debates in the House, they would not only seriously undermine delegates or members of the executive in the performance of their duties, but also undermine the image and effectiveness of Parliament to function as the

Constitution intends. This approach is in keeping with the practice in other parliamentary jurisdictions.

As allegations are equally offensive and damaging whether they are made indirectly or put forward by way of a question, she appealed to members not to abuse their freedom of speech and to refrain from making remarks which could be regarded as offensive. Such remarks are neither worthy of the dignity of the House, nor conducive to orderly and effective debate.

The remark casts aspersions on members of the executive by implying that they are not honest, and as such was ruled to be unparliamentary. The member was asked to withdraw the remark. (Chairperson of the NCOP)

4. Unparliamentary language

FACTS

A member objected to a remark made by another member who was addressing the House and said that “*other members of the Council are deceitful*”. Given that the Presiding Officer did not hear the remark the ruling was reserved.

QUESTION TO BE CONSIDERED

Whether it is parliamentary to refer to members as “deceitful”?

RULING

Section 71 of the Constitution, read with rule 30 of the Council, guarantees every member of the Council freedom of speech in the proceedings of the House and its committees. However, the privilege of freedom of speech is not absolute and is limited by rule 46. Members should guard against making insinuations that are offensive to other members, unbecoming of honourable members, not in keeping with the decorum of the House, or not conducive to orderly debate.

The remark was ruled unparliamentary, and the member was requested to withdraw it. (Chairperson of the NCOP)

5. Use of mother tongue languages during debates

FACTS

A member objected to a statement made by another member that “*members use their mother tongues in order for other members not to hear what they are saying*”. The member was asked whether she made the statement, which she denied. The Presiding officer undertook to verify by consulting Hansard.

QUESTION TO BE CONSIDERED

Whether the member had made the statement and if she did, whether it is unparliamentary?

RULING

The Hansard records revealed that the member said the following: *“Chairperson, Honourable Minister, Honourable members, usually when the ANC wants to say something that not everybody will understand properly, it is done in the speaker’s mother tongue”*.

Section 30 of the Constitution provides that everyone has the right to use the language of their choice. Furthermore, the Use of Official Languages Act (Act No 23 of 2011) seeks to promote the parity of esteem and equitable treatment of official languages of the Republic. Parliament provides Translation Services to cater for members who do not understand certain languages.

Members were requested to refrain from making statements which imply that members use their mother tongues to prevent other members from understanding. Members were encouraged to use their mother tongue languages. The member was requested to withdraw the remark, which she did. (Chairperson of the NCOP)

6. Motions, amendments, and withdrawals

FACTS

While moving a notice of a motion, a member alleged that the absence of the Minister who was scheduled to respond to Oral Questions was as a result of her taking an extended holiday in Europe at the expense of tax payers. Another member objected to the notice of a motion on the grounds that the Minister was on official business abroad.

The Presiding officer requested that the information be verified in order to enable him to make a ruling on the matter.

QUESTION TO BE CONSIDERED

Whether allegations made by the member were true and, if so, whether or not they are unparliamentary?

RULING

Information received showed that the Minister was attending the International Labour Organisation (ILO) Governing Body meeting in Geneva, Switzerland from 12-16 November 2012. The meeting was followed by an International Symposium on Challenges of Social Protection held in Paris, France on 19 November 2012. Thereafter, the Minister attended a panel discussion of BRICS

members on “Technical Cooperation and Social Protection Floors Implementation” held in India.

Members have freedom of speech in the House, but such freedom is subject to the rules of the Council, in particular rule 46, which provides that “no member may deliberately make a statement in the Council which the member knows is false”. Thus the motion could not be proceeded with. (Chairperson of the NCOP)

7. Motions, amendments, and withdrawals

FACTS

A member moved a motion which, *inter alia*, called on the Speaker of the National Assembly to clarify issues relating to the loan on the President’s private residence in Nkandla.

QUESTION TO BE CONSIDERED

Whether or not the Council may direct or order a presiding officer of another House to do something?

RULING

The Council may not direct or order a presiding officer of another House (National Assembly); any action required to be taken by the presiding officer(s) of the National Assembly should be raised in the Assembly. Thus, the relevant part of the motion was excluded

from the text of the motion and reprinted in the next Order Paper.
(Chairperson of the NCOP)

8. *Sub judice* rule

FACTS

A member moved a motion without notice that the House notes the plight of residents of Lenasia whose houses were demolished as a result of failure to get authority to build houses on a land owned by the municipality. Another member objected to the motion on the grounds that the matter was before a court and as such *sub judice*. The Presiding officer reserved his ruling in order to check whether the matter is indeed before the court.

QUESTION TO BE CONSIDERED

Whether or not above matter is before a Court of Law?

RULING

The matter was before the Gauteng High Court and as such in contravention of rule 57, which provides that “No delegate may reflect on the merits of any matter on which a judicial decision is pending”. Thus, the motion could not be proceeded with. (Chairperson of the NCOP)

9. Matters before courts

FACTS

A member objected to a notice of a motion made by another member on the grounds that it contravenes rule 48 of the Council, which reads: “*[no] member, while addressing the Council may reflect on the merits of any matter on which a judicial decision is pending*”. The notice of a motion related to allegations of farm neglect by the member of the Council. Paragraph 4 of the motion called on the committee of the Council to investigate the matter.

QUESTION TO BE CONSIDERED

Whether the notice of a motion was in contravention of Council rule 48.

RULING

At the time the motion was moved the matter was still under investigation and, as such, no formal charges had been laid. Therefore, the notice of a motion does not contravene rule 48. However, the prayer requested in terms of paragraph 4 of the motion falls outside the constitutional mandate of the Council, as the motion related to a personal and private matter. In accordance with rule 80, paragraph 4 of the motion should be expunged from the next Order Paper. (House Chairperson: Committees).

10. Casting aspersions on the Presiding Officer

FACTS

During the debate on Parliament's Budget Vote, a member suggested to the Council that consideration be given to putting in place a system where retired judges from the Constitutional Court and other High Courts are appointed to be presiding officers of this House. A member rose on a point of order against this proposal and requested the presiding officer to make a ruling as to whether *"it was parliamentary for a member to cast aspersions on the presiding officer by saying that judges should preside"*

QUESTION TO BE CONSIDERED

Whether the statement casts aspersions on the presiding officer by saying that the Council should have judges presiding?

RULING

The statement made by the honourable member was a mere suggestion to the House of the possibility of having retired judges appointed as presiding officers.

Practice of this House, and parliaments in general, is that if a member holds a different view or differs from the speaker, either regarding party or policy matters, the member should use the opportunity allocated to him or her during debate on those matters, instead of rising on a point of order. This is what debates are about. Members are not to rise on frivolous points of order and in so-doing interrupt the speaker on the floor. Members should raise genuine points of orders. The Rules guide members regarding what constitutes a point of order.

11. Unparliamentary language

FACTS

A member rose on a point of order to enquire whether it was parliamentary to “*imply that the Democratic Alliance was behind the third force*”.

QUESTION TO BE CONSIDERED

Whether it was parliamentary to imply that the Democratic Alliance was behind the third force?

RULING

Unparliamentary language means different things in different jurisdictions and to different persons and members. Sometimes it strikes members as odd that some words and phrases are deemed unparliamentary, while others are permitted as being part of the cut and thrust of debate. The context in which particular words are used can affect their meaning, making them more or less acceptable to the person at whom they are directed.

At times members wish to express their views forcefully and to engage in robust debate. That is acceptable. However, it is not acceptable where the tone or the nature of the remarks becomes

so ill-tempered and bad-mannered that it borders on discourtesy and disorder, rather than civil debate.

The guiding principles as to whether the words used in a debate are out of order are the perceived motive for using the words and whether something dishonourable is being attributed to another member. Words or phrases used in a debate which do not impugn the honour of the member will not be ruled out of order.

Expressions by the honourable member directed at the party are not unparliamentary, as they do not reflect on the integrity of another member. (Chairperson of the NCOP).

12. Unparliamentary language

FACTS

A member rose on a point of order in reaction to another honourable member's speech, when the honourable member said "*yiva ke lawundini ndikubalisele*". This is a Xhosa proverb which could be translated loosely as meaning 'Behold and let me tell you'.

QUESTION TO BE CONSIDERED

Whether it was parliamentary for a member to refer to another member as “lawundini”?

RULING

Research revealed that the honourable member was not misleading the House when saying that in rural Eastern Cape you can use it interchangeably i.e. you can either use it offensively or politely depending on the context. When one looks at the writings of Ndungana and Majamba, one of them said: “He he, ndiyeva lawundini.” This is interpreted as, “I say so” or “if you say so, mfondini.” The word used by the honourable member was not meant to offend and therefore would not be unparliamentary. However, members should be aware that, for instance, coloured people would object if you use the same word in the North West Province, as they would feel denigrated. Members are once more cautioned to be mindful of how they use words or phrases which might mean one thing in their own constituencies but something very different to other members. (Chairperson of the NCOP).

13. Participation of special delegates in the Council

FACTS

Two members raised points of orders saying that the MEC of the Western Cape appeared to be tabling the budget of her department rather than debating the Minister's speech.

QUESTION TO BE CONSIDERED

Whether the NCOP should prescribe to special delegates what to say during a debate?

RULING

The participation of special delegates in the National Council of Provinces is important, as it ensures that the NCOP's mandate to ensure that provincial interest is taken into account in the national sphere of government is realised. Provinces have the prerogative to delegate any member as a special delegate to attend plenaries of the NCOP. Such members may range from members of the executive to members of the provincial legislatures. Therefore, their contributions to Council debates will always be determined by what they want to bring to the House and to any given debate. It would be very difficult for the NCOP to prescribe to special delegates what to say. In view of this, the MEC from the Western Cape Province was within her rights to include what she thought

relevant during the debate in the House. (Chairperson of the NCOP).

14. Unparliamentary language

FACTS

During the Policy debate on Budget Vote Number 14: Arts and Culture, a member rose on a point of order to enquire whether it was parliamentary for a member to refer to another member as a “*waste*”.

QUESTION TO BE CONSIDERED

Whether it is parliamentary to refer to another member as “a waste”?

RULING

Based on the unrevised Hansard, no reference was made to the honourable member as “a waste”. In the light of this, the point of order could not be upheld. (Chairperson of the NCOP).

15. Unparliamentary language (Joint Sitting)

FACTS

A point of order was raised against a remark made by the Minister of Human Settlements, when she said: *“Now that the madam has found another hired native in the form of the honourable member, he will forever be grateful to the ANC for having fought in the struggle so that today a black man is such a sought-after commodity that he is hand-picked to do the bidding of somebody else”*.

QUESTION TO BE CONSIDERED

Whether the Minister’s remark was parliamentary?

RULING

There is nothing unparliamentary about a native being referred to as a native. There is nothing unparliamentary about a native being hired by anybody, and when used separately, there is nothing untoward or unparliamentary about it. However, in the context used by the Minister, the remark is offensive and may perpetuate the stereotype that “natives” are always for hire. In view thereof, the Minister must withdraw the remarks she made. (Chairperson of the NCOP).

16. Reflecting upon the competence or honour of judges (Joint Sitting)

FACTS

A point of order was raised in reaction to the following statement made by the Minister of Human Settlements, *“In this province (Western Cape) there is a scam readily available, day in, day out. Right now, we sit with a scam that has been covered up with the complicity of the media. Millions were spent by the City of Cape Town on a scam called ‘World Design Capital’. And what has happened here is that the judges were paid to judge in favour of the City of Cape Town”*.

QUESTION TO BE CONSIDERED

Whether the Minister’s statement is in conflict with rule 14J of the Joint Rules, which prohibits members from reflecting upon competence or honour of the judges?

RULING

The purpose of rule 14J of the Joint Rules is to protect the integrity and the independence of the judiciary and not individuals sitting on a procurement or competition panel. The judges referred to in rule 14J are members of the judiciary. The judges that the Minister referred to in her statement are not members of the judiciary.

Reference to judges in this context is therefore not unparliamentary (Chairperson of the NCOP).

17. Amendment to minutes of the House (Joint Sitting)

FACTS

During the State of the Nation Address on 12 February 2015, the leader of the opposition brought to the attention of the presiding officer allegations of cell phone signal jamming in the House.

On 17 February 2015, a member rose on a point of order, questioning the quality of the Minutes of Thursday, 12 February 2015, claiming that the Minutes were not complete and, moreover, were not a true reflection of what happened in the House on the day i.e. allegations of cell phone jamming amongst other things.

The member referred to section 20 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, which recognizes minutes as evidence, which might be required by a Court of Law. The member indicated that the proceedings of Thursday evening may very well lead to legal action, and members may be aware that legal proceedings could already have been instituted.

QUESTION TO BE CONSIDERED

Whether the Minutes of the sitting of Thursday, 12 February 2015 are a true reflection of what transpired in the House on that day?

RULING

The Minutes of Proceedings is the official record of business transacted in the House and the decisions taken by the House during a plenary session. All decisions are recorded, with the exception of the State of the Nation Address by the President. The Minutes are a concise record of business transacted in the House. In general, the Minutes of the Houses or a Joint Sitting do not reflect individual points of order, the decision of a political party, or individual members who voluntarily leave the House.

However, the Minutes would reflect decisions, major or unusual occurrences, and rulings from which a particular action resulted, for example when the presiding officer gives a considered ruling where a member is ordered to withdraw remarks. Where proceedings are suspended, this would also be reflected. Together, the Minutes and the Hansard transcript form the official record of proceedings and should be read together. Should there be an instance where these records are required by a court, both the Minutes of proceedings and the Hansard would be provided to the court.

In view of this, the Minutes of proceedings of 12 February 2015 have been reprinted to reflect the matter of the jamming of cellular signal. This decision was made in view of the uniqueness of that situation. Members were encouraged to submit the matter for consideration by the Rules Committees, including the Joint Rules, if they thought that the Minutes of the House or both Houses should follow a different format. (Chairperson of the NCOP).

18. Rule 81 of the NCOP Rules

FACTS

A member raised a point of order requesting the presiding officer to state the rule that does not allow a certain member to rise on a question of privilege in terms of rule 81.

QUESTION TO BE CONSIDERED

Whether there is a Rule that prohibits a member from rising on a question of privilege in terms of Rule 81?

RULING

The member did not rise on a motion directly concerning the privileges of the Council, let alone an urgent one, as required by rule 81 of the Rules. Had it been that the member intended to move an urgent motion that directly concerned privileges of the House, precedence could have been given in terms of rule 81. In view of this, the point of order was not sustained. (Chairperson of the NCOP).

19. Rule 49 (1) of the NCOP Rules

FACTS

A member raised a point of order in terms of rule 49 (1) (Rule of anticipation) of the NCOP Rules, objecting to a statement made by another member, indicating that there is a committee in another House of Parliament that was dealing with the very same issue.

QUESTION TO BE CONSIDERED

Whether rule 49 (1) can be used to object to a matter that is before a committee of another House of Parliament?

RULING

Rule 49 (1) of the NCOP Rules clearly stipulates that *“[no] member, while addressing the Council, may anticipate the discussion of a matter appearing on the Order Paper”*. This rule further stipulates that *“in determining whether an address to the Council is out of order on the ground of anticipation, the officer presiding must consider whether it is probable that the matter anticipated will be discussed in the Council within a reasonable time”*.

In the context of the NCOP, the Rule of Anticipation does not extend to cover matters before committees of the National

Assembly. The matter that has been objected to does not appear on the Order Paper of the Council, nor is there an indication that the matter will be deliberated upon by the Council within a reasonable time, as required by rule 49. In view hereof, the Rule of Anticipation is not applicable in this instance. (House Chairperson: Committees).

20. Question of privilege in terms of Joint rule 14 L (a) (Joint Sitting)

FACTS

The Chief Whip of the Opposition raised a question of privilege in terms of Joint Rule 14 L (a) enquiring whether it is appropriate for members of the VIP Protection Unit, who are tasked with protecting the executive, to be screening Members of Parliament on their way to the House.

QUESTION TO BE CONSIDERED

Whether it is appropriate for members of the VIP Protection Unit, who are tasked with protecting the executive, to be screening Members of Parliament on their way to the House?

RULING

Section 4 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 stipulates that Members of the security services may enter upon or remain in the precincts of Parliament for the purposes of performing any policing function, if so permitted and authorised by the presiding officers. The responsibilities of the South African Police Service are also provided for in clause 8.2.3 of the Security Policy of Parliament, where it is stated, inter alia, that they are responsible for the access control system and chamber security. Further, clause 8.5.4 provides that, for the purposes of their own safety and that of others, Members will be required to have all their possessions x-rayed or manually searched.

It should be noted that, in terms of section 199(1) of the Constitution of South Africa, the security services of the Republic consist of a single police service, which includes the VIP Protection Unit. Whenever necessary, members of the VIP Protection Unit may be part of the members of the South African Police Service which carries out security functions in Parliament.

The incident that the Chief Whip of the Opposition referred to took place during the State of the Nation Address, where all arms and other organs of the State collaborate. Although the Chief Whip of the Opposition indicated that Members of Parliament were

screened by the members of the VIP Protection Unit, he did not indicate that they were in any way impeded from performing their functions as Members of Parliament as a result.

Having enquired into the matter, it was established that some members of the VIP Protection Unit did screen Members of Parliament as part of the South African Police Service duties. Under normal circumstances, this is not the practice. It is only in exceptional circumstances that this approach is taken. Members were encouraged to report to the presiding officers any incidents that inhibit them from carrying out their functions as Members of Parliament as a result of any screening done by any of the Protection Services' members in and around Parliament. (Chairperson of the NCOP).

21. Unparliamentary language (Joint Sitting)

FACTS

A member rose on a point of order on the grounds that a remark made by the honourable Minister is derogatory towards his or her leader. The Minister of Human Settlements was recorded as having said, "Thank you very much to Honourable Holomisa for the suggestion of an economic indaba resembling that of Convention for a Democratic South Africa (CODESA). The rest of

Honourable Holomisa's rumblings are not worth mentioning here right now".

QUESTION TO BE CONSIDERED

Whether the statement made by the minister is unparliamentary?

RULING

The member did not specify which part of the speech by the Honourable Minister of Human Settlements was derogatory. It was assumed that the member was referring to the word "rumblings". The word "rumblings" is defined as "To talk or to write in a discursive or aimless way". The guiding principles as to whether the words used in a debate are out of order centre on the motive attributed to the member who used them and whether something dishonourable is being attributed to another member. Words or phrases used in a debate which do not in any way impugn on the honour of a member will not be ruled out of order. The point of order raised by the member could not be upheld. (Chairperson of the NCOP).

22. Gross disorderly conduct

FACTS

On 9 March 2016, during the Oral Questions Session to the Deputy President, a member rose to ask a follow-up question relating to a question published in her name. According to the report submitted by the Deputy Chairperson on the matter, the member referred to matters unrelated to the question, spoke without being recognised, and referred to matters which were *sub judice*. Further, despite caution from the presiding officer, the member continued with her actions to the extent of insulting a member and accusing the presiding officer of protecting the Deputy President. Her actions warranted suspension from the House.

The Chairperson when delivering her ruling on the incident, referred to the above report which was submitted to her in terms of Rule 38(2) of the NCOP Rules by the Deputy Chairperson in respect of the matter. In terms of the report, the conduct of the member caused grave disorder in the House; bordered on contempt and a breach of the privilege of the freedom of speech. The Deputy Chairperson's report concluded that due to the gravity of member's conduct, the order to leave the House was inadequate.

QUESTION TO BE CONSIDERED

Whether the conduct of the member warrants suspension in accordance with Rule 38(3)(b).

RULING

In terms of rule 38(1), the Chairperson is required to announce what action is to be taken against a member. Rule 38(3)(a) compels the Chairperson to report an offending member to the Legislature that appointed him or her, in this case, the Gauteng Provincial Legislature. In terms of rule 38(3)(b), the Chairperson has the discretion to suspend the member concerned. Rule 39 (1) provides that the suspension of a permanent delegate on the first occasion during the annual session continues for five working days.

Based on the report by the Deputy Chairperson, the Chairperson decided not to suspend the member as authorised by Rule 38(3)(b). Instead, the matter was referred to the Standing Committee to be appointed in terms of section 12(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act. This given that according to the report, the member's conduct may border on contempt and a breach of the privilege of freedom of speech in terms of the Powers, Privileges

and Immunities of Parliament and Provincial Legislatures Act. (Chairperson of the NCOP).

23. Removal of a Member from the House

FACTS

During the sitting of 15 March 2016, a member was found to have disregarded the authority of the presiding officer after he refused to leave the House, despite being requested to do so by the presiding officer several times. Subsequently, the presiding officer invoked Rule 38, whereby he ordered the member to leave the precincts of Parliament until the Chairperson of the NCOP announced the action to be taken against the member.

The Chairperson referred to the sitting of 15 March 2016 (above), specifically to the removal of a member from the House. She further made reference to the report she received from the House Chairperson.

QUESTION TO BE CONSIDERED

Whether the conduct of the member warranted removal from the Chamber?

RULING

When formulating rulings, presiding officers are guided by a number of factors, which include previous rulings on similar matters.

Having had regard to such precedence, the removal of the member for the remainder of the day's sitting was adequate, given the nature of the offence. Members were cautioned to adhere to rulings and the orders of the presiding officers. It is of utmost importance to maintain the dignity of the House, and that includes recognising the authority of the Chair. Members were implored to treat the presiding officers with the same courtesy and respect they expect from them. (Chairperson of the NCOP).

24. Unparliamentary language

FACTS

A member raised a point of order against a remark made by another member, who said "*you are visually impaired, open your eyes*" while the member on the podium was visually disabled.

When the member was asked whether she made the statement, she acknowledged having made the statement and indicated that it was a figure of speech. She further indicated that, in English, when you say to somebody ‘open your eyes’, it is a figure of speech, which means that someone should observe the facts of a situation.

QUESTION TO BE CONSIDERED

Whether the statement is unparliamentary?

RULING

Our languages are rich with metaphor, which in some instances may be misconstrued as derogatory or offensive depending on the context. In this matter, the honourable member used a figure of speech which may be construed as insensitive. The member did not intend to offend the member who was at the podium at that time. Having regard to rule 46, which provides that members may not use offensive or unbecoming language towards other members, commonly known as “unparliamentary language”. This must be balanced with freedom of speech. This rule is broadly framed to allow the presiding officer to take into consideration, amongst other things, the context and tone of particular remarks and inference.

Words used by the honourable member did not amount to unparliamentary language. (House Chairperson: Committees).

25. Unparliamentary language

FACTS

During the policy debate on Budget Vote Number 17: Social Development, members rose on points of order against remarks made by another member, who said “You know this white man! This white man must not tell me that I am wasting time. This white man must never! Jesus, a white person telling me? Jesus! A racist white person telling me to sit down; I will never! He must never tell me!”

QUESTION TO BE CONSIDERED

Whether the statement is unparliamentary?

RULING

The points of order relate to matters raised when members were in private discussion. Members are all aware that presiding officers are not privy to the private discussions between members, as their focus is on the speaker at the podium. Notwithstanding this, the conduct of the members sometimes results in the disruption of the

House. What then disrupted the House was that members heard another member say:

“You know this white man! This white man must not tell me that I am wasting time. This white man must never! Jesus, a white person telling me? Jesus! A racist white person telling me to sit down; I will never! He must never tell me!”

There are two matters to consider; firstly, the behaviour of the member and secondly, the language used in the House. Members are aware of their privilege of freedom of speech in the Council and its committees. Similarly, members should also be aware that rule 46(a) provides that no member may use offensive or unbecoming language in the House. In keeping with the decorum of the House, members are required to afford each other mutual respect by referring to and addressing one another in a respectful manner. Referring to another member as ‘this man’, or ‘this white man’, or ‘a racist white person’ is disrespectful and offensive.

There is a procedure to be followed if one member feels aggrieved by the conduct or utterances of another member. There is no doubt that, if the member had opted to follow that procedure, the presiding officer would have been able to attend to and address the matter. Unfortunately, the member chose to display behaviour, not only contrary to the decorum of the House but also to her position as a public representative.

Members will recall that there have been rulings in this House on calling another member a racist. It should be reiterated that it is not parliamentary to call another member a racist, regardless of the situation or context.

The conduct and the language used by the member were not in keeping with the decorum of the House. In fact, it is unbecoming and unacceptable. (House Chairperson: International Relations and Members' Support).

26. Statement by Deputy Chairperson on behaviour of Members

FACTS

The presiding officer referred to previous rulings regarding unacceptable behaviour of members which undermined the decorum of the House. The presiding officer indicated that the presidium *has noticed that some members have taken it upon themselves to want to question, debate, overturn, and in some instances, defy the officer presiding.*

RULING

Owing to above concerns, the presiding officer made the following statement:

“I would like to refer members to Council Rules 35 and 37.

Rule 35 states: “Whenever the officer presiding rises during a debate in the Council, a member addressing or seeking to address the Chair must sit down and allow the officer presiding to be heard without interruption.

Rule 37 states:

- (1) The officer presiding may order a member to leave the Chamber immediately for the remainder of the day’s sitting if the officer presiding is of the opinion that -*
 - (a) the member is deliberately contravening a provision of these Rules;*
 - (b) the member is in contempt of or is disregarding the authority of the Chair; or*
 - (c) the member’s conduct is grossly disorderly.*

Members should be mindful that, as honourable members, we are supposed to conduct ourselves in a manner befitting of the

decorum of this august House. To interject when an officer presiding is addressing the House, or to call to question the ruling of the officer presiding after it was delivered is totally unacceptable, and is tantamount to contempt and/or disregarding the authority of the officer presiding.

As officers presiding, we have the responsibility to conduct proceedings of the House and to protect speakers at the podium in order to ensure that the business of the House is not compromised. Members might have noticed that we always encourage them, in case a member is not satisfied with the decision of the officer presiding, to write and bring that matter to the attention of the Chairperson of the Council. Therefore, there should not be any justification for members who are not satisfied with rulings of the officer presiding to disrupt proceedings of the House.

I therefore call upon all members to co-operate with us and to afford us the opportunity to conduct the business of the House, uninterrupted. Failure to do this will leave us with no other option but to protect the decorum of the House and enforce the Rules".
(Deputy Chairperson of the NCOP).

27. Statement by Chairperson of the NCOP on unparliamentary language and behaviour of Members

Owing to concerns regarding behaviour of members in previous sittings, the presiding officer made the following statement:

“Honourable Members, I have in the previous weeks observed with concern the deterioration of the language used in the House. I could not help but observe that the language used by members was increasingly falling foul of the accepted parliamentary language. Some bordered on sheer intimidation or threats. Others bordered on naked racism and disrespect. Although the debates may be robust and members may heckle, the language must remain within the bounds of acceptable parliamentary practices and conventions.

Freedom of speech is one of revered privileges accorded to Members of Parliaments the world over. This is to allow members to freely express their views and represent, to the best of their ability, their constituencies without interference or hindrance from outside bodies. This privilege belongs to both individual members and a collective body of members. So important is this privilege that it may only be limited by the Rules. To my mind, Members have adopted the Rules that limit the exercise of this privilege. These Rules need to be adhered to. Defy them, the House

descends into disorder. Defy them, the Officer Presiding is entitled by the Rules to meet out the penalty provided for in the Rules.

It is therefore concerning to hear members using language and words with pejorative meaning against each other in the name of privilege of freedom of speech. Words such as “there is a smell of alcohol in the House” uttered by a member on 7 June 2017 during the debate on Social Development clearly suggest that members are not sober; “you stay in a house full of dog fur” uttered by the Minister of Social Development on the same date” suggests that a member is dirty or stays in an unhygienic condition.

The threats of assault issued by a member to another member on the same day are clearly intended to intimidate members in the performance of their constitutional functions.

The racist words such as “this white man”; “a racist white person who hijacked the struggle” uttered by a member referring to another member are clearly intended to impair the dignity of a member and are inconsistent with every democratic tenet that this House stands for.

The belittling word such as “sies” uttered by a member on 13 June 2017 during the debates on Rural Development and Land Reform and Agriculture, Forestry and Fisheries is intended to impair the dignity of members.

A phrase such as “you have no balls” uttered by a member during the same debate is clearly not in consonance with the decorum and dignity of the House.

I have deliberately taken time on this matter merely because of the importance I attach to the privilege of freedom of speech accorded specifically to members alone. I expect no less from the members of this House. The very constituencies that we represent expect better from us”. (Chairperson of the NCOP).

28. Unparliamentary language

FACTS

During the Policy Debate on Budget Vote 36: Water and Sanitation a Member raised a point of order against a statement made by another member as follows, *“I rise on a point of order; the member is misleading the public, the honourable member said Nomvula Mokonyane paid for the conference millions. She knows very well that is not true”.*

Owing to the fact that the presiding officer could not hear what was said, she asked the member whether she made the statement. The member denied making the statement. The presiding officer undertook to consult Hansard and revert with a ruling.

Having consulted Hansard, it was ascertained that the member did not make the statement as alleged. She is recorded to have said, *“it seems that the self-proclaimed “Mama Action”, which is Nomvula Mokonyana, was only really active in being responsible for frivolous spending in her department by this, I am speaking about the 2 billion that will be spent on the Reserve Bank....”*

QUESTION TO BE CONSIDERED

Whether the statement can be deemed unparliamentary?

RULING

In arriving at her ruling, the presiding officer indicated that as members are at liberty to exercise their freedom of speech as enshrined in the Constitution and the Rules, this should not permit them to rise on frivolous points of orders, as that could potentially degenerate proceedings of the House.

She pointed out that recently points of orders were being raised as a response to what the speaker on the podium was saying, as was the case in the current matter. She urged members to guard against raising points of order as responses, especially when they hold a different view to the speaker on the podium. The practice of this House, and parliaments in general, is that where the member holds a different view or differs from the speaker on the podium, he or she should use the opportunity allocated to him or her when

debating to raise those matters, rather than rising on points of order. This is what debates are all about.

She then ruled that the allegations made by one member against another member cannot be substantiated, and therefore the point of order cannot be upheld; it was a response to the speaker on the podium.

She further appealed to members to debate matters instead of rising on contrived points of order. (House Chairperson: International Relations and Members' Interests)

29. Deliberately misleading the House

FACTS

During the debate on Budget Votes number 20 and 23, a member rose on a point of order and stated that another member was misleading the country by stating that "*The DA under the National Party killed people and individuals at Vlakplaas*".

The presiding officer committed to consult Hansard and revert with a ruling, as he did not hear the member's remark. According to Hansard, the member said "*shame on DA for selling their manifest after killing innocent people during the time of the National Party Programmes*".

QUESTION TO BE CONSIDERED

Whether the member had made such statements as alleged by the other member, and, if so, did she deliberately mislead the House?

RULING

In arriving at her ruling, the presiding officer indicated that what the member said sounded similar and could have been interpreted as “*the DA killed people*”.

As previously ruled in this House, all members of Parliament have freedom of speech, which is expressly constitutionalized in section 71 and further embedded in Council Rule 30. References to political parties is not unparliamentary.

The courts have favoured the use of robust and emotive language during parliamentary debates, as held in the Constitutional Court Judgement of ***Democratic Alliance v African National Congress***; 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 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 judgements laid down by the courts that members' freedom of speech is tantamount to the promotion of an environment that is representative of an open and democratic society.

He ruled that the point of order as raised by the member is not sustained. He cautioned members 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 contrived points of order. (Deputy Chairperson of the NCOP).

30. Unparliamentary language

FACTS

During the Policy Debate on Budget Vote No 26: Energy, a member rose on a point of order and alleged that another member was misleading the public. "*Where did he see Zuma looting?*"

The presiding officer undertook to consult Hansard and revert with a ruling, as he did not hear the member's remark. Having consulted Hansard, the member is recorded to have said the following "*We should condemn and actually imprison President Zuma, the Guptas, and Mr Brain Molefe for looting from government, through inflating the controversial 1 064 locomotive*

tender to which the Gupta-linked businesses scored from R38 billion to R54, 5 billion with these inflective.”

QUESTION TO BE CONSIDERED

Whether the statement can be deemed unparliamentary?

RULING

In arriving at his ruling, the presiding officer referred to section 71 of the Constitution, read with the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, and Council Rule 30 which affords members of the Council freedom of speech. This fundamental privilege 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 Nation Council of Provinces v Malema that the Constitution does not allow a presiding officer to limit a member’s freedom of speech, unless authorised by the Rules of Parliament or a standing order.

In previous rulings presiding officers have discouraged members from referring to persons who are not members of parliament and who are unable to reply in their own defence.

In both the Westminster system and our own South African system, members have a responsibility to protect the public, not only from outright slander, but also from any slur directly or indirectly implied.

He ruled that making an allegation against a non-member of Parliament is not unparliamentary but appealed to members to avoid, as much as possible during the course of debate, mentioning people outside of Parliament who are unable to reply in their own defence, as they are not Members of Parliament. (Deputy Chairperson of the NCOP)

31. Statement by the Chairperson of the NCOP on disorderly conduct

FACTS

During the sitting of 6 June 2018, when the House Chairperson of International Relations and Members' Interests (House Chairperson) was presiding, a member rose on a point of order on the basis that other members contravened rule 32 of the Council in that they were conversing very loudly.

Furthermore, that the member on the podium was drowned out by frivolous points of order that came from members of the EFF. The member, while addressing the presiding officer on a point of order,

submitted that such conduct constituted grave disorder, thereby referring to rule 41.

The member also submitted that the House Chairperson could have suspended the proceedings or adjourned the sitting in terms of rule 41. The presiding officer, however, dismissed the point of order. The member objected to the ruling, remained standing, and persisted with the point of order several times. The House Chairperson ordered the member to leave the House, which she refused to do, arguing that the ruling was biased. The House Chairperson ordered the Usher of the Black Rod to remove the member. The member continued to resist. The House Chairperson then requested the Parliamentary Protection Services to assist in removing the member from the House. The member submits that she was assaulted in the process.

The Chairperson of the NCOP informed the House that she received a letter from the member on 7 June 2018 requesting that they meet. The Chairperson indicated that she met with the member.

In her letter, the member reaffirmed the sequence of events as follows:

- that at the plenary of the 6th, she rose on a point of order based on NCOP rules 32 and 33, to request that the House

Chairperson addresses the decorum of the House, as the EFF was disrupting the member on the podium during his speech on the policy debate on Vote 24;

- that despite clear evidence from the member on the podium being drowned out by the racket of the EFF members, including the frivolous points of order aimed at disrupting the member on the podium, the House Chairperson ruled that her point of order was void;
- that in objection to the ruling of the House Chairperson she remained standing in order for the House Chairperson to recognize her and rule upon her point of order; In response the House Chairperson yelled at her to sit down;
- that she requested the House Chairperson to restore the order of the Council, which she could have done by applying rule 41;
- that her microphone was switched off, and she was ordered to leave the Council;
- that she made a statement regarding the House Chairperson's ruling as biased; and that she did not want to leave the Council;

- the House Chairperson requested the Usher of the Black Rod and the Parliamentary Security Protection Services to remove her from the Council. Upon this instruction from the House Chairperson, the Parliamentary Protection Services physically forced her out of the Council and assaulted her.

In her letter, the member also calls for the House Chairperson to tender an apology in Council on the grounds that her rights were violated and, furthermore, that the House Chairperson should not preside until the matter has been resolved.

The Chairperson indicated that she had an opportunity to discuss the matter with House Chairperson regarding the other violations of the member's rights and the assault.

In her report, House Chairperson states that, "*I then cautioned her that if she continues to speak without being recognized, I would order her to leave the House. Having disregarded my authority, I then ordered the member to withdraw from the Chamber for the remainder of the sitting*".

The Chairperson further indicated she had the opportunity to look at the recordings of the proceedings of that day. From the recordings, it is quite apparent that:

- Firstly, the record specifically confirms that member rose and stated the following, “*The decorum of this House for the past 15 minutes was terrible. We cannot continue in this way;*”
- Secondly, the presiding officer ruled her out of order;
- Thirdly, the presiding officer ordered her to take her seat and indicated that failure to do so would result in her being removed from the House;
- Fourthly, she refused to take her seat and persisted in speaking; and
- Fifthly, she refused to leave the House when ordered to do so, and she was ultimately removed with the assistance of two women from the Parliamentary Protection Services.
- It is also noticeable that several members were standing at the time that the member was speaking. There appeared to be an altercation between herself and the presiding officer.
- It also appears that before she was removed, she resisted attempts to leave the House. It also appears that on her way out she attempted to hold onto desks. Except for the pushing and shoving, the recording does not reveal any signs of the member being assaulted.

The Chairperson pointed out that one of the issues that we must also put on the record is that, outside that specific door, there is no camera coverage. Therefore, she was unable to tell whether, once the member stepped out of the door, she was assaulted or not. That is something that needs to be attended to, as presiding officers do not want to be seen to be unable to deal with a situation when it confronts them.

RULING

In arriving at her ruling, the Chairperson indicated that it is correct that rule 32 prohibits members from conversing aloud. However, it has been ruled in the past that while heckling is allowed, members must not be drowned out. So, members can converse, but not drown each other out. Rule 32 does not completely prohibit members from conversing. It only says that you should not be heard above the one that is on the podium. It is also correct that rule 33 authorises members to interrupt a member who is speaking at the podium by raising a point of order.

The decision whether members converse aloud lies with the presiding officer. Equally, it is for the presiding officer to decide when a point of order is valid. Members are requested not to attempt to assist the presiding officers but rather to leave the decision to rule a member out of order to the person who is presiding.

Rule 35, on the one hand, allows the presiding officer to be heard without interruption. This rule compels any member speaking to take his or her seat while the presiding officer addresses the House. An altercation with a presiding officer is therefore prohibited. For a member to persist in speaking after having being ordered to take his or her seat, is therefore in contravention of rule 35.

Rule 37 authorises the presiding officer to order the member to leave immediately, should the presiding officer be of the opinion that the member is deliberately contravening a provision of rule 37, or that the member is in contempt of or disregarding the authority of the Chair, or the member's conduct is grossly disorderly.

The Chairperson indicated that the House Chairperson has informed her that she formed an opinion as required by rule 37, and that her opinion is supported by the following words from the recording, "Having disregarded my authority, I then ordered the member to withdraw from the Chamber".

It is important to mention that, in a democratic society, members are allowed to exercise their right to speak. However, it is also critical that members respect the authority of the presiding officers. The impartiality of the presiding officer is one of the foremost values that the integrity of the South African Parliament must be measured by. Presiding officers have the responsibility to preserve

parliamentary integrity, to maintain the decorum of the House, to ensure the smooth running of the business of the House, and to maintain law and order. Presiding officers should be civil; they should be courteous; and they should be reasonably patient towards all members of this House. Temperament is an important aspect of the role of the presiding officer. Important attributes in a presiding officer includes, but are not limited to, attentiveness, courtesy, open-mindedness, patience, absence of arrogance, listening skills, decisiveness, even-handedness in the treatment of all members, a fostering of a general sense of fairness, and the absence of bias.

What is critical in a presiding officer is attentiveness and control over the proceedings of the House. As observed from the recordings, the presiding officer was a bit overwhelmed on that day as a result of the situation in the House. Honourable members, at times in the midst of very tense and heated debates, presiding officers tend to be overwhelmed by such pressure of listening to and hearing you clearly, and responding in a particular manner without the intention of stifling the debate in the House. Presiding officers are just human beings. Sometimes they also get impatient; they lose track of what you are saying because they are trying to calm things down, but Presiding Officers must try to be one and all of the things that were enumerated.

Because of an overwhelming situation that the House Chairperson found herself in, some members were not given sufficient opportunity to speak or were interrupted while attempting to. It is critical that presiding officers should afford members an opportunity to raise their points of order without hindrance. Points of order should not be frivolous and should not be intended to stifle or frustrate debates. Presiding officers should apply the rules before arriving at a conclusion that a point of order is out of order.

Members were urged not to abuse the rule on points of order, as this abuse has the potential to cause the House to degenerate into chaos. A chaotic House is the antithesis of a robust debate.

The Chairperson highlighted the following:

- Firstly, the member persisted in speaking when ordered to stop;
- Secondly, she further refused to leave the House when she was ordered;
- Thirdly, although she felt her rights were infringed, she should have left the House as ordered; and
- Lastly, when all of us as presiding officers preside, we need to hear out a member's point of order before we rule.

“I want to say that the assault allegation by the honourable member is serious. As I have indicated, there is no recording. Now, in no democratic society, or any society at all, must a public representative feel that they are under the threat of an assault from anybody, least of all when they walk in the corridors where they are representatives. So, we will make sure that it never happens that our members are subjected to any threats or actual assaults.”

The Chairperson implored members to respect one another, to respect the Constitution, to respect the rules of the House, and all South African laws. Also importantly, to respect all South Africans who look to them for leadership. Furthermore, members were asked to remember who they are, why they are here, what they are doing here, and how they come across to those people who have sent them here when they behave the way they behave in the House. (Chairperson of the NCOP)

32. Deliberately misleading the House

FACTS

During the Oral Questions Session to the Minister in the Presidency for Planning, Monitoring and Evaluation, a member rose on a point of order and said the following: *“Chairperson, on a point of order: The Minister just said now that the precursor and the following party of the National Party is the DA and that was*

mentioned before in this House and there was a ruling about that, which is clearly false. [Interjections.] It is deliberately misleading because the DA comes from the DP and the DP comes from the PFP and the PFP does not come from the National Party”.

The presiding officer undertook to consult Hansard and revert with a ruling, as he did not hear the member’s remark.

QUESTION TO BE CONSIDERED

Whether the statement by the Minister deliberately mislead the House?

RULING

In arriving at his ruling, the presiding officer referred to section 71 of the Constitution read with the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act and Council Rule 30 which affords members of the Council and Cabinet Members freedom of speech in the Chamber.

He indicated that this privilege recognizes that members should be free to speak their minds in debates without fear or favour. It is at the heart of privileges of Parliament, which are an integral part of our Constitutional arrangements. However, in exercising the privilege, one would expect that everyone in the House would always be prudent in their tone and choice of words.

One of our roles as officers presiding is to create a space that allows members during debates to express themselves, probe others and listen to others. Every member in this House has the right to hold his or her own views and the right to express those views in this Chamber.

To raise points of order out of every heated exchange in the House would render proceedings unworkable. As previously ruled in this House, the officers presiding cannot be expected to adjudicate on the accuracy or otherwise of every statement, as this would lead to endless disputes of facts.

A deliberate misleading of the House involves an intent to mislead and or knowledge that the statement would mislead. It would be virtually impossible to prove that a member deliberately misled the House. Members must be allowed to present different interpretations of debates or events in political discourse. However, we will never allow remarks directed specifically at another Member that question that Member's integrity, honesty or character.

In view of this, he ruled that the point of order raised by the member cannot be upheld. (Deputy Chairperson of the NCOP)

33. Statement by the Deputy Chairperson on the conduct of the Members

Honourable members, I would like to make some comments on the recent behaviour of some members of the House, I would like to stress the point that I refer to some members.

As Presiding Officers, we have noted that some members have taken it upon themselves to want to question, debate, overturn and in some instances defy the officer presiding. I would like to refer members to Council Rules 35 and 37, which provides as follows;

Rule 35 states whenever the officer presiding rises during a debate in the Council, a member addressing or seeking to address the Chair must sit down and allow the officer presiding to be heard without interruption.

Rules 37 state, the officer presiding may order a member to leave the Chamber immediately for the remainder of the day's sitting if the officer presiding is of the opinion that-

- the member is deliberately contravening a provision of the Rules
- the member is in contempt of or is disregarding the authority of the chair, or
- the member's conduct is grossly disorderly.

Members should be mindful that as honourable members we are supposed to conduct ourselves in a manner befitting the decorum of this august House. To interject an officer presiding while addressing the House or to call to question the ruling of the officer presiding after it was delivered is totally unacceptable and is tantamount to contempt and/or disregarding the authority of the officer presiding.

As officers presiding we have a responsibility to conduct proceedings of the House and to protect speakers on the podium in order to ensure that the business of the House is not compromised. Members may have noticed that we always encourage members if they are not satisfied with a decision of a presiding officer to write and bring that matter to the attention of the Chairperson. Therefore, there should not be any justification for members who are not satisfied with rulings of officers presiding to disrupt proceedings of the House.

I therefore call upon all members to cooperate with presiding officers and afford presiding officers the opportunity to conduct the business of the House un-interrupted. Failure to comply will leave us with no option but protect the decorum of the House and enforce the rules. (Deputy Chairperson of the NCOP)

34. Ruling by the Chairperson of the NCOP on the proposed amendments to Electoral Laws Amendment Bill [b 33b – 2018] (National Assembly – sec 75) in terms of Rule 212 of the NCOP

FACTS

The Office of the Secretary to the NCOP received proposed amendments from Hon Hattingh at 14:00 on 8 January 2019. The proposed amendments were purportedly submitted in terms of Rule 212 of the Rules of the National Council of Provinces. The proposed amendments sought to amend the Electoral Laws Amendment Bill [B33B – 2018]. In terms of Rule 212(1)(a), after a Bill has been placed on the Order Paper but before the Council decides on the Bill, any member may place proposals for amending the Bill on the Order Paper. It was in terms of this Rule that the Hon. member purportedly submitted the proposed amendments.

RULING

The purported proposed amendments seek to amend certain provisions of the Electoral Act which are not covered by the Electoral Laws Amendment Bill [B33B- 2018]. The Bill is classified as a Bill not affecting provinces. It is therefore to be dealt with in terms of section 75 of the Constitution.

The Bill was passed by the National Assembly and referred to the National Council of Provinces, as required by section 75(1) of the Constitution. Section 75(1)(a) of the Constitution enjoins the National Council of Provinces to pass the Bill, pass the Bill subject to proposed amendments or reject the Bill.

The Bill was then referred to the Select Committee on Social Services, now referred to as the committee, for consideration and to report to the House.

Rule 210(1)(a) requires the committee to which the Bill is referred, to inquire into the subject of the Bill and the committee has done so. According to the report presented by the chairperson of the committee, the committee reports the Bill without proposing amendments.

In terms of Rule 212(1)(a), after a Bill has been placed on the Order Paper but before the Council decides on the Bill, any member may place proposals for amending the Bill on the Order Paper. It is in terms of this Rule that the hon member purportedly submitted the proposed amendments.

The purported proposed amendments were accordingly placed on the Order Paper of 10 January 2019, in terms of Rule 212. Rule 212(3)(a) prohibits, amongst others, proposed amendments that may render a Bill constitutionally or procedurally out of order,

within the meaning of joint Rule 161 or amendments that are out of order for any other reason. Rule 210(1)(h), which applies to the consideration of the Bill by the committee, is similarly worded. It prohibits a committee from proposing an amendment that may render the Bill constitutionally or procedurally out of order within the meaning of joint Rule 161.

In terms of joint Rule 161(2)(a), to which rule 212 refers, a Bill is procedurally out of order if the procedure prescribed in either the Assembly or the Council rules as a precondition for the introduction of a Bill in the particular House has not been complied with. As indicated above, the Bill was classified as a Bill not affecting provinces to be dealt with in terms of the procedure prescribed in section 75 of the Constitution. Needless to say, the Constitution does not envisage the introduction of these types of Bills in the National Council of Provinces. Unlike Bills affecting provinces, which the National Council of Provinces may amend, the House is only confined to passing these types of Bills subject to proposed amendments.

To be precise, section 68(b) of the Constitution, dealing with the powers of the National Council of Provinces, empowers the National Council of Provinces to initiate or prepare legislation falling within a functional area listed in schedule 4 or other legislation referred to in section 76(3). The electoral law is neither

one of those functional areas, nor does it fall within the category of legislation referred to in section 76(3).

Bill B33B of 2018 that served before the committee seeks to amend certain provisions of various laws including the Electoral Act of 1998. In particular, the Bill seeks to amend sections 7, 8, 11, 20, 24, 28, 38, 40, 41, 86, 87 as well as schedule 1 of the Act. Except for section 11, these provisions do not appear in any of Hon. Member's purported proposed amendments, nor do they deal with matters that the Hon. member seeks to insert in the Bill.

On the other hand, the Hon. member's proposals seek to amend sections 2, 3, 4, 10, 11 and 33 of the Act. The only common provision between the Hon. member's proposals and the Bill is reference to section 11 of the Act. But this is where the similarities end. Although the Bill also seeks to amend section 11 of the Act, the provision in section 11 that the Hon. member proposes to amend is not the same as the one that the Bill seeks to amend. While the Bill seeks to amend section 11(2) of the Act, the Hon. member proposes the amendment to section 11(1) of the Act.

Having regard to the purported proposed amendments by the Hon. member, they cannot be properly classified as proposed amendments within the meaning of Rule 212 of the Rules of the National Council of Provinces. They effectively amount to a new Bill which the Hon. member seeks to introduce through rule 212.

This will be inconsistent, not only with the Constitution, but also with the Rules. As indicated above, this is a matter that does not affect provinces within the meaning of the Constitution and can therefore not be introduced for the first time in the National Council of Provinces. Should these proposed amendments be allowed, they will render the Bill both constitutionally and procedurally out of order. These proposed amendments would suitably be introduced in the National Assembly.

When the Hon. member wrote to the Chairperson about these purported amendments, he said that he does so in the name of his party. Advice therefore would be that he requests his party to introduce these in the National Assembly, if he so wishes.

Having considered the purported proposed amendments by the Hon. member, the Chairperson came to the conclusion that they are constitutionally and procedurally out of order.

In terms of Rule 212(3)(b), the ruling by the Chairperson on whether an amendment is out of order, is final.

Had the Hon. member's proposed amendments been in order, the Chairperson of the NCOP could have been compelled by Rule 212(5) to either recommit the Bill to the committee or to put the proposed amendments to the House before the Bill as a whole is decided on. (Chairperson of the NCOP)

35. Unparliamentary expressions

List of words, expressions, and phrases that are regarded as unparliamentary by the NCOP:

1. Reference to a Member as “*sexist*”.
2. Reference to Members as “*voting cows*”.
3. Reference to awarding work for “*sex favours*”.
4. Reference to a Member as “*a child*”.
5. Reference to a Member as “*poppie*”.
6. Reference to a Member as “*darling*”.
7. Reference to the President as a “*womaniser*”.
8. Reference to Presiding officers as “*bullies*” and “*Trigger happy*”.
9. Reference to the (then) President as “*Zuma*” not “*President Zuma*”.
10. Use of words such as “*guts*” and “*insist*”, such as “if the member has guts, I insist that he takes my question”.
11. Reference to Members as “*empty tins*”.

12. Reference to Members and a political party as “*coming from apartheid regime*”.
13. Reference to a Minister as “*a minister by default*”.
14. Reference to Members as “*racist*”.
15. Statement such as “*there is a smell of alcohol in the House*”, which clearly suggests that Members are not sober.
16. Use of the word “sies”, which can be interpreted as demeaning.
17. Reference to a Member as “*this white man*”; or “*a racist white person who hijacked the struggle*”.
18. Use of the words “*you have no balls*” is unacceptable.
19. Use of the words “*you stay in a house full of dog fur*” - suggests that a Member is dirty or stays in unhygienic conditions.
20. Reference to a Member as “*this man*”. A Member should always be addressed with respect and as “*the Honourable Member*”.
21. Reference to a Member as a “*straatmeid*”.
22. Reference to a Member as a “*white boy*”.

23. Reference to a Member as a “*concubine*”.
24. Reference to Department of Home Affairs as “*Department of Corrupt Affairs*”.
25. To say a Member is talking “nonsense”.
26. Calling a Member a “*coward*”.
27. To say a Member should “*shut up and sit down*”.
28. To say the President “*received bribes*”.
29. Reference to the departments name incorrectly e.g. *Department of Horror Affairs* rather than *Department of Home Affairs*.
30. Reference to a Member’s speech as “*bullshit*”.
31. Reference to a Member as “*this white woman*”.
32. To say to a Member “*you have a black heart*”.
33. Reference to a Member as “*this racist white man*”.
34. To say “*the member is not sober*”.
35. Calling a member “*an empty vessel*”.
36. Calling a Member a “*stupid*”.

37. Calling a Member a *“liar”*.
38. Calling a Member a *“stooge”*.
39. Calling a Member a *“fool”*.
40. Reference to a member as *“insane”*.