



SEVENTH PARLIAMENT OF THE REPUBLIC OF NAMIBIA

REPORT OF THE STANDING COMMITTEE OF PRIVILEGES OF THE NATIONAL ASSEMBLY

**Investigation Into the Conduct of Hon.
Bernadus Swartbooi and Hon. Henny Seibeb
on 15 April 2021 During the State of the
Nation Address**

September 2021

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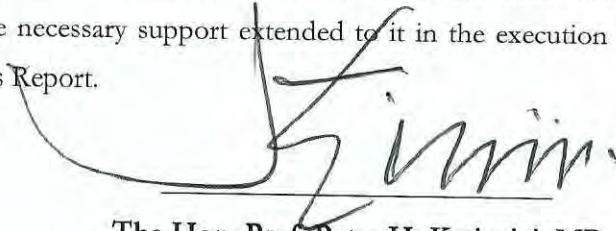
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i. Foreword

The Standing Committee of Privileges of the National Assembly of Namibia is established by the Powers, Privileges and Immunities of Parliament Act, 1996 (Act No. 17 of 1996).

On 26 April 2021, the Committee of Privileges resolved to investigate the conduct of two members of the National Assembly, Hon. Bernadus Swartbooi and Hon. Henny Seibeb, on their conduct on 15 April 2021, in the National Assembly Chamber, where His Excellency the President of the Republic of Namibia delivered his State of the Nation Address to a joint sitting of Parliament. This Report is a culmination of that investigation and it is presented to the House in terms of section 12(d) of the Privileges Act read with Standing Rule 68(4)(e) and clause 7.6 of the Code of Conduct.

The Chairperson of the Committee hereby thanks all the members of the Committee for their contribution and involvement in the investigation that has culminated in this Report. The task before it established a model which will be used to inform the course of similar future events. The Committee wishes to also thank the Secretary of the National Assembly and the Committee Secretariat for the necessary support extended to it in the execution of its mandate and in the production of this Report.



The Hon. Prof. Peter H. Katjavivi, MP

Speaker of the National Assembly

and

Chairperson of the Committee of Privileges

ii. Establishment, Membership and Mandate of Committee of Privileges

Establishment

The Committee of Privileges is established under section 7(1)(a) of the Powers, Privileges and Immunities of Parliament Act, 1996 (Act No. 17 of 1996) (hereinafter the Privileges Act).

Membership

The National Assembly Committee of Privileges is comprised of the following Members:

- | | |
|--------------------------------------|--------------------------------------|
| 1. Hon. Prof. Peter H. Katjavivi, MP | (Chairperson) |
| 2. Hon. McHenry Venaani, MP | (Vice-Chairperson) |
| 3. Hon. Agnes Mpingana Kafula, MP | |
| 4. Hon. Phillipus Katamelo, MP | |
| 5. Hon. Sebastiaan Karupu, MP | |
| 6. Hon. Bernadus Swartbooi, MP | (temporarily withdrawn) ¹ |

Committee Secretariat

The Committee's work was facilitated by a Secretariat comprising of the following officers -

1. Ms. Lydia Kandetu - Secretary of the National Assembly
2. Mr Simon Uirab - Director: Office of the Speaker
3. Ms Carol-Ann Esterhuizen - Chief Legal Officer and Committee Secretary
4. Ms. Rachel Mundilo - Legal Officer: Office of the Secretary

Mandate, Powers and Functions of Committee of Privileges

In terms of section 12(b)(i) of the Act

the Committee of Privileges -

- (a) shall, subject to the approval of the House, issue directives providing for -

¹ The decision to withdraw Hon Swartbooi, was set aside in Bernadus Swartbooi & Another v The Speaker of the National Assembly (SA 38-2021) [2021] NASC.

- (i) such disclosure by members of their financial or business affairs as it may consider to be appropriate; and
 - (ii) the form and frequency in which the particulars contemplated in subparagraph (i) shall be furnished;
- (b) may, subject to Part III, investigate, either of its own accord or upon a complaint made by -
- (i) the House, any matter relating to the conduct of any member within the precincts of Parliament or an alleged breach by any member of the relevant Standing Rules and Orders;
 - (ii) any person, any matter relating to an alleged breach by a member of his or her duty in terms of section 22 to disclose an interest as contemplated in that section;
- (c) may, for the purposes of paragraph (b), in writing require a member to submit to it a return of assets and liabilities or furnish it with such particulars or information or to submit or make available to it such books, documents, statements, or records as it may require, and to examine such return or particulars, information, books, documents, statements, or records;
- (d) shall report and make recommendations to the House with regard to its findings in any investigation in terms of paragraph (b).

In terms of Rule 68(4)(b) and (e) of the Standing Rules and Orders and Internal Arrangements (hereinafter the Standing Rules)

- (4) The Committee may, in particular, -
- (a) deal with matters of policy relating to the Assembly,
 - (b) deal with matters relating to the conduct of Members, including the misuse or abuse of Rules of the Assembly,

- (c) issue directives concerning disclosure by Members of their interests and the form and frequency of the disclosure,
- (d) make recommendations to the Assembly regarding the disclosure of Members' interests to be contained in these Rules and/or any other instrument, and
- (e) **investigate and report on any matter relating to the Standing Rules and Orders, the Code of Conduct, any other Rule or Order of the Assembly or any matter prescribed by an Act of Parliament.**

In terms of Clause 6.1 and 7 of the Code of Conduct

Functions and Powers of the Committee

6.1 **The Committee of Privileges is empowered to:**

- 6.1.1 adopt such codes of conduct for all Members, in conformity with Article 60 of the Namibian Constitution **on their duties, privileges and immunities;**
- 6.1.2 **enforce and administer this Code;**
- 6.1.3 adopt a standard format for the declaration of interests and the reporting requirements with regard thereto; and
- 6.1.4 perform such other functions as may be determined in this Code.

7.3. a) **The Committee may of its own accord investigate an alleged breach of this Code by a Member.**

1. Terms of Reference

- 1.1 The Committee of Privileges, in accordance with its mandate as provided for in section 12(b)(i) of the Privileges Act, read with Standing Rule 68(4)(b) and (e) and Clause 7.3(a) of the Code of Conduct, resolved of its own accord to investigate the conduct of Hon. Swartbooi and Hon. Seibeb on 15 April 2021 in the Chamber.
- 1.2 The Committee will, at the conclusion of its investigation, in accordance with section 12(d) of the Privileges Act read with Standing Rule 68(4)(e) and Clause 7.6 of the Code of Conduct, report thereon to the House.

2. Introduction and Background

- 2.1 On 15 April 2021, between 14.30 and 18.00, His Excellency Dr. Hage G. Geingob, the President of the Republic of Namibia delivered his State of the Nation Address (SONA) during a Joint-Sitting of Parliament. During the questions and answers session, Hon. Bernadus Swartbooi (Leader of LPM) and Hon. Henny Seibeb (Chief Whip of LPM) continuously interjected and disrupted the proceedings.
- 2.2 The Speaker, in terms of Rule 111 ordered Hon. Swartbooi and Hon. Seibeb to withdraw from the Assembly Chambers, however the two members refused to abide by this order. The Sergeant-at-Arms was called to assist in escorting the two members out of the Chamber in terms of Rule 113(b) and was reinforced by the Parliamentary Protection Services (PPS).
- 2.3 On his way out of the Chamber, Hon. Swartbooi seized the Mace of the House and flipped it in the direction of H.E the President. The Mace was airborne but was caught by one of the members of the PPS.
- 2.4 Hon. Seibeb then started to bang a copy of the Harambee Prosperity Plan Phase 2 booklet and started moving away from his bench towards the center of the Chamber whilst tearing the copy of the said booklet apart and throwing pieces of it across the Chamber floor. During this period, the Parliamentary Protection Services returned to the Chamber, to implement the order, which applied to both Hon. Swartbooi and Hon. Seibeb. Hon.

Seibeb refused to leave the Chamber and attempted to initiate a scuffle with the Parliamentary Deputy Director of Security and Risk Management Service. The Presidents Security Personnel entered the Chamber and proceeded to remove him from the Chamber.

2.5 The Speaker, in terms of Rule 115 abruptly adjourned the House.

2.6 Subsequent Events

2.6.1 On 19 April 2021 the Speaker wrote a letter to Hon. Swartbooi and Hon. Seibeb which reads:

“As you may be aware that the Speaker made a ruling in terms of Rule 111 read with Rule 113(b) on Thursday, 15 April 2021, by withdrawing you from the Assembly Chamber, therefore, in terms of Rule 112 the Speaker deems it necessary to report this matter to the Committee on Standing Rules and Orders for consideration.

In the interim, I wish to hereby invoke Rule 124(a) in that you remain withdrawn from the House for the time being.

In light of the above, the above ruling shall remain in force until it is set aside on the recommendation of the Standing Committee on Standing Rules and Order and Internal Arrangements.”²

2.6.2 On 21 April 2021, the Speaker who is also the Chairperson of the Committee on Standing Rules, referred the matter to the Committee in terms of rule 112. The Chairperson of the Committee narrated the incident and stated that:

“...It is therefore, I brought this matter to the Committee on Standing Rules and Orders to brief Members on what transpired... The floor is open for discussion...”³

² The Speakers ruling in terms of Rule 124(a) has subsequently been set aside in a Supreme Court appeal judgment see n1.

³Verbatim of the meeting of the Standing Committee the Committee on Standing Rules and Orders, held on 21 April 2021.

2.6.3 This referral was consistent with the provisions of Rule 112. After the deliberation on the matter the Committee was however of the view that an investigation into the conduct of the two members falls within the purview of the Committee of Privileges, and the Committee on Standing Rules will then receive a recommendation from the Committee of Privileges whether to suspend the Members as provided for in terms of Rule 112.

2.6.4 This position is informed by Rule 67(1)(e) of the Standing Rules which provides that:

“The Committee has the power and duty to:

(e) receive all reports from parliamentary Committees and delegations and approve them for tabling in the Assembly or deal with them as provided for in these Rules”

2.6.5 The Committee on Standing Rules is of the view that it cannot impose a sanction in the form of a suspension in terms of Rule 112 without an investigation and that investigation must be carried out by the Committee of Privileges.⁴

2.6.6 Despite the referral of the investigation by the Committee on Standing Rules, the Committee of Privileges in terms of the Privileges Act, may conduct an inquiry into the conduct of a Member *suo moto*⁵ and in terms of that Act, and the Code of Conduct the Committee of Privileges makes its recommendations directly to the House.⁶ Furthermore, despite the sanctions contained in Rule 112, the Committee of Privileges may impose its own sanctions in terms of the Code of Conduct, if it finds that a member has breached a provision of the Code.⁷

⁴The Standing Rules and Orders are currently under review by the National Assembly Secretariat. The general consensus is that reference to the Standing Committee on Standing Rules under Rule 112 is misplaced and it should in fact be the Committee of Privileges as that committee is seized with the duty to investigate matters concerning the conduct of members (in terms of Rule 68(4)(b)). Despite the error, the Committee of Privileges, in terms of the Rules as they currently stand, cannot recommend a suspension in terms of that Rule.

⁵ Section 12(b)(i) of the Privileges Act.

⁶ Section 12(d) of the Privileges Act and Clause 7.6(a) of the Code of Conduct.

⁷ Clause 7.5 of the Code of Conduct.

- 2.6.7 At its meeting held on 26 April 2021 the Committee of Privileges resolved to investigate, on its own accord the events of April 15, 2021 in terms of section 12(b)(i) of the Privileges Act, read with Rule 68(4)(b) and (e) as well as Clause 7.3(a) of the Code of Conduct.

3. Committee of Privileges Meetings

- 3.1 The Committee of Privileges has held 12 meetings to consider all the issues relating to the conducting of the investigation, to conduct a preliminary hearing/investigation as well as sittings to hear and consider the evidence before it.
- 3.2 The minutes of those meetings are kept with the Secretary of the National Assembly as the official repository of all National Assembly records.
- 3.3 The Committee resolved to not hold any of its meetings in public, in accordance with Rule 68(5) of the Standing Rules, to ensure that its recommendations were unfettered from public pressure resulting from the premature publication of documents or evidence during the investigation.
- 3.4 The Committee highlights the fact that witness statements were published in the media before the report of the Committee was presented to the House. The Committee notes that the Privileges Act does not contain any provision preventing the premature publication of the Committee's proceeding or evidence, which is a generally accepted practice of parliaments the world over that no act done at any committee should be divulged before it is reported to the House, unless the public is admitted to those proceedings.⁸ Any such premature publication is considered a breach of privilege or contempt.⁹

⁸ Cocks, B. (1971) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 18th ed. at p. 142-143, Butterworths & Co: London.

⁹ *Ibid.*

3.5 Correspondences

- 3.5.1 The Committee received a number of correspondence related to the matter before the Committee from the legal representatives of the two members. These are deposited with the Secretary of the National Assembly for record keeping together with the responses of the Committee.

4. Relevant Law

4.1 Parliamentary Privilege and Contempt of Parliament

- 4.1.1 Any disregard for or attack on the rights, powers and immunities of the House and its Members by any person, including a member of the House, is considered to be a “breach of privilege” and is therefore punishable by the House.¹⁰
- 4.1.2 Not all affronts against the dignity and authority of Parliament fall within a specifically defined privilege. As a result, the House has a right to punish any action or omission which obstructs or impedes the House in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt even though there is no precedent of the offence.¹¹ As a result, it is generally accepted that enumerating every act that might be construed as a contempt would be futile. The Kenyan¹² and South African¹³ laws relating to the powers, privileges and immunities of members of parliament enumerate conduct constituting breach of privilege and contempt, respectively.
- 4.1.3 The Namibian Constitution, in terms of Article 60(3) provides that “rules providing for the privileges and immunities of members of the National Assembly shall be made by Act of Parliament...” In light of this constitutional provision the

¹⁰ibid at p. 132.

¹¹ibid.

¹² Section 16 and 17 of the Kenyan Parliamentary Powers and Privileges Act, 2017 (Act No. 29 of 2017).

¹³Section 13 of the South African Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act No. 4 of 2004).

Privileges Act was enacted to declare and define certain powers, privileges and immunities of Parliament and its members. The Privileges Act does not provide a definitive and exhaustive list of all the privileges of Parliament and it only created special categories of **criminal offences**¹⁴ for breaches of certain privileges/contempt.

- 4.1.4 Any intention to criminalise these acts under section 24 of the Privileges Act may construe those acts as contemptuous. The Committee is however hard-pressed to investigate and recommend sanctions for contempt, in the absence of any legislative enactments to guide that process.
- 4.1.5 The Committee is empowered under section 12(b)(i) of the Privileges Act to *suo moto* investigate any matter relating to the conduct of any member within the precincts of Parliament or an alleged breach by any member of the relevant Standing Rules and Orders. The Standing Rules, under Rule 68 (4)(b) and (e) provides that the Committee may, in particular deal with matters relating to the conduct of members and investigate and report on any matter relating to the Standing Rules and Orders, the Code of Conduct, any other Rule or Order of the Assembly or any matter prescribed by an Act of Parliament. Clause 7.3.(a) of the Code of Conduct also provides that the Committee may of its own accord investigate an alleged breach of this Code by a member. The Committee is therefore guided by the Code of Conduct.

4.2 Breach of the Code of Conduct

- 4.2.1 Clause 7.1(a) of the Code of Conduct provides that “a Member breaches this Code if he or she contravenes or fails to comply with a provision of this Code.” The Code of Conduct in its Preamble provides, that: The Members of the National Assembly, as elected representatives, are servants of the people of Namibia and have a duty to “**maintain the dignity and image of the National Assembly** both during the sittings of the National Assembly as well as in their acts and activities outside the National Assembly” (amongst other duties). More specifically,

¹⁴ Section 24 of the Privileges Act.

Chapter 3 of the Code of Conduct refers to the personal conduct expected of every member. Clause 3.1(b) provides that:

“A Member must act in the interest of the Namibian people and of the National Assembly. In doing so, a Member has a duty to uphold the Constitution and laws of Namibia and to act in conformity with the Rules of the National Assembly.”

- 4.2.2 In amplification of these provisions¹⁵, the Namibian Constitution under Article 60(1)(a) provides that:

“The duties of the members of the National Assembly shall include... [that]... all members of the National Assembly shall maintain the dignity and image of the National Assembly both during the sittings of the National Assembly as well as in their acts and activities outside the National Assembly”

- 4.2.3 The investigation therefore sought to determine whether the conduct of Hon. Swartbooï and Hon. Seibeb has fallen short of these duties and whether they have, as a result of that conduct, breached clause 3.1(b) of the Code of Conduct read with its Preamble and Article 60(1)(a) of the Namibian Constitution.**

- 4.2.4 In conducting the investigation, the Committee is guided by section 16 of the Privileges Act which provides that the procedure at any enquiry shall be in accordance with the relevant Standing Rules and Orders.

- 4.2.5 Rule 68(1) of the Standing Rules provides that:

“the Committee of Privileges shall act in terms of the Rules, the Code of Conduct for Members of the Assembly and exercise such duties, powers and functions as prescribed by an Act of Parliament including the Powers, Privileges and Immunities of Parliament Act, 1996 (Act No. 17 of 1996) and in accordance with the provisions of the Electoral Act, 2014 (Act No. 4 of 2014).”

¹⁵ Article 45 of the Namibian Constitution also provides that “the members of the National Assembly shall be representative of all the people and shall in the performance of their duties be guided by the objectives of this Constitution, by the public interest and by their conscience.”

4.2.6 Rule 68(4)(e) provides that:

*“The Committee may, in particular, - investigate and report on any matter relating to the Standing Rules and Orders, **the Code of Conduct**, any other Rule or Order of the Assembly or any matter prescribed by an Act of Parliament.”*

4.2.7 Chapter 2 of the Code of Conduct further provides that *“the Code forms part of the Rules of Procedure of the National Assembly as contemplated under Article 59 of the Namibian Constitution, the Powers, Privileges and Immunities of Parliament Act, 1996 and the Standing Rules and Orders of the National Assembly.”*

4.2.8 The Code of Conduct provides the process that ought to be followed when conducting an investigation of an alleged breach of the Code of Conduct. More specifically, Clause 7.3 provides that during investigations by the Committee, the Committee must at all time adhere to the rules of natural justice. Therefore, the rules of procedure which the Committee must rely on are the rules of natural justice as referred to in the Code of Conduct.

4.3 Rules of Natural Justice

4.3.1 A procedure which abides by the rules of natural justice essentially manifests a procedure which is regarded as fair, reasonable and just. Fairness encompasses a number of procedural rights “aimed at ensuring that a person's legal rights are protected when decisions are made which impact on those rights.”¹⁶

4.3.2 It is argued that “the rules of natural justice are not immutable rules at all,¹⁷ but rather a collection of procedural devices that can be tailored to fit different

¹⁶Joint Subcommittee on Powers and Privileges (6 September 1999) Report on The Powers and Privileges of Parliament (Republic of South Africa) available at [<https://pmg.org.za/committee-meeting/4663/>] accessed on 10 May 2021.

¹⁷“The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects.” Nelumbu and Others v Shikumwah and Others (SA-2015/27) [2017] NASC 14 (13 April 2017) at para [57]; citing R v Secretary of State for the Home Department, Ex parte Dood [1993] 3 ALL ER 92 (HL) at 106d-e.

contexts.”¹⁸ Therefore each case must be determined on its own merits. Fairness cannot be reduced to a one size fits-all formula and the courts have refused to lay down rigid rules as to what constitutes fairness.¹⁹

4.3.3 The Committee of Privileges relied on the construction by the South African Joint Subcommittee on Powers and Privileges as to what rules of natural justice apply in the context of Parliament. These include:

- (a) the right to a fair impartial hearing;
- (b) a right to be heard;
- (c) a right to know the case put against one and to test it and to confront witnesses.²⁰

4.3.4 The right to a fair impartial hearing

4.3.4.1 The first requirement is that adequate notice must be given to the member informing him/her of the nature and purpose of the proposed action. The requirement of adequate notice means that sufficient information must be provided to allow the person to exercise his/her right. To this end the Committee issued summons to the members on 07 May 2021 to appear before the Committee of Privileges in terms of section 14 and 15 of the Act, on 18 May 2021. The Committee resolved to hold a preliminary investigation on 18 May 2021 where the two members were informed of the nature and purpose of the investigation and to allow for the evidence that will be lead at the investigation to be discovered to them. The Committee submits that the technical legal rules of evidence need not be complied with, in an investigation of this nature – at common law decision-makers have been allowed to adopt whatever procedures they like,²¹ as it relates to evidence.

4.3.4.2 *Sufficient notice*: it has been argued that 48 hours is wholly inadequate but “there must be some nexus between the information disclosed to an affected person and

¹⁸Joint Subcommittee on Powers and Privileges at n16.

¹⁹ Hoexter, Cora (2010) “Administrative Law in South Africa” at p.328. Juta&Co: Cape Town.

²⁰Joint Subcommittee on Powers and Privileges at n16.

²¹Hoexter: n19 at p.330.

the quality of his opportunity to make representations.”²² In the matter before the Committee the two members were informed on 18 May 2021 of the nature of the matter before the Committee and they were provided with the evidence that will be relied on at the investigation. The Committee gave the two members time to make representations to it on 21 May 2021 on any matter pertaining to the investigation and on the process that will guide the investigation. The two members were again given 5 days’ notice prior to their scheduled appearance before the Committee on 20 July 2021 and further evidence in the form of witness statements was discovered to them.

- 4.3.4.3 The second leg to the right to a fair and impartial hearing is rooted in the latin maxim “*nemo iudex in sua causa*” which means no one should be a judge in his or her own cause. In the matter before the Committee of Privileges, the Speaker of the National Assembly is also the Chairperson of the Committee of Privileges.
- 4.3.4.4 The Committee of Privileges investigates allegations of misconduct of members and makes recommendations to the House on its findings, in terms of section 12 and 13 of the Privileges Act read with Code 7.4 and 7.6. The House shall consider the report made to it and take such disciplinary action as it considers necessary.²³
- 4.3.4.5 Parliament, may be accused of being the complainant, prosecutor and judge but it has been argued that “if one were to accept that the courts have the power to punish contempt’s directed at them, there is in principle no reason why this power should be denied Parliament.”²⁴ It is further argued that the Speaker of the National Assembly is also the Chairperson of the Committee of Privileges the “rule against bias requires that persons who have expressed a firm opinion on the subject under investigation or have some other vested interest that may be seen to affect their impartiality ought not to sit on the committee.”²⁵ The Committee is of the view that Parliament, when enacting the Privileges Act and in constituting the Committee, knew that investigations pertaining to members conduct in the

²²ibid at p.334.

²³Section 13 of the Privileges Act.

²⁴Joint Subcommittee on Powers and Privileges at n16.

²⁵ibid.

Chamber, presided over by the Speaker, will come before it. Therefore any challenge pertaining to its composition must challenge the Privileges Act.²⁶

4.3.4.6 The Committee is committed to conducting the investigation in an impartial manner. The Hon. Mr Swartbooi, who is also a member of the Committee of Privileges, was withdrawn from the Assembly/House in terms of Rule 124²⁷ of the Standing Rules and Orders. The definition of Assembly/House provided in the Standing Rules and Orders includes “any Committee, Sub-Committee, group...” The Committee recognises the inherent nature of Parliament and the political elements that must be balanced in order to foster fairness. By virtue of the withdrawal and to ensure fairness in the composition of the Committee, Honourable Swartbooi was on 28 April, 2021 requested to nominate a member from his political party by May 03, 2021 in terms of Rule 68(3) of the Standing Rules to act as a member of the Privileges Committee for the purposes of the investigation, however, the Committee did not receive any nomination.

4.3.5 The right to be heard;

4.3.5.1 The right to be heard is also rooted in a latin maxim known as the “*audi alterum partem*” rule. “Where a person's rights will be affected by a decision, he or she should be heard by the decision-maker prior to the decision being taken.”²⁸

4.3.5.2 The right to be heard does not necessarily imply the right to an oral hearing in every instance.²⁹ The Committee however resolved that the two members will be granted a reasonable opportunity to respond to any of the allegations before the Committee. To further foster fairness the Committee resolved that the two members must be granted an opportunity to make submissions on the proceedings as well as provide responses to any points of clarification or in amplification of any

²⁶ Economic Freedom Fighters and Others v Speaker of the National Assembly and Others (21471/2014) [2018] ZAWCHC 4; [2018] 2 All SA 116 (WCC) (29 January 2018) at para [29].

²⁷ This decision has been set aside in the Supreme Court see n1.

²⁸ Joint Subcommittee on Powers and Privileges at n16.

²⁹ Parker, C. (2009). Administrative law in Namibia, its current state, challenges, and proposals for law reform. The Comparative and International Law Journal of Southern Africa, 42(1), 115-127. Available at <http://www.istor.org/stable/23253215> accessed on 13 May 2021.

concern. They are however at liberty not to answer any of the questions put to them by the Committee in asserting their right not to self-incriminate.

4.3.5.3 The Committee recognised the right to be afforded an opportunity to make representations by asking the two members to appear in person and to make oral representations if they so wish on the day of the investigation. The two members were granted an opportunity to make submissions to the Committee before it makes its recommendation to the House, albeit in absentia. Consistent with the rules of natural justice it is “required that when a statute empowered a public official or body to give a decision prejudicially affecting an individual's rights, interests or legitimate expectations, such an individual must be heard before the decision is taken **or any serious recommendations** prejudicially affecting such rights, interests or legitimate expectations are made by the body concerned.”³⁰ The two members chose to abandon the proceedings and did not attend the investigation. They opted to have their legal representatives present in their stead. The Committee had informed the two members on the day of the preliminary hearing/investigation that they may make submissions to the Committee before it formulates its recommendations and the opportunity was afforded them on the day of the investigation albeit in absentia.

4.3.6 **The right to know the case put against one and to test it and to confront witnesses;**

4.3.6.1 This right denotes that at the hearing (in this case the investigation) the persons must be given a reasonable opportunity to refute the evidence by making written or oral submissions. In line with the rights referred to previously. We will not go into the details again except to state that the Committee has agreed to allow the members to make submissions at the investigation and to question or counter any statements made by witnesses and to call witnesses of their own. The two members have an opportunity to put forward any mitigating factors. The two members did not attend the investigation on 20 July 2021 in person and opted to have their legal representatives present.³¹

³⁰ De Lille and Another v Speaker of the National Assembly 1998 (3) SA 430 (C).

³¹ The legal representatives left just before the Committee started to hear the evidence of the witnesses.

- 4.3.6.2 In terms of section 16(3) of the Privileges Act, the two members have the right not to incriminate themselves and may refuse to answer questions put to them by the Committee.

4.4 Right to legal counsel

- 4.4.1 The Privileges Act, Code of Conduct and the Standing Rules do not make provision for assistance by legal counsel. Permitting legal representation or assistance by another member is said to contribute to the fairness of the process in parliaments that follow the Westminster system. In South Africa and the UK legal representation is granted in exceptional cases only.³² The Australian and New Zealand Parliament allow any person appearing before the Privileges Committee to automatically be assisted by counsel. The Committee considered whether there was a duty in terms of Article 12(1)(e) of the Constitution to allow the two members to have legal representation present. The Committee was guided by the following dicta:
- 4.4.2 In **Vaatz v Law Society of Namibia**³³ a question was raised as to *“whether the enquiry due to take place to consider applicant's alleged unprofessional conduct falls within the ambit of Article 12 of the Constitution. Applicant argued that it did because he said the proceedings were 'in the nature' of criminal proceedings. The Court held that in our law it has frequently been held that disciplinary proceedings of a law society are neither civil proceedings nor criminal and do not therefore fall within the ambit of Article 12.”*
- 4.4.3 In **Hamata & another v Chairperson, Peninsula Technikon Internal Disciplinary Committee & Others**³⁴, the court held that *there is no constitutional imperative regarding legal representation in administrative proceedings discernible, other than flexibility to allow for legal representation but, even then, only in cases where it is truly required in order to attain procedural fairness.*

³²Joint Subcommittee on Powers and Privileges at n16.

³³ 1990 NR 332 (HC).

³⁴ 2002 (5) SA 449(SCA).

4.4.4 In **Dabner v SA Railways & Harbours**³⁵ Innes CJ held that: *“No Roman-Dutch authority was quoted establishing the right of legal representation before tribunals other than courts of law...”*

4.4.5 The functions of the Committee is not judicial or administrative in nature. However, due to the reason that the Committee is expected to make recommendation for the possible imposition of disciplinary measures on members, the nature of evidence that will be led as part of the investigation, and for procedural fairness, the Committee was of the view that the members may have legal representation present if they so choose, at their own cost.

4.5 In conducting the investigation, the Committee of Privileges was guided by the following processes which speaks to the rules of natural justice:

- (a) There must be a preliminary hearing/investigation to discuss the rules of procedure³⁶, make known to the members the purpose of the investigation against them and to provide the evidence that will be brought against them;
- (b) Members must be given notice of at least 3 days³⁷ after they are notified of the purpose of the investigation against them to inform the process before evidence is lead before the Committee;
- (c) If, in considering any matter before it, the Committee wishes to consider any evidence the person or persons appearing before the Committee must be given an opportunity to respond to that evidence and present their own evidence, if they so wish;
- (d) Where the Committee proposes to make a recommendation to the House to impose a penalty or disciplinary measures on a person or persons for breach of the Standing Rules and Orders and the Code of Conduct, the person or persons must have the opportunity to address the Committee;

³⁵ 1920 AD 583.

³⁶ A formulation of the rules of natural justice to guide the investigation before the Committee of Privileges.

³⁷ The members were given 5 days' notice.

- (e) If the person or persons fail(s) to appear before the Committee, the Committee can proceed to make its recommendations on the evidence before it; and
- (f) The person or persons appearing before the Committee are entitled in accordance with Article 12(1)(e) to be represented by a legal practitioner of their choice. Legal representation is at their own cost.

4.4.7 This guidance (rules of procedure) were communicated to the two members including a draft schedule of activities at the preliminary hearing/investigation on 18 May 2021 and they were informed that they may make submissions into that interpretation, if they so choose by 21 May 2021.

4.4.8 The two members were amenable to the process at the time of the preliminary hearing and made a number of submissions which they said they would canvass accordingly in their submission on 21 May 2021. On 21 May 2021 the two members wrote to the Committee of Privileges through their attorney's, indicating amongst other matters that:

“6. Article 59(1) of the Constitution provides that:

The National Assembly may make such rules of procedure for the conduct of its business and proceedings and may also make such rules for the establishing, functioning and procedures of committees, and formulate such standing orders, as may appear to it to be expedient or necessary.

7. The Committee on Privileges is not the National Assembly and has no authority or power to act pursuant to Article 59(1) of the Constitution. As a result, your demand and conduct of the Committee on Privileges is illegal and *ultra vires*.”

4.4.9 The Committee of Privileges responded, through the Government Attorney's Office that:

“Regarding the Rules that were provided for purposes of the investigations, it is our instructions that, the said Rules are merely an explanation of what constitutes the Principles of Natural Justice that is provided for in terms of Rule 7.3 (d) of the Code of Conduct, which was enacted by the National Assembly in terms of Article 59(1) of the Namibian Constitution. Therefore, there is nothing untoward with the suggested Rules emanating from Rule 7.3 (d) that are aimed at ensuring that the investigation proceedings are free and fair.

Consequently, the Committee on Privileges has acted within the confines of the Code of Conduct adopted by Parliament to formulate the Rules of Procedure flowing from the broad principle of Rules of Natural Justice provided for under Rule 7.3 (d).³⁸

4.5 Burden of Proof

- 4.5.1 The standard of proof used by the Committee of Privileges is the criminal standard of proof “beyond a reasonable doubt” as provided under Clause 7.4(c) of the Code of Conduct. The Committee must therefore satisfy itself that “the evidence establishes the guilt of the [member] beyond a reasonable doubt... which will be so only if there is at the same time no reasonable possibility that an innocent explanation which has been put forward might be true.”³⁹
- 4.5.2 The burden of proof in proceedings of this nature in most parliaments throughout the Commonwealth is on a balance of probabilities. Arguments have been made that it is untenable that “before a House acts to protect the integrity of its process it must prove contempt (conduct) beyond a reasonable doubt.”⁴⁰ The Committee submits that the burden of proof as it relates to matters of conduct of members must be on a balance of probabilities.

³⁸ Also see paragraph 4.3.2 above.

³⁹ State v Van der Meyden 1999 (1) SACR 447 W at 448.

⁴⁰ Evans Harry (29 January 1990) Senate Standing Committee of Privileges; Advice No. 5 Standard of proof for a finding of contempt; Australia; available at [\[https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Privileges/Tabled_Documents_and_Advices/Advices/Advice-05\]](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Privileges/Tabled_Documents_and_Advices/Advices/Advice-05) accessed on 25 July 2021.

5. Conducting the Investigation

5.1 Procedural Fairness

5.1.1 The investigation into the conduct of members is a serious matters and any adverse findings against a member may have grave consequences for that member, where they may face the possibility of suspension and significant financial loss.⁴¹ Even where a member is not suspended his/her public image may be affected. In view of this, the Committee attempted to ensure that procedural fairness in accordance with the rules of natural justice was afforded to the two members as referred to in this Report above.

5.1.2 The two members were given the opportunity to be heard in person and were invited to participate in the investigation to test the evidence that will be brought against them. The Committee ensured that both members were aware of the nature of the investigation and the Committee took the time to respond to all queries received from the two members. The two members were further given the opportunity to attend with legal counsel.

5.1.3 The two members however failed to appear on the day of the investigation on 20 July 2021 and could therefore not exercise their rights.

5.2 Rules of Evidence

5.2.1 The Committee of Privileges is not bound by the strict rules of evidence observed in courts.⁴² The Committee considered only the evidence which the majority concluded to be reasonably reliable and of assistance in aiding the Committee to reach a conclusion which is both fair and an accurate reflection of the issues under consideration.

⁴¹ Clause 7.5 of the Code of Conduct.

⁴² "The principles of natural justice do not require a domestic tribunal to follow the procedure and to apply the technical rules of evidence observed in a court of law, but they do require such a tribunal to adopt a procedure which would afford the person charged a proper hearing by the tribunal, and an opportunity of producing his evidence and of correcting or contradicting any prejudicial statement or allegation made against him." *Turner v Jockey Club of South Africa* 1974 (3) SA (A), at 646D-H;

5.3 The Evidence

- 5.3.1 The Committee reviewed video footage filmed in the Chamber on 15 April 2021 as prima facie evidence of the events of that day. The Committee further identified 4 witnesses who were present in the Chamber on the day, two of whom were seated in close proximity to the two members on the day in question.
- 5.3.2 The 4 witnesses all submitted sworn statements to the Committee and 3 out of 4 witnesses appeared before the Committee to give evidence on 20 July 2021. The Committee could not get hold of Hon. Muharukua on the day but it was of the opinion that his evidence (based on the statement he provided) did not add anything new. As a result, the Committee did not pursue the matter further.
- 5.3.3 The Chairperson of the Committee administered an oath to the 3 witnesses in terms of section 16(2) of the Privileges Act.
- 5.3.4 The statements (testimony) from the 3 witnesses are reproduced below, in the order in which they appeared before the Committee:

Hon. Hambyuka

Chief Whip of the SWAPO Party

Pursuant to your letter addressed to me on the 03 June 2021, regarding the conduct of Hon. Bernadus Swartbooi and Hon. Henny Seibeb from the Landless Peoples Movement (LPM), during the joint sitting of Parliament for the State of the Nation Address (SONA), where the President, His Excellency, Hage G. Geingob was to deliver his state of the nation address on 15 April 2021.

I was present in the Chamber from the beginning to the end. The proceedings started well with the prayer, suspension of other business to commence with the business of the day which was SONA. H.E. the President delivered his address even though there were interjections here and there throughout his statement from the opposition members. However, the President concluded his statement.

During the question time, the first five Hon. Members asked their questions and H.E. the President replied to those questions. The chaos erupted when the two Hon. Members from LPM, Hon. Swartbooi and Hon. Seibeb raised and according to them wanted to advise the House as to how they should conduct themselves.

I can report that the SONA process was well organised but the two Honorables (Hon. Swartbooi and Hon. Seibeb) interrupted the proceedings. He (Hon. Swartbooi) took the floor or stood up continuously without following the Parliamentary procedure which prompted the Speaker of National Assembly, Prof. Peter H. Katjavivi to ask Hon. Swartbooi to leave the Chamber.

He wanted to leave, but two of his colleagues requested him not to leave the Chamber. Later, when he was approached by the Sergeant at Arms and the Parliamentary Protection Service (PPS), he opted to walk out. However, as he was escorted out, he (Hon. Swartbooi) unlawfully touched the Mace and threw it down. Fortunately, it was caught by the police officer before it landed on the bench where H.E. the President was sitting.

In a fit of rage, Hon. Seibeb, started tearing up the copy of the Harambee Prosperity Plan 2 and started walking and throwing papers towards the President and later wanted to beat the police officer who was near him. That to me made other officers emotional and forcefully removed him from the precinct of Parliament. There was a lot of chaos as Members of Parliament started intervening and making noise.

In light of the chaos that erupted due to the two Members' unruly behavior, the Speaker of the National Assembly had to suspend the sitting in accordance with Rule 1(9).

Mr Gideon Shuuya

Deputy Director: Security and Risk Management Services

National Assembly

I am stated that he is a Deputy Director by Rank and I am the Head of the Division of Security and Risk Management Services at the National Assembly. His main duties are but not limited to providing security to the National Assembly assets, (people, property and information). To establish and enforce physical security measures at the National Assembly. To develop National Assembly security policy and security standard operating procedures. To head the team of Parliamentary Protection Service in providing required security to the Chamber of National Assembly and its Members of Parliament during the session. Be the principal security Liaison Officer and coordinate with other security institutions. To work closely with the Namibian Police Force in providing security to the National Assembly.

On 15 April 2021 between 14.30 and 18.00, His Excellency Dr Hage Geingob, the President of the Republic of Namibia delivered His State of the Nation Address during the Joint-Sitting of Parliament. There were interjections and disruptions from the beginning of the main address, but the President concluded his State of the Nation Address successfully. Two members of parliament namely: Hon Bernadus Swartbooi and Hon Henny Seibeb were interjecting and interrupting by speaking without being allowed by the Speaker, interrupting other Members of Parliament who were on the floor and engaging in a dialogue directly with the President and other Members of Parliament.

Thereafter, the Hon. Speaker, Professor Peter Katjavivi opened the floor for questions from Members to the President. After an initial round of questions from four Members namely: Hon. McHenry Venaani, Hon. Joseph Kauandenge, Hon. Bernadus Swartbooi and Hon. Jan Mukwilongo, the President proceeded to respond to their questions. During this process, there were continuous commentaries, disruptions and interjections from the benches of the Hon. B. Swartbooi (Leader of LPM) and Hon. H. Seibeb (Chief Whip of LPM). This kept derailing His Excellency in his attempts to answer the questions of the Members. The Speaker repeatedly called for order in the House, and called on all Members to maintain the decorum of the House. The Speaker repeatedly implored on the Hon. B. Swartbooi and Hon. H. Seibeb to refrain from interjections, disruptions and attempts to create a dialogue with H.E the President, contravening Rule 116

which deals with general restrictions and Rule 118 which deals with the application to the President of the Standing Rules and Orders of National Assembly.

Hon. B Swartbooi and Hon. H. Seibeb, ignored the warnings and ruling from the Speaker. The Speaker continued to guide the House towards the second round of questions from Members to the President. At this juncture, the Speaker called upon Hon. !Auchab to pose a question to H.E The President. The President could not effectively hear the question from the Hon. !Auchab, due to the continuous deliberate disruptive behavior from the two members of the LPM.

The Speaker continued to appeal to both Hon B.Swartbooi and Hon H Seibeb, to allow Hon. !Auchab to put his question, as per his privileges as a Member of Parliament. The two mentioned Members of LPM ignored the Speaker, and continued in their attempts to throw the session into chaos. Despite all these interjections and disruptive behavior Hon. !Auchab was able to pose his question. The Speaker gave the floor to Hon. Kavekatora, who was unable to ask his questions because the disruptive behavior intensified. The Hon. Swartbooi challenged the Speaker to remove them (Hon H. Seibeb and Swartbooi) from the Chamber.

Consequently, the Speaker was left with no other choice and, in terms of Rule 111 of the Standing Rules and Orders and Internal Arrangements directed Hon. B. Swartbooi and Hon. H. Seibeb to vacate the Chamber immediately. The mentioned Members refused to abide by the order of the Speaker, and Hon. Swartbooi challenged the Sergeant-at-Arms to come and remove him. The Speaker, ordered the Sergeant-at-Arms, to assist in escorting the two Members out of the Chamber. Upon the intervention of the Sergeant-at-Arms, Hon. Swartbooi and Hon. Seibeb refused to comply with his request. Therefore, Rule 113 (b) of the above mentioned Standing Rules and Orders and Internal Arrangements came into force as a final resort and the members of the Parliamentary Protection Service (PPS) came into the House, to reinforce the Sergeant-at-Arms in implementing the ruling of the Speaker, to remove the two mentioned Members of Parliament.

During this process, Hon. Swartbooi was implored upon multiple times by the Sergeant-at-Arms, and the members of the Parliamentary Protection Service, to leave in an orderly manner. Shortly after this, Hon. Swartbooi started moving towards the northern exit of the Chamber. While being escorted by the Parliamentary Protection Service, Hon. Swartbooi, grabbed the Mace of the House, and threw it in the direction of H.E The President. The Mace was airborne but was caught by one of the members of the Parliamentary Protection Service. Had the Member of the Parliamentary Protection Service not intervened, the Mace would have most likely hit and injured H.E the President or the Mace could have been damaged. Hon. B. Swartbooi was then escorted out of the parliamentary Chamber.

While Hon. Swartbooi was escorted, Hon. Seibeb remaining in his seat started banging a booklet of the Harambee Prosperity Plan Phase 2 on his table and in the process causing loud disruption. Thereafter, he moved away from his seat, towards the center of the Chamber and started tearing the Harambee Prosperity Plan Phase 2 booklet apart, while throwing pieces of it across the Chamber floor. During this period, the Parliamentary Protection Service returned to the Chamber, to implement the order of the Speaker, which was applicable to both Hon. Swartbooi and Hon. Seibeb. Hon. Seibeb unlike Hon. Swartbooi, violently refused to leave the Chamber. Hon. Seibeb initiated a scuffle with the Parliamentary Deputy Director of Security and Risk Management Services (myself) with an intention to assault me, prompting the members of the Parliamentary Protection Service to eject him to the outside the precincts of Parliament.

After these incidents, the House was unable to continue with its business. Therefore, the Speaker was forced to apply Rule 115 which states; “In the event of grave disorder as a whole the Speaker may adjourn the Assembly without the question put, or suspend any sitting for a period to be stated by him/her.” The House was thereafter abruptly adjourned.

Mr Johan Ndjaronguru

Presidential Security Chief, VIPP Directorate

I hold the rank of Commissioner in the Namibian Police, Very Important Persons Protection Directorate (VIPPD), State House, as Presidential Security Chief H. E. Dr. Hage G. Geingob, President of the Republic of Namibia, accepted an invitation by the Speaker of the National Assembly dated 25th March 2021, to address a Joint-Sitting of Parliament on the State of the Nation (SONA). The State of the Nation was subsequently confirmed for the 15th April 2021 at 14h30.

On the 15th April 2021, I, as Standard Operating Procedures (SOP's) dictates and in line of my job description, as well as customary to all events to which the President is invited to as guest to officiate at such events, accompanied the President, First Lady and Vice President of the Republic of Namibia, to the National Assembly on the occasion as stated above. Presidential Security normally takes charge of all security aspects wherever the President goes.

The 2021 State of the Nation was marred with unprecedented interjections, disruption and grave disregard for the Head of State, such as never seen or experienced in an Independent Namibia.

However, H. E. Dr. Hage G. Geingob, President of the Republic of Namibia, successfully delivered his State of the Nation Address amidst unending interjections and disruptions, which was followed by the customary Questions and Answers session.

After the initial Questions and Answers (Q&A) session, the President proceeded to respond the questions posed, which was also marred with continuous disruptions, interjections and comments from Hon. Swartbooi and Seibeb respectively, and continued, despite the Speaker's numerous warnings. Eventually, the Speaker ordered Hon. Swartbooi and Seibeb to leave the chambers. Both Hon Swartbooi and Seibeb refused to comply and Hon. Swartbooi, yelled on the top his voice and challenged the police to come and remove him, which led to the Speaker to call on the Sergeant-at-arms, Warrant Officer J. Mokoxwa, to escort the MP's out. Hon. Swartbooi continued to defy the order of the Speaker and even challenged the Sergeant-at-Arms to pick him up, if he so dared

At this point members of the Parliamentary Protection Services (PPS), entered the chambers to assist the Sergeant-at-Arms, Warrant Officer J. Mokoxwa, in escorting Hon. Swartbooi out of the chambers. At this point two other MP's Hon. Dienda and Muharukua, also joined the fray in an attempt to obstruct both the Sergeant-at-Arms and Parliament Protection Services (PPS) from escorting Hon. Swartbooi from the chambers.

Observing from my seat, it became very evident to me that this situation has not only become volatile, but could also escalate into a situation which will endanger the life and wellbeing of the President, in particular, as well as the Vice President, H. E. Nangolo Mbumba and First Lady, Mrs. Monica Geingos, since the President was clearly the primary focus of their increasing anger. Fortunately, Hon. Swartbooi, started to make his way to exit, escorted by the Parliament Protection Services (PPS) and sergeant-at-Arms, Warrant Officer J. Mokoxwa and it seemed that the situation would now be defused.

However, when he reached the table on which the Mace is placed, he reached for the Mace, grabbed it and threw it in the direction of H. E. Dr. Hage G. Geingob. The Mace hit the floor but fortunately one of the Parliament Protection Service member, Inspector (f) N.S.S. Hamaambo, quickly reacted and caught it before it could travel any further. The Mace, which commonly regarded as a symbol of authority of the National Assembly, is also a heavy club with a spike metal head that can inflict serious injuries if hurled to anyone with malicious intent, such as Hon. Swartbooi did. I cannot confirm whether any damage was caused to the Mace during this unlawful and intentional act of violence and assault on the Head of State, which could be considered treasonous.

This serious act criminality, never seen in 31 years of our Independence and during a State of the Nation by any of our other former Presidents, seemed to spur Hon. Seibeb into, what can only be described as a uncontrolled fit of rage, in which he seemed to have lost total control of his emotions and repeatedly slammed a book onto his desk, screaming at the top of his voice, hurling inaudible words and screams at the removal of Hon. Swartbooi.

Hon. Seibeb, whilst in that extreme state of agitation, took the recently launched Harambee Prosperity Plan II (HPPII) and started tearing chunks of pages out of it, before stepping out from behind his desk and hurling the chunks of pages into the direction of the President. He continued to advance into the center of the chamber whilst continuing to throw chunks of pages in the direction of the President.

He was approached by Mr. G. Shuuya, the Deputy Director of Security and Risk Management Services, whom he physically assaulted and pushed with extended arms.

It was at this point that it was evident that this situation turn into a dangerous one if not put under immediate control. Two consecutive and obvious assaults directed at the President were committed in full view of all present, followed by an assault on a Parliament staff member, by Hon. Swartbooi and Seibeb, who were clearly not in control of their emotions and whose violent acts became unpredictable.

Being responsible for overall security and safety of the Head of State, First Family, First Lady of the Republic of Namibia (FLON), including the Vice President at that specific point in time, and being the only member from the Presidential Security inside the chambers, I was compelled as per my training to respond to these assaults and threats of assaults and thus proceeded to subdue and remove Hon Seibeb with minimum force. Members of the Parliamentary Protection Services (PPS), consisting of Inspector (f) N.S.S. Hamaambo, Inspector M. Endjala, Warrant Officer M. T. Shimanya, Warrant Officer J. J. Kamonde and Sergeant K. E. Xamgoaseb, then proceeded to escort of Hon. Seibeb from the precincts of Parliament and I then returned to my allocated seat inside the chambers. The Speaker, then adjourned the Assembly following these grave disorder and criminality.

I did not assault, neither threatened, verbally or non-verbally, Hon Swartbooi and Seibeb, at any given time during and after the commission of their criminal actions.

I acted in my official capacity as the Presidential Security Chief as mandated by my job description, as being **"Responsible for the overall security of the Head of State by ensuring all-round protection and safety is provided to the Head of State at all times. To further provide and ensure high standard of security, protection and safety to the Head of State at all times.**

Hon. Seibeb on the other hand, continued with his assaults through threatening during the Landless People's Movement (LPM) Press conference after the event, stating that he knows where I stay and that natural justice will follow. I would thus want to put it on record and include this in the criminal charges to follow, that if and when myself or any of my family members are harmed in any way, he as a Party leader commanding numerous supporters whose actions cannot be predicted, will have to be hold responsible for any acts ensuing from such instigations against me.

I did not assault Honourable Seibeb in any manner and neither did I tear (damage) his blazer (jacket). I just collectively with my fellow members of the Police and Head of the Parliamentary Security Mr. Shuuya removed Honourable Seibeb out of the parliamentary chambers. I did not have any intentions to assault Hon. Seibeb or damage his property at all. The allegations against me are false and malicious. I know and understand the content of this statement. I have no objection to take the prescribed oath. I consider it to be binding on my own conscience.

5.4 Analysis of Evidence - Findings and Reasons for Findings

- 5.4.1 From the evidence presented to it by the witnesses the members of the Committee sought clarity on a number of issues and interviewed the witnesses to clarify inconsistencies in their statements and to have a full picture of the conduct of Hon Swartbooï and Hon Seibeb. The records of proceedings are available, upon request, from the Secretary of the National Assembly.
- 5.4.2 All three witnesses testified to the disruptive conduct of both Hon. Swartbooï and Hon. Seibeb. This testimony is corroborated by the video footage. The Committee

finds that these disturbances were adequately dealt with in terms of the Rulings made in terms of Rule 111 and Rule 113(b). The Committee therefore does not make any further findings in this regard.

5.4.3 *Dislodging of the Mace*

5.4.3.1 All three witnesses testified to having seen Hon. Swartbooi dislodging and flipping the Mace. Despite the inconsistencies in the language used “unlawfully touched the Mace and threw it down;”⁴³ “grabbed the Mace of the House, and threw it in the direction of H.E The President;”⁴⁴ and “he reached for the Mace, grabbed it and threw it in the direction of H. E. Dr. Hage G. Geingob,”⁴⁵ the Committee is satisfied that Hon. Swartbooi dislodged and flipped the Mace. The witness statements are corroborated by the video footage.

5.4.3.2 The Committee therefore finds that there is sufficient evidence to determine that Hon. Swartbooi dislodged and flipped the Mace and in so doing his conduct failed to maintain the dignity and image of the National Assembly.

5.4.4 *Grossly Improper Conduct*

5.4.4.1 All three witnesses testified to having seen Hon. Seibeb slamming the Harambee Prosperity Plan II (HPPII) on his desk. He then moved towards the centre of the Chamber, tore pages out of the HPPII and continued to discard the ripped pages on the Chamber floor. The witness statements are corroborated by the video footage.

5.4.4.2 The Committee therefore finds that there is sufficient evidence to determine that Hon. Seibeb acted in a grossly improper manner and in so doing his conduct failed to maintain the dignity and image of the National Assembly.

⁴³ Hon. Hambyuka.

⁴⁴ Mr Shuuya.

⁴⁵ Mr Ndjaronguru.

- 5.4.5 In formulating its recommendations, as it relates to a penalty in terms of Clause 7.5, the Committee considered mitigating and aggravating factors. In aggravation the Committee considers the seriousness of the conduct by the members, the lack of acknowledgement of any wrongdoing on the two members part and the lack of co-operation with the Committees work, as well as the interests of Parliament to limit the likelihood of similar conduct in future by the two members or any other member of Parliament.
- 5.4.6 In mitigation, the Committee takes note of the fact that the two members suspension in terms of Rule 124(a) spanned a significant amount of time and as a result the Committee does not wish to recommend any further suspension to the House.

6. Recommendations

- 6.1 Based on the examination and consideration of all the evidence before it, the Committee makes the following recommendations to the House in terms of Clause 7.6(a) of the Code of Conduct read with section 12(d) of the Privileges Act and Rule 68(d)(e) of the Standing Rules:
- 6.1.1 That the House finds that the conduct of Hon. Swartbooi constitutes a breach of Clause 3.1(b) of the Code of Conduct, read with the preamble to the Code of Conduct and Article 60(1)(a) of the Constitution for conducting himself in a manner that does not maintain the dignity and image of the National Assembly.
- 6.1.2 That the House finds that the conduct of Hon. Seibeb constitutes a breach of Clause 3.1(b) of the Code of Conduct, read with the preamble to the Code of Conduct and Article 60(1)(a) of the Constitution for conducting himself in a manner that does not maintain the dignity and image of the National Assembly.
- 6.1.3 That the House imposes the penalty contained under Clause 7.5(a) of the Code of Conduct, a reprimand, which reprimand is to be entered into the Minutes of Proceedings of the House.

6.2 Section 13 of the Privileges Act provides that:

“13. The House -

(a) shall, in accordance with its Standing Rules and Orders, consider a report and recommendation made to it under section 12(d); and

(b) may take such disciplinary action against the member concerned as it may deem appropriate in accordance with its Standing Rules and Orders.”

6.3 The Privileges Committee therefore emphasises that the House is not bound by these recommendations.

6.4 General Comments and Recommendations

6.4.1 In addition to the above recommendations the Committee of Privileges makes the following further recommendations, observations and comments:

6.4.1.1 Reference to the Standing Committee on Standing Rules and Orders and Internal Arrangements in terms of Rule 112 must be amended to refer to the Standing Committee of Privileges.

6.4.1.2 The Mace is recognised under the traditions and practices of the House and similar practices in other jurisdictions as a symbol of the Speaker’s authority. The Standing Rules and Orders are however silent on its recognition. The Committee recommends that the Standing Rules and Orders be amended to provide for it.

6.4.1.3 The Committee recommends that the House amends the Privileges Act to provide for the prohibition against premature publication of the Committee’s proceedings or evidence. This is an ancient custom of Parliament that no act done or evidence collected at any committee should be divulged before the same is reported to the House.

6.4.1.4 The Committee recommends that the burden of proof for matters pertaining to members conduct must be on a balance of probabilities.

6.4.1.5 The Committee further submits that the privileges of Parliament are those contained in the Privileges Act as provided for in terms of Article 60(3) of the Namibian Constitution. The Committee therefore proposes that an amendment of that Act is warranted to fully provide for the privileges of parliament and to further enumerate those acts and omissions that constitute breaches of privilege or contempt and to provide for the process to deal with contempt and breach of privilege specifically (in the Rules or in the Act).

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