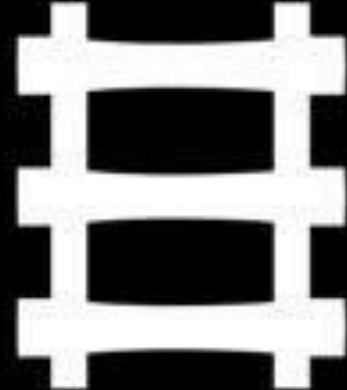


CONSIDERING #UNITEBEHIND'S COMPLAINTS AGAINST 6 MPS

June 2023

Joseph Mayson

Legal Officer and Director



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CODE OF CONDUCT

“The Code outlines the minimum ethical standards of behaviour that South Africans expect of public representatives, including upholding propriety, integrity and ethical values in their conduct” (clause 2.1).

Members must adhere to the following principles (clause 2.4):

- Selflessness
- Integrity
- Objectivity
- Openness
- Honesty
- Leadership

Clause 4 of the Code provides that the Members must:

4.1.1 abide by the principles, rules and obligations of this Code;

4.1.2 by virtue of the oath or affirmation of allegiance taken by all elected Members, uphold the law;

4.1.3 act on all occasions in accordance with the public trust placed in them;

4.1.4 discharge their obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above their own interests;

4.1.5 maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution; and

4.1.6 in the performance of their duties and responsibilities, be committed to the eradication of all forms of discrimination.

CODE OF CONDUCT

Our complaints alleged contraventions of clause 4.1 of the Code, which is a breach of the Code in terms of clause 10.

Complaints procedure:

- Submission of complaint to Registrar (must be complaint against an individual)
- Registrar communicates complaint to respondent MP within seven days of receipt
- MP submits response to complaint within seven days of their receipt
- Registrar assesses complaints and makes recommendation to Committee (no timeline)
- Committee then has the following options (no timeline):
 - accepting the recommendation with or without amendments, and finalising the matter;
 - rejecting the report in whole or in part;
 - determining if any matter requires further investigation, and if so on what terms and parameters; and
 - determining that a hearing be held

CODE OF CONDUCT

If the Committee finds that there has been a breach of the Code:

- Committee must make a recommendation on what penalty is appropriate, voted on by the respective House.
- Such penalties include:
 - a formal reprimand by the House,
 - a fine not exceeding 30 days salary,
 - the reduction in wages not exceeding 30 days salary,
 - and suspension from Parliamentary duties.
- Harsher penalties may be imposed if the Committee finds that the Member has breached the ethical principles

The Code requires the Committee to continue its investigation to make a finding even if a Member of Parliament resigns or leaves parliament after a complaint has been made.

CONSTITUTION

The Constitution requires that the Parliament and its committees conduct their business in hold their meetings in public and may not exclude the public from sittings of their committee unless it is reasonable and justifiable to do so in an open and democratic society.

WHY

The mismanagement of PRASA has had a devastating impact on commuters who rely on rail services. Disproportionately affecting marginalized communities.





The following current and former MPs have contributed to the destruction of PRASA. Rather than being punished, they have been rewarded with positions in parliament. They must be held accountable.

SFISO BUTHELEZI

During his time as chair of the PRASA board, **Sfiso Buthelezi** approved hundreds of corrupt contracts. Including the R3.5 billion Swifambo 'tall trains' contract. His own company received R99 million from this deal. He hid his financial interests.

In 2017 the department of national treasury concluded under Buthelezi's authority, that 30 contracts between PRASA and other entities violated the PMFA, but Buthelezi faced no criminal charges. Buthelezi is now Chair of the Standing Committee on Appropriations.





Joe Maswanganyi:

**Former Minister of Transport
Now the Chairperson of the Standing
Committee on Finance**

He unlawfully dismissed the Molefe Board, and engaged in unlawful negotiations with China for Moloto Rail Development Corridor. He also illegally appointed an interim board headed by a judge who simultaneously held judicial office and chaired in the PRASA Board.

Mosebenzi Zwane:

**Former Chair of the Portfolio
Committee on Transport**

While he was Minister of Mineral Resources, he was implicated in severe maladministration and corruption at ESKOM. The State Capture Report recommended that he be criminally prosecuted.

Dipuo Peters:

**Former Minister of Transport
Now a member of the Standing
Committee on Appropriations**

She neglected her duties by not appointing a permanent Group CEO for PRASA and dismissing the Molefe Board. She also utilized PRASA busses to benefit the ANC without proper payment or procurement processes.



Dikeledi Magadzi:

Former Chairperson of the PCOT.

She vilified the only functional PRASA Board in the past 10 years, led by Popo Molefe (2014-2017). She actively worked to undermine their commendable efforts.

Zondo: “total lack of understanding” of corruption. Failed in oversight duties.



Fikile Mbalula:

Former Minister of Transport

Mbalula engaged in irregular appointments at PRASA, unlawful dismissed of the Board, and appointed an unauthorized administrator. Despite court rulings, he failed to rectify his actions allowing further misconduct.

PARLIAMENT'S IN ACTION



#UniteBehind submitted our complaints in September 2022. The committee neglected to address our complaints for 8 months. We requested updates and information. Next to nothing was provided.

As a result, we took them to court in April 2023. We submitted an application to compel prompt action and challenged the constitutionality of the Code's confidentiality clauses.

The Committee then dismissed the complaints against:

- Buthelezi
- Mbalula
- Zwane
- Magadzi

18 April 2023

1. **MR FIKILE MBALULA**
2. **MS. DIKILEDI MAGADZI**
3. **HON. SIFISO BUTHELEZI**
4. **HON. MOSEBENZIE ZWANE**

The complaints by your Client in respect of the four persons mentioned above, refers.

I write on behalf of the Joint Committee on Ethics and Members' Interests ("the Committee") who at its meeting of 17 April 2023 finalised its deliberations in respect of the complaints against the four persons mentioned above.

Please be informed that *Mr. Fikile Mbalula* and *Ms Dikeledi Magadzi* resigned as Members of Parliament with affect from 06 March 2023 and 08 March 2023, respectively. The Code of Ethical Conduct and Disclosure of Members Interests for Assembly and Permanent Council Members ("the Code") applies to Members of Parliament. Therefore, as Mr. Mbalula and Ms. Magadzi are no longer Members of Parliament the Committee does not have jurisdiction to consider the complaints further. The files in these matters have accordingly been closed.

In respect of *Hon S. Buthelezi, MP*, the Committee noted that he only became a Member of Parliament in 2016. This was after his tenure at the Passenger Rail Agency of South Africa (PRASA). As Hon Buthelezi, MP was not a Member of

Parliament when he served at PRASA, the Committee does not have jurisdiction to consider the complaint. The file in this matter has been closed.

In respect of *Hon Zwane, MP*, the Committee found that the complaint is unfounded. Hon Zwane, MP became the Chairperson of the Portfolio Committee on Transport in 2019 after the problems at PRASA became evident. The file in this matter has been closed.

Further, please be informed that the complaints against *Hon. Peters, MP* and *Hon. Maswanganyi, MP* are ongoing. The Committee has not finalised these complaints.

Joe Maswanganyi:

13 June 2023

The Committee considered your representations dated 5 May 2023. While the content of your representations addressed your induction for your role as Minister, the position still remains that you failed to appoint the PRASA Board after Parliament dismissed the Board.

The Committee will recommend to the House to impose the following sanction.

That the Member be suspended from his seat in all parliamentary debates and sittings, and from committee meetings and committee related functions and operations from 10 October 2023 to 1 December 2023.

The Committee Report will be ATC'd in terms of item 10.7.8.1 of the Code of Ethical Conduct and Disclosures of Members' Interests.

PROBLEMS AND GAPS IN THE CODE AND COMMITTEE PROCEDURE

Insufficient timelines/deadlines

Committee delays

Code and Committee not equipped to deal with serious misconduct e.g. corruption

Incorrect application of the Code - applies to MPs who have resigned

No provision for updates or adequate reasons

Code does not apply to conduct before MPs join Parliament

Perhaps this is correct?

Sanctions too weak

Unconstitutional:

- Confidentiality
- Lack of reasons
- Delays

Constitution requires openness, transparency, efficiency, responsive governance, procedural fairness

RECOMMENDATIONS

The Code must be amended:

- Timelines and deadlines for all processes.
- Openness as a default.
- Greater penalties.

RECOMMENDATIONS

“The term political malpractice has been recently coined. Given the extent to which certain public representatives failed to exercise their power, and the resultant massive losses to the fiscus and the suffering cause to vulnerable members of the public, in respect of PRASA-related matters, and the premium that the Constitution places on accountability, perhaps it is time for South Africa to ensure that its public representatives fulfil their obligations by introducing a form of sanction for what may be termed constitutional and political malpractice.”

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QUESTIONS AND DISCUSSION