

41007 eff hearing



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

LEGAL SERVICES

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## MEMORANDUM

**TO:** Chairperson, Powers and Privileges Committee

**COPY:** Acting Secretary to Parliament [Ms P Twaya]

**FROM:** Constitutional and Legal Services Office  
[Adv F S Jenkins, Senior Parliamentary Legal Adviser]

**DATE:** 7 October 2014

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**SUBJECT:** Notes on the procedure of the Committee

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1. The verbal and subsequent written submission or representation from Hon J Malema MP, made during the morning session of the Powers and Privileges Committee (the Committee), on 7 October 2014, appears to be consistent with item 4 in the Schedule to the National Assembly Rules. Item 4 permits a member to make a written or verbal explanation after receiving the notice of the charge.
2. The Schedule gives effect to the requirement in subsection (3) of section 12 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004, that the Committee enquire into a matter referred to it in accordance with a procedure that is reasonable and procedurally fair.
3. The submission does not constitute evidence that may be submitted in terms of items 7 & 8 of the Schedule, which deal with the hearing as is headed as such. In other words, the submission is not evidence given under oath that may be questioned by the members of the Committee, the Chairperson, member's charged, whether directly or through their legal representative, or the initiator.
4. Furthermore, the submission is also not a properly brought point to challenge the legality of the proceedings of the Committee, including whether the Committee is



correctly constituted or whether the Committee suffers from bias. These are matters raised in the submission.

5. It might be said that the question of bias has been dealt with in a previous memorandum from our Office. The question of the legality of the referral by the Speaker has been dealt with by the Western Cape High Court on Monday evening, 29 September 2014.
6. The Committee is constituted in accordance with the Rules of the National Assembly and a challenge to the composition should thus challenge the applicable rules.
7. In light of the above the Committee should consider the submission and report on it when it reports its findings, based on the evidence, to the House.

Adv F S Jenkins

Senior Parliamentary Legal Adviser