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NATIONAL ASSEMBLY
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PROCEEDINGS OF THE NATIONAL ASSEMBLY

The House met at the Cape Town City Hall at 10:11.

The Speaker took the Chair and requested members to observe a moment of silence for prayer or meditation.

ANNOUNCEMENT

The Speaker announced that the President had informed her that the Deputy President of the Republic had been designated Leader of Government Business in the National Assembly in terms of section 91(4) of the Constitution.

The Speaker further announced that in terms of Rule 34, Dr G W Koornhof and Ms R T Siweya had been designated as parliamentary counsellors to the President and Deputy President respectively.

APPOINTMENT OF JOINT STANDING COMMITTEE ON INTELLIGENCE

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The Chief Whip of the Majority Party moved that the House, noting the pending appointment of the Joint Standing Committee on Intelligence upon the finalisation of all legal prescripts, firstly, establishes an ad hoc committee to allow members of the National Assembly to be briefed prior to the debate on Vote No 8 – National Treasury: State Security including Crime Intelligence and Defence Intelligence;

Secondly, that the committee consist of 11 members as follows: ANC 4, DA 2, MK 2, EFF 1 and other parties 2;

Thirdly, that the committee conducts its proceedings in closed session in terms of Rule 184(1)(b)(iii) and that members conduct their functions in a manner consistent with the protection of national security;

Fourthly, that the committee exercises those powers in Rule 167 it may deem necessary for the performance of its task; and

Finally, that the committee ceases to exist upon the completion of the debate on Vote No 8 – National Treasury: State Security including Crime Intelligence and Defence Intelligence.

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Motion agreed to.

ELECTION OF HOUSE CHAIRPERSONS

The Chief Whip of the Majority Party moved that the House, in terms of Rule 22, elects the following members as House Chairpersons: Mr C T Frolick, Mr W Horn and Ms Z Majozi.

Mr N F SHIVAMBU: Hon Speaker, please note the objection of the EFF. We are not dividing the House but let's note the objection of the EFF to the proposed names for House Chairpersons.

Motion agreed to (Economic Freedom Fighters dissenting).

ELECTION OF MEMBERS TO PAN-AFRICAN PARLIAMENT

The Chief Whip of the Majority Party moved that the House notes the resolution of the House on 2 July 2024 electing the following four members of the National Assembly: Mr M Ntuli from the ANC, Mr M Chetty from the DA, Ms D Zuma-Sambudla from MK and Mr V Pambo from the EFF to represent Parliament at the Pan-African Parliament in terms of article 4(2) and (3) of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament, and resolves

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to elect Ms R M Mtshweni-Tsipane – Chairperson of the National Council of Provinces, as the fifth member to represent Parliament at the Pan-African Parliament.

Motion agreed to.

**ELECTION OF MEMBERS TO SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
PARLIAMENTARY FORUM**

The Chief Whip of the Majority Party moved that the House elects the following members to represent Parliament in the Southern African Development Community Parliamentary Forum in terms of article 7(2) of the Constitution of the Forum: Ms A T Didiza – Speaker of the National Assembly, Ms S E Lucas from the ANC, Mr K M Mmoiemang from the ANC – NCOP, Mr B S Madikizela from the DA, Mr D M Skosana from MK and Ms N V Mente-Nkuna from the EFF.

Motion agreed to.

DESIGNATION OF MEMBERS TO JUDICIAL SERVICE COMMISSION

The Chief Whip of the Majority Party moved that the House designates the following members to the Judicial Service

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Commission in terms of section 178(1)(h) of the Constitution, 1996: Mr M S Lekganyane from the ANC, Ms F Hassan from the ANC, Adv G Breytenbach from the DA, Dr M J Hlophe from MK, Mr J S Malema from the EFF and Mr R A P Trollip from Action SA.

The SPEAKER: An objection having been noted and request for declarations made, I will now ask the parties in the following order to make their declarations. The DA. The time for declarations, hon members, is two minutes.

Declaration(s) of votes:

The CHIEF WHIP OF THE OPPOSITION: Madam Speaker, we expect to receive a lot of criticisms when it comes to the Vote because of our decision to force a vote on this matter. Given the long-standing practice that when a position is allocated to a party for representation on other forums, it is taken as the prerogative of that party.

The SPEAKER: Excuse me. Order, hon members. I am sorry, the time for your declaration as it has been agreed to before in the Rules Committee, DA is five minutes. Five minutes, you can continue.

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The CHIEF WHIP OF THE OPPOSITION: Thank you, Madam Speaker. Given the long-standing practice that when a position is allocated to a party for representation on other forums, it is taken as the prerogative of that party to decide who will represent it in the National Assembly. We also expect the argument to be made that for as long as an individual is deemed to be fit and proper to serve the National Assembly, you are consequently fit and proper to represent the National Assembly on other forums.

However, in the current context, there are two reasons why this process should not continue today. The first one is that it is a matter of public record that Dr Hlophe lost his status as the Judge of the High Court of South Africa as a consequence of a finding of gross misconduct by the Judicial Services Commission, JSC. The decision to be taken today is, furthermore, not merely a political decision but the exercise of the public power aimed at contributing to the establishment of the very same JSC.

In the circumstances, it is a legal requirement of the National Assembly to act in a reasonable and rational manner. we are strongly of the view that it is neither reasonable nor rational to elect Dr Hlophe as a representative of the

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National Assembly on the JSC. The second reason why Parliament should not elect Dr Hlophe is to be found ... [Interjections.] ... on the grounds that I have just mentioned ... [Interjections.] ... if you listened, hon member.

The second reason why Parliament should not elect Dr Hlophe ... [Interjections.] ...

The SPEAKER: ... order, order! ... [Interjections.] ...

The CHIEF WHIP OF THE OPPOSITION: ... is to be found ... [Interjections.] ... in the constitutional obligation which we as members of the National Assembly enjoy assisting and protect the judiciary in order to ensure its independence, its impartiality, its dignity and its effectiveness.

Madam Speaker, even if the majority today holds the view that any person who is fit and proper to be a Member of Parliament is fit and proper to be a member of the JSC, it must follow that a large number of applicants to be interviewed by the JSC going forward, will object and apply for the recusal of Dr Hlophe on the basis of the finding of gross misconduct that renders him unfit to serve on a body that is to determine the fitness and the propriety of others.

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Madam Speaker, this poses the risk of paralysing the JSC and tying it up in endless review processes. If we are to assist and support the judiciary, we must today refrain from praising the JSC to this risk. The DA cannot vote to put Dr John Hlophe on the JSC. Thank you.

Mr J S NGUBANE: Hon Speaker, the provisions of section 178(1) of the Constitution, 1996, set out to the composition of the Judicial Services Commission. Apart from the Chief Justice, the President of the Supreme Court of Appeal, the JSC also consist of six persons designated by the National Assembly from among its members, at least, three of whom must be members of opposition parties represented in the Assembly in terms of section 178(1)(h) of the Constitution.

The Constitution does not contain an inherent qualification requirement for members to sit on the JSC since members who qualify to be appointed to take to the JSC are already Members of Parliament and, therefore, bound by their oath of office. The Constitution in its wisdom, does not regulate the qualification of members to sit in the JSC. The existing Constitution scholarship or on the makeup of the JSC and endorses the appointment of politicians to the JSC.

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According to Prof Pierre de Vos, judges are not elected. The involvement of politicians in the JSC provides a semblance of credibility to the JSC process, especially, because politicians are deemed to enjoy the mandate of the electorate. The further point to be made relates to the powers of the judiciary which include in validating legislation and adjudicating serious matters of national public importance. Importantly, politicians are involved in the JSC so that they amplify the voice of the poor, the electorate. Therefore, the legal qualification and judicial experience of members such as Dr Hlophe are a shoe fit for a body such as the JSC.

[Applause.]

It is also important to highlight that the numerical and proportional strength of parties such as the MK party and the resultant privileges accruing from that are constitutionally protected. [Applause.] The attempt to erode the will of the people by dictating to the MK party on which of its preferred candidates are to be designated to the JSC is constitutionally repulsive. More importantly, the Rules of the National Assembly do not prescribe the minimum requirement for the delegation or appointment of members to any of its forums such as the JSC.

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The MK party has done a huge justice to the House to bring into the lawmaking House a Cambridge University PhD graduate with law [Applause.] A PhD Cambridge graduate with a law degree to come into the House and assist to make the laws of this country. Thank you, hon Speaker. [Applause.]

Mr N F SHIVAMBU: Hon Speaker, we, as the EFF fully support the appointment of Dr Mandlakayise John Hlophe [Applause.] as a representative of South Africa's Seventh Parliament in the JSC. As a matter of principle, it is that anyone who is eligible to become a Member of Parliament as per section 47 of the Constitution, can be delegated to whatever responsibility that all Members of Parliament are eligible for. That is the principle that we had sustained.

There are so many less than capable members of the DA, some of which are serving in the executive now who do not have any form of qualification or direction. We have not yet exposed their incapacity because they are eligible to be appointed even as the executive. Some of them are even deputised by people who are more qualified than them. It is just a group of white illiterates, semi-illiterates that are presiding over the government because a certain section of society has given you that responsibility. We respect that.

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So, let us respect the fact that a certain number of people in South Africa have voted for the MK party and have designated Dr Hlophe to become a Member of Parliament. So, let us respect that. It is a matter of protocol which we have always protected in the Chief Whips' Forum that whoever is designated by a political party, must be respected. So, we wish you well Dr Hlophe in the JSC. Thank you very much. [Applause.]

Mr N M HADEBE: Hon Speaker, the Judicial Services Commission plays a key role in the appointment of judges as per the constitutional mandate. It is incumbent upon the Members of Parliament appointed to the JSC to always be guided by the principle of fairness, integrity, and above all, a commitment to the rule of law.

Elected Members of Parliament chosen to represent us on this prestigious body, bear a profound responsibility. They are not merely representatives of their respective parties, but are ambassadors of this Parliament, and by extension, the people of South Africa. Their actions, decisions and demeanour within the Judicial Service Commission, must transcend individual or party-political ambitions. They must embody the collective will and aspirations of our diverse society. This emphasis on

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the rule of law as their guiding principle is not just a matter of ethical importance, but of national significance.

The integrity of our judiciary, its independence and its ability to function without fear, favour or prejudice, is contingent upon our appointees holding these values as the core of their service. May this House reaffirm its pledge to uphold the sanctity of our judiciary by ensuring our representatives on the Judicial Service Commission not as members of their political parties, but as guardians of our Constitution and as stewards of justice and the rule of South Africans. I thank you.

Mr W W WESSELS: Hon Speaker, it is true that the Constitution does not dictate and prescribe who a party may appoint to the Judicial Services Commission, JSC. But it is also true that we should be rational. It is also true what the hon Shivambu said and what the other hon member from the MK said that they did bring us a highly qualified person in the form of Dr Hlophe. But what they do not mention is that Dr Hlophe is also the first judge to have been removed from office, ...

[Interjections.] ... and that cannot be ignored.

[Interjections.]

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Then we should be rational. Then we should protect the integrity of the judicial. Then we should protect the integrity of the judicial system. Then we should protect the separation of powers. And we should be rational with the conflict of apparent interest that they will be in the appointment of Dr Hlophe in that position.

We cannot support that and there is a void in the Constitution with regards to this, and this should be addressed. A member cannot be impeached by this House and then be fit and proper to serve in this House. I thank you.

Ms M P KOBE: Speaker, good morning to hon members. We as ActionSA believe that the parliamentary representation that serves on the JSC should - though we are all nominated by our respected parties - represent the people of South Africa who have spoken loud and clear in these elections. This means that we should ensure that the very best legal minds are considered on their respective merits to be appointed to the judiciary. This obviously also requires that such candidates are suitably qualified and that they are beyond reproach, in order to fulfil this very important responsibility. So this House, should call on Parliament to consider the importance of this committee and its work and do the right thing by electing

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candidates that are fit for purpose. So we move. Thank you, Speaker.

Mr S N SWART: Speaker, the judiciary is a crucial part of our constitutional democracy due to the extensive powers the Constitution vests in our judges, which also guarantees its independence, and this makes issues of how judges are appointed critical to the strength of our constitutional democracy. In this seventh administration, the process of appointing a new Chief Justice and a Deputy President of the Supreme Court of Appeal, which began before the elections, would need to be finalised. This is in addition to other appointments. As we know, the JSC plays a central role in this process.

Now the JSC itself has been the subject of much criticism from various judgments and civil society. It even had to rerun interviews. So, we in the seventh Parliament, have the opportunity to strengthen this key institution and address the shortcomings that exist by ensuring that its members are at the very least, committed to the rule of law and the constitutional democracy.

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While Dr Hlophe is highly qualified, and I know him personally, and whilst there is no legal impediment to today's nominations constitutionally, as far as the ACDP is concerned, the prospect of a nominee who was removed from judicial office for gross misconduct, sitting on the very body that made that finding is, in our view, plainly wrong. Those serving on the JSC to appointing disciplined judges must themselves be above reproach to ensure the legitimacy of the judiciary, not only in our eyes but in the eyes of the public, given, as the hon member from the MK himself said, that judges are not elected in South Africa. And the ACDP cannot - in good conscience - support today's nominations, as those nominated will represent us and be our voice in the JSC.

Clearly, however, and I say this with the greatest respect to the hon John Hlophe, that the legal lacuna that exists needs to be addressed either by constitutional, other legislative amendment to address this issue, this legal lacuna, which in our view it is ethically obvious. It is ethics 101. I thank you.

The SPEAKER: Order, hon Deputy Minister. No gestures. Go to the podium.

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The DEPUTY MINISTER OF DEFENCE AND MILITARY VETERANS (Mr B Holomisa): Madam Speaker and hon members, ...

IsiXhosa:

... uJaji uHlophe ikhona i...

English:

... dissertation paper ...

IsiXhosa:

... awayibhalayo ethetha nge ...

English:

... legitimate expectation.

IsiXhosa:

Isetyenzisiwe ke kwiinkundla ezininzi. Kukho i...

English:

... legitimate expectation ...

IsiXhosa:

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... yabantu abavotele iqela lakhe ethi, ukuba ungene ngokusemthethweni apha makawaxhamle onke amalungelo afanelekileyo ale Ndlu. Enkosi.

Mr M A MAIMANE: Hon members, fellow South Africans, Speaker, this is a moment in our nation when we all went out to the electorate and campaigned, asking for who gets to represent the South Africans in this House. The sixth administration did a duty and a function. I have engaged, and certainly, this is not a decision about judge Hlophe, this is a decision about how exactly this House represents itself. I have absolute respect for Judge Hlophe. I respect his qualifications. I respect the fact that the party he represents, saw it fit for him to serve in the portfolio committee. Equally so, I think this House would do well for itself to be able to establish whether the Rules are sufficient enough, that should a member be impeached from a particular portfolio committee, that same member can then proceed to go serve in the same portfolio committee, in that sense.

Therefore, respectfully in terms of serving in the Judicial Services Commission, I respect that hon sir. So therefore, I hold the view that as Bosa, we stood up and we said we want a particular level of leadership, and we need to be able to

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endorse that view. Therefore, it would not for us, given the fact that the Rules allow still for judge Hlophe to be elected, that should just be automatic. Therefore, we cannot support the decision. Thank you very much.

Mr V ZUNGULA: Speaker, I think we need to remind this House that any Member of Parliament can represent Parliament in any committee and in any body. There is nothing that precludes Dr John Hlophe from representing Parliament. [Applause] The National Assembly has always followed a principle of allowing parties to decide who gets to represent the party. What we are calling for as the ATM is that the National Assembly today must follow that principle, follow the Constitution and also follow the Rules of Parliament.

Speaker, we can't allow a case whereby a party will want to bring subjective opinions on the appointment of Dr Hlophe. Because, if we were to follow subjective appointments, there are parties here in Parliament who voted against the abolishment of apartheid. Those parties are here in Parliament enjoying the fruits of democracy. [Applause.] So, as the ATM, we fully support this nomination. Thank you. [Applause.]

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The DEPUTY MINISTER OF SOCIAL DEVELOPMENT (Mr M G E HENDRICKS): Hon Speaker, the streets have spoken. They want the hon Judge Hlophe to serve on that commission. The people shall govern. This is a peoples' Parliament. Al Jama- ah supports the nomination. If any judge wants to be a judge and asks the hon Hlophe to recuse himself, that person does not deserve to be on the bench. Thank you very much. [Applause.]

Sesotho:

Mr L W MAHLATSI: Kgotso, Maafrica.

English:

Speaker, as UAT we believe that Judge Hlophe is a representative for our people, and with such suitable qualifications is the best suitable for the Justice Service Commission, JSC role. Judge Hlophe ...

IsiZulu:

... sesithembele kuwena baba. [Ihlombe.]

The CHIEF WHIP OF THE MAJORITY PARTY: Madam Speaker, there are just two or three issues that we want to raise on this matter. The first one is that it is correct that in the Chief Whip's Forum we have agreed to work within certain parameters. We've

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established certain principles. One of those principles is that parties must be permitted to second their own chosen members to specific portfolio committees. That's one of the principles that we have established. It doesn't mean that there would not be a time where we deviate from that if there is a concern emanating from one of the parties who are represented in the Whippery.

The second issue is that we respect the fact that the DA raised a concern and an objection on the issue of hon Hlophe for the reasons that they have advanced, which are of course on the basis of the argument as presented by the Chief Whip of the DA. But our own view as the ANC, which is a view that has been consistent in all the committees we have said, the Chief Whips' Forum as well as in the Rules Committee. We have agreed that, in instances where the Rules of Parliament or the Constitution has not clearly defined a particular position, we are going to have to live on the basis of the established Rules and practices of Parliament.

I want to make an example about this matter which is still a very contentious issue in the Rules Committee that we are discussing. The parties, for instance, have been engaging one another about what we understand as members of the Seventh

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Parliament as the Chief Whip of the Majority Party versus the Chief Whip of the largest party. We've agreed that until rules are amended otherwise, we are going to have to stay with the current convention and the Rules of the National Assembly.

Our view as the ANC is that notwithstanding the concern that has been raised by the DA on the Hlophe matter, we want to suggest that the House should not take a position unless it has clarified its own rules where there is a lacuna or there is a gap on our Rules as well as the Constitution, so that when we take a position it does not just become a political position, but a position that is supported by either the Constitution or the Rules of the National Assembly. So, that is the point that we want to raise hon Speaker as the ANC.

[Applause.]

The SPEAKER: Hon members, order. I do not have any other speakers now. My list is closed. There were parties who were called upon, they did not take their slots, or maybe they are absent in the House. Order! I now put the motion. Are there any objections? The objection of the DA is noted.

Motion agreed to (Democratic Alliance, Freedom Front Plus and African Christian Democratic Party dissenting).

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The House adjourned at 10:51.

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