



For attention:
Hon Joseph Hendrik Pieter Britz
Co-Chairperson
Joint Committee on Ethics and Members' Interest

Email: registrar@parliament.gov.za

31 March 2026

Dear Hon Britz

The Helen Suzman Foundation is an NGO that advocates for constitutional democracy and human rights in South Africa. We attach our written submission in response to the invitation for comments on the [Amendment to the Code of Ethical Conduct and Disclosure of Members' Interest for Assembly and Permanent Council Members](#).

Should you have any queries, it would be appreciated if you could contact me at the following email address: naseema@hsf.org.za

Yours Sincerely

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1. Introduction

- 1.1. The Code of Ethical Conduct ("The Code") plays a critical role in safeguarding the integrity of Parliament by establishing clear ethical standards for Members of Parliament and by promoting public confidence in the conduct of elected representatives. As the primary mechanism through which Parliament regulates the conduct of its Members, the Code must operate effectively within the broader constitutional framework of accountability, openness, and responsiveness.
- 1.2. HSF submits that certain provisions of the Code could be strengthened in order to better fulfil these objectives. In particular, the current framework raises concerns regarding:
 - 1.2.1. the scope of the Code's application to Members serving on constitutional and statutory bodies such as the Judicial Service Commission;
 - 1.2.2. the limited manner in which clause 11 presently extends the application of the Code to such roles; and
 - 1.2.3. the absence of clear mechanisms to ensure the timely implementation of sanctions imposed by the Ethics Committee once legal challenges have been exhausted.
- 1.3. As such, HSF submits that the proposed amendments to the Code present an opportunity to strengthen Parliament's ethical governance framework by:
 - 1.3.1. clarifying that the Code applies in its entirety to Members serving on constitutional and statutory bodies in their capacity as Members of Parliament;
 - 1.3.2. ensuring that Members remain accountable under the Code for conduct that undermines public confidence in those bodies; and
 - 1.3.3. introducing mechanisms, either within the Code or the Joint Rules of Parliament, to ensure that sanctions imposed by the Ethics Committee are implemented promptly once all legal remedies have been exhausted.
- 1.4. These amendments would assist in strengthening Parliament's oversight architecture and reinforce the constitutional principles of accountability, responsiveness, and openness.

2. Legal framework underpinning the Code

- 2.1. The constitutional framework governing the conduct of Members of Parliament is clear. Sections 1 and 2 of the Constitution establish the supremacy of the Constitution and affirm the foundational values of accountability, responsiveness, and openness.¹ Chapter 4 of the Constitution situates Parliament as the primary legislative authority while simultaneously assigning to it a critical oversight function within the system of checks and balances.
- 2.2. Members of Parliament exercise public power not for personal or partisan interests, but as elected representatives acting in service of the Constitution and the broader public interest. Their conduct must therefore reflect the standards of accountability and integrity required by a constitutional democracy.
- 2.3. The Code must also be understood within the broader legal framework that regulates the conduct of Members. It is established and given effect through the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, read together with the Joint Rules of Parliament.² These instruments collectively constitute the legal and institutional framework through which Parliament regulates the conduct of its Members and enforces ethical standards.

3. Application of the Code to Members nominated to serve in constitutional and statutory bodies

- 3.1. Clause 11 of the Code provides that where a Member is selected to serve on a statutory or constitutional body, such service is undertaken "in furtherance of her or his duties and responsibilities as a Member". Members of Parliament routinely serve on bodies such as the Judicial Service Commission and other statutory commissions. In those contexts, they participate by virtue of their status as elected representatives.
- 3.2. While the intention of clause 11 appears to be to extend the operation of the Code to Members serving on such bodies, the provision presently does so in a limited manner. In particular, the clause focuses primarily on preventing Members from using their position on these bodies for personal or financial gain. As currently framed, the clause appears to limit the application of the Code to the narrow circumstances contemplated in clause 11(2).
- 3.3. HSF submits that this formulation does not adequately reflect the broader ethical obligations that Members must uphold when serving in constitutional and

¹ The Constitution of the Republic of South Africa, 1996.

² Act 4 of 2004.

statutory bodies. The conduct of Members in such roles has significant implications for public confidence in the institutions on which they serve.

3.4. HSF therefore recommends that:

3.4.1. Clause 11 be amended to make it clear that the Code applies in its entirety to Members serving on statutory and constitutional bodies.

3.4.2. The provision should further clarify that conduct outside the formal proceedings of such bodies may nevertheless constitute a breach of the Code where it undermines public confidence in those institutions.

4. Timeous implementation of penalties

4.1. Clause 2 of the Code states that its purpose is to promote public trust and confidence in public representatives and to protect the integrity of Parliament. As noted above, the Code must be read together with the Joint Rules of Parliament.³

4.2. HSF therefore submits that any effort by the Committee to strengthen the provisions of the Code should also extend to the Joint Rules where necessary.

4.3. Public confidence in the ethical governance of Parliament is undermined where findings of misconduct and accompanying sanctions are not implemented timeously. Where the Ethics Committee makes a finding that a Member has breached the Code and imposes a sanction, prolonged delays in the implementation of that sanction risk weakening the authority of the Code and eroding public trust in Parliament's accountability mechanisms.

4.4. The challenges posed by delayed implementation are illustrated by the Ethics Committee's report titled "*Report of the Joint Committee on Ethics and Members' Interests on Complaint against Honourable JS Malema, MP.*"⁴

4.5. This report was adopted by the National Assembly on 7 December 2021 and found that Mr Malema had violated the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members.

4.6. The finding arose from a complaint lodged by the Council for the Advancement of the South African Constitution (CASAC) relating to Mr Malema's participation in a Judicial Service Commission (JSC) meeting on 15 April 2021.⁵ During that

³ https://www.parliament.gov.za/storage/app/media/JointRules/2025/1-february/05-02-2025/Consolidated_Joint_Rules_7th_edition_working_draft.pdf.

⁴ <https://pmg.org.za/taled-committee-report/4784/>.

⁵ <https://www.dailymaverick.co.za/article/2021-04-13-parliament-asked-to-act-over-malemas-role-in-judicial-interviews-given-his-disparaging-comments-about-judges/>.

meeting, Mr Malema questioned Judge Matojane, who was applying for appointment to the Supreme Court of Appeal, regarding an order that the judge had previously issued in a matter in which Mr Malema had been the defendant.

- 4.7. The Committee found that Mr Malema, while serving as a commissioner of the JSC, had failed to place the public interest above his own personal interests and had used the JSC platform in pursuit of those interests.
- 4.8. On 22 November 2021 the Ethics Committee recommended that Mr Malema be sanctioned by requiring him to issue an apology to Justice Matojane and to the Judicial Service Commission during a sitting of the National Assembly. The Committee's report and recommendations were subsequently adopted by the National Assembly on 7 December 2021.
- 4.9. Mr Malema applied to review the National Assembly's decision to adopt the report. On 21 May 2025, a full bench of the High Court dismissed the review application with costs.⁶ Despite the exhaustion of legal remedies, the sanction has yet to be implemented several months later.
- 4.10. HSF recognises that Members have the constitutional right to challenge findings of the Ethics Committee through judicial review. However, once those legal processes have been finalised and where the challenge is unsuccessful, mechanisms should exist to ensure that the sanction imposed by Parliament is implemented without undue delay.
- 4.11. HSF therefore recommends that the Committee consider introducing provisions in the Code, or alternatively request amendments to the Joint Rules of Parliament, to ensure that sanctions imposed by the Ethics Committee are implemented promptly once all legal remedies have been exhausted.

5. Conclusion

- 5.1. The Code of Ethical Conduct and Disclosure of Members' Interests is a central component of Parliament's system of accountability. It serves not only to regulate the conduct of Members, but also to promote public confidence in Parliament as a constitutional institution.
- 5.2. While the Code establishes an important framework for ethical governance, certain aspects of its current formulation limit its effectiveness in practice. In particular, the narrow application of clause 11 to Members serving on constitutional and statutory bodies, as well as the absence of mechanisms to

⁶ *Malema v Speaker of the National Assembly N.O and Others (2724/2022) [2025] ZAWCHC 213.*

ensure the timely implementation of sanctions, risk undermining the integrity of Parliament's ethical oversight processes.

- 5.3. The current review therefore presents an important opportunity for Parliament to strengthen the Code and ensure that it fully reflects the constitutional principles of accountability, transparency, and responsible governance.
- 5.4. HSF accordingly urges the Committee to amend the Code to clarify its full application to Members serving on constitutional and statutory bodies, and to introduce measures that ensure sanctions imposed by the Ethics Committee are implemented without undue delay once legal remedies have been exhausted.
- 5.5. Strengthening these provisions will assist in safeguarding the integrity of Parliament, reinforcing public trust in democratic institutions, and ensuring that Members of Parliament continue to exercise their responsibilities in service of the Constitution and the public interest.