

# #UniteBehind won't give up

## Ethics Committee failed to bring MPs to book

*A determined attempt to employ Parliament's Joint Committee on Ethics and Members' Interests to call to account six ANC MPs found by the Zondo Commission to be complicit in state capture came up against so many obstacles that after six months of persistent knocking on the Committee's door the organisers turned to the courts for help.*

Civil society organisation #UniteBehind launched an application in the Western Cape High Court in April 2023 to compel the Ethics Committee and its Registrar to act on its complaints and to declare provisions of Parliament's Code of Conduct unconstitutional.

In a punchy presentation to Decode's Defend our Constitutional Democracy workshop, #UniteBehind described its protracted struggle with the Committee that was mandated in terms of Parliament's Implementation Plan to deal with MPs found to have breached Parliament's Code of Ethics.

At the end of August 2022, #UniteBehind submitted formal complaints to the Ethics Committee against ANC Members of Parliament, Sfiso Buthelezi, Dipuo Peters, Joe Maswanganyi, Dikeledi Magadzi, Fikile Mbalula and Mosebenzi Zwane who the organisation said had "facilitated and enabled state capture and corruption

through a failure of their ethical and legal duties of care".

Parliament's Ethics Committee is the primary body dealing with misconduct of MPs, which is what prompted #UniteBehind to take the six complaints to the Committee. #UniteBehind had selected its targets carefully. As its main campaign focuses on improving South Africa's collapsing commuter rail service, run by the Passenger Rail Agency of South Africa (Prasa), the complaints focused on MPs who had held prominent positions in Prasa oversight at the time.

#UniteBehind reported that the Ethics Committee and the acting Registrar of Members' Interests, advocate Anthea Gordon, took too long to investigate its complaints and had not acted in accordance with the [Code of Ethical Conduct and Disclosure of Members' Interest for Assembly and Permanent Council Members](#). This, #UniteBehind said, was unlawful and unconstitutional.

#UniteBehind Legal Officer and Director, Joseph Mayson, told the Decode workshop: "we consistently asked for updates concerning the processing of our complaints, including whether recommendations had been made by the Registrar and whether the Committee had made a decision.

"We asked for this information over a lengthy period of time from a number of persons, including the Speaker [to Parliament], the Co-Chairpersons of the Committee, the Registrar and the leaders of the major political parties. We received no substantial information or updates on the processing of our complaints.

"Thus, we felt that it was necessary to launch an application to compel the Registrar and the Committee to process

our complaints in terms of clause 10 of the Code. We also challenged the constitutionality of the confidentiality or secrecy clauses in the Code."

#UniteBehind had approached the Chief Whips of all the major political parties requesting assistance in getting a response to the complaints as well as the Speaker of the NA, who wrote a letter in reply reminding them that "the Committee conducts its business on a confidential basis." She stated in the letter, "the Acting Registrar will correspond when the need arises."

Mayson's concern was that #UniteBehind "and the country at large remain[ed] in the dark."

The High Court application signalled something of a turning point for #UniteBehind. Its change of tactics showed it had decided tougher action was needed to get Parliament to respond on what was its constitutionally-determined oversight duty.

However, on the very same day, *after* the application was lodged, #UniteBehind received a notification from the Registrar that the Committee had made an at least partial ruling. Four of the six complaints were dismissed, one complaint was partially successful, and one is still being processed, Mayson reported in his presentation.

Regarding Buthelezi, the Committee ruled that the complaint was beyond its jurisdiction. At the time Buthelezi committed the acts referred to in the complaint he was not yet a Member of Parliament, and the Committee deals only with complaints against MPs.

Buthelezi was former chairperson of the Prasa board. He approved hundreds of corrupt contracts, including the R3.5 billion Swifambo "tall trains" contract,



“

**We also challenged the constitutionality of the confidentiality or secrecy clauses in the Code.**

which delivered Chinese-made trains that could not be used on South Africa’s railway system. For this deal, Buthelezi’s own company received R99 million.

As the chair of a powerful Parliamentary committee, Buthelezi is now “responsible not just for allocating funding to government departments, including SOEs like Prasa, but also for ensuring compliance with the Public Finance Management Act and other procurement legislation,” Mayson reminded the workshop.

The Committee ruled that because Magadzi and Mbalula had resigned as MPs in March 2023, the Code did not apply to them. Magadzi was the chair of the Portfolio Committee on Transport during which time she vilified and undermined the only functional Prasa Board in the past 10 years, led by Popo Molefe from 2014 to 2017.

Mbalula, the former Minister of Transport, engaged in irregular appointments at Prasa, dismissed the Board unlawfully and appointed an unauthorised administrator. Today this former Minister serves as the ruling party’s Secretary General.

When it came to Zwane, the Committee ruled that he became Chairperson of the Portfolio Committee on Transport in 2019, “after the problems at Prasa became evident. Thus, it found no merit in our complaint,” Mayson said. While he was Minister of Mineral Resources, Zwane was



Decode workshop Joseph Mayson, Unite Behind. Photo by David Southwood

implicated in severe maladministration and corruption at Eskom and the State Capture Report recommended that he be criminally prosecuted.

#UniteBehind was told on 13 June 2023 that the complaint against Maswanganyi had succeeded and that the Committee found that he had breached the Code because he “failed to appoint a Prasa Board after Parliament dismissed the Board”. #UniteBehind was informed that the Committee would recommend to the National Assembly (NA) that Maswanganyi, who was Minister of Transport from March 2017 until February 2018 and is now Chairperson of the Standing Committee on Finance, be suspended from participating in the House and from all Committee activities from 10 October to 1 December 2023.”

#UniteBehind is still waiting to be told the date by when the House will vote on this recommendation.

“The Maswanganyi decision did not deal with important aspects of our complaint against him, such as the R79 million embezzled to the ANC through the Swifambo contract,” Mayson told the workshop.

“Our experience with the Ethics

Committee’s complaints procedure left much to be desired ... We were met with a lack of action, delays, a lack of information, ineffective investigation, and an insubstantial decision regarding our one partially successful complaint. We have challenged, in court, the delay and secrecy in dealing with our complaints,” Mayson said.

He added #UniteBehind was considering bringing a judicial review application challenging some of the Committee’s findings, pointing out, “this matter is current, ongoing, and is constantly changing, reacting to legal events”. This was the state of affairs at the time of the IFAA workshop in June.

The #UniteBehind report stated: “Prasa has been mismanaged into a state of almost total ruin. Since 2015, many reports have detailed the deep state capture, corruption and maladministration that has completely destabilised the state-owned entity (SOE).

“Instead of being punished, many state officials and politicians implicated in corruption and maladministration at or relating to Prasa have been elevated to, or have retained positions, in Parliament.” >>

The #UniteBehind Report listed some of the problems it identified with the Ethics Committee complaints process and gaps in the Code, including:

- The standards of ethical conduct do not speak directly to MPs' duties of oversight, upholding the Constitution and meeting their constitutional obligations.
- After the stipulated deadlines by which the complaints should have been communicated to the respondent MPs and by when they should have replied, there are no timelines for
  - the Registrar to make a recommendation on the complaints,
  - the Committee to undertake an investigation,
  - the Committee to make a finding or recommend a sanction, or
  - the House to vote on the Committee's recommendation.
- In addition, the Report noted the "extremely long time [it took] to make a decision. In our case, the Committee did not meet for more than four months (between November 2022 and March 2023). Not meeting for a third of the year defeats the principle of 'promptness' stipulated in the Code".
- It also noted that the entire process was kept secret or confidential. This is unconstitutional, #UniteBehind contends, as the Constitution requires that the NA and National Council of Provinces (NCOP) and their committees (including joint committees) conduct their business in meetings that are open to the public, unless it is reasonable and justifiable to do so in an open and democratic society.

The Report identified as another shortcoming that the Committee believes that the Code only applies to Members' conduct when they are in Parliament and does not apply to their conduct before joining. It also



Source: GroundUp James Stent

said the sanctions recommended by the Committee are too weak. They allow for suspensions but Parliament cannot disqualify or dismiss members or potential members for non-criminal offences as this would be unconstitutional.

"The Code has only been used a few times to submit complaints regarding corruption, maladministration, or a serious failing in constitutional duties. It was likely not intended for this use."

The #UniteBehind Report included the following in its list of recommendations:

- The Code must be amended to include timeliness or deadlines for all aspects of the complaints process.
- The Code should include openness as a default position. Only particularly sensitive or private information should remain confidential. Complaints regarding information already in the public domain and/or relating to the performance of constitutional or legislative duties should not be kept secret.
- The Committee should be instructed to impose greater penalties, within its powers. Parliament should consider a recommendation made in the Zondo Report for including

"constitutional and political malpractice" as a breach of the Code, incurring higher sanctions than are currently recommended by Committee.

Mayson concluded with the following: "It is recognised that the Code is perhaps not best suited to ensuring accountability for corruption or maladministration. However, the Code and the Ethics Committee play an important role in achieving some level of justice and accountability for Parliamentarian's malfeasance or inadequate performance of constitutional obligations.

"Civil society would not have to resort to the Code's complaints process if South Africa's criminal and administrative bodies worked. If investigations and prosecutions for corruption, state capture, maladministration and other forms of malfeasance were carried out with diligence and efficiency, accountability for MPs' misconduct would be achieved. However, this is not the case.

"The Code's complaints process should accord with our political reality. We need Parliament to step in to ensure proper oversight over its own members where other relevant bodies are unable, inept or otherwise unable to do so." **NA**