

# African National Congress

PUBLIC ANNOUNCEMENT OF THE NATIONAL DISCIPLINARY COMMITTEE,  
10 November 2011, Chief Albert Luthuli House, Johannesburg

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**RE: HEARINGS OF COMRADES JULIUS MALEMA, RONALD LAMOLA,  
PULE MABE, SINDISO MAGAQA,  
KENETSWE MOSENOGI AND FLOYD SHIVAMBU**

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## **PREAMBLE**

The ANC Constitution requires public announcement of the outcome of a disciplinary proceeding. The purpose of this media conference is to announce the outcome of disciplinary proceedings involving comrades Julius Malema, Ronald Lamola, Pule Mabe, Sindiso Magaqa, Kenetswe Mosenogi and Floyd Shivambu.

Before dealing with the charges and findings, and in response to commentary and speculation by ANC members, political commentators and the public, the National Disciplinary Committee (NDC) wishes to contextualise the process and their considerations.

## **1. THE ANC CONSTITUTION**

1. In terms of the ANC Constitution the NDC hears and decides cases referred to it by the ANC National Officials, NWC, or the NEC.
2. On 16 August 2011, the ANC National Officials, properly empowered in terms of the ANC Constitution, charged comrades Julius Malema, Ronald Lamola, Pule Mabe, Sindiso Magaqa and Kenetswe Mosenogi for violations of the ANC Constitution.
3. In terms of the ANC Constitution the Chief National Presenter represents and presents the case of the ANC at a hearing of the NDC and any person faced with disciplinary proceedings is entitled to be represented by a member in good standing.
4. Reasonable time was afforded to those charged and their representatives to prepare themselves for the hearings scheduled over the period 30 August to 6 November 2011.
5. Based on the facts and evidence presented the NDC has made a ruling and decided on penalties
6. Those charged have been advised of the ruling and the penalties, with reasons, and they have been advised of their right to appeal to the National Disciplinary Committee of Appeal.

**The NDC is accordingly satisfied that disciplinary proceedings were properly initiated and that proper process was followed.**

## **2. PREVAILING CIRCUMSTANCES DURING THE HEARING**

The ANC's Constitution and Code of Conduct require members of the ANC to respect the Constitution and structures of the ANC and to place their energies and skills at the disposal of the organisation.

Prior to the commencement of the disciplinary hearings, those charged, together with other national leaders of the ANC Youth League addressed meetings of the ANC Youth League throughout the country urging their members to support those charged.

A specific call was made on 23 August 2011 by the ANC Youth League Secretary General that *"All young people in South Africa must come out in full support of our leaders, because they are being charged for championing our demands of free education and the nationalisation of mines."* This call was followed by further calls for support for those charged.

At the commencement of the hearing on 30 August 2011 there were unprecedented violent demonstrations outside Luthuli House causing disruption and chaos in the City of Joburg.

Throughout the hearing statements have been made on public platforms, by some of those charged, containing allegations and innuendo about the process of the disciplinary hearing, ulterior motives and predetermined outcomes of the hearing

**The rulings and penalties decided on by the NDC are not determined by the circumstances and factors prevailing during the hearing. The NDC would like to remind all ANC members and leaders that the NDC is a structure appointed by the NEC of the ANC tasked with the responsibility to consider any violation of the ANC constitution based on the evidence before it. The rulings and penalties are determined by the NDC in private, whereafter the outcome of the disciplinary proceeding is reported to the Secretary-General of the ANC and announced to the public.**

## **3. AIMS AND OBJECTIVES AND CHARACTER OF THE ANC**

The Constitution of the ANC sets out its aims and objectives and character in the preamble and in the rules of the Constitution. In particular, the preamble to the constitution affirms that

*"...the fundamental goal of the ANC remains to construct a united, non-racial, non-sexist, democratic and prosperous society in South Africa"*

Rule 2, the aims and objectives set out the intent of the ANC

Rule 3, which describes the character of the ANC, contains clauses particularly pertinent to the charges considered:

*“3.4 The ANC shall, in its composition and functioning, be democratic, non-racial and non-sexist and against any form of racial, tribalistic or ethnic exclusivism or chauvinism.*

*3.5 While striving for the maximum unity of purpose and functioning, the ANC will respect the linguistic, cultural and religious diversity of its members.*

*3.6 The ANC will support the emancipation of women, combat sexism and ensure that the voice of women is fully heard in the organisation and that women are properly represented at all levels.*

*3.7 The principles of freedom of speech and free circulation of ideas and information will operate within the ANC.”*

**The NDC draws the attention of ANC members and leaders at all levels in the organisation to these clauses in particular and reminds ANC members and leaders of the solemn commitment made at the time of joining the ANC to “defend the unity and integrity of the organisation and its principles, and combat any tendency towards disruption and factionalism”.**

#### **4. THE 3<sup>RD</sup> ANC NATIONAL GENERAL COUNCIL**

The 3<sup>rd</sup> National General Council (NGC) of the ANC which took place from 20 to 24 September 2010 directed that:

*“...for the ANC to remain strong and effective, discipline is a non-negotiable that must be enforced at all levels of membership and leadership, without fear or favour.”*

On programmatic issues towards 2012,

*“The delegates overwhelmingly want the 3<sup>rd</sup> NGC to go down in history as the gathering that marked a decisive turning point in tackling, arresting and reversing the negative tendencies that have eroded and threaten to erode the political integrity and moral standing of the ANC among our people. The 3<sup>rd</sup> NGC has to be remembered as the gathering that went beyond condemning sins of incumbency and other misbehaviour such as ill-discipline and factionalism. From now onwards, decisive action has to be taken by the leadership and membership to renew our movement and fight tenaciously against any*

*tendency to erode the character, principles, core values and culture of the ANC.”*

On Unity and Cohesion of the movement, the National General Council:

*“...criticised the NEC for not being firm and consistent in enforcing discipline among all ANC members, including among NEC members. Acts of ill-discipline in the constituent organs of the ANC such as the Leagues and public attacks by our Alliance partners have a direct negative bearing on the image and integrity of the ANC in society. Inconsistent application of rules and inactions were roundly condemned by the commissions. The NEC in particular and all constitutional structures in general are called upon to act with firmness, fairness and consistency in enforcing Rule 25 of the ANC Constitution. There should be no confusing signals and messages from the leadership on matters of discipline and integrity.”*

Finally, the Declaration of the NGC states that:

*“...Council was frank in acknowledging that tendencies of ill discipline and misconduct had set in within various structures of the movement. This 3<sup>rd</sup> National General Council, the delegates resolved should mark a decisive turning point in addressing all the negative tendencies that eroded and pose danger of eroding the organisational integrity and very character of the ANC.*

*In this regard delegates stated without equivocation that there should not be confusing signals and messages from the leadership on matters of discipline.*

*The responsibility to assert the core values and principles of our movement rests with every leader, every cadre, every member and every supporter of the ANC. These are, among others a steadfast adherence to the interests of the people, unity, selflessness, sacrifice, collective leadership, humility, honesty, discipline, hard work, internal debate, constructive criticism and self-criticism and mutual respect”*

**The current disciplinary proceeding are the first proceedings before the NDC following the NGC and it is incumbent upon the NDC to observe the injunction of the NGC. Argument was presented to the NDC by those charged that there must be consistency in dealing with matters of discipline and the NDC concurs with this. Accordingly, all levels of leadership are urged to ensure that they indeed act with firmness, fairness and consistency in addressing discipline in the organisation. The NDC is also cognisant that those charged are national leaders of the ANC Youth League and is of the view that their leadership positions impose on them a responsibility to conduct themselves, in all respects, in an exemplary manner, serving as role models to young people.**

## **PART 2: SUMMARY OF NDC FINDINGS**

Six members of the ANC, who are also members of the National Executive Committee of the ANC Youth League, were charged with various acts of misconduct in terms of the ANC Constitution.

Four separate hearings were held between 30 August and 6 November 2011.

The charged members requested that the findings in all four (4) hearings be made at the end of the proceedings

This morning, all six (6) respondents were informed of the findings against them. By agreement the findings against cde Malema were presented to his representatives. Thereafter the outcome of the hearings were reported to the Secretary General of the ANC. This announcement to the public is in accordance with Rule 25.11 of the ANC Constitution.

The findings in the four disciplinary hearings run into one hundred and thirty six (136) pages.

The findings follow a particular format. It provides:-

1. Details of the charges
2. The plea process
3. Summary of evidence of all witnesses and their cross-examination
4. The onus of proof
5. Determination of legal arguments raised by the respondents.
6. Issues that the NDC had to determine
7. The determination of these issues by the NDC
8. Factors that were considered when determining an appropriate sanction which were:-
  - the seriousness of the charge;
  - the presence of aggravating factors;
  - any previous findings against the respondent;
  - the presence of mitigating factors;
  - the concept that the sanction must take into consideration the interests of the organisation, the respondent and society at large;
  - the concept of a graduated approach to sanctioning; and
  - the sanction must fit the offence.
9. Consideration of an appropriate sanction; and finally
10. The sanction imposed

## **CROSS-CUTTING AND LEGAL ARGUMENTS**

During the proceedings the following cross-cutting issues and legal arguments were raised and resolved as follows:

### ***1. Argument that the disciplinary proceedings were not validly instituted in accordance with the ANC Constitution.***

1. The respondents argued that a resolution of this argument, if upheld, would not only put an end to the disciplinary proceedings against cde Malema, but also against the other members of the Youth League who have been charged.
2. In the NDC's view, this argument encompasses two aspects:-
  - 2.1 whether the ANC Constitution makes provision for a structure known as the "National Officials"; and
  - 2.2 if so, did the National Officials have the power not only to refer but also to institute disciplinary proceedings.
3. The Charges were instituted by the National Officials and the existence of the National Officials as a structure or organ was disputed by the respondents.
4. After analysing the ANC Constitution and the Appendix, the NDC concluded that:-
  - 4.1 It can be inferred that an organ exists in the ANC known as the "National Officials", which is distinguishable from the National Executive Committee and the National Working Committee and that such organ has the powers conferred on it in terms of Rule 25(6)(a) read with Clause 3 of the Appendix to the Constitution.
  - 4.2 Clause 3 of the Appendix to the ANC Constitution empowers the NDC to hear and decide cases referred to it by the National Officials.
  - 4.3 The words, "or the relevant body exercising its right to invoke to disciplinary proceedings" in Rule 25.3 includes "National Officials" when read with the right of other organs such as the NEC to invoke disciplinary proceedings.
  - 4.4 Rule 25.3 confers three rights on the National Officials viz.
    - To satisfy itself that disciplinary proceedings are warranted;
    - To decide to institute disciplinary proceedings; and
    - To refer the matter to the NDC to proceed with such disciplinary proceeding.
5. The argument that the "National Officials" does not exist and that, if it

existed, it could only refer and not institute disciplinary proceedings was rejected.

## **2. The argument that *the ANC Youth League is autonomous and therefore independent of the ANC***

1. In deciding this issue, the NDC took into account:-
  - The ANC Constitution;
  - The ANC Youth League Constitution;
  - Annexure JM 2 – *A life of its own: The autonomy of the ANC Youth League* (adopted at the 1991 National Congress of the ANC Youth League in KwaNdebele); and
  - The evidence of the respondent's witnesses.
2. In the understanding of two of the respondent's witnesses the autonomy of the Youth League was qualified but the Youth League had the freedom of organizational independence and the freedom to develop policy for consideration and possible adoption by the ANC.
3. The Constitution of the ANC Youth League attributes the existence of the Youth League to the ANC and specifically provides that it shall be located within the overall structure of the ANC. This is reinforced by the dissolution clause which provides that its assets shall vest in the ANC upon dissolution.
4. The main objective of the Youth League is to support and reinforce the ANC and Rule 7.4 of the ANC Constitution provides a constitutional mandate for the Youth League to achieve this objective.
5. Comrade Winnie Mandela testified that the Youth League was autonomous in every respect except financially.
6. "Autonomous" is defined in the ANC Constitution and, in the view of the NDC, the operative word in the definition is "operate" and not the word "independently."
7. The fact that the Youth League has chosen, in its Constitution, to be a legal persona that would enable it to hold and alienate property and enter into agreements does not make it independent of the ANC. These powers, in the view of the NDC, speak to a degree of organizational independence. This organizational independence is, in turn, circumscribed by Rule 7.4 of the ANC Constitution which provides that the Youth League constitution shall not be in conflict with the ANC Constitution and policies of the ANC.
8. Moreover, Article 11.2 of Schedule A of the Youth League Constitution expressly subjects Youth League members to be sanctioned by disciplinary committees of the ANC and the Youth League by virtue of this provision, in effect, undertakes to ensure its enforcement. In the NDC's

view, this provision, on its own, detracts from the argument that the ANC Youth League is independent.

9. In summary, if the Youth League seeks to operate outside of the ANC Constitution and policy, it will, in the NDC's view, be acting outside the constitutional doctrine of legality of the ANC Constitution and existing ANC policy. In other words, the ANC Youth League would be operating unlawfully.
10. On an analysis of all the evidence, the NDC is of the view that the ANC Youth League, like the Womens' League and Veterans League, has a degree of organizational autonomy but is not independent of the ANC.
11. Consequently, the respondent's defence that the ANC Youth League is autonomous and therefore independent of the ANC is rejected.

### **3. The argument that the ANC deals differently with alliance partners and autonomous bodies and is therefore inconsistent**

1. Put simply, the argument is that the ANC treats its alliance partners, COSATU and the SA Communist Party, differently from the Youth League and, by virtue of this conduct, is inconsistent.
2. This argument, in the view of the NDC, is misplaced for the following reasons:-
  - Both COSATU and the SA Communist Party do not derive their existence from the ANC Constitution, as is the case with the Leagues of the ANC.
  - COSATU and the SA Community Party owe their existence and mandate to a different set of circumstances when compared with the Youth League as set out in its own constitution.
  - COSATU and the SA Communist Party have their own constituencies and programmes and are accountable to their respective constituencies and not to the ANC, whereas the main objective of the Youth League, in terms of its own constitution, is for the purpose of reinforcing and supporting the ANC.
  - Allies come together for common purposes and the realization of common goals. Otherwise, they remain independent in the true sense of the word. On the other hand, the ANC Youth League, in terms of its Constitution, owes its existence to the ANC and exists for the sole benefit of the ANC.
3. Consequently, the NDC is of the view that the Youth League and the ANC's alliance partners are not in the same relationship with the ANC.
4. As such, any comparison as to how the ANC relates to the Youth League

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and its alliance partners, to determine consistency, is misplaced.

5. In any event, the NDC is of the view that any value judgment about consistency or inconsistency can only be made over a period of time and after evaluating a number of events. Other than a reference to one incident concerning COSATU, the respondents have not provided any evidence of incidents over a period of time to enable the NDC or any reasonable observer to make a finding of inconsistency on the part of the ANC.

**4. The argument that the ANC Youth League has traditionally been militant and therefore the conduct of the current leadership should not be judged differently**

1. The NDC agrees with this proposition and does not believe that the current ANC Youth League administration should act or be judged any differently from previous administrations.
2. The common denominator is that the ANC, for most part of its existence since 1912, has had a Code of Conduct to regulate the conduct of its members.
3. In the view of the NDC, the decision whether to discipline or not lies in a fine line or threshold between militancy and robust expression on the one hand and ill-discipline on the other. Once that line has been crossed or threshold breached, one could expect to be disciplined.
4. All members of the ANC, without exception, are subject to the ANC Constitution and its Code of Conduct. In the NDC's view, ill-discipline, in the guise of militancy and robust expression, cannot exempt any member from being sanctioned nor can it be a licence for reckless conduct.

**5. The argument that disciplinary proceedings should not be used to settle political scores as provided for in Rule 25.2 of the ANC Constitution**

1. The NDC agrees that the ANC Constitution expressly prohibits the use of disciplinary proceedings to stifle debate, deny any member of his or her democratic right or be used to solve private problems.
2. Generally, whether such prohibitions are in play can be established from the Charge itself.
3. For instance, if a member is charged for an utterance he or she never

made or an act that he or she never committed but which is attributed to him or her in a charge, that allegation in itself should be sufficient for any disciplinary tribunal to be concerned about the legitimacy of the charge.

4. In terms of Rule 25.2 such disciplinary tribunal is obliged to satisfy itself that the conduct of the charged member (act or utterances) constitutes a violation of the ANC Constitution or an offence affecting the organization as expressly provided in Rule 25.2 of the Constitution.
5. In the present disciplinary hearings the respondents did not deny making the utterances which they were alleged to have made.
6. In the face of such formal admissions, there was no rational basis or need thereafter for the NDC to consider whether the disciplinary proceedings were instituted for any illegitimate purpose.

**6. The argument that Youth League members would still retain their membership and positions in the Youth League even if expelled from the ANC**

1. This submission was based on Rules 7.4. and 7.5 of the ANC Constitution which provide, *inter alia*, that the Youth League will function as an autonomous body and that members of the ANC Youth League over the age of 18 are expected to play a full part in the general political life of the ANC.
2. The implication of this argument, as understood by the NDC, is that in terms of the ANC Constitution, members of the Youth League do not necessarily have to become members of the ANC.
3. Consequently, it would follow, according to this argument, that if a Youth League member is a member of the ANC, the outcome of disciplinary proceedings against that member in his or her capacity as an ANC member would not affect that member's membership of the Youth League.
4. The NDC was of the view that the argument was untenable for the following reasons:-
  - 4.1 The issue of the Youth League's autonomy has been dealt with in this finding and the NDC's conclusion was that whilst the Youth League enjoys a degree of organisational independence, it is not independent of the ANC.
  - 4.2 The Youth League Constitution specifically provides in Article H that Youth League members over the age of 18 are "obliged to join

the ANC”.

4.3 It follows that a Youth League member over 18 years of age will not be permitted to remain in the Youth League unless he or she becomes a member of the ANC.

4.4 This positive obligation to join the ANC is reinforced in the Preamble of the Youth League Constitution which provides that the ANC Youth League derives its existence from the Constitution of the ANC and exists as a mass youth formation of the ANC.

4.5 Furthermore, Article 11 of the Code of Conduct of the Youth League, set out in Schedule A of the ANC Youth League Constitution provides:-

*“11.1 A disciplinary proceeding of the Youth League may not interfere with a person’s rights and duties as a member of the ANC, unless such rights or duties are exercised in an ex-officio capacity on behalf of the Youth League.*

*11.2. A person, who has been found guilty by an ANC disciplinary proceeding resulting in the imposition of the penalties of suspension, temporary/forfeiture of membership rights or expulsion, such penalties shall have the same application in all structures of the ANC Youth League.”*

4.6 The provisions of Article 11 above explicitly postulate two outcomes.

4.6.1 The first, set out in 11.1, is that the outcome of disciplinary proceedings conducted by the Youth League against any of its members will not impact on that member’s rights and duties as a member of the ANC. The only exception is where that member represents the Youth League in an ex-officio capacity in the ANC, in which event the Youth League may exercise its right of deployment of that member by removing him or her and nominating another member in his or her stead.

This means that the outcome of disciplinary proceedings within the Youth League will not affect that person’s membership of the ANC.

4.6.2 However, the converse position set out in 11.2, subjects all member of the ANC Youth League to be bound by the outcome of ANC disciplinary proceedings.

4.7 In other words, it is not a defence for a Youth League

member charged by the ANC to raise the argument that a sanction imposed by an ANC disciplinary committee would not affect his or her status as a member of the Youth League.

4.8 The ANC Youth League, by express provision in its Constitution, has subjected its members to and has undertaken to respect the outcome of ANC disciplinary proceedings against ANC members who are also Youth League members.

5. Consequently, a Youth League member, by agreeing to be bound by the provisions of Article 11.2, has consented to the jurisdiction of the ANC over his or her membership of the Youth League.

6. It also means that the Youth League itself shall be under a constitutional obligation to give effect to any decision of an ANC disciplinary committee which affects its members and to take all steps necessary to ensure that the sanction is enforced.

7. The ruling of an ANC disciplinary committee against a Youth League member is not limited to expulsion but extends to suspensions.

8. Consequently, if the respondents, are expelled or suspended by the ANC, that ruling would affect and be applicable to their membership of the Youth League and they would no longer be permitted to participate in the Youth League in any capacity.

## **FIRST HEARING – THE HEARING INVOLVING FIVE MEMBERS**

In this hearing, comrades Julius Malema, Ronald Lamola, Pule Mabe, Sindiso Magaqa and Kenetswe Mosenogi were charged for contravening Rule 25.5 (q) And Rule 25.5 (o) of the ANC Constitution for deliberately disrupting a meeting of the ANC National Officials and for undermining the Secretary General of the ANC on 8 August 2011.

### **Finding of the NDC**

1. It is unprecedented, and untenable for obvious reasons, for a person or persons to enter a meeting of the ANC National Officials, which included the President and Deputy President of both the ANC and the Republic of South Africa, without prior invitation and permission.
2. The charges against the respondents were properly instituted by the ANC National Officials in terms of the ANC Constitution. Details are set out in the disciplinary inquiry of comrade Julius Malema which is incorporated as part of this finding.
3. The NDC accepts that the respondents may have harboured feelings of frustration, that they could have held perceptions and that they were not being taken seriously by the National Officials. But the NDC finds that ill-discipline is not a cure for frustration.
4. The respondents' act of disobeying the directive of the National Officials, as conveyed to them by the SG, constitutes a breach of Rule 25.5 (o) (cc) of the ANC Constitution because such disobedience undermined the effectiveness of the ANC as an organisation as contemplated in that sub rule.
5. The act of going to the meeting of the National Officials, uninvited, constitutes a breach of Rule 25.5 (q) on the ground that such action was deliberate, disrupted the meeting of the National Officials and interfered with the orderly functioning of the ANC as contemplated in that rule.
6. The NDC is satisfied that the complainant has proved its case on a balance of probabilities and that the causal link between the misconduct of the respondents and the acts of misconduct contemplated in Rules 25.5 (q) and Rule 25.5 (o)(cc) of the ANC's Code of Conduct has been established.
7. Accordingly, the NDC finds the respondents guilty as charged.

### **Impact of the ANC disciplinary proceedings on membership of the ANC Youth League**

Pursuant to Article 11.2 of Schedule A of the Constitution of the ANC

Youth League, this ruling is applicable to the respondents' membership of the ANC Youth League.

## **Sanction**

### ***1. Factors taken into account for the purpose of sanctioning***

- The seriousness of the charge;
- the presence of aggravating factors;
- any previous findings against the respondents;
- the presence of mitigating factors;
- the concept that the sanction must take into consideration the interest of the ANC, the respondents and society at large;
- the concept of a graduated approach to sanctioning; and
- the sanction must fit the offence.

### ***2. Consideration of an appropriate sanction***

1. Like any other organisation, there is an unwritten culture of respect in the ANC. One sees it in practice every day. For instance, older members of the ANC are shown respect in the organisation, irrespective of their positions in the organisation. It is unfortunate that the respondents did not respect this culture.
2. Cabinet Ministers and other key officials of government are generally afforded security protection, because any serious physical injury to them, or even death, could have a destabilising effect on the country and on government's ability to discharge its mandate. The respondents, as senior leaders of the ANC Youth League, should have realised the security risk their action posed. In this regard the misconduct of the respondents is regarded as a serious offence.
3. The ANC, as a liberation movement and the ruling party of a sovereign state governing the lives of about 50 million people, is expected to conduct its business in a professional manner. Discipline is necessary for the ANC to function optimally. South African society and the international community expect no less.
4. The NDC took the view that the respondents, as ANC members and senior leaders of the ANC Youth League, are expected to shine as beacons of the values of the ANC, and set an example to the millions of young people in South Africa, both Black and White.
5. It is the responsibility of the Youth League leaders to represent the hopes and aspirations of the youth of South Africa. The starting point on this journey is to acknowledge discipline as the foundation for any intended programme of action.

6. As potential future leaders of South Africa, the respondents have the responsibility of sending a strong signal of maturity and respect for authority. In the view of the NDC, this would be an appropriate moment for the respondents to reflect and stop their ill-discipline.
7. The letter of apology from the respondents was accepted as a mitigating factor.
8. Having considered all these factors, the NDC imposes the following sanction:-
  - 8.1 The membership of comrades Julius Malema, Ronald Lamola, Pule Mabe, Sindiso Magaqa and Kenetswe Mosenogi is suspended for 2 (two) years;
  - 8.2 The sanction in 8.1 above is suspended for a period of three years and will be implemented if the respondents are found guilty of any contravention of the ANC's Code of Conduct within the said period.
  - 8.3 Pursuant to the provisions of Article 11.2 of Schedule A of the Constitution of the ANC Youth League, this ruling is applicable to the respondents' membership of the ANC Youth League.
  - 8.4 The NDC calls on the leadership of the ANC to ensure the mentorship and nurturing of the ANC Youth League leadership as part of remedial action.

The respondents have the right to appeal to the NDCA within 14 days.

## **SECOND HEARING – THE HEARING INVOLVING CDE SINDISO MAGAQA**

The respondent, comrade Sindiso Magaqa, was charged for contravening Rule 25.5(o) of the Constitution of the African National Congress by, in a pre-meditated manner, prejudicing the integrity or repute of the organisation, by making derogatory remarks about an NEC member thereby creating division within the ranks or membership of the ANC.

The alleged act of misconduct was that on 2 August, 2011 he issued in the name of the ANC Youth League a derogatory statement regarding Comrade Malusi Gigaba, a member of the NEC and Cabinet minister.

Comrades Shivambu and Tulelo testified on behalf of the respondent. The respondent did not testify.

### **FINDING OF THE NDC**

After considering all relevant factors, the NDC finds as follows:-

1. Comrade Shivambu contradicted himself in a material respect regarding a meeting that had been arranged between comrade Gigaba and the Youth League.
2. Comrade Shivambu's evidence about having confirmed what comrade Gigaba had said at the American Chamber of Commerce is hearsay.
3. The contents of the statement was derogatory and potentially defamatory in nature and constituted an unwarranted and unjustified attack on the person of comrade Gigaba;
4. As such, there was no obligation on the respondent to issue the statement in his official capacity as Secretary General of the ANC Youth League.
5. The respondent would have had a valid reason or excuse not to issue the statement.
6. The fact that the respondent elected to issue the statement in his name through his office as Secretary General shows that he acted with no consideration of the consequences of his action.
7. By electing to issue the statement, with full knowledge that its contents were derogatory of comrade Gigaba, the respondent's conduct was unreasonable and in conflict with the ANC Constitution.
8. The respondent, by conduct, associated himself with the contents of the statement and consequently attracted personal liability. Moreover, comrade Shivambu testified that the statement was prepared by the leadership of the ANC Youth League, of which the respondent is part.



9. Even if the statement was issued in the name of the respondent without his knowledge (which is not the case), there is no evidence before the NDC that the respondent had taken any immediate corrective action to absolve himself from liability after establishing that the statement had been issued.
10. It is self-evident that the issuing of the statement by the respondent:-
  - 10.1 was prejudicial to the integrity and repute of the ANC and its personnel (comrade Gigaba);
  - 10.2 created or had the likely effect of creating division within the ranks of the ANC and in the ANC's relationship with the ANC Youth League since the respondent, comrade Gigaba and the National Executive Committee members of the Youth League are all members of the ANC;
  - 10.3 undermined the effectiveness of the ANC as an organisation in that the respondent's misconduct undermined comrade Gigaba's position as a Minister, deployed by the ANC, within the country and internationally; and
  - 10.4 impeded comrade Gigaba's activities in his capacity as a Minister of State and, by implication, the activities of the ANC as an organisation.
11. On the evidence, the NDC finds the respondent personally liable for misconduct.
12. The NDC is of the view that the complainant has proved the misconduct of the respondent on a balance of probabilities.
13. The NDC is satisfied that the causal link between the respondent's misconduct and the act of misconduct contemplated in Rule 25.5(o) of the ANC Constitution has been established.
14. For the reasons set out above, the NDC is of the view that the defence of the respondent that he issued the statement in his official capacity as Secretary General and as a representative or agent of the ANC Youth League and was therefore not personally liable, cannot be sustained.
15. Accordingly, the respondent is found guilty as charged.
16. On 6<sup>th</sup> November 2011 the respondent's representative specifically requested the NDC to decide whether the disciplinary proceedings were validly instituted in accordance with the ANC Constitution.

17. The argument was considered in the disciplinary inquiry of comrade Julius Malema and the finding in that case viz. "the respondent's argument that the National Officials does not exist and that, if it existed, it could only refer and not institute disciplinary proceedings is rejected" is incorporated in this finding.

### **The impact of ANC disciplinary proceedings on membership of the ANC Youth League**

1. Pursuant to Article 11.2 of Schedule A of the Constitution of the ANC Youth League, this ruling is applicable to the respondent's membership of the ANC Youth League.

### **Sanction**

#### ***1. Factors taken into account for the purpose of sanctioning***

- The seriousness of the charge;
- the presence of aggravating factors;
- any previous finding against the respondents;
- the presence of mitigating factors;
- the concept that the sanction must take into consideration the interest of the ANC, the respondent and society at large;
- the concept of a graduated approach to sanctioning; and
- the sanction must fit the offence

#### ***2. Consideration of an appropriate sanction***

1. The Ministry of Public Enterprises is a critical portfolio in South Africa's quest to attract foreign and local investment for infrastructure development and job creation. The respondent, as a member of the NEC of the ANC should have been familiar with programmes of the ANC and government in this regard and should have realised the consequences of his action and its impact on society.
2. The unwarranted attack on the person of comrade Gigaba belittled and had the effect of potentially defaming him as a person. At an operational level the attack painted a picture of someone who was ineffective, out to appease the forces of imperialism and as one who did not enjoy the confidence and political support of his comrades in the ANC. In the NDC's view, this picture would have seriously lowered comrade Gigaba's esteem, detracted from his mandated duties as Minister of Public Enterprises and impacted negatively on the ANC.
3. In the current economic climate internationally, the securing of foreign direct investment has become extremely challenging and competitive. The NDC is of the view that the respondent's action has prejudiced the ANC, the government and the community it serves, including a

possible negative effect on investment in South Africa.

4. The NDC has taken cognisance of the fact that the respondent's conduct not only attracted liability to himself but also created uncertainty and attracted risk to the country. International and local investors would be reluctant to enter into any long term investment arrangements with a Minister of Public Enterprises who apparently did not enjoy the support of the Youth League of the ANC - who could be seen as possible future leaders.
5. In any event any attack on a leader of the ANC and NEC member by a Youth League leader who is also a member of the NEC, constitutes an act of ill-discipline and has the effect of creating divisions in the organisation.
6. For these reasons the NDC considers the offence to be of a serious nature.
7. The respondent did not testify. Consequently, the NDC has no basis to establish his version and consider any mitigating factors.
8. The NDC has taken into account the finding of guilt against the respondent on a charge of contravening Rules 25.5(q) and 25.5(o) (which finding was handed down today) and decided not to invoke the suspension in that matter for the purpose of determining an appropriate sanction in this case.
9. Having weighed and considered these factors, the NDC imposes the following sanction:
  - 9.1 Cde Magaqa's (the respondent) membership is suspended for a period of 18 (eighteen) months.
  - 9.2 The sanction imposed in 9.1 above shall be suspended for a period of 3 (years) and will be implemented if the respondent is found guilty of contravening Rule 25.5(o) of the ANC Constitution within the said period.
  - 9.3 Pursuant to Article 11.2 of Schedule A of the Constitution of the ANC Youth League, this ruling is applicable to the respondent's membership of the ANC Youth League.
  - 9.4 The respondent shall make a public apology to comrade Malusi Gigaba. Failure to do this within five (5) days after the conclusion of the disciplinary processes will result in Clause 9.1 taking immediate effect.

The respondent shall be entitled to appeal to the NDCA within 14 days.

## **THIRD HEARING – THE MATTER INVOLVING CDE SHIVAMBU**

In this hearing, the respondent, comrade Floyd Shivambu was charged with three instances of misconduct.

### **Charge One**

1. The first charge was for contravening Rule 25.5 (o) aa, bb, cc and dd of the ANC Constitution by prejudicing the integrity or repute of the organization, its personnel or its operational capacity by impeding the activities of the organization, creating divisions within its ranks or membership, doing any other act which undermines its effectiveness as an organization:

#### ***First act of misconduct***

Two acts of misconduct were included in this charge

1. The first act related to the respondent repeatedly swearing at a journalist on or about 12 July 2011, thereby causing harm to the integrity and reputation of the ANC:

#### ***Second act of misconduct***

2. The second act of misconduct related to the issuing of a press statement in which, inter alia, the following is stated:

“The ANC Youth League does not believe that our position on Botswana and the approach is inconsistent with ANC policy outlook (sic);” that

“If there is anything inconsistent with ANC policy directives, it is leaders of the ANC who associated with imperialist controlled political parties like MDC in Zimbabwe and BDP in Botswana;” further that

“... the ANC Youth League takes a practical programme of liberating the people of Botswana from imperialist dominance; ” further that,

“... the government of Botswana had openly embraced imperialism...”

And finally that

“The resolution of the ANCYL NEC on the Botswana Command team stands until there is discussion with ANC Constitutional structures on what should be the approach to the Botswana question.”

### **Charge Two**

The second charged leveled against the respondent was for contravening

contravening Rule 25.5(i) of the Constitution of the African National Congress by behaving in such a way as to provoke serious divisions or a breakdown of unity in the organization;

The respondent was charged for misconduct for driving a wedge between the spokesperson of the ANC and the ANC Officials in a press statement issued 2 August 2011. The charge is that he undermined the leadership of the ANC and provoked serious divisions.

## **FINDING BY NDC ON CHARGE 1**

### **1. First act of misconduct**

1. The respondent admitted swearing at the journalist and the NDC finds that the respondent uttered the foul language alleged in the Charge.
2. The respondent's defence that he was provoked is rejected on the following grounds:-
  - 2.1 On the respondent's own evidence, the trigger for uttering the profanities was that the journalist had called him a fool.
  - 2.2 When compared with the respondent's previous encounters which taxed his patience, particularly being told that "you Youth League people are corrupt", the NDC finds that the respondent's response was, in the circumstances, unjustified.
  - 2.3 Moreover, on respondent's own evidence he uttered the profanities after about 8 or 9 telephone calls from the journalist whose number he recognised and who, at the time, spoke in a calmer voice.
3. On the respondent's argument that the evidence was illegally obtained, the NDC finds:-
  - 3.1 The transcript of the taped telephone conversation by the journalist was not used to charge the respondent, nor was it used to make a finding or used to obtain evidence to secure a finding adverse to the respondent.
  - 3.2 The respondent admitted that he uttered the profanities which he considered to be unfortunate and wrong and the NDC finds him guilty on his admission and not on the evidence of the taped telephone conversation.
4. The NDC rejected the respondent's argument that he could not be sanctioned twice for the same offence - the so-called defence of double jeopardy, on the following grounds:-
  - 4.1 The defence of double jeopardy was not raised as a special plea in the

proceedings. The respondent's reason for not doing so was that he was not sure of the legalities. That may be so. But he was legally represented.

- 4.2 The Youth League Constitution considers offences which damage the integrity of the organisation to be within the scope of offences which are considered to be grave, serious and a violation of discipline, all of which would warrant a disciplinary inquiry by the Youth League.
- 4.3 It is common cause that the Youth League did not convene a disciplinary inquiry but reprimanded the respondent.
- 4.4 The NDC finds that the sanction of reprimand was not the outcome of a formal disciplinary hearing by the Youth League. The defence of double jeopardy is rejected.
5. The respondent's use of vulgar language constituted behaviour which is a breach of the ANC's Code of Conduct.
6. The NDC took the view that the media and any other third party, with whom the respondent as spokesperson for the Youth League communicated with, deserved respect.
7. Irrespective of how frustrated the respondent felt, did not justify the behaviour that brought the ANC into disrepute.
8. Based on his admission, the NDC finds that the respondent is guilty of prejudicing the repute of the ANC in contravention of Rule 25.5(o) of the ANC Constitution and that the causal link between the misconduct of the respondent and the act of misconduct contemplated in Rule 25.5 (o) of the ANC Constitution has been established.

## **Second act of misconduct**

1. The contents of the statement (Annexure E3) issued by the respondent raised the following contentious issues and was a contravention of ANC policy:-

- 1.1 it disagreed with the ANC's spokesperson's approach and, by implication, the ANC's approach on Botswana;
- 1.2 it made reference to a practical programme of the Youth League to liberate the people of Botswana from imperialist dominance;
- 1.3 it referred to the BDP as a potential security threat to the entire African continent;
- 1.4 it expressed the belief that the ANC Youth League's position on

Botswana was not inconsistent with ANC policy;

- 1.5 it stated that the ANC was acting outside its own policy directives by associating with imperialist-controlled political parties like the MDC in Zimbabwe and BDP in Botswana;
- 1.6 it suggested that the ANC was establishing strange ideological trends and political relations for purposes of convenience and that such conduct had the potential of undermining the integrity of the ANC as a national liberation movement;
- 1.7 it issued a threat viz. that the ANC Youth League resolution would stand until there was discussion with the ANC on what the approach to the Botswana question should be; and
- 1.8 it stated that the ANC Youth League had canvassed and obtained the support of continental and world youth formations for its position on Botswana.

2. The respondent, by conduct, associated himself with the contents of the statement of the ANC Youth League which was unlawful and unreasonable.
3. The respondent's act of issuing the statement, without due regard for the consequences of his action and in circumstances where he was under no obligation to issue the statement rendered him personally liable for misconduct.
4. The NDC is satisfied that the complainant has proved its case on a balance of probabilities and that the causal link between the misconduct of the respondent and the act of misconduct contemplated in Rule 25.5 (o) of the ANC Constitution has been established.
5. Consequently, the NDC finds the respondent guilty as charged.

## **Charge Two**

### ***Evidence for the complainant***

Both comrades Mbete and Jackson Mthembu testified for the complainant. In view of its finding on this Charge, the NDC believes it is unnecessary to summarise the evidence of these comrades.

### ***Evaluation by the NDC***

1. The extent of overlap between Charges 1 and 2 is evident.

2. The NDC notes that the complainant has not sought to amend this Charge at any stage of the proceedings and decided to make a finding.
3. Consequently, the NDC is of the view that since the respondent has already pleaded to this charge, the NDC is obliged to make a finding.

### **Finding by NDC on Charge Two**

The respondent is found not guilty on Charge Two.

### **Impact of the ANC disciplinary proceedings on membership of ANC Youth League**

1. Pursuant to Article 11.2 of Schedule A of the Constitution of the ANC Youth League, this ruling is applicable to the respondent's membership of the ANC Youth League.
2. Full details of this ruling are set out in the disciplinary inquiry finding of comrade Julius Malema and are incorporated herein.

### **Sanction**

#### ***1. Factors taken into account for the purpose of sanctioning***

- The seriousness of the charge;
- the presence of aggravating factors;
- any previous findings against the respondents;
- the presence of mitigating factors;
- the concept that the sanction must take into consideration the interest of the ANC, the respondent and society at large;
- the concept of a graduated approach to sanctioning; and
- the sanction must fit the offence

#### ***2. Consideration of an appropriate sanction***

##### ***2.1. First act of misconduct on Charge 1***

1. Generally, a spokesperson is the face of any organisation. The NDC is of the view that the respondent's use of vulgar language when dealing with third parties brought the ANC into disrepute, is unacceptable and constitutes a serious offence.
2. Comrade Mbetse testified that she could not remember when the ANC had condoned such language and that it was not the first time that the



respondent had committed such an offence.

3. The respondent's apology to the Youth League for swearing at the journalist was considered as a mitigating factor.

## **2.2. Second act of misconduct on Charge 1**

1. The respondent is a senior member of the ANC Youth League and performs the crucial function of communicating and articulating decisions of the NEC of the Youth League to members of the ANC Youth League and to the public.
2. The NDC is of the view that the respondent, who is currently serving a second term as the spokesperson and a leader within the ANC, should have known better.
3. The NDC is of the view that the interest of the ANC has been severely prejudiced by the misconduct of the respondent. Consequently, the organisation's standing in inter-party and international relations has been eroded and the element of trust and the ANC's standing, built over the years, would take time to heal.
4. As the ANC is the ruling party in government, the NDC has no doubt that the respondent's act of misconduct would have a negative impact on international inter-state relations and would be prejudicial to society as a whole.
5. The NDC is of the view that a key responsibility of spokespersons of structures and organs of the ANC is to disseminate and articulate decisions of the movement with clarity, consistent with policies of the ANC.
6. Certainty is important because investors form their opinion about South Africa from the statements issued by spokespersons. The respondent's reckless conduct not only attracted liability to himself but also put the country at risk.
7. The NDC is mindful of the fact that the ANC Youth League is robust in its manner of conducting its affairs and has developed a tendency of pushing the boundaries of policy formulation, as the respondent has testified, and the ANC would not expect its youth wing to act any differently. However, the NDC is of the view that a distinction must be made between robust expression on the one hand and recklessness and ill-discipline in expression on the other. It was incumbent upon the respondent, as a senior leader of the Youth League, to be mindful of this distinction at all times.
8. The NDC is also of the view that the respondent should have realised that states guard their sovereignty jealously and that the ANC had given

an undertaking in the Freedom Charter, more than sixty years ago, to respect this convention.

9. Any message from the Youth League as a structure within the ANC, could be perceived by the public at large to be a message representing the views of the ANC and, by implication, the government of South Africa.
10. The NDC has noted the arrogance of the respondent and his response to the ANC that "the Youth League's position on Botswana will stand until resolved with the ANC" and regards such conduct as an act of defiance and ill-discipline. This arrogance and defiance, the NDC notes, is a far cry from the manner in which different leaders of the Youth League, over the decades, conducted their affairs in attempting to influence ANC policy and to contribute to the political and organisational work of the ANC and the life of the nation.
11. Once the ANC, through its Headquarters, has pronounced on any matter, no structure or member may publicly contradict such pronouncement.
12. In the circumstances the NDC considers the two offences for which the respondent has been found guilty to be very serious in nature.

### **Sanction**

1. Having considered all the above factors, the NDC imposed the following sanction in respect of the two acts of misconduct of which the respondent has been found guilty:
  - 1.1 The respondent's membership is suspended for a period of 3 (three) years.
  - 1.2 Pursuant to Article 11.2 of Schedule A of the Constitution of the ANC Youth League, this ruling is applicable to the respondent's membership of the ANC Youth League.
  - 1.3 The respondent shall vacate his position as a member of National Executive Committee of the ANC Youth League.

The respondent has the right to appeal to the NDCA within 14 days.

Dated at Johannesburg this 10<sup>th</sup> day of November 2011

## **FOURTH HEARING – THE MATTER INVOLVING CDE MALEMA**

Three charges were leveled against cde Malema:

- The first charge is for contravening Rule 25.5(i) of the Constitution of the African National Congress by behaving in such a way as to provoke serious divisions or a breakdown of unity in the organization.
- The second charge is for contravening Rule 25.5(c) of the Constitution of the African National Congress by behaving in such a way as to bring the organization into disrepute.
- The third charge is for contravening Rule 25.5 (d) of the Constitution of the African National Congress by sowing racism or political intolerance.

### **Prelude to Findings**

As a prelude to the finding on the specific Charges, the NDC finds that there is a difference between the Youth League as an institution and the respondent as an individual. In the same way there is a distinction between the Youth League statement and the respondent's utterances. The NEC of the Youth League was not charged for its statement. It was the respondent who is being charged for his utterances.

### **Charge One**

The first charge is for contravening Rule 25.5(i) of the Constitution of the African National Congress by behaving in such a way as to provoke serious divisions or a breakdown of unity in the organization,

IN THAT:

When addressing a press conference at the conclusion of the ANC Youth League NEC meeting on 31 July 2011, he actively participated in making the following statement:

“In the past, we know that President Mbeki used to represent that agenda very well” and further that

“The African agenda is generally no longer a priority, and we think that there is a temptation by the colonizer and the imperialist to want to re-colonise Africa in a different but sophisticated way – and President Mbeki stood directly opposed to that type of conduct.”

### **Finding on Charge 1**

The NDC finds that:-

1. The onus was on the respondent to explain the utterances which he admitted. Save for a bald denial that he was having a ‘dig’ at President Zuma, the respondent has failed to discharge this onus and provide any

reasonable explanation for his utterances.

2. Given that the respondent was elaborating on the Youth League statement, as he contended, then the inescapable conclusion is that the respondent accepted and associated himself with the Youth League statement which attributed the existence of a vacuum and the decline in the African agenda directly to the departure of President Mbeki. It is this statement that the respondent was elaborating on.
3. The respondent's evidence that the Youth League (and not him) suspected that the ANC and the South African government had relegated the African agenda, when considered against the objective fact that President Mbeki had resigned three years ago in June 2008, is further support for the inference that the respondent was in fact negatively comparing different administrations and leaders of the ANC and ANC-led government.
4. The fact that comrade Motlanthe and President Zuma are not mentioned by name in the respondent's utterances is immaterial and does not detract from the conclusion that the respondent was comparing different administrations. In the context of the respondent's utterances, reference to President Zuma is apparent by innuendo and supports the inference above.
5. Comparison between different eras of leadership in the ANC's history by itself is not an act of misconduct and in fact is part of our culture of democratic debate. However, the suggestion that the administrations after comrade Mbeki have relegated or abandoned the African agenda and thereby aided and abetted the imperialist agenda that seeks to recolonise Africa is untrue and portrays the current ANC government and its leadership under President Zuma in a negative light and therefore has the potential to sow division and disunity.
6. On the respondent's own evidence about the performance of the ANC, South African government, SADC and the AU, the inference above excludes every other reasonable inference that could have been drawn from the respondent's utterances.
7. The inference drawn above is consistent with all the proved facts.
8. The respondent was personally liable for his utterances and the NDC rejects the defence of the respondent that he was acting in a representative capacity or on behalf on the collective on the following grounds:-
  - 8.1 It would normally be the responsibility of the respondent, as he testified, to read the Youth League statement in his capacity as President of the Youth League. However, on this particular

occasion he was advised by the NEC of the Youth League not to read the press statement because the spotlight was on him and he could be questioned on issues relating to his family trust. For that reason the SG was mandated to read the Youth League press statement.

8.2 Even if the respondent did elect to attend the press conference, he was under no obligation to answer any questions. He attracted personal liability when he voluntarily chose to answer questions at the press conference to elaborate on the Youth League statement, which was not within the parameters of ANC policy.

8.3 By agreeing to be bound by the decision of the collective, the respondent by conduct, associated himself with the decision of the collective.

8.4 If that decision is subsequently found to be unlawful (i.e. it constitutes a contravention of ANC policy or the ANC's Code of Conduct) or unreasonable (i.e. it could expose the member of the collective to liability for misconduct for articulating the decision of the collective) then the respondent, by doing something or saying something in furtherance of the collective decision, attracts personal liability.

9. Having regard to the evidence of comrade Mantashe and the respondent's own evidence, the respondent's behaviour was directed at the leadership of the ANC and as such could potentially provoke serious divisions or lead to a breakdown of unity in the ANC.

10. The complainant has proved, on a balance of probabilities that the respondent's behaviour constituted an act of misconduct as contemplated in Rule 25.5(i) of the ANC Constitution.

11. The causal link between the respondent's behavior and the misconduct contemplated in Rule 25.5 (i) of the ANC Constitution has been established, by implication and on a balance of probabilities.

12. The respondent is found guilty as charged.

### **Charge Two**

The second charge is for contravening Rule 25.5(c) of the Constitution of the African National Congress by behaving in such a way as to bring the organization into disrepute:

IN THAT

1. On 31 July 2011 he addressed a press conference where, in the name of the National Executive Committee of the ANC Youth League, a structure which operates within the policy confines of the ANC, by making the

following pronouncements:

“Botswana’s leadership of government poses a serious threat to Africa, so we need a progressive government in Botswana”; further

“We are not going to sit with neighbours that conduct themselves like that. Botswana is in full co-operation with imperialists... and the government is undermining the African agenda”; and further

“The ANCYL would establish a “Botswana Command Team” which will work towards uniting all opposition forces in Botswana to oppose the puppet regime of Botswana led by the Botswana Democratic Party.”

These careless, negligent or reckless pronouncements and utterances were a deviation of established and ongoing ANC policy and had the effect of embarrassing and bringing the organization into disrepute within and beyond the borders of South Africa.

## **Finding on Charge 2**

The NDC finds that:-

1. The respondent as a member of the NEC of the ANC should or ought to have known that the Youth League statement on Botswana was not part of or within the parameters of ANC policy.
2. The respondent did not provide any additional explanation beyond stating that he uttered the words alleged in the Charge to support the Youth League’s decision to establish a Botswana Command Team.
3. The respondent’s utterances *per se* against a sovereign state were reckless and baseless pronouncements and impacted negatively on South Africa’s relations with Botswana, the SADC and the AU, brought the ANC, as a liberation movement and the ruling party in South Africa, into disrepute and were in conflict with ANC policies and the ANC’s resolution on Party-to-Party relations as adopted at the 52<sup>nd</sup> National Conference in Polokwane.
4. The respondent’s utterances on the audiovisual clip (that was produced in evidence) that a team was to be sent to Botswana or a team from Botswana would visit South Africa by the end of August went beyond the Youth League statement. It is indicative of a final decision that was in the process of being implemented and was his personal view.
5. In the absence of providing a satisfactory explanation, the only deduction the NDC could make, either directly or through witnesses, was that the respondent was expressing a personal view.
6. By his conduct the respondent associated himself with the contents of the

Youth League statement.

7. By voluntarily choosing to amplify the Youth League statement, which was not part of or within the parameters of ANC policy and where there was no obligation upon him to do so, the respondent acted recklessly and in contravention of ANC policy and the ANC's Code of Conduct.
8. Even if it is to be assumed that the respondent acted in a representative capacity, then his utterances (which expressed a personal view) would make him personally liable.
9. The respondent's personal liability is founded on two acts of misconduct contemplated in Rule 25.5 (c) of the ANC Constitution, both of which are a deviation of ongoing ANC policy and which had the effect of bringing the organisation into disrepute:-
  - 9.1 his act of publicly uttering excerpts from the contents of the Youth League statement which was not part of and within the parameters of ANC policy;
  - 9.2 his utterances, which do not appear in and go beyond the Youth League statement, expressed a personal view and was in conflict with ANC policy.
10. Having regard to the evidence of comrades Mbetse and Mantashe, the audiovisual clip and the respondent's own evidence, the complainant has proved:-
  - 10.1 that the respondent's utterances were reckless and a deviation of ongoing ANC policy;
  - 10.2 that the respondent brought the ANC into disrepute; and
  - 10.3 that the respondent's behaviour constituted misconduct as provided for in the ANC Constitution.
11. The complainant has proved its case on a balance of probabilities and the causal link between the misconduct of the respondent and the contravention set out in Rule 25.5 ( c ) of the ANC Constitution has been established.
12. The respondent is found guilty as charged.

### **Charge Three**

The third charge is for contravening Rule 25.5 (d) of the Constitution of the African National Congress by sowing racism or political intolerance:

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This charge relates to statements made by the respondent at a public rally on 9 May 2011 in Galeshewe.

There was an alternative charge of contravening Rule 25.5 (c ) of the Constitution of the African National Congress, by behaving in such a way as to bring the organization into disrepute.

### **Finding on Charge 3**

The NDC finds that:-

1. After evaluating all the evidence, the complainant has not proved its case on a balance of probabilities.
2. The respondent is found not guilty on this Charge.
3. The evidence of the complainant does not support the alternative charge of bringing the ANC into disrepute as contemplated in Rule 25.5 (c) of the ANC Constitution and the respondent is accordingly found not guilty on the alternative Charge.

### **Sanction**

#### **1. *Factors taken into account for the purpose of sanctioning***

- The seriousness of the charge;
- the presence of aggravating factors;
- any previous findings against the respondent;
- the presence of mitigating factors;
- the concept that the sanction must take into consideration the interests of the organisation, the respondent and society at large;
- the concept of a graduated approach to sanctioning; and
- the sanction must fit the offence.

#### **2. *Consideration of an appropriate sanction***

1. As the President of the Youth League, the respondent had a duty to lead and direct the Youth League and to focus on the League's constitutional mandate in terms of Rule 7.4 of the ANC Constitution viz. to confront and champion the issues facing the youth and to ensure that the youth make a full contribution to the work of the ANC and to the life of the nation.
2. This places an obligation on the leadership of the Youth League to prepare its membership for active participation in the motherbody and to understand and defend the constitution of the ANC, its values and its policies.



3. Outside the core constitutional mandate of the Youth League, it was and still is open to and expected of the ANC Youth League to push the boundaries of policy formulation within the ANC on any policy issue, as it has done historically, in order to make a full contribution to the work of the ANC and the life of the nation, provided that such lobbying is done within ANC policy and procedure.
4. The fundamental goal of the ANC remains the creation of a united, non-racial, non-sexist, democratic and prosperous South Africa. Non-racialism was and still remains the driving force for the formation and existence of the ANC. In the furtherance of this objective, the respondent had an obligation to shy away from sowing division and disunity in the ANC.
5. In the view of the NDC, the respondent, as the leader of the Youth League, should have focused his energy on developing programmes to actively reach out to the broad cross-section of the youth, both Black and White, so that the Youth League of today would be at the forefront in cementing the foundation of tomorrow's non-racial and non-sexist society.
6. The NDC is also of the view that the respondent should have realised that states guard their sovereignty jealously and that the ANC had given an undertaking in the Freedom Charter, more than sixty years ago, to respect this convention and to respect the right to peace and friendship and self-determination of all nations.
7. As the ANC is the ruling party in government, the NDC has no doubt that the respondent's misconduct would have a negative impact on international and inter-state relations and would be prejudicial to South African society as a whole.
8. The acts of misconduct for which the respondent has been found guilty are very serious and have damaged the integrity the ANC and South Africa's international reputation.
9. In May 2010 the respondent was found guilty of contravening Rule 25.5 (i) of the ANC Constitution and the sanction imposed, *inter alia*, was that should the respondent be found guilty of contravening Rule 25.5(i) of the ANC Constitution within the next two years, his membership of the ANC shall be summarily suspended for a period to be determined by the ANC.
10. The ANC Youth League is the preparatory school for future activists and leaders of the ANC. Discipline is a core attribute of any leadership and the ANC would have expected the respondent to have had led by example. In the space of a year and a half, the respondent has been found guilty of 4 (four) acts of sowing division in the ANC, bringing the

ANC into disrepute and defying the National Officials.

11. The NDC is of the view that, at its most fundamental level, the ANC is a voluntary organisation which people join willingly because they subscribe to its aims, objectives, culture, ideals and value system. This is the glue that has held the ANC together for almost a hundred years. No one is forced to join the ANC or compelled to remain in the ANC if he or she is not happy. In the same spirit, the ANC should not be obliged to retain the active membership of any person, without exception, who pays scant regard to the membership oath of the ANC, its policies, organisational culture, value system and Code of Conduct.

## **SANCTION**

12. Having considered all these factors, the sanction on cde Malema imposed is as follows:

12.1 With regard to the respondent's disciplinary hearing in May 2010, the respondent's membership is suspended for a period of 2 (two) years;

12.2 In respect of the present disciplinary hearing:-

12.2.1 The respondent's membership is suspended for a period of 5 (five) years;

12.2.2 The sanctions imposed in 12.1 and 12.2.1 shall run concurrently.

12.2.3 Pursuant to Article 11.2 of Schedule A of the Constitution of the ANC Youth League, this ruling is applicable to the respondent's membership of the ANC Youth League; and

12.2.4 The respondent shall vacate his position as President of the ANC Youth League.

The respondent has the right to appeal to the NDCA within 14 days.

Dated at Johannesburg this 10<sup>h</sup> day of November 2011