IN THE SECTION 194 INQUIRY

HELD AT THE NATIONAL ASSEMBLY, CAPE TOWN

In respect of

THE PUBLIC PROTECTOR OF SOUTH AFRICA

THE PUBLIC PROTECTOR'S APPLICATION(S) FOR RECUSAL

A: INTRODUCTION

1. In terms of Rule 129 AD (2) of the Rules of the National Assembly:-

   "***The Committee must ensure that the enquiry is conducted in a reasonable and procedurally fair manner, within a reasonable timeframe***."

2. In terms of clause 10.2 of the Directives issued by the Chairperson of the Section 194(1) Committee dated 14 July 2022

   "***Any person wishing to make an application to the Committee which is not otherwise provided for in this Procedure, or in the Assembly Rules, must do so in writing to the Chairperson***."

3. In terms of the letter received from the Chairperson, following notification of this application,

   "***… in addition to the notice that you intend giving by no later than 10h00 on Monday 19 September 2022, also provide the application setting out***

the basis for the application, by no later than 10h00 on 20 September 2022."

4. In terms of the remarks made and warnings repeatedly issued, on behalf of the Public Protector since the start of the enquiry proceedings on 11 July 2022 and more specifically on 26 August 2022 and 13 September 2022, indications were made directly and indirectly that serious consideration was being given to the contemplated application for the recusal of the Chairperson. None of these warnings were heeded. Instead, the situation was worsened and further aggravated by the conduct of the Chairperson outlined below. The day has now arrived to make good on those warnings.

5. In the same breath complaints, which were brought to the attention of the Committee and/or its Chairperson regarding the inherent bias of Honourable Kevin Mileham, were not adequately entertained and were ultimately overruled by the Chairperson.

6. This then is the recusal application which has been "*threatened*" since 26 August 2022, in the hope that some improvements would be observed. In actual fact, none of these serious warnings were heeded and instead the situation worsened and deteriorated to the present intolerable levels where it is impossible to continue with the enquiry before this application is resolved one way or the other. The unfortunate reaction was to generate and fuel fake outrage about the warnings issued.

7. This application has been compiled at the instructions of the Public Protector, which will be confirmed at the relevant sitting of Committee, if necessary.

A1: <u>The duty to act fairly</u>

8. Rule 129 AD prescribes that the Committee must operate according to the standards of fairness, reasonableness and/or transparency. In the view of the Public Protector all the Chairperson has breached all three standards. However, this application is largely based on the compulsory standard of fairness.

A2: <u>The meaning of fairness</u>

9. It is not easy to define fairness and unfairness. It is however very easy to identify or perceive unfairness and injustice when it is directed at one.

10. The legal standard of fairness derives from the well-established two rules of natural justice. They are:-

    10.1. the *audi alteram partem* rule which simply means the other side must be heard; and

    10.2. *nemo iudex* in *rem sua* also known as the rule against bias, which simply means that no person can be a judge in his or her own cause. It is also referred to as the conflict of interest rule which is applied in many situations involving the exercise of power and decision making conduct. Finally, it is also the rule which prohibits predetermined or prejudiced outcomes in respect of processes in which fairness is an inherent prerequisite.

11. There is always an irresistible overlap between the two rules of natural justice. This present application is no exception. However, in this application major reliance will be placed more on the *nemo iudex* rule.

12. In addition to the two rules of natural justice, the Public Protector will also place reliance on the doctrine of legitimate expectations in terms of which she is legally entitled to expect fairness from the Chairperson, Honourable Mileham and/or the Committee of which they are members. The basic features and requirements of this rule will be further explained during the oral hearing. In short it refers to a situation such as the present case where the applicable rules or previous conduct or promises to create a legitimate expectation that fairness will be afforded. A failure to do so is then in breach of the doctrine as well as the relevant duties of the public body in question.

13. In order to save time and not bring piecemeal applications, this application will separately cover two separate recusal applications directed at:-

    13.1. The Chairperson of the section 194(1) Committee, Honourable Richard Qubudile Dyantyi; and

    13.2. Mr Kevin Mileham who is a member of the Committee representing the Democratic Alliance (“the DA”) in the Committee.

14. The purpose of this document is to outline the basis of these applications by setting out non-exhaustive but sufficient grounds thereof. The details of the issues raised below will be elaborated upon during the envisaged oral presentation of the application(s).

B: THE RECUSAL APPLICATION IN RESPECT OF HONOURABLE DYANTYI AS CHAIRPERSON

15. It is important to start this section with a reminder of what was articulated on behalf of Adv Mkhwebane, the Public Protector of South Africa, literally on day one of the enquiry namely that her participation was offered under protest for various reasons including reasons connected with her perceptions of inherent fairness of the process.

16. As articulated at that time and reiterated on a few subsequent occasions, the Public Protector was of the view that the assurances given by some members of the Committee, and more particularly by its Chairperson that an open mind would be brought to the enquiry deserved to be taken at face value and given a chance to be believed, unless or until the contrary could be established.

17. That point has now been reached and sadly exceeded. This will be demonstrated by reference to the countless examples of unfair treatment of the Public Protector and/or her legal representatives at the hands of the Chairperson (and/or Mr Mileham).

18. The methodology adopted is to mention each topic or ground and then to furnish a high-level summary of the underlying facts. These will be elaborated upon during the oral presentation of the application. It is not intended to call any witnesses in support of the recusal application, but reliance will be placed on the record of the proceedings.

19. Specific reference will be made to the address made on behalf of the Public Protector by her Senior Counsel, on 26 August 2022. However, the proverbial last straw that broke the camel's back was the events of 13 September 2022.

20. In support of the recusal application relating to Honourable Dyantyi we raise the primary grounds dismissed in sections B1 to B2 below and which ought to provide sufficient for the granting of the relief sought. Thereafter a brief expression of the applicable legal test to be applied will be given, with reference to some of the relevant decided cases from our Courts, including the Constitutional Court.

21. We now turn to dealing with each of the grounds which will be invoked by the Public Protector.

B1: <u>First Ground: Scope of the enquiry</u>

22. In response to the objection raised by the Public Protector on 11 July 2022 and subsequently reduced to writing, the Chairperson, unfairly and unreasonably exhibited bias and/or substantial prejudice against the Public Protector by ruling that the enquiry would proceed on the basis of the original motion of Ms Mazzone and/or the DA dated 21 February 2020, in spite of the substantial and effective amendment of the motion in the Independent Panel Report (specifically Annexure A hereof) released on 21 February 2021.

23. This ruling will cause material prejudice in that the Public Protector will be called upon to produce evidence to rebut charges in respect of which the Independent Panel has ruled that no *prima facie* evidence or case exists.

24. As a result thereof, the Public Protector harbours a reasonable apprehension of bias more particularly in that no reasonable Chairperson would, in the same circumstances, issue or support such a patently unreasonable and unfair ruling.

B2: <u>Second Ground: Unlawful and unilateral amendment of Directives and the misapplication thereof</u>

25. On or about 26 August 2022 the Chairperson issued a purported "*Addendum*" or "*amendment*" of the Directives which govern the procedures employed in the inquiry, in the middle of the process, without any consultation and to the prejudice of the Public Protector. Copies of the original Directive, adopted on 14 July 2022 in spite of protestations by the Public Protector and the purported addendum are annexed hereto marked "**RA1**" and "**RA2**" respectively.

26. In so doing the Chairperson knowingly acted procedurally irrationally and/or unreasonably, to the prejudice of the Public Protector and in breach of the applicable Rules and/or Directives. No reasons were given why the new rule must operate retrospectively.

27. He amended directive specifically refers to the issue of recalling witnesses.

28. Having agreed that witnesses in respect of whom cross-examination was not concluded would be recalled, the Chairperson has unfairly shifted the goalposts by imposing a "*new*" rule requiring a complicated application for recall. This was clearly intended to and/or had the predictable effect of rendering such recalls difficult and subjectively determined.

29. This issue is related to sections B3 above as well as the Public Protector's predicaments which prevent her from properly preparing her own witnesses. It will be impossible to lead her evidence without first resolving this issue. It will also be prejudicial to force her to do so.

B3: <u>Third Ground: Refusal to subpoena Mr Ramaphosa</u>

30. In August 2022 the Chairperson refused the request of the Public Protector to be assisted in securing the relevant evidence of Mr Cyril Ramaphosa who had made certain scatting remarks against the Public Protector which form part of the impeachment motion, with particular reference to the so-called CR17/BOSASA litigation referred to at paragraph 11 of the Charge Sheet/Motion.

31. In the process the Chairperson unfairly and unreasonably rejected the proposal made by Honourable Herron to seek further information from the Public Protector regarding the relevance of Mr Ramaphosa's evidence.

32. In so doing the Chairperson acted unreasonably, unfairly and in a manner which exhibited manifest bias against the Public Protector and in favour of Mr Ramaphosa who, is also the President of the African National Congress of which the Chairperson is a loyal member.

B4: <u>Fourth Ground: Unduly Favouring the Evidence Leaders and unwarranted proximity to collusion with them and generally adopting an oppositional posture towards the Public Protector and/or her representatives</u>

33. There are unnumerable examples of conduct on the part of the Chairperson which exhibits undue bias and favouritism in his dealings with the Evidence Leaders. This phenomenon has manifested itself in various rulings and/or other forms of conduct which will be elaborated upon during the oral presentation, notably:-

33.1. Rejecting almost all objections by the Public Protector including those dealing with relevance while entertaining as serious similar objections made by the Evidence Leaders. A case in point was the objection of the Evidence Leaders pertaining to the allegations of sexual harassment against him in the context of disciplinary proceedings against him, which the Chairperson had ruled to be "*relevant*" in respect of his and other witness testimony.

33.2. Allowing the Evidence Leaders to lead witnesses for whatever duration they want while unduly curtailing the Public Protector's cross-examination or giving it an unreasonably short duration than warranted.

33.3. Conferring with the Evidence regarding formal requests made by the Public Protector, to the exclusion of the Public Protector and/or her legal team and to the extent of making decisions on the Evidence Leaders written and/or added input.

33.4. During the written exchanges which led to the unnecessary and unfortunate events of 13 September 2022 referred to below, the Chairperson wrote to the Public Protector a long 5-page letter which was clearly written or heavily influenced by the Evidence Leaders. One

of the tell-tale signs was the inclusion in the said letter of information which had been exclusively shared with the Evidence Leaders and which the Chairperson could not have known but for the undue collusion with the Evidence Leaders. This was not happening for the first or even the last time.

33.5. Unidirectional hostility and negative remarks directed only at the Public Protector's team while not censuring the same conduct on the part of the Evidence Leaders. This includes undue level of impatience, shouting at and suppression of the Public Protector's legal representatives in violation of the clear ruling of the Constitutional Court.

33.6. Instinctively rejecting proposals made by the Public Protector unless and/or until they get the support of the Evidence Leaders and/or a member of the Committee.

34. A further example relates to prior conversations between the Evidence Leaders and the Public Protector's legal team in which a "*gentleman's agreement*" had been reached to the effect that a two-week break would be granted between the last witness called by the Evidence Leaders and the first witness called by the Public Protector. This would allow proper scheduling and preparation of witnesses to ensure the smooth running of the evidence.

35. This arrangement was communicated to the Chairperson.

36. When the Evidence Leaders missed two of their self-imposed deadlines before calling their last witness, the Chairperson reneged on the arrangement and now

wants to give the Public Protector one working day to make the abovementioned arrangements which is in the circumstances an impossibility.

37. This attitude is both unfair and unreasonable and a clear sign of the selective treatment of the teams and related bias on the part of the Chairperson.

38. These examples, which are by no means exhaustive, are indicative, individually and/or cumulatively, of undue bias on the part of the Chairperson.

B5: <u>Fifth Ground: Undue comments interference in High court litigation</u>

39. On or about 24 August 2022 the Chairperson instructed the lawyers representing the National Assembly and the Committee to deliver a Notice to the Western Cape High Court advising that court of a judgment of the Constitutional Court in which the Public Protector's application regarding the leaking of a previous judgment was dismissed and she was ordered to pay personal costs. This notice was delivered literally within hours of the Constitutional Court ruling. The intention was clearly to influence the outcome of the then reserved and pending judgment of the Western Cape High Court.

40. As it turned out, the Western Cape High Court refused to entertain the said Notice. However, that does not detract from impropriety of submitting it on the part of the Chairperson. It was another clear display of his bias.

41. As if that were not enough and on the same day the National Assembly and/or the Chairperson issued a media statement celebrating and supporting the order of personal costs against the Public Protector. This was also uncalled for from

institutions which are supposed to be sitting in the impartial judgment of the Public Protector.

42. These issues were raised sharply with the Chairperson and Committee on 26 August 2022. An early warning was given that such conduct constituted recusal conduct. The warning was ignored in the same way as the subsequent one issued on 13 September 2022.

B6: <u>Sixth Ground: Rulings related to cross-examination and/or re-examination</u>

43. This section relates to the misapplication of the (disputed) directives

44. The chairperson not only unduly dismissed the objection related to the undue and direct questioning of the Public Protector by members at the end of a witness' evidence but has now twice allowed members to ask their questions even before the end of cross-examination. This arbitrary application of the disputed rule shows manifest bias. It has never been explained whether, and why and when the relevant "*rule*" has been abandoned. This brings undue uncertainty and inherent unfairness.

45. Most significantly, the Chairperson has thrice unlawfully allowed a situation where the Committee members question a witness before his or her cross-examination is concluded or even commenced. This happened with the witnesses Van Loggerenberg, Pillay and Thejane, respectively. Apart from the inherent unfairness of this procedure, it is in direct contravention of paragraphs 6.7 to 6.9 of the Directives which make it clear that the Evidence Leaders must

ask the witness questions, followed by cross-examination by the Public Protector and only "*thereafter*" shall the members pose questions, if any.

46. The related refusal to afford the Public Protector the right similar to the Evidence Leaders, to ask questions arising out of the questions asked by the members and/or the Chairperson in terms of Rule 6.16 represents an incurable and irreversible taint of bias to the proceedings. To continue without having addressed this issue will only be a waste of time and resources.

47. Finally in this regard, the conduct of the Chairperson on 8 August 2022 in allowing, despite the emphatic and repeated objections of the Public Protector, the Evidence Leaders to cross-examine Mr Thembinkosi Muntu Sithole, a witness called and prepared by the Evidence Leaders was the most egregious violation of the Directives.

48. The Chairperson's ruling to the effect that the questioning did not amount to cross-examination cannot withstand any objective scrutiny. It was also correctly refuted by the witness himself who is a qualified attorney and whose evidence was credible, balanced and exemplary.

B7: <u>Seventh Ground: Rulings related to the concept of relevance</u>

49. This ground relates to the skewed and unfair application and abuse of the Chairperson's powers conferred in terms of Clauses 6.1 and 8 of the Directives.

50. This has resulted in the calling of several witnesses whose evidence is irrelevant and related to human resources grievances which have no bearing on the charges (on any version thereof).

51. The Chairperson's refrain that these rulings will be revisited at the time of deliberation are inappropriate and highly prejudicial to the Public Protector.

52. The said breach has resulted in the calling of 15 mostly irrelevant witnesses and the conversion of the enquiry into the CCMA or the labour desk of the Office of the Public Protector.

53. A particular egregious example of the misapplication of the relevance rules occurred on 5 August 2022 when the Public Protector raised the valid objection that members should not be permitted to asks irrelevant questions in respect of the very question with which the Committee is seized, namely whether or not the Public Protector is guilty of misconduct.

54. The Chairperson's response which was repeated afterwards, was to the effect that the members "*may ask any questions that they deem fit*" and do so "*in any manner which they may deem fit*". This is clear breach of the relevance rule but more seriously an unlawful abdication by the Chairperson of his lawful role and duties to control the proceedings.

55. It has been conclusively established that the Public Protector had no involvement in the payment and/or approval of attorneys' invoices. It has been also established that she did not necessarily and directly prescribed which advocates would be engaged by the attorney. There were at least 7 alternative ways in which advocates were engaged on behalf of PPSA.

56. In spite of the above and despite valid objections based on privacy and relevance having been raised, the Chairperson has and continues to allow the

wanton display of earnings by professionals who rendered legal and related services to PPSA. The intention seems to embarrass members of the present legal team representing the Public Protector. In pursuit thereof inaccurate and misleading figures have been allowed to be bandied about in the public domain. For example, the total figure of R48 million spent over a period of 5 to 6 years is portrayed as current expenditure. The Evidence Leaders have also stated that Seanego Attorneys was paid R49 million which is false. The correct figure is below R40 million, of which only about R10 million (less VAT) over a period of 5 years was earned by Seanego Attorneys and the balance was paid out to a number of senior and junior advocates handling the relevant briefs and depending on the size and duration thereof.

57. The root cause of all this malicious misinformation is the Chairperson's refusal to exclude irrelevant "*evidence*" even when the nature of the prejudice has been sufficiently explained to him.

B8: <u>Eighth Ground: Previous utterances made by the Chairperson prejudging the issues</u>

58. It has also been brought to the attention of the legal team that the Chairperson has actually made express statements which show conclusively that he had prejudged the crucial and relevant issue of the Public Protector's alleged incompetence.

59. We attach hereto, marked "**RA3**", a copy of an accurate report in which among others the Chairperson is quoted as having said in or about July 2019 to the Public Protector:-

"***Here we have to budget for incompetence. I will use that word. You said you are being called incompetent and on the basis of the facts before us I think I can venture into that***".

B9: Ninth Ground: Refusal to postpone on 13 September 2022 (Availability of legal representatives)

60. On the eventful day of the 13 September 2022 the Chairperson unreasonably and unfairly refused to entertain and/or grant a postponement of the proceedings despite a reasonable request based on the non-availability of the Public Protector's legal team as a result of a related emergency playing itself out in the courts.

61. The biased and unreasonable ruling on this issue resulted in gross prejudice to the Public Protector and a denial of her fairness rights.

B10: Tenth Ground: Refusal to postpone on 13 September 2022 (Temporary medical unfitness)

62. The proverbial last straw which broke the camel's back was the Chairperson's dismissal of a postponement application based on the medical condition of the Public Protector even when it was made clear that there was independent support thereof in the form of a medical certificate. A copy of the said medical certificate which was tendered, is annexed hereto and marked "**RA4**".

63. The refusal of the Chairperson to listen to aspects of the application and for the submission of the relevant medical evidence to the members was grossly unreasonable, unfair, insensitive, cruel and malicious.

64. This unacceptable, unlawful, unconstitutional and patriarchal conduct was only underscored by the subsequent and unilateral about-turn by the Chairperson when he (unilaterally) postponed the proceedings scheduled by him for 14 September 2022. See Annexure "**RA5**" hereto.

B11: <u>Eleventh Ground: Rejection of requests by members to be consulted</u>

65. Related to the above two grounds were numerous requests by Committee members Honourable Maotwe, Holomisa and Zungula for the Chairperson to adjourn the meeting shortly so as to allow for the consultation of Committee members, which requests were unduly rejected by the Chairperson. In the process the Chairperson ordered that Honourable Maotwe be electronically expelled and/or excluded from further participation in the enquiry.

66. Such dictatorial tendencies are clear signs of manifest bias and disqualifying impropriety on the part of the Chairperson. He is not fit to fill the position of Chairperson with the requisite levels of impartiality and ethical conduct.

B12: <u>Twelfth Ground: Misrepresentations made in the public domain</u>

67. In aggravation of the abovementioned misconduct the Chairperson went on to present false facts in the public domain during interviews with the Newsroom Afrika and SABC News television channels.

68. In those interviews, the Chairperson went on to call for the investigation by the Legal Practice Council of the Public Protector's legal representative merely for allegedly "*threatening*" him with he present application, not for the first time and which he was entitled to do. In so doing the Chairperson was merely restating

the unduly hostile position adopted by the DA, Freedom Front Plus and the ANC.

69. Such conduct is clear evidence of a lack of impartiality and a negative attitude which is calculated to strip the Public Protector of her right of legal representation.

70. The grounds related to the unfortunate events of 13 September 2022 will best be articulated by making reference to the relevant transcripts and/or audio-visual evidence of the hearing held on that day and the subsequent media interviews. It is otherwise not possible to capture here the demeanour, tone and hostility exhibited by the Chairperson. Several appeals were made to him, all in vain, to refrain from shouting and to listen to what was being said to him. His reaction is summed up by his conduct in unduly ordering the muting the Public Protector's legal representative as well as one of the members who was correctly calling him to order and thereby attempting to assist him.

71. Upon any objective observation of the evidence referred to above, it ought to be self-evident that the Public Protector cannot reasonably be expected to continue with the enquiry before the role of the Chairperson is conclusively addressed, one way or the other.

C: THE RECUSAL APPLICATION IN RESPECT OF HONOURABLE MILEHAM

72. It is common cause that Honourable Mileham is the lawfully married husband or spouse of the complainant, Honourable Mazzone.

73. It is also undeniable that Honourable Mileham has consistently displayed a hostile and condescending attitude towards the legal representative of the Public Protector.

74. These issues have been previously raised with the Chairperson who failed to address them adequately.

C1: <u>First Ground: Inherent bias based on relationship with the complainant</u>

75. It is legally and ethically untenable to allow a person who suffers from a conflict of interest of the kind which affects Honourable Mileham, to sit in the purported impartial determination of the guilt or innocence of the Public Protector, or any other person in her current position.

76. This example demonstrates the most serious indication of a pre-determined outcome on the part of the decision maker.

C2: <u>Second Ground: Twitter attacks on Public Protectors legal representatives</u>

77. We attach hereto, marked "**RA6**", evidence of recent twitter activity on the part of Honourable Mileham making gratuitous unsolicited and unwarranted attacks on lead counsel for the Public Protector.

78. Not only is this patently and grossly inappropriate but the content of the exchanges contains evidence of a poisoned and biased mind. It is impossible to expect Honourable Mileham to bring a neutral mind to the decision making table.

C3: **<u>Aggravating factors: Association with public statements of the DA Leader</u>**

79. Although these factors affect other members of the DA, it provides aggravation in the case of Honourable Mileham when read in conjunction with his other conduct.

80. Firstly, it is now well documented that the DA Leader John Steenhuisen stated on national television that members of the DA were popping champagne at the news of the unlawful, biased and improper subpoena of the Public Protector by the President on 9 June 2022.

81. More recently, the DA has committed gross misconduct by attaching witness statements in the section 194 Committee to court papers. More seriously the DA also attached the Public Protector's confidential witness list which was only rendered to the Chairperson of the Committee. This has resulted in the predictable reluctance of some of the potential witnesses to assist the Committee. This will result in irreversible prejudice to the Public Protector.

D: APPLICABLE AND RELEVANT PRINCIPLES

82. In this section we briefly outline some selected and well-established principles which are applicable to recusal applications and on which reliance will be placed to support the recusal application in this and any other appropriate forum.

83. Bias can be classified into actual bias and a reasonable apprehension of bias on the part of the affected party, in this case the Public Protector. Although it sometimes happens that actual bias is proved, the majority of cases involve a reasonable suspicion or apprehension of bias, which has the same legal effect as actual bias.

84. Recusal applications must not be brought lightly. While it is legally permissible for legal practitioners to bring and/or to threaten to bring recusal applications, they must do so, as in the present case, as a matter of last resort and only once the situation truly becomes untenable. In the very recent case of **Bennett v the State**[1] the following was correctly stated:

> "***More and more recusal applications are brought as a tactical device or simply because the litigant does not like the outcome of an interim order made during the course of the trial. The seeming alacrity with which legal practitioners bring or threaten to bring recusal applications is cause for concern. The recusal of a presiding officer, whether it be a magistrate or a judge, should not become standard equipment in a litigant's arsenal, but should be exercised for its true intended objective, which is <u>to secure a fair trial in the interests of justice in order to maintain both the integrity</u> of the courts and the position they ought to hold <u>in the minds of the people whom they serve</u>***".

85. The following pronouncement by Ngcobo CJ sitting in the Constitutional Court[2] which is relevant against both the Chairperson but more directly to Honourable Mileham, demonstrates that to continue to sit under the circumstances described above is a breach of the Constitution:

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[1] Bennet v The State 2021 (2) SA 439 (GJ) at paragraph [113]
[2] Bernert v Absa Bank 2011 (3) SA 92 (CC) at paragraph [28]

"***The apprehension of bias may arise from the association or interest that the judicial officer has in one of the litigants or in the outcome of the case. Or it may also arise from <u>conduct or utterances</u> by a judicial officer prior to or during (the) proceedings. In all these situations a judicial officer <u>must</u> ordinarily recuse himself or herself. The apprehension of bias principle reflects the fundamental principle that courts must be independent and impartial***."

86. In this regard it must be added that enmity and/or hostility towards a party also constitutes sufficient reason for recusal.

87. Where the presiding officer has communication with either party in the absence of the other party in relation to issues directly affecting that other party, this also constitutes a good ground for recusal.

88. Whereas in the present case, the presiding officer has heard inadmissible evidence and is unable to disabuse his mind of the effect of what was heard, he or she ought to recuse himself or herself.

89. In contrast to the televised conduct of Honourable Dyantyi and Mileham, the propriety of a party's legal representative's motives in bringing a recusal application or other objections, should not be lightly questioned. The gratuitous suggestion of misconduct on the part of such representatives is a ground for recusal by its maker. Judge Kotze in **State v Bam**[3] put it like this:

[3] 1972 (4) SA 41 (E) at 43H-44A

"***It should always be borne in mind that an accused or his representative, who finds it necessary to apply for the recusal of a judicial officer is confronted with an unenviable task and the propriety of his motives should not be lightly questioned. The proceedings in the magistrates court are set aside***."

90. Another crucial dilemma is usually whether to bring the application as soon as possible or to wait until an adverse outcome before raising the issue of recusal. The better view was articulated by the Constitutional Court as follows:-

"***It is not in the interests of justice to permit a litigant, where that litigant has knowledge of all the facts upon which recusal is sought, to wait until an adverse judgment before raising the issue of recusal. Litigation must be brought to finality as speedily as possible. It is undesirable to cause parties to litigation to live with the uncertainty that, after the outcome of the case is known, there is a possibility that litigation may be commenced afresh, because a late application for recusal which should have been brought earlier. To do otherwise would undermine the administration of justice***."[4]

91. Finally, it is important to note that the High Court will intervene in unfinished proceedings if grave justice would otherwise result or where justice may not be obtained by other alternative means.

[4] Per Ngcobo CJ in the Bernert case (supra), at paragraph [75]

E: CONCLUSION AND RELIEF SOUGHT

92. Applying these and other related well-established principles which will be expanded upon during the oral presentation of the application, it seems self-evident that the present circumstances present multiple grounds and bases for the recusal application to be granted upon any one or more or all of the grounds which cannot be refuted on the common cause facts. Whether or not actual bias exists is immaterial. What cannot be denied is that there is sufficient objective upon which a reasonable person in the position of the Public Protector may perceive, apprehend and/or suspect bias on the part of the identified persons.

93. The application must accordingly be granted. In the present circumstances of multiple and material grounds going to the root of the fairness of the proceedings, it would be both untenable and undesirable to simply brush off these grave concerns and happened. That would mount to a serious violation of the rights conferred by the Directives, the Rules of the National Assembly, the applicable legislation and more importantly the rights and values enshrined in the South African Constitution.

94. In the circumstances, the relief sought must be granted.

COMPILED BY THE LEGAL TEAM

AS MANDATED BY THE PUBLIC PROTECTOR

20 SEPTEMBER 2022

"RA1"

DIRECTIVE

DIRECTIONS, ISSUED BY THE CHAIRPERSON IN TERMS OF ASSEMBLY RULE 183, GOVERNING THE APPEARANCE OF PERSONS IN THE ORAL HEARINGS OF THE S194 ENQUIRY INTO THE REMOVAL OF THE PUBLIC PROTECTOR, ADV B MKHWEBANE

1. **Definitions**

1.1. '**Assembly Rules**' means the Rules of the National Assembly, as amended;

1.2. '**day**' means a calendar day;

1.3. **'Directive'** means this directive governing the appearance of persons appearing before the Committee for purposes of the oral hearings as contemplated in Assembly Rule 183 as set out herein and as amended or amplified from time to time;

1.4. '**Terms of Reference**' means the terms of reference adopted by the Committee on 22 February 2022, as may be amended from time to time;

1.5. '**Motion**' means the motion of Mrs NWA Mazzone, MP, dated 21 February 2020, to initiate an enquiry in terms of section 194(1) of the Constitution for the removal of Adv Busisiwe Mkhwebane from the Office of Public Protector South Africa on grounds of misconduct and/or incompetence;

1.6. **'Powers Act'** means the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004; and

1.7. **'Summons'** means a summons issued by the Secretary to Parliament in accordance with section 56 of the Constitution and the procedure set out in section 14 of the Powers Act.

2. Any reference to the Public Protector below, should be read to include any representative, legal or otherwise, that may appear on her behalf, unless the context clearly indicates otherwise.

2.1. The Enquiry shall proceed in accordance with its programme which may be amended from time to time.

2.2. In the light of the duty to discharge all constitutional obligations diligently and without delay, the Committee shall exercise all reasonable effort to adhere to its published schedule for oral hearings.

3. **Evidence**

3.1. All matters of evidence shall be considered in the context of the Committee's function in terms of Assembly Rule 129AD which requires the Committee to establish whether or not Adv Busisiwe Mkhwebane is incompetent and/or has misconducted herself as alleged in the Motion, for purposes of presenting its findings and recommendations to the Assembly.

3.2. Only evidence relevant to determining the veracity of the grounds of incompetence and/or misconduct set out in the Motion should be put before the Committee, and any evidence, not so relevant, that may be placed before the Committee, will be disregarded.

3.3. The Evidence Leaders will present the oral, documentary and other evidence before the Committee in accordance with the Rules of the Assembly, the Terms of Reference, this Directive and any other directives that may be issued by the Chairperson.

3.4. The Public Protector may present evidence of witnesses before the Committee in accordance with the Terms of Reference, this Directive and any other directives that may be so issued. The Evidence Leaders and members may put questions to any witness called by the Public Protector.

3.5. At all material times during the proceedings the Chairperson may impose reasonable restrictions on the presentation of oral evidence.

3.6. With reference to the collection of documentary evidence and affidavits filed:

3.6.1. All affidavits received must be formatted in sequentially numbered paragraphs and must include an index and subject-matter headings if the affidavit is more than twenty pages long.

3.6.2. The Evidence Leaders and the Public Protector, respectively, shall file with the Secretary of the Committee all affidavits which they intend for the Committee to consider at least 7 days prior to the day on which any deponent to such affidavit is to give evidence. The Secretary shall provide electronic copies to all Members of the Committee, the Evidence Leaders, and the Public Protector either by way of email, or by uploading it to an electronic database, to which the Public Protector's legal representatives will be provided access.

3.6.3. The exception to clause 3.6.2 above relates to witnesses subpoenaed to appear before the Committee as provided for in the Powers Act, who may not have rendered any sworn statement. In relation to such witnesses, the Evidence Leaders shall present the evidence from such witness through questions to the witness, whereafter, and should such be required by the Public Protector, the latter may request that cross-examination, if any, be postponed for a period not exceeding 5 days.

3.6.4. Affidavits and/or evidence presented by the Evidence Leaders which form part of court records may be regarded as being sufficient for its purposes as presented, without oral evidence being led in relation thereto.

3.6.5. The Evidence Leaders may agree with the Public Protector that certain evidence is not in dispute, in which case the Evidence Leaders shall present the evidence to the Committee and, where applicable, the Chairperson may dispense with calling any witness to offer oral testimony in respect of the undisputed evidence.

3.6.6. Any challenge to evidence presented to the Committee may be addressed by the Public Protector any time before or during its presentation and/or in closing arguments and must be taken into account in the deliberations of the Committee.

4. Opening statements

At the start of the Enquiry the Evidence Leaders followed by the Public Protector, should she elect to do so, may address the Committee orally to give an outline of how the matter will be approached and/or conducted. The Public Protector shall be entitled to present a different and separate opening address before calling her first witness, if any.

5. Witnesses

5.1. Witnesses called to give oral evidence must provide that evidence on the dates and within the timeframes specified in the Committee's schedule and any summons issued, if applicable.

5.2. The Evidence Leaders shall determine the sequence in which the Committee's witnesses are called to give evidence, whereafter the Public Protector may present evidence.

5.3. The Public Protector may, as a measure of last resort and subject to clause 5.4 below, request the Chairperson to summon any person to appear before the Committee to give evidence or to produce documents.

5.4. A request in terms of clause 5.3 above must:

5.4.1. be made in writing;

5.4.2. be preceded by –

5.4.2.1. a written request to the person sought to be summoned, on reasonable notice, requesting that person to provide the specified evidence and/or documentation; and

5.4.2.2. a refusal of that person to cooperate with the request;

5.4.3. indicate what steps have been taken to secure the voluntary participation of the witness;

5.4.4. indicate the subject matter on which the witness is to be questioned and/or the documentation the witness has been requested to provide;

5.4.5. provide reasons as to why the testimony or evidence is required for the proper performance of the Committee's functions; and

5.4.6. if a request is made for documentary evidence, such evidence must be sufficiently described.

5.5. A request made in terms of clause 5.3 must be submitted to the Committee Chairperson by no later than three days after the need for the evidence in question arose and must thereafter be considered and decided upon by the Committee in terms of the Powers Act.

5.6. In the event that the Committee seeks to call any further witness, arising from evidence presented before the Committee, but whose name did not appear on the list provided to the Public Protector, then the latter shall if required, be afforded 5 days, to deal with any evidence to be presented by such person.

5.7. In the event that the Committee resolves that any further witnesses should be presented and such arises from evidence presented by the Public Protector, the latter would be afforded a further opportunity to respond to any such evidence, by filing further affidavits and/or presenting further oral evidence, within reasonable time periods and on such terms and conditions as determined by the Chairperson.

5.8. As confirmed in paragraph [45] of the *Speaker of the National Assembly v Public Protector and Others; Democratic Alliance v Public Protector and Others* [2022] ZACC 1, a legal representative cannot give evidence on behalf of Adv Mkhwebane.

5.9. A Member of the Committee, either directly, or through the Evidence Leaders, may ask Adv Mkhwebane directly to respond to certain questions posed orally, or in writing, including factual disputes that may arise, even if she is not at that time giving evidence. Adv Mkhwebane must respond to such questions immediately, unless she requests a reasonable period of time within which to submit a response, in which case the Chairperson shall determine that reasonable time frame, and must have due regard to any request made by Adv Mkhwebane in this regard and the Chairperson's duty to ensure that the Committee is able to properly fulfil its mandate and carry out its oversight function. All such answers must be made under oath or affirmation as provided for in the Powers Act.

5.10. Such responses shall be subject to any privileges recognised by South African law, and further subject to section 16(2) of the Powers Act, and any other applicable law.

5.11. The Chairperson may direct any witness, to respond in writing to allegations arising from a witness statement and/or the oral evidence of any witness or any other evidence before the Committee, and to answer in writing specific question put to them by the Chairperson arising from the statement or evidence in question on such time frames as determined by the Chair with due regard to the Committee's mandate and functions. All such answers must be provided to the Secretary of the Committee and shall be under oath or affirmation as provided for in the Powers Act.

6. The questioning of witnesses

6.1 All questions put to witnesses must be relevant to the assessment of the Motion. Disputes regarding relevance shall be determined in accordance with clause 8 below.

6.2 All questions put to any witness, (whether by the Evidence Leaders, or any member, or the Public Protector) shall have due regard for that witness' right to human dignity. No witness shall be subjected to questions and/or statements that bully, intimidate, harass, gratuitously embarrass and/or deliberately insult the witness.

6.3 No person (whether the Evidence Leaders, Member, or the Public Protector), while questioning a witness, shall impugn the character of that witness unless –

a) he or she has reasonable grounds for doing so;

b) the character of the witness is relevant to the evidence, issues and motion; and

c) evidence supporting the claim against the character of the witness (if reliance will be placed on any such evidence) has been filed with the Secretary of the Committee at least 3 days prior to when the witness has been scheduled to give evidence.

d) The Chairperson may order any person, whether a member or otherwise, to stop speaking if he or she, despite a warning from the Chairperson, persists in questions and/or statements that contravene clause 6.1, 6.2 and 6.3.

6.4 The Chairperson may impose time limits on the questioning of a witness that he considers reasonable in the circumstances, including limiting or putting a stop to irrelevant or repetitive questioning.

6.5 The Chairperson may require the Public Protector to indicate **within a period of five days of such request** which paragraphs of an affidavit deposed to by any witness is agreed to for purposes of limiting the oral evidence required and the Evidence Leaders and Public Protector's legal advisers may agree to a mechanism for the use of common cause evidence.

6.6 In the event that the Evidence Leaders, the Public Protector or any member intend to rely on any document in the questioning of a witness, which document is not already in the Committee's record of documentary evidence, the Secretary of the Committee shall be provided with such document, at least 3 days prior to the day on which such witness is to appear and such shall be uploaded to the electronic database. The Secretary shall per email inform the Committee, the Evidence Leaders and the Public Protector thereof.

6.7 The Evidence Leaders may in presenting evidence, ask any questions, including leading questions, of any witness.

6.8 After the Evidence Leaders have presented the evidence of a witness, the Public Protector may cross-examine that witness.

6.9 Thereafter Members of the Committee shall, subject to the directives below, indicate to the Chairperson whether they wish to pose any question to the witness.

6.10 The Chairperson shall determine the order and manner in which members shall put their questions to the witness and the duration of time permitted for such questions.

6.11 Members may not repeat questions already asked, whether by other members, the Evidence Leaders or the Public Protector.

6.12 Members shall not, for purposes of the hearing, make speeches, or present argument to the Committee, but shall limit their questions to establishing

facts in respect of the grounds of incompetence and/or misconduct set out in the Motion. Such arguments and speeches may form part of and may be reserved for the later deliberations of the Committee.

6.13 A member shall address the witness in question for no more than **five minutes** in total; provided that the Chairperson may, on good cause shown, grant a member an extension of up to **three additional minutes**.

6.14 Notwithstanding clause 6.13, a member posing questions shall only be afforded one opportunity to address questions to a witness, irrespective of whether that opportunity utilises the member's full-time allocation; provided that the Chairperson may, on good cause shown, grant a member one additional opportunity to address a follow-up question or a question of clarity to a witness.

6.15 If a dispute arises, the Chairperson's determination of whether a particular member has exhausted his or her permitted time, or complied with this Procedure, shall be final.

6.16 After members have posed questions the Evidence Leaders may ask any questions arising or seek clarity from the witness in relation to questions posed to such witness, whereafter the Chairperson shall excuse the witness from the Hearings.

6.17 In relation to any witnesses called by the Public Protector, the Evidence Leaders may put any questions, relevant to the grounds in the Motion, to such witness, subject to any reasonable restrictions, including time restrictions, the Chairperson may impose.

6.18 Notwithstanding a witness having been excused by the Chairperson, the Committee may recall a witness if it is necessary to obtain further evidence, or clarification, from that witness.

7. **Documents**

7.1. The record of proceedings that served before the Independent Panel is before the Committee.

7.2. The Committee may consider affidavits and evidence that have been filed in other proceedings and/or before other bodies, provided that the Evidence Leaders and/or the Public Protector shall be permitted to put forward evidence and/or submissions contextualising the affidavits or evidence in question and such is relevant to the Motion before the Committee.

7.3. Documentary evidence shall be put before the Committee in accordance with clause 3.6 above. All evidence before the Committee is to be provided to the Secretary of the Committee.

7.4. The Secretary of the Committee shall ensure that a paginated record of all such documentary evidence is kept, and shall maintain an accompanying index, which must be updated from time to time. Members and the Public Protector must be provided with access thereto.

8. **Relevance**

8.1. Only questions, evidence and submissions relevant to the issues of incompetence and/or misconduct as alleged in the Motion shall be asked, led or made during the oral hearings of the Committee.

8.2. In the event there is any objection as to relevance of evidence the Chairperson shall make an immediate determination as to the admissibility thereof. The Chairperson may make a provisional determination that the question and/or evidence and/or submission is relevant and, once the Committee has heard the evidence in full and closing arguments, if any, the Committee in its deliberation may make a final determination regarding such evidence and/or submission and indicate whether in its report whether

such was taken into account in the making of its recommendation to the Assembly.

9. **Closing statements**

9.1. Once all of the evidence has been led, the Public Protector will be afforded an opportunity to address the Committee orally in closing argument.

9.2. Any address or submissions in terms of this clause shall be subject to the relevance requirement set out in clause 8 above and any dispute regarding relevance shall be dealt with in terms of that clause.

10. **General**

10.1. As required, further and/or amended directives may be issued regarding the oral hearings before the Committee.

10.2. Any person wishing to make an application to the Committee which is not otherwise provided for in this Procedure, or in the Assembly Rules, must do so in writing to the Chairperson.

10.3. The Chairperson may condone any non-compliance with this Directive, or extend any time provided for therein, on good cause shown or if he is satisfied that it would be in the interests of fairness to do so.

ISSUED BY THE CHAIRPERSON : COMMITTEE FOR SECTION 194 ENQUIRY
DATE: 14 JULY 2022

Mr QR Dyantyi, MP

ADDENDUM 1 TO THE AMENDED DIRECTIVES

Issued on 26 August 2022

DIRECTIONS ON THE RECALLING OF WITNESSES AND AMENDENT TO DIRECTIVE 5.9 AS ISSUED BY THE CHAIRPERSON IN TERMS OF ASSEMBLY RULE 183, GOVERNING THE APPEARANCE OF PERSONS IN THE ORAL HEARINGS OF THE S194 ENQUIRY INTO THE REMOVAL OF THE PUBLIC PROTECTOR, ADV B MKHWEBANE

1. The Amended directives as issued on 28 July 2022 are hereby amended by:

1.1. the inclusion of a new Directive 6A on the recalling of witnesses who have already appeared before the Commitee as follows:

"6(A) Recalling of witnesses

6.1(A) The Evidence Leaders or the Public Protector may, subject to Directive 6.2(A) below, request that any witness who has testified be recalled by the Chairperson to provide further evidence.

6.2(A) A witness may only be recalled upon a written request by the Evidence Leaders or the Public Protector which sets out the:

I. Reasons the witness is to be recalled;

II. Reasons why Directive 5.11 of the Amended Directives which provides for written questions cannot be utilised instead; [1]

III. The area or subject-matter in respect of which the witness will be asked questions;

[1] Directive 5.11 reads as follows: 5.11. *The Chairperson may direct any witness, to respond in writing to allegations arising from a witness statement and/or the oral evidence of any witness or any other evidence before the Committee, and to answer in writing specific question put to them by the Chairperson arising from the statement or evidence in question on such time frames as determined by the Chair with due regard to the Committee's mandate and functions. All such answers must be provided to the Secretary of the Committee and shall be under oath or affirmation as provided for in the Powers Act.*

IV. The relevance of the questions in relation to the issues in the Motion before the Committee; and

V. The approximate time that the witness will be required to attend the Hearings.

6.3 (A) A witness may only be recalled where the evidence sought from the witness is relevant and necessary for purposes of establishing whether or not the Public Protector has misconducted herself or is incompetent as alleged in the Motion.

6.4 (A) In determining whether to approve a request to recall a witness the Chair shall have due regard to the information provided in terms of paragraph 1.2 above; the time already allocated to the Evidence Leader or the Public Protector to put questions to the witness, as well as reasonableness, fairness and the requirement that the s194 Enquiry be conducted within a reasonable time frame.

1.2 By the deletion of directive 5.9 in its entirety and the replacement thereof with the following:

"5.9 A Member of the Committee may, via the Chair, ask Adv Mkhwebane directly to respond to certain questions posed orally [even if] when she is not at that time giving evidence. Adv Mkhwebane must respond to such questions immediately provided that the question is one in respect of which she can be reasonably assumed to have immediate and direct knowledge. In the event of a dispute as to the nature of the question, the Chair will make a ruling on whether the question may be asked or not with due regard to the Committee's powers and functions. All other questions from the Members and the Evidence Leaders <u>acting in terms of paragraph 5 of the Terms of Reference</u> must be held over to when Adv Mkhwebane provides <u>oral</u> evidence to the Committee <u>in which case all questions must, unless sufficient cause can be shown, be answered fully and satisfactorily during her testimony as required by the Powers Act</u>.

2. Save for the amendments reflected herein, the Directives as amended on 28 July 2022 remain in full force and effect.

ADDENDUM 1 TO THE DIRECTIVES ISSUED BY THE CHAIRPERSON: COMMITTEE FOR SECTION 194 ENQUIRY

DATE: [insert] SEPTEMBER 2022

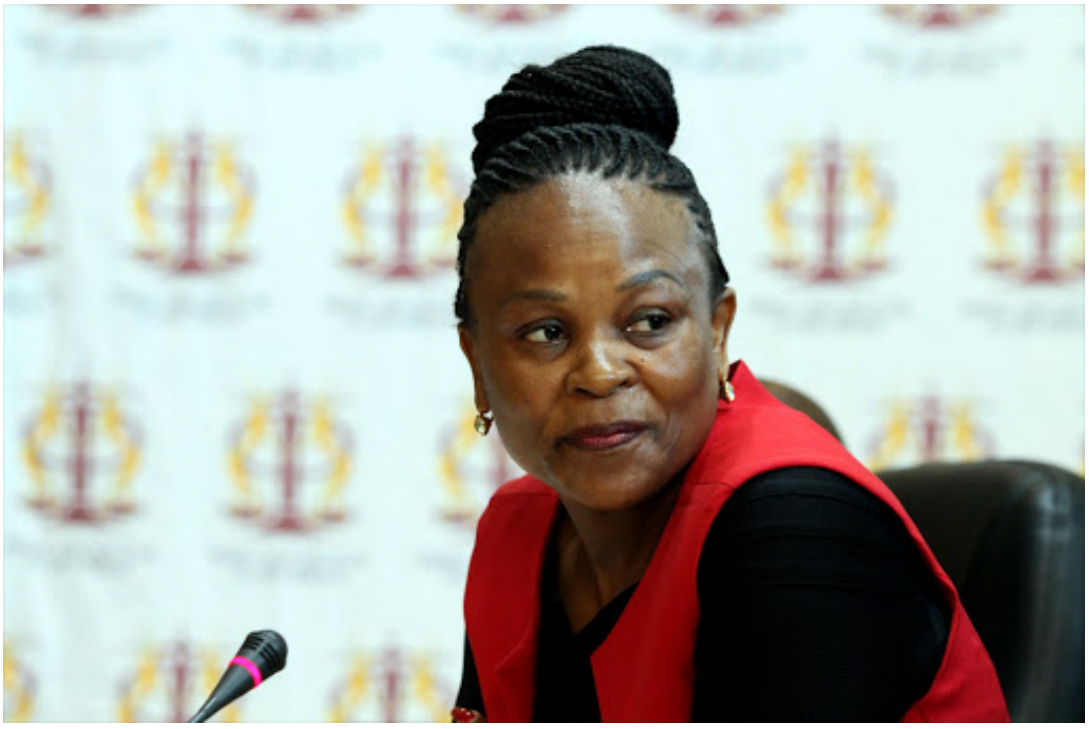
_____

Mr QR Dyantyi, MP

"RA3"

SOUTH AFRICA

'We can’t please everyone,' Mkhwebane tells MPs at fiery meeting



Public protector Busisiwe Mkhwebane says her decisions can’t please everyone. Image: SANDILE NDLOVU

Public Protector Busisiwe Mkhwebane has told parliament that no matter what her office did, someone would be unhappy.

She said every person in the republic had their own ideas as to how the public protector's work should be done.

“If we take decisions they do not like, we are incompetent, biased, involved in political factionalism and not fit for office. It is almost as though everyone is a public protector in their own right.

"We can’t please everyone. We can only do our best,” she said.

was there to table the annual performance plan and her office's budget plans.

During her appearance she also complained about ministers who attacked her office and her person by accusing her of venturing into politics.

She said the reality was that some of her office's decisions would not go down well with some of the affected parties, but such parties have recourse in that they can approach a court of law to have the decisions reviewed - and many had done that.

“But we find that this process is severely misunderstood.

“There are certain quarters in society who seem to believe that to have a report taken on review is an indication of ineptitude on the part of the author of the report concerned. It gets worse if that report is eventually reviewed and set aside by the courts,” she said.

She repeated an argument she's previously made that court decisions are appealed successfully all the time.

“Strangely, when this happens, we never hear the high courts being accused of a lot of things we have been criticised for.

“We have taken it upon ourselves to continuously explain to detractors, hoping that one day we will all see things from the same perspective,” she said.

The meeting got heated as MPs discussed her contribution, with the ANC's Richard Dyantyi criticising her for raising “irrelevant” issues.

“This which you have just presented is a presentation of a public protector who is very angry and aggrieved.... Basically, who is raising issues that don't necessarily live in this committee; they should not be here,” he said while suggesting that Mkhwebane could have addressed her grievances in a press statement, not in parliament.

“I was disappointed that more than seven slides [as part of her presentation] ... where you were really offloading the kind of disappointment that you have, and I thought that was irrelevant to be honest,” he added.

Dyantyi also attacked the office for what he called “budgeting for incompetence”.

He said an increase in legal fees had to do with the quality of the reports, which are taken on review and set aside.

“Here we have to budget for incompetence. I will use that word. You've said you are being called incompetent and on the basis of facts and evidence before us, I think I can venture into that,” he said.

But EFF MP Mbuyiseni Ndlozi begged to differ.

He praised Mkhwebane for “admirable” service to the country and “very competent” work of her office. Ndlozi literally applauded at the end of Mkhwebane's address.

He objected to other MPs who questioned Mkhwebane about her reports, some of her recommendations and the processes she followed, saying this was abuse of power.

“It's wrong for MPs, who were colleagues of ministers [Pravin Gordhan and Gwede Mantashe] to come here and want to subject the reports of the public protector to a review. That's what they are doing,” he warned.

“Now she must come here and explain her reports; details of her reports, many of which are in front of the courts...”

to court for a judicial review, ask MPs to question Mkhwebane about her reports.

"It is wrong and an abuse of power to come here and subject this office to have to explain itself in relation to reports it releases about your colleagues in parliament," he added.

Mkhwebane explained that she raised the issues because the MPs were

Ukrainian refugees with pets

1 Hour Ago

Israeli presidents attend commemoration ceremony

2 Hours Ago

"RA4"

ROUSMED

Turning our work into worship gives it worth.

Dr PG Rous & Dr Christelle

Practice number: 1462687

Treating provider
Dr Peter Graham Rous
General Practitioner (GP) HPCSA No: 0155772MP
Disp. No: 1462687
MBCHB (CAPE TOWN), ECFMG, MA., THM (USA)

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Contact details
Office no:**0123221199**
Cellphone:**0828227444**
Email:**pete@rouspractice.co.za**

13-09-2022

Medical Certificate

This is to certify that **BUSISIWE Mkhwebane** was seen by **Dr Peter Graham Rous** on **13-09-2022**.

She has been unfit for work from **13-09-2022** up to and including **16-09-2022**.

Dr Peter G. Rous
M.B., Ch.B., M.A., Th.M., E.C.F.M.G.
P.O. Box 11444, The Tramshed, 0126
1020 Louis Pasteur Medical Centre
374 Francis Baard Street, Pretoria 0002
Tel: 012 322 1199 / 8
M.P. 0155772 PR: 1462687
Email: info@rouspractice.co.za

Dr Peter Graham Rous

"RA5"

From: Thembinkosi Ngoma <tngoma@parliament.gov.za>
Sent: Tuesday, 13 September 2022 16:16
To: Nafeesa Patel; Priscilla Sekatana
Cc: Theophilus Seanego; Hangwi Matlhape; shabalala@counsel.co.za; smilton@duma.nokwe.co.za; dali mpofu; Tshepo Cheryl-Lee Morie
Subject: Postponement of Meeting of Wednesday, 14 September 2022

Dear Nafeesa

Please note that the meeting that was scheduled for Wednesday, 14 September 2022 has been postponed to Monday, 19 September 2022.

The Committee will meet on Monday, 19 September 2022 and Wednesday, 21 September 2022 to conduct the remaining hearings.

On behalf of the Committee, allow me to wish Adv. Mkhwebane a speedy recovery.

Hereunder is the link to today's proceedings for her attention. Please note that the link has an Access Code.

13 September
https://parliament-gov-za.zoom.us/rec/share/_jpDclu4LmTsKf1t4iEQ2fxrK5FdcfVE4LS3F7hWKW7Kq7I5L5N62gQ6sh59qYyZ.DVm6pzquYkBhYTRP
Passcode: ktB1^LCv
A revised programme will be shared soon.

Regards

"RA6"

Kevin Mileham MP @kmileh... · 22h

Replying to @Mjudana

So it's okay for all political parties (representing the people of SA) to agree on rules of conduct in parliament, and then for Adv. Mpofu to come in and tramp on those rules? Just like the court room, there is expected behavior, and again, he ignores that at his peril.

2 1

Kevin Mileham MP @kmileh... · 21h

Replying to @Mjudana

If someone comes to my house shouting and screaming, I kick them out. My house, my rules.

1

Kevin Mileham MP @kmileham · 1d

Replying to @kzasoze @nickhedley and others

I haven't made up my mind on Adv. Mkhwebane's fitness to hold office yet. Adv. Mpofu is rude, disrespectful and unwilling to accept the rules of Parliament. I will continue to stand up fo the rights of witnesses and our right as MPs to ask whatever we like.

37 4 10

Kevin Mileham MP @kmileham · 1h

Replying to @mdubadoo88 @kzasoze and 6 others

1. This isn't a court of law. The rules for cross examination are court rules, not Parliamentary rules. There's a BIG difference.
2. The rules of Parliament apply to everyone equally - including Adv. Mpofu.
3. If you breach those rules, expect to be "disrupted".

Kevin Mileham MP @kmileh... · 23h

Replying to @Mjudana

When he is dignified, competent and respectful, he will be treated as such. A many others are every single day. Sadly, the advocate fails badly in this regard.

1

Kevin Mileham MP @kmileh... · 15h

Replying to @mdubadoo88 @kzasoze and 6 others

Really? All I have done is ask questions that really need to be answered. If Adv. Mpofu can't handle those, he shouldn't be a lawyer.

As for expecting him to "bow down" to me: No. Just no.

I do, however, expect him to follow the rules of Parliament & the decorum of the house.

4

10:45 84%

Tweet

Kevin Mileham MP
@kmileham

Replying to @Mjudana

Show me one instance where I have acted outside the rules or disrespected Adv. Mpofu.
I have called him by his title. I have asked respectful questions. I have observed the rulings of the chair.
Unlike Adv. Mpofu, who saw fit to tell me to shut up and called me by my surname.

12:01 · 06 Sep 22 · Twitter for Android

1 Quote Tweet

Kevin Mileham MP @kmileh... · 22h
Replying to @kmileham and @Mjudana
None of which indicates I cannot consider the evidence before me with an open mind. I have not yet reached any conclusion and will wait to see what argument and evidence is still to be

Tweet your reply

Kevin Mileham MP @kmileham · 1h

Replying to @mdubadoo88 @kzasoze and 6 others

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Replying to @mdubadoo88 @kzasoze and 6 others

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4

Mjudana_Kokwa @Mjudana · 21h

If you only see Mpofu as the culpr
it does seem what's televised isn't
what's truly happening in your domain.

Kevin Mileham MP @kmileh... · 22h

Replying to @Mjudana

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I have called him by his title. I have aske respectful questions. I have observed the rulings of the chair.

Unlike Adv. Mpofu, who saw fit to tell me to shut up and called me by my surname.

1 1

Kevin Mileham MP @kmileham · 1d

Replying to @kzasoze @nickhedley and 3 others

1. You just called me white boy again. That's playing the race card.

2. She never claimed to be an advocate. Someone changed her profile on Wikipedia. Not Natasha and not me. That's fake news. And racist. And it makes you pathetic.

Mjudana_Kokwa @Mjudana · 21h

If you only see Mpofu as the culprit then it does seem what's televised isn't what's truly happening in your domain, it's unfortunate that you see no wrong from first sitting till now and proving that indeed many factors come to play when defining wrong, disrespect and rude.

> **Kevin Mileham MP** @kmil... · 21h
> Replying to @Mjudana
>
> Again, show me where this happened. The only time it occurs is when Adv. Mpofu does it.

1

Kevin Mileham MP @kmileh... · 21h

No examples then? Okay....

Kevin Mileham MP @kmileh... · 22h

So it's okay for all political parties (representing the people of SA) to agree on rules of conduct in parliament, and then for Adv. Mpofu to come in and tramp on those rules? Just like the court room, there is expected behavior, and again, he ignores that at his peril.

2 1

Kevin Mileham MP @kmileh... · 22h

Replying to @kmileham and @Mjudana

None of which indicates I cannot consider the evidence before me with an open mind. I have not yet reached any conclusion and will wait to see what argument and evidence is still to be presented before deciding how I will proceed (as part of the committee).

1

Mjudana_Kokwa @Mjudana · 22h

Mhlekazi if this was about process you'd address in a befitting matter, you wouldn't have posted that tweet, infact what it suggests is due to Mpofu you'd happily penalise Mkhwebane and that's politicking the process, and of coz don't need validation but it seems eager to

Mjudana_Kokwa @Mjudana · 23h

The issue isn't Mpofu's conduct the issue is you looking for conformance an you please check your own conducts an behaviours, all of you, no all of us want validation, what's frustrating you is you can't rein him in as a small boy y'all seem eager to.

> **Kevin Mileham MP** @kmi... · 23h
> Replying to @Mjudana
>
> When he is dignified, competent and respectful, he will be treated as such. As many others are every single day. Sadly, the advocate fails badly in this regard.

1

Kevin Mileham MP @kmileh... · 23h

Hmm. No. I don't need any validation. I do expect that Adv. Mpofu treat parliament, its rules & members with respect. That he obeys the rulings of the chair & doesn't talk over other people or scream abuse when he doesn't get his way & that witnesses are given respect & dignity.