PUBLIC PROTECTOR
SOUTH AFRICA

Accountability • Integrity • Responsiveness

MOSIRELETSI WA SETŠHABA • **MOŠIRELETŠI WA SETŠHABA**
MUSIRHELELI WA VANHU • MUTSIRELEDZI WA TSHITSHAVHA
OPENBARE BESKERMER • **UMKHUSELI WOLUNTU** • UMVIKELI WOMPHAKATHI
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Chairperson- Dr Mathole Motshekga
Portfolio Committee on Justice and Correctional Services
PARLIAMENT OF REPUBLIC OF SOUTH AFRICA.
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Dear Dr Motshekga

RE: REQUEST TO EXPEDITE PROCEDURES TO REMOVE THE PUBLIC PROTECTOR

1. I refer to the letter from Honorable John Steenhuisen MP(Mr Steenhuisen) dated 16 February 2018 and a letter from the Chairperson of the Portfolio Committee on Justice and Correctional Services ("Committee") dated 21 June 2018.

Introduction

2. The Call for Nominations/Applications for the position of the Public Protector was advertised on 2nd June 2016 and in terms of section 1A of the Public Protector 23 of 1994, the person recommended for appointment as Public Protector must be a South African citizen, who is a fit and proper person to hold such office. While legislation does not describe or define what a *fit and proper* person is, there have been useful albeit limited discussions of the definition in case law. In *General Council of the Bar of South Africa v Jiba and others 2017 (2) SA 122 (GP)*, Judge Legodi described a fit and proper person as someone possessing integrity, objectivity, dignity, capacity for hard work, respect for legal order and a sense of equality or fairness.There is no doubt that my appointment involved a character screening exercise, which meant that, my honesty, integrity, reliability was screened or interrogated to determine whether I was a "fit and proper individual" to occupy the office of the Public Protector.

3. The recruitment process of the Public Protector was open to the public, with 78 nominations and only 64 candidates had accepted their nomination. Out of 64 candidates, 14 were short-listed candidates for interview, including myself.

4. The parliamentary team working on the process came up with other non-formal qualifications that would be expected of the Public Protector. These qualities were drawn from the Judicial Service Commission (JSC) process, surveys, and case law. The qualities included whether the candidate was a person of integrity; displayed the necessary professional motivation; possessed technical experience with regard to the values and needs of the society; and whether the candidate was a technically competent person with the capacity to give expression to the values of the Constitution.

5. The Ad Hoc Committee recommended me as the preferred candidate to the National Assembly when it tabled its report. All Committee Members, apart from the DA, reached consensus on my appointment. Members spoke very positively of the recommended candidate noting that I gave an excellent interview, had a sound temperament and outstanding CV in terms of qualifications and experience.

6. Despite the above-mentioned rigorous recruitment process, the DA called a press conference held in Parliament ahead of the debate on the Public Protector nomination scheduled for Wednesday, 07 September 2016. In that press conference, the attached statement (marked "**PPSA1**") was delivered by the DA Shadow Minister of Justice, Adv Glynnis Breytenbach MP, who was joined by DA Shadow Minister of Justice and Correctional Services, Werner Horn MP, and DA National Spokesperson and Member of the Ad Hoc

committee established to appoint the new Public Protector, Phumzile Van Damme MP. In that media statement, the DA indicated that it has decided not to support my nomination as the Public Protector, and the DA based its decision on its allegation that I am a spy. I have taken the DA to court to retract this allegation and the matter is pending in court

7. It is true that the Constitution also requires the Public Protector to execute her functions without fear, favour or prejudice and in terms of section 194(1) of the Constitution, I can only be removed on-

7.1 the ground of misconduct, incapacity or incompetence;

7.2 a finding to that effect by a committee of the National Assembly; and

7.3 the adoption by the National Assembly, with a supporting vote of at least two thirds of the members of the National Assembly, of a resolution calling for that person's removal from office.

8. As a result of the above, the question about my fitness to hold office of the Public Protector has already been taken by this parliament with more than 60% support from the Members of the National Assembly before appointment by the President.

9. Despite the fact that of fitness to hold office is not a ground for removal of the Public Protector, as alleged in the letter of Mr Steenhuisen, this Committee must go beyond proving displeasure with my performance. The ground relied upon in the letter of Mr Steenhuisen, is incompetence. "Incompetence" means that the employee is incapable of performing the job, or, that the employee is possibly capable of doing so, but consistently failing to meet a reasonable standard of performance. This Committee's displeasure at my performance is not enough to warrant removal. My performance must be gauged against the following objective standard, which Mr Steenhuisen must establish:-

9.1 the level of the job performance required;
9.2 that the standard was communicated to me;
9.3 that suitable instruction and/or supervision was given to enable me to meet the standard;
9.4 I am unwilling to or incapable of meeting the standard; and
9.5 I was warned that failure to meet the standard would result in my removal.

10. As indicated above, DA's dissatisfaction about my appointment to the position of the Public Protector, which is being improperly and deceivably linked with my performance is not enough to warrant my removal for the office. For this Committee to start the removal process, there must be some serious misconduct or substantial incompetence and the onus of proving just cause rests with Mr Steenhuisen, who has dismally failed to discharge that onus or any of the objective standards listed above.

11. While the standard of incompetence to warrant removal from the office for cause is severe, the threshold of incompetence necessary to warrant removal for cause is significantly lower where such removal is preceded by many warnings, indicating unsatisfactory performance.

Performance and Competence

12. My performance speaks for itself. In the year 2016/17 and 2017/18, I had a total workload of 25 288 complaints. Out of these, we finalised 21 176. I must indicate that the statistics for 2017/18 are still undergoing an audit process and so, the picture might change slightly.

13. In the 20 months since I took office, I have published 50 investigation reports and that is an average of two reports a month. Out of **50 reports** published, only **12 Reports** (**6%** of the reports issued) have been taken on judicial review and none (0%) of my report has been reviewed and set aside by the court of law. Only some remedial actions, in my Report *"on allegations of maladministration corruption, misappropriation of public funds and failure by the South African Government to implement the CIEX Report and to recover public funds from ABSA Bank"*, were reviewed and set aside by the court of law. My findings in the aforesaid Report about the illegality of ***Bankorp/Absa lifeboat***[1] remained unchallenged and are legally binding, since my Report has not been set aside.

14. As the Committee may be aware, and dealt with herein below, taking any of my report on judicial review does not mean that I am incompetent or incapable of performing my function. Take note further that since judgment of the Constitutional Court in the matter between the Economic Freedom Fighters and Others against the Speaker of National Assembly and Others, that the Public Protector's remedial actions are binding until set aside by the court of law, there has been an increase on litigation against the Public Protector, therefore this does not reflect on the competence of the incumbent.

[1] Absa Bank Limited and Others v Public Protector and Others (48123/2017; 52883/2017; 46255/2017) [2018] ZAGPPHC 2; [2018] 2 All SA 1 (GP)

15. My response is informed by a number of constitutional principles including accountability to Parliament, in terms of section 55(2)[2] of the Constitution and others which relate to my independence. My response is also informed by the language, context and purpose of sections 181 and 182 of the Constitution regarding the legal status or effect of my powers to take remedial action. Further, I am guided by the principle that I am required to be independent and subject only to the Constitution and the law, to be impartial and exercise my powers and perform my functions without fear, favour or prejudice. I am further informed by the principles underlying finality of court judgments in terms of section 165 and 166 of the Constitution and my constitutional rights to due process and access to court in terms section 34. Most importantly, my response is informed by the recognition that the National Assembly and Mr. Steenhuisen have constitutional responsibilities and obligations imposed by sections 55(2) and 181(3) of the Constitution. I consider it a sacred duty to assist the Portfolio Committee on Justice and Correctional Services ("Committee") to make decisions that are **compliant with the Constitution and the rule of law**.

16. I am greatly concerned that the utterances and firm positions adopted by some members of the Committee in their earlier deliberations regarding myself, which clearly shows that a fair hearing before some of these Committee members may not be possible. Accordingly, I request that some of these members should recuse themselves from taking a decision on this matter.

Procedure adopted by the committee is constitutionally infirm.

17. I wish to point out that the conduct of Mr. Steenhuisen to force the Committee to embark on a course of conduct is unconstitutional, in that it threatens the constitutionally guaranteed independence of my office/position. In the judicial context two former Chief Justices of the Republic of South Africa have had, on occasion, to remind Parliament about respect for decisional independence of judges, and by extension adjudicators charged with constitutional responsibility such as myself.

18. It is apposite that I highlight at this stage the unfair treatment offered to the Office of the Public Protector as compared to the treatment that is offered to the judges (two offices which are given constitutional independence).

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[2] Section 55(2) provides:
"The National Assembly must provide for mechanisms—
(a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and
(b) to maintain oversight of—
(i) the exercise of national executive authority, including the implementation of legislation; and
(ii) any organ of state."

19. The Committee may recall the ensuing parliamentary controversy in 1999 when Judge John Foxcroft sentenced a convicted father to seven years for raping his 14-year-old daughter, saying: "**The harm of the rape was limited to the victim and not society.**" In his ruling, Judge Foxcroft referred to a previous case involving a judgment by Judge Dennis van Reenen in 1996. That a 1995 case in which both Judges van Reenen and Foxcroft heard, on appeal, a case of a man who raped his three daughters over a period of time. A magistrate had sentenced the man to 11 years imprisonment. Judges Van Reenen and Foxcroft reduced the sentence to six years on the grounds that the culprit did not pose a serious threat to society since his crime was limited to his family thereby propagating the myth that rape or sexual assault within the family is harmless and involves no injury to society. Significantly Judge Foxcroft's ruling came after Parliament passed the 1997 Criminal Law Amendment Act which changed drastically the discretion of judges in sentencing rapists who rape underage girls. The law required judges in such cases to impose a mandatory life sentence for rapes of girls under 16 except if "substantial and compelling circumstances exist." Judge Foxcroft's ruling sparked controversy and public outcry ensued. Around the same time there were rumours that the **Parliamentary Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women** sought to hold a hearing with Judge Foxcroft. Almost immediately advocates and legal academics denounced the summoning of the judge to Parliament as unprecedented and as undermining the rule of law. They argued correctly that such a move would **severely undermine the decisional independence** of the judge involved and that the normal procedure, if anybody is dissatisfied, with the judgment, is to use the mechanism of appeal.

20. The rumours that Parliament issued summons to Foxcroft were met with swift response from former Chief Justice Ismail Mahomed and Judge Arthur Chaskalson, President of the Constitutional Court. In a joint statement the judges noted media reports that suggested that a committee of Parliament has resolved to "summon" Judge John Foxcroft of the Cape High Court to explain reasons for a sentence.[3] They said they trusted "very much" that the media reports were incorrect. Judges Mahomed and Chaskalson pointed out that South Africa's Constitution expressly separated the function of the judicial section of the state from its legislative and executive organs. Each is independent in its own sphere. A member of the judiciary cannot properly be "summoned" or even otherwise be required to explain or justify to a member of the legislature or the executive any judgment given in the course of his or her judicial duties. Similarly, a member of the legislature cannot be required by the judiciary to explain why Parliament passed a law properly falling within its powers and functions.

[3] See, Judges rail against summons by lawmakers; October 13 1999 http://www.iol.co.za/news/politics/judges-rail-against-summons-by-lawmakers-1.15976?ot=inmsa.ArticlePrintPageLayout.ot

Neither is permissible. If any person is aggrieved or dissatisfied with any judgment of the court, the proper course is to "follow the procedures prescribed by law to correct or review such a judgment," said the statement.

21. In a landmark Human Rights case of ***ROSSOUW v SACHS 1964 (1) SA 290 (C)*** (Five-member panel of Appellate Division, Ogilvie Thompson JA, Steyn CJ, Beyers JA, Botha JA, and Wessels JA), this panel of judges unanimously upheld the appeal overturning the Cape court's order, this panel of judges were found to have instead of guarding individual rights, and giving proper effect to law and legal precedent, they yielded to political expediency: they used their power to help the apartheid government's security apparatus, and they were considered to have violated the substantive, internal, component of judicial independence.

22. The five panel judges' competencies were not subjected to scrutiny or questioning of any nature and neither of these judges were removed from their office due to incompetence or wrongfulness of their decision.

23. This panel of judge's decision was also viewed as unduly executive-leaning at a time when the courts' duty was to stand firm against white fright and for individual rights, and when at their disposal lay the clear power to do otherwise.

24. There are also several South Africans who have been unlawfully convicted and sentenced to life imprisonment for crimes which they did not commit and the competence of those judges or magistrates were never questioned, but they enjoy similar constitutional independence like the Public Protector. As submitted somewhere in this letter, the court judgments reviewing the decision taken from the constitutional sourced powers cannot be used as a ground of removal for incompetence. For example:

    24.1 North West Judge President Monica Leeuw, convicted and sentenced Samuel 'Sampie' Khanye and Victor Moyo as murderers. After **14 years** in jail for a crime they didn't commit, the Constitutional Court had overturned the men's life sentences and convictions on four counts – including murder and robbery – and ordered their immediate release.

    24.2 Lucky Shange spent two decades **(20 years)** locked up for a crime (convicted of murder, robbery with aggravating circumstances and possession of an unlicensed firearm in 2000) he didn't commit until he was finally freed, when the SCA ruled that the conviction and sentences should be set aside.

24.3 Lastly, Boswell Mhlongo **13 years** in jail for crime he didn't commit, after being sentenced to life-imprisonment for the murder of a policeman. Constitutional Court overturned his sentence and conviction and ordered his immediate release.

25. In the specific case of myself, separation of powers issues are not directly at stake but equally weighty issues of decisional independence are at play. Decisional independence allows judges and adjudicators to make decisions freely, without being swayed by concern for political or career consequences, or for public backlash.

26. As Justice Chaskalson has explained in **S v. Makwanyane** 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC) at para 88:

'If public opinion were to be decisive, there would be no need for constitutional adjudication. The protection of rights could be left to Parliament, which has a mandate from the public, and is answerable to the public for the way its mandate is exercised, but this would be a return to parliamentary sovereignty, and a retreat from the new legal order established by the 1993 Constitution.'

27. The Committee is urged to revisit and carefully ponder the implication of the judgment of Constitutional Court in **Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others** [2016] ZACC 11 for my decisional independence. There, the Constitutional court confirmed that the **Oudekraal principle**[4] applies to my decisions: my decisions cannot be ignored (or trumped up by parallel processes) and unless they are set aside on review, they must be obeyed and given effect to. In this sense they are binding and not mere recommendations. The question is whether a judicial review setting aside my decision can be used as a basis to threaten me with removal for alleged incompetence. Such a move would be unconstitutional as it threatens my very decisional independence and punishes me in a way that judges who make gross erroneous judgment are not.

28. There are further procedural flaws in the Committee's intended approach, as follows. The Committee must know that there is an appeal to the SCA and application for direct access to the Constitutional Court regarding the High Court decisions impugning my findings and remedial measures. Any attempt to pre-empt the said appeal processes or to embark on a parallel process to essentially threaten or punish me for matters pending before the courts is unlawful and amounts to usurpation of judicial authority by members of the Committee and National Assembly. The Committee has not been given such dangerous power to be used

[4] **Oudekraal Estates (Pty) Ltd v. City of Cape Town & Others** 2004 (6) SA 222 (SCA)(2004) ZASCA 48 para.26.

in a manner that would impair my independence. Indeed, the Constitution envisioned my decisional independence as means of ensuring accountability not to the partisan clamor of the day, but to lasting legal principles that were to be neutrally applied to all members of the community. It is impermissible for the personal interests, partisan affiliations, or fear of public reprisal to cloud my decisional process. Accountability to Parliament does not mean submitting to a system where threat and fear of removal become intertwined to constrain me from investigating and deciding cases in an absolutely independent manner. Accounting to Parliament cannot be used as an ***in terrorem*** means to curtail my decisional independence.

Prejudgment of the matter and prejudicial comments and violation of constitution by justice and correctional services committee members

29. Section 58 (1) of the Constitution unequivocally enshrines the privilege of members of the National assembly to discuss or debate issues and to "(a) have **freedom of speech in the Assembly and in its committees, subject to its rules and orders**". The Rules of the National Assembly give effect to these privileges and are equally unambiguous. Section 66 entitled "Reflections upon judges, etc." expressly states that: "**No member shall reflect upon the competence or honour** of a judge of a superior court, **or of the holder of an office (other than a member of the Government) whose removal from such office is dependent upon a decision of this House**, except upon a substantive motion in this House alleging facts which, if true, would in the opinion of the Speaker prima facie warrant such a decision." My removal from office requires two-thirds majority vote by the National Assembly and I am included in the category of persons whose honour or competence may not be savaged willy-nilly.

30. Further, Section 67 of the Rules of the National Assembly entitled "**Matters sub judice**" unambiguously states that: "***No member shall refer to any matter on which a judicial decision is pending.***" The Committee has already violated all of the above provisions.

31. It is a matter of public record that on 06 March 2018, Committee Chairperson Dr. Mathole Motshekga (ANC) presided over a Committee Meeting in which extensive discussions took place regarding my "report into the Vrede Dairy Farm in the Free State; *the adverse findings against me in two separate court judgments in the Gauteng High Court, which set aside aspects of my remedial action in the ABSA matter and the order to Parliament to amend the Constitution to change the South African Reserve Bank mandate.*" Minutes of the Committee meeting reflect that highly pejorative and bigoted remarks were made about me and that as a "whole the Committee expressed **disappointment, frustration and even anger** at my responses and the manner in which I conducted the Vrede investigation."

Members said my report "had failed to investigate politicians and the Gupta family who are at the center of the Vrede scandal...I had dismally failed in that." In clear violation of the Constitution's provisions guaranteeing my broader powers to determine the scope and methods of investigations, the Committee members purported to berate me for "failing to consult the intended beneficiaries of the project" and opined that such failure is "at odds with my constitutional duty."

32. In a manner which belittled and clearly purported to adjudicate my position on the matters raised in the appeals to the SCA and the Constitutional Court, the Committee opined that it "*is unacceptable for me to state that personal cost orders undermine my independence. For far too long public officials have adopted an unduly combative attitude to litigation and it is time they personally bear the costs of the taxpayer.*" Further, members responded that "*as a result of my remedial action severe damage had been dealt to the independence of the SARB, my office and the economy as a whole. The full bench judgment stated that I had acted in a disingenuous manner by trying to pass off what was clearly a peremptory order to change the Constitution to amend the mandate of SARB as merely permissive.*" I have been accused by the members for having engaged in "*litigation that is clearly vexatious and frivolous as illustrated by the two High Court judgments.*" Members said it was "*unacceptable for me to publicly state that the judges in the matter had failed to apply their minds in an impartial and objective manner. It is shocking that I, myself an officer of the Court, could express such statements which border on contempt of court.*" I was "*asked by some members if I could still reasonably expect people to believe that I am a fit and proper person to occupy my office. I should consider doing the honourable thing and resign, just as the former President had done.*"

33. Against this background, it is crystal clear that the Committee had totally ignored the Constitution and the Rules of the National Assembly in a manner which has irreparable destroyed the atmosphere for a fair hearing on the matter of my removal. The Committee's unbridled attack on my independence, if not reversed, will produce several entirely predictable negative consequences on my constitutional efforts and my independence. First and foremost, as evidenced by the Democratic alliance (DA) tactics, it will lead to an increase in litigation against my office, as parties which failed to derail my nomination and appointment will seek to continue their political attacks and vendettas before the National Assembly by shoehorning their allegations into claims focused on the allegedly "pejorative" judicial criticism of my office by our judges regardless of whether the alleged judgments are later overturned on appeal.

34. This is illustrated by the unseemly rush to misuse court judgments which are subject to appeal in total disregard of the *sub judice* rule (National Assembly Rule 67). Most damning, the Committee rushed to condemn me as "engaging in frivolous litigation" as taking positions "bordering on contempt of court" has been refuted and exposed by the subsequent Supreme Court of Appeal judgment, **Minister of Home Affairs v. The Public Protector** 9308/2017)(2018) ZASCA 15 (15 March 2018) (Lewis, Majiest and Willis JJA and Plasket and Motlhe AJJA) which expressly overruled the premise of the two cases the Committee relied upon for its savage attack on me.

35. In the course of my daily work, I am frequently required to make dozens of decisions related to the investigation, reporting and remedial orders of my caseload. Once the decisions are made and reports issued, there are further prospects of the unhappy party seeking judicial review. The prospect that I will face removal for these decisions or judicial criticism each time creates the possibility that I am so threatened and would shade my decisions instead of exercising the independence of judgment required by my public trust. Clearly, the public trust my office would suffer if I was constrained in making every decision by the consequences in terms of my own potential removal based on alleged judicial criticism.

36. The reality forced upon me by the Committee is this: The Committee has already held a meeting in which there was palpable hostility towards me, in which the Committee attacked me and rehashed the same allegations as stated in Steenhuisen's letter. Is it not an exercise in futility to now require a response as a mere formality when some Committee members have made known their prejudiced viewpoints and even urged me to resign?

Substantively, there are many reasons why a removal enquiry would be constitutionally infirm and open to challenge in a court of law.

37. Without prejudice to my rights in the removal enquiry or any court litigation, I hereby furnish some of the reasons why a removal process should not be embarked upon. The Supreme Court of Appeal (SCA) in **South African Broadcasting Corporation Soc Ltd and Others v Democratic Alliance and Others** [2015] ZASCA 156; [2015] 4 All SA 719 (SCA) (SABC v DA) and the **Constitutional Court in Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others** [2016] ZACC 11, confirmed that the **Oudekraal principle**[5] applies to my decisions: my decisions cannot be ignored (or trumped up by parallel processes) and unless they are set aside on review, they must be obeyed and given effect to. In this sense

[5] **Oudekraal Estates (Pty) Ltd v. City of Cape Town & Others** 2004 (6) SA 222 (SCA)(2004) ZASCA 48 para.26.

they are binding and not mere recommendations and remain so until the review processes are exhausted.

38. The Committee must know that there is currently an appeal to the SCA and application for direct access to the Constitutional Court regarding the High Court judgment which is being used as a ground for an enquiry into my competence. Any attempt to pre-empt the said appeal processes or to embark on a parallel process to essentially threaten or punish me for matters pending before the courts is unlawful and amounts to usurpation of judicial authority by members of the Committee and National Assembly. Once an appeal was lodged against the High Court judgments there was an automatic stay of the adverse judicial findings and orders and the Committee cannot ignore that.

39. The main grounds, amongst others, of appeal to the Constitutional Court (alternatively to the SCA) are setting aside paragraph 4.3 of the order, in particular the Court's finding that there is a reasonable apprehension that I was biased and that I do not fully understand my constitutional duty to be impartial and to perform my functions without fear, favour or prejudice.

40. It is disconcerting that the Committee has, contrary to normal rules of Parliament opted to summon me to answer allegations regarding court decisions which are clearly ***sub judice*** and where appeals to the Supreme Court of Appeal and the Constitutional Court are pending. I note further with great consternation above that the Committee has already committed gross violation of the Constitution – while the same matters were pending appeal the Committee summoned me before it and continued to berate, criticize and condemn me for the impugned decisions. As shown below, this was not just the work of overzealous members of the Committee or the Democratic Alliance who are hell-bent on retaliating against me for appointment they vehemently opposed and who is involved in litigation with the DA for its defamatory allegations that I was a "spy". The move signals a very dangerous pattern in which public servants are dealt with differently based on their race - white judges and decision-makers are allowed to make errors which are susceptible of being corrected through the normal appellate review mechanisms. But black judges or adjudicators are singled out and must be personally attacked and denounced as incompetent jurists who must face a rushed and ill-considered inquiry to have them removed before the requisite appeal process is finalized. I am not making this assertion lightly.

Subsequent ruling by the SCA refutes Steenhuisen's premature legal claims and provides evidence that the court judgments against me were based on wrong premise and erroneous.

41. I further bring the following significant new legal developments to the Committee's attention. Subsequent to the two decisions trumpeted by Mr. Steenhuisen and on 15 March 2018, the Supreme Court of Appeal in **Minister of Home Affairs v. The Public Protector** 9308/2017)(2018) ZASCA 15 (15 March 2018) (Lewis, Majiest and Willis JJA and Plasket and Motlhe AJJA) expressly overruled the premise of the two cases Mr. Steenhuisen is relying on. **See, specifically, paragraphs 27 -37 of the SCA judgment.** The Court pointed out that a Promotion of Administrative Justice Act 3 of 2000 ("PAJA") review is available only if the impugned action is administrative action as defined in the PAJA. The Court specifically referred to the judgment of Murphy J (**South African Reserve Bank v Public Protector & Others** 2017 (6) SA 198 (GP; and the **Absa Bank Limited & Others** (2018) ZAGPHC where both judgments concluded that the remedial action ordered by me was subject to review in terms of the Promotion of Administration of Justice Act (PAJA). **Id** at para 29. The SCA concluded that "*My **Office is not a department of state or administration and neither can it be said to be part of the national, provincial or local spheres of government. It is an independent body that is answerable only to the National Assembly...It is, however an institution that exercises both constitutional powers and public powers in terms of legislation"***. Further the SCA opined that my Office "***does not fit into the institutions of public administration but stands apart from them***" and that "***it is a purpose-built watch-dog that is independent and answerable not to the executive branch of government but to the National Assembly."*** Further the SCA pointed out that my function "***is not to administer but to investigate, report on and remedy maladministration.***" The SCA also took notice that I "***am given broad discretionary powers as to what complaints to accept, what allegations of maladministration to investigate, how to investigate them and what remedial action to order- as close as one can get to a free hand to fulfill the mandate of the Constitution.***", The SCA concluded: "***That being so, the PAJA does not apply to the review of exercise of power by the Public Protector in terms of Section 182 of the Constitution and Section 6 of the Public Protector Act.***"

42. For example and strictly without attempting to argue my appeal in Parliament, In paragraph 101, 103 and 123 of the judgment under appeal, The High court [6]held as follows;

42.1 the court concluded that that due to my failure to disclose certain meetings in my report, which some were not related to the matter under investigation, it has been proven that the Public Protector is reasonably suspected of bias **as contemplated in section 6(2)(a)(iii) of PAJA;**

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[6] **Absa Bank Limited and Others v Public Protector and Others** (48123/2017; 52883/2017; 46255/2017) [2018] ZAGPPHC 2; [2018] 2 All SA 1 (GP) (16 February 2018)

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42.2 the court held that my conduct in failing to provide the applicants with the above-mentioned documents, denied them an opportunity to respond to those documents before the final report was prepared and on that basis, the court finds that **in terms of section 6(2)(c) of PAJA,** my conduct was procedurally unfair and therefor the remedial action in paragraphs 7.1 and 8.1 of the Report has to be set aside; and

42.3 in concluding its judgment, the court has found the remedial action to be unlawful and that there is a reasonable apprehension of bias. The court further finds no reason to remit the report and that it is clear that the Public Protector unlawfully, *ultra vires* and **breached several provisions of PAJA.** The breached provision of PAJA referred to in the judgment are those under **section 6 of PAJA**

43. The ruling makes it abundantly clear why my appeal to the same SCA is highly likely to succeed, as the judgments which are the subject matter herein relied on PAJA and as indicated above, the SCA[7] ruled that PAJA does not apply to the review of exercise of power by the Public Protector in terms of Section 182 of the Constitution and Section 6 of the Public Protector Act."

44. Admittedly Mr. Steenhuisen's letter of February 2018 preceded the SCA judgment and he could not have been aware that the adverse judgments he was brandishing against me is dealt with by the SCA in the manner it did. But he must now have the humility - as a sworn member of the National Assembly Mr. Steenhuisen has constitutional responsibilities and obligations imposed by sections 55(2) and 181(3) of the Constitution. He must not mislead the Committee by trumpeting the overruled judgments relying on PAJA, he must not undermine my independence or advance absurd legal theories rejected by the SCA on matters directly in issue before the Committee. He is ethically and morally bound to withdraw the premature and ill-considered letter attacking me which he sent to the Speaker and now being considered by the Committee. Surely, Parliament has more important issues to deal with, such as amendment of section 25 of the Constitution which has got everyone talking about the long outstanding land restitution matter, than being coerced into an unconstitutional conduct for political gains of a minority party at an expense of the South Africans whom I have a Constitutional obligation to protect.

45. A major premise of the two High Court judgments was that PAJA was applicable to exercises of my power in terms of section 182 of the Constitution and section 6 of the Public Protector

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[7] **Minister of Home Affairs v. The Public Protector** 9308/2017)(2018) ZASCA 15 (15 March 2018)

Act and my investigation and remedial actions should be viewed as that of any other government bureaucrat. It was for that reason that the **Absa** judgment erroneously articulated my need to have shown "deference" to other government departments or institutions. In violation of the principles articulated by the Constitutional Court in the **Economic Freedom Fighters v Speaker of the National Assembly and Others** case, the two High Court judgements took an erroneous view of the powers and my duties and applied wrong tools of legal analysis to my investigation, report and remedial measures. The setting aside of the remedial measures and the unprecedented imposition of a personal cost order against me will eventually be shown to be influenced by the **gross error of law** by the same High Court already identified and overruled by the SCA.

46. This Committee must be aware that decisions of the **Supreme Court of Appeal** are binding on all lesser courts and the decisions of the High Courts (which used to be known as the Supreme Courts) are binding on Magistrates' Courts within their areas. The principle of stare decisis is a *juridical command to the courts to respect decision already made in a given area of the law.* The practical application of the principle of stare decisis is that courts are bound by their previous judicial decisions, ***as well as decisions of the courts superior to them.*** In other words a *court must follow the* ***decisions of the courts superior to it even if such decisions are clearly wrong.***

47. The statement of principle by Didcott J in **Credex Finance (Pty) Ltd v Kuhn 1977** (3) SA 482 (N) that is thus concisely summarised in the headnote to that judgment is in point:

> ***"The doctrine of judicial precedent would be subverted if judicial officers, of their own accord or at the instance of litigants, were to refuse to follow decisions binding on them in the hope that appellate tribunals with the power to do so might be persuaded to reverse the decisions and thus to vindicate them ex post facto. Such a course cannot be tolerated."***

48. The Constitutional Court, in **Camps Bay Ratepayers' and Residents' Association & another v Harrison & another** 2011 (4) SA 42 (CC), paras 28-30, expressed itself in no uncertain terms about observance by courts of the maxim stare decisis or the doctrine of precedent. Brand AJ, in delivering the unanimous judgment of the court said:

> *"Considerations underlying the doctrine were formulated extensively by* ***Hahlo & Kahn [Hahlo & Kahn The South African Legal System and its Background*** *(Juta), Cape Town 1968) at 214-15]. What it boils down to, according to the authors, is: '(C)ertainty, predictability, reliability, equality, uniformity, convenience: these are the principal*

advantages to be gained by a legal system from the principle of stare decisis.' ***Observance of the doctrine has been insisted upon, both by this court and by the Supreme Court of Appeal. And I believe rightly so. The doctrine of precedent not only binds lower courts, but also binds courts of final jurisdiction to their own decisions. These courts can depart from a previous decision of their own only when satisfied that that decision is clearly wrong. Stare decisis is therefore not simply a matter of respect for courts of higher authority. It is a manifestation of the rule of law itself, which in turn is a founding value of our Constitution. To deviate from this rule is to invite legal chaos.***"

49. It would be contrary to the rule of law for this Committee to insist on a removal or enquiry process in total disregard of these legal developments.

50. In point of fact, these latest SCA developments should be an object lesson to those overzealous members of the Committee who appear to be eager to latch on to every adverse court ruling against me emanating from the courts and appear ready to use that for attacking me and threatening my security of tenure and decisional independence. The Committee owes me a public apology for the unseemly public attacks which have been directed at my office for alleged incompetence and for the accompanying threats of removal. What would happen if the Committee were to heed Steenhuisen's unwise and/or unlawful importunings, hold hearings and remove me only to have the SCA or Constitutional Court vindicate me after the fact?

51. As an aside, I wish to point out one particularly unfair assault on my integrity. As you all know, the previously repealed Ombudsman Act 110 of 1983 was promulgated in 1983. In terms of section 11 of that Act, the institution of the Ombudsman was empowered to act as a remedy to deficiencies in the legislation. If in the exercise of the Ombudsman's supervisory powers it transpires that there are grounds for initiating a change in the statutes or some other official measure, the Ombudsman was empowered to represent this circumstance to the South African Parliament or the government.

52. More often an Ombudsman of this era would submit adjudication to the appropriate authority or parliamentary committee when it was considered to indicate legislative shortcomings that the legislature should be aware of. In 1995 my office replaced the Ombudsman. Many Ombudsman around the world are allowed similar leeway in regard to legislation. Even if the courts do not agree that I have similar powers in regard to suggestion for legislative changes, it is downright despicable to attack me and impugn my integrity based on a different understanding of the powers and functions.

The committee has committed legal errors by implying that judicial criticism cannot be challenged in parallel proceedings and I am barred from disputing the said criticism

53. The Committee's characterization of my attempt to dispute the basis for the judicial criticism and imposition of costs order as "contempt of court" shows a woeful misunderstanding of the law and must be abandoned. On the contrary the courts have allowed persons criticized by the judges to offer an explanation in subsequent proceedings without labeling such denials as "contempt of court." A case in point: On 15 September 2016, Judges Legodi and Judge Hughes issued a judgment in the matter of General Council of the Bar of South Africa v Jiba and Others (23576/2015) [2016] ZAGPPHC 833; [2016] 4 All SA 443 (GP); 2017 (1) SACR 47 (GP) (15 September 2016).[8] . At para. 82 the Court observed that:

[82] Very often when adverse remarks are made in legal proceedings, the person against whom the remarks are made is not given the opportunity to state his or her case to the impeding adverse remarks. It is for this reason that courts do not easily make adverse remarks. Courts are of course willing to reconsider adverse remarks afresh given the responses by the person against whom they were made.

54. The Court proceeded to deal with complaints against Jiba, in her capacity as the then Acting National Director of Public Prosecutions in the Booysen case. These arose from the exercise of her statutory power to authorise the charging of Major-General Booysen (Booysen) with contravention of section 2(1) (e) and (f) of the Prevention of Organised Crimes Act no.121 of 1998 ("POCA"). Another judge (Gorven) had earlier condemned Jiba and accused her of "mendacity" and lying under oath in regard to her charging decision. Judge Legodi, in the subsequent case involving an application to strike Jiba from the roll of advocates allowed Jiba to present evidence showing that Judge Gorven's conclusions were erroneous and not supportable by evidence. On that score Judge Legodi concluded that the Gorven finding was wrong and concluded:

"[67] I cannot find any mala fides and or ulterior motive in the authorisation by Jiba as contemplated in POCA. POCA is like a cry out loud for declaration of war against serious, continuous and organised crimes. That needs specialised investigation and prosecution. Most importantly, POCA requires the freedom and space to be given to the members of the prosecuting authority in the exercise of their legislative power to investigate through members of their Investigating Directorate and under the watchful eye of a special director

[8] http://www.saflii.org/za/cases/ZAGPPHC/2016/833.html

so appointed to prosecute without fear, favour and prejudice those implicated in the commission of serious crimes. Anything short of this, or anything which tends to impede on this constitutional and legislative imperative, for example, hauling Jiba to the proceedings in terms of Section 7 of the Admission of Advocates Act, ought to be based on very cogent, serious and exceptional circumstances".

55. In the extant proceedings before the Committee, there was gross violations of my rights as follows: I was invited to appear before the Committee to answer allegations regarding court decisions which are ***sub judice*** and where appeals to the Supreme Court of Appeal and the Constitutional Court are pending. When I attempted to respond to the allegations against myself, my explanations were given short-shrift and dismissed. In a manner which purported to adjudicate the matters raised on the appeals to the SCA and the Constitutional Court, the Committee opined that it "*is unacceptable for me to state that personal cost orders undermine her independence. For far too long public officials have adopted an unduly combative attitude to litigation and it is time they personally bear the costs of the taxpayer.*" There was no one willing to listen with an open mind and as a "whole the Committee expressed disappointment, frustration and even anger at my responses." Further, the evidentiary record of the Committee hearing demonstrates the entire Committee's tendency to characterize as deliberate further that my evidence incompetence any legal position taken by myself which some members disagreed.

56. At least at the time the Committee Chairperson wrote the 21st June 2018 letter, it was fully aware that I had lodged an application for leave to appeal ("appeal") against the whole judgment and the order by the High Court. The Committee knew or should have known that in terms of section 18(1) of the Superior Courts Act 10 of 2013, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal, unless the court under exceptional circumstances orders otherwise, which it has not done so. The Committee's violation of my rights is highlighted by its intention to institute an enquiry based on the High Court decision in circumstances where doing so would effectively amount to putting into operation and execution of the decision which, in law, is suspended. If any party wants the decision to be put into operation and executed with immediate effect the remedy they have in law is to make an application to court and meet the requirements set by section 18(3). No grounds exist for, and no party has made, any such application. No reasonable, conscientious and informed Member of Parliament would ignore such fundamental legal precepts. Instead, some DA members of the Committee have totally ignored the law, Rules of the National Assembly and indeed the Constitution in their vengeful action against me.

57. My legal and litigation position is further strengthened by the fact that the SCA has expressly rejected a major premise of the High Court's reasoning in regard to reviewability of my exercises of power in terms of section 182 of the Constitution and section 6 of the Public Protector Act under PAJA. To the extent that Mr. Steenhuisen's jeremiad is based on the High Court's erroneous conclusions regarding PAJA, such position must be rejected. It is disconcerting that Mr. Steenhuisen has assiduously avoided bringing the March 2018 SCA judgment to the notice of the Speaker or the Chairperson of the Committee. At a minimum, collegiality and candor to the Committee Chairperson would have required him to disclose the subsequent SCA decision which undermined the major façade of his narrative.

58. Clearly, the different conclusion reached by the Courts (High Court and SCA) on some of the key legal issues is indicative of the fact that another court might come to a different conclusion than the one Mr. Steenhuisen is harping on. Thus, there are reasonable prospects of success of the appeal.

59. I further submit that Mr. Steenhuisen, as an MP, was supposedly representing the public, and presumed to act impartially in the interest only of justice. Despicably, he elected to lay aside the impartiality that should characterize his official action to become a heated partisan, and by vituperation of my accuse and appeal to prejudice. He lost sight of the constitutional significance of my removal and sought to procure a removal through cutting corners, he ceased to properly represent the public interest, which demands no victim, and asks no conviction through the aid of passion, sympathy or resentment.

60. The Committee is being advised that as long as the appeal process is pending and the findings of fact and law on which the High Court based its judgment are being challenged, the orders of the High Court Mr. Steenhuisen is brandishing is not definitive and final. It has been suspended and will only be definitive and final once the appeal process has been exhausted.

61. Even if the appeal process in not in my favour, as already indicated above, it would be unlawful to institute an enquiry into my competence based on the review of my decision by the court, which the constitutional court has held that such decision can only be reviewed by the court of law. Such decision will be unconstitutional, as already mentioned above.

Mr. Steenhuisen's letter is urging the national assembly to disregard the law and undermines judicial independence, violates sections 165 and 166 of the constitution and undermines the constitutional independence of the public protector.

62. Section 165 of the Constitution unequivocally states the following:

(1) The judicial authority of the Republic is vested in the courts.
(2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
(3) No person or organ of state may interfere with the functioning of the courts.
(4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.
(5) An ***order or decision issued by a court binds all persons to whom and organs of state to which it applies.***

63. In terms of the constitutionally enshrined hierarchy of our judiciary, an order by the SCA rejecting the premise of the two High Court judgments against me is binding on the National Assembly. The law stands firmly against any acts, direct or indirect, that would eviscerate judicial authority enshrined in section 165 of the Constitution. This section states, in keeping with the separation of powers principle, that the "judicial authority of the Republic is vested in the courts" and not in some other branch of government. The hierarchy of the courts is established in section 166 of the Constitution and it stands to reason that a judge of the High Court is not authorized to second guess, revise and amend a final order or judgment of another High Court Judge of similar status or the SCA. The only process through which that can be accomplished is an appeal.

64. When viewed against the express provisions of Section 165(5) which states that ***"an order or decision issued by a court binds all persons to whom and organs of state to which it applies***" it makes sense that a final judgment of the SCA overruling some aspects of the extant High Court judgments is binding on all persons to whom it applies and cannot be second-guessed, amended or subject to revision by this Committee or other person.

65. Mr. Steenhuisen ignored this simple principle when he wrote to the Speaker urging me to institute expedited parallel "my removal" proceedings in which he seeks to pre-empt an appeal process and which gives him an opportunity for political grand-standing at the expense of my office and our country's Constitution. Mr. Steenhuisen further compounds this unfair attacks on me and gross injustice when he persists with his call for my removal despite the pending appeals and recent pertinent legal developments in the SCA alluded to above.

66. This Committee is reminded that Section 165(5) enshrined in our Constitution a long-standing common law rule. It is trite that once a court has disposed of a matter finally it

cannot correct its own judgment and order. This is derived from the long standing principle of *functus officio*. See, **De Villiers NO and another v BOE Bank Ltd** [2004] 1 All SA 481 (SCA), 2004 (3) SA 459 (SCA) which affirmed this long standing principle and noted a few exceptions under which a court may alter its own order or judgments. It is gross incompetence and fundamentally unfair to expect a party who is appealing an adverse High Court judgment to the SCA to have the National Assembly force her in parallel proceedings where her questioning of the correctness of the judgment being appealed is used as further evidence of her incompetence.

67. It would be constitutionally impermissible for the National Assembly or its Committee to disregard the SCA ruling and to retry issues of whether the Public Protector's actions complied with PAJA, whether her argument (ultimately proven correct) that PAJA did not apply to her investigations, report and remedial orders was "frivolous" as Steenhuisen asserted in his letter. It would be legally absurd to hold that my actions are subject to a PAJA review when the SCA has expressly cited the extant High Court judgments and ruled otherwise.

National Assembly has breached its constitutional obligations imposed by sections 55(2) and 181(3) of the Constitution by adopting procedures for my removal which undermine my independence.

68. As shown by Mr. Steenhuisen's and the Committee's action in response to the adverse court judgments, the National Assembly has adopted procedures which have the effect of undermining the my constitutional independence, subjecting me to the torture of public condemnation and personal attacks or premature threats of removal based solely on adverse court criticism. The risk of undermining my constitutional independence becomes even greater when the sole reason for the Committee's criticism or attacks is an adverse court judgment reviewing and setting aside my findings, orders or remedial action. To attack my decision which is reviewed and set aside is a gross violation of my decisional independence which is a well-known principle applicable even to our judiciary.

69. The Committee cannot be oblivious to the changed legal landscape ushered in by the ruling of the Constitutional Court in **Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others** [2016] ZACC 11. Arguably the highest Court has opened the floodgates of litigation against myself: My decisions cannot be ignored (or trumped up by parallel processes) and unless they are set aside on review, they must be obeyed and given effect to. In this sense they are binding and not mere recommendations and persons adversely affected by these

decisions or who dislike them have every incentive to litigate or have them reviewed and set aside. More judicial reviews of my decision are bound to become the norm and the fact that my decision has been set aside by the court, it does not mean that I am incompetent.

70. In the case of the judiciary, through appellate review, courts can ensure that lower court judges have neither misstated the law, nor misapplied it. Judges review lower court decisions to determine whether those judges abused their discretion in resolving cases or controversies. But there is an iron-clad rule that a judge whose decision has been overturned on appeal or who was subject to scathing criticism by the higher court cannot suffer retaliation or threat of removal based simply on judgment later proven to be erroneous. In the same vein, for me as well, impartial adjudication is critical. Members of the National Assembly or politicians should not be able to meddle in individual cases under the guise of holding me to account. In short, for both judges and myself, freedom from external influence is critical to the judicial and my function, and seeking to discipline or remove them solely on the basis of the merits their decisions is constitutionally impermissible.

71. I strengthened my submission by the analogous provisions of the Judicial Services Commissions Act. Section 14 (4) lists the grounds upon which any complaint against a judge may be lodged, as any one or more of the following:

(a) Incapacity giving rise to a judge's *inability to perform the functions of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct*, as envisaged in section 177 (1) (a) of the Constitution;

(b) Any *wilful or grossly negligent breach of the Code of Judicial Conduct* referred to in section 12, including any failure to comply with any regulation referred to in section 13 (5);

(d) Any wilful or grossly negligent failure to comply with any remedial step, contemplated in section 17 (8), imposed in terms of this Act; and

(e) *Any other wilful or grossly negligent conduct*, other than conduct contemplated in paragraph (a) to (d) , *that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts.*

72. Section 15 of the Judicial Services Commissions Act states that "lesser complaints may be summarily dismissed" if the Chairperson or the Head of Court designated in terms of section 14 (2) is of the view that the complaint falls within the parameters of the grounds set out in

subsection (2), **he or she must dismiss the complaint.** Subsection 2 states that **a complaint must be dismissed if it –**

(a) does not fall within the parameters of any of the grounds set out in section 14 (4);
(b) does not comply substantially with the provisions of section 14 (3);
(c) is solely related to the merits of a judgment or order;
(d) is frivolous or lacking in substance; or
(e) is hypothetical.

73. Likewise, a complaint against me based solely on the merits of my decision or remedial orders is untenable. As evidenced by the latest SCA ruling referred to above, the Steenhuisen complaint against me raises matters not distinct from matters normally dealt with through appeal or judicial review process. Judgments of many other High Court judges are routinely reversed for abuse of discretion. When a court of appeals says that a High Court judge abused his/her discretion, this is a legal conclusion that connotes mere error- not wrongdoing. The court of appeals may criticize the judge concerned but it normally refrains from saying whether the judge committed misconduct, mindful, no doubt, that such determinations are the province of the Judicial Services Commission. In a similar vein, the reviewing and setting aside of my remedial measures even if accompanied by scathing criticism cannot be a basis for hauling me before the National Assembly for a hearing over alleged "incompetence."

74. Decision making independence is critical to assure litigants that judicial results are as free from external influence as possible. I, just like judges, we both enjoy decisional independence and I cannot function effectively if my decisions are viewed as the product of threats of removal by the National Assembly or lobbying by some with ulterior purposes. Moreover, the appearance of propriety may, in fact, matter as much as the reality. Litigants or the members of the public served by me must have faith in the unbiased nature of the litigation or my remedial orders. This Committee's interests in political accountability must not be allowed to trump any possibility of my complete constitutional decisional independence.

75. I wish to bring to the attention of the Committee that Section 181(2) of the Constitution requires me to exercise my powers and perform my functions without fear, favour or prejudice. In terms of section 181(4) of the Constitution, no person (including this Committee) may interfere with the functioning of the Public Protector.

76. In terms of section 11(1) of the Public Protector Act, any person who interferes with the functioning of the office of the Public Protector, as contemplated in section 181(4) of the Constitution, shall be guilty of an offence and upon conviction in terms of the aforementioned Act, such person shall be liable to a fine not exceeding R40 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

77. Accordingly, threatening to remove me in respect of what is reflected in my report, my findings, point of view or recommendation made or expressed in good faith and submitted to Parliament or made known in terms of this Act or the Constitution, especially in relation to the performance of her constitutional obligation, constitute an interference with the functioning of the office of the Public Protector, as contemplated in section 181(4) of the Constitution, and is tantamount to a criminal offence punishable in terms of the law.

78. Lastly, I wish to submit to this Committee that I cannot be liable, in terms of section 5(3) of the Public Protector Act, in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted to Parliament or made known in terms of this Act or the Constitution. Based on the above-mentioned provision, the Committee is legally prohibited from holding me liable in respect of anything reflected in any of my reports, findings, point of view or recommendation made or expressed therein. The judgment which the Mr Steenhuisen's request to expedite procedure to remove the Public Protector from office relate to my findings, point of view or recommendation made or expressed in my report in good faith.

79. The legislature envisaged that the Public Protector, just like judges and magistrates, will sometimes make human error in discharging his or her constitutional powers and provided for general indemnification against personal liability under section 5(3) of the Public Protector Act.

80. The Court concluded that I have exceeded the bounds of this indemnification, without the finding of bad faith on my part, hence such finding that I have exceeded bounds of the indemnification under of section 5(3) of the Public Protector is also under appeal.

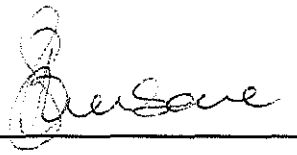
CONCLUSION

81. For the reasons detailed herein, there is no basis for initiating my removal proceedings. Mr Steenhuisen has failed to disclose that appeals are pending in the matter. Further, he has failed to disclose that a subsequent SCA judgment undermine a major part of his narrative against me.

82. I also respectfully submit that in light of the Minutes of 06 March 2018 revealing the highly prejudicial remarks by the Committee, some of the Committee members cannot sit in judgment over the matter and they must recuse themselves from any future discussions or process regarding this matter.

83. Due to the fact that the issue under discussion herein, especially the Judgment in the matter of ***Absa Bank Limited and Others v Public Protector and Others (48123/2017; 52883/2017; 46255/2017) [2018] ZAGPPHC 2; [2018] 2 All SA 1 (GP) (16 February 2018)***, is *sub judice*, and in order to prevent irreparable damage to the me and the currently pending appeals in the Constitutional Court and/or Supreme Court of Appeal, the contents of this letter shall only be used by the Parliament of the Republic of South Africa (Portfolio Committee on Justice and Correctional Services) and shall not be used for any other ulterior purposes than the Parliamentary processes in terms of section 194 of the Constitution.

Yours Sincerely



ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR SOUTH AFRICA
DATE: 05/07/2018

CC: Speaker of the National Assembly

CC: Office on Institutions Supporting Democracy (OISD)