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**AFFIDAVIT**

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I, the undersigned,

**TEBOGO KHOLOFELO KEKANA**

state under oath that:

1. I am an adult male living in Pretoria, employed in the office of the Public Protector of South Africa ("**Public Protector**") as a Senior Investigator. I am a qualified attorney and an officer of the Court.
2. The facts contained in this affidavit are within my personal knowledge, unless it appears otherwise from the context, and are both true and correct.
3. Where I make any legal submissions, I do so on the advice of my legal representatives.

**PURPOSE OF THIS AFFIDAVIT**

4. The purpose of this affidavit is to place on record, and make a protected disclosure regarding several instances of what I consider to be improper behaviour within the office of the Public Protector under the leadership of the current incumbent of the office, Advocate Busisiwe Mkhwebane ("**Advocate Mkhwebane**"). I make this allegation based on my personal knowledge and experience working directly under Advocate Mkhwebane in the circumstances I describe below.
5. This affidavit seeks to make a protected disclosure pursuant to the Protected Disclosures Act 26 of 2000 ("**PDA**") in that it discloses information regarding

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the conduct of my employer (being the Public Protector) which, in my view, is irregular and improper. I believe that this disclosure complies with the conditions contained in section 9(2) of the PDA.

6. I shall transmit this affidavit in due course to:
  - 6.1 the Speaker of Parliament; and
  - 6.2 the President of the Republic of South Africa.

### BACKGROUND

7. After graduating from the University of Pretoria with a Bachelor of Laws (LLB) degree in 2004, I began my legal career by serving my articles of clerkship at Chiloane & Associates from January 2005 to July 2006.
8. I was admitted as an attorney in the High Court of South Africa in 2006. Thereafter, I continued working for Chiloane & Associates, before taking up the position of claims handler for the Road Accident Fund from July 2007 to October 2011.
9. I joined the office of the Public Protector as an investigator in October 2011, during Advocate Thuli Madonsela's tenure as Public Protector. Advocate Madonsela was the predecessor to Advocate Mkhwebane. In this capacity, I attended to all incoming complaints and preliminary investigations. I also performed quality assessment of complaints, drafted memoranda, reports and correspondence for the Public Protector, and supervised trainee investigators.
10. In December 2016, after Advocate Mkhwebane had been appointed as Public Protector, I was appointed as a Senior Investigator in the Quality

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Assurance Unit of the Public Protector. The purpose of the Quality Assurance Unit was to quality assure all reports and section 7(9) notices within the institution.

11. In January 2017 I was transferred to the Private Office of the Public Protector. In this capacity, I reported directly to Advocate Mkhwebane. I conducted the investigations of matters identified by Advocate Mkhwebane for investigation in the Private Office, drafted formal assessments and memoranda for the Public Protector, attended to all allocated queries and correspondence on behalf of the Public Protector, attended to Task Team and Think Tank meetings, drafted, reviewed and edited reports of the Public Protector, and coached and supervised trainees in the Quality Assurance Unit.
12. I remained in the Private Office of the Public Protector until December 2017, when I was transferred to the Provincial Investigations and Integration Unit. In my capacity as Senior Investigator in this Unit, I conducted investigations, drafted notices and reports and conducted the quality assurance process of reports and notices allocated by the Senior and Executive Manager for Provincial Investigations and Integration. In addition, I reviewed and investigated matters from provincial offices of the Public Protector and acted as Senior Manager on occasion.
13. In the course of my employment within the office of the Public Protector, I witnessed and acquired knowledge of several troubling instances of improper conduct by Advocate Mkhwebane herself. These instances are detailed below.

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## THE CIEX INVESTIGATION

14. Following a complaint laid in 2010, the Public Protector conducted an investigation and published a report titled "*Report on an investigation into 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*" ("**the CIEX investigation report**"). The CIEX investigation had begun during the term of office of the former Public Protector, Advocate Madonsela, but Advocate Mkhwebane took over the investigation. The CIEX investigation report addressed whether the South African Government should have implemented the recommendation by Ciex, a British company contracted to investigate alleged misappropriations of funds by the Apartheid era government, as recommended in the *Ciex Report: Operations on behalf of the South African Government August 1997 - December 1999*.
15. On 21 December 2016, the Public Protector's provisional report on the CIEX investigation ("**the provisional report**") was leaked and made publicly available. The provisional report is attached marked "TK1". The provisional report had never been quality assured prior to it being leaked. This was also, in my experience, a significant departure from standard procedure. When the provisional report was leaked, I noticed that it contained numerous errors and was missing vital information. I informed Advocate Mkhwebane of the errors and missing information verbally in our meetings in her office and Advocate Mkhwebane indicated to me that these issues should be attended to.
16. After the leak, the organisation Black First Land First ("**BLF**") requested a meeting with the Public Protector in order to discuss the provisional report.

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This meeting was held on 12 January 2017. During this meeting, the BLF indicated that they wished to be a complainant in the CIEX investigation. As the investigation had already progressed significantly, the BLF were informed that they could not be a complainant. However, Advocate Mkhwebane invited the BLF to make submissions on the investigation (despite the fact that the BLF was in no way involved in the matters pertaining to the investigation or any other relevant matter).

17. As part of the investigation, former Public Protector, Advocate Madonsela, interviewed Mr Billy Masetlha, a representative of the State Security Agency ("SSA"), prior to the provisional report being finalised. . The transcript of this interview, however, was misplaced. As a result, Advocate Mkhwebane requested a meeting with the SSA and asked me to attend. This meeting occurred on 3 May 2017, after the provisional report had been finalised.
18. Advocate Mkhwebane and I attended the meeting with representatives of the SSA, Mr James Ramabulane and Mr Arthur Fraser, in order to obtain further submissions from the SSA on the investigation. The Minister of State Security at the time, David Mahlobo, also attended this meeting.
19. On the day of the meeting, I was informed that Advocate Mkhwebane was having a discussion with Minister Mahlobo prior to the meeting. I was not party to this discussion. I found it odd that Advocate Mkhwebane would hold a discussion by herself with one of the attendees of an interview, without anyone else present.
20. The formal meeting then began. When the meeting with the SSA began, I took out my notepad in order to take notes of the meeting and took out my recording device in order to record the meeting (as I usually do). Advocate

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Mkhwebane, however, instructed me to not record the meeting. She also instructed me to not take any notes during the meeting. I was extremely surprised by both of these instructions. They were entirely out of the ordinary. I had always recorded every meeting which I attended with the Public Protector (either in the form of an audio recording or in writing). The Public Protector was of course aware that this was standard procedure. Accordingly, there is no recording of this SSA meeting as I was instructed not to make one.

21. After all parties (including the BLF) made their submissions on the investigation, the drafting process of the final report began. I was tasked with drafting the final report. While I was drafting the final report, Advocate Mkhwebane told me that I must find a way to include a recommendation in the final report in terms of which the Constitution of the Republic of South Africa ("**the Constitution**") would have to be amended to cater for the nationalisation of the South African Reserve Bank ("**SARB**"). Advocate Mkhwebane never informed me of what purpose or motive such a recommendation would serve.
22. I prepared several versions of the draft final report. None of the drafts which I prepared included a recommendation that the SARB be nationalised. This was because I did not believe that this recommendation was warranted based on the findings of the investigation. In fact I thought that such recommendation was bizarre.
23. On 4 May 2017, Advocate Mkhwebane provided me with her comments on the draft in an email attached marked "**TK2**". Advocate Mkhwebane's comments are typed in capital letters in the email. As can be seen from this email, Advocate Mkhwebane instructs me to "**AMEND THE CONSTITUTION**

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TO CATER FOR STATE BANK PER GOODSON PROPOSAL". The reference to "Goodson" is to the economist, Stephen Goodson, with whom Advocate Mkhwebane also met after the provisional report was leaked.

24. I did not agree with this suggestion by Advocate Mkhwebane, nor did I believe that this recommendation was warranted or legally sound. Despite this, I followed her instructions and submitted the final draft report to Advocate Mkhwebane, as per her comments on 17 May 2017 which included the recommendation that the SARB be nationalised as per Stephen Goodson's suggestion.
25. On the same day, 17 May 2017, I received an email from Advocate Mkhwebane, attached as annex "TK3" ("the SSA email"). In this email, Advocate Mkhwebane thanked me for the final draft report and stated that she had "[a]sked SSA to provide input and economist". The input that she was seeking from the SSA related to her desire to include a recommendation in the report to amend the Constitution to allow for the nationalisation of the SARB. I pause to note that, in the 2017 High Court applications to review the findings of the CIEX investigation report by the SARB, Minister of Finance and National Treasury, and ABSA Bank Ltd, the SSA email was inexplicably omitted from the Rule 53 record. It has never been disclosed until now.
26. On or around 6 June 2017, I attended a meeting with Advocate Mkhwebane and representatives from the SSA - namely Mr Mai Moodley and Mr James Ramabulane. Mr Moodley was introduced to me by Advocate Mkhwebane as an "economist" who would assist with the constitutional amendment recommendation in the CIEX investigation report.

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27. During this meeting, Mr Moodley produced a single page which contained a draft of proposed recommendations which were to be inserted into the final report. The page containing the recommendations from Mr Moodley is attached as annex "TK4". The recommendations from Mr Moodley states, *inter alia*, the following:

*"It is recommended that the following sections in the Constitution, relating to the South African Reserve Bank be amended as follows, and that all corresponding legislation be duly amended:*

*224. (1) The primary object of the South African Reserve Bank is to promote balanced and sustainable economic growth in the Republic, while ensuring that the socio-economic well-being of the citizens are protected.*

*(2) The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, while ensuring that but there must be regular consultation between the Bank and the Cabinet to achieve meaningful socio-economic transformation".*

28. Advocate Mkhwebane instructed me to insert the recommendations received from Mr Moodley into the final report, which was published on 19 June 2017. I did so. Accordingly, the remedial action contained in the final CIEX investigation report did not come from the office of the Public Protector, but rather from the SSA.
29. I informed Mr Isaac Matlawe, the Senior Investigator in the Quality Assurance Unit, of this irregular incident and he was taken aback. Mr Matlawe was supposed to quality assure the final report. However, he was not given an

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opportunity to do so prior to the release of the final report. Thus, the final report was never quality assured.

#### THE REVIEW PROCEEDINGS

30. In 2017, the SARB, Minister of Finance and National Treasury, and ABSA Bank Ltd instituted review proceedings against the Public Protector in relation to the findings of the CIEX investigation report.
31. I was tasked with compiling the Rule 53 record for the review proceedings. As part of this process, I liaised with the attorneys representing the Public Protector, Sefanyetso Attorneys, as well as counsel for the Public Protector.
32. In August 2017, I attended a meeting with Sefanyetso Attorneys. During this meeting, I informed the attorneys of the fact that the recommendations contained in the final CIEX investigation report had actually been prepared by the SSA.
33. On my way to a meeting with the attorneys and Advocate Azhar Bham SC (who was on brief for the Public Protector at the time), I received a call from Advocate Mkhwebane who said that she does not want all the drafts of the CIEX investigation report to be included in the Rule 53 record. Advocate Mkhwebane said that the drafts which were prepared during her predecessor, Advocate Thuli Madonsela's tenure, could be included but not the drafts prepared during her tenure. I relayed this message to the attorneys and Advocate Bham SC. Advocate Bham said that the drafts could not be omitted from the Rule 53 record as they were relevant to the review - the rule requires all relevant documents to be included and disclosed in the Rule 53 record. Advocate Mkhwebane vehemently opposed this during a telephone conversation with me.

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34. Two weeks later, I attended another meeting with a new legal team who had been appointed by the Public Protector. Sefanyetso Attorneys and Advocate Bham were not in attendance. Instead, the meeting was with Michael Bill Motsoeneng Attorneys and Advocate Caps Motimele. This was the first time that I learned that Advocate Mkhwebane had appointed new counsel and attorneys.
35. I informed Advocate Motimele of all the information at my disposal regarding the CIEX investigation, including the fact that aspects of the recommendations in the report were prepared for the Public Protector by the SSA itself and not by her. I note that Advocate Motimele, too, was eventually replaced as counsel on the matter.
36. Another thing which I found odd during the litigation of the matter was that Mr. Sibusiso Nyembe, now Chief of Staff of the Public Protector, attended two meetings with the Public Protector's legal representatives. Mr Nyembe, however, was not an employee of the Public Protector at the time of these meetings. Advocate Mkhwebane introduced him in the meetings as her political advisor.
37. At the end of November 2017, I was called to a meeting with Mr Gumbi Tyelela, a senior Human Resources manager,. I was informed during this meeting that Advocate Mkhwebane no longer wanted me to work in the private office of the Public Protector. When I asked for the reasons for this decision, I was told that it was because Advocate Mkhwebane was of the opinion that I say too much to the lawyers representing the Public Protector in the review proceedings. After this meeting, I told Advocate Mkhwebane that I did not understand why I was being asked to leave the private office but

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that I accepted this decision. I was accordingly transferred to the Provincial Investigations and Integration Unit in December 2017.

#### THE VREDE DAIRY PROJECT REPORT

38. In February 2018, the Public Protector released a report on the Vrede Dairy Project in the Free State titled "*Report on an investigation into complaints of maladministration against the Free State Department of Agriculture in respect of non-adherence to Treasury prescripts and lack of financial control in the administration of the Vrede Integrated Dairy Project*" ("**the Vrede Dairy Project Report**").
39. I was informed that Advocate Mkhwebane had removed the investigation from the initial investigator on the matter, Ms Erika Celliers of the Free State provincial office, as it was alleged that she was a member of the Democratic Alliance. I was then appointed as lead investigator in this matter. I was assisted by Mr Nditsheni Raedani and Mr Muntu Sithole. We all reported to Mr Reginald Ndou, the executive manager for the Provincial Investigations and Integration Unit.
40. Much of the evidence needed for the investigation was contained in the leaked emails of members of the Gupta family (which became popularly known in the media as the #GuptaLeaks). Advocate Mkhwebane, however, stated that the #GuptaLeaks were not to be used in the investigation or included in the report.
41. I was also informed by Mr Ndou that Advocate Mkhwebane had instructed him not to make any findings in the report against any politician. We were accordingly forced to remove any adverse findings contained in the report against any politician, including Mr Ace Magashule, the Premier of the Free

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State at the relevant time, and Mr Mosebenzi Zwane, who was the MEC for the Free State Department of Agriculture at the time.

42. On 8 February 2018, the investigation team was instructed to report to Advocate Mkhwebane's boardroom for a meeting with her. I attended with the team. Mr Ntsumbenzeni Nemasisi, the Senior Manager: Legal Services, was also in attendance. During the meeting, Advocate Mkhwebane instructed us to remove material information relating to the investigation, including information relating to the inflation of goods and information relating to beneficiaries. Mr Nemasisi warned Advocate Mkhwebane about removing vital information in the report, as it could lead to a review. Advocate Mkhwebane indicated that she did not care whether the report was reviewed or not.
43. I note that the Democratic Alliance and the Council for the Advancement of the South African Constitution successfully applied to have the Vrede Dairy Project Report declared unconstitutional and set aside by the High Court. I was not involved in the review proceedings; by then, as I have said, I had been relocated at the instance of Advocate Mkhwebane.

#### **HARRASSMENT AND INTIMIDATION OF ME BY THE PUBLIC PROTECTOR'S OFFICE**

44. On 29 May 2019, I was informed by Ms Maureen Papo, the human resource officer, that I was required to attend an interview to be conducted by Diale Mogashoa Attorneys on 31 May 2019. When I requested the reasons and purpose for this meeting, I was advised that it was not necessary for me to have this information. I requested the reasons for this investigation to be provided to me in writing. To date, these reasons have never been provided.

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45. On 31 May 2019, I attended the meeting with Diale Mogashoa Attorneys together with my union representative, Advocate Jenö Singh. No official from the office of the Public Protector was present at the meeting, which I found to be odd. At this meeting, Diale Mogashoa Attorneys informed me that they had been mandated to conduct an investigation by the Public Protector's office. Advocate Singh and I raised concerns about the process of the investigation and requested an assurance that the process was properly constituted and lawful. In addition, I confirmed that I had not received any written correspondence regarding the purpose of the meeting or what it was about and that it appeared to be an ambush.
46. After we raised these concerns, the attorneys requested us to leave the room so that they could discuss the matter. After 10 minutes, we were called back into the room and were advised that the proceedings would not continue as they would discuss the concerns raised with the Office of the Public Protector and the meeting ended.
47. Fifteen minutes later, Mr Gumbi Tyelela, the Senior Manager: Human Resources, informed me that I was required to hand over my laptop to Diale Mogashoa Attorneys. I requested reasons for this and was advised to speak to the CEO of the Public Protector's office, Mr Vussy Mahlangu.
48. When I asked the CEO for reasons why I was being asked to hand over my laptop, he told me that Diale Mogashoa Attorneys were conducting a fact-finding investigation into communications between Mr Baldwin Neshunzhi, the Senior Manager: Security, and Mr Isaac Matlawe. The CEO also insisted that I must hand over my laptop so that a copy of it could be made as I was a person of interest in the investigation. I handed over my laptop under protest.

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49. Several concerns about this were raised in an email from Advocate Singh dated 31 May 2019, attached as annex "TK5", including the following:
- 49.1 the process undertaken by Diale Mogashoa Attorneys was not sanctioned by any policy of the Public Protector's office;
  - 49.2 as a shop-steward, I have confidential and privileged information on my laptop which was received from other employees in the Public Protector's office who are currently participating in grievance procedures. The employer, against whom the employees had laid grievances, would now have access to this information;
  - 49.3 in addition, I have sensitive information regarding pending investigations being conducted by the Public Protector on my laptop. It was unclear whether the attorneys had received security clearance to be in possession of this information;
  - 49.4 this process appeared to be a fishing expedition, possibly with the intention to find something on my laptop which could be used against me in order to charge me; and
  - 49.5 there were no assurances provided as to the legitimacy of the process.
50. These concerns were also raised in a formal grievance which I laid on 7 June 2019 attached as annex "TK6", as well as a letter from the PSA Union to the Public Protector dated 7 June 2019 attached as annex "TK7". The grievance was never attended or responded to.
51. On 27 June 2019, I received a letter attached as annex "TK8" in which I was invited to comment on the preliminary findings of Diale Mogashoa Attorneys that I disseminated certain confidential information without authority.

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52. I responded to this letter on 5 July 2019. My response is attached as annex "TK9". As can be seen from my response, I denied all allegations of wrongdoing. In addition, I requested further information and a detailed explanation on the charges against me in order to enable me to properly respond to the findings against me. To date, no response has been received to my request for further information.
53. On 23 July 2019, I received a notice of intention to place me on precautionary suspension as a result of the finding that, according to the CEO, my response to the preliminary findings did not provide satisfactory answers to the allegations against me. The notice of intention to place me on precautionary suspension is attached as annex "TK10". No reasons were provided for how or why my response was unsatisfactory. Furthermore, no rationale was provided on how the decision to institute formal disciplinary proceedings against me was arrived at.
54. I responded to the notice of intention to place me on precautionary suspension in a letter dated 29 July 2019, attached as annex "TK11". In my response, I pointed out that the lack of reasons for the decision to place me on precautionary suspension was entirely prejudicial to me. Furthermore, a precautionary suspension is only resorted to by an employer where there is a pending investigation against the employee. I had not been informed of any pending investigation against me. It therefore appears that the purpose of the precautionary suspension is to punish me and to harass and victimise me as a result of me raising concerns of maladministration within the office of the Public Protector.
55. On 1 August 2019 (after my laptop was returned to me after being seized), I noticed that all the emails stored in my archive folder from the email

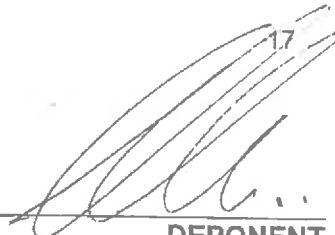
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addresses [MkhwebaneB@pprotect.org](mailto:MkhwebaneB@pprotect.org) and [Busisiwe.m.t@gmail.com](mailto:Busisiwe.m.t@gmail.com) from 2017 had disappeared. I sent an email to our IT Department about this, attached as annex "TK12". The IT Department could not locate the emails in the archives of my Outlook email account and could only retrieve them on Mimecast, an online back-up storage system for our email account. The IT Department could not explain why these emails were no longer in my Outlook archives.

56. On 27 August 2019, I was placed on precautionary suspension. The notice of precautionary suspension is attached as annex "TK13". In addition, a formal disciplinary inquiry was instituted against me. The charge sheet in relation to the disciplinary inquiry (as amended) is attached as annex "TK14".
57. The hearing of the disciplinary inquiry was scheduled for 18 to 20 September 2019 but was postponed to 2 to 3 October 2019, due to the unavailability of the Chairperson of the inquiry. On 2 October 2019, a further postponement was requested by the Office of the Public Protector, as they had included an outdated IT policy in their bundle of evidence. As a result, the matter was postponed, yet again, to 7 to 8 November 2019. On 15 October 2019, the Chairperson of the inquiry requested a further postponement as he had to attend a Strategic Planning Session from 7 to 9 November 2019. It was eventually agreed to postpone the matter to 21 to 22 November 2019. The matter has again been postponed at the instance of the Office of the Public Protector in order to introduce a new document into the bundle of evidence. At the time of deposing to this affidavit, my disciplinary inquiry hearing has not yet been held.

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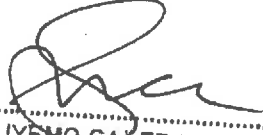


  
DEPONENT

The deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn to before me at **Sandton** on this the **12** day of **December** 2019, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Full names:  
Business address:  
Designation:  
Capacity:

  
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