**MEDIA STATEMENT**

**COMMITTEE FOR SECTION 194 ENQUIRY AGREES TO STRONGER ENFORCEMENT OF DIRECTIVES**

**Parliament, Wednesday, 20 July 2022 –** The Committee for Section 194 Enquiry into Public Protector (PP) Adv Busisiwe Mkhwebane’s fitness to hold office today held a meeting to reflect on the hearings held thus far and the way forward. The committee agreed to enforce its directives more strongly when it resumes its work on Wednesday next week.

The committee has held seven days of hearings thus far. It agreed yesterday that the hearing of witnesses would resume next week, in order to provide the PP and her legal team time to prepare for a court hearing next week. The committee was established by the National Assembly (NA) on 16 March 2021 to conduct an enquiry into the PP’s fitness to hold office.

Today, committee Members raised several matters relating either to the committee’s terms of reference and directives or NA rules governing how the committee executes its mandate.

Members were concerned about the manner in which Adv Mkhwebane had responded to the committee’s questions so far and the time allocated for her to do so at a later stage. They were also concerned about the lack of regard with which witnesses have been treated by some of those involved in the process, as well as the time taken up by the questioning of witnesses. The committee resolved that these three directives require stronger enforcement to ensure that its processes run more smoothly and its work is credible and fair.

Committee Chairperson Mr Qubudile Dyantyi addressed the committee on the claims of “double jeopardy” that were made several times during the hearings by Adv Mkhwebane’s legal representatives. He pointed out that the right not to be subject to “double jeopardy” is provided for in section 35(3)(m) of the Bill of Rights. According to this provision, every accused person has a right to a fair trial, which includes the right not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted.

The rights relate to an accused person that, for example, faces criminal charges in proceedings to determine criminal liability. “These rights are concerned with multiple processes to acquit or convict,” Mr Dyantyi said. “So, if one legal process investigates the same conduct, but does so for a different purpose, or to achieve a different end, the rule against double jeopardy is not triggered.

“The mere fact that the statutory administrative regime imposed a penalty does not mean that the rule against double jeopardy is implicated. The Public Protector is not at risk of double jeopardy. These are not criminal proceedings, or civil proceedings, or judicial proceedings. These are sui generis constitutional proceedings, that the Constitution prescribes only the National Assembly may discharge,” Mr Dyantyi said.

He went further to say that there is no possibility that the committee or Parliament can make a finding on civil or criminal liability. “Neither the committee nor Parliament can send her to jail for a criminal offence, or require her to pay damages for civil liability. So there is no risk that Parliament will risk duplicating the determinations that a future criminal court may make, or risk exposing the Public Protector to two criminal sanctions for the same criminal conduct.”

Mr Dyantyi said in closing that it is clear from the input of Members that the committee remained on course in this pioneering process. “The key overarching points made clearly today are the importance to enforce rules of the NA, to adhere to the committee’s terms of reference and to have stronger enforcement of the committee directives.”

Mr Dyantyi noted the committee’s concern to keep a balance with regards to witnesses. “It’s a fine balancing act. We understand that witnesses must be cross-examined. We further understand the rights of witnesses, the Members of the committee, the evidence leaders and that of the Public Protector and her legal team. We need to balance the rights and responsibilities, and navigate them in such a way as to ensure a credible process.”

The committee further resolved that its draft programme should remain flexible to accommodate any time lost that needs to be made up at a later stage.

The committee will hear from more witnesses from Wednesday next week when the hearings resume. The committee is expected to finalise its work by the end of September 2022. Committee documents can be found on its page on [Committee for Section 194 Enquiry - Parliament of South Africa](https://parliament.us15.list-manage.com/track/click?u=174940c63c5e06b60f5650bea&id=3356dd5b00&e=da105e4f6a)

**ISSUED BY THE PARLIAMENTARY COMMUNICATION SERVICES ON BEHALF OF THE CHAIRPERSON OF THE COMMITTEE FOR SECTION 194 ENQUIRY, MR QUBUDILE DYANTYI.**

For media enquiries or interviews, please contact the committee’s Media Officer:
**Name: Rajaa Azzakani (Ms)**
**Tel: 021 403 8437**