
**AFFIDAVIT IN THE SECTION 194 INQUIRY INTO THE REMOVAL OF THE
PUBLIC PROTECTOR, ADV B MKHWEBANE**

I, the undersigned,

LUFUNO REGINALD NDOU

do hereby make oath and say that:

1. The contents of this affidavit are true and correct and fall within my personal knowledge, unless otherwise stated or clear from the context.
2. I served the Office of the Public Protector (“PPSA”) for a period of nineteen years in various capacities. Initially I was employed as a senior investigator in the PPSA in April 1999. By November 2000 I was promoted to the position of Provincial Representative in Mpumalanga. I returned to the Head Office in January 2007, where I headed the PPSA’s Outreach Branch. As from 1 July 2010 I headed up the PPSA’s Service Delivery Branch. In April 2015 I was transferred to the Provincial Investigations and Integration (“PII”) Branch at Head Office in the capacity as Executive Manager. In this capacity I had to manage offices spanning nine provinces. I resigned on 1 November 2018.
3. I was also appointed as the Acting Chief Executive Officer (“CEO”) of the PPSA with effect from 1 December 2016 to 31 January 2017 by the current

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PP, Adv Busisiwe Mkhwebane (hereinafter referred to as "*Adv Mkhwebane*" or "*the PP*"), following the resignation of the then CEO, Adv Louisa Zondo.

4. I have been requested to provide evidence in respect of events that took place several years ago. I have not been able to access all files and correspondence records, so as to refresh my memory entirely. Accordingly, in some instances, my recollection is hazy. The evidence leaders have provided me with some emails from my time at the PPSA, which are referred to below. If further correspondence becomes available, I may have to depose to a supplementary affidavit. I have also not had access to all of the documents or the contents of the computer that I used whilst employed at the PPSA.

A. VREDE DAIRY REPORT

(i) Section 7(9) notices generally

5. Previously, the PPSA would prepare "*provisional reports*" and then circulate them to implicated parties, in terms of section 7(9) of Public Protector Act, No. 23 of 1994 ("*the PP Act*"), in order for those parties to make representations. However, in several instances the provisional reports, even though subject to a confidentiality embargo, would get leaked to the press. This had the potential to adversely impact on the investigation and, given that findings were not final, there could be unforeseeable adverse impacts and implications for recipients of section 7(9) notices who may ultimately not have any adverse findings against them. Accordingly, the PPSA developed the practice of preparing and dispatching section 7(9) notices, which were

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particularised for each implicated party, and contained only those portions of the provisional report relevant to that party's interests.

6. A section 7(9) notice would have to be despatched to all implicated parties evident from the draft report at that stage as prepared by the investigator. The section 7(9) notice would include, among others, both the PPSA's proposed findings and the proposed remedial action. One would hence need to have regard to the draft report for purposes of finalising the section 7(9) notice. This is also so when the section 7(9) notices are quality assured. Before section 7(9) notices are despatched to parties, they are considered by, among others, quality assurance officials and the PP herself, who is responsible for signing the notices.

7. In my experience, having a draft report (including draft remedial action) in place before preparing and issuing a section 7(9) notice made things easy. That is how we prepared such notices, given that each section 7(9) notice would only relate to a specific implicated person: the parts of the draft report relevant to the recipient of the section 7(9) notice could be lifted from the draft and inserted into the notice. Remedial action would be part of any draft report, so it would form part of the section 7(9) notice. This was never left out for later, but of course could change depending on responses received. The investigator would craft the remedial action but, like all parts of a section 7(9) notice or report, it would be subject to input by, for example, the investigator's manager, the Executive Manager, the Task Team, or Legal Services. Formulating remedial action is not a separate process that is divorced from the finalisation of an investigation. Section 7(9) notices were

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discussed at the Task Team and the PP -would also engage with the notice, as the PP also signed all section 7(9) notices. It may be that after the notices are issued that draft reports were amended depending on what information became available.

(ii) The approach to the investigation

8. To the best of my recollection the PP instructed the investigator who had been handling the matter in the Free State Provincial Office, Adv Erika Cilliers, to bring the file to Head Office sometime during September / October 2017. At this meeting it was decided that the matter would be finalised by PII. My sense at the time was that PII was to quality assure the report, and if there were gaps, these would need to be closed. The section 7(9) notices had by then already been issued.
9. I recall that we sat in the CEO's boardroom to look specifically at the receipts of what was purchased for the Vrede Dairy. This involved myself, the PP, her secretary (Ephraim Kabinde), Adv Cilliers and Adv Mlonyeni (who assisted Adv Cilliers with the investigation).
10. We were not, on that occasion, concerned with redrafting of a report.
11. The PP and Mr Kabinde at some point left the meeting and the rest of us continued to peruse the file. Later that day Mr Kabinde took the receipts file (but not, as far as I can recall, the entire file containing all of the evidence) to the PP's office.

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12. After I left this meeting, the PP called me from her cell phone to talk about the investigation and its transfer to Head Office. It was a short call, but she made remarks to the following effect:
 - 12.1. That Adv Cilliers was doing the bidding of the Democratic Alliance ("*the DA*") in this investigation, and that one could see she was working for the DA.
 - 12.2. That the PP would personally be happy if there were no adverse findings in this report. This is where the call ended.
13. At the time I was driving home from the office. It was on the very day that the file had been brought to Head Office and we had not yet extensively considered or discussed the evidence. Given that I had just started considering the file, I was taken aback by the PP's words. This is the kind of utterance that one does not forget.
14. When I was visiting the Free State Office subsequently, I informed Adv Cilliers hereof.
15. Prior to the aforementioned meeting, during August 2017, the Free State Office had submitted a further iteration of the draft Vrede report.
 - 15.1. A copy of the email correspondence is annexed marked "**LRN1**".
 - 15.2. A copy of the draft report is annexed marked "**LRN2**".

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16. Later in August 2017, the Free State office prepared a further revision of the draft report, incorporating what emerged from a Think Tank meeting that had taken place.
 - 16.1. A copy of the email correspondence is annexed marked "LRN3".
 - 16.2. A copy of the draft report is annexed marked "LRN4".
17. On 7 September 2017 the Free State office again prepared another version of the draft report, which I sent on to the PP on 8 September 2017.
 - 17.1. A copy of the email correspondence is annexed marked "LRN5".
 - 17.2. A copy of the draft report is annexed marked "LRN6".
18. On 11 September 2017, the PP responded to my email with various comments on the draft report. Unfortunately, I have only been able to locate her email correspondence, not a copy of the draft containing her comments, but it may well be in the PP's sent items that could be shared with the Committee. A copy of that email correspondence is annexed, marked "LRN 7".
19. As is apparent from the email correspondence, I contacted Mr Samuel to obtain a copy of the section 7(9) notice sent to the then Premier, Mr Magashule.

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20. On 17 September 2017 I sent an email to Mr Mothupi, with draft correspondence setting out the information that still needed to be supplied by Mr Magashule.

20.1. A copy of the email correspondence is annexed marked "LRN8".

20.2. A copy of the draft correspondence is annexed marked "LRN9".

21. I requested Mr Mothupi to have the PP sign and dispatch the correspondence by 18 September 2017, as the information was required for the investigation and letters to politicians were signed by the PP. To the best of my recollection, the correspondence was signed and sent.

22. It has been drawn to my attention that draft Task Team minutes reflect that, after the initial section 7(9) notices were issued in June 2017, a further section 7(9) notice was to be issued. As far as I can recall, this is not correct. It was not a further section 7(9) notice, but actually a letter (the abovementioned draft correspondence) to Mr Magashule confirming receipt of his response to the section 7(9) notice and reminding him that there remained outstanding information that the PPSA still required. The due date for a response had been 31 October 2017 but no response was received. I undertook to send a reminder and, to the best of my recollection, this was done.

23. In November 2017 the Senior Manager: Legal Services, Mr Nemasisi, provided an opinion in which he expressed the view that a PPP had not been

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concluded with Estina in respect of the Vrede transaction. A copy is attached marked “LRN10”.

24. I addressed an email dated 17 November 2017 indicating that the PP had approved the Vrede Task Team to finalise the report. This included, if I recall correctly, Mr Kekana, Adv Raedani and Mr Sithole. This was a team put together specifically to attend to the Vrede report and should not be confused with the PP’s Task Team that met weekly. Adv Matlawe was also involved at certain times. I indicated as follows in this email:

The Public Protector’s instruction are the following:

- a) To write reminders to the two Ministers for her signature; her view is that what we have requested from the two ministers will give us a good idea of how a project such as the Vrede project should be properly run, and then benchmark Vrede against that;
- b) To do a comparison of the two sets of invoices to see if payments were done in after submission of proper invoices.

You will notice in the report that there is just a one liner about the Gupta emails. I raised the issue with the Public Protector but did not receive a response. When I checked the Amabhungane website there are various allegations pertaining to monies from this project. For example there allegations that R84M was siphoned off to a Gupta offshore account and that the Gupta wedding in Sun City was paid for from funds in this project.

25. A copy of my email correspondence is annexed, marked “LRN11”.

(iii) With regard to the Guptaleak emails

26. As I recall, the Guptaleak emails had surfaced in 2017 and there were various newspaper articles relating to them at the time. Those Guptaleak emails (which included emails relating to the Vrede project) would not have been the subject matter of the initial complaints lodged, so I specifically raised these emails in correspondence with the PP (marked as annexure “LRN12”). The Guptaleak emails had not yet been addressed during the investigation. I stated:

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*The one issue that I have picked up in the final draft report is where we refer to the newspaper articles on the Vrede project in a one liner that reads **"The recent newspaper articles on the emails reported on that surfaced around June 2017, referring to the Vrede Dairy project were noted but do not form part of the scope of this investigation"** is in my view dismissive of the allegations in the newspaper articles. Some of the articles allege that monies in this project were diverted to foreign bank accounts, without being used for the intended beneficiaries. This might be a ground for the review of the report on the basis that this is a perfunctory approach that goes against what was enunciated in the Mail and Guardian case.*

As an institution, we just need to have cogent reasons why this avenue was not explored, especially since we make reference to them in the one liner in case we are taken on review."

27. In referencing the Mail and Guardian case in my email, I was referring to the fact that the Supreme Court of Appeal had already indicated that the PPSA had to follow wherever the investigation leads us. We could not be confined simply to the complaint.
28. The email was sent directly to the PP and I also copied Mr Nemasisi and Mr Mothupi. To the best of my recollection neither the PP nor Mr Nemasisi responded to my email.
29. I also recall raising the issue of the Guptaleak emails again at a subsequent Task Team meeting, and the PP specifically saying that these emails were not part of the investigation. During a break in the meeting I was later advised by Mr Nemasisi and the then secretary to the Task Team, Mr Tebele, to let the issue go, as they had tried to raise the matter at previous meetings and were also shot down by the PP.

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(iv) Finalising the Vrede report

30. It was contemplated that if all the information still required could be obtained in November 2017, then we could conceivably complete the report by 31 January 2018. The Task Team was requested to meet on 22 January 2018 to finalise the issue of the financials. At that stage further information had also to be provided by Mr Maimane from the DA.
31. By January 2018 the Vrede report had still not been finalised and was not ready to be issued as further information was still required.
32. On 25 January 2018 the Task Team compiled a memorandum in respect of the investigation, for submission to the Acting CEO and PP. It recorded, *inter alia*, that the Vrede Task Team still needed to consider a recent submission from Mr Magashule, an internal legal opinion regarding the public private partnership, the evidence in respect of the project's intended beneficiaries and further evidence that the DA leader had undertaken to provide, and which had still not been provided.
33. Whilst this is recorded in the memo, I do not now remember the specifics of what was outstanding.
34. A copy of the email is attached marked "LRN13".
35. A copy of the memorandum is attached marked "LRN14".

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36. The PP sent me a SMS asking about progress on the matter and either she or Ms Motsitsi indicated that she wanted to sign the report the following day. I recall Ms Motsitsi kept on contacting me saying that the PP wants the report. Once there was an instruction on 5 February that the PP wanted to sign the report, then efforts were directed to finalise it. I do recall indicating to Ms Motsitsi that the team was still working on the report and that it was not going to be ready the next day.
37. At the time the PP was out of the country; to the best of my recollection she was in an African country (precisely which one, I cannot recall) at a conference or some meeting. I recall we had not received all the outstanding information in respect of the investigation.
38. Nevertheless, Adv Raedani and Mr Kekana convened to attend to the report. At some point Mr Muntu Sithole may also have been included. The team worked late nights during that week. On 7 February 2018 I sent the revised draft of the report through to the PP.
- 38.1. A copy of an email chain containing my email correspondence is annexed, marked "**LRN15**".
- 38.2. A copy of the report is annexed, marked "**LRN16**".
- 38.3. As far as I am able to recall this was my last input in respect of the Vrede report.

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39. During the evening of 7 February 2018 (20h20), Mr Nemasisi circulated his comments on the draft report. He had various concerns about the report, felt that several issues still needed to be looked into and proposed finalising the report by 22 February 2018.
- 39.1. A copy of Mr Nemasisi's email correspondence is annexed, marked "LRN17".
- 39.2. A copy of the draft report that Mr Nemasisi sent through (containing his mark-ups and concerns) is also annexed, marked "LRN18".
40. I do not recall having looked at Mr Nemasisi's concerns during that evening.
41. The PP wanted to have a meeting to discuss aspects of the report on 8 February 2018. However, I had approved leave days and I therefore could not attend the meeting that the PP wanted to hold.
42. I recall receiving an SMS or WhatsApp from the PP on 8 February 2018 to the effect that my being away on the day that we were supposed to be working on the report would make our working together in future difficult. She further stated that my leave was cancelled and I should return to the office immediately. I was not able to do so.
43. On my return to the office, I anticipated the possibility of there being some adverse consequences to the fact that I had not responded to the summons back to office on my leave day and the PP's purported cancellation of my leave. I received a notice to which I responded. I no longer have that notice.

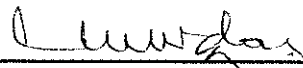
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However a copy of my response is annexed marked "LRN19". I heard nothing further in relation thereto.

44. The report was finalised in my absence on 8 February, while I was on leave as described above. Changes to the report in which I had no involvement were effected while I was out of office. The one-liner relating to the Guptaleaks remained in the final report.
45. At no stage was I instructed that certain issues could not be investigated or had to be specifically left out because of financial constraints. It never came up in any discussions in which I was involved at any point, especially given that the PPSA always had financial constraints of some kind or another. The version of the report that I had last worked on did not contain that phrase. The reference to "*capacity and financial constraints*" must therefore have been added at the time when the report was being finalised in my absence. There was no reason why this investigation was particularly subject to those constraints, any more than any other PPSA investigation.

B. LINKEDIN

46. On 29 April 2022 the PP sent me a LinkedIn invite, which I accepted. Although I had not spoken to her since I left the PPSA, I recall having as a courtesy apprised her of my resignation, and I accepted the invite. A copy is annexed marked "LRN20".



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I certify that the above signature is the true signature of the deponent and that he has acknowledged that he knows and understands the contents of this affidavit which affidavit was signed and sworn to before me in my presence at PE on this 13 day of **AUGUST 2022**, in accordance with Government Notice No R1258 dated 21 July 1972, as amended by Government Notice No R1648 dated 19 August 1977, as further amended by Government Notice No R1428 dated 11 July 1980, and by Government Notice No R774 of 23 April 1982.

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COMMISSIONER OF OATHS

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