**MEDIA STATEMENT**

**COMMITTEE FOR SECTION 194 AGREES TO GRANT PUBLIC PROTECTOR THREE DAYS FOR LEGAL REPRESENTATION**

**Parliament, Friday, 28 October 2022 –** The Committee for Section 194 Enquiry into Public Protector (PP) Adv Busisiwe Mkhwebane’s fitness to hold office today resolved to grant Adv Mkwebane three days instead of 10 to prepare for her legal presentations.  The hearings will resume on Tuesday next week.

This follows the PP’s legal team leaving the meeting yesterday after a ruling declining an adjournment. This happens in circumstances where there is no interdict that precludes the committee from proceeding with its hearings. The PP sought to postpone the proceedings to an unspecified date, pending the outcome of her intended review proceedings in the Western Cape High Court to challenge the decision by the committee Chairperson, Mr Qubudile Dyantyi, committee member Mr Kevin Mileham, and the committee to decline her application for the recusal of the Chairperson and Mr Mileham on grounds of alleged bias.

At today’s proceedings, Adv Mkwhebane confirmed that she did not terminate the mandate of her legal team, nor did she restrict their mandate to only being limited to the adjournment application.  No reasons were furnished for the request for  the 10 day adjournment for consultation with her legal team as she sought to postpone proceedings until 7 November 2022 and only thereafter to seek the services of a new legal team if necessary.  She indicated that her counsel of choice remained Adv Dali Mpofu, SC.

The committee received legal input from Parliament’s legal advisor, Ms Fatima Ebrahim. Ms Ebrahim took the committee through  the Supreme Court of Appeal judgement of Take and Save Trading CC and Others v Standard Bank of SA Ltd 2004 (4) SA 1 (SCA) where the SCA dealt with a matter where a defendant’s legal team withdrew without reasons.  In this matter the Supreme Court of Appeal found that  it was ‘one of the oldest tricks in the book’, when a party gets into legal difficulty, for the legal team to withdraw, or to have its mandate withdrawn, so as to engineer a postponement because the party would then not have legal representation, thereby in this way seeking to force the very postponement that was refused.

Ms Ebrahim explained further that as per the SCA’s finding the mere withdrawal by a practitioner or the mere termination of a mandate does not, contrary to popular belief, entitle a party to a postponement as a right.

Ms Ebrahim took the committee through a correspondence  between the Chairperson and the PP’s legal team – as recent as 21 October - in which they had indicated that they were ready to proceed. She indicated to the committee the various options at its dipsoal and indicated that the Enquiry can continue to hear the evidence in chief of Mr Neels Van der Merwe as  this would not infringe on Mkhwebane's rights, as she would still be given an opportunity to cross-examine the witness herself or by her legal team and deal with his evidence at a later stage, should she so require.

In giving her advice Ms Ebrahim reminded the committee that it was constiutuionally bound to hold the PP to account and that it acted on behalf of the public using public funds.

Members of the committee were then allowed an opportunity to deliberate on matters. The majority of members  accepted the legal advice by Ms Ebrahim with some members expressing the sentiment that the “walk out” by the legal team was a ploy. Two political parties, who had also previously supported the adjournment application,  were of the view that the PP should also be granted enough time to sort out the matter of her legal representation before the Enquiry reconvenes.

Following an objection that the evidence leaders could not put questions to the PP, Mr Dyantyi explained the role of the evidence leaders as well as Parliament support staff was to enhance the work of the committee. “They are here to guide and assist the committee to get to the bottom. That is why they lead evidence and ask questions.”

Furthermore, in summary Mr Dyantyi made it clear that the majority of members are in favour of option two as presented by Ms Ebrahim which provided that request for a postponement be granted until close of business on Monday by which time the PP must provide an update on the outcome of her consultation with Seanego Attorneys before resuming with the hearing of evidence on Tuesday.

The committee is going to hear the evidence of Mr Neels Van der Merwe, Senior Manager: Legal Services at Public Protector South Africa, on Tuesday.

The committee will continue on Tuesday with its hearings. The committee was established by the National Assembly on 16 March 2021 to conduct a constitutional inquiry into the Public Protector’s fitness to hold office. Committee documents can be found at [Committee for Section 194 Enquiry - Parliament of South Africa](https://parliament.us15.list-manage.com/track/click?u=174940c63c5e06b60f5650bea&id=48b58f5f26&e=da105e4f6a)

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

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