**MEDIA STATEMENT**

**COMMITTEE FOR SECTION 194 HEARD NO OMBUDSMAN CAN ENGAGE IN COMMERCIAL TRANSACTIONS WITH PUBLIC**

**Parliament, Wednesday, 1 February 2023 –** The Committee for Section 194 Enquiry into Public Protector (PP) Adv Busisiwe Mkhwebane’s fitness to hold office heard yesterday that no ombudsman can engage in any commercial transaction with either a complainant or a respondent or a member of the public.

This was the response by Ms Caroline Zulu-Sokoni, the Public Protector of the Republic of Zambia, in response to questions by Adv Nazreen Bawa, SC, regarding whether crowd funding could be used to pay for a personal cost order against a PP and stemmed from evidence heard that Adv Mkwebane benefited from a crowd funding initiative by the public following a person cost order made against her by the Constitutional Court.

Ms Zulu-Sokoni, however, several times raised serious concern around the issue   of personal cost orders made against the PP, saying that it is not correct to award such orders if the Ombudsman’s actions were in her/his professional/official capacity. The committee yesterday heard evidence again from Ms Zulu-Sokoni after which evidence leader, Adv Bawa, SC,  was given an opportunity to put questions to her.

After objections from the PP legal team on her line of questioning, Adv Bawa, SC said the witness had given extensive evidence on the subject of an ombudsman’s independence and autonomy, and she wants to explore with the witness where she draws the line. Ms Zulu-Sokoni said it would not be appropriate or in order for an ombudsman to seek funding from the public. However, she said the protection around the Ombudsman must be entrenched, and personal costs orders make them vulnerable.

Adv Bawa said the Constitutional Court ruling stated that personal cost orders are not granted against public officials who conduct themselves properly, but against those who fall short. Ms Zulu-Sokoni responded that there should be other ways to punish such action, “But I have no problem with the reasoning of the court.” Ms Zulu-Sokoni said personal cost orders is a power that has to be used with care, especially when dealing with an Ombudsman.

She further agreed with Adv Bawa, SC that the Venice Principles are not binding on South Africa, but rather South African law is.

Adv Bawa also focused on what was referred to as “judicial harassment”. She said only three or four of the several judgements against Adv Mkhwebane made personal cost orders against her. She asked Ms Zulu-Sokoni if findings by courts of non-compliance against the PP can then still be referred to as “judicial harassment,” to which Ms Zulu-Sokoni said no. Ms Zulu-Sokoni, however, remained opposed to personal cost orders. “It would send a wrong message if the Ombudsman had to pay personal costs for respondent institutions.” However, she admits to not having scrutinised all the court judgments that made cost orders against the PP.

Regarding questions raised about the Section 194 inquiry process, Adv Bawa asks if Ms Zulu-Sokoni is saying that the process does not  comply with the minimum standards, to which she responded: “This process is compliant with the laws of South Africa, and that is what is important.”

She admitted that she is not an expert on either South African law or the South African Constitution. She is also not an expert on the removal process of a PP, but rather speaks as an experienced Ombudsman who has held  the position of PP in Zambia for almost 20 years.

The committee heard that the PP had written to the African Ombudsman and Mediators Association (AOMA), which Adv Mkhwebane heads, for their intervention in her impeachment. This leads to an observer team being sent to South Africa at the start of the hearings to monitor the process and the current testimony of Ms Zulu-Sokoni.

Committee Chairperson Mr Qubudile Dyantyi said the committee will resume later today with housekeeping matters regarding calling certain witnesses following by a continuation of the hearings with the testimony of Mr Seabi. 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=f6ec01dd1f&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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