

To: Mr QR Dyantyi, MP

Dear Mr Dyantyi,

- 1: **ALLEGED FAILURE TO GIVE INSTRUCTIONS**
- 2: **BIASED, UNDIGNIFIED, CRUEL AND DEGRADING TREATMENT BY THE ENQUIRY CHAIRPERSON AND/OR S194 COMMITTEE**

1. I refer to your official letter written to me as Public Protector and in your capacity as the Chairperson of the Section 194 Enquiry into the veracity of the charges contained in the Mazzone Motion which was subsequently tabled in the National Assembly. The said letter contains disturbingly offensive material to which I wish to respond as set out below. It would seem that the letter was shoddily rushed through because neither the pages nor the paragraphs are subsequently numbered making it difficult to reference. For ease of reference, I have therefore taken the liberty to number the paragraphs so that there can be some logical flow in the responses. The numbered version of your letter is, for the record, attached hereto and marked “**QRDA**”.
2. I will now deal with each paragraph in turn, followed by my specific demands as to what next steps should take place.



Adv. Busisiwe Mkhwebane



Ad Paragraph 1

3. You state that you wrote your letter out of concern and “*frustration*”.
4. It is inadvisable to write an official letter, on the letterheads of the Parliament of South Africa and/or the Section 194 Committee whilst driven by emotions such as frustration and/or undue anger more especially when such emotions are based on false information as will be demonstrated below. Yours is a leadership position which requires factual grounding, balance, fairness, impartiality and sound judgment.

Ad Paragraphs 2 and 3

5. As repeatedly articulated by me both verbally and in writing, especially when I addressed the Committee on 13 February 2023, both I and my legal team are eternally grateful to you and your team for having speedily acted when I appealed for your intervention regarding the crisis of non-payment which was facing my legal team and threatening my ability to participate meaningfully in the enquiry. We continue to hold that view.
6. That notwithstanding, your self-confessed emotional outbursts and gratuitous insults aimed at me as a person, as a public official and as a woman were, as intended, received with much shock and regret. The members of the legal team will speak for themselves if you find it in your heart to allow them to speak when they next request to do so. I cannot speak for their own injuries but will only refer to the insults aimed at them only in so far as they were targeted at them as my representatives.
7. Given the sad realities of our patriarchal society, men who are put in certain positions of power over women must always be particularly sensitive to their inherent and oppressive attitudes and how these may be received.

8. For the record, the financial ruin which was faced by my legal team was, contrary to your insinuation otherwise, sincere and genuine until recently alleviated after a series of timely and separate interventions by me, your office and them.

Ad Paragraph 4

9. I reject the theory that the invoices were not submitted "*timeously*", not in accordance with the requirements of the PFMA or other prescripts. If that were the case then the invoices should and would not have been fully and 100% paid within six or seven days of my letter to you dated 9 February 2023, without any adjustments having been made thereto. It ought to be obvious to you that there was never any truth to that claim. In any event and even if the invoices were late, the complaints refer only to invoices already rendered (submitted to PPSA). Unissued accounts are therefore of no relevance to the present issues. Further, PPSA is obligated to process and pay invoices within 30 working days, alternatively they should have returned the invoices back for correction within reasonable time.
10. It is not only in that regard that you inexplicably allowed yourself to be lied to and misled but also in respect of the numerous undertakings made to you by PPSA, for example that 33% would be paid on 2 February 2023, 74% would be paid on 10 February 2023 and ultimately that 100% would be paid on 14 February 2023. All those undertakings were breached in some form or other. Yet you direct your anger, not at the perpetrators of those omissions but at the victims thereof. It is also clear that there are countless other ways in which you unquestioningly accepted and believed misinformation.
11. It is indeed true that I had reached a point where I was unable, not unwilling, to give instructions to my legal team to refrain from doing any other work and exclusively focus on my case when they were in financial dire straits and while everyone else involved in the enquiry including you, me, members of the Committee, the Evidence

Leaders, Parliamentary staff receive our payments and salaries promptly and on due dates. That I had reached such a point was not a secret. It was in fact explicitly articulated to you in my letter dated 9 February 2023. The lack of empathy which is necessary for anyone to fail to grasp this simple reality is difficult to imagine from any person, let alone one who is supposedly our impartial leader in this accountability exercise and project.

12. The less said about the contradictory messages which supposedly both came from Ms Ebrahim, that the team was not able to consult with Ms Mvuyana due to lack of instructions (which is true) while the team simultaneously wished to consult with her (which is false), the better. Clearly the two statements cannot both be true.
13. Given the task you have been given to preside over such a complex enquiry made up of up to 50 000 pages of information, it is a huge concern that you are unable to deal with the very limited information related to the simple dispute regarding the non-payment of a few legal invoices.

Ad Paragraph 5

14. It is specifically false that Adv Mpofu SC indicated to Adv Bawa SC that he was “*willing to proceed but could not speak in respect of his juniors*”. The legal team speaks and acts with one voice. Any suggestion to the contrary is not only mischievous but preposterous. What Adv Mpofu SC communicated was that he was personally not in the same financial dire straits as what he has been told by his juniors (due to his fortuitously being paid by a different attorney during January) and also that he would appeal on behalf of the entire legal team, on Monday 13 February 2023 when I had indicated to you that I would have appeared alone. As you know, that is exactly what actually happened on Monday 13 February save for the fact that you refused to allow Adv Mpofu SC to speak despite my numerous requests for you to do so.

15. Had you allowed the Senior Counsel to speak as requested, he would have explained the position and absence of the entire legal team, including my attorneys. He had volunteered to avail himself out of respect for the Committee and on the understanding that there was no fight or difference with the Committee but with PPSA. If anything, he intended to express the team's gratitude to the Chair and certain members of the Committee for their understanding. (You may recall that Honourable Nqola had previously even urged the Committee to pass an apology to the legal team for the non-payment crisis, which you ruled against.)

It is false to state that I did not own up to the fact that the non-availability of my lawyers was mainly driven by my inability or "*failure*" to give them instructions but led you or the committee to believe that "*it was (my) legal team that were refusing to take further steps until the fee issue had been attended to with PPSA*". In case I have not made this clear in my earlier and/or this interaction with you and the Committee: **IT WAS ME BUSISIWE MKHWEBANE WHO FOUND IT DIFFICULT OR IMPOSSIBLE TO IMPOSE ANY FURTHER INSTRUCTIONS ON MY LEGAL TEAM WHEN THEY WERE BEING UNFAIRLY AND DISINGENUOUSLY NOT BEING PAID BY PPSA FOR WORK DULY DONE AND INVOICED IN TERMS OF THE APPLICABLE GOVERNMENT REGULATIONS.**

16. That point was reached by the dictates of my own conscience and not induced by any other person. I refrained from issuing such further instructions in my capacity as a client and in terms of considering all the information at my disposal regarding this issue and what I know of the relevant and applicable regulatory prescripts.
17. What the legal team kindly added to the above was that, they would be willing to proceed, even if some of the moneys owed had not been actually paid out due to, for example any legitimate disputes, but only if suitable arrangement would have been negotiated and agreed to following a meeting between them and PPSA.

18. As it actually transpired, the legal team returned back to work promptly upon my instructions for them to do so in the morning of 15 February 2023 and before the payment of all outstanding fees.
19. I hope there will be no other unnecessary confusion on this question of instructions.

Ad Paragraph 6

20. I reject the notion that the steps taken which successfully resulted in the 100% of the outstanding fees amounted to “*the waste of the precious time of all persons involved including members who have many other matters to attend to ...*”. Actually, the members are employed and duly paid by us as citizens to attend to duties such as attending the enquiry and holding PPSA accountable to honour its obligations to service providers. Doing exactly that can never be referred to as a “waste” of “*their*” time. To the contrary it is private legal practitioners who only sell their time and professional services for a living. Parliament is duty bound to assist them and to save them, as citizens, from abusive treatment by any organ of state. Parliament has no “*many other matters*” than ensuring the welfare of all South African citizens and adherence to the Constitution of the Republic.
21. To your knowledge my (successful) intervention was also not aimed at “*impeding the work of the Committee*” but at facilitating its work. At the risk of stating the obvious, in the event of my legal representatives withdrawing their services for any legitimate reasons, including non-payment for their services, then the work of the Committee would literally screech to a halt. To prevent such an eventuality cannot ever be properly described as “*impeding the work of the Committee*”. Your comment in that regard is, to say the least, unfortunate, regrettable and ill-conceived.
22. For the record, it was I in agreement with my legal representatives who agreed that I, accompanied by Adv Mpofu SC as the team leader, should address the Committee on 13 February and give any necessary clarifications and assurances, all out of our

unrequited respect for the Committee. It was always our view, until recently, that the Committee was unnecessarily caught in the crossfire and was duly empathic to our plight. How wrong we turned out to be.

23. Your comments about my “*remaining in Cape Town*” in the hope that a solution would be found, is most demeaning, disrespectful and hurtful. I was not in Cape Town as a holiday-maker but to address your Committee and to attend the enquiry if called upon to do so.

Ad Paragraph 7

24. Those around you who are properly and legally trained will no doubt explain that the fact that one has called a witness does not mean that you must not consult with that witness because you are “*clearly aware of what you sought to ask her*”. Your comment in that regard therefore does not merit any serious response.

Ad Paragraph 8

25. As previously indicated, I do not wish herein to speak for the legal team save as it concerns me personally.
26. I have already explained the obvious and inherent lie regarding alleged non-compliance with the PFMA.
27. It is yet another lie that my legal team and/or Adv Mpofu SC who, from his sickbed, reached out to Adv Bawa SC in an effort to seek solutions to the impasse, ever made a request for the hearings “*to be postponed to Tuesday 21 February in order to afford the team some time to prepare*”. This is palpably and demonstrably false. Adv Mpofu SC asked for the hearing to be postponed to Friday 17 February 2023 (i.e. to exclude

the two half-days scheduled for 15 and 16 February for the convenience of the Committee members who were required to attend the Presidential SONA Debate). The then hearing of Mr Malunga's evidence would be finalised and Ms Mvuyana could be moved to Monday 20 February to Tuesday 21 February. Adv Bawa SC indicated that she was scheduled to appear at the Supreme Court of Appeal in Bloemfontein on Monday 20 February. For that reason, Adv Mpofu SC then indeed proposed that Ms Mvuyana could therefore be heard on Tuesday. It is crucial to correct the distorted version officially reduced to writing in your letter, which generations to come and/or other forums will otherwise be misled to believe.

28. The rest of the discussions between Adv Mpofu SC and Adv Bawa regarding the removal of the payment issue from the table of the Committee were never intended to be conveyed to you but formed part of the supposedly off-the-record discussions between Senior Counsel to break the impasse. To the extent that they have been unduly disclosed, they are confirmed to be true.

Ad Paragraph 9

29. The misrepresentations of my position and that of the legal team have been addressed above.
30. The suggestion that my team needs "*clarification*" from you in respect of their professional duties to the effect that they do not need instructions on each and every occasion to attend to work is not worthy of a response. It is a concern for a person holding your position to even think that you are qualified to make such an insulting remark towards such senior professionals.

Ad Paragraph 10

31. I had refused to instruct Seanego Inc until such time as the outstanding balance has been paid after which (they) will consult with Ms Mvuyana. For the record, that consultation started at 10h00 on 15 February 2023, your letter was received at 13h40, and the outstanding balance was only paid after 15h00 and a day later than promised and falsely relayed to you. Those are the objectively verifiable facts. Whoever it is who "*briefed*" you to the contrary was not telling the truth.
32. To blame me and not PPSA for the impasse is nothing short of breathtaking. Your suggestion that I was dishonestly aiming at obtaining a postponement until the next week is roundly rejected as false, for the reasons already explained.

Ad Paragraph 11

33. It is distinctly false that, when you wrote your objectionable letter, an amount of R1,8 million had been paid. As earlier indicated that payment was only made much later and after 15h00 well after your letter was received by me.
34. It is very unfortunate indeed that at this stage you have found it necessary or even appropriate to question or second-guess the number of representatives necessary to constitute the full legal representation which the Constitutional Court ruled I was entitled to. The suggestion that because the rule refers to "*representative*" in the singular, supposedly means that I should have one attorney or one advocate (not briefed by anyone) is plainly ludicrous. It is an indication of your bias that you have never similarly questioned the similar compliment of Evidence Leaders, their assistants and/or briefing attorneys which participates in the Committee. I invite you to tell me how many attorneys and/or advocates would be adequate in your professional experience, if any. I will then reduce or increase my team according to your opinion.

35. For the record, the size of the team was agreed with PPSA in writing prior to the commencement of the enquiry proceedings. The daily and hourly rates to be charged were similarly agreed. You may remember that Adv Neels van der Merwe confirmed under oath before the Committee that counsel had voluntarily decided not to charge their usual rates but to work on a discounted rate. Your unwarranted shifting of the blame to my legal representatives is therefore particularly underserved in light of these verified facts.

Ad Paragraph 12

36. Despite the disclaimer, your conduct in interrogating the financial habits or commitments of my legal team is inexcusable. So is your remark that my junior advocates, by refusing to be enslaved and by doing other work in order to feed their families, were indulging in the exercise of “*cutting one’s nose to spite their faces*”. If you understand your duties to include making such condescending insults, then you need to be corrected before it is too late.

Ad Paragraphs 13 and 14

37. I reject, with the contempt it deserves, your accusation that I am purposely delaying matters. Equally the accusation directed at my Senior Counsel implying that he must have been lying in stating that I want nothing more than to have my say and see this (frivolous) matter to conclusion, is unwarranted and constitutes another gratuitous insult aimed at me and my legal representatives who are simply performing their professional duties for someone that you and the others clearly resent and hate. This includes all those who have continuously and falsely praised you for being “*fair*”, “*patient*” and “*tolerant*” in the discharge of your duties. It is driven by the toxic combination of racist, hateful and political agendas by those who fear public accountability which is behind the concocted charges in the Mazzone Motion.

38. I similarly reject your unfounded accusation that I do not have “*a particular grasp*” of ensuring that public funds are spent in a reasonable manner. Under my leadership PPSA obtained an unprecedented three successive clean audits exactly because I have “*a particular grasp*” of governance issues. The remarks about my allegedly “*unusually large team*” have already been addressed.
39. I am not responsible for the fact that the hearings take place in Cape Town and therefore necessitate the burdens of travelling and being away from my home. Nor can I be expected to rely on parliamentary security and travel alone to Cape Town. It is not clear why such a ridiculous standard may be imposed by you on me, unlike the legion of Ministers and other public and state officials who have visited Parliament for the past 29 years. It is equally puzzling why you should think that my security must only be protected “*in the precinct*”. This raises eyebrows why such comments, must I be left vulnerable to those who hate accountability and do not want to account to constitutional institutions? Worse, you should be worried also about how much was spent by the Evidence leaders when they were taking statements of witnesses around Gauteng.
40. Putting such matters in the public domain can only be calculated to compromise my physical security and to put my life at unnecessary risk. It must be condemned.

Ad Paragraph 15

41. Easily the best evidence of your insulting treatment of me is contained in the false accusation that Seanego Inc are not submitting bills “*timeously*” and if so that this is done “*perhaps at (my) instructions*”. It is not clear when, why and for what reason I could have given such strange instructions. This particular statement seems to be totally gratuitous and baseless. For the record, one of the key reasons for delays in rendering bills has exactly been the persistent delays and spurious objections raised by PPSA, the history of which was communicated to you. This is why my legal team has been begging PPSA for a meeting to resolve the issues once and for all. Since

August 2022 to date such a meeting has never been granted. In any event your attack on my attorneys without checking the facts or giving them an opportunity to put their side of the story is yet another example of bias and prejudice. Your threats and accusation that I am holding the Committee to ransom is, needless to say, hereby rejected.

42. It seems necessary to emphasise that neither you nor the Committee have a singular duty to ensure that “*the enquiry proceeds without delay*”. This misapprehension seems to lie at the heart of the many constitutional transgressions which are constantly committed in the name of the Committee by you and others. In fact the relevant National Assembly Rule 129 AD (2) reads as follows:

“The Committee must ensure that the enquiry is conducted in a reasonable and procedurally fair manner within a reasonable timeframe.”

43. Therefore the Committee carries an equal duty to ensure fairness, reasonableness and undue delay. Any blinkered over-emphasis on any single one of these three requirements at the expense of the others will result in the dismal failure to comply with that Rule. Your recent remarks that you are operating in some “*countdown*” is the surest way to breach Rule 129 AD (2). Let this be a warning of such a narrow approach to the enquiry. Your headlong haste to comply with your “*countdown*” at the expense of fairness and reasonableness, will lead to compromising the process. It is an approach which is guaranteed to backfire in the long run even though it may grant instant gratification in the immediate term.

Ad Paragraph 16

44. Your unfounded suggestion that my team has applied itself in any matter which is not diligent, even in the face of abuse from all quarters, constitutes a particularly disrespectful and uncalled for insult.

Ad Paragraph 17

45. If your letter in which you see your role as that of scolding me to submission, is part of what you describe as doing your best to “*accommodate*” me, then your best leaves a lot to be desired. Because to me I feel insulted and subjected to threats. Such unfair treatment and clear gender stereotyping of our mutual roles in this enquiry must be roundly and decidedly rejected with the contempt it deserves. Such behaviour has no place in our modern and constitutional democracy based on the values of equality, dignity and ubuntu and in particular, gender equality. It constitutes a subtle form of gender based violence. I certainly feel violated by you.
46. It is for these reasons that this letter will be referred for investigation to the Speaker and to the Commission for Gender Equality. That is to cater for the likely event that the serious issues raised above will otherwise be predictably swept under the carpet if only left in the hands of the biased and prejudiced Committee and/or its Chairperson who are the very perpetrators of such violations.

DEMAND

47. I therefore hereby demand that you must forthwith:-
 - 47.1. allow my legal representatives the opportunity to address the issues raised above and any additional issues at the enquiry;
 - 47.2. unconditionally withdraw the said offensive letter;
 - 47.3. issue an apology in writing which must also be read by you into the record of the enquiry; and
 - 47.4. undertake to refrain from repeating such conduct in the future.

48. Failure to do so by Friday 24 February 2023 will result in my taking whatever necessary steps within the constitutional framework of South Africa, to protect my violated rights, notwithstanding the constraints legitimately imposed by section 58 of the Constitution but which, contrary to popular belief, do not constitute a total bar to accountability.

Yours faithfully,



Adv. Busisiwe Mkhwebane

CC1: SPEAKER OF THE NATIONAL ASSEMBLY

[REDACTED]

CC2: COMMISSION FOR GENDER EQUALITY

[REDACTED]