



Committee for Section 194 Enquiry

Chairperson: Mr QR Dyantyi, MP

Committee Secretary

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Executive Secretary

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14 August 2023

Mr Chowe

State Attorney, Pretoria

Copy: Adv B Mkhwebane, Public Protector

By em 

Dear Mr Chowe

ADV MKHWEBANE'S LETTER OF 11 AUGUST 2023

1. I refer to the above-mentioned letter and more particularly paragraph 9 therein in which Adv Mkhwebane has indicated that all correspondence be directed through your office for transmission to her chosen attorneys "*once the normal legal processes have followed.*"
2. I note that Adv Mkhwebane seeks your assistance in explaining to the Committee the impediments that speciously prevent the State Attorney, Pretoria from acting on her behalf. This is not necessary as at the Committee meeting of 9 June 2023, you sufficiently explained to the Committee that it is Adv Mkhwebane herself who is of the opinion that there is a conflict of interest that would prevent the State Attorney, Pretoria from acting on her behalf because the State Attorney, Cape Town appointed the evidence leaders. The issue of a conflict of interest or potential conflict, as you explained, was not raised at your behest, but because Adv Mkhwebane refused to allow your office to act for her.

3. Be that as it may, I have previously expressed to Adv Mkhwebane that the PPSA has availed funds to her for purposes of the Enquiry (she having made it clear that she wished to have legal representation to allow her to continue participating in the Enquiry) and it is herself, rather than the Committee, which controls how those funds are best spent. The onus has thus always been and remains on Adv Mkhwebane to do the necessary to secure her legal representation, and the Committee has not impeded her in respect thereof in any way.
4. Notwithstanding the two recusal applications against me, I remain in the position of Chairperson, and therefore remain charged by the Committee with bringing the Enquiry to finality. Whilst finality, may not serve Adv Mkhwebane's interest, despite a stated intent to want to participate in the Enquiry (albeit 'under protest'), repeated postponements do not favour the public purse. More importantly however further postponements will have the inevitable effect of paralysing the Committee and in turn the National Assembly from holding Adv Mkhwebane to account notwithstanding its Constitutional obligations and the public interest. Whilst neither the Committee or I have attributed every delay as an orchestrated act by Adv Mkhwebane to ensure that the s194 process cannot be completed before mid-October 2023, the fact of the matter is that the delays have had the cumulative effect of constraining the capacity of the Committee or myself to grant any further extensions without good cause.
5. The Committee deliberated on the content of Adv Mkhwebane's letter of 8 August 2023 and was resolute that it has not prevented her from accessing or availing her right to legal representation. The Committee questioned the sudden withdrawal of Chaane Attorneys (conveniently at the time when it would have completed familiarising itself with the record) and its failure (and the failure of Adv Mkhwebane as the client) to ensure that counsel has been briefed. Aside from one member of the EFF, the Committee was satisfied that it has done everything in its power to assist Adv Mkhwebane and it will not delay its processes any further.
6. Unfortunately, postponements (especially of an open-ended nature as the one being requested) are not merely for the taking especially in the absence of good cause. As Chairperson I must balance the Constitutional obligations of Parliament and the public interest on the one hand with Adv Mkhwebane's rights on the other. I am not convinced that Adv Mkhwebane has made a case for postponement given her failure to secure her legal representation as set out in previous correspondence. There is also no reason for me to believe that the appointment of new attorneys will allow for proceedings to be conducted without further undue delays and in a manner which will permit the Committee and the National Assembly to fulfil its Constitutional obligations and complete the s194 process. This is especially so given the objections raised to date.

7. As such, Adv Mkhwebane is reminded that should she wish to respond to the draft report such response is due by no later than 21 August 2023. Adv Mkhwebane has always known she will be provided an opportunity to comment on a draft report and it is her responsibility to exercise that right should she wish to do so.

Yours faithfully



Mr Qubudile Richard Dyantyi

Chairperson: Committee for Section 194 Enquiry

