



## **Committee for Section 194 Enquiry**

**Chairperson: Mr QR Dyantyi, MP**

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13 June 2023

Adv. B Mkhwebane

Public Protector

Copy: Mr I Chowe

State Attorney, Pretoria

Dear Madam, Public Protector, Adv. B Mkhwebane

### **RESUMPTION OF THE S194 ENQUIRY AND CHANGE IN FORMAT**

1. It is now more than 10 weeks since the Committee was last able to hold an oral hearing in the Enquiry into your removal. The Committee was forced to adjourn on 31 March 2023, being the date the PPSA had indicated, a month prior, would be the last day it would be in a position to continue funding your legal representation, having already spent some R30 million.
2. At that stage we were in the middle of your oral testimony which was aimed at amplifying your written statement. Since then, the Committee has made no meaningful progress in assessing the Motion. It has become increasingly clear that unless I issue revised directives that ensures the Enquiry is completed by at least early August 2023, we will face continuous obstacles that will require piecemeal management and will impede the Committee from completing its work and the National Assembly from fulfilling its obligations.
3. We have also been limited to a further final R 4 million budget which the PPSA has provided for your legal representation. Therefore, our procedures going forward need to be revised to ensure that the

process is completed within the available budget and timeframe. This is evidently the only reasonable option, given that you have indicated that you will not pay for your own legal representation before the Committee and that you will also not participate in the process without state-funded legal representation. Further, it would appear that you have refused to have counsel briefed until such time as clarity is provided as to what the position would be once the R 4 million is exhausted. As the s194 Committee has no powers within which to deal with the issue of legal representation, mindful of the above constraints, the proposal presented on Friday 9 June 2023 was to ensure that the Committee's processes would be completed within the R 4 million budget and in a manner that is still fair.

4. The repeated stalemates of course mean that oral hearings as we have had thus far, followed by questions from the Evidence Leaders and Members, are no longer practical. No purpose is served in clinging to directives (which you have from inception indicated that you do not agree with anyway) that are not implementable in light of the changed circumstances that now prevail.
5. In the Committee meetings of 7 and 9 June 2023, I had indicated that the Committee has been beseeched with several obstacles (many pre-date the termination of funding on 31 March 2023). These include various 'interlocutory' type applications; illness; the so called 'walk-out' of your legal team; a recusal application against me and Mr Mileham, MP; a recusal application in respect of the Evidence Leaders; funding and payment issues and delays occasioned by parallel litigation processes launched by yourself. The completion of oral evidence of witnesses also took longer than anticipated and were, in some cases, interrupted by other events. All of these impacted on the Committee completing its work. I mention same without attributing any blame. It is a fact that these delays have occurred and have adversely impacted the work of the Committee and I am doing my level-best to manage the consequences.
6. As I noted at the meeting on Friday, 9 June, it appears that for every step forward, we take two steps back adversely affecting the ability of this Committee to fulfil its functions without delay. It would be an indictment on Parliament which has, as a core function, the duty to conduct oversight (including holding office bearers of Institutions Supporting Democracy to account), if it were not able to conclude the process it commenced, regardless of what the outcome thereof may be, and which remains to be seen. This is especially so after the expense incurred in this protracted process.
7. Given all the financial and human resources ploughed, at the expense of taxpayers, into this process (on the side of Parliament and the PPSA) which has ensued for, more than 11 months since the Enquiry commenced, the Committee must complete its task. I remain obligated to take all necessary steps to ensure that a report be provided to the National Assembly as per the Constitution and Assembly Rules. This means that the Committee must conclude its work and provide the National Assembly with a report for consideration by latest early August 2023 so that this matter may be

finalised prior to the end of your term of office in October 2023. This latter date has always been known.

8. As I had also indicated it is not fair to you that this process overshadows your departure from office. If it is left incomplete this may present an impediment to you in your future career path. However, and importantly, it is also, in the public interest that the process is completed.
9. In light of this, I proposed a new way forward, which was shared in the meeting on 9 June 2023. It had become clear after the meeting of 7 June 2023 that other proposals were not feasible.
10. It is useful for me to recap the main events that have unfolded in the past weeks and how this has informed my decision on the way forward. Given the many events and timespan, I do this in the form of a table attached as Annexure "A".
11. The summary and chronology in Annexure "A" do not reflect all correspondence exchanged in this period of time or the full content thereof nor every development. However, it is aimed at illustrating the salient aspects of how matters have unfolded to date and the recent key events which have informed my decision. To the extent that correspondence has been directed to me or from me, these have been tabled in the Committee and a complete record is available as are all transcripts and audio-visual recordings of meetings of the Committee whether it was sitting as a Committee or where the Enquiry was reconvened for purposes of restarting.
12. Given these developments, my proposal in the meeting of Friday, 9 June 2023, was put to Members and there was no dissent from any of the Committee Members present in relation to this proposal. It was expressly endorsed by those Members who participated in the ensuing discussion. The proposal was informed by prevailing circumstance, the events captured in Annexure "A" and the following additional reasons:
  - 12.1. You, as the subject of this Enquiry, have been suspended for more than one year now and you have the right to have this matter brought to finality. If we fail to do so, it leaves you in the position where this matter will forever hang over you as a cloud. That can never be fair. If we are to arrive at a finding that you reject as irrational or based on a process that is unprocedural, you will at the very least have the right to challenge this in the court of law should you so wish.
  - 12.2. The Committee is bound by the Constitution and the Assembly Rules which require it to complete its task diligently, in a fair manner and within a reasonable timeframe, without delay. I therefore believe that, in the circumstances, it is the only viable option which allows for the process to be concluded in a manner that is fair to all the role-players. Whilst I do not doubt the fairness of the way forward, I most certainly would never have permitted or recommended

a procedure in this form had these obstacles arisen some months ago and in the context of a more favourable financial position.

- 12.3. Whilst you have sought to bring an application directly at the Constitutional Court, on the question of who bears the legal responsibility to pay your legal fees (if such a responsibility exists), this in itself does not require of the Committee to await that outcome. You will recall that, as with previous applications and requests, it has been made clear to you that in the absence of an interdict the Committee remains duty bound to continue its work.
- 12.4. The PPSA has firmly indicated that it will not avail any further funds beyond the ring-fenced amount of R4 Million Rand. In turn you have indicated, in no uncertain terms, that you are not willing or able to cover any expenditure that may be incurred in respect of your legal fees beyond this amount in relation to the Committee proceedings. Whilst I have intervened, and been subjected to criticism for so doing, in trying to assist you to secure additional funds, the question of funding is not within the domain of the Committee. In fact, the amount that has been provided is excessive for any process. Furthermore, you direct your legal team (which consisted of 3 counsel supported by at least 2 attorneys at any given time) with the knowledge that the PPSA had only committed to paying the reasonable costs of your representation and that the budget of the PPSA is not limitless nor can it be poured into this matter at the expense of other core priorities.
- 12.5. Considering this stalemate, a revised approach is the only option for the process to be completed timeously within the remaining budget, in a way where you are provided with a fair opportunity to deal with questions from Members and the Evidence Leaders. The R4 million is sufficient for purposes of completing the Enquiry fairly on the approach adopted on Friday, even though the fees of your counsel have now increased. As you would be aware I had not initially favoured an approach where you answered questions in writing as I was of the view that the members of the Committee should be able to ask you questions for you to respond to orally especially given that the Constitutional Court made it clear that your legal representatives cannot answer questions on your behalf.<sup>1</sup> However, asking questions of you in writing is better than not asking it at all and provides you the added advantage of being able to respond outside of the pressure that an oral hearing, in full public view, may cause. It remains so that the answers should be your own. Thus, I appreciate that while the assistance and guidance of your legal representative of choice may be required, their availability becomes less of an issue as the answers are to emanate from you. Given your involvement in all the matters, and the oral evidence already provided, you have the requisite personal knowledge of the matters which

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<sup>1</sup> See Para 45 of *Speaker of the National Assembly v Public Protector and Others; Democratic Alliance v Public Protector and Others* (CCT 257/21; CCT 259/21) [2022] ZACC 1; 2022 (3) SA 1 (CC); 2022 (6) BCLR 744 (CC) (4 February 2022)

form the subject matter of the Motion respond personally. In any event, it is of course from you that instructions are inevitably obtained where your legal team represent you.

- 12.6. Prior to the termination of the brief of Chaane Attorneys by the State Attorney, you failed, alternatively refused, to instruct Chaane Attorneys, to brief your legal representatives of choice at all. In addition, Mr Chaane appeared to labour under the belief that he needs to familiarise himself with all the documentation in the Dropbox before even briefing counsel, notwithstanding that your affidavits have already been prepared and instructions in respect thereof had already been relayed to counsel. This is firstly, not a litigation process, and it has been obvious to anyone observing the proceedings that Adv Mpofo SC liaises directly with you and you with him throughout the process for purposes of giving or taking instructions. To now suggest to the Committee that an attorney coming fresh to the proceedings needs to become familiar with the contents of the Dropbox before briefing counsel, is nonsensical and likely to cause inevitable and unnecessary delays which will not be tolerated by the Committee. In fact, if that were the case, the matter would never be able to be completed as the record spans thousands of pages. It makes no logical sense for your attorneys to seek to familiarise themselves with the Dropbox without being guided by the counsel entrenched in the matter as to what is relevant and in respect of what aspects they are required to assist counsel (if any given that counsel is intimately familiar with the matter). To do otherwise would simply mean that the attorney would be charging a perusal fee for documentation that may well not be relevant to the Enquiry and/or for purposes of which the attorney's input is not necessary. Further, briefs are often extended to put counsel on record, even prior to instructions of any substantive nature being rendered, and yet this was not done. It would have allowed the Evidence Leaders and your counsel to initiate backroom arrangements and indeed the secretariat made attempts to secure this. Any instructions given to counsel ultimately emanates from the client.
- 12.7. There are funds available to pay your legal representative of choice now and you have the authority to instruct your attorney – be it the State Attorney or a private attorney – to brief your counsel. If you are dissatisfied with the State Attorney, as you indicated, it is for you to raise this promptly with the PPSA, in order that it can be attended to. The selection and briefing of counsel are not being impeded by monetary constraints and it lies within your domain to attend to it speedily with the State Attorney and PPSA.
- 12.8. I remain of the view that the Committee is only bound to afford you the right to be legally represented. It is up to you to take up the right or waive it expressly or tacitly. Where you choose to take up the right, you should do so in a manner which is cost effective and reasonable. On this point I elaborate:

- a) You have had the benefit of both an attorney 'of choice' on record as well as your counsel of choice since the commencement of the Enquiry which came at a significant cost.
- b) Your attorney of choice has elected, for alleged professional reasons, not to participate further in the Enquiry, and whilst you invoked legal professional privilege in not disclosing these reasons to the Committee, when directly asked, you without hesitation disclosed reasons in an interview on national television, which reasons, had no appearance of being covered by legal privilege at all. The only reason I sought to obtain this information in the first place was to determine if there was anything I or the Committee could do to assist you in retaining the services of Seanego Inc, as I had done by writing to the PPSA during the payment disputes last year and so prevent further delays.
- c) You were then provided with an alternative attorney of record, Chaane Attorneys, whose services were secured on your request and supported by me. Section 129AD of the Assembly Rules only provides for a singular legal practitioner or other expert of your choice to assist you in your defence and whilst such legal practitioner may act as your representative in the proceedings, they will be subject to any reasonable time restrictions the Chairperson may impose.
- d) Notwithstanding, the PPSA further permitted the retention of all three of your counsel at increased rates, despite their financial constraints, it appears that these longstanding counsel used by you in several matters are apparently prepared to act pro bono in court but are not prepared to act for you in the Enquiry unless they were paid more money. There was no willingness on their part (or yours to my knowledge) to negotiate a smaller team. The right to legal representation does not mean that you have an unfettered right to any number of legal representatives at any cost and of your own choice for an indeterminate timeframe.
- e) The moment the obstacles of the number of counsel and their fees were removed, the position then reflected to the Committee was that Mr Chaane wishes to be afforded an unknown amount of time to familiarise himself with a record - that your counsel of three is already intimately familiar with – to ostensibly instruct them and refused to brief your counsel until such time as he has done so. Further that counsel would also not be briefed unless there was clarity as to the position or a commitment on who will fund anything beyond the R4 Million cap. Similarly, it seems you were not prepared to instruct Chaane Attorneys to brief your counsel, who have the requisite knowledge and experience to more than fully represent and assist you in these inquisitorial proceedings before the Committee. This process does not have as a requirement that Adv Mpofu SC cannot proceed to represent you as he had done up to now where during hearings, he had obtained instructions directly from you, and you had given him instructions directly in the Committee, without any resort to any attorney.

I am not suggesting that Mr Chaane should not have familiarised himself with some salient documents, but he rightly ought to be guided by counsel as to what is necessary, given where the process is at, and the financial constraints. This in and of itself could not reasonably be said to be an impediment to a brief being issued.

- f) In effect you have refused to instruct and ensure that Chaane Attorneys, brief counsel alternatively you failed to give Chaane Attorneys the instruction to put your counsel on brief, whereafter they could have liaised further with the Evidence Leaders on a number of issues and provided your instructing attorney with the guidance going forward – as counsel ordinary does. The effect of this failure/refusal is that it has caused yet further delay in the resumption of the Committee proceedings.
- g) It is unfortunate that Mr Chaane took ill, and the position of his firm has been that he alone can assist you. It was further noted that on Wednesday the Committee was provided with a medical certificate that put him off work for an indefinite period. It was also indicated on Wednesday by two members that he was “fighting for his life” in hospital. How the two members from the same Party came about this knowledge I do not know, but it was not contradicted by you at all, thus raising further concerns of indefinite delays.
- h) However, as the brief had been terminated, on the instruction of the Solicitor-General acting with the concurrence of the CEO of the PPSA, the State Attorney, Pretoria was advised to act for you and to take the matter forward. However, on Friday, the Committee was advised that you had objected based on an alleged ‘patent conflict of interest’, which was described as one arising because the State Attorney, Cape Town had extended the brief to the Evidence Leaders.
- i) Whilst I acknowledge that you orally raised the issue of conflict of interest, the precise nature and reason for such conflict was not articulated, the written record shows otherwise in that on 2 occasions you indicated emphatically that you had no objection to the State Attorney representing you. However, after that written representation made by you, once it had come to fruition you rejected this assistance, despite the costs and time it will save, and the obvious fact that it would mean that more of the R 4 million would be available to pay your counsel of choice and the juniors assisting him at their now increased rates.
- j) I am advised that contrary to what you indicated to the Committee the office of the State Attorney does not seek to recover the costs of attorney services from organs of state and government departments but rather, the disbursements incurred with briefing of counsel or other disbursements. In this matter the R4 million is being provided to cover disbursements

of that nature. By insisting on private attorneys, you yourself are causing the disbursements to increase. In respect of the Solicitor-General's correspondence he too mentions a potential conflict of interest but never elaborates and then goes on to propose, presumably after due consideration (and indeed he previously raised concerns about costs and the size of your legal team), the very arrangement which you proposed yourself but now reject.

- k) It is clear, based on the legal advice received by the Committee legal adviser and the State Attorney Pretoria, that it is not unusual that the State Attorney may act for more than one organ of state contesting the same matter. In any event, the Evidence Leaders had been briefed at the behest of the Parliamentary administration by the Cape Town office whereas your brief has been handed over to the Pretoria office- each of which operates independently of one another as I understand it. This matter is also not litigious, and all the Committee seeks to do is to consider the Motion and determine whether the evidence before it supports the allegations therein. For this purpose, the Committee has not relied on any advice or guidance by the State Attorney, Cape Town whose role in the Enquiry has been limited to providing the Evidence Leaders with a brief – because the professional rules require that such brief be extended in this manner- and attending to their fees. Given the role of the Evidence Leaders and that they do not act as prosecutors, there is no role for the State Attorney, Cape Town to play in the process beyond the very limited role which they do. It is thus entirely not clear what the alleged patent conflict of interest is. In any event, whilst the Solicitor-General did raise concerns about a potential conflict of interest, he clearly changed his mind having decided that utilising the services of the State Attorney, Pretoria had merit, as this resulted in amongst others a cost saving for you. Mr Chowe, when addressing Committee only referred to your dissatisfaction with using his services. This was not a decision of the Committee but rather one that was proposed by the Solicitor-General and agreed to by the CEO of the PPSA as the budget-holder. Having complained that the PPSA should be the one to extend the brief and given that Chaane Attorneys for an indefinite period would be unable to fulfil this task, this was a reasonable approach to adopt, in light of the knowledge and experience lying with the 3 counsel, who were presumably waiting for their briefs to be provided.
- l) In addition, on your own version Adv Mpofu, SC is your legal representative of choice, and he has done, as was indicated in the last meeting, all the heavy lifting in this matter as it were. Indeed, it was clear during the hearings that you and Adv Mpofu, SC gave or took instructions respectively directly from one another. In fact, when Mr Seanego did appear on the platform you had objected to witnesses being present on the basis that Adv Mpofu SC, should be present, and that it did not suffice having only Mr Seanego present.



- m) To all intents and purposes, the Committee has done everything it can to assist you in exercising your right to legal representation in a reasonable manner, but you have chosen not to avail such yourself of such legal assistance as made available and which would facilitate the continuation of the proceedings. In the circumstances the Enquiry proceedings will continue as I had foreshadowed on Friday. The extent of the involvement of any legal representatives is now up to you, given that funds have been made available.
- 12.9. The Enquiry has over 11 months made important progress. Very little remains to be done. You commenced with your oral testimony, as indicated above, and covered what Adv Mpofo, SC said was the most important topics of CR 17 and SARS. We also have the benefit of your sworn written statement (in 2 parts) which responds to charges in the Motion and which forms part of the *audi* afforded to you since hearings commenced. In addition, you have been allowed to cross examine witnesses and call your own witnesses, even with, objections as regards the recalling of certain witnesses and the decision of the Committee not to summons certain witnesses on your request. These matters have however been dealt with and you have been provided with reasons for these decisions (some of which are currently being contested before the courts).
- 12.10. You have objected to my previous decision to proceed to deal with the Enquiry in parts by concluding the evidence on statement A before we commence with Part B statement which would have entailed the Evidence Leaders and Members orally putting questions to you in respect of the evidence already led before proceeding. I set out my reasons for same in earlier correspondence and afforded you an opportunity to make representations in that regard.
- 12.11. In terms of the new way forward, continued work would thus not be constrained by the availability of (or lack of availability) of legal representatives on hearing dates, and progress of the Committee's mandate will not be constrained. You have also alluded to the fact that your counsel, once briefed, may have availability issues, this being the likely next impediment to the continuation of the Committee's proceedings continuing orally. Unfortunately, despite my request to the State Attorney, Pretoria that the Committee be provided with the availability of counsel they were not able to provide that information because of impediments that you had imposed. Given that you have not ensured that counsel is briefed - despite funds being made available – and which lies within your purview, the days on which your counsel are available is not currently known to the Committee. For that reason, the work of the Committee going forward has had to be planned without regard to their schedules whilst still being reasonable in respect of the timeframes imposed. Given that there are three counsel, and that much of the ensuing period going forward is the court recess, during which period court matters are not ordinarily set down, and the new proposed plan which reduces potential

hearings days, it will be incumbent on you to ensure that deadlines are strictly met. The Committee process will be forced to continue irrespective thereof.

13. For these reasons, understood in the context of a revised programme and directives that will be provided to you, I have determined as follows:

- 13.1. The Evidence Leaders and Members are instructed to put all questions, arising from the evidence before the Committee, and in respect of any subject matter in relation to the charges, in the Motion in writing. These questions will be collated, preferably by topic, and provided to you to respond to in writing within the period specified and with due regard to the Constitutional Court dicta that legal representatives cannot answer questions on your behalf. I have already asked members to have such prepared by no later than Sunday, 18 June 2023 as they, in any event, would have been keeping a list of such questions as they may wish to pose to you. In respect of the Evidence Leaders, I have afforded them until 25 June 2023 to submit all questions (and not to do so in 2 parts as proposed by Adv Bawa, SC in the last meeting).
- 13.2. Should you wish to respond orally to all the questions, you will be afforded the opportunity to attend hearings not later than a day after being provided the questions, which will be shared with you on 25 June 2023. Therefore, from 26 June, the Evidence Leaders and Members can put their questions to you orally and of course pose any other questions that may flow from your answers, or which relates to the Motion, should they wish to do so. You are to inform the Secretariat of your preference by no later than Monday, 19 June 2023. Should you indicate that you wish to answer questions orally, it is your responsibility to ensure the availability of your legal representatives on the dates as determined. Should the Secretariat not hear from you, the questions will only proceed in writing.
- 13.3. Should the question be answered orally, re-examination may ensue to the extent necessary to clarify anything that has arisen from those questions. Oral testimony will be subject to a written undertaking by your legal representatives confirming their availability for the period as indicated in the attached timeline marked Annexure "B"- commencing 26 June 2023. It may not be necessary to utilise this allotment in full, but it is important that counsel is available to assist you for this period should you wish to proceed orally. This is to prevent any unforeseen circumstances resulting in none of your legal representatives being available on the days on which you are to be asked questions and for purposes of re-examination. In other words, there will be no agreement to permit you to give evidence orally, unless a legal representative is confirmed to be available it being noted that it may be all or any of your team unless you expressly waive that right. If for whatever reason, the oral answering of questions is not

concluded on the days provided for same, any unanswered questions must still be answered in writing by no later than 6 July 2023.

- 13.4. Alternatively, you may choose to respond to all questions in writing under oath by no later than 6 July 2023. In this regard I remind that you the Constitutional Court has ruled that your legal representatives cannot answer questions on your behalf and would be the case irrespective whether you answer them in writing or orally. Thus, I appreciate that while their reasonable assistance and guidance may be required, their availability becomes less of an issue with reference to the answers that emanate from you. Given your involvement in matters, and the oral evidence already provided, you have the requisite personal knowledge in relation to the matters which form the subject matter of the Motion to do so. Continued work would thus not be constrained by the availability of legal representatives on hearing dates, and progress of the Committee's mandate will not be constrained by the availability of counsel, as you had, as indicated earlier, foreshadowed this to be the likely next impediment to the continuation of the Committee's proceedings continuing orally.
- 13.5. In acknowledgement that you did not complete your oral evidence in relation to your Part B statement, in the interim while Members and Evidence Leaders conduct this exercise of putting their questions to paper, I will allow you to submit anything further you wish to submit in writing in addition to the statements given to us and which may have arisen since we paused hearings on 31 March 2023. This too must be done under oath by 22 June 2023. Similarly, given your complaints in respect of my instructing the Evidence Leaders to take the Committee through the court records and judgements relating to the CR17/BOSASA and Gordhan/SARS matters (notwithstanding that the purpose was to empower Members and it provided you with the advantage of knowing in advance some of the questions likely to be put to you and what the Evidence Leaders identified as gaps or discrepancies), I will allow you until 22 June to also make any additional submission on these matters. Bearing in mind however that written questions will be put to you on these matters providing you in any event with an opportunity for you to clarify, correct or emphasise anything further.
- 13.6. In the event that you for whatsoever reason fail to submit your written answers to the questions posed in writing, as foreshadowed above, or for whatsoever reason, if so selected, an oral response cannot be provided in the time available, the Committee reserves the right to deliberate and make its findings based on the evidence before it which includes your sworn statements to the Committee; the various affidavits in the court records which are the subject of the Motion or to which the Committee has been referred; witness statements and oral

testimony and any other evidence relied on by the Independent Panel or submitted by the Evidence Leaders or your legal team to the Committee.

- 13.7. Members will be afforded an opportunity to consider your answers. I will then allow you, via your counsel, an opportunity to make a closing statement orally or in writing. As per the timeline in Annexure “B” written closing arguments will be due by 14 July 2023 or alternatively oral closing arguments can be made on 13 or 14 July 2023. Again, all pre-agreed to appearances of your counsel will be subject to the availability proviso indicated above.
- 13.8. If no closing argument is submitted and one is not made orally the Committee will be forced to continue its deliberations following the provision of a written summation of evidence from the Evidence Leaders, which is contemplated to include what may be referred to in your closing argument.
- 13.9. After considered by the Committee, a draft report will be prepared for acceptance of such draft before the Committee, whereafter such will be submitted to you for comment on 20 July 2023. This step will form an additional and final *audi* before a decision on the adoption of the report will be made, after taking into account comments, if any, from you. To the extent the Committee agrees, it will make changes to the draft report based on the representations made in this regard. The report will then be duly tabled. Any minority or contrary views provided by members of the Committee will be indicated in both the draft and final reports.
14. I will issue hereto draft directives which provide for the above, it being noted that in terms of the Rules I, as Chairperson, am empowered to issue directions and I do so for purposes of ensuring that the Committee completes its task. I do so confident that they are fair for the reasons I have provided. In the interim however, I attached Annexure “B” which sets out the timeline for ease of reference.
15. I urge you to take the necessary steps to ensure that the State Attorney, Pretoria is directed with urgency to instruct your counsel to assist you in the remainder of the proceedings failing which I will treat your non-action as a decision on your part to waive your right to be assisted by a legal practitioner, alternatively to liaise with the PPSA to reach agreement in relation to an alternative attorney. I have not seen any correspondence directed from the PPSA containing any legal basis on which the State Attorney, Pretoria cannot attend to the matter. I am advised that no issues of procurement arise as the attorneys of the office of the State Attorney are not paid by the PPSA, as indicated, only disbursements would be paid for. It was clear from your oral address to the Enquiry that you laboured under the misconception that the PPSA paid for the attorney services of the State Attorney giving rise to procurement issues, hence you laboured under the erroneous belief that the

provisions of the PFMA were being breached. The fact that the State Attorney is not on the PPSA's panel of attorneys does not preclude them rendering services to the PPSA for free as an organ of state.

16. On my side, I remain committed to concluding the Enquiry within the budget of the additional R4 Million Rand and in a fair manner. I do so on the understanding that the giving of *audi* does not require that the Committee be addressed orally especially where opportunities for same were built in but have become unworkable due to endless delays beyond the control of the Committee. The procedure affords you multiple opportunities in which you are permitted to provide evidence, answer questions and address submissions to the Committee in writing or to answer orally and make an oral closing statement. Whether you do so with legal representation remains up to you to give the requisite instructions without conditions and/or demands so that the process can be facilitated within the R 4million budget.
17. It remains your responsibility to attend to the issue of legal representation, given your refusal to accept the State Attorney, Pretoria, and the absence or lack of availability of legal representation will not be countenanced as a basis why none of the deadlines provided for in Annexure "B" have not been met.

Yours faithfully

A handwritten signature in black ink, appearing to be 'QR Dyantyi', written over a rectangular stamp or box.

**Mr QR Dyantyi, MP**

**Chairperson: Committee for Section 194 Enquiry**

## Annexure “A”

Date	Event
<b>March 2023</b>	
1 March 2023	<ul style="list-style-type: none"> <li>• The PP received notice from the office of the PPSA that funds for the cost of her legal representation will not be availed after 31 March 2023.</li> <li>• On this day the Committee was scheduled to hear from Professor Madonsela, a witness the PP requested the Committee to summon, but who then agreed to attend voluntarily at the request of the Committee. Her testimony could not proceed due to a dispute between the PP’s legal team and the Evidence Leaders as to who should lead her evidence.</li> <li>• The Committee however proceeded with the testimony of Mr. Mataboge being aware that it was important to manage proceedings so as not to waste time and thereby incur unnecessary costs as this may prejudice the PP. His evidence was concluded on 2 March 2023.</li> <li>• The Chairperson in a letter to Seanego Inc. “<i>Testimony of Prof. Madonsela</i>” notes that there was an expectation of a lengthy statement being prepared and offered the PP the opportunity to submit her statement in 2 parts with the first part due on 9 March and the second on 14 March 2023. The Chairperson also offered again that Prof Madonsela can be called to appear if the PP leads her, as she had been called to testify on the request of the PP.</li> </ul>
5 March 2023	The Chair receives a letter from Seanego Inc. indicating, due to changes in the schedule, the PP’s statement cannot be submitted on 9 March 2023 and will be submitted on 20 March 2023 followed by her testimony commencing on 27 March 2023.
6 March 2023	The Committee resumed on 6 March 2023, the issue of Adv Madonsela’s testimony having been resolved and Prof Madonsela concluded her evidence on 7 March 2023. She was led by Adv Mpofu, SC.
7 March 2023	<ul style="list-style-type: none"> <li>• On 7 March 2023, the Chair receives a letter from Seanego Inc. providing a list of additional witnesses to be called on behalf of the PP. To date the Committee has not received witness statements in respect of these additional persons as requested by the Chairperson.</li> <li>• The Committee deliberates on the issue of the extension for submission of the PP’s statement and commencement of her testimony to 27 March 2023.</li> </ul>

	<ul style="list-style-type: none"> <li>Following this, in a letter “<i>Your letters of 28 February 2023; Sunday 5 March 2023 and 7 March 2023</i>”, the Chairperson communicated that an extension is granted and the statement will fall due on 14 March at 17h00 and that the PP’s oral testimony will commence on 15 March 2023.</li> </ul>
9 March 2023	The original date on which PP statement is due but is not submitted because of the extension granted by the Chairperson.
8 - 15 March 2023	<ul style="list-style-type: none"> <li>The Committee does not sit during this period while the PP continues with preparation of her statement and attending to the preparation for her review application in the Western Cape High Court, such additional time having been granted to her.</li> <li>On 13 March there is a high court sitting to hear the review application brought by the PP against the Chairperson in respect of the recusal of the Chairperson and Mileham, MP amongst other issues.</li> </ul>
14 March 2022	The PP submits part A of her statement notwithstanding that the statement in full was due on this date, an extension having been granted. Chair accepts that there may have been a misunderstanding in respect of the initial proposal that it could be submitted in 2 parts in order to accommodate her.
15 - 16 March 2023	Day 1 and 2 of PP’s testimony, led by Adv Mpofu, SC.
17 March 2023	In a letter to Seanego Inc, “ <i>Submission of Balance of Public Protector’s Statement</i> ” the Chairperson indicated that the PP would have until Friday, 24 March 2023 to submit the balance of her sworn statement. The Chair further confirmed that he had indeed agreed to accommodate Adv. Mpofu, SC, by not conducting hearings on Monday, 20 March 2023 and Wednesday 22 March 2023 due to him being otherwise engaged in a non-related matter. Hearings would therefore resume on Thursday, 23 March 2023 at 13:00.
22-27 March 2023	PP booked off sick, having duly submitted a sick certificate for this period.
24 March 2023	The Chair receives a letter from Seanego Inc, wherein an extension is requested to submit the PP’s part B statement on 28 March 2023.
27 March 2023	<ul style="list-style-type: none"> <li>In response to the letter addressed from Seanego Inc on 24 March 2023, the Chairperson took note of the PP’s undertaking to submit the final instalment of the statement by no later than 28 March 2023.</li> <li>PP submits part B of her statement. PP notes this is the second and final instalment of her affidavit and witness statement.</li> </ul>

28 - 31 March 2023	Day 3-6 of PP's testimony, led by Adv Mpofo, SC. At this stage the PP concluded with Part A of her sworn statement dealing in the main with the CR17/BOSASA and SARS matters.
31 March 2023	PPSA Letter to PP confirming funding has dried up. Hearings pause and have not resumed.
<b>APRIL 2023</b>	
<ul style="list-style-type: none"> <li>• Various interventions by Chairperson to assist the PP in securing additional funds to conclude the process.</li> <li>• The Evidence Leaders are instructed to contextualize court judgements in respect of CR17/BOSASA and SARS matter over a period of 5 days for the benefit of the Committee. PP objects but Evidence Leaders proceed on instruction of Chairperson. The Chairperson provides reasons for this decision in full.</li> </ul>	
<b>MAY 2023</b>	
2 May 2023	<ul style="list-style-type: none"> <li>• PPSA confirms that an additional R4 Million Rand will be made available but that this money will be ringfenced. It notes further that no additional funds will be made available beyond this and that it is the responsibility of the PP to manage this amount. In this regard the PPSA will not instruct counsel or attorneys and this is to be done by the PP.</li> <li>• The Chairperson addresses correspondence to the PP stating that due to the further funds being made available that the proceedings will proceed on 8 May thereby allowing the PP an opportunity to brief her legal team. PP alleges not to have received the letter from the PPSA and it is resent to her.</li> </ul>
5 May 2023	<ul style="list-style-type: none"> <li>• PP launches application in Constitutional Court regarding her legal fees, and who must bear the costs, amongst other things. PP is represented by her personal attorneys, RMT Attorneys for purposes of this application.</li> <li>• RMT Attorneys addresses correspondence to the Chairperson and states therein, <i>"Given the fact that our client is without legal representation in the Committee and her eagerness to complete the process, in a fair manner, <b><u>she would have no objection to being represented by the State Attorney, or for that matter any other attorney</u></b>, provided of course that this would be done in a manner which will be fully compliant with a binding order of the Constitutional Court."</i></li> </ul>
8 May 2023	PP attends committee meeting without legal representation and informs Committee that she cannot engage Seanego Inc. directly and the PPSA must do.
9 May 2023	Letter from Chair to PPSA CEO to resolve this impasse of who must brief Seanego Inc.



11 May 2023	PPSA CEO responds maintaining her position that PP must brief Seanego Inc. but that the costs will be carried by the PPSA.
12 May 2023	Letter from Chair to PP indicating hearings will resume on 17 May 2023 and that this additional time is being afforded for the PP to take the necessary steps to brief Seanego Inc. and counsel and attend to any 'housekeeping' matters.
15 May 2023	<ul style="list-style-type: none"> <li>• Seanego Inc addresses correspondence to the Chairperson stating, <i>“Please be advised that Seanego Attorneys Inc. was not involved in this matter since 31 March 2023 and will not be involved going forward due to professional reasons. This was communicated to the Public Protector.”</i> These professional reasons are not stated.</li> <li>• The Chair responded to the above letter requesting Seanego Inc. to attend the Committee proceedings on 17 May 2023 to explain these “professional reasons” as stated in the letter.</li> <li>• Chairperson receives a letter from RMT Attorneys, the personal attorneys for the PP, raising objections to the revised programme and her lack of legal representation.</li> </ul>
16 May 2023	CEO of the PPSA addresses correspondence to the Solicitor-General (copying the secretariat) raising concerns about the s194 Enquiry. The CEO asked whether the services of the State Attorney could be utilized, for purposes of briefing counsel to appear on behalf of the PP in the Enquiry.
17 May 2023	<ul style="list-style-type: none"> <li>• Seanego Inc. refuses to appear before the Committee to answer questions in relation to their withdrawal citing that it would constitute a breach of privilege which had not been waived by the PP.</li> <li>• The PP confirmed in a Committee meeting that Seanego is no longer acting for her and requests assistance, via the PPSA, in procuring the services of Chaane Attorneys who are also on the panel of attorneys for the PPSA.</li> <li>• The PP indicates that she will not waive her professional legal privilege in respect of providing the Committee with the reasons for the withdrawal of Seanego Inc. when asked to do so for purposes of assisting, via the PPSA, that the services of Seanego Inc. be retained.</li> <li>• The PP indicates that she never agreed to use the State Attorney because of conflict of interest, contrary to what is contained in the letter from RMT Attorneys dated 4 May 2023.</li> <li>• The Solicitor-General responds to the letter from the PPSA of 16 May 2023. The SG raises concerns about a potential conflict of interest indicating that engaging state-attorneys <i>“may not be in the best interest of justice, considering potential</i></li> </ul>

	<p><i>conflicts of interest and the strained budgetary situation” and that it shall be “inappropriate.”</i> The SG notes that the right to equal representation is not an open-chequebook exercise. He proposes negotiating fees, streamlining the legal team and/or outsourcing the engagement of attorneys by the PPSA.</p> <ul style="list-style-type: none"> <li>• The PPSA addresses correspondence to the Solicitor-General indicating that it engaged Chaane Attorneys who advised they are not comfortable with the arrangement that they are instructed by the PP and that they seek instruction and a mandate directly from the PPSA. In the circumstances the PPSA requests the Solicitor-General to facilitate the outsourcing to Chaane Attorneys.</li> </ul>
18 May 2023	Chair writes to PPSA CEO asking that it assist the PP by appointing Chaane Attorneys.
23 May 2023	Chaane Attorneys appointed as correspondent attorneys by the State Attorney, Pretoria, subject to the appointment of one counsel at a rate of R45 000 per day.
24 May 2023	Chaane indicates to State Attorney that Adv Mpofu will not accept the brief unless the junior counsel who appeared together with Adv Mpofu, SC in the matter are also appointed. At this stage this was the only condition raised and no further issue is raised in relation to fees.
25 May 2023	Parliamentary Legal Adviser, Ms. Ebrahim and the secretariat meet with Mr. Chaane to explain how Dropbox works and other housekeeping matters.
26 May 2023	The State Attorney informs Chaane that approval has been granted to also appoint the 2 juniors to support Adv Mpofu, SC as per his request.
25 May 2023	Chaane is provided access to the Dropbox repository of records before the Committee as well as an explanatory note showing duplication in records and how to navigate the records. The next day the Secretariat sends an email again indicating that access has been granted.
29 May 2023	The State Attorney advises PPSA that counsel has revised their fees resulting in an increase in respect of each of the three counsels, having received correspondence from Chaane Attorneys indicating same.
1 June 2023	<ul style="list-style-type: none"> <li>• The Chair receives a letter from the PPSA that contains an update on the process of appointing legal representation for the PP through the assistance of the Solicitor-General. PPSA indicated their approval of the increased negotiated daily counsel rates.</li> <li>• Chaane accesses Dropbox for first time according to them.</li> </ul>

2 June 2023	<ul style="list-style-type: none"> <li>• Chaane Attorney's receives communication from the State Attorney, Pretoria informing them that counsel's revised fees have been agreed to and they can proceed to brief counsel.</li> <li>• Considering the above the Committee meets and resolves to proceed on 5 June 2023.</li> <li>• Letter from Chair to Chaane Chair indicates he is having regard to request to a proposal to conclude evidence on BOSAS/CR 17 and SARS by allowing the Evidence Leaders and members to proceed with questions on these matters before proceeding to the content of Statement B. Chair requests feedback by 4 June at 1pm.</li> <li>• From the appointment of Chaane up to this point there are regular follow-ups from the secretariat on the issue of appointing counsel, but responses are vague, and no mention is made of an indefinite time requirement to go through documents.</li> </ul>
4 June 2023	<ul style="list-style-type: none"> <li>• Chairperson receives a letter from Chaane Attorneys in the evening requesting an indefinite postponement of the Enquiry to allow them time to familiarise themselves with the record for purposes of adequately advising the PP and instructing counsel. Chaane Attorneys expresses the view that they cannot instruct Counsel until such time as there is clarification on the R4 Million cap and payment terms and client agreeing to foot the bill beyond this amount. This is raised for the first time as impediments to the briefing of counsel.</li> <li>• Chair replies to Chaane indicating that consideration is still being given to an approach of allowing evidence to be concluded on CR17/BOSASA and SARS and deadline for comment extended to 5 June at 14h00.</li> </ul>
5 June 2023	<ul style="list-style-type: none"> <li>• Late afternoon, receive letter from Chaane Attorneys saying Mr. Chaane is in hospital and no one else can respond to Chair's letter as he is the only person able to deal with the 194 matters.</li> <li>• Letter from Chairperson to Chaane- decision in respect of conclusion of evidence on CR17/BOSASA and SARS. Provide copy of draft directives incorporating process to provide for this decision.</li> <li>• Secretariat addresses letter to Solicitor-General informing him that counsel has not been briefed by Chaane Attorneys and this may adversely impact the Enquiry.</li> </ul>
6 June 2023	<ul style="list-style-type: none"> <li>• A Letter is received from the Solicitor-General indicating that the SG has decided, subject to concurrence by the PPSA, that the mandate of Chaane Attorney's will be terminated, and the briefing of counsel will be insourced via the State Attorney, Pretoria.</li> </ul>

	<ul style="list-style-type: none"> <li>• The SG cites the illness of Mr Chaane and the fact that resolution cannot be reached on the issue of revised fees for counsel. He notes this will result in a saving of R25 000 per day for the PPSA which can be used to cover the revised fees of counsel and will allow the PP to be represented by her desired legal team. The PPSA communicates its agreement to same.</li> <li>• A Letter is received from the PP personally to the Chairperson raising various issues including the adequacy of the 4 million cap and objection to communication from PPSA that she will bear the costs personally after the depletion thereof; an objection to way forward in terms of which questions will be put to her by Evidence Leaders and members on CR17/BOSASA and SARS Unit matter. The PP indicates that since the Chairperson previously rejected her request to allow Evidence Leaders and Members to put questions to her on these matters before she proceeded to other evidence, he cannot consider it again as he is functus officio (the Chair having dismissed such a request by Adv Bawa, SC while when the PP concluded her evidence on CR17/BOSASA). She further states she has no reason to delay the Enquiry whether deliberately or otherwise, the charges are spurious and baseless and there is a scheme to manipulate evidence. PP indicates further she intends to instruct her attorney to move an application for removal of chair if he does not voluntarily recuse himself in relation to allegations of bribery. The PP also demands that the Enquiry be suspended until all outstanding issues relating to legal representation is resolved including that Mr Chaane is recovered and failure to comply will result in an urgent court application.</li> </ul>
7 June 2023	<ul style="list-style-type: none"> <li>• Meeting of the Committee. The PP appears without legal representatives, citing the illness of Mr. Chaane and indicating that hearings cannot continue until various matters are attended to.</li> <li>• Mr. Chaane submits a sick certificate providing for an indefinite leave of absence “until further notice”.</li> </ul>
8 June 2023	<ul style="list-style-type: none"> <li>• Mr Chowe informs the Secretariat that he has received instructions from PPSA to brief counsel and will do so in the course of the day.</li> </ul>
9 June 2023	<ul style="list-style-type: none"> <li>• Meeting of the Committee.</li> <li>• PP appears with Mr. Chowe, State Attorney, Pretoria but without counsel. Mr Chowe however informs the Committee that the PP has declined the offer to be assisted by his office as attorneys of records citing a patent conflict of interest and the proceedings cannot move ahead. He indicates he has not been able to ascertain counsel’s availability due to this.</li> </ul>

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|  | <ul style="list-style-type: none"><li>• Members allude to the fact that Mr Chaane is 'fighting for his life'.</li><li>• Chair proposes a new way forward to deal with the remainder of the Enquiry. It is supported by members who respond to the proposal.</li><li>• PP fails to submit written recusal application.</li></ul> |
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<b>Annexure “B”- Timeline</b>			
	<b>Action</b>	<b>Due date</b>	<b>Comment</b>
1.	PP to submit any additional affidavits or documentation in support of Part B of her Statement or in relation the Evidence Leader’s presentations to the extent that this was not covered in her oral submissions or written statement.	22 June 2023	No submissions will be considered after this date.
2.	Members to submit questions to the PP in writing via the secretariat.	21 June 2023	Questions to be based on the subject matter in the motion. This will allow the secretariat to collate the members’ questions in a suitable format for ease of reading for the PP. Members are reminded that the PP’s statement is in 2 parts.
3.	Evidence Leaders to submit questions on the motion to the secretariat.  If members have any additional questions arising from the submission by the PP of further information as per no. 1 above, such further questions are due in writing by 10h00.  The secretariat to submit the questions of Members and Evidence Leaders to the PP.	25 June 2023	

4.	PP to have the opportunity to answer the questions in writing or orally.	Orally: 26 - 29 June 2023  (Sitting extended hours if necessary, extending to 1 and 2 July 2023)  (4 - 6 days)  <b>OR</b>  Written: 26 June - 6 July 2023	If questions are to be answered orally, PP must inform secretariat by no later than 19 June 2023 by 17h00. The PP is responsible to ensure counsel's availability to assist her. The opportunity to be re-examined will be afforded to the PP after her oral submissions to the extent necessary.  If for whatever reason, the oral answering of questions (if elected) is not concluded on the days provided for same, any unanswered questions must still be answered in writing by no later than 6 July 2023.
5.	Prep Days for Closing Arguments	7 - 12 July 2023	In the case of the PP answering orally this period commences on latest 3 July thereby affording additional days.
6.	PP's closing arguments to be submitted orally or in written form.	If oral, closing argument may be made on Thursday, 13 July 2023 or Friday 14 July 2023.  <b>OR</b>  If written, closing arguments are due Friday, 14 July 2023	If the PP does not intend making an oral closing argument, this must be communicated to the Secretariat by 7 July 2023.  Alternatively, if oral closing arguments are going to be made the PP must let the Secretariat know whether same will be done on 13 or 14 July 2023 or on both days so that arrangements for the sitting can be made.
7.	Written summation of evidence by Evidence Leaders	Thursday 20 July 2023	The purpose is to assist the Committee to consolidate all the evidence for purposes of assisting the Committees consideration thereof.
8.	Period for report writing	20 - 26 July 2023	

9.	<b>Committee Meeting:</b>  Consideration of the draft Committee report, adoption thereof and provision to the PP for comment.	Friday, 28 July 2023  (May extend to 29 and 30 July 2023)	
10.	Period for PP to consider draft report	31 July - 7 August 2023	Additional days may be afforded prior to 31 July if Committee adopts a draft report earlier.
11.	PP to submit to the secretariat written submissions on the draft report.	Tuesday, 8 August 2023	Written submissions will be attached or linked to the report
12.	Members to consider submissions individually.	9 and 10 August 2023	
13.	<b>Committee Meeting:</b>  Committee to consider the submissions of the PP and deliberate.	Friday, 11 August 2023	Changes, as agreed to, will be incorporated in the report.
14.	<b>Committee Meeting:</b>  Committee to adopt final report for tabling to the NA.	Saturday, 12 August 2023	