
**AFFIDAVIT IN THE SECTION 194 INQUIRY INTO THE REMOVAL OF THE
PUBLIC PROTECTOR, ADV B MKHWEBANE**

I, the undersigned,

NELISIWE PATIENCE THEJANE

do hereby make oath and say that:

1. I am currently employed at the Office of the Public Protector (“PPSA”) as Executive Manager: Provincial Investigations and Integration Inland (“EM: PII Inland”).
2. The contents of this affidavit are true and correct and fall within my personal knowledge, unless otherwise stated or clear from the context.
3. In Charge 4 of the Motion with which this Committee is concerned, it is alleged that Adv Mkhwebane (the PP) is guilty of misconduct in that, amongst other things, she has intimidated, harassed and/or victimised staff, alternatively that she has failed to protect staff in the office of the PPSA from intimidation, harassment and/or victimisation by the erstwhile CEO, Mr Vussy Mahlangu.
4. It is further alleged in Charge 4 of the Motion that the PP has committed misconduct and/or demonstrated incompetence in the performance of her

NT

duties by doing, or failing to do, the various things alleged and set out from paragraph 11.1 to 11.4 of the Motion.

5. In my position as Executive Manager: PII Inland I oversee investigations and from that vantage point, I have witnessed instances where staff in the PPSA have felt intimidated and victimised as a result of the conduct of the PP. This, in the main, manifests itself in the PP's demands in the conduct of investigations. The PP deals with staff in a punitive manner. This has led to a workplace environment that is characterised by a general culture of fear in the PPSA. Further, in what I say below, I describe how executive management resources were managed in such that it was difficult to perform our functions efficiently and effectively.
6. I have therefore deposed to this affidavit at the request of the evidence leaders, to assist this Committee with information which it may consider relevant, in the discharge of its function.

A. BACKGROUND

7. I have a law degree (BProc LLB), as well as experience in programming and forensic and investigative auditing.
8. I had previously been employed at the PPSA as an investigator in KwaZulu-Natal as an Investigator and a senior investigator: Head Office in the period 2000 – 2008. I was offered the position of Provincial Representative: Western Cape, but left the PPSA prior to taking up that position.

KS NT

9. I was then employed at the South African Post Office ("SAPO") as Senior Manager: Security and Investigations from September 2008 to September 2017, whereafter I became the Senior Manager: Labour Law. I left the employ of SAPO in 2019.
10. The position of EM: PII at the PPSA became vacant following the resignation of Mr Reginald Ndou. It was advertised in November 2018 and I applied.
11. I was appointed as EM: PII Inland which covers the provinces of Gauteng, Free State, Mpumalanga, Limpopo and North West with effect from 1 March 2019.
12. During 2019, for a short period of time, I was appointed as the PPSA's Acting Chief Operating Officer ("COO"). I also occupied the position of Acting Executive Manager: Investigations during December 2020 until June 2021.
13. In the PPSA, Executive Managers report to the COO, of which the PPSA has had two, namely Ms Basani Baloyi (from February 2019 until October 2019) and Mr Charles Lucky Mohalaba (who left in about September 2021). After Mr Mohalaba's departure, Ms Lethabo Mamabolo assumed the position of Acting COO. Ms Mamabolo has since returned to her position of Senior Manager: Executive Support in the PP's Private Office and I am currently the PPSA's Acting COO.

KS NT

B. MANAGEMENT MEETINGS AT THE PPSA

14. There are various governance meetings within the PPSA at which investigation reports are discussed such as Leadership meetings; Full Bench meetings; Task Team meetings where a Task Register would be generated; and Dashboard meetings.

15. I mention these governance meetings for context, in order that the Committee may obtain a better appreciation of the context that management operates in. It is in these meetings that the progress of reports is discussed, and that the issue of the setting of deadlines by EMs, investigators and the PP, as well as the reasonableness of those deadlines, arises.

(a) Leadership meetings

16. These are executive committee meetings that are attended by the PP, Deputy PP (DPP), CEO, COO, Chief Financial Officer (CFO) and the Chief of Staff. When Ms Pasani Baloyi was the COO, EMs did not attend Leadership, but after she left, leaving the COO post vacant, EMs also began to attend Leadership meetings.

17. Leadership meetings deal with both management and operational matters and, at times, some items that are dealt with at Dashboard or Task Team meetings often spill over into Leadership meetings. Leadership meetings initially were aimed more towards strategy, but they became increasingly less strategic and more operational over time.

KG NT

18. When it came to investigation reports, the substance of reports did not form part of the discussions at Leadership. Rather, these meetings were more like Task Team meetings (about which I say more below) where we discussed the status of the investigation in each matter, for each unit in the PPSA, as well as the time frames. We also provided updates on adherence (or non-adherence) to those timeframes.

(b) Full Bench meetings

19. In 2021 the concept of oversight by what is referred to as a "Full Bench" was introduced by the DPP, when she was acting in the capacity as Acting PP, when the PP was on leave. This structure remained after the PP returned from leave. Its purpose was to exercise ultimate oversight of reports before they are finally signed off by the PP.

20. Full Bench is a welcome innovation aimed at improving the content and quality of reports before they are finally issued. However, its effectiveness is often undermined by the fact that draft reports are not submitted timely, in order to give Full Bench members the time to consider and meaningfully input on all the issues which the different reports raise. For example, it often happened that multiple reports were submitted on the morning of, or on the day before a Full Bench meeting and all or some of those reports were scheduled to be issued in a media briefing shortly thereafter.

RG NT

(c) Task Team meetings

21. Task Team meetings were held on Monday and they covered priority matters that had to be monitored on a weekly basis, including special attention matters (SAM) and EMEA matters. Every week a Task Register was generated which listed the matters that formed the subject matter of a Task Team meeting. The Task Register had to be updated by the Thursday preceding the Monday meeting.

22. The Task Team meetings were attended by the EMs, PP, DPP (if available), CEO, the COO and sometimes the investigator or senior investigator, Provincial Representatives (PRs) who had to report on a particular matter that was before Task Team. An investigation report that served at a Dashboard meeting could also then be dealt with at Task Team. Task Team meetings also dealt with what were referred to as "old matters", for which a number of deadlines had been set with a view to eradicating them.

(d) Dashboard meetings

23. From paragraphs 107 to 112 of her affidavit made for this Committee, Ms Ponatshego Mogaladi described Dashboard meetings – how they were conducted initially and what they were about, and how Dashboard meetings evolved in their content and focus. I do not seek to repeat what Ms Mogaladi has already stated in this regard, but I concur with the views that she expressed.

NT

24. Suffice to say that, under the current PP, Dashboard meetings became more intense and more time consuming. This is because, instead of reporting on the status of each case at a high level, the meetings became operational and we were subsequently required to prepare memoranda on each matter and present it at Dashboard meetings. All of these memoranda had to go through all the quality assurance approval processes detailed in paragraph 26 below.

25. In addition to backlog cases and organisational performance reports, the PP required the meetings to report on all active cases (GGI, service delivery, EMEA and early resolution cases). The responsible EMs would be required to report on and explain each and every one of those matters. The PP insisted on PowerPoint presentations at each dashboard meeting, even though the information is captured and stored in excel spreadsheets since we use the manual system at the PPSA. This was time-consuming. We had to export information that is readily available on excel into PowerPoint format and each slide could only accommodate a limited number of cases.

26. A single Dashboard meeting could last for up to two to three days. Initially Dashboard meetings were scheduled for one day to give a high level report on older matters. However, the PP decided to include all active cases in these meetings. The scope of Dashboard meetings was further extended to include even matters that were recently received and allocated. Dashboard meetings also became more frequent: they moved from occurring quarterly to monthly or with even greater frequency, if required by the PP.

ACG NT

27. Staff time at all levels began to be consumed by providing input for, preparing for and attending Dashboard meetings. This is because preparations for a Dashboard meeting entail the following steps:
- 27.1. Investigators preparing reports on the progress of all matters (both backlog and current matters) for submission to senior investigators.
 - 27.2. Senior investigators considering those reports, revising if necessary, and submitting them to Chief Investigators (CIs). Note that at the provinces if the matter was assigned to an investigator, the senior investigator responsible would have to conduct quality assurance and sign the memorandum before it is submitted to the PR.
 - 27.3. CIs doing the same exercise before submitting to the Provincial Representatives (PRs).
 - 27.4. In turn, the PRs would undertake a similar process and submit to the Senior Manager Inland at Head Office who would in turn escalate to the EM.
 - 27.5. The EMs considering, checking and signing off on these reports, updating spreadsheets; and
 - 27.6. The EMs thereafter (and, on invitation, the PRs and CIs) attending Dashboard meetings to explain the contents of the reports and spreadsheets.

RS NT

28. I annex, marked "NN1", email correspondence that I sent to various Provincial Representatives that reported to me, regarding reporting requirements following a Dashboard meeting. I sent the email on 9 March 2020 and needed the submissions by 11 March 2020, so that I could consolidate the submissions and present them in the required format by 13 March 2020. My email reads:

27.1. As per the PP's reminder at last dashboard, you are each required to provide the following representations:

27.1.1. Reasons for the failure to finalise cases older than two years (old backlog);

27.1.2. Reasons for the failure to finalise cases older than two years (new cases);

27.1.3. Reasons for the failure to meet the six (6) months turnaround time;

27.1.4. Reasons for the failure to meet the twelve (12) months turnaround time;

27.1.5. Your representations must include cases that have been reclassified and/or closed. In other words, the representations are determined based on the period when each case matures as prescribed in the turnaround periods.

27.2. The representations are expected from:

27.2.1. Each Investigator

27.2.2. Each Senior Investigator (representation on own cases)

27.2.3. Senior Investigator must provide reasons why Investigator(s) under his/her responsibility did not finalise their cases within the prescribed period;

27.2.4. Senior Investigators/PRs must further indicate whether all SERVICE STANDARDS were complied with by the Investigators and provide reasons for such non-compliance.

27.2.5. Each PR must submit all individual representations to national office and further provide his/her own reasons for the provincial office's failure to meet the prescribed deadline.

27.2.6. Thirdly, each province is required to provide a project plan on how these cases will be finalised by end of March 2020.

27.2.7. Lastly, submit your proposals on how the situation can be improved and/or averted.

29. The reporting requirements for these meetings were therefore substantial, and affected the organisation as a whole, not just executive or senior

A handwritten signature in black ink, appearing to be 'JCN' or similar, located at the bottom right of the page.

management. Preparations for a Dashboard meeting would continue well into the night because of meetings during the day and other pressing obligations especially where more information was required from provinces.

30. This level and style of reporting took a great deal away from the time that the EMs would have spent guiding investigations, which is their core work. It became problematic for Executive Managers to oversee operational matters that fell under their control, because they were constantly in meetings or preparing for meetings.

C. THE IMPOSITION OF DEADLINES AND THE VARIOUS BACKLOG PROJECTS


(a) Deadlines generally

31. This was not the only challenge presented by Dashboard meetings. The other challenge which Dashboard meetings presented for staff was the manner in which the PP conducted them, and the outcomes that she demanded from EMs and management at these meetings.

32. Ms Mogaladi in her affidavit before this Committee already referred to the fact that in these meetings, the PP was interested only in what product was expected and by when. The answers to these questions are typically informed by the information available to the EMs and CIs at the time, including, amongst other issues, the stage at which an investigation is; its complexity; the resources available to conduct that investigation, and constraints presenting in the investigation.

NT

33. The PP did not demonstrate interest in considering factors that may be relevant to an investigation, and which might impact the progress of the investigation. Whilst it is correct that EMs and investigators were in the first instance permitted to set their own deadlines for meetings certain targets, if the PP did not like that deadline, she would impose her own deadline, which was not informed by any of the factors I have mentioned which impact on an investigation. The EM would indicate the reasonable date taking into account the status of the investigation and service standards, but the PP would object leading to an earlier date being agreed to, which could not be met. However, the EMs would then be held to account on the non-adherence to the dates imposed in this manner.
34. Deadlines were therefore in reality imposed by the PP, no matter how unrealistic and most times notwithstanding the explanations furnished by staff with better knowledge of the investigations. The notion that the EMs were allowed to set their own deadline was more apparent than real.
35. When imposing these deadlines, operational matters such as other ongoing investigations and existing workloads were not taken into account.
36. Task Team meetings were also characterised by the same approach from the PP which I have described above, i.e., unrealistic deadlines; uninformed by the information provided by the EMs; and followed by threats of disciplinary steps. Much of this detail has already been put before the Committee.
37. The PP's insistence on setting unrealistic deadlines and insisting that they be complied with at all costs suggested the following things to me: (a) either she



did not care about the quality of investigations and reports produced, in the quest for numbers; or (b) she did not understand what was involved in investigations. Or both.

38. When I started working at the PPSA on 1 March 2019, there were already matters that had been identified for closure on the Dashboard and I was held to account for compliance with the completion dates thereof. These dates were set before my arrival at the PPSA. This resulted in me receiving the first *audi* letter in August 2019, while I was still on probation, for not meeting deadlines that I had not agreed to but were imposed on me.

(i) Deadlines and media briefings

39. The PPSA holds media briefings on a monthly basis, at which reports are discussed and publicised. Often, the PP decides that a particular report will be released to the media even before that report has been finalised. This results in a rush to complete the report so that it will be ready for presentation to the media on the date desired by the PP.

40. However, the rush is not related to any investigation concern. It also means that, if substantive issues are identified – such as further aspects that need to be investigated – they may not be able to be attended to and remedied because doing so would push past the media briefing deadline.

41. In some instances, formal reports were finalised on the day of the media briefing, and responses received from state organs are incorporated hastily instead of the release of the report being deferred for a proper quality

 NT

assurance to be conducted. In the Ngcobo (PACASA) matter against the Department of Health, for example, I had to work through the night with the investigator who was pregnant, because the PP insisted that the report be issued on the next day even though we had requested, through the Acting COO, to have the matter deferred to the next media briefing.

(b) The backlog projects

42. A backlog occurs when cases are not finalised within the time periods set out in the PPSA's service standards for the resolution of those cases, depending on their classification. Complex GGI cases must be finalised within 36 months; GGI cases within 24 months; service delivery matters within 12 months and early resolution matters within 6 months. EMEA matters must be finalised within 30 days which has never occurred, as far as I am aware.

43. Although the main contributor to the development of a backlog is the lack of sufficient human resource capacity in investigations, backlogs also come about for numerous other reasons:

43.1. Historically, some matters simply were not dealt with by investigators and have been left to other investigators to deal with, sometimes from scratch, despite the lapse of time.

43.2. The decision taken to focus on older matters in itself created a backlog of newer matters, resulting in further matters being backlogged given the number of complaints and available capacity.

AS NT

- 43.3. Also an investigator may be working on his or her allocated matters in an endeavour to finalise them only to be redirected by the PP or their EM, taking that investigator's attention and time away from matters allocated to that investigator. It must be born in mind that investigators carry multiple files at any given time.
- 43.4. It has, in practical terms, not been possible complete an EMEA matter in 30 days, and after 30 days it then becomes a backlog matter.
44. The above factors were also exacerbated by the impact of COVID-19 and the various lockdowns that ensued cannot be ignored in the current assessment of the causes of a backlog that exists. The reality is that we lost about 6 months during which there was no proper and effective performance due to lockdowns. At the beginning of the lockdown period, not all investigators in the PPSA had the tools of trade required to work from home. It was only Executive Managers and some investigators who were ordinarily issued with laptops. Because people were now required to work from home, laptops had to be especially procured for investigators. This took time. In addition, those that were being investigated in the public service were also under lock down and not always available to assist.
45. When the lockdown regulations eased and permitted people to work in their offices, staff went in on a rotational basis in order to comply with lockdown regulations. But the returning staff were not operating at full capacity, either because they contracted COVID; or had to quarantine because of contact with

Handwritten signature and initials, possibly "DZ NT".

COVID; or the office itself had to close at times because of a COVID case. These challenges had an impact on the turnaround times and contributed to the backlog.

46. However, the PP refused to allow us to refer to lockdown, or COVID-19 related reasons, as a justification for not meeting a particular milestone. We were not permitted to refer to lockdown as having affected us in any way. Given the impact thereof on us and our families, that alone was traumatic. The PP viewed references to the lockdown as an excuse not to work. This was not fair or reasonable, because COVID-19 caused real disruptions in all aspects of people's lives across the country. The staff at the PPSA were no exception.
47. I share the concern of the executive authority and the other EMs that the eradication of the backlogs, and preventing the accumulation of further backlogs must remain a priority for an office such as the PPSA. In order to deal with the backlog and move investigations along from time to time various mechanisms have been embarked upon since my time at the PPSA from 2019.
48. When Ms Baloyi arrived at the PPSA in February 2019 and assumed the position of COO, there was a backlog of about 466 cases that were older than two years. Working together with the team, she resolved 284 (63%) of those cases in her first two months and by the time she left the PPSA in October 2019, she had resolved 83 further cases.
49. When Mr Lucky Mohalaba was the COO he too prioritised the reduction of the backlog. The PPSA Conceptualised Project Plan: Backlog of Old Matters with

ES NT

the target of resolving 272 GGI (of which 159 were older than two years) and service delivery (of which there were 113 that were older than 12 months) matters by 30 September 2021. This deadline was of course unrealistic, for various reasons. Whilst some matters were closed, not all of them could be because, apart from limited human resource capacity at investigations, matters differed in nature and complexity and the imposition of one date to have dealt with all of them does not take these critical factors into account. GGI matters, by their very nature, are complex.

50. I, together with Adv Stoffel Fourie (Executive Manager: PII Coastal) and Mr Vusumuzi Dlamini (Acting Executive Manager: Investigations), was a sponsor of the project, and the project owner was Mr Mohalaba. Mr Mohalaba subsequently resigned from the PPSA in about October 2021.
51. The deadline for eradicating 272 backlog cases within 44 days was not met. The PP instructed the CEO to issue us with *audi* letters, asking us to make representations as to why disciplinary steps should not be taken against us.
52. I received an *audi* letter from the CEO, Ms Sibanyoni dated 4 October. A copy is attached marked 'NN2'. The letters to Adv Fourie and Mr Dlamini are attached marked 'NN3' and "NN4".
53. I responded to my letter by means of the letter attached hereto marked "NN5". Adv Fourie's response is attached marked 'NN6' and Mr Dlamini's response is attached marked "NN7".

R S NT