



## Minutes of the Committee for Section 194 Enquiry

**Date:** Monday, 11 July 2022

**Time:** 10:00

**Venue:** Hybrid (Virtual & Physical at Committee Room M46)

**Agenda:**

- **Hearings: Day 1 – Opening statements by the Evidence Leaders of the Committee and the legal representatives of the Public Protector, Adv. Busisiwe Mkhwebane**

### Members

Status	Name of Member	Political Party
Present	Mr QR Dyantyi (Chairperson)	African National Congress (ANC)
	Ms J Hermans	
	Ms TM Joemat-Pettersson	
	Ms TI Legwase	
	Mr S Luzipo	
	Mr MG Mahlaule	
	Ms JS Mananiso	
	Ms T Mgweba	
	Mr BS Nkosi	
	Mr X Nqola	
	Ms ED Peters	
	Mr AM Seabi	
	Ms VS Siwela	
	Mr BM Maneli	
	Ms ME Tlhape	
Ms GK Tseke		
Mr GJ Skosana		
Ms J Tshabalala*		
	Dr A Lotriet	Democratic Alliance (DA)
	Mr KJ Mileham	
	Mr BB Nodada	
	Dr M Gondwe	
	Ms BM Van Minnen*	
	Mr JS Malema	Economic Freedom Fighters (EFF)
	Ms OMC Maotwe	
	Dr CP Mulder	Freedom Front Plus (FF+)
	Ms H Denner* (FF+)	

Ms ME Sukers	African Christian Democratic Party (ACDP)
Mr AM Emam-Shaik	National Freedom Party (NFP)
Mr B Herron	GOOD
Mr B Holomisa	United Democratic Movement (UDM)
Mr MGE Hendricks	Al Jama-ah
<b>Apologies</b> Ms D Dlakude (ANC)	

\*indicates that a member is an alternate

#### Parliamentary Officials and other

Name	Organization	Designation
Mr TK Ngoma	Parliament	Committee Secretary
Ms TC Morie	Parliament	Graduate Trainee
Ms H Davids	Parliament	Graduate Trainee
Adv. N Bawa	Parliament	Evidence Leader
Adv. N Mayosi	Parliament	Evidence Leader
Adv. A Pillay	Parliament	Evidence Leader Support
Adv. D Mpofu	Seanego Attorneys	PP Legal Representative
Adv. B Shabalala	Seanego Attorneys	PP Legal Representative
Adv. H Matlhape	Seanego Attorneys	PP Legal Representative
Mr T Seanego	Seanego Attorneys	PP Legal Representative
Ms N Patel	Seanego Attorneys	PP Legal Representative
Adv ML Tau	Parliament	Acting Section Manager
Mr M Dano	Parliament	Committee Researcher
Ms S Sipamla	Parliament	Content Advisor
Mr S Magagula	Parliament	Content Advisor
Dr S Khuzwayo	Parliament	Content Advisor
Mr P Dlomo	Parliament	Content Advisor
Ms F Ebrahim	Parliament	Legal Advisor
Mr S Njikela	Parliament	Legal Advisor
Mr T Nage	Parliament	Procedural Officer
Mr P Hahndiek	Parliament	Procedural Officer
Mr S Thwala	ANC Caucus	Content Advisor

Mr M Sweet	ANC Caucus	Head: Research and Development
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## **1. Opening and welcoming**

Mr Dyantyi opened the meeting and welcomed all present both physically and on the virtual platform. He recognized and welcomed Adv Busisiwe Mkhwebane, the Evidence Leaders of Parliament led by Adv. Nazreen Bawa SC and the legal representatives of the Adv. Mkhwebane led by Adv. Dali Mpofu SC.

He indicated that the enquiry was a process of the National Assembly and there was no predetermined outcome. Only the evidence, facts and rigorous scrutiny of such will determine the outcome of the process.

He emphasized that the meeting marked the beginning of the hearings of the Committee to determine whether Adv. Mkhwebane was fit to hold the office as the Public Protector. The Committee was determined to hear evidence that would be placed before it by the witnesses. The evidence would assist in either exonerating Adv. Mkhwebane or confirm the motion that was tabled. He requested that members should remain objective during the process.

The Chairperson indicated that draft directives to guide the proceedings of the Committee, as agreed to in the previous meeting, were drafted and agreed to by both teams with amendments, and the document would be discussed during the course of the meeting.

The Chairperson requested the Committee Secretary to read apologies.

## **2. Opening remarks by the Evidence Leader of the Committee, Adv. Bawa SC**

Adv. Bawa indicated that it was the first time in the history of South Africa that Parliament had an impeachment Committee. She emphasised that the Committee was not a Committee of judges, neither was it a quasi-judicial process, a trial nor a process that grants the Committee the power to make decisions of that nature. All in all, the Committee was not a court of law although it was bound by the court judgements.

Adv. Bawa provided a brief background on the expectations on the work of the Committee. She highlighted that the Committee was not the ultimate decision maker in the process and it was due to make findings to the National Assembly, which had the power to decide on whether there was enough evidence which warranted the removal of the Public Protector.

She requested that the Committee conducts its work in a reasonable, fair and objective manner. The latter also applied to the treatment of all witnesses, participants in the process as well as Adv. Mkhwebane. Adv. Bawa reminded members that the Committee had determined its Terms of Reference, which was adopted in February 2022 and led to the appointment of two Evidence Leaders for the Committee. The two Evidence Leaders possessed a wealth of experience in working with Enquiries, evident to that was the Khayelitsha Enquiry.

She read the four charges contained in the Motion to the Committee.

### **3. Opening remarks by Adv. Mpofo, legal representative of Adv. Mkhwebane**

Adv. Mpofo briefly explained that his team would raise issues with the Committee that needed clarification. He stated that he would provide two opening statements. One would address the opening statement that was made by the Committee's Evidence Leader and the other would address the allegations that had been made against Adv. Mkhwebane. He further indicated that Adv. Mkhwebane's was participating in the process under protest. Adv. Mpofo stated that Adv. Mkhwebane wanted to assure the Committee that she was indeed fit and proper to hold office.

In 2019, the Public Protector wrote a letter to Ms Helen Zille regarding the issue of her removal from office. She sought to bring to her attention that she could not be removed from office without the process of the law having taken place. Adv. Mpofo summarised the process that the Public Protector's team had undertaken in submitting an application to the Constitutional Court. The application was granted and the Court explained that for a removal to take place there must be "preliminary pre-determination of the existence of grounds."

Adv. Mpofo further explained three cases that were the result of the Section 194 process. He touched on the Constitutional Court case that concluded that the "mummified legal representatives" rule was unconstitutional. He emphasised the fact that the Committee for Section 194 was not a removal Committee and read Section 177 of the Constitution in support of that.

The Chairperson requested that Adv. Mpofo take the Committee through section 194(1) of the Constitution to clarify the point that he was making. He reiterated that the Committee for Section 194 was not a removal Committee. He stated that the issues that he raised in his opening statement, including the issue of fairness would be raised in the Cape Town High Court in the coming weeks.

Adv Mpofo raised his concerns regarding the draft directives with the Committee.

#### **4. Deliberations.**

The Committee deliberated extensively on issues raised by both legal teams, during which the Chairperson took members through the work of the Committee since its establishment. He reminded members that the Committee was established on 20 July 2021, when he was appointed the Chairperson. Following its establishment, the Committee adopted a Draft Programme on 28 July 2021. However, the Committee took a long break as a result of the legal challenges which had impact on its work. The Constitutional Court handed down its judgement on 4 February 2022, to which the Committee resumed with its work.

Following this judgement, the Committee met on 22 February 2022 to amongst others, adopt its Terms of Reference, which granted permission to the Legal Advisor to facilitate the appointment of Evidence Leaders. As such, authorisation for the appointment of Evidence Leaders was obtained on 7 March 2022.

The Chairperson emphasised that the Committee had no influence nor was it involved in any way when the Speaker notified the President, through a letter that the Committee processes were underway and therefore could not provide any explanation regarding the timing of the suspension letter. Furthermore, the Chairperson provided that the draft directives had been drafted in consultation with the legal representatives of the Public Protector, to which they had agreed in principle.

The Committee took note of the concerns raised by Adv. Mpofo relating to the draft directives and agreed that they would be revised and finalised in the meeting of Tuesday, 12 July 2022.

#### **5. Adjournment**

The meeting adjourned at 16:20

*Signed electronically*

*16 August 2022*

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**Mr QR Dyantyi, MP**  
**Chairperson: Committee for Section 194 Enquiry**

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**Date**