
**AFFIDAVIT IN THE SECTION 194 ENQUIRY INTO THE REMOVAL OF THE
PUBLIC PROTECTOR**

I, the undersigned,

THULISILE NOMKHOSI MADONSELA

Do hereby state under oath and say that:

PART A: CONTEXT

1. I am an adult woman currently employed at Stellenbosch University as a law professor and Director of the Centre for Social Justice.
2. The facts herein contained fall within my personal knowledge, save where the context otherwise indicates, and are, to the best of my knowledge, understanding of this matter and belief, both true and correct.
3. I was appointed Public Protector with effect from 15 October 2009 and served in that position till 14 October 2016, when my non-renewable term of office ended and my knowledge, accordingly is limited to operations of the Public Protector during the said period.
4. The statement sets out a summary of what I intend to share with the "Committee for Section 194 Enquiry into the Removal of Adv B Mkhwebane as Public Protector" (The Committee) when I appear before the Committee as scheduled.
5. The contents and intended appearance are in response to the letter of the Chairperson of the Committee, Hon QR Dyantyi, MP, dated 21 February 2023, wherein he communicated the Committee's resolution to summons me and the decision to ask me to participate in the process without such summons. The chairperson stated, in part, that:

"As you are aware, the national assembly is seized with a motion to remove Adv Busisiwe Mkhwebane from the office of Public Protector on grounds that she is incompetent and/or has committed misconduct. The Committee on the Section 194 Enquiry (the Committee) is currently conducting its hearings and must, in terms of section 194(1)(b) of the Constitution, make findings on these grounds of misconduct and/or incompetence as set out in the motion to remove Adv Mkhwebane.

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On 13 December 2022 the Committee received an application from Adv Mkwabane to Summons you to appear before the Committee..."

6. The Chairperson's letter proceeded to, among others, accept my objection to questions that have no logical connection to the purpose of the s194 process as outlined in the s194 motion and communicated the following:

"After careful examination of your response, the Committee reiterated its resolution to summons you. The committee however considered the content of your letter closely and agreed that you will only be called to provide evidence on matters related to the Vrede Dairy investigation and the CIEX investigation as the reports that emanated from these investigations were only issued after your term ended and form a substantive part of the subject matter of the Motion itself...I was informed that a number of documents that would have been generated during your time in office relevant to the CIEX and Vrede matters could simply not be found..."

The Committee agreed with legal advice presented to it that its mandate is not to conduct a comparative exercise between Adv Mkhwebane and her predecessors but to confine itself to the motion and in particular the conduct of Adv Mkhwebane which forms the subject matter of the Enquiry."

PART B: THE CIEX AND VREDE DAIRY INVESTIGATIONS

7. Regarding the CIEX investigation and report, I Confirm that:

7.1 I was the lead investigator on commencement, only working with a Trainee Investigator and when he left for the NPA, the investigation was stalled until I was given a young investigator, who had just been promoted to the status of an investigator

7.1 The CIEX investigation was an outlier in that it was the only investigation that was directly supervised by and virtually conducted by myself as Public Protector.

7.2 Before then no investigations were conducted from my office and no other was.

7.3 The reason for the anomaly was that the request by Adv Paul Hoffman SC, to have this investigation conducted was rejected on grounds of the fact that the matters it dealt with preceded the genesis of the Public Protector. There were also concerns regarding efficient use of resources given lapse of time making this a cold case compounded by prescription rules regarding the recoverability of relevant funds.

7.4 I was persuaded to take it on when the complainant assured me that it would be a slam dunk in that there were documents indicating that the debt was admitted and funds set aside by the bank at the centre of the complaint.

7.5 The matter ended up being far more complicated though we persisted even after loss of time after the Trainee investigator left.

7.6 What I submit is that:



- (a) I left no final report or approved provisional report;
- (b) I found that the principal debt of the final loan had been paid but interest not;
- (c) I considered it legally impermissible to claim the money, considering that prescription had been raised as a legal defence much earlier;
- (d) The tone, scope, findings and remedial action in both the issued provisional report and the final report differ materially from drafts the investigator had worked and submitted to me, though I did not approve same and requested further changes;
- (e) The State Security Agency (SSA) was never involved, in the investigation, except for an interview with Mr Billy Masethla regarding why his institution got involved in the original contract with CIEX and how the process unfolded;
- (f) Strangely though, after leaving documents with a colleague from the South African mission in London, which had been given to me by CIEX's Michael Oatley at an interview this colleague accompanied me to, the documents arrived from the SSA, opened and with a note from the SSA Director General. They were meant to be transported by DIRCO.
- (g) Key changes that I have observed in the final CIEX report, include the remedial action regarding changing the powers of the Reserve Bank, which was not an issue as the issue concerned lending and debt collection practices.

8. Regarding the Vrede Dairy investigation, I confirm that:

8.1 The investigation was conducted by the Public Protector regional office in Bloemfontein during my term.

8.2 The investigator and her team struggled, with drafts being sent back from my desk and from their peers in the Think Tank, presumably because the investigator had been doing service failure of an early resolution nature while at National Office and that until my time, regional offices did not conduct investigations on complex matters particularly involving corruption and related financial impropriety allegations.

8.3 They still failed to meet the Standards in the Standard Operating Protocol(SOP), I personally developed and issued as a Handbook even after training using the same tool. One of the key reasons was omission of names and failure to conduct a forensic investigation, which is compulsory in the SOP in matters where corrupt relationships are alleged or suspected.

8.4 When Mr Samuels took over as Regional Representative, I asked him to take the investigation over.



PART CONTEXT AND CONCLUDING OBSERVATIONS


9. Investigations System Contextualising the CIEX and Vrede Dairy Investigations:

- 9.1 I inherited a well-run institution that had been built virtually from scratch and improved step by step by my predecessors.
- 9.2 Through learning and growing together we kept improving the system guided by Seneca's assertion that: "Will I not walk in the footsteps of my predecessors? I will indeed use the ancient road – but if I find another route that is more direct and has fewer ups and downs, I will stake out that one" (Williams Stevens: 2020, 22)
- 9.3 Two of the investigation guardrails I personally developed followed by peer review by the team, was The Handbook On Administrative Investigations and The Public Protector Mandate book.
- 9.4 I further did what I could to collaborate with colleagues towards guardrailing the Ombudsman institution globally, which included establishing the African Ombudsman Research Centre (AORC), a process commenced by my immediate predecessor Adv Laurence Mushwana and personally suggesting and developing the OR *Tambo Declaration on Minimum Standards for an Effective Ombudsman Institution*
- 9.5 I resisted being spied on by the State Security Agency, through sudden repeated requests to vet me as I was finalising the Waterkloof Landing incidence by the Gupta family. What I could not prevent is it landing with the CIEX Box and flash disc all of which had been opened on arrival.
- 9.6 We worked as a team building and executing systems that tried to balance rigor with promptitude, gave priority to what we referred to as *Gogo Dlamini* cases while ensuring that the investigation standard applied and duty of care was uniform.
10. It is my considered view that the above is all that is relevant in the light of the s194 Enquiry Motion and the contents of the letter of the Chairperson of the Committee.


THULISILE NKOMO-MADONSELA

I certify that:

1. The Deponent acknowledged to me that:
 - 1.1 She knows and understands the contents of this declaration;
 - 1.2 She has no objection to taking the prescribed oath; and
 - 1.3 She considers the prescribed oath to be binding on her conscience.
2. The Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God"
3. The Deponent signed this declaration in my presence at *Stellenbosch*..... on *28*..... February 2023.



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