

CLOSING REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 31 OF 2020/21

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CLOSING REPORT: INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND IMPROPER CONDUCT IN CONNECTION WITH THE BUNGLING OF THE FISHING RIGHTS ALLOCATION PROCESS BY THE FORMER MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES MS TINA JOEMAT-PETTERSSON

1. INTRODUCTION

- 1.1. This is my closing report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act, [Act No. 23 of 1994] (the Public Protector Act).
- 1.2. The report relates to an investigation conducted in connection with allegations of maladministration and improper conduct in connection with the bungling of the fishing rights allocation process by the former Minister of Agriculture, Forestry and Fisheries, Ms Tina Joemat-Pettersson.
- 1.3. A copy of the closing report is provided to the Democratic Alliance Member of the Portfolio Committee on Agriculture, Land Reform and Rural Development, Ms Annette Steyn, MP (the Complainant), the Acting Director-General of the Department of Environment, Forestry and Fisheries, Mr Ishaam Abader, and Ms Tina Joemat-Pettersson, in terms of section 8(3) of the Public Protector Act, 1994.
- 1.4. The investigation emanates from a complaint lodged by Ms Annette Steyn, MP, former Shadow Minister of Agriculture, Forestry and Fisheries, (the Complainant) on 20 March 2015, against the former Minister of Agriculture, Forestry and Fisheries, Ms Tina Joemat-Pettersson (the former Minister).
- 1.5. In her complaint, the Complainant alleged that the former Minister breached the Fishing Allocation Policies by revoking fishing licences awarded to qualifying holders and issued same to non-qualifying fishers.
 - 1.5.1. The Complainant also alleged that previously, investigations were conducted by Messrs Harris-Nupen Molebatsi Incorporated (Harris-Nupen Molebatsi) and Emang Basadi Legal and Legal Forensics (Pty) Ltd (Emang Basadi) and reports were issued in this regard. According to the reports, the following was revealed following the finalisation of the investigations:

1.5.1.1. *“There were instances of political interference in the rollout of the Fishing Rights Allocation Process (FRAP); and*

1.5.1.2. *Some FRAP applications who failed to meet maximum qualifying criteria were issued rights because FRAP officials were “instructed” to approve their applications”.(sic)*

1.6. The Complainant further alleged that, these reports were presented to the Parliament’s Portfolio Committee on Agriculture, Forestry and Fisheries, however, the former Minister failed to answer Parliamentary Questions posed in respect thereof, and that the Minister’s refusal to issue permits was in breach of the Department of Agriculture, Forestry and Fisheries (DAFF) Fishing Allocation Policies.

2. Based on the analysis of the complaint and the allegations contained therein, the following issue was identified to inform and focus the investigation:

2.1. Whether the former Minister breached the Fishing Allocation Policies by revoking fishing licences awarded to qualifying holders and issued same to non-qualifying fishers, and if so, whether the conduct constituted maladministration and improper conduct.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that:

“The Public Protector has the power as regulated by national legislation –

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action.”*

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation, advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

3.5 The Department of Agriculture, Forestry and Fisheries is an organ of state and its conduct amounts to conduct in state affairs, as a result, the matter falls within the ambit of the Public Protector’s mandate. The Public Protector’s power and jurisdiction to investigate, report and take appropriate remedial action was not disputed by any of the parties.

4. THE PRELIMINARY INVESTIGATION

4.1. Methodology and approach to the investigation

4.1.1. The investigation is conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution), read with sections 6 and 7 of the Public Protector, 1994 (the Public Protector Act).

4.1.2. The preliminary investigation process included the consideration of the complaint lodged on 20 March 2015, as well as the exchange of correspondence with the former Minister of Agriculture, Forestry and Fisheries, Mr Senzeni Zokwana, and the current Minister of Agriculture, Rural Development and Land Reform, Ms Thokozile Didiza.

4.1.3. All relevant documents and correspondence were obtained and analysed, in particular investigation reports issued by Harris Nupen Molebatsi Attorneys dated 26 May 2014 and Emang Basadi Legal and Forensic Services (Pty) Ltd, February 2015, as well as a copy of the Legal Opinion compiled by Adv. G Budlender, SC on 10 December 2014. Relevant laws, policies and related prescripts were also considered and applied throughout the investigation.

4.2. Approach to the investigation

4.2.1. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1. What happened?

4.2.1.2. What should have happened?

4.2.1.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or improper conduct?

4.2.1.4. In the event of maladministration or improper conduct what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the conduct of the former Minister of Agriculture, Forestry and Fisheries constituted maladministration and improper conduct.

4.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Minister of Agriculture, Forestry and Fisheries to prevent maladministration and improper conduct.

4.3. **The Key Sources of Information**

4.3.1. **Documents**

4.3.1.1. A copy of the Complainant's complaint document;

4.3.1.2. A copy of an investigation report on an investigation conducted by Harris-Nupen Molebatsi Incorporated;

4.3.1.3. A copy of a forensic investigation report on an investigation conducted by Emang Basadi Legal and Forensics (Pty) Ltd;

4.3.1.4. Legal Opinion compiled by Adv. G Budlender, SC on 10 December 2014.

4.4. **Correspondence Sent and Received**

- 4.4.1. A copy of a letter addressed to the former Minister of Agriculture, Forestry and Fisheries, Mr Senzeni Zokwana dated 27 March 2018;
- 4.4.2. A copy of an email addressed to Ms Pheladi Sethojoa, Personal Assistant to the Minister of Agriculture, Forestry and Fisheries dated 23 July 2018;
- 4.4.3. A copy of an email from the Special Adviser to the former Minister of Agriculture, Forestry and Fisheries, Adv S'du Gumede dated 22 August 2018;
- 4.4.4. A copy of an email addressed to Adv. S'du Gumede dated 10 September 2018;
- 4.4.5. A copy of a letter addressed to the Minister of Agriculture, Land Reform and Rural Development, Ms Thokozile Didiza, MP dated 07 January 2020;
- 4.4.6. A copy of a subpoena addressed to the Minister of Agriculture, Land Reform and Rural Development, Ms Thokozile Didiza, MP dated 30 January 2020; and
- 4.4.7. A copy of a letter received from the Acting Deputy-Director General: Fisheries Management Branch, Ms Sue Middleton dated 14 February 2020.

4.5. **Legislation and other prescripts**

- 4.5.1. The Constitution of the Republic of South Africa, 1996;
- 4.5.2. The Public Protector Act, 1994 (Act 23 of 1994).

5. **THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS:**

- 5.1. **Regarding whether the former Minister breached the Fishing Allocation Policies by revoking fishing licenses awarded to qualifying holders and**

issued same to non-qualifying fishers, and if so, whether the conduct constituted maladministration and improper conduct:

Common Cause Issues

- 5.1.1. It is not disputed that during the 2013 FRAP rollout, fishing rights were allocated to eight (8) commercial fishing sectors, namely KZN Prawn Trawl (Pty) Ltd, Demersal Shark (Pty) Ltd, Squid Tuna Pole-Line (Pty) Ltd, Hake Handline (Pty) Ltd, Traditional Linefish (Pty) Ltd and White Mussels and Oysters (Pty) Ltd.
- 5.1.2. It is also not disputed that following the 2013 FRAP rollout, widespread allegations of irregularities, manipulation, unlawful or arbitrary decision-making and unprocedural conduct in the FRAP 2013 process surfaced, which was followed by the Traditional Line Fishers Association bringing an urgent application before the High Court seeking a relief to set aside the allocation of fishing rights in the Traditional Line Fish Sector.
- 5.1.3. It is further not disputed that in February 2014, the former Minister of Agriculture, Forestry and Fisheries, Ms Tina Joemat-Petterson, commissioned Harris Nupen Molebatsi Attorneys to conduct an independent audit with a view to determine whether proper processes were followed in the allocation of fishing licences and rights by the DAFF.

Issues in Dispute

- 5.1.4. The issue in dispute is whether due process was followed during the 2013 FRAP rollout, and if not so, whether the conduct constituted maladministration and improper conduct.

- 5.1.5. In her complaint, the Complainant alleged that, the former Minister breached the Fishing Allocation Policies by revoking fishing licences awarded to qualifying holders and issued same to non-qualifying fishers.
- 5.1.6. The Complainant also alleged that previously, investigations were conducted by Messrs Harris-Nupen Molebatsi Incorporated (Harris-Nupen Molebatsi) and Emang Basadi Legal and Forensics (Pty) Ltd (Emang Basadi) and reports were issued in this regard. According to the reports, the following was revealed following the finalisation of the investigations:
- 5.1.6.1. *“There were instances of political interference in the rollout of the FRAP; and*
- 5.1.6.2. *Some FRAP applications who failed to meet maximum qualifying criteria were issued rights because FRAP officials were “instructed” to approve their applications”. (sic)*
- 5.1.7. The Complainant further alleged that, the reports were presented to the Parliament’s Portfolio Committee on Agriculture, Forestry and Fisheries, however, the former Minister failed to answer Parliamentary Questions posed in respect thereof, and that the Minister’s refusal to issue permits was in breach of the Department of Agriculture, Forestry and Fisheries (DAFF) Fishing Allocation Policies.
- 5.1.8. It was established during the preliminary investigation that, following widespread allegations of improper conduct associated with the 2013 FRAP rollout, in February 2014, the former Minister of Agriculture, Forestry and Fisheries, Ms Tina Joemat-Petterson commissioned Harris Nupen Molebatsi Attorneys to conduct an independent audit with a view to determining whether proper processes were followed or not.

5.1.9. It was also established that an independent audit conducted by Harris Nupen Molebatsi Attorneys focussed on seventeen (17) critical areas which included, *inter alia*:

5.1.9.1. The validity of the Policies;

5.1.9.2. The application forms, the submission of application forms, the verification of the application forms and the application fees;

5.1.9.3. Delegation of powers;

5.1.9.4. The appointment of independent service providers to assist with rights allocations;

5.1.9.5. The Anonymous Tip-Off Line;

5.1.9.6. The FRAP Steering Committee Operations;

5.1.9.7. The allocations of the Total Allowable Catch (TAC) and Total Allowable Effort (TAE);

5.1.9.8. The determination of the ratio between new entrants and existing Rights Holders, the Exclusionary Criteria, the Balancing Criteria, which included a sampling exercise, the process of notification of decisions; and

5.1.9.9. The Grant of Right fee and Appeals.

5.1.10. It was further established that on 26 May 2014, following the finalisation of the independent audit, Harris Nupen Molebatsi Attorneys issued a report which contained findings and recommendations highlighting failures and delays which marred the 2013 FRAP, including a flawed consultation process, a disjuncture between Policies, criteria and the application forms, allegations of corruption, collusion and maladministration, lack of human resource capacity and a defective verification process and recommendations.

5.1.11. Harris Nupen Molebatsi Attorneys *inter alia* made findings that:-

5.1.11.1. *“Without a rational justification for a departure from the published policies, which are the policies on which the applicants expected their applications to be assessed, the failure to comply with the policies renders the allocation in each of the fisheries potentially vulnerable to review under the PAJA on grounds of a lack of authorisation, arbitrariness, or lack of a rational connection between the decision and the purpose of the empowering provision, which includes both the delegated power and the policies under which the power was to be exercised;*

5.1.11.2. *An ongoing theme of concern throughout FRAP 2013 is the relatively short time allocated to the process, which meant that good governance requirements, such as recording the decisions made and the manner in which they were reached, were not complied with.*

5.1.12. According to the report, Harris Nupen Molebatsi Attorneys recommended, *inter alia*:

5.1.12.1. *“DAFF gives careful consideration to the selection of venues for Policy consultation, to ensure that all affected fishers and communities are consulted;*

5.1.12.2. *Counsel’s advice should be obtained in each instance where there was a departure from Policy, to ensure that the reasons advanced provided a rational basis for departure;*

5.1.12.3. *The process of developing application forms should be simultaneous with the process of developing Policy criteria and sector specific Policies;*

5.1.12.4. *The Minister should consult the Minister of Finance to determine application fees for commercial and small-scale subsistence farming. If the*

administrative costs for processing commercial applications require an increased fee, consultation should be done timeously;

5.1.12.5. *The power to determine the TAC and TAE and the apportionment thereof between sectors – commercial, subsistence and recreational – should not be delegated;*

5.1.12.6. *Service providers and their Terms of Reference, along with timeframes set out in the General Submission of 30 November 2011, should be used as a template for future rights allocation processes and the full submissions should be adhered to and applied;*

5.1.12.7. *The planning phase should make sufficient time for the procurement of service providers, and if there are any deviations required, this should be done in accordance with Departmental Procurement Policies;*

5.1.12.8. *The Anonymous Tip-Off Line should be active from the start of the application process to the end of the appeals process;*

5.1.12.9. *Complaints should be considered, investigated and addressed by an independent body;*

5.1.12.10. *There is a need for further and detailed investigation of tip-offs received;*

5.1.12.11. *An immediate verification of all FRAP 2013 allocations was required;*

5.1.12.12. *In future, intensive verification is required on all applications prior to allocation of scores;*

5.1.12.13. *Steering Committee members should be appointed three (3) years in advance and roles and responsibilities of each member should be clearly defined;*

- 5.1.12.14. *There should be proper schedule of meetings, action plans with timeframes and all meetings to be properly minuted and recorded and kept by the FRAP Secretariat;*
- 5.1.12.15. *The process of granting Exemptions under Interim Relief be urgently reviewed given the public criticism that the process was used to appease unsuccessful applicants and their employers;*
- 5.1.12.16. *The delegated authority should provide detailed reasons for the decision in respect of each fishery and those reasons be submitted to Counsel for an opinion on whether they meet the requirements of just administrative action under the PAJA;*
- 5.1.12.17. *The decision of the apportionment between new entrants and existing Rights Holders ought to be taken by the Minister after consultation with stakeholders;*
- 5.1.12.18. *The decision to not exclude applicants without vessels or suitable vessels cannot be dealt with by the Minister on appeal. An application should be made to court to set aside the granting of rights to applicants who should have been excluded in terms of Policy;*
- 5.1.12.19. *Score sheets should not include Exclusive Criteria. Only applicants who have not been excluded should be scored;*
- 5.1.12.20. *The delegated authority should provide detailed reasons for the selection of criteria and weighting in respect of each fishery and those reasons should be submitted to Counsel for an opinion on whether they meet the requirements for just administrative action under PAJA;*
- 5.1.12.21. *Although it is permissible for the delegated authority to depart from the Policy, all deviations should be justified and properly recorded;*

- 5.1.12.22. *Sufficient time should be set aside for drafting of letters with further checking and verification. Similarly, also to ensure that the correct list of successful applicants is properly checked and communicated;*
- 5.1.12.23. *Delivery of the letter should be outsourced to a courier company with clear instructions of delivery – even in instances where the applicant is not home;*
- 5.1.12.24. *A Grant of Right fee for the 2013 allocations should be determined as soon as possible and successful applicants be notified;*
- 5.1.12.25. *For future allocations, a Grant of Right fee should be determined well in advance;*
- 5.1.12.26. *The database, application forms and documents attached to each application should be made available to applicants”. (sic)*
- 5.1.13. According to the information received during the preliminary investigation, in December 2014, following the receipt of the Harris Nupen Molebatsi Attorneys’ report, the DAFF sought a legal opinion from Adv. G Budlender (SC) regarding the findings and recommendations made in the report.
- 5.1.13.1. It was noted that Adv. G Budlender opined amongst others as follows:
- “247 *The authors make a number of recommendations of a logical or administrative, and forward looking recommendations in order to improve any future rights allocation process.*
- 248 *The recommendations appear to us to be sensible. They are largely administrative or policy laden decisions, and are not of a legal nature or directly related to FRAP 2013”. (sic)*

5.1.13.2. Regarding the recommendation that the power to determine the TAC and TAE and the apportionment thereof between sectors, should not be delegated, Adv G Budlender opined as follows:

“232 Decisions taken by the delegate can be appealed under s 80(1) of the MLRA to the Minister. For reasons already stated, this internal remedy must be exhausted before a review can be instituted in a court.

233 If the Minister does not delegate his powers under s 14 and there is a legal challenge to the Minister’s decision, there can be no internal appeal. This is neither quick, nor cost effective.

234 In contrast, the appeal before the Minister under s 80(1) requires him to make a fresh determination on the merits. He may make his own enquiries and even gather evidence if necessary.

235 The Minister is able to correct any irregularities that may have arisen in the determination and may choose to give interested parties a hearing.

236 In our view, for the reasons stated above, there is a practical advantage if the Minister delegates his powers under s 14 of the MLRA. We therefore do not agree with the recommendation [...] of the Harris Report [...]”. (sic)

5.1.14. It was noted that in the weeks leading to the appointment of Mr Senzeni Zokwana as the Minister of Agriculture, Forestry and Fisheries, the outgoing Minister of Agriculture, Forestry and Fisheries Tina Joemat-Petterson, set aside the 2013 FRAP. The process was suspended following litigation instituted against the DAFF, as well as public outcry against the operational flaws which characterised the process.

5.1.15. Following his appointment as the Minister of Agriculture, Forestry and Fisheries, Mr Senzeni Zokwana commissioned Emang Basadi Legal and Forensic (Pty) Ltd to assess and render advice on a number of queries arising from the FRAP

2013, as well as to assess the DAFF's capacity to work and process the FRAP in the 2015/2016 financial year with a view to preventing the recurrence of the shortcomings of FRAP 2013, identified by Harris Nupen Molebatsi Attorneys.

5.1.16. Subsequently, in February 2015, Emang Basadi Legal and Forensic Services (Pty) Ltd, issued a report containing the following recommendations:

5.1.16.1. *“The Minister to extend all rights expiring in 2015 for a period of a year to allow more time for the implementation of FRAP 2015/2016;*

5.1.16.2. *General and sector specific Policies to be reviewed and aligned with the Marine Living Resources Act, 1998;*

5.1.16.3. *The Minister to form a Fisheries Transformation Council to assist in the review of the Rights Allocation Policies, to ensure alignment with the intended goal of transforming the fishing industry;*

5.1.16.4. *The development of application forms should be simultaneous with the development of Policies;*

5.1.16.5. *The Minister should consult the Minister of Finance to determine application fees;*

5.1.16.6. *The Minister to establish a Consultative Advisory Forum;*

5.1.16.7. *The Minister to establish an independent appeals team;*

5.1.16.8. *A FRAP Steering Committee and Executive Committee should be established to oversee FRAP 2015/2016;*

5.1.16.9. *A FRAP 2015/2016 process flow was proposed for adoption;*

5.1.16.10. *The Human Resource Capacity Strategy of the unit which manages the FRAP should be integrated with broader organisational objectives;*

5.1.16.11. *The DAFF should acquire a robust information technology system to administer, process and evaluate the FRAP; and*

5.1.16.12. *Adequate and equipped FRAP office space”.*

5.1.17 Regarding small-scale fisheries, Emang Basadi Legal and Forensic (Pty) Ltd recommended that the Policy should, *inter alia*:

5.1.17.1 *“Be clear on objectives and desired outcomes;*

5.1.17.2 *Be explicit in its scope of application;*

5.1.17.3 *Should not discriminate or exclude communities which are not homogenous or commercial;*

5.1.17.4 *Provide clarity on powers in respect of co-management and devolution of decision-making;*

5.1.17.5 *Clarify level of consultation and participation;*

5.1.17.6 *The enabling legislation should cater for the issue of co-management”.*

5.1.18 In addition, it was established that the South African Police Service’s Directorate for Priority Crimes Investigation (DPCI) has since investigated two corruption cases against Mr Desmond Stevens, the senior Fisheries official who headed 2013 FRAP rollout.

5.1.19 The investigation in this regard was conducted following allegations that Mr Desmond Stevens, in his capacity as the Treasurer of the Umkhonto we Sizwe Military Veterans’ Association (MKVA), solicited a payment for the benefit of the MKVA from a company appointed by the DAFF to assist with the 2013 FRAP

verification process. The docket was thereafter handed over to the National Prosecuting Authority for decision on whether or not to prosecute.

Application of the relevant laws and prescripts

5.1.20 Section 7(1)(a) of the Public Protector Act, 1994, provides that:-

“The Public Protector shall have the power, on his or her own initiative or on receipt of a complaint or an allegation or on the ground of information that has come to his or her knowledge and which points to conduct such as referred to in section 6(4) or (5) of this Act, to conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with”.

Conclusion

5.1.21 The information submitted to me during the course of the preliminary investigation, indicates that the DAFF embarked on a process to address the allegations of irregularities in the FRAP 2013, by commissioning two (2) separate investigations and by seeking a legal opinion in respect of the findings made following the issuing of the reports upon the finalisation of the investigations.

5.1.22 The DAFF proceeded to implement the recommendations contained in both these investigations reports, and reported on its implementation of the recommendations to the Portfolio Committee on Agriculture, Forestry and Fisheries during 2019. In addition, the DPCI investigated the conduct of the official who was implicated in the irregularities identified.

6 REASONS FOR CLOSURE

- 6.1 In terms of section 7(1)(a) of the Public Protector Act, the Public Protector had to determine on the basis of what was found from the preliminary investigation, how the matter should be dealt with.
- 6.2 The evidence received during the investigation indicates that, following widespread allegations of irregularities, manipulation, unlawful or arbitrary decision-making and unprocedural conduct in connection with the FRAP 2013 process, which was followed by a urgent application launched by the Traditional Line Fishers Association before the High Court seeking a relief to set aside the allocation of fishing rights in the Traditional Line Fish Sector, the former Minister commissioned Harris Nupen Molebatsi Attorneys to conduct an independent audit with a view to determine whether proper processes were followed in the allocation of fishing licences and rights by the DAFF.
- 6.3 The evidence further indicates that, upon his appointment as the Minister of Minister of Agriculture, Forestry and Fisheries, Mr Senzeni Zokwana appointed Emang Basadi Legal and Forensics (Pty) Ltd to review and assess the DAFF's capacity to work and process the FRAP during 2015/2016, with a view to prevent the recurrence of the shortcomings of FRAP 2013, identified by Harris Nupen Molebatsi Attorneys.
- 6.4 Additionally, the evidence received during the investigation indicates that the South African Police Service's Directorate for Priority Crimes Investigation has since investigated two (2) corruption cases against Mr Desmond Stevens, the senior Fisheries official who was directly involved in the 2013 FRAP rollout.
- 6.5 Consequently, the pursuance of the matter and remedial action that I may consider should adverse findings be made from a further investigation will serve no judicious purpose on the basis that the issue has become moot consequent to the DAFF's implementation of the recommendations contained in both the

Harris Nupen Molebatsi Attorneys and Emang Basadi Legal and Forensic (Pty) Ltd reports.

- 6.6 The principle of mootness was echoed by the Constitutional Court in ***National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs***¹:

“A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law”.



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 08 February 2021

Assisted by Investigation Branch: GGI

Ms Carina Van Eeden



¹ 2000 (2) SA 1 (CC) para 21 *op cit* fn 18.