

15 October 2021

To: Judge Navanethem Pillay  
Chairperson of the Nominations Panel  
Per: Email [angeline@presidency.gov.za](mailto:angeline@presidency.gov.za); [OSewpaul@justice.gov.za](mailto:OSewpaul@justice.gov.za)

Dear Sirs,

**OBJECTION LETTER: ADVOCATE BUSISIWE MKHWEBANE**

1. We refer to the above.
2. The Organisation Undoing Tax Abuse ("OUTA") is a non-profit company incorporated in terms of the Companies Act, 2008, and has been approved as a public-benefit organisation in terms of the Income Tax Act, 1972.
3. Part and parcel to OUTA's mission is to challenge and take action against maladministration, corruption and where possible, ensure that individuals are held accountable for their conduct and actions.
4. OUTA strongly objects to the nomination of Advocate Busisiwe Mkhwebane for the position of Chief Justice of the Constitutional Court of the Republic of South Africa, on the grounds that she is not fit and proper for the position, she lacks judicial competence and her integrity is highly questionable.
5. Advocate Busisiwe Mkhwebane is currently the Public Protector of the Republic of South Africa, however, in performance of her duties, her credibility, competence and understanding of her constitutional duties for that office have been questionable. Numerous courts have reviewed and set her reports, citing misinterpretation of the law, bias, exceeding her powers and blatant disregard for the rule of law as some of the reasons for setting aside her findings.
6. An example of a court judgement that resulted in the credibility and competence of Advocate Busisiwe Mkhwebane being questioned is the *Public Protector v South*

**ORGANISATION UNDOING TAX ABUSE NPC**

Reg No.: 2012/064213/08

**Directors:** WL Duvenage (CEO), Adv. S Fick,

**Non-Executive Directors:** W Modisapodi (Chair), P Majozi, LJJ Pauwen, F Adam, T Pillay Van Graan, Dr H Volmink

**CONTACTS:** 087 170 0639 • info@outa.co.za • www.outa.co.za

*African Reserve Bank*<sup>1</sup> case where the court found that, she had acted in 'bad faith; did not fully understand her constitutional duty to be impartial and perform her functions without fear, favour or prejudice; and had failed to fulfil her obligation to be frank and candid when dealing with the court'. The constitutional court then proceeded to confirm the personal punitive cost order granted against her by the North Gauteng High Court.

7. It is also important to note that Parliament is busy with the process of removing Advocate Busisiwe Mkhwebane from her position as the Public Protector, whether or not such process will result in her successful removal rests solely on the shoulders of the National Assembly. However, the mere fact that the independent panel appointed by the Speaker of the National Assembly found that there was substantial *prima facie* evidence of misconduct and incompetence on her part should be a major cause for concern.
8. Notwithstanding the above, Advocate Busisiwe Mkhwebane also lacks judicial competence. According to her biography, she has never held any judicial positions before. This is worrisome because the Constitutional Court is the highest court in the land and it deals with complex and weighty issues, therefore, it's Chief Justice must be someone who at least, has a track record of writing high quality judgements.
9. Furthermore, from her biography, it appears as though she did not have much experience as a practicing advocate, most of the positions she occupied previously are purely administrative.
10. It is our submission that Advocate Busisiwe Mkhwebane's integrity is highly questionable having due regard to the negative court judgements that have been handed against her.
11. We further submit that for the reasons listed above, Advocate Busisiwe Mkhwebane is not a fit and proper candidate for the position of the Chief Justice of the Constitutional Court and should therefore, not advance to the next stage of the appointment process.

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<sup>1</sup> *Public Protector v South African Reserve Bank* (CCT107/18) [2019] ZACC 29; 2019 (9) BCLR 1113 (CC); 2019 (6) SA 253 (CC)

12. We trust that you will find the above to be in order.

Yours Sincerely,



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**Stefanie Fick**

**Executive Director of the Accountability and  
Public Governance Division**

**OUTA – Organisation Undoing Tax Abuse**

Email: [stefanie.fick@outa.co.za](mailto:stefanie.fick@outa.co.za)