



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

National Assembly  
**Member of Parliament**

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07 March 2017

The Public Protector  
Adv. Busisiwe Mkhwebane  
175 Lunnon Street  
Hillcrest Office Park  
Pretoria  
0083

Dear Adv. Mkhwebane,

**Request for an investigation into Minister Faith Muthambi**

I am writing to you in order to request an urgent investigation by your Office into the alleged breach of the Constitution, Broadcasting Act, Executive Ethics Code and the Powers Privileges and Diplomatic Immunities of Parliament and Provincial Government Act by the Minister of Communications, Faith Muthambi.

**Background**

During the proceedings pertaining to the inquiry held by the SABC ad hoc committee, various inconsistencies were evident from statements made by the Minister.

I refer to the transcripts of the ad hoc committee on the SABC Board Inquiry dated 14 December 2016 and attached hereto as Annexure "A". On page 1210 of the transcripts, Minister Muthambi states the following about the SABC's Memorandum of Incorporation (hereinafter referred to as the MOI):

"In our normal quarterly bilateral meeting with the SABC Board, including the annual general meeting which I chair as per the relevant legislative prescripts that I've mentioned above, not a single Board member highlighted any sense of discomfort about the MOI. I would expect that the Board as the people who are involved in the governance of the SABC will be able to advise me and this never happened."

This was an utter lie, as the ad hoc committee was provided with evidence by Mr. S. Masinga, in the form of Minutes of the meeting attached hereto as Annexure "B1", showing that there were indeed objections to the MOI, which can be seen on page two. Regards to the Minister's statement that neither the Board nor the Portfolio Committee had raised any reservations about the impact of the amended MOI, again the facts speak a different truth. The minutes of the board meeting clearly show that some board members had serious reservations. Further, and in respect of the Portfolio Committee meetings minutes, the Democratic Alliances' Honourable Davis, as well as COPE and the EFF, all raised reservations, which minutes are attached hereto as Annexure "B2".

Furthermore, the Final Report of the ad hoc committee on the SABC Board Inquiry dated 24 February 2017, is attached hereto as Annexure "C". In section 9.1.2 of the report the following is stated:

"During her evidence the Minister insisted that amendments to the MOI were effected in accordance with both the Broadcasting Act and the Companies Act. She stated that although legislation did not require her to do so, the Ministry had consulted the Board on the amendments as a courtesy before they were submitted to Companies and Intellectual Property Commission (CIPC). She had also briefed the Portfolio Committee on the MOI in June 2015. According to the Minister, neither the Board nor the Portfolio Committee had raised any reservations about the impact of the amendments or the manner in which they were processed."

The CIPC was consulted in this regard and it was found that no further amendments to the MOI were ever submitted. The only changes made to the MOI during the Minister's term were changes to Directors, attached hereto as Annexure "D". It is also noteworthy that the MOI, which was submitted to the CIPC, attached hereto as Annexure "E", differs from a later MOI, which was signed by the Minister and used in the running of the SABC. The CIPC has no proof of this. The MOI which was used to govern the SABC is attached hereto as Annexure "F". When the Minister was asked for proof that this version of the MOI was indeed submitted to the CIPC, an acknowledgement of receipt of e-mail was given to the committee. This e-mail is attached hereto as Annexure "G" and could by no means be verified by the CIPC, causing its authenticity to be brought into question. Accordingly, it is requested that this matter be investigated. It should also be noted that the changes to the MOI were by no means in line with the Broadcasting Act, as stated by the Minister considering that the amendments erode the powers and duties of the Board and centralises power in the Minister.

Finally, when it comes to the Minister's relationship with Hlaudi Motsoeneng, the Minister states the following in section 25.7 of her reply to the interim report, attached hereto as annexure "H":

"I also considered the fact that the position of COO had not been externally advertised and that the Board's motivation for not having advertised the position. I was satisfied with the explanation that Mr. Motsoeneng had done such a sterling job as acting COO for a period of almost three years, and that it made sense to appoint him to the position permanently without advertising for the position."

In section 29 of her response, the Minister further comments that "When I was asked to confirm the appointment, I took into account the fact that he (Motsoeneng) had been acting in the position for almost three years, had made great strides within the SABC during that period and received the support of the current and previous Boards." In a parliamentary response to a written question by the Democratic Alliance, attached hereto as Annexure "I", the Minister provided the following response:

"No, the positions of (a) Group Executive of Corporate Affairs and (b) Chief Operating Officer (COO) were not advertised. There was no need to advertise the position of COO, as Ms Tugwana was acting in this position. Mr Motsoeneng was reinstated to the position he occupied prior to his appointment as the COO."

The appointment of Mr. Motsoeneng took place despite the Public Protector's 2014 report, stating that he shouldn't be employed in this position. The Minister was clearly acting in contravention of this report and also acted in contravention of Section 96(2)(c) of the Constitution, as well as Section 2 of the Executive Ethics Code, considering that she used her position in order to benefit another, to wit Mr. Motsoeneng.

In the report by the SABC ad hoc committee, attached at Annexure "C", evidence is given of the Minister's interference in the business of the Board and her abuse of power. Sections 5.1.3-5.14 in particular read:

"Witnesses suggested that the Minister at times interfered in the Board's business under the guise of holding the SABC accountable to the Shareholder Representative and in so doing disregarded the Board as the primary mechanism to promote accountability. This was most notable in the circumstances surrounding the permanent appointment of Mr Motsoeneng as COO soon after the Minister took office in July 2014.



Evidence from witnesses including the Minister, revealed that in many instances the Broadcasting Act was disregarded as the principal act governing the affairs of the public broadcaster. Notwithstanding section 8A(5) of the Broadcasting Act, provisions of the Companies Act were in some instances given preference. This was seemingly done to empower the Minister to become involved in the SABC's operational matters. Many witnesses also gave evidence to illustrate how the MOI had been used to trump the Broadcasting Act for the same purpose as mentioned above."

This are but a few of the highlighted issues, as various other breaches and irregularities can also be identified.

### **Basis for Investigation**

Section 182 (1) (a) of the Constitution of the Republic of South Africa states that the Public Protector has the power "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."

Section 96 of the Constitution states that 96(1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation. (2) Members of the Cabinet and Deputy Ministers may not—(a) undertake any other paid work; (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person

Section 3(1) of the Executive Members Ethics Act 82 of 1998 requires the Public Protector to investigate any alleged breach of the code of ethics on receipt of a complaint. Section 3(2) of the Act requires the Public Protector to submit a report on the alleged breach of the code of ethics within 30 days after receipt of a complaint. Section 4 of the Act states that the Public Protector must investigate, in accordance with section 3, an alleged breach of the code of ethics on receipt of a complaint by (a) the President, a member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister. Section 4 confirms that the Public Protector may also consider complaints about such breaches from ordinary members of the public.

Section 2.1 of the Code of Ethics states that: Members of the Executive must to the satisfaction of the President or the Premier, as the case may be (a) perform their duties and exercise their powers diligently and honestly; (b) fulfill all the obligations imposed upon them by the Constitution and law; and (c) act in good faith and in the best interest of good governance; and (d) act in all respects in a manner that is consistent with the integrity of their office or the government.

Section 2.3 of the Code of Ethics further states that Members of the Executive may not: (a) wilfully mislead the legislature to which they are accountable; (b) wilfully mislead the President or Premier, as the case may be; (c) act in a way that is inconsistent with their position; (d) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;

The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 states the following: Section 7 states "A person may not - (a) improperly interfere with or impede the exercise or performance by Parliament or a House or committee of its authority or functions; (b) improperly interfere with the performance by a member of his or her functions as a member". Section 13 states that "A member is guilty of contempt of Parliament if the member (a) contravenes section 7, 8, 10, 19, 21(1) or 26; (b) commits an act mentioned in section 17(1)(a), (b) or (c) or (2)(a), (b), (c), (d) or (e)". Section 17(2)(e) states that a person whether or not during examination under section 15, wilfully furnishes a House or committee with information, or makes a statement before it, which is false or misleading, commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and imprisonment.

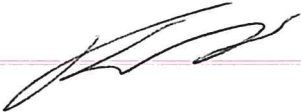
**Request for Investigation**

In light of the abovementioned facts and the relevant legal basis outlined, I therefore submit this request to your office to investigate Minister Faith Muthambi for alleged breaches of the aforementioned legislation and to extend your investigation to probe for any other laws that Minister Muthambi's actions may have contravened in this matter.

I look forward to your response.

Please urgently let me know should you require further documentation or information in this regard.

Yours Sincerely,



**Mike Waters MP**

**DA Deputy Chief Whip**

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