



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**NATIONAL ASSEMBLY**  
**OFFICE OF THE CHIEF WHIP OF**  
**THE OPPOSITION**

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21 February 2018

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

Dear Adv. Mkhwebane,

**REQUEST FOR AN INVESTIGATION INTO MINISTER MALUSI GIGABA**

I am writing to you in order to request an urgent investigation by the Office of the Public Protector into the alleged breach of the Constitution, the Executive Members Ethics Act and the Executive Ethics Code by the Minister of Finance, Mr Malusi Gigaba.

**Background**

On 14 December 2017, the Gauteng Division of the High Court of South Africa delivered judgment in the matter of *Fireblade Aviation (Pty) Ltd v Minister of Home Affairs Case No: 85376-2016/93450-2016*. The judgment was the result of an application by a private company who sought a declaratory order to compel the Minister to abide by a decision he had taken to grant the company's application to operate a fixed base aviation operation at the Oliver R Tambo International Airport. Specifically, it concerned certain decisions by and conduct of Minister Gigaba during his tenure as the Minister of Home Affairs.

In this regard, it is essential that I draw your attention to a number of the courts most serious findings against the Minister. Judge Tuchten firstly held that:

*"...there is no escaping the conclusion that... **the Minister has deliberately told untruths under oath**" (my emphasis)*

However, he also finds as follows:

*"**The Minister is bound by section 96(2)(b) of the Constitution**, not to act in any way that is inconsistent with his office. **He is further bound by section 165(4) of the Constitution** as an organ of State to assist and protect the court to ensure its effectiveness. **By telling a deliberate untruth on facts central to the decision of this case, the Minister has committed a breach of the Constitution so serious that I could characterize it as a violation.**" (my emphasis)*

The judge then goes on to state:

**“A violation by the Constitution by a high officer in the Executive, fundamental to the decision of a court case, is an exceptional circumstance... I say that because it *is such a departure from the standards which the Constitution enjoins be applied in this country that it constitutes something exceptional.*”** (my emphasis)

These findings require no further explanation and they amount to nothing less than unequivocal proof that the Minister has not only lied under oath but also acted in breach of his constitutional duties.

### **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— (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;

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 Executive Ethics Code states that: 2.1. Members 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) fulfil all the obligations imposed upon them by the Constitution and law; (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 Executive Ethics Code further states that Members may not: (a) Deliberately or inadvertently mislead the President, or the Premier or, as the case may be; the legislature; (b) act in a way that is inconsistent with their position.

### **Request for Investigation**

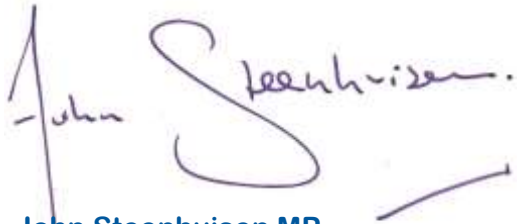
In light of the abovementioned facts and the relevant legal basis outlined, I therefore submit this request to your office to investigate Minister Gigaba for alleged breaches of the aforementioned

legislation as well as the Executive Ethics Code and to extend your investigation to probe for any other laws that the Minister's actions may have contravened in this matter.

For your ease of reference, I will attach hereto the judgment in the matter of *Fireblade Aviation (Pty) Ltd v Minister of Home Affairs Case No: 85376-2016/93450-2016* which I referred to above.

I look forward to your consideration of this request and your favourable response.

Yours faithfully,

A handwritten signature in blue ink that reads "John Steenhuisen". The signature is written in a cursive style with a large, prominent 'S'.

**John Steenhuisen MP**  
**Chief Whip of the Official Opposition**  
**Parliament of RSA**