



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

NATIONAL ASSEMBLY
OFFICE OF THE CHIEF WHIP OF THE
OPPOSITION

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16 February 2018

Hon B Mbete MP
Speaker of the National Assembly
Parliament of the Republic of South Africa

Dear Madam Speaker,

REQUEST TO EXPEDITE PROCEDURES TO REMOVE THE PUBLIC PROTECTOR

I am writing to you in respect of recent developments involving the Public Protector, Advocate Busisiwe Mkhwebane. I also refer you to my letter to you dated 13 September 2017 in which I raised similar issues with Adv Mkhwebane's conduct and fitness to hold office.

You may be aware that today, 16 February 2018, a judgment was delivered by the Pretoria Division of the Gauteng High Court in the matter of *ABSA Bank Limited & Others v the Public Protector Case No 48123/2017* (annexed to this letter for ease of reference). In the judgment, the court made a number of deeply pejorative findings against Adv Mkhwebane. To quote the court's findings against her:

- At paragraph 49 of the judgment it was held that "*...there can be no doubt that the Public Protector has made findings and come to conclusions and did not make recommendations*";
- At paragraph 85 it was held that "*...the Public Protector's aim was to amend the Constitution to deprive the Reserve Bank of its independent power to protect the value of the currency. This is an aspect of the remedial action that had nothing to do with the Presidency and should have been discussed with experts at the Reserve Bank*";
- At paragraph 95 it was held that it was "*disingenuous*" for the Public Protector "*...to change the focus and remedial action of her investigation substantially without affording the reviewing parties a similar opportunity*";
- At paragraph 101 the court held that "*...we are of the view that a reasonable, objective and informed person, taking into account all these facts, would reasonably have an apprehension that the Public Protector would not have brought an impartial mind to bear on the issues before her. We therefore conclude that it has been proven that the Public Protector is reasonably suspected of bias contemplated in 6(2)(a)(iii) of PAJA.*";
- At paragraph 103 it was held "*...in terms of section 6(2)(c) of PAJA this conduct of the Public Protector was procedurally unfair*" and moreover that the remedial actions that she ordered were "*...the product of a procedurally unfair process and are unlawful.*"; and
- At paragraph 120 the court found "*The Public Protector did not conduct herself in a manner which should be expected from a person occupying the office of the Public Protector*"

It is manifest that these findings are particularly damning and that Adv Mkhwebane has completely misconstrued her powers. However, this remains but one of many examples of her consistent failure to uphold the values of the office.

Most recently, she released an inflammatory statement of the Democratic Alliance in which she labelled the Official Opposition party's criticism of her "unpatriotic" and made a number of inappropriate statements about the party's legitimate criticism of her work. This statement shows how Adv Mkhwebane fell far short of the legal requirement that she conduct herself in good faith and without fear, favour, bias or prejudice. The Democratic Alliance has lodged several complaints on a number of matters with her office and her disparaging remarks towards the party via this statement places her objectivity into serious question.

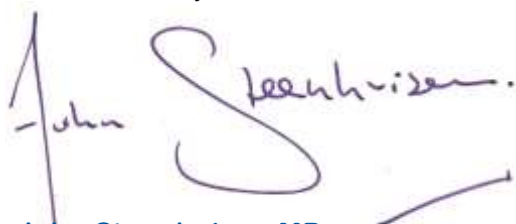
Evidently, Adv Mkhwebane is unfit to hold office as a result of her gross incompetence. Accordingly, in light of this judgment and as well as the issues raised with you in my letter of 13 September 2017 and those contained in this letter, it is now absolutely paramount that the proceedings in accordance with section 194 of the Constitution and section 2(1)(c) of the Public Protector commence and be expedited.

For your ease of reference, I will attach hereto:

1. A copy of the North Gauteng High Court judgement in case number *48123/2017*;
2. A copy of the ABSA/Bankorp report by the Public Protector; and
3. A copy of the statement issued by the Public Protector on 12 February 2018.

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 initial 'S'.

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