

STATEMENT: MALUSI GIGABA; YOUR MOVE NEXT, MR PRESIDENT

Ms Phephelaphi Dube: Director, Centre for Constitutional Rights

The Centre for Constitutional Rights (CFCR) calls for the President to remove Minister Malusi Gigaba from his position as Minister of Home Affairs. His stay in the position has become untenable in light of many factors, including: an adverse High Court judgment making material findings about Minister Gigaba's conduct; a report by the Public Protector agreeing with the judgment, with the added finding that Minister Gigaba violated the Constitution, the *Executive Ethics Code*, and the *Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members*. To boot, the same report tasks the President with ensuring that appropriate disciplinary action is taken against Minister Gigaba. Most recently, the Constitutional Court refused the Minister leave to appeal the High Court decision, putting paid to any possibility of taking the Public Protector's report on review before a court. In addition, Parliament's Portfolio Committee on Home Affairs has asked the Minister to appear, once again, before the Committee to answer questions about his conduct in the Fireblade Aviation matter, from which the court challenge arose.

While South Africa does not have a law inscribing qualifying criteria for Cabinet Members, nonetheless, once in office, they have a duty to conduct themselves in a particular manner, which is beyond reproach. This includes adherence to the letter and spirit of the Constitution, as well as the *Executive Ethics Code*, and the *Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members*. Minister Gigaba's conduct falls far short of this duty and he no longer bears the gravitas and lacks the integrity necessary for one to hold the position.

In any event, staying in the position opens up the President's conduct (or lack thereof) to a rationality challenge before the courts. This is on the basis that it is irrational for individuals who have flouted both the Constitution and other legislation to remain in a position where they exercise public power. Simply put, he does the nation a great disservice by remaining in the office and it is time that the President paid heed to these concerns.