



**MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

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Honourable Lungi Mnganga-Gcabashe, MP
Chairperson of the Portfolio Committee on Public Enterprises
Parliament of the Republic of South Africa
Cape Town
8000

Tel: (021) 403 8115
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Dear Ms Mnganga-Gcabashe

**PARLIAMENTARY ENQUIRY INTO THE DEPARTMENT OF PUBLIC
ENTERPRISES' STATE OWNED COMPANIES**

Your letter dated 30 November 2017 and received on 5 December 2017, bears reference.

I note your invitation to appear before the Enquiry on 6 December 2017.

Given the fact that I only received the invitation letter a day before I am expected to appear before the Committee, I have not had an opportunity to seek legal advice on the legal opinion you provided. I also have not had an opportunity to go through the statement and transcript of Ms. Suzanne Daniels' testimony.

Furthermore, you indicated in your letter that any person implicated in evidence will be afforded an opportunity to respond to the allegations made against them. I am making this written submission to respond to the allegations. It cannot be assumed that the response can only be valid or legal if it is made in person.

Given the circumstances and background of my invitation to appear before the Portfolio Committee, the written submission adequately addresses the issues I am required to attest to. As a result, it is not necessary for me to appear before the Committee as I am responding to the Committee in writing. Please find attached my written submission.

Finally, I note that the Committee reserves its rights in terms of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004. I also reserve my rights to seek legal recourse in this regard.

Sincerely

A handwritten signature in black ink, appearing to read 'Ben Martins', with a horizontal line underneath.

MR DIKOBEN BEN MARTINS, MP
DEPUTY MINISTER: PUBLIC ENTERPRISES
DATE: 05-12-2017.

Cc: Advocate N Navara
Acting Registrar of Member's Interest

**WRITTEN SUBMISSION TO THE
PORTFOLIO COMMITTEE ON
PUBLIC ENTERPRISES ON
THE INVITATION TO
APPEAR AT THE
PARLIAMENTARY
HEARING**

1. Letters written on behalf of the Department of Public Enterprises

1.1 I want to start by referring to the letters written by the Executive Head of the Department of Public Enterprises dated 9 August 2017, 16 October 2017, 14 November 2017. I would also like to refer to the letter that I addressed to the Portfolio Committee dated 21 November 2017.

1.2 In the letter dated 9 August 2017, the Minister requested clarity on whether in the interest of procedural fairness does the Portfolio Committee intend to:

- (i) conduct an investigation prior to the hearings? If so, will it communicate the results of such an investigation to witnesses prior to the hearing?
- (ii) appoint an evidence leader?
- (iii) seek written input from witnesses and institutions?
- (iv) invite input from any interested parties or will the proceedings be confined to the evidence of witnesses specified by the Committee?
- (v) allow witnesses to be assisted by a legal representative during the proceedings?
- (vi) publish an interim report and to invite comments on it prior to the issuing of the final report?

1.3 On 16 October 2017, the Minister addressed a second letter to the Portfolio Committee wherein she asked, amongst others, the following questions:

- (i) On the nature of enquiry? Is it inquisitorial or accusatorial? Will the list of questions be given to the witnesses beforehand?
- (ii) The Terms of Reference for the Enquiry have not been formalized let alone have they been made public.
- (iii) Is legal representation allowed? May the record reflect that the Department wishes to be legally represented and rightly so as envisaged in the Constitution?
- (iv) What is the interface between the Parliamentary Enquiry and the other investigations by other organs of state like the SIU and the Public Protector?

- 1.4 The Portfolio Committee responded to the Minister's letters on 20 October 2017 and indicated the following:
- (i) The Enquiry is inquisitorial in nature and based on the rules of natural justice.
 - (ii) The Enquiry will be conducted in a transparent manner.
 - (iii) In the event that a witness implicates an individual, that individual will be notified and may attend the proceedings. However, no cross examination will be allowed.
 - (iv) A report will be prepared by the Committee and implicated individuals will be afforded an opportunity to respond to the draft Committee report.
 - (v) Legal representatives may attend the proceedings but may not participate in the proceedings.
 - (vi) There is no interface between the Committee and other investigations by other organs of the state as investigations by these organs of state are not a legal impediment to Parliament in the exercise of its constitutional powers of holding the executive accountable.
- 1.5 The Minister further addressed a letter to the Committee dated 14 November 2017, wherein the Minister indicated that she has noted factual inconsistencies in the statements of some of the witnesses, which may have a bearing on the Ministry of Public Enterprises, the Department and the State Owned Companies reporting to the Department. The letter further states that in line with the principles of natural justice and in particular the *audi alteram partem* rule, the Department should be given an opportunity to state its case before the Report is finalized. The Portfolio Committee was further requested to confirm if the Interim Report will be issued and when will the Ministry, Department and SOCs be given an opportunity to appear before the Parliamentary Enquiry? This letter has not been responded to.
- 1.6 The said letters lay emphasis on the request for procedural fairness to be effected by the Committee. I attach the said letters as Annexures "A", "B" and "C".
- 1.7 On 21 November 2017, I wrote a letter to the Portfolio Committee raising the following issues (attached as Annexure "D"):

- (i) I raised concerns about the processes and procedures of the hearings.
- (ii) I requested statements of witnesses that testified before the Enquiry.
- (iii) I sought clarity on what specific issues that I need to make written submissions on.
- (iv) I further requested clarity on which questions must I answer relating to governance at Eskom.

1.8 I received a response of my letter from the Portfolio Committee through a letter dated 30 November 2017. However, I only received the letter on 5 December 2017. I have not had an opportunity to study the legal opinion or seek legal advice on the said legal opinion. I also have not had an opportunity to go through the statement and transcripts of Ms. Suzanne Daniels' testimony.

1.9 In the Portfolio Committee's response to Minister's letter, the Committee indicated that in the event that a witness implicates an individual, that individual will be notified and may attend the proceedings. I was not informed that Ms. Daniels will implicate me and was not requested to attend the proceedings.

1.10 Furthermore, you indicated in your letter which I received on 5 December 2017 that any person implicated in evidence will be afforded an opportunity to respond to the allegations made against them. I am making this written submission to respond to the allegations. It cannot be assumed that the response can only be valid or legal if it is made in person.

2. The invitation to appear before the PC

2.1 I refer to the Portfolio Committee's invitation letter dated 30th November 2017 and received on 5 December 2017 "the invitation letter" calling upon me to appear before the Committee in my capacity as the Deputy Minister of Public Enterprises to make written submissions and answer questions before the Committee on the allegation made by Ms. Suzanne Daniels and any related issues (attached as annexure "E").

3. Submissions relating to the Invitation Letter

- 3.1 It is important to clarify that as a Deputy Minister I am appointed in terms of section 93 of the Constitution. Section 93 indicates that the President may appoint Deputy Ministers. It further states that Deputy Ministers are accountable to Parliament for the exercise of their powers and the performance of their functions. However, the Constitution does not state what are the powers and functions of Deputy Ministers.
- 3.2 In terms of section 93 (1) (a) of the Constitution, I was appointed by the President as the Deputy Minister of the Department of Public Enterprises on 31 March 2017 to assist the Minister of Public Enterprises.
- 3.3 The PFMA only refers to the Minister as the executive authority and not the Deputy Ministers.
- 3.4 It is important to note that the executive functions are with the Minister of Public Enterprises. The Minister has delegated to me oversight functions relating to Alexkor, Denel and the South African Forestry Company. However, the executive functions still remains with the Minister. The delegation is for administrative purposes and does not include matters relating to Eskom.
- 3.5 The power I discharge as the Deputy Minister is public power. I discharge this power in as far as my delegated oversight functions pertaining to South African Forestry Company, Alexkor and Denel are concerned.
- 3.6 Clearly, what I have to traverse and testify to is what has allegedly been said in Ms. Suzanne Daniels' testimony regarding the meeting that allegedly took place on 29 July 2017.
- 3.7 On 8 November 2017, Ms. Suzanne Daniels gave a testimony before the Portfolio Committee. Ms. Daniels gave a testimony about a meeting that allegedly took place with certain individuals. It was further alleged that I was part of that meeting.

- 3.8 As I indicated in my statement dated 14 November 2017 (attached as Annexure "F"), on 29 July 2017 from 7am until approximately 1:15pm I was at the funeral service of Mr Ronnie Mamoepa at St Albans Cathedral in Pretoria. Whilst at the funeral I took several photographs with other former Robben Island political prisoners and posted one of the photographs on my twitter handle.
- 3.9 At approximately 1:30pm I departed from St Albans Cathedral and drove to St Georges Hotel in Irene, where the ANC NEC Lekgotla was to commence at 2pm.
- 3.10 Upon arrival at St Georges Hotel Conference Centre I registered as a participant and was issued with an accreditation card.
- 3.11 I attended the Economic Transformation Commission which was chaired by Mr Enoch Godongwana. Ministers Rob Davies, Ebrahim Patel and Lindiwe Zulu among others made presentations at the commission.
- 3.12 Throughout the duration of the commission from approximately 2:30pm until 7:30pm I sat next to the Chairperson of the ANC Parliamentary Caucus Mr Seiso Mohai.
- 3.13 When the Economic Transformation commission deliberations ended for the day, I went to the St Georges Hotel Conference Centre dining hall, where I sat at a dining table with Mr Paul Langa, Mr Vusi Mkhize and other members of the ANC logistics and security unit. I departed from the dining hall at appropriately 08:30pm and went to my residence in Pretoria.
- 3.14 The Chairperson of the ANC Parliamentary Caucus Mr Seiso Mohai, Mr Paul Langa and other ANC members who were in attendance at the commission and the dinner can attest to the above.

4. Conclusion

4.1 *“Fairness ordinarily requires that an interested party be given access to relevant material and information in order to make meaningful representations”.*

**See : Earthlife Africa (CT) v DG: Dept of Environmental Affairs & Tourism 2005 (3) SA 156 at para 52.
Brink v Kitshoff NO, 1996 (4) SA 197 CC**

4.2 Irrespective of my position as the Deputy Minister, like all citizens, I am entitled to expect the Committee in its dealings with me to be fair especially in the Committee’s assumption of authority to invite me to come testify before it. I am entitled to rely on the fact that the Committee will treat me fairly, moreso, as I do not know of any limitations the Committee has. I also enjoy equal protection of the law.

4.3 I am concerned that after the testimony of Ms. Daniels, one of the Honourable members of the Committee, Mr. Floyd Shivambu, made insinuations about my character on social media. It is unfortunate that a member of the Committee can make public statements outside the Committee about issues that the Committee is seized with. What is more concerning is that the insinuations were made based on untested allegations.

4.4 On 22 November 2017, the Minister of Public Enterprises appeared before the Portfolio Committee. It was unfortunate to observe that prior to her appearance, my letter to the Committee dated 21 November 2017 was discussed. It was noted that I requested certain documentation and that such documentation should be given to me before I appear before the Committee. There was a suggestion from Mr. Shivambu and other members of the Committee that I be subpoenaed to appear before the Committee. I was surprised because I wrote a letter requesting clarity and documentation but the Committee was already considering to subpoena me. It was indicated in that verbal exchange that I should be called to appear the next Wednesday.

4.5 Furthermore, Mr. Gungubele also made comments on radio about this process. This is not in line with procedural fairness as some witnesses

(myself included) had not being given an opportunity to state their case but a member of the Committee was already making public statements and conclusions. Unfortunately, this makes me to conclude that there are predetermined outcomes that some members of the Committee seeks to achieve.

- 4.6 Based on the foregoing, I am of the opinion that the fairness of the hearing has been compromised to achieve a predetermined outcome.
- 4.7 Given the circumstances and background of my invitation to appear before the Portfolio Committee, the written submission adequately addresses the issues I am required to attest to. As a result, I am of the view that it is not necessary for me to appear before the Committee as I am responding to the Committee in writing.
- 4.8 Finally, I note that the Committee reserves its rights in terms of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004. I also reserve my rights to seek legal recourse in this regard.



**Deputy Minister
Dikobe Ben Martins, MP**



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**Honourable Z. Rantho, MP
Chairperson Portfolio Committee on Public Enterprises**

**Cc: Ms Baleka Mbete
Speaker of Parliament**

**Tel: (021) 403 8115
Fax: (085) 607 8917**

Dear Ms Rantho

Parliamentary Enquiry into the Department of Public Enterprises State Owned Companies

The above matter refers.

I would like to reiterate my commitment to fully cooperate with the Parliamentary Portfolio Committee ("Portfolio Committee") investigations into the affairs of Eskom and other State Owned Companies under the purview of the Department of Public Enterprises.

I note that the initial intentions of the Portfolio Committee investigation were directed at the affairs of Eskom and the scope of the Portfolio Committee has since been broadened to include Denel and Transnet. In ensuring that the Portfolio Committee successfully exercises its oversight role and seamlessly conducts its investigations I would like to seek clarity from the Portfolio Committee regarding the issues to be investigated in relation to Denel and Transnet.

With regards to Eskom, it is important to further note that the matter relating to the reinstatement of Mr Brian Molefe as the Group CEO is scheduled to be heard in the North Gauteng High Court at the end of November 2017. Therefore, the Committee should be cautious in how it conducts the hearings in relation to this matter, so that it is not seen to be contravening the rules on the separation of powers between the Legislature and the Judiciary.

Moreover, I will greatly appreciate a detailed copy of the program of the inquiry, revised Terms of Reference ("ToR") and an opportunity to provide input into the ToR. In light of the other parallel investigations such as the SIU looking into similar issues at the same SOCs it appears that there will be a duplication of efforts. In the event of different conclusions by the different investigations what will be the order of precedence in terms of the implementation of the outcomes or recommendations of these investigations?

Furthermore, in the interest of procedural fairness does the Portfolio Committee intend to:

- a. conduct an investigation prior to the hearings? If so, will it communicate the results of such an investigation to witnesses prior to the hearing?
- b. appoint an evidence leader?
- c. seek written input from witnesses and institutions?
- d. invite input from any interested parties or will the proceedings be confined to the evidence of witnesses specified by the Committee?
- e. allow witnesses to be assisted by a legal representative during the proceedings?
- f. publish an interim report and to invite comments on it prior to the issuing of a final report?

I will greatly appreciate your prompt response to the matters raised above.

Yours sincerely



MS. LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 07/08/2007



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Delivered to in
CPT on 17/10/2017

13th October 2017

TO : HONOURABLE Z. RANTHO, MP
CHAIRPERSON PORTFOLIO COMMITTEE ON
PUBLIC ENTERPRISES

CC : Ms. BALEKA MBETE
SPEAKER OF PARLIAMENT

TEL : 021 - 403 8115

FAX : 086 607 8917

Dear Ms. Rantho

RE : PARLIAMENTARY ENQUIRY INTO THE DEPARTMENT OF
PUBLIC ENTERPRISES STATE OWNED COMPANIES

: MY LETTER DATED 08 AUGUST INSTANT ADDRESSED
TO YOUR GOODSELF

- 1.1 The above subject refers in particular reference is made to my letter dated 08th August Instant "my letter".
- 1.2 In parenthesis, I draw your attention to the fact that my letter was not responded let alone was it acknowledged.
- 1.3 I reminded myself of the provisions of section 41 of the Republic of South Africa Constitution, 1996 "the Constitution" dealing with the principles of co-operative government and Intergovernmental Relations collated with the Intergovernmental Relations Framework Act 13 of 2005 "IGRFA".
- 1.4 Once again, I am committing to fully co-operate with the Parliament Portfolio Committee "Portfolio Committee" Investigations.
- 1.5 Equally and primarily significant is the Portfolio Committee's constitutional obligations calling upon it to co-operate with my Department in mutual trust and good faith by assisting and supporting one another, informing one another of and consulting one another on matters of common interest as envisaged by section

- 4(1)(h)(ii) and (iii) of the Constitution. The issues and the subject bringing matters to a head in the Parliamentary Enquiry are matters of common interest.
- 1.6 I am very mindful of my constitutional role as the executive head of the Department of Enterprise "DPE" as adumbrated by section 85(2)(c) and (e) of the Constitution. I undertake to fulfill and discharge this role in line with the basic values and principles governing public administration as adumbrated by section 195(1)(a),(b),(d),(f) and (g) of the Constitution.
 - 1.7 The ubiquitous section 2 of the Constitution addressing the Supremacy of the Constitution and section 7(2) alluding to the obligations of the State to respect, protect, promote and fulfill the rights in the Bill of Rights play a significant role in this regard. The provisions of the Promotion of Administrative Justice Act 3 of 2000 "PAJA" heralding and giving effect to the right administrative action that is lawful, reasonable and procedurally fair bears relevance in the subject matter before the Parliamentary Enquiry.
 - 1.8 From the foregoing, I am concerned that I have not received a response to most if not all of the subject matters raised in my letter of 08 August instant. I have in the selfsame letter addressed issues of procedural fairness too. To date I have not received a response.
 - 1.9 In parenthesis, I further request the following questions to be addressed:
 - 1.9.1 Advocate Navara is appointed as evidence leader. He is a member of Ethics Committee seized with the issue of my executive role on the Trillian subject matter? Is there a conflict of interest?
 - 1.9.2 The nature of enquiry is not clear? Is it inquisitorial or accusatorial? Will the list of questions be given to the witnesses beforehand.
 - 1.9.3 The Terms of Reference for the Enquiry have not been formalised let alone have they been made public.
 - 1.9.4 Is legal representation allowed? May the record reflect that my Department wishes to be legally represented and rightfully so as envisaged by the Constitution.
 - 1.9.5 What is the interface between the Parliamentary Enquiry and other investigations by other organs of state like the SIU and the Public Protector?
 - 1.9.6 The subject matter of the former CEO of ESKOM, ie, Mr. Brian Molefe is sub judice? Does this principle apply to Parliamentary Enquiry?
 - 1.9.7 What are the powers of Parliament to Subpoena? Could Parliament enforce such Subpoenaes?
 - 1.9.8 The authenticity of the e-mails in the public space. Could their veracity be relied on?
 - 1.9.9 How do we deal with information that implicates the Department from other witnesses? What about the fundamental right of not-implicating oneself?

1.9.10 Conflict(s) of interest(s) of a member(s) of Committee including but not limited to former Minister of Finance, ie, Mr. Pravin Gordhan.

1.9.11 Once again, I would like to assist the Committee investigations and the Enquiry subject to the above said issues of concern being responded to.

I await your speediest response.

Yours Sincerely



LYNNE BROWN, MP
MINISTER

DATE: 16/10/2017



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Dear Honourable Chairperson

Parliamentary Enquiry into the Department of Public Enterprises State Owned Companies

The above matters bears reference.

I note from the deliberations at the Parliamentary Inquiry that the Portfolio Committee will issue an Interim Report based on the information received from the witnesses to date.

I have noted factual inconsistencies in the statements of some of the witnesses, which may have a bearing on the Ministry of Public Enterprises, the Department and the State Owned Companies (SOCs) reporting to the Department.

I advise that in line with the principles of natural justice and in particular the *audi alteram partem* rule, we should be given an opportunity to state our case before the Report is finalized.

Please confirm if the Interim Report will be issued and when will the Ministry, Department and SOCs be given an opportunity to appear before the Parliamentary Inquiry.

I hope you find the above in order.

Yours sincerely

MS. LYNNE BROWN, MP
MINISTER

DATE: 14/4/2017



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Dear Honourable Chairperson

INVITATION TO PORTFOLIO COMMITTEE: INQUIRY

Your letter dated 20 November refers.

The Executive Head of the Department of Public Enterprises, i.e. Honourable Minister Brown has addressed various letters to the Chairperson of the Portfolio Committee on Public Enterprises, to the Speaker of Parliament and specifically to the Evidence Leader. I believe that this Portfolio Committee is well aware of the contents of those letters. I would request that the contents of those letters be noted and incorporated as part of my submission.

I wish to place it on record that the subject matter of the inadequate process and procedure of the Portfolio Committee's hearing remains of concern. However, like the Executive Head of the Department, I undertake to fully cooperate with the Committee's hearings. This is a Constitutional duty imposed on all of us which I undertake to uphold.

This assurance should be qualified as I set out herein below:

- (i) From the date of receiving the notice to attend the Committee's hearing up to the date of preparation of this letter, the time-frame given to me to prepare my submission is inadequate. This is so as I have not received statements of any of the witnesses called by the Committee. These statements would of course be helpful in preparing for my appearance before the Committee. Certainly, it could be persuasively contended that I could look at the transcript of the recorded testimony of all the witnesses who have testified to assist me to prepare. I put it on record that I would need sufficient reasonable time to do so. To be precise, I would need approximately 3

weeks to do so. Unfortunately these testimonies do not include the testimonies of other witnesses who should have been called by the Committee to give a different well balanced perspective regarding the subject-matter of the hearing. I intend consulting with such witnesses as their testimony would certainly assist the hearing.

- (ii) The written submissions I have to prepare do not traverse executive oversight functions as I do not have such powers in so far as Eskom is concerned. This is so as my delegated responsibilities as the Deputy Minister of the Department of Public Enterprises are prescribed and refer specifically to the following State Owned Companies:
- South African Forestry Company.
 - Alexkor.
 - Denel.

From the foregoing, it is manifest that my delegated responsibilities do not include oversight of the governance of Eskom and Transnet. The record should be set straight on this before I come to testify in front of the Portfolio Committee. This should not be seen and/or interpreted as abdicating any of my responsibilities as the Deputy Minister of the Department of Public Enterprises. In actual fact, this should be seen as respecting the Executive Head's authority and my role being supportive to her.

- (iii) I also take a cue from the Committee's approach in the manner in which it dealt with my colleague, i.e. the Executive Head of the Department of Public Enterprises, Honourable Minister Brown's invitation to appear before it. This is so as the Committee remitted enquiries she was requested to address and deal with. Such an approach is complemented as it enables a witness to be able to focus on relevant subject-matter the Enquiry invited him/her to deal with. You will bear in mind that my delegated responsibilities do not relate to the oversight of the governance of Eskom. I am certain that this will assist the Committee to appreciate the practical challenges assailing my intention to appear before the Committee.

I now deal briefly with specific paragraphs of your letter as follows:

- (i) In paragraph 3 of your letter, you state that an opportunity will be available to me to address issues raised by witnesses who implicated me. I am only aware of the allegation made by Ms. Suzanne Daniels when she testified that I attended the coffee/tea party with her, Mr Atul Gupta and Mr Duduzane Zuma on the 29th July 2017. I attach hereto the media statement that includes my diary addressing my commitments for the 29th July 2017 marked Annexure "A".
- (ii) Further in paragraph 3 of your letter, you state that the Committee requires me to make written submissions. However, the letter is not specific or clear on what I should make a written submission on.
- (iii) It is further stated in the self-same paragraph 3 of your letter that I should answer questions on the issues related to governance at Eskom. What question should I answer relating to governance at Eskom? Although I have in the preceding paragraphs addressed the subject-matter of my limited responsibility with Eskom, I find the scope of your request very broad. Your precise request with specific detail would assist.

I urge the Committee to allow me the requested reasonable time to enable me to prepare a substantive statement.

Sincerely



MR. DIKOBÉ BEN MARTINS, MP
DEPUTY MINISTER

DATE: 21 November 2017.



20 November 2017

Deputy Minister Ben Martins
Department of Public Enterprises

Subject: Invitation to appear before the Portfolio Committee on Public Enterprises

Dear Deputy Minister Martins

The Portfolio Committee on Public Enterprises (‘the Committee’) is conducting an oversight inquiry into various allegations of governance failures at State Owned Enterprises. The first phase of the oversight inquiry commenced on 17 November 2017, with the Committee considering allegations in respect of Eskom.

You are hereby invited, in your capacity as Deputy Minister of Public Enterprises, to appear before the Committee and give evidence on issues related to the governance at Eskom.

The Committee requires that you make a written submission and answer questions on the issue related to governance at Eskom and offers you an opportunity to address any matter raised by witnesses against you.

The details of the inquiry are as follows:

Date: 23 November 2017

Time: 14:00

Venue: V475, Old Assembly, Parliament of the Republic of South Africa.

For further information, kindly contact the Committee Secretary, Mr Disang Mocumi.

Yours sincerely

Ms Lungi Mnganga-Gcabashe
Chairperson: PC on Public Enterprises



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**To: All Media
Date: 14 November 2017
For Immediate Release**

ISSUES ARISING FROM THE UNTESTED TESTIMONY OF MS SUZANNE DANIELS

Deputy Minister Dikobe Ben Martins' Diary for the 29th July 2017

INTRODUCTION

The Parliamentary Enquiry into the Department of Public Enterprise's State Owned Companies started on the 17 October 2017. Before the Parliamentary Enquiry started my colleague, i.e. Honourable Minister Lynne Brown, the Executive Authority of the Department of Public Enterprises (DPE) addressed 3 letters to Parliament. One letter went to the Honourable Chairperson of the Portfolio Committee on Public Enterprises. The other letter went to the Speaker of Parliament and the third letter was addressed to the Evidence Leader of the Enquiry.

The first letter of 8 August 2017 addressed concerns regarding procedural issues in so far as the Enquiry is concerned. The second letter of 13 October 2017 raised self-same procedural issues including but not limited to the evidence leader's conflicted role. The third and final letter dated 19 October 2017 addressed procedural issues in particular the evidence leader's failure to act ethically and professionally as expected of him in line with rules and ethics governing the advocacy profession.

EVIDENCE LEADER'S ROLE

We wish to emphasize the evidence leader's failure to uphold the standard and principles of fairness in as far as the conduct of the Parliamentary Enquiry is concerned. This is so, as the Parliamentary Enquiry is subject to the Constitution of the Republic of South Africa, 1996 (the Constitution). The Constitution upholds due process of the law. The Constitution upholds fair procedural administrative process and respect for individual fundamental rights as set out in Chapter 3 of the Constitution (the Bill of Rights). The Parliamentary Enquiry failed to uphold the Constitution in this regard.

The Parliamentary Enquiry has to be lawful, transparent, accountable, fair, regular and valid. These elementary requirements cannot be substituted for less. This is so as the Parliamentary Enquiry is not permitted to allow others to be implicated without being heard including their version being put before the Enquiry. Such a version could be put and/or had to be put before the Parliamentary Enquiry by the Evidence Leader.

We put it on record that the Evidence Leader has failed the Parliamentary Enquiry process in this regard. To be precise, the Parliamentary Enquiry has permitted testimony implicating various persons without having advised those persons that they were going to be implicated. There was a duty on the part of the evidence leader to advise such other persons about testimony which was going to implicate them. On this basis alone, the Parliamentary Enquiry has violated the human dignity of such persons. No one can implicate his or herself. The right to be heard is a fundamental human right.

MS SUZANNE DANIEL'S UNTESTED TESTIMONY

An instance case is the testimony of Ms. Suzanne Daniels, i.e. Eskom's suspended Acting Head of Legal who also served as Eskom's Company Secretary. Ms. Daniels herself being an admitted attorney and Officer of the Court should know about the repercussions of implicating other persons who are not able to respond to being

implicated before the Parliamentary Enquiry. Equally important is the evidence leader's ethical duty to also uphold the fairness standards by concretizing the right of such implicated persons to be heard. For instance, informing such persons timeously including putting the versions of such implicated persons to witnesses before the Parliamentary Enquiry. This is necessary and procedurally envisaged in line with legitimizing the hearing without lowering the standards of fairness.

In particular, Ms. Daniels testimony including the testimony of all other witnesses who testified before the Parliamentary Enquiry has never been tested. The truthfulness of such testimony falls short of satisfying the requirements of a valid, cogent and admissible evidence. Clearly the evidence leader has failed to uphold the prime standard expected of a hearing of the nature of the Parliamentary Enquiry should have been done. This is so as those implicated are not able to rebut and/or controvert and/or deny and/or correct the one sided untested version(s) elicited by the evidence leader.

In our considered view, this amounts to an abuse of a Parliamentary Enquiry process which falls short of meeting the requirements of a fair process. On this basis, the Parliamentary Enquiry does not align and configurate with the Constitution.

A Classical Example of failure of the Parliamentary Enquiry Process to uphold the standards of fairness and a lawful just administrative hearing as envisaged by Promotion of Administrative Justice Act (PAJA) is demonstrated by failure to accord Deputy Minister Dikobe Ben Martins (Deputy Minister) an opportunity to controvert and/or answer to Ms. Daniels testimony including the evidence leader's failure to elicit Deputy Minister Martins' testimony.

The following is a version the Deputy Minister would have presented had he been heard. This is the selfsame version the evidence leader should have put to the witness.

From 7am until approximately 1:15pm the Deputy Minister was at the funeral service of Mr Ronnie Mamoepa at St Albans Cathedral in Pretoria. Whilst at the funeral the

Deputy Minister took several photographs with other former Robben Island political prisoners and posted one of the photographs on his twitter handle.

At approximately 1:30pm the Deputy Minister departed from St Albans Cathedral and drove to St Georges Hotel in Irene, where the ANC NEC Legkotla was to commence at 2pm.

Upon arrival at St Georges Hotel Conference Centre the Deputy Minister registered as a participant and was issued with an accreditation card.

The Deputy Minister attended the Economic Transformation Commission which was chaired by Mr Enoch Godongwana.

Ministers Rob Davies, Ebrahim Patel and Lindiwe Zulu among others made presentations at the commission.

Throughout the duration of the commission from approximately 2:30pm until 7:30pm he sat next to the Chairperson of the ANC Parliamentary Caucus Mr Seiso Mohai.

When the Economic Transformation commission deliberations ended for the day, he went to the St Georges Hotel Conference Centre dining hall, where he sat at a dining table with Mr Paul Langa, Mr Vusi Mkhize and other members of the ANC logistics and security unit.

Deputy Minister Martins departed from the dining hall at appropriately 08:30pm and went to his residence in Pretoria.

The Chairperson of the ANC Parliamentary Caucus Mr Seiso Mohai, Mr Paul Langa and other ANC members who were in attendance at the commission and the dinner can attest to the above.

Conclusion

From the foregoing, we request that in the future, any hearings in particular, Parliamentary Portfolio Committee Hearings should not lower the standards of procedural fairness as envisaged by PAJA and the Constitution. In our considered view, the current Parliamentary Enquiry of the Portfolio Committee of Public Enterprises is an example of failure to uphold Promotion of Fair Administrative Justice and the Constitution.

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