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Our Ref: MAT170/AG  
Your Ref:

**DATE: 30 November 2017**

Honourable DZ Rantho  
Chairperson

Inquiry into the Board of Eskom Holdings SOC Ltd  
(being Phase I of the Inquiry into State-Owned Enterprises)  
Portfolio Committee on Public Enterprises

National Assembly  
Parliament of South Africa

Transmitted by email: [zrantho@parliament.gov.za](mailto:zrantho@parliament.gov.za)  
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**RE: FUNDAMENTAL RIGHTS OF PERSONS POTENTIALLY SUBJECT TO ADVERSE FINDINGS**

Honourable Chairperson,

1. We act for Mr. Ajay Gupta.

2. Mr Gupta and the Gupta family have been wrongly implicated in false wrongdoing, directly or indirectly, either individually or through family or business associations, before the Inquiry for which you serve as Chairperson, through testimony and in many documents before you.
  
3. Witnesses and documents before the Inquiry wrongly implicate him and/or the Gupta family falsely in relation to corporate governance failures at Eskom Holdings SOC Ltd. These matters are the subject of the current first phase of the Inquiry.
  - 3.1. As an example of the false allegations against Mr. Gupta and his family before the Inquiry, we refer to the perjured testimony of Ms. Suzanne Daniels on 8 November 2017.
  - 3.2. Ms. Daniels falsely stated on oath that she met Mr Gupta on 29 July 2017 in Melrose Arch, and that Mr Gupta made statements suggesting that he would seek to influence a Deputy Judge President in respect of the scheduling of a court hearing, no less. When challenged about the truth of her testimony, Ms Daniels made a statement to the press that she stands by what she said to the Inquiry.
  - 3.3. As Mr Gupta made plain in a letter dated 15 November 2017 and sent to you as well as the Speaker of Parliament and the National Prosecuting Authority, he was not in South Africa on or about the date of the meeting alleged by Ms Daniels. He provided to

Parliament supporting evidence in the form of an exit stamp on his passport, the flight records of his aircraft and a publicly-available video showing him giving a speech at a religious festival in India on the very day he is alleged to have met Ms. Daniels.

- 3.4. We attach a copy of this letter for ease of reference.
4. This is but an example of the many matters on which the inquiry has received false testimony. It highlights the need for the inquiry to exercise extreme caution in sifting facts and testing allegations. It further highlights the need to provide all persons who are accused before the inquiry to be given a meaningful opportunity to refute those allegations.
  5. Documents before the Inquiry further implicate him and/or the Gupta family in relation to corporate governance failures at Transnet SOC Ltd and Denel SOC Ltd. We understand these matters are the subject of two subsequent phases of the Inquiry.
  6. We note that the proceedings of the Inquiry are public and statements of witnesses and documents referred to in evidence are available to the public.
  7. The public record of the Inquiry to date indicates, beyond doubt, that Mr. Gupta and his family are potentially subject to adverse findings.

Witnesses and members of the inquiry routinely deploy terms such as “Gupta-linked”, “Gupta-connected” and “Gupta-related” when referring to alleged corrupt practices.

8. Surprisingly, despite a lapse of nearly six months, during which adverse but false evidence concerning his conduct has mounted before the inquiry, no invitation has been forthcoming from the inquiry for the production of information and to clarify or refute the allegations.
9. Mr. Gupta has refrained to date from public statements about the work of the Inquiry, or related matters concurrently before the courts. He has done so in deference to Parliament and the judiciary, and to the prejudice of his name and reputation and that of his family members. He has no recourse in law to protect his name and reputation because the proceedings are protected by parliamentary privilege.
10. The inquiry has, as we understand it, been advised of the fundamental procedural rights of those who may be subject to adverse findings by the inquiry. The inquiry has also received advice to invite interested parties to at the very least make input in writing. Submissions should be sifted and analysed and if necessary parties should then be heard orally.

11. We note that Mr. Gupta has not been invited to make any input in writing.
12. This does not, with respect, indicate a fair-minded treatment of the pressing issues before it, supporting the view that the Inquiry has other motives than fair and honest truth-finding.
13. Mr. Gupta denies the wrongdoing in which he and his family members have been implicated before the Inquiry.
14. In order to safeguard Mr. Gupta's fundamental procedural rights from further harm, and to give Mr. Gupta and his family an opportunity to provide written input to the inquiry, we call upon you to furnish us with a detailed list of questions that the inquiry may wish to put to him in writing. Please let us have this list within 10 business days of receipt of this letter.
15. In addition, if Mr. Gupta or any member of the Gupta family is required to testify before the inquiry:
  - 15.1. We request that you provide a detailed list of questions at least two weeks before the hearing; and that
  - 15.2. These persons receive at least 10 business days' notice of the hearing.

- 15.3. Please note, further, that neither Mr. Gupta nor the members of his family are available in the period between 8 December 2017 to after 15 January 2018.
16. Should you for any reason not be inclined to furnish us with the requested list of questions, we request that you notify us of this in writing and furnish your reasons for declining to do so.
17. We wish to place on record that any attempt to conclude the business of the inquiry or to prepare any report, draft or final, without giving our clients the opportunity to provide written input would render the inquiry fundamentally unfair and would simply reinforce the perception amongst sectors of the public (and as we understand echoed by persons testifying before the inquiry) that the inquiry has ulterior motives other than fair and honest truth-finding.

**YOURS FAITHFULLY**

*Electronically transmitted*

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Mr. Ahmed Gani