**Submission of the Deputy Minister of Public Enterprises to the Portfolio Committee on Public Enterprises Parliamentary Inquiry.**

Honourable Chairperson;

Honourable Members of the Portfolio Committee on Public Enterprises;

Evidence Leader Advocate Ntuthuzelo Vanara;

Advocate Simmy Lebala SC (Senior Counsel) accompanying me:

Ladies and Gentlemen: good morning!

**Introduction**

1. Honourable Chairperson, I thank you for the guidance that you provided in your invitation letter of the 26th January 2018 namely, to appear at this inquiry in my capacity as the Deputy Minister of Public Enterprises to address the allegation made by Ms Suzanne Daniels.
2. In your letter you further brought it to my attention that Mr Lucky Montana will address the Portfolio Committee inquiry on the 30th January 2018 and that there was a possibility that he may implicate me in his testimony.

**Affirmation and terms of office in different Portfolios**

1. **Affirmation**
   1. Ministers and Deputy Ministers have a duty to uphold the oath or solemn affirmation made on their appointment as set out in schedule 2 of the Constitution.
   2. I solemnly affirmed that I will be faithful to the Republic of the South Africa and will obey, respect and uphold the constitution and all other laws of the Republic. I undertook to hold my office as the Deputy Minister with honour and dignity and to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me, and to perform the functions of my office conscientiously and to the best of my ability.
2. **Terms of office in different Portfolios**

In the time that I have served as:

* Deputy Minister of Public Enterprises from 1st November 2011 until the 11th June 2012;
* as the Minister of Transport from the 11th June 2012 until the 9th June 2013;
* as the Minister of Energy from the 9th June 2013 until 20th May 2014;
* and as the Deputy Minister of Public Enterprises again as of the 31st March 2017 to date, I have had occasion to meet different stakeholders of different departments mainly in my office but at other times also at my official residence.

1. In all the meetings that I had with the departmental and State Owned Enterprises officials and stakeholders during my tenure as a Minister at the Departments of Transport, Energy, and Deputy Minister at the Department of Public Enterprises, there was never ever criminal intent on my part to abuse the status of my office for personal gain, nor did I ever instruct or coerce any official or functionary to act illegally or to carry out corrupt acts for any stakeholder and / or interest group and / or entity.
2. No business, company, family or individual, including members of my family have received a tender, contract or money as a result of a corrupt relationship with me.
3. Anyone who alleges or insinuates that I have been party to a corrupt act or to the commission of a crime, or that I acted contrary to the solemn affirmation I made, has a moral and civil duty to lay a criminal charge against me and to prove it.

**Constitutional Provisions**

1. Section 85 of the Constitution of the Republic of South Africa, 1996 entrusts the President with executive authority which is exercised together with Cabinet members for:
2. implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;
3. developing and implementing national policy
4. co-ordinating the functions of the state departments and administration;
5. preparing and initiating legislation and
6. performing any other executive functions provided for in the Constitution and national legislation.

**Accountability and responsibilities in terms of the constitution**

1. Ministers, in accordance to the Constitution are appointed in terms of section 91(2) read with section 91(3) (b) and (c) of the Constitution of the Republic of South Africa, 1996.
2. Section 92 of the Constitution dealing with accountability and responsibilities provides for accountability collectively and individually for the exercise of powers and their performance. Having been a Minister in two portfolios, I know how important it is to appreciate the functions and authority of Ministers and Deputy Ministers.
3. Section 93 of the Constitution grants the President the prerogative to appoint Deputy Ministers. Deputy Ministers are appointed in terms of section 93 (1) (a) of the Constitution of the Republic of the South Africa, 1996.
4. Section 93 of the Constitution states that Deputy Ministers are accountable to Parliament for the exercise of their power and the performance of their functions.
5. Section 96 of the Constitution provides for the conduct of Cabinet members and Deputy Ministers. In line with my affirmation, I have never undertaken any other paid work including acting inconsistently with my office or exposing myself to any situation involving the risk of a conflict between my official responsibilities and private interests.

**The Public Finance Management Act**

1. The Public Finance Management Act (PFMA) only refers to Ministers as the Executive Authority and does not refer to Deputy Ministers as such. Executive functions are thus the purview of Ministers.
2. In line with the PFMA, the Department has a Director-General who is the accounting officer that assumes administrative and operational responsibilities on behalf of the Department.
3. But although Deputy Ministers are not members of the Cabinet, they are bound by its decisions and must support the implementation of Cabinet decisions.

**My delegated responsibility**

1. The Minister of Public Enterprises, Ms Lynn Brown has delegated oversight of the following State Owned Enterprises to me:
2. Alexkor
3. Denel
4. and SAFCOL
5. The Minister of Public Enterprises however still retains the executive authority over these State Owned Enterprises. The delegation to me is thus for administrative purposes. Such administrative functions includes, amongst others, attending meetings of the said SOEs, checking the financial and operational reports on performance of the SOEs and oversight of the projects that those SOEs undertake.
6. Members of Cabinet jointly and severally have the responsibility to ensure that their functions are executed effectively and efficiently with the view of bringing about a better life for all South Africans in line with the National Development Plan (NDP).
7. The National Development Plan enjoins South Africa to build a professional public service that serves government but is sufficiently autonomous to be insulated from political patronage. The provisions of section 195 of the Constitution echoes basic values and principles governing public administration. In essence, public administration must be governed by democratic values and principles enshrined in the Constitution including but not limited to a high standard of professional ethics being promoted and maintained.

**Ms Suzanne Daniels’ testimony**

1. On the 8th November 2017, Ms Suzanne Daniels in her testimony to the Inquiry alleged that I was at a meeting attended by her, Mr Ajay Gupta, Mr Duduzane Zuma and Mr Salim Essa on the 29th July 2017.
2. The Official Department of Public Enterprises Deputy Minister’s diary reveals that on the 29 July 2017 I had attended the funeral service of Mr Ronnie Mamoepa at 7am at St Albans Cathedral in Pretoria. I attended the funeral service and at approximately 1:30 pm I departed from St Albans Cathedral and was driven to St Georges Hotel in Irene by a member of the South African Police Services VIP protection unit, to attend the ANC NEC Lekgotla which was scheduled to commence at 2pm.
3. Upon my arrival at St Georges Hotel in the company of two SAPS VIP protection members, I registered to participate in the Lekgotla and was issued with a Deputy Minister’s accreditation card.
4. After registering I attended the Economic Transformation Commission which was chaired by Mr Enoch Godongwana. Ministers Rob Davies, Ebrahim Patel and Lindiwe Zulu amongst other members of the ANC made presentations at the commission.
5. Throughout the duration of the commission from approximately 2:30pm until approximately 7:30pm I sat next to the Chairperson of the ANC Parliamentary Caucus, Mr Seiso Mohai.
6. When the Economic Transformation Commission deliberations ended for the day, I proceeded to the St Georges Hotel Conference Centre dining hall where I joined the dining table of Mr Paul Langa, Mr Vusi Mkhize and other members of the ANC logistics and security unit.
7. I departed from the dining hall at approximately 8:30pm and was driven to the official residence allocated to me in Pretoria to retire for the night. The journey was undertaken in the company of the two SAPS VIP security officers assigned to work with me.
8. The Chairperson of the ANC Parliamentary Caucus, Mr Seiso Mohai and Mr Paul Langa and other members with whom I interacted during the commission and dinner are prepared to attest to the aforegoing.

**Interactions with the Guptas**

1. During 2011, when I was the Deputy Minister of Public Enterprises, I had a interaction with the Gupta brothers at the SABC TNA Business Breakfast arranged by the Department of Public Enterprises. There were no business related discussions.
2. Another time I met the Gupta brothers was shortly after my appointment as Minister of Transport. I met them at an Indian food faire that they had organised at one of their homes at Saxonworld. Some Ministers and members of the public were in attendance. There were no business related discussions.
3. During those interactions, I never abdicated my duties and responsibilities as a Minister and Deputy Minister.

**The First Meeting I arranged between Mr Tony Gupta and Mr Lucky Montana**

1. **First issue raised at the meeting**
   1. Mr Montana arrived first at the meeting. The issue of PRASA’s Board was discussed between myself and Mr Montana before the arrival of Mr Tony Gupta and Mr Duduzane Zuma. At the time there was talk and rumours that Mr Buthelezi and Mr Montana were going to be removed as the Chairperson and CEO of PRASA, respectively. I assured Mr Montana that I would not support his and Mr Buthelezi’s removal as there was no basis and justification for it. Shortly after this meeting, Mr Tony Gupta and Mr Duduzane Zuma arrived at my residence.
2. **Second issue raised at the meeting**
   1. Mr T Gupta had called me sometime after I was appointed as the Minister of Transport and asked many questions about the PRASA tender to acquire locomotives as he had an interest in the tender.
   2. I told him that it was my understanding that the tender process had run its course or that it was about to end.
   3. He asked more questions in regard to when the tender was advertised, in which print media it was advertised and for how long it had been open for submissions. He further stated that it was his belief and view that the tender process had not been open and transparent and that he reserved his right to challenge the process in court.
   4. My response was that he was within his right to take whatever legal action he felt was necessary. I however, suggested that it might be advisable to first seek clarity to the questions he posed from the CEO of Prasa Mr Lucky Montana, before taking the matter to court. I then organised the meeting and invited him and Mr Lucky Montana to the official residence that was allocated to me as Minister of Transport.
   5. I saw nothing untoward in arranging this meeting between Mr Tony Gupta and Mr Lucky Montana as its aim was to clarify and give answers to the questions that Mr Gupta had posed to me.
   6. I did not at any stage ask Mr Montana to unduly, irregularly or illegally assist Mr Gupta. There was no unlawful and / or malicious intent on my part in facilitating the meeting.
   7. I think it is important to remember that at the time the meeting occurred in 2012, the context and public image of members of the Gupta family was not what it is today in 2018; namely a family perceived and projected as the personification of corruption incarnate.
   8. In 2012 the Gupta brothers were not *persona non grata,* as they are projected to be today. All I knew then was that they were an Indian family originally from India who owned a medium sized BEE company of moderate means named Sahara. And that they were trying to expand their business interests beyond the confines of the computer market into other business sectors.
   9. The objective conditions and the context under which the meeting occurred were thus different to those of today. Then in 2012 the Gupta family had a medium sized business of moderate means, unlike today in 2018 when they are perceived to be billionaires. It has to be noted that the meeting with Mr Montana did not result in Mr T Gupta obtaining the locomotives tender.
   10. The 2012 context and the current 2018 context were thus different.
   11. During my tenure in the Departments of Transport and Energy, it was not out of the ordinary for the Ministry and the department to receive many queries relating to tenders, contracts, customer complaints and various stakeholder issues relating to the twelve SOEs that fell under the remit of the Department of Transport and eight SOEs that fell under the Department of Energy. This also applies to the SOEs that fall under the mandate of the Department of Public Enterprises. Ministers and Deputy Ministers when possible give an audience to stakeholders through formal and informal engagement. On that basis, I did meet with stakeholders, interest groups, entities including ordinary members of the public, in the course of my responsibilities. As a matter of course, most meetings took place at the office. However, some meetings took place outside the Office.
3. At the said meeting, Mr Tony Gupta was advised about the advanced stage of the tender process and that it cannot be reversed. In conclusion, Mr Tony Gupta indicated that he would consider his option of taking the tender process on review. That brought the discussion to an end.
4. A general point worth stating in regard to any meeting, is that the intent of the meeting and the outcomes of the meeting are important. I have not presided over any meeting where the intent was corrupt and the outcome was a commission of a crime whether directly and / or indirectly. I have not abdicated any of my executive functions to any individual, interest group or entity.

**The second meeting at the request of Mr Montana**

1. In September 2012, Mr Montana had travelled to Germany to attend an Inno Trans rail roadshow. I received a call from Mr Montana requesting a meeting. He advised me that he was shocked as he learned that the Gupta Brothers told the rolling stock manufactures that they work for President Zuma, myself and himself. Upon his return from Germany, such a meeting took place. In all fairness and sincerity, I do not remember each and every detail of the discussions. But I do remember in particular, Mr Montana raising the matter of the misrepresentative sharply and that I also sternly rebuked Mr Tony Gupta for abusing the name of the President, myself and that of Mr Montana. The meeting ended acrimoniously.

**Developments after the second meeting**

1. Sometime after the second meeting, I recall receiving a letter from PRASA addressing the concerns of the Chairperson and CEO that there were talks and rumours of imminent changes to the Board and that the Chairperson and CEO will be removed. In the letter, PRASA alluded to, amongst others, that the suggested restructuring of the Board will destabilise the turnaround and modernisation initiatives including uncertainty at PRASA at that critical moment. That that would affect the integrity of the procurement process that was underway.
2. I then gave the Chairperson and CEO written and verbal assurance that I will not change the PRASA Board including the Chairperson and CEO without legitimate and valid reasons. Indeed, the Chairperson, CEO and Board members were not removed.

**Further interactions with the Gupta family**

1. Another time I interacted with Mr T Gupta was during May 2013, whilst I was still the Minister of Transport. Mr Tony Gupta called me and asked me if it will be possible for a plane conveying their wedding guests to land at OR Tambo International Airport and for a welcoming reception to be held there. I declined the request. On the 9th June 2013, I was deployed from the Department of Transport to the Department of Energy.

**Procedural Justice**

1. Procedural Justice is the thread that weaves the fabric of justice in society. Procedural Justice is thus concerned with making and implementing decisions according to fair process.
2. It is my belief that no one should be allowed to use the parliamentary inquiry as a platform to settle personal vendettas or as a vehicle for organized character assassination.
3. If there is anyone who has proof of me having been party to corruption, or of me having been party to the commission of crime, they have a moral and civil duty to report me to the police or any other relevant law enforcement authority.
4. A fundamental principle of South African Law is that everyone is presumed to be innocent until proven guilty. The spirit and letter of that principle is not that an individual is assumed guilty until he or she can prove themselves innocent.
5. Another fundamental principle in our law is that: he or she who alleges must prove.

**Conclusion**

1. No one has a monopoly on the truth. Each word has an echo and so does each silence.
2. I have been perplexed and astounded by the false testimony of Ms Suzanne Daniels, moreso as to why she has not reported the alleged meeting of the 29th July 2017 which, amongst other things according to her testimony, brought the Deputy Judge President’s Office into disrepute by insinuating that it was malleable to corruption. I would have thought that as a member of the legal profession she would have reported the matter to the South African Police Services and the Law Society of South Africa of which she is a member.
3. I would not be part of any process, procedure, meeting and discussion intended to undermine the integrity of the Office of the Deputy Judge President.
4. Finally, I repeat that if there is anyone who has evidence of criminality on my part they should report it to the relevant authorities.

I thank you.