

---

**OPENING ADDRESS**  
**RAMAGAGA MATSHEGO**

---

Commissioners, officials of various government departments and entities in attendance, members the public and the media:

The evidence to be presented during this first phase will be limited to the terms of reference 1.1 to 1.4 which deal with the rationale, utilization, and the offsets (including jobs). The Commission intends to lead the evidence of Government departments and entities in the first part of the first phase and the evidence of witnesses who criticize the armament acquisition in the second part of the first phase.

1.

**THE SUMMARY OF THE EVIDENCE TO BE LED:**

**INTRODUCTION**

**AD RATIONALE:**

The rationale for the Strategic Defence Procurement Packages (SDPP's), meaning the reason for the procurement will mainly be outlined by the evidence led from the following Departments and entities:

- 1.1 The Department of Defence and Military Veterans (DOD);
- 1.2 The Armaments Corporation of South Africa (Armcor);
- 1.3 The National Treasury.

#### **AD UTILIZATION OF EQUIPMENT:**

Evidence relating to the utilization and non-utilization of the equipment will be led by the DOD, mainly from the two arms of service, namely the South African Navy(SAN) and the South African Air Force(SAAF) as well as by the acquisition arm of the DOD, Armcor.

2.

#### **AD REALIZATION OF JOB OPPORTUNITIES FROM THE SDPP AND THE OFF-SETS ANTICIPATED TO FLOW THEREFROM:**

Evidence in respect of the aforesaid term of reference will be led mainly by the Department of Trade and Industry in relation to the National Industrial Participation (NIP) and by Armcor in respect of the Defence Industrial Participation (DIP).

3.

#### **AD CRITICISM OF THE ACQUISITION :**

Evidence of the Government departments and entities will be followed by evidence from interested parties that criticize the SDPP's. Such witnesses have been

identified from their written submissions to the commission and their written statements to the commission. Further, the Commission may by virtue of the powers vested in it call such persons or entities as it deems necessary, to testify.

The common question among those who criticize the acquisition is “Why did the country spend so much money on arms at a time when it faced no internal or external military threat, but when social needs of people were vast.” The criticism includes issues pertaining to executive accountability, the acquisition impact on the macro-economy of the country, procurement best practices and allegations of impropriety on the part of decision makers in the acquisition.

## **THE EVIDENCE AND CHRONOLOGY OF PRESENTATION**

4.

### **DEPARTMENT OF DEFENCE AND MILITARY VETERANS**

#### **Background**

The DOD will explain the determinants of the size and shape of the SANDF, the principles underpinning deterrence strategy, the characteristics of the primary defence posture of the South African National Defence Force(SANDF) and the functions, roles and tasks of the SANDF. Further, the DOD will present evidence that it identified:

- The need to transform the SANDF;
- The need to equip the South African National Defence Force for new regional roles;

- The needs for long term force design planning approach;
- The need for a new force design;

Having identified the needs of the SANDF, the DOD decided to undertake a comprehensive defence review. The review would entail comprehensive long-range planning on the transformation of the SANDF including its armament capabilities. The defence review was undertaken parallel to the arms acquisition process which had commenced after the adoption of the white paper. The two processes were spearheaded by the Joint Standing Committee on Defence (JSCoD). Subsequently, the DOD decided to rather opt for an arms package procurement rather than piecemeal acquisition. This ultimately led to the armament acquisition package now commonly known as the SDPP's. The JSCoD was given the oversight function to assist in the DOD's acquisition programme.

## 5.

Evidence on **rationale** will deal with the following material issues:

- 5.1. The history of arms acquisition prior to the SDPP process;
- 5.2. The impact of the arms embargo on arms acquisition prior to the SDPP process;
- 5.3. The defence budget reduction during 1990 and 1995 and the consequent effect on arms acquisition;
- 5.4. The initiative from the Navy and the Air Force to procure military equipment

prior to the SDPP process;

- 5.5. The consultative process leading to the adoption of the Defence Review which had been preceded by the White Paper;
- 5.6. The adoption of the Defence Review by the National Assembly;
- 5.7. The implementation process of the Defence Review;
- 5.8. The audit of the internal process of DOD by the Inspector General.

## 6.

Evidence on **utilisation** will deal with the following material issues:

Through the SDPP process the DOD acquired the following equipment;

- 6.1 4 Corvettes;
- 6.2 3 (three) submarines;
- 6.3 30 Light Utility Helicopter (Agusta A109);
- 6.4 24 Lead-in-Fighter Trainer Aircraft (The Hawk); and
- 6.5 26 Light Fighter Aircraft (The Gripen).

## 7.

The Navy and the Air Force will lead evidence on the utilisation of the aforesaid equipment which includes maintenance, training and force preparation as well as participation in the following :

- 7.1 local, regional and multinational exercises;

- 7.2 peacekeeping missions;
- 7.3 rescue missions;
- 7.4 patrols;

## 8.

Evidence will also be led on the following factors that impact on utilization:

- 8.1 Budget;
- 8.2 Defects;
- 8.3 personnel;
- 8.4 Maintenance;

## 9.

### **ARMAMENT CORPORATION OF SOUTH AFRICA**

#### **The acquisition process**

Armcor was the acquisition agency of the DOD with its board serving as the state tender board. It will lead evidence on the acquisition process which includes the following:

- 9.1 applicable legislative and policy framework
- 9.2 processes followed and applied to cure any deficiencies in the existing and applicable policies and directives;

- 9.3 establishment of various committees during the acquisition process;
- 9.4 powers and functions of the said committees;
- 9.5 management of the bid process up to and including the recommendations to the designated ministerial sub-committee of Cabinet;
- 9.6 Defence Industrial Participation Programmes
- 9.7 utilisation of the equipment purchased to the extent necessary

10.

## **DEPARTMENT OF TRADE AND INDUSTRY**

### **Job Creation and Offsets**

The Department of Trade & Industry (DTI) was tasked with monitoring the offset programmes. The evidence which will be led will deal extensively with the mandate given to the DTI, the methodology of how credits were to be given to the various arms manufacturers or associated entities in terms of the National Industrial Participation Programme and certain of the offset projects. The DTI will give evidence in respect of *inter alia* the following:

- 10.1. management and monitoring of off-sets;
- 10.2. the status of the off-sets

12.

## **NATIONAL TREASURY**

### **The Affordability of the SDPP and conclusion of the loan agreements**

On 18 November 1998, Cabinet approved the recommendations on the international offers and the preferred suppliers. Consequently, a negotiating team led by a chief negotiator and supported by the departments of Defence including Armscor, Trade and Industry, Public Enterprises and Finance was mandated by Cabinet to negotiate an achievable funding arrangement and an affordable package with the preferred suppliers which would result in final contracting for the offered equipment to the SANDF.

The negotiating team constituted the International Offers Negotiating Team (“the IONT”). The IONT performed its tasks within the terms of reference approved by the Ministerial Committee. Treasury convened the finance workgroup of the IONT and was led by a senior manager in the budget office, staffed by among others economists and advisors within and outside the department. The financing work group *inter alia* was expected to do an affordability or budgetary analysis and proposal, assessment of funding options and proposals for funding strategy, assessment and proposal regarding economic implications of the SDPP.

IONT submitted various reports to the Ministerial Committee in accordance with its terms of reference. In particular, the affordability team or finance workgroup of the IONT was instrumental in the compilation and presentation of the Affordability of the Defence Strategic Armaments Packages Report (“the report”) to the Minister’s Committee on 31 August 1999.

The report took into account the impact of the procurement on the fiscal, financial and economic conditions. The affordability team made recommendations on its assessment of the SDPP economic, fiscal and financial impacts.

Loan Facility Agreements were negotiated and concluded between the Republic of South Africa and various foreign entities as part of the financing of the SDPP. The initial cost of the SDPP was indicated as approximately R29.9 billion. However, by October 2010 the cost of the SDPP were stated as approximately R42.3 billion. The final capital payment was due in April 2011 and an amount of R4.9 billion was estimated to be paid by then.

The report estimates that the finance charges on the capital amount of the SDPP will be settled by 2018. Noting that the contracts concluded requires payment in foreign currency, exchange rate fluctuations has and will inevitably affect the costs incurred in the purchase of the SDPP equipment.

Subsequent to the conclusion of the loan facility agreements, Treasury continued to monitor and manage the liability arising from these loans.

Treasury will lead evidence on the role it played, regarding the matters above and any other matter incidental thereto with reference to:

- 12.1 Budget;
- 12.2 The price and incidental matters thereto
- 12.3 The affordability of the SDPP;
- 12.4 Financing of the SDPP;

12.5 SDPP Loan agreements and liability management thereof;

13.

### **THE SUB-COMMITTEE OF CABINET (MINISTERIAL COMMITTEE)**

#### **Final Acquisition**

The Commission intends to enquire into and investigate the process followed by the sub-committee of Cabinet, which was constituted of the then Deputy President (as chairperson), the Ministers of Defence, of Trade and Industry, of Finance and of Public Enterprise, in relation to the appointment of the preferred bidders and the overall affordability of the SDPP and matters connected thereto.

The Ministerial Committee convened meetings to consider the recommendations of made to it relating to the preferred suppliers of the SDPP, the progress reports on the terms of reference of the International Offers Negotiating Team (“the IONT”) relating to *inter alia* Non-defence Industrial Participation, Defence Industrial Participation, the affordability of the SDPP, the technical aspects and financing of the SDP.

Evidence from the ministerial committee will be in respect of the following:

- 13.1. Executive accountability
- 13.2. Appointment by Cabinet;
- 13.3. Powers and functions;
- 13.4. Execution of mandate;
- 13.5. Processes and deficiencies;
- 13.6. Interaction with the Project Teams;

13.7. Recommendations to Cabinet.

#### **14. TRANSITION TO CRITICS(Private note)**

The announcement of the decision to procure the armament and the subsequent procurement drew a lot of criticism from different individuals and interest groups including the Chairperson of SCOPA and some members of SCOPA.

On 9 May 2012, by way of government notice, the Commission invited interested parties to make written submissions on affidavit in respect of all or specific terms of reference. The following persons or entities accordingly made submissions : Sean Bozalek, Terry Crawford-Browne, Paul Holden, Patricia de Lille, BAE Systems PLC, David Maynier, Andrew Feinstein(Feinstein) and The Ceasefire Campaign.

In the exercise of its discretion in terms of clause 4 of the Government Notice dated 9 May 2012, the Commission will on notice require some of the interested parties who have made submissions to make oral representations during the public hearings.

In part two of this phase of public hearings, the Commission intends calling the following persons who criticize the SDP acquisition for one reason or the another: Patricia de Lille, David Maynier, Paul Holden, and the following from SCOPA Gavin Woods(Woods), Andrew Feinstein and Raenette Taljaard(Taljaard). The respective persons will be required to give evidence on issues raised in their submissions whose brief synopsis follow :

#### **12.1. PARLIAMENT'S STANDING COMMITTEE ON PUBLIC ACCOUNTS ( SCOPA)**

Evidence from the then chairperson and some members of Scopa will be led on matters arising from *inter alia* the following:

- The AG's report tabled before Parliament on 15 September 2000.
- The President's refusal to issue a proclamation authorising and empowering the Heath Special Investigating unit to investigate.
- Various interventions on the part of respective government and parliamentary role players and agencies concerning the joint investigations and the role of SCOPA.

In particular, Feinstein and Taljaard have written extensively on these concerns in their books titled "After the Party" and "Up in Arms" respectively.

The Chairperson of SCOPA resigned on 25 February 2002. The decision to resign was informed by the chairperson's view that SCOPA was undermined by political interventions and that the joint investigating team failed to conduct a proper investigation.

## **INDIVIDUAL CRITICS**

**12.2. Terry Crawford-Browne's** evidence will deal in particular with the offset programme, the difficulties encompassed in it and whether offset programmes have

worked worldwide. He will also deal with whether the relevant government Ministers exceeded their authority by signing the Strategic Defence Procurement Packages contracts.

**12.3. Paul Holden and Andrew Feinstein** have jointly made written submissions under oath to the commission and have affirmed that they are willing to testify in person before the commission. They criticise the SDPP on the following basis:

**12.3.1. Irrationality of the arms deal**

They believe that the decision to pursue the SDPP acquisition was fundamentally irrational, considering South Africa's post-apartheid military posture and the country's overwhelming socio-economic needs.

**12.3.2. Job Creation and Macro-economic considerations**

They submit that the SDPP failed to create 65 000 jobs that were promised when the planned acquisition was announced in December 1999.

They further submit that it is apparent that the procurement team in charge of the acquisition, including the cabinet sub-committee in charge of the procurement, were made aware that the SDPP was, in the best case scenario, likely to produce either neutral or negative job figures.

**12.3.3. Offsets**

- Evaluation framework for offsets – The criticism pertains to how the offset credits were awarded and how the multipliers could have the effect of undermining the envisaged real value of the offsets.
- Offset fulfilment in the South African arms procurement – key to this issue is the calculation and assessment of the performance of the offsets.
- The appropriateness of offsets: A research conducted on the offset programme suggests that a number of projects have either terminated due to failure or criminal misdemeanour.

#### **12.3.4. Irregularities in the selection process and allegations of corruption.**

They submit that they believe that the selections of three of the four primary contractors in the SDPP's were done in an irregular manner. They state that there were gross procedural irregularities that impact on the selection of the preferred contractors for the ALFA/LIFT components, the submarine and corvette contracts.

**12.4. Patricia De Lille's** evidence will deal mainly with the fact that she reported suspected impropriety around the SDPP's to parliament in September 1999 and requested that the acquisition be probed. She handed over the documents to former Judge Willem Heath. However, the Special Investigating Unit required a proclamation from the President. The President did not issue the proclamation. The NPA retrieved the documents from Judge Heath. Subsequently, she received death

threats and was made to appear before the Investigating Directorate, Serious Economic Offences(DSO) commonly known as Scorpions. With no progress forthcoming on the investigation, she requested for a *nolle prosequi* certificate so that she could institute private prosecution.

### **12.5. David Maynier**

Mr Maynier's testimony will focus on the offset projects that have partially or not materialised at all, the utilisation or lack of the capabilities acquired for the defence force, and the number of jobs that have materialised from the SDPP. He will also give testimony in relation to item 1.5 of the terms of reference.

**13.** As already stated, the DOD evidence will be led mainly by witnesses from the Navy and the Air Force. The first three witnesses to testify are Admirals Green, Higgs and Schoultz, in that order from the Navy.

### **13.1. Admiral Green**

Admiral Green will shed light on the mandate of the SANDF, its functions, implementation of policies which culminated in the decision to purchase the armaments which are the subject of this inquiry, the defence strategic objectives and will give a broad overview of the rationale of the SDPP, and the utilisation for the SDPP, detail will be provided by members of the various arms of service. Lastly, he will focus on the funding profile of the acquisition of assets.

**13.2. Admiral Higgs** will give evidence mainly on:

- 13.2.1.** The purpose of the defence review, its roll out, as well as its approval by Parliament.
- 13.2.2.** The establishment of Project optimum, its role and how the project was undertaken. Project optimum is a project that was established to help determine the force design of the SANDF in an environment with no clearly defined threats.

**13.3. Admiral Schoultz** will give evidence mainly on:

- 13.3.1.** The Naval Capability Deficiencies history dating as far back as 1975 and interventions that were put in place in an attempt to cure deficiencies.
- 13.3.2.** The utilization of the frigates and submarines.

The areas to be covered by each witness will progressively be given in advance during the hearings and on the Commission website whose particulars are [www.armscomm.org.za](http://www.armscomm.org.za).

The Commission would like to bring to the public and interested parties the procedure during the public hearings:

#### **14. The procedure during the public hearings**

The procedure to be followed during the public hearings is outlined in the Commissions Act of 1947, the Regulations promulgated in Government Gazette 35023 of 8 February 2012 and the Directives issued by the Chairperson in the Government Gazette No 35325 of 9 May 2012 and these include the following:

- The conduct of and the procedure of the inquiry shall be under the control and the discretion of the Chairperson
- The commission shall determine whether the evidence presented to the inquiry or a representation to the inquiry is to be in writing or oral.
- Any person appearing before the commission may be assisted by an advocate or an attorney at own cost
- No person appearing before the commission may refuse to answer any question on any ground other than the privilege contemplated in section 3(4) of the Commission's Act.
- No evidence regarding questions and answers contemplated in Regulation 8(1) of the Regulations, and no evidence regarding any fact of information that comes to light in consequence of any such questions or answers, shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act or Regulation 14.

- Any witness appearing before the commission may be cross-examined only if the Chairperson permits such cross-examination by such person because the Chairperson deems it necessary in the interest of the functions of the Commission.
- Any witness may be re-examined by his or her legal representative for the purpose of explaining the evidence given by the witness during his or her testimony
- The hearings of the commission will be public, however, with leave of the Chairperson, the proceedings may be held in camera in terms of section 4 of the Commissions Act.
- Where at the time of any person presenting information to or giving evidence before the commission, members of the general public have been excluded from attendance at the proceedings of the commission, the Chairperson may, at the request of such a person, direct that no person shall disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.