CHAIRPERSON: Good morning everybody. Today is our first day of the sitting of this Commission; fortunately as we are sitting today we are properly constituted. The President has decided that the Commission will consist only of two people. What we are going to do this morning, the first thing that is going to happen is the opening statements from the Evidence Leaders, the opening statements will be made by Advocate Aboobaker [SC] and Ms Mphaga, senior attorney. We hope that that process will take us right up to 12h00 or 12h30 and from there we'll break for lunch. From 14h00 this afternoon right up to 16h00 there will be a pre-trial conference involving the Evidence Leaders and the legal teams representing the witnesses and interested parties.

Tomorrow the proceedings will start at 10h00. We are going to resume tomorrow for the leading of evidence and the starting time tomorrow would be 09h30 and we'll take a tea break at 11h00 to 11h30 and the lunch break from 13h00 to 14h00 and we'll resume at 14h00 until 16h00. Given the opening address the Evidence Leaders, one of the Evidence Leaders will announce the names of the witnesses who will be testifying in the first week together with written statement of the issues each witness will be dealing with, thereafter on every Friday afternoon before close of business the names of the witnesses to be called during the following week will be announced with a statement of the issues that

each will be addressing, this is to enable interested parties to decide when to attend the proceedings.

The proceedings will be mechanically recorded by the Commission's personnel only and no other mechanical and electronic recording will be allowed, save for those media houses that shall have been accredited to carry the live broadcast. The record of the proceedings will be transcribed overnight and they will then be put onto the Commission's website from where everybody can have access to that. Then I should also mention that as far as the recording is concerned the Department of Defence would also be allowed to participate in that process.

Copies of the documents or bundles of documents to be used in evidence by a witness about to testify will be furnished ahead of the evidence to the following categories of people and/or entities, one; those who have made submissions to the Commission and written statements to the evidence leaders and are earmarked to testify before the Commission, only such documents as are relevant to the issues raised in the statements would be made available, those who have not made written submissions to the Commission but have had consultations with the Commission's evidence leaders and their statements obtained and are earmarked to give evidence before the Commission. Thirdly, people and/or entities who are directly implicated in evidence to be tendered by a witness who

is not on the witness list or people and/or entities not following falling in any of the above categories.

Let me repeat the third category of people who will be entitled to documents; people and/or entities who are directly implicated in the evidence to be tendered by the witness who is on the witness list. Four; people and/or entities not falling within any of the above categories who can demonstrate that they have a meaningful, positive contribution to make towards the work of the Commission and need the documents for that purpose may apply in writing to the chairperson for copies of such documents.

Five; any party wishing to cross-examine a witness must at the conclusion of the witness's evidence in chief directly request to do so to the chairperson, this may be done orally from the bar or in appropriate circumstances it may take the form of a written application wherein reasons for the request are briefly stated. The chairperson may before deciding the request or application hear oral submissions from the applicant and/or his or her or its legal representative in the evidence list.

Six; paragraph 3 above does not apply to classified documents which will be dealt with differently. Seven; evidence taken *in camera* shall not form part of the record to be put on the website. Eight; during *in camera* hearings only people who demonstrate that it is necessary or

desirable for him or her to be present at the said hearings will be allowed to attend *in camera* hearings. Nine; all the witnesses who testified before the Commission are the Evidence Leaders' witnesses and therefore the Evidence Leaders will be entitled to object if any witness is asked during cross-examination unfair and/or irrelevant questions.

Lastly please take note that these guidelines are not hard and fast rules of law and may be adjusted, amended or altered as the circumstances may require, it must be read in conjunction with the regulations and directives issued by the chairperson on the 9th day of May 2012.

Before the Evidence Leaders start presenting their opening statements I would like to make the following announcement, apparently there has been an allocation of different Evidence Leaders to different government departments, in other words certain Evidence Leaders will lead evidence of various government parties, the Evidence Leaders who are going to lead the evidence of witnesses from the Department of Defence are as follows; Advocate Simmy Lebala [SC], Advocate Moss Mphaga [SC], Advocate Tshepo Sibeko [SC], Advocate Mahlape Sello, Advocate Phumlani Ngobese and Advocate Sbusiso Zondi.

And then those, the Department of Trade and Industry witnesses' evidence will be led by the following;

Advocate Tayob Aboobaker [SC], Advocate Barry Skinner [SC] and Advocate Carol Sibiya. National Treasury Advocate Moss Mphaga [SC], Ms Ramagaga as a senior attorney and Advocate Sbusiso Zondi. And the evidence of the witnesses from ARMSCOR will be led by the following people; Advocate Simmy Lebala [SC], Advocate Moss Mphaga [SC], Advocate Tshepo Sibeko [SC], Advocate Mahlape Sello, Advocate Phumlani Ngobese and Advocate Sbusiso Zondi.

I think that is the few announcements that I wanted to make before we start with the opening address by the Evidence Leaders. Maybe let me start by Advocate Aboobaker who will do an opening address for and on behalf of the other Evidence Leaders.

ADV ABOOBAKER: Thank you Mr Chairman.

OPENING ADDRESS BY ADVOCATE ABOOBAKER

ADV ABOOBAKER: This opening address is presented on behalf of all the Evidence Leaders, I would present the first part of the opening statement and my learned colleague Ms Ramagaga the second part. Commissioners, the presentation of this opening statement means that the hearings of this Commission are officially off the ground, the subject matter of these hearings is the Strategic Defence Procurement Package or SDPP for short.

That this Commission of Inquiry itself has

been initiated is the product of a long and arduous process in which the individuals responsible for bringing it about have spent considerable time, energy and expense in bringing about its realisation. The SDPP has been mired in controversy ever since its inception. The validity of the process which resulted in its implementation, the reasons why it was necessary and the benefits, if any, it has brought to our country has been the subject of much media and public speculation, these murmurings have increased over a period of time, the confidence of some of members of the public and those responsible for binding the nation to the Strategic Defence Procurement Package has taken a severe battering.

Whether such speculation is true or not and whether there is an improper factual foundation upon which such speculation is based, is part and parcel of what these proceedings are all about, it is a process in which those responsible for the SDPP and those who participated in its finalisation are called to account for their actions, it is not a process by which they are brought to book.

That is part of a separate process in which the National Prosecuting Authority which I shall hereinafter refer to as the NPA may, depending upon the recommendations of this Commission be called upon to take such action as is considered appropriate. That process could well result in criminal prosecution against those individuals whom the NPA in

its wisdom finds that a proper case has been made out for such a prosecution.

Our mandate as the team of Evidence Leaders is to present all relevant information at our disposal in as detailed a manner as the circumstances require, we do not take sides in the extensive debates arising out the Terms of Reference, our function is to place the evidence before the Commission in as clear and concise a manner as possible to enable the commissioners to make their finding within the framework of the Terms of Reference by which they are enjoined to discharge their duties.

The Commission has come under extensive criticism from the media and members of the public, that is as it should be, the weight of public pressure has assisted in defining the work of the Commission and reinforcing its resolve to ensure that there is total transparency and accountability in its workings and that the public has confidence in the final report produced by it.

However, in saying so it must be borne in mind that the Commission is faced with a mammoth task, putting a Commission together of this dimension is a learning curve even for those who are trained and skilled in management processes, the commissioners we may be bold to say have a greater aptitude for analysing the law and making judicial announcements rather than managing a huge

commission requiring very substantial and well-honed management skills, that management process and those skills are being refined and reinforced with each passing day. The quest for perfection goes on within the constraints of the financial and human resources available to the Commission.

Be that as it may the fact that these hearings have begun is in itself a massive achievement for which due credit must be given. The challenges which we have are many, the time available limited, the way forward not entirely clear. This is because the public nature and transparency of the process is absolutely critical to its success. Under scrutiny is *inter alia* the conduct of the executive responsible for the Strategic Defence Procurement Package. It is that very executive and its functionaries that have the documents which are vital for a proper understanding of this process.

Voluminous documents have been received from the various state departments but the vast majority are classified in the one way or the other, we record our appreciation to the relevant state departments for making these documents available. What is important is that these documents should be available insofar as it is possible for public scrutiny. What may have been regarded as confidential and classified many years ago may not deserve that label today.

It is only the most sensitive of documents which impacts upon the relationship between nations and documents which affect the security of the State that can justify non-disclosure. Of necessity some of the hearings of this Commission must be held *in camera*, these should be kept to the bare minimum. We urge the members of the executive and indeed those responsible for initiating this Commission to do everything in their power to ensure that the relevant documents are available for public scrutiny, we also plead to those legal teams present today to bring the weight of their considerable talents to bear upon their clients so that they too can show that they have nothing to hide to a nation and to a world which is calling out for answers.

We should indicate at this stage that the lifespan of this Commission is a period of two years, that period expires on the 4th of November 2013, however, we have no doubt that the necessary steps will be taken to extend the life of the Commission. The timetable for the calling of witnesses has been drafted on the basis that the proceedings of this Commission will resume on the 14th of January 2014 on the assumption that such an extension will be granted.

If the first phase of the hearings are not completed by 31st of January 2014 the hearings will continue until the first phase is completed, thereafter the Commission will adjourn to enable the commissioners to present an interim

report to the President and to finalise preparation and investigations for the second phase of the hearing. We will, as we have done during the first phase, give indicative dates when evidence of various individuals or entities will be led in the second phase.

In order to simplify the process of understanding the issues which arise in this inquiry we will raise certain relevant questions and then attempt to answer them, (a); what are the background events which gave rise to this inquiry. (b); what evidence is to be placed before the Commission in the first phase of the hearing. (c); what is the nature of the evidence to be placed before the Commission in the second phase of the hearing.

We do not propose to deal with any of these matters in any detail, we consider it appropriate at this stage to give all those who have an interest in the deliberations of this inquiry only a glimpse into what is to happen and what the future holds, it will merely be a template from which to work to understand the process as it unfolds. Time does not permit the luxury of an in-depth analysis of the evidence to be presented before this Commission.

My learned colleague Ms Ramagaga will either provide more detail of the evidence which will be led in the first phase immediately after this address had been completed. It is therefore necessary to deal with each of the

questions which have been posed and hopefully to provide some guidance. The genesis of both the SDPP and this Commission has been a very long and complex process, what follows does not attempt to summarise all the events but serves as background. Allegations of corruption associated with the Strategic Defence Procurement Package were raised even before the SDPP agreements were signed.

Patricia De Lille who was a member of Parliament at the time presented to Parliament a document which has subsequently come to be known as the "The De Lille Dossier" in which wide-ranging allegations of corruption associated with the SDPP were raised. The first investigation to be conducted into the allegations relating to the impropriety that accompanied the acquisition of the SDPP was conducted by the Auditor-General between 1999 and 2000. On the 15th of September 2000 a special review by the Auditor-General of the selection process of the strategic defence procurement packages for the acquisition of armaments at the Department of Defence was tabled in Parliament.

On the 2nd of October 2000 the review was referred to Parliament Standing Committee and Public Accounts for consideration. This committee shall hereinafter be referred to as SCOPA. In his report the Auditor-General recorded that there had been material deviations on generally accepted procurement practices and that the explanation provided by the

Department of Defence for these deviations did not appear to be satisfactory. During 2000 SCOPA became actively involved in pursuing an investigation of the strategic arms acquisition process. Pursuant to investigations carried out by SCOPA and a hearing conducted on the 11th of October 2000 SCOPA presented its fourteenth report on the Auditor-General's review of the strategic defence package on the 30th of October 2000.

On the 2nd of November 2000 the National Assembly adopted SCOPA's fourteenth report. Subsequent to the adoption of this report the Heath Special Investigating Unit required a presidential proclamation to conduct the investigation as part of the multi-agency investigation. On the 19th of January 2001 the President announced that it had been decided not to issue a proclamation authorising the Heath Special Investigating Unit's participation in the joint investigation.

As a result of this exclusion the joint investigations with SDPP was constituted only by the Public Protector, the Auditor-General and the National Director of Public Prosecutions. These agencies which collectively came to be referred as the "Joint Investigation Team" will hereinafter be referred to as JIT. The JIT report was submitted to Parliament during November 2001. The key findings of the JIT report were *inter alia* that no evidence was found of any improper or unlawful conduct by the Government and that due

to the sanctions imposed on the acquisition of arms prior to 1994 an adequate acquisition policy to accommodate the procurement of armaments for the South African Defence Force from the international market did not exist.

The JIT report was released on the 14th of November 2001, the report was discussed with six parliamentary committees including SCOPA. SCOPA met on the 11th of December 2001 and adopted the JIT final report on the strategic arms acquisition. On the 6th of November 2000 the Investigating Directorate for Serious Economic Offences or DSO for short initiated a preparatory investigation in terms of Section 28(13) of the NPA Act 32 of 1998 into allegations of corruption and/or fraud in connection with the SDPP acquisition.

The DSO investigation continued notwithstanding the submission by JIT of its report to Parliament and the subsequent adoption of the final report. When the DSO was disbanded in 2008 and replaced with the Directorate for Priority Crime Investigation, the investigation referred to above were inherited by this newly formed investigative body, the investigation of corruption and/or fraud in connection with the SDPP acquisition were discontinued in November 2010.

Criticisms have been raised in various quarters that there has been interference in the findings and

final report of the Joint Investigation Team. Numerous persons and bodies over the years have called for a commission of inquiry, proceedings were brought at the Constitutional Court for the commission of inquiry to be appointed, the application was opposed by the President and the Government who were cited as respondents. Shortly before this matter was to be heard, however, a settlement was reached between the parties pursuant to which the President issued the proclamation which brought into existence the present Commission.

On the 4th of November 2011 the President established the present Commission to inquire into, make findings, report on and make recommendations concerning the matters outlined in the Terms of Reference which are set out hereunder and read as follows:

"1.1 The rationale for the SDPP.

1.2 Whether the arms and equipment acquired in terms of the SDPP are underutilised or not utilised at all.

1.3 Whether job opportunities anticipated to flow from the SDPP have materialised at all and:

1.3.1 If they have, the extent to which they had materialised; and

1.3.2 If they have not, the steps that ought to be taken to realise them.

1.4 Whether off-sets anticipated to flow from the

SDPP have materialised at all and:

1.4.1 If they have, the extent to which they have materialised; and

1.4.2 If they have not, the steps that ought to be taken to realise them.

1.5 Whether any person/s, within and/or outside the Government of South Africa improperly influenced the award or conclusion of any of the contracts awarded and concluded in the SDPP procurement process and, if so:

1.5.1 Whether legal proceedings should be instituted against such persons, and the nature of such legal proceedings; and

1.5.2 Whether, in particular, there is any basis to pursue such persons for the recovery of any losses that the State might have suffered as a result of their conduct.

1.6 Whether any contract concluded pursuant to the SDPP procurement process is tainted by any fraud or corruption capable of proof, such as to justify its cancellation, and the ramifications of such cancellation".

The Term of Reference define the scope of this Commission and determine its ambit, any matter falling outside the scope of the Terms of Reference has no relevance at all should not be

entertained. The Terms of Reference are a product of legislation and the inquiry which this Commission is mandated to carry out is determined by these terms.

After all the evidence has been heard and before this inquiry terminates the commissioners may call upon the team of Evidence Leaders and indeed all the other legal teams present to make submissions as to what the appropriate recommendations of this Commission should be. Those submissions are determined by an analysis of the evidence presented to the Commission and based upon facts and inferences arising from the evidence. It is at that point in time that it would be appropriate for the team of Evidence Leaders to submit what their views are on the evidence that has been led, at this stage one can merely speculate as to what such findings would be.

The evidence proposed to be adduced will be presented to the Commission in phases. The first phase deals with the following Terms of Reference, (a) the rationale for the SDPP, (b) utilisation of the arms and equipment acquired, (c) the flow of job opportunities with SDPP and (d); offsets. During the first part of this phase the various government departments, entities and the cabinet subcommittee which were involved in the acquisition of the SDPP will be called upon to adduce before the Commission evidence which would shed light on the issues listed above, these departments and entities

include the Department of Defence and Military Veterans, the Armaments Corporation of South Africa or ARMSCOR as it is generally called, the Department of Trade and Industry and the National Treasury.

5 In this phase evidence will be presented to this Commission setting out (a); a history of the state of the forces as they were before the decision was taken to acquire armaments, (b) the process followed by Government to determine the needs of the Defence Force and its ability to 10 discharge its constitutional mandate, (c); the origins of the Strategic Defence Procurement Package, (d); the reasons for the purchase of arms, that is the rationale, (e); the cabinet decision to acquire arms, (f); procurement processes applicable at the time.

15 In the second phase of the hearing the Commission will hear evidence from those members of the public who have made written submissions to the Commission pursuant to the call for submissions issued by the Commission on the 9th of May 2012 and such other witnesses as may be 20 subpoenaed. The second phase of the hearings which will be scheduled after the 31st of January 2014 will deal *inter alia* with the evidence of the critics which for the large part will be at variance with the evidence given by the functionaries of the executive in the first phase.

25 Included amongst the persons due to give evidence

in the second phase are Patricia De Lille, David Maynier, Gavin Woods, Reinette Taljaard, Hennie Van Vuuren, Andrew Feinstein, Paul Holden, Terry Crawford-Brown and Richard Young. These critics will *inter alia* contend (a); that South Africa was not at the time when the SDPP was concluded faced with any short to medium term military threats, (b); that priorities such as housing, electricity and job creation should have been the focus and delivery priority of those who governed us, (c); that the greatest threat to South African security at the time was poverty and unemployment, (d); that the arms and equipment required in terms of the SDPP are underutilised or not utilised at all, (e); that the economic benefits to the country by way of offsets flowing from the SDPP process have not materialised to the extent contemplated at the time when the Strategic Defence Procurement Package was mooted; (f); that this country could simply not afford the financial burden imposed upon the country by the Strategic Defence Procurement Package.

As would be apparent from the analysis set out herein before the first phase of the Commission therefore deals with the executive justification for the Strategic Defence Procurement Package and the second phase deals *inter alia* with the attack by the critiques of this justification, whether these arms were in fact necessary and whether the job opportunities and options contemplated had any real benefits

for our country, whether such benefits have been overstated and whether the true cost of the SDPP outweighed the limited benefits flowing therefrom. It is the interplay between the participants in that debate which will unfold during the first and second phase of the hearing.

The scope of the second phase of the hearings is potentially much wider than the issues arising in the first phase, the witnesses who will be called will give evidence *inter alia* to the effect (a); that there were serious irregularities in the procurement process, (b); that there were a number of individuals who influenced the outcome of the bid adjudication process, (c); that the bid adjudication process may have been manipulated to ensure that contracts were awarded to specific bidders, (d); that three of the four primary contracts forming part of the SDPP and at least four of the subcontracts had been subject to manipulations by officials overseeing the process.

During this phase the Commission will also deal with the question of whether any basis exist for the State to recover losses that may have been suffered resulting from the conduct of any person improperly influencing the conclusion of any contracts awarded in the SDPP procurement process. The Commission will also be seized of the issue as to whether the contracts concluded are tainted by fraud or corruption such as to warrant the cancellation of these contracts and the ramifications of such cancellation. These aspects are relevant

to paragraphs 1.5.1, 1.5.2 and 1.6 of the Terms of Reference.

Whether the remedy of cancellation is available in relation to a particular contract will be a matter which will be carefully considered as well as all other possible remedies available upon an analysis of all the evidence in this regard. During the second phase of the hearings those persons who have been implicated of wrongdoing will also be given an opportunity to place their version before the Commissioner.

It is not appropriate to release the names of the implicated persons at this stage, the Commission has considered it fit that before such persons or entities are named they should have the benefit of the notice of the Commission informing them that they will be implicated by persons who have made submissions to the Commission. These notices to implicate a person will be given before the second phase of the hearings commence.

Finally, and before I hand over to Ms Ramagaga we wish to raise a few further matters; firstly we wish to urge those legal teams present here and those that will no doubt emerge in the future to assist the Commission in discharging its mandate effectively and efficiently. 14 years have elapsed since the tenal [sic] dossier was presented to Parliament, any further extended period of delay impacts on the credibility of the Commission and may relegate to irrelevant its findings, the South African public is crying out for answers and we would

urge all legal teams to assist in making this process as smooth as possible and not to place unnecessary obstacles in the way.

Finally we wish to say that the Commission should not be judged on speculation but on the results it achieves as it sets out to fulfill its task and when it finally completes its work. Give those who have been implicated the opportunity to demonstrate whether the finger of suspicion has been correctly placed at their door, give us space to carry out the work which we are enjoined to do. The findings of the Commission have the potential to regenerate our nation and to give renewed faith in our people, in the validity of the legal processes and in the rule of law, give it the backing and support it deserves and I call upon Ms Ramagaga to deal more specifically with matters to be raised in the first phase of the hearing. Thank you.

MS RAMAGAGA: Thank you Mr Chairperson.

OPENING ADDRESS BY MS RAMAGAGA

MS RAMAGAGA: Commissioners, officials of various government departments and entities in attendance, members of the public and the media, the opening address that I am going to present is the opening address that is done on behalf of all members of the evidence leading team. 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, utilisation and the offset, 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 criticise the armament acquisition in the second part of the first phase. The summary of the evidence to be led is as follows; I'll start off with rationale introduction. The rationale for the Strategic Defence Procurement Package commonly known as SDPP's meaning the reason for the procurement will mainly be outlined by the evidence led from the following departments and entities, the Department of Defence and Military Veterans commonly known or referred to as the DOD, the Armaments Corporation of South Africa commonly referred to as ARMSCOR and the National Treasury.

Now on utilisation of equipment evidence relating to the utilisation and non-utilisation of the equipment will be led by the DOD mainly from the two arms of service, the South African Navy and the South African Air Force as well as by the acquisition arm of the DOD namely ARMSCOR. Realisation of job opportunities from the SDPP and the offset anticipated to flow therefrom, the evidence in respect thereof will be led mainly by the Department of Trade and Industry in relation to the National Industrial Participation, commonly referred to as NIP, and by ARMSCOR in respect of the Defence Industrial Participation which is normally referred to as DIP.

Now regarding the criticism of the acquisition the

evidence of government departments and entities will be followed by evidence from interested parties that criticise 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 amongst those who criticise 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.

Now I turn to present the chronology of the presentation of the evidence. The Department of Defence and Military Veterans will be the first department to present evidence, the DOD will explain the determinacy of the size and shape of the SANDF, the principles underpinning deterrent strategy, the characteristics of the primary defence posture of the South African National Defence Force commonly referred to as the SANDF and the functions, roles and tasks of the SANDF.

Further the DOD will present evidence that it identified the following; the need to transform the SANDF, the

need to equip the SANDF for new regional roles, the need for long term force design planning approach and the need for a new force design. Having identified these 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, 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 Joint Standing Committee on Defence was given the oversight function to assist the DOD's acquisition programme. The evidence on rationale will deal with the following material issues; the history of arms acquisition prior to the SDPP process, the impact of the arms embargo on arms acquisition prior to the SDPP process, the defence budget reduction during 1990 to 1995 and the consequent effect on arms acquisition, the initiative from the Navy and the Air Force to procure military equipment prior to the SDPP process, the consultative process leading to the adoption of the defence

review which had been preceded by the White Paper, the adoption of the defence review by the National Assembly, the implementation process of the defence review, the audit of the internal process by DOD ... I beg your pardon, I'll rephrase or I'll rather repeat, the audit of the internal process of DOD by the Inspector-General.

The evidence on utilisation will deal with the following material issues; through the SDPP process the DOD acquired the following equipment, 4 Corvette's, 3 submarines, 30 light utility helicopters referred to or described as Agusta A109, 24 lead infighter trainer aircraft referred to as the Hawk and 26 light fighter aircraft referred to as the Gripen.

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; local, regional and multi-national exercises, peace keeping missions, rescue missions and patrols. Evidence will be led on the following factors that impact on utilisation; budget, defects, personnel and maintenance.

The next entity to present evidence will be the Armament Corporation of South Africa which is referred to as ARMSCOR, the acquisition process, it will lead evidence on the acquisition process. ARMSCOR 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; applicable legislative and policy framework, processes followed and applied to cure any deficiencies in the existing and applicable policies and directives, establishment of various committees during the acquisition process, powers and functions of the said committees, management of the bid process up to and including recommendations to the designated minister subcommittee of Cabinet, defence industrial participation programme, utilisation of the equipment purchased to the extent necessary.

The Department of Trade and Industry will lead evidence on job creation and offsets. The department was tasked with monitoring of, with monitoring the offset programme. 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 on the various arms manufacturers or associated entities in terms of the National Industrial Participation programme and certain of the offsets project.

The DTI will give evidence in respect of *inter alia* the following; management and monitoring of offsets and the status of the offsets. The next entity that will lead evidence would be the National Treasury, it will lead evidence on the affordability of the SDPP and conclusion of the agreements.

On the 18th day of November 1998 the Cabinet

approved recommendation on the international offers and the preferred suppliers, consequently a negotiating team led by the chief negotiator and supported by the Department 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 supplier which would result in the final contracting for the offered equipment to the SANDF.

The negotiating team constituted the International Offers Negotiating Team which is commonly referred to as the IONT. The IONT performed its tasks within the Terms of Reference approved by the Ministerial Committee. Treasury convened the Finance Work Group 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 of Finance Workgroup of the IONT was instrumental in the compilation and presentation of the affordability of the Defence Strategic Armaments Packages Report to the Ministers Committee on the

31st day of 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, physical and financial impact. 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 was stated as approximately R42.3 billion. The final capital payment was due in April 2011 and an amount of R45.9 billion was estimated to have been 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 require payment in foreign countries, in foreign currency I beg your pardon, 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 agreement Treasury continued to monitor and manage the liability arising from these loans. Treasury will thus lead evidence on the role it played regarding the matters above and any other matter incidental thereto with reference to the following; budget, the price and initial ... I beg your pardon.

The price and incidental matters thereto, the affordability of the SDPP, financing of the SDPP, SDPP loan agreements and liability management thereof.

The subcommittee of Cabinet which is commonly referred to as the Ministerial Committee will present evidence on the final acquisition and the implementation of the cabinet decision. The Commission intends to inquiry into and investigate the process followed by the subcommittee of Cabinet which was constituted by 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 made to it relating to the preferred suppliers of the SDPP, the progress report on the Terms of Reference of the International Offers Negotiating Team, that is the IONT, relating to *inter alia* Non-Defence Industrial Participation, that is the NIPS, Defence Industrial Participation, that is the DIPS, the affordability of the SDPP, the technical aspects and financing of the SDPP.

Evidence from the Ministerial Committee will be in respect of the following; executive accountability, appointment by Cabinet, powers and functions, execution of mandate, processes and deficiencies, interaction with the project team,

recommendations to the Cabinet.

During the second part of this phase people that criticise the SDPP's will lead evidence. The announcement of the decision to procure the armaments 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 the 9th day of May 2012 by way of Government Notice the Commission invited interested parties to make written submissions on affidavits in respect of all or specific Terms of Reference.

The following persons or entities accordingly made submissions; Shaun Bozalek, Terry Crawford-Brown, Paul Holden, Patricia De Lille, BAE Systems PLC, David Maynier, Andrew Feinstein who will later be referred to as Feinstein, and the Seize Fire Campaign. In the exercise of its discretion in terms of Clause 4 of the Government Notice dated the 9th of May 2012 the Commission will on notice require some of the interested parties who have made submissions to make oral representations during the public hearing.

In this part, Part 2 of this phase of the public hearing the Commission intends calling the following persons who criticised the SDPP acquisition for one reason or the other, and those persons are Patricia De Lille, David Maynier, Paul Holden and the following from SCOPA; Gavin Wood who will later be referred to as Wood, Feinstein and Reinette

Taljaard who will later be referred to as Taljaard. The respective persons will be required to give evidence on issues raised in their submissions whose brief synopsis is as follows; firstly 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 on the 15th day of September 2000 before Parliament, the President's refusal to issue a proclamation authorising and empowering the Heath Special Investigation Unit to participate in the investigations, 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 25th February 2002, the decision to resign was informed by the chairperson's view that SCOPA was undermined by political interventions and that the Joint Investigation Team failed to conduct a proper investigation.

Now I turn to give further synopsis of the individual critics. Terry Crawford-Brown'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.

Paul Holden and Andrew Feinstein have jointly made written submissions under oath to the Commission and they have affirmed that they are willing to testify in person before the Commission. They criticised the SDPP on the following basis, 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. 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's apparent that the procurement team in terms of the acquisition including the Cabinet Subcommittee 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.

3, Offsets. The evaluation framework of offsets. The criticism had pains to how the offset credits were awarded and how the multipliers could have the effect of undermining the envisaged real value of the offset. Offset in fulfillment 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 offsets programme suggests that a number of projects have

either terminated due to failure or criminal misdemeanor. Irregularities in the selection process and allegations of corruption; they submit that they believe that the selection of three of the four primary contractors in the SDPP's were done through irregular means, they state that there were gross procedural irregularities that impact on the selection of the preferred contractors for the Alpha/Lift components, the submarines and the Corvette contracts.

Now I turn to give the summary of Patricia De Lille. 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 and the President did not issue the proclamation empowering the Unit to investigate.

The NPA retrieved the document from Judge Heath, subsequently she received death threats and was made to appear before the Investigating Directorate Serious Economic Offences, that is the DSO commonly known as the Scorpions. With no progress forthcoming on the investigation she requested for a *nolle prosequi* certificate so that she could institute private prosecutions.

David Maynier's testimony will focus on the offset

project that have partially or not materialised at all, the utilisation of lack thereof, 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.

As already stated the DOD evidence will be led mainly by witnesses from the Navy and Air Force. The first three witnesses to testify are Admirals Green, Higgs and Schoultz in that order from the Navy. 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, I beg your pardon, utilisation for the SDPP. Detail will be provided by the members of the various arms of service. Lastly he will focus on the funding profile of the acquisition of assets.

Admiral Higgs will give evidence mainly on the following; the purpose of the defence review, his rollout as well as its approval by Parliament, 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.

Admiral Schoultz will give evidence mainly on the

naval capability deficiency history dating as far back as 1975 and interventions that were put in place in an attempt to cure those deficiencies, the utilisation of the frigates and the submarines. The areas to be covered by each witness will progressively be given in advance during the hearing and on the Commission website.

The Commission would like to bring to the public and interested parties the procedure that will be followed during the public hearing and that procedure is as follows; the conduct of the procedures of the inquiry shall be conducted under the control and discretion of the chairperson. The Commission shall determine whether the evidence presented to the inquiry or the representation to the inquiry is to be in writing or orally. Any person appearing before the Commission may be assisted by an applicant or an attorney at own costs, 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 Commissions 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 person 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 will 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. That concludes this opening address. Chairperson, Commissioners, I thank you.

NOTE: Note that the chairperson's microphone is not engaged.

CHAIRPERSON: Thank you. I think we've now come to the end of the opening addresses. As I mentioned earlier first witness then to testify, to testify tomorrow morning and we'll

start at 09h30, and today after we adjourn there will be a pre-conference meeting organised by the Evidence Leaders with the legal teams of witnesses who are going to testify. I hope that if there are still some outstanding issues that those issues will be resolved this afternoon.

ADV ABOOBAKER: Mr Chairman, with your permission and with due deference to the legal teams present we'd like to bring that conference forward to 12h00 today in order not to waste any time.

CHAIRPERSON: I see it's 11h30 now. I'm sure there will be no objection if the conference is brought forward to 12h00, if there are any objections I'm sure you can deal with those objections at 12h00. We'll meet tomorrow morning and we'll start at 09h30.

ADV ABOOBAKER: Thank you Mr Chairman.

CHAIRPERSON: Thank you.

(COMMISSION ADJOURNS)