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CHAIRPERSON: Thank you. Good morning. Can we ask the witness confirm that he is still under oath?

MR ODENDAAL: I do.

CHAIRPERSON: Ms Ramagaga.

5 MS RAMAGAGA: Thank you Chair. May I proceed with the witness? Thank you. Yesterday when we adjourned ...

CHAIRPERSON: I'm sorry, unless if at all there is something that you want to do before you proceed with the witness.

10 MS RAMAGAGA: Thank you Chair. In actual fact I think we believe that it is appropriate that we address the Commission about the reason why we are only starting at this time, 11h20 instead of the scheduled time of 10h00. Mr Chair, the reasons why we could not start at the expected time is that we had to  
15 settle documents that we received, there is a bundle of documents that were given to the respective institutions for declassification and declassification does not happen overnight and in actual fact in particular the Department of Defence policy is that it takes about a minimum five days before  
20 declassification can be done but what it has done, it has actually bent backwards to accommodate us and it, that is illustrated by the fact that we were able to have the required documents declassified within a period of less than five days.

The documents were given to them or they were  
25 identified on Monday and by the end of yesterday the

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documents had been declassified but once they are declassified we need to confer with the witness, go through the documents and then paginate and make sure that you have documents that are even put in a proper order so that there can be a proper  
5 flow of evidence. Now a question may be raised as to why this was not done previously and the reasons Chair and Commissioner Musi would be that firstly this being a Commission of Inquiry, as and when information comes to the fore you do not then say because I had arranged my  
10 presentation of evidence to be, to take these in a certain order then I will have to stick to that because in a way that can bring about some sort of a discourse in the presentation of evidence, so you stop without taking the Commission for granted, you stop and try to align that evidence.

15           And secondly Chair and Commissioner Musi, maybe it is proper that you know, it is repeated in the public domain that the initial arrangement was that Mr Nortjé would be presenting evidence or should have presented evidence before we came in, so we were moved forward and that in itself has  
20 affected the manner in which we have had to plan the presentation of evidence. We had to also try to fast track the arrangement and the planning of our presentation of evidence appreciating the fact that time should not be wasted in unnecessary adjournments.

25           The Commission make sure that then it moves our

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team forward so that they cannot be vacuumed, there cannot be more time wasted. Much as that is proper to make sure that time is not wasted but also evidence should be presented in a coherent fashion and that is why here and there Mr Chair and  
5 Commissioner there may be delays, but I think I should also disclose to the Commission that you know the team, the witnesses as well as the administrative staff does not when there is an adjournment go home to rest, we continue to work beyond the time of the hearings with a view of trying to make  
10 sure that where possible we could start on time.

And I would just like to restate the commitment to the Commission that we will not take this Commission for granted, we will not take you, the leadership of this Commission for granted but, however, where circumstances are  
15 outside our control we may have to start later than the scheduled time. Thank you Chair. And may I also just indicate that just with a view to making sure that we, you know we start earlier than maybe 12h00, 14h00 or so we have now decided to proceed with the evidence from where we were yesterday and  
20 introduce documents that have been declassified and paginated to an extent possible.

There are still others that have to be finalised and we will try to use either the lunchtime to also add on those documents but if we during the presentation of evidence we say  
25 to you we are asking for an adjournment just in order to make

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sure that we proceed smoothly with the other documents that have not been finalised with the witness, we request that you bear with us and please accommodate us. That is all Chair.

COMMISSIONER MUSI: Well, I hope people from sections of the media are listening. Thank you.

CHAIRPERSON: Thank you Ms Ramagaga for the explanation. You may proceed.

MS RAMAGAGA: Thank you Chair. Yesterday when we adjourned we were dealing with page 9 of the witness's statement and he had concluded reading into the record paragraph 3.10 on that page, and at the time I indicated to the Commission that I would like to go back to paragraph 3.9 that deals with "JO9" and now going through the documents it has actually become necessary that I direct the Commission firstly to page, to "JO7" which appears in page 5 of the witness's statement, "JO7". What I will do is just to finalise one or two elements of "JO7" that had not been highlighted at the time when we were dealing with that document and that document Chair is the Response Evaluation Model. May I then request that you turn to page 343 of the bundle. 343 Clause 3.7. May I then proceed Chair and Commissioner Musi? It's page 343.

CHAIRPERSON: Thank you.

MS RAMAGAGA: Thank you Chair. In particular I would like to draw your attention to Clause 3.7 of this document and I would request Mr Odendaal to read into the record the second

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paragraph of that clause. Please do Sir.

MR ODENDAAL: I'm reading from the second paragraph of Clause 3.7 of the Response Evaluation Model for the Request of Offer of February 1998:

5                   *"Two engine types per Offerer will be considered during the evaluation and two separate MFOM's calculated, one of [sic] each engine type. (Operational Effectiveness, Lifecycle Cost and Risk Assessment will be considered separately for each*  
10                   *engine type during the determination of the OEI, LCCI and RAF). As an alternative the evaluation could be based on a helicopter fitted with a Pratt & Whitney 207 series (PW207) engine, if this engine type is offered by all three contenders".*

15    MS RAMAGAGA: Right, thank you. On the same document then will you please turn over to page 344 and Clause 4 which deals with the Evaluation Arrangements, will you please read Clause 4.1 into the record.

20    MR ODENDAAL: *"Evaluation Team. The Evaluation Team will consist of two sub-teams, one evaluating Section 1 and Section 2 of the value model and the other evaluating Section 3 of the value model. Members of the Programme/Functionality team are:*

- *Col P I Wilkens*
- *Col J B West*

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- *Lt Col F K S Viljoen*
- *Maj J J O'Connel*
- *Mr F Kotzé*
- *Mr Shalan Chetty*

5                    *Members of the Supportability team are:*

- *Col K F Emke*
- *Col P A Haley*
- *Col A Swart*
- *Capt D L Teepe*
- 10                  • *Mr B N Griffiths*
- *Mr A W Botha.*

*Mr A A Louw will calculate the Lifecycle Cost Index and present it to the other team members for verification”.*

15                  MS RAMAGAGA:     Right, before I then draw your attention or direct you to the page that deals with the real team that had to do the evaluation can you indicate to the Commission as to whether this is the team that actually continued to be recognised and do the work, the function of the Evaluation  
20                  Team or were there subsequent changes to this team and in order to answer this I'd like to say this paragraph should be read with page 378 paragraph 3.2.

MR ODENDAAL:     As normally there's an initially approved  
25                  team but sometimes not all members are available and then alternative team members are approved to take part. In this

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case those changes has been recorded in the evaluation, the RFO Evaluation Results Report in paragraph 3.2 and it's recorded as following:

5

*"The Evaluation Team members are as listed in Appendix 'A'", ...*

MS RAMAGAGA: The page that Mr Odendaal is now reading from is page 378, Clause 3.2. Just a minute. Should we proceed Chair? Thank you, you may then read the information into the record.

10

MR ODENDAAL: Paragraph 3.2:

*"The Evaluation Team members are listed in Appendix 'A'.*

15

*Prior to the start of the evaluation but after the issue of the Value Model three changes were made to the Evaluation Team:*

20

- *Col J B West was added to the team that evaluated supportability cost [sic] (this was done due to his overall experience of helicopter operations in the SAAF).*

25

- *Lt Col P J Labuschagne replaced Col P I Wilkens on the team (this was due to over-commitments on the part of Col Wilkens).*
- *Maj W J Möller replaced Col K F Emke on the team (this was due to over-commitments on*

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*the part of Col Emke)*".

MS RAMAGAGA: Right, thank you Sir. Shall you then now turn to "JO9" which appears on page 419 [sic], the "JO9" is the Response Evaluation Model for Engine Selection, page 417 of the bundle, page 417, 417 of the bundle. Mr Odendaal, this page is the Engine Value Model for the Evaluation of the two Engine Contenders, Approval Page. Now it is correct that this page is signed or the approval is signed by Lieutenant General W Hechter who was at the time the Chief of the South African Air Force, it is also signed by Chief Executive Officer of ARMSCOR Mr L Swan, and it is also signed by the Chief of Acquisitions Department of Defence Mr S Shaikh and it was signed on the 1<sup>st</sup> day of June 1999 by all three signatories.

MR ODENDAAL: I confirm Chair.

MS RAMAGAGA: Now will you please turn to page 419. Now in 419 I'd like you to read into the record the third paragraph under Clause 1, "Background", the third paragraph starting with "The evaluation ..." and ending with "... series engines".

MR ODENDAAL: I'm reading from the paragraph 1, paragraph 3 from Section 1 on the "Background":

*"The evaluation model is designed for the evaluation of the possible engines that can be fitted to the Agusta A109SAAF. The model is based on the initial evaluation document for the RFO phase and is structured based on the operating conditions*

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5                   *experienced by the SAAF. The evaluation will be based on information received during the RFO process, however, it will be expanded to include figures from both engine manufacturers since the original evaluation included the Pratt & Whitney 206 series engine".*

MS RAMAGAGA:     Thank you Sir. Clause 2 deals with the "Structure of the Document and the Model" and that information contained in Clause 2 is explained better through the diagram  
10                   that you find in page 420, turning over to that page, 420. Will you please just explain this model to an extent necessary for this Commission, the programme or the diagram.

MR ODENDAAL:     I'll start with Section 1 which relates to Supplier Information, evaluation factors. The Section 2 deals  
15                   with Technical Performance of the respective engines. Section 3 deals with Supportability, Section 4 deals with Operational Requirement and Section 5 with Technical Risk Factors. These factors are added up in accordance with the formula that is  
20                   given later in this same document which will give you Operational Effectiveness Index. Section 6 deals with Cost Implications and the Military Figure of Merit is derived by  
25                   dividing the Operational Effectiveness with the Cost Index.

                  For the benefit of the Chair and Commissioner Musi I'll just want to refer you to page 425 of the same bundle and  
under paragraph 3.3, the relative weighting of the different

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sections are indicated, just for clarity purposes.

MS RAMAGAGA: Right, thank you. Now will you then please turn to page 422 of this very document. No, no, before 422 page 421. And will you then please read into the record the information starting on the second paragraph “The MFOM result ...” and having read through that paragraph then you can also explain that diagram that appears on that page. Page 421.

MR ODENDAAL: Chair, Commissioner Musi, just to explain, this Value System deals specifically with the Military Figure of Merit although the NIP and DIP higher level weighting is also mentioned but there were separate Value Systems for the DIP and NIP just for clarity in order to avoid any misunderstanding. I’ll start to read then from the second paragraph on page 421:

*“The MFOM result will then be combined with the results of the strategic issues and the results of the Defence Industrial Participation (DIP) and the National Industrial Participation (NIP) evaluation results as supplied by ARMSCOR’s Countertrade division. The respective weights of each of these subsections were recommended by the SAAF Project Officer and the ARMSCOR Programme Manager (these weights are not known to the evaluators of section 1-6) ...”.*

Chair, I have to just correct something in this case, this is not the correct statement in this report, it was not specifically the

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Project Officer and the Programme Manager was only involved in the weighting of the first iteration, not in the final one, so that is a mistake in this document. This was the final one which was, as it was prepared by the necessary, or decided upon by the approval authorities. And I'll continue to read from there on:

*“... (these weights are not known to the evaluators of sections 1-6) and follows the guidelines set-up during the initial evaluation of the suppliers of the Light Utility Helicopter and are as follows:*

- *MFOM Weight - 67%*
- *StI Weight - 33%*
- *DIP Weight - 100%*
- *NIP Weight- - 100%”.*

Chair, and just for clarity this is an obvious mistake the way it's written because the, all, it actually adds up to 300%, so it should actually have been written 67 out of 300 for military Figure of Merit, Strategic Issues 33 out of 300, DIP Weight 100 out of 300, NIP Weight 100 out of 300, just for correction in case of misunderstanding. I'll continue to read there in the next sentence:

*“The combination of the above will be ask follows, to provide a final Figure of Merit (FOM) for each of the possible suppliers; ...”.*

The Figure of Merit, it's complicated to read the way if I read it

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directly but it implies that the Figure of Merit will be the sum in accordance with the top formula of the weighting of each of the four weighting, the four parameters being the Military Figure of Merit, the Strategic Issues, the DIP and the NIP Weighting.

5 And below the prediction is just another, the depiction below is just for clarity purposes of the above wording.

MS RAMAGAGA: Right, thank you. I would still nevertheless would like to invite you to just you know, explain this diagram below and in the explanation you should also make  
10 an indication as to where your team would have been involved and who are actually the players on this diagram. Thank you.

MR ODENDAAL: I start with the first block in the diagram or Criteria 1, the Military Figure of Merit that counted 67 out of 300. This is the part that IPT and the evaluators, the technical  
15 evaluators were involved. The Strategic Issues, the Military Strategic Issues Criteria 2, there was a special tool which is also listed in one of the appendices, I believe Appendix 1, the names of those persons, and that counted 33 out of 300 which the combination of the Military Figure of Merit and strategic  
20 issues resulted in the Figure of Merit, in total 100 and then 100 was added for NIP and 100 for DIP.

MS RAMAGAGA: Right, thank you. Will you then turn over to page 422. In fact may I just indicate even to the Chairperson and Commissioner Musi that most of the  
25 information that you are now reading into the record, it's

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actually detailed information that is necessary because it deals with the evaluations relating to engine in particular and this is the information that was obtained whilst now you were at the helm as the programme manager. Please read into the record paragraph 3 onwards until I indicate otherwise.

5 MR ODENDAAL: I read from page 422 Chair, paragraph 3: "Description of the Evaluation Model":

10 *"The different elements which the evaluation model comprise of are addressed in detail in the paragraph of the document. The evaluation model will determine which of the two contenders scores higher on each of the technical issues. If both contenders fall within a 3% bandwidth (deviation) both proposals will be regarded as equal and will be awarded equal points for that particular discrimination criteria".*

15 Reading under paragraph 3.1 "Supplier Contents, Operational Issues, Technical Risk and Military Strategic Issues", 3.1.1:

20 *"The Principle Behind Supplier Contents, Operational Issues, Technical Risk and Strategic Issues.*

25 *The Supplier Contents will examine a few Contractor issues. These will centre mainly on the company and the history around the use of those*

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5 particular Engines. These are factors which will be based on past experience and will contribute to the successful outcome of the programme as measured in terms of the extent to which the technical, timescale and cost targets are met.

10 Operational issues will examine all those factors that will adversely affect the daily operation (Hostile as well as non-Hostile environment) of the LUH as it will be operated by the SAAF).

15 The Risk Index examines factors that could lead to the engine not being completed to the technical or schedule, thus being late for incorporation into the LUH airframe.

20 The Strategic Issues are issues that could adversely affect the programme that are strictly non-programme issues. These issues should be viewed at a high level and will be evaluated by persons who have a holistic understanding. The evaluators will be required to consider political as well as Air Force and Industrial issues in their assessment of the initial acquisition subsequent

25 lifecycle support of the system”.

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MS RAMAGAGA: Right, thank you. I'd like to just seek for clarification in respect of the paragraph that deals with the Strategic Issues. Now in the second sentence of that paragraph it reads:

5                    *“These issues should be viewed at a high level and will be evaluated by persons who have a holistic understanding”.*

And then:

10                    *“The evaluators will have to be required to consider political as well as Air Force and Industrial issues ...”.*

Can you just explain to the Commission as to what is meant by the indication that it had to be done at a high level and what role would then be played by these people who would have holistic what, holistic information or understanding?

15                    MR ODENDAAL: Chair, Commissioner Musi, it can be seen on page 426 of the same Section 9 that:

*“The members of the team evaluating the Strategic issues are:*

- 20                    • *Gen O A Schur*  
                         • *Col P Haley*  
                         • *Mr J J Britz*  
                         • *Mr B Griffiths”.*

You can also see at the different designations in their position that it was senior people in the organisation and therefore they

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are in accordance with the requirements of the Value System. I have to, however, remind that I was not, I was only involved in the first iterations and this, it's, I was not part of this, so I would not be able to explain the rationale for the Strategic  
5 Issues and why different parameters were selected or not selected.

MS RAMAGAGA: Thank you. Shall you then, we proceed to turn to page 425 of the same document. Now in particular I would like you to then focus your attention on Clause 4, 4.1  
10 which deals with the Evaluation Team. Will you please read that into the record.

MR ODENDAAL: I read from paragraph 4.1 onwards, "The Evaluation Team":

*"The Evaluation Team will consist of two sub-teams,  
15 one evaluating sections 1 to 6 of the value model and the other evaluating Section 7 of the value model. The evaluation of both the DIP and the NIP will be performed by responsible people at the Department of Trade and Industry and ARMSCOR  
20 Countertrade division and they will supply those figures to the Project Team to be included in the final Value System".*

I just may say that this was never supplied to the Project Team.

*"The members of the team evaluating sections 1 to*

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6 are:

- *Maj A Wanneburg*
- *Maj K Gettliffe*
- *Mr R N Jubber*
- 5     • *Mr AW Botha*
- *Mr S N Chetty*".

*Mr S N Chetty will act as coordinator in and will collate all the results to achieve the final proposed OEI figure for each of the engines*".

10     MS RAMAGAGA: Right, before you proceed to the next session ..., section, just for the purpose of the commissioners and clarification, it is correct that now referring to the first line under "Evaluation Team":

15             *"The Evaluation Team will consist of two-teams, one evaluating sections 1 to 6 ..."*.

Now it is correct that sections 1 to 6 as to what they entail appear in pages 427 to 432 of this very document.

MR ODENDAAL: That is correct Chair.

20     MS RAMAGAGA: And Section 1 deals with the Supplier Information as appears on page 427. Section 2 deals with Technical Performance Index as appears on page 428. Section 3 deals with Supportability Requirements as appears on page 429. Section 4 deals with Operational Requirements as appears on page 430. Section 5 deals with Technical Risk  
25     Factors as appears on page 431 and Section 6 deals with Cost

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Implications as appears on page 432. Do you agree Sir?

MR ODENDAAL: I agree.

MS RAMAGAGA: And ref..., there is also reference in to Section 7, it is correct that Section 7 appears on page 433 and it deals with the Strategic Issues, is that correct?

MR ODENDAAL: That is correct.

MS RAMAGAGA: Now before you proceed to, or read on into the record that is on page 426, will you also agree with me that in terms of these sections that I have referred you to there are values that are indicated in respect of sections 1 to 6 columns and in respect of Section 7 ... No, no, the values appear in respect of all the columns, is that correct Sir?

MR ODENDAAL: That is correct.

MS RAMAGAGA: Thank you. You may then proceed to turn over to page 426 and continue to read on up until the end of that Clause 4.1.

MR ODENDAAL: *“Members of the team evaluating the Strategic Issues are:*

- *Gen O A Schur*
- *Col P Haley*
- *Mr J J Britz*
- *Mr B Griffiths*

*The coordination of the above evaluation will be carried out by Mr J J Britz. Mr S N Chetty will combine all the results to achieve a Figure of Merit*

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*for each of the potential Suppliers”.*

MS RAMAGAGA: Right, thank you. Will you now turn to page 432, that is Section 6 that deals with Cost Implications. Now under the column provided for Values there is no, that  
5 portion is not completed. Are you able to explain to the Commission as to why it is so?

MR ODENDAAL: I am able to explain.

MS RAMAGAGA: Please go ahead and explain that.

MR ODENDAAL: The column shouldn't have been there  
10 because this refers to the costing, so this is a summary of the cost and the Cost Index is used to divide through the military Figure of Merit, so the items are not weighted against each other, the cost of each item are summed to arrive at the Cost Index. I hope that is clear enough Chair.

MS RAMAGAGA: But finally on this document Sir will you please turn to page 433. Now that is the section that we said it has to do with Strategic Issues which in terms of the narration has to be dealt with at high level. Will you please read into the record the content of that table.

MR ODENDAAL: Section 7, “Military Strategic Issues (The weight allocated to each value function indicated in the last column”. Item 7.1:

*“The Risk that the supply of the logistic requirements will be adversely affected due to  
25 political and/or other reasons when dealing with the*

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*Supplier (If a suitable guarantee is supplied by the Engine Supplier the risk is deemed to be negligible).*

Weight allocation 4. 7.2:

5 *“Strategic Partnerships forged/in the process of being forged”.*

Weighting 3. Item 7.3:

10 *“Facilities and Equipment available within the RSA and the implication of using the proposed supplier (standardisation e.g. with Oryx, ASTRA, C47-TP, C-130 and Rooivalk).*

Weighting, 3. Item 7.4:

*“Strategic impact on potential marketing opportunities (e.g. Rooivalk).*

15 Weighting 4.

MS RAMAGAGA: Right, thank you. May I just find out from you Sir as to whether through common knowledge that you might have in respect of the engines that were at the time available and in use within the South African Air Force, not necessarily with reference to the fixed wing or the rotor wing, can you indicate to the Commission as to whether, because already it is clear that the considerations related to the Turbomeca as well as the Pratt & Whitney engines. Looking at 7.3 are you able to indicate to the Commission as to whether  
20  
25 any of the two engines, or both, were already in use within the

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South African Air Force?

MR ODENDAAL: None of the three engines being the Pratt & Whitney 206, 207 ..., sorry 406 and 407, or the 2K2 are in service in the South African Air Force on any other product.

5 MS RAMAGAGA: Right, thank you. Shall ... Is there anything that you would like to add Sir? You may go ahead.

MR ODENDAAL: Chair, maybe just for further clarification I think, and as I say I wasn't part of this evaluation criteria and approval of this document, but obviously the authors here were  
10 thinking is the Pratt & Whitney type of engine or the Turbomeca engine used on other products in their inventory, and of course there is Pratt & Whitney as well as Turbomeca engines on numerous aircraft within the Air Force, both helicopters and fixed wing helicopters, so the standardisation that is referred  
15 to here is not specifically meant the same engines, but refers to standardisation with respect to using engines from the same company.

MS RAMAGAGA: Right, thank you. Chair and Commissioner Musi, unless there's questions or any need for clarification we  
20 will now proceed to deal with the next document which is "JO10". The witness had already read into the record as I indicated paragraph 3.10 of his statement which introduced this "JO10". Now "JO10" is found in pages 434 to 477 of Mr Odendaal's bundle, bundle 1. Sir, you are at page 434. Now  
25 what I would like to focus your attention to, or the attention of

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the Commission is page 435, that Approval Page. It is correct that in terms of this page of the document which is the LUH Engine Evaluation it is indicated that:

5                   *“This document was approved as a true reflection of the results of the evaluation of proposals received in response to the SAAF The Light Utility Helicopter Request for Offer”.*

Issued in February 1998. Now that document is signed by Mr S N Chetty who was the LUH Engineer from ARMSCOR, Lieutenant Colonel Viljoen who was the officer, and Mr J Odendaal who was the Programme Manager, and Mr J Odendaal is actually yourself, am I correct?

MR ODENDAAL:       That is correct.

15                   MS RAMAGAGA:       And this document is dated the 24<sup>th</sup> day of June 1999, is it the date on which it was issued because from the signatures it would appear that each of the mentioned officers signed it on the same day, the 24<sup>th</sup> day of June.

MR ODENDAAL:       Yes, I confirm.

20                   MS RAMAGAGA:       Thank you. Will you then please turn over to page 438 of the document. I will request you to read into the record that page that has the ... Yes, please read into the record that page and actually maybe just for clarity read page, please read pages 438 to 439 into the record.

25                   MR ODENDAAL:       I start on page 438 paragraph 1 “Executive

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Summary”:

*“The proposals for the engine to power the Light Utility Helicopter Systems were received from Pratt & Whitney in Canada and Turbomeca in France.*

5 *Both proposals are of acceptable quality and enabled successful application of the value model”.*

If I may just clarify, this is of course received via Agusta because the formal communication was with Agusta, this is the information that was supplied by Pratt & Whitney and  
10 Turbomeca via Agusta who was the main contractor. And I continue to read “Summary of Proposals”:

*“A summary of the main points of the proposals is:*

15 *The engine performance of the engines are similar, however, the Turbomeca engine results are entirely predicted since no variant exists as yet. Pratt & Whitney have a certified P&W 207 engine flying, while the Arrius 2K2 is still under development. The Turbomeca is \$2 701 3850.00 more expensive*  
20 *in respect of the Total Acquisition cost and will also be more expensive to maintain.*

25 *The overhaul and maintenance of the Pratt & Whitney engines can be performed at either the SAAF or Local Service Centre in collaboration with*

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5            *the SAAF and/or Denel. The overhaul and maintenance of the Turbomeca engine will be performed at Denel Air Motive. The timescales and technical performance of Turbomeca is viewed as a risk”.*

Evaluation Results:

*“The following table is a table summarising all the results to supply a final Figure of Merit for the evaluation, the results are the normalised values”.*

10        Evaluation Criteria, for the Military Figure of Merit Pratt & Whitney scored 100, Turbomeca scored 90. For the Military Strategic Issue Pratt & Whitney scored 94 and Turbomeca 100. The Final Normalised Technical Figure for Pratt & Whitney is 100 and for Turbomeca 95.5.

15        MS RAMAGAGA:        Now before you proceed to the next portion is it correct that these evaluation results relate to the technical evaluation only?

MR ODENDAAL:        That is correct, including the strategic issues as identified.

20        MS RAMAGAGA:        Yes, then you may proceed Sir.

MR ODENDAAL:        *“Through application of the value model discriminatory and cost factors, the relative normalised Military Figure of Merit (FOM) combined with the Technical Strategic Issues, ranking for the proposals are:*

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- *Pratt & Whitney 207C ranked first with the evaluation Technical FOM of 100*
- *Turbomeca 2K2 ranked second with an evaluation Technical FOM of 95.5”.*

5 And I page to page 439 and continuing at the top, “Project Team Recommendations”:

*“The Project Team recommendation is that the Pratt & Whitney 207 engine be utilised.*

10 *The discussion of the Project Team recommendation is included in paragraph 7 of this report”.*

MS RAMAGAGA: Now I think for the completion of the record I would like you to then turn to page 444 which contains this information that is referred to as paragraph 7. Please turn  
15 to page 444 and read into the record Clause 7 which is headed “Project Team Recommendations”.

MR ODENDAAL: Paragraph 7 “Project Team Recommendations”:

20 *“The Project Team supports the value systems conclusion.*

*It should further be noted that:*

- *The Turbomeca engine is viewed to have both timescale and technical risks.*
  - *The FADEC ...*
- 25

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Which relate to the engine control system, electronic control system:

5                   *“... specification for the Turbomeca Arrius 2K2 (SAAF) has not been resolved and is unknown as yet. Confirmation on the current system reliability not totally proved. This may pose a safety risk.*

10                   • *The Project does not at this stage have the additional budget for the certificate of the Arrius 2K2 Engine or for any of the other additional costs associated with this engine (a total of \$2 701 385.00).*

15                   • *The selection of the Arrius 2K2 will place further financial burden on the state since the support costs associated with the maintenance and Logistic support is higher than that of the Pratt & Whitney 207C.*

20                   • *There exists a risk that there might be a delay in the project if the Arrius 2K2 engine is selected.*

25                   • *Even though Agusta is guaranteeing the performance of the time between TBO figures, there exists a technical risk that the performance and TBO figures might not be met due to new materials and increased operating*

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*temperature being used in the 2K2. This factor could adversely affect the ability to extend the TBO of the engine.*

5

- *Since the SAAF will be the first operator of the Arrius 2K2 engine a maturity problem could exist”.*

MS RAMAGAGA: Right, thank you. Will you then please go to page 440 of the same bundle. Now will you please read into the record Clause 2.1.

10

MR ODENDAAL: “Purpose”:

15

*“This document records the results of the Light Utility Helicopter (LUH) Response Evaluation Model as applied to the two technical responses (hereafter called the proposals) for the supply of the power plant for the Light Utility Helicopter”.*

MS RAMAGAGA: Now in Clause 3.1 that clause reads as follows:

20

*“The product system proposals were received from two helicopter engine manufacturers that could supply the power plant for Agusta A109LUH SAAF: ...”.*

25

And it mentions those engines as Pratt & Whitney 207C as well as Arrius 2K2 from Turbomeca. Now what I would like you to deal with in that sentence is this indication that the, or the product system proposals were received from the two helicopter

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engine manufacturers. Can you clarify to the Commission as to what the position is bearing in mind that thus far you have indicated that the communication would not have been directly with the manufacturers but it would have been with Agusta.

5 MR ODENDAAL: Chair, Commissioner Musi, ARMSCOR also has indicated in the proposal by Agusta bought the engines as well as the rest of the helicopter from Agusta only. In this case the wording in this paragraph is misleading because it seems that we are, ARMSCOR solicited information directly to  
10 Turbomeca and from Turbomeca and Pratt & Whitney. This is indeed not true, all formal correspondence and communication was via Agusta and the proposals that we received technically and financially was from Agusta and not from the engine suppliers. In fact we don't know what the detailed contractual  
15 arrangement between Agusta and the engine supplier is because we are not privy to that documents because we do not have a formal relationship with respect either to Pratt & Whitney or Turbomeca.

MS RAMAGAGA: Right, thank you. Maybe just for the  
20 completeness of the record will you then read the entire clause into the record because I just read part of it in order to highlight as to what I wanted to deal with then.

MR ODENDAAL: I'll read from ...

MS RAMAGAGA: 3.1.

25 MR ODENDAAL: From 3.1.

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MS RAMAGAGA: Yes.

MR ODENDAAL: Which deals with the "Evaluation Process".

3.1, "Proposals Received":

*"Product system proposals were received from two  
helicopter engine manufacturers that could supply  
the power the power plant for the Agusta A109LUH*

*SAAF:*

- *The P&W 207C from Pratt & Whitney in Canada;*

*and*

- *The Arrius 2K2 from Turbomeca in France".*

*Both proposals are of acceptable quality and with  
requested technical and cost information included.*

*The data requirements of are fully satisfied by the  
proposals".*

Just because this sentence doesn't read correctly it just means  
that the data was sufficient to do the evaluation.

MS RAMAGAGA: And will you then proceed to read 3.2, the  
"Evaluation Team" into the record, and for the completeness of  
that clause I will invite you to read 3.2 on page 440 with page  
446 that gives the details of the teams.

MR ODENDAAL: 3.2, "Evaluation Team":

*"The different Evaluation Team members are as  
listed in Appendix 'A'".*

And I turn to Appendix "A" on page 446 of the same bundle.

"Appendix 'A': Evaluation Team Members List".

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*“The Evaluation Team that evaluated the Military Figure of Merit consisted of the following persons:*

- *Maj A Wanneburg*
- *Maj K Gettliffe*
- 5       • *Mr R N Jubber*
- *Mr A W Botha*
- *Mr S N Chetty”.*

2:

*“The Evaluation Team that evaluated the Strategic Issues consisted of the following person:*

- *Col O A Schur*
- *Col P Haley*
- *Mr J J Britz*
- *Mr B Griffiths”.*

15     3.

*“The Evaluation Team that put forward the consolidated NIP and DIP result consisted of the following persons:*

- *ARMSCOR DIP Division – Mr J J Van Wyk”.*

20     I can just confirm that only members of ARMSCOR and the South African Air Force in and the DoD participated and no external third parties in the evaluation process.

MS RAMAGAGA:     Right, thank you. So, just to sum it up what appears on page 446 tends to firstly show that the teams  
25     that were appointed for evaluation were three teams and each

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team had its role to play. Now can you indicate to this Commission as to whether when the evaluation was done by the three respective teams would they do the evaluation sitting together with different roles or would the evaluation be done  
5 separately by separate teams?

MR ODENDAAL: The evaluation is done separately. In this case the evaluation of the first team that evaluated the technical parameters was done in one group, only that team. The evaluation for item 2 in accordance with the instruction  
10 was done by the individuals and combined later on, so it was not in a combined session. With respect to the defence Industrial Participation and the NIP evaluation, although the sentence is included here I don't have the details of that and it's also not included in this report.

MS RAMAGAGA: Do you know, and are you able to tell the Commission as to the evaluation results as to where the respective team would then present their evaluation results and at what point would that be done?

MR ODENDAAL: After approval of the evaluation model the  
20 evaluation was done by the technical team and the team evaluating the Strategic Issues, the report was drawn up and the Military Figure of Merit which include the technical and the Military Strategic Issues was presented to the PCB, I think the details we will see later on in my submission if we have not  
25 already and in June 1999 it was presented. And that covers

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that. The NIP and the DIP evaluation were not part to although the final detailed results of the technical evaluation was presented to the PCB and the final figure was also mentioned at the same PCB for the DIP and the NIP evaluation.

5 MS RAMAGAGA: Alright thank you. Shall you then revert to page 440 and then continue to read into the record Clause 3.3.

MR ODENDAAL: "Evaluation Strategy":

*"The LUH Engine Selection team adopted a two-phase approach for evaluation of the proposals.*

- 10
- *The Value System was discussed and the evaluation carried out on a single day.*
  - *The evaluation of the proposals were done by consensus by the team members and a single score sheet prepared and handed in.*

15

  - *Due to the Turbomeca proposal with regard to the development of the Arrius 2K2 engine the evaluation of the technical risk associated with the programme had to be performed again. This was again performed by*

20

  - consensus".*

MS RAMAGAGA: Now what has actually caught my eye is this indication that the evaluation had to be performed again. Can you just elaborate and explain to the Commission as to how that came about and you know what was done and whether

25 this was also done on the same day or what the position is to

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the extent that you are able to inform or assist the Commission on this.

MR ODENDAAL: Chair, if you can just give me a minute, I just want to see if I can quickly find some supporting information in the bundle. Chair, Commissioner Musi, I don't want to unnecessarily waste the time of the Commission so I can also answer the question without having any reference. With respect to the question of the evaluation of the risk issues as it is stated here it was done again, I cannot, because I was not part of the Evaluation Team and I cannot recall if the team did it on one day or whether they did two separate evaluations, the first evaluation or whether they had the first evaluation and then afterwards on another occasion had the risk evaluation, I don't know, I was not present.

MS RAMAGAGA: Right, thank you. Will you then turn over, but maybe just complete the last portion of this page, page 440, that bottom portion that you, you have read into the record up to ...

MR ODENDAAL: Oh yes.

MS RAMAGAGA: Yes, just the last portion, that one, that sentence.

MR ODENDAAL: *“Good results were achieved with application of the value model. All members of the Evaluation Team expressed their satisfaction with the evaluation process”.*

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MS RAMAGAGA: Now will you then turn over to page 441, Clause 4 deals with the "Evaluation Results". Now 4.1, will you read that into the record please.

MR ODENDAAL: "Operational Effectiveness Index".

5 Supplier Information Pratt & Whitney scored 100, Turbomeca 86.67. Technical Performance Pratt & Whitney scored 100 and Turbomeca 93. System Supportability Pratt & Whitney scored 92, Turbomeca scored 100. Operational Issues Pratt & Whitney scored 100 and Turbomeca 88. Technical Risk Pratt & Whitney  
10 scored 100 and Turbomeca 80.

MS RAMAGAGA: Right. Just in case the Commissioners may also want to establish as to how these amounts of these figures were arrived at, is it correct that the worksheet to calculate the respective figures can be found, and I will  
15 mention each item and state the page on which the breakdown can be found or the calculation can be established. The Supplier Information, the calculation is found in page 466 of the same volume, am I correct? Please turn to page 466. It has the portion that says "Supplier Information".

20 MR ODENDAAL: That is correct.

MS RAMAGAGA: Now dealing with the rest I will just indicate the pages at once and ask for your response. The information relation to Technical Performance, the calculation is also contained in the same page 466, the System  
25 Supportability calculations also appear on page 466. The

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Operational Issues appear on page 467 and the Technical Risk calculation also appears on page 467 of this document. Do you agree Sir?

MR ODENDAAL: I agree.

5 MS RAMAGAGA: Thank you. I would now like you to turn over to page 442. Now page 442 I would like to invite you to start off by reading from the top which is the table summarising the items of different value. This table actually addresses the cost issues. Will you please read the information into the  
10 record.

MR ODENDAAL: "Items of Additional Cost to the Programme", first one is "Integration/Installation and Certification of the Engine", Pratt & Whitney 207C is no extra cost, Turbomeca Arrius 2K2 \$2.3 million extra cost. The Unit  
15 Price per Engine for Turbomeca Arrius 2K2 is \$1 500 per engine considering that there is two engines in each helicopter plus spare engines. Cost of a list of Spares requested and in the case of Pratt & Whitney 207C it was \$106 590.36 and in the case of Turbomeca Arrius 2K2 it was \$85 932.

20 MS RAMAGAGA: Now I notice that below that table there is a note which states that:

*"The list of spares selected is not the complete required list. Pratt & Whitney have a lower cost associated with the full spare requirement".*

25 Can you please just explain that note Sir?

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MR ODENDAAL: Now as in the RFO for the helicopter in order to make this calculation what was done was to ask for specific high cost spares to do the comparison because it can very easily become a non-valid figure if you don't compare apples with apples, so similar components, the high value items were requested to be quoted on and that was used in order to have a, to be able to compare apples with apples.

MS RAMAGAGA: Will you then proceed to read 4.3 into the record.

MR ODENDAAL: 4.3, "Risks":

*"The proposals were considered to not have equal risks from the technical and timescale standpoint since P&W 207Ca and Arrius 2K2 engines are in different stages of development. The Evaluation Team found that the technical performance of the 2K2 to be a risk since it has not been developed yet. The 2K2 engine will be utilising materials not before used on this engine and operating these materials at higher temperatures, this could affect both the MTBF (Meantime between failures) and the TBO (Time between overhaul) as well as the performance of the installed engine".*

MS RAMAGAGA: Now cognisant of the fact that the DIP and NIP evaluations were done by a separate team and the Military Strategic Considerations were also done by a separate team

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but for a comprehensive understanding of how ultimately a decision was made or rather for a comprehensive understanding of the evaluation I will also invite you to read into the record Clauses 4.4 and 4.5 respectively.

5 MR ODENDAAL: Chair, Commissioner Musi I'm reading from paragraph 4.4, "The DIP and NIP Evaluations":

10 *"The DIP division of ARMSCOR performed the DIP evaluation. The Department of Trade and Industry of the National Government performed the NIP evaluation. This results does not form part of this document and will be combined with the figures from the Technical Figure of Merit by the responsible persons to achieve the final figure for the evaluation".*

15 Paragraph 4.5, "Military Strategic Considerations":

20 *"The strategic considerations were evaluated by a separate team consisting of personnel at management level from both ARMSCOR and the South African Air Force (not part of the Project Team). The results of the evaluation are included in Appendix 'C' and see Appendix 'D' for the calculations. The final normalised score for the contenders is:*

- *The Pratt & Whitney result is 94*
- 25 • *The Turbomeca result is 100".*

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In terms of Military Strategic Considerations.

MS RAMAGAGA: Right, thank you. Now I'd like to then request that you turn over to page 447 and in particular I will in fact lump the relevant pages together and they are pages 5 447 to 453, they are described as the "Undertakings by the Evaluators". Can you just, are you in that page, page 447? 447 is the covering page of the document that I would like the witness to talk about. 448 to 453 is actually those undertakings. Now I'm lumping them together because they 10 seem to serve the same purpose. Now can you just explain to the Commission as to what the purpose of those documents are and whether they are ordinarily used within the ARMSCOR terrain when the evaluation models are dealt with.

MR ODENDAAL: Chair, Commissioner Musi, that is normal 15 ARMSCOR procedure to let evaluators sign certain declarations when they are nominated and participate in evaluation teams. And I can for example read the example page, I think it's a good example, it doesn't always look exactly the same, it is adapted to be applicable for the specific adaption, specific 20 evaluation to be done. And I read from the document "Undertaking by Evaluator":

*"The evaluator hereby confirms that this adjudication has been completed to his best ability, and is a true reflection of his judgement of the 25 tender proposals.*

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*The evaluator further agrees that:*

1. *He accepts the Value System, as approved by the Helicopter Project Control Board, Department of Defence.*
- 5 2. *To the best of his knowledge the procedure followed constitute a fair and just process of evaluation.*
3. *The scoring has been done by consensus, without duress.*
- 10 4. *There is no personal conflict of interest in the outcome, and*
5. *The overall evaluation results are accepted as the final reflection of the proposal merit”.*

So this is a standard declaration that we request evaluators to be typically assigned.

MS RAMAGAGA: Right, now pages 454 to 460 deal with the sections 1 to 6 of the evaluations or the evaluations of sections 1 to 6, I beg your pardon, and then 461 deals with the evaluation of Section 7 which is the Strategic Issues. Now I notice from 454 to 457 that there are scores that are allocated on this value model, on these items in particular whereas in respect of Section 7 that deals with Strategic Issues there are no score allocations done. Can you just explain to the Commission, if you know, as to why this information is not indicated in the Section 7?

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MR ODENDAAL: Chair, Commissioner Musi, I think this is just an administrative mistake, this one was left here empty but if you page over to page 462 you would see this Appendix "C" deals with the scoring sheets for the Military Strategic Issues.

5 I noted that in the copy that I have in front of me on page 463 there is a signed example of this, I don't know why this particular copy does not have the results of all the other evaluators in it but in essence all of them were the same sheet that was completed by the individual evaluators, remember in  
10 the case of the Strategic Issues unlike the Technical Issues the evaluation was done by individually, not as a consensus evaluation.

MS RAMAGAGA: Right, thank you. May I now turn your, request you to focus your attention on page 468 of the same  
15 bundle and the document is described as the "Calculation of the Cost Index". Can you please read that information into the record.

MR ODENDAAL: Calculation of the Cost Index, Cost Implication, Cost Factor, Price ... I apologise. I read from  
20 page 468 Calculation of the Cost Index, the Cost Implications. For the Cost Factor, Price per Unit Engine \$170 000 and for the Turbomeca \$171 500. Chair, I just want to explain so that there's no confusion to the Commission. Earlier we said that the engine additional cost is \$1 500 per engine, here of course  
25 the \$170 000 was an estimate of what the engine or the price

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for a typical, for a Pratt & Whitney engine, so we added the \$1 500 or the evaluators added the \$1 500 hence it's not to say that this is just purely to indicate that the price difference is \$1 500 per engine consistent with what was earlier reported. I then continue to read, Direct Operating Cost per Engine Over Life, and that is \$590 187.50 for the Pratt & Whitney, it's \$527 500. Installation Cost of the Engine for the Pratt & Whitney that is zero, for the Turbomeca it's \$28 750 per engine. Engine Documentation and Data Pack in both cases zero extra cost. All Training Costs (CBT – Computer Based Training and Cutaway included) in both cases zero extra cost. The total Cost Index then amounts to the, for the Pratt & Whitney engine to \$689 187.50, for the Turbomeca \$727 750 which indicates a Cost Index for the Pratt & Whitney of 1 and for the Turbomeca 1.06.

MS RAMAGAGA: Right, thank you Sir. The next page or the next pages rather from 469 onwards, I notice that they deal with what happened prior to the evaluation results or the evaluation, the approval of the evaluation model, so I will come back later to that at the right time once all the documents have been aligned that deal with just a bit of history leading to the finalisation of this process relating to the Turbomeca engine and the Pratt & Whitney engine. Will you then for now please revert to your statement, we were in page 9, I think so, yes. Yes, page 9. Page 9, 3.11 onwards. I'm quite aware of the

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fact that some of the factors that appear here have already been dealt with in more detail in the documents, the attachments that we have referred to, but to an extent necessary you may also then deal with the respective clauses in order to clarify, or paragraphs in order to make your evidence more clearer to the Commission.

MR ODENDAAL: I read from paragraph 3.11 onwards:

*“This report indicated that the Pratt & Whitney 207 has the highest Military Figure of Merit (100 vs the 90 points for the Turbomeca) and additional cost and risks with respect to the Arrius 2K2. The results were presented to the HPCB ...”.*

Which is the Helicopters Programmes Control Board:

*“... with the Defence Industrial Participation and National Industrial Participation evaluation results added the Arrius 2K2 had however the highest overall score”.*

Just to note this was added at the PCB.

*“After ample debate with respect to the engine selection at successive HPCB’s it was decided that the risk associated with the Arrius 2K2 engine can be sufficiently covered by contractual guarantees. The Arrius 2K2 was subsequently included in the contract baseline”.*

Paragraph 3.12 on page 10:

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5           *“On 3 December 1999, pursuant to the negotiations, a contract was concluded for the supply of 30 helicopters together with their logistic support (LUH Supply Terms no. 1221/2), the National Industrial Participation (NIP Terms no. 1221/4) effort, the Defence Industrial Participation (DIP Terms no. 1221/3) effort as well as an Umbrella Agreement (Reference no. 1221/1)”.*

Paragraph 3.13:

10           *“The total programme value approved by Cabinet was R1 989 million (March 1998 monetary value, RoE R6.25/USD1)”.*

MS RAMAGAGA:     Now in this paragraph you mentioned that the total programme value approved was the sum that is stated in that paragraph. Can you just explain as to what is included in, when you say “total” what factors were taken into consideration in order to arrive at (indistinct).

MR ODENDAAL:     Chair, Commissioner Musi that figure relates to the total cost of the programme that includes, included the cost of the main contractor and overseas supplier, provision for programme management and additional contracts to be placed later on, small contracts, provision for statutory costs which is typically the import cost of the equipment and the relevant value added tax to be paid, as well as in this case it also include the so-called subject premium [sic] which was

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the financing charge which was managed by the Department of Finance. This amount did not include the ... Well no, I retract that. That's correct.

MS RAMAGAGA: I would have liked you to conclude the sentence if there's anything that you wanted to add but from the items that you have mentioned the amount or the total sum seems to have taken into consideration several other factors, it was not just purely a purchase price.

MR ODENDAAL: That is correct. If I can expand it is the total programme cost, the total cost to the state.

MS RAMAGAGA: Right, thank you. Will you then proceed to deal with the Outcome of Acquisition as appears on the next paragraph and unless there's an indication to myself you may just continue to read into the record your statement as evidence.

MR ODENDAAL: Chair, Commissioner Musi I'm proceeding with the "Outcome of the Acquisition" in order to give some additional information and hopefully be helpful to the Commission to understand the, or to have more information on the full programme, the "Outcome of Acquisition":

*"4.1 The project and the contract was managed in accordance with the standard principle and procedures applicable in ARMSCOR.*

Paragraph 4.2:

*"As in all complex acquisition projects the*

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*associated risks had to be managed. From all the technical financial and schedule risks foreseen in the beginning of the programme only the timescale risk materialised and this will be expanded on below”.*

5

I may just add for the benefit of the Commission that the technical risks that was foreseen for example with the Turbomeca engine did not materialise, they however did take longer to complete the development of the engine but I think the good news is that there was only one of the many risks that were foreseen that materialised due to the management, it was effectively managed and abated throughout the programme. I continue to read from paragraph 4.3:

10

*“To mitigate risks Agusta was contracted to be the main contractor with single responsibility to develop and deliver an integrated helicopter system with its associated logistic support. Agusta were fully and solely responsible for their subcontractors and suppliers including local South African companies”.*

15

I proceed to read from the next section dealing with “Financial and Schedule Matters”, in paragraph 4.4:

20

*“With respect to the cost of the programme as approved by Cabinet it should be mentioned that the R1 914 million (March 1998 monetary value, RoE R6.25/USD1) has not been exceeded and more than*

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*R50 million (March 1998 monetary value) has not been utilised and the programme budget has been reduced accordingly”.*

And then just for the note and the clarification because the  
5 Commission will note there’s a difference in the, as I record it  
in 3.13 on the total programme value and this value is about  
R85 million smaller. This is due to the so-called subject  
charges which relates to the financing costs. Due to the fact  
that ARMSCOR did not deal with it I cannot really report on the  
10 financing charge, that is something which is in the domain of  
the Department of Finance. So, here it was the R1 114 million  
was the portion that was the responsibility of ARMSCOR to  
account for.

MS RAMAGAGA: Thank you for that clarification. I will then  
15 request Mr Odendaal to proceed unless there’s any further  
clarification required by the Commissioners? Thank you Sir,  
you may then proceed.

MR ODENDAAL: I read from paragraph 4.5”  
*“Approximately 70% of the value of the main  
20 contract was fixed in US Dollar and most of the  
payments were made at an advantageous exchange  
rate”.*

Fixed meaning there was no escalation applicable afterwards  
which is a very beneficial arrangement, I believe, for South  
25 Africa.

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*“The balance (approximately 30%) was payable in Rand escalated to the applicable milestone date only”.*

5 So the escalation stopped on the Rand portion on the date of the initial milestone date as specified in the contract, so in the case where there was timescale extensions the escalation stopped at the date that the milestone should have been achieved. And I continue to read:

10 *“This resulted in the total real expenditure of R2 305 million which represent an increase due to rate of exchange and escalation of 20.4% over the full period of the programme”.*

15 And I just want to clarify again Chair and Commissioner Musi, the previous figures that I gave was \$1 914 million but that was in March 1998 conditions, the R2 305 million that I’m quoting in paragraph 4.5 is the real expenditure, in other words in this case the real escalation and the real extra money or savings on exchange rates as reflected. So, the 20.4% you would, I hope agree with me, is a very small portion in escalation with respect to time value of money over such a long contract.

20 MS RAMAGAGA: Just before you proceed to the next subparagraph I would just like to highlight to the Commissioners that that figure of R1 914 million is the projected figure that was done or was reflected in March 1998. That was even before the, long before the announcement of the

25

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preferred bidders and this amount of R2 305 million is actually the amount that was spent when this selection or after this selection had been made in June 1999, is that correct or please clarify so that I too should understand.

5 MR ODENDAAL: Chair, I can further clarify, it's not, I think to make it more clear, this is the actual amounts paid, so it is not an amount that were applicable when we signed the contract, it was the actual amount paid, whether that was in 2000, 2008, 2010 that is the sum of all the actual amounts paid  
10 on the project.

MS RAMAGAGA: Thanks Sir, then you can proceed.

MR ODENDAAL: I proceed on page 11 reading from paragraph 4.6:

15 *"The value of the main contract remained unchanged and all deliveries have been concluded".*

4.7:

*"The first helicopter was delivered in August 2005 (25 months after the initial scheduled date) and the last in August 2009".*

20

4.8:

*"The main reason for the delay were the additional time required to resolve technical development issues that the avionics, autopilot and communication subcontractors experienced. The*

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*local production of helicopters further contributed towards the delay due to the capacity shortages.*

In South Africa at the South African companies.

5

*“Twenty three of the thirty helicopters have been produced locally”.*

4.9:

10

*“Substantial liquidated damages of approximately R75 million (March 1998 monetary value) were applied due to the delay in the delivery of the equipment”.*

The actual amounts was far larger than R75 million because it was levied at the actual rates applicable at the time.

Paragraph 4.10:

15

*“Following the initial fielding of the LUH the number of changes/additional items were requested by the South African Air Force. The Integrated Project Team is now implementing the last of these items utilising savings from the initial approved budget”.*

20

So those things, there was the provision in the initial budget for programme management and things that were not foreseen in the beginning and that provision has been used and also substantial savings that was realised. I continue to read:

25

*“The following items are still in process and will shortly be concluded: shipping containers for LUH equipment storage at various South African Air*

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*Force Squadrons, pilot and co-pilot dinghies, ...”.*

This is safety equipment if you fly over waters:

*“... changes to the flight planning system, new flash disks for the storage of flight map information and improvements to the cockpit procedural trainer”.*

I may note here that this paragraph was written two or three months ago, in the meantime most of these items has been concluded. I proceed to “Technical Matters” paragraph 4.11:

*“A number of improvements with respect to the contractual specification were introduced by the contractor at no cost to ARMSCOR, the most notable being a more technologically advanced efficient main rotor system, an advanced 4 axis digital autopilot and formal certification of the aircraft by the European Civil Aviation Authorities (EASA)”.*

All those things were not contractual committed, commitments that were introduced in the aircraft without payment by the state. 4.12:

*“It is worth mentioning that the contract has never disputed any warranty claim and has indeed allowed many warranty claims long after the expiry of the warranty of the particular item”.*

I continue to page 12 paragraph 4.13:

*“With respect to the support cost of the A109LUH,*

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5           *ARMSCOR and the DoD benefitted from the economies of scale which arise from the fact that the A109LUH is part of A109 family of helicopters of which more than 1 500 are operated all over the world. The specific A109LUH aircraft configuration has indeed subsequently been sold to a number of other countries including Sweden, Malaysia, Nigeria, New Zealand and Algeria”.*

10           These countries decided to buy the same configuration as was specified by the South African Air Force.

MS RAMAGAGA:     Thank you. You say these countries have actually purchased the South African configuration of the LUH. Would that include the engine that has been selected by South Africa?

15           MR ODENDAAL:     That would include the engine, the same engine as well as some of the components which are integrated that are from South African companies. Maybe to further clarify Chair, if we say economies of scale what that means is because there's more users of the same piece of equipment the support goes down because there is more through-put, also the

20           Air Force on numerous occasions benefited from improvements or that were introduced due to the insistence of some of the other users of this items and that the Air Force also got that improvements, generally with no charge, at no extra cost.

25           MS RAMAGAGA:     Thank you for that clarification. I'm

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tempted to just ask or enquire from you as to whether like you mentioned that there are several other countries which have purchased our configuration thereafter, that is after South Africa acquiring this LUH model and you say when you talk  
5 about the economies of scale you are looking at the fact that the more the users, the better the prices. Would that impact on the costs of spares as well as maintenance of the equipment?

MR ODENDAAL: That is correct Chair, certainly the prices are better if you have more users and that use the same  
10 facility, the facility, the fixed cost of the facilities are in essence shared more parties.

MS RAMAGAGA: Thank you. You may then proceed Sir to read into the record 4.14 of your statement.

MR ODENDAAL: *"Local industry has \*through Defence  
15 Industrial Participation) also benefited from and continues to benefit from the acquisition of the LUH as South African subsystems such as the communication system [sic], electronic warfare protection system and observation system has been  
20 included in the sales of the LUH to other countries".*

And I also can mention here they also sold similar equipment for other helicopter systems sold worldwide by Agusta.

MS RAMAGAGA: Thank you Sir. Mr Chair and Commissioner Musi I notice that it is now 13h00 and I did indicate earlier on  
25 that there may be a need for us to just finalise the

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documentation and it would be inappropriate for us now to lead the witness to go to the conclusion and at this point in time I'd like to request for an adjournment so that we can, we, the team members can attend to finalising our own logistics in relation to the presentation of the evidence and that would be a lunch break.

CHAIRPERSON: We'll adjourn for lunch.

**(Commission adjourns)**

**(Commission resumes)**

10 CHAIRPERSON: Thank you. Can the witness confirm that he is still under oath?

MR ODENDAAL: I do.

CHAIRPERSON: Thank you.

15 MS RAMAGAGA: Thank you Chair. When we adjourned the witness had finished reading paragraph 4.14 into the record and now I would like to request the Chairperson and Commissioner Musi to now focus their attention on Volume 2, Odendaal Volume 2. Now yesterday when Mr Odendaal was giving evidence I made mention of the fact that there may be  
20 some documents that are in Mr Griesel's bundle that I will want to introduce to his evidence for completeness of the record and I will only read the contents of the document where necessary. In particular now I would like to direct the attention of the Commission to pages 498 to 501 of Volume 2. No, I beg your  
25 pardon, ... I beg your pardon Chair, in actual fact the

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documents were only added today but I'm sorry to say it's Volume 2, they are in fact in Volume 1. Volume 1 of Odendaal. Now the document that I spoke about is in pages 498 to 501 and that is the constitution of the HPCB, the Helicopters Programme Control Board. Right, that document as I've indicated Chair is the constitution and what I would like to draw the attention of the Commission to is actually contained in pages 499 to 500 which outlines the functions of the Board.

The next document that I would just like to just bring to the attention of the Commission is the User Requirement which appears on pages 478 with supporting documents I think that appear on 497. Now the reason why I'm just bringing this to, or I'm highlighting the existence of the document in the bundles is to show to the Commission that the version that was ultimately approved is version 5 of the user requirement and also to show the Commission that indeed the document was approved.

Now the next set of documents that I would like to refer the Commission to is they appear in pages 115, 122, 123 and 124 of Volume 2, we are now done with Volume 1, I'd like you to go focus your attention to Volume 2. The document now that I'm referring the Commission to starts in page 108 and it is titled "The Audit Report: Foreign Package Proposals". Now this document is also incorporated in the bundle of Mr Griesel.

Mr Odendaal, I'd like to direct you to look at

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paragraph 2.20 of the document, will you please read that paragraph into the record?

CHAIRPERSON: Just hold on, on which page will that be?

MS RAMAGAGA: Page 115 Chair, I beg your pardon, page  
5 115. The paragraph I'm talking about is towards the bottom,  
paragraph 2.20. May I proceed? Thank you. Please read it  
into the record Sir.

MR ODENDAAL: Chair, Commissioner Musi page 115  
paragraph 2.20:

10 *"The MOD Policy for dealing with the International  
Defence Equipment Offers dated 8 August 1997  
(CPP/R/302/6b par.15) stipulated a multi-tier  
approach to be followed during the assessment of  
offers. The policy outlined a three-order evaluation  
15 to be performed and according to the SOFCOM  
constitution it managed the second order  
evaluation. No third order evaluation in terms of  
the policy has been performed and it is uncertain  
whether some other third order evaluation has been  
20 performed that could account for the changes to the  
recommendations mentioned in paragraph 2.3".*

MS RAMAGAGA: Now what I would like to highlight is the  
last sentence in that paragraph which states that: "There was  
no third order evaluation in terms of the policy". Can you just  
25 clarify to the Commission as to whether this comment by the

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Auditor-General or the auditor, the internal auditor, whether this was, is this comment is correct or not, and clarify.

MR ODENDAAL: Chair, if you'll allow me to go to page 52 of the same bundle which is part of the MOD Policy being referred to in this paragraph, if you look at item 15 on page 2 of this bundle, sorry item 15 on page 52 of this bundle you can see there's a description of First, Second and Third Order. Now just to point out the obvious fault in the Internal Audit Report, when it's referred to the Third Order Value System it was actually meant as can be seen from the First Order in terms of the Policy and I remind you what is written in the policy, First Order is an evaluation to be done by a work group, MOD workgroup to be appointed by the Minister of Defence, the Second Order is to be developed also by the MOD and the third order is by the project teams, so the third order obviously we showed ample evidence not only in this statement but also in other projects that there was Third Order Value System, so just to point out that obvious mistake but yes, so I cannot testify as to whether there was a First Order or not because I was not part of such a workgroup ordered, appointed by the Minister of Defence.

MS RAMAGAGA: Thank you. Now please turn over to page 122 of that Volume, in particular ... 122. Right, thanks. Now in particular I'd like to draw your attention to Clause 3.2.1.1 which deals specifically with "Observations" of Internal Audit.

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Will you please read that portion into the record.

MR ODENDAAL: I read from page 122 and from paragraph 3.2.1:

5                   *“The SAAF Light Utility Helicopter Final Response  
Evaluation Results for February 1998 Request for  
Offer, Doc NO: RFORES, Issue 1”.*

Paragraph 3.2.1.1, “Observations”:

10                   *“This document is considered to be under 90%  
configuration control since it has been properly  
numbered, identified, approved, revision controlled  
and the original distribution was by controlled  
copies. The only criticism on configuration control  
is that the copy of the document submitted to the  
SOFCOM was a photocopy of a secret document  
15                   which can therefore not be considered as a  
controlled copy”.*

MS RAMAGAGA: Will you comment on that?

20                   MR ODENDAAL: Chair, I think that was an obvious mistake  
by the person that did give the copy to the SOFCOM not to  
control it in the prescribed manner.

MS RAMAGAGA: Thank you. The next observation that I’d  
like to take you to appears on page 123 of the same document  
and that is in Clause 3.2.1.2 in particular, the “Observation”.  
Will you please read that into the record.

25                   MR ODENDAAL: Chair, if you would allow me also

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paragraph 3.2.1.3 refers to the same oversight, so I would like to deal with them together so that you can just see why this happened. First of all I have to mention I've got the greatest respect for these people that did prepare this report and the fact that I don't agree with what they've written is here is not because I don't think that they are more than qualified to do this job, to the contrary. I read from paragraph 3.2.1.2 "Observations":

*"Paragraph 4.1 of the report ...".*

10 And here they refer to the Evaluation Report for the initial appointment of the preferred supplier:

*"... the report states that the allocated scores were normalised. On investigation it was found that the scores had in fact only been calculated as percentages and not normalised".*

15 And then if you can allow me to skip to the observation, the next observation below under paragraph 3.2.1.3:

*"The report describes the general strategy followed during the evaluation but does not describe the actual method or process of evaluation. The actual method that was used consisted of a comparison of the offers against each other rather than against a norm".*

20  
25 Now what happened, what I suspect here, happened here Chair and Commissioner Musi, Mr Louw that was the author and the

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leader of this whole exercise was no longer in ARMSCOR and if they had the opportunity to speak to him he would have clarified that point very quickly and, but I will do this in any way for the Commission. If you can please go to my bundle  
5 "JO1" and go to page 338, and I tried to deal with not, with all the details but just to summarise to you that criticism, that observation was indeed a wrong observation. It's page 338 of my bundle under Section 7, this is the part that deals with the Response Evaluation Model for the February 1998 Request for  
10 Offer.

Chair, so before I read to you I'll explain what mistake that was made. The authors of the Audit Report, the Internal Audit Report did not see in the report how the evaluation was done, the details on (Indistinct) and they  
15 deducted it from the results. Had they had access to the Response Evaluation Model which we look at now they would see that the scoring and the evaluation was done exactly as described and approved in the Evaluation Model. I take you on page 338 just to illustrate some of these points why I'm right,  
20 why this is a wrong deduction in the observation. If you look at the last paragraph from paragraph 3.1.2 just above paragraph 3.1.3, page 338 of bundle 1. I read:

*"The scores achieved by each proposal for the Programme Requirements are added and divided by  
25 one hundred and ninety five (the maximum total*

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*score obtainable from the thirty nine evaluation factors) to get a normalised score which is called the PRI \*Program Requirement Index)".*

5 So, if you read this you should be able to see that this is how the authors of the model and how it was approved, this is exactly how it must be calculated, so it did not call for normalisation to 100, so this was actually done in the correct way as it was done in the report. I can further just for the benefit page to the next page, page 339, the last paragraph on  
10 page 339 to further illustrate this issue about the observations in 3.2.1.2 and 3.2.1.3 in the Internal Audit Report and here it's an example how exactly, how, it was actually prescribed exactly how the evaluation should be done.

15 *"The weighted scores achieved by each proposal for Technical Functionality are added and normalised that the proposal with the highest score has one hundred. The normalised score is called TFI (Technical Functionality Index)".*

20 Chair, what I tried to illustrate and I can take more time of the Commission if needed, that the model, the approved Evaluation, the scoring was done exactly in accordance with the approved Evaluation Model and had the auditors looked at that they would have not made the two observations. I hope that that clarifies that two observations Chair.

25 MS RAMAGAGA: Right, thank you Mr Odendaal. Will you

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then proceed to look at page 124 of the same document. 124, I'm just bringing to your attention and the attention of the Commissioners the discussion that is indicated on that page. Will you please just read it into the record as this is just an overall impression gained by the Internal Audit.

MR ODENDAAL: I read into the middle paragraph under the heading "Discussion" on page 124 of the Internal Audit Report:

*"This is one of the most detailed evaluation reports seen during the audit and could serve as an example of how important aspects should be addressed in an Evaluation Report".*

MS RAMAGAGA: Thank you. Now I'd like to refer you to the JIT Report, in particular page 375 of the JIT Report.

CHAIRPERSON: Page?

MS RAMAGAGA: Page 365 Chair. 375.

CHAIRPERSON: 375?

MS RAMAGAGA: 375, yes. And may I focus your attention to paragraph 14.1.13 . That is 14.1.13 on that page, that is the bottom paragraph. Mr Odendaal will you please read that paragraph into the record.

MR ODENDAAL: I read from paragraph 14.1.13:

*"The Acquisition Policies and Guidelines of the DoD and ARMSCOR, as well as the Defence Reviews, stipulate that the primary responsibility for the selection of subcontractors rest with the main*

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5 *supplier. However, ARMSCOR was not precluded from contracting subcontractors directly if this proved to be more cost effective. ARMSCOR did, in fact, nominate and select subcontractors for the supply of engines for the LUH and the gearboxes for the Carvettes”.*

Chair, ...

MS RAMAGAGA: Is it true Sir that ARMSCOR was not precluded from contracting subcontractors directly and further  
10 is it also true that ARMSCOR did in fact nominate and select subcontractors for the supply of engines and yes, for the supply of the LUH engines?

MR ODENDAAL: Chair, ARMSCOR has not placed [sic] subcontractors, selected subcontractors directly and place [sic]  
15 contractors directly on them due to the responsibility that that would have implied onto ARMSCOR as prescribed earlier today. I don't fully agree with the last sentence of this statement which says: "ARMSCOR did in fact nominate and select subcontractors for the supply of the engines for the LUH". I  
20 don't think it's correct to say that ARMSCOR nominated, in this case ARMSCOR were given the option to choose between two different engines which we did, but we have not nominated that, it was something that was part of the initial offer of the contractor and we exercised our right to opt for one specific  
25 one of all the facts were on the table about the two options.

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MS RAMAGAGA: Thank you Sir. Now I'd like to take you back to Volume 2. May I refer you back to Volume 2 of Odendaal please. Now just before I refer you to particular clauses or particular statements that I would like to highlight in this Volume and at this stage I'd like to just indicate to the Chairperson and Commissioner Musi that the purpose of this exercise is in actual fact to illustrate a notion that was explained yesterday by Mr Odendaal that the advent of the SDPP's did not then displace the existing ARMSCOR Armament Acquisition Processes but in fact there was a fusion of the two processes or it was expected to be the case whenever there were gaps. I am quite cognisant of the fact that Mr Griesel's statement does deal with the issues, but what is important is just for me to highlight to the Commissioners those excerpts that are relevant for the purposes of the acquisition of the LUH and I will thus be brief in my references. May I proceed?

Thank you Chair. I have already indicated that this is based on the Volume 2, Now in page 6 of Volume 2, in particular paragraph 4.1 Mr Griesel states that "ARMSCOR policies and practices were used during the execution of the SDPP process", that appears on 4.1 Commissioner Musi, page 6 of Volume 2. Should I proceed? Yes, in 4.1 Mr Griesel does submit that "ARMSCOR policies and practices were used during the execution of the SDPP process". It is, however, important that this statement paragraph 4.1 be read with paragraph 4.10

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that appears in page of the same document which reads as follows, page 8 Commissioner Musi. Page 8, paragraph 4.10. Should I proceed? Thank you.

5                   *"It should also be noted that this policy did not reflect the organisational structures that were formed post 1994 as an output of the MODAC1 process, namely the Armaments Acquisition Council Board ("AACB"), the AASB and the AAC, and also did not sufficiently provide guidelines for foreign*  
10                   *acquisitions of the nature of the SDPP's. During 1999, a further Acquisition Policy (Acq 1/98, dated 19 July 1999) was developed. This policy was purely a DoD ( Department of Defence) policy and served to introduce the role of the Defence*  
15                   *Secretariat, to establish the Departmental Acquisition and Procurement Division ("DAPD") as the nodal point for armaments acquisition, and to provide direction for the management of the total spectrum of acquisition activities".*

20                   Now finally I would like to refer the Commission to page 9 paragraph 4.12 which states that:

25                   *"The distinction with the SDPP was that each product system (save for the Corvette's which were to incorporate the 'nominated' local combat suite into the foreign main contract) was essentially for*

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5           *existing, foreign-designed and developed weapon system products that required certain adaptations or modifications to meet the unique South African requirements. It was accordingly necessary to adapt and interpret VB 1000 so that it was integrated with a foreign procurement programme of this nature”.*

10           Now this was read into the record solely for the purpose of just highlighting and indication by Mr Griesel who is more of an authority on the acquisition about the fact that there was a fusion and I want to repeat Chair and Commissioner, when I do this highlight it is not meant to try to persuade a pronouncement on the validity or otherwise of any of the policies or processes. Thank you.

15           Now shall we get back to your statement Sir. Will you then please proceed to ... Maybe just before you go to the conclusion of your statement just briefly giving an overview to the Commission, can you talk about what the possible implications of the cancellation of the contract could be, what consequences would follow from that and if that were to be done on average how long would it take to deal with the process of replacement of the equipment that would have been lost through the cancellations.

20

MR ODENDAAL:     Chair, Commissioner Musi, I think it's clear from the documentation and the processes that this

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acquisition started a long, long time ago and took some years to complete. A typical programme like this is something that take at least 10 years from the time that the requirement is generated until it's contracted and delivered and implemented  
5 in the Air Force or in the arms of service for that matter.

Should for whatever reason there is a decision to cancel and start the programme over and we have to be sure that this is a requirement from the South African Air Force to have Light Utility Helicopters as almost all air forces in the  
10 world has in their inventories and also has been in service in the South African Air Force for many, many years, so if this should be cancelled it would mean that the Air Force have to again start the process of procuring new Light Utility Helicopters.

15 That means that it could be up to 10 years before they will have a new piece of equipment, not to speak about the cost to enter into such a procurement project on a second time at a later date at a much higher cost and the impact on the operational capability for 10 years that the equipment is not  
20 available to them until there is new equipment, so I think to cancel such a, or to start over with such a procedure and discard what is at the moment in inventory would have a huge impact operationally, also in terms of re-implementing inside the Air Force which is also typically a process of three to five  
25 years, that I think is too grave to even consider to talk about.

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I think if I, towards the end of my conclusion Chair there is also some financial indications that I will give but I will, with your indulgence I will just let it stand over for a minute or two, but if I can summarise that point it will be  
5 disastrous for the Air Force to do such a thing and not even considering the potential financial impact on the state.

MS RAMAGAGA: Thank you Mr Odendaal. Can, will you then please round off your conclusion?

MR ODENDAAL: Chair, Commissioner Musi I read on page  
10 12 item 5 "Conclusion":

*"Following a competitive bidding process and the evaluation of the tenders in accordance with approved Value System the contract for the LUH was awarded to the bidder that offered the lowest  
15 price and best technical solution".*

I may also add here the best Industrial Participation, but I didn't deal with it formally because it was not part of my brief.

I continue to read

*"The last helicopter was delivered in August 2009  
20 and the value of the main contract remains unchanged".*

In other words no additional cost.

*"The acquisition was concluded within budget as in  
25 accordance with the contractual technical specifications. Should the same programme be*

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*repeated today the cost could be as much as 3  
(three) times more”.*

And that conclude the written statement.

MS RAMAGAGA: Right thank you. Just to round off, is  
5 there anything that you would like to add?

MR ODENDAAL: Chair, Commissioner Musi I think there has  
been many audit reports of the whole SDP Process, generally  
the LUH, this was one of the items with the least criticism with  
respect to the LUH and I think the presentation about the LUH  
10 is not concluded since you still will hear some other evidence  
about it with respect to Industrial Participation and as well as  
finances, but I think it should be clear from what we presented  
to you that there was a formal approved process followed to  
arrive at all the logic conclusions, of course along the way  
15 being a vigorous process there's always debate and different  
opinions but in my view this contribute to ensure the best value  
to the state.

MS RAMAGAGA: Right, thank you. That concludes the  
evidence of Mr Odendaal, but just before I hand him over back  
20 to the chairperson I'd just like to introduce one document which  
purpose is to help the Chairperson and Commissioner Musi to  
navigate through the documentation relating to the LUH at the  
time when you execute your mandate. Sir there is a document,  
two documents that have been generated and is there, the one  
25 is described as the Light Utility Helicopter Document marked

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“PO1”, and the second one is described as the Engine Selection Document marked “PO2”. Is it correct that this, these two documents are a fair reflection of the activities or relevant activities relating to the Light Utility Helicopter acquisition as well as the activities relating to the engine selection?

MR ODENDAAL: I confirm that the source documents is the documents as provided and it is a fair representation of the timeline and the relevant important events deemed to be useful for the Commission.

MS RAMAGAGA: Thank you. The document has thus been submitted to the commissioners for the purpose of assisting in the navigation. Thank you, that concludes the evidence.

CHAIRPERSON: Thank you Ms Ramagaga. Is there anybody who wants to cross-examine Mr Odendaal?

LHR REPRESENTATIVE: Mr Chair, if I may, my name is David (indistinct) from Lawyers for Human Rights, we represent Andrew Feinstein, Hennie Van Vuuren and Paul Holden. While I don't technically have right of appearance before the Commission Ms Snyman was unavailable to come to today, so I want to make very quick submissions. We only received the documentation today for this particular witness and therefore it's been impossible for us to determine whether our witnesses [sic] wish to cross-examine or not, it's a total of around 820 pages that we've been given now and if I understand correctly

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there's an additional 32 pages that we haven't yet been given, we also only got the transcript at around 12h00 today when they were posted on the website, so we will still need to consult with our clients whether they wish to cross-examine  
5 this particular witness or not.

CHAIRPERSON: I'll tell you what, I think I have a difficulty with your clients, this is a public hearing, this witness has been in the witness box from Monday, the time that you were given the documents is the time that we also got the  
10 documents. The excuse every now and then of trying to get more time after a witness has testified I think is causing us more problems. Your client was entitled, well I'm not sure whether you are an attorney or you are just a friend, I'm not sure, what is your actual position?

15 LHR REPRESENTATIVE: Mr Chair, (indistinct) strategic litigation of Lawyers for Human Rights. Technically with the Law Society I'm an article clerk in South Africa.

CHAIRPERSON: You were supposed to have been here if at all your client had any interest of cross-examining this witness.  
20 We can't postpone every now and then after a witness has testified to give your clients an opportunity of going to decide whether they want to cross-examine or not, and in my view it's not only the interest of your client that we must take into account, if each person is going to behave like your client then  
25 this process will take another four, five years before we come

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to an end. Your clients are expected to be here on a daily basis, hear evidence, if he intends cross-examining as soon as the witness finishes leading evidence he's supposed to start cross-examining. The system that your client is adopting, I think, it must come to an end because I'm not going to postpone every now and then after a witness has testified in order to allow your client an opportunity of going to decide whether he wants to testify or not.

If I do the same thing with all people who might have an interest in cross-examining witnesses then this process will never come to an end and I thought the last time when this incident happened that it will never happen again, now it is happening again. And every now and then it's the same reasons that you bring forward, that the real (indistinct) that you know the transcripts were not posted timeously on the website, but this witness has been testifying in public! I'm not quite sure what you are likely to see on the website which you could not hear at the time when the witness was testifying.

LHR REPRESENTATIVE: Mr Chair if I may just respond to some of those, perhaps criticisms to the way in which our clients have been attending the hearings, unfortunately Lawyers for Human Rights is a donor dependent organisation, we have limited funds and limited resources to participate in the hearings, as such we are simply unable to be here every day to hear the testimony, so for example we were unable to be

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here yesterday for the testimony and therefore we are dependent on the transcripts to know what the details of that testimony were.

5 In addition unfortunately the documents that are being referred to during the leading of the evidence is vital to the testimony that is being given by the witness. There are over 800 pages that have been referred to and we only received them today at 11h15 in the morning, it's simply impractical for us to be able to tell our clients to give us instructions as to  
10 whether they wish to cross-examine the witness or not.

And if I may, it's also in an attempt to assist the Commission with a full, allowing all the evidence to come out before the Commission so that it's in the benefit of the Commission to be able to have the full amount of evidence  
15 that's being presented before the Commission today. If you would Sir, we would ask that we be allowed to at least consider the documents and witness statements that had been given to us so that we can get instructions from our clients.

CHAIRPERSON: Whilst I understand that Lawyers for  
20 Human Rights depend on some people to fund it, but I've got interests of other people to take into account. For instance ARMSCOR, they have employed lawyers and attorneys who are sitting here at great costs, a great cost. ARMSCOR is in the same position, they are sitting here at great cost, so should I  
25 sacrifice the interests of all those people in order to

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accommodate your clients? I think that will be unfair to everybody else, it will also be unfair to us, you know the sooner we finish with this inquiry the better for everybody, but therefore I think a system which each and every time when  
5 once a witness finishes testifying we must adjourn for a day or two to allow your client to prepare properly I think is totally unacceptable. Maybe even before you answer let me hear what the other parties have got to say. Ms Ramagaga.

MS RAMAGAGA: Thank you Chair. I hear the lawyer  
10 indicate or state to the chairperson that his designation is the designation of a candidate attorney who is currently article to a principal at the Lawyers for Human Rights institution and I will restrain myself from commenting about the dress code in relation to lawyers that appear before judges, I will just confine  
15 myself to the issues that he has raised. He tells the Commissioners that he received documents only today at around 11h00 or after 11h00, but what he does not tell the Commissioners is that by arrangement and agreement with the Commission on Monday the 18<sup>th</sup> day of November they were  
20 supposed to uplift the documents yesterday.

They do not explain as to why they were not here yesterday to uplift those documents and if they had honoured the agreement between themselves and the Commission that excuse would not have been advanced, but the question is  
25 whose fault is it that they only received the documents today?

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Chair, I'm not talking about supplementary documents, I'm talking about the documents that had been agreed upon. Now turning to the issue of documents that we also received today, I have restrained myself to in fact deal with those documents in the presentation of evidence and I'll tell you why, upon perusal of those documents an assessment of evidence that had been led thus far, not much turns on those documents, (indistinct) they are supposed to be ready to commence with the cross-examination today. Now turning to the question of inability to attend the proceedings or the public hearings it is important to be mindful of the fact that it is unprofessional in the law profession for anyone to accept mandate while he or she knows that he will not be able to execute the mandate fully, properly and conveniently to all concerned.

Now in this case the excuse that "we are a public institution that relies on public funds for survival" I must submit with respect Chair is not good enough. At the time when they accepted the mandate and even prior to the commencement of the public hearings a schedule was released which schedule indicates as to how long for the first session of the first phase we intend presenting the evidence. Now also Chair an excuse that there are no records or there are no documents supplied, or there is no, there are no transcripts of the evidence that are placed on the website, we've got to be mindful as you deal with this issue Chair of the fact that, that

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clients that are represented in this matter are not just people that have not participated in this case, in particular for the purpose of this Commission they have made submissions and in those submissions they have at length and breadth criticised  
5 the engine selection.

Now they know exactly what it is that they would like to challenge in respect of the evidence of this witness, now you cannot say while you have gone at length and breadth in particular from page 187 of their submission, the clients'  
10 submissions they attack the selection of the engine and mainly this witness was talking about the selection of engine and this by the way Chair cannot be seen as something new, it's actually a continuation of what was begun or the evidence that was presented by Colonel Viljoen.

15 Even at the time when towards the end of presentation of Colonel Viljoen's evidence we drew the attention of the world to the criticisms that are levelled by their clients and that revolves around the selection of the engine and today to come back and say: "I am not ready to proceed"  
20 and the question is why, "I don't have documents, I've explained about documents, I was not able to be in attendance because one or two, or three other things". If you can't execute mandate don't accept the instructions, it's quite simple and clear.

25 And also have this morning indicated to the

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Commissioners as to the length that, or how far we go in order to try and make sure that we do not delay the hearings by going an extra mile burning the midnight oil, working through the night and that is not something that is only done by us, but  
5 even institutions involved are doing that, and maybe I should also draw the attention of the Commissioners to the fact that Lawyers for Human Rights has written a letter and it's actually a press release of the 20<sup>th</sup> day of November 2013.

Now this press release, the essence of it is a  
10 complaint about the delays in the public hearings, the essence of this press release is to indicate or to suggest that there is some tardiness from some corner in relation to the release of information that is required. I do not anywhere here see a confession or just a fair statement to say this is what we have  
15 done, these are the agreements that we have reached and it is quite interesting that this press release is dated today, the 20<sup>th</sup> day of ..., or yesterday, the 20<sup>th</sup> day of November and yesterday, the 20<sup>th</sup> day of November or yes, yesterday, is the day on which they were supposed to have uplifted the  
20 documents instead of ...

CHAIRPERSON: And they didn't come to you to pick up the documents, you say that is a (indistinct) statement?

MS RAMAGAGA: It is a ..., I wonder whether one should say it's a coincidence or not but that the day on which she was  
25 supposed to uplift documents you find it fit to make a press

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release. It would be better if you were to make a press release and subsequently come and collect documents, you don't do that and then you come today and you say you received documents at 11h00, you don't even explain as to why at 5 11h00, whether you were here even earlier and why you chose not to come on the agreed date. I will not go into the contents of this press release but I'm just saying the essence.

Now what Human Rights is trying to do, Lawyers for Human Rights, is to exactly do what they are complaining of to 10 say please give us another postponement, we still want to do one, two, three and four. Unfortunately this Commission, in this Commission we do not have the luxury of doing things at our own pace.

CHAIRPERSON: Thank you.

15 MS RAMAGAGA: Thank you Chair.

CHAIRPERSON: (Indistinct), do you want to add something, but then even before you add something can I find out are you a candidate attorney?

20 LHR REPRESENTATIVE: Mr Chair I'm an article clerk, I finished my articles in August, I had applied for an extension of my (indistinct) but unfortunately the Law Society lost the application, so I have to resubmit it.

CHAIRPERSON: Are you a candidate attorney or not, or have you finished your articles?

25 LHR REPRESENTATIVE: I have finished my articles.

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CHAIRPERSON: And that is the dress code that you think is appropriate for this Commission?

LHR REPRESENTATIVE: Mr Chair I do apologise, I did not expect to be speaking today. I did not know that we were at the end of the testimony so I did not expect to be speaking today, had I known I would be speaking I wouldn't have dressed, I would have dressed in an appropriate suit, so I do apologise for that Sir.

CHAIRPERSON: Advocate Solomon.

10 ADV SOLOMON: Chair, Commissioner Musi, the approach of my client ARMSCOR is as follows; we hear from Lawyers for Human Rights that they wish to be of assistance to this Commission and bring relevant information to the fore but they want to do it by remote control and then to snipe from the  
15 sidelines and complaint about the pace at which the Commission is attending to its affairs. I think I would be failing in my duty as counsel for my client not to associate myself with what Ms Ramagaga has already said, we need to balance the interests of my client, this witness in particular as  
20 against Lawyers for Human Rights. A pattern is developing here, they want to run their interest in this Commission by remote control, it's not the first time, I think it's at least the third time and possibly the fourth time that there is a request at the end of a witness's evidence for the matter to stand  
25 down, there's a complaint about not having had access to

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documentation.

Really the posting of the transcripts of the evidence of witnesses is something that's unexpected, it's a luxury, it's not a necessity. When one has an interest in judicial proceedings such as this you attend, you make notes, you listen to the witness, you, if you have any interest ask for documentation that you consider relevant, you do it at the adjournments of which there are several during the course of the day, if those requests are rebuffed or not adhered to needful to say an approach can be made to yourself and Commissioner Musi in an open hearing to ask for your assistance in obtaining access to documentation or whatever they need, they can't start to look for that documentation when the witness has just concluded his evidence and then to say: "I'm taken by surprise by the fact that Mr Odendaal is now finished".

Well, we all know how these proceedings work, we're taken by surprise every hour, minute of the day, things happen, that's the nature of these type of proceedings, that's why you need to be in attendance. Now if you want to try and run it by remote control you're then going to have to suffer the consequences and if you're not ready you can't keep incessantly asking for stand downs and postponements, so we would object. Thank you Chair and Commissioner Musi.

CHAIRPERSON: I think we are going to grant them a

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postponement and I hope this is the last postponement, I hope this is the last postponement, we are not going to end up having to adjourn each and every ..., after a witness has testified because Lawyers for Human Rights wants to go and read the records or to go and consult with their clients in order to determine whether they want to cross-examine or not. Any person who wants to cross-examine a witness must be present at the time when that witness finishes leading evidence cross-examination must start.

10 I think we are going to bend backwards for the last time to accommodate your clients and I can assure you it will not happen again unless if at all there are exceptional circumstances. What I intend doing is then to adjourn until Monday morning to give you an opportunity and you and your clients to look at the, whatever documents that you want to look at and then start cross-examination on Monday morning but then as I said I'm not going to allow it to happen again because every now and then after a witness has testified we end up losing a day or two because you want to, you always you've got somebody else to blame.

20 Like you say now you were supposed to collect the documents yesterday, you didn't collect the documents yesterday, but then you want to put the blame on somebody else. I hope this happens for the last time and if next time we try the same thing we will not allow it unless if at all there are

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exceptional circumstances. Mr Odendaal I'm sorry that you have to go back home and come back only on Monday, I had hoped that by tomorrow we'll be in a position to finalise your evidence so that you can go back and do what you are supposed to be doing, I'm sure you are not living for this Commission only, you must be having some other responsibilities. I'm very sorry, I do apologise. Then in that case we'll adjourn until Monday morning. Thank you.

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**(COMMISSION ADJOURNS)**