

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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DATE : 12 JUNE 2014

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HEARING ON 12 JUNE 2014

CHAIRPERSON: Good morning everybody and Manuel, do you confirm that you are still going to tell us the truth?

5 MR MANUEL: I confirm that I will continue to tell the truth.

WITNESS: TREVOR MANUAL AFFIRMS

CHAIRPERSON: Thank you. Advocate De Vos?

ADV DE VOS: Commissioners, I will start by apologising
10 for the delay in the starting procedure due to the fact that we could not prepare the bundles, because we had disastrous technical problems and I also would like to express our gratitude to the secretariat this morning for assisting us in this regard, thank you. Now, Mr Manuel
15 do you [indistinct] and understand that this Commission is looking into the rationale of the decision procure this particular package, but perhaps more importantly also the question of corruption including the secondary contracts. Now, we have heard evidence before that
20 there may have been corruption in some... in some form or another, but the details obviously are still unclear. So, I convey to ask you a very serious question and that is: Where did you get your tie?

MR MANUEL: I purchased this tie at a store. You can
25 come and check the label on it. I do not recall the price,

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but I have had it for a very long time. Thank you, Commission.

ADV DE VOS: Now on a... perhaps a more serious note, Mr Manuel, the first issue I want to raise with you is the
5 question of approval by Parliament. What is your viewpoint on this? Did Parliament approve the Strategic Defence Procurement Package as we know it?

MR MANUEL: Chairperson, in my submission yesterday I elucidated the separation of powers and I referred to the
10 Constitution that gives Parliament the right and responsibility of overseeing what the executive does. The acquisition is an executive decision and that is quite fundamental in a democracy that is focused on the separation of powers and I think our constitution is
15 abundantly clear on that issue. However, to get to that point, what the executive and administration sought to do was to embark on a very public process of both the defence white paper which was a policy shift to introduce a democratic dispensation on oversight of our
20 Defence Force and secondly, a process of a defence review that changed the force design. So, those were public processes, but having undertaken those public processes the decisions, I think, correctly were executive decisions. Thank you.

25 ADV DE VOS: Mr Manuel, my clients will argue before

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this Commission that it was necessary to go back to Parliament to get Parliament's approval of the Strategic Defence Procurement and I am going to raise this argument with you. You will remember that the defence review specifically stated in paragraph 8 of chapter 8:

"The approval of a force designed by the Parliamentary Defence Committee, cabinet or Parliament does not constitute a [indistinct] approval for all implied capital projects or an immutable contract in terms of the exact numbers in terms of equipment and best it constitutes approval in principle for the maintenance of the specified capabilities at an approximate level."

What is your comment on that?

MR MANUEL: The Chairperson, Commissioners, I testified yesterday that I was a member of Parliament for 20 years until the elections this year and I know that in the context of Parliament there is not the necessary technical competence to deal with these matters in detail. The key issue and I go back to the fact that the Constitution requires Parliamentary oversights decisions. The moment you involve Parliament in the nitty-gritty of decisions, the question would have to arise: Who oversees Parliament? And I think that that matter was discharged in the method that was used in the acquisition. Thank you.

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ADV DE VOS: Well, in terms of the defence review and specifically paragraph 74, it was specifically stated that, I quote:

*“The chosen force design option will become the
5 object of implementation planning for the next decade or
longer. However, the realisation of this force design will
be influenced by periodic provisions of the defence
review and subsequent planning will reflect the
continuously changing strategic environment and
10 prevailing circumstances. The result is that the exact
details regarding the type and quantities of main
equipment will inevitably deviate from this vision.”*

And now perhaps the most important part:

*“Such deviations will be subject to parliamentary
15 oversight and stipulations of the acquisition process.”*

Now we know that that did not happen. That was a process undertaken by Cabinet.

MR MANUEL: Commissioners, let us unpack what learned counsel has just... and the first issue is period
20 review. There is a process currently underway of a major
defence review. That is periodic. Whatever the period is,
it is periodic. The second issue is in the context the
force design... and go back to the defence review that
Ms De Vos is using. Part of the acquisition programme
25 that we did not even get through was for all of the

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landward defences. This was focussed on dealing with primarily a problem that had arisen in respect of particular elements and that was in respect of the Navy that was seriously undercapitalised and the Airforce that was seriously undercapitalised and then to expand dealing with the [indistinct]. That was... that was the package, but I think in the understanding even of that defence review there would have been issues that were taken account of. I think the next part of the landward defences went by a name like Project Hoefyster. That would never gotten round. The issue of Parliament and its oversight role is exercised in the manner in which Parliament oversees all of Government's work, primarily in committee commissions. The appropriations bill would articulate the selection by the executive of various functions of Government. Each department would place before Parliament a strategic plan for five years broken down into annual work plans and there is an annual report discussed in this [indistinct]. So, Parliament's oversight role is a continuous role. It is not a once-off. It is a continuous role and I think it is evident there. You could work your way through the [indistinct] and the committee report and find that Parliament is in fact not lacking in that regard. Thank you.

25 ADV DE VOS: Mr Manuel, just to clear this up. We are

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talking about the argument that the approval by Parliament was needed for the arms deal package as such. I understand your answer to be that that was not necessary, because the Cabinet had the executive
5 function and could make that decision by itself. Do I understand you correctly?

MR MANUEL: I am saying in the context of separation of powers, Commissioners, Parliament's detailed involvement in acquisitions would not be required.

10 ADV DE VOS: So, what you are saying is that the Parliament need not approved the Strategic Defence Procurement Package. That is what you say?

MR MANUEL: I repeat, Commissioners, Parliament is involved at a pretty high level of strategic oversight and
15 then becomes a reference point for accountability as articulated in the Constitution.

ADV DE VOS: Now, Mr Manuel, if you look at the first document in the bundle before you, you will find an article written by Professor Laurie Nathan. Now I take it
20 that you are familiar with Professor Nathan as he was intimately involved in drafting both the white paper on defence and the defence review.

MR MANUEL: No, I am acquainted with Laurie Nathan, Commissioners.

25 ADV DE VOS: But in this article he specifically states

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that

“The approval of Parliament of the defence review 1998 cannot be construed as a mandate by weapons. Parliament was not asked to sanction the arms deal at
5 *the time of the review or subsequently.”*

And his... his viewpoint as expressed in this article is the same as my client's, namely that Cabinet had to go back to Parliament to ask for permission to continue with the arms deal.

10 MR MANUEL: Commissioners, I think that Professor Nathan and I are saying the same thing. What we are saying is that you do not require the specific approval of Parliament to undertake the acquisitions. There is that
15 line in the separation of powers that ought not to be crossed. I think what Ms De Vos is asking me to do is to in fact undermine what I believe to be a firmly and
trenched constitutional principle of the separation of powers. Thank you.

ADV DE VOS: Thank you, Mr Manuel. You indicated that
20 Parliament has properly dealt with its oversight duties and you also gave evidence about SCOPA and the 14th Report yesterday. As you know one of my clients were a member of SCOPA, Mr Feinstein, are you familiar with that?

25 MR MANUEL: I am familiar with the fact that Mr

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Feinstein was a member of SCOPA, but so were many other people.

ADV DE VOS: Well, he instructed me to discuss the issue of calling... the calling of ministers in front of
5 SCOPA which you raised yesterday. You will remember that you... the complaint was that the 14th Report of SCOPA was produced without calling any of the relevant ministers to SCOPA.

MR MANUEL: Chairperson, I am sure that what I said
10 yesterday and if you go to the minute of SCOPA of 26 of February 2001, I said yesterday what I said in that meeting and that was that the Treasury was not called. It is most unusual for SCOPA to call ministers. But I would have thought that the body of information and expertise
15 on these matters vests in very competent public [indistinct]. SCOPA's oversight is normally at that level and I could say without fear of contradiction that the Treasury has not been called. I said yesterday that it was an unusual step to engage in this discussion as a
20 trio of ministers after would issue a... or convene the press conference to criticise the 14th Report. Thank you.

ADV DE VOS: But in the end there was a presentation by the ministers to SCOPA which took place on the 22nd of February 2001 and I think you alluded to that
25 yesterday. Is that correct?

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MR MANUEL: Ja, we may quarrel about the date, but that is correct.

ADV DE VOS: According to Mr Feinstein there was an ANC study group meeting. That is a meeting of the ANC
5 members of the Parliamentary committee before the hearing. Can you remember that?

MR MANUEL: Chairperson, it was not normal for members of the executive to be called into study groups, unless it was a lined function. So, we were not lined... I
10 certainly was [indistinct] line function responsible for SCOPA, because SCOPA is of Parliament and not... who does not have the same relationship. So, I cannot recall something that I was not at.

ADV DE VOS: Mr Feinstein will give evidence that there
15 was such a meeting that during this meeting, yourself included, instructed the ANC members in exactly what questions they should ask of the ministers during this hearing which effectively precluded them from exercising the oversight role.

20 MR MANUEL: Chairperson, Commissioners, I do not recall. I am sure that that might be Mr Feinstein's recall, but it does not make it perfect recall simply because it happens to come from Mr Feinstein. If evidence were to be sought, then I am sure that every member could be
25 called, but it is not unusual in the Parliamentary process

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such as operates here in a derived Westminster system that you have a whip that controls what members do. Everybody does this. It is the same across all party lines in the National Assembly, in provincial legislatures, but
5 many parts of the world that have a system derived from Westminster would have a whip in place as well. Thanks.

ADV DE VOS: But surely, Mr Manuel, the idea has always been that SCOPA would act independently and
10 that is why the chairperson of SCOPA used to be, I am not sure whether it is still the situation, a member of the opposition party. Is that not correct?

MR MANUEL: That was a convention applied, but which is why I say I do not recall any study group meeting,
15 because I had no line function relationship with SCOPA, Commissioners.

ADV DE VOS: You have not answered my question, Mr Manuel.

MR MANUEL: I am saying that... what precisely is your
20 question, Ms De Vos?

ADV DE VOS: My question is the following: Is not it correct to say that SCOPA was supposed to be an independent Parliamentary committee precisely because they had to... but they still have to exercise their
25 oversight duties including oversight over what Cabinet

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does and does not do and that is why they are supposed to be independent and clearly from what you are saying, they no longer are independent and you and the Cabinet felt that you were entitled to interfere during that SCOPA
5 hearing of the ministers.

MR MANUEL: Chairperson, Commissioners, I have a sense that [indistinct] speculation. I am saying I safely do not recall having attended a study group meeting of SCOPA. I have always respected and during my years as
10 minister and as Member of Parliament, had very high regard for the outputs of SCOPA. I am saying that it might be that recall of Mr Feinstein is recall of Mr Feinstein and his alone, but that needs to be tested in a different kind of environment. Be... the convention of
15 Parliament has been that the chair of SCOPA has gone to an opposition member. I believe that this might still be the case. Thank you.

ADV DE VOS: Mr Manuel, I put my client's version to you. Let us just move on. Do you... I saw you were not
20 very happy when you saw I had a copy of After the Party written by Mr Feinstein [indistinct], but I have got a book that I am sure that you would appreciate and that is a copy of the Constitution.

MR MANUEL: Yes. May... I should say [indistinct].

25 ADV DE VOS: I know that you are familiar with this, but

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just indulge for a moment. Section 217 of the Constitution deals with this procurement and it says the following:

5 *“Where an order of state in the national, provincial or local sphere of Government or any other institution identified in National Legislation, contracts for goods or services, it must do so in accordance with the system which is fair, equitable, transparent, competitive and cost effective.”*

10 You are familiar with this I am sure?

MR MANUEL: Commissioners, I am familiar.

ADV DE VOS: Are you... is your evidence that the system that would be followed in... or that the Cabinet followed more specifically in procuring the arms, was a
15 system which was fair, equitable, transparent, competitive and cost effective. Is that your evidence?

MR MANUEL: It is my evidence that the system utilised, complies broadly with Section 217. The... I think the particular point to bear in mind is that what may be
20 competitive in some instances would not necessarily be competitive in all instances. Let me cite an example, if...
Commissioners, if Ms De Vos wants to buy a car today she could go out and buy a Chery, a Chinese manufactured car, for perhaps R70 000 and that might be
25 the cheapest car in the market. She might choose to buy

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a very expensive Maybach at about R4 million. It may be competitive at a different level. So, the way in which these adjectives they used in Section 217 needs to be given context by the needs of a particular circumstance.

5 Thank you.

ADV DE VOS: Mr Manuel, nobody is going to argue with that principle. Obviously nobody says that the cheapest arms should have been procured. But can you just look at these specifics? I notice from all the minutes of the
10 meetings that you were not necessarily involved and you also said so yesterday in many meetings where... many of the meetings where the details of the procurement were discussed. But I want to take you to some issues and just highlight the argument that my clients will be
15 using in front of this Commission why they say that the process was not compliant in terms of Section 217. Firstly, will you please turn to the Joint Investigation Report, chapter 4 and you will find it on page 4 of the bundle that was given to you this morning. Can you
20 please have a look at the table that appear at the bottom of page 78? That is the financial evaluation results which were also as such presented to SAFCOM were as follows and we are now dealing with the question whether the Gripen should have been chosen, not the
25 Italian aeroplane, Aermacchi as it is called. Now, if you

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look at this table, do you confirm that only the BAE SAAB received a score for ...[intervenes]

CHAIRPERSON: I am sorry Advocate De Vos. You are saying that the Gripen should have... should not have
5 [indistinct] instead of the Aermacchi? Is that what you are saying?

ADV DE VOS: I think that is what I said.

CHAIRPERSON: The Gripen and the Aermacchi.

ADV DE VOS: I think the argument was that there is...
10 oh, I see. Now I have got it. I have got the... I see what you are saying. My technical knowledge is not [indistinct]. The three possibilities were the Saab Gripen, the Germany [Indistinct] and the France Dassault mirage. I am sorry, I will rephrase that question. Okay,
15 so the choices were between those three bidders and if you look at the column you will see that only BAE SAAB received a score for their financing offer for the Gripen. Neither did Germany DASA nor the France Dassault receive a score for that. Can you see that?

20 MR MANUEL: Yes, I can, Commissioners.

ADV DE VOS: Thank you. In paragraph 4.3.6.3 over the page the following comment is made:

*"It is clear from the above that there was no competitive financial evaluation. The aforementioned
25 lack of competitive financial evaluation played an*

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important role in...”

[intervenes]

CHAIRPERSON: I am sorry, Advocate Definitely Vos.
Where are you reading?

5 ADV DE VOS: Paragraph 4.3.6.3.

CHAIRPERSON: On which page?

ADV DE VOS: Oh, it is page 5A, sorry. I thought it was
page 5. It is page 5A, 4363.

10 *“It is clear from the above that there was no
competitive financial evaluation. The aforementioned
lack of competitive financial evaluation played an
important role during the overall evaluation process as
the financial score comprised 33% of the evaluation.”*

What is your comment to this?

15 MR MANUEL: Chairperson, my Commissioners, my
comment would have to be entirely speculative. I bear no
knowledge of the technical detail. I am aware of the fact
that in the evaluations process and if we had the full JAT
report, you will see the various structures. There were
20 kind of filters so that by the time these matters reached
the executive it would have gone through a process of
filtering and part of it is financial and part of it is
military value. Now, I might know about finance, but like
Ms De Vos I would not pretend here or anywhere else
25 that I have the technical know-how to be able to

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determine and select, because these are systemic issues that need to be undertaken together and finance would be one component to that as far as I understood and approached this matter. Thank you.

5 CHAIRPERSON: And I think in all fairness to Mr Manuel, he was not part of the teams which [indistinct]. There were various teams which were busy dealing with the evaluations and from there they then pushed their results to the high structures and I do not think Mr
10 Manuel was part of that team. Maybe you may... and he might not know exactly [indistinct].

ADV DE VOS: Chair, I am not debating the merits of each of these decisions with Mr Manuel. I am debating the question whether there was a fair procurement. Now,
15 I am not asking Mr Manuel's opinion about whether that one aeroplane is better than the other. I am simply asking him about the question why... how can anybody say that this was fair if only one of the three bidders were given or had a financial package before the
20 committee. Clearly what they should have done and that is what I want to put to Mr Manuel, was they should have deferred the decision and asked the other two bidders to place their financial information before them as well and that is what I am going to ask Mr Manuel. Whether he
25 was there or not is irrelevant. What is relevant is

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whether once you take that into account it can still be said that it was a fair procurement.

CHAIRPERSON: I still maintain that Mr Manuel [indistinct]. We had leaders with the various evaluation
5 teams who came and testified. From there they [indistinct] their result and gave them to the high authorities which Mr Manuel said. I am sure you are not in a position to know whether there was any financial evaluation or not, because they were given the results
10 and the people who did those evaluations came here and gave evidence. The counsel represented and then [indistinct] cross-examined those witnesses. I think it would be unfair to put this question to Mr Manuel. But if you want, you can go ahead. Mr Manuel can decide what
15 he wants to do with your question.

ADV DE VOS: I would like to go ahead. Mr Manuel, I think you understood what I am trying to say to you. I am not saying that you should have been the person to raise an issue. You were not there. It was not part of your line
20 function or anything, but you said that the procurement process was broadly constitutional and all I am pointing out to you and I have got other examples as well where it seems from the... at least from the Joint Report that there were scheme presentations made and all I am
25 asking you is: What is your opinion now that you have

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seen that there was no financial information placed before that particular committee. How can anyone argue that it was fair?

MR MANUEL: Commissioners, with respect, I am here to
5 assist the Commission to arrive at conclusions. I do not think that what Ms De Vos is asking me now to speculate assists the Commission in any way. My speculation I think might be points of academic interest, but I do not think they assist the Commission. We need evidence to
10 be able to advance this matter. Thank you. I accept to protect you, Chairperson.

COMMISSIONER MUSI: Maybe... maybe I am sorry, just maybe to try to help out. If I understand the situation, RFO's were issued requesting inter alia that the bidders
15 should provide the financing options as well. Now, on the receipt of the responses to the RFO, if a bidder has omitted to submit financial... financing proposals and the deadline for the responses is closed, that would explain why, maybe you will have a situation where [indistinct]
20 bidder did not submit any financing proposal, because they feel they were requested to do so, but they did do it. Maybe that explains the situation.

ADV DE VOS: Thank you. Commissioner Musi, I am not in a position to take this point any further, because I do
25 not have the reference, but I have been instructed that

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there is a dispute as to whether those letters were ever sent to two of the bidders requesting the financial information, but I am not going to take the issue further with this witness. He has made his point clear. He is
5 accepting the protection of the Chair and I will move on with my question.

CHAIRPERSON: Maybe just before you move on, I am not quite sure [indistinct]. There does not seem to be any evidence before us that there is a dispute. Are you
10 in a position to refer us to any particular witness's evidence?

ADV DE VOS: I... we will find a reference later on and present it to the Commission. I do not have it with me right now.

15 CHAIRPERSON: Okay.

ADV DE VOS: Mr Manuel, are you now out of protection and can I continue with my cross-examination?

MR MANUEL: You... of course, Commissioners. I am waiting from Ms De Vos. I have been waiting since
20 lunchtime yesterday actually.

ADV DE VOS: Now, Mr Manuel, the Hawk and Gripen decision was taken by Cabinet and also by the sub-committee of Government on which you also served and in the minutes of that meeting and I am not going to go
25 there. We all know what it says. It says that the Hawk

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was selected for strategical reasons and just to remind you, the minutes states that:

“The decision to recommend the Hawk was based on a national strategic consideration for the future survival of the Defence Aviation sector and the best teaming up arrangements offered by the respective bidders. Strategically important industrial participation programmes offered with the best advantage to the state and local industries was a determining factor in the final recommendation of the preferred bidders [indistinct].”

Now, you will remind... you will remember that the Hawk was about double the price of the... now I think I got it right, the Aermacchi. Can you remember that?

MR MANUEL: I have a vague recall of something like that, yes.

ADV DE VOS: Well, so, the evidence before this Commission so far is that the Hawk was chosen above the Italian version in spite of the enormous difference in price because of what was stated in the minute namely National Strategic Considerations. Do you agree with that?

MR MANUEL: I agree with that we were advised of a linkage between the Hawk and Gripen and the training facility from a dual-seated to a single-seated Gripen made for easy transition and that was therefore a

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consideration as well.

ADV DE VOS: Is it not correct to say that another consideration was that the British Aerospace and SAAB as the primary contractors would invest in particular in the South African Aviation sector. I think somebody even
5 said they were going to save Denel in the aviation.

MR MANUEL: Commissioners, I do not know who that somebody is who may even have said. Clearly seeking best advantage for interrelationships is part of this and
10 yes, those would have been considerations, but to this and my recollection, the biggest consideration was the ease of transition from lead-in fighter trainer, a trainer to a fighter plane was that transition between the Hawk and the... and the Gripen.

15 ADV DE VOS: But clearly it was a factor.

MR MANUEL: I have indicated it would have been one of many factors considered, Commissioners.

ADV DE VOS: Can you please turn to page 14 of the bundle presented to you. That is the... a copy of a part
20 of the annual report of ARMSCOR for the year 2011, 2012 and it is page 88 of the report. It is on page 14. And under the heading 'management of the obligations' the following is said:

“The board is not satisfied with ARMSCOR...”

25 [intervenes]

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CHAIRPERSON: Can you just hold on? Can you just hold on?

ADV DE VOS: It is page 14, Chairperson.

CHAIRPERSON: Thank you, you can go ahead.

5 ADV DE VOS: Thank you. It says:

“The board is not satisfied with ARMSCOR’s management of the defence and industrial participation agreements. One company has to date failed to discharge its obligation or as other seem to have chosen
10 *the areas and manner in which to discharge their obligations. It has become clear to the board that there was limited ARMSCOR directed and purposeful action during the SDP’s leading to the discharge of the DIP obligations. To date ARMSCOR cannot show the impact*
15 *of DIP obligations in the economy.”*

It then goes on to say:

“Meeting with affected companies has only served to confirm this concern. It would also seem that companies charged with DIP obligations sought to exchange credits
20 *amongst themselves, whilst others acted as agents for other entities to obtain export sales for which it received credits for the entire contract value as DIP obligations. In some cases some companies elected to perform enterprise development as part of their DIP obligations*
25 *but ended up buying out the owners of the enterprises*

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they would... they discharged... where they discharged the obligation, thereby [indistinct] the very basis of the DIP agreement. These include for instance the SAAB, Denel, Aerostructure and [Indistinct].”

5 Do you have any knowledge of the fact that that particular [indistinct] that was expected of SAAB and BAE came to [indistinct] in terms of at least this document?

MR MANUEL: Chairperson, I am not sure where Ms De
10 Vos is going with the question. We are talking about a major procurement programme. The page she refers to, page 88 of the annual report of Denel of year 2011, 2012 is management issue. It does not impact on the issue. If you have had an advantage of NIP and DIP and have not
15 fully utilised it, it is quite a separate issue. If you have created the opportunity for it, that is an issue that happens at the point of collective executive decision. This is a management issue you are referring to and management issues happen in a variety of areas. I could
20 pick education and say this is what education is funded at. There are problems in the classroom. You would... it... because it is in that realm of issue. So, I am not quite sure where this question is going, but I do know that there has been detailed hearings on the NIP's and
25 the DIP's. I imagine that the matter may come before you

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again, Commissioners and this is in the realm of the implementation by management of opportunities created.

Thank you.

ADV DE VOS: The point I am trying to make and the
5 point that my clients will make when they give evidence
is simply that the investment by BAE SAAB in the
defence industrial participation activities was neither
ideal nor valuable for the South African economy, but
they were chosen by the executive, in other words, that
10 choice turned out not to be a good choice. That is the
point I am trying to make.

MR MANUEL: Commissioners, you could take the same
example and apply it to virtually anything. I think in the
nature of the beast corporations do not like to part with
15 resources unless you have managerial oversight at the
level of detail that compels it to do it. That is an issue
that I think is in a different realm. Perhaps when Ms De
Vos' clients, the two come back from their colonial perch
in the UK they may engage with us quite differently.

20 ADV DE VOS: I will get instructions, but as far as I can
remember one of them at least would love to come back,
but just cannot find a job though.

MR MANUEL: Perhaps he does not have the skills.

ADV DE VOS: Although he was a member of the ANC
25 and Parliament, but speaking about Mr Andrew Feinstein,

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he will give evidence, Mr Manuel, that he had a meeting with you around... I will tell you when, just a moment. According to Mr Feinstein he... I just want to find the date, if the Commission can just bear with me for a moment. If I have got my dates correctly it is somewhere round about November 2001. You asked to have lunch with Mr Andrew Feinstein, Feinstein, sorry. And he says in his book on page 177 about this meeting:

"I greatly admired Mr Manuel's robust intellect and his courage during the struggle and was encouraged by rumours that he has never supported the arms deal in Cabinet, primarily concerned with its impact on [indistinct]."

Now, I have to ask you what about... what do you say about the fact that there are rumours that you did not support the arms deal in Cabinet?

MR MANUEL: Commissioners, mainly people who spread rumours are people who lack courage. So, they use rumours to create division. Nobody had ever asked me for my opinion on these matters. But what matters is not my opinion, what matters is whether I was true to the letter and spirit of the Constitution that [indistinct] collectively accountable and whether in that context I discharged my obligations as the Minister of Finance. In a democracy the key issue, Commissioners, is whether

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you allow yourself to be persuaded on the basis of argument. I think it is also true for legal processes. Once you enter a process you must be prepared to accept the outcome of that process. It is exactly the same if we commit ourselves as democrats, then we accept the outcome. The outcome is more important than the views that we start off with. Thank you.

ADV DE VOS: So, if I understand you correctly and I used the word... I just want to correct myself. I used the words 'rumours', but that there were also... I am not sure if one would call them rumours. There were articles in newspapers quoting various people, saying that you were against the amount that was going to be spent and that you put pressure on Cabinet to slash the defence spending down to 1.5% of the GDP at the time.

MR MANUEL: Chairperson, Commissioners, you know Ministers of Finance I think are a breed of a special type. They do not like partying with money and they argue the same, whether this be the Department of Health or Education or anybody and the process is uniform and so, the idea that every department would get what it desires would not find comfort with those responsible for synthesizing budgets. I am saying it is in the nature of the beast.

ADV DE VOS: To get back to the lunch that you have

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with Mr Feinstein, he says that there was discussion about the extensive work that the Treasury had undertaken before agreeing to the financing package. You were explaining that to Mr Feinstein and the reason
5 why you did that is he was at that time part of the SCOPA of Parliament and actively trying to investigate possibilities of corruption in the arms deal and at that time it was then suggested that Mr Feinstein should speak directly to the officials. Can you remember this
10 meeting?

MR MANUEL: I remember paying for lunch for Mr Feinstein. I even remember what he ate on that day. Thank you.

ADV DE VOS: He then says that towards the end of the
15 meal you made the following points and I am quoting from what he says you said:

"We all know that JM..."

And that was what Joe Modise was known as,

*"We all know JM. It is possible that there was some
20 shit in the deal, but if there was, no one will ever uncover it. They are not like stupid. Just let it lie. Focus on the technical stuff which was sound."*

Do you admit that you said this to Mr Feinstein?

MR MANUEL: Mr Feinstein, Commissioners, says in his
25 submission to this Commission that he did not record the

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discussion. It is his word against mine and so, I think that is the only thing that matters. These are his recollections and if he did not record it, it is his word against mine. Did he confirm to Ms De Vos whether JM
5 was Julius Malema, Jabu Moleketi, because there were two initials, a J and an M used. Did he confirm this, because we could have been talking about anybody that we know. Thank you.

ADV DE VOS: The question is: Did you say those words
10 to him, whoever JM was?

MR MANUEL: No, I did not and I am under oath.

ADV DE VOS: Well, my client finds it interesting, because you will remember that when his book was about to appear you asked lawyers to contact him about
15 a quote by yourself on HIV and AIDS and you wanted it to be corrected, but you did not mention this particular issue. Why was that?

MR MANUEL: Commissioners, you know, there is an industry of people who write books about this. I am sure
20 that Ms De Vos... I saw about half a dozen books in front of her. They all quote each other and so the... that bit used by Mr Feinstein I am told is also used by Mr Crawford-Browne and Mr Crawford-Browne's book is [indistinct]... and so, there is an industry like that. It is
25 not possible for me given the life I lead to read every

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book, because you know JK Rowling has written wonderful books about Harry Potter. It does not make it correct. It is about the imagination of the authors and that is what I think many of the books lying before Ms De
5 Vos are about as well. They cannot be verified on the basis of evidence or empirical evidence more particularly.

ADV DE VOS: Mr Manuel, you have not answered my question.

10 MR MANUEL: Which question have I not answered, Commissioners?

ADV DE VOS: I will repeat the question. You [indistinct] to get Mr Feinstein to change a quote in his book that connected you with a certain quote to HIV. You wanted it
15 to be corrected, but you did not go to the issue of this particular lunch.

MR MANUEL: The issue that Mr Feinstein withdrew from the book that Mr Crawford-Browne has not withdrawn from his book is a suggestion that: (a) I addressed the
20 secret meeting in Parliament. Parliament has no secret meetings and (b) I am alleged to have said that we should not give ARVs to people who are HIV positive, because they are going to die anyways. No, that is so pernicious and evil, impossible to contemplate and
25 certainly not part of my DNA and it so offended me and

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every part of my being that I sought to have it excised from the book. Mr Feinstein acknowledged that he had no sound basis for including it in the book and he and his publishers, Jonathan Bore then sought to include
5 [indistinct] in the book and in subsequent additions removed it. But I think it is very important to draw a distinction, Commissioners, between just the perniciousness of that inclusion and something that seemed like, you know, a dinner talk... a lunchtime talk
10 over just general... matters of generalities. I was not the editor and I do not think it is my role [indistinct] to be the editor of all of the people who produced these books. Thank you.

ADV DE VOS: Thank you, Mr Manuel and just for the
15 record, the reason why I am referring to these three books is because we have been having difficulty getting documents from the secretary and there is various requests for documents. So, until I get the documents, I am afraid I will have to stick to the books.
20 Commissioners, I am going to ask ...[intervenes]

CHAIRPERSON: Just hold on, Advocate De Vos. Which documents are you referring to?

ADV DE VOS: I am sure that there has been request for documents. I was told by my attorney that ...[intervenes]

25 CHAIRPERSON: Which documents are those?

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ADV DE VOS: Chair, I am instructed that there is a schedule of documents that was... has been requested since February 2013 that has not been supplied.

CHAIRPERSON: Advocate De Vos, I will tell you why I
5 am asking this question. We have heard this [indistinct]
so many times from [indistinct]. We asked them to
specify which documents are they referring to so
advocate, you are in a position to deal with that. I am
not really sure whether [indistinct] at that level.

10 What do they contain, those document?

CHAIRPERSON: And what are those... or what is
contained in those documents that you might need to
cross-examine Mr Manuel, because [indistinct].

ADV DE VOS: I was actually making a joke, Chair, but it
15 is not really a joke. The problem here is that my clients
have been struggling to get documents. There is a list
that was supplied in February 2013 that we have not
received. I am not in a position to discuss the content of
that list, because I have not been briefed to do so. But I
20 do want to mention that there is that list and that we are
struggling to get documents.

CHAIRPERSON: I will tell you way I am saying so.
Clients have been saying that for the past [indistinct] in
order to put this matter to [indistinct]. I made an order
25 here that they must give us a list of documents, because

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our suspicion is that we have given them all the documents. We said if they will give us a list of those documents which are still outstanding. I am really surprised that now you raise [indistinct] that there are
5 documents that are still outstanding [indistinct]. Tell us which documents are those.

ADV DE VOS: Can I ask... can I ask...

ADV MDUMBE: Chairperson...

ADV DE VOS: Can I ask...

10 ADV MDUMBE: Chairperson, I beg leave to enlighten the Commission on this issue that Advocate De Vos ...[intervenes]

CHAIRPERSON: Can you just pick up your voice?

ADV MDUMBE: Chairperson, I beg leave to enlighten
15 the Commission and to perhaps respond to Advocate De Vos. An impression has been created in the past and continues to this day in the present that this Commission for whatever reason is withholding information that is crucial to the [indistinct]. This is not true. The letter that
20 Ms De Vos is referring to was addressed to the Commission and it was the end of February. Among the documents that Ms De Vos' clients requested, Commissioners, they requested only its... of all forums that were involved in this procurement process. When
25 [indistinct], it was at the time when the Commission's

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approach was that it would call the complaining witnesses, the critiques. At the time no witness ever appeared before the Commission. In August witnesses from the South African National Defence Force appeared before this Commission and they relied on minutes of approval forums. We have seen... Ms De Vos is probably aware that in all the bundles of witnesses who have appeared to date, there are documents and among those documents there are minutes. They requested all records of DTI. DTI ministers were here, relied on their minutes. They requested minutes of the IBCC. DTI witnesses who were led by other [indistinct] relied on those minutes. Lawyers for Human Rights as interested parties, they invariably received documents from the Commission. In fact when Mr Irvin was giving evidence Lawyer for Human Rights complained that they had not received the [indistinct] report. I personally requested Cabinet to [indistinct] that report. They received a copy of that. Lawyer for Human Rights recently complained that they were not given answers to umbrella [indistinct]. Commissioners, they have not seen the [indistinct] and the details and therefore they cannot participate meaningfully. A day before yesterday after these documents were looked at by ARMSCOR and ARMSCOR in its wisdom redacted those provisions that they felt

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were commercially sensitive. Lawyers of Human Rights have received those documents. We are here to receive a letter as the Commission for the Lawyers for Human Rights are saying we have looked at all the documents
5 that we have received. These are the documents that are still outstanding. We are here to receive that. Thank you.

CHAIRPERSON: Thank you Advocate MDumbe. Remember those [indistinct] Advocate de Vos, I would like to have a copy of at least of the documents that
10 your clients are saying that they are still waiting for from the Commission. If you can have that before the end of the day, because they should be knowing exactly which documents they want from us so that they can be in a position to continue and participating in the Commission.

15 ADV DE VOS: Thank you, Chair. I will take instructions on that. Can I ask that the short adjournment be taken? I just want to take instructions. I merely... I think I am merely finished with my cross-examination. I just want to take instructions, maybe the tea adjournment. Just...

20 CHAIRPERSON: We will take the tea adjournment for 20 minutes. Thank you.

(COMMISSION ADJOURNS)

(COMMISSION REOPENS)

CHAIRPERSON: Thank you. Mr Manuel, do you swear
25 that the evidence you will continue to give will be the

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truth?

T MANUEL: s.u.o

CHAIRPERSON: Thank you.

ADV DE VOS: Mr Manuel, one last aspect. That is that
5 you made a statement yesterday that if the contracts
relating to the arms deal are cancelled, that that will be
a threat to our economy and I understood you to also
made a [indistinct] or reply to the implementation of the
national development plan. Correct?

10 MR MANUEL: Yes, I confirm that that is what I said
yesterday.

ADV DE VOS: I just have to point out that it has never
been my client's contention that a contract should be
cancelled, but only those people, if any, that were
15 involved in corruption during the arms deal procurement
process and afterwards it should be brought to book and
I am sure that you will not disagree with that sentiment?

MR MANUEL: I have absolutely no disagreement with
the fact that the crimes have been committed. People
20 should be brought to book.

ADV DE VOS: In fact, in March 2013 you were reported
to have said that the greatest threat to the national
development plan is in fact corruption. Is that correct?

MR MANUEL: Yes, I think it is a great threat to the
25 spirit of our democracy.

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ADV DE VOS: I think I understand your evidence correctly, but just to make sure I do, is it correct then to say that you are not, when you indicated to this commission that cancellation of the contracts will be a
5 threat to the economy, you are surely not advocating that the question of corruption should not be investigated and the proper steps taken as per the mandate of the commission, not so?

MR MANUEL: Commissioners, I can confirm that
10 position. I think it is necessary to separate the two. The cancellation of contracts would be a very grievous step that will call into question the ability of any party to contract with a democratic South Africa.

ADV DE VOS: Clearly that is irrelevant to the question
15 whether the corruption should be investigated and the proper steps taken against whatever the [indistinct] of the people were.

MR MANUEL: Indeed that is why I am saying separate
20 out these issues, because I do not think that anybody can stand up and support corrupt activity or that corrupt activities be swept under the carpet.

ADV DE VOS: Thank you Mr Manuel. Commissioners,
that is the cross-examination on behalf of [indistinct], my clients. I just want to ask permission to raise the
25 question of the documents again. Advocate Mdumbi

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explained to this commission that certain of the documents requested, had been given through witness statements and bundles to my clients.

I just want to point out that the problem that we have had and that is perhaps why I made the remark about the books, is that it is one thing to receive those documents, or some of the documents that you have requested the night before or the day before the witness is to testify, and it is another thing to receive them a month before the time so that you can properly prepare.

That has been the complaint all along. Not necessarily that documents have been, that there has been a lack of documents given to us. Yes, there are documents we still need and that we will give a list to this commission to, but the real complaint is about the timing, and all we are asking for and will ask for is to present the commission with our list as requested by the commissioners.

That the documents be given to us timorously so that we can prepare properly and also then assist this commission in not wasting time. Thank you.

CHAIRPERSON: Advocate De Vos, am I right to say to you that at this point you are not complaining that there is a particular document that you require [indistinct] to cross-examine Mr Manuel?

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ADV DE VOS: Not a particular document. I would have liked to have the minutes of the cabinet meeting. I think it was in November 1998 in which the final bidders were approved, but that document has not been around here
5 and I understand it is not available.

We have been asking for that document. It has not seen the light of day during the cross-examination and or the presenting of evidence here, but except for that document, there is no specific document that I can say
10 that I need now.

CHAIRPERSON: Is there any specific issue that you want [indistinct] to cross-examine Mr Manuel?

ADV DE VOS: I would not know unless I see the minutes.

15 CHAIRPERSON: [indistinct]. You complain that you are able to cross-examine effectively because you do not have a particular document, where in actual fact you do not even know what is in that document. I find that strange.

20 Secondly, can you get the list by the end of the day today from your client, of documents that they allege that they are still awaiting from the commission?

ADV DE VOS: Chair, I have taken instructions on that point. My clients will prepare a list. They will not be
25 able to have it ready by the end of today. They have

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been preparing a list to submit to this commission and the secret ate over the last few days in any event. They are going to need another day or two to do so.

My instructions are they will be able to present the
5 list by the beginning of next week.

CHAIRPERSON: Ja, I also find that a bit strange, because for the past twelve months they have been asking for documents and they are still waiting for them. One would expect that they know what documents they
10 are waiting for. I believe they are still going to investigate which documents they require from the commission.

I find that a bit strange. In any event we can get their list by Monday, Tuesday. I will really appreciate
15 that, because you want to avoid this statement that has been made by the [indistinct] that you are unable to cross-examine because you do not have documents, when in actual fact tell us which documents are those.

ADV DE VOS: May I just respond to the issue of the fact
20 that you find it strange that the list is not available. It is precisely because the documents has been given to the lawyer of human rights in drips and drags, through evidence by witnesses who cannot give a precise list. We have a list of documents we want, and every time a
25 witness gives evidence, we have to tick off on our list

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which documents we have now received.

We have received bundles this week of documents and we have received bundles last week of documents, which will now correlate with the list that we are
5 requesting. So it is not a question of us not knowing what we want. We know exactly what we want. We just have to do the sums and then we will present the commission with the list.

CHAIRPERSON: I think it is very simple. [indistinct]
10 and I want ten documents, as and when they come in if I tick, I should know by now how many documents I still want. But you know, maybe let us not get to this point any further.

Let me have a list at least by the latest Tuesday next
15 week, because we are trying to avoid a situation where each and every witness who testifies, it is being said that we do not have enough documents. We are unable to proceed.

Then secondly, we normally give you the documents
20 with a statement that we receive from the various witnesses, because that will be the time which we receive those documents. Some will be having them and some will not be having them. So we cannot give them to you in advance if we do not have them.

25 We cannot give them to you until [indistinct] and now

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when a witness comes and you want to use particular documents, we go out of our way to get those documents, [indistinct] and immediately thereafter we make them available to you, and for your own
5 information more often than not, even we as the commissioner, we get the documents the same time as your clients.

I do not think there is anything strange about that arrangement, because we cannot give them what we do
10 not have. We can only give them what is in our possession.

ADV DE VOS: Chair, I appreciate that and I do not think the intention was to say that there is any kind of deliberate withholding of documents. I think it is more a
15 question of doing the homework, but I appreciate what the chair has said and we accept that.

CHAIRPERSON: Thank you.

MR MPHAGA: Chair, may I just also for the record confirm that the extract of the cabinet meeting of 18
20 November 1998 was in the bundle of [indistinct].

CHAIRPERSON: So the minutes that they said they do not have, as a matter of fact they have them in the bundle of [indistinct] documents?

MR MPHAGA: The extract.

25 CHAIRPERSON: [indistinct] end of business on Tuesday

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so that we can put this matter to rest.

ADV DE VOS: Yes, no that will be done.

CHAIRPERSON: Thank you. Mr Crawford Browne?

MR BROWNE: Thank you. Mr Manuel, during 1996 until
5 2003 you were the minister of finance, is that correct?

MR MANUEL: That is correct.

MR BROWNE: Thank you, and prior to 1996 you were
minister of trade and industry and during the 1980's you
were [indistinct] in Cape Town. [indistinct].

10 CHAIRPERSON: Mr Browne, if you do not mind, can we
confine ourselves to the evidence that this witness
gave? He has not spoken anything about his
involvement ... [intervene]

MR BROWNE: It is purely an introductory statement sir.

15 CHAIRPERSON: Let us just get straight to the point.
Get straight to the point that you want Mr Manuel to
answer.

MR MANUEL: Yes.

CHAIRPERSON: Just hold on.

20 MR MOERANE: In that connection I wish to place on
record that we have been furnished with a list of
question that Mr Crawford Browne intends to ask. In
that list there are certain statements which are made
which are defamatory. Some of them are scandalous and
25 [indistinct] and obviously are not intended to assist this

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commission in arriving at the decisions that it has to.

We would just like to place Mr Crawford Browne on notice that we are certainly going to object to any of those questions as I have described, and a great deal of the intended questions deal with matters that are
5 [indistinct] and it appears that Mr Crawford Browne intends to resuscitate the failed litigation in the Western Cape.

We shall certainly object to that attempt. Thank you.

10 MR BROWNE: There was an objection that [indistinct] was made available. I was asked to provide a draft of what I intended to ask him, but obviously since then I have significantly rewritten those questions, and I believe that I can say that I have not been defamatory
15 with the questions.

MR MOERANE: Can you repeat? I am not quite sure that I follow what you are saying?

MR BROWNE: I provided a draft of questions last week when I was here. I provided a draft of questions that I
20 intended to ask Mr Manuel. It seems rather extraordinary that the draft which was provided to the commission is on its way to Mr Manuel's legal counsel.

CHAIRPERSON: Who did you provide the draft and what was the purpose thereof?

25 MR BROWNE: The draft was provided to [indistinct] at

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the request that I was required to, why I should [indistinct] to cross-examine Mr Manuel and Mr Mbeki.

CHAIRPERSON: I hear what you are saying, but in any event I do not think there is anything wrong in Mr Manuel
5 being made aware of the type of questions.

MR BROWNE: May I proceed sir? So now you were the minister of finance.

CHAIRPERSON: Just hold on.

MR BROWNE: [indistinct]

10 MR MANUEL: That was the subject of my testimony yesterday.

MR BROWNE: Thank you sir. Now even [indistinct] you were known during the early stages to oppose to the arms deal, and the department of finance memorandum
15 dated 30 June 1998, which is entitled [indistinct], jointly signed by yourself, Trevor Manuel as minister of finance and [indistinct] as director general of finance, and the document is paginated as pages 371 to 374 in the bundle
2.

20 MR MANUEL: I have not heard a question.

MR BROWNE: May I proceed now that you have got the document?

MR MANUEL: Proceed.

MR BROWNE: On page 373, just above your signature it
25 states:

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“The Department of Finance has performed a physical analysis to estimate the level of funds that will be available over the next twenty years for spending on a proposed government to government contracts. The Department of Finance strongly recommends the total sum of any contract signed, should not see the amount that have been estimated as affordable as indicated in table 1.”

Is that correct and is that your signature?

10 MR MANUEL: There is a document before us chairperson.

CHAIRPERSON: You can move on to the next question Mr Browne.

15 MR BROWNE: So you confirm it. Table 1, at the bottom of page 372, projects affordable defence procurements in the year of 2001 and 2002. 1.4 billion rand rising to 4.5 billion rand by the year 2018 to 2019. Is that correct?

20 CHAIRPERSON: Mr Browne, we can see the document here. It is not necessary to go through each and every item on that document, unless there is a specific question that you want to ask.

25 MR BROWNE: Okay, I will skip over the part of the human rights. We raised the issue of the authority given from parliament in the defence review, and I will then move on. That even at six billion rand, option 2, which

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was what [indistinct] had already exceeded what [indistinct] deemed affordable in terms of this memorandum which you signed. Is that correct?

MR MANUEL: Chairperson, I do not know if I am being
5 asked to confirm what he said, because I cannot be expected to do so. Thank you.

MR BROWNE: Sir, there was no authority from parliament for the arms deal acquisitions as such. There was a wish list that assumed over a period there would
10 in terms of option 2, over a wish list and that they would require further parliamentary approval, there would be an expenditure of about six billion rand.

Even that exceeded the figure that your department had deemed to be affordable. That is what I wanted to
15 confirm.

MR MANUEL: You know, there is a certain rationality to the [indistinct] and that is that documents that are being developed, cannot have the same weight as formal decisions taken, an intra-departmental submission is
20 theoretically protected by the PIA, so why are we going there?

My testimony yesterday covers what has been spent and I was able to demonstrate as had Mr Donaldson before me, why it was affordable within the [indistinct].
25 Thank you.

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MR BROWNE: Sir, the cabinet was approved in 1998 I will put to you. Of 29.8 billion rand. Completely blew the budget of what the department of finance had deemed to be affordable, less than five months earlier
5 on June 30 which appears above your signature. Within two months of that, the figure was already 30.3 billion rand and by February 2001 the figure was already 43.8 billion rand.

The reason is that even these figures had been
10 massaged to deceive the public by [indistinct] air craft and some of the other expenses. Is that correct?

MR MOERANE: Chair, one must object to statements like that. The figures had been massaged. Where is the evidence?

15 CHAIRPERSON: Mr Crawford Browne, [indistinct] that the figures had been massaged?

MR BROWNE: We traversed that at great length in the cross-examination of Mr Kasrils the other day.

CHAIRPERSON: On what facts do you rely to make this
20 statement that the figures had been massaged?

MR BROWNE: There was a discussion at great length in the cross-examination of Mr Kasrils about the memo and whether the public would be, the figure of six billion rand should not be made available to the public because
25 it would create a public outcry.

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You may recall that discussion.

CHAIRPERSON: That I understand. But where was the statement? What facts are you relying on to say that the figures have been massaged and by whom?

5 MR BROWNE: In the figure that was published to the public in 1998, it excluded the subsequent [indistinct] as what was the so called option 2, which then as we learnt subsequently, the loading costs of that option was such that it became practically impossible to apply that. This
10 is why the process escalated to graphically.

CHAIRPERSON: I am not allowing the question. Get to the next question.

MR BROWNE: So the affordability study committed by the Department of Finance officials with the assistance
15 of international consultants, [indistinct] the arms deal was a risky proposition that could lead the government into mounting economic physical and financial difficulties, and as you pointed out in your submission, the affordability study was acknowledged by the auditor
20 general as being a highly professional document.

The copy of the [indistinct] is contained in the bundle of Mr Kasrils and is not very legible. None the less Mr Manuel will be familiar with the draft and the warnings. May I proceed with the warning by [indistinct] on the
25 foreign exchange list?

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CHAIRPERSON: Can you please put questions to the witness about his evidence. It is a very long statement, and I am sure it is going to take a very long time before you come to the point. You heard what his evidence was in chief. You heard what his evidence was when he was cross-examined.

Ask him anything about what he knows and what should be within his personal knowledge, not about what other people have said.

10 MR BROWNE: [indistinct] said there is no effective way which government can successfully page against currency risk. Is that so?

MR MANUEL: Chairperson, if indeed Mr Crawford Browne were an international banker, he would know how these things work. He would know that you ask for mathematics to inform you of risks. That is what we did, in inviting Walberg, Dill and Read and paying them to do it for us.

We did it because we wanted to understand what the risks were, and as I indicated yesterday, once you know the risks you know how to mitigate. If you do not know how these things work, you might be shocked to abstract the line from what a company like Walberg, Dill and Read would offer you.

25 We evaluated and we took appropriate decision and I

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think the record speaks, and the record I think is a history of sound physical management over the period. All of this is annually reported to parliament. In fact in terms of the Section 32 of the public finance management act, there are monthly reports to parliament.

So these are matters of public record, but I want to emphasise that we understood the risks and mitigated against them. Thank you.

10 MR BROWNE: And in fact the rand since 1999 has collapsed by sixty eight percent against the US dollar, and by seventy nine percent against the Euro. In the course of the arms deal to date [indistinct] [indistinct] warned you there is no effective way.

15 This is a twenty year contract that we went into, where there is no effective way to [indistinct]. That is the point that I am putting to you.

MR MANUEL: Chairperson, again I say if indeed the question [indistinct] an international banker, he would understand currency volatility has nothing to do with a contract in a particular country. The most volatile interrelationship in global exchange rates, is that between the US dollar, the Euro and the Japanese Yang. It has got nothing to do with the issues we are talking about.

25

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This week there has been confirmation of the fact that the [indistinct] currency is in the process of collapse. It has nothing to do with the contract before us or the reason why this commission was established. I submit
5 respectfully sir. Thank you.

MR BROWNE: [indistinct]

CHAIRPERSON: Thank you.

MR BROWNE: [indistinct]. The implication of that quote is that you would know better the next time. Is that
10 correct?

MR MANUEL: This is speculation and I will not respond to speculation, thank you.

MR BROWNE: So this is a quotation from a book published by a very respected academic in Cape Town.
15 The point I want to make is [indistinct] at the next time with defence review 2012. This is led by Rudolph Meyer and minister Lindiwe Sisulu, Ron Haywood, Tony Yengeni and [indistinct] who led South Africa into arms deal number one.

20 The defence review 2012 is about to be introduced into the new parliament. Now the same characters [indistinct].

CHAIRPERSON: I am going to stop you from that. May you get to the next question.

25 MR BROWNE: Sir, as a minister of finance has remained

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silent and it is abuse of the public.

CHAIRPERSON: I am not going to allow that question.

Let us get to the next question.

MR BROWNE: Yesterday in your testimony you spoke at
5 length about Section 198 of the constitution which
covers the issue of national security, which says
[indistinct]. Now Mr Manuel, these principles reflect
human security values of the 1948 [indistinct] of human
rights, which the apartheid government had refused to
10 sign.

Our constitution is unique in many ways, including
this provision. These human security provisions are now
[indistinct] in which the state has [indistinct]. In a
nutshell what I put to you is that personal security
15 issues of education, health, housing, job creation and
crime prevention take national security priority in terms
of the constitution, and that in the circumstances the
post-apartheid South Africa, human security priorities
must [indistinct]. Is that correct?

20 MR MANUEL: Chairperson, yesterday I detailed the
record of public finance, when the SDPP at the highest
point in its expenditure was one of the smallest items,
because we have always held a composite view of human
security.

25 In respect of Clause 198 of our constitution, the

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matter referred to by Mr Crawford Browne, it is important to note that it is located in chapter 11 which deals with security services. That very provision creates an obligation on a democratic elected government to
5 provide that responsibility.

It is clearly a responsibility that we need to have also in relation to our neighbours in Africa. So I really do not know. If the insinuation by Mr Crawford Browne is that we neglected to finance issues like education, health
10 care, social security etcetera, then I think I would like to go back to my evidence in chief yesterday, which referred to exactly what the expenditure levels have been consistently over the period.

Thank you.

15 MR BROWNE: Mr Manuel, as your memorandum on 30 June 1998 confirms, it was irrational and unconstitutional to prioritise minister of security over human securities by blowing the budget on the warships and [indistinct].

20 CHAIRPERSON: I am not going to allow that question. Let us get to the next question.

MR BROWNE: [indistinct] loan agreements signed by Mr Manuel for the [indistinct]. These are loan agreements funded by ... [intervene]

25 CHAIRPERSON: I am not going to allow you to ask that

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question. Let us get to the next question if you still have other questions.

MR MANUEL: So Mr Manuel's signature appears on that loan agreement.

5 CHAIRPERSON: Mr Browne, I am warning you for the last time now. If I give a ruling, I expect you to respect it. I say to you now that I am not going to allow that question. Get to the next question if you do have another question.

10 MR BROWNE: [indistinct], obviously I have to skip most of my questions and the abuse of law that I have suffered for Mr Manuel, but the point I want to make is the DTI document, the report which is in your bundle, which found that the offsets were fraudulent.

15 [indistinct] from the Department of Trade and Industry that the offsets were fraudulent.

CHAIRPERSON: Can you produce the evidence that the [indistinct] fraud?

MR BROWNE: Sir, it is in the bundle. DTI has phoned
20 me earlier this year and I furnished this document to you. Page 643 on. After fifteen years DTI's audit has finally ... [intervene]

CHAIRPERSON: Just so that I understand. Where is that document?

25 MR BROWNE: Page 643. At the back of the bundle sir.

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CHAIRPERSON: Can you refer to the particular paragraph?

MR BROWNE: Not right at the moment sir, but it is public knowledge and it is included. [indistinct], was the
5 benchmark and we only received six billion rand in offsets. Therefore the offset program which motivated the arms deal was fraudulent.

CHAIRPERSON: Let us get to the next question.

MR MOERANE: Chair, we are rather concerned about
10 the turn of Mr Crawford Browne's so called cross-examination, because he is making defamatory allegations against not only the witness, but other people who are not before this commission.

Referring to perjury, referring to fraud committed by
15 these people and I think he should be warned that this commission cannot be used as a platform to defame people.

CHAIRPERSON: I agree with what advocate Moerane said. In your question you tend to make a lot of other
20 allegations before you come to the question that you want to put to the witness. Can you please put questions to Mr Manuel about what he testified. If you want to put another question to him, please do it without making reference to any other question.

25 MR BROWNE: [indistinct]. Since you are not allowing

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me to proceed with my questions, I would like to refer to the legal opinion presented to the commission two years ago as part of my submission to the commission, [indistinct] and the system of the arms procurement in
5 Section 217 (1) of the constitution.

That submission was made in June 2012, it has still not been dealt with. [indistinct].

CHAIRPERSON: That legal opinion we are aware of it. We are dealing with evidence now. Mr Manuel has given
10 evidence before this commission. Do you still have any further question to ask him? The question of legal opinions and legal argument will come at a much later stage and not at this stage.

MR BROWNE: Since Mr Manuel at great length has
15 raised the issue of the consequences of cancellation, let me refer to the last paragraph of advocate [indistinct] opinion.

CHAIRPERSON: I am warning you for the last time. The question of the legal opinion will come in at a much later
20 stage. Mr Manuel has given evidence. Do you still want to put any questions to him, relating to his evidence and not to [indistinct]?

MR BROWNE: As DTI had already foreseen it, the offsets were fraudulent.

25 CHAIRPERSON: I am warning you for the last time now.

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You say DTI has conceded that the offsets were fraudulent. Do you have that evidence? Can you refer us to that evidence?

MR BROWNE: [indistinct]

5 CHAIRPERSON: Can you tell me on which paragraph does that statement appear which states that the offsets were fraudulent?

MR BROWNE: [indistinct]

MR ISSAC: If I may come in, I am the state attorney on
10 behalf of the DTI. Chair, I think Mr Crawford Browne is missing the point. The intention of the internal audit was a self-introspection by the DTI, in which it actually within itself advised about the policies and where they might have some discrepancies.

15 He stated them out, not necessarily pointing them out as fraud, but just setting corrective measures which they advise their own department to deal with. That DTI report is supposed to be [indistinct], it is not fraud at all. There is no mention of fraud.

20 With due respect to what [indistinct] he never referred to the DTI policy as being fraud or any kind of benefits. That we do take an exception.

CHAIRPERSON: Mr Browne, do you still have any relevant questions to Mr Manuel?

25 MR BROWNE: I have one final point to make sir.

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CHAIRPERSON: Just hold on. I do not want you to make any points. I am trying to find out if you still have questions for Mr Manuel?

MR BROWNE: I have one more question to put to Mr
5 Manuel. Mr Manuel, yesterday you spoke a great length about the consequences of cancellation of these loan agreements. The point I want to put to you, is that fraud [indistinct] and that in cancelling the contracts would in fact regain some of [indistinct] which has been severely
10 compromised by the arms deal and the corruption [indistinct] and therefore after that I have no further questions to put to you.

We would, if we cancel these contracts, regain [indistinct].

15 MR MANUEL: Commissioners, the basis of the Crawford Browne application was precisely this. It went to the Western Cape high court. He lost with costs. He went to, he sought leave to appeal. It was dismissed. He went to the SCA. It was turned down. He petitioned the
20 constitutional court. It was turned down.

He then went to the public protector to report the constitutional court to the public protector. It was turned down and then he went to the constitutional court to report the public protector for not taking him
25 seriously. It is exactly the same issue that he

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[indistinct] time after time.

The submission I made yesterday is that this matter is well and truly like the [indistinct] now extinct. Thank you very much.

5 MR BROWNE: [indistinct]

CHAIRPERSON: I have not given you permission to talk. You are finished with your cross-examination, thank you. Mr Manuel, thank you for testifying.

MR MOERANE: Re-examination?

10 CHAIRPERSON: Sorry.

MR MOERANE: We do not have any, thank you.

CHAIRPERSON: Mr Manuel, thank you for testifying. What is our next step now? I thought somebody at the back wanted to talk. Okay. If I am not wrong advocate
15 Mphaga, we are going to adjourn now and our next sitting will be on a date to be announced in the coming three days or so.

MR MPHAGA: I confirm same. We will then adjourn.

CHAIRPERSON: Thank you. All adjourn

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(COMMISSION ADJOURNS)

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