

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

PHASE 1

DATE : 17 JULY 2014

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HEARING ON 17 JULY 2014

[00:44]

CHAIRPERSON: Good morning everybody. And advocate Sibeko.

ADV SIBEKO: Good morning chair, Commissioner Musi. Today we are ready to lead the evidence of the former President Mr Thabo
5 Mbeki. I beg leave that he be sworn in.

THABO MVUYELWA MBEKI - SWORN IN

CHAIRPERSON: Thank you.

ADV SIBEKO: Chair and Commissioner Musi, before we deal with the evidence of the former President, there is one housekeeping
10 matter I would like to deal with and this relates to a document that inadvertently slipped into the statement, during the course of photocopying the statement. That is a document, which is dated Wednesday, 6 August 2008. It is a Hansard recording of certain parliamentary proceedings in which the former President was
15 responding to certain questions put to him in parliament. It was never the intention of the evidence leaders, nor the team representing the former President to have this as part of the statement and to the extent that it has become part, we would beg that leave for that to be removed from the statement.

20 CHAIRPERSON: Thank you, Advocate. I have seen that and I was wondering what that document wants in the bundle. Clearly, if you read the statement that, that document does not form part of that statement. So, I do not think that should be a problem.

ADV SIBEKO: Your observation is correct Chair, and we are
25 indebted to the Chair. Mr Mbeki, during the course of giving evidence, you are required to speak into the microphone and for purposes of facilitating the proper record, it is required that one

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person speaks into the mike at a time. You will see that every time I ask the question, my mike will be on, at the conclusion of which, I would switch it off. When you respond, you just press the mike to facilitate the recording. Now, having dealt with those housekeeping
5 matters, it is correct that on the... let us see, on the 16th of July, you signed a statement. Do you confirm that?

MR MBEKI: Yes. I confirm that.

ADV SIBEKO: You have been furnished with a copy of the statement and if you look, turn to page 4 of the statement. There is a signature
10 that appears there. Do you confirm that is your signature?

MR MBEKI: Yes. It is there, Chairperson.

ADV SIBEKO: Now as I pointed out the statement is made up of four pages, which deal with the issues which intends to assist the Commission with, especially in relation to the role you played, either
15 as Deputy President of the Republic of South Africa or as the President of the Republic of South Africa, in relation to the acquisition of the special defence packages. Is that correct?

MR MBEKI: Yes.

ADV SIBEKO: Right. May I ask you to have regard to paragraph 1
20 of your statement, where you state the capacity in which you would be giving evidence before the Commission. Now, I suppose the Commissioner can take judicial notice of the fact that in 1994, you were appointed as one of the Deputy Presidents of the Republic of South Africa. Do you confirm that?

25 MR MBEKI: Yes. That is correct, Commissioners.

ADV SIBEKO: Now, you served in that position, up to the middle of 1999. Is that correct?

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MR MBEKI: That is also correct.

ADV SIBEKO: After the elections in 1999, you were then elected as the President of the Republic of South Africa. Is that correct?

MR MBEKI: That is also correct, Commissioners.

5 ADV SIBEKO: Now, evidence has been tendered before the Commission, starting with among others, former Minister Alec Erwin, Minister Lekota and subsequently Minister, former Minister Manuel, with regards to the existence of a formation referred to as the Inter Ministerial Committee, also known as the IMC, which was a
10 subcommittee of Cabinet. Do you confirm that?

MR MBEKI: Yes, indeed. I would confirm that.

ADV SIBEKO: And in terms of the evidence before the Commission, you were the chairperson of that Inter Ministerial Committee.

MR MBEKI: That is correct, Commissioners.

15 ADV SIBEKO: Now, in terms of the role you played, as the chairperson of that committee, are you able to just briefly describe to the commissioners exactly what your position entailed as chairperson of the Inter Ministerial Committee?

MR MBEKI: Well, Commissioners, as chair when I had do chair,
20 when I had to chair the committee and really it is a supervisory sort of role, with the detailed work with regard to that whole package, with the detail work being done at the ministerial level. So, the responsibility of the chair in that case, would be to make sure that we meet as a committee, that we address the matter of that
25 procurement within the context of what might have been decided as to what is it that we wanted to achieve and then to ensure that the necessary reports were given to Cabinet.

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ADV SIBEKO: The various former ministers, who have given evidence before this Commission before you, have given evidence, with regard to the role that this IMC or Inter Ministerial Committee or Subcommittee of Cabinet, as you wish, played. Inter alia being to
5 provide execute oversight over the acquisition process of the special defence packages. Now, as far as you recall, could you just briefly state, although I may point out that this has, or evidence to that effect has already been presented to the Commissioner. But, in your role as the chairperson of this subcommittee, could you just briefly
10 explain the sequence of events that led to the decisions that were ultimately taken to procure ...[intervened]

CHAIRPERSON: Can we just ask members of the media not to try and interrupt our proceedings, please? I see them walking up and down and also try, the press also disrupting there and the former
15 President are testifying. Can we just make sure that there is no up and movements, when the witness testifies?

ADV SIBEKO: Thank you. I beg your pardon Mr President. May, may seek permission? I know you are no longer President. May I refer to you as Mr President?

20 MR MBEKI: Well, if one does not violate any protocol or law or values or something. I am sure Commissioners would get to call me anything. Thanks.

ADV SIBEKO: Yes. For, for purposes of these proceedings, I shall refer to you as Mr President. Now, I was in the process when I was
25 interrupted to say, to ask you to just briefly describe the sequence of events that culminated in the decision, ultimately, to procure the SDPs as they are referred to, starting perhaps with the rationale,

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therefore as provided for in the Constitution.

MR MBEKI: Well, the, the Commissioners, of course, I can only state this matter very broadly. We are talking about events that took place 16, more than 16 years ago. The, the, there was an obligation
5 on government, arising out of what the Constitution says about the need to have a defence force, which would carry out various tasks, in terms of protecting the country, et cetera. So, that was that requirement. In any case, the government was aware of the fact that National Defence Force, it needed a react weapon in any case.
10 When, when we came into government, the then government, we came into government in 1994, the then government had a, was on the verge of signing a contract to buy four Corvette's. We discussed that matter and said that it would be wrong to approach the matter of these acquisitions in a, in a piece meal matter, in a piece meal
15 manner. That what would be necessary is that we have a complete look at whatever, at all the needs of the National Defence Force. So, that it is a, you are better able to decide what to do with, what obviously would be limited resources. What, what you would spend for each of the services, whether it is the army, or the air force, or
20 the navy, or the medical services and so on. So, I am saying that, we had these two considerations, the Constitutional one and the reality that we knew that National Defence Force required reequipping. As a consequence of which, then, it was decided that we should, the Minister of Defence should prepare this defence white paper, which
25 was done. Then, Commissioners, as, as you are aware, the white papers are a government policy, not departmental, they might be put out by particular Ministries. So, we discussed the white paper and

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agreed in Cabinet. So, it went forward and discussed in Parliament and as, as again, you would recall, we talked about the need for a defence review, which again, was done, which then, decided all these things about force structure and so on. So, that, that was a process.

5 Once we had completed that and there was indeed, the overall view in the country, including the Parliament, unanimously, in Parliament, that indeed, we need a, to re-equipping the Defence Force, in the manner that was visualised. We, we then proceeded. We had to go ahead with the, with the procurement process. That is it.

10 ADV SIBEKO: And it is so that this procurement process was preceded by a further step that was taken, subsequent to the adoption of the defence white paper, which is referred to as the defence review. It is in, during that process, where the views of the public, in general, were obtained. Do you confirm that?

15 MR MBEKI: Yes. Commissioners, with regard to that, I would say that we were sensitive to the fact that there is a particular history that attaches to the armed forces, here. In that the SADF, South African Defence Force, was part of the forces of oppression. This was a part of what the Apartheid regime used, in order to submerge a
20 struggle here. So, we were sensitive to the fact that it was necessary, in a democratic South Africa to reposition the National Defence Force, in the eyes of the people of the country. Of course, it also had this other negative experience, with regard to the region. The SADF has been a big force, also in stability and there were lots
25 of people killed and destroyed and so on. So, we thought it was important that the population as a whole, it should really take or have a new attitude towards the National Defence Force. Therefore, that

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even this matter, it is about equipping it and so on. This has been kind of a national, national ownership of this. So, I am awkward, that as an executive, we could have taken over decisions we needed about this. But, we thought it was necessary to engage the South African public, including Parliament. That is I say so, that indeed, everybody gets a sense of ownership of this. In addition to which, of course, is the consideration that we would have to spend significant sums of money to purchase this equipment. That even that, that the population in general, had to take on board, having better understood, what the South African National Defence Force has approved for the South African Defence Force, stood for, would do and so on. Indeed, we were very pleased that that very inclusive process of consultation with the population. They came out with an outcome, which would have said to us in government, that indeed, with monies to that extent, to shift the attitude of the population towards the National Defence Force, away from what the population would have known of the Apartheid Defence Force, to understand that here we have new entity, consistent with this new South Africa. That is what I would say, Commissioners in response to this question that has been posed.

ADV SIBEKO: And during the course of this public process that was undertaken, with the coming into power of the new government, there were also imperatives to address socio-economic rights. What would your comment be, with regard to the decision that was ultimately taken to procure arms, in the context of the debates that prevailed, at the time, having the socio-economic rights of the majority of the population?

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MR MBEKI: Well, Commissioners, the, again, as the Commission, as the Commission would be aware, the country faced many different challenges and many different needs, which needed to be addressed. There is none of them important demands, none of which could be postponed. You could not say. There are the challenges, with regard to access to clean water, no, let us postpone acting on that, until we have built more clinics. You could not. So, here we have got a whole strand of challenges and things that need to be done, which are, would have been reflected, for instance, in the, in the reconstruction and development programme, as well as, adopted by, by Cabinet. So, so, this particular matter, which as I have been saying, adding in terms of what the Constitution said, in settle of the needs that we knew, would have to be addressed and that is the re-equipping of the Defence Force. This is one of the many matters, with which government has got to deal. So, in dealing with that issue, we had to see in how we balance these expenditures on all sorts of things, expenditure on education, on health, on defence force, on the police, on all sorts of things. How do you balance this thing so that you, you achieve the best possible result? You are advancing on with this objective, which we had to do. I, I, have been told, Commissioners, that our, as for my colleague Trevor Manuel and the people at treasury have dealt in some detail with this particular matter. I am quite sure that I have absolutely nothing to add or subtract from what they have said. But, one of the consequences of that is that, we reduced quite sharply the expenditure on the defence on defence, as, as a proportion of, of GDP and in, of the budget. It may very well, Commissioners, I am not making this as a definite, definitive

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statement. I do not, there are many measurements. But, looking at it, at it now, at some retrospect, I think it may even be that we reduced it too radical. It, in the end, it will have a negative consequence on, on the National Defence Force in the interim. But, 5 it was an order, Commissioners, to deal with the question that has been posed about how to balance all of these needs, needs about the economy developments, to bring about, to where do you get the money to invest in economic infrastructure. Social, Social spending, foreign affairs, the country has to re-open up to the rest of the world, 10 after all these years of isolation. That you balance all of these things, I am saying, that balancing was done and I am quite sure that Trevor Manuel and the officials at treasury were, have given a detailed account of how this was done and its outcome. Thank you very much, Commissioners.

15 ADV SIBEKO: So, in essence, what this process or the decision was based on, to acquire these armaments, was also informed by the balancing act that was undertaken, at the time. The government had to govern the policy of reconstruction and development. That is basically it.

20 MR MBEKI: Yes. Indeed, absolutely, that is, that is a given.

ADV SIBEKO: Yes. Having regard to the need of the Defence Force, the South African Defence Force, at the time, as described in the evidence, of amongst others. Admiral Green with various other officials from the SANDF? There was in fact, a dire need. That 25 equipment had become obsolete and had to be replaced. So, there was a need to deal with the matter as soon as possible, without delay. Would you agree with that?

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MR MBEKI: Yes, Commissioners, I would agree with that. I would say for instance, effectively, for instance, we did not have a navy. We had sailors, who were on a standby role and so on. But, no ships to sail in, which is why it was correct, even for the, for the previous
5 government, the decision to acquire those three Corvettes was correct. It is a, because they were needed. That was again, confirmed by what the defence review. So, I mean, the, the re-equipping of, of the, of the National Defence Force was it a, it was obvious what. Thanks, Commissioners.

10 ADV SIBEKO: And also, with regard to the envisaged acquisition, it is so that it was intended for the equipment to be acquired, to be modern and be in line with the advancement of technology at the time that these decisions were made. Is that correct?

MR MBEKI: Yes. Certainly, that is correct, Commissioners.

15 ADV SIBEKO: And that is also a view that is expressed in the defence review that the, in equipping the South African Defence Force, it was necessary to have modern equipment, which would be, or would enable those who operate it, to be able to operate it elsewhere in the world, other than the Republic, in the even that that
20 need, therefore, arose.

MR MBEKI: Yes. That would be correct. Because part of the, the kind of military policy that would develop and also included visualising, our contributing to peace keeping efforts on the continent. So, we had to have, able to have that kind of outreach
25 beyond, beyond the borders of the country. Thanks.

ADV SIBEKO: So, if, if one has regard again, to what is stated in the last part of paragraph 1 to your statement, it is recorded there

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that the subcommittee cabinet played a role, in giving effect to the decisions of Cabinet, regarding the strategic defence procurement packages. What would you, in brief, describe these decisions of cabinet be, with regard to the procurement of these packages, 5 amongst others?

MR MBEKI: Well, Commissioners, first decision, of course, would have been that we must take the necessary steps to make sure that this equipment is acquired and therefore, various structures would have been established to process this matter. I am talking about 10 structures below the, the Ministerial Committee. Who would then look at the matter and then recommend to the Ministerial Committee. So, one of the decisions would be that. There would have been other decisions, like, for instance, a decision that says let us look at affordability. Once you accept, this is what we are going to get, 15 which is a matter, which the treasury, the Minister of Finance and Treasury would have dealt with. But, he would have reported to the Ministerial Committee at the first instance. So, the Ministerial Committee would have to look at that, to see whether, what has come out of that. It is a matter that can be properly reported to Cabinet. 20 We processed it to that extent. I mean, I am sure that that could have happened also, with regard to defence reports of the negotiating team, which then had to negotiate final contracts with the preferred dealers and that Cabinet would have said, set up this thing and let it do whatever. Then, the Ministerial Committee would have had 25 oversight of the work of the negotiating team, so that, by the time the report comes to Cabinet, it would have been processed by the Ministerial Committee. Thanks.

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ADV SIBEKO: Now, we have already touched on your role, as the chairperson of the Inter Ministerial Committee. You have testified that the various ministers who were, who formed part of this committee, were responsible for the functions in their respective divisions, for instance, Minister, the late Minister Joe Modise, as Minister of Defence, at the time, being responsible for defence matters, from Minister Manuel would be responsible for financial and treasury matters, from Minister Irwin would have been responsible for issues relating to the national, issues relating to the national trade and industry, also regarding the industrial policy that had been developed by Cabinet, at the time. Now, while these individuals and respective ministers were responsible, individually for their departments, is it so that, as members of the IMC, they would discuss their, the matters relating to their respective departments, jointly, as members of the IMC and perhaps, seek to reach consensus at that point?

MR MBEKI: Here, I, I say, Commissioners, they would, with another member of the minister, the member of the IMC is the Minister of Public Enterprises, that, that would have been my team. It is important, because it relates to a, for instance, your, your DIPS, because we are dealing with state corporations in the, in the military, defence sector. So, I am saying, we did not mention the, Commissioner, that that, Commissioners, the fact that we also had the Minister of Public Enterprises that was a member of the, of the Ministerial Committee. Now, surely, we, we, indeed, the particular matter of, those processing matters relevant to each ministry, of course, would first of all be done by the minister concerned, which

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reports in the end would come, as all other reports, from the lowest structures, it would then ultimately come to the Ministerial Committee, as, as recommendations to. So, that is what would happen and sure, as Ministerial Committee, I am quite sure that in 5 instances where this might have been necessary, we would have had a look at ensuring that there is coherence, that there is coherence in terms of the decisions that have been taken affected different, different departments and ministries.

ADV SIBEKO: And, and this to an extent is what the Constitution in 10 Section 18 (5) refers to as co-ordinating functions of Cabinet. You will find that the late Minister Stella Sigcau, as the Minister of Public Enterprise at the time, would be looking at the impact that the procurement would have in, with regard to the defence industry. Minister Irwin would also have regard, together with his department 15 on the impact that would be achieved with leveraging of industrial participation from the various bidders and so forth. Is that how this was intended to be?

MR MBEKI: Yes. I would imagine that, yes, that how the matter would have been proceeded.

20 ADV SIBEKO: Now, if you turn to paragraph 4 of your statement. It appears on page 2 thereof. It is recorded there, this is after you have indicated that you, together with other members of the Inter Ministerial Committee had taken a decision to assist the Commission in every manner possible in the discharge of its functions. You 25 report there, in paragraph 4:

"In that context, it is important to make a point that none of the members of the IMC acted in their personal capacities, when

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executing their functions as members of the executive.”

Could you just briefly expand on the import of what you say there?

MR MBEKI: Yes, Sir. Commissioners, I thought it would be, I thought it was important to make this statement, because you see a lot of, over the years, you have seen a lot of comment, which seems to attribute particular actions, government actions to, to individuals policies and actions, which is not how our government functions. As I was saying, that we had earlier, Commissioners, when you, as the Commission knows, when you talk about the defence white paper, which is tabled in Parliament by the Minister of Defence, it is in fact, a Cabinet document. It is a decision of Cabinet, Cabinet has discussed it and so and so. You could say, in a colloquial sense that Minister of Defence has said but is only colloquial. So and that is the point we are trying to make here and therefore that the decisions that came from the Ministerial Committee were not decisions that were made by the members of the Ministerial Committee acting in their individual capacities. They had to report. Our senior committee was the Cabinet. We had to report to the Cabinet, this is what we are recommending and explain why, what we recommending whatever. The Cabinet would then take a decision. So, I thought it was important to understand this. I am saying, because, Sir, you get it is quite a lot, this rather strange notion, that the major decisions of government are taken by individuals, in, as long as you have the capacity, the possibility to do your thing, I at least, know what I did, when I was in government. Thanks.

ADV SIBEKO: And, and in that vein, that would also exclude you from having taken any particular decision, regarding the SDPP, in

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your personal capacity or in your capacity, as President, or in your capacity, as chairperson of the IMC.

MR MBEKI: Yes, Commissioners. I mean, there are no decisions that were taken by the chair of the Ministerial Committee, or the
5 Deputy President or the President of the country. There were no individual decisions that were taken, with regard. It is all decisions, all the final decisions, with regard to this matter, were Cabinet decisions.

ADV SIBEKO: Now, you point out in paragraph 6 that your, the
10 former ministers, your colleagues have already given evidence to the Commission, with regard to material issues that arose, with regard to their participation in various decision, decisions, involving the SDPP's and you said in paragraph 7 you endorse evidence given in that respect. Do you still confirm that?

15 MR MBEKI: Yes, Commissioners. I definitely. I definitely do confirm that.

ADV SIBEKO: Now, once the decision to procure these packages had been taken, the implementation thereof was left to the various officials, within the SA Defence Force and the other departments that
20 participated in the process. That process culminated in a Cabinet, oh, I beg your pardon, a briefing to the Inter Ministerial Committee, which, according to the evidence before the Commission, took place on 31 August 1998. Where a recommendation was adopted, in terms of which several equipment, oh, would be sourced from the
25 recommended suppliers. Do you recall that?

MR MBEKI: No, Commissioners. No, I do not, I do not recall this meeting. It would have taken place, you say 1998? That is what... it

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is how many years ago 16? No, I do not.

ADV SIBEKO: In fact, to that effect, there is, what appears to be a recorder of the proceedings of that meeting and in respect of which, Minister Kasrils gave evidence, as to what motivated the decision to
5 procure some of the equipment from certain suppliers. I believe you possibly would be aware of one controversial programme in these packages, which was the acquisition of the Hawk from BAE. Do you have any recollection, vague, or somewhat detailed about this?

MR MBEKI: But, Commissioners, I would presume that both Ronnie
10 Kasrils, who at this time, was Deputy Minister of Defence and, and the officials and officers from the, from the Defence Department and National Defence Force, I am sure they would have addressed this matter. But, as I recollect the discussion, when the recommendation came, to the Ministerial Committee from the lower committees about
15 this particular issue, a trainer, you know, this is the trainer for the Grippen. As I recall it, there were, there was a proposal about two options that the Ministerial Committee could agree to option one, or could agree to option two. In terms of option one, the, I think the Italian trainer was the preferred trainer, in terms of option one. In
20 terms of the second option, the Hawk was. The difference here was that, what had to be decided here was the Italian trainer would be cheaper than the Hawk. But the Hawk would have certain advantages over the Italian, in terms of compatibility with the Grippen. It is therefore, from the point of view of, of training of pilots and whatever
25 else that the Air Force does, from that point of view, the Hawk was a better plane. But, it was a more expensive plane. So, as Ministerial Committee, we had to take a decision in, in reality, which was does,

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does cost trump this compatibility and other advantages? Or does compatibility and these other advantages trump cost? So, we had a choice that had to be made and we decided that, let us go with, with the Hawk and see how we manage the cost implications of that, within
5 the totality of the budget that would be allocated for this purpose. So, that was the decision, as I recall it. I, I would imagine that, as I was saying the then Deputy Minister Kasrils and the officers from National Defence Force and officials from the department, might have a more detailed explanation about this. But, I think, broadly,
10 Commissioners, I think, that was about what the issue was and then that is how we, we arrived at a decision, which then, of course, was, was a decision and that was then, adopted finally by Cabinet.

ADV SIBEKO: And would you recall if there was any present, detailed presentation with regard to the costing of both these
15 programmes, furnished to the Inter Ministerial Committee, at the time that it had to apply its mind to the recommendation, coming from the lower committees?

MR MBEKI: Well, Commissioner, I do not know the, these matters about costs, it would obviously have featured, in terms of the report
20 that would be coming from the committees below to say we had short listed the following whatever and we think this one is best. This is number one, number two and they would have explained on what basis, this one becomes best and, et cetera. So, to that extent then, there would have been a discussion of the financial elements thereof.
25 But, I would imagine that there would have been a much more extensive discussion of this matter, once the Minister of Defence, sorry, the Minister of Finance came with the affordability study.

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Looking at the totality of the budget, I would imagine that might have been the occasion to have a more comprehensive discussion about the money matters.

ADV SIBEKO: And, and perhaps, for the assistance of the
5 Commission, the issues relating to the choice of the Hawk and the affordability and rationale, the Commissioners would find, in the transcript of proceedings at the folder in the references, page 7187, lines 4 to 25 and with regard to affordability, these appear in the evidence again of, former Minister Trevor Manuel at page 7188, as
10 from line 4 and page 7198, as from line 1 and it continues at page 7201, line 10 to 7203, line 22. That is why the detail of, of the affordability study and in relation to the acquisition of the entire package, appears to have gathered in his evidence. I believe these matters would have been canvassed, during the meetings of the Inter
15 Ministerial Committee over which you presided.

MR MBEKI: Yes, that is correct, Commissioners.

ADV SIBEKO: There is an issue raised in paragraph 8 of your statement, regarding the extensive litigation, relevant to the issue around the validity of the contracts that were subsequently concluded
20 and the affordability of the packages. As, as I recall through the evidence, again of former Minister Manuel, that litigation involved you, at that time, having been cited in your capacity as the President of the Republic. Do you have any recollection in the independent of having refreshed your mind about it, regarding that litigation?

25 MR MBEKI: No, Commissioners, I, I would not, I mean, I, I recall indeed, that, as has been stated, I was cited as the President in, in these instances and indeed, as government, we then decided that the,

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the means and requirements in treasury would take the lead, in terms of responding, responding to this, to this issue. So, we did not therefore, deal with it any directly and in detail. Thanks.

ADV SIBEKO: Now, having dealt with that matter, perhaps it might
5 be appropriate to just digress, take a step or two back. That, after the recommendation was made to the Inter Ministerial Committee, perhaps the meeting, in terms of which the evidence suggests, was on 31 August 1998, to approve certain suppliers. This matter, is it correct, was considered by the Inter Ministerial Committee and it, in
10 turn, made a recommendation to Cabinet, which then, took a decision, in principal to approve the recommendation that was made. This was during, in September 1998. Do you recall that? September 1999, I beg your pardon, do you recall that?

MR MBEKI: Yes, Commissioners. The, the process was that, as I
15 was saying, there would be committees below the Ministerial Committee that would look at all of these matters in detail. Then come and report to the Ministerial Committee and make recommendations to the Ministerial Committee, which we would then discuss those, prior forwarding them to, to Cabinet. So, sure, at
20 some point, at some point there would have been a time, when the Ministerial Committee, having looked at the recommendations that would have come from the committees below, which then, would have gone to Cabinet and made the recommendations. As I recall it, Cabinet actually accepted recommendations that were made by the
25 Ministerial Committee. So, I, I am saying, Commissioners, I cannot, I cannot confirm the exact dates, whether the date was on the 9th of January or March or February or whatever. But, at some point, the

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recommendations were made by the, to the Ministerial Committee, including, which recommended all of these things, which ultimately became the decision of Cabinet. There may very well have been these meetings took place somewhere in Durban in 1998. It may very well have happened. If it did not happen, it would have happened, if it did not happen then, it would have happened at some other point. But, in the end, the fact of the matter is, Cabinet took certain decisions based on recommendations made by the IMC, which the IMC itself, would have listened to presentations made to it by other committees.

ADV SIBEKO: In fact, if you have regard to paragraph 9 of your statement, you state there that:

"The record shows that in November 1998, Cabinet approved the preferred suppliers for each of the equipment types, comprising the SDPP and Cabinet simultaneously, at that point requested that matters, relating to affordability should be investigated."

So, in 19 November 1998, Cabinet took a decision with the caveat that the affordability of the packages be investigated.

MR MBEKI: Commissioners, yes, that is correct.

ADV SIBEKO: Now, it is common cause now and through the evidence of, from Minister Manuel that the exercise, relating to the investigation of affordability was undertaken. The evidence before the Commission, a presentation therefore, of the affordability study was made to the Inter Ministerial Committee around September 1999. Do you have any recollection of that, without the aid of any document, at this point?

MR MBEKI: No, but the only thing that I can say, Commissioners, is

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that indeed, there was, there was a report presented. We discussed it and, and then having satisfied ourselves that addressed Cabinet that said must be addressed. We took it back, I, what mind was on, or even the detail of the discussion, I cannot recall now.

5 ADV SIBEKO: Now, in paragraph 10, you state that:

“When Cabinet was finally satisfied that it have obtained an affordable contracting position that government would support, it took a decision in December 1999 in which it authorised the signing of the contracts with the successful suppliers.”

10 Do you recall, do you recall that decision, being taken by Cabinet?

MR MBEKI: Yes, Commissioners. I do, I do, indeed it is a decision, as, as recorded here.

ADV SIBEKO: Could you just briefly set out the circumstances surrounding the decision being taken, if you recall.

15 MR MBEKI: Commissioner I am not, not quite sure that I understand that question. But, I mean, the, this is a culmination of a process. A decision had been taken, National Defence Force needs re-equipping and we go through a process to say how it needs to be re-equipped and then pose question, is it affordable. At the end of all of that
20 process, Cabinet in December 1999 said well, all of these matters have been addressed and, in terms of the negotiations with the preferred bidders, what we required, needed to be done, it was referred with us, in terms of the negotiations has been done. In the
25 end we would now proceed to, to sign the contracts with the successful suppliers. So, I am saying really, I think, Commissioners, really just it was a culmination of this process, which started quite earlier and then, when, when these various decisions were taken to,

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to do this, this procurement.

ADV SIBEKO: Now, in paragraph 11 of your statement, you state that you have:

5 *“At all times held the firm conviction that the decisions of the Cabinet.”*

I presume this in relation to the SDPP:

“Were compliant with the Constitution and within the Constitutional mandates inferred on Cabinet.”

10 Why was it necessary to include this statement, or this section in your statement?

MR MBEKI: Well, Commissioners, I am really, I am saying this, because there, there are some matters that have been in the public domain for some time, which, some of which have suggested that there was something wrong, wrong with the programme, 15 Constitutionally wrong, in terms of the government deciding to go for this requisition, in the light of the various demands that the country had for houses and [indistinct 56:19]. To make the point that the, people should not cherry pick what the Constitution says. It requires a Defence Force of a particular kind. It describes, as the 20 Commission knows, the task of this Defence Force. So, like I said, I am saying, the decisions taken by government were, were compliant with the, with the Constitution and then, it also relates to matters that belong within the mandate of the National Executive, as, as defined in the Constitution. There again, I have heard that there has 25 been some argument presented that once the Cabinet had agreed on all of these things, the affordability issue and so on, it needed to go to parliament to, to have that endorsed. It is clearly wrong. What

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happens is that in the end, the budget, the national budget, as I am sure the Commission is perfectly aware, national budget is approved by Cabinet. What would have happened in this particular case is that all costs, all costs that government incurs, as this one, must be provided for. There must be necessary, necessary funds have to be fund. Those funds have to be approved by the national Parliament. So, that matter that follows, the, would have gone to Parliament, via that national budget. The funds are to be allocated to finance this acquisition, not that, if, if Cabinet wants to buy 20 jets, it must go to Cabinet, I mean, to Parliament to get permission to buy, to acquire 20 jets. There is no such requirement. But, that purchase, in terms of the national budget must, must reflect. So, that is why we, we are making these references to these Constitutional matters, because, as I say, because of some things that somehow have been put in the public domain simply, to suggest that somehow the government had acted in a manner that was unconstitutional. Thanks.

ADV SIBEKO: Now, you, you would have seen that, that that brought us to a conclusion of your statement, as I understand it. Is there anything else, with regard to the role that you played, either as Deputy President of the Republic, or President of the Republic, or the Chairperson of the IMC, in relation to the acquisition of the packages that you would like to add, which is not included in your statement?

MR MBEKI: No, Commissioners. I cannot think of anything. I have been, I think we have said whatever needed to be said. But, of course, if the Commission may want to ask some further questions, I would be available to answer those. Thanks.

ADV SIBEKO: Chair and Commissioner Musi, that is the evidence in

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chief of President Mbeki.

CHAIRPERSON: Thank you, Advocate Sibeko. Is there any person, who would be interested to cross-examine the former State President?

5 ADV HOFFMAN: Mr Commissioner, my name is Paul Hoffman. We have not met, mainly because you refused to meet me, when I tried to meet you.

CHAIRPERSON: You are and I refused to meet you. Late in the evening in my office, I will not talk to any of the bosses involved.

10 You are correct, I refused to meet you.

ADV HOFFMAN: I want to cross-examine the lead witness on behalf of Terry Crowford-Browne, who is sitting next to me in this meeting.

CHAIRPERSON: I think, just for the record. Mr Paul Hoffman is correct, I refused to meet you. He came to the office, together with
15 his client. I was sitting and working at about seven pm. Then I was told that they want to meet me. I refused. The reason is simple, you cannot see any of the parties, or one of the contestants in the absence of other parties and for that reason I said to, I said to my secretary: 'Tell Mr Paul Hoffman, I will not meet him.' He is correct.
20 Before I go to the next person, Mr Paul Hoffman, who is your instructing attorney? So that we can make our record straight.

ADV HOFFMAN: I am here on the instructions of Charles Abrahams and has been in correspondence with the Commission on various matters over the past few years.

25 CHAIRPERSON: Thank you. I will tell you why I was asking that question, because at some stage we received a letter from them, saying that they are no longer acting for him, but I might be

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incorrect, but if they are still for him then it is fine. Then it will possibly help us to try and arrange with him for the statement of Mr Terry Crawford-Brown for in order to place [indistinct 01:02:15] so he can come here and could testify. Advocate Mdumbe you have got it, 5 so we know we are going to contact it [indistinct 01:02:21] in order to try and arrange a statement of Mr Terry Crawford-Brown. Thank you, Mr Hoffman. Any other questioning you might want to?

ADV HOFFMAN: Sorry, before we, we move on, there has already been negotiation with Advocate Mdumbe in relation to the availability 10 of Mr Crawford-Browne who is willing to assist the Commission, but unfortunately, he has to attend a conference in Turkey.

CHAIRPERSON: Just hold. I am not ...[intervened]

ADV HOFFMAN: We will worry about that ourselves.

CHAIRPERSON: Ja. No, no, I am not dealing with that question of 15 his availability.

ADV HOFFMAN: Yes.

CHAIRPERSON: On the date that we have subpoenaed him to come in here and testify. That we will deal with at a later stage.

ADV HOFFMAN: Yes.

20 CHAIRPERSON: Can I get a second, any other person who might want to, to cross-examine the former State President?

ADV DE VOS: Chairperson, yes, De Vos and it is Ms Snyman on behalf of Lawyers for Human Rights. We have requested the opportunity to cross-examine Mr Mbeki.

25 CHAIRPERSON: Thank you. I think, that seems to be the only two people. Just so that we can get our timing correct. Mr Hoffman, more or less, how long do you think that your cross-examination will

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take, more or less?

ADV HOFFMAN: Mr Commissioner, that is a very difficult question, just about.

CHAIRPERSON: Just a rough estimation, you know, I am not going
5 to go into that.

ADV HOFFMAN: I imagine that I would take most of the rest of the day.

CHAIRPERSON: Most of the rest of the day. Okay. Thank you and then, Advocate De Vos, just a very rough estimation.

10 ADV DE VOS: It is obviously very difficult to say. It depends on the answers that we receive from the questions that is going to be put to the witness, but it may take about an hour or two.

CHAIRPERSON: Oh.

ADV DE VOS: I am not as optimistic as Mr Hoffman was now.

15 CHAIRPERSON: Thank you, Advocate De Vos. I think this might be a right moment to take a tea adjournment and we will come back after 20 minutes. Thank you.

(COMMISSION ADJOURNS)

(COMMISSION REOPENS)

20 CHAIRPERSON: Thank you. Can you confirm that you are still under oath?

MR MBEKI: I do.

CHAIRPERSON: Okay. Thank you. Mr Hoffman?

ADV HOFFMAN: Thank you, Mr Commissioner. I have clear line of
25 sight the witness [indistinct] and somebody else's microphone appears to be on at the moment. It might worry the transcribers later. That sounds more like, oh, it is on. May I proceed, Mr

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Commissioner?

CHAIRPERSON: I am not quite sure, but I see one of the microphones next to the former President seems to be on, would that affect your colleagues or not? Thank you, Mr Hoffman, you can go
5 ahead.

ADV HOFFMAN: There is another on in the midpoint between us but if the technicians are happy, I am happy. I just do not want to be a fly in the ointment, as they say.

CHAIRPERSON: Apparently, they are happy.

10 ADV HOFFMAN: Mr Mbeki, and please forgive us for calling you Mr Mbeki, but we prefer the precedent set by your predecessor, President Mandela, who choose not to be called President, after his term at office. The evidence that you have given this morning is a short summary of a matter which is not really in an adversarial
15 domain. What we are busy with here as you know, is a Presidential Commission of Inquiry appointed by President Jacob Zuma, to enable him, to be better advised as to what happened many years ago. Some of it is very long time ago, in relation to the acquisition of, of arms by South Africa, after the new South Africa dawned and what,
20 what followed, in terms of implementation of, what I will call offset deals by the press. Now, I do not, I do not seem to have an adversarial conversation with you. I seem to get loose of my track and sort out in chronological order, what is, what we know is germane to what the Commission has to do, if it is probably going to discharge
25 the very onerous mandate, which has been given to it, by President Zuma ...intervened]

CHAIRPERSON: Mr Hoffman, can we get to the cross-examination

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please.

ADV HOFFMAN: We can do that. Can you tell us, what position, prior to becoming Deputy President of South Africa did you hold in the ANC?

5 ADV MOERANE: Chair, I, I hope these questions will assist the Commission in arriving at decisions, which it is mandated to, in terms of reference. Obviously, Chairperson, if you will control the manner of asking questions. But, for the life of me, I do not see the relevance of this question.

10 CHAIRPERSON: Mr Hoffman, is there, do you have any point to that?

ADV HOFFMAN: Yes.

CHAIRPERSON: Because I am not quite sure, whether the position the former President held in the ANC, at that time, has got any
15 relevance with what we are doing.

ADV HOFFMAN: It really relates to how it happened that he became the Deputy President. That is really, it is a leading question to why it was that he became Deputy President in 1994. But, if it worries my learned friend, Mr Moerane, then I do not need ask it. It is simply
20 goes straight to you were Deputy President from 1994 to 1999. Is that correct?

CHAIRPERSON: Just hold on. As leader of the ANC, the charge is not relevant. Get straight to the questions. He was the Deputy President at that time. We all know that.

25 ADV HOFFMAN: There is a need for a record and that is why I am asking the question.

MR MBEKI: Commissioners, Commissioners, yes, indeed, I was.

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Thanks.

ADV HOFFMAN: During the term of your Deputy Presidency, you were effectively a Prime Minister of South Africa. You were the hands on day to day person, running the show. Your President was a
5 reconciler and a nation builder, rather than a day to day mechanical operator. Is that a fair summary of what was happening in the early years that you were in Cabinet?

MR MBEKI: No, Commissioner. I think, it is, it is not. The, President Mandela was the head of State in the new government and
10 functioned as such. There was no suggestion that anybody played a role of a Prime Minister, that position, which we do not have. There is no suggestion whatsoever. No, I, the, the description is wrong.
Thanks.

ADV HOFFMAN: So, you regarded yourself, you regarded yourself
15 as his deputy.

MR MBEKI: No. I did not regard, I did not, it is not that I regarded myself as such, I was. That is how I was appointed and so and so. I am Deputy President, together with Deputy President FW De Klerk.

ADV HOFFMAN: And when it came to this arms acquisition, you
20 were the President, agree the Chairman of the Inter Ministerial Committee that was ceased with the task of finding the right balance and mix in relation to the acquisition of arms.

MR MBEKI: Yes. I chaired the Inter Ministerial Committee, appointed by Cabinet to, to have oversight of that, over that process.

25 ADV HOFFMAN: And when did that committee cease to function?

MR MBEKI: Oh. I would imagine, I have not checked on that, but I would imagine that it would have ceased to function, once it had

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completed its work.

ADV HOFFMAN: And that happened at, or that you can, that you can remember?

MR MBEKI: No, I am sure, I am afraid I do not, Commissioner.

5 ADV HOFFMAN: What I am going to do, Mr Mbeki, is try to place a chronological context on how it came about that South African spent, what was initially going to be R6 billion on armaments, which was then revised to R10 billion. By the time the deal was done, it was R30 billion and if you read in the newspapers today it is R90 billion.
10 What I want to do is put all of that in chronological context on, on the basis of your particular role.

CHAIRPERSON: Just a moment, Mr Hoffman. Advocate Moerane.

ADV MOERANE: Chairperson, I do not know if colleague is putting misleading statements. There was never any stage, where the cost of
15 this acquisition was going to be R6 billion.

CHAIRPERSON: And then, secondly Mr Hoffman, if I remember, there was no evidence, even from Treasury, nobody ever mentioned R90 billion. I am not sure where you get that figure from.

ADV HOFFMAN: The, the first, the figure to which Mr Moerane is
20 complaining, is the one in the defence review, way back in the 1990's and the R90 billion is the figure that is now in and as I put it, brandied about. I do not say it is an accurate figure. It is in the press today.

CHAIRPERSON: Can you, can you just try and stick to facts.

25 ADV HOFFMAN: I.

CHAIRPERSON: You tell me, and I will not have lead any evidence about the R90 billion that they are talking about. I think can

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continue with your questions. If you are not, please try and refrain from making statement, which you are unable to, to justify at a later stage. I have not seen any R90 billion. I have witnesses from national treasury, I have a witness from DTI, none of them spoke
5 about R90 billion. Maybe just leave out that figure from your questions, because I am under the impression you are mistaken.

ADV HOFFMAN: As, as the Commission pleases. Then, when you became Deputy President, the, the situation in the South African Defence Force, as it then was, was that there had been severe
10 budget cuts and staff cuts. They were not in a healthy state. Is, is that a fair statement? I am talking now about the period between 1989, when the end of Apartheid began to dawn and 1992, which is when the CODESA process began. Is that a fair statement, Mr Mbeki?

MR MBEKI: No. I do not, I do not know, Commissioners. I have
15 know a slight detail what had happened to the National Defence Force before 1994. So, I really don't know.

ADV HOFFMAN: That, that is a fair answer. Sorry, that is a fair answer and I cannot give to, to give evidence about stuff you do not know about. But, you did mention that there was talk and that my
20 date is March 1993, that the Navy, the SA Navy, as it then was, was looking to purchase four new Corvettes from Spain. I think you mentioned that, in passing, in your evidence in chief this morning. Is that correct?

MR MBEKI: The, what happened, what, what I mentioned there,
25 Commissioners, was that when we came into government in 1994, we found that government had acted to acquire four Corvettes indeed, from Spain, but that the contract had not been signed.

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ADV HOFFMAN: Yes. That is correct. We are on the same page. That, that was under review. They want smaller vessels, much cheaper vessels than the vessels that were eventually acquired under the ultimate acquirement package. Is that right?

5 MR MBEKI: I do not know.

ADV HOFFMAN: Now, my instructions are that in the period the 6th to the 14th of January 1995, you are now Deputy President. You travelled to Germany and you told the German Foreign Minister that the race is still open for companies to submit tenders for the
10 Corvettes. Do you remember ever saying that?

MR MBEKI: No. I, I do not. But, I am sure we can check with that former Foreign Minister of Germany as whether, but I do not.

ADV HOFFMAN: He, he was the Foreign Minister and I am sure we can. It, it was reported at the time and my source of this
15 information, is a well-known South-African historian, whose name is Paul Holden. Who has spent many years crouched over a, a computer screen researching the, the arms deals, as you probably know.

MR MBEKI: No, Commissioner. I am afraid I do not know him. I do not even know of him. But, I am saying that sure, he might have said
20 what you say he said. But, I cannot recall any such thing.

ADV HOFFMAN: You are not in a position to dispute what he has said, about what happened when you visit, visited Germany in January 1995.

MR MBEKI: No. I am not, was, was he, he made, Commissioners, he
25 might have been told by the German Foreign Minister that that is what I said to the Foreign Minister, because I cannot remember a Mr Holden being present in meetings that I had with the German Foreign

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Minister. But, he would have got this information somewhere. I may have met the German Foreign Minister, I told him that. I do not know. But, I cannot recall, recollect it.

ADV HOFFMAN: Do you recall that the Corvette deal was scrapped,
5 the, the intention to, to get the Corvettes, that idea was scrapped in
June of 1995, when the Cameron Commission of Enquiry was in full
flow and there was intense public criticism of the idea of spending
money on, on Corvettes, while half of the population of South Africa
is living in poverty and shacks and less than ideal circumstances. Do
10 you remember that happening that the Spanish deal never happened?

CHAIRPERSON: Just hold on, before former President can respond
here. I do not quite understand the question. Can you attempt to
rephrase the question?

ADV HOFFMAN: Yes.

15 CHAIRPERSON: And normal, in according to the evidence that we
have and that there are any attempts to acquire the Corvettes were
stopped because of the defence review. That is what the navy said
was. The said ideal was unanimous. The whole thing with the
defence review is so that they can be national consensus to the
20 requirements of the SANDF. That is the evidence that I have. Now,
you have entered quite a lot of other things. I did not quite
understand what you are, what you are saying about the, about the
other things that you said.

ADV HOFFMAN: Oh. Sorry, Mr Commissioner, if I put too many
25 events in one, which I will break the question some more and we will
be here longer. But, the, the reason that Holden gives for the
scrapping of the plan to get Spanish Corvettes is that the public was

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unhappy about the idea of spending a lot of money on expensive war ships, when we did not appear to have any enemies.

MR MBEKI: Well, Chairperson, as I was saying, I do not know Mr Holden. I do not know also why this reliance on Holden. I, I explained this earlier today, this morning. Indeed, Chairperson of the Commission, as you have indicated that we took the decision to cancel that, I am saying the contract had not been signed, to terminate that process, because we were saying it is important to have an overall look at the needs of the National Defence Force and not say today we, we buy for the Navy and then ask a question, well, what does the Air Force need and all of that. That was the reason. Whatever Mr Holden, I, he is entitled, of course, to refuse, but that was the reason. Thanks.

ADV HOFFMAN: Yes. Mr Holden is one of the witnesses that would be giving evidence to this Commission in due course. But, I, I think in fairness to you, if you are able to add light to what is going on, then obviously, you do so. If you do not remember, you do not remember and I am not trying to, going to try and force you. I am not here to force you to remember things that you do not remember. It is a long time ago and a lot of water has flown over the bridge since then. No, not really, but let us get on with the job. As regards the Air Force, my instructions are that in October of 1995, the Air Force did an analysis of its needs and it said, all we need to do is to replace the Cheetah trainer aircraft that were then in service in South Africa. They have since been sold to Ecuador, as you probably know. But, my question is, were you aware that the Defence Force was not, at that time, asking for expensive Hawks and Gripens.

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CHAIRPERSON: And concerning, before that one, the President replies, Mr Hoffman, please try and put to the witness the correct facts. The evidence that we have from the SANDF was not at all what you say. At no stage do they say that, they do not want to replace
5 the Cheetahs. As I understood their evidence, the Cheetahs' lifespan was almost coming to an end and then two: There are [indistinct 01:23:26] lifespan had come to an end. They set out exactly what their requirements were. I do not remember that type of evidence that you are saying that was led by anyone of the, of the Air Force
10 members, or the SANDF. Maybe try and put the proper position to the witness, so that we can have an answer from him.

ADV HOFFMAN: Mr Commissioner, my function is not to put what the SANDF has come and said before this Commission. My, my function here, is to put my instructions and to seek, to help you to
15 find out whether you are being told the truth, when you are told what you are told by officials, who have, whatever reasons they may have to tell you what they tell you. But, simply because they have told you something, does not turn it into the Holy Grail. It is their evidence and I am entitled, on the instructions of my client, to put to this
20 witness, who is the man on whose desk the buck stopped. What other people say was actually going on at the time. That is my job.

CHAIRPERSON: I agree with you. In other words, if I understand you well, this is the evidence that your client is going to lead? Thank you.

25 ADV HOFFMAN: Well, my client and Mr Holden, who is the source of the information. Let us just take a step back.

CHAIRPERSON: Just hold on. You are saying that your client and

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Mr Holden, that is the evidence that they want to lead before the Commission.

ADV HOFFMAN: Correct, and ...[intervened]

CHAIRPERSON: then in that case, you want clarity on that question
5 to him.

ADV HOFFMAN: And they will say also that Ecuador has bought those Cheetahs and those Cheetahs are still in service in Ecuador.

CHAIRPERSON: Just hold on Mr Hoffman. I see Advocate De Vos, at the back, is raising a hand.

10 ADV HOFFMAN: On that I would at least.

CHAIRPERSON: Yes, Advocate De Vos?

ADV DE VOS: Mr Chair, I act on behalf of Mr Holden and obviously, I cannot object to whatever is put on behalf of Mr Terry Crawford-Browne to Mr Mbeki, as long as it is clear, that whatever the
15 instructions Mr Hoffman is putting to Mr Mbeki does not come from my client.

CHAIRPERSON: Okay. Advocate this is what I thought it was and it is [indistinct 01:26:00] you know, Mr Hoffman now, is acting also for Mr Holden and Mr Terry Crawford-Browne. No, but then, thanks a lot
20 for clarifying that. Mr Hoffman, you are not acting on behalf of Mr Holden.

ADV HOFFMAN: No. I am not.

CHAIRPERSON: The version of Mr Holden will be put by Advocate De Vos, who is sitting right at the back there. She is acting for, for
25 Mr Holden. Thank you. May you please proceed?

ADV HOFFMAN: What, what I can put on behalf of Mr Terry Crawford-Browne is that, at the time, which was in 1995, the

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Cheetahs, then in the service, in the South African Air Force, had a twelve year lifespan. They were sold to Ecuador and that they are still being used in Ecuador, to this day. I ask the witness whether he can enlighten the Commission, in the light of the fact that he was the
5 Chairman of the Arms Acquisition Committee in relation to the aspect of this matter.

ADV MOERANE: Chairperson, that is not correct. He was not the Chairperson of the Armaments Acquisition Committee. There was a different chair of that particular committee.

10 ADV HOFFMAN: I miss-spoke. My learned friend is quite right. He was the Chairman of the Inter Ministerial Committee. I take it back and I apologise for wasting the Commission's time.

MR MBEKI: No, the, Commissioners, I do not, I do not know anything about this reporting about, in terms of the work of the Inter
15 Ministerial Committee.

ADV HOFFMAN: You, you referred in your evidence in chief to the defence white paper that was produced early in your term of office. I want to suggest to you that my information is that that happened in May of 1996 and that the Department of Defence asked for a balance
20 to be struck between, what was then the RDP, the Reconstruction and Development Programme and the need to prepare the country for any military eventuality. Is, is that a fair summary of how you recall the white paper?

MR MBEKI: Well, Commissioners, I would imagine indeed, that that
25 would have been the attitude of government and I would not be surprised. I have not read what that white paper for many years. I would not be surprised if it reflected what government was.

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ADV HOFFMAN: Thank you, Mr Mbeki. Thank you, Mr Mbeki, we are making progress now and Of course, what, what was in front of the, of the, the South Africa, at the time, was the notion that the primary objective of the Defence Force is to defend and protect the Republic, 5 our territory integrity, our people and the principals of international law, in relation to the use of force. That is really what it was about those were the principles that we were now bringing in to bear the new South Africa.

MR MBEKI: That, that is reflected in the Constitution. But, in the 10 process of the defence, a discussion of defence policy, defence posture, this matter would cross us, also added thereto, South Africa had an obligation towards the rest of the African continent.

ADV HOFFMAN: And, and that was part of that African Renaissance in which you and I have participated. The question that I have to 15 raise with you, seriously, is what military eventualities, were you as Chairman and Deputy President aware of, at the time that these considerations were on the table and that this white paper was there?

MR MBEKI: Commissioners, the views of government, with regard to threats and all that, are reflected both in the white paper and the 20 defence review. As a person, I do not have any views that are different from those.

ADV HOFFMAN: You were not personally aware of any possible threat, nor were you surprised to discover, as we sit here in 2014, that many of those weapons that we obtained, relating to the 25 armaments that we obtained have ever been used in anger in South Africa, since then.

MR MBEKI: No, Commissioners. I am saying my, my personal views

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are entirely irrelevant here. What we are talking about there, are government decisions and with government decisions, I explained in the documents to which I have referred. I think, that is what is my true answer to the work of the Commission.

5 ADV HOFFMAN: Perhaps, I should ask you the question a little bit more bluntly, even though I am trying not to be blunt with you. Are you aware of any tactical or defensive use that the Corvettes, the submarines and the jets that we have acquired under this deal, have been put since we bought them?

10 MR MBEKI: Chairperson, Chairperson, while I was in government, the way I, we never did, we never, where I was sitting in government checked on the operations of submarines and ships. Where was the submarine yesterday, where was this aircraft another day? What were they doing? But, I am sure people in the National Defence
15 Force and Defence Department can answer that question.

ADV HOFFMAN: Thank you, Mr Mbeki. I, I suppose that, that there would be a more appropriate official to, to deal with the matter. The, the instructions that I have, is that above half of the aircraft are at least still in their packing cases. They have not been unpacked yet.
20 That two of the submarines are unusable and that the Corvettes have got all kinds of, well, the frigates have got all kinds of technical problems, which mean that they decorate the harbour at Simon's Town at the moment. But, if you have been following ...[intervened]

CHAIRPERSON: Mr Hoffman, please. We do not have time. Can you
25 get straight in the cross-examining of Mr, the former President? That type of information, you can discuss it, at a later stage, when your client testifies. It is not, it is not made him to go on in detail, trying

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to tell the President what your clients are going to testify about, if he says that he does not have any personal knowledge of that. Let us just try and save time. Get on with your questions without making long statements please.

5 ADV HOFFMAN: Mr Commissioner, I will, I will attempt to avoid long statements and stick to the facts. I am instructed that in March of 1997, the South African National Defence Force had received bids from 23 different suppliers for the provision of fighter trainer jets and made a short list of four and neither the Hawks, nor the Gripen
10 made that short list. Do you remember that in the processes of your committee that you chaired and for which you were collectively responsible?

MR MBEKI: No, Chairperson. I do not.

ADV HOFFMAN: I am also instructed that on the 18th of June of
15 1997, the South African cabinet approved the defence review and made a decision that South Africa needs to undertake extensive purchases to maintain the capacity of our Defence Force. Do you remember making that decision?

MR MBEKI: Yes, indeed, a decision was taken, Commissioner, by
20 Cabinet to acquire the equipment, as indicated in the defence review.

ADV HOFFMAN: Thank you, Mr Mbeki, now we are getting there. July 1997 was the month in which you as, I suppose then, it was still, would have been President Mandela in July 1997 and that an appointment was made for the first time ever, to have a South African
25 Consul General in the city of Hamburg. Did you participate in any way in that decision?

MR MBEKI: Consuls General, Consuls General are appointed by the

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Department of Foreign Affairs, or the Department now of International Relations. They would have nothing to do with the presidency.

ADV HOFFMAN: You are saying it was a departmental decision and not, not a presidential decision.

5 MR MBEKI: Let me repeat. Consular officials are decided upon by then, the Department of Foreign Affairs or currently the Department of International Relations and have got nothing to do with the presidency.

ADV HOFFMAN: Perhaps you would enlighten the Commission, as to
10 why it was necessary to appoint a gentleman by the name of Mo Shaik to be the Consul General of South Africa in Hamburg for a period of only three months, given that the city of Hamburg is the home town of Blohm and Voss which was one of the companies in the German frigate consortium.

15 CHAIRPERSON: Advocate Moerane?

ADV MOERANE: Chair, I think Mr Mbeki has said twice that that was not a presidential appointment. It was a departmental appointment by Foreign Affairs, as it was then called. Now, to start cross-examining the witness about why a particular person was appointed,
20 it is taking us nowhere.

CHAIRPERSON: Correct. Go on.

ADV HOFFMAN: Thank you, Mr Commissioner.

CHAIRPERSON: Otherwise, do you want the President, a former State President, to start speculating?

25 ADV HOFFMAN: No. I was not.

CHAIRPERSON: Was it clear, Sir, that was not his function?

ADV HOFFMAN: I am not asking him about the appointment. He

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has told us that that appointment was not made by him or anybody in the Cabinet. It was made by Foreign Affairs and I accept that answer. I am not attacking it. What I am asking him is why was it necessary, for his government, in which he was the Deputy President
5 to put Mo Shaik in Hamburg for three months, the home of Blohm and Voss. He either knows why, or he does not know why, or.

CHAIRPERSON: He is going to speculate. He did not make the decision. I am not going to allow the question. Just get to the next question.

10 ADV HOFFMAN: I do not know why it could be speculation, with respect Mr Commissioner, because if he knows why Mo Shaik went to Hamburg, he would tell us why Mo Shaik went to Hamburg. If, if his learned council and the Commission are not prepared to give him the opportunity of answering that question, then I am afraid getting at the
15 truth of why Mo Shaik spent three months in Hamburg ...[intervene]

CHAIRPERSON: Just hold on. Before you go on there, Mr President, do you know why Foreign Affairs did not reveal?

MR MBEKI: No, Chairperson. I, I would not. They would take decisions, I am saying, I said all matters, relating to consular
20 matters were decided by the department. Who goes to which capital? What car do they drive? What shoes will they wear? That department does anything to do with the Presidency.

CHAIRPERSON: Thank you. Let us get to your next question now.

ADV HOFFMAN: The following month, that is now August of 1997, I
25 am given to understand that the South African Parliament actually approved the defence review, which was the open sesame for the, the arms deal process to start moving. Is that, is that, does that accord

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with your recollection? You gave evidence to that effect earlier, without being planned. Is that the sort of date that that would have happened?

MR MBEKI: Chairperson, I am not sure about the months and so on.
5 But, the fact that the Parliament approved the defence review is correct.

ADV HOFFMAN: I am also instructed, Mr Mbeki that on the 2nd of October 1997, you made an announcement that South Africa would re-open tenders for the purchase of arms and that the total cost that you
10 were envisaging, you made that announcement was the princely sum of R12 billion. Do you recall making that announcement?

MR MBEKI: No I do not.

ADV HOFFMAN: Do you dispute that you made that announcement?

MR MBEKI: I cannot dispute it. I said I do not know. I cannot
15 recall it.

ADV HOFFMAN: Thank you, thank you, Mr Mbeki. You have been very fair and I think we will go far, in this respect as well. I want to now take you to, to the work of Mr Joe Modise, which was taking place in October of that same year. The, the instruction that I have,
20 that I have to put to you, because I am trying to do my job properly is that the South African Air Force command council met, to decide on the force structure that would be used in the new South Africa. They received strict instructions, from Joe Modise who, at the time was the Minister of Defence and with whom, as you have correctly conceded,
25 you were collectively responsible that there would be a three tier system in the tendering and that, as a result the BAE and the Gripen and the Hawk could be re-submitted for evaluation, even though they

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had fallen off the table at an earlier stage in the proceedings. So, by the end of that month, sorry, let us stop there. I will ask you the second half of the question about the end of the month later. But, does this, this is a big decision, I mean, this idea to have the three
5 tier system. Does this ring any bells with you, or is it something that you were allowing your committee to do with just overall supervision on your part?

MR MBEKI: No, the Minister of Defence and Department of Defence might have done exactly what, what he says, Commissioner. Although
10 I do not know what, what they decided there. What I would know is what was brought to the Inter Ministerial Committee.

ADV HOFFMAN: That was the, sorry, that was the second part of my question.

CHAIRPERSON: Just hold on a second, Mr Hoffman. Sorry, Mr
15 Hoffman, I was just discussing with my fellow Commissioner here. I notice that you are reading a book. I am not sure whose book that is. I am too concerned that this is on instruction. Who are you referring to when you say this is on instruction? Who would have instructed you?

20 ADV HOFFMAN: My instruction comes from Terry Crawford-Browne, who is sitting on my left. The book, as I have explained already to the witness and the Commission, comes from Paul Holden, who is a South African historian, who has written two books about the arms inquiry, or the arms deals. The first one, from which I draw this
25 information, is called the Arms deal in your pocket. That is the book that I am dealing out of and the other, it has a chronology, which was placed before the Constitutional Court and with the ...[intervene]

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CHAIRPERSON: Just hold on a second. I understand that. I just wanted to understand when you are saying my instructions are, from whom are you getting those instructions.

ADV HOFFMAN: I have been getting my instructions from Terry
5 Crawford-Browne, because he has ...[intervene]

CHAIRPERSON: And, and not from Mr Holden, because I am waiting for a statement from Mr Holden now. So, of the proposition that you are putting forward, is what your client would possibly testify about.

ADV HOFFMAN: That is so, that is so.

10 CHAIRPERSON: Thank you. Thank you.

ADV HOFFMAN: I cannot put instructions from people, who do not instruct me. That would be wrong.

CHAIRPERSON: That would be very wrong. What once, as I earlier on you said that and you are acting for, are sure it is not Mr Holden
15 and you said that is not correct. It is the sort, that is why I lean on you. It is just that arising out of this question.

ADV HOFFMAN: Ja. I was having this information by Mr Holden and if I said instruction, it is my mistake. I apologise.

CHAIRPERSON: Oh. Okay. As you elaborated, I suppose I falsely
20 understood you as saying as I did. But, we can go ahead now. You are not acting on behalf of Mr Holden.

ADV HOFFMAN: Never.

CHAIRPERSON: And the information that you are using to cross-examine is the evidence that is going to be given by Mr Crawford-
25 Browne whom now you are representing, I will allow that.

ADV HOFFMAN: Yes. And, and ...[intervene]

CHAIRPERSON: Thank you.

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ADV HOFFMAN: And I stress, for the record that this chronology, which I am using at the moment was placed before the Constitutional Court and confirmed on oath, by Mr Crawford-Brown, when he made the application to court that led to this commission of inquiry being
5 appointed ...[intervene]

CHAIRPERSON: Mr Hoffman, bearing all in all, you have said that many times in the past. Can you continue with the cross-examination?

ADV HOFFMAN: I am very happy to do that. Thank you for the
10 opportunity. For the second part of the question, in relation to Joe Modise's three tier system that let the Hawks and the Gripens back into the system yes by the end of October of 1997, there were three preferred suppliers for the supply of the Alpha jets that were chosen and at first, the Gripen was the lowest rated of all of the choices,
15 due to its cost. I think we are ad idem about that. You mentioned already that the Gripen was more expensive than the others in the race.

MR MBEKI: No. No, Commissioner, we were talking about the Hawk. We were, were talking about the Hawk, not the Gripen.

20 ADV HOFFMAN: Are you able to confirm that the Gripen was, in fact, the lowest rated? Did you look at the ratings at the time?

MR MBEKI: I do not remember, Commissioner, any presentation made to the Inter Ministerial Committee would have said that.

ADV HOFFMAN: Now, as at 1998, Joe Modise was the life president
25 of the MK veterans association. Is that right?

MR MBEKI: He may very well have been, Commissioner, I do not know.

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ADV HOFFMAN: And you will not know whether BAE made a donation to that organisation?

MR MBEKI: No, that is not in my diet, that I ever had to deal with.

ADV HOFFMAN: But, it is so that Mr Modise was a political ally of yours in the political activities that took place around that time.

MR MBEKI: Chairperson, I think I would like to request, with your permission that the advocate explains that, I do not understand it what is political ally, about what?

ADV HOFFMAN: Let me put it to this, the way that my note reads is Joe Modise was the king maker of Thabo Mbeki, because Thabo Mbeki wanted to succeed Nelson Mandela and there are various other political people that want him to do likewise and with his support, you became the second President of the liberated South Africa. That is the question I am asking you and I would appreciate an answer.

CHAIRPERSON: Advocate Moerane I see your hand. You wanted to say something to that?

ADV MOERANE: That, that is so, Chairperson. I, I do not see how Mr Terry Crawford-Browne can give that evidence. In any event, it is totally irrelevant to the issues that this commission has to decide. My learned colleague is obviously, reading from some book, written by some, some person and he seems to be relying on the truth of that and that is not in his Client questions. I do not know how he can vouch for the accuracy of all these statements.

CHAIRPERSON: Mr Hoffman?

ADV HOFFMAN: I have already confirmed in the case, Mr Moerane has just stated at the time, that what I am putting is put on the instructions of Mr Crawford-Browne. Mr Crawford-Browne has been

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involved in, in the politics of the arms deals, since, well, I think, since before the armsdeals with the, since 1989, he has been involved in it. He has taken a close interest in it and he has written two books on his own, which I have been careful not to quote from, because he will give evidence about what he said in his own books. What I have done, is in relation to the Holden new book is made careful cross reference to see where Holden and Crawford-Brown coincide and overlap and that is why this is being done. I do not know why you are being so coy about the fact, which everybody in this room knows is that Joe Modise was the team maker of President Mbeki, at the time.

CHAIRPERSON: Mr Hoffman I do not think that statement is correct. You say everybody knows. I, for example, I am one of those who does not know. I am sure there might be other people who do not know.

COMMISSIONER MUSI: I, I certainly do not know myself.

CHAIRPERSON: Commissioner Musi also does not know that. I think that question, in any event, it is irrelevant. I am not going to allow it. Let us get to the next point.

ADV HOFFMAN: According, according to the information that I am instructed with and this was accepted by the High Court, the Supreme Court of Appeal and the Constitutional Court in the matter of the State versus Shabir Shaik, which are going to have to discuss in some detail, at some stage. What happened in the 17th of March of 1998 is that Shabir Shaik wrote a letter to the head of Thomson CSF, which was one of these arms deal headers, a man called Perrier telling him that Mr Jacob Zuma was then, I think a MSC for

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Environmental Affairs, wants to discuss Thomson's uncertainty about including Nkobi Holdings as a partner in Thomson CSF, in Thomson ADS bin for the delivery of the Corvettes in South Africa was looking at. That that letter was copied to you, Mr Mbeki. While Mr Moerane
5 is formulating his objection, let us hear whether you got a copy of that letter that Shaik has been found beyond a reasonable doubt to have written and to have copied to you.

CHAIRPERSON: I am sorry, if I am, okay. Can I cut in? You say what is the date of that letter?

10 ADV HOFFMAN: The date of the letter, according to my instructions, is the 17th of March 1998 and the reference, according to my instructions, to NKobi, is a reference to a company that was initially formed by Shabir Shaik and named after a deceased prominent ANC politician. If I am wrong with any of that, I am, I am
15 happy to be corrected, however by interventions, or by the witness, who I am trying to, to interrogate in this inquiry.

CHAIRPERSON: Mr Moerane?

ADV MOERANE: Chairperson, firstly, my learned friend is not allowed to interrogate any witness. Secondly, this issue of what
20 transpired, during the Shabir Shaik case, relating to any correspondence between Mr Shaik and Mr, the rear of involving Mr Zuma, Chairperson, those issues are certainly not relevant to this stage of the inquiry. It is certainly not relevant to the evidence that is given by former President Mbeki.

25 CHAIRPERSON: Maybe, we must ask former President Mbeki, if he knows anything about that letter. Do you know anything about that letter?

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MR MBEKI: No. No, Chairperson, I do not. I am not disputing at all that, what, what the Advocate might, might just, Said. But, I would imagine if there was ever any letter that was copied to the Deputy President of the Republic, it would be in the custody of the
5 government.

ADV HOFFMAN: May, may I proceed, Commissioner? I am going to take you now, all the way to April of 1998 and that is the month in which our South African National Defence Force committed itself to purchasing 24 lead-in fighter trainers and when it made that
10 commitment, 20 proposals from international companies were received, which were then whittled down to four, the BAE Hawk, the Aermacchi MB339 FE and the Aermacchi MB339 FE was in fact, the South African Air Force favoured the choice. Are you able to dispute any of that, the information of the pre-history of what we are here for
15 today?

MR MBEKI: As, as I understand this, as I understand this matter, Chairperson, the, the Deputy Minister of Defence and people from Defence represented evidence about this matter and I have got nothing to add to what they have said.

20 ADV HOFFMAN: Fair, Fair enough Mr Mbeki. I am not trying to put you in a box. I am trying to, to use your wisdom and your experience ...[intervened]

CHAIRPERSON: Just hold on a second, Mr Hoffman. Advocate Sibeko?

25 ADV SIBEKO: Chair, just one matter that might bring some order to the process. It is apparent from the questions that Mr Hoffman has been putting to the former President that there are some documents

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on which he relies for the questions he has put. It would bode well for the proceedings if Mr Hoffman would prepare a bundle of the documents that he intends to rely on, for purposes of cross-examining the witness. But, to extend that the document he seeks to
5 rely on, during the course of cross-examination are documents that have been produced before this Commission. It would assist the witness, somewhat, if the documents are referred to, as they have been presented to the Commission, to, at the very least assist the witness in perhaps, recalling some of the issues that Mr Hoffman
10 seems to raise with the witness. I think, it is only fair to the witness, if that could be done.

CHAIRPERSON: Mr Hoffman?

ADV HOFFMAN: Mr Chairman and I am very happy to accept my learned friend's kind offer to, to produce documents that he would
15 like to put in front of the witness, if they referred to, during the cross-examination. I am in the middle of the cross-examination, which I do not want to waste the Commission's time. I am moving as fast as I can and I am not going to refer to documentation, unnecessarily. I am referring to the narratives now. I am seeking to
20 assist the Commission, to get the story out in chronological order. That is what we are doing.

CHAIRPERSON: Thank you. Advocate Moerane I think, although offering Mr Hoffman, unless if i am incorrect, he seems to be going through a book. Maybe, if all that is correct, it might assist if he told
25 us which book is going through so that the witness can also be given that book so that the witness can also be even led through and all of us, we can then be, any of us to be on the same page. I, I will not

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insist if may be corrected, Mr Hoffman, you are going through a book, you got a book in front of you?

ADV HOFFMAN: Mr, Mr Commissioner, in the course of the week, I indicated to Mr Mdumbe, who is in charge of these things that we
5 would be using the volumes that are called to, I think there are eight of them, Terry Crawford-Browne volumes and this document is copied in and I have told my learned friend who has been leading the witness, this morning that if they wish to place, to use, for their own purposes that document just for reference, or if they wish to go out
10 and buy a copy ...[intervened]

CHAIRPERSON: Ja. I understand. Thank you. Advocate Moerane?

ADV MOERANE: Chairperson, we, we shall accept that my learned colleague Hoffman is, is going through a narrative. We, we said we would not like to waste any time, standing down for documents to be
15 presented. We are quite comfortable with the witness referring to somebody's opinion and calling that a narrative.

CHAIRPERSON: Okay. I thank you Advocate Hoffman legal representative, they are happy that we continue in the way we should.

20 ADV HOFFMAN: I mean, I am indebted to Mr Moerane for his generosity and I will seek to avoid going into minutiae that may require documentation. There is more than enough documentation for this matter already. 30th of April the year 1998 is the day on which Mr Modise instructed the team, evaluating the purchase of the LIFT
25 aircraft, to adopt what he called the visionary approach to select the plans so that there would be two separate evaluations and one would exclude cost as a criteria. You referred to this in your evidence in

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chief. Does this fit into the chronology?

MR MBEKI: No, I did not refer to any such thing in my evidence in chief.

ADV HOFFMAN: Does it fit into the chronology of your recollection
5 that Mr Modise said, leave cost out of the count, in evaluating it?

MR MBEKI: At no point did the Inter Ministerial Committee leave any costs out. Thanks.

ADV HOFFMAN: Are you then, is your evidence then that this well-
documented, the JIT evidence that Mr Modise said let us adopt
10 visionary approach and leave cost out of consideration, never
happened. Is that your evidence?

MR MBEKI: Chairperson, I am not talking about Mr Modise, I am
talking about the Inter Ministerial Committee. I did not sit in at
meeting where then Mr Modise was chairing whatever. I am talking
15 about matters that were discussed in the Inter Ministerial Committee.
What I am saying is that at no point about anything did the Inter
Ministerial Committee take any decision, without reference to cost.

ADV HOFFMAN: Without reference?

MR MBEKI: Without reference to cost.

20 ADV HOFFMAN: In this, this the first time that we are not really
agreeing with each other, because it is well-documented and we will,
we will help you with the documentation, after lunch so that we do not
waste time. Now, that Mr Modise's idea of getting the VAD
...[intervened]

25 CHAIRPERSON: Mr Hoffman, can you get to the next one? The
witness clearly says that those meetings, where Mr Modise was
chairing, he was not present in that. He does not know what went on

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there. He was sitting as a Chairperson of the Inter Ministerial Committee. He can talk about, about what happened at that committee. Is this what I see the witness does not understand what you say, so, whether you give him other documents, or not. I am not
5 quite sure how that is going to help.

ADV HOFFMAN: Thank you, Mr Commissioner, let us do it this way. Do you agree with me, Mr Mbeki that it would be wrong to leave cost out of the count in the weighing a bid of this nature?

MR MBEKI: Chairperson, I do not understand that. What I have
10 said, yes, the only, the only reason I have said before, that there is no point at which the Inter Ministerial Committee considered any, anything without addressing the matter of cost, naturally, because we have got to pay for it. So, it was no possibility to sit and just can take decisions, without having to answer the question as to how
15 much, how much are you going to pay for this. I think, it is a straightforward issue. I cannot, I cannot, unless I am being a bit stupid. I do not know. Perhaps, you could explain a bit better.

ADV HOFFMAN: Mr Mbeki, I am sure you are not really stupid. I beg your pardon. It is a sensitive issue here, the blood pressure of
20 Mr Erwin behind you had gone up several levels. I want you to apply your mind to what I am putting to you now, carefully.

CHAIRPERSON: Can you just hold on?

MR MBEKI: That, that is uncalled for.

ADV HOFFMAN: I am concerned for his health.

25 CHAIRPERSON: Mr Hoffman, can you please only concentrate on what you are supposed to, to do be doing. Mr Erwin is not one of the witnesses that we called today.

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ADV HOFFMAN: Mr Mbeki, it goes like this and I have to put it to you, as being part of the case of the people who complained about the Arms deal, that Joe Modise decided, because he wanted the Hawks and the Gripen so badly that cost had to be just forgotten
5 about when this procurement took place. Now, either that happened ...[intervene]

CHAIRPERSON: And what level are you referring to, Mr Hoffman? I also do not understand the question. Mr Modise was involved at a Departmental level as a Minister of Defence and he was chairman of
10 various committees. He was also a member of Cabinet, a member of the Inter Ministerial Committee. Former State President says that he was sitting as the Chairperson of the Inter Ministerial Committee. Now, when you say that Mr Modise made that statement, at what level did he make the statement, so that we can also understand the
15 question properly?

ADV HOFFMAN: My instructions are that it was made in the context of giving an instruction to a team that was evaluating the purchasing of the aircraft.

CHAIRPERSON: So, those instructions are what he has, he gave
20 them out, at a departmental level.

ADV HOFFMAN: That is how I understand the position, yes.

CHAIRPERSON: Thank you. Mr former President, do you know what, whether Mr Modise gave those instructions to his department or not?

MR MBEKI: No, Chairperson, I do not. Indeed, as you have
25 indicated that I have said this already. That we did not sit in those meetings of, departmental meetings. Mr Modise might very well have said all the things that you say he said within the department. But,

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we sat as an Inter Ministerial Committee and this matter did not come to the Ministerial Committee of, of something which is not cost at all.

ADV HOFFMAN: Because, Mr Mbeki, you appreciated that it would be illegal and unconstitutional and invalid to leave cost out of
5 consideration and you understand that that is wrong.

MR MBEKI: Yes, Sir. Yes. Yes. This, I do not, I cannot honestly do not understand, Chairperson, what you are doing. I keep explaining that, at no point did we as Inter Ministerial Committee consider anything, without taking cost into account. Exactly because,
10 we are conscious of our responsibilities, with regard to, to that particular matter, with regard to costs. Now, I am being asked a question about legality and illegality and so on. Sure, of course, it would be illegal. But, I am saying that the very action to, exactly means that, that we had to discharge certain responsibilities. As a
15 government committee, we then, we then did what we had to do.

ADV HOFFMAN: Because as you have very correctly, in your summary conceded the Cabinet in South Africa is collectively responsible for what Cabinet Ministers do and if the Cabinet Minister invents a visionary approach that leaves costs out of the count, then
20 he is doing something that is deeply, darkly, unconstitutional, had he done it. Now, let me, in, in the interest of giving you the opportunity to answer the question in an informed way. Let me just refer you to the pits of the Constitution that count ...[intervene]

CHAIRPERSON: Mr Hoffman, get on with the questions. We all know
25 what the Constitution is saying. The former President, he knows what the Constitution is saying. Put only your question to him.

ADV HOFFMAN: My question is, how can it ever be cost effective,

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as required by Section 217 of the Constitution, if you have a system in place, put there by Joe Modise that says leave cost out of the count, when you are buying these aeroplanes.

CHAIRPERSON: Again, you do not have to answer that. Let us get
5 to the next question. He said to you that he does not know what Mr Modise did at the departmental level, if this is the evidence that you are going to give, then you can argue the question of the constitutionality at a later stage. We have not reached that stage as yet. Can we get to the next question?

10 ADV HOFFMAN: I would prefer not to, Mr Commissioner, because the witness was prepared to answer and you stopped him from answering. I believe that his answer is critical to whether we are participating in a farce, or whether we are trying to get to the truth.

CHAIRPERSON: Mr Hoffman, can, can you just be careful with your
15 language? Can you be careful with your language? You said that the former, Mr Moerane?

ADV MOERANE: Chair, we would like the, my learned colleague to withdraw that statement, participating in a farce. That is contemptuous of this Commission.

20 CHAIRPERSON: Yes, Mr Hoffman?

ADV HOFFMAN: I am not prepared to, to retract that statement, until such time as I have thirteen answers from you, Mr Commissioner, in relation to ...[intervene]

CHAIRPERSON: Mr Hoffman, if you do not stop talking about that,
25 we are busy in a commission now. The witness is before us. If you saw that it was a farce, what do you want here now? Because, we are talking about you cross-examining a particular witness and what

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you do you go back to what happened, sometime last month and even at the beginning when we started. This one you also did. You then referred to the incident, where you came to the office, in the evening, wanting to see me alone and I refused. Now, I see you are doing
5 exactly the same thing. The moment we are talking about whether the question that you put to this particular witness, whether it is the question, or whether it is a question that will assist us or not. Can we try and proceed to solve the questions of, of witnesses before this?

10 ADV HOFFMAN: Mr Commissioner, with the greatest of respect, I have to insist that that question is a question that is to the heart of what is happening here. If we have bought aeroplanes and ...[intervene]

CHAIRPERSON: Just hold on. Can I perhaps suggest that if you
15 want to, can you rephrase the question?

ADV HOFFMAN: Yes. I will rephrase the question.

CHAIRPERSON: I am just trying to have this in actually the proper way.

ADV HOFFMAN: I am trying to take, I know that your, that is the
20 question that you be patient in relation to reiterating what the law means. But, the point is that our law requires that a system of procurement, using public money, insists that cost effectiveness is a criteria and that if cost effectiveness is just wiped off the table, that the contract that flows from that is invalid. It falls to be struck down
25 by auto bill, because it is not consistent with the Constitution. The witness has, has been fair so far. I am trying to see, whether South Africa can be R70 billion better off, because you Mr Commissioner

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came to the conclusion that there was a contract here, that did not comply with procurement requirements. If there is a contract here that does not comply with procurement requirements, because a minister said forget about the cost, we are going to do the BAE Hawk
5 SAAB deal, whatever the cost, because we are adoption a visionary approach. Then, something not criminal, not bribery, not [indistinct 02:15:25], but a simple mistake in a new government in relation to what is then to be done, when you spend public money in a big way. This was the biggest procurement ever in South African history.

10 CHAIRPERSON: Mr Hoffman, can you rephrase your question?

ADV HOFFMAN: And then, my question to, to Mr Mbeki is a very simple one. Do you agree with me that it would be unconstitutional to leave cost out of account, when you are required to, to by law, by the Constitution to take cost effectiveness into account in your
15 system of procurement. That is my question.

MR MBEKI: Chairperson, the Inter Ministerial Committee, which made recommendations to Cabinet, made recommendations to Cabinet that this is what we should do. Cabinet accepted those, both those committees, both of those committees at no stage considered these
20 matters, without taking into account costs and I am sure the Cabinet then, as I am sure, all of us here now, are, we are very familiar with what the Constitution says about these matters. Thanks.

ADV HOFFMAN: Mr Mbeki, I, I have to tell you, that when you were being led by my learned friend for the Commission, you, you talked
25 about the excessive cost of the Hawks and you suggested that the Hawks were a better bet anyway, because they fitted in better with the SAAF requirements, which is exactly the opposite of what I put to

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you here, where they said they would have preferred to have the Aermacchi, because it works better in South Africa. Now, we sit with these aeroplanes in boxes, nobody to fly them, no fuel to put them in the air, doing less than a hundred hours a year. Mr Mbeki, I beg you,
5 think about it. What have we done? What has your Cabinet done?

CHAIRPERSON: Mr Hoffman, I am not going to allow you to go on in that particular manner. When you put your question to the witness, make a proper opportunity to the witness and let the witness answer. You cannot make a then long statement that at the end of the day,
10 answering but not understanding what the question is. I am sure, even the witness end up not understanding what the question is.

ADV HOFFMAN: I apologise. I am due for my next book.

CHAIRPERSON: Just, just hold on. Just hold on.

COMMISSIONER MUSI: You know, Mr Hoffman, I think it will help a
15 great deal, if you were to look at the record of the evidence led so far.

ADV HOFFMAN: I cannot hear you.

COMMISSIONER MUSI: It will help a great deal, if you were to look at the record of the evidence led so far, especially around those
20 matters you are talking about. It will help a great deal.

ADV HOFFMAN: I am afraid that the evidence that has been led thus far, is part of a cover up and I do not believe it.

COMMISSIONER MUSI: Let me not ...[intervene]

ADV HOFFMAN: That is the problem about the reading of that
25 evidence.

COMMISSIONER MUSI: The problem I have, the problem I have is that, those witnesses were not challenged. Their testimony was

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never challenged.

ADV HOFFMAN: And that is because I have come here today, to not deal with millions, but to ask the man who was in charge, what is going, we got limited capacity. We have got no funding and we are
5 here to ask the man in charge, to answer for the collective responsibility, which, Mr Commissioner, you know about, because you know Section 92 of the Constitution.

COMMISSIONER MUSI: Ja.

ADV HOFFMAN: We are not a, a big fat organisation that can afford
10 to sent large teams of people to such as those sitting on my left here, day after day. It is impossible. What we have to do is use what we have got as best we can. What, what concerns me, is that Mr Mbeki is stricken at the moment. I am not happy about what is happening here, because R35 billion on aircraft that we have never
15 used, except for a ...[intervene]

CHAIRPERSON: Mr Hoffman, just hold on. You have repeated that statement so many times this morning. Let me, Commissioner I am also going to let you say something before we finish.

COMMISSIONER MUSI: You see, I am raising this because a lot of
20 your questions do not seem to have any relevance to what has been led before this Commission. A lot of the evidence has been [indistinct 02:20:42] around those issues you are talking about. If you care to read the record, you would be in a better position to ask even better questions, leading to the very same matters you are raising.

25 CHAIRPERSON: I think I am going to take a lunch adjournment. Probably, when we come back after lunch we might be in a position to do something better than [indistinct]. Former President?

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MR MBEKI: Chairperson, I do not want, I am not disagreeing with what you say. But I must say, Chairperson, I am really getting quite angry at Mr Hoffman. He is talking about my colleagues as minions. They are not minions. They might be minions in his eyes, but I do not know if this entitles him to make any statements like these. [Indistinct] my conversation. But, I think it is very, very offensive, Chairperson. Thanks.

CHAIRPERSON: Mr Hoffman, do you want to say anything to what has been said?

10 ADV HOFFMAN: In fairness to Mr Mbeki, when I was referring to minions, I was referring to the staff of the National Defence Force that has taken up a great deal of time now. I was not referring to his Cabinet colleagues. If he thought I was referring to his Cabinet colleagues, I apologise and withdraw. It was very ambiguous to put
15 it that way and clearly, duly elected Cabinet Ministers are people of stature and people who deserve the respect of the public. But they are also people who are constrained by the requirements of the Constitution and cannot do the same ...[intervene]

CHAIRPERSON: Thank you, Mr Hoffman. I did not think that you
20 were going to make a long statement like that. Thank you. Maybe we should just leave it at that. Let us adjourn and we will come back at two o'clock.

ADV HOFFMAN: Thank you.

(COMMISSION ADJOURNS)

25 **(COMMISSION REOPENS)**

CHAIRPERSON: May the witness confirm that he is still under oath?

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MR MBEKI: I do.

THABO MBEKI: (s.u.o.)

ADV MOERANE: Chair, before we proceed, I think when we adjourned ...[intervenes]

5 CHAIRPERSON: Just hold on Advocate Moerane, let her first finish. Thank you.

ADV MOERANE: Thank you. Thank you, Chair. Chair, when we adjourned, my learned colleague Hoffman apologised for apparently referring to the Cabinet Ministers as minions and
10 he told the Commission that he was actually not referring to the Cabinet Ministers but he was referring to staff. I think the Mr Hoffman has to apologise to staff. We have had director generals here. We have had generals of the army and other people giving evidence and I think it is still
15 impolite and improper to refer to them as minions. We do not need such language before this Commission.

CHAIRPERSON: Mr Hoffman?

ADV HOFFMAN: Thank you, Mr Commissioner. I am pleased to say that Mr Mbeki accepted the apology in relation to the
20 Cabinet and drew it to my attention that it is not appropriate to refer to the senior personnel and have graced this Commission with their presence as witnesses and I have no hesitation in withdrawing the reference to them as minions. I apologise to each and every one of them jointly and
25 severally, singularly and collectively. It was unnecessary to do. It was done in the heat of the moment and it was done in the sense that I was seeking to draw a distinction between

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those who have political responsibility for what has formed the subject matter of this Commission of inquiry and those who are civil servants doing their duty for the public of South Africa. So I have taken my medication. I will be
5 better behaved after lunch.

CHAIRPERSON: Thank you. Advocate Moerane, I am sure the issues now has been sorted out.

ADV MOERANE: Thank you Chair.

CHAIRPERSON: Thank you. Can we now continue with the
10 cross-examination, Mr Hoffman?

ADV HOFFMAN: Thank you Mr Commissioner. I want to return unfortunately to the question of the... let us leave cost out of account, because it is dealt with in the JIT report which Mr Mbeki is familiar and in particular I would refer him
15 to what he said in paragraph 3.3 of a special SAAF command council meeting in which they say in terms and this is to be found in the JIT report which is already before the Commission as I understand it, that paragraph 4.5.1.12 they quote from the minutes and the minutes say:

20 *“A separate recommendation is required where cost is not taken into account as per the request from the Minister of Defence.”*

Which is obviously a reference to Joe Modise. So it is very clear from these official documents that what I have been
25 putting to the witness is in fact the truth and then if you go further in paragraph 4.5.1.12 of the official JIT report which is, as we all know the document that was prepared to put all

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of the controversy around the Arms Deals to bed before I had any grey hair and while Mr Mbeki was still a deputy president.

In that paragraph they say that the... There is a request.
5 I am talking at the second last line of the paragraph just before 4.5.1.13. There was a request by the AAC which is the Arms Acquisition Committee to consider a non-costed option. This led to paragraph 3.3 of the minutes as quoted above. That is the 3.3 that I have just read. The bottom-line
10 of all of this research is that what I put to you was correct, that your Cabinet colleague got the idea of a non-costed option and in so doing he tore up the part of our Supreme Law that requires that cost effectiveness be taken into account in the acquisition and procurement of goods and
15 services in South Africa and by so doing, he entered into a contract which has cost the people of South Africa R35-billion in aeroplanes that we use for World Cup soccer and fly-pasts and very little else and my question to you, Mr Beki is: How could you let that happen as the man on whose
20 desk the sign: 'The buck stops here' rests?

ADV MOERANE: Chairperson, I think that question should be disallowed for a number of reasons. Firstly this matter has been canvassed extensively. Secondly the question itself is confused. It conflates a number of things. We are
25 not dealing here with what the AAC, that is the Arms Acquisition Committee, did. We are dealing here with what the IMC did and what the Cabinet did. This question has

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absolutely no bearing to what the IMC did and what the Cabinet did and to make this horrific jump from what the... Mr Joe Modise said or might have not said at an Arms Acquisition Committee meeting to what Cabinet decided, it is
5 a non sequitur. It does not follow and we are just wasting time.

CHAIRPERSON: Mr Hoffman, I have a difficulty is that you know I went through quite a lot of those documents from DOD and from Armscor. I have not seen any Armaments
10 Acquisition Council. I am not... a committee, I mean Armaments Acquisition Committee as you will refer to it. I have not seen it.

ADV HOFFMAN: Well, it is in...The acronym AAC, is in the JIT report and I am very kindly informed by the attorney
15 acting for the Department of Defence that that is just another acronym for the committee on which the witness served and as far as the objection is concerned ...[intervenes]

CHAIRPERSON: Just hold on Mr Hoffman. I am aware of the
20 Armaments Acquisition Council. That is what I have read from the documents that I received. I have not seen anything called the Armaments Acquisition Committee.

ADV HOFFMAN: So maybe it is 'Council' and not committee. I am sorry if I got the literature wrong.

25 CHAIRPERSON: Okay.

ADV HOFFMAN: They are calling it AAC.

CHAIRPERSON: So, can you respond to what Advocate

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Moerane said?

ADV HOFFMAN: Yes, with all due respect to Mr Moerane who enjoys a good relationship with me. We worked together in the Constitutional Court on the antecedent litigation that
5 ended in a decision that gave birth to this commission. He is mistaken in making the objection and I suspect that all he is doing is giving the witness a bit more time to consider the question that is being put and the reason why I say that is because he has overlooked the very fundamental provisions
10 of Section 2 of the Constitution, which I do not need to remind the Commission, says that any conduct that is inconsistent with the Constitution is invalid.

So, it does not really matter if the discussion is with the lowest of the low level Defence Department people. The
15 decision that is made is not made by them; the decision that is made is made by the Cabinet. It is made politically. The civil service cannot possibly make a decision to spend R35-billion of tax payer's money ...[intervenes]

CHAIRPERSON: Thank you Mr Hoffman. We have had that
20 straddle before. Is the former president in a position to answer the question?

MR MBEKI: Yes, Chairperson.

CHAIRPERSON: Thank you. You can go ahead.

MR MBEKI: To say Chairperson, I have answered this
25 question. I have said the Inter-Ministerial Committee and the Cabinet did not consider... there is no... at no point did they consider any option without cost. What might have happened

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at some departmental meeting or whatever else, I do not know. But I am saying the effective decisions, effective recommendation came from the IMC and the only decision came from the Cabinet. Whatever might have happened at
5 other stages in this process and I do not know, but the decisions... the recommendations of the Inter-Ministerial Committee where all of them included the element of cost as did what was even more important than any opinion of the Inter-Ministerial Committee, what was important was the
10 decisions of the Cabinet and precisely because it was serious about the matter of cost, the Cabinet even instructed that we must work on this matter of affordability. So I am saying Chairperson that... Chairperson, if you will allow me just one more minute. You know, Advocate Hoffman
15 is really quite insistent on making very offensive remarks. For instance, he says that Advocate Moerane... he told that Advocate Moerane intervened where he did in order to give me to think about the kind of answer that I would make, to give me time to cook up some story. That is what he is
20 saying. There are other things, statements he has made like kingmakers like Joe Modise. I know. I am told... I am told, Chairperson that the proceedings, they are being televised alive. I do hope that we are not making all these statements and all sorts of allegations about the usage of equipment
25 because of that. I am hoping, I am not saying that is why, but I think that we need to show a little bit of respect to one another. Thanks.

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CHAIRPERSON: Thank you. Advocate Moerane, you know I am a bit worried about the statements that Mr Hoffman made saying that this... what the minutes of the AAC indicates. My recollection seems to be slightly different, because we do
5 have copies of those minutes. I am not sure if maybe Advocate Cane can be of some assistance because I recall that he went into details with witnesses when he dealt with those minutes.

ADV CANE: Thank you learned Commissioner. I have
10 actually made a copy of the minute available to my learned friends who are acting for the former president, as it was part of the bundle when Mr Steyn's gave his evidence and what is significant about the wording to which the Judge is referring is they refer to the two options, but second in
15 relation to which cost was not be the deciding factor was what they also required, not necessarily that it was not to be taken into account and my submission is that is a fundamental difference. Thank you.

CHAIRPERSON: Thanks a lot. That is how I recall it. The
20 minutes say that cost should not be a deciding factor. There was nowhere where it was said that cost should not be taken into account.

ADV CANE: This is in accordance with the wording of the minute.

25 CHAIRPERSON: Thank you. I was a bit worried about that statement because I was hearing for the first time that at any of those meetings it was said that cost should not be

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taken into account. As Advocate Cane said it was said that cost should not be a determining factor. Are you ...[intervenes]

ADV HOFFMAN: I am... sorry to interrupt. I hope was not
5 interrupting you Mr Commissioner. May I proceed? What I was doing when we got back onto this was reading direct quotes from minutes that neither me nor my client have had anything to do with and the direct quote, and this is obviously public servants covering themselves against
10 getting into trouble for breaching the Constitution, the direct quotes and I read it again slowly is paragraph 3.3 ...[intervenes]

CHAIRPERSON: Just hold on. A direct quote from what?

ADV HOFFMAN: A direct quote from the SAAF Command
15 Council meeting held on the 29th of June 1998. Now that is referred to nicely and easily to find on 4.5.1.12.

CHAIRPERSON: Just hold on Advocate Hoffman. We want to get to the actual minutes.

ADV HOFFMAN: Ja, the minute itself is quoted in quotes in
20 the JIT report, paragraph 3.3 ...[intervenes]

CHAIRPERSON: No, I mean the date of the minutes is the minutes of which meeting?

ADV HOFFMAN: Yes, of the 28th of... as I am reading this, of the 29th of June 1998 which is a part which we reached a
25 narrative and it says there ...[intervenes]

CHAIRPERSON: Just hold on. Just hold on. You say it is the minutes of the meeting? Meeting of the 9th of June?

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ADV HOFFMAN: 29th of June 1998. 29 June 1998.

CHAIRPERSON: Of which body, of the AAC?

ADV HOFFMAN: A special SAAF Command Council. So, these are the people who are in charge of the SAAF, not as
5 politicians, but as public administrators, public servants and what they say ...[intervenes]

CHAIRPERSON: Just hold on. Advocate Cane, do we have copies of these minutes?

ADV HOFFMAN: It is in the JIT report.

10 CHAIRPERSON: Just hold on Mr Paul Hoffman. We want the original minutes. That is what I am asking about.

ADV CANE: Thank you Commissioner. To my knowledge the record does not have the minute of 29 June 1998 from the special AAF Command Council. The words which are
15 strikingly similar to the ones that are purportedly being quoted are words that appear in a minute of the special AASB minute of 8 July 1998 and there the wording, if I may read it for the record, is:

20 *"The decision by the AAC during 30 April '98 briefing on the shortlist of offers required the project team to consider a solution taking cost into account and the solution where cost was not taken as a deciding factor."*

CHAIRPERSON: Thank you.

ADV HOFFMAN: The preceding minute which led to the
25 passing of that minute, which we suggest is unconstitutional is a minute in which the public servants themselves say a separate recommendation is required where cost is not taken

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into account as per the request from the Minister of Defence. That is the way they approach. They are saying if you politicians want to tear up the Constitution do it on your own risk, do not ask us as the people who have to process
5 the decision making, to do it and then my learned friend quotes from a later meeting in which this is all neatly finessed and the bottom-line is that the Hawks are bought instead of the ...[intervenes]

CHAIRPERSON: Just hold on Mr Hoffman. Let us just deal
10 with the question of minutes. Apparently you are saying that you know the, the special AASB meetings... minutes that we have of the 8th of July 1998. They are not correct or are you saying that the minutes that you are referring to ...[intervenes]

15 ADV HOFFMAN: I am not ...[intervenes]

CHAIRPERSON: Just hold on. The minutes that you are referring to is the minutes of the special AAF meeting which minutes we do not seem to be having.

ADV HOFFMAN: What I am doing is, quoting from the JIT
20 report which itself quotes minutes and the minutes that I refer to are in June, the 29th of June and in those minutes they are saying in effect: You politicians want to do this on a non-costed or visionary approach, then you do it at your own risk. Pierre Steyn resigned because he was not
25 prepared to do all this. So you know, it is not as though I am breaking into new ground or revealing something that nobody has ever heard of before. In the ranks of the

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complainant people that you ...[intervenes]

CHAIRPERSON: Just hold on. In order to make progress, has the question been answered or do you still want to put the question again?

5 ADV HOFFMAN: No, I have not got an answer as to why cost effectiveness, which is a constitutional requirement [indistinct 21:18] of which the deal is invalidated has been ignored in the acquisition of the Hawks and Gripen jets. That is my question and I have not got an answer because the
10 poor witness has not been given a chance to answer it.

CHAIRPERSON: I see you have got Mr Mbeki's interest at heart. You want him to be given an opportunity of answering. Former president, you heard the question, are you in a position to respond?

15 MR MBEKI: Chairperson, he will have to help me. He says that there was something that was ignored. Ignored by whom? Because I have been insisting that the Inter-Ministerial Committee and Cabinet did not ignore anything.

ADV HOFFMAN: Sorry. I am not suggesting that anything
20 has been ignored. What I am suggesting and in fact what happened is that the Hawks and Gripens were bought when the Defence Force said these are not appropriate, too expensive, not really what we want, but they were bought for a political reason or a reason that was decided in Cabinet
25 and I am not going to point any fingers at you or anybody else about that in these proceedings at this stage, because what we are looking at in this stage of the proceedings is

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the constitutionality, the regularity, the question of misfeasance in the deal and what I am saying is that what happened in this deal is that we ended up with Hawks and Gripens that cost a lot more money and that were not even
5 wanted by the line Air Force people. That is what the JIT report shows. It is what the minute show and it is why Pierre Steyn said: 'I want no part of this. I am out of here. I am resigning.' And it is because the Constitution ...[intervenes]

CHAIRPERSON: Just hold on a second. Mr Hoffman, you
10 have made such long statements. I am not even sure which one the witness is going to answer because you have made so many allegations in the process. Can you try and break them down to small pieces so that the witness can understand? Can understand the question?

15 ADV HOFFMAN: Only with pleasure, Mr Commissioner, because this is important. It is in fact critical to do your work and my concern is that what has happened because of the visionary approach of Joe Modise which is, it is not a new thing. It is all over the papers everywhere. It is not
20 something that we dreamt up this morning. Because of this visionary approach that did not take cost into account ...[intervenes]

CHAIRPERSON: Mr Hoffman, I understand that. Can we just
25 break down the questions so that the witness can understand?

ADV HOFFMAN: The question. The question for the witness, thank you Mr Commissioner. The question for the witness

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is: How could the South African Cabinet committed to the constitutional order in which politicians are constrained by the rule of law and the supremacy of the Constitution, not go for the cost effective option and instead, buy more expensive aeroplanes and the second question is: Why? Let us stop with that one.

CHAIRPERSON: Ja, just stop there.

ADV MOERANE: Mr Chairman, I object to this question because it is misleading. You see my learned colleague says that the Air Force itself did not want these. They were foisted upon by the politicians. That is a factually incorrect statement. If one has regard to the evidence ...[intervenes]

ADV HOFFMAN: I object to this. I am objecting to this ...[intervenes]

CHAIRPERSON: Just hold on Mr Hoffman. I will give you chance to make a statement. Let Advocate Moerane finish, then I will come back to you.

ADV MOERANE: Chairman, if one has regard for instance to the evidence of Brigadier General Bayne, he says a lot of things but his conclusion at paragraph 57 of his submission is as follows:

"The SAAF today has an excellent well-balanced and well-equipped fighter system capability within the ideal three-tier system, wherein the gap is higher between the first and second tier and relatively small between the second and third tier. The Hawk has also proven to have a cost effective collateral operational capability,

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especially when packaged with the Gripen. The training success rate has been very high for air crew from various backgrounds and both genders. The Gripen has exceeded the SAAF's and SANDF's expectations especially in the domain of more than fourth generation integrated systems deployability, logistic support and reach. The Hawk and Gripen aircraft have also solved many of the past problems experienced with hot and high operations mainly thrust, cooling and communications. Clearly the Hawk and Gripen systems have been well utilised since delivery in line with the current security environment. Should the security environment change to one of conflict, then the utilisation of the systems will change as and when required to defend and protect the Republic in the line with the constitutional mandate."

That is General Bayne from the Air Force and he gave evidence before this Commission. So anything to the contrary of what he said is misleading.

ADV HOFFMAN: On the contrary. What the general says now ex post facto is entirely irrelevant to what this Commission has to determine. This Commission has to determine what was happening at the time and at the time what was happening was that the South African Air Force was saying give us the cheaper Aermacchi option because it suits our conditions better. Please do not burden us with these expensive and unnecessary Hawks and Gripens and that is well documented in the documentation in the JIT report and

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elsewhere and it is a valid basis for me to put it to the witness that that is not what the defence force wanted at the time and that these ex post facto statements that are made now in order to cover up the wrongdoing, the misfeasance
5 that went into spending more money than we should ...[intervenes]

CHAIRPERSON: Just hold on. Are you saying that the army as our SANDF, they came here in order to cover up the evidence that they gave? It was to cover up for misconduct
10 of others.

ADV HOFFMAN: The kind of evidence that has just been quoted by Mr Moerane is a sugar-coated effort that does not talk... it does not even begin to address the facts about the Hawks. It does not mention that half of the Hawks are still
15 stuck in their boxes and ...[intervenes]

CHAIRPERSON: Just hold on. Advocate... you are acting for DOD.

ADV HOFFMAN: No, I am not acting for DOD. Sorry, are you speaking to my colleague?

20 CHAIRPERSON: Unless if you have changed, now you are Advocate Cane too, then I will talking to you. Advocate Cane, this statement that has been made. Your client all came here the army, the Air Force and then they were not telling us the truth. Will that be a correct assessment or will
25 that statement be correct to be made by Mr Paul Hoffman sitting next to you now?

ADV CANE: Learned Commissioner, thank you for the

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opportunity. I was hoping to be given one at this point. There are a number of levels that I need to deal with this on. The first is the factual propositions being put to the present witness, the former president and there I must
5 concur with my learned friend Advocate Moerane that the evidence is not in accordance with propositions being put. The evidence was overwhelmingly that the various items of equipment were assessed and that those that satisfied the technical requirements of the Air Force, were put forward for
10 further decision making, but that the Air Force itself did not express preference within that choice of four aircraft that remain for ...[intervenes]

CHAIRPERSON: I am sorry. There is a cell phone ringing this side.

15 ADV HOFFMAN: Thank you.

CHAIRPERSON: Thank you.

ADV CANE: With the result that my recollection of General Bain's evidence was that the Hawk had not won the selection criteria because of cost, but it was nevertheless an
20 outstanding piece of equipment that met all the technical requirements and if the politicians saw fit, the Air Force was delighted and so that was the thrust of his evidence. If a different proposition wishes to be put by my learned friend it should be put on a different basis then, not that it emanates
25 from the evidence of a person like General Bayne whose evidence was quite the contrary, but that perhaps he has another basis for putting a different proposition.

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The second level of objection ability to what is now taking place is that these witnesses have come and given their evidence and they were not challenged and so it was not being put to them that they are **selectively** be giving
5 sugar-coated evidence. That does not accord with the [indistinct 32:20]. And in fairness that really should [indistinct 32:26]. So what is now being put does not bear any relationship to what the people, the actual experts [indistinct 32:37] have said. We do not know where the
10 contrary submissions are coming from, because certainly Mr Hoffman's client is no expert in relation to these matters. He does not put up any sort of qualification to second-guess the evidence before you to the extent that it has been drawn from other documents that are not now being made available
15 or are being quoted from such as the JIT report, then you know where the source is, but then it must just be put on the basis that it is a quotation from the JIT report, not that it emanates from the personal knowledge of a person who actually knows the facts. Thank you.

20 CHAIRPERSON: Thank you.

ADV HOFFMAN: Thank you Mr Commissioner. Can I try and short-circuit this because it is probably a matter for argument and it is probably a matter for the Commissioners to ponder the relevant parts of the JIT which was a genuine
25 effort by lots of serious senior civil servants to get to the bottom of the Arms deal.

CHAIRPERSON: Maybe let me put it this way: I agree with

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you. It is a matter for argument.

ADV HOFFMAN: Good.

CHAIRPERSON: Let us argue it at the end.

ADV HOFFMAN: Let me just put one factual... because I
5 have been accused of putting things that should not be put.
Let me just put one factual aspect to you which is two lines
so that I can defend myself against the slings and arrows of
outrageous fortune and that is to take you to paragraph
4.1.15 of... we call it JIT, the JIT... the report. Paragraph
10 1.4.15 reads as follows. It is a very short paragraph.

*“In July 1997 the president was advised by the
Department of Defence and the South African National
Defence Force of the reasons why the British proposal...”*

And that is a reference to the Hawks and Gripen,

15 *“... was not acceptable.”*

So that I suggest on the basis of what was happening at the
time is a fair reason to ask the witness who has had a very
long rest, what was going on when this decision was made?

CHAIRPERSON: Just for my own understanding, which
20 British proposal are you referring to?

ADV HOFFMAN: That is what was on the table in relation to
the SAA/BAE consortium that was offering Hawks and
Gripen in competition with the Aermacchi Italian aeroplanes
and the French and the German. So, there were four offers
25 at one stage. Eventually it boiled down to a choice between
the Hawks and the Aermacchi and what happened was we
spent a lot more money on the Hawks than we would have if

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we had gone for the Aermacchi. That is what the Commission will find as a matter of night following day. We are not making this up. We do not have sufficient imagination to make it up. That is what it is about, Mr Commissioner and I do not know whether having a huge debate, it is a very important point obviously, but ...[intervenes]

CHAIRPERSON: Okay, I understand.

ADV HOFFMAN: ... huge debate between counsel about now is not on.

10 CHAIRPERSON: Ja, I understand. I understand. Advocate Cane, as I understand the situation, for the Hawk, the shortlist came as a result of an evaluation by experts and I think that technical team consisted of about 12, 13, 14 experts and their findings was that all those aircrafts that they recommended for RFO stage they meet at least the minimal technical requirements of the Air Force. From there the same team evaluated the RFO stage. They made a recommendation and from there the other teams came in and the financing team, their IP team and ultimately this how the preferred bidder was ultimately chosen. Will I be correct to say that is the position and if that is so, then the proposition by Mr Hoffman does not seem to be a fair proposition?

25 ADV CANE: Commissioner, that is certainly correct. Where the... perhaps misunderstanding arises is that it was the current secretary of defence at the time, Mr Steyn, who strongly preferred the Aermacchi above the Hawk and argued

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strenuously for the choice of the Aermacchi in the various committees in which he participated and that was fully canvassed with him. But from the Air Force's perspective they had not taken a line of indicating preference. In fact
5 they abstained from it.

CHAIRPERSON: Thank you. In fact I think one of the generals said that in as far as the Air Force was concerned anyone of the two will be acceptable because at least they meet the minimum technical requirements of the Air Force.

10 ADV CANE: Yes, that was the evidence, Commissioner.

CHAIRPERSON: Thank you.

ADV HOFFMAN: Yes, Mr Commissioner, I want to close on this point, because we are not making progress and we need to make progress. I can take it no further than saying please
15 look closely at chapter 4 of the JIT report because you will find stuff there that will raise question marks if not hackles or the warning signals above your heads when you ...[intervenes]

CHAIRPERSON: Then what you can also do during argument
20 you can still raise that question.

ADV HOFFMAN: Correct, absolutely and there will be evidence from the authors and objectors that will enlighten the Commission as well.

CHAIRPERSON: Thank you.

25 ADV HOFFMAN: So let us move on from the visionary approach that we made peace about minions and trying to be [indistinct 38:55] that we are most of the time in the

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interchange with the witness. I want to take you now to the question of the way in which Thomson CSF became involved in the [indistinct 39:35] frigate part of the contract. Sorry, I beg your pardon and what I am looking at here is that according to the official record Thomson CFS purchased 5 shares in Altech Defence Systems on the 14th of April in 1998 and they have renamed it African Defence Systems or ADS and that that won the tender to supply the information management systems to be used in the Corvette combat 10 suits. Are you au fait with any of what went on in that regard or is this stuff that was done by other people?

MR MBEKI: No, Chairperson, the matter about Thomson and its involvement in terms of the Corvettes is not a matter that was part of the, on the agenda of the Ministerial Committee, 15 because this was a subcontract. We were dealing with the principal contractors and the principal contractor was a German frigate consortium, which then took its own decisions about to whom it subcontracts, whatever. So that is a matter that would have been dealt with in that way.

20 ADV HOFFMAN: Then I want to take you on... sorry, I want to take you on to June of 1998 when the Department of Trade and Industry which was then led by Mr Erwin, I believe, received a report that the BAE offset proposals were radically inflated during this evaluation process that 25 was going on and really going back to the JIT, Mr Commissioner, the JIT notes that there also ...[intervenes]

CHAIRPERSON: I am sorry. So your only source is JIT, you

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have not gone into the documents themselves?

ADV HOFFMAN: No, no, we have gone ...[intervenes]

CHAIRPERSON: I am just asking out of interest.

ADV HOFFMAN: Mr Commissioner, I am a new boy in this.

5 CHAIRPERSON: Oh, okay.

ADV HOFFMAN: My client has been added since 1998. He has written two books and five other books have been written by other people. There is litigation in the Constitutional Court. There is the case that he had in the
10 Cape High Court and I have read all of that paper and for my sins responsible for putting together the Constitutional Court application that, as you are sitting here instead of playing golf this afternoon. So I apologise for that, but the point is that that is a wealth information from well-informed
15 people including a former ANC politician.

CHAIRPERSON: Ja, let us not go there, because not mention other people ...[intervened]

ADV HOFFMAN: Ja, they asked me what I know and I am telling you where I am getting it from.

20 CHAIRPERSON: Okay.

ADV HOFFMAN: Okay.

CHAIRPERSON: No, the only point I was trying to make was that you seem to be relying only on JIT.

ADV HOFFMAN: No, JIT is a good source because it is an
25 official source and it is a source that a Cabinet member, a Cabinet leader, a former president ought to be a) familiar with and b) able to explain to us. That is why I am doing

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that.

CHAIRPERSON: I understand that. You can go ahead.

ADV HOFFMAN: You stole a lovely punch line but I will not hold it against you. The JIT report in relation to these BAE offsets is that the offset proposals are a load of hot air. I do not know if you remember that at all, Mr Mbeki or whether you are prepared to comment on it, but I am putting it to you as part of the narrative of how we managed to get to where we are with more expensive aeroplanes and we should ever report.

MR MBEKI: Chairperson, my colleague Alec Irwin came to the Commission to discuss exactly these matters. I would imagine that is the person who should have been... who should have answered these questions, but as for me indeed as I have indicated in the main statement that I made, the comments made by members of the IMC and presented to the Commission, well I stand by those statements, but I am quite sure questions like this that have been posed now would be questions that will have to be dealt with there in that interaction with the minister, Minister Irwin and of course the current ministers at the Department of Trade and Industry because that kind of discussion that would have taken place there, he says there was a communication that got to DTI, the Department of Trade and Industry which said whatever. So it went to dDI. It became [indistinct 44:53] in the ministerial committee. So it would have been dealt with there, then something later came to us.

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ADV HOFFMAN: And the JIT came to you last and eventually came to you and what I am asking you is: Do you remember that scolding criticism of the BAE offsets? That is really the question. The rest was just bleeding you in.

5 MR MBEKI: No, I cannot... I did not read that report for long time. I honestly cannot be able to say [indistinct 45:26]

ADV HOFFMAN: I understand. You did not... you were not advised to read the JIT report or really anything else in order to prepare for this...

10 MR MBEKI: No, I was not and I would not understand why I would have to.

ADV HOFFMAN: Or perhaps to better equip you to answer the questions that you have been asked now.

CHAIRPERSON: Mr Hoffman, can you continue with the
15 cross-examination? Whatever advice that Mr Mbeki got from his legal advisors I am sure it is not relevant. What is relevant is the answers that he gives to your questions. Maybe get to the next question.

ADV HOFFMAN: Ja, let us get to the next question which
20 takes us to July of 1998 and a... an attempt in July of 1998 on the part of General Pierre Steyn who was then the Secretary of Defence to stop the Cabinet being presented with an evaluation that excludes cost criteria in choosing the lift option in which he was just overruled by Joe Modise.
25 So that was [indistinct] 46:54 that you were not present. You have no recollection of that meeting [indistinct] 47:00

MR MBEKI: No. What let me... Yes, no I was not at any such

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meeting. Let me just say this, Chairperson, as a matter of principle. As chair of the Commission... sorry, of the committee and Deputy President of Republic of south Africa I never attended any departmental meetings where the
5 defence or trade industry or whatever. So in cases might arise again. It will be the same answer. Thanks.

ADV HOFFMAN: Well, unfortunately the next question is one where my instructions are that you were present and that is on the 31st of August. There was a Cabinet meeting, this is
10 still 1998, where you were briefed on the Arms deal. You were there so was Ronnie Kasrils, Joe Modise, Stella Sigcau, Pierre Steyn and Chippy Steak... Shaik and Chippy Shaik presented two options for the purchase of LIFT and that is the costed and the non-costed options. Now the way
15 that Pierre Steyn approaches this, no decision was made at the meeting and then there was an argument afterwards about the minute that Chippy prepared and the minute that Steyn wanted prepared. Do you have any recollection of this at all, Mr Mbeki?

20 MR MBEKI: You said it was a Cabinet meeting?

ADV HOFFMAN: No, not meeting, a Cabinet briefing, a Cabinet briefing on the 31st of August 1998.

MR MBEKI: No, what I have been told about was not a Cabinet briefing.

25 CHAIRPERSON: Just hold on. Maybe I may help Mr Hoffman. It was not a Cabinet meeting. It was ...[intervenes].

ADV HOFFMAN: It was a Cabinet briefing.

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CHAIRPERSON: It was not a Cabinet briefing. It was Inter-Ministerial briefing as I recall it and that is why there were only four, five ministers at that meeting. It was not the full Cabinet...

5 MR MBEKI: No, this is what I was asking. I was saying there was no Cabinet meeting.

ADV HOFFMAN: No I did not say that. I said there was a briefing.

10 MR MBEKI: There was no briefing of Cabinet, because there was no Cabinet meeting. There was a briefing of the Ministerial Committee, not Cabinet. Unless you got.. it seems that you have got different information that there was a Cabinet meeting which was briefed.

15 ADV HOFFMAN: No, the information that I have is that there was a briefing at which the ministers I mentioned, Chippy Shaik and Pierre Steyn was present and then there was a fight afterwards about the meeting, what the minute of the meeting should be saying. Do you have any recollection of that particular dispute in August, 31st and days after that?

20 MR MBEKI: No, I do not. I do not know of any dispute about anything that would have related to what the officials discussed among themselves outside of hearing of the Ministerial Committee, I really do not know.

25 ADV HOFFMAN: That is a fair answer and let us move on to November as far as we can. Because on the 18th of November...

ADVOCATE MOERANE: Chair, with regard to that meeting of

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the 31st of August 1998 there has been comprehensive evidence by Mr Kasrils.

CHAIRPERSON: I agree with you Mr Kasrils and that in fact because Mr Steyn was saying one thing about [indistinct] 51:03... the minutes without reading them and Mr Kasrils came and explain to us that those are the minutes of the meeting and they signed those minutes. [Indistinct] 51:18... I am sure he is not aware of that evidence.

ADV HOFFMAN: I am not aware of that evidence and I do not think it makes any difference anyway because I want to know what this witness has to say about that meeting and he has told us he does not recall it and that is a fair enough answer and I cannot go further than that. I [indistinct] 51:38

CHAIRPERSON: Okay, do your job.

ADV HOFFMAN: Alright, let us move on then to a big day which is the 18th of November 1998 when you announced that Cabinet had approved a R30 billion Arms deal and that you were given the authorisation to negotiate and finalise the deals with those four primary contractors that had been negotiated with. Now I hope you remember that one.

MR MBEKI: Yes, I... Yes, I... Yes I do. That was the Cabinet meeting.

ADV HOFFMAN: And is it correct Mr Mbeki that in that announcement it was said that the deal or the four deals really, but we call it the Arms deal for short, that the deal will produce offset benefits with a R104 billion and create 65 000 jobs for South Africans.

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MR MBEKI: That might be verywell been said

ADV HOFFMAN: You also remember that later in the month of November the then deputy auditor-general, a man called Shauket Fakie identified the Arms deal as a high risk deal
5 from an audit point of view and that he asked for the right to investigate that matter as auditor-general.

MR MBEKI: No, I do not... I do not recall that. I do recall...

ADV HOFFMAN: [Indistinct] 53:39

MR MBEKI: Well I cannot dispute it if I cannot remember.

10 ADV HOFFMAN: Now you go to Stockholm at the end of November, 25th of November and the Swedish people were complaining about the... being Swedish people they were complaining about the money that had been allocated to the acquisition of Arms at the time when we as a nation was
15 striving for human dignity, the achievement of equality and the enjoyment of the freedom that we just won. Do you remember? Sorry?

MR MBEKI: I do not and I cannot speak for the Swedish people. I am interested that you are able to speak for the
20 Swedish people as to what they thought and said and so on. I do not know. I was in Sweden as you say and did whatever happens during this kind of visit and certainly when I came back I did not have some feeling that the Swedish people were aware of this position, but you may very well know
25 better about this than I do.

ADV HOFFMAN: I am going to remind you, Mr Mbeki and this is inside quotes. So it is actually something that you

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said while you were in Stockholm.

5 *“The idea that money that you are using to acquire
defence equipment is necessarily money that is being
diverted from housing, is emotionally appealing but
wrong.”*

Is that what you said at the time?

MR MBEKI: It is possible.

ADV HOFFMAN: Are you as you sit there here today at a
stage when according to the national development plan we
10 have 2.1 million units in arrear for housing. That will cost
R300 billion to build and millions of people in shacks. Are
you able to explain your reasoning when you said that in
Stockholm way back then in November 1998?

MR MBEKI: We have dealt with this question, Chairperson, I
15 thought. I said right at the beginning that the Government
had to deal with a whole variety of challenges, whether it is
housing or water or whatever including this one of defence.
We indeed within the context of the reconstruction and
development program and that is what happened.

20 ADV HOFFMAN: Is that all you want to say about that?

MR MBEKI: That is all I need to say.

ADV HOFFMAN: Can you explain to the Commission why it
was necessary to engage in the most expensive procurement
in the history of South Africa on armaments, at a time when
25 we were the flavour of the month, the new democracy,
enemyless and sitting with the leftovers of the most powerful
oppressive army in Africa. Why did we need to spend so

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much money on arms?

MR MBEKI: This question, Chairperson, I am quite sure has been posed and answered in front of this Commission, the rationale for the acquisition and all of that. That has been
5 done. Certainly as this has been done by my colleagues in the IMC and by the senior officials from defence and elsewhere in Government, that those are the positions that... Government positions... those are positions that we... I would support. I have nothing to add to what has been
10 presented to the Commission.

ADV HOFFMAN: Am I understanding you correctly that you continued to tow the official party line that you do not want to seek to justified other than that. It was a jolly good idea to put South Africa in debt to the tune of lots of money in
15 order to acquire arms to fight enemies we do not have with money we had to borrow.

CHAIRPERSON: Mr Hoffman, you have made so many propositions. Can you make those propositions one by one so that the witness can understand them and respond to
20 them?

ADV HOFFMAN: Who were our enemies when you concluded the Arms deal?

MR MBEKI: Chairperson, there was never an official party line about this. I do not know what the gentleman is
25 referring to when he talks about an official party line. It was a Government decision which was based on very extensive consultation with South African population which included

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Parliament and the decision was taken which to settle it was as a national decision. It does not mean there were not some people who were objecting but I am saying overwhelmingly this is a national view and was a unanimous
5 view of our Parliament elected representatives. So, and that was also the view of Government. We acted on that basis and implemented that. There was no party line about it, but then so that it became not only a Government decision to do that acquisition but a national decision to re-equip the
10 National Defence Force.

ADV HOFFMAN: Mr Mbeki, my question was: Who were our enemies when you spent all this money on arms?

MR MBEKI: Chairperson, we do not want to reopen the... all the discussion that you would find for instance in the
15 defence review. If the gentleman want us to do this of course we can go and fetch defence review and read exactly the argument which justified this particular acquisition. I do not know if you want us to do that, but I am saying that this matter has been canvassed before and indeed that would
20 include incorporating whatever would have said in the document like the defence review and that I have nothing to add to this.

ADV HOFFMAN: Can you name three countries that are... that were enemies of ours when you did this deal?

25 CHAIRPERSON: Mr Hoffman, let us get to the next question. You have answered... you have asked that question. Mr Mbeki says that the justifications are contained

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in the defence review. If you want him to do that he can go back and get the defence review and give you those reasons why they make the acquisition. Now to say to him 'name three countries which are enemies to South Africa' I am sure
5 it is not going to be helpful to this Commission. Let us get to the next question.

ADV HOFFMAN: As the Commission pleases. Mr Mbeki, the next aspect that we need to move on to, because now the deals are done and the fallout begins and before I
10 ...[intervenes]

CHAIRPERSON: I am sorry, Mr Hoffman. Can you just repeat at least the first three words?

ADV HOFFMAN: I say we can move on, because now the deals are done and we are getting to the next chapter of
15 the... of this unnecessarily long cross-examination. So, before I do that, is it correct that Trevor Manuel was initially not in favour of the Arms deal and had to be persuaded to support it?

MR MBEKI: No, he never told me that and I do not know
20 whether he was asked that question when he appeared before the Commission, because he would have been able to answer that question, but he never told me that.

ADV HOFFMAN: Alright, no it was just... that was just an aside. It is also true that South Africa had to borrow money
25 in order to pay for these arms. Is that not so?

MR MBEKI: Sure, ja, it is so, ja.

ADV HOFFMAN: And the public... sorry, and the Public

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Finance Management Act is what it is all about. That is what... that is what tells you how you go about borrowing money for public purposes.

ADV MOERANE: Chair, as my learned colleague will know
5 the Public Finance Act was not in operation then. It only came into operation in 1999. It was the Exchequer Act which was applicable at the time and in any event these very issues have been extensively covered by Minister Manuel.

ADV HOFFMAN: Commissioner, I am responding to some of
10 the evidence-in-chief. The wording of... the relevant wording is identical in both acts as my learned friend Mr Moerane knows and the point that I am wanting to make with the witness is simply this that the Minister of Finance is indeed entitled to borrow money, but under Section 71F the kind of
15 borrowing that was done, and it was big borrowing, to finance the Arms deals is the kind of borrowing which is called borrowing for any other purpose approved by the National Assembly by special resolution. That is what the law says.

20 CHAIRPERSON: I am sorry, Mr Hoffman, that section...

ADV HOFFMAN: It is Section 71F...

CHAIRPERSON: Of?

ADV HOFFMAN: ...of the Public Finance Management Act.

CHAIRPERSON: But then I think the evidence that we have
25 and what Mr Moerane says, at the time when these deals were made the Exchequer Act was in operation and not the PMFA Act. I think one of the witnesses dealt with that issue

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in detail.

ADV HOFFMAN: He has dealt with it and that is why I am challenging him. My instructions are that the wording of the... in relation to this issue is the same in the old act as
5 the new. So I am referring to the new because it is just easier to find and the point that I... really the question is: Are you aware and can you point the Commission to any special resolution of the National Assembly that gave Trevor Manuel the permission to borrow all that money that he
10 borrowed in order to... and if there is one I will be very happy to know that there is one. I do not know of one and it worries me that this borrowing was done on *pausant* I am not putting it to you that there was not a special resolution. I am putting it that a special resolution is required and I
15 have not in all of the paper that I have read in this ever seen such a special resolution.

ADV MOERANE: Chairperson, this issue of the borrowing, question of the loans from the subject matter of an action which was brought by my learned colleague's client in the
20 Cape High Court where he lost. He applied for leave to appeal to the SCA. He lost. He went to the Constitutional Court, he lost. That issue in our submission is *res judicata* A court of law has pronounced on the validity of those loans et cetera. I do not see why we should be revisiting that,
25 rehashing that.

ADV HOFFMAN: I was unfortunately not in that earlier litigation because I was still a proper lawyer then, not... I

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was still a proper lawyer in the old days, not a NGO worker. So I was not in that earlier litigation, but I have read the judgment and as I understand it the finding of the court is that the applicant which was Mr Crawford Brown sued the
5 wrong party. There is no *res judicata* on this point and this point is an important point for this Commission, because if it happens that a special resolution of Parliament was required before Mr Manuel took his loan, then this Commission is on all about I would suggest to find out about that and that is
10 all I am trying to do. I am not trying to be clever. I am not trying to suggest that there was not one. I am asking a question that I do not know the answer to, which is always dangerous cross-examination, but this is important enough to do.

15 CHAIRPERSON: I remember when I was still young I was told that when you cross-examine, if you do not know the answer do not put the question to the witness. Now this is exactly what happened. Mr Mbeki, are you in a position to tell us whether are you aware of any resolution of that
20 nature or not?

MR MBEKI: Chairperson, the... at no point did the Government act in any illegal manner knowingly or unknowingly as far as we are concerned and this matter that has been raised about what might be said in the... the then
25 Legislation as it existed, I as I was saying earlier I am sure that the matter could have been put to the Minister of... the then Minister of Finance, because indeed as he says the

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Minister of Finance borrowed... it could have been put there and I am quite sure that he would have been dealt with if it is not already being dealt with in the courts as Advocate Moerane says.

5 CHAIRPERSON: Thank you. Advocate Hoffman, in any event I think, you know, you can still raise this question during argument.

ADV HOFFMAN: We will do it as a matter of discovery from the Commission. It is a Government document that either
10 exists or does not and we can do it by our documents. If there was a quick answer and the witness knew we would have saved a lot of people a lot of time and trouble looking for a document which may or may not exist. I was trying to be helpful even though I do it in the worst possible way.

15 CHAIRPERSON: Okay.

ADV MOERANE: To be helpful... to be helpful, Chair, I think reference can be had to Section 16 of the Exchequer Act which says:

*"The Minister of Finance may at any time borrow moneys
20 a) to finance anticipated deficits in the Exchequer account, obtain foreign currency..."*

Et cetera, et cetera.

CHAIRPERSON: Is that helpful to you Mr Hoffman?

ADV HOFFMAN: As I understand it is the same as the
25 BFMA. My client is a banker, fortunately, so he knows more about these things than I do, but the difficulty is that this is a question of a foreign loan. It is not just borrowing money

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locally and I do not think we need to debate it now. I do not think it is fair to Mr Mbeki for us to sit here and be clever lawyers while he is trying to actually give evidence.

CHAIRPERSON: Mr Hoffman, how long do you think you will
5 still be busy with the witness, because I think I am going to sit until we finish this witness today?

ADV HOFFMAN: Well, I am now in ...[intervenes]

CHAIRPERSON: Just more or less, how long do you think?

ADV HOFFMAN: I am...in my chronology I am in the happy
10 hear of 1999 which was a very happy year, because Mr Mbeki won presidential election by a landslide and I need to take him at least to the end of his presidency which is 2007. I do not think there is as much detail, but I have a plan. I am still on chapter 1 of the plan which is to try and help the
15 Commission by giving you a chronological sequence ...[intervenes]

CHAIRPERSON: Mr Hoffman that I understand. The simple question is: Are you still going to be busy for an hour, two hours, three hours, four hours so that we can know how to
20 plan our things. That is the only question that I was asking.

ADV HOFFMAN: It depends on how often Mr Moerane interrupts me.

CHAIRPERSON: Okay. I think in that case let us adjourn for 15 minutes. We will come back and my fellow Commissioner
25 said to me that we are going to sit until we are done with Mr Mbeki.

ADV HOFFMAN: I am indebted to you Mr Commissioner

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[indistinct]

CHAIRPERSON: Advocate de Vos?

ADV DE VOS: Mr Commissioner, I am going to request on behalf of lawyers of Human Rights to, after this cross-
5 examination is finalised, to get the opportunity to consult with my clients. You will appreciate that the statement that we received this morning of some 11 paragraphs and four pages ...[intervenes]

CHAIRPERSON: I understand that. You do not have to
10 motivate it. When I said we need to finish, I was referring to Mr Hoffman.

ADV DE VOS: Oh, okay. Thank you.

CHAIRPERSON: If we finish with Mr Hoffman today, then we can come back to you, tomorrow.

15 ADV DE VOS: Thank you, Mr Chair.

CHAIRPERSON: Advocate Moerane, tomorrow unfortunately we will have to be... to come back, but then, so that we can finish timeously tomorrow. I think we are going to take a 15-minute adjournment and from there continue until we are
20 finished with cross-examination of Mr Hoffman.

ADV MOERANE: Chairperson, maybe we can discuss this later, because I am not available tomorrow and my learned junior is not available tomorrow. I have not discussed President Mbeki's diary for tomorrow. Maybe we can come
25 back to this issue. We would be prepared to sit as late as possible today.

CHAIRPERSON: Ja, I understand that, but then we have a

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problem from Lawyers for Human Rights. They say that they might need to prepare for their cross-examination and if that is the position, unfortunately, we will have to say that Mr Mbeki will have to come back tomorrow morning, because we
5 want to do his evidence and cross-examination and finish, so that we can get into the next stage. I think we will discuss that further when we come back from tea. Let us take an adjournment of 15 minutes and then we can take this issue further. Thank you.

10

(COMMISSION ADJOURNS)

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(COMMISSION REOPENS)

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CHAIRPERSON: May you just confirm that you are still under oath?

MR MBEKI: I do.

THABO MVUYELWA MBEKI : (s.u.o.)

5 MR MOERANE: Chair, before we proceed, I think when we adjourned [intervenes]

CHAIRPERSON: Just hold on a bit [indistinct] Thank you.

MR MOERANE: [Indistinct] [52.0] Ja, thank you Chair. Chair, when we adjourned our learned colleague Hoffman
10 apologised for apparently referring to the Cabinet Ministers as 'minions' and he told the Commission that he was actually not referring to the Cabinet Ministers, but he was referring to staff. I think Mr Hoffman has to apologise to staff. We have had Directors-Generals here, we have had
15 Generals of the Army and other people giving evidence and I think it is still impolite and improper to refer to them as 'minions'. We do not need such language before this Commission.

CHAIRPERSON: Mr Hoffman?

20 MR HOFFMAN: Thank you Mr Commissioner. I am pleased to say that Mr Mbeki accepts the apology in relation to the [indistinct] and drew it to my attention that it is not appropriate to refer to the senior personnel that have graced this Commission with their presence as witnesses and I have
25 no hesitation in withdrawing the reference to them as 'minions'. I apologise to everybody jointly and severally, singularly and collectively. It was unnecessary to do

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[indistinct] and it was done in the sense that I was seeking to draw a distinction between those who have a political responsibility [indistinct] as has formed the subject matter of this commission of enquiry and those who are civil servants doing their duty for the public of South Africa. So I have taken my medication ...I am indebted to [indistinct]

CHAIRPERSON: Thank you. Advocate Moerane, I am sure the issue has now been sorted out.

MR MOERANE: Thank you, Chair.

10 CHAIRPERSON: Thank you. Can we now continue with the cross examination, Mr Hoffman?

CROSS EXAMINATION BY MR HOFFMAN (Continued): Thank you, Mr Commissioner. I want to turn unfortunately, to the question of the "let us leave costs out of account", because it is dealt with in the JIT Report which Mr Mbeki is familiar and in particular I would refer to what is said in paragraph 3.3 of a Special SAAF Command Council Meeting, in which they say in terms... and this is to be found in the JIT Report which is already before the Commission, as I understand it that ...paragraph 4.5.1.12, they quote from the Minutes. The Minutes say :

"A separate recommendation is required when costs is not taken into account as per the request from the Minister of Defence..."

25 Which is obviously a reference to Joe Modise. So it is very clear from these official documents that what I have been putting to the witness is in fact, the truth and then if you go

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further in paragraph 4.5.1.12, of the official JIT Report which is, as we all know, the document that was prepared to put all of the controversy around the Arms Deal to bed before I had [indistinct] [05.03] and while Mr Mbeki was still
5 the Deputy President. In that paragraph they say, that the... there is a request... I am talking at the second ... the second last line, the paragraph just before 4.5.1.13, there was a request by the AAC which is the Arms Acquisition Committee to consider a non-costed option. This led to
10 paragraph 3.3 of the Minutes as quoted above. That is 3.3 that I have just read, but the bottom line of all of this research is, that what I put to you was correct, that your Cabinet colleague got the idea of a non-costed option and in so doing, he tore up the part of our supreme law that
15 requires that cost effectiveness be taken into account in acquisition and procurement of goods and services in South Africa and by so doing, he entered into a contract which has cost the people of South Africa, R35 billion in aeroplanes that we use for World Cup Soccer and fly-pasts and very
20 little else, and my question to you, Mr Mbeki, is how could you let that happen as the man on whose desk the sign 'the buck stops here' rests?

MR MBEKI: Chairperson, I think that question should be disallowed for a number of reasons. Firstly, this matter has
25 been canvassed extensively. Secondly, the question itself is confused. It conflates a number of things. We are not dealing with what the AAC, that is the Arms Acquisition

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Committee did. We are dealing here with what the IMC did and what the Cabinet did. This question has absolutely no bearing to what the IMC did and what the Cabinet did and to make this horrific jump from what the... Mr Joe Modise said or might have not said at an Arms Acquisition Committee meeting, to what Cabinet decided, it is a non-sequitur, it does not follow and we are just wasting time.

MR MOERANE: Mr Hoffman, I have a difficulty is that you know we have gone through quite a lot of those documents [indistinct] from the DOD and from ARMSCOR. I have not seen any [indistinct] Arms Acquisition Council. [indistinct] as you referred to it. I have not seen it.

MR HOFFMAN: Well, it is in the acronym AAC is in the JIT Report and I am very kindly informed by the attorney acting for the Department of Defence, that that is just another acronym for the Committee on which the witness served. As far as the objection is concerned [intervenes]

CHAIRPERSON: Just hold on Mr Hoffman. I am aware that is the acronym of the Acquisitions Council, [indistinct] I have not seen anything called the Arms Acquisition Committee.

MR HOFFMAN: That is Council [indistinct] I am sorry if I got that [indistinct]

CHAIRPERSON: Okay.

25 MR HOFFMAN: They are calling it the AAC.

CHAIRPERSON: So [indistinct]

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MR HOFFMAN: Yes. With all due respect to Mr Moerane who enjoys a good relationship with me, we worked together in the Constitutional Court on the [indistinct] litigation that ended in a decision that gave birth to this Commission. He
5 has mistakenly made the objection and I suspect that all he is doing is giving the witness a bit more time to consider the question that has been put and the reason why I say it, is because he has overlooked the very fundamental provisions of Section 2 of the Constitution, which I do not need to
10 remind the Commission, says that I

“Any conduct that is inconsistent with the Constitution is invalid.”

So it does not really matter if the discussion is with the lowest of the low level defence department people. The
15 decision that is made is not made by them. The decision that is made is made by the Cabinet. It is made politically. The civil servant cannot possibly make a decision to spend R35 billion of tax payers’ money [intervenes]

CHAIRPERSON: Thank you, Mr Hoffman. [indistinct]
20 before. Is the former President in a position to answer that question?

MR MBEKI: Yes, Chairperson.

CHAIRPERSON: Thank you. You can go ahead.

MR MBEKI: To say Chairperson, I have answered this
25 question. I have said the Inter Ministerial Committee and the Cabinet did not consider ...there is ...at no point did they consider any option without cost. What might have

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happened at some departmental meeting or whatever else, I would not know, but I am saying the effective decisions, the effective recommendation came from the IMC and the only decision came from the Cabinet. Whatever might have
5 happened that other stages in this process and I do not know, but the decisions ... the recommendations of the Inter Ministerial Committee, were all of them included the element of costs. As did what was even more important than any opinion of the Inter Ministerial Committee, what was
10 important was the decisions of the Cabinet and precisely because it was serious about the matter, of course the Cabinet even instructed that we must work on this matter of affordability.

So I am saying Chairperson, that ... Chairperson if you
15 will allow me just one more minute. You know Advocate Hoffman is very and quite insistent on making very offensive remarks. For instance he says that Advocate Moerane ... he thought that Advocate Moerane had intervened where he did, in order to give me to think about the kind of answer that I
20 would make, to give me time to cook up some story. That is what he said. There are other things in the statements he has made like [indistinct] [13:22] like Joe Modise. I know, I am told... I am told Chairperson that the proceedings here are being televised alive. I do hope that we are not making
25 all the statements and all sorts of allegations about the usage of equipment, because I am hoping ...I am not saying

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that is why, but I think that we need to show a little bit of respect for one another.

CHAIRPERSON: Thank you. Advocate Moerane, [indistinct] a word about the statements that Mr Hoffman made, saying
5 that this [indistinct] of the ANC indicates. My recollection is slightly different, because we do have copies of those Minutes. I am not sure if maybe [indistinct] can be of some assistance, because I recall that you wanted to [indistinct] with witnesses when it dealt with those minutes.

10 ADV KING: Commissioner, I have actually made a copy available to my learned friends acting for the former President as it was part of the bundle when Mr Steyn gave his evidence. What is significant about the wording to which the JIT is referring, is they refer to the two options, second
15 in relation to which costs was will not be the deciding factor, was what they also required. Not necessarily that it was not to be taken into account and my submission is that this is a fundamental difference [indistinct]

CHAIRPERSON: Thanks a lot. This is how I recall it. The
20 Minutes say that the costs should not be a deciding factor. It was nowhere where it was said that costs should not be taken into account.

ADV KING: That is in accordance with the wording for [indistinct]

25 CHAIRPERSON: Thank you. I was a bit worried about that statement. Because I was hearing for the first time that in any of those meetings it was said that costs should not be

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taken into account. As I was [indistinct] it was said that costs should not be a determining factor. Are you [intervenes]

MR HOFFMAN: Sorry, Chairperson, I hope I was not
5 interrupting you Mr Commissioner, may I proceed?

CHAIRPERSON: [indistinct]

MR HOFFMAN: What I was doing when we got [indistinct] into this, was reading direct quotes from minutes that neither me nor my client had had anything to do with and the
10 direct quote ... and this is obviously public servants covering themselves against getting into trouble for breaching the Constitution. The direct quote that I read it against [indistinct] is, paragraph 3.3 [intervenes]

CHAIRPERSON: Just hold on. They are not quotes from it?

15 MR HOFFMAN: I read quotes from the SAAF Command Council Meeting held on the 29th of June 1998. Now that is referred to nicely and easily to find on 4.5.1.12.

CHAIRPERSON: Just hold on one moment. We want to get to the actual minutes. The actual [intervenes]

20 MR HOFFMAN: The Minute itself is quoted in quotes in the JIT Report. Paragraph 3.3 [intervenes]

CHAIRPERSON: There are many of the minutes. The minutes of which meeting?

MR HOFFMAN: Yes of the 28th of ...if I am reading this of
25 the 29th of June 1998 which is [indistinct] that we have reached in the narrative and it says there [intervenes]

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CHAIRPERSON: Just hold on. You say it is the minutes of the meeting of 29th of June [intervenes]

MR HOFFMAN: 29th of June 1998. 29 June 1998.

CHAIRPERSON: Of which body?

5 MR HOFFMAN: Of the Special SAAF Command Council. So these are the people who are in charge of the SAAF. Not as politicians, but as public administrators, public servants. What they say [intervenes]

CHAIRPERSON: Just hold on. Advocate King, do we have
10 copies of this minute?

MR HOFFMAN: It is in the JIT Report.

CHAIRPERSON: Just hold on Mr Hoffman. We [indistinct] the minutes, that is what I am asking about.

ADV KING: Thank you, Commissioner. To my knowledge the
15 record does not have the Minute of 29 June 1998, from the Special SAAF Command Council. The words which are strikingly similar to the ones purportedly being quoted, are words that appear in the Minute of the Special AASP Minute, of 8 July 1998 and there the wording, if I may read it for the
20 record, is :

“The decision by the AAC during 30 April 98 briefing on the shortlist of offers required the project team to consider a solution taking costs into account and a solution where costs was not taken as a deciding factor.”

25 CHAIRPERSON: Thank you.

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MR HOFFMAN: The preceding minute which led to the passing of that and which we suggest is unconstitutional, is a minute in which the public servants themselves say :

5 *“A separate recommendation is required where costs is not taken into account as per the request from the Minister of Defence.”*

That is the way they [indistinct] they say if you politicians want to tear up the Constitution, do it on your own risk, do not ask us as the people who have to process the decision making, to do it and then my learned friend quotes from a later meeting in which this is all neatly finessed and the bottom line is the Hawks are bought instead of the [intervenes]

CHAIRPERSON: Just hold on Mr Hoffman. Let us just deal with the question of the minutes. Apparently you are saying that the Special AASP Meeting Minutes that we have of 8th of July 1998, they are not correct? Or are you saying that the minutes that we are referring to [intervenes]

MR HOFFMAN: I am not [intervenes]

20 CHAIRPERSON: Just hold on. The minutes that you are referring to, the minutes of the Special SAAF Meeting which minutes we do not seem to be having.

MR HOFFMAN: What I am doing is quoting from the JIT Report which itself quotes minutes. The minutes that I referred to are in June, the 29th of June and in those minutes they are saying in effect, you politicians want to do this on a non-costed or visionary approach, then you do it at

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your own risk. Pierre Steyn resigned because he was not prepared to do this. So you know it is not as though I am breaking into new ground or revealing something that nobody said or have heard of before. In the ranks of the
5 complainant [intervenes]

CHAIRPERSON: Just hold on. In order to make progress has the question been answered, or do you still want to put the question again?

MR HOFFMAN: But I have not got an answer as to why
10 costs effectiveness which is a Constitutional requirement on [indistinct] of which the deal is invalidated as being ignored in the acquisition of Hawks and Gripen jets. That is my question [intervenes]

CHAIRPERSON: Okay.

15 MR HOFFMAN: And I have not got an answer, because the poor witness has not been given a chance to answer.

CHAIRPERSON: I see you [indistinct] Mr Mbeki's interest at heart. You want him to give him an opportunity of answering. Former President, you heard the question. Are
20 you in a position to respond?

MR MBEKI: Chairperson, you will have to help me. He says there was something that was ignored. Ignored by who? Because I will insist that the Inter Ministerial Committee and Cabinet did not ignore anything.

25 MR HOFFMAN: I want to suggest [indistinct] sorry, I am not suggesting that anything was being ignored. What I am suggesting and in fact what happened, is that the Hawks and

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Gripens were bought when the Defence Force said these are not appropriate, too expensive, not really what we want, that they were bought for a political reason, or a reason that was decided in Cabinet. I am not going to point any fingers to
5 you or anybody else in these proceedings at this stage, because what we are looking at in this stage of the proceedings, is the Constitutionality, regularity, the question of [indistinct] to deal with and what I am saying is that what happened in this deal, is that we ended up with Hawks and
10 Gripens that cost a lot more money and they were not even wanted by the nine Air Force people. That is what the JIT-report shows. It is what the Minutes show and it is why Pierre Steyn said I am not part of this, I am out of here. I resign and it has been because of the Constitution
15 [intervenes]

CHAIRPERSON: Just hold on Mr Hoffman. You have made such a long statement now I am not really sure which one the witness is going to answer, because you have made so many allegations in the process. Can you try and break
20 them down to small pieces so that the witness can understand and can understand the question.

MR HOFFMAN: Only with pleasure Mr Commissioner, because this is important. It is in fact critical to your work and my concern is that what has happened because of the
25 visionary approach of Joe Modise which is ... it is not a new thing, it is all over the papers everywhere. It is not something that has been dreamt up this morning. Because

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of this visionary approach that did not take cost into account
[intervenes]

CHAIRPERSON: [indistinct] my understanding. Just break
down the question so that the witness can understand it.

5 MR HOFFMAN: The question for the witness, thank you Mr
Commissioner, the question for the witness is, how could the
South African Cabinet committed to the Constitutional order
in which politicians are constrained by the rule of law and
the supremacy of the Constitution, not go for the cost
10 effective option and instead, by more expensive aeroplanes
and, the second question is, why? Let us stop with that.

CHAIRPERSON: Yes, just stop there.

MR MOERANE: Mr Chairman, I object to this question
because it is misleading. You see my learned colleague
15 says that the Air Force itself did not want these, they were
forced upon by the politicians. That is a factually incorrect
statement. If one has regard to the evidence [intervenes]

MR HOFFMAN: I must object to this. I am objecting to this
because [intervenes]

20 CHAIRPERSON: Just hold on Mr Hoffman, I will give you a
chance to make a statement. Let Advocate Moerane finish
then I will come back to you.

MR MOERANE: Mr Chairman, if one has regard for instance
to the evidence of Brigadier-General Bayne, he says a lot of
25 things, but his conclusion at paragraph 57 of his submission,
is as follows :

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“The SAAF today has an excellent, well balanced and well equipped fighter system capability within the ideal three tier system, wherein the gap is higher between the first and second tier and relatively small between the second and third tier. The Hawk has also proven to have a cost effective collateral operational capability especially when packaged with the Gripen. The training success rate has been very high for air crew from various backgrounds and both genders. The Gripen has exceeded the SAAF’s and SANDF’s expectations especially in the domain of modern fourth generation integrated systems, deployability, logistic support and reach. The Hawk and Gripen aircraft have also solved many of the past problems experienced with [indistinct] and high operations, namely thrust and cooling and communications. Clearly the Hawk and Gripen systems have been well utilised since delivery in line with the current security environment. Should the security environment change to one of conflict, then the utilisation of the systems will change as and when required to defend and protect the Republic in the line of the Constitutional mandate.”

That is General Bayne from the Air Force and he gave evidence before this Commission. So anything to the contrary of what he said, is misleading.

MR HOFFMAN: On the contrary. What the General says now *ex post facto* is entirely irrelevant to what this Commission has to determine. This Commission has to determine what

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was happening at the time and at the time what was happening, was that the South African Air Force was saying give us the cheaper Aermacchi option because it suits our [indistinct] better. Please do not burden us with these
5 expensive and the unnecessary Hawks and Gripen. That is well documented in the documentation, in the JIT-report and elsewhere and it is a valid basis for me to put it to the witness, that that is not what the Defence Force wanted at the time, and that these *ex post facto* statements that are
10 made now in order to cover up the wrongdoing, the missed reasons that went into spending more money and should [intervenes]

CHAIRPERSON: Just hold on. Are you saying that the [indistinct] SANDF they indicated [indistinct] in order to
15 cover... the evidence that they gave was to cover up for [indistinct]

MR HOFFMAN: The kind of evidence that has been quoted by Mr Moerane, is a sugar coated effort that does not talk ... that does not even begin to address the facts about the
20 Hawks. It does not mention that half of the Hawks are still stuck in their boxes and [intervenes]

CHAIRPERSON: Just a moment. Advocate King, you are acting for the DOD?

MR HOFFMAN: No, I am not acting for the DOD. Sorry, are
25 you speaking to my colleague?

CHAIRPERSON: Unless you have changed [indistinct] then I am talking to you. Advocate King, this statement that has

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been made [indistinct] the Army, the Air Force, the Navy, they were not telling us the truth, would that be a correct assessment, or would that statement be correctly made by Mr Hoffman sitting next to you now?

5 ADV KING: Learned Commissioner, thank you for the opportunity. I was hoping to be given one at this point. There are a number of levels that I need to deal with this on. The first is the factual propositions being put to former President Mbeki and there I must concur with my learned
10 friend Advocate Moerane, that the evidence is not in accordance with politicians or any [indistinct] The evidence was overwhelmingly that the various items and equipment were assessed and that those that satisfied the technical requirements of the Air Force, were put forward for further
15 decision making, but the Air Force itself did not express preference within that choice of four aircraft that remained or [intervenes]

CHAIRPERSON: I am sorry, the basis [indistinct] Thank you.

20 ADV KING: With the result that my recollection of General Bayne's evidence was that the Hawk had not won the selection criteria because of cost, but it was nevertheless an outstanding piece of equipment that met all the technical requirements and if politicians saw fit, the Air Force was
25 delighted and so that was the [indistinct] If a different proposition wishes to be put by my learned friend it should be put on a different basis, not that it emanates from the

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evidence of the person like General Bayne whose evidence was quite to the contrary, but that perhaps it has another basis for putting a different proposition.

The second level of objectionability to what is now taking place, is that these witnesses have come and given their evidence and they were not challenged, and so it has not put to them that they are selectively giving sugar coated evidence, that does not accord with the true facts in accordance with their [indistinct] and in fairness that really should be something that has been done. So what is now being put does not bear any relationship to what the people, the actual experts' personal knowledge have said. We do not know where the contrary submissions are coming from, because certainly Mr Hoffman's client is no expert in relation to this [indistinct] He does not put up any sort of confrontation to second guess the evidence before him. To the extent that it is being drawn from other documents that have not now been made available or have been quoted from, the JIT-report, then you where the source is, but then it must just be put on the basis of that it is a quotation from the JIT Report, not that it emanates from the personal knowledge of the person that actually knows the facts. Thank you.

CHAIRPERSON: Thank you.

25 MR HOFFMAN: Thank you, Mr Commissioner. Can I try and short circuit this, because it is probably a matter for argument and it is probably a matter for the Commissioners

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to ponder the relevant parts of the JIT, which was a genuine effort by lots of serious senior civil servants to get to the bottom of the arms deal.

CHAIRPERSON: Maybe let me put it this way, I agree with you, it is a matter for argument. Good, let us argue it at the end.

MR HOFFMAN: Let me just put one factual... because I have been accused of putting things that should not be put. Let me just put one factual aspect to you which is two lines, so that I can defend myself against slings and arrows of outrageous fortune, and that is to take you to paragraph 4.1.15 of JIT-report. Paragraph 1.4.15 reads as follows, a very short paragraph :

"In July 1997 the President was advised by the Department of Defence and the South African National Defence Force of the reasons why the British Proposal..."

And that is with reference to the Hawks and Gripens :

"Was not acceptable."

Now that, I suggest, on the basis of what was happening at the time, is a fair reason to ask the witness, who has had a very long rest, what was going on when this decision [intervenes]

CHAIRPERSON: [indistinct] just for my own [indistinct] which [indistinct] proposal are you referring to?

MR HOFFMAN: That is what was on the table in relation to the SAAF BAE Consortium and was offering Hawks and Gripens in competition with the Aermacchi, the Italian

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aeroplanes that [indistinct] with Joe Modise. So there were four offers at one stage. Eventually it wound down to a choice between the Hawks and the Aermacchi and what happened was, we spent a lot more money on the Hawks
5 than we would have had we gone for the Aermacchi, that is what the Commission will find as a matter of night following day. We are not making this up. We do not have sufficient imagination to make that up. That is what it is about Mr Commissioner, and you know I do not know whether having a
10 huge debate, it is a very important point obviously, but [intervenes]

CHAIRPERSON: Okay, I must [intervenes]

MR HOFFMAN: [indistinct]

CHAIRPERSON: I understand. [indistinct] as I understand
15 the situation for the [indistinct] and the shortlist came into the realm of an evaluation by experts and I think [indistinct] experts and their findings were that all those aircraft that they recommended for, are a four stage and [indistinct] technical requirements of the Air Force. From there you are
20 saying that a team evaluated the other [indistinct] and they made a recommendation and from there the other teams came in and the financing team [indistinct] and ultimately that is how the preferred bidder was ultimately chosen. Would I be correct to say that that is the position and, if
25 that is so, then the proposition by Mr Hoffman does not seem to be a fair proposition?

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ADV KING: Commissioner, that certainly will be correct. Where the misunderstanding arises is that it was the current Secretary of Defence at the time, Mr Steyn, who strongly preferred the Aermacchi above the Hawk and he argued
5 strenuously for the choice of the Aermacchi in various committees in which he participated and that was [indistinct]. But from the Air Force's perspective, they had not taken a line of indicating preference. In fact they abstained from it.

10 CHAIRPERSON: Thank you. In fact I think one of the Generals said that as far as the Air Force was concerned, any one of the two will be acceptable, because that is the minimum technical requirement of the Air Force.

ADV KING: Yes, that was the submission.

15 CHAIRPERSON: Thank you.

MR HOFFMAN: Mr Commissioner, I want to close on this point, because we will not make any progress and we need to make progress. I can take it no further than saying please look closely at Chapter 4 of the JIT Report because
20 you will find stuff there that will raise question marks, if not hackles [indistinct] warning signals above your heads when [intervenes]

CHAIRPERSON: [indistinct] during argument you still raise that question.

25 MR HOFFMAN: Absolutely. There will be evidence from the authors of objectors that [indistinct] the Commission as well.

CHAIRPERSON: Thank you.

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MR HOFFMAN: So let us move on from the visionary approach and then make peace about minions and trying to be civilised and that we are most of the time and [indistinct]. I want to take you now to the question of the way in which Thompson CSF became involved in the [indistinct] of the contract. Sorry. I beg your pardon, and what I am looking at here is that according to the official record, Thompson CSF purchased shares in Alltech Defence Systems on the 14th of April in 1998 and they renamed it African Defence Systems or ADS and that that [indistinct] tendered to supply the information management systems to be used in the covert combat sweeps. Are you au fait with any of what went on in that regard, or is this stuff that was done by other people?

MR MBEKI: No, Chairperson, the matter about Thompson and its involvement in terms of the covert, it is not a matter that was part of the... on the agenda of the Ministerial Committee, because this was a sub-contract. We were dealing with the principal contractors and the principal contractor was the German Frigate Consortium which then took its own decisions about whom it sub-contracts, or whatever. So that is a matter that would have been dealt with in that domain.

MR HOFFMAN: Then I want to take you on... sorry, I want to take you on to June of 1998 when the Department of Trade and Industry, which was then led by Mr Irwin, I believe, who received a report that the BAE offset proposals were

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radically inflated during this evaluation process that was going on, and really gave that to the JIT, Mr Commissioner. The JIT has [intervenes]

CHAIRPERSON: [indistinct] as far as the JIT [indistinct]
5 and so on?

MR HOFFMAN: No, no, we have done in [intervenes]

CHAIRPERSON: I am just asking out of interest.

MR HOFFMAN: I am a new boy at this.

CHAIRPERSON: Oh.

10 MR HOFFMAN: My client has been at it since 1998, he has written two books. Five other books have been written by other people. There is litigation in the Constitutional Court. There is the case that he had in the Cape High Court and I have read all of that paper and for my sins, responsible for
15 putting together the Constitutional Court application that has you sitting here instead of playing golf and so on, so I apologise for that. But the point is that there is a wealth of information from well informed people including a former ANC [intervenes]

20 CHAIRPERSON: Ja, let us just [indistinct] because if you start mentioning [intervenes]

MR HOFFMAN: [indistinct] what I know, I am telling you [intervenes]

CHAIRPERSON: Oh, okay. [indistinct] was that you seem to
25 be relying on only the JIT.

MR HOFFMAN: JIT is a good source.

CHAIRPERSON: Okay.

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MR HOFFMAN: Because it is an official source and it is a source that a Cabinet member a Cabinet leader, a former President ought (a), to be familiar with and (b), be able to explain to us, that is why I am doing that.

5 CHAIRPERSON: I understand that. You can go ahead.

MR HOFFMAN: You stole the lovely punch line that I wanted to get to. The JIT report in relation to these BAE offsets is that the offset proposals were a load of hot air and that ...I do not know if you remember that at all, Mr Mbeki, or
10 whether you are prepared to comment on it, but I am putting it to you as part of the narrative of how we managed to get to where we are with more expensive aeroplanes than we should ever have bought?

MR MBEKI: Chairperson, yes, my colleague Alec Irwin came
15 to the Commission to discuss exactly these matters. I would imagine that a person should have answered these questions, but as for me indeed as I have indicated in the main statement that I made, the comments made by members of the IMC and presented to the Commission, I stand by
20 those statements. But I am quite sure that the questions like this that have been posed, would be questions that will be dealt with there. Even [indistinct] with the Minister Mr Irwin and of course the current Minister at the Department of Trade and Industry, because that kind of discussion that
25 would have taken place, there he says was a communication that got to DTI, the Department of Trade and Industry, which said to, whatever. So it went to DTI. It did not come to us

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in the Ministerial Committee, so it would have been dealt with there. Then something later came to us.

MR HOFFMAN: The JIT [indistinct] and eventually came to you, but what I am asking you is, do you remember that
5 scalding criticism of the BAE offsets, that is really the question. The rest was just [indistinct]

MR MBEKI: No, I cannot ...I have not read that report for a long time. I honestly [indistinct]

MR HOFFMAN: I understand, you did not ...you were not
10 advised to read the JIT Report or [indistinct] anything else in order to prepare for this?

MR MBEKI: No, I was not and I would not understand why I would have to.

MR HOFFMAN: Well, it would perhaps better equip you to
15 answer the questions that you are being asked now.

CHAIRPERSON: Mr Hoffman, can you continue with your cross examination. Whatever advice that Mr Mbeki got from his legal advisors, I am sure it is not relevant. What is relevant is the answer that he gives to your questions. May
20 you get to the next question?

MR HOFFMAN: Okay, let us get to the next question, which takes us to July of 1998 and an attempt in July of 1998, on the part of General Pierre Steyn who has been the Secretary of Defence to stop the Cabinet in [indistinct] with an
25 evaluation that excludes costs criteria in choosing [indistinct] option. In which he was just overruled by Joe Modise. So that was a meeting presumably at which you

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were not present. You have no recollection of that meeting you seem to be saying?

MR MBEKI: No, and what led me to [indistinct] just no, I was not at any such meeting. Let me just say this,
5 Chairperson, as a matter of principle, as Chair of the Commission, sorry of the Committee and the Deputy President of the Republic, I never attended any departmental meetings. Whether Defence or Trade and Industry, or whatever. So in case this matter arises again, it
10 will be the same answer.

MR HOFFMAN: Well, fortunately then the next question is one where my instructions are that you were present. That is on the 31st of August there was a Cabinet meeting, this is still 1998, where you were briefed on the arms deal. You
15 were there, so was Ronny Casrels, Joe Modise, Ella Sica, Pierre Steyn and [indistinct] Sheik and [indistinct] Sheik presented two options for the purchase of an IFT... that is the costed and the non-costed options. Now the way that Pierre Steyn approached this, no decision was made at the
20 meeting and then there was an argument afterwards about the minute that Jimmy prepared and that Steyn wanted prepared. Do you have any recollection of this at all, Mr Mbeki?

MR MBEKI: You said it was a Cabinet meeting?

25 MR HOFFMAN: Ja, a Cabinet meeting, a Cabinet briefing. A Cabinet briefing on the 31st of August.

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MR MBEKI: No. What I had been told about that ... not a Cabinet briefing.

CHAIRPERSON: Just hold on [indistinct] Mr Hoffman. It was not a Cabinet meeting.

5 MR HOFFMAN: I said a Cabinet briefing.

CHAIRPERSON: It was not a Cabinet briefing. [indistinct] and that is why [indistinct] at that meeting. It was not a full Cabinet.

10 MR MBEKI: This is what I was asking. I was saying there was no Cabinet meeting.

MR HOFFMAN: I did not say there was. I said there was a briefing.

15 MR MBEKI: There was no briefing of Cabinet, because there was no Cabinet meeting. There was a briefing of the Ministerial Committee, not Cabinet, unless what you have... it seems that you have got different information that there was a cabinet meeting which was briefed.

20 MR HOFFMAN: The information that I have is that there was a briefing at which the Ministers I mentioned, Chippy Shaik and Pierre Steyn were present and then there was the fight afterwards about the meeting and what the minute of the meeting should be saying. Do you have any recollection of that particular dispute in August 31st and days after that?

25 MR MBEKI: No. No, I do not know of any dispute about ...about anything that would have related to what the officials discussed among themselves outside of hearing of the Ministerial Committee, I really do not know.

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MR HOFFMAN: That is a fair answer and let us move on to November as fast as we can because on the 18th of November [intervenues]

MR MOERANE: Chair, with regard to that meeting of the
5 31st of August 1998, there has been comprehensive evidence by Mr Kasrils.

CHAIRPERSON: [indistinct] Mr Kasrils [indistinct] Mr Steyn was saying one thing about those minutes, Mr Steyn was saying [indistinct] and Mr Kasrils came and explained to us
10 that those are the minutes of the meeting [indistinct] Mr Hoffman, I am sure he is not aware of that evidence.

MR HOFFMAN: I am not aware of that evidence and I do not think it makes any difference anyway, because I want to know what this witness has to say about that meeting and he
15 has told us he does not recall it and that is a fair enough answer and I cannot go further than that. I am trying to go move faster.

CHAIRPERSON: Okay, do your job.

MR HOFFMAN: Okay, let us move on then to a big day
20 which is the 18th of November 1998 when you announced that Cabinet had approved a R30 billion arms deal and that the authorisation to negotiate the final ... and finalise the deals with those four primary contractors that had been negotiated with. I hope you remember that date.

25 MR MBEKI: Yes, I do. That was a Cabinet meeting.

MR HOFFMAN: And is it correct, Mr Mbeki, that in that announcement it was said that the deal [indistinct] we will

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call it the arms deal, for short, that the deal will produce offset benefits with R104 billion and create 65 000 jobs for South Africans?

MR MBEKI: That might very well have been said.

5 MR HOFFMAN: Do you also remember that later in the month of November, the then Deputy Auditor General, a man called Shauket Fakie, identified the arms deal as a high risk deal from an audit point of view, and that he asked for the right to investigate that matter as Auditor General?

10 MR MBEKI: No, I do not recall that. I do recall [intervenes]

MR HOFFMAN: You cannot dispute that he said that, because we asked him to come and tell us [intervenes]

MR MBEKI: Well, I cannot dispute it, if I cannot remember.

MR HOFFMAN: Now you go to Stockholm at the end of
15 November, the 25th of November and the Swedish people were complaining about... being Swedish people they were complaining about money that had been allocated to the acquisition of arms at a time when we as a nation, were striving for human dignity, achieving equality and the mere
20 enjoyment of [indistinct] that we just got. Do you remember that, sorry?

MR MBEKI: I do not know. I cannot speak for the Swedish people. I am [indistinct] that you are able to speak for the Swedish people as to what they thought and said and so on.

25 I do not know. I was in Sweden as you say and I did whatever happens within this kind of visit and certainly when I came back I did not have some feeling that the Swedish

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people were of the disposition, but you may very well know better this. I am unable to.

MR HOFFMAN: I am going to mind you Mr Mbeki, and this is inside quotes, so it is actually something that you said while
5 you were in Stockholm.

“The idea that money you are using to acquire defence equipment is necessarily money that is being diverted from housing is emotionally [indistinct], but wrong.”

Is that what you said at the time?

10 MR MBEKI: It is possible.

MR HOFFMAN: Are you, as you sit there here today, at a stage when according to the National Development Plan we have 2.1 million units in arrear for housing, it will cost R300 billion to build, and millions of people in shacks, are you
15 able to explain your reasoning when you said that in Stockholm way back in November 1998?

MR MBEKI: We have dealt with this question, Chairperson, I thought. I said right at the beginning that the Government had to deal with a whole variety of challenges, that is
20 housing, or water, whatever, including this one of defence. Indeed within the context of the reconstruction and development programme and that is what happened.

MR HOFFMAN: Is that all you want to say about it?

MR MBEKI: That is all I need to say.

25 MR HOFFMAN: Can you explain to the Commission why it was necessary to engage in the most expensive procurement in the history of South African on armaments at a time when

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we were the flavour of the month, a new democracy, enemy less and sitting with the leftovers of the most powerful oppressive army in Africa, why did we need to spend so much money on arms?

5 MR MBEKI: This question, Chairperson, I am quite sure has been posed and answered before this Commission. The rationale for the acquisition and all of that, that has been done. Certainly as it has been done by my colleagues in the IMC and senior officials from Defence and as well
10 Government, [indistinct] the positions that we [indistinct]. I have nothing to add to what has been presented to this Commission.

MR HOFFMAN: Am I understanding you correctly that had you continued to tow the official party line, that you do not
15 want to seek to justify other than it was a jolly good idea to put South Africa in debt to the tune of lots of money, in order to acquire arms to fight enemies we do not have, with money we had to borrow?

CHAIRPERSON: Mr Hoffman, you make so many
20 propositions. Can you make those propositions one by one, so that the witness can understand them and respond to them?

MR HOFFMAN: Who were our enemies when you concluded the arms deal?

25 MR MBEKI: Chairperson, there was never an official party line about this. I do not know what the gentleman is referring to when he talks about 'an official party line'. It

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was a Government decision which was based on very extensive consultation with South African formulation which included Parliament and a decision was taken, which certainly to us was a national decision. It does not mean
5 there were not some people objecting, but I am saying overwhelmingly this was a national [indistinct] and it was a unanimous view of Parliament elected representatives and [indistinct] was also the view of Government. We acted on that basis and implemented that. It was no party line
10 [indistinct] but so that it became not only a Government decision to do that acquisition, but a national decision to [indistinct] the National Defence Force.

MR HOFFMAN: Mr Mbeki, my question was, who were our enemies when you spent all this money in arms?

15 MR MBEKI: Chairperson, we do not want to reopen the ... all the discussions that we will find for instance in the defence document. If the gentleman wants us to do this of course we can go and fetch defence [indistinct] and bring it, exactly the argument which justified this particular position.
20 I do not know if you want us to do that, but we are saying that this matter has been canvassed before and indeed it would include incorporating whatever I would have said in the document like the defence [indistinct] and that I have nothing to add to this.

25 MR HOFFMAN: Can you name three countries that are... that were enemies of ours when you [indistinct]

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CHAIRPERSON: Mr Hoffman, let us get to the next question. You have asked that question [indistinct] and the defence [indistinct] if you want me to do that, we can go back and get the defence [indistinct] why they made the acquisition. Now [indistinct] this Commission. Let us get to the next question.

MR HOFFMAN: As the Commission pleases. Mr Mbeki, the next aspect that we need to move on to, because now the deals are done and the fall out begins and before I [intervenes]

CHAIRPERSON: My concerns are [indistinct] can we just shortly digress your first few words.

MR HOFFMAN: I say we can move on now because the deals are done and we are getting to the next chapter of this unnecessarily long process as a nation. So before I do that, is it correct that Trevor Manuel was initially not in favour of the arms deal and had to be persuaded to support it?

MR MBEKI: You know he never told me that and I do not know whether he was asked that question when he appeared before the Commission, because he would have been able to answer the question. But he never told me that.

MR HOFFMAN: Alright, that was just an aside. It is also true that South Africa had to borrow money in order to pay for these arms, is that not so?

MR MBEKI: Sure. Ja, it is so, ja.

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MR HOFFMAN: And the Public Finance Management Act as well [indistinct] that is what tells you how you go about borrowing money for public purposes?

MR MOERANE: Chair, as my learned colleague will know the
5 Public Finance Act was not in operation then. It only came into operation in 1999. It was the Excheqge Act which was applicable at the time and in any event, these various issues have been extensively covered by Mr Manuel.

MR HOFFMAN: Commissioner, I am responding to some of
10 the evidence in chief. The wording of ... the relevant wording [indistinct] as my learned friend Mr Moerane knows, and the point that I am wanting to make with the witness, is simply this: that the Minister of Finance is indeed entitled to borrow money, but under Section 71(f) the kind of
15 borrowing that was done and it was big borrowing, to finance the arms deals, is the kind of borrowing which is called 'borrowing for any other purpose approved by the National Assembly by Special Resolution", that is what the law says.

CHAIRPERSON: I am sorry, Mr Hoffman, that Section?

20 MR HOFFMAN: It is Section 71(f) of the Public Finance Management Act.

CHAIRPERSON: But then I take it [indistinct] what Mr Moerane says, at the time when these deals were made the Excheqge Act was in operation and the PFA Act [indistinct]

25 MR HOFFMAN: He has and that is why I challenged him. My instructions are that the wording in relation to this issue is the same in the old act as the new, so I am referring to

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the new, because it is just easier to find and the point that I am on, really the question is, are you aware and can you point the Commission to any special resolution of the National Assembly that gave Trevor Manuel the permission to borrow all that money that he borrowed, in order to ... and if there is one, well I will be very happy to know that there is one. I do not know [indistinct] and it worries me that this borrowing was done on [indistinct] not... I am not putting it to you that there was not a special resolution. I am putting it that a special resolution is required and I have not in all of the papers that I have read in this, ever seen such a special resolution.

MR MOERANE: Chairperson, this issue of the borrowing ... the question of the loans, from the subject matter of an action which was brought by my learned colleague's client in the Cape High Court where he lost, he applied for leave to appeal to the SCA, he lost. He went to the Constitutional Court, he lost. That issue in our submission is *res judicata*. A court of law has pronounced on the validity of those loans etcetera. I do not see why we should be revisiting that and rehashing that.

MR HOFFMAN: I was unfortunately not in that earlier litigation, because I was still a proper lawyer then. I was still a proper lawyer in the old days and not an NGO [indistinct] so I was not in that earlier litigation, but I have read the judgment and as I understand it the finding of the court is, that the applicant which was ECAR, Mr Crawford

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Browne, sued the wrong party. There is no *res judicata* on this point and this point is an important point for this Commission, because if it happened that a special resolution of Parliament was required before Mr Manuel took
5 the loan, then this Commission is [indistinct] I would suggest to find out about that and that is all I am trying to do. I am not trying to be clever. I am not trying to suggest that there was not one. I am asking a question that I do not know the answer to, which is always dangerous cross
10 examination, but this is important enough to do it.

CHAIRPERSON: [indistinct] was told that when you cross examine if you do not know the answer, that will be the question to the witness. That is exactly what that means. Mr Mbeki, are you in a position to tell us whether, are you
15 aware of there being a resolution [indistinct]

MR MBEKI: Chairperson, at no point did the Government act in any illegal manner knowingly or unknowingly as far as they are concerned and this matter that is being raised about what might be said in the then legislation as it
20 existed, as I was saying earlier I am sure that the matter could have been put to the Minister of ... the then Minister of Finance, because indeed as he says the Minister of Finance borrowed, it could have been put there and I am quite sure that it would have been dealt with, if it has not
25 already been dealt with in the courts as Advocate Moerane says.

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CHAIRPERSON: And [indistinct] in any event I think [indistinct] in argument.

MR HOFFMAN: We will do it as a matter of discovery from the Commission. It is a Government document that either
5 exists or it does not, and we can do it via documents. If there was a quick answer and the witness knew, we would have saved a lot of people a lot of time and trouble [indistinct] which may or may not exist. I was trying to be helpful even though I [indistinct]

10 MR MOERANE: To be helpful Chair, I think reference can be had to Section 16 of the Excheqge Act, which says :

“The Minister of Finance may at any time borrow monies (a) to finance anticipated deficits in the Excheqge account, or obtain foreign currency, etcetera, etcetera.”

15 CHAIRPERSON: Is that helpful, Mr Hoffman?

MR HOFFMAN: I understand it is the same as the PFMA. My client is a banker fortunately, so he knows more about these things than I do. But the difficulty is that this is a question of foreign money, it is not just borrowing money
20 [indistinct] I do not think we need to debate it now. I do not think it is fair to Mr Mbeki for us to sit here and be [indistinct] lawyers while he is trying to [indistinct] evidence.

CHAIRPERSON: Mr Hoffman, how long do you think you are
25 still going to be busy with the witness, because I think I am going to sit until we finish with this witness today.

MR HOFFMAN: I am now in [intervenues]

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CHAIRPERSON: Just more or less how long do you think?

MR HOFFMAN: In my chronology I am in the happy year of 1999, which was a very happy year as Mr Mbeki won the Presidential Election by a landslide and I need to take him
5 to at least to the end of his Presidency, which is in [indistinct]. I do not think there is much detail. But I have a plan. I am still on Chapter 1 of the plan, which is to try and help the Commission by giving you a chronological sequence of [intervenes]

10 CHAIRPERSON: Mr Hoffman, I understand. The simple question is [indistinct] an hour, two hours, three hours, four hours, so that we can now how to plan our things. That is the only question that I was asking.

MR HOFFMAN: It depends on how often Mr Moerane
15 interrupts me.

CHAIRPERSON: Okay. I think in any case let us adjourn for 15 minutes. We will come back and my fellow Commissioner said to me that [indistinct] sit until we are done with Mr Mbeki.

20 MR HOFFMAN: Lovely. I am indebted to you [indistinct]

CHAIRPERSON: Advocate De Vos?

ADV DE VOS: Mr Commissioner, I am going to request on behalf of Lawyers for Human Rights to after this cross
25 examination is finalized, to get the opportunity to consult with my clients. You will appreciate that the statement that we received this morning of some 11 paragraphs [intervenes]

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CHAIRPERSON: I understand that. You do not have to motivate. I said we need to finish [indistinct] I was referring to Mr Hoffman. If we finish with Mr Hoffman today, then we can come back tomorrow.

5 ADV DE VOS: Thank you, Mr Chairman.

CHAIRPERSON: Advodate Moerane, tomorrow unfortunately you will have to come back. So that we can finish [indistinct] tomorrow. [indistinct] to take a ten minutes adjournment and then continue until we finish with cross
10 examination of Mr Mbeki.

MR MOERANE: Chairperson, maybe we can discuss this later, because I am not available tomorrow and my learned junior is not available tomorrow. I have not discussed President Mbeki's diary for tomorrow. Maybe we can come
15 back to this. We would be prepared to sit as late as possible today.

CHAIRPERSON: Ja, I understand that but then we have a request from Lawyers from Human Rights, they say that they might need to prepare for their cross examination, and if
20 that is the position unfortunately we will have to say that Mr Mbeki will have to come back tomorrow. Because we want this evidence in cross examination finished so that we can move to the next stage. I think we can discuss that further when we come back from tea. Let us think about it and then
25 adjourn for 15 minutes and then we can take this discussion further. Thank you.

(COMMISSION ADJOURNS)

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(COMMISSION REOPENS)

CHAIRPERSON: Do you confirm that you are still under oath?

MR MBEKI: I do.

5 **THABO MVUYELWA MBEKI** : (s.u.o.)

CHAIRPERSON: Thank you.

CROSS EXAMINATION BY MR HOFFMAN (Continued): Thank you, Mr Commissioner. I promised to start on a happy note and the happy note is the month of June 1999, when Mr
10 Mbeki became the President of South Africa in a landslide victory. But even happy days in a Commission of Enquiry, have dark linings. It is also correct, is it not, Mr Mbeki, that when you were re-elected your Deputy President was one Jacob Zuma?

15 MR MBEKI: Yes, that is correct.

MR HOFFMAN: And shortly after the elections the then Auditor-General, Henry Tuba, asked you for permission for the Auditor-General's office to do a proper audit of the arms deal, do you remember that?

20 MR MBEKI: It is possible.

MR HOFFMAN: [indistinct] and a man called Gavin Woods was appointed as the chairman of SCOPA of the Standing Committee of the Public Accounts in July that year, and to your credit the predecessors of the Scorpions were started
25 in August of that year, do you were definitely "Mr Delivery" as [indistinct] liked to call you at that time. You were getting on with the business of creating an administration

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[indistinct] Is that a fair summary of what happened in the early months of your Presidency?

MR MBEKI: Well you have mentioned Mr Woods being [indistinct] of SCOPA, that was a Parliamentary decision.

5 MR HOFFMAN: Yes.

MR MBEKI: That is correct, that is what happened. The rest was well, normal Government work.

MR HOFFMAN: Now in August of that year sorry, in August of that year Minister Manuel's department presented an
10 affordability study of the arms deal which raised some serious concerns including taking into account currency fluctuations and how was the impact on the national effort to reduce the budget deficit, which was one of his major achievements as a politician. Do you remember that
15 happening shortly after you took over the reigns?

MR MBEKI: No, I do not remember it specifically, but it could have happened.

MR HOFFMAN: Then of course the party got spoiled by Patricia de Lille and produced a dossier on the 9th of
20 September that year, which had a whole lot of serious allegations about how [indistinct] and all kinds in relations to the arms deals. In part... she produced it in part. Do you remember that as being [indistinct] when that occurred?

MR MBEKI: Yes, certainly I mean you are right that she
25 produced a document [indistinct] you are quite correctly describing them as serious allegations and that is all they

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were. I do not know what party was over it as a result of the making of the allegations, but indeed.

MR HOFFMAN: You did, however, respond on the same day, the 9th of September and ...or the Presidency did, or your
5 office did and you released a statement that defended Jacob Zuma against these allegations of being involved in shady arms deals. Do you remember that?

MR MBEKI: NO.You will have to be a bit more specific about that.

10 MR HOFFMAN: On the same day that Patricia de Lille produced her dossier in Parliament, my instructions are that the Presidency did a press release in which Jacob Zuma, the then Deputy President, was defended because he was one of the people fingered in that set of allegations. So you
15 sprung to his defence as President, that is what I am saying.

MR MBEKI: Well, what I am saying Chairperson is that I cannot recall what Patricia de Lille might have said about the then Deputy President Jacob Zuma, I do not know. What... maybe he can remind us about that. Because it
20 would explain what the office of the President would have said. Again I am imagining this because probably, probably one of the things the office of the President might have said was that the then Deputy President Jacob Zuma was never involved in the procurement process.

25 MR HOFFMAN: He was not on any Government Committee, am I right?

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MR MBEKI: He was not in any [indistinct] that is what might have been said. I do not know. I am speculating, because I do not know quite what the charge, the allegation by Ms de Lille was.

5 MR HOFFMAN: I am concerned [intervenes]

CHAIRPERSON: Just hold on Mr Hoffman.

MR MOERANE: Chairperson, if my learned colleague is referring to [intervenes]

10 CHAIRPERSON: Sorry, Mr Moerane, can you switch on your machine.

MR MOERANE : If my learned colleague is referring to any document, I think it would be in the interest of everybody, in the interest of justice, if he were to produce that document so that we all read it and see what it says.

15 CHAIRPERSON: Ja, I will tell you I think Mr Hoffman is in a difficulty, because he is reading the book. This are allegations that are in the book. I can see you know he is reading the book. Probably that is why he is unable to give us documents which will substantiate the statements that he
20 is making. But I think we will have to ... unfortunately we will have to go on in the manner in which we are doing. Unless [indistinct] will say that difficulty is in order.

MR MOERANE: Thank you, Chair.

MR HOFFMAN: Just to ease Mr Moerane's pain, [indistinct]
25 lawyers in shady arms deals are [indistinct] promise as they quote part of Presidential [indistinct] we are not making this up as we go along. It is actually a serious recordal of the

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chronology and I am sure it is on the Presidential website. Look in ...later in September and in fact it would have been around the 20th or the 21st, Mr Fakie who had now been promoted to Auditor-General, wrote to Mosiuoa Lekota, who I saw here earlier today and he asked that the arms deal [intervenes]

CHAIRPERSON: Mr Hoffman, if you do not mind, I see Mr Lekota is sitting at the back there. He is Minister Lekota. He is [indistinct]

10 MR HOFFMAN: Sorry.

CHAIRPERSON: He is sitting at the back and I think he is Minister Lekota. Because he is not confined [indistinct] as how we refer to him. Unless he is your friend, you know, he might allow you to say Lekota.

15 MR HOFFMAN: He is my friend, but I am still out of line you quite right. I have to call him Mr Lekota for the record and I apologise. He seems to have a lot of [indistinct] which is [indistinct] He was asked by the Auditor-General to... or he was urged by the Auditor-General to allow the arms deals to
20 be audited. The Auditor-General had the means [indistinct] and his response was to say by all means, Mr Auditor-General you are Chapter 9 of the institution, you act without fear or financial prejudice, go ahead audit the arms deal. Do you recall that happening, Mr Mbeki?

25 MR MBEKI: You are talking about an interaction between the Auditor-General and the then Minister of Defence?

MR HOFFMAN: Yes.

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MR MBEKI: No, I was not there.

MR HOFFMAN: Did you react to it in any way? That interaction?

MR MBEKI: I do not recall that the Minister of Defence or
5 the Auditor-General came and raised the matter with me.

MR HOFFMAN: I see. A strange thing happened next, which is why I asked that question. A General, called Keith Snowball, wrote to Mr Fakie and said Mr Lekota's earlier letter was invalid and that the terms of reference of any
10 investigation by the Auditor-General would have to be cleared with your executive. Is does that prompt your memory? Do you remember such a ...or are you just not in a position to dispute that that was part of the chronology of what went on?

15 MR MBEKI: No, I do not know that. I know about the constitution of the JIT, which included on the Auditor General that I know about.

MR HOFFMAN: Just before we get to that JIT, there was also De Lille, sorry, Ms De Lille offering her dossier to
20 Willem Heath who was the SIU or the Special Investigative Unit at the time and asking him to investigate and cancelling deals if necessary. Does that ring any bells in your recollection of the chronology of the arms deal, or is it something that has passed you by?

25 MR MBEKI: No.

MR HOFFMAN: You do not remember?

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MR MBEKI: Assuming that they will have done that, I do not know.

MR HOFFMAN: And then in February of well, before we get to February let us just remember that on the 3rd of December 5 1999, was the big day when you all signed off on the deal and the final loan and purchase agreements ... so R30 billion of South African money was committed to the purpose of modernizing our defence force, preparing us for foreign invasion, getting us ripe to play our correct role as the 10 leading country... a liberated country in Africa, that is the date of the deal I think you can even agree with me on that?

MR MBEKI: Sure. That is the date the Cabinet took the decision, yes.

15 MR HOFFMAN: Then in February the next year, which is 2000, the Office for Serious Economic Offences which was the predecessor of what we now call the Scorpions, says that it is doing its only investigation independently into the arms deals and funnily enough at the same time, Mr Zuma 20 starts building Nkandla with a budget of R1 million, but that is 'by-the-by'. Let us just stick to the question about the Scorpions predecessors getting involved, were you ever made aware of the fact that there was a police investigation into the arms deals?

25 MR MBEKI: No, I do not remember that.

MR HOFFMAN: Now it is documented in the Schabir Shaik trial, that Jacob Zuma, Allen Mthethwa, Schabir Shaik met in

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Durban on the 10th and 11th of March of 2000 and the court accepted that the purpose of the meeting was to discuss the payment of a 500,000 Euro bribe, to Mr Zuma in turn for protection against investigation into Thompson's potential
5 corrupt activity in the arms deals. In other words they were getting nervous about what [indistinct] all the noise that was going on about irregularities and that was all over the press. Do you remember that, or is it just something that did not involve you?

10 MR MBEKI: Sure. I remember it. But it did not involve us.

MR HOFFMAN: I do need to ask you this question, given that kind of publicity because you are a senior statesman in Africa today and you are working to make Africa a better place. I would like your view, if you would share it with us
15 please, on the propriety of a person in the position of President Zuma, appointing sitting judges to preside at a Commission of Enquiry of this nature about the subject matter such as this, and I see Mr Moerane is really upset.

CHAIRPERSON: Just hold on Mr Moerane, before you say
20 anything. I am not going to allow the question, Not necessary for the former President to answer the question.

MR HOFFMAN: I accept that, Mr Commissioner. It is perhaps something for another day in another forum. Now on the 15th of August in the year 2000, the first Auditor-
25 General came out and that is the first official report of the Auditor-General's investigation and in it he raised some serious questions about the rate of the acquisition process

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and recommended that there be further investigations, which I think led to JIT [indistinct] Does that accord with your recollection of the chronology? Is that the way things happened?

5 MR MBEKI: That is possible. I do not know.

MR HOFFMAN: Do you also recall that Selby Baqwa who at the time was the Public Protector announced almost simultaneously that the Public Protector's Office which is there to guard against mal-administration, said it too was
10 going to get ...take an interest into what happened in the arms deal?

MR MBEKI: Yes, again I cannot remember all of this detail about things that happened then, but I would not ... that this might very well have happened.

15 MR HOFFMAN: And then on the 9th of October, which was quite soon after that, the Heath Unit lodged a request with you to be granted a Presidential proclamation because the SIU works in terms of Presidential proclamation, giving it the right to investigate the arms deals. So we have got
20 Patricia de Lille, the Heath Unit, the Auditor-General and now in October... the Public Protector in August, all swarming all over the arms deal. Is that the way that your Presidency began?

MR MBEKI: The Special Investigation Unit or the Heath Unit
25 does not present requests to the President, unless the law has changed since we left Government. They would have

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presented that request to the Minister of Justice, not to the President.

MR HOFFMAN: But it requires a Presidential proclamation if it is going to have any effect, is that not right?

5 MR MBEKI: On the recommendation of the Minister of Justice.

MR HOFFMAN: Sorry, I was trying to speed things up. But you are quite right. Okay. Then I want go to the first SCOPA hearing which I know you were not involved in,
10 because you were in the executive at that stage. But what emerged there was that by October 2000, the costs of the deal had spiraled to 48, sorry, 43.8 billion and that there was not proper provision in the agreement about what happens if the offset deals do not really materialize. Do you
15 remember any of that, Mr Mbeki?

MR MBEKI: No, I do not.

MR HOFFMAN: Do you remember that Schabir Shaik when that was all happening, suggested that he recused himself from discussions in which he would be in a conflict of
20 interest, but that that was found to be false when the JIT got involved in the investigation?

MR MBEKI: Well, I only recall that Chairperson, in the context of what the JIT [indistinct] did discuss that, about particular matter, I do not know what earlier discussion took
25 place about that.

MR HOFFMAN: And I do not think we need to go into what Schabir Shaik's fate was. We all ... there is a court record

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that we all know that he was given 15 years' for corrupting Jacob Zuma. Let us just accept that it is part of the narrative and that that is in fact what followed. You are happy with that?

5 MR MBEKI: Yes. Sure.

MR HOFFMAN: Now we get to the month of October 2000 and we have SCOPA released its 14th report, which is the one we call the JIT Report [indistinct] and that report urges your Government to form a super investigating team to
10 investigate the arms deal and argues that the SIU should be involved in the process, because the SIU has these powers to cancel deals and [indistinct] or whatever. Do you remember that, Mr Mbeki?

MR MBEKI: Yes, no, I remember that, the recommendation
15 of SCOPA, more or less in the terms that you are stating.

MR HOFFMAN: And then from another court all together, in December of 2000, the Speaker of Parliament who was then Frene Ginwala, came into the row that was going on in SCOPA between Woods and Feinstein on the one side and
20 the ANC and [indistinct] on the other side [indistinct], and she says she was not ...and I am putting this in quotes again for Mr Moerane's benefit :

*"Not aware of any resolution of Parliament of the National Assembly instructing the President to issue any
25 proclamation regarding the work of the Heath Commission."*

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I think you have answered that already. You say that is something that the Minister of Justice should have done, not Parliament.

MR MBEKI: No. No, Chairperson, she was not addressing
5 that issue. What she was addressing was, she was saying that the Parliamentary Committee has no authority to direct the Executive to do anything, unless that is done by the resolution... that is what she was addressing.

MR HOFFMAN: We can agree on that one. Then we go to
10 January of the next year, which on the 12th of January that year, Ministers Erwin, Manuel, Radebe and Lekota had a press conference at Johannesburg International which was now ORT and at...well I would like to know if they were there and obviously they were collectively responsible
15 [indistinct] for what happened, were they there with your blessing and your knowledge, or did they just do it on their own?

MR MBEKI: No we agreed that they should do that.

MR HOFFMAN: And what they did there was to defend the
20 procurement process while noting that the costs had gone up, because inflation and that the procurement did not really deal with the secondary contracts, you had left that to the contractors to do rather than make the secondary contracts, [indistinct]. Is that really the line that was taken when they
25 stood up at ORT and held that press conference?

MR MBEKI: I am sure that is what the statement says. That was the position of Government [indistinct]

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MR HOFFMAN: And then a couple of days later on the 19th of January, you wrote a letter to Judge Willem Heath and you said to him, you are not going to give him the right to investigate the arms deal. Do you remember that?

5 MR MBEKI: We communicated with Judge Heath on the basis of the recommendation by the Minister of Justice which said we had an obligation to implement a decision of the Constitutional Court which said that that particular unit, the Special Investigation Unit, the Heath Unit, was
10 improperly constituted and therefore that we needed to change it and therefore the Minister of Justice said, on the basis of this we have to do this and that certainly was part of argument.

MR HOFFMAN: It was a separation of powers and an issue
15 ... you had a member of the judiciary working in the Executive which is not a healthy thing when there is a separation of powers, is that really what it was?

MR MBEKI: Well I am not a lawyer, but I am just saying what I could recall is that the Constitutional Court said it
20 was improper for us to appoint a Judge who had to head this ... to head this Commission. We needed to find somebody else. With that I know quite what the detailed argument would have been at the Constitutional Court and I can ask the lawyers all around me including you.

25 MR HOFFMAN: Please do not, otherwise we will never finish. I am indebted to Mr Moerane, for drinking instead of talking. It will be much easier to get on with the show. The

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quote and this is once again inside quotes for counsel's benefit of what you said there worries me and I want to talk to you about it, because the quote of what you said in relation to that, is :

5 *"It is clear that we cannot allow the situation to continue where an organ appointed by and accountable to the Executive, refuses to accept the authority of the Executive. This situation of ungovernability will not be allowed to continue."*

10 Now that, with respect, it is a general statement which I do not think you are really going to say, you were dealing with it specifically in the context of the separation of the powers [indistinct]. If you took what you had said there, literally, it would actually chop off at the knees everything that every
15 Chapter 9 institution does and that I do not think that is what you meant. I would be much relieved to hear that you agree with me, that is not what you meant when you said it?

MR MBEKI: The 'issue' you so call is not the Chapter 9 institution.

20 MR HOFFMAN: Correct.

MR MBEKI: So I am quite sure the comments that I would have made to the Unit, relate to what certainly the Government thought the Unit was doing. So it has got nothing to do with Chapter 9 Institutions. It has got to do
25 with particular behavior at a particular time by a particular unit.

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MR HOFFMAN: Yes, now I am very pleased with that answer and I thank you for it, because it is a source of concern where a separation of powers is so critical to the success of constitutional democracy and a multi party set up like us.

5 Let us move on to what happened in January of ... later in January of the same year, when the ANC members of SCOPA put out a press statement saying, that SCOPA had never directly asked for Heath to be part of the investigation team and they made Andrew Feinstein the [indistinct]. Do you
10 remember that incident?

MR MBEKI: No, I am afraid not. I was not in Parliament.

MR HOFFMAN: Okay. Do you know that after he said it, he actually retracted the statement, when he saw the reaction?

MR MBEKI: No, as I have said, Chairperson, I was not in
15 Parliament. I do not know what [indistinct]

MR HOFFMAN: That just passed you by?

MR MBEKI: I do not know what [indistinct]

MR HOFFMAN: Now I want to move all the way to May because I am mindful of the hour and we are making
20 wonderful progress. So let us go to May of 2000 where once again this joint Parliamentary Standing Committee on Ethics and members interests forced through a resolution that was to the effect that Tony Yengeni who was in trouble with his Mercedes Benz, did not have to appear before the
25 Committee to answer questions relating to the claims that he was involved in the arms deal. Did you have any role in

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that, or did that just happen in Parliamentary level without any input from you?

MR MOERANE: Chair, I think we are wasting time. If the Parliamentary matters ... Mr Mbeki was not involved in those
5 Parliamentary matters, then can we please get on with it.

CHAIRPERSON: Ja, my problem [indistinct] that are we still on the [indistinct] the questions that are being asked [indistinct] and said to him no. I am not quite sure which type of reference this information that Mr Hoffman is trying
10 to elicit from Mr Mbeki is meant to ... how it is going to help us? Mr Hoffman, is that [intervenes]

MR HOFFMAN: Let me put it succinctly, part of your mandate relates to the Cabinet does it not? This is where I am at.

15 CHAIRPERSON: Which paragraph will that be?

MR HOFFMAN: It is the question of how institutionally the allegations of wrongdoing, misfeasance, malfeasance in the arms deal were dealt with subsequent to the deals being done. That is... I am not trying to make a big song and
20 dance, I am trying to put [intervenes]

CHAIRPERSON: No, no, that I understand. I have got the terms of reference ... can you just refer me to that relevant portion, maybe I am the one who misunderstood.

MR HOFFMAN: It is 1.5. My instruction is that it is 1.5. I
25 will check my instructions because my client has been reading these things longer than me.

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CHAIRPERSON: Can you just read that into the record and then we ... you know we ...[indistinct]

MR HOFFMAN: Yes. So it is 1.5 of your mandate. Do you want me to read it out?

5 CHAIRPERSON: Naturally, because that does not seem to be our understanding of 1.5.

MR HOFFMAN: It is a question of how you interpret words ... not 'award' which is that goes before a conclusion of the contracts that were concluded in the [indistinct] and if so,
10 whether legal proceedings should be instituted against such persons and the nature of such legal proceedings and whether in particular its base is to pursue such person for the recovery of any losses that the state may have suffered as a result of their loss. Now if that is conduct that is
15 designed to cover up wrong doing in abstractio, let us not talk about this here then there is a basis for saying that that mandate or that burden is part of the mandate.

CHAIRPERSON: Okay, I hear what you are saying. You can continue. Fortunately I see [indistinct] let us move along.

20 MR HOFFMAN: I am running out of [indistinct] but fortunately the book is only chapter 1, but I do not [indistinct] Sorry, Mr Mbeki, we are getting there. Is it also correct that on the 30th of August in 2000 Andrew Feinstein resigned from the ANC after being taken to task because of
25 the position he took on the arms deal? [indistinct] SCOPA and a lot of the conflict around it.

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MR MBEKI: Well, I know that he resigned when he did, I cannot remember.

MR HOFFMAN: I am helping you with the date. It is documented. And then I want to take you to October of that
5 same year where there were reports in the investigative press and Mr Fakie, the Auditor-General had forwarded his provisional audit to [indistinct] which was released in August 2000, to your Cabinet for review and that paragraphs implicating Schabir Shaik in improper activities, had been
10 edited out by your Cabinet to clear Schabir Shaik, and the book by the man who is sitting behind me, has a lot of pages that show that there has been editing in handwriting, and I do not want to spend a lot of time on it. I want to know whether you had anything to do with that, or whether we
15 should be looking for other culprits in relation to the audit... the editing of the Auditor-General's report in October 2000.

MR MBEKI: Chairperson, the Cabinet never edited any Auditor's report, of any kind. What normally happened, I do not know if the practice remains, what normally happened
20 with regard to the Auditor-General was that whichever institution, department he was auditing, he would prepare the audit report, he would show it to the people, organization, institution that was being audited to allow them to make comments in terms of what would be before
25 him, which comments he was free to accept or reject [indistinct] after which then he finalises the report, his report. That is normally what he did and in this case, in the

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case I am talking now, but in the case when there was the
JIT and he had to prepare that report, he followed the same
normal procedure. There was nothing extraordinary about it
and there was nothing that would have been edited out by
5 members of the Ministerial Committee, because the Minister
was not Cabinet, but no doubt there would have been
comments. If we thought that there were some things the
Auditor-General had got wrong, as I say there was no
obligation on the Auditor-General to accept [indistinct] but
10 that is normal practice with the Auditor-General, because
they did not do anything which was extraordinary with regard
to this particular matter.

MR HOFFMAN: So what you are saying is that the procedure
really mirrors the procedure that the Public Protector now
15 does with the confidential provisional report, which is then
given to interested parties to comment on, goes back to her
and she then makes her final report. It is not a question of
somebody saying this has to be filed in the report? It is a
question of input being given? Have I summed you up
20 correct?

MR MBEKI: Chairperson, I do not know what the Public
Protector does. I was talking about what I know about the
manner in which the Auditor-General conducted his work
while I was in Government. With regard to any audit report,
25 that they would prepare the report, show it to the person,
institution, organization that is being audited, they would

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get whatever comments and they would finalise it and then they followed exactly the same procedure in our case.

MR HOFFMAN: Do you remember that Schabir Shaik was arrested on the 16th of November that year and charged in relation to his relationship with Mr Zuma, that on the same
5 ...well, I think you do remember that, that on the same day you wrote an article in "ANC Today", attacking the joint investigation report?

MR MBEKI: I do not recall attacking the joint investigation
10 report, Chairperson. I might have made some critical comments on the elements of what they said. But as I said, I cannot remember attacking it. Because of course you can always find that letter it is on the internet, it is not difficult.

MR HOFFMAN: Can we prevail upon Mr Conradie not only to
15 make that ANC Today editorial that you wrote on the 16th of November, but also the one that you wrote some time later... I will pick up the days now... it is the 30th of May. I think those are the only two that I know of, that you wrote in relation to the arms deal, can we ask ... to prevail upon him
20 to make them available to the Commission and to the parties representing?

MR MOERANE: Chairperson, I decline the invitation. My learned colleague Hoffman and his client can do their own work.

25 MR HOFFMAN: Are you going to pay us? On the 25th of February 2002 the chairman of SCOPA, Gavin Woods, resigned from SCOPA in protest against the way that your

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Government handled the arms deal litigation. Do you recall that event, Mr Mbeki?

MR MBEKI: Ja, I do recall that Mr Gavin Woods left SCOPA, quite why I do not know. I am sure that this is a matter that
5 would have been discussed in Parliament.

MR HOFFMAN: And it left you cold? You had no reaction to it at all?

CHAIRPERSON: Mr Hoffman, can you continue the cross examination? He says he does not know. Let us get to the
10 next question.

MR HOFFMAN: I will move on. Thank you. Now by the 13th of March 2003, there had been litigation involving Richard Young who was one of the disappointed tenderers in relation to the IT [indistinct] and I am instructed that on that date,
15 the 13th of March, the Auditor-General dropped his appeal against the judgment in favour of Richard Young, meaning that the Auditor-General had to release documents requested by Young, including the draft JIT Report which is [indistinct] in Hennie van Vuuren's book now and the extract
20 showed that the report had been heavily edited in order to reflect more favourably on the Government. Are you in a position to dispute any of that, or do you simply take it as a statement of what went on and that you are unable to contest?

25 MR MOERANE: Chairperson, it is not every pleasant to be objecting at every turn, but I really really do not see the

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relevance of this line of questioning, particularly in the light of the evidence of President Mbeki.

MR HOFFMAN: Let me help Mr Moerane. On the next occasion that anything of relevance to this matter occurred, 5 Mr Mbeki wrote a column in "ANC Today" where he was critical of what had happened there. So he made a comment at the time, and that is why it is relevant, because he obviously regarded it as something of importance. But we will do our homework. We will go and scratch on the 10 internet. We will find the articles that were written and we will produce to them when Mr Crawford-Browne gives his evidence in due course. Now let us not [intervenes]

CHAIRPERSON: I think [indistinct]

MR HOFFMAN: Let us do it [intervenes]

15 CHAIRPERSON: Do your homework, get those articles, give them to Mr Crawford-Browne and then he can produce them when he gives evidence.

MR HOFFMAN: That is [intervenes]

CHAIRPERSON: I think that will be a much better way of 20 dealing with it.

MR HOFFMAN: Thank you, Mr Commissioner. Moving on then to June, that is when Patricia Hewitt, who was then the British Trade Minister and the Secretary of Trade in the UK House of Commons, stood up and said that BAE had paid 25 commissions to agents who helped secure the Hawk/Gripen deal and that the amount involved was 112 million Pounds

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Sterling. Did you take note of that announcement in any shape or form?

CHAIRPERSON: I am not going to allow the question. Whether you know ...surely he will not know what the British
5 have done or what announcement they have made. Whatever answer he is meant to give [indistinct] May you please proceed to the next question.

MR HOFFMAN: Okay, the next question is, is there any provision in any of the arms deals for the payment of
10 commission to intermediaries? Because I have not been able to find one myself and if you found one for me, I will be deeply indebted to you Mr Mbeki.

MR MBEKI: A payment by whom, Chairperson?

MR HOFFMAN: Payments to intermediaries by the arms
15 deals suppliers. Let me explain this because it is another important part of this. If these deals are cancelled because of this kind of activity, the loss that accrues in respect of the bribes, falls on the European arms dealers, who corrupted the South African officials, personnel, people who
20 were involved in the negotiation of the arms deals, and in this particular instance, what Patricia Hewitt actually said was, we set aside 200 million [intervenes]

CHAIRPERSON: Mr Hoffman, what is the question?

MR HOFFMAN: The question is, do you appreciate, Mr
25 Mbeki, that if arms deals are cancelled, recipients of bribes keep their bribes and the loss falls on those who gave ... paid the bribes to land the contracts? Do you know that?

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MR MOERANE: Chairperson, the witness asked for clarification as to who are these people who are alleged to have paid bribes. That has not been cleared, so that he is in a position to answer the question, the so called
5 intermediaries. I mean if... it would make sense if it related to Government and it related to the primary contracts. But if it is relating to secondary then it is totally irrelevant.

MR HOFFMAN: Mr Commissioner, my learned friend has not been listening, because it is late. It is BAE that admits in
10 Parliament that it paid 112 million Pounds of commissions which is just English language for bribes and your ... you have in the *Terry Crawford-Browne v The President* documentation a great fat wad of paper that shows exactly who was paid, and how much and where, and through which
15 companies and if my learned friend, Mr Moerane, has not read that, then I suggest he does not waste your time about asking silly questions, but he goes and reads it, because it is all there, waiting for anybody who wants to read it, to read it.

20 MR MOERANE: Chairperson, my learned colleague should withdraw that "asking silly questions". That is not the sort of language we should be using here.

CHAIRPERSON: Mr Hoffman, Mr Moerane says that he objects to the fact that you say he is using ...he is "asking
25 silly questions".

MR HOFFMAN: If Mr Moerane had taken the trouble both when he [intervenes]

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CHAIRPERSON: Are you prepared to withdraw the fact that you are saying that he is “asking silly questions”, or are you not prepared to withdraw it?

MR HOFFMAN: Let me say that it was an unnecessary
5 question, had he prepared.

CHAIRPERSON: No, no, I am saying are you prepared to [intervenes]

MR HOFFMAN: I will withdraw the “silly question”, because Mr Moerane is not [intervenes]

10 CHAIRPERSON: You will not withdraw the statement?

MR HOFFMAN: No, I will. I will withdraw the “silly” term, because Mr Moerane is not silly.

MR CHOWE: Chairman, I am not quite certain [indistinct] is not my home language, but I am not quite certain whether I
15 have seen anywhere where it is written that the way the Commission is equivalent [indistinct] Can you help me with that statement?

MR HOFFMAN: May I suggest, with the greatest of respect, Mr Commissioner, that you do what nobody in this
20 Commission appears to have done yet, and read the papers that were placed before the Constitutional Court in order to get this Commission appointed, because they are full of information that shows that these so called ‘commissions’ were paid as bribes to Red Diamond Trading in the British
25 Virgin Islands, to the personnel like [indistinct] and Breytenbach and others, we will give you a list of names if

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you want them, they are actually all there and they have been before you since the day you were appointed.

CHAIRPERSON: Okay, I must tell you that when the time justifies it then you can lead that evidence. But then
5 [indistinct] to Mr Thabo Mbeki so that we can finish with this segment and then the list of people who received bribes, then we can deal with them when they come and testify. Can we just [indistinct] questions to Mr Mbeki which are [indistinct] so that he can understand. I am sure he will be
10 [indistinct] if you say to him that there were bribes in English is the same as commission. May we just try and avoid that type of language.

MR HOFFMAN: No, those 'commissions' as they were so delicately called in the House of Commons, are not
15 recoverable from the persons to whom they were paid. If there is a cancellation of BAE/SAAF deal which we submit there should be, then R35 billion flows back into the coffers of South Africa, which we could use, and the bribes fall where they fall, on those who paid them. Because a bribe is
20 an illegal transaction and they cannot sue Fana Hlongwane, or John Breytenbach or whoever it is that received that commission in the course of negotiating the BAE deal and the same applies to all of the other deals and that does not seem to be understood generally and I am very concerned to
25 know, whether it has crossed your radar because it is an important thing to know, not only here, but also in [intervenes]

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CHAIRPERSON: Mr Hoffman, what is the question
[intervenes]

MR HOFFMAN: The question is, does the witness
understand that bribes... that commissions of... that are not
5 in the contract that are paid, are not recoverable from the
person who received them, as a matter of law? Do you know
that that is what the law is?

MR MBEKI: I have got the great disadvantage Chairperson,
that I am not a lawyer, so I really honestly do not know what
10 the law says. As I listened to the question [indistinct] it is a
speech and a question and I listened and tried to understand
what was being said, then indeed I must say, Chairperson, I
agree with you. I did not think that the words 'commission'
and 'bribes' were synonymous. We have absolutely no
15 evidence and for the last 16 years or however long this
discussion has been taking, for all of these years, there has
been absolutely no party who has presented any evidence of
any kind, of bribery in terms of people who were involved in
the processing, particularly the IMC, the processing of the
20 acquisition. We have been waiting for all of these years for
people to say concretely these are the facts we have and I
have not seen any. There may be, but I have not seen any.
I am saying this Chairperson, because therefore in that
context the [indistinct] for us to consider what would happen
25 to whoever might have been bribed, because the matter has
not arisen. So it has been a speculative thing ... and in this

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particular case I am certainly not familiar with what about [indistinct] might say about this.

MR HOFFMAN: Mr Mbeki, I have to enlighten to you as to what is on record in the Constitutional Court matter that gave life to this enquiry. Because it seems that you have not been briefed by your legal team as to what has been [indistinct] In those documents and they were before the court when my learned friend Mr Conradie and I went there in May 2011, and they were before the Court on the 12th of September of the same year, when President Zuma decided rather than to answer the documentation, he simply conceded this Commission of Enquiry without ever dealing with the facts. This wad of documents here is *Ex Parte National Director of Public Prosecutions In re: An Application for the issue of search warrants* and it has a founding affidavit by Johan du Plooy who is a senior Scorpion and it identifies and shows anybody who takes the trouble to read it, who was paid bribes, how much they were paid bribes, what accounts the bribes were paid in and where in the world ...it was British Virgin Islands. BAE created accounts that it called Red Diamond Trading and [intervenes]

CHAIRPERSON: Mr Hoffman, what is your question to the witness? Can you just put short questions to the witness so that the witness can understand them and answer them. A very long speech it will not help us because [indistinct] you

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know forgetting what you said at the beginning. Put very short questions to the witness and let the witness respond.

MR HOFFMAN: Mr Mbeki, there is ample evidence of bribery in the BAE deal. In the submarines deal the suppliers of the
5 submarines have admitted that there is bribery and corruption in the South African submarine deal and in the Corvette deal you once had a memory lapse in relation to what happened when you and [indistinct] were together, with the contractors in Paris. I do not know whether you have
10 recovered from that memory lapse, and those are the three things I am putting to you.

MR MBEKI: There was [intervenes]

MR MOERANE: Chair, sorry. Chairperson, I am objecting to this line of questioning because as my learned colleague
15 correctly says, at some stage I was involved in the applications which started in the High Court in Cape Town, where Mr Crawford-Browne had to withdraw those applications because their papers were [intervenes]

CHAIRPERSON: I am sorry Advocate Moerane, if you do not
20 mind. Mr Crawford-Browne?

ADV MOERANE: Yes, Mr Crawford-Browne, I beg your pardon if I had not mentioned the "Mr" part of it. He had to withdraw those papers after a couple of months, he then instituted proceedings in the Constitutional Court. That
25 matter in the Constitutional Court was never adjudicated. It consisted of allegations which were taken from books and from certain copies of affidavits, those allegations were

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never ever tested and at the time when the decision was made to appoint the Commission of Enquiry as my learned colleague knows, I was never... I was never involved. I was no longer involved in those proceedings. But they remain
5 allegations which were untested and that is all they are.

CHAIRPERSON: You know that has been [intervenes]

MR HOFFMAN: I can respond to that.

Commissioner Musi: That has been worrying me whether these averments made in affidavits and other statements
10 before the Constitutional Court, whether the court ever made any findings thereon, to say that they are proof of what they are saying. That has been worrying and from what Advocate Moerane is saying, in fact there was never any pronouncement on those allegations. You cannot therefore
15 come and say these are facts.

MR HOFFMAN: May I respond, Mr Commissioner Musi?

CHAIRPERSON: Yes.

MR HOFFMAN: This is what actually happened: when Mr Crawford-Browne approached me for legal advice as to what
20 to do about the persistent failure of the South African Government to appoint a Commission of Enquiry into the arms deal, I advised him, unlike what Mr Moerane has just said, I advised him to institute an action. There was a reason why I said 'institute an action'. The reason was
25 [intervenes]

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CHAIRPERSON: Mr Hoffman, if you do not mind, can we just deal with one [indistinct] per page and that is the status of the affidavits which were lodged at the Constitutional Court.

MR HOFFMAN: I am dealing with [intervenes]

5 CHAIRPERSON: My understanding and apparently Commissioner Musi shares the same understanding, those are in the level of allegations. The Constitutional Court did not make any factual findings as far as those allegations are concerned. Is that correct? Is that the correct legal
10 position?

MR HOFFMAN: Let me tell you what happened properly, because you have been told information that is not correct in relation to what happened. There was not an application in the High Court in Cape Town, there was an action for an
15 order compelling President Zuma to appoint a Commission of Enquiry. Now, as you know, in an action when the pleadings have closed, it is possible to call for discovery and to issue subpoenas. The game plan was to issue subpoenas on the ANC in order to find out whether all of these wild and
20 wonderful allegations, were true or not by looking at the ANC. That game plan was thwarted by good advocacy by Mr Moerane, for which I must congratulate him, because he repeatedly objected to everything we did and eventually he drew an exception which said the High Court does not have
25 jurisdiction in a matter like this, this is the kind of matter that is only justiciable by the Constitutional Court itself and he thought we would go away and not be seen again,

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because we did not have enough money for a train ticket to Braamfontein. Well, we say here we went to Braamfontein and we appeared in Braamfontein in May 2011 and at that stage there was a fairly skeletal application, a brief
5 application saying look we have been sent here because Mr Moerane does not want to fight us in Cape Town and we would like to have the opportunity of asking this court to give us the relief that we are asking for, on the basis of these untested allegations because they are allegations that
10 can and should and ought to be, tested by independent, impartial and a full of integrity Commission, and Mr Moerane's response to that, was to take more technical points and to suggest that actually we should be back in Cape Town instead of ... where we were there in
15 Braamfontein. So [intervenes]

CHAIRPERSON: Mr Hoffman, with the greatest of respect and I am [indistinct]

MR HOFFMAN: I am [indistinct]

CHAIRPERSON: [indistinct] is not going to help us. We just
20 want to determine the status of those allegations made in the Constitutional Court.

MR HOFFMAN: I am getting there, but it needs to be explained properly, because if I leave you with the impression that Mr Moerane has left you with, you will be
25 misled and we do not want you to be left under a false impression as to what actually happened.

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So we get to May 2011, we have got our story before the court and Mr Moerane has got a selection of technical points and no answers to the untested factual allegations which are worrying Commissioner Musi now as ...very
5 correctly and I take your point entirely that it is something that is worrying. So that the Chief Justice says to us, Mr Hoffman, is your client prepared to go on on the papers as they stand and we say yes, we are because we think that we have got enough information here to justify, not proving
10 anybody was a crook or an acceptor of bribes, or an ignorer of the Constitution, but that there is a case for a Commission of Enquiry.

Now Mr Moerane turned around and said, no, no, I am not prepared to do it that way, I want an opportunity to be
15 given more facts, which we gave, and to be given an opportunity to deal with the facts and this you need to know. I wrote about it to Mr Sony when he was still [indistinct] and so what happened was the case was postponed, and we supplemented the papers. We put in all sorts of extra
20 information including the whole story about the BAE bribes, the Fero Star Visions that their whole management were crooks and we said okay, let us go to court.

What we got back from the Presidency was requests for an extension in time to deal with the matter and eventually a
25 vast extension [indistinct] was 15 September 2011 and on that day, [intervenes]

CHAIRPERSON: Mr Hoffman, I understand that, [intervenes]

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MR HOFFMAN: [indistinct] Please let me finish, with respect, Mr Commissioner, what happened on that day is instead of answering the allegations and the facts, and the reports, and the newspaper stories, and the affidavits by
5 Scorpions, what we got was we surrender you can have your Commission of Enquiry and to this day, I am unaware of any effort on the part of anybody whether they are researches, evidence leaders, or commissioners in this Commission, to actually sit down and work their way through those papers.
10 That when people tell me now that they do not know anything about bribes in the matter and there is a great wad of bribes in the papers that are in that ex parte claim, [indistinct] that I referred to [indistinct] really do worry me Mr Commissioner, because what needs to happen is that
15 those need to be investigated. Yes, they are unanswered allegations and there is only one reason why they are unanswered allegations, and that is because Mr Moerane, or in fairness to him, his successor in title because he was not always in the matter, chose not to answer what we put up to
20 the Constitutional Court and the Constitutional Court refused to allow us to withdraw the matter, until it was satisfied that it was proper in public interest litigation, that the matter be withdrawn on the basis that the allegations in the public domain, in those papers, were properly before a
25 Commission of Enquiry, and that is why you and your learned colleague, Mr Musi, was sitting now Mr Commissioner, and trying to get to the bottom of this.

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But to pretend that there was nothing wrong and that this is all hearsay nonsense, is not appropriate in a Commission of Enquiry. You are entitled to hear hearsay allegations in a Commission of Enquiry. You are entitled to
5 recommend cancellations of deals, criminal proceedings, all manner of unravelling of what is going on and what has been going on. You are in a position to [intervenes]

CHAIRPERSON: Sorry, [indistinct] you are making a long speech and I thought you were at a stage where you were
10 cross examining [intervenes]

MR HOFFMAN: Yes.

CHAIRPERSON: And let me just correct one thing, it is not true about those allegations that culminated in the Constitutional Court, have not been investigated. It is not
15 true. Simply not true.

MR HOFFMAN: But [intervenes]

CHAIRPERSON: Just hold on, let me finish. And secondly, it is not true that we did not read your client's application in the Constitutional Court. It is simply not true. I can assure
20 you all my evidence leaders have read that ... there is a [indistinct] we are armed. They are fully aware of the allegations that your client made in those affidavits. [indistinct] of all the supplementing affidavits that they filed and some of those issues we were investigating and we are
25 still investigating.

So your allegation that will advise us to go and read the affidavits, is incorrect. Because [indistinct] we are fully

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aware [indistinct] and then secondly, those that counsel are referring to, I can tell you that they are being investigated. So it is not correct for you to say the allegations made are not being investigated. We thought come to the public hearing to come and hear evidence and those with further documents, which proves the allegations that there are [indistinct] in that documentation. Today we thought former President Mbeki to come and give evidence and you will cross examine him. I never expected that you will start with such a long story and make allegations like you know some of those who have not [indistinct] should read it.

Can we try and go to back what we were supposed to be doing and that is the cross examination of former President Mbeki. Put the questions as short as possible so that he can understand the questions and be in a position to give us the appropriate answers.

MR HOFFMAN: Thank you Chair and please understand I did not come here prepared to say what I said now. I came here to cross examine former President Mbeki and I have been obliged to spend a lot of my day dealing with objections from Mr Moerane that call for a proper reply, and he deserves a proper reply. He is a senior member of the profession and he is a learned gentleman and I cannot just sit here pretending that I have no answer to what he says. But if I have wasted your time, please forgive me. Let us get on with the show. Okay. I want to know on the [intervenes]

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CHAIRPERSON: Just hold on. Just hold on.

MR MOERANE: Chairperson, may I request a five minutes stand down?

CHAIRPERSON: I was just about to suggest that. So we
5 will take a five, ten minutes break, thank you.

(COMMISSION ADJOURNS)

(COMMISSION RESUMES)

CHAIRPERSON: Thank you. Former President, can you confirm that you are still under oath?

10 MR MBEKI: I do.

THABO MVUYELWA MBEKI : (s.u.o.)

CROSS EXAMINATION BY MR HOFFMAN (Continued):

Thank you, Mr Commissioner. We are moving towards the last gap and hope not to keep too many people away from
15 their loved ones [indistinct]. I want to just finish off the chronology quickly, if I may, Mr Mbeki by reminding the Commission and you that on the 8th of June in year 2005, Schabir Shaik was sentenced to 15 years for corrupting Jacob Zuma. You recall that, I am sure?

20 MR MBEKI: Ja, I remember Scabir Shaik being convicted. The only person I remember being convicted was him. The exact date, I do not know.

MR HOFFMAN: And that is on the 8th of June. On the 14th of June you fired Jacob Zuma from his post as your Deputy
25 President of South Africa, you terminated his Deputy Presidency, as you were entitled to do at the end of the Cabinet?

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MR MBEKI: Yes, sure. Agreed.

MR HOFFMAN: Why?

MR MBEKI: Chairperson, we issued a statement at the time which explained...which answered this question why. I am
5 sure that ... even if I have to do it personally, I can send you a copy of the statement, it explains why we did that and that will be the explanation.

MR HOFFMAN: So what you are telling the Commission is, you stand by the explanation you gave at the time? I think
10 it was something about Caesar's wife and things like that.

MR MBEKI: Well no, I do not know anything about Caesar's wife.

MR HOFFMAN: Alright, let us not speculate. We will look at it.

15 MR MBEKI: Yes.

MR HOFFMAN: Can we move on?

MR MBEKI: Okay.

MR HOFFMAN: Alright, then on the 1st of July of 2006 there was a national meeting of the ANC and Jacob Zuma was
20 retained as the Deputy President, do you recall that occasion?

CHAIRPERSON: I am not quite sure ... the ANC are going to help this Commission.

MR HOFFMAN: Alright [intervenes]

25 CHAIRPERSON: [indistinct]

MR HOFFMAN: [indistinct] the question. You are aware of a newspaper by the name of the Sunday Times. It is one of

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the largest circulation newspapers in South Africa? You know that? You are aware of this presence in the South Africa media?

MR MBEKI: Yes, Advocate, I do.

5 MR HOFFMAN: I want to show you the front page of the edition that was published on the 16th of March 2008 where the heading ... can we hand these out to everybody because this is the first document that I am producing and I have got [intervenes]

10 CHAIRPERSON: Are those newspaper cuttings?

MR HOFFMAN: Yes, it is a newspaper cutting.

CHAIRPERSON: Advocate Moerane, newspaper cuttings, Mr Hoffman wants to cross examine the former President on the basis of a newspaper cutting.

15 ADV MOERANE: Chairperson, these are allegations which appear in a newspaper. We object to that evidence. I mean we all read it. It dealt with some you know alleged bribe or whatever, but this is not evidence. It is just an allegation. Unless somebody were to bring that before the Commission
20 as a fact under oath, we object to it.

MR HOFFMAN: I am afraid my learned friend has anticipated the wrong newspaper. Let me tell you what the newspaper cutting is and why it is one that you can accept in the context of this cross examination, because it is
25 possible for you not to just regard it as a loose allegation, but one that you can follow up profitable. The headline is

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“Come Clean on the Arms Deal ANC tells Mbeki” and the lead in sentence :

“Party leaders want to summon the President to explain himself...”

5 And the reporter reports that :

“Business magnate and senior ANC leader Tokoyo Sexwale, has called on President Thabo Mbeki to explain his involvement in the controversial multi billion rand arms deal.”

10 The purpose of introducing this newspaper cutting, is to give the witness in all fairness to the witness, the opportunity of enlightening this Commission, which is not a court of law, and which is a place in which hearsay evidence is accepted for what it is worth and giving him the opportunity to
15 account as Tokyo Sexwale asked him to account, or to explain why Tokyo Sexwale was being less than frank or direct about it. This is the only opportunity we are going to get and I do not believe that Mr Mbeki is going to be required to come back to be cross examined further by us,
20 and certainly if necessary the [indistinct] Tokyo Sexwale to ask him what he was talking about.

So I submit that on that basis it is perfectly in order for a Commission of Enquiry as against a court of law, to receive this and two other newspaper cuttings, that are
25 germaine to what the enquiry is about. I am asking leave ... I have not numbered it yet, that copies be made available to everybody around the inner circle.

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MR MOERANE: Chair, I am aware that many of these questions that have been asked, do not have really any relevance to the terms of reference of the Commission, but are calculated to make certain headlines in the media and
5 just for the sake of the public, I withdraw my objection to what my learned colleague wishes to put. I think Mr Mbeki will be able to deal with that question, particularly because it is being raised in public. Less the impression is being given or created, that the former President has anything to
10 hide. As on that basis, of not conceding that it is relevant.

CHAIRPERSON: Mr Hoffman, you can go ahead with your question.

MR HOFFMAN: I am indebted to my learned friend and to you too, Mr Commissioner. How would you like us to number
15 these documents, or should we just dish them out and then give everybody an opportunity to number it in their documents?

CHAIRPERSON: Mr Mbeki?

MR MBEKI: Thanks, Chairperson ... what I am going to say
20 might help me to answer this particular question and that story is a complete fabrication, from beginning to end. A complete fabrication. Thanks.

MR HOFFMAN: Who was the reporter? Who was the reporter of that publication?

25 CHAIRPERSON: Mr Hoffman, well, I am not sure how it is going to help us, because you have got it in front of you [indistinct]

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MR HOFFMAN: Somebody is being accused of a complete fabrication. I want to know who that person is.

MR MBEKI: The story that is being cited that appears in the Sunday Times, Chairperson, is a complete fabrication, 5 whoever wrote it and then I am saying this again, it is a complete fabrication. So I do not ... and I do not know why you would want to be circulating what is a lie Thanks.

MR HOFFMAN: Are you suggesting that it is a lie that Tokyo Sexwale asked you to give an account of your involvement in 10 the Arms Procurement Deal, is that the lie you are talking about?

MR MBEKI: I have answered this question, Chairperson. I have said the report that the Advocate cites which appears in the Sunday Times is a fabrication. It is a fabrication that 15 Tokyo, Mr Sexwale [indistinct]

MR HOFFMAN: I believe we can get on with the rest of the Sunday Times rather quickly. There is another one [indistinct], the second one is the Sunday Times Rapport which is dated ... forgive me Mr Chairperson, it is dated the 20 3rd of August 2008 and its heading is [intervenues]

CHAIRPERSON: I am sorry, Mr Hoffman, seeing that Mr Mbeki says that Mr Archibald, the first one that we have referred to, it is a complete fabrication, do you have any intentions of calling the journalist to come and confirm this 25 [indistinct]

MR HOFFMAN: And Tokyo Sexwale as well.

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CHAIRPERSON: [indistinct] that is fine. Then we can deal with that statement at that time.

MR HOFFMAN: The second newspaper clipping that concerns us, is one written later by the Sunday Times which
5 says that it did a six month investigation :

“A secret report fingers both men in arms deal bribes. Mbeki took 30 million and gave some to Zuma and detail is 2 million to Zuma”.

And once again for the record, your response, please, sir?

10 MR MBEKI: Chairperson, in that again, this is another complete fabrication and indeed I am quite sure at some point whoever makes the allegation, will produce the necessary facts before the Commission. Thanks.

MR HOFFMAN: Alright and then the third Sunday Times
15 front page that is alleged to be an exclusive arms deal probe [indistinct] dealings, is a document headed, or a page headed “The Big Con by Men in Power in [indistinct].

*“You were promised thousands of jobs and billions in investments, we got suckered with failed businesses, and
20 broken agreements*

Is your response to that story, equally negative and the same as the others?

MR MBEKI: Chairperson, I am not quite sure why I am asked to respond to opinions of newspapers. The Sunday
25 Times is perfectly entitled to its opinion about this whole thing and they would state as any other newspaper would,

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they are entitled to its opinion. I think my view about it is entirely irrelevant.

CHAIRPERSON: And I think one should also mention that, there were people from DTI.. there were people from
5 ARMSCOR who came and testified about the [indistinct] which in their view were made and there were a number of jobs that were created and that is all on record, and their evidence was never challenged.

MR HOFFMAN: [indistinct] in fact there is a report ...an
10 attempt made [indistinct] by the Department of Trade and Industry called the strategic defence packages performance review report, which was prepared by the Industrial Development Policy Commission, which I believe it is the document to which Mr Commissioner refers, and it shows
15 how few of the 65,000 jobs appeared and how little of the R110 million materialised.

CHAIRPERSON: I am not sure [indistinct] is true. If you read the record you will find that there is extensive evidence, I think four or five, if I am not wrong, I think
20 [indistinct] about nine witnesses testified about that. I am not sure whether [indistinct] but [indistinct] this one there is another JIT report. There is people from [indistinct] and from ARMSCOR [indistinct] there was a direct DIPS there were direct [indistinct] so I am not sure which one ... the
25 one that we have to what does it relate. But if you look at the evidence that has been tendered up to now, you will find that information.

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MR HOFFMAN: The document to which we refer has been numbered 633 by somebody and it is a 2012 document that was released this year in 2014. It has ... I think it has been circulated in the Commission as part of the material that Mr
5 Crawford-Browne has made available. So I am not going to waste time on that. It is get close to Chaile time.

CHAIRPERSON: I am sure Mr Chowe, you can help on this point because those were your clients and if I recall very well some of them went to the extent of saying that in fact
10 some of those projects exceeded their expectations?

MR CHOWE: Indeed, Commissioner. The evidence of the DTI was that they, they did not say that everything was really good as such. But they were clear that even some of the projects exceeded their expectations and even the
15 [indistinct] report was brought before the Commission to clarify some discrepancies or some certain witnesses which were identified as the DTI, with the NIPs and the improvements which the DTI would like to make on that, and Mr October for instance did give very clear evidence in as
20 far as that point is concerned.

CHAIRPERSON: Thank you. Mr Hoffman?

MR HOFFMAN: Just to close off, I am Staff out of material, out of the devil and the detail ... and I am advised that it will not be covered because the Lawyers for Human Rights
25 and the authors of "The Devil in the Detail" and a complete and different strategy to the strategy of Mr Crawford-

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Browne, just a couple of points out of that book which I would like to put to this witness.

CHAIRPERSON: I hope the strategy you are talking about is to testify, because you will hear an objection.

5 MR HOFFMAN: No, no, it is really about conditions on the ground in South Africa now. One of the ... Mr Mbeki, I am sorry to have to have done all that, but you realise that I am doing my job, one of the suggestions that is put forward towards the end of "The Devil in the Detail" and in a sense I
10 suppose somebody would argue that you are a victim of that, rather than the [indistinct], is that what is called a 'shadow state' is developing in South Africa. It is also dealt with in, by [indistinct] Visser in your [indistinct] biography where the view is expressed that those who have [indistinct] are not
15 constitutionalists, do not have respect for the good of the law, and do not want to stitch South Africa into the world economy. I would like to hear what you have to say about those allegations and I put them higher than allegations, because it is important.

20 MR MBEKI: Chairperson, unfortunately I have not read this book, "The Devil and the Detail", I have not read it. So I do not quite know what the argument is that the Advocate is trying to explain about shadow something. So I am really not in a position to comment on this. I would have to read
25 this to understand what the author is saying and what he means, for me to have an opinion about it. But as I say unfortunately I have not read the book.

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MR HOFFMAN: The hour is late, everybody is tired. On the next page, page 513, of "The Devil and the Detail", there is an index entry that says "Mbeki Thabo" and it has a number of entries, I am going to invite you sincerely to... do not
5 bother about reading the whole book, it is a lot of detail and there is a lot of Devil ... but look at the entries that relate directly to you, and if you have any comment on those entries, then please supply ... if it is all rubbish and irrelevant just say, it is all rubbish and irrelevant and we
10 will know. But please supply this Commission in the interests of people getting home to their loved ones before midnight, with whatever responses you choose to give to what is said about you. I think it is about 15 or 20 pages where your name comes up. It is very clear that you were
15 not a big player in this. You were the Deputy President. You were the captain of the ship. You were not the person doing the day to day stuff that went on and you have been very helpful. In fact you have [intervenes]

CHAIRPERSON: Mr Hoffman, I am not quite sure what
20 procedure is being suggested now. [indistinct] the former President must now go back and read a document and give us comments, I am not quite sure if that is part of the cross examination.

MR HOFFMAN: No, Mr Commissioner, [intervenes]

25 CHAIRPERSON: [indistinct] just hold on what let me hear what Advocate Moerane has got to say?

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ADV MOERANE: Chairperson, I think all the evidence that has to be given by President Mbeki, should be given in this Commission. He is here to give evidence. If there are any questions arising, those questions should be put. He should
5 not be asked to go and do some bedtime reading and then come to some conclusions and then write a letter to the Commission or whatever. I think his evidence should be heard by everybody who is here, based on proper questions which have to be asked and no, no homework. This is not a
10 primary school.

CHAIRPERSON: I am not going to allow Mr Hoffman, you to give Mr Mbeki any homework that he must go and do at home then from there send us letters. We want everything to be done in public. [indistinct] ask him questions relating to
15 that. He is here. Let us do it in public.

MR HOFFMAN: You have invited me to continue.

CHAIRPERSON: [indistinct] if you still want to continue, you can continue. I do not want the allegation later on that I stopped you from cross examining. If you haven't finish
20 you can continue.

MR HOFFMAN: Bear with me because I rather thought it was a generous offer, but then I see my generosity is being spurned by Mr Moerane. I accept that this sort of thing should happen, but the sorts of questions that one can ask
25 in relation to what goes on is ... look I have already covered the JIT Report. I do not think we need to go to that in more detail. It is covered in this book. For the information of the

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Commission it is covered in some detail in this book and Mr Mbeki has given his explanation and as his cross examiner, I am stuck with his explanation of the JIT aspect. So that leaves me ...if you will just bear with me, there are just a couple of items here that I have marked and I want to make
5 sure that they [indistinct]

CHAIRPERSON: Mr, Advocate Moerane

MR MOERANE: Chairperson, while our learned colleague is still paging through ... trying to think up questions, I hope
10 those questions will really firstly be instructions that he has received from his client and not mere allegations which appear in a book.

CHAIRPERSON: Advocate Moerane, I think I am going to allow Advocate Hoffman to do what he thinks he needs to do.
15 He is going through a particular book. I want to give him an opportunity to finish going through that book.

MR MOERANE: Thank you, Chairperson.

MR HOFFMAN: I am indebted to you Mr Commissioner.

CHAIRPERSON: Mr Hoffman, how long do you think you still
20 have to go through that book before you need to formulate questions that your are going to put to Mr.Mbeki

MR HOFFMAN: I am in the process of cutting out bits that I do not want to cover unnecessarily. If you will bear with me for two minutes.

25 CHAIRPERSON: Two minutes?

MR HOFFMAN: I am sure that I will either have a question or I will shut up.

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CHAIRPERSON: Okay, I hope you find a question. We will wait for two minutes.

MR HOFFMAN: Mr Mbeki, I want to give you the opportunity because I think you deserve to have it, of dealing with
5 allegations mainly from your successor, your current successor and President, that you have abused the system in South Africa in relation to the arms deals and other things as well, in particular the arms deals, by way of creating political agendas in matters which ought to be matters of
10 criminal investigation. I know that when you were asked repeatedly to appoint a Commission of Enquiry to the arms deals by various people ranging from COSATU to Arch Bishop Tutu, and others your attitude was always consistently if you have evidence, find a policeman and lay
15 a complaint. Now the complaint against you is that you have used the system in order to further a political agenda, rather than to be involved in the proper administration of criminal justice. I think that because there is so much of that out there, I think it is only fair that I give you the opportunity of
20 responding in this forum to that type of allegation.

CHAIRPERSON: Advocate Moerane, this to my mind does not relate to your terms of reference and if the former Deputy President does not want to answer that question, he can say so. It has got nothing to do with your terms of
25 reference.

MR MOERANE: Chairperson, I do not know from whom these allegations emanate. The complaint, by whom? It is not

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very clear to me. It is just all in the air without being specific. I do not know who the complainant is. I do not know whether it is my learned friend's client, Mr Terry Crawford-Browne, or somebody else. I really do not.

5 CHAIRPERSON: [indistinct] before I make a final ruling, are you in a position to comment to what Advocate Moerane has said?

MR HOFFMAN: No, I am trying to get to the bottom because the arms deal is intimately involved in what has happened in
10 the unfolding of the political situation in South Africa and I am trying to get to the bottom of that in relation to the allegations that are made on oath by the then private citizen Jacob Zuma, now President Zuma, in *Nicholson* judgment that the Commissioners are aware of, in the *Harms* judgment
15 that followed all of which were named and suggesting that this witness is the person who manipulates the law for his own political agenda, and we submit that it is relevant to who has benefitted and who has not benefitted out of what has gone on in relation to the arms deal. Given that
20 somebody has been given 15 years jail for organising 500,000 [intervenues]

CHAIRPERSON: Okay, besides that long speech have made are you in a position to answer Advocate Moerane.

MR HOFFMAN: Sorry, you are asking me whether?

25 CHAIRPERSON: [indistinct]

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MR HOFFMAN: It is Zuma I am talking about. I am talking about Jacob Zuma, this President Jacob Zuma, that is the person who is making the allegations.

CHAIRPERSON: Okay.

5 MR MOERANE: Chairperson, that is not correct. President Jacob Zuma never said President Mbeki manipulated situations. In any event if my learned friend is referring to the *Nicholson* judgment which we know the history of that judgment, Judge Nicholson's judgment. That judgment was
10 set aside by the SCA. I do not know why is it... it is being brought up here.

MR HOFFMAN: It is being brought up here because it has to do with [indistinct] with what went on around the arms deal. It does not matter that the *Nicholson* judgment was
15 overruled. What matters is that this witness lost the highest office in the land because of what was said in the *Nicholson* judgment. The *Nicholson* judgment said things about this witness in relation to his attitude towards malfeasance and misfeasance, not only around the arms deals, but in other
20 respects and I believe fairness to this witness no matter whom we owe our [indistinct] to now, is only fair and this hour of the day to make that my last question.

CHAIRPERSON: So I am not going to allow the question. Advocate Moerane is there, I am sure if ... was [indistinct]
25 he would have said so. I am not going to allow the question, unless if the former Deputy President wants to

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respond to that, because that question has got nothing to do with our terms of reference.

MR MBEKI: Yes, I accept your observation Chairperson, it has got nothing to do with the terms of reference, but there is a point that ..i made earlier and Advocate Moerane made again later, which was that as you know Chairperson the work of your Commission is being shown the country, it is being televised and I did say that I did hope that some of the manners in which we have conducted ourselves here, has not been in order to address ... not the Commission, but that public that is out there and so within that context it is necessary for me to say something very very briefly about this. And first thing to confirm what Advocate Moerane said here, President Zuma has never ever said any of these things that it is alleged he said, that I did this and that and the other. He has never done that.

Secondly, the Advocate says that the decision of the Supreme Court of Appeal with regard to the *Nicholson* judgment is relevant. It is not. Exactly because the Supreme Court of Appeal dealt with exactly the same thing, with exactly the same thing that is raised. Because these are the matters that were presented to that court and the Supreme Court of Appeal took a decision about that and set aside what the *Nicholson* judgment had said. It is very relevant to what he said, because that was a matter that was being adjudicated.

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Now lastly, Chairperson the Advocate has just referred to ... that is why the witness lost his job for the following reasons: I do not know. He might have got dismissed [indistinct] from the National Executive Committee of the ANC which entitles him to come a decision of that kind, or indeed he may very well be basing himself on statements that were made immediately after that decision of the National Executive Committee of the ANC by the Secretary General of the ANC. I would recommend Chairperson, that if he wants to pursue this particular matter he should go back to those two sources which will explain to him, what decision was taken and why.

Now lastly with regard to ... he mentioned that one of the [indistinct] turned down the request to appoint a judicial commission of enquiry as part of this process of mishandling whatever. The evidence leader here this morning, Chairperson, you will recall that he spoke about a document which had inadvertently been circulated which was responses that I have made to that [indistinct], to various Parliamentary, or in fact two Parliamentary questions. One of them ... let me explain that it had been inadvertently distributed and really was not part of the record, then indeed Chairperson you responded to that, but that one of these questions was about the setting up of this Commission. I do not want to re-read what I have said in parliament but at the centre of my argument Chairperson about this matter, was that there had been a very thorough

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investigation by state organs here in which the Government had full confidence, in other jurisdictions and in other investigations like in Germany, [indistinct] in contact with us and asked for legal assistance and this and that and the other, and in the end they dropped prosecutions against members of the German Frigate Consortium. I do not know where this British enquiry ended up of the Serious Fraud Office, which later took matters that the Advocate mentioned about what BAE Systems might have done, but I am saying in the end, there is this huge volume of work that has been done about this. An enormous number of documents and I am talking about Chairperson and I am very clear about this, I am talking about decisions taken by the Inter Ministerial Committee and decisions taken by Cabinet and I kept saying and I repeated this in Parliament, that if anybody, if anybody has got any evidence despite all of this investigation that has taken place, if anybody has got any new evidence I suggest that we should do this by all means, we shall set up a judicial commission, but where is this evidence?

To this day Chairperson, I am saying to this day, allegations planned ... planned and many, you can fill up books and books with allegations, but for 16 years why has nobody produced one single fact and that was my argument, that indeed if somebody could say there is one here, one or two facts or two and a half, to justify this when various state organs have done as much work as they have already done, then indeed if there was additional information we would

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give it. It had nothing to do with mismanaging or mishandling or anything and indeed Chairperson, what I said [indistinct] to end about this, and it was perfectly correct and I am saying to this day, unless I am not properly informed, yes I am aware of the many, many and many 5 allegations which ...an allegation is very easy to make. But I am not aware of one single fact that has been produced by anybody to say the Inter Ministerial Committee took any decision in a corrupt manner. That the Cabinet took any 10 decision in a corrupt manner. I am not aware of this. That in the process ...that the process of determining for instance the preferred bidders, that that decision was influenced by corrupt interventions.

Allegations might very well have been made, but I am 15 saying on the basis of the facts, given the enormous amount of investigation that has taken place, I kept saying please produce something which would justify the appointment of a judicial commission of enquiry.

That is the entire reason ... that was the entire 20 argument. I do not know about this other argument that is being presented that this was part of some scheme to politicise what should have been ordinary Government things and that is why I am explaining this, Chairperson. I am terribly sorry to be so long. Thanks a lot.

25 CHAIRPERSON: Thank you. Mr Hoffman, do you still have any questions?

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MR HOFFMAN: Yes, there are a couple of matters that arise from the full explanation that Mr Mbeki has given us, that I feel I need to share with him, because it obviously... he has big responsibilities in the whole of Africa and does not
5 involve himself with a lot of [indistinct] of what goes on in the arms deal in South Africa, but [intervenes]

CHAIRPERSON: But my question is, do you have [intervenes]

MR HOFFMAN: I have a question for him.

10 CHAIRPERSON: Okay.

MR HOFFMAN: Are you aware that in relation to Fero Star who supplied us with the submarines, there is a report which they have released from privilege, it is a report by a firm of attorneys, called "Depwar Clinton LLP" dated the 13th of
15 April 2011, in which it is admitted that there was bribery in the South African submarine deals. You do not know about that?

MR MBEKI: No, no. I am not aware of that report at all, Chairperson, and I do not know that who was bribed but the
20 point I am making, which maybe wrong in terms of what has just been said, is that I had no information that members of the IMC, members of Cabinet, took any decision corruptly.

MR HOFFMAN: Then are you aware that in that report the name of Tony Georgiou features as a major donor to the
25 ANC?

CHAIRPERSON: Mr Hoffman, I am not going to allow that question. The witness said that he is not aware of that

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report. If he is not aware of this report, how can he be aware of the contents of that report?

MR HOFFMAN: I thought he might have known about that fact as quite apart from the report.

5 CHAIRPERSON: Put the question, rephrase the question. Apart from the report, then you can put that question.

MR HOFFMAN: Thank you, Mr Commissioner it is getting late. Tony Georgiou, donor to the ANC, yes or no? Or I do not know?

10 MR MBEKI: I am sure he did, but whether he was a major donor or not which was your original question, that I do not know. But certainly I am sure he did donate at some point to the ANC.

MR HOFFMAN: John Breytenbach? The same question.

15 MR MBEKI: I do not know who that is.

MR HOFFMAN: Richard Charter?

MR MBEKI: I do not know whether he donated anything to the ANC.

MR HOFFMAN: [indistinct]

20 CHAIRPERSON: Mr Hoffman, [indistinct] I see you are trying to get some further names from [indistinct]

MR HOFFMAN: Fana Hlongwane, no we were trying to decide which order to do it in. Fana Hlongwane, he is a donor to the ANC?

25 MR MBEKI: I do not know.

MR HOFFMAN: Then are you aware of the fact that BAE has paid massive fines for its illegal activity in the arms trade

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and that the South African deal is part of what they have paid in fines, 479 MPS Target Fines for being bad boys in relation to supplying arms to inter alia, South Africa.

CHAIRPERSON: Just hold on. Are you saying that BAE was
5 convicted because of the South African transactions?

MR HOFFMAN: The South African transactions are included in the plea bargain is what I have been instructed by Mr Crawford-Browne.

CHAIRPERSON: Do you have evidence to prove that?

10 MR HOFFMAN: I am sure that it can be obtained.

CHAIRPERSON: I think let the witness answer and if you can help me, I want to ask you to give us that information because we have been running around trying to get that information but are unable to get it. You seem to be, in a
15 much better position, because your client can get that information we would really appreciate it and [indistinct] which shows that BAE paid a fine and one of the charges was their activities in South Africa.

MR HOFFMAN: It was a plea bargain fine and [intervenues]

20 CHAIRPERSON: Ja, but that plea bargain fine and one of the activities that went through the doors, their South African activities. We will really appreciate it if you can give us that, and I hope that your client [indistinct] will help us with that information.

25 MR HOFFMAN: I love it when a plan comes together Mr Commissioner.

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CHAIRPERSON: Okay, thank you. Maybe Mr Mbeki can answer that question. Are you aware that BAE paid a fine [indistinct]

MR MBEKI: No, Chairperson, I was not. I was going to say
5 myself that surely that information should be given to the Commission.

MR HOFFMAN: And then to get to the most painful part, it is quite ironic because I am not aware myself, I do not know if some of these more learned people might be, I am not
10 aware myself of any corruption in the Italian part of the deal, which is quite funny because of the [indistinct] reputation, but in relation to the French [indistinct] I see I have even got Mr Moerane to smile, in relation to the French part of the deal, Barbara Masekela has said that you came
15 to Paris to talk to the French ship builders and you ... when you were asked about it previously you could not remember that meeting. Has your memory been jogged in the meantime, or are you still without a memory as to what you were talking about in Paris with Barbara Masekela and
20 others?

MR MBEKI: Chairperson, let me again mention the document ... the evidence that I have mentioned earlier. The second part of ... the second question to which I responded which in that document relates to this particular matter, and in that
25 response ... in that response what I said was, Ambassador Masekela does not know. She has... indeed she arranged the meeting, but she was not there, does not know whether

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the meeting took place. Minister [indistinct] was with me in Paris, also does not recall such a meeting taking place. When asked the French Government through the French Embassy as their recollection about this and they cannot
5 recall such a meeting neither, which I could not either. Now we did not ... the Advocate says that we went to Paris to talk to the arms dealers, we did not. The reason we went to France was a state visit. It was a state visit and the reason we could go back to the French Government, to ask for their
10 own recollection of this meeting, is because there was a French [indistinct] a guest of the President of France and therefore all the meetings I would have had in France, would have had to be arranged together with the Government of France and I am saying they said, they had no idea whether
15 such a meeting took place.

So none of us can recall this meeting taking place. Barbara Masekela can recall arranging it, but she does not know whether it took place, because she was not there. She did not participate. So that is the answer to this.

20 Now this is ... I have wanted to respond to this thing earlier Chairperson, the issue of ... I do not know maybe it is simply is I do not know what, but he addresses us in a very condescending manner. He is very superior. Like now he had raised this thing earlier, suggesting that about this
25 particular matter relating to this supposed meeting with Thompson in Paris, that I had deliberately forgotten, because there was something I was hiding that is the

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manner in which he posed that question earlier. Then he got into a long discussion about what had gone on in the Constitutional Court so I did not respond to this.

Earlier I had said that he made a comment that when
5 Advocate Moerane in the build up about some matter, that the reason he was doing that, was to give me time to cook up some story. Now I am raising this Chairperson because I do not know what can be done about it. Perhaps there is no way to change Mr Hoffman. You have got a particular
10 attitude, very superior, very condescending and says all these insulting things and I do hope ... I do hope that we should all of us understand that we are trying to do something about building a new society and maybe we will have to make a special effort to take out of our bloodstream
15 things that have become engrained. Thanks Chairperson.

MR HOFFMAN: Will you permit me to respond to that statement, please?

CHAIRPERSON: Before you respond, you no longer have any question on this [indistinct]

20 MR HOFFMAN: I have no more questions.

CHAIRPERSON: Thank you. You can go ahead.

MR HOFFMAN: But I do think I need to respond.

CHAIRPERSON: Come again?

MR HOFFMAN: I need to respond.

25 CHAIRPERSON: Oh, you can go.

MR HOFFMAN: I have behaved particularly bad. I would like the witness to know that my 34 year old daughter,

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committed suicide last month and that the amount of medication that I am taking in order to be able to function sufficiently to be here at all, is rather scary, because I do not usually take [indistinct]. So I have offended you, if I
5 have appeared to be condescending, I would like you to know that I have an excuse and like you, I would like to build a new South Africa in which our Constitution is implemented and becomes a reality and that all free people enjoy the fruits of the Bill of Rights and I do work for that,
10 and I work for that without pay, because not people want to pay such a disagreeable person in any event. So forgive me Mr Mbeki, for irritating you, if I appeared to be talking down to you, it is certainly not my intention. I have the greatest respect for what you did to get us here.

15 CHAIRPERSON: Mr Mbeki, I am sure that you are prepared to accept that apology.

MR MBEKI: Well, absolutely, absolutely. Chairperson, no I accept it fully without reservation. But we would also like to express some... I am sure all of our sympathy with this. I
20 did not know the story that the Advocate has just told us about his daughter. It is a very sad story, it is a very tragic story indeed let me say that we ... to the extent Advocate that anyone of us can doing anything to help to support you, we are willing to do that. We are very very sorry to hear
25 that. Thanks.

CHAIRPERSON: Thank you.

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MR HOFFMAN: Thank you Mr Mbeki, my psychiatrist says that what I have been doing today is called “sublimation therapy”, but I am sure we can find better ways of dealing with what needs to be dealt with and ... thank you for telling
5 me and understanding that position. [indistinct] to you in the past [indistinct]

CHAIRPERSON: Thank you. It is ten past six. I think we have got two options, either we adjourn until tomorrow morning because ADV DE VOS the Lawyers for Human Rights
10 said that they first want to prepare or we arrange another date. I would prefer that we continue tomorrow.

MR MOERANE: Chair, I have rearranged my life with the result that I have made myself available and so has President Mbeki. The only person who will not be around is
15 my junior.

CHAIRPERSON: Thank you, Advocate Moerane, then in that case we will be in a position to finalise Mr Mbeki’s cross examination tomorrow. ADV DE VOS can we start at nine o’clock?

20 ADV DE VOS: If it is possible Chair, we would prefer to start at ten o’clock, because I still have to consult with my clients and obviously prepare for cross examination. I would like the extra hour. I can assure you that it will not take whole day.

25 CHAIRPERSON: Okay, then we will [indistinct] tomorrow at ten o’clock. Thank you. We will then start tomorrow at ten o’clock. We are now adjourning.

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(COMMISSION ADJOURNS)