

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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HEARING ON 18 JULY 2014

CHAIRPERSON: Good morning everybody. We can follow the normal procedure in the house. The former President to confirm that he is still under oath.

5 MR MBEKI: I do.

THABO MVUYELWA MBEKI - CONFIRMS

CHAIRPERSON: Advocate de Vos?

CROSS EXAMINATION BY ADVOCATE DE VOS: Thank you Commissioners. My clients welcome the opportunity to cross
10 examine Mr Mbeki. Mr Mbeki, just from the outset to explain the position of my clients who have criticised in public, portions of the 'arms deal', if I may call it that, it is not that they do not recognise the responsibility of our democratically elected Government to make decisions,
15 including security related matters which are to be for the benefit of all South Africans, and which they feel the Government had and still has, a responsibility to make sure that we break from our painful Apartheid past.

20 However, the question is and that is what I am going to try and explore with you today on behalf of my clients, is whether the decision to proceed with the arms deal on the scale and in the manner which this country did, was rational, given the sad legacy of our Apartheid past.

25 Now I would like to start with the first issue and that is you said yesterday that the decision to buy R29,9 billion worth of arms was approved by Parliament. Can you perhaps just explain to me again why you said that, your

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rationale for saying so?

MR MBEKI: Chairperson, I said what went to Parliament was the Defence Review, with which Parliament agreed. Thanks.

5 ADV DE VOS: So do I understand you correctly, your statement is that the Defence Review, the acceptance of the Defence Review by Parliament, was in fact a decision by Parliament to approve the arms deal, is that correct?

MR MBEKI: It was approval of the Defence Review. That
10 is what Parliament did.

ADV DE VOS: Well, perhaps I should take you to the Defence Review itself. Copies of it will be given to you, but I am quoting from the Defence Review itself and it says the following and I am referring to the Defence Review,
15 paragraph 8 of chapter 8. It says :

“The approval of a forced design by the Parliamentary Defence Committee [intervenes]

CHAIRPERSON: I am sorry, Advocate De Vos, can you just allow us time to locate the correct pages. It is on page?

20 ADV DE VOS: Oh, I am sorry, Mr Chair, I was not aware of the fact that the first bundle has already been given it. It is page 5 of the first bundle. Thank you, Mr Chair. It says here that :

*“The approval of a force design by the Parliamentary
25 Defence Committee, Cabinet or Parliament does not constitute a blanket approval for all implied capital projects, or an immutable contract in terms of the exact numbers and*

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types of equipment. At best it constitutes approval in principal for the maintenance of the specified capabilities at an approximate level.”

Do you care to comment on this paragraph?

5 MR MBEKI: No. I do not know Chairperson, why I should.

ADV DE VOS: Mr Mbeki, perhaps I should take you to the... paragraph 74 in the same chapter. You will find it on page 7 of your bundle. It goes on to say :

10 *“The chosen force design option will become the object of implementation planning for the next decade or longer. However, the realisation of this force design will be influenced by periodic revisions of the defence review and subsequent planning to reflect the continuously changing strategic environment and prevailing circumstances...”*

15 And perhaps the most important :

“The result is that the exact details regarding the type and quantities of main equipment will inevitably deviate from this vision. Such deviations will be subject to Parliamentary oversight and stipulations of the acquisition process.”

20 Now I put it to you that there was no Parliamentary oversight, after the decision of the Cabinet taken in November 1998 to proceed with the 29.9 billion arms deal, is that not correct?

MR MBEKI: I hope I heard the question, Chairperson, but
25 the Parliament did exercise oversight over the Executive and I would imagine that they would have an exercise oversight over this particular decision of the Executive.

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ADV DE VOS: Mr Mbeki, I was under the impression that the Constitution required Government to get permission for spending of money from Parliament, and that is what normally happens by proposing a budget for the year to come and getting Parliament to vote in favour of the budget, not so?

MR MBEKI: You are quite correct, Advocate, that that is exactly what Government did.

ADV DE VOS: I could not find any reference to the amount of R29.9 million in any specific budget. There was no specific entry asking permission from Parliament to spend nearly R30 million on arms.

MR MBEKI: The Government presents a budget to Parliament on a yearly basis and that budget covers the entirety of Government expenditure. The Government does not to Parliament ... on different days to present different budgets for different departments. The debate about departmental budgets arises after the presentation of the overall budget by the Government, which was done in this case.

ADV DE VOS: I will leave it. It is a matter for argument, but my clients will give evidence before this Commission that there was no proper approval by Parliament of this particular deal and that it should have happened in view of the requirements in the Constitution. But I will leave it at that. Mr Mbeki, in the Defence Review itself, you do not have to go there, you will remember that the Defence Review

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visualised the budgetary allocation for the defence to be 40/30/30 ratio for defence spending on personnel, operating and capital costs, after the transformation process is completed. Do you remember that?

5 MR MBEKI: No, I do not. I have not read the Defence Review for some years. But it may very well be saying that.

ADV DE VOS: Do you accept that that is the position because the document is attached to your bundle. I do not want to go to the document every time. It was decided to be
10 40/30/30 in the ration as I explained, do you accept that?

MR MBEKI: Advocate, you said Defence Review says that, I said that I do not remember that. I have not read it for a long time, but it may very well be saying that, I am not questioning that.

15 ADV DE VOS: And as ...if one reads the Defence Review it is clear that the vision was that the 30% for capital expenditure was supposed to be for the entire total expenditure of the SANDF per year, and I put it to you that that is exactly what the Defence Review says. You will find
20 that in the document, I have given and do you accept that proposition?

MR MBEKI: The Government accepted the Defence Review so I think this answers this question.

ADV DE VOS: Now Mr Donaldson gave evidence before
25 this Commission and you will find his evidence on page 14 of the bundle before you and if you look at Table 3, that is contained in his evidence and I will just read it to you, you

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do not need to go there. It shows and I submit that it is clear from this table that the arms deal absorbed a substantial portion of the defence spending. In fact in the years 01/02, 02/03, 03/04 and 05/06 the arms deal alone
5 absorbed either close to or over 30% of the defence budget that was identified by the Defence Review for capital expenditure. Do you accept that?

MR MBEKI: Chairperson, this is what is being reported that was said by a senior official from Treasury. I am sure
10 that if he said it, he said it. I do not know why I must accept it or reject it. I am not Treasury. I have not done any of these figures. I accept that if... that is what he might have said.

ADV DE VOS: Mr Mbeki, perhaps I should just explain to
15 you what I am trying to do. I understand that you do not at this point in time have the detailed knowledge that you perhaps had 16... or how many years ago and even then perhaps all these figures were not available, but the fact of the matter is that certain decisions were taken based on
20 certain facts. I am putting those facts to you now and I am asking you to explain the rationale of the decisions that was taken. So that is why it is important for me to take you through the various facts that you based your decisions on.

Now what I am doing here is I am showing you that the
25 Defence Review said 30% of the budget should be spent on capital costs. That is the first point. Secondly, that expenditure, the 30% was basically used up by the arms

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deal and this brings me to my point, that means that for the years that the arms deal was implemented, there was no money left for the rest of the capital costs of the South African National Defence Force. That is my point and do
5 you accept that, because that is exactly what the figures show?

MR MBEKI: I do not know what the figures show, Chairperson, but what I know is that there was never an issue raised that other sections of the National Defence
10 Force were short of whatever capital they might have needed. The Army or the Medical Services I cannot recall that there was at any point that any of the services said that they needed particular capital expenditure and it was said no, it cannot be financed because of what had been spent on
15 this particular acquisition. I cannot recall that.

ADV DE VOS: Mr Mbeki, it has got to do with the question whether the decision to spend this amount of money, was rational. That is why I am asking you this. If the Government decides we will put aside R100 a year for
20 capital expenditure and they then take the whole of R100 and spend it on number (a) instead of on (b) and (c) as well, clearly there was no money left for (b) and (c) and the question is, whether this was a rational decision. That is all I am asking you. If my proposition that I put to you is
25 correct, I am saying to you that my clients will argue that it was not a rational decision.

MR MBEKI: Chairperson, I am sure their clients are

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perfectly at liberty to argue that. The decision was rational and I am saying in the consequence I cannot recall any of the services within the National Defence Force which ever said that there was no money to finance whatever capital
5 needs they might have needed.

ADV DE VOS: Mr Mbeki, your reference to the 'headlines', can you perhaps explain that to me?

MR MBEKI: The what?

ADV DE VOS: You referred to the 'headlines', I did not
10 follow what you were saying there.

MR MBEKI: I did not say anything about any 'headline'.

ADV DE VOS: Sorry, I did not understand your answer. I have just been assisted by my attorney. Thank you. Can we for a moment just stay with the Defence Review, Mr Mbeki.
15 The Defence Review and the prevailing defence policy at the time of the SDP indicated that :

"The greatest threats to the security of South Africans was not of a military nature and, but of poverty, unemployment and high levels of crime and violence."

20 You will remember that Mr Hoffman asked you yesterday who were the enemies of the country? Well, we have read the Defence Review and the Defence Review specifically states that :

*"The real enemies of South Africa at the time, was
25 poverty, unemployment and high levels of crime and violence."*

Do you accept that?

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MR MBEKI: Chairperson, the Government accepted the Defence Review. So of course it is possible...it is quite allowed for the Advocate to quote any section of that Defence Review, but the answer will be the same. The
5 Government accepted the Defence Review.

ADV DE VOS: From that it follows logically that if the greatest threat as it said in the Defence Review at the time to the security of South African citizens was unemployment and poverty, then it means that any state decision that could
10 potentially worsen these social skills, would decrease rather than increase our human security in South Africa, is that correct?

MR MBEKI: Well, I am sure that is logically correct, yes.

ADV DE VOS: There was mention made yesterday of the
15 affordability report. Portions of this report are attached to your bundle. This report was presented to the Inter Ministerial Committee at some point in 1999, and I just want to refer you to the report itself. Just bear with me for a moment. Now Mr Naidoo gave evidence before this
20 Commission and he said that the affordability study had two objectives. The first was to assess the matter of economic fiscal [intervenes]

CHAIRPERSON: I am sorry, Advocate de Vos, is that perhaps attached to this document and, if so, on what page?
25 On this bundle that you gave us?

ADV DE VOS: No, I am not referring to a document. Mr Naidoo's evidence is on record, Mr Chair, and I am reading

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from his statement. I do not think there is going to be an argument. I tried to limit the documentation to issues that may be in dispute. I am just placing this on record for Mr Mbeki's ... to assist him because obviously has not read the report in a while and it is perhaps just good to revisit the purpose of the study.

Mr Mbeki, according to Mr Naidoo :

"The affordability study had two objectives. The first was to assess the macro-economic fiscal and financial impacts of the expenditure on armaments and these issues addressed in this respect is whether the procurement would create undue pressure on the South African overall economic performance as measured by the GDP growth, employment levels, external economic position and the Government's financial position and the second objective was to analyse the risks involved in the procurement. The number of risks of the procurement were identified in the report and according to Mr Naidoo they contained the following..."

I just want to refer you to the following :

"The first risk was an increase in domestic interest rates, upon the announcement of the packages. Then the non-performance of offset commitments. The more rapid depreciation of the rand exchange rate and assumed and any economic shock that the announcement may have had on the economy."

Can you recall that these things were discussed and debated in the Inter Ministerial Committee?

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MR MBEKI: The affordability report was not provided by Mr Naidoo, but by the then Minister of Finance, Trevor Manuel and, indeed, we discussed it.

ADV DE VOS: I accept that. I am just using his evidence
5 to explain perhaps in easier terms than the affordability report reads, what was presented to you. But if you look at the Affordability Report on page 15 on the documents that was given to you, that is paragraph 3.3.4 and 3.3.6. There is a discussion precisely on the key ...two key risks and that
10 is :

“The increased interest rates on the back of the announcement of the SDP and the failure of the of the nip obligations to materialise in full.”

Those were the two key risks identified. Now if you look at
15 page 16, paragraph 6.1.1 and 6.1.2, the following is said in the executive summary :

*“The proposed defence procurements are distinguished from other Government procurements by four key characteristics. The sums involved are extremely large.
20 They involved fixed contractual commitments extended over long periods. They are heavily import based and their costs are offset by a set of associated economic activities, the nips which cannot be guaranteed. These characteristics create a set of important and unique risks for the
25 Government. The analysis of these risks suggests that as the expenditure level increases, these costs associated as the major risks escalate, ultimately the decision about*

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expenditure levels really constitute a decision not only about Government's assessment of the needs and benefits driving the procurement decision, but about Government's assessment of the risks."

5 Now I am sorry about this long quote, but it is important and what I am going to say, Mr Mbeki, is that this suggests that there was a high degree of risk involved in pursuing the arms deal. What is your comment on that statement?

MR MBEKI: Chairperson, the ...I was saying that the
10 Inter Ministerial Committee and indeed the Cabinet, discussed this previous report and accepted it. I did not say we accept paragraph 1, paragraph 2, we accepted all of it. Thanks.

ADV DE VOS: So I accept then that you accepted that
15 there was a high degree of risk involved in the process ...in pursuing the arms deal, is that correct?

MR MBEKI: I am saying the Government, Chairperson, accepted this report.

ADV DE VOS: Why did the Committee decide that the high
20 risk or high degree of risk is something that they are willing to accept? On what basis did the Cabinet and the Inter Ministerial Committee believe that they can be comfortable with such a high risk, especially taking South Africa's peculiar socio-economic situation into account?

25 MR MBEKI: Obviously because the Government thought it could manage the risk.

ADV DE VOS: Now if one looks at the total unemployment

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between the period of 1995 and 1999 and you will find that on pages 38 to 42, it is taken from Statistics South Africa, it shows that there was an increase of ... from 1 [intervenes]

CHAIRPERSON: Just one minute, Advocate De Vos, can we get to that page?

ADV DE VOS: Page 38, I did mention that, to 42.

CHAIRPERSON: Thank you, everybody has got that page. You can continue.

ADV DE VOS: I can be more specific, the ... I was going to say, put it to Mr Mbeki that the unemployment nearly doubled between 1995 and 1999, because it increased from 1.8 to 3.2 million individuals. You will find that at page 42, bullet 3, is that correct?

MR MBEKI: I do not know what you are asking? What is it that is correct?

ADV DE VOS: That the Statistics South Africa document shows that there was a doubling of unemployment in that period, that is all.

MR MBEKI: Sure. I am sure that is what it says.

ADV DE VOS: Now if one considers this statistic, Mr Mbeki, our clients will argue and they will submit that for the Government to have pursued the SDP which the Affordability Report found could have dire economic consequences, was irrational especially in view of this particular statistic.

MR MBEKI: Chairperson, they are, I am sure, quite free to discuss that, but they would have to show a causal link between that and unemployment. I do not know of any.

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Thanks.

ADV DE VOS: Now Mr Mbeki, the Affordability Report did not make provision for a study of opportunity costs. I am not sure if you are familiar with the term 'opportunity costs'?

5 MR MBEKI: The last time I studied this I was doing a junior degree, many years ago. I am familiar with it from that point of view. That was in the 1960's, Chairperson.

ADV DE VOS: I only found out about 'opportunity costs', when I heard the evidence of Mr Naidoo. But it seems that
10 what was done is nobody ... when they did the Affordability Report, there was no specific study done about what else could have been done with some of the money, or all the money, in terms of socio-economic upliftment and the question simply is, why was that not also considered?

15 MR MBEKI: Chairperson, as I understand it my colleague Alec Irwin gave evidence about this particular matter. But more broadly I am not quite sure what the question implies, that perhaps if we had not bought ships for the Navy, that would have been better because something else would have
20 happened, what then happens to the Navy? It means we take a decision to close down the Navy, what is the opportunity costs of that? So I do not understand how ... to use this concept in this particular way, but I am saying in any case this matter was dealt with by my colleague, Alec
25 Irwin, who spoke for all of us for the IMC on this particular matter.

ADV DE VOS: My question is simply this, why was

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opportunity costs not a consideration? Because it is not only about, with respect Mr Mbeki, it is not only about buying Corvettes for the Navy. It is about the amount of money that was spent. It is about deciding whether the
5 Hawks should be bought, or the Aermacchi, or whatever that aeroplane is called. That is the point I am trying to make. So all I am asking is why did the Inter Ministerial Committee and Cabinet not at least just have some kind of comparison between opportunity costs and the costs of this particular
10 purchase?

MR MBEKI: What is meant, Chairperson, by opportunity costs ... it is a little bit of economic cited. Perhaps she could explain to me what she understands by 'opportunity costs', then perhaps I could explain this.

15 ADV DE VOS: If the Chair can just give me a moment, I just want to find my notes. Mr Mbeki, I am not an economist, so I cannot explain it to you. All I am going to put to you is the evidence before this Commission by Mr Naidoo in his statement, item 10, sub-paragraph 3, he
20 says the following :

"The Affordability Study defined affordability in terms of the capacity of the economy to absorb the overall costs of the exercise, as well as the possible increase in costs levels which might occur if the associated risks were experienced.

25 *Affordability was not defined in terms of the concept of (and he quotes it) "opportunity costs", that is the possible alternative uses of the funds on meeting other policy*

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objectives.”

MR MBEKI: Chairperson, is this... this matter again I am saying, was canvassed by my colleagues in the IMC and they were representing the point of the Government and not the
5 IMC. I have got no position that is different from them, even this thing about risks. Indeed there is a paragraph there which addresses the matter exactly, that Government therefore had to assess how it manages those risks and Government... this is this paragraph 6.2.2 on page 16 :

10 *“The issues on which decisions are required are the appropriate level of expenditure for the entire procurement...”*

And so on and so on. All of this and :

“Whether to accept the opinion...”

15 And so on and so on, “option”, sorry :

“on on a combined [indistinct] Hawk or Gripen or whether ...”

Etcetera. So I am saying that the Government applied its mind to all of these things as is reflected in this report and
20 as I said yesterday as to the matter of [indistinct] there are no decisions which were taken by the IMC or Cabinet which excluded costs, none.

As indeed the whole procurement was discussed in the context of what are the other national challenges and I
25 know, Chairperson, Commissioners that this particular matter about Government expenditure, was dealt with quite extensively by Minister Trevor Manuel and senior official

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Donaldson, from Treasury. Exactly to argue is that even at the height of our defence spending, we still ran a budget surplus.

So indeed the Government looked at the entirety of this thing as it must. It is a Government, it is not a Government of a particular department, it is entire to a Government, so it has got to look at the entire program of Government and that was done. Including what are the costs of whatever program. The discussion we are having, Chairperson, would apply to anything and absolutely anything. That we would say, look we need to increase expenditure on primary education, so we are going to say what implication does that have in terms of better clinics? It is a necessary process.

That is what happens normally and that is what would have happened in this particular case, as indeed was explained I am sure quite extensively both by the former Minister of Finance and Treasury officials.

ADV DE VOS: Mr Mbeki, the point I am trying to make is not whether we had a budget surplus in later years, but at the time the decision was made, whether there was a rational reason for the decision and that is one of the instructions to this Commission to look at the rationale for the decision.

I am not implying that the decision was made because of any kind of corrupt dealings on behalf of the Government. We are dealing with the first question that was... that must be answered by this Commission and that is the rationale for

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the decision. The reason why this is... why we are discussing what we are discussing is to look at the rationale at the time and whenever I am saying what you decided or did not decide, I am obviously referring to you, Mr Mbeki, in
5 conjunction with the Cabinet and the Inter Ministerial Committee. I am just asking your personal views and you ...what you can remember what was discussed and why the decisions were made and I am debating the rationality of that decision with you. That is all that we are
10 doing here.

MR MBEKI: Well, certainly as Government we thought the decision was very rational.

ADV DE VOS: Well, perhaps then we should turn to Appendix B of the Affordability Report, entitled "*Summary of*
15 *Output from the Macro-Economic Model*". You will find that on page 26 of the documents before you. What you see there is the figures :

*"That were calculated as per the macro-economic model used to estimate the impact of the SDP and the figures are
20 broken down into baseline figures, that is without the SDP. Figures related to expenditure on the SDP without the two negative scenarios contemplated in the model and figures related to expenditure on the SDP with each negative scenario model and figures related to the scenario on which
25 the two risks identified came to fruition."*

And this was to assist the decision making process and to assess the risks. Do you see that that is what the figures

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show?

MR MBEKI: Certainly. Certainly, that is what they do. They are a reflection of the fact that Government was seriously applying its mind to this issue.

5 ADV DE VOS: Well, let us look at that. If one turns to the second box of figures the heading is "*GDP Annual Growth: Real Percentage*". We can ignore the figures for the middle and low scenarios because we know we in the end went for the high expenditure [intervenes]

10 CHAIRPERSON: Just hold on Advocate De Vos. Thank you, we can proceed.

ADV DE VOS: Thank you Commissioners. I do not want to read the figures to you. I just want to make the following statement. If you look at the table it clearly indicates that :

15 *"Even if none of the adverse scenarios materialised, the GDP growth would have been reduced by at least 0.1% against the baseline in years 6 to 10."*

Can you see that? It further indicates :

20 *"That all the adverse scenarios if they all materialised the GDP growth would have been at least 0.5% less than if the arms deal had not been pursued."*

This is one of the risks that the Government thought was not serious enough to reduce the expenditure on this particular arms deal. Is that not correct?

25 MR MBEKI: These tables as I understand it, Commissioners, reflect different scenarios which the people who were preparing this particular Affordability Study,

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thought were important in part of the process of applying their minds, before they made recommendations.

So therefore because there are different scenarios, you would say well if we had this scenario what would happen. 5 If there was this other scenario, what would happen. So I mean that would be a normal process. So that is what happened, so that is what happened.

ADV DE VOS: Well, perhaps I will rephrase the question. I am going to say to you that the figures that was presented 10 in the Affordability Report showed three things: it first showed that even in the best case scenario, the GDP growth would have been reduced by 0.1%.

It further shows that the budget deficit would have increased in the best case scenario by 0.1% and most 15 importantly, it shows that as far as employment is concerned, even in the best case scenario, the SDP would only have created 1,000 jobs and I can take you to those figures, if you want me to.

The fact of the matter is, that the decision was taken in 20 spite of these negative indicators, and that is what I am putting to you. There were negative indicators and in that context it makes it difficult to understand why the decision was taken.

MR MBEKI: Chairperson, let me repeat this, all of these 25 matters were canvassed here by the then Minister of Finance and, I am sure, that he was... people asked him questions about it and the positions that he took, are the positions I

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take because those were the positions that ... were the Government positions, not individual positions. Thanks.

ADV DE VOS: Well, according to the figures that was given to the Inter Ministerial Committee as well as Cabinet
5 on the best scenario, only 1,000 jobs would have been created. The question is, why Mr Mbeki, did you agree to release information that suggested that the arms deal would create 65,000 jobs? That is the question.

MR MBEKI: I think the... what we need to note... what we
10 need to remember is that there was also work done on the nips and dips and that produced its own particular outcome with regard to the issue of job creation.

ADV DE VOS: Mr Mbeki, as far as my knowledge is and I am going to get instructions on this, the figures that I have
15 quoted to you, included the nips and dips figures.

MR MBEKI: Sure, you should that, but I am sure they do not.

ADV DE VOS: No, they ... shall we continue with this, they do. But I will after the tea adjournment show you to the
20 correct places where I can convince you that they do include the nips and dips. But perhaps we should continue with the cross examination until I get to that. The point that we really are trying to make and I think that my clients will give evidence on, is that if the ... any of the negative risks came
25 to fruition, it would have meant that a number of jobs would have been lost and that obviously, given the warning of the Defence Review document, would notably have decreased

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security in South Africa instead of increasing it and the question is, why did the Government think that this was an acceptable risk to take?

MR MBEKI: Chairperson, I am saying the Government took
5 a decision on this matter in the context of everything else in the country and decided that this decision is correct to take.

ADV DE VOS: Mr Chairperson, the fact that I do not continue with the discussion with the witness, does not mean that my clients accept his proposition. I just accept
10 that sometimes I am not going to get the answer that I am looking for. So I do not know if you want me to put that to the witness every time.

CHAIRPERSON: Not necessarily. I suppose as a cross examiner, you always do not get the answer that you need.
15 That I accept and of course your clients are at liberty to testify on any other issue that they think is relevant to our mandate.

ADV DE VOS: Thank you, Mr Chairperson. If the Chair can just give me a moment? Now I am sure, Mr Mbeki, at
20 the time of discussing the affordability of the project, the question of the costs estimates and the two different bases that were used was discussed by the Committee first and then by Cabinet.

*"The first basis in the Affordability Report assumed the
25 rand exchange rate fixed in August 1998 and to calculate a nominal or what was called a 'cash price'. That is the cost as if a single payment were to be made at the date of*

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signing. The second cost estimation basis calculated the real cost by taking into account the expected rate of depreciation of the rand, exchange rate over the repayment period, as well as the inflation differential between South Africa and the supplier countries. The results were then

5 *discounted."*

No, sorry. In the presentation of the costs to Cabinet by the Inter Ministerial Committee, and eventually the statement that was made to the rest of South Africa, the cash price

10 was used as the reference, namely 29.9. Obviously the real costs were considerably more and according to my instructions, it was just over 36 billion. The question is, why was the real price or the real cost not used in the decision making process, and or the announcement that was

15 made to the public?

MR MBEKI: Excuse, sir, I apologise, can she please just pose that question again? Just the question.

ADV DE VOS: Well, perhaps I will put it differently, in the presentation of costs to Cabinet ... I was wrong there, in the

20 presentation of costs to Cabinet, both the nominal costs, that is the cash price and the real costs were included, but when this announcement at the time that the Cabinet decision was made to the public about the amount of money that was going to be spent, only the cash price basis, which

25 is obviously unrealistic, 29.9 billion, was used. The question is, why was the real cost not used in the announcement?

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MR MBEKI: The Government announced what it decided what this thing would cost. If somebody else had got a different calculation about how much it would cost, of course that is their business, but it announced what this thing was
5 going to cost.

ADV DE VOS: But Mr Mbeki, according to the Affordability Report, the real cost to Government would be in the region of 36 billion. So why was that... that was the real cost. The question of a cash price was not ...was not reality. It was
10 not going to be 29.9 and the Government knew it. Why was that information not given to the public?

MR MBEKI: I am saying that the Government announced what it knew had to be paid in terms of this acquisition and that is all, Chairperson and Trevor Manuel in any case dealt
15 with this thing again people had an ample opportunity to ask questions about this particular matter, because it is also a budgeting matter.

ADV DE VOS: Well, nobody had access to the Affordability Report which showed the real cost.

20 CHAIRPERSON: I am sorry. I am sure the witness cannot help you with that. He is no longer in Government. He does not know what documents you are referring to. He does not know where that document is. I am sure he cannot help you with that question.

25 ADV MOERANE: Chairperson, and my learned colleagues' clients had access to the Affordability Report even before it was declassified.

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CHAIRPERSON: We note that.

ADV DE VOS: Commissioners, I am going to leave it at that, but my argument and the point I am trying to make and trying to get Mr Mbeki to explain to South Africa, is why at
5 the time when the announcement was made the Government knew that the real cost would be 36 billion, but instead they chose a fictitious number 29.9 million in the announcement... billion, sorry, in the announcement to the public, that is all I am asking. It is a very simple question.

10 CHAIRPERSON: Mr Mbeki, I am sure what you hear what Advocate De Vos is saying. She says Government chose a fictitious figure when they made the announcement. Do you want to comment?

MR MBEKI: The matter that would arise in that context,
15 Chairperson, is that obviously you know that you have to pay interest and number two, the exchange rate might move and you do not know in which direction. Now what I am saying that Government announced what it knew it could budget for with certainty, but of course Government knew that there
20 might be additional costs that would arise because of the matter of interest rates and foreign exchange, the foreign exchange rate and in which we did not know whether it was going to move up or down. So now to compute these... to compute these which we will carry in future, I do not know
25 there would be an insistence on that.

ADV DE VOS: Mr Mbeki, it was computed and it was contained, or is contained in the Affordability Report, but I

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am not taking this any further. Let us rather move on. I want you please to look at the question of offsets which, as you know, and perhaps you can help me, or correct me if I am wrong, the question of offsets were quite an important part of the arms deal, is that not correct, for South Africa?

MR MBEKI: Yes, they were part of what had to be considered.

ADV DE VOS: I asked whether it was an important part of the packages?

10 MR MBEKI: All elements of the packages are important.

ADV DE VOS: If you look at ... Mr Mbeki, if you please... will you please look at paragraph 3.3.3.9 of the Affordability Report on page 24 of the documents before you, it says the following :

15 *"It is naturally more difficult to obtain evidence of unsuccessful nip processes since it is not in the interest of either supplier or purchaser, to reveal this information. However, it can be concluded that the implementation of offset agreements does indeed take place to some extent,*
20 *but it remains unclear what the proportion of commitments is actually achieved and it is doubtful that full delivery is ever achieved."*

Now my question to you is, do you agree that this paragraph indicates that it should have been doubted by Government that the important part, namely the nip process would probably not be 100% achieved?

MR MBEKI: This matter Chairperson, as you know, has

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been extensively covered. The nips ...the former Minister Alex Irwin was here and people from Trade and Industry dealt with all of these things. I certainly do not have anything to add to what they said.

5 ADV DE VOS: Mr Mbeki, I am asking you as a witness at this Commission, to tell the Commission what you can remember was discussed about the risks, the obvious risks that the nips had in this whole process. That is what I am asking you.

10 MR MBEKI: I do not know how many times I must answer this question, Chairperson? I have said both the IMC and the Cabinet discussed this Affordability Report, all of it and accepted it. With regard to the issue of nips, I am saying that whatever is said in this paragraph which Government
15 accepted, in the practice we then had to deal with this matter and it was dealt with in detail and evidence was presented to this Commission in detail, a former Minister and officials at DTI, about this matter. So I am saying Chairperson, we accepted the report on affordability. So it
20 does not matter what paragraph you come to, if it is in the report, it is in the report. Thanks.

ADV DE VOS: Well, perhaps, Mr Mbeki, then we should turn to what your colleague Mr Alex Irwin said before this Commission and you will find that part of his evidence in
25 your bundle, on page 61 to 62. If you want the opportunity to turn to that part? The paragraph reads :

"This illustrates that the nip is essential a form of

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commercial partnership where the obligor and the DTI on behalf of the buyer, are attempting to achieve differing objectives. The obligor wants to maximise the “credidollar” with the minimum amount of money it has to put forward and
5 *the DTI is trying to maximise investment with no real interest in who supplied the investment. In theory for the obligor the maximum amount of money that would be ... that it would be prepared to pay in, is what it values as the economic rent of being the equipment supplier. For the DTI*
10 *it wants to maximise investment and other objectives as a I will later deal with, but it cannot push this too far otherwise the obligor will see redress in finding means to increase price over the life cycle of equipment in order to secure its required profit level.”*

15 Well, perhaps, Mr Mbeki, since you align yourself with Mr Irwin’s evidence, do you care to explain what you understand with this paragraph?

MR MBEKI: The paragraph speaks for itself, Chairperson. Thanks.

20 ADV DE VOS: Well, our interpretation of this is that what Mr Irwin was suggesting is that the DTI knew it could never achieve a full realisation of the nip commitments as the suppliers would simply increase their maintenance and support costs to cover these costs. Do you agree with that
25 interpretation?

MR MBEKI: No, I do not. What this paragraph is saying... it is describing very accurately, very accurately, the balance

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between these two parties in this kind of negotiation. That is the kind of the balance that you would meet. So if I was asked to go and negotiate offsets, I would be very pleased to receive this advice and that is why I am saying it speaks
5 for itself. It says negotiations of this kind, this is the challenge that you are going to face and it is correct.

ADV DE VOS: Mr Mbeki, my clients do not agree with you. My clients say that this statement indicates that the State could be held over the barrel post-delivery, on the basis of
10 escalating life cycle and maintenance costs levied by the suppliers. What is your comment to that?

MR MBEKI: Your clients are perfectly at liberty to disagree. That does not mean they are correct. Of course they can disagree.

15 ADV DE VOS: Mr Chairperson, I want to move on to a complete different field. May we have the tea adjournment now, please?

CHAIRPERSON: Maybe let us take the tea adjournment. We will be back after 20 minutes. Thank you.

20 **(COMMISSION ADJOURNS)**

(COMMISSION REOPENS)

Do you confirm that you are still under oath? Say I do.

MR MBEKI: I do.

MR MBEKI: (s.u.o.)

25 CROSS-EXAMINATION BY ADV DE VOS (Continues): Thank you, Commissioners. Mr Mbeki, may I take you to the meeting of the 31st of August 1998? That was a meeting of

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the Inter-Ministerial Committee which you chaired and I think it was held in Durban and you in your evidence-in-chief mentioned that you could not remember the detail of that meeting, but you do remember that there were certain
5 recommendations that were made and that certain decisions were made by the Committee. Is that correct?

MR MBEKI: Yes, I mean the... what is contained in the memo with regard to the particular specific items of equipment that were ultimately recommended to Cabinet,
10 that indeed was the situation.

ADV DE VOS: You are aware I am sure of the evidence of both Mr Esterhyse and Mr Steyn who were present at that particular meeting that they cannot recall that a specific decision has been made as far as the preferred bidders are
15 concerned.

MR MBEKI: Well, I cannot contest that, Chairperson, if they cannot remember. They say they cannot remember, they cannot remember.

CHAIRPERSON: I am sorry, maybe let me just correct the
20 position. Both of them said that they left. To say that you know there was a discussion, there was a presentation and after the presentation all the officials left. Steyn initially said that he is sure that everybody else left and the Ministers said they had an urgent meeting to attend to. He
25 later on said that they could not remember when he was confronted with his section 2A statement. So all the evidence that we have up until now, including Mr Steyn, is

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that when the Ministers met all the officials had left. That is my recollection of the evidence of Mr Steyn.

ADV DE VOS: Chair, I have looked at the statement by Mr Esterhyse, not his evidence but his statement that he filed
5 and in the statement that is where I got the information from that there was no decision made, but I accept the Commission's recollection. If it is necessary I can always revisit it. Nothing turns on it.

CHAIRPERSON: If [indistinct] then we can leave it. If
10 something is going to turn on it I was going to ask Advocate Cane because she is the one who dealt with those witnesses in detail and I can still remember. I think at the end of the day what we gathered from those witnesses were that when the meeting with the... Inter-Ministerial meeting took place
15 they had already left and I think even Mr Kasril confirmed that there was that meeting where those decisions were taken.

MR MBEKI: And what would happen in any case normally, Chairperson, Cabinet committee meetings like the IMC and
20 the Cabinet itself Ministers would come and present reports but by the time the Ministers take a decision there are no officials there. That was normal practise.

ADV DE VOS: Mr Mbeki, according to the minutes of this particular meeting the minutes indicated the officials were
25 present during the presentation and the discussion. That is neither here nor there. I do not want to argue about this particular issue. What I want to talk about is at this

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particular meeting two very important decisions were made and the one was to buy the Hawks instead of the Aermacchi and the other one was the question of the [indistinct] options as far as the Gripens are concerned and those are
5 the two things I would like to discuss with you. Can we perhaps first have a look at the question of the Hawks?

The... Mr Hoffman when he cross-examined you put to you that there was a no-cost option and a costing option and that was unconstitutional, but perhaps if I can take you to
10 the slideshow that was presented at this particular meeting by Mr Shaik we can discuss this with the facts at hand. We will find that at page... 220 of the bundle before you. This is only part of the slideshow and this part that we included here deals with the lead-in fighter training or the lift
15 program which has to do with the question of the Hawks. If you turn over the page you will find the evaluation results and I am just going to read to you the heading:

“Program lead-in fighter trainer, quantity 24, nil value excluding costs.”

20 Can you see that?

CHAIRPERSON: Advocate De Vos, on which page is that?

ADV DE VOS: That is page 221.

MR MBEKI: Yes, I can see that.

ADV DE VOS: So, it would seem that part of the
25 presentation made by Mr Shaik to the committee at the time was an evaluation excluding costs, not so?

ADV CANE: Learned Commissioners, may I please interject

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with one more issue that does need some clarification?
There is no evidence as far as I am aware that this particular document was in fact presented before the Ministerial Committee and whether it was or not... whether it
5 was or was not presented perhaps needs to be established first perhaps via the witness or on some other basis. As you please.

CHAIRPERSON: Advocate De Vos?

ADV DE VOS: Just give me a moment please, Chair. I just
10 want to find the passage in Esterhyse's evidence where I find this... found this information. Chair, I am going to refer you to Mr Esterhyse's evidence and specifically... well, his statement, specifically page 36 paragraph 5.6 thereof where he refers to the special Ministerial briefing on the 31st of
15 August 1998 and he says the following:

*"A special Inter-Ministerial Committee briefing session took place on the 31st of August 1998 in Durban. I was present at this meeting. Deputy President Mbeki chaired this meeting. Mr Shaik presented overhead transparencies of the
20 soft [indistinct] (ANNEXURE EE16)."*

Now the document I am referring Mr Mbeki to is a part of ANNEXURE EE16 and I assume that this evidence was given before this Commission.

CHAIRPERSON: But I think Advocate Cane seems to be
25 raising a different point altogether. He says he is not sure whether is this particular document that was presented at that meeting as I understood that.

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ADV CANE: Learned Commissioners, I accept my learned friend's submission in this regard would constitute a sufficient basis then to put this to the former President. She has resolved my difficulty. Thank you.

5 ADV DE VOS: Mr Mbeki, can I now once again just refer you to that page and show to you that there was two options presented or two evaluations? The one was no cost and you will see on the right-hand side eventually there is a best value figure indicated. The Hawk earned a 100 points. The
10 Czech Republic 86.3, the Aermacchi 87.5 and the other party 74.6. Can you see that?

MR MBEKI: Yes, I can.

ADV DE VOS: Now if you turn over the page and you go to page 220 there is the value including costs...ag, sorry, 222.
15 That is the value including costs, page 222. It is just over the page.

MR MBEKI: Yes I can see that.

ADV DE VOS: And here we see that the Hawk scores 96.5 whereas the Aermacchi scores a 100 points. Is that correct?

20 MR MBEKI: Yes, it is.

ADV DE VOS: So first of all your evidence yesterday that there was never any proposition or any evaluation proposed excluding costs is not correct. Is that right?

MR MBEKI: I am afraid you are misrepresenting what I said.
25 What I said yesterday was that neither the Inter-Ministerial Committee nor Cabinet ever considered anything without taking into account cost and I had repeat that.

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ADV DE VOS: Now the question is the following: If cost is excluded, it shows that the Hawk scores a 100 and the Aermacchi scores 87.5, but if costs are included it shows that the Aermacchi clearly wins the race. The question is
5 whether the difference in price between the two justified or the difference in what the Government perceived to be between the Hawk and the Aermacchi in terms of performance justified the amount of money that was spent on the Hawk and that is what I want to ask you.

10 MR MBEKI: The answer is yes, Chairperson.

ADV DE VOS: Now according to my instructions the difference in price between buying the Hawks and buying the Aermacchi was 400 million Dollars. Will you accept that or do I have to take you to a passage in the documents?

15 MR MBEKI: Chairperson if you say so it is alright. I do not mind. I do then have to go through any document.

ADV DE VOS: And according to Mr Esterhyse's evidence the performance of the Hawk was only 15% better than the Aermacchi. Do you accept that?

20 MR MBEKI: If... I do not know whether it was correct or not. I have no technical capacity to assess whether what he said was correct or not.

ADV DE VOS: Sorry it was... I made a mistake. It was Mr Steyn who made that... who gave that evidence. But let us
25 accept for the moment this Commission accepts that Mr Steyn was correct is that in terms of performance you are talking about 15%, but in terms of price we are talking about

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400 million Dollars. I am asking you again: Isn't
...[intervenes]

ADV CANE: I must interject at this point. It is not in
accordance with the evidence to put that and if my learned
5 friend does want to persist with it I would respectfully
request her to locate the passage from Mr Steyn's evidence
so that I may consider it in context.

ADV DE VOS: Mr Chairperson, I am... we are now slightly
confused whether it was Mr Steyn or Mr Esterhyse who said
10 it. We will find that passage and I will continue then with
that question, but whether it was 15% or not I still want to
pursue the issue of the 400 million Dollars with this witness.

CHAIRPERSON: Did that witness speak about 400 million
Dollars?

15 ADV DE VOS: Those figures are in the documents that... I
think it is in this particular...

CHAIRPERSON: Advocate De Vos, may we just verify the
facts before you put the question to the witness?

ADV DE VOS: I have verified the facts. I will just find my
20 reference, if the court... the Commission can give me a
moment please.

CHAIRPERSON: Okay.

ADV DE VOS: Perhaps I have found the figures and it was
right in front of us. It is still page 222. That is the valuation
25 including costs Mr Chair and Mr Mbeki and perhaps Ms Cane
here listening to me. There is the program costs in US
Dollars in the first column and one can see that the Hawk is

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765 and the Aermacchi 377.7 and we have worked out that the difference between the two is 400 million. I do not know if that solves the problem.

ADV CANE: Learned Commissioners, my difficulty pertains
5 to the technical comparison that was being made in the statement that the Hawk had been testified to be 15% better than Aermacchi. I did wonder where that evidence came from and I stand to be corrected. It was not so much in relation to the figures that are on the table before us.

10 CHAIRPERSON: Thank you. I think Mr Steyn is the one who spoke about 15%.

ADV CANE: Very well then. Perhaps the cross-examination should proceed and I will check that on my own. Thank you.

CHAIRPERSON: Thank you.

15 ADV CANE: Mr Mbeki it seems that the documents before you show that the decision to buy the Hawk cost South Africa roughly R2.6 billion more than if we bought the Italian version. Is that correct? And that is at the exchange rate of 6.6 that was used at the time.

20 MR MBEKI: If the [indistinct] is correct Chairperson, sure. I have not done any calculations as you may have. So I have no basis to agree or disagree.

ADV DE VOS: But surely this must have been discussed at the time, the huge price difference between the two top
25 contenders. Not so?

MR MBEKI: Chairperson, this matter was discussed yesterday as to what happened with regard to this decision

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and I said then as I repeat it today that there is at no point the IMC or Cabinet taken a decision without taking into account cost. The legal representative representing defence explained even this thing about uncosted what it meant and here was a decision that was taken by the IMC, Chairperson. This document is what... page 338, 338 of that same bundle, that paragraph 11, Steyn's bundle. I am told it is Steyn's bundle on page 338 and it is paragraph 11. And it says:

"After a discussion it was decided by the Ministers present that the Hawk option B should be recommended as the preferred option. This decision to recommend the Hawk was based on national strategic considerations for the future survival of the Defence Aviation Sector and the best [indistinct] offered by the respective bidders. Strategically important industrial participation programs offered with the best advantage to the state and local industries was also a determining factor in the final recommendations for the preferred bidders per program."

That was the decision and it is what we explained yesterday.

CHAIRPERSON: Advocate De Vos?

ADV DE VOS: Thank you Commissioners, I am just trying to locate the minute. I was referred to a document and my page numbers are not the same as the witness's. The minute he was referring to is also in our bundle of documents and it starts at, if I am correct, on page 72 of the bundle. Now, that is a point I would like to raise with you, Mr Mbeki, and that is the rationale for the decision to buy the Hawks. It

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says here that:

“The decision to recommend the Hawks was based on national strategic considerations for the future survival of the Defence Aviation sector.”

5 Let us just deal with that. What on earth does that mean?

MR MBEKI: It relates to the possibilities to... for the South African Defence Industry to link up with the British Defence Industry, whatever industry was connected to the Hawk which assessment was that it would benefit our industry
10 here. That is what it meant.

ADV DE VOS: When I read Mr Esterhyse’s evidence it seem to me that he was saying that that particular paragraph meant that Denel would get a lot more work from the BAE if the Hawk is chosen than they would normally get if the
15 Aermacchi is chosen. Do you know that... do you know that that was his evidence?

MR MBEKI: What... clearly if he said that it is only adding a detail to what I have just said that the... our defence industry here as referred to in this paragraph would benefit
20 from this and Denel is part of that.

ADV DE VOS: Mr Mbeki, no I think you misunderstood me. I am not saying that he confirm that. He said that this particular paragraph is... means and what was discussed is that the [indistinct] would be to the benefit of Denel if Hawk
25 was chosen and not Aermacchi and that is what I am asking you. He did not say it is correct. He said that was the discussion at the time and the thought at the time in the

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committee and I want you to confirm that his version of the events is correct.

MR MBEKI: What I am confirming Chairperson is the decision that was taken by the Ministerial Committee as I
5 have just read it.

ADV DE VOS: Well, according to Mr Esterhyse's evidence if I understand it correctly that rationale actually was not correct and he showed in his evidence that if one has regard to the two different propositions that actually if South Africa
10 bought the Aermacchi Denel would have be in a much better position than vis-à-vis the Hawk. What is your comment on that?

MR MBEKI: The... I am talking about what the Ministerial Committee decided. Officials might have made [indistinct] of
15 recommendations to the Ministerial Committee and the Ministerial Committee was perfectly at liberty to decide which recommendation to accept or not and if what the official that referred to said something contrary to what was actually decided it means obviously... the logic of it is that
20 the Ministerial Committee would not have accepted his advice.

ADV DE VOS: Mr Mbeki, I am putting facts to you, not opinions and the fact of the matter is that the Ministerial Committee made a decision and gave a reason for that
25 decision that now transpires not to be correct and that is what I am putting to you.

MR MBEKI: You say it is not correct because an official

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says it is not correct. Why should we accept that what the official says? Because you agree with it therefore it is correct. I cannot understand the logic of that.

ADV DE VOS: I will leave that as a question of argument, 5 Mr Mbeki, but I am giving you the opportunity to make a comment or to comment on that. If the official... the facts given by the official is found ...[intervenes]

CHAIRPERSON: Advocate De Vos, he has answered that. Just get to the next point. He says that is an opinion of the 10 official. They took their own decision.

ADV DE VOS: Mr Chairperson, I am putting facts to the witness that my clients will say has already been given evidence about before this Commission and all I am asking, this particular witness is to give his comments on if... if this 15 Commission found those facts to be correct on whether the decision they made was the correct decision or not. That is all and I submit I am entitled to ask him that and to ask him to answer me properly.

CHAIRPERSON: Okay, he can answer but then I thought he 20 has already answered. If you want to put the question again, Mr Mbeki, do you mind to answer that question again?

MR MBEKI: What I have said Chairperson which I am repeating myself is that the official might have made whatever presentation he might have wanted to present to 25 the committee. The committee took its decision as I have just read it. If the official's proposal is contrary to what was agreed by the committee obviously therefore logically it

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means the committee did not accept that.

ADV DE VOS: The question is actually why but I will leave it at that. I understand that you do not want to answer that question in the way I am putting it to you. At the same
5 particular meeting, Mr Mbeki, there was another decision made and that was the question of the Gripens.

Now I just want to find that passage. I have to refer you again to Mr Naidoo's evidence as you previously said that you align yourself with the evidence given on behalf of the
10 Government and he is one of the officials that was involved in the process. Now according to his statement that he handed in at this Commission and gave evidence on there was after consultations with the chief of the Air Force, chief of the Navy and chief of the SANDF and the Minister of
15 Defence on the need of the defence equipment the timing of these needs and alternative approaches, a certain list of priorities were drawn up. This list was the following and all that is important here for purposes of my questioning is the question of the Alpha which said 'not required immediately'.
20 He then goes on to deal with that requirement and he says the following:

*"At the time of the negotiations the Air Force had 50 Supersonic Cheetah fighter aircraft including 12 dual passenger Cheetah aircraft which had recently had a mid-life
25 upgrade. These aircraft are able to operate until 2012."*

We are now talking about 1999 or 1998.

"With regard to train pilot for Supersonic aircraft the

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[indistinct] understood there were... is not sufficient train personnel to absorb the Gripen aircraft should these be supplied earlier than the time required."

Now in the back... if you take this as the backdrop, what
5 happened was that they... the discussions surrounding the
affordability of the Gripen then dealt with the possibility of
[indistinct]. Can you remember that this was the situation?

MR MBEKI: The... Chairperson, I honestly it is... we are
being asked to do an impossible thing. To remember this
10 kind of detail of something that happened 15, 16 years ago,
it is difficult. It is difficult for me to... I do not have that
kind of capacity to recollect.

ADV DE VOS: Mr Mbeki, I will then remind you of what was
discussed. According to Mr Naidoo the recommendation of
15 the negotiation team was to seek a deferment of the Gripen
procurement on terms and conditions practical and
favourable to the Government. However in response to this
the BAE/SAAB indicated that they were not interested in this
and they then proposed an alternative proposal.

20 *"A full transaction of the supply of 24 Hawks and 28
Gripen with the first delivery of 12 Hawk aircraft and the
dual-seater Gripen aircraft and an option the South African
Government to cancel on the supply of the remaining Hawk
aircraft followed by another option to cancel on the single-
25 seater Gripen aircraft."*

Does this ring a bell?

MR MBEKI: Chairperson, our then Minister of Defence, Mr

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Lekota dealt with this matter and I again I have no view about it different from what he said. Thanks.

ADV DE VOS: Mr Mbeki, you were part of the decision-making process. The Government decided to buy Gripens at
5 the time which, from what I have read to you, they did not need in a process that really did not allow them to cancel the second and third deliveries. I am not even going to go through that evidence. The evidence was before this court and it was unchallenged. Ag, before this Commission and it
10 was unchallenged. You were part of the decision to in spite of that buy the Gripens and that after you have given evidence before this Commission that there was a careful balancing between the needs of the Defence Force and the socio-economic needs of South Africa and I submit and I am
15 asking you to explain the thinking of the Government at the time. Why was it so important to get Hawks for 400 million US Dollars more and to get Gripen and whatever for an enormous amount of money if we did not need it at the time? That is all the people want to know.

20 MR MBEKI: Chairperson ...[intervenes]

CHAIRPERSON: Just hold on. You know, Advocate De Vos, you made such a long statement. I am not quite sure what the question is. You made various propositions. Can you break them down into smaller propositions so that we can
25 also follow?

ADV DE VOS: Mr Chairperson, I submit that Mr Mbeki is fully capable of answering my long question. I am going to

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ask him to do that.

CHAIRPERSON: I must also understand it, because I am the one who is going to write the report at the end of the day. I must make the findings. I am just asking you to do it so that
5 I can also understand it.

ADV DE VOS: Mr Mbeki, you indicated to this Commission that you cannot remember this far back. I have now given you a background to the question of [indistinct] and I want to ask you why was it necessary in view of the fact that
10 South Africa was not immediately in need of the Gripens to buy it at the time at an immense cost?

MR MBEKI: Earlier as she put this question Chairperson she also added again the matter of the Hawk and this 400 million and so on and I was going to say with regard to the matter
15 of the Hawk I have explained that and read out the decision of the Cabinet on this particular matter. There is no other Government explanation about it.

With regard to [indistinct] to the second matter that she is raising about the Gripen and so on, I am saying then
20 Minister of the Inter-Ministerial Committee and Cabinet, our then Minister of Defence dealt with this thing and answered it and I have no different opinion about it or information or any other thing different from that. I do not understand why the insistence that I must repeat what Mr Lekota said. Why
25 the insistence? This evidence given by Mr Lekota surely, Chairperson, is on the record of the Commission and [indistinct] to Mr Ronnie Kasrils of Defence, then Deputy

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Minister of Defence. I have no information or opinion or anything else different from what they said.

ADV DE VOS: Mr Mbeki, first of all Mr Lekota was not present when the decision was made. So he could not give
5 any evidence on this particular point. That is the first problem that we have here and the responsibility does not fall under Deputy Minister, it falls on the Ministers as I understand it. That is why I am asking you this particular question.

10 MR MBEKI: No, I will explain. You were not in Government. We were in Government. Deputy Minister of Defence then, Ronnie Kasrils participated in the work of the IMC. That is what happened in Government, whatever your understanding of how Government works. That is what happened. And I
15 have no doubt that when the Minister Lekota became minister indeed he became very familiarised with what had been happening in the department.

There is no minister or starts being a minister who required to remember only the things that happened since
20 he/she was there. He would... of course he would have been familiarised with everything that the department was doing including this acquisition and therefore perfectly competent to comment he would have to... to be competent to happen on decisions that were taken before he got there.

25 So the fact that he came later he might not have participated in whatever meeting. It does not take away the possibility for him to know about these departmental things.

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He signed the contracts. What contracts was he signing?
Thanks.

ADV DE VOS: Mr Mbeki, maybe you misunderstand the reason for your appearance here. The idea, and I think you
5 said that in your original statement, is to assist this Commission in its investigation. Now to refer to a minister who was not present when a decision, an important decision that is being questioned and criticised by certain people were made is not an answer to my question and I am going
10 to explain to you why it is important that you explain to this Commission why the Inter-Ministerial Committee recommended to Cabinet that the Gripen should be bought as well as the Hawk, both of them being manufactured by the BAE. I am going to explain to you why this is important.

15 I want to refer you to the investigations of the... Can I... can I ask the question? The United States investigated BAE and there was a discussion about it yesterday, BAE and SAAB. I just want... In connection inter alia with their South African dealings and I have to explain to you that my clients
20 will come and give evidence to this Commission that deals with the two US... well, first the plea bargaining dealt with in 2010. I do not want to bore you with the detail and that the second one was in 2011. But what is more important is that rightly or wrongly and we submit that our clients will be able
25 to prove to this Commission that those two investigations clearly shows that there was unauthorised commissions paid in order for the BAE to land the South African Hawk and

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Gripen contracts and I just want to refer you to our submissions we made to this Commission and I am going to read a short part of it to you and then I am going to ask you to comment. They deal with both of the plea bargaining documents and then say:

“While South Africa was not explicitly mentioned in the plea bargaining documents in the US in 2010, it was certainly implicit in the settlement as relayed to Mr Feinstein by an officer of the US Government agency involved in the investigation. But more importantly, in addition South Africa featured quite clearly in another plea bargain that BAE Systems agreed to in 2011.

This time the company settled a civil action brought by the US State Department around a different set of offences. Here it admitted guilt in return for a fine of 70 million Dollars for violating a number of US regulations. In particular BAE admitted to numerous violations of US International Traffic in Arms Regulations. These violations included unauthorised brokering of US defence article and services causing unauthorised brokering failure to register a broker failure to file annual broker reports and failure to report to the payment of fees or commissions associated with the defence transactions.

And then the department concluded, conducted a further review of the Gripen aircraft transaction and identified the license issued by the Department of Justice in June of 2002. The license included negative certification, in other words

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BAE certified that they have not paid fees and commissions for them to export these. It then turned out that the license which was part of a broader transaction involving 1.6 million Pounds worth of Hawk aircraft partly to South Africa. The
5 *United States Department came to the conclusion that based on information obtained by the department, respondent or its representative Red Diamond made payments to brokers involved in securing the sale to South Africa and the respondent failed to disclose those payments.”*

10 So based on this, do you understand why people are questioning the decision in spite of the elements that show to some people clearly that the idea of buying the Hawk and the Gripen was not such a good idea seems suspicious and by this I am not saying that Government or the Ministers or
15 anybody had anything to do with it. It may be that there was a manipulation of facts, but the fact of the matter is we sit here and the BAE has admitted that they have paid commissions and we can call it commissions but clearly that is not allowed. Let us call it what it is: bribes, in connection
20 with this transaction. What do you say about this?

ADV MOERANE: Chair, I have listened with interest to the long preamble to the question, but I do not see what the relevance of it to the particular witness is, particularly when there is no indication as to who paid bribes or commissions
25 to whom. That would be the kernel of it. There is a long story about plea bargains etcetera, but we do not know what the allegation is, who paid whom unlawfully. We would be

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interested in that particularly if it has a bearing on the bribery of the President, Deputy President or a Minister or any of the people in the IMC and that has not come... it is just a vague allegation. I think we have to be specific here

5 Chair.

CHAIRPERSON: Let me just find out from the former President. Do you know anything about this American investigation?

MR MBEKI: No, I do not Chairperson.

10 CHAIRPERSON: Okay, thank you.

ADV HOFFMAN: May I intervene at this point Mr Commissioner?

CHAIRPERSON: Just hold on. Just hold on. You had a chance yesterday. Let us first finish with the [indistinct].

15 Yes, Advocate De Vos?

ADV DE VOS: Chairperson, the relevance of the question is simply what is the comment because the problem that we are facing is that there seems to have been a choice made by Cabinet for a preferred bidder under circumstances that raises questions and I have raised the questions with the witness and then afterwards we come across the fact that at least as far as the... let us accept my proposition is correct at least as far as the United States are concerned certain commissions that was unauthorised were paid. I am asking
20
25 this witness whether he has any knowledge about why under these circumstances the Gripens and Hawks were chosen.

CHAIRPERSON: Maybe you should restrict the question to

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the South African situation. He knows nothing about the American investigation. I will suggest that let your questions be restricted to the SDPP's that were investigating because he has knowledge of that, but then he says he has no
5 knowledge of what happened in America. Maybe restrict your question to the South African situation.

ADV DE VOS: First of all Mr Chair, I can take you to where South Africa is mentioned in the documentation, but let us rather leave that for my clients to do. But I have asked Mr
10 Mbeki to explain why South Africa chose to buy Gripens at the time when we did not need them and I have given him the references to that evidence. He has not given an answer to that question. He keeps on saying 'why do I have to answer it or somebody else has answered on my behalf', but
15 it is a legitimate question. It is a legitimate worry and I would like him to answer that question then I can move on.

MR MBEKI: Chairperson, this... the advocate wants to insist that this is a Mbeki question. It is not a Mbeki question, it is Government question and Government has answered this
20 question. And I have said that is no other information, additional information I can supply the Commission on this matter additional to what people who spoke on behalf of the IMC and Government beyond what they said.

With regard to the second matter question is asked in the
25 light of these findings in the United States about commissions and plea bargains and all of that, why did you buy the Gripen? I am quite sure that whatever happened in

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the United States happened after these decisions were taken. Whatever discovery is made about commissions whether they are bribes or whatever surely was before the decisions that were made. If it was not certainly this is not a
5 matter that ever came to our attention that there was this particular problem.

But in the end what... this point that Advocate Moerane is making I would like to come back to this question, Chairperson, that the people I am talking about the people
10 who said on the Ministerial Committee and Cabinet. Indeed I do not want to dispute whatever might have been found in the United States that BAE Systems paid some commission to somebody.

The question that arises for is, is there any evidence and
15 really I would very much appreciate it if this is produced, because this matter has been up in the air for 16 years, 15... that as a result of whatever BAE Systems did in terms of commission or anybody else did in terms of paying commissions, that process resulted in corrupting, in
20 corrupting the members of IMC and the Cabinet. And indeed if this allegation, this point can be made and proved this would be enormously helpful, because then we can deal with this factual thing that BAE Systems paid commission to somebody and we are coming back it seems, Chairperson, to
25 what was debated yesterday and you are correctly saying the words 'bribe' and 'commission' are synonymous and I say my own view is the same but again we are back there.

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But even if they were synonymous, what impact did they make on these two principle committees from whom the decisions came. I think that becomes the critical element, but the question that was posed was in the light of what
5 happened in the United States why this. I am saying certainly I cannot recall at any point that anybody came to... this matter came to the notice of the IMC or Cabinet that it were some findings in the States about BAE Systems and so on. I do not recall that happening.

10 ADV HOFFMAN: Mr Chairman, I am sorry to interrupt my learned friend. I did ask for an opportunity to intervene in this aspect because I want to remind the Commission that yesterday my client gave an undertaking to the Commission to find for the Commission the very document which has now
15 been produced by the Lawyers for Human Rights. We would like to be excused from having to do that little [indistinct] and we would also like to remind both the witness and the Commission that in the papers before the Constitutional Court which gave rise to these proceedings and to which
20 reference was made yesterday, there is evidence on oath by a Scorpion called Du Plooy covering a 160 pages which makes it very clear that bribes were paid.

CHAIRPERSON: Thank you Mr Hoffman, we are aware of the evidence of Mr Du Plooy. Probably he is going to be one of
25 the witnesses that we are going to call. But then thanks a lot. We are aware of that information. Can we ...[intervenes]

ADV HOFFMAN: Are we excused then from going to the

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trouble of producing a document which is now coming in any way in this bundle, please?

CHAIRPERSON: Thank you, you are excused.

ADV HOFFMAN: Thank you so much. It saves us effort and
5 trouble to find.

CHAIRPERSON: Thank you.

ADV DE VOS: Mr Mbeki, on the question of commissions and bribes, I just want to remind you and you obviously will not be able to remember that on the 4th of September 2008
10 in a question and answer situation, I think it was obviously in Parliament, the question... where was this? May I have a moment just to get my facts?

I think I have got the facts now. It was referred to yesterday. It was a press briefing by Minister in the
15 Presidency, Minister Pahad and Minister of Public Enterprises then, Minister Erwin and it is dated... if I may just find the date... the 6th of August 2008 and it is called the full briefing on the Arms matter and just in relation to the question of commissions, I am going to put it to you that
20 can be no argument that the commissions that was paid in the BAE deal, that was found to be paid in the BAE deal by the United States of America were regarded as bribes and not only that, even the South African Government acknowledged that commissions paid under these
25 circumstances can be called bribes and I am going to read to you the question and the answer given at this particular briefing.

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“Can arms purchases ever be negotiated without kickbacks and here one has in mind previous controversies and alleged kickbacks in other countries.”

The answer was:

5 *“It is known in the Arms industry that commissions can be mere camouflaged for bribes and kickbacks.”*

And I want to ask you whether you now accept that if there is reference to commissions in the context of this Commission we are actually talking about bribes and that
10 the Government knew it at the time.

MR MBEKI: Chairperson, the BAE Systems may have commissioned somebody to persuade the decision makers to take particular decisions in favour of BAE Systems. What BAE Systems would have paid, the person who would
15 facilitate the purchase of their goods is not a person who was being bribed. He has been paid the commission, perhaps to carry out the act of bribery. In this instance if a minister as a member of... if... [indistinct].

If the Chair of the IMC was the best person to whom...
20 with whom BAE Systems were in contact to encourage the IMC to take particular decisions, for instance about the Hawk, and they paid the Chair of the IMC, that would be a bribe. But somebody... there was no decision making [indistinct] in this process, but has a possibility to persuade
25 the decision makers to take particular decisions. The person in between will be paid the commission and the paid person pay the commission would pay a bribe.

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And that is why it is important that we should be precise about this matter, Chairperson, because I am saying that certainly from the position of our Government then were very interested that these allegations that we made needs to be dealt with and the only way you can deal with them is the way... is that the people who make the allegations presumably because they have got the facts, that they must produce the facts. Then it becomes possible to act on this thing. Commissions paid, yes indeed commissions might very well have been paid by BAE Systems. Did they corrupt? Did they... were they passed on as bribes? Maybe the US system found that this had happened, maybe.

But I am saying the mere fact of paying a commission to somebody who is commissioned to go and do whatever is not a bribe to that person. It becomes a bribe when the person who is a decision maker is then bought in order to make particular decisions. It may very well be that the US process, that the US process about BAE Systems discovered that there are people who were paid those commissions then bribed whoever. It may very well be that that is what happened. I am not familiar with the report.

ADV DE VOS: Mr Mbeki, are you saying that if BAE paid money that they were not... that was not due in terms of a contract to an official or a person who is not a minister who had a role to play in the Arms Deal that that was not a bribe?

MR MBEKI: I am saying a person who is asked to facilitate

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a particular business agreement, you Ms so and so, Mr so and so know Judge Seriti very well. I need Judge Seriti to take a particular decision. I will give you this money. 1) For the services that you are going to render and 2) for the money you are going to use to buy him. That is what I am saying and then indeed this person comes who knows Judge Seriti and sits with him and unfortunately fails because judge he would fail. I have no doubt about this. To bribe Judge Seriti he must go back and to say to the person who gave the money 'look, I cannot... I cannot [indistinct].' And so I who gave the money will then say 'okay, return to me the money you could not use as a bribe' and of course you are going to keep the money that I gave you for the work that you did.

15 And as I understand it normally that kind of commissions is normally not hidden necessarily, because it is not illegal. It is kind of normal business practise. Not just with regard to the Defence industry. People... consultants, they might be called consultants and then so on, brokers, it is a normal business practise. The bribing occurs when that consultant, broker or... then goes and buys the decision maker. That is a bribe.

25 And I am saying it may be very well be that the US process identified that, identified these person who were bribed here and it indeed would be very very good if the people who made the allegations or if we... in the documents from the US. They help us to identify these people who were

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bribed. Not people who paid commissions, people who were
bribed because then we are able to act on. It really would be
very very important. Because we have had to live with this
allegations for decade and a half and each time you say
5 okay let us then... the people who make the allegations,
please just give us something on the basis of a law
enforcement or whatever, can then act on the bribery
[indistinct]. Not on who was paid commission to go and
canvas to say that you know the best shoe seller in the
10 world is Thabo Mbeki Shoemaker Incorporated, a salesman.
That is what, advocate, I understand by what is meant
between commissions and bribes.

ADV HOFFMAN: Mr Commissioner, I am sorry to keep
interrupting, but it is an appropriate moment at which to
15 draw the attention of the Commission to clause 20 of the
BAE contract which is the clause that tells us about what
bribes are in the context of this agreement. Clause 20 is
called the 'remedies in case of bribes' clause and the other
aspect of this agreement ...[intervenes]

20 CHAIRPERSON: Thank you Advocate Hoffman.

ADV HOFFMAN: You have got that, I am sure.

CHAIRPERSON: We are aware of that clause. We are aware
of that clause.

ADV HOFFMAN: The only other quick point I want to make
25 is that you will search in vain, everybody will search in vain
for a reference to the payment of commissions in this
agreement.

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CHAIRPERSON: Thank you. Thank you. Advocate De Vos?

ADV DE VOS: May I proceed, Mr Chair? Mr Mbeki, the point I was trying to make and I think you have... you are assisting me somewhat in that is that let us assume that the
5 bribes that were... or the commissions that were paid by BAE resulted in the Cabinet choosing the Hawks and the Gripens above other equally good choices, then obviously the commission becomes a bribe. That is what you have been saying. Is that correct?

10 MR MBEKI: No. No, the person paid the commission may indeed very... may very well have very persuasive argument about the value of this product. A persuasive argument is not a bribe.

CHAIRPERSON: I am sorry. Advocate De Vos, just repeat
15 your question. It appears to me that you are talking past each other. Can you just repeat the question if you do not mind?

ADV DE VOS: Mr Mbeki, the issue is this: Once that now that we know that there are these allegations made by the
20 United States, clearly that is an issue for this Commission to investigate, because that forms part of their... of their mandate and that you agree with. Not so?

MR MBEKI: Sure, I agree. If it is in the mandate, of course.

ADV DE VOS: The reason why the BAE deal has been
25 questioned is simply this: We did not need the Gripens at the time and we bought Hawks for 400 million Dollars more than we could have paid for something basically equally as

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good and that is what is raising the eyebrows and I am asking you to comment on that.

MR MBEKI: But I have answered that question, Chairperson. What has... what arose later was this matter about the plea bargain and indeed I am told is dated 2011, this plea bargain, long after would concluded all of these things about this acquisition. What... the issue that arose later was in the light of what has happened with regard to this plea bargain. What justifies the purchase of this? So I was saying that as far as I recall we did not know anything of this at the time that the decisions were made and as I say it then transpires that the... this plea bargain is then dated something... some month... is it May? May, 2011.

ADV DE VOS: Mr Mbeki, my clients will give evidence and it will be argued on their behalf that the decision to purchase the Gripens and the Hawks was not rational given the facts before this Commission but I am going to let that be. Can we perhaps turn to the question of the submarines and competitive quotes? Sorry... I have just been reminded that my clients want me to ask you about the light utility helicopters and the competitive quotes on that and not the submarines. The selection of the Agusta as the preferred bidder to supply the light utility helicopters under the SDP was based on a tender for 60 helicopters. Do you remember that?

ADV MOERANE: Chair, the witness is being asked certain details which relate to specifics of particular tenders. The

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issue of the tenders has been dealt with by other witnesses and the witness will obviously not be in a position to deal with the nitty-gritty of each particular acquisition. The IMC did not deal with the nitty-gritty. IMC recommended certain
5 matters to Cabinet. Cabinet took an in principle decision that the acquisitions must be... must go ahead. I do not think it is fair to ask this particular witness these nitty-gritties.

ADV DE VOS: Mr Chairperson, I was going to interfere. I am not going to ask about nitty-gritty and perhaps I put the
10 wrong wording to the question. I should not have asked whether Mr Mbeki can remember it. I am just giving him facts that were already been testified on. So perhaps I will just rephrase that. Mr Mbeki, I am not asking you to remember about whether there was 60 or 30 or how many
15 helicopters. The fact of the matter is the tender process that was put into place was for 60 helicopters and after that process the... there was a re-evaluation of the bid and the decision was taken that only 30 helicopters will be... need to be acquired.

20 Now the question is this and I am going to put it to you: There was not a re-evaluation or a re-request for tenders after that decision was made and my clients will argue that... that that does not necessarily... if you buy 30 helicopters instead of 60 it does not necessarily mean that the price
25 would be the same, because there will... there may be factors that will influence the tender process and that the committee should have asked for new tenders after the

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decision was made to slash the helicopters from 60 to 30. That is the question.

CHAIRPERSON: I am sorry. If my recollection is correct the initial tender was 60 or 40. [Indistinct] 60 or 40 but at the
5 end of the day because of the decision of the Inter-Ministerial Committee they end up taking 30. One of the witnesses testified in detail about that. I think he said that you know they said 60 or 40, but in the end they end up placing for 30 and not for 40.

10 ADV DE VOS: Mr Commissioner, my instructions are that Mr Ferreira gave... or Colonel Ferreira gave evidence. I am not sure about the 40. I will have to take instructions on that. Thank you. I will leave it then for the moment at that. Mr Commissioner, I see it is a few minutes before one o'clock. I
15 am going to ask... there is a possibility that I may finalise my questioning in about another half an hour or so that I am not sure if we need to take the whole adjournment or...

CHAIRPERSON: Can I suggest that we take a 10 to 15 minutes break and then we come back and then what we
20 intend doing is that once you finish cross-examining Mr Mbeki we want to deal with your application to recall Mr Erwin and try and see if we can finalise that arrangement today.

ADV DE VOS: Thank you Chair.

25 CHAIRPERSON: Advocate Moerane, will that be in order?

ADV MOERANE: Yes Chair.

CHAIRPERSON: Thank you. Then maybe let us adjourn for

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about 15 minutes or so. Thank you.

(COMMISSIONS ADJOURNS)

(COMMISSION REOPENS)

ADV DE VOS: Thank you, Mr Chair, may I know just, I am
5 not sure how the system works here. I have got the
documentation from the US, dealing with the DAE, both the
DAEP bargaining available and that we can hand it to the
Commission.

COMMISSIONER MUSI: Is that all of them, both of them?

10 ADV DE VOS: Ja. But, specifically in these documents
there is specific information and reference to South Africa
and that South Africa and the, and the Hawk is included in,
in these documents [indistinct] and Mr Chair, you
specifically mentioned yesterday that you could not get hold
15 of these documents. So, we have made copies. It comes
from the US website, I think, these, all of them. But, at
least then, we have them available for, for the Commission.

CHAIRPERSON: Thanks a lot. I am supposed it can be
given to [indistinct] and they have not given us that. Thanks
20 a lot.

ADV DE VOS: Thank you. Mr Mbeki, from your evidence,
it is clear that you are not familiar with the United States
investigation and or their findings. Is that correct?

MR MBEKI: Yes. That is correct.

25 ADV DE VOS: So, in view of that, I suggest that you are
not currently in a position to say categorically that there
was no corruption involved in this arms deal?

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MR MBEKI: But, Chairperson, I said I do hope that the, the US report goes beyond the point of people being paid commissions. I, I said I do hope it goes beyond that, to the point where it might help us to answer these long
5 outstanding allegations and provide us with the evidence about who was right.

ADV DE VOS: Thank you, Mr Mbeki. Now, in your statement and in your evidence, you argued that spending on the Arms Deal did not prevent necessary expenditure on
10 other socio-economic priorities, because the government of the time was balancing the various needs, as against the budget. Is that correct?

MR MBEKI: Yes. That is correct.

ADV DE VOS: Now, in September 2001 there was an issue
15 about the question of antiretrovirals and the supply of antiretrovirals in general to the, to the public. My instructions are that part of the government policy, at the time, was not to supply antiretrovirals, because of the fact that it was going to be too expensive. Do you agree with
20 that statement?

MR MBEKI: No. I do not.

ADV DE VOS: Well, all I can do is read you a media article, dated the 13th of September 2001. You will find it on page 53 of your [indistinct] bundle. It quotes the late Health
25 Minister Manto Tshabalala-Msimang where it says the following:

"The budget I have for medicines is R2 billion. If I were

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to buy antiretrovirals, I would have to forget everything else.”

Is that not an indication that the government felt that the programme was too expensive?

5 MR MBEKI: No. The, the way the advocate is putting it is incorrect. I am saying [indistinct]. Clearly, the matter about, for affordability of antiretroviral drugs then, was not a matter only in dispute here in South Africa, in discussion only. It was a global discussion about the price of these
10 drugs. It was a global discussion and for instance, you would find, Chairperson, that one of the people who intervened most vigorously on this matter, because of this high cost of the drugs, was the Curtain Foundation, led by the former President of the, of the United States. The
15 Curtain, the matter was addressed very vigorously. Indeed, even in our own intervention, on the matter of parallel import to bring down the price of the drugs here, it had also to address this matter. The advocate may remember this or not, that the South African government took up this matter
20 with the whole pharmaceutical industry that South Africa must be able to acquire drugs, where they were cheapest. Because we were concerned about this matter about the cost of drugs and at long debate, a long discussion, a matter with the courts and so on and [indistinct] sent on these trips,
25 government trips to America and so on. In the end, the matter was agreed with the pharmaceutical companies, that indeed, we could do the preliminary report and deal with this

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matter about genetic drugs, generic drugs. It took us three years to come to this conclusion. It was not, it was not to say, because the drugs are too expensive that we do not buy them. It was to say, considering whatever you do with regard with these drugs, you have got to take into account, how much they would cost and if you budget on these drugs at these prices, at these particular prices at the time, if we then bought the, the [indistinct] or the fees that might have been recommended or required, this would be the impact on the budget. That is, that is what the discussion was about. But, to put it as to say there was a, the price is too high, therefore, not. There was a consequence to that and the consequence of it, with the interventions the government made, precisely to help with this matter of bringing down the price. I am saying it was not a just a South African debate, Chairperson. It was a global debate. You can look at documents of World Health Organisation, discussing exactly to say that, exactly to say the problem. So, that that is the circumstances around, around that statement which had been made by our then, Health Minister.

ADV DE VOS: Mr Mbeki, but the fact of the matter is, the decision not to roll out the ARV treatment at the time, 1998, 1999, was because of the effect it would have on the budget. That is exactly what you just said.

25 MR MBEKI: Chairperson, we, I do not know if the Commission, it wants as part of the mandate to discuss this much about HIV and AIDS. Because this partial, these

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intentions are [indistinct].

CHAIRPERSON: No. Mr President, I am not quite sure if that is part our mandate. But then, [indistinct] trying to determine is whether the advantages of government as far
5 as the [indistinct] is concerned, did it have any impact on the SDPP's or not? If that is not the question, then, and it means [indistinct] the question of the drugs or for AIDS [indistinct]. This one we are already investigating.

MR MBEKI: Yes. Chairperson, this, that is why I was
10 saying that, say for instance [indistinct], the reason why I am saying that I do not whether this is part of your mandate, because we can discuss the whole debate around the HIV and AIDS issue. One of the principal challenges the government was addressing, was, does the public health
15 system have the capacity to deliver and manage these drugs. We looked very carefully at the US practice. We looked carefully at the US practice, wherein the US, doctors would dispense, I do not know if they still have them now, but at the time doctors would dispense ARV's, actually give
20 them to a specific [indistinct] and the requirement that once you start, patients start taking the ARV's, this is a kind of follow up that the doctors need to do. So, one of the things the government had to look at, was the public health system, because the disease centres where this is controlled in the
25 United States were saying if you do not do that, you are going to produce negative consequences. So, if we look at the matter, what is it that we do, in order to improve the

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capacity of the public health system to manage this? One consequence would be that [indistinct] the Clinton Foundation. One consequence of it, how can we ask the Clinton Foundation to come, later they did. They came and worked with us, based on their own experience, on setting up, how to set up this system, as a consequence of which, government then started setting up pilot schemes, again, to test the capacity of the public health system to manage this. That is why I, I am explaining this, Chairperson, it has nothing to do with the work of the Commission, to say, the, the advocate wanted us to discuss this HIV [indistinct]. That is the only thing that was being considered was cost. I am saying it was not. But, we do not have time to discuss the totality of this issue, which will include, Chairperson, the decision, in the end that sufficient work had been done to enable the government to produce the first ever and still [indistinct] comprehensive plan to deal with this HIV and AIDS matter. But, all of that belongs in a different discussion. From the type of the question that was posed, no, decisions that government took on this matter of HIV and AIDS, were not just based on the cost of drugs. That was an only consideration and I am sure [indistinct] to respond to that, but it was not the only thing. But, that belongs to a discussion of the whole overall issue. Thanks.

ADV DE VOS: Mr Mbeki, the reason why the issue HIV and AIDS is important, in the context of this commission, is because, if the question of costs, in any way, prohibited the

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implementation of any kind of programme and, and I am not in a position here to, to present evidence on that, but I am, my client will try and find the references to that. But, the point is this, if the cost issue, the fact that the government
5 felt, it did not have enough money to pay for the medication, whether they were too expensive or not, it is not really relevant, because we were dealing with a crises in 1997. If the cost were the prohibit factor, then clearly, the decision to spend R29.9 billion could not have been a rational act, at
10 the time. That is the point that I am making to you.

MR MBEKI: And that is why I am saying, Chairperson, the Commission, Commission, I am quite sure, Chairperson, you as Commissioners may very well be finding it impossible to discuss the issue. In order to understand government
15 policy, on the matter of HIV and AIDS, you would have to discuss budget, budget a government policy towards this, not selected [indistinct], but budget policy. That is when you will then understand all elements of this, including the costs [indistinct]. Thanks.

20 ADV DE VOS: May I have a moment, Commissioners? I just want to get instructions. May I proceed, Mr Chairman? Mr Mbeki, I have, I understand that there may have been many factors playing along. The point I have been putting to you, is that at the time, there was a crises in South Africa
25 and I am sure the figures are not going to be in contention. There are, there are notes that R7.2 million additional debts into AIDS between 1995 and 2015, would, would be

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experienced. That was the United Nations report, if we do not roll out the, the treatment. Now, those figures may, or may not be completely correct. But, we do know that we have, we have got figures for, I think we have added them to
5 our bundle from Stats South Africa that shows that especially women, suffered extremely from 1997 up until 2002, when the [indistinct] started, I think. The point I am making to you, is it not correct to say that if it is found that costs were a prohibitive issue that in, in buying these arms,
10 with the idea of protecting the people of South Africa, was the wrong plan. That maybe, in protecting the people of South Africa, we should have gone the other way. That is my question to you.

MR MBEKI: Chairperson, I really do not want to come back
15 to this discussion. You see, for instance, the advocate now refers to she, she sometimes does not listen. She has her own conversation there. It refers to figures and so on and that is exactly what, what I meant, Chairperson. You even look at Stats SA figures. It is Statistics South Africa
20 produces an annual report about mortality, because of mortality in the country, which would say this one, number one, number two, number three, number 10, these are the causes of death in the country, in their order. That would have to be part of this discussion, in order to understand
25 this question properly. I am saying again, it would be improper and incorrect. When you are discussing this matter of HIV and AIDS, to discuss only, this matter of cost

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and base that and say therefore, on this basis this is what explains government policy. Thanks.

ADV DE VOS: I have no further questions.

CHAIRPERSON: Thank you. Any re-examination?

5 ADV MOERANE: Chair, I do not know [indistinct] for that, my learned colleague or me.

CHAIRPERSON: I am not even quite certain, whether, you know, this has happened on several occasions, where as evidence leaders, you will re-examine. You know, the legal
10 representative, representative to the witness will re-examine. But, I do not think that would [indistinct]. I cannot see provision for that. But, I have got to say both parties wanted to re-examine that is why, I do not know who to give preference to. Advocate Sibeko [indistinct] while you do
15 your re-exam, can you lead him from there, cross-examine, or re-examine [indistinct] in terms of regulations, or is it I am going to [indistinct] on the right to, to re-examine.

ADV SIBEKO: Chair, as I understand the regulations, we have no right to re-examine. What my colleague, Ms Silva
20 and I have sought to do, in respect of the witnesses, whose evidence we have led, was merely to clarify issues that arise in cross-examination and not to re-examine. So, at this point, I believe that, based on my understanding of the recollections, Advocate Moerane, has the right to re-
25 examine the former President, if he chooses to.

CHAIRPERSON: Thank you. Advocate Moerane?

ADV MOERANE: Thank you, Chair. Chair, I think I should

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start with an issue that arose yesterday, during the cross-examination, of my learned colleague, Mr Hoffman. Mr Hoffman referred to the final report of [indistinct] Clinton in the matter relating to Ferrostaal, effective April 2011. Mr Hoffman indicated, during his cross-examination that the privilege, relating to that report had been lifted. I am advised an enquiry, regarding the correctness of this contention was made, by a representative of Ferrostaal, who is attending the proceedings. He was advised, amongst other things, that the privilege over the documents have not been lifted and that Ferrostaal will cause a letter, confirming this fact to be delivered to the Commission, during the course of, of today. In, in the circumstances, Chairperson and Commissioner, that documents and its contents, we submit cannot be referred to, or, or relied upon. I do not know, if my learned colleague is in a position to dispute this that privilege has not been lifted.

ADV HOFFMAN: Mr Commissioner, my instructions are that this document is in the public domain and that there was indeed, a waiver. The document was brought into existence, in order to clean up the image of Ferrostaal, so that it could do business in the United States. Ferrostaal head office has no difficulty with anybody and I have had a personal conversation with the relevant official, asking about it and the answer was, you can have it and we will give you anything else that you need. If there has been a change of heart since then and there is a document that my learned

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friend Mr Moerane is sitting on and he has not had the opportunity of sharing it with me, I would obviously want to see that document. I would want to take it up with the head office people at Ferrostaal that I have spoken to about this matter. As far as my instructions go, I have got the document. Privilege has been waived and once it has been waived and the document is out there, it is like trying to reverse a birth that has already taken place.

CHAIRPERSON: I am aware that there are members [indistinct] that they should at a later stage, are you saying that the letter is going to be addressed to the Commission, or would I get that letter and with the necessary [indistinct]. For the moment, can we concentrate on the re-examination of Mr Mbeki?

ADV MOERANE: Thank you, Chair. I just wanted to get that out of the way.

ADV HOFFMAN: Sorry, [indistinct] before we get it out of the way completely, may I prevail upon you, Mr Commissioner, to get a copy of this letter to which my learned friend refers, that my client instructed me from? If you have not seen that, trust me.

CHAIRPERSON: Thank you, we will do that [indistinct]. As I understand it, the letter is not yet in our possession and once we have, when we see the letter, we will do what needs to be done. Thank you. Advocate Moerane?

ADV MOERANE: Oh. Thank you, Chair.

ADV HOFFMAN: Sorry, [indistinct] what that means.

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Commissioner, I am asking whether we can have insight into the letter.

CHAIRPERSON: Mr Hoffman, [indistinct] will you at least sit down. You can have your say in that, as far as
5 [indistinct] prove that it is [indistinct] and as the [indistinct] I will do it, once we received the letter. I am not quite sure. What more can we do?

ADV HOFFMAN: My concern is that we should see the letter too.

10 CHAIRPERSON: That is the whole thing, whole thing, you will get a copy of the letter.

ADV HOFFMAN: Thank you, Mr Commissioners.

CHAIRPERSON: Advocate Moerane?

ADV MOERANE: Thank you, Chair. Thank you, Chair. Mr
15 President, according to media reports, which came out yesterday, certainly critics, that is the [indistinct] that was used, have taken issue with your not recollecting, or remembering certain things. Now, I just want to explore that. Just as an anecdote, yesterday, when I arrived at the
20 Commission, I greeted my learned colleague, Mr Hoffman, who immediately indicated that he does not know me. He does not recognise me. Yet, we have been involved in the matter that gave rise to this question, with my learned colleague for three years, up to May 2011, 2012. I am, I am
25 not alleging that Mr Hoffman is one of those critics, because I recall that he accepted that he could not remember many of those things. Now, the events ...[intervene]

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ADV HOFFMAN: Mr Chair, I must object to this. What does this have to do with re-examination of the witness? It is correct that I could not recognise Mr Moerane and that was my error. I attributed it to the amount of thoughts
5 [indistinct] around inside me and I apologised to him immediately. I thought that I had made peace with him about it and if he wants to make fun of that now, then I am going to ask you to ask him to do what he did a moment ago, which is to get on with the re-examination and stop making
10 that kind of comments, because it is not necessary.

CHAIRPERSON: Thank you, Mr Hoffman. I will tell Advocate Moerane to get on with the re-examination.

ADV MOERANE: I will do so, Chair. That was just a demonstration of the fallibility of memory. Otherwise, I shall
15 and I was definitely not making fun of, of my learned colleague. Now, Mr President, you have been called upon to recall matters that occurred 16 and 15 years ago, meetings that took place 16 and 15 years ago. Now, how often did you have Cabinet meetings over the period of about 15
20 years, when you were in government?

MR MBEKI: Chairperson, the, the routine then, was that there would be a series of Cabinet committee meetings that would meet, during that particular week and the following week, there would be a meeting of Cabinet. So, it would
25 have been at a certain stage between, in, in the fortnight, there would probably be at least four, one Cabinet meeting and then perhaps three Cabinet committee meetings that I

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would have to chair.

ADV MOERANE: And this, this was over a period from 1994 up to September 2008.

MR MBEKI: That, that is correct.

5 ADV MOERANE: You have been asked certain questions, in fact, a number of questions, relating to the rationality of the decision to make these acquisitions. Can you just summarise how you, as a member of the IMC and as a member of the Cabinet, later President viewed the rationale
10 and the rationality of the acquisition?

MR MBEKI: Well, Chairperson, I mean, our first consideration that we had to take into account, was what the Constitution says about this matter and, and what therefore, what the obligations of the executive, of the executives
15 were, considering what the, what the constitution says. So, that is the first consideration and certainly, within government the view was that the executive had an obligation to respect what the Constitution said. Apart from which, as I had said earlier, Chairperson, we knew for a fact
20 that practically, that indeed, it would be necessary to look at the needs of the National Defence Force, in terms of re-equipping it. So, that, that is a strategy. So, therefore, we then took all of these necessary steps to, to look at this matter in a detailed manner as possible, as rationally
25 manner as possible, within the context of overall government policy, described then as, as the Reconstruction and Development Programme, the RDP. To say, within the

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context of, of that programme, how do we handle this, this particular matter? So, so, that is the thinking that, that took place and therefore the preparatory work that had to be done and the subcommittees, then when the actual process started, we had to set up and so on. The, the rationale of it, I am saying that even from the Constitutional point of it disrupts with the rationale. It does not tell you what, what you will do [indistinct] equipment, obviously. But, in the process of, of estimating that, then of course, you then have indeed, to take these rational decisions and, and act in a rational manner. Indeed, Chairperson, you might recall that the, the approval of the Bi-Cabinet of the proposal by the, the IMC we should acquire the following equipment, the Cabinet agreed to that in 1998. But, it was only in April to mobilise signing of, of the agreements in December, was it December or November, end of 1999. This is because, we had to spend that amount of time, even though Cabinet had said, okay, we accept this, than to spend virtually an entire year, to deal with this matter about the rationality of each decision, including affordability, within the context of the totality of the same again, within the context of the totality of government programmes. So, broadly, that, that, broadly that is what happened there, Chairperson, and so, definitely from the point of view of the government, it explained the rationale for this and indeed, when we prepared both the white paper and the defence review document, we stated the rationale about this thing. Then, as I say, in the process of

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actually handling the, the acquisition, the procurement, the, I am quite convinced we tried, we took this matter in as rational a manner as was possible. For instance, again, just as a last example, Chairperson, it was mentioned, when we
5 were talking about the affordability report, about all sorts of scenarios. That was part of arriving at a rational decision. These scenarios were prepared by the models, based on actually science, probabilities and so on, even including proposals that were made that the, even also, led to
10 suppose a worst-case scenario. That was part of the process of ensuring that we come, we arrive at rational decisions about, about all of these things. So, I am saying, both from the point of view that the advocate here, asked, from the point of view of rationale and rationality, certainly,
15 as government, we were quite convinced that what, what decisions were taken, satisfied both. Thanks, Chairperson.

ADV MOERANE: During his term as President of the Republic of South Africa, did President Mandela express himself on the defence review and, and the acquisitions?

20 MR MBEKI: Well, as you, as you indicated, it has been indicated, Commissioners, President Mandela was indeed, the President of the Republic 1999 and acted, as described by the Constitution. He was head of state and the government and therefore, all of the decisions we have been
25 talking about here, where we are saying they are government decisions, they were also his decisions. So, there was never an issue of him being distant or taking some

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position with regard to this, that was different from the rest of government.

ADV MOERANE: And would, would it be correct that he dealt with these particular matters, in various State of the Nation addresses?
5

MR MBEKI: Yes, that would be correct. Again, reflecting, State of the Nation address, the manner it is, it is prepared, is indeed, to take into account, the various elements of government policy, which would later of course, then be reflected in the budget that follows. So, indeed, it is a deep address that, even, even in that context.
10

ADV MOERANE: Are there any concluding remarks that you wish to make, particular, particularly with regard to the allegations of corruption that have been in the media over the past so many years?
15

MR MBEKI: Yes, Chairperson. No, thanks for that. No, we, I am as a, as members of the Cabinet, we, we have been very concerned about this, that indeed, we had no, we had no problem whatsoever with citizen raising their concerns about something that they might have seen going wrong, that indeed, it was the duty of the citizens to, to raise those matters. But, equally, it was then, you have somebody, who makes this allegation, Chairperson, that all manner of corruption is taking place. Indeed, with everybody, everybody, certainly, during the time I was in government, we wanted to act on this and hoping that the people who made the allegations, will indeed, produce this evidence,
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which makes it possible for us to act against this. The government, Chairperson, has a general posture against the matter of corruption and took certain steps to address this, whether the steps worked or not, is something else, took
5 certain steps to set up, institutions within government, set up institutions between government and civil society, for all of us together to address this matter. So, now, as advocate has indicated, for all of these years, we have been saying, let, let this evidence be produced, so that action can be
10 taken, with regard to this. What has been extremely frustrating is that we had this over this 15, 16 years, something called the Arms Deal. There was never any deal, some Arms Deal. I think I know enough in this, Chairperson, to know why a phrase like this, is used. No Arms Deal, it
15 was an acquisition process, it was a defence procurement process. An Arms Deal is underpinned by a lot of corrupt matters. I think, I have said here, chairperson, that in terms of the process of this procurement that two committees which were decisive, one committee was the Inter Ministerial
20 Committee. The reason it was decisive, is because it had the possibility to reject, accept, amend recommendations that would come from structures below, that is why. Two, it was the only committee that had any possibility to make a recommendation to Cabinet, no other and only the people
25 who could take a decision on this, was the Cabinet. So, I am saying there is two committees, who were critical and decisive. So, it has been a view over these years, that

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indeed, with the matter of corruption, to corrupt this process, it is, you then had to make an impact on these two committees. We are, by no means saying that there not somewhere along the process down there, there might not have been somebody who was corrupted. We are not at all, saying that. But, to say, here are these two committees, who [indistinct] decision could ever have been made. It is critically important, that as we discuss this corruption matter, which is important, that as we discuss this matter, we have to address this issue, in truth. Start with the reason in my, I think it is called evidence in chief. I said, there were no decisions taken on an individual basis, because even if, there was a member of the IMC who had been corrupted and indeed, if there was, then let the information come out and see that action can be taken against that person. But, I am saying, even if that happened, that person would have to convince the other four members of the committee, because they would have taken a collective decision, unless, the briber was able to bribe all five, which is possible, in principal possible. But, in the end, Chairperson, even today, I am really looking forward to what I read that the Commission has done it very correctly, to say let the people who have been making the accusations, let them come and speak under oath and present this evidence. I do hope, Chairperson, that is what would happen, that the Commission, at last, gives us an opportunity for the people who have been making these accusations for all of this

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period about an Arms Deal, that the Commission, that what the Commission is doing, gives them the possibility to do this. It is important, because then, it also gives the country the possibility to deal with this matter to some finality. Ja, 5 on allegations that have been sustained for a decade and a half, simply, somewhere on the basis that they are allegations. Some of us, there was some reference, yesterday, to letters that I wrote as ANC President, in ANC today, which, however, I am finished, Chairperson. I am 10 saying, you have allegations which get sustained for this long period of time, without one single fact being adduced. So, I am saying, some of us entertain that there must be a reason, there has to be a reason why, in our society, it is possible to, to do that. It is some, there is a reason why it 15 was possible to do that. But, people can go banging drums about allegations and then you say and they say something that shows this allegation is correct, nothing. We can discuss another day, why I think, I know why, I knew exactly why, these allegations have been able to live a long, a 20 longer life as they have been. Thanks, Chairperson.

CHAIRPERSON: Thank you.

ADV MOERANE: Chair. Chairperson.

CHAIRPERSON: Yes. Advocate Moerane?

ADV MOERANE: Perhaps, in the light of, of cross- 25 examination of my learned friend for Mr Holden and others, once, once you end up with, with specific question. What was the proportion of defence standing, including the arms

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acquisition, as a proportion of gross domestic product, during the period we are discussing?

MR MBEKI: Well, we brought it down, Chairperson, as, as a percentage in GDP to 1.7 per cent of GDP. Thanks.

5 CHAIRPERSON: Thank you. Advocate Sibeko?

ADV SIBEKO: Chair, this would bring to the end the evidence of former President, Mr Mbeki.

ADV HOFFMAN: Chair, before we get to that particular point. I want to be given the opportunity of dealing with the
10 last penultimate reply that was given, in relation to the failure of the criminal justice administration in South Africa to deal with the allegations of corruption, which were really introduced for the first time, in reply. It was not covered at all, either in chief or in cross-examination and I do not
15 propose to be wrong about it, but I think we had thought of the provision to have the benefit of, of the evidence of Mr Mbeki on why there has been the failure of the criminal justice administration to deal with the allegations of corruption.

20 CHAIRPERSON: Mr Hoffman, are you sure you cannot deal with that, at the time when you lead your client. But, I thought that you have already cross-examined, yesterday. We are dealing with the [indistinct] here. When you cross-examined Mr Mbeki, you could have done that.

25 ADV HOFFMAN: I have cross-examined him. I have not dealt with the issue that has now been introduced as a matter of, of reply, as a matter of re-examination by my

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learned friend Mr Moerane. It is on that basis, because we have now, now gone and opened a completely different Pandora's box, that I am asking your leave to, to [indistinct] to Mr Mbeki, my instructions in relation to what happens
5 when attempts get made, to get the bottom of corruption [indistinct].

CHAIRPERSON: Advocate Moerane?

ADV MOERANE: Chairperson, I object to this. My learned colleague spent almost a whole day cross-examining
10 President Mbeki and part of the evening. The Commission gave him ample leeway to ask anything and he actually did deal with issues, relating to corruption. I do not know how many times he, he alleged that there was corruption and certain cover ups. So, he has had the opportunity. This is
15 not something new, which is arising. So, I, I object to him being given a second bite at cross-examination.

ADV HOFFMAN: If I cannot be permitted to reply to this issue ...[intervene]

CHAIRPERSON: Just hold on, Mr Hoffman.

20 ADV HOFFMAN: I am just asking.

CHAIRPERSON: [Indistinct] Mr Hoffman has had enough opportunity to cross-examine. We are not going to allow him to [indistinct] cross-examination. Thank you.

ADV HOFFMAN: You will say you are not going to allow a
25 reply to what has just been put to in the argument.

CHAIRPERSON: Thank you, Mr Hoffman, we are done with him. Whatever points that you want to raise, you can raise

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that when you lead your client, Mr Crawford-Browne. Thank
you. I think we have come to the end of this proceeding.
However, before we and before we finish, there is one issue
that was an application by Rights with Human Rights to
5 really call Mr Alec Irwin. We received this application, I
think, I am sure it is on Wednesday and I think I did make a
request that all these applications must be made available
to the legal representatives of Mr Irwin. I was made to
understand that was done. I have looked at the application
10 and I Advocate Moerane is of the view that we should grant
this application, unless if you can give me really strong
reasons why is it that we should not. But, I know I do not
find [indistinct] that this application and should be granted.

ADV MOERANE: Chairperson, I suppose I should indicate
15 what our attitude is. I know that ultimately the Commission
will, will make its own decision. But, as the Chairman will
recall that when Mr Irwin gave his evidence, the issue of his
cross-examination was debated at length, my learned
colleague, Mr De Vos, was asked several times, in fact,
20 given an opportunity to cross-examine Mr Irwin and on each
occasion she declined. On the basis that her client did not
have access to the contracts and on the basis that the
affordability report had not been declassified. Now, dealing
firstly, with the question of the affordability report, I think it
25 is common knowledge that my learned colleague's clients'
had this affordability report in their possession, long before
Mr Irwin testified. Furthermore, that particular report was

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declassified. In other words, there was no barrier to using that report. But, notwithstanding that, the invitation to testify was, was declined. So, as far as the affordability report is concerned, there is absolutely no basis for my
5 learned colleague and her client to cross-examine Mr Irwin further. With regard to the contracts, because now, that seems to be the issue, Mr Irwin did not testify on the subject matter, or the content of, of the, of the contracts. But, now, that is used in our submission as an excuse that would to
10 have him recalled. With, with respect, we submit that the reasons that have been advanced in, in this application have no merit. Five issues are mentioned in the letter, in 13.1. They seek Mr Irwin's recall in order to cross-examine him on the following issues. One, the objectives of the SDP's from
15 a Ministerial and Cabinet view. This issue has been exhausted. There is no purpose and no reason to recall Mr Irwin to discuss the objectives of the strategic defence procurement packages from a ministerial and Cabinet view. This issue has been exhausted. Two, the rationale of the
20 SDPP decisions at ministerial and Cabinet level, in the light of the content of the affordability report. I have already indicated, Chairperson, that that report was available, even before the day Mr Irwin gave evidence. So, that is not a reason, or basis to recall him. Three, the use of ministerial
25 or Cabinet discretion to change the initial terms of the SDPP contracts and in particular the use of multipliers in mid-projects. That evidence was tendered and there is no

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reason, absolutely no reason why that particular evidence was not canvassed with, with Mr Irwin and other witnesses, because Mr Irwin was not the only, and is not the first witness to testify about that. Earlier witnesses had done so and, and they were not cross-examined about that. So, number three, this is no basis for recalling. Four, the contents of meetings which Mr Irwin attended as a member of Cabinet and the Inter Ministerial Subcommittee, during which the SDPP was discussed. Chairperson, this is so wide, that I do not know what is actually envisaged by, by this particular reason. Mr Irwin gave evidence, regarding any important meetings he attended, where the SDPP were discussed. Five, is really no, no point, because it says other issues which may arise from his testimony. For, for those reasons, Chairperson, Commissioner, we submit that no case has been made out for the recall of Mr Irwin. Thank you.

CHAIRPERSON: Advocate De Vos, any other thing that you want to say, which is not contained in this application?

ADV DE VOS: Yes, Mr Chair. Just one thing and that is in view of, especially in view of Mr Mbeki's evidence, from which he relied heavily on the evidence of Mr Irwin. I would submit that it is of importance for this Commission to have Mr Irwin's evidence tested.

CHAIRPERSON: Thank you. We have looked at this application and we are of the view that the application should be granted. I think, we think that Mr Irwin should, Mr

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Irwin should be recalled. What we think that very important and I do not think that this issue was properly ventilated, is the issue raised in 13.3 of the application from Rights for Human Rights. That is issue, I do not think it has been properly ventilated and we will be keen to hear Mr Irwin also, on this point. So, the application is granted. Mr Irwin will have to come back for cross-examination. Now, the issue or comment, when do we do that? We have certain tentative views and we thought that you know, seeing that Mr Irwin is here, one, he does not have a subpoena, we have not subpoenaed him to come. Two, in the [indistinct] to give him a subpoena is going to take some time. Three, we thought that, as we are all here, maybe we can agree on the date on which Mr Irwin can come for cross-examination and try and get his commitment that he will be here on the day that we are going to agree upon. We were suggesting that, we should deal with him on Monday, this coming Monday. Advocate Moerane, is it possible?

ADV MOERANE: Chairperson, firstly, all the witness that I represent have actually not come before this Commission, because of subpoena. They, they have actually, willingly, voluntarily come here, to assist the Commission. So, the subpoenas are really not necessary for, for Mr Irwin and any of the other witnesses. Your evidence leader approached me, during one of the adjournments, regarding a possible gathering on Monday. Chairperson, it is inconvenient again, just like today was inconvenient, that desirous as I and my

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team are, of bringing this matter to conclusion, we shall make ourselves available on Monday.

CHAIRPERSON: Thanks Advocate Moerane. Advocate De Vos?

5 ADV DE VOS: Chairperson, I am unfortunately not available on Monday and or Tuesday. It is possible perhaps, that I can return on Wednesday. But, I am not sure whether that will be of any assistance. I am not here. I am obviously, going back today and I have other commitments
10 already that I cannot do anything about it.

CHAIRPERSON: Ja. I thought everybody will be available on Monday. I sure, [indistinct] advocate, is it not possible for you to try and think of something? [Indistinct] make, you see our problem?

15 ADV DE VOS: I accept that, but unfortunately, I am not in a position to be here on Monday or Tuesday.

CHAIRPERSON: Is it possible that your clients could bring somebody else, to, to [indistinct]?

ADV DE VOS: Well, I would obviously, not want to speak on
20 their behalf. But, I would submit that would be slightly unfair, Mr Chair, because the, I have, I have been involved now with the cross-examination of some of the witnesses in this case for a month or two, three and it has taken me quite a while to come to grips with the facts of, of, of this case, or
25 this matter. I do not think it will be possible to brief someone to be here on Monday. I think, in fact, it will be completely impossible.

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CHAIRPERSON: You know, before I think about this [indistinct] will be in a position to be [indistinct] it does not seem to be possible in any, oh, I see somebody else wants to give you some instructions, I think.

5 ADV DE VOS: No. The question that is asked is whether it is possible perhaps, to re-schedule Mr Irwin to come and give his, to be cross-examined after the phase 2. So, that is just, that it stands over for that time. But, that is just a suggestion, based on the reasons.

10 CHAIRPERSON: After phase 2, after your clients have testified. Okay. Advocate, the suggestion is that the cross-examination of Mr Irwin will happen at a later date [indistinct].

ADV MOERANE: Chair, without taking instructions, 15 speaking for myself, I, I would go along with that. But, obviously, I have to take instruction.

CHAIRPERSON: Mr Irwin is just behind you. He is just [indistinct] Advocate Moerane, please take instructions.

ADV MOERANE: Mr Alec Irwin is prepared to come on any 20 day. He is prepared to assist us.

CHAIRPERSON: Thanks a lot, Advocate Moerane. So, why do we not doing this other thing. Advocate Mdumbe liaise with all the parties and from there try and determine a date, which will be suitable to all.

25 ADV DE VOS: Commissioners, thank you.

CHAIRPERSON: Thank you. Then, the next issue is Monday. What is going to happen on Monday, Advocate

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Mdume?

ADV Mdumbe: Commissioner, and Commissioner Musi, the second phase of the commission's public hearings will commence on the 21st and Dr Richard Young is scheduled to
5 give evidence on Monday. We have received a letter from his attorneys, they are called [indistinct] in Cape Town. Dealing with the other issues, we think that it would be prudent with those issues in the presence of Dr Young and the evidence leader, in respect who was assigned to lead his
10 evidence and Advocate Barry Steenkamp and Advocate Karen Cilliers, I then made and will probably finalise today arrangements for them to travel to Pretoria on Sunday. Thank you Chairman.

CHAIRPERSON: And Dr Young has received, you have
15 served his subpoena.

ADV Mdumbe: Yes, Sir. He has [indistinct] and he has acknowledged receipt.

CHAIRPERSON: Thank you. I suppose that we were having problems in the end and that there were issues that he
20 wants to discuss with us. I will prefer that they must be discussed in a public domain. So, he must come here on Monday and he can raise any [indistinct] that he has with us and I will also expect the two evidence leaders who are assigned to lead his evidence also to be present here on
25 Monday morning. Thank you. Thanks a lot Mr Mbeki, thank you for, for giving evidence and Mr Irwin, thank you for agreeing to come for cross-examination at a date will be

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determined by the Commission. I will allow the two of you to adjourn. Advocate Moerane thanks a lot for the report. Thank you Mr Hoffman, thank you. We resume on Monday morning at 10 o'clock. We will now adjourn.

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(COMMISSION ADJOURNS)

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