

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

PHASE 2

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CHAIRPERSON: Good morning.

MS RAMAGAGA: Good morning, sir.

CHAIRPERSON: Ms Ramagaga, we are resuming.

5 **MS RAMAGAGA:** Good morning, Commissioners. Today we will be leading the evidence of Ms Reinette Taljaard. She is in ... she has taken the stand and she is ready to relate her evidence.

May I just indicate to the Commissioners that we would like to apologise for not starting at ten o'clock as we had intended to, because we had some logistical problems. We worked into the early hours of this morning arranging the bundle and we also tried to make some copies in the early hours of the morning, but then we could not finish and we only finalised that this morning. We were supposed to have also done some final consultation with the witness yesterday and that was only finalised today and it is not due to circumstances within either the witness' control or the evidence leaders' control. Thank you, Chair.

CHAIRPERSON: Thank you. Can the witness take an oath?

REINETTE TALJAARD: (d.s.s.)

CHAIRPERSON: Thank you.

20 **MS RAMAGAGA:** Right. Ms Taljaard, you have made a statement that is going to be used in the presentation of your evidence before the Commission. Is that correct?

MS TALJAARD: That is correct.

MS RAMAGAGA: And you do have before you a statement that appears on pages 1 to 36 of your bundle?

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MS TALJAARD: That is correct. Forgive me just in breaching the procedure, but I just also want to greet the Commissioners. Good morning Commissioners.

CHAIRPERSON: Good morning.

5 COMMISSIONER MUSI: Good morning.

MS RAMAGAGA: Thank you. Will you please turn to page 36 of the bundle. Commissioners, we will only be using one bundle that is put before you. The second bundle that may be brought will just comprise of the book "Up in Arms", written by the witness. Yes. Are you at page 36? Do you recognise
10 the signature that appears at the bottom of that page?

MS TALJAARD: I do. It is mine.

MS RAMAGAGA: And do you confirm that you when ... the statement that appears on pages 1 to 36 is your statement and do you confirm the truthfulness of the facts that appear in that statement?

15 MS TALJAARD: I do.

MS RAMAGAGA: You ... to the bundle there is also your curriculum vitae which appears on pages 37 and 38 of the bundle. Do you confirm that that is your curriculum vitae?

MS TALJAARD: It is.

20 MS RAMAGAGA: Now shall we then go back to the first page of your statement. You are an adult female Senior Lecturer in the Department of Political Science at the University of Cape Town and you are also a Commissioner at the Independent Electoral Commission?

MS TALJAARD: That is correct.

25 MS RAMAGAGA: And you were appointed a Member of Parliament for the

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Democratic Party in 1999 and subsequently as a member of the Standing Committee on Public Accounts, during April? May I just correct this? During January /February 2001?

MS TALJAARD: That is correct, as corrected.

5 MS RAMAGAGA: Commissioners, I would like to request that paragraph 2 of the statement be amended to read:

“During January/February 2001”.

CHAIRPERSON: Thank you.

MS RAMAGAGA: Thank you. Now you have been requested to provide
10 evidence to the Commission relating to the acquisition of the SDPPs and mainly your evidence will focus on the oversight role of SCOPA and you have actually indicated your willingness to assist the Commission to an extent possible, am I correct?

MS TALJAARD: That is correct with the advice that I have also received
15 from the evidence leaders with respect to my role as a Commissioner, for which I am grateful.

MS RAMAGAGA: Right, thank you. Will you then turn to the second page of the statement? Please take us through [intervenens]

CHAIRPERSON: I am sorry, Ms Ramagaga, just before you proceed. I
20 could not quite understand what the witness is saying now. Because she seems to be suggesting that she is going to testify about the oversight role of SCOPA and she further said that taking into account her functions ... I do not quite understand what does it mean? Can you just ask the witness to clarify, because we have five terms of references as far as this Commission is
25 concerned, and I think the witness understands what those terms are. I

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thought she is going to touch on one of the five, but then [indistinct] is going to be [indistinct] with the oversight role of SCOPA and she also talks about her current functions as a Commissioner. I am not quite sure what does that actually mean? Can you just ask the witness to clarify that to us?

5 MS RAMAGAGA: Thank you, Chair. Ms Taljaard, do you understand the Chair's concern? Will you please address that, please?

MS TALJAARD: I will happily do so. Thank you also for the opportunity. Mr Chairman, in terms of the issues related to the Electoral Commission Act, I had concerns with respect to Section 9(2) of the Electoral Commission Act, because Section 9(2) of the Electoral Commission Act indicates that Commissioners in terms of their conduct, should not be expressing themselves on matters that are in contention between parties and I was advised by the evidence leaders, that in terms of the interpretation of statutes and indeed clause 2 on the interpretation of the Act, as well as clause 4 of the Electoral Commission Act, I would still be at liberty to testify as laudably as possible.

10
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I had reservations but the evidence leaders last night provided me with legal opinion which, I think, perhaps ought to also be read into the record of these proceedings.

20 CHAIRPERSON: Ms Ramagaga, you see my difficulty is that I thought you have called the witness to come and testify and help the Commission to deal with the five terms of references that we have, and I thought the witness... I have seen this book ...I mean I have gone through the book and I was much more interested in the things that she mentions in this book, because they are relevant for our terms of reference, then I would not want a situation

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where she says that you know, I am unable to talk about other things because of my current position. I really do not think that her current position really stops her from giving evidence here. I do not think that she can withhold some information from us, saying that because of her current
5 position. Her current position has got nothing to do with what we have called her to testify about. She needs to tell us as much as she knows, about what happened during this procurement and if she knows our terms of reference are, [indistinct] is the one that we are interested in and we thought [indistinct] she deals with it to a great extent with 1.5 and that is why we suggested that
10 she must be put on the list of witnesses.

Can you just please help us and deal with that, because if it is going to be an academic lecture about what should have happened and what should not have happened, I am not quite sure that is going to help us. We are interested in knowing exactly what she knows about what happened in this
15 procurement and particularly dealing with 1.5, which deals with criminality [indistinct]. Are you in a position to take the matter any further, Ms Ramagaga?

MS RAMAGAGA: Yes, thank you, Chair. May I just indicate to the Commissioners, that the manner in which this statement is structured is such
20 that the witness would talk laudably about topics that are listed there: the executive accountability ... she will address the tensions between the Executive and Parliament in relation to the SDPP procurement. She will talk about the contractual validating questions and corruption issues you know, those also touch on the issues of impropriety and may I also indicate to the
25 Commissioners, that the witness has not burdened her statement with the

detail in the book. But in the presentation of her evidence, there will be cross reference to the documents that are attached to the statement, as well as the book. I have indicated to the honorable Commissioners that the ... I think very soon the book will be placed in front of the Commissioners to ... so that
5 they could be also cross referencing thereto.

So it is just the scheme of things as to how the statement is structured, but as it goes on, it will be touching on specifics and where necessary, it will also be touching on ... you know presenting a [indistinct] relating to the concepts that are addressed.

10 Now regarding the issue of the witness' position as a Commissioner of the Electoral Commission, she has I think adequately addressed the Commissioners about that to say she had reservations and she brought this to our attention very early during our consultation, and we then undertook or agreed that we would give her an opinion on ... our opinion on the
15 interpretation of that provision, and that was done and it was sent to the witness. Maybe the only oversight that we did was failure to then make it part of the ... of the bundle, and we will hand that up in due course. But she has expressed an understanding that you know thanks to the opinion and the engagement, she now fully understands that she should be in the position to
20 can respond to all questions that are put to her. The opinion also does address that, Commissioners. Thank you.

CHAIRPERSON: Thank you for that explanation. It is just that I wanted to make certain that she is given an opportunity of telling us as much as possible from what she knows, particularly related to item 1.5 of the terms of
25 reference which deals with criminality. I did not want it to appear as if she is

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going to hold back because of those concepts and that is why I thought that you know, we need to address this issue quite early.

But thanks a lot for the explanation. It appears as if you ... you have adequately dealt with that issue.

5 MS RAMAGAGA: Thank you, Chair. I just hope that I have characterized the understanding of this witness well and maybe she should be given the opportunity to just indicate as to whether she does ... whether I have characterized her understanding well.

MS TALJAARD: Thank you very much, and thank you also to you
10 Mr Chairman. I have to say that having served now in the Constitutional Office for three years, I have a very keen awareness of what it means to prioritise the conduct of a Commissioner in terms of the law. So there will be times when I will feel in this context that those duties and obligations to the Constitution may be in conflict with some of the issues that will arise.

15 That will in no way deter me from expressing myself with candor. That has always been the way in which I have expressed myself in the public arena, but I do have a duty to the Constitution and to the obligations in the Electoral Commission Act that I do believe would override in certain cases.

But I have structured the statement as candidly as possible and I
20 expect the evidence leaders to also lead my evidence as candidly as possible. Thank you.

MS RAMAGAGA: Thank you. Should we proceed, Chair?

CHAIRPERSON: Thank you. You can proceed.

MS RAMAGAGA: Right, thank you. Now shall you then go back to page 2
25 of your statement? Please take the Commission through paragraphs 5 ...

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paragraphs 6, 7 and 8 of the statement.

MS TALJAARD: Thank you so much.

“The facts contained in the statement are, unless the context indicates otherwise, within my personal knowledge and are to the best of my
5 *knowledge and belief, true and correct.*

I am privileged to be here to share some of my experiences as a Parliamentarian over 13 years ago with you today. I hope and I trust that the perception that the witnesses during this cycle of the Commission’s hearings, are somehow here as whistle blowers, or those who have to table the
10 *allegations of corruption, will be addressed both by those of us who testify here about the clear policy implications of the decisions that were taken around defence expenditure in the early years of our democratic state, as well as the lessons from this experience which we can all learn, to strengthen our democracy. This will be the focus of my testimony.*

15 *Such approach will not only enrich the subsequent recommendations of this Commission, but also the deliberations that our country will have of our new threat analyses, as well as possible future procurements in accordance with the new defence review and debates about the strategic posture of the SANDF, as well as the [indistinct] and procurement decisions*
20 *that may flow from these discussions, which will undoubtedly include a discussion about the expenditure on defence as a percentage of GDP, in the face of the imperatives to build an African standby force under the auspices of the AU Peace and Security Council.*

During these debates the spectra of the arms deal will be there and
25 *we will therefore all have a duty to ensure as much light as possible flows*

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from the submissions [indistinct] if we are to have future policy debates with a semblance of rationality.”

MS RAMAGAGA: Right, thank you. Please turn to ... are you now at page 3 of the statement? Yes. You mention in paragraph 9 of your

5 statement that :

“If we replicate any aspect of the decision making models that were in place at the time without critically interrogating what went wrong, and learn the requisite accountability lessons, we will be doomed as a country to repeat them.”

10 And then you go on to the next paragraph to indicate that there are certain issues that you would like to touch on in your statement. Now the next page, page 4, Section B that deals with the Section 9(2) of the Electoral Commission Act.

15 Now in the light of the discussion that we had earlier with the Commissioners just to clarify the issues, would you still want to go through this portion of the statement, or would you just like to address any issues that are outstanding and maybe even introduce the opinion that you received from the evidence leaders?

MS TALJAARD: I would like to do so. I am not sure whether I am at liberty 20 to read the legal opinion into the record at this point, or whether that could be circulated, or whether the Commissioners would prefer for that to be read into the record?

MS RAMAGAGA: The ... I think the essence of the opinion has already been placed on record and maybe just for the completeness of the record, 25 what you should ... [indistinct] a copy of the opinion, if you have it with you.

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MS TALJAARD: Unfortunately I only have one in electronic form.

MS RAMAGAGA: Commissioners, with your indulgence, we will hand up the opinion during the adjournment. Thank you. Then you may proceed, Ma'am.

5 MS TALJAARD: I shall therefore not ... not to waste the Commission's time, proceed with paragraph 15, correct?

MS RAMAGAGA: Yes?

MS TALJAARD:

"I was elected to our country's second democratic Parliament in 1999.

10 *One of the Parliamentary Committees on which I served was the then Portfolio Committee on Public Enterprises. I also served as an alternative for my then political party, the Democratic Party, as an alternate member of the Portfolio Committee on Finance."*

MS RAMAGAGA: Thank you. Now in the following paragraphs 17 and 18,
15 and 19 you are dealing with the ... your engagement especially with regard to the invitation that you received as a member of the Public Enterprise Portfolio Committee regarding the defence industrial participation component of the countries as DPP. Now in paragraph 18 you say:

"This visit took place on the 2nd to the 7th day of July 2000."

20 Will you take the Commission through paragraphs ... the paragraph 19, regarding this trip?

MS TALJAARD: Thank you. I think that this paragraph also shows clearly that long before I became a member of SCOPA, the issues on the Defence Industrial Participation were there, so let me just proceed.

25 *"We visited the Defence [indistinct] Agency at Farnborough, as well as*

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GK in Westland, BAE Systems, the Defence [indistinct] Services Organization and Rolls Royce. All these entities were closely linked to the Strategic Defence Package and the BAE [indistinct] a core component of the deal, the most expensive part of the defence procurement.

5 *Prior to the departure of the Portfolio Committee, many of its members, including myself expressed a concern and the absence of a proper program for the visit to the United Kingdom. However, it soon became clear that the purpose was to further clarify the bills of DESO and the DDA and these entities' approach to offsets and smart offsets and all the entities*
10 *visited including the supplier companies, spent a significant amount of time discussing the offset obligations in the SDP with the Committee members."*

May I continue?

MS RAMAGAGA: Yes. Yes, you may continue.

MS TALJAARD:

15 *"Upon our return to South Africa I wrote to my then Chairman, Mr Sekiwe Delot, indicating that it might be a prudent approach to hold hearings on offsets along with the Portfolio Committee on Trade and Industry, given the significant role these offset obligations appear to have played in the SDP selection criteria for the military equipment that was*
20 *referred by the Interministerial Cabinet Committee."*

MS RAMAGAGA: Right. Excuse me please. You then refer to ... please switch off. To this letter as RT1A in the bundle. Is there anything that you would like to highlight in respect of that letter?

MS TALJAARD: I think the letter is relatively self-explanatory. What you will
25 note is that there is a strong emphasis on the Denel component of the

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offsets.

MS RAMAGAGA: The letter that the witness is talking about, Commissioners appears on pages 39 to 40 of the bundle. Right. You may then proceed, Ma'am. In paragraph 21 you are now dealing with the Auditor General's
5 special review report and conclusion.

MS TALJAARD:

*"During 2000 the Auditor General's special review of the selection processes of strategic defence packages for the acquisition of armaments in the Department of Defence, concluded as follows: (and I quote from the
10 actual special review) as mentioned in paragraphs 3.1 and 3.2, material delineations from generally accepted procurement practice were discovered. The explanation provided by DOD for this material delineation, does not appear to be satisfactory. Based on the review performed at primary contractor level, there were no other material findings, other than those
15 mentioned in paragraphs 3.3 to 3.9.*

*The review focused mainly on the award of contracts to primary contractors. Many allegations regarding possible irregularities and contracts awarded to sub-contractors, exists of which the finding in paragraph 3.6.1 is an example. (That reference was to the Corvette incidentally.) The relevant
20 pages from the Auditor General's report are attached hereto as Annexure RT2."*

MS RAMAGAGA: And Commissioners the ... that annexure appears on pages 42 to 48 of the bundle. Is there any portion that you would like to refer to in particular on that annexure?

25 MS TALJAARD: Just to draw the Commission's attention to the paragraph

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that deals with the [indistinct] in particular and I have already quoted from the elements in the conclusion that highlighted the concerns about the subcontracts. I just want to emphasize that from the document.

MS RAMAGAGA: Right then. Will you then proceed to paragraph 22 where
5 you are making a recommendation?

MS TALJAARD: This is fortunately the recommendation of the Auditor General.

MS RAMAGAGA: Okay. Yes, please read that into the record.

MS TALJAARD:

10 *“I recommend that a forensic audit or special investigation into these areas be initiated. Furthermore I am concerned that the guarantees for national industrial participation may not be sufficient. I [indistinct] to this conclusion by the Auditor General in 2000. However, the specific areas [indistinct] in these paragraphs included the following areas where
15 inadequacies were noted: inadequacy with performance guarantees of the national industrial participation [indistinct]; the MOD policy; the armaments acquisition policy; the negotiation stage; the tender procedure; subcontracting; the negotiating phase; the budget; arithmetical and clerical errors.”*

20 Once again these are drawn from the original special review that then formed the basis for SCOPA's 14 Report.

MS RAMAGAGA: Right, thank you. Then in the following paragraph, you are talking about the meeting that ... of the hearings that were held by SCOPA as well as the subsequent meeting that was held where you were
25 invited to attend and discussions were held around the joint investigating

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team that should be constituted and you do express a view regarding why it was necessary to have certain institutions included in this joint investigation team. Would you take the Commission through that?

MS TALJAARD:

5 *“During October 2000 the hearings of the Standing Committee on Public Accounts with the Department of Defence, pursuant to the special review by the Auditor General South Africa of the selection processes of the strategic defence packages for the acquisition of armaments at the DOD, drew my attention and I heard that SCOPA was going to hold a meeting with*
10 *all the agencies involved. This would have included the National Director of Public Prosecutions, what was then colloquially known as the Heath SIU, the [indistinct] office and the Public Protector. Mentioned in the 14th Report on the Arms Deal at the [indistinct] offices in Pretoria to discuss firstly their respective mandates and powers and how these would overlap and*
15 *complement one another. As well as secondly the need for a proper budget for the investigation that SCOPA had called for in its 14th Report as a Committee which the National Assembly had adopted.”*

MS RAMAGAGA: Now in the following paragraphs you talk about where you know ... where your interest lay with regard to this meeting and the
20 SCOPA interaction relating to the issues of SDPP and you also make reference to what happened ... the engagements that the participants were involved in and that is fairly in the public domain and maybe you should then proceed to paragraph 27 of your statement where you make reference to specific legislation that you mentioned there. The SIU Act. Please proceed
25 to deal with paragraph 27 of your statement.

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MS TALJAARD: Thank you.

“It was during this meeting that my attention was drawn to sections of the Special Investigation Units and Special Tribunals Act, the founding legislation of what became known as the Heath Unit in reference to
5 *Judge Willem Heath who was the founding head of the unit, which provided for the unit to have the power to cancel contracts that were corruptly concluded. This is an important matter and detail to which I will [indistinct] discuss the contractual [indistinct] clauses of the SDP contracts, sections 20 and 22 which I believe have been declassified and it is linked to this power of*
10 *the Heath SIU. A copy of the Special Investigation Unit and Special Tribunals Act, is attached hereto.”*

And if I may refer to that?

MS RAMAGAGA: Yes, you may proceed to refer to that, but just before you do that, Commissioners, that annexure that the witness would like to refer to,
15 appears in pages 49 to 63 of the bundle and in particular she would like to draw your attention to pages 51 and 52 of the bundle.

MS TALJAARD: Thank you and I do so humbly in the context of those who are much better qualified than I am legally to reflect on these matters, but I humbly draw your attention to a number of clauses. The issues arise with
20 respect to clause 4, 4(1)(c), 4(1)(d) and 2. As you can see the Heath Unit has the power ... well let us just refer to the Special Investigating Unit and not deal with the colloquialism of the founding name, because that happens to be just coincidental, but when they are looking at the powers here, it is clear that the Special Investigating Unit can conduct civil proceedings and
25 special tribunals and that there is a very clear link between the special

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investigating unit's ability to also grant specific areas of civil proceedings, and then to have an immediate link with a special tribunal.

I think that speaks quite clearly and also the fact that there is a compulsion on the unit to draw to the attention of the prosecution service,
5 any issues in terms of the sections and as you can see in section (d) “

“To refer evidence regarding or which points to the commission of an offence, to the relevant prosecuting authority.”

And in sub 2:

*“The special investigating unit must as soon as possible after it has
10 obtained evidence referred to in section 1(d), inform the relevant prosecuting authority thereof whereupon such evidence must be dealt with in the manner which best serves the interests of the public.”*

And if I may just dwell on this point. I attended that meeting as a member of Parliament who had an interest in the industrial participation component of
15 the deal and because I had been party to a lot of the legislation that created some of the entities concerned, and it was a historic meeting that I also wanted to be present at to see how the discussion flowed and there was a very strong discussion between the Auditor General's office and the representatives of the special investigating unit, as well as the National
20 Director of Public Prosecutions, about these complementarities, as you can see them in the legislation in sub 4.

MS RAMAGAGA: Right, thank you. Will you then proceed to deal with paragraph 28 of your statement which deals with the contractual cancellation clauses that are part of the agreements that were concluded. Continue.

25 MS TALJAARD:

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“As the contractual cancellation clauses leave the agenda setting power for cancellation marginally in the hands of the sellers, in the case of convictions for corrupt activities, it is an important element of the sovereignty of the South African state to record that the South African state also has powers of contractual cancellation in accordance with its domestic laws and specifically in relation to the powers of the then SIU, the Heath SIU. I attach copies of the relevant termination clauses of the SDP contracts in this regard as annexures.”

MS RAMAGAGA: And the annexures appear on pages 73 and 74 of the bundle. Would you like to take the Commissioners to those specific pages and specific paragraphs of [indistinct]

MS TALJAARD: Thank you. I would like to do so once again on the understanding that all these documents have been properly classified ... declassified as I have been advised.

“In terms of Section 20 if the seller or any of its members or representatives in relation to negotiating, entering into or execution of the agreement has been convicted of having committed an offence under The Prevention of Corruption Act, or analogous legislation in any relevant jurisdiction by for example having promised or caused on its behalf to be promised, offered or given any kind of illegal gift, illegal advantage or illegal consideration, or been convicted of fraudulent, illegal or criminal acts in obtaining or in the execution of the agreement, ARSMCOR and the South African Government acting through them, may summarily cancel the agreement and claim damages resulting from the cancellation or claim an amount equal to 5% of the total contract price, as agreed for pre-estimated

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liquidation damages. The seller shall not for the duration of the supply terms and for the period of 12 months after completion thereof, employ any employee or former employee of the South African National Defence Force or ARMSCOR who is or was in any way involved with the agreement, without

5 *the prior written consent of the Chief of the South African National Defence Force, or the Managing Director of ARMSCOR respectively or their deputies, DOD or DTI, who is or was in any way involved with the agreement, without the prior written consent of the Directors General of DOD or DTI respectively.”*

10 MS RAMAGAGA: Right then, will you proceed to take the Commission through to paragraph 31 of your statement on page 10.

MS TALJAARD: I am commencing on paragraph 29.

MS RAMAGAGA: Yes?

MS TALJAARD:

15 *“During the prelude to the opening of Parliament and the State of the Nation Address in 2001, my then party leadership in the Democratic Party decided to shuffle the DP SCOPA membership on the recommendation of the journalist and appointed me to head the SCOPA team for the purposes of the committee’s role in dealing with the strategic defence procurement*

20 *question. Another consideration was the complementarity that exists between the work done in SCOPA and the work done in the Portfolio Committee on finance, as these committee memberships were often held by same party spokesmen in the past. As a result I became a member of SCOPA in 2001. It is in this capacity that I found myself dragged into the*

25 *rapidly escalating controversy surrounding SCOPA and its arms deal probe.*

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The controversy would impact executive legislative interactions quite severely.”

MS RAMAGAGA: Yes, you may proceed to paragraph 31.

MS TALJAARD: Thank you.

5 *“It has only become clear to me with the benefit of hindsight and following the receipt of further information, that at the time of the DOD hearing in SCOPA in October 2000, the DOD had written to Chairman Dr Gavin Woods pointing out that some of the questions SCOPA wanted answers to, could not be answered by the officials of the DOD, but would*
10 *have to be answered by members of the Inter ministerial Cabinet Committee and Cabinet as key final decisions about specific equipment selections were made at that level. This did not occur before the adoption of the 14th Report, of the Standing Committee on Public Accounts, and became a main subject of criticism of SCOPA which the Ministers concerned leveled in a press*
15 *statement in early 2001 and then it finally did appear before SCOPA in February of 2001. The press statement released by the Ministers and the transcript of the proceedings before SCOPA are attached hereto.”*

MS RAMAGAGA: Right, and the transcript appears on pages 120(a) to 219 of the bundle, Commissioners and RT8 the Ministers press statement
20 appears on pages 101 to 102. Now in respect of RT9 in particular, is there anything that you would like to bring to the attention of the Commissioners?

MS TALJAARD: Yes, there is.

MS RAMAGAGA: Yes, please go ahead.

MS TALJAARD: I would like to draw the attention of the Commissioners to
25 page 108 of the transcript and just to point out for accuracy, I believe this

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may be the Minister of Finance speaking, or ... I just want to clarify. Yes. It seems to be and I am quoting from the second ... the third paragraph.

“This means and I think it is an important point that four departments and four Ministers were immediately involved and we were [indistinct 38:12]

5 *Deputy President, subsequently President Thabo Mbeki. This means that the evaluation process which was examined by the Auditor General and in the questioning of SCOPA, is not identical to the decision making process. The decision making process was informed by that evaluation, but the decisions were taken by the Cabinet subcommittee making*
10 *recommendations to the Cabinet. This is important from our viewpoint because it means that we have structured the process in a manner that many players were involved in the decision and this was done explicitly to ensure that we could manage this decision in the optimum manner.”*

I am dwelling on this issue, because to the best of my subsequent
15 understanding, the documents that were provided to the Standing Committee on Public Accounts are indeed the documents of the Inter-Ministerial Cabinet Committee and they were not fully fledged Cabinet documents, and it is something that also arose in the hearing of SCOPA. That is my impression and this is why I believe important to raise it with the Commissioners,
20 because it is of significance because SCOPA interacted with these documents in the belief that these are Inter-Ministerial, are not the Inter-Ministerial Cabinet Committee documents alone, but the actual fully fledged Cabinet discussions on the overall procurement and I think it is something that I also want to draw the Commissioners' attention to.

25 CHAIRPERSON: Sorry, Ms Ramagaga, let me just understand what the

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witness is saying. Are you saying that the decisions were not taken by Cabinet, but they were taken by the Inter-Ministerial Committee? Or what are you saying? Maybe I misunderstood you?

MS TALJAARD: Mr Chairman, I am trying to clarify that the Inter-Ministerial
5 Cabinet Committee minutes were the documents that Mr Shaik sent to
Dr Woods, to the best of my understanding and I believe those are the
documents that have been declassified.

CHAIRPERSON: Okay.

MS RAMAGAGA: Should we proceed, Chair? Right, you may proceed to
10 the next paragraph.

MS TALJAARD: That is the best of my understanding based on my
interactions with the evidence leaders.

MS RAMAGAGA: Now the next paragraph is paragraph 33. May you
please proceed.

15 MS TALJAARD:

*“At this point I have to indicate that these reflections on events, are reflections tinged with an awareness that I was a member of the opposition political body politic at this stage. As the ranking member of the opposition in SCOPA during this process, it was required of me to try and ensure that the
20 political party that I represented attracted sufficient media coverage for its work on this matter. Some of the testimony that I give will therefore reflect those perceptions of that time from the vantage point that I then held, that of a member of the Democratic Party which subsequently ceased to exist as a political party during the period when the DA was formed. I will be mindful of
25 Section 9(2) of the Electoral Commission Act as I do so.”*

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MS RAMAGAGA: Yes, continue.

MS TALJAARD:

“During this period the Chairman of SCOPA and I tried to ensure that SCOPA would have some interactions with the investigating teams. These interactions became sporadic and bogged down in legal discussion about powers SCOPA did and did not have. Similarly the Standing Committee on Public Accounts’ Chairman had copies of documents which were sent to him by the DOD which were subsequently transferred to Madam Speaker in early 2001, and to Parliament where they would be held under lock and key and when they became immediately protected by the powers of privileges of Parliament. The documents were sent to Dr Woods by the Chief of Acquisitions, [indistinct] and he later went back to Dr Woods indicating that he did not have the approval of Cabinet to release the sensitive Cabinet documents that he had sent to SCOPA and to the Committee, therefor. A letter from [indistinct] to Dr Woods is attached hereto as annexure RT10.”

MS RAMAGAGA: RT10 appears on pages 220 to 221 of the bundle. You may proceed. Do you want to refer to the letter ... the contents? Please proceed to paragraph 37.

MS TALJAARD: Thank you. I think it is best if other witnesses perhaps refer to the detailed content of that particular letter. Thank you.

“These documents also became the subject of legal [indistinct] as specific rules, specifically Rule 157 of the Rules of the National Assembly, governing the use of these documents and due to their classified status, members of SCOPA could not take notes or quote from these documents at any stage. This created difficulties in being able to pin Ministers down with

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specific questions in accordance with the Constitutional provisions of executive accountability to the legislature, as MP's who had read these documents, would not freely quote from them when asking questions to Ministers. However, members of SCOPA could spend time [indistinct] these documents and using them as a basis for Parliamentary questions as well as debates, both of which I did as they were in the [indistinct] areas of breakdown in Ministerial responsibility, as well as the legislature executive interactions under the provisions of the New Constitution of the Republic, that was signed [indistinct] by President Mandela in Sharpeville on the 10th of December 1996.”

MS RAMAGAGA: Right, now in this paragraph you say that:

“This revealed critical areas of breakdown in Ministerial responsibility as well as in legislative executive interactions under the provisions of the New Constitution.”

Would you please elaborate on that portion of your statement?

MS TALJAARD: If I may then with the indulgence of the Commissioners, go beyond the areas that deal with the issues in sub (d)? I am just asking for guidance from the evidence leaders.

MS RAMAGAGA: Yes, you may, if it contributes to a smooth flow of the evidence presentation.

MS TALJAARD: Thank you. Thank you for the clarification. I then turn to page 50 where these issues arise. Under the heading “Ministerial Responsibility and Collective Responsibility, chains of accountability broken, the Inter-Ministerial Cabinet Committee, the role of Mr Shaik, the [indistinct] and the terms of reference of the [indistinct].”

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“It is as a consequence of how we had sight of these documents that it became clear that various chains of accountability broke down during the strategic defence procurement process.”

And as you will know from the statement, these reflect my knowledge and my
5 perceptions on these documents.

*“Some, but not all of this can be attributed to the fact that certain laws of the Apartheid era for example the Exschegge Act, the Defence Act, had not as yet been brought into mind with the New Constitution. However, there are clear breakdowns that cannot be explained by these factors alone given
10 that new constitutional standards were in place setting a higher standard as a matter of legal and some would argue, moral principle. A further number of structural aspects have to be mentioned before breakdowns are highlighted. Firstly the South African Defence Secretariat who is responsible for acquisition and the key role players here are the Secretary of Defence as the
15 accounting officer and the Chief of Acquisitions, who was responsible for the industrial procurement policy for the DOD. The Defence Secretary chairs an armament acquisitions steering board which approves [indistinct 46:27] projects. The Secretary drafts contracts and the highest level and does not deal with subcontracted suppliers. ARMSCOR manages all acquisition
20 processes for the DOD and remained under the MOD after the 1992 restructuring of ARMSCOR/DENEL with DENEL taking control as the local defence industry falling under the Ministry of Public Enterprises. These breakdowns therefore contained important lessons for future procurements, wherein defence [indistinct] large scale infrastructure projects. Another issue
25 of crucial importance is to know that the country’s arms, acquisitions and*

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policy actors did not have any experience in one of the strategic arms acquisitions [indistinct] as past arms and procurement decisions had been on a case by case basis, as has been pointed out by DOD officials here and indeed at the public hearings of the joint investigating team in 2001. It is

5 *important to differentiate strategic arms procurement acquisitions, such as the strategic defence package, from others and it is a rare and expensive acquisition that becomes the responsibility of a country's executive and or legislative branches of Government and mindful of civil [indistinct]."*

And if I may just also draw the Commissioners' attention to a very good

10 academic piece of work by Justin Sylvester and Annette Sering on these issues, which will be of assistance also to the Commission and I will happily provide those references in due course.

CHAIRPERSON: Ja, I think let us just leave out other books, because you know this is not [indistinct] quote from another book. I am not quite sure that

15 is going to help us. This next paragraph she deals with other people's works. I am not quite sure helpful that is going to be.

MS TALJAARD: Mr Chair [intervenes]

CHAIRPERSON: [indistinct] Just hold on. I will leave that in your hands.

MS RAMAGAGA: Thank you, Chair. May I just ... the book that you would

20 like to refer to? It is in the bundle? Am I right, it is in the bundle?

CHAIRPERSON: It is not in the bundle.

MS RAMAGAGA: It is not in the bundle. Well, that in itself I think to an extent is a problem. If there is any further literature that you are of the view that it can be of assistance in the work of the Commission, I think ... without

25 imposing on the Commissioners to read or to look at that, it would just help to

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put a script of that and that is it. As to how it would feature if at all, or not, if it is something that is not within our ... yes. It will be a bit difficult for us now to start introducing other documents and I think maybe at this stage, the indication that we are getting and which is of course correct, is that the

5 Commission operates within the four parameters of the terms of reference and the Commission's main interest is how the evidence that is being presently presented, how is it going to assist the Commission in the execution of its function, with reference to the very [indistinct] that we are talking about. And the ... I think when we come to deal with the contents of

10 your book, most of the issues of interest will then come up at that time. So either we ... it is actually maybe not even necessary to go through the entire statement verbatim. Like I have said you can read into the record what is important and even speak to some of the provisions, or some of the paragraphs in the statement to highlight issues that specific paragraphs seek

15 to address.

MS TALJAARD: I will be looking for guidance from the Chair, because the book is not ... I have not sworn or affirmed the text of the book. I have the statement.

MS RAMAGAGA: Ja, I think now in terms of the statement ... the statement

20 that we have, it is not sworn to and it was also not taken under affirmation. The book is a public document. It will be moved into the evidence that you will be presenting and you deal with the questions like you have said, you will be led by the evidence leaders and you will then respond to the questions as they are put to you in line with what is contained in the book.

25 MS TALJAARD: I do not, Mr Chairman, want to turn this into a lengthy or

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verbose procedural conversation and I have very comfortably worked with my evidence leaders up until this point, and I hope that we will continue to do so throughout the course of the day.

The issue for me is there are complementarities between the statement and the book, but obviously one is at great liberty to write in a book
5 which is in the public domain and it has been checked, up and down for defamation, but I have a very clear desire to share the issues which I have sworn to in the statement and you will clearly notice, if I may proceed, that there are complementarities strong ones, between the book and the
10 statement, if I may do so.

I will naturally not try and not deal with the book. In fact there are areas where I would like to specifically refer to annexures in the book, that are relevant to my statement and I will do so.

So I do not want us to belabor the process but I want to be clear that I
15 have certainly sworn and affirmed my written statement with its annexures, and I am very happy that I did so. The book to the best of my understanding, does not form part of that. But I am very happy to deal with the complementarity issues. But I also do not want to just get stuck on procedure.

20 MS RAMAGAGA: With your permission, Chair, I would like to ask just for a short adjournment? At the beginning of the presentation of evidence we would need to place it on record that the witness has not been legally represented throughout from even the time of consultation up to now and it is ... it becomes our responsibility to ensure that there is some level of comfort
25 on the witness' part, and I would thus just request that the Commission just

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grant us an indulgence, just to discuss certain issues and then come back. It will not be a long discussion that we would like to hold and we will try to avoid asking for [indistinct] during the presentation of the evidence.

CHAIRPERSON: What time [indistinct] about 15?

5 MS RAMAGAGA: 15 minutes, Chair.

CHAIRPERSON: 15 minutes?

MS RAMAGAGA: Yes.

CHAIRPERSON: Okay, we will adjourn for 15 minutes.

MS RAMAGAGA: Right, thank you, Chair.

10 **(PROCEEDINGS ADJOURN)**

(COMMISSION REOPENS)

CHAIRPERSON: Can the witness confirm that she is still under oath?

MS TALJAARD: I do.

CHAIRPERSON: Ms Ramagaga?

15 MS RAMAGAGA: Thank you, Chair. We have conversed with the witness and we would like to request that, in the presentation of the evidence, we perhaps stick to the chronology of the order of the statement. The next area that we are going to deal with, after dealing with the executive responsibility, that we have done, would have entered contractual validity questions and
20 corruption issues. Now, that appears on page 12 of her statement. We, we request that the Commissioners, the Chair, cognisant of the fact that the witness did not have a private legal representative, when this statement was developed. We request then, for the indulgence that the witness be allowed
25 to go through her statement, in the order that it is arranged and, and attempt to bring in other documents that are not part of the bundle, will not be named

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and if a need is identified that certain other documents be introduced to the Commission, the team will try to find a way of dealing with that, but in a proper way. Thus, I request that the witness resumes the presentation of evidence, starting from page 12.

5 CHAIRPERSON: You can proceed then.

MS RAMAGAGA: Thank you, Chair.

MS TALJAARD: Thank you, Mr Chairman, I think we are all trying to make progress in good relations. So, let us, let us proceed then from page 12. I am proceeding from D.

10 *“Contractual validity questions and corruption issues, an umbilical link. As I have already indicated above, the question of the multi-agency probe that was recommended in Scopa’s fourteenth report, had a bearing on the inclusion of the Heath unit, specifically due to its powers and its ability to cancel or set aside corruptly concluded contracts. It had already, at that*

15 *stage, done so with respect to contracts for the provision of searching grants in the Eastern Cape, prior to the creation of SASSA as a national distribution agency and the synchronisation of such payment systems, to curtail corruption. The presence of [indistinct] referring to this as the SIU was therefore crucial. This so, as the contracts themselves, left the ability to*

20 *initiate nullification, due to a corruption conviction in the hands of the suppliers and furthermore, provided for immediate invalidity, if acts of revolving door employment occurred, with any of the officials involved in the procurement itself, commencing work for a supplier. This happened in at least one case, which is referred to. It is therefore, important to understand*

25 *that in terms of South African law, it would have been possible to cancel*

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contracts.”

CHAIRPERSON: I am sorry. I am sorry. I suppose, as we are not in a court of law, we will stop in order to get some clarification. Here you say, you are saying that, in paragraph 14, you talked about this revolving door
5 employment, having happened at least, in one case. Can you refer us to, to the relevant portions of your attachments?

MS TALJAARD: With your indulgence, Mr Chairman, we did compile these this morning. Chair, it is by implication included in the issues that relate to the Corvette agreement in seven and specifically, the termination clause is
10 there.

MS RAMAGAGA: The termination clauses, Chair, appear in pages 73 and 74.

CHAIRPERSON: Ms Ramagaga, I am aware of that. But then, the statement is saying, it says here that this happened in, at least one case.
15 That is what we are trying to find out, which cases she is referring to. Is there any [indistinct] so that we can make sure that it is really there, other that we have been provided with? Or can the witness explain what she means, when she says that it happened in at least one case. Can you give us particulars of that incident, because we would be interested in that?

20 MS RAMAGAGA: Alright. Thank you, Chair. Will you please elaborate on that?

MS TALJAARD: Mr Chairman, I think it is important to point out that it is not a case again, of which I have personal knowledge. It was an allegation.

CHAIRPERSON: What is the allegation?

25 MS TALJAARD: It was five allegations that were contained in the

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documentation. I think the documentation, otherwise known as the De Lille dossier, relating to a member of the navy, who was working with the German Frigate Consortium.

CHAIRPERSON: Who is that member of the navy?

5 MS TALJAARD: Mr Chair, these are allegations.

CHAIRPERSON: I understand, they are allegations, but then, those allegations remained and a person that they named, has to say in this state. So, the question is who is that person who has been named? We know that it is an allegation. But, then, we want to know who the person is, so that we
10 can go after that person. This is what we are trying to find out. The major portion of this Commission is to try and find wrongdoing. Then if you are aware of a possible wrongdoing, please give us the details. We want to know who that person is, so that we can approach that person and confront him, confront that person, if necessary.

15 MS TALJAARD: Mr Chairman, this person's name has been circulated in the media. But, because I do not have any personal knowledge, specifically, I will not do so. I have interacted with this process in good faith, without legal counsel. If I believe that becomes necessary, I may change my mind.

CHAIRPERSON: To be honest with you. I do not understand that. If you
20 are saying in the papers, that this person has committed misconduct and you say the name has been given to you, when we are saying to you that give us that name, so that we can be in a position to follow up leads. The [indistinct] the person acted, who was a navy member, acted contrary to the, to terms of employment and to the supply chains that the GFC entered into with the
25 South African government. We would want to follow up that person. Then,

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you can try and say that you cannot even give us a name, or cannot even give us the details. I am sure, there is very little we can do. We cannot force information out of you. But, then, I can assure you that is not helpful at all. It would have been much better, if at all, you were in a position to give us the name of that person, because I am sure, we would have tried to subpoena that person to come and explain. But, then, if you do not give us a name, we cannot, we cannot subpoena that person to come and explain. Then, if you prefer not to give us any details and you just want to now read this. I am sure we can go ahead. We cannot stop you.

5
10 MS TALJAARD: I am in your hands, Mr Chairman. I am also aware of the fact that the De Lille dossier has been given to the Seriti Commission for investigation. As this name arises in the De Lille dossier, I am sure that the Commission will be looking into these issues and I will continue to read my statement, with your indulgence.

15 MS RAMAGAGA: May we proceed, Chair?

CHAIRPERSON: You can proceed. I have made my point.

MS RAMAGAGA: Thank you. Alright. Will you then proceed to paragraph 41 of your statement?

MS TALJAARD: I will proceed to paragraph 41 of my statement:

20 *"It is therefore, important to understand ... [intervene]"*

MS RAMAGAGA: Just a minute. It seems to me ... [intervene]

COMMISSIONER MUSI: Let me, let me interrupt. You see, the difficulty I have here, is in this version, paragraph, the paragraph says:

25 *"And furthermore provided for immediate invalidity if acts of revolving door employment occurred with any of your officials involved in the*

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procurement itself, commenced working for a supplier. This happened in at least one case."

Now, that is a statement of fact. The question is now, which, which instance are you referring to here. You are talking of the De Lille dossier. The De Lille dossier has not got, contains no evidence. It contains only allegations, which the, the author of, De Lille, herself, cannot, cannot substantiate. You are probably aware of that, by now. So, to say here, this happened in, at least one case, when there is no evidence of such one case, it is, it is totally misleading. Is that not so?

10 MS TALJAARD: Mr Chairman, with all due respect, I actually want to take this matter, as well, with the evidence leaders. I had very little time, to review the final formatted statement, which I received from the evidence leaders. I think that it is critical, also the interest of my might and my reputation that I clarify with the evidence leaders, the version of the statement that I sent to
15 them and the version of the statement that was formatted and sent back to me. I do not know whether you would like another adjournment, while I do so, but I would like to request the opportunity to do so. Because I will feel very uncomfortable, if I have to leave this room, with an assumption that I am making unsubstantiated allegations and that could be attributed to an editing
20 issue between myself and the evidence leaders.

CHAIRPERSON: I understand what you are saying. This is your statement and basically, we are asking questions, about what you have already laid. This is contained in your statement. I am not quite sure, this point that you are raising now, where does it emerge from. The question is, you say that
25 one person, at least, has been mentioned, who was employed by GFC, when

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he was not supposed to. The simple question, who is that person, we want to follow that person. We want to subpoena GFC and ask them to come and explain why they did that. Now, you are saying to us, I cannot tell you who, who that person is. You know, that is not helpful, at all. Now, in any event, if
5 you want an adjournment to go and look at your statement again, as you want to say that you, you did not have a look at the statement again, we are prepared to give you that opportunity. But, then, just keep in, keep in mind that we want to know what actually happened. We are trying to find out, if at all, if any person, who was involved in any criminal conduct. If you do know
10 that person, if you do mention them here, you can be rest assured, we are going to ask you questions about it, because we want to approach those people and try to get answers from them.

MS TALJAARD: Mr Chairman, which is the reason why, in the interest of fairness to myself and in the interest of fairness to the evidence leaders, with
15 the time lines that we had at our disposal, in the time period that I have had, to deal with this issue. I would like to request the opportunity to do so. I am sorry, if we are going to keep adjourning. But, I am going to ask for that opportunity, because I had very little time, this morning, to ensure that the version that I emailed and the version that I finally signed was page by page,
20 clause by clause the same, or whether there was a formatting, or editing issue, that may have arisen this morning, because we were still working on this, this morning. I think it is in the interest of fairness to my mind as a witness and also in the interest of fairness to you, in seeking the answers that you would like to have that I do so.

25 CHAIRPERSON: And Ms Taljaard, we will give you all the chance that you

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need, in order to [indistinct] to your version, provided that it might be helpful to the Commission. If you do want an adjournment, we will grant you an adjournment, we are here to hear your evidence. What sort of time do you have in mind?

5 MS TALJAARD: Mr Chairman, if you want to step away from this point, then I can consult with the evidence leaders, during the lunch period, we can do so and I am very happy then, to consult with them and to come back. But, I am also very happy to provide you with the evidence that I do have, which is the table of on-going investigations and issues, on page 22 of the JIT report.
10 But, I am not sure whether I am going to be helpful, as a witness to you, in this regard, or whether Mr Du Plooy and the former members of the Scorpions are going to be of assistance to you. But, I am happy to believe that you ... [intervene]

CHAIRPERSON: Ms Taljaard, let me assure you, we are aware of those
15 allegations. We are aware of the JIT report. We have read the JIT report. Some of us have read it more than twice. We are aware about what Hawks have done. We had a meeting with them. We know exactly what they have done. I can just mention it to you that one or two of those members of the Hawks will be called as witnesses. So, we are aware of those investigations. I am
20 not sure if that is helpful to you, if you know that we are of the JIT report. We have read it several times. We are aware of what the Hawks have, have done. In any event, one or two members of the Hawks will be called as witnesses.

MS TALJAARD: I am delighted to hear that, Mr Chairman and also greatly gratified by that.

25 CHAIRPERSON: So, do you still need some time to talk to the evidence

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leaders, before you proceed with the, with the statement and if so, I was just trying to find out, more or less, how long do you need, 15 minutes, 30 minutes, so that we can know what time should we come back. I will come back to this issue, if I may, after the lunch break. But I am in your hands, in terms of guidance.

COMMISSIONER MUSI: Let, let her continue. She can read this thing after lunch.

CHAIRPERSON: Okay. We can proceed now, because of the time that we lost in the morning. I thought we will break for lunch at 1:30. Will that be okay, Ms Ramagaga?

MS RAMAGAGA: Yes. That will help, Chair. Because, I mean, the witness makes it clear that she is, she is to an extent, comfortable with her statement. But, if there are any, you know, sort of allegations, or things that are said in the statement that she, she believes she might not have said, that will be clarified, or she would stop at the time and then, want to relate with the comparisons then. But, her indications presently, is that she is in the position to can then proceed to present her evidence, with this statement, as it is.

CHAIRPERSON: Thank you. You can proceed then.

MS TALJAARD: I think it is important, Mr Chairman and Chairperson and thank you also, to the evidence leader. Because I think there are issues that I will look at very carefully, during the lunch break, with respect to the entire statement. Thank you. But, I will proceed with the areas that deal with the corruption issues. I just want to proceed then, from paragraph 41 and bearing in mind, as I have said from the beginning. I am interacting with this process, in good faith, without legal counsel.

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"It is therefore, important to understand that in terms of South African law, it would have been possible to cancel contracts, due to the involvement of the SIU. It is also critical to reflect on the constitutional standard that was set out in Section 217 of the new constitution. It is also transparent

5 *[indistinct] to this point, to bear in mind that this clause calls for that. This clause has recently been bolstered significantly by the Constitutional Court's ruling the Albeit case. In this case, it was not even necessary to establish corruption for the social security payment system of SASSA to be found wanting and the contract to be declared invalid. A simple non-compliance to*

10 *the procurement prescript that resulted in an outcome that breached Section 217 was sufficient. As the new constitution was in place, at this time, it could also have been used as a standard to bring about contractual cancellation. It is also important to note that even the payment of so-called commissions in the arms trade, is outlawed by the OECD convention on combating bribery of*

15 *foreign public officials. As the bulk of suppliers are OECD states, they are bound by these provisions and convictions for the commissions that they paid, would have been possible in any of their jurisdictions bordering South Africa, due to the provisions of the Corruption Act, as well as the activities of the SIU. Please note, would have been possible. This is further bolstered by*

20 *the public international law commitments that exist in terms of the UN convention against corruption. I attach relevant excerpts of the OECD convention, as ANNEXURE 11."*

MS RAMAGAGA: Now, ANNEXURE 11 appears on pages 222 to 262 of the bundle and would you like to bring the attention of the Commissioners to

25 particular clauses in this document?

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MS TALJAARD: Well, the entirety of the convention, naturally. But, I also just want to pick on a point that is relevant on page 246. Where there are also recommendations that are relevant to the issues that the Commission is going to be looking at and that arises with reference, particularly to the export credit guarantee agencies:

“In accordance with the 1996 development assistance committee recommendation on anti-corruption, proposals for bi-lateral aid procurement, member countries should require anti-corruption provisions in bi-lateral aid fund and procurement. Promote the proper implementation of anti-corruption provisions in international development institutions and work closely with development partners to combat corruption in all the development compression efforts.”

I raise this issue, because in terms of the provisions that apply, also to export credit guarantee agencies, there is a significant discourse, with respect to the DFID and whether or not, there ought to have been an export credit guarantee agency formula. This is why the issues in the OECD convention are particularly important, as they relate to the supplier countries. The needs of financing came from export credit guarantee agencies in countries that were also significant donors in the initial years of our transition to democracy, particularly the EU states.

MS RAMAGAGA: Alright. Then, continue to paragraph 43.

MS TALJAARD:

“It is also important to note, even though this falls beyond the time period of the relevant procurement, but it is an important issue to note in the evolution of our law on these matters. In 2007, South Africa ratified the

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OECD convention and under these provisions, as well as, the new Prevention of Corrupt Activities Act, as well as, the on-going activities of the SIU, the old protection to combat bribery has been significantly bolstered. It should furthermore, be noted that the purposes of dual [indistinct] and mutual

5 *equal assistance, the architecture that exists today, as a new domestic law and arguably some of this was in place with the Corruption Act of 1992, the Prevention of Corrupt Activities Act, attached hereto is ANNEXURES R12 and RT13. As well as, the OECD renewed conventions respectively, would be of significant assistance to the Commission, if it would take the schedule*

10 *of on-going investigations contained in the JIT report on page 22, as well as, the matters contained in the case files, which the Hawks have further.”*

I have already referred to page 22 of the JIT report. If, with the indulgence of the evidence leaders, I am going to just refer to the clauses of the Prevention of Corrupt Activities Act and I would like to draw the Commission's attention

15 to, in order to make the point about the evolution of our law, during the process of the on-going umbrella agreements and supplying terms and delivery terms of these contracts, which were long term contracts and stretched over a significant period in time, I will do so now. If you look at the Prevention of Corrupt Activities Act and I am referring specifically to the

20 bundle, pages 274 onwards. If you look at the general offences of corruption, but more particularly, if you look at the offences that are contained in part 2 of this legislation, related to the offences, in respect of corrupt activities, relating to public officers. It is important to note that this legislation was drafted in

25 duration of the continued delivery schedules, as well as, financing

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components of this agreement, these international law obligations and domestic law obligations that are mutually reinforcing, will reinforce one another and ought to be of great interest to this Commission, in pursuing its mandate.

5 MS RAMAGAGA: Alright. Thank you. Will you then proceed to page 15? You have partly dealt with the heading, relating to the ministerial responsibility, collective responsibility. Alright. Will you then proceed to where you had left? I think you were, you dealt with paragraph 46, 47, 48, 49, 50. I think you have, ja, you were supposed to deal with 51. I am speaking under
10 correction.

MS TALJAARD: I would like, I would like to proceed with 50 if I may. The issues are quite relevant, because the areas of decision making and when the opportunities, with respect to decision making arose is critical. Paragraph
50:

15 *“Another issue that is of crucial importance is to note that the country’s arms acquisition policy actors did not have any experience in running a strategic arms acquisition package. As past arms approaches and procurement decisions had been on a case by case basis, as has been
20 the JIT investigations in 2001. It is important to differentiate the strategic arms acquisitions, such as the SDP, from others. As it is a rare and expensive acquisition that becomes the responsibility of the country’s executive and the legislative branches of government, mindful of civil military relations dimensions. The first link that broke down was that of civil military
25 relations in defence procurement matters, where the executive branch of*

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government was inactive and according to some, highly rated academic authors, if not, dominating participant in the strategic acquisition package, negotiating directly with foreign governments, like the United Kingdom and Germany, who are South Africa's main European trade mark partners and sources of foreign direct investment. The strategic acquisition package was a means to attract foreign direct investment and to gain access to foreign markets. Whilst this is to be partially expected in a project of this nature, especially given the timing and end of the cold war, as South Africa was emerging as a new democracy with a need to build extra on the trade ties, to escape the strangle hold of the aftermath of Apartheid and to reintegrate the economy into the global economy. The level of involvement of the executive branch in defence procurement decisions, to the point that the Hawk was chosen against the preference of the sentry of defence and the chiefs of the South African Air Force, is an important issue to note."

15 And I would like to refer to the relevant document, if I may. It is in the bundle.

MS RAMAGAGA: Yes, you may. The RT15 is in pages 312 to 317 of the bundle. I believe the witness would like to refer to page 317.

MS TALJAARD: Thank you. I would like to do so and once again, I do so on the understanding that the declassified stamp is as reliable as I believe it to be, Mr Chairman. Paragraph 7.3.24 and I would like to read it:

"The Minister said the political decision needed, must not revolve about the operational aspect of the aircraft that it is ... [intervene]"

CHAIRPERSON: Just hold on a minute. Just, all you think about give us a chance of, of getting to that paragraph. We are still trying to find that paragraph. Which paragraph is that?

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MS TALJAARD: My sincere apologies, Mr Chairman. It is on page 317 in my bundle. I hope that my bundle is exactly the same as yours. It is paragraph 7.3.24 on page 317. Are we on the same page? Thank you.

*“The Minister said the political decision needed, must not revolve
5 about the operational aspect of the aircraft that it is part of our
recommendation. Government must decide if they want to enter the
European market and if so, through which partner. The defence industries of
the world are forming consortiums. If we are not part of one of those
consortiums, our aircraft industry will be lost. He said we must not prejudge,
10 let the politicians decide.”*

I simply draw out this paragraph, because there are nuances here, in terms of civil military relations that are quite critical to this Commission, in reflecting on the decision points and the roles and responsibilities between the various committees, SOFCOM, the Arms Acquisition Board, the Ministers, Inter
15 Ministerial Cabinet Committee and indeed, Cabinet as a whole. Those decision making points are really very relevant to the deliberations in this Commission and to its recommendations.

MS RAMAGAGA: Alright. Thank you. Then we proceed to paragraph 53.

MS TALJAARD:

20 *“According to these comments this clearly demonstrated, at least in part, the eagerness of the new administration to grant a significant contract to a British company. But, the break down goes deeper into the very cores of civil military relations, discoursing defence procurement matters.”*

And I do believe this is a policy issue that the Commission ought to consider,
25 mindful of future procurement, if I may say, as a suggestion, Mr Chairman.

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“The second chain of accountability that broke down was that of Ministerial responsibility, given the significant scope that was granted to the international offers negotiating team, in relation to the decision making processes of the Inter Ministerial Cabinet Committee, on the strategic

5 *defence procurement package. The terms of reference that were given to the IONT and the chief negotiator, specifically, were in my view, a mere abdication of collective Cabinet responsibility as the widest possible negotiating power was granted to the chief negotiator.”*

And I fully accept that this is my view and my view only. I attach a copy of

10 the relevant terms of references, ANNEXURE RT16.

MS RAMAGAGA: Ja. RT16 appears in pages 318 to 320 of the bundle and is there any specific provision in the terms of reference that you would like to bring to the attention of the Commissioners and if so, in which page is it?

MS TALJAARD: I would just, I would just like to, once again, clarify with the

15 evidence leaders the declassification. The issue of this document, I did raise it this morning, this is a declassified document.

MS RAMAGAGA: Yes, Chair. The document has already been handed up, through the evidence, I think of, of Mr Naidoo.

MS TALJAARD: Thank you. That is indeed, on page 318. I would like to

20 just draw attention to the wording that was also amended.

“The chief negotiator reports to the Ministers Committee and to the Deputy President, as required.”

You will notice that from the paragraphs that follow, it is a very wide role description for the role of the chief negotiator and it embraces various areas

25 of defence and trade in a co-ordinating role. You will notice specifically, that

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the chief negotiator is located in the Ministry of Defence and the reason why this is important, is when you look at the composition of the international offers negotiating team itself, you will notice that it has extensive representation, from the Department of Defence, as well as, Department of, 5 the Department of Trade and Industry and only one representative in the IOAT, from the Department of Finance. I want to bring this to your attention, because it is quite critical to the moment, in which the financing issues of the deal, actually received greater attention at Cabinet level and I hope that that will emerge as we proceed, from the statement. But, it is very important to 10 see this in context, to also see the role of the chief negotiator in very broad terms of reference that was given to the chief negotiator.

MS RAMAGAGA: Thank you. Proceed then to paragraph 55?

MS TALJAARD:

“There were certain misalignments between the work of the international 15 offers negotiating team and the affordability team that was belatedly engaged to sufficiently ascertain the full possible micro economic risks of the large scale procurement. However, the testimony of Roland White, before the public phase of the Joint Investigating Team’s hearings in 2001, also clearly showed the number of instances, where the Department of Finance, took a 20 slight back seat, during the technical scoring and soft com stages, including their cost and non-cost options for the whole could be considered. The affordability team’s reports and work came into the process fairly late, when the international offers negotiating team had all that concluded the core elements of negotiations and prices. I attach a copy of the transcript 25 deferment whilst evidence at the JIT hearing, as ANNEXURE RT17.

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MS RAMAGAGA: Now, RT17 is in pages 321 to 378 of the bundle and you would like to draw the attention of the Commission to a specific portion of this annexure. Please go ahead.

MS TALJAARD: Thank you so much. I would like to draw the attention of
5 Commissioners to page 323.

MS RAMAGAGA: Just a minute. Are you there, Commissioner Musi? Thank you. You may proceed.

MS TALJAARD: Thank you. As you will notice, in the transcript on page 323, this deals with memoranda that was sent to the then Minister of
10 Finance, by Mr Roland White, relating to the financing of this particular defence procurement and the centres of these memoranda, that was sent to the Ministry of Finance. These are exceptionally important documents, which I believe this Commission ought to have, in order to reflect on the cost issues, related to the procurement. If I may continue:

15 *“In terms of the consultation, both the constitution and the Access to Information Act and the internal memoranda by advisors are privileged. We cannot accept with exception for the accessing, which in particular case, given the fact that I have already indicated that we understand, it is the order to general investigation that the exception that would be there, would be in
20 terms of Section 281 of the Companies Act, alternatively in terms of Section 5 of the Auditor General Act.”*

I think the issues here, as I indicated, specifically relate to the memoranda, that were written to the Minister of Finance. I highlight this, because the critical issues of the cost and the affordability of the deal and the decisions
25 that were made are reflected in the memoranda. If I may just turn to the book

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for a moment, because I do not want to disappoint the Chairperson that we will not deal with the book at all. We will deal with the book and key areas of the book.

MS RAMAGAGA: Yes. You may proceed with the book.

5 MS TALJAARD: On page 251 of Up In Arms, there is a copy of a letter, which I have addressed to the then Minister of Finance, requesting access to these memoranda, because they are quite critical, with respect to also questions, in terms of when contracts were signed, when contracts were
10 Commission's further investigation. I would also like to turn the Commission's attention to page 257 of Up In Arms, which contains a reply from the Ministry of Finance, highlighting the request not to be acceded to for the memoranda. I would like to submit to this Commission that it is, in fact, of critical interest to this Commission to have access to these memoranda and
15 they could easily be made available, if the public interest provisions of the promotion of Access to Information Act would be used.

MS RAMAGAGA: Alright. Then you may proceed to deal with paragraph 56. It is on page 18 of your statement.

MS TALJAARD: I am on page, I am on page 18 paragraph 56:

20 *"The chief negotiator became an effective second in command, to then Deputy President Mbeki and eventually to the then Deputy President and eventually President Mbeki. The press statement announcing the chief negotiator's appointment, issued by the office of the Deputy President, made this quite clear. The chief negotiator was on contract to the Ministry of
25 Defence and his tasks were wide ranging and the statement states that.*

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Since his task will involve activities that related to the Department of Defence, Finance, Public Enterprises and Trade and Industry, Naidoo will be accountable to and report to Deputy President Thabo Mbeki.”

I attach a copy of the press statement of the then Deputy President Thabo Mbeki, as ANNEXURE RT18.

MS RAMAGAGA: The annexure will be found at page 379 of the bundle. You may proceed to the next paragraph of 57.

MS TALJAARD:

“Whilst the, whilst this Commission has therefore, heard much about collective Cabinet responsibility, I would urge you to go much deeper to understand the roles and relationships between the chief negotiator and members of the Cabinet and the IMCC process better. The conventional notions of collective Cabinet responsibilities where Ministers fully engage on the detailed trade-offs inherent in different policy choices and balances between policy choices. I will argue that this was not the case in this case and this has a bearing on the notion of collective Cabinet responsibility that we have been confronted with. This only becomes clear, when one fully considers the terms of references, the chief negotiator’s position, as well as the various sets of minutes of the Inter Ministerial Cabinet Committee meetings, where this role can be clearly assessed. Whilst the chief negotiator was on contract to the Ministry of Defence, his role goes far beyond what a civil servant at any level of seniority would ever have had. In this regard, it also goes much further in highlighting the breakdown of accountability, if all the normal mechanisms of accountability, where the constitutional provisions could reach, are largely, effectively curtailed by such

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an appointment, despite the provisions of Sections 55 and 56 of the Constitution that could arguably use to secure all necessary information about this role. Herein lies a lesson for all future large scale and complex government procurement processes, whether in the defence arena, or any other, regarding the role of such a post and its reemit and its impact on notions of accountability. The third chain of accountability that broke down, was the inappropriate role played by the chief of acquisitions at Armscor in a variety of forum, not least of which acting arguably highly inappropriately as a Cabinet secretary, in preparing minutes of the Inter Ministerial Cabinet Committee meetings. The minutes that were handed over to the standing Committee on Public Accounts, prior to its October 2000 hearing with the Department of Defence on the strategic defence procurement.”

MS RAMAGAGA: Why, why do you say that the, for the chief of acquisition of Armscor of Armscor to become the secretary, or the Cabinet secretary for the moment, in relation to the IMCC was irregular or improper? Why do you say that?

MS TALJAARD: Because it is, it is an unusual role to be playing, visibly at an Inter-Ministerial Cabinet Committee.

CHAIRPERSON: Ms Taljaard, are you aware that on the evidence that we have is to the effect that he was requested to play that role? He prepared the initial minutes, circulated them, in [indistinct] and they would return them back to, to the various Ministers. If you [indistinct] on the 31st of August 1998, 1999. Are you aware of that evidence?

MS TALJAARD: Mr Chairman, regrettably, I have not had the opportunity to follow every detailed evidence of these proceedings. We have earlier today

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referred to another role that I do have and you will also recall that this year is an election year and was an election year and Commissioners were quite engaged with the National Provincial Elections. So, regrettably, I have to say that I did not spend as much time, even though I spent considerable amount of time following your proceedings, I did not follow that element of your proceedings. This is my impression and it is an impression that is also informed by the field of public policy in which I teach, in terms of the arrangements that would govern Cabinet, Cabinet minuting, Cabinet relations, Cabinet decision making. I would still consider it a highly inappropriate role.

MS RAMAGAGA: Just for the completeness of the record. Chair we are just indicating that the IMC minutes, I think it is four sets that have been handed up and all of those minutes are actually scribed by the chief of acquisition. So, it is something that just runs through the entire, it is, it is not just a once off thing that happened. I am just placing on record, just for the completeness of the record. Thank you. Please then, proceed to the next topic, which is executive legislative interactions and constraints.

MS TALJAARD: Thank you. I will try and speed up, Sir. We have enough time for consultations during the lunch period.

20 *"We cannot equate the white paper and the defence review with the SDPP, according to Scholar, Sylvester and Scheepers. They point out clearly that those who in State and Parliament approved the defence review and therefore, approved the SDPP, wrong. Instead it is the other way around. The defence review became a legitimised mechanism for the*

25 *strategic defence procurement. It is important to recall that Parliament*

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approved the document that contained several options. What Parliament approved was an ideal image of the South African National Defence Force, force design, subject to budget constraint and as the review contained no details of the exact cost of the various options to the State's budget, an

5 *argument cannot be sustained that a Parliamentary approval of the defence review, equates to an approval of the SDP. There are two further technical arguments that are irrelevant. Firstly, whilst it is true that the stricter act was enforced, which allowed a significant amount of budgetary discretion and executive sway, in the hand of."*

10 There seems to be a misalignment affair just here.

MS RAMAGAGA: Okay. Page 21, 20, 21.

MS TALJAARD: The ones in my file are not as well marked.

"This must be seen in the context of the adoption by Parliament of the Public Finance Managing Act in 1999 and its entry into force on 1 April 2000,

15 *as well as the adoption of the new Constitution in 1996 that set a new standard in terms of Section 217 on government procurement. Whilst the PFMA implementation that falls beyond the period of contract conclusion for the SDP the overall legislative direction was clear and the new Constitution clearly provided for a role of the Parliament in the budgetary process. Whilst*

20 *this legislation also came about much later, the Money Bills Procedure and Related Matters Act of 2009, the fact that this provision was in the new Constitution, clearly made the provisions in Schedule 6 of the Constitution, would have had a bearing on at least posing the question, whether such executive concentration of budget powers in the Minister of Finance was*

25 *desirable in such a controversial procurement, such as the unusual strategic*

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defence procurement package. Whilst the National Assembly undoubtedly voted on the defence budget in the estimates of national expenditure of the budget, therefore giving penance to the basic technical approval of the SDP all but passed for the estimates of national expenditure, in terms of the

5 [indistinct] Act. Therefore, giving penance to the basic technical approval of the SDP in Parliamentary terms and no agreements. Such approval and debt exposure should have warranted more than a mere passing engagement for the legislature, given the importance of the executive branches for an inter civil military relations, demarcation and the procurement

10 space. The relationship between the standing Committee on Public Accounts of the Ministers ought to also receive a small mention. The Ministers criticised the standing Committee and its 14th report on the strategic defence procurement quite aggressively in a press statement in January 2001. But, then failed to answer some detailed questions, during their

15 appearance before the standing Committee on Public Accounts in February of 2001. Given that the standing Committee on Public Accounts have not had the requisite access or time to properly prepare as co-ordinated committee for such a hearing and the fact that strict access rules applied to the confidential documents of members, the scope, or were allowed to

20 consult with, got sight in committee hearings, these were clearly not the exemplification of a robust executive legislative interactions on one of the largest armament procurements of the democratic era. Once again, the secure policy lesson for the balance that has to be struck in favour of openness and accountability, if parliament is to live up to the expectations of

25 oversight, we all believe it to be constitutionally charged with.”

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Lessons learnt here, relate to classification of documents, something I believe that this Commission has also had difficulties with.

“Openness and transparency and the fact that with the new PFMA treasury regulations the Money Bills Amendment, the Constitutional Court’s ruling in the Albeit case and its impact on supply chain management, as well as the robust role of the new Parliamentary Committee on Appropriations. A rewind of the circumstances of the Arms deal at the level of executive legislature of interactions has become a lot harder, as our democracy has developed deeper systems of accountability.”

10 MS RAMAGAGA: Alright. Thank you. That, that concludes that topic and now, I would like to invite you to present your evidence in relation to the next topic, which is the cost of the deal, export trade guarantee agencies and their role and micro economic risks. Please go ahead.

MS TALJAARD: Thank you.

15 *“In looking at the overall cost of the Arms deal, it is important to separate out, questions of the process on the finance side, the role of Parliament in the budget process, which has already been discussed, as well as the overall micro economic risks and other ancillary costs of the deal. On the question of process, what are significant are the role of the chief negotiator and the affordability team and their respective roles, at different stages. According to the press statement, released by then President Thabo Mbeki, the responsibilities of the chief negotiator included, heading the South African government negotiations team, to extract the best possible solution to the financing and industrial benefits, accruing from the SDP, preparation and*

20 *guidance with the teams and key decisions on the route to be followed in*

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pursuing the objectives of obtaining a financing package, acceptable to the Cabinet. Conclusion of firm contracts, relating to the envisaged flows of foreign exchange with the investments and potential exports from South Africa, contained in the industrial participation offers, received from bidders.

5 *These were indeed, significant roles and it is of importance to understand this role, this being the role of the Ministry of Finance and the Department of Finance, as I have already observed this broad responsibility, as well as placing of the role of the chief negotiator within the Ministry of Defence, have implication for the proper consideration of costs. It is of great importance to*

10 *note that the affordability team was stripped out of the international offers negotiating team, pursuant to a Cabinet Committee decision in March of 1999 and that their study was only fully considered by approximately August 1999. This would have included the Warburg Dillon Read model, when it was exceptionally close to contract finalisation and contract signature, as the*

15 *preferred bidders had all but been decided and the preferred bidders having been announced in November of 1998. Whilst the finance working group did exist in January of 1999, with the following terms of reference, affordability and increasing the affordability of the deal, assessing the budgetary implications and physical impact of the deal, a financial strategy, assessing*

20 *the economic implications of the deal, undertaking financial negotiations for loans, the affordability team was established in March and items 70, 1, 2 and 3 of the original terms of reference of the finance working group, now effectively became the task of the affordability team. As Roland White is the only official from the Department of Finance, who played a role in the IRMT*

25 *the finance working group, as well as the affordability team, his perspective*

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on the sequencing of the negotiations and the finance and micro economic impact issues, is crucially important. If the Commission fails to interact with him, I hope that it will be an addendum on being able to secure the memoranda that he wrote to the Minister of Finance, at the time, if it has not

5 already been submitted to the Commission or declassified. A copy of the memoranda from Roland White to the Minister of Finance is not declassified. One could argue that the affordability team's efforts came as a bit of an afterthought in the 1999 period, despite the fact that some officials of the Ministry of Finance were involved in evaluating teams, which were often

10 dominated by DOD technical assessments, as well as DTI, NIP and DIP assessments that would often leave finance as an afterthought. This can most clearly be seen in some Cabinet discussions on cost and non-cost options for the leading fighter trainer project. Whilst Mr Roland White was a member of the IONT and there was a DT oversight committee comprising the

15 DT's of Finance, Trade and Industry and Defence, the level of co-ordination between technical specs, specifications and NIPs and DIPs and cost was often insufficient. Again, this is my opinion, under oath. The argument that is being offered here is one of sequencing of decisions. Surely, it is more sensible to consider the resource envelope that is available and to then,

20 prioritise aspects of force design accordingly, than it is to select preferred bidders and then to act to squeeze this force design selection into a buttered range that must, of necessity and by virtue of other competing priorities, be restrictive."

I am not going to rehatch paragraph 76. I have dealt with that. I think it

25 would be important for the Commission, as I have said, to obtain these

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memoranda and I will also not rehash that.

"I believe that Roland White also wrote a letter to the chief negotiator Mr Jayendra Naidoo, citing his concerns about the fact that the submarine contract would be initialled by the outgoing Minister of Defence, before the affordability team, team's report had formally served in Cabinet, which was
5 *due to occur in August of 1999. This disagreement between members of the IONT was therefore flanked by a letter from Roland White. This is all drawn from Roland White's testimony, during the public phase of the investigations and it critical for this Commission to consider it. It is interesting to have noted*
10 *from Roland White's evidence, at the time that the armaments acquisition council formatted the evaluations forms that were given to the Department of Finance officials, during the more technical aspects of the process and that the Department of Finance officials had nearly no role in the format of these evaluations or in the weighting of criteria that was used for evaluating*
15 *purposes."*

Now, I am aware that a hundred, hundred and hundred marks were awarded, in terms of how these evaluations took place. But, I do believe it requires a deeper look, because there was not an extensive degree of finance involvement in the actual design, at this stage.

20 *"It appears at this stage to have been a mere perfunctory exercise on the part of DOF officials, as the defence role players had effectively selected all criteria and design the weighting systems."*

I think that this is an area where the Commission may want to look carefully at the Roland White evidence from the JIT process and the Donaldson's
25 *testimony here. I think there are issues here that need to be looked at more*

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carefully.

“What emerged particularly from his testimony at the JIT public phase of the investigation was his concession that the formulae for the assessment of possible cost escalations were probably not researched sufficiently. It is
5 important to note that the total cost of the Arms deal is proposed to have many elements, including the tender contract price, statutory and freight costs, project management costs, export credit agency premium and escalations. What even the affordability study do not include, was the actual operation and the maintenance costs over the life cycle of the products, as
10 well as the training and staffing costs to operationally use the equipment. Furthermore, letters one and two of the executive summary of the affordability study, also made it clear that the tranche option that was decided on for the BAE, the sole component of the deal, meant that we effectively could not cancel the third or second tranche as we would be paying the
15 premium of 34 to 35 per cent of the aircraft. With respect to the macroeconomic risks, the moderating role assumed for NIPs and DIPs were a factor in the [indistinct] exercises, to assess economic risk, such as balance of payments and the growth impact. The specific risks that were pointed out by the affordability team were encrypted risks, non-materialisations of NIP
20 and DIP benefits and interest rate movements, following the announcement of the packages and extrinsic risks, unsuccessful defence budget restructuring, adverse rand forex movements, lower underlying economic growth and cancellations costs. Whilst the affordability team spend a significant amount of time, attuning the policy relating to the scale of risk
25 inherent in the strategic defence procurement, they made it clear that it was

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the decision of the Ministers to countenance the level of broader lateral risk they were willing to engage. However, the conclusion of the affordability team is significant, as two specific recommendations require highlighting. The fact that the Ministers decided they needed to decide on the expenditure ceiling and leave the negotiation of the specific procurement combination to the lead negotiator and the DOD. Subject to final Ministerial ratification and simultaneously with the expenditure ceiling in position, so the Minister's Committee should decide on the basic question of whether to purchase both Hawk and Gripen, at this point and in particular, whether the tranche option offered by BAE should be accepted. It is of interest to note that according to Roland White, it was the chief negotiator, who provided information to Cabinet on the team's hung opinion. But, it is possible that the cost impact of the tranche option, only properly came to light, when the affordability team's addressed the impact of the base loading of the price of the first tranche as crisply, as they did, in their executive summary that served before Cabinet in August of 1999. Lastly, it needs to be emphasized that the acquisition process did not include operation and maintenance costs over the life cycle of the equipment. So, the realised cost of the SDP and the defence budget over the duration of the equipment delivery schedules would indeed, be higher and this is borne out by the various annual report of the department. It also did not include the training and personnel costs, to operation, suppliers and use the new acquisitions, as these were also additional budget costs that have placed strain on the defence budget, once again, as we can see in various annual reports. On the role of the Parliament and budget process, I have already testified that the architecture has changed significantly. What I

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would like to highlight, that is just that the defence procurement approach would have a specifically clear impact on the deficit, as well as the deficit on the current account of balance and payments. This will indeed, hold truth for any future defence spending and or large and macro economically significant large scale government procurement. The architecture for executive legislative interactions on these matters has changed significantly. However, it is up to the member of the house to ensure that this history is not repeated.”

And I do think it would be a valuable contribution for this Commission to make, to also look at the level to which democratic institutions and laws have changed and deepened over this period, because there are significant changes and significant differences.

CHAIRPERSON: I am sorry, do you believe that that point that you are making, falls within our terms of references? We have five, six terms of reference. The point that you are making that we must make recommendation, does it fall within our terms of reference? I just want to hear what your view is, because you have mandate of recommendation. I am sure you must have had a look at our terms of references. Do you think that point falls within our terms of references?

MS TALJAARD: Mr Chairman, I, I do, with respect. I do believe that it does, because I believe that the issues that are emerging before you are of such a nature that they effectively cry out for recommendations to be made. I think that your Commission is going to be in a unique position, to reflect on the extent of evidence that is being placed before you. On policy issues, not only, on the areas that you are focussing on specifically, when you highlight

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1.5, in the way that you do.

CHAIRPERSON: No, no. I understand. On policy issue, thus clearly on our terms of references, require us to make recommendations on policy issues.

Let me put it that way. I am sure you must have had a look at our terms of
5 references. Does anyone of them require us to make recommendations on
policy issues?

MS TALJAARD: I believe that that is implicit. It is not expressly stated, but I believe it may be implicit.

CHAIRPERSON: Concerning which paragraph, which one of the six?

10 MS TALJAARD: I think it is implicit in all of them.

CHAIRPERSON: Okay. Thank you. Thank you.

MS RAMAGAGA: Alright. Thank you. May I proceed, Chair? We are now at the next stage of the statement. The next topic that you are invited to deal with is item H, NIPs and DIPs, the question of industrial policy.

15 CHAIRPERSON: Ms Ramagaga, should we not perhaps take a 20 minutes break, before we come to the next point. I see it is already 20, 20 to two.

MS RAMAGAGA: Thank you, Chair that will be proper.

CHAIRPERSON: Can we take a 20 minutes break and then come back?

MS RAMAGAGA: Yes. Yes, Chair.

20 CHAIRPERSON: My co-commissioner here says 30.

MS RAMAGAGA: 30?

CHAIRPERSON: Ja.

MS RAMAGAGA: Yes. We would actually welcome that.

CHAIRPERSON: [Indistinct] we will adjourn for 30 minutes.

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(COMMISSION ADJOURNS)

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(COMMISSION REOPENS)

CHAIRPERSON: Can the witness confirm that she is still under oath?

MS TALJAARD: I do.

CHAIRPERSON: Thank you.

5 MS RAMAGAGA: Alright. Thank you, Chair. When the Commission adjourned, we were due to start with the next item H on page 30. Now, you, you will remember that during the course of the presentation of the evidence, the witness indicated that she would like to go and compare the draft that she had sent, as against the signed statement, in order to clear the issues
10 relating to paragraph 40, which appears on page 13 of, of the bundle. The witness has had opportunity to do the comparison, to check and further, there was an engagement between her and the evidence leaders, regarding issues around that paragraph in particular. I would like to start off, by dealing with that portion of evidence first, before we proceed to deal with the items, the
15 item in paragraph, in page 30.

CHAIRPERSON: 30, I am sorry, you said it is paragraph 40, is it the one on page 13?

MS RAMAGAGA: That is correct, page 13 paragraph 40, Chair.

CHAIRPERSON: Thank you.

20 MS RAMAGAGA: Thank you. You may, Commissioner Musi is there. Okay. Thank you. You may then proceed, Madam.

MS TALJAARD: Commissioners, you will forgive me if I get confused when I hear the word Commission. Now, on a slightly lighter note, I do sometimes look, when the word arises. But on paragraph 40, I would like to point out
25 that naturally, the issue is the allegations around Rear Admiral Johnny

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Kamerman. It has drawn to my attention by the evidence leaders, because I have not been in a position to follow all of your proceedings. Unfortunately, as you know, as I indicated earlier, we were quite busy, earlier this year. So, I would like to put that name on record, but I have also been informed, during
5 the period of the break by the evidence leaders that apparently, in the evidence of Rear Admiral Kamerman, there was a submission made, around permission having been granted, which the contracts provide for. But, I do not want to express a view on any of those issues, either just to raise the name, because the name has been raised in your proceedings and I have
10 been informed of that by the evidence leaders and I want to clear that space, between myself and the Commissioners. But, I also would like to raise an issue, arising from the book, on page 265 and 266 ... [intervene]

CHAIRPERSON: I am sorry. Just hold on. Just before we finish with the, with paragraph 40. If you are saying that you have been informed that the
15 person that you thought got permission to work for GFC, or GFC and that that person has provided us with proof that he had permission. Now, what happens to your statement in paragraph 40, in the light of the fact that we know what the truth is.

MS TALJAARD: Mr Chairman, I would like to delete the last sentence,
20 because it has been drawn to my attention by the evidence leaders and because I am not in a position to verify, or otherwise, I think it wise that I do so, in the context of what has emerged.

CHAIRPERSON: So, in other words, we must delete the last portion of paragraph 40.

25 MS TALJAARD: Because I have no personal knowledge of this.

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CHAIRPERSON: You are not qualified ... [intervene]

MS TALJAARD: And I simply have heard from the evidence leaders what has been submitted and I think in order to satisfy the requirements in oath. I would need to delete the sentence.

5 CHAIRPERSON: Thank you.

MS RAMAGAGA: Alright. Then, Chair, the witness would like to proceed, but not by starting off with that page 13, where we had ended on, but also introduce evidence that relates to, that is relevant to this area, in particular. May I then proceed to lead the witness?

10 CHAIRPERSON: Ja.

MS RAMAGAGA: Thank you. You may then proceed, Madam.

MS TALJAARD: Thank you. And mindful of the fact that this is with respect to an area of which I have personal knowledge, with respect to correspondence between myself and the Ministry of Defence in the United Kingdom. There are documents on page 265 and 266 of the book Up In Arms.

CHAIRPERSON: I am sorry. Which paragraph are you dealing with?

MS TALJAARD: Mr Chairman, on the broader issue that arose, with respect to paragraph 40. I am introducing evidence in good faith, based on items of which I have personal knowledge.

CHAIRPERSON: Thank you. I understand that. Thank you.

MS TALJAARD: Thank you. If I may proceed? Thank you. Page 265 and 266 of the book Up In Arms, if I may draw the Commissioner's attention to this. I would like to, particularly, draw your attention to issues with respect to BAE systems and issues that were confirmed with respect to Red Diamond

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Trading and Airborne Trust, having received payments from BAE systems. I simply want to introduce that, as evidence that you may investigate further, evidence that may come to your attention, through the evidence of other witnesses. But, I would like to specifically enter this into the record, because

5 it is an issue, of which I have personal knowledge, arising from my correspondence with Julian Brazier in the House of Commons, as well, as well as the interactions between Mr Brazier and the Ministry of Defence, at that time, if I may do so and then proceed with my statement.

MS RAMAGAGA: Alright. Thank you then. Will you please turn to page 30

10 and give evidence in relation to the NIPs and DIPs a question of industrial policy. You may proceed.

MS TALJAARD: Thank you so much to the evidence leaders. Starting on paragraph 82:

"It is impossible not to weigh the industrial participation component of

15 *this procurement as a separate issue, as it touches on a balance between global trade provisions and domestic industrial policy preferences. In this regard, it is important to reflect on these issues, in the context of the WTO purely lateral agreement on government procurement. Here I would like to note that the global infrastructure market is worth 60 trillion US dollars and*

20 *represents 15 per cent of global GDP. The GPA commits countries to non-discrimination and transparency in government procurement. Whilst South Africa is neither a signatory, nor an observer at present, the pressure for BRICS member states to join is becoming quite significant. The growing importance of this norm of public international law, is set against our*

25 *country's own policy choices that clearly are constitutionally founded on*

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BBBEE legislation, but also against our use of offsets, such as the National Industrial Participation agreements and the Defence Industrial Participation agreements that were at issue in the SDP. South Africa's government procurement policy has been set to a threshold of US 10 million dollars to

5 *trigger an offset obligation for a supplier of a product or a service to the South African state. As part of my role on the portfolio committee on public enterprises, at the time, I looked at this industrial policy matter in great detail, these are the decisions of the then South African Airways board to purchase*

10 *21 Boeing 737 800's which triggered a national industrial participation obligation for offset investments and job creation. In subsequently engaging with the defence industrial base of the United Kingdom, with respect to the Hawk, Gripen, BAE, SAAB, DENEL offset obligation, I started looking more deeply into the quality and enforceability of the NIP and DIP components of the Arms deal, as this was also a matter that had bothered the auditor*

15 *general in his initial special review, as well as, of course the SCOPA clause in its 14th report. In reviewing the documents in SCOPA's possession, it became clear that the lack of enforceable contracts, particularly in terms of the SAAB, BAE NIP agreements would be an issue and I do not want to only single out the supplier. It is a generic point, however. Other than broad*

20 *provisions for breach of contract under the umbrella agreements, which included provisions for NIPs, the proper enforceability of NIPs on a project by project basis and here, I am intending to stipulate contract by contract, project by project, as opposed to the overall trigger, that arose, with respect to the umbrella agreement, left a lot to be desired. As projects could merely*

25 *be substituted for one another, without amounting to breaches of contract. In*

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the light of this, I requested specific meetings with the then Minister of Trade and Industry about these issues and his answers were, with due respect to him, not satisfactory. It was clear to me that these DIP and NIP contracts, were not enforceable in the usual terms of contract law, beyond the broad

5 *breach provisions.”*

Here I am referring to, just to give a concrete example and I will continue with the paragraph. If for example a list on IP stipulated a seal nil, you could not go and contractually enforce this seal nil as an individual contract. There would be overall breach provision that you could go and say well, there is a

10 potential breach and penalties, but you could not go and extract a seal nil, on a contract to contract basis in that way.

“It was clear to me that these DIP and NIP contracts were not enforceable in the usual terms of contract law and that the amount of possible substitution of projects could render the agreements highly

15 *problematic, in terms of meeting targets for job creation and investment, as the suppliers could simply substitute one for another. Worse still, in some cases there was no sign of the type of new industrial based development that the NIPs had promised, but either privatisations, for example a 20 per cent equity stake in DENEL, which was very much on the table for conversation,*

20 *or other parastatals having to spend to make an area susceptible to investment. The NIPs were credited on the assumption that there would be green field’s investment coming into the country, not that it would be an equity stake or a privatisation stake. A clear example of this was when the German Frigate Consortium had proposed a steel mill for the new Coega*

25 *IDZ, where this mill would be anchor tenant. This did not occur, due to a*

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meltdown in global steel prices, at the time the project delivery became due. However, the Coega Development Corporation continued the construction of the deep sea port and significant public investment ended coming off the balance sheet of Eskom, Transnet and Portent respectively, for the

5 *successful development of the port. In late 2001, I asked the auditor general to investigate the CDC for possible non-compliance with the IDZ regulations and the Manufacturing Development Board's statutory provisions, to no avail. I also requested a specific enquiry into the costs public sector companies were now expected to fund to develop the port that subsequently struggled to*

10 *secure an anchor tenant, without proper Arms deal offsets, finding their way here, specifically the steel mill that I have referred to. If industrial participation offsets remain a part of our industrial policy preferences, despite the clear shortcomings, that have already been conceded, most recently by the Minister of Trade of Industry and I think it was brave of him to do so and*

15 *quite frank. We have to revisit any role and status we may have wished to have, perhaps even as an observer with respect to the GPA agreement. In addition and given the exchange rate movements we have seen and could see in the wake of more quantities issues in values of US Federal Reserve, we may wish to revisit the US 10 million thresholds, we have applied thus far,*

20 *if the decision is to keep such policies in place. I think that the evidence emerging before your Commission will be quite important in that regard. However, another lesson learnt is perhaps to be clearer about policy objectives, instead of trying to dress offsets, as something which they are not. A full balancing of the scales of forex outflows, on the balance of*

25 *payments, when large infrastructure imports come to South Africa. Because*

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the Warburg Dillon Read model stipulated very clearly and modelling created forex outflows, stacked up against what could arguably flow in from the offsets to balance the balance of payments. This is where the difficulties actually arose. With respect to the DIPs, these are questions about the

5 *domestic defence industry and industrial policy. In the aftermath of the Arms deal, it is important that we have a little open and focussed policy discussion on defence procurement and its links to the defence related industrial base of our country and its export potential. This presupposes that foreign policy objectives are clearly stated and moral hazard is countenanced and export*

10 *controls transparently adhered to. It is clear that the DIP side of the SDP was perhaps more strategic and better thought through as the policy objective, as the local industry as undoubtedly benefitted from new export markets in aviation industries, in particular. It is also clear from the DOD plan to proceed with project hoefyster, the orphan, if you will of the 1999 SDP.*

15 *But, the industrial policy objective from the local procurement for the SANDF is clear and quite similar to the defence procurement defence industry's linkages that we see in the USA, for example. It seems clear that there will be need for upfront decisions about the defence industry's export base and what it will take to keep it profitable and integrated in global markets and how*

20 *to link this, where possible with procurement, both local and international. I raise this, because it arose so strongly in the political dimension of the decision that I have highlighted, where the Minister of Defence is cited in the document, I have referred to earlier, because it becomes one of the relevant debates and arguments. It is a policy argument and a policy debate with*

25 *political connotations. Up front policy debates about this are necessary and*

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the lesson from the late 1990's is probably the question, why should they be hidden debates. Ironically, this is where the visit of the portfolio committee on public enterprises to Dera and Diso in the United Kingdom in 2000 becomes relevant. There are therefore, some profound lessons from large

5 *scale procurements, whether defence or infrastructure related, or if not lessons, then preferences to be learnt from the Arms deal, the process of the IMCC and the IONT like structures, in my view diminish democratic decision making and accountability in the normal sense of constitutional prescripts of collective Cabinet responsibility to the legislature. Cabinet must thrash out*

10 *priorities properly and in 2014, South Africa, in the context of the national development plan and associated budget priorities, this implies that future decisions on defence procurement in terms of the new defence review, must avoid the pitfalls and learn the lessons of the Arms deal saga with respect to policy and accountability questions."*

15 Mr Chairman, I do not want you to indulge me on further paragraphs on the future of defence and the African standby force. I am happy to leave that part of the testimony, if you want me to stop at this point.

MS RAMAGAGA: Yes, Chair. We have looked at this portion of evidence, the remaining portion, excluding the conclusion. It is actually something that

20 deals with what should happen in the future and so forth. Much of the evidence that has been traversed, before this, this Commission, has also touched on that. So, I would actually concur with the witness that it is actually not necessary to traverse that evidence and read the paragraphs into the record. But, that is left to the discretion of the Honourable

25 Commissioners.

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CHAIRPERSON: Ms Ramagaga, I hear you saying that this evidence is already on there. I thought this would have appeal as her evidence. At the last portion when she talks about the future is that what she sees? Is there a commentary that she wants to, that she wants to make? That to me, appears
5 to be how appeal is. Would it be a correct assessment of this paragraph?

MS RAMAGAGA: Yes. That is the correct assessment. Maybe I should just preface it to say, the views that she expresses there. I think there are also one or two, a few witnesses, who have also expressed their views, regarding the issue of the future on procurement and so forth. That is all,
10 Chair, on, on this portion, in particular.

CHAIRPERSON: Thank you.

MS RAMAGAGA: Does the Chair then, run ... [intervene]

CHAIRPERSON: I want you to proceed, if you want to proceed.

MS RAMAGAGA: Okay. Alright. Thank you. Now, what, what, I would like
15 not to take the opportunity to then cross over to the book, written by the witness, that is Up In Arms, you have the copies in front of you. I, I would not deal with the entire contents of the book. I know that is an understatement because that would just be impractical. What we have done, as a team, has been to identify specific paragraphs and areas that we believe, can also be of
20 assistance to the Commission, in terms of, what is out there, in the public about the views, statements and allegations around the Arms deal. May I then take this opportunity to focus your attention to, beginning with page 40 of the book? Thank you. Then I will proceed, Chair, to focus your attention to the second paragraph, more toward the end. That is where the author is
25 talking about the purchase of the arsenal as to what it would have make or

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the effect of, or the consequences that also flow, that flowed from this acquisition and in particular, I would like to draw your attention to the portion, where you say:

*“The defence procurement packages were signed by the government,
5 which led to the purchase of a whole arsenal of arms and arms and military
equipment. It would make some individuals incredibly wealthy and push our
new democratic institutions to the brink of cardiac arrest.”*

Now, out of this passage that I have just read, I would like to ask you, two questions, arising there from. The first question that I would like to ask you
10 is as to whether you can indicate to this Commission, as to which individuals
would then have become incredibly wealthy, as a result of the purchase of
this equipment?

MS TALJAARD: Mr Chairman, I would have difficulty naming specific
names, in terms of individuals who became incredibly wealthy. But, certainly
15 with respect to one element of concrete evidence of which I do have
knowledge, I have placed that before the Commission for its future attention,
with respect to the role, possible role of the Airborne Trust and Red Diamond
Trading. I would like to put that on the agenda as possible conduits for
wealth, but I have no personal knowledge, beyond what is contained in the
20 correspondence that I received from the British Ministry of Defence. Beyond
that, I would have no personal knowledge of the specific individuals. But, the
existence of these trusts, would suggest to me that there is something for the
Commission to look at.

MS RAMAGAGA: Alright. Then, I will proceed to the ... [intervene]

25 CHAIRPERSON: Just one moment. The information that you, you received,

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does it suggest that Airborne Trust and the Red Diamond Trading, did they legitimately receive this money, or is there evidence that suggests they are corrupt? They received the money in a wrongful manner?

MS TALJAARD: Mr Chairman, I am suggesting that I simply know that they
5 received money and that it would really be for the Commission to decide the
wrongfulness, or otherwise. I mean, this is the issue for me. I know that
wealth is channelled through to, through to trusts. That is all that I know.
Whether that wealth was of a legitimate or illegitimate nature is something
that falls beyond my scope, because I do not have the forensic investigative
10 capabilities, as an individual to establish that, beyond reasonable doubt.

CHAIRPERSON: So, in other words, the information that you have is that
this trust received money. That is all that you have. Thank you.

MS RAMAGAGA: Alright. Thanks then. The second portion, it relates to
the, our democratic institutions. You say this; this purchase had the effect of
15 pushing our new democratic institutions to the brink of cardiac arrest. Will
you please explain that to the Commission?

MS TALJAARD: Thank you. I think that what I am suggesting in the book
is that there were new institutions in place, in many cases and that the
pressure around these issues were very significant. They would have been
20 significant pressures and they are, in established democracies. In our
country, some of these institutions were post 1996 constitutional institutions
that were still, in some cases in their infancy. These types of issues, whether
they relate to defence or intelligence, do place institutions under incredible
strain. In our case I personally believe that because these were quite new
25 institutions, post 1996 constitution, they were placed under considerable

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strain. There had never been a multi-agency probe. There had never been a Parliamentary standing committee on public accounts environment, where any Cabinet minutes of any description, whether of a Inter Ministerial Cabinet Committee, or a Cabinet level committee had served. I do believe that these
5 were unusual pressures and they were events that placed strain on the institutions. That was my personal experience.

MS RAMAGAGA: Alright. Then, on the same page, I would like to take you, just above that, that paragraph that I read from, or the portion that I read from earlier on, where you are talking about you, your appointment, or rather
10 your membership of the Safety and Security Portfolio Committee. You say amongst others, you had to work on the Prevention of Organised Crime Act of 1999. Then you go on to say:

*“The act dealt with the seizure of the process of unlawful activities. I would have loved to see these powers used, without any fear or favour in the
15 arms probe.”*

Now, on what basis did you make this statement that you would have loved to see this seizure, the seizure provision being invoked in, with reference to the arms procurement?

MS TALJAARD: Having a personal conviction and that is all that it is, that it
20 would have been impossible to have a strategic defence package of this magnitude, without the possibilities of enrichment that may or may not have been legitimate or illegitimate.

MS RAMAGAGA: Now, I would like to then turn to page 42 of the book. Unless there are questions.

25 COMMISSIONER MUSI: I am, I am sorry, Ms Ramagaga. I am not, I am

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not quite sure that I understand this clause that says that the acquisition pushed our new democratic institution to the brink of cardiac arrest. Can, can the witness maybe give an example of an institution that would have been thus adversely affected?

5 MS RAMAGAGA: Yes. You may proceed to answer the Commissioner.

MS TALJAARD: Rightly or wrongly, Parliament is an institution and as a self-reflective witness, who is no longer a political player, I think at least I have the indulgence of reflecting on my own role, in that process.

COMMISSIONER MUSI: And in what way would Parliament have been
10 pushed to the brink of cardiac arrest, in what way?

MS TALJAARD: Bearing in mind, that when one writes a book, as opposed to giving testimony under oath, one is prone to hyperbolic expression, because it is a completely different entity, a book to a sworn statement before a Commission and I am engaging on the content, despite that reservation. I
15 think it would be important to indicate that SCOPA, as a Parliamentary Committee, went through a very challenging time. I think that, every member of SCOPA, would have had a duty to the institution of the committee and to Parliament to reflect on the various roles we all played in that process. I have had the opportunity of taking distance from public life and having the
20 opportunity to do so extensively. Not necessarily everyone had that luxury. But, I believe that SCOPA was placed under an incredible amount of strain and I think we all bear responsibility for that.

COMMISSIONER MUSI: Thank you.

MS RAMAGAGA: Alright. Thank you. Then I will, I would like to take you
25 to page 42 of the book. Page 42, the first paragraph, where you say:

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"I raised key concerns about the manner in which the special investigating units, particularly the Heath unit had been allowed to become, in my party's view, political footballs."

Now, will you just explain as to what, what you mean in this particular
5 sentence? It is page 42, the third line that is where you find:

"The Heath unit had been allowed to become, in my party's view the political footballs."

Thank you.

MS TALJAARD: Commissioners I believe the grammatical error will
10 renounce itself in showing you where the paragraph is, because I have just spotted a grammatical error. However, the issue for me was the extent to which a discourse emerged around the head of the unit and the personality of the head of the unit. That is, that is where there were elements of political, how should I say this, for lack of a better word, political drama. I think there
15 were different perceptions about the head of the unit. But, for me, the issues were two fold at this time. The first was the Constitutional Court ruling around the head of the unit and separation of powers doctrine, which is a very important part of the conversation that occurred, at that time. The other was the issue of obscuring the discourses about the powers that the unit had,
20 as an entity, in a broader discussion about personality politics. That was my experience at this and hence, the expression.

MS RAMAGAGA: Alright. Thank you. Now, will you turn over to page, page 45. Now, in this page, you are dealing largely with the special review of the AJ. Towards the middle of this page, you will find a sentence that starts
25 with, that reads as follows:

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“This hugely significant report would have profound consequences. It would shake the very foundations of the relationship between Parliament and the executive.”

Now, you were talking about this special review of, of AJ. Of Interest is that, or rather, what I would request you to explain to this Commission is, as to what, what you mean when you say it would shake the very foundations of the relationship between Parliament and the executive. Where possible, you can also refer to examples that you might have picked up, as what illustrates this very shaking of the relationship between the two institutions.

10 MS TALJAARD: The one I eluded to this morning, when I alluded to the fact that SCOPA did receive a letter from the DOD indicating that the officials would not be able to answer all the questions that SCOPA had put to them, in October of 2000, during a hearing, on the special review of the auditor general. I think, the fact that Ministers were not involved in the hearing in 15 October 2000, may have contributed to the way in which they viewed the 14th report. I am not advocating that anybody was right, or anybody was wrong. I am trying to point out where the tension points emerged that really placed a lot of pressure on the relationship between Parliament and the executive. That was one moment. I think an additional moment would have then been, 20 after this not happening, so the officials go, having written saying they cannot be there alone, the Minister should also come. I was not a member of SCOPA, at that time. So, I should actually not be pinioned on this. I think others are going to be at much greater liberty to speak freely about what the interactions were at that time, what the reasons were, what the reasons were 25 not. I do not want to step into that space. I simply want to point out where

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the pressure points were. So, the SCOPA chairperson did receive a letter from DOD indicating the officials cannot discuss everything, because some decisions were not taken at that level. Ministers do not appear, because you can look at the transcript of the October hearing in 2000 and you will not see

5 an appearance by Ministers. The Ministers, then, in early January, after the 14th report of SCOPA is adopted in the National Assembly, which is the only role that played and that as a Parliamentarian, because I am a member of a collective, at that stage, so they adopted the 14th report as a standing committee, the Ministers then, became quite aggressive towards the standing

10 committee on public accounts, very early in 2001. Again, this happened before I became a member of SCOPA. I was watching this, like every other citizen of the country, watching the State President on national television, having a press conference and then Ministers, having a press conference, in short succession. So, none of these issues, I can claim personal knowledge,

15 other than the generic knowledge of a Parliamentarian, who was a Parliamentarian. I was not a member of SCOPA. But, as a Parliamentarian, I thought that moment marked a significant tension point between the executive and the legislature, at least, between the executive and the Standing Committee on Public Accounts, of which I was not a member, at

20 that stage.

MS RAMAGAGA: Alright. Thank you. Then, I will proceed to read the next sentence, still on that page. The one that starts as follows ... [intervene]

COMMISSIONER MUSI: Can you, can I hear, before you proceed there, Ms Ramagaga? In what way were the reputations of these investigating

25 agents harmed?

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MS RAMAGAGA: Yes. Please, please proceed to answer. It is actually the next question I was going to ask, Commissioner. Yes. You may.

MS TALJAARD: On the understanding, once more, that I am dealing with a book, not with my written statement and I am simply reflecting my opinion
5 and that is my understanding. If one looks at the special review, you would have noticed and I am trying to draw out the continuities. In the special review, the subcontracts were not probed and the auditor general raised a flag of concern about the subcontracts, in the initial special review of 2000. In the JIT report, you can very clearly see the concerns of the auditor general
10 once more, because he actually points out in the JIT report, that he had difficulty in accessing information from the Department of Defence and the Department of Trade and Industry. In fact, in the public hearings on the JIT report, the auditor general is also on record, the then auditor general, pointing to those difficulties. I do believe, still today, that the fact that the
15 scope of the audit had to be limited, in the Joint Investigating Team report. The fact that subcontracts were not looked at and there are reasons for that, those reasons relate to commercial contracts, there are many reasons. I am not going to go into those, those are for other people to canvass. But, if we look at the fact that there has been a consistent limitation of scope on the
20 subcontracting dimension, despite the fact that the auditor general raised that concern as a concern, in the special review and in SCOPA and it became again, a limitation in the JIT investigation. I do believe the limitation of SCOPA, potentially harmed the credibility of the investigation. It certainly did, in my view.

25 MS RAMAGAGA: Should I proceed, Commissioner?

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CHAIRPERSON: So basically, what you are telling us is your opinion. You do not have any other concrete evidence to support that position. Simply because, you are, as to the evidence before us, we are told that the subcontractors that was a function of the, of the main contractors. DOD was

5 involved in there once or twice as far as the combat suite is concerned with the, with a subcontract. But, in general, only the, the preferred bidders were the ones who were interacting with the subcontractors. If that is the position, will I be correct to say that is your opinion, which you have told us as an outsider, or do you want to say to us that you do have information, which

10 suggests that some of those subcontractors corrupted those who were supposed to make a, or who were supposed to have made actual decisions?

MS TALJAARD: If I may, Commissioner, two issues and I would like to separate them. The first issue, I was not a member of SCOPA, at that stage. So, anything related to the strategic review in 2000, anything related to those

15 issues, is my opinion, editorialised. However, from the time that I became a member of SCOPA and I took an interest in reading the Inter Ministerial Cabinet Committee minutes, which I did, in detail and just please remind me again, evidence leaders, those are all declassified, specifically, with respect to the inclusion of the Corvette combat suite component and the risk element,

20 as it is reflected in the Inter Ministerial Cabinet Committee minutes. That to me, suggested, at least, in principal, with respect to that specific component, it would have necessitated a deeper look and therefore the narrowing of the scope of the audit and the difficulties around DOD documentation and DTI documentation is a real issue. Again, I cannot say that I have personal

25 knowledge and that I can name and shame individuals. I do not have the

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forensic capabilities to do so, but the fact that the subcontract arose, in the Inter Ministerial Cabinet Committee in the way that it did and I understand why it did, because it is a mission critical component of the vessel. So, there are big issues here. I understand why the scope limitations became a
5 problem and they were a problem to me then, as a member of SCOPA,
when I became a member of SCOPA. I think the, the, nobody is going to say that the history of procurement was not that primary contractors and subcontractors were separated in this way. I think the history of DOD procurement shows that. The history of the structures of DOD procurement,
10 but in this particular case, the presence of the Corvette combat suite issue in the Inter Ministerial Cabinet Committee minutes, is an issue that warranted a closer look and the scope limitation in the audit made that very challenging, if not impossible. But, I have no personal knowledge.

CHAIRPERSON: So, in other words, even though the issue that you are
15 referring to about the combat suite, you have no personal knowledge about that. What you are saying to us is that you suspect that something wrong might happen, when investigating. Should I understand to, to that sense?

MS TALJAARD: Not entirely, because at this stage, I was already a member of SCOPA and if I may just turn to page 22 of the JIT report.

20 CHAIRPERSON: We are aware of what the JIT report is saying. I want to hear from you, as a witness. I kept on saying to you that we have got the JIT report. We want evidence. We have all read the JIT report. We know what they are saying. What we are trying to find out from you, you are referring to the combat suite. You seem to be suggesting that the combat suite was
25 discussed at the Inter Ministerial Committee meeting. Do you know what

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there was discussed, or not? Do you have any evidence to back up this statement, because I concede? Do you have any evidence to back up the statement that the combat suite was discussed at one point in time in the Inter Ministerial Committee meetings?

5 MS TALJAARD: Mr Chairman, I believe that is in the documents that are in possession of the Seriti Commission to the best of my understanding through the evidence leaders, am I to understand that that is not the case?

MS RAMAGAGA: Chair, I think, regarding this, this aspect, the Inter Ministerial Committee minutes have been handed up, during the presentation
10 of evidence. There are not many set really. I think they are just about five sets, that have been, that have been handed up. I think, just in the interest of time, it would assist to look at the minutes and, and then respond to this question. That could also be addressed by the Commissioners when they draw their report, because they would also refer to those minutes.

15 CHAIRPERSON: Maybe you are right, that we can do. Just, I was raising with the witness, because she refers to it. She refers to the discussions in the Inter Ministerial Committee meeting on the combat suite. It is so that we have seen that she is talking about it, she be having quick reference to those minutes. That is why I was raising it with her.

20 MS RAMAGAGA: Thank you, Chair. May I just maybe bring it to the attention of, of the Commissioners that in, in our preparation for the hearing, the witness did ask for copies of the Inter Ministerial Committee minutes, because the witness indicated that those minutes are among the documents that they had to see, when they were under lock and key in the, in the
25 custody of Parliament. Now, she would not have an independent recollection

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of where, which minutes, in particular, would such reference be found. What we did, was just to inform her that the minutes, at least, are there and they are already on record and also, due to time constraints there was no opportunity, I think to make copies of declassified minutes, because the
5 declassification stamp has to appear on the minutes that would be handed over to her. So, that, that was sort of a challenge, but I think it is only proper that we bring it to your attention as to what happened in relation to the ...
[intervene]

CHAIRPERSON: Thank you. Thank you.

10 MS TALJAARD: And Mr Chairman, if I may, just for the indulgence of the evidence leaders, just add that even though members of SCOPA had access to the documents, we were under strict instruction not to take notes, not to try and commit too much to memory and simply use this as the basis, of our questions. So, I, unfortunately, would not have any personal documents in
15 that regard. So, I would have to rely on the declassification.

CHAIRPERSON: Ms Ramagaga, Commissioner Musi was also whispering to me. Can we just check, whether the question of the combat suite, was it ever discussed at the Inter, Inter Ministerial Committee meeting. I cannot recall that. You and your witness seem to be saying that that is a possibility.
20 I cannot recall seeing any of those minutes, where the combat suite was, was discussed, particularly the combat suite, relating to, to the subcontractors.

MS RAMAGAGA: Alright. Thank you, Chair. Maybe I just need to correct the understanding of what I was addressing, when I spoke about minutes. I did not say that it definitely, that there is an entry in the minutes, where they
25 are talking about or whether it is reflecting that the Inter Ministerial

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Committee discussed the combat suites. All what I said is that the minutes are available and in the event that we are unable to establish that now, in this forum the Commissioners will have the opportunity to look at, I mean, if it there in the minutes it will be there. If it is not there, it is not there and it will
5 be properly taken care of in the, ultimately in the report.

MS TALJAARD: Fine. Sorry, Mr Chairman, I do not want to hold up the process. I want to help us make progress. But, I think, there are just two issues that arise for me that are important. The one is a question of procedural fairness, because I assumed certain minutes were declassified.
10 So, in the interactions between myself and the evidence leaders, I think we just need to establish that as a procedural fairness issue for all sides. Also, with respect to the minutes, I do not have an infinite memory capacity and it may be that I do not recollect the detail perfectly. I seem to have a recollection from the minutes. I am not stepping away from the statement,
15 but I do want to have the comfort that I am relying on a memory that stretches back 13, 14 years ago, with respective details in minutes that I had for specific periods in time. So, my own memory recollection may not be perfect. So, firstly, I want to place that before the Commission up front. Secondly, just as a matter of procedural fairness, if that has somehow, in the
20 declassification matter, not been properly addressed between myself and the evidence leaders I hope that no prejudice will be suffered by either party in that regard.

MS RAMAGAGA: Ja. Thank you, Chair. I think the issue, relating to the declassification and the existence of the minutes and so forth has been
25 properly ventilated. It is on record as to what happened preceding the

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presentation of this evidence today. May I proceed? Thank you. Now, still on page 45 of your book, I want to take you to the last paragraph. The first, is it, ja, it is the first sentence on the last paragraph. I will, I will read the relevant portion into the record as is. I know that you did mention that when you wrote the book, you did not have the Commission in mind. That is understandable. But, nevertheless, for all fairness, I will, I will read it into the record and that reads:

“The Pandora’s box of gruesome delights that the auditor general’s first report opened would destroy lives, Parliamentary careers and institutions.”

I will stop here and follow up with the following sentences. Now, what I would like you to indicate to this Commission is as to whether you can point out the specific persons, whose Parliamentary careers were destroyed, as a result of this special review report, as well as, the institutions that were destroyed, as well as, the lives that were destroyed by this report?

MS TALJAARD: Once again, this is not the kind of document that one swears to under oath. These are emotive statements, made in a book, which reflecting on the experiences of an individual Member of Parliament at that particular time. In that regard and this is not evidence and I just want to clarify that, it is my opinion, I believe that former ANC MP Andrew Feinstein, considers his life, at least, partly deeply affected by this. I personally consider my own life to have been deeply affected by this and it certainly contributed to my decision to leave the National Assembly. It was not the only, it was not the only reason, but it certainly you can see that in the rest of the book. I think that there are a number of other individuals, who may feel

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the same way. But, I am talking about feelings and opinions and editorialising. I do not consider that to be evidence. So, I am really in the hands of the Chairperson.

MS RAMAGAGA: And are there any institutions that you would also like to point out, as being in your opinion, institutions who might have been destroyed, as a result of this, this report?

MS TALJAARD: Under oath, I would not use destroyed, because it would have a very specific meaning, but deeply impacted, I would use and I do think that SCOPA and Parliament were deeply impacted by this. I also think that the, once again, we are in the editorialising space, I also believe that the way in which large scale procurement is structured was not destroyed, because it was not as if there was a template for that. But, template was created that I think we need to take some lessons away from and think about that very deeply, so impacted, yes.

MS RAMAGAGA: Alright. Then I will proceed, unless there are questions from you, I will proceed with the next sentence:

“Yet, it still represents the most truthful and honest first step assessment of the shortcomings of the acquisition process. I do think, in my view, there would be major contradictions between this bare knuckled probe by the auditor general, who had initiated the special review, a brave step for a new incumbent and his subsequent report, compiled, as the convening head of the Joint Investigation Team, appointed subsequently.”

Now, what I would like you to address is your making reference to the fact that there, in your view, there appears to have been a marked difference between this report and the final report of the report, yes.

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MS TALJAARD: It is very challenging to reflect back on the memories of a politician, 13 years ago and especially one who is no longer a politician, but I will try and keep it to a more legalistic expression. The language in the Joint Investigation Team report, I consider to be toned down, quite extensively
5 from the language that was used, with respect to deviations of process in the strategic review. That was my, my view, at the time. I have to say that it is also a matter of record that I engaged in an extensive amount of interaction with the then auditor general about the provisions in the old Auditor General's Act and the way in which those provisions dealt with the manner in which
10 audits occur of the intelligence structures in South Africa and indeed, of the special defence account. Because it was my view, at that stage that, with respect to the principals in the new Constitution, the correct balance, between transparency and secrecy, which does exist in these issues, intelligence and defence procurement was not struck in the Audit Act, as it
15 existed then.

MS RAMAGAGA: Alright. Thank you. We are now in page 46.

COMMISSIONER MUSI: I, I am not sure I, I understand. What are these major contradictions between the initial report by the auditor general and the subsequent JIT report, what all are these?

20 MS TALJAARD: The strength of the findings on deviations, the way in which it was expressed. I thought that the language in the Joint Investigating Team report was toned down considerably from the strength of the strategic review's finding. This is a matter of opinion. Two different people would be, in this, come to a different conclusion. But, it had an undertone for me,
25 because I was concerned that the provisions in the Auditor General Act, did

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not comply with the spirit of transparency that came from the new Constitution, specifically, because the legislation in question, legislation that dealt with intelligence, legislation that dealt with defence, was legislation that came from another era, another country, if you look at the new Constitutional
5 standard. As a consequence, I did not believe, at that time that the Auditor
Generals Act struck the right balance and I articulated that to the auditor
general, in the way that a politician would, which I was, at that stage, a
politician and I did so aggressively.

COMMISSIONER MUSI: As for, in lives, its priorities and example of a life
10 that was destroyed.

MS TALJAARD: With due respect to the Commission, to the Commission, I
do believe that there are people, who would consider that their lives were
destroyed by this. I cannot speak for all of them. My life was not destroyed,
but it was deeply impacted and I can only speak for myself.

15 COMMISSIONER MUSI: But, do you know of any, whose life was
destroyed, as a result of that report?

MS TALJAARD: In my view, certainly former MP Andrew Feinstein's life
has had a severe impact, from these events.

COMMISSIONER MUSI: Not destroyed.

20 MS TALJAARD: And that is my opinion and different people will reach
conclusions on this.

COMMISSIONER MUSI: Certainly not destroyed.

MS TALJAARD: As I indicated, this is a book, conveying my opinions. This
is not a statement under oath, in that sense. If there is an intention to create
25 any statement under oath, I will not be doing that.

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COMMISSIONER MUSI: Is it what you call what happened?

MS TALJAARD: Judge, it is a book. It is a book, it is editorialised opinion and I am not going to testify to specific names, because I think, different people are going to have different opinions and I think we all need to also
5 agree that perhaps in this forum, so will we.

COMMISSIONER MUSI: Thank you.

MS RAMAGAGA: Alright. Thank you. Then I am reading from page 46, the last, the last sentence and over to page 47.

10 *“SCOPA called on an all-party [indistinct] that needs to be remembered for an investigation that would bring together the auditor general, the Heath special investigating unit, the public protector, the investigating directorate for serious economic offences and any other appropriate investigative body that could add value to the probe, in terms of skills formal powers and legal mandates.”*

15 Now here, you are talking about the, that, that meeting, where it was agreed in Pretoria that there should be, there was a proposal that an investigative body of this nature should be established. Then, you say the report stated that SCOPA would issue an investigation brief to the team. I am well aware of the fact that, at the time, when that meeting was held, you were not as yet,
20 a member of SCOPA, but you subsequently became a member of SCOPA in January, February 2001. Now, the question that I would like to ask is whether SCOPA did, in fact, issue that investigation brief to the team, or what is the position?

MS TALJAARD: Again, if I may split this into two. The one reflects,
25 certainly just as a back bencher, sitting on my bench in Parliament, observing

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what was moving above and below the line, as the house was adopting various reports. When the 14th report of SCOPA was adopted, it was adopted with no debate and normally when that happens in the Parliamentary environment, when a report simply moves from below the line, above the line without any debate; it is an indication that there is not great conversation between political parties, on an issue. So, even though I was not a member of SCOPA, I had the perception that there was not great contestation controversy in this report of SCOPA, because it just mechanically moved from below the line to above the line and it was voted through and it was a report of the National Assembly. In it, contained the paragraph that referred to the multi-agency probe and that paragraph, I do not recall the correct wording and I do not have the 14th report in front of me, but we can check it. I think the wording was along those lines. It was crafted, I think, including wording around the lines of the investigation brief and we would have to check that, for that to be under oath, properly. But, I cannot remember the exact wording in the 14th report. But, certainly, in the meeting in Pretoria and bearing in mind, I was not a member of SCOPA. This was my first interaction, where I sat with members of SCOPA, who had worked together for years, on an all-party basis. I did not get any indication of disagreement amongst the members of SCOPA, at that time. Again, a big discourse developed and letters were written between the then Chairman of SCOPA and the Speaker of the National Assembly on this issue. I have my perceptions, basically as a former Parliamentarian on those letters and the correspondence and the binding nature of the Parliamentary Report of the Standing Committee on Public Accounts. But, I cannot claim first-hand

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knowledge, specifically about what drove the interactions between the Speaker and the Chairman of the Committee, or what drove the dynamic between the Chairman of the Committee and the members of the Committee. I do not; I simply do not have those memories.

5 **MS RAMAGAGA:** Alright. The purpose of my question, is just to establish, as to whether the brief that went to the team, is it a brief that was issued by SCOPA, or was it issued by some other institution and I am asking you the question, because I have already stated that, at the time of the meeting, you were not, as yet, a member of SCOPA, but you subsequently, shortly
10 thereafter, you subsequently became a member of SCOPA and if you have issued a brief, then even if you come later into SCOPA, you would be part of the collective that is establishing, as to whether the brief is being carried out, in accordance with the terms, set out in the brief. Hence my question, whether SCOPA did issue the investigation brief to the team or not, or you do
15 not know.

MS TALJAARD: The only direct knowledge of this that I could claim is that the 14th report, as a report, which was adopted by the National Assembly was the brief. If there was any other specific brief that was issued in the intervening period, or even flowing from that meeting specifically, I know that
20 there was a conversation about the fact and this even arose in the discussion amongst the agencies that, in the discussion where they were comparing their different powers that they would bring to an investigation to comply with the 14th report. They all discussed the fact that they could not assume that the special investigative unit would be part of this, because that requires
25 Presidential confirmation. That conversation, I remember, distinctively taking

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place, within the confines of that meeting. Now, anything that happened between the timeline of that meeting and the time that I became a member of SCOPA, I cannot speak to with any authority. But, my perception is about what the brief was, once I became a member of SCOPA, was that the brief
5 was the 14th report.

MS RAMAGAGA: Well, I ... [intervene]

MS TALJAARD: I cannot, I cannot go beyond that, because that is really what I contain personal knowledge of. I did subsequently see the letter that was written to the President, regarding the proclamation, or the possible
10 proclamation for the Heath unit. But, that only arose, because once I became a member of SCOPA, all those documents became available to me, in order to understand. But, I have no knowledge in that time line.

MS RAMAGAGA: Okay. No. Then, that is fine, I think like you say, you cannot take any further.

15 MS TALJAARD: No.

MS RAMAGAGA: It is only what, what caught my eye is that, in the book it says the report stated that SCOPA would issue an investigation brief of the team, which then means that, that report was not a brief. The report states that SCOPA would then issue the brief. But, seeing that there is not much
20 that you can assist with, in that respect, I will then proceed to, unless there are questions from the Commissioners, I will then proceed to the last sentence on that page, which reads:

*“The subject of the Arms deal probe was merely the beginning. In years to come it would bring the country of moments of Constitutional crisis
25 and threaten the very heart of good governance in South Africa.”*

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Now, can you just explain to the Commission as to, in what way would this acquisition bring the country to moments of Constitutional crisis and threaten good governance in South Africa?

MS TALJAARD: I think, with all due consideration and respect to the
5 Commission, the fact that we are all here 13 years later, partly attests to the fact and I also believe that at that time, again, I am being very careful, because I will not step over line with the Electoral Commission Act. I will be very mindful of this. I am reflecting the perspectives that I had, as a then, opposition politician. In my view, at that time, I looked at what was
10 happening, as I was sitting in my bench, looking at the other side of the house, where my opposing political party sat and to me, I perceived an enormous amount of internal tension in the party that was sitting opposite me, in the house, at that stage. I thought that by virtue of the electoral outcome, given the size and importance of that party that that would have
15 ramifications for institutions. But, that reflects my views at that time. I know, I know that the Chairperson may what to coax me further, but I am going to resist very aggressively with Section 92 of the Electoral Commission Act, if I may. Because I can only, only reflect back, on the views I held, at the time, in this regard.

20 CHAIRPERSON: You are dead right. I was just about to follow up on that statement that you have made, because I find it quite, quite interesting.

MS TALJAARD: Please be merciful, with reference to Section 92, Chairperson.

CHAIRPERSON: Maybe you are correct. I will keep that in mind then.

25 MS TALJAARD: Thank you.

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CHAIRPERSON: And for that reason, I prefer not to pursue at this point.

MS TALJAARD: Thank you.

CHAIRPERSON: Thank you.

MS RAMAGAGA: Alright. Then, shall we then proceed to page 48 of the
5 book? Page 48, the last paragraph. Now, that, that makes reference to that
cabinet statement of January, was it the 12th and then, which was followed by
the appearance of the February 2001 clause by the specific Ministers and
that reads:

*“Some weeks after the issuing of the Cabinet statement, the Defence
10 Minister Mosiuoa Terror Lekota, successor to Joe Modise on whose watch
the Arms deal was concluded, also welcomed the probe, stating that any
investigation that cleared the air could only be of benefit. This response,
stands in marked contrast to the subsequent way in which the executive
would unleash the full fury of its powers and tactics on individual MP’s, on
15 Parliament and SCOPA itself in a series of acrimonious interactions that they
pose to this day.”*

Now, will you please just explain that, that paragraph, especially when you
refer to acrimonious interactions between the Cabinet Ministers and the
individual MP’s, the Parliament as well as SCOPA?

20 MS TALJAARD: Just firstly, just looking at the first part of that sentence
and I know you have been sitting through a number of very technical
submissions. So, I hope that some of the humour of a former political life
may also be allowed in this chamber. At that time, the former Minister Terror
Lekota, during the interaction and the hearing of SCOPA in February of 2001,
25 very robustly indicated that he had investigated and he had requested the

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first investigation. Then, subsequent to an interaction between himself and former Finance Minister Trevor Manuel, he then wrote back to me, clarifying the day, after that meeting that that was, in fact, not the case, that the auditor general had approached the Department of Defence. But, that is purely for you, your entertainment, because you have sat through a lot of technical discussions, as well. But, on the acrimonious side of things, I think, the Parliamentary environment, became very charged, around this issue. That became clear, just from the number of letters, press statements and I did not play a direct role in much of that, because I was a Committee member and others would be able to speak to this, with much greater authority, because I was not the Chairperson of my Committee. I was a member of the Committee. But, at that stage, the Chairperson of the Standing Committee on Public Accounts, received a pleather of letters from the Speaker, from the then Deputy President, from Ministers and there were lots of letters. All those letters retched it up the tension and contributed to fairly acrimonious exchanges. Frankly, particularly between ruling party MP's and opposition party MP's and that should not strike one as too strange in a Parliamentary environment, but it was quite acrimonious.

MS RAMAGAGA: Alright. Then, shall we then proceed to page 51 of the book? The second paragraph, commencing with the sentence, I felt that I, it is the second line on the second paragraph:

"I felt that I had joined a gathering field with loyal and committed heads of agencies and fellow MP's from SCOPA, motivated by a deep desire, to ascertain, whether these important procurement decisions had been informed by a propriety."

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Now, out of reading this portion, did, did you, as a person, now I am calling for your own opinion, did you have some reason to suspect that the procurement might have been the, the procurement decision might have been influence by some propriety or impropriety?

5 MS TALJAARD: One of the more and I am being very careful with how I choose these words, prior to my appointment to SCOPA , even though I had absolutely no substantive interest in the defence industry, even intellectually, I did read quite a bit about the Al-Yamamah one and two contracts in Saudi Arabia and the involvement of BAE systems in that. That, 10 at least, gave me pause to wonder, whether that would have been a possibility in the South African case. So, I will not state it any stronger than that. But, it certainly gave me pause to wonder if this is an operational mode, that was applied in those two deals, where commissions were paid, that has been admitted and there are various issues on record, in other jurisdictions, 15 in that regard. It did give me pause. Even though the evidence around commission payments and those issues only came out much later. But, there were a lot of allegations, as well, in the British Parliamentary environment about that and that did give me pause.

MS RAMAGAGA: Alright. Thank you. Shall we then proceed to page 52 of 20 the book? The, I would like to focus your attention on the second paragraph of the book. I would like to read into, I will read into the record, the second, commencing from the second sentence of that paragraph and it reads:

"I was particularly fascinated by the contractual aspect of the deal. Above all, I was interested in the possible nullification of the contracts on the 25 ground of corruption, the enforceability of the National Industrial Participation

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agreements and their potential, if any. To offsets, what was a remarkable economically significant investment of money and the disputed overall cost of the procurement.”

Now, will you just explain to the Commission, as to what is it that made you
5 to be interested in the possible nullification of the contracts, on the grounds
stated in that paragraph?

MS TALJAARD: Once again, I think it is important to reflect that members
of parliament also look very carefully at what the issues are that of concern in
the public arena and how they then reflect those issues back, into their
10 Parliamentary activity. There was a significant amount of speculation
discussion around corruption, as a consequence of the tabling of the De Lille
dossier. I think it is important to reflect and pause, simply understanding that
the real world of politics, means that Parliamentarians will take up issues that
emerge in the public domain, issues that emerged, that they put on one
15 another's agendas and they will follow those issues. So, I would not be
giving honest evidence if I did not say that the broader impact of debates
about corruption at that time ensured that a lot of Members of Parliament
were looking at these issues through those lenses. I think it would have been
the case for a number of MP's and that is just the factual reality of how
20 Parliamentary politics works. What is difficult for me, as well, to reflect is to
think back whether, at the time of these experiences, as opposed to writing
the book, nearly eight, nine years later, I was as intensely focussed on the
corruption issues or to what extent my, like with any other normal human
being the memory re-constructs slightly, when you look eight years back. I
25 think that happens too. But, certainly, with the kind of cut and thrust in the

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Parliamentary environment, what was happening in the public arena, at that stage, was a lot of focus on corruption related stories and allegations. Yes, there were allegations. But, there were also documents that were leaked, that are part of the media record, around a variety of different allegations
5 about subcontracts, allegations about a variety of issues. So, because we had access to the documents, I considered it my responsibility as a Parliamentarian to understand what the implication would be, if that were really the truth. Because I also served in the Finance Committee and I understood that there would be consequences if that were to be true and
10 those consequences would be contractual and they would be severe.

MS RAMAGAGA: Alright. Will you then proceed to page 72 of the book? Page, oh, I beg your pardon, page 62, I beg your pardon, Commissioner, page 62.

CHAIRPERSON: I am sorry Ms Ramagaga, just so that we can know, how
15 to reschedule our work, how long do you think you are still going to be busy with this, Ms Ramagaga. I am not rushing you, I just want to plan. You see, it is already quarter to four. I want to take a decision, whether we should go on until we are finished with her, or if we are going to be too long, maybe we should adjourn until, until [indistinct]

20 MS RAMAGAGA: Alright. Thank you, Chair. It is, it is our wish and intention to finish leading the evidence today. I am unfortunately, not able to state as to, or to give an estimation of how long I am still going to take. But, the indication I can give, especially in relation to the evidence that I have been placing on record, with regard to the book specifically, I can indicate
25 that I am, I, I have gone beyond half the amount of evidence that I would be

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placing on record. Maybe I can say it cannot be more than 25 per cent of the time that I have spent that I will still have to ... [intervene]

CHAIRPERSON: Your response, you are not helping that much, an hour, two hours, three hour, four hours, and five hours?

5 MS RAMAGAGA: It might not take. It will not be in excess of one hour.

CHAIRPERSON: Not in excess of one hour?

MS RAMAGAGA: Ja. It will not be in excess of an hour.

CHAIRPERSON: Is there any other person who might want to cross-examine? No cross-examination from anyone?

10 ADV MPHAGA: Mr Chairperson, we will not be cross-examining. Thank you.

CHAIRPERSON: Ms Ramagaga, I think, in that case, let us take a five, ten minutes adjournment and when we come back we will continue, until you finish your evidence.

15 MS RAMAGAGA: Thank you, Chair.

CHAIRPERSON: Thank you. Then let us adjourn for about 10, 15 minutes.

(COMMISSION ADJOURNS)

(COMMISSION REOPENS)

CHAIRPERSON: Can the witness confirm that she is still under oath?

20 MS TALJAARD: I do.

MS RAMAGAGA: Thank you, Chair. Now, I would like to take you to page, page 78 of the book and, I am just going to ask a few questions. It is not going to take long. I beg your pardon, Chair. Ja, page 78, at the bottom. Now, on page 78, I will focus your attention to the last paragraph, nè? Now,

25 this is an area, where you are talking about the press statements that were

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done by the executive and commenting on the speech that was made, by the President, you say, you say the following:

“The very next day, the Minister of Justice.”

No. Let me start:

5 “However, this peace seemed to be highlighted the controversial role the Speaker had played in aiding the Heath unit’s exclusion an issue extensively touched on by Gavin, in his focus meeting the day before. The speech also showed how the President had misused the legal advice obtained about the Heath, as I knew, in his public broadcast. For the lawyers had actually
10 recommended the fastening of legislation to regularise the unit, a step that could secure its inclusion to the probe.”

Would you like to comment on that?

MS TALJAARD: Just a simple comment. I am not a Constitutional lawyer neither am I a SILK, but I did have the view, at the time that the ruling of the
15 Constitutional Court, in terms of the head of the unit and the separation of powers doctrine, could have remedied by a fast track amendment and that was the advice that was given, as well and I did simply note that that advice was not followed and it became the reason for the exclusion of the Heath unit and the non-issuance of the proclamation.

20 MS RAMAGAGA: I thank you. Now, I would like to take you to the, towards the bottom of page. No, no, I would like to take you to page 79 to 80, nè? The last paragraph reads of page 79:

“As the Presidency and Judge Heath became more intended in a war of words, Mbeki flew Darfur for the annual meeting of the World Economic
25 Forum. Mbeki arrived in Darfur with the derailed arms probe, like an

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albatross around his neck. It was in Darfur in 2007 that I would see Mbeki loose his composure when the British serious fraud offence, serious fraud office announced that their probe into the British defence firm, BAE systems Saudi Arabia their arms deal would be halted, while the probe of the BAE deals with South Africa and Tanzania would continue. His fury nearly derailed an entire session on investment in Africa.”

Any comment?

MS TALJAARD: Well, again, the fact that it, in my view, derailed the arms probes again, hyperbole, but in my view it derailed certainly the issues relating to the inclusion of the special investigating unit. I happen to sat, I happened to have sat in on the 2007 session and the focus was of the entire forum panel on investment and it became a 10 to 20 minute discourse on the British serious fraud office’s double standard, visibly Saudi Arabia and Africa and particularly, South Africa and Tanzania.

MS RAMAGAGA: Alright. Thank you, Chair. With regard to the book, that would be my last question, unless there are any other points that, ja, that would be my last question and I would like to take the witness back to her statement, to deal with an area of, to deal with an item of conclusion. Now, will you please then go back to your statement, at page 36? Will you just make your concluding remarks?

MS TALJAARD: Thank you and thank you Commissioners. In the final conclusion, I simply try to draw a couple of strands together, because as I was working on this with the evidence leaders, I certainly thought a lot about the extent to which the legal framework moved and changed. The extensive movement from the ex CHEKA Act and the transformation into the Ministry of

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Finance and replacement of the ex CHEKA Act with the new PMFA, the new Ministry of Finance, just the enormous amount of institutional change that has occurred in the legislative space. What that means for large scale government procurement and particularly for any future debates on further
5 defence package, if any. I mean, if there is going to be a discussion, from the defence review about procurement in the future, it is going to look very different, indeed, from the period in the early 1990's, because the legal architecture looks completely different. Then, the second issue also, is related, because at that time, Parliament did not flex its muscles in the
10 budget space, on these issues. Parliament now has set up a budget office. It has appropriation committees. It is an entirely different world from this time, in that regard, even though it is at its fledging stage in the budget office, but it would be a different, different scenario, in terms of how the debate would take place, at least in principal terms. Then, lastly, for me, I hope that
15 if anything is taken from this entire period, 13 years later and indeed, from the work of your Commission, I hope it is going to be reflections, as well, about the discussions we are going to have as a country, because there is a new defence review. A new defence review will imply new defence procurement and I hope that we are going to have the courage and
20 conviction to all look very critically at what we bought and whether we are using it or whether we are not using it. I know that is part certainly of your brief. I hope that those debates will take place, or they will certainly commence in this forum. I wish you well for those, because I know that they will follow.

25 **MS RAMAGAGA:** Alright. Thank you. Just, just one follow up. I, I have

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quoted from the book that you were, you know, expressing a desire to have the contracts cancelled on the grounds stipulated in your book. But, now, as you know that one, one of the desired outcomes from, ja, from some portals, it is about the cancellation, the cancellation of the agreements. What is your
5 view presently about the cancellation of the agreements?

MS TALJAARD: I would want to have an answer to that question, once the Roland White memoranda have been declassified and they are in the public arena. But, I think it is very challenging to unscramble an egg, frankly. However, much, there may be a desire and there certainly is a desire in
10 certain quarters to look at this and particularly to look at Section 217 and I know there have been various legal debates about that. I think it is incredibly challenging to undo a procurement of this nature. It is not impossible. I know that it has consequences. I also know that from a trading partner perspective it has consequences. But, the contracts have provisions for breach. The
15 contracts have provision for a variety of issues that are not related to corruption. So it would quite interesting to see whether this Commission will look at the level of performance on industrial participation, in a very critical way. These breaches are triggered on a variety of different crowns in these contracts. The issue for me is, are we using what we bought? Are they
20 mothballed? Do we know? I have not followed these debates in great detail, because there is a new generation of Parliamentarians who, I am sure, have done so. I am sure that you will be interacting with some of them. But, I, at a practical level it is very challenging to go and undo these contracts. I know that there is a view that it will completely ruin South Africa's reputation as an
25 investment destination. I know that those arguments have been made. But,

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for me, there is also a pragmatic argument of what is happening in the defence budget and whether we can sustain what we bought and acquire what we need for the African standby force and for the regional brigades that are required, in terms of the African Union commitments we have made.

5 **MS RAMAGAGA:** Thank you, Chair. That concludes the evidence of Ms Taljaard.

CHAIRPERSON: Ms Taljaard, thanks a lot for coming to, to testify. I hope some of the evidence that you have led here, will go a long way in helping us to figure out what comment there, as we understand it, to, I think I hear you
10 talking about, whether these weapons are being used, or not. We have heard evidence already in that regard. About five, six people came and testified about utilisation, which happens to be one of the terms of reference that we are supposed to deal with. But, all in all, thanks a lot for coming to testify. I hope it was worth your trouble.

15 **MS TALJAARD:** I would also like to express my appreciation to the evidence leaders. This has not been a simple easy process and I think I threw them quite a curve ball on nine two, but they provided me with quite sound advice and I want to express my gratitude. Also, to the Commission, I wish you well, because you have extensive deliberations ahead.

20 **CHAIRPERSON:** Thank you. Advocate Mphaga, what is [indistinct] than yourself, because I think, earlier on, we tried to find out whether is there anybody who wants to cross-examine earlier. Apparently there was nobody who wanted to cross-examine. So, the witness is going to be excused, because she has just finished with her evidence. Thank you.

25 **MS TALJAARD:** Thank you.

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PHASE 2

CHAIRPERSON: Just before we excuse you, let me hear from Advocate Mphaga what the next step is going to be?

ADV MPHAGA: Thank you, Chair. The next witness, I think is David Mainer, who will be testifying on Monday and Tuesday, next week, the 11th and the
5 12th. Thank you, Chair.

CHAIRPERSON: 11th and the 12th and Advocate Ndou, can we make sure that his statement is processed and on the website by the latest tomorrow?

ADV NDOU: I will do so, Chair.

CHAIRPERSON: Thank you. So, we will adjourn until Monday morning and
10 we will start again Monday morning at 10 o'clock. Thank you. We will adjourn.

(COMMISSION ADJOURNS)

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