

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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HEARING ON 11 AUGUST 2014

CHAIRPERSON: Good morning everybody. Advocate Lebala?

ADV LEBALA: Esteemed Commissioners, we are ready to proceed in leading the evidence of Mr David Maynier. He is standing before the
5 Commission. Chairperson, we apologise for starting late. It appears that the issue of the [indistinct] is becoming an [indistinct]. We would like to assist the Commission where we can to remedy the delays occasioned by us not being ready and we would like in the future when we lead testimony for the Commission, to direct us to assist where we can. There is a simple
10 [indistinct] to it Chair, whereas Commissioner Musi the day before evidence has to be led, it will save time. But we have once again requested David Maynier is standing before the Commission.

CHAIRPERSON: Can you just take an oath?

DAVID MAYNIER: (d.s.s.)

15 **CHAIRPERSON:** Thank you.

ADV LEBALA: Esteemed Commissioners, let us tell you how we tidy up and deal in dealing with MR MAYNIER's testimony. His sworn statement are [indistinct] 5 of the 6 terms of reference, that the Commission is dealing with. Now you will note that his sworn statement does not address only one term
20 of reference [indistinct], the reasons why [indistinct] and capabilities [indistinct] were acquired. But there is something unique about his inadmittable sworn statement. You will note towards the end it invites us as the Commission to investigate whether there was interference in the Strategic Defence Procurement packages and why the initial investigations
25 were terminated.

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Now we mention this so that the Commission should not be taken by surprise as we go towards the conclusion of MR MAYNIER and this is mentioned in the context of paragraph 2 of the terms of reference, esteemed Commissioners and it reminds us that the Commission may act, (2), vary or
5 amend from time to time the terms of reference. This aspect of requesting the Commission to look at as to why the initial investigations were terminated, it is an issue that will also come out in Mr David Maynier's testimony.

Now just to put the documents in order, esteemed Commissioners, the
10 witness has prepared a three page sworn statement.

CHAIRPERSON: I am sorry, Advocate Lebala, I think I missed a point. You tried to make a point that you know we can amend. I am not quite sure what you were referring to when you say we can amend. I was still trying to look through this document.

15 ADV LEBALA: Chair, if you look at the terms of reference of the Commission, you will see paragraph 2. Paragraph 2 of the Government Notice Number 34731.

CHAIRPERSON: Just hold on.

ADV LEBALA: [indistinct] the Commission in paragraph 2.

20 CHAIRPERSON: Advocate Lebala, my understanding once they say that the terms of reference can be amended, it means they can be amended by those we have passed [indistinct] to put in force the terms of reference. I did not [indistinct] to mean that we as a Commission can amend the terms of reference. We must operate within the four corners of the terms of reference.

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The person who can amend the terms of reference is a person who drew up and put in force the terms of reference, not the Commission.

ADV LEBALA: Chair [intervenes]

CHAIRPERSON: It is that [indistinct] are we on the same page as far as
5 that is concerned?

ADV LEBALA: Chair, by reflection, if an important aspect arises, then you will see why we keep on saying the testimony of Mr David Maynier demonstrated by his inadmittable sworn statement, demonstrates that this issue that he is mentioning, and this is not what we are saying. We are
10 introducing this so that we should, so that the Commission should not be taken by surprise. He is saying that arising from the six terms of reference, it appears especially in as far as evidence is concerned, that there has been interference in as far as the investigation is concerned.

So he is says [intervenes]

15 CHAIRPERSON: Advocate Lebala, I understand that. Let us deal with that question [indistinct]. Let us deal with the amendment of the terms of reference. Can we sitting here amend the terms of reference?

ADV LEBALA: It is a legislative... certainly it is a legislative process. It can be done by those better qualified. Whether [intervenes]

20 CHAIRPERSON: So the answer is, we cannot amend the terms of reference?

ADV LEBALA: Chair, the terms of reference cannot be amended by you, but this aspect as to whether there could be investigation as to why there was a termination of the processes, that would have explained certain processes
25 that could not take place. The Commission could look into that. How that

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could be achieved, it includes the following: in exercising your [indistinct] instincts you could approach the powers that [indistinct] and say this aspect has become critical to the Commission now. I can only say this at this stage that we will appreciate it perhaps when listening to the testimony of MR
5 MAYNIER.

CHAIRPERSON: Thank you. We can do that. It is just that I wanted to understand the principles so that one should know the parameters within which we should operate. I just wanted to make clear that I have no powers whatsoever of amending the terms of reference and I have never pretended
10 that I do have powers to amend the terms of reference. I think once we get that clear I am sure our things that we are supposed to deal with, it will be much easier for us to decide which are the relevant issues, and which issues are not relevant to this Commission. Thank you.

ADV LEBALA: Esteemed Commissioners, we never suggest that you
15 should assume legislative functions, not at all. But let us deal with it when we get to that aspect and thanks for highlighting that point, Chair. Chair, Mr David Maynier's statement consists of three pages, as [indistinct]. There is an annexure A to his statement, consisting of 12 pages. You will note that there is one page of his CV. Now there are 29 annexures. The first
20 annexure is DM1, the last annexure is DM29. Now the annexures start from page 22 and they end up on page 904.

I see that the Commissioners are paging through. I would appreciate to be directed when, if appreciated that the annexures starts from page 22 to page 904. I see the Chairperson is nodding. I see Commissioner Musi is
25 nodding. We are ready to proceed, Chair.

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CHAIRPERSON: I think we can proceed or [indistinct] clarification as we go on, because I think I am much more interested in paragraph 4. I want to understand exactly what does that mean, and that will tell us whether you know if the witness is going to help us [indistinct] or not.

5 ADV LEBALA: Thank you, Chair. I am not certain whether the witness has been sworn in. But I am refreshed that he has [indistinct]

MR MAYNIER: Yes, I can confirm I have.

ADV LEBALA: The witness has been sworn in. I am glad to draw your attention and direct you to page 1 of your statement. It is obvious that you
10 have prepared a sworn statement. Please look at page 2 of the paginated papers at the bottom. That is your signature, am I right?

MR MAYNIER: That is correct.

ADV LEBALA: Now let us go... MR MAYNIER, you will see that I will be talking you will be talking, so I am going to request that you press and let us
15 look at each other, so that we [intervenes]

MR MAYNIER: I will get into a flurry.

ADV LEBALA: Thank you. Thank you, but please address the Commission. Let us look at page 1 of your affidavit.

"I, the undersigned, David Maynier, do hereby make oath and say that:

20 1. *I am a member of Parliament and since 2009 have been a member of the Joint Standing Committee on Defence, the Portfolio Committee on Defence, the Portfolio Committee on Defence in the Military Veterans and an alternate member of the Standing Committee of Public Accounts."*

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I would like to break that down. Just summarise, let us start with your membership as a joint Standing Committee member on Defence. What does it entail, briefly?

MR MAYNIER: Thank you Advocate. The Joint Standing Committee on Defence is a joint committee. It comprises of members of the National Assembly and the National Council of Provinces and it is established in terms of the Interim Constitution, Section 228 and the joint rules of Parliament. Generally the Joint Standing Committee on Defence focuses on the... making recommendations and investigating the functioning, the organisations, the morale and state of preparedness, of the South African National Defence Force. I was a member of the Joint Standing Committee in the previous Parliament, between 2009 and 2014. That Committee has not been established by the new fifth democratic Parliament.

ADV LEBALA: Thank you.

15 MR MAYNIER: I expect that it will be, and I expect to be a member of the Committee. Thank you.

ADV LEBALA: Thank you. The Commission has heard a lot about this Committees. I just wanted to... just go to the nub and summarise. Then you are also a member of the Portfolio Committee on Defence and the Military Veterans?

20 MR MAYNIER: That is correct. The Portfolio Committee on Defence and Military Veterans comprises only of members coming from the National Assembly. The Committee is established in terms of Section 55 of the Constitution and Rule 201 of the National Assembly Rules and generally the

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Portfolio Committee focuses on scrutiny and oversight in respect of the budget and it deals with legislation.

ADV LEBALA: And an alternate member of the Standing Committee on Public Accounts, SCOPA. The Commission has heard so much about
5 SCOPA. Just to refresh us, a sentence, summarise.

MR MAYNIER: Thank you Advocate. The Standing Committee on Public Accounts again only comprises of members of the National Assembly and was set up in terms of Section 204 of the Rules of the National Assembly and it generally focuses on and deals with national statements and audit reports
10 of all organs of state that submit those reports to Parliament.

ADV LEBALA: Now at this stage remember we are trying to relax you, the Commission would like you to hear you not us. You mentioned something about the fifth democratic [indistinct]. Just explain that in the context of what you said with regard to these Committees and your role?

15 MR MAYNIER: I was a member of the Portfolio Committee on Defence and Military Veterans in the fourth democratic Parliament, 2009 to 2014. I am a member of that Committee in the fifth democratic Parliament which was established after the 2014 General Election. I am no longer an alternate member or a member of the Standing Committee on Public Accounts in the
20 fifth democratic Parliament, although I was an alternate member in the fourth democratic Parliament 2009 to 2014.

ADV LEBALA: Thank you. Let us go to paragraph 2.

“The contents of this affidavit are true and correct.”

You have prepared a short CV. I would like to deal with it in the context of
25 what your testimony is all about. But to relax you, let us go to page 21. The

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Commission's attention is drawn to page 21. Education, you hold the Master's Degree in Public Administration and your experience in Parliament ranges from as early as 2008, am I right?

MR MAYNIER: That is correct.

5 ADV LEBALA: And the self-same page 21 tells us that you are an MP through the [indistinct] or breach of the Democratic Alliance, is it not?

MR MAYNIER: That is correct.

ADV LEBALA: Now let us go, let us go back to page 1 of your CV. Paragraph 3.

10 *"I have described in summary form the topics which I wish to traverse in my evidence to the Arms Procurement Commission as well as the documents to which I shall refer in support of my contentions. A list of topics is attached hereto marked Annexure A."*

15 The Commission's attention is drawn to annexure A, we will be taking the Commission through that annexure if need. It starts from page 4 to page 16. Let us proceed to read in paragraph 3 :

20 *"It is possible that further information may become available before I am called to testify. For example the final report of the Accountancy and Actuarial Discipline Board's enquiry into the conduct of KPMG as auditors to BAE Systems may become available and I would then like to refer to the report. A list of topics and documents will then have to be updated."*

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Now what is your position as at the time when you are standing before the Commission? Is there any further information available that you would like to add to?

MR MAYNIER: No, there is not and just for the record, the report which I mention in paragraph 3, falls away simply because the investigation never proceeded and that was as a result of a statement released on the 1st of August 2013. So that report falls away.

ADV LEBALA: Now what was that investigation, briefly? It is not relevant from what you say, it fell away. What was the relevance of that investigation in relation to the Strategic Defence Procurement packages?

MR MAYNIER: Advocate, to the best of my knowledge, a body called the Accountancy and Actuarial Disciplinary Board in the United Kingdom, launched an investigation into the audits and professional services provided by KMPG to BAE and there was some expectation at the time, that this report may shed some light on allegations concerning front companies and the payment of bribes by BAE. But as I said, for various reasons, the investigation did not proceed and there is no report, and for that reason the matter falls away.

ADV LEBALA: Now there is nothing to update thus far, am I right?

MR MAYNIER: That is correct.

ADV LEBALA: Thank you. MR MAYNIER, I would like you to speak into the gadget, if you can. Thank you. Let us look at paragraph 4.

"It will be apparent, I do not have personal knowledge regarding many of the topics which appear on the list and that I will in the main, rely on the listed documents to substantiate my views."

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Now what are you saying to the Commission, MR MAYNIER?

MR MAYNIER: I am simply saying Advocate, that on many of the topics I do not have personal knowledge, but there are documents which I believe are relevant to the Commission and I would like to use those documents in order
5 to further my arguments, which I believe are relevant to the terms of reference of the Commission.

CHAIRPERSON: I am sorry, Advocate Lebala, just on that point. You know I am not quite sure if [indistinct] when we further [indistinct] MR MAYNIER to come and testify, that we were much more interested in his views than the
10 evidence. I thought he will come and testify about facts and facts can only relate to those issues that are within his personal knowledge. Now from this thing it appears as if and you know I have just received this bundle now, he has attached a lot of documents prepared by other people. So basically he is going to read through these documents and tell us what he is reading and
15 [indistinct] the views are and not give us evidence. These documents that have been attached, we can read them and from there draw our own conclusions. [indistinct] any evidence which supports any of the allegations contained in these documents and we will not be in a position to make a proper assessment. From what I understand MR MAYNIER now, he is just
20 going to go and read through these many documents, authored by other people, and from there tell us what his views are about those documents. I am not quite sure if that is going to be of any value to us, unless if I am wrong? I have looked at most of these documents, unfortunately I have just been given this bundle, it contains documents prepared by other people. If
25 [indistinct] gives us a document prepared by DTI, some of the members of

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DTI testified. If you think that issue is important, why can we not subpoena the authors of those documents and let him come and testify. Unlike getting somebody who comes from somewhere gives us a document, reads the document and comes and testifies, I think this document means (a), (b), (c) and (d). Rather than ask... will it not be better if we call the person who prepared that document? Then he will tell us why he came to that conclusion. So basically what we are having, MR MAYNIER, to come and do ... he has attached a lot of documents I see, it runs almost into 1000 pages, he is going to tell us he has read the documents and this is what he thinks. And I [indistinct] that is the purpose for which MR MAYNIER is going to take us through the documents, from what I understand from this paragraph 4, unless if I am wrong?

ADV LEBALA: Chair, I see ADV DE WAAL wants to address you, but I wanted to say to the esteemed Commissioners, that in truth and in fact MR MAYNIER is taking the Commission into his confidence, saying that he does not have personal knowledge. Most of the documents is he here to [indistinct] accompany them, just to say to the Commission look at this document, but you will see it is [indistinct] testimony esteemed Commissioners that there are certain positive steps that was taken in relation to these documents. Where he has written letters, where he can address the Commission positively about some of these documents. Now we will [indistinct] from making MR MAYNIER to talk of documents he has not prepared and that is our approach. I am certain that ADV DE WAAL would like to highlight the same aspect that I am highlighting. But let me not preempt what he is going to say.

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ADV DE WAAL: Mr Chairman, it is certainly not the intention that MR MAYNIER will only take you through documents compiled by other people.

There are aspects pertaining to the first two topics, which falls within his personal knowledge and you will see that he obtained certain information in

5 response to questions he posed to a member of Parliament and to Ministers.

He will take you to those. There is also an analysis that MR MAYNIER did from the Parliamentary documents and from the evidence already presented

to the Commission by others, people who testified on behalf of the DOD and DTI and his analysis reveals certain conclusions that he has come to that he

10 would like to bring your attention to, which he believes will assist in the questions of utilisation, jobs and investment.

CHAIRPERSON: ADV DE WAAL, I understand that. But then I thought that the purpose of calling the witness, [indistinct] he must come and testify. He

will not do that analysis if he [indistinct] wants to come and present argument

15 he can do that right at the end. Let us not conflate the two processes. At the

end will come up and we will ask people to come and make submissions. At

that stage he can come up with his own analysis and present whatever

submissions that he wants to present. I thought we had not reached the

stage where we are going to analyse the evidence that has been given

20 before us, but then we are accepting evidence. His own analysis about what

he thinks about the evidence of the DOD, I do not think it is neither here nor

there. We have the evidence. At the right time if we are going to deal with

submissions, we will be in a position to ask people to make submissions at

that stage. But then we seem to be conflating the two processes. I do not

25 think it is the time now for submissions. It is time to lead evidence. If MR

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MAYNIER knows about corruption, let him tell us about corruption and give us evidence about that. I thought this was the state where we are. When we have reached the stage where we are asking submissions, the DOD people that you are referring to, they did not come and make submissions. They came and gave evidence. They have not made submissions as yet. They were [indistinct] evidence. ARMSCOR people came and brought that evidence and did not make submissions about the conclusion that they want us to draw from other documents prepared by other people. Some of those people are people who actually prepared the document. They said it is what we did and they said that is what we are doing now. I thought we were still at that stage where we were gathering evidence. Would it not be proper that if MR MAYNIER is going to testify, let him testify about what he knows. If at all at a later stage he will want to make submissions at the end and once we have valued all the evidence, only then can he make submissions. Would that not be a better way of dealing with this matter?

ADV DE WAAL: Mr Chairman, what I would suggest is that we start going on the topics and you will see that it is also evidence that he will present and you may stop MR MAYNIER as we go along to the extent that you believe it does not assist, but there is certainly from topic 1 already, some aspects which falls within his personal knowledge.

CHAIRPERSON: ADV DE WAAL, I [indistinct] with that. I was trying to suggest that should we not [indistinct], between issues where it was personal knowledge and let him testify about that, and the ones where he wants to draw conclusions after reading several documents, those are submissions and can be made at a later stage.

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ADV DE WAAL: Yes, Mr Chairman, I may have to address you on that later, because well, certainly from our belief, we would like to contend that that is in order as long as DOD do not come back later or DTI come back later, and say that was never put to them. That was never put to them, because we
5 can do it very quickly but there is certain aspects which it is submissions, it is conclusions drawn from the documents, and that has not been traversed in the evidence of the DTI witnesses. We did not put it to them and if they want to challenge MR MAYNIER on those conclusions here, that is what he is here for.

10 CHAIRPERSON: I understand that. DOD might say that the witnesses came and testified and nobody challenged it. But then MR MAYNIER is he not going to testify about what happened at DOD? He wants me to draw conclusions. I do not know if you understand the distinction that I am trying to make?

15 ADV DE WAAL: Yes.

CHAIRPERSON: DOD came and testified. They did not make a submission. They called witnesses to testify. Unless if you say to me MR MAYNIER is going to testify about issues that DOD and ARMSCOR dealt with, we are happy to listen to him. But if you are saying to me, he is going to draw
20 conclusions from other material, then I will have a difficulty with that, because that will be a wrong stage to try and make submissions. [indistinct] about things which are within his personal knowledge, we are happy to listen to that. But then if at all he wants to make submissions, I am saying that the stage will come when he will... or when he can make submissions.

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ADV DE WAAL: Yes, Mr Chair, I suggest that we start going and see where he takes us. I suggest we start going and see to what extent this problem arises.

CHAIRPERSON: My fellow Commissioner is drawing my attention to some
5 of the things that he is saying here, that seems to be facts that he wants to bring before the Commission and if that is so, then we can proceed. But then if at all at a later stage where he now he wants to give an opinion and not facts, we will raise that directly with you. Will that be fair that we proceed in that way?

10 ADV DE WAAL: Certainly, Mr Chairman.

CHAIRPERSON: Thank you. Advocate Lebala, unless if you want to add something else, then you can proceed [indistinct]

ADV LEBALA: Just to assure you esteemed Commissioners that as we were preparing with MR MAYNIER, the issues that have been addressed by
15 Advocate de Waal, we considered them. There are instances where the conduct of MR MAYNIER positively contributed to some of the terms of references, where one could say he could adduce facts and evidence before this Commission. We will askew avoid territories where he cannot address the Commission, particularly in bringing facts, that we will do. Except that
20 there are documents in the context of his positive conduct of trying to address and find out about the issue of corruption. He played some role that could assist the Commission and that is where he wants to say, I draw the Commission's attention to this document and he does not want to testify to it, because he is not qualified to testify to it. Once again we will assure you that
25 we will handle these questions. MR MAYNIER, shall we proceed? We are

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still in paragraph 3. You do appreciate the issues raised by the Commissioners, am I right?

MR MAYNIER: I do and we have addressed some of them in our preparation.

- 5 ADV LEBALA: Once again, please speak into the mike, because there has got to be a transcript of your testimony. I would like us to proceed from paragraph 4 and to make sense, I think let us recapitulate and start again in paragraph 4.

10 *"It will be apparent I do not have personal knowledge regarding many of the topics which appear on the list, that I will in the main rely on the listed documents to substantiate my views. To the best of my knowledge all documents listed in annexure A, are within the public domain or were obtained through the Promotion of Access to Information Act, save that for the*

15 *following documents which were provided to me in confidence and my sources cannot and will not be revealed."*

Let us analyse what you are saying here in the context of a challenge and the difficulty that the Commissioners have. These documents you say :

"There are those which are within the public domain."

- 20 Am I right?

MR MAYNIER: What I am saying is that there are all the documents which I have adduced to the Commission, save for the specified documents, are in the public domain.

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ADV LEBALA: Now let us look at those which are in the public domain. It is one category and they are those that you obtained through the Promotion of Access of Information Act?

MR MAYNIER: That is correct. There are some documents which have
5 been adduced to the Commission which I obtained through the PAIA Act, a good example would be the impact assessment of the Denel SAARB offset project.

ADV LEBALA: Now was it a court application or was it just... was it just an application in terms of the Promotion of Access to Information Act?

10 MR MAYNIER: It was simply an application in terms of the PAIA Act, the Department complied and released the information.

ADV LEBALA: And the next category, it is those that were provided to you by sources. Now let us be specific. Do those sources include Ms de Lille?

MR MAYNIER: In respect of the specified documents, the sources do not
15 include Ms de Lille.

ADV LEBALA: [indistinct] but I will tell you why, Ms de Lille came to testify before the Commission and mentioned that she left some documents with you in her office, within the [indistinct] of Parliament.

MR MAYNIER: That is correct. At some point, I cannot recall the precise
20 date, Patricia de Lille did hand to me a number of documents concerning the Arms Deal and the purpose of that Advocate, was simply for me to follow up on any outstanding issues. When the Commission was established, those documents were handed back to Patricia de Lille for her preparation to appear before the Commission.

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ADV LEBALA: Now amongst these documents that you are mentioning, are there those that assisted you in having [indistinct] the evidence that you want to testify to before this Commission?

MR MAYNIER: I do not understand the question. Advocate, could you
5 repeat it?

ADV LEBALA: We have looked at the three sets of documents. We know that there are those which are within the public domain, there are those that you obtained through the PAIA Act, and there are those that were given to you in confidence by sources. Now amongst these three sets of documents
10 are there those that you could isolate that through your positive conduct, the steps that you took, they will assist you testify to the terms of reference before this Commission?

MR MAYNIER: Advocate, do I understand that you would like me to specify the documents which are in the public domain, compared to documents in
15 the PAIA applications and then the documents in respect that are from sources, is that what you would like me to do?

ADV LEBALA: No.

MR MAYNIER: To give you some flavour? I am sorry. I do not quite understand you.

ADV LEBALA: Fair enough. If you do not understand my question, then
20 there is something wrong with the way I pose it. All that I want you to tell the Commission is, yes, or no. My question is, amongst these three sets of documents, given the difficulty that the Commission has and we have established that the Commission is not going to allow us to make you
25 traverse documents that you did not prepare, which makes sense, because

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they have nothing to do with you. You know the Commission will draw its conclusions [indistinct], I would like to know are there documents that, because of the positive steps that you took, either by writing letters, or either by investigating, either by going into the website, assist you to come and
5 testify about issues that you can talk to, in as far as the terms of reference before the Commission are concerned, without specifying them. My question is just to establish yes, or no.

MR MAYNIER: Thank you. I now understand the question and the answer is, yes.

10 ADV LEBALA: Thank you and we will focus on those documents, because those you can talk to. Now let us look at page 2. There are one, two, three, four, five classes of documents. Now all of these documents have been considered by yourself, am I right?

MR MAYNIER: That is correct.

15 ADV LEBALA: Now explain to the Commission briefly, which of those documents are public documents, which are those that you could testify to, because you took steps to obtain them, and which are those which were given to you in confidence?

MR MAYNIER: Advocate, of the four specified, the one, two, three, four, of
20 the five specified documents, the consultancy agreements and the amendments to consultancy agreements are now in the public domain. The fifth document, which is an Auditor General's report, I do not believe is in the public domain, but I speak under correction. It may be, or sections of that document may be. All the documents which I have specified I think would be
25 helpful in respect of my testimony today and evidence today.

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ADV LEBALA: Now these documents that we are talking to, do they refer to particular terms of reference in as far as the Commission is concerned?

MR MAYNIER: The first four documents speak to the Commission's terms of reference, 1.5 and 1.6, about alleged conduct of individuals and alleged
5 corruption. The fifth document I think would be helpful in respect of the first term of reference which is the utilisation.

ADV LEBALA: Now all these documents you have considered them, am I right?

MR MAYNIER: That is correct.

10 ADV LEBALA: We will come back and deal with those that you could attest to in the context of the positive conduct that you took. I think that [indistinct]. You are not going to be allowed to go to the conclusions, because the Commission can do it, [indistinct] we will come back to that. I would like us to go to annexure A, page 4 of the indexed and paginated papers. Now we
15 have established that they are [indistinct] one, two, three, four, five sets of documents, some are public documents.

CHAIRPERSON: I am sorry Advocate, I think we seem to be a bit confused. Initially we thought that the documents, the five documents that are mentioned on page 2, these are the documents that he received from the
20 sources that he cannot disclose. But it does not seem to be so. Now the question is, which documents are those that MR MAYNIER says that he received from sources that he cannot disclose?

ADV LEBALA: Commissioners, I am going there, but at this stage let the witness deal with it. I thought the clarity was going to come as we start
25 traversing annexure A, but I am giving it over to the witness Commissioners.

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MR MAYNIER: Commissioner, I did not quite understand your question. Could you repeat your question, please?

CHAIRPERSON: You see that on page 1, paragraph 4, [indistinct] the last two sentences. You are talking about :

5 *“The following documents, which are provided to me in confidence and my sources cannot and will not be revealed.”*

Now my question is, which documents are those?

MR MAYNIER: Those documents are the five documents specified on the second page. There are other documents which I intend to traverse in my
10 evidence, but those documents were in the public domain at the time of deposing to this affidavit.

CHAIRPERSON: Thank you.

ADV LEBALA: [indistinct] question from Commissioner Musi, [indistinct]

CHAIRPERSON: No, we can proceed. We can proceed.

15 ADV LEBALA: Let me direct you to annexure A, page 4 of the indexed papers. You have referred to annexure A in your affidavit that it refers to a list of topics that you intend traversing. Now we will start with utilisation. I see MR MAYNIER is trying to get his act together. Please take your time. If you need time... are you trying to draw my attention to something?

20 MR MAYNIER: No.

ADV LEBALA: “Utilisation”. Now at the outset MR MAYNIER, are you able to traverse the topic, “utilisation”?

MR MAYNIER: Yes, I am.

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ADV LEBALA: That is the issues raised by this term of reference, “utilisation”, relate to issues where you positively played a role and you could make factual contributions before this Commission?

MR MAYNIER: Yes, I can.

5 ADV LEBALA: Now 1.2 on the self same page, the term of reference says :

“Whether the arms and equipment acquired in terms of the Strategic Defence Procurement Packages, are under utilised or not utilised at all.

10 1.2 *It appears from the documents listed below that the Gripen advanced light fighter aircraft are under utilised by the South African Air Force.*

1.3”

There is a reference to Annexure DM1:

15 “1.3 *Replying to a Parliamentary question MO288E National Assembly, 12 March 2013, Annexure DM1.*”

Let us go to page 22. Annexure DM1 is on page 22, esteemed Commissioners. We could save time by reading everything, or just draw the Commission’s attention if you look at annexure DM1 that you positively participated on the subject.

20 CHAIRPERSON: I am sorry, Advocate Lebala, 1.2 seems to be talking about the Hawks and not the Gripens. Am I correct. It says that :

“The Hawks aircraft are under utilised by the South African Air Force.”

And when you go to page 22, it talks about the Gripen.

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ADV LEBALA: Chair, and I will tell you why. That is where the problem of the preparation of bundles in the morning comes in. There has been a change. I have made notes on my old annexure A, you are right, actually I am comparing the two annexure A's. This annexure A has been handed to
5 me, in the morning. It does not mean anything in line with us going ahead, Chair. I will correct myself by realigning what I have on the old one, where I made notes and the current one that we see in annexure A, page 4. Now I think the easiest way to deal with it MR MAYNIER, is let us look at what is before the Commission.

10 “1.2 *The Hawks aircraft are under utilised by the South African Air Force.*”

Let us pause there. Are you able to deal with the subject of the Hawks?

MR MAYNIER: Yes, I can.

ADV LEBALA: Now let us start where you traverse your testimony in
15 assisting the Commission. You may proceed. Start dealing with the subject of under utilisation of the Hawks under the topic ‘utilisation’. We will start with the Hawks and we will go to the Gripens, if need be. Yes? Annexure DM1 does it relate to the Hawks or to the Gripen?

MR MAYNIER: Annexure 1... DM1, relates to the Gripens.

20 ADV LEBALA: Let us look at the annexure that might assist us to appreciate that, the subject dealing with the Hawks. Page 23. Do you want to identify this document, page 23?

MR MAYNIER: Page 23, is DM2 and again DM2 I think will assist us with the Gripens, not the Hawks.

25 ADV LEBALA: Page 24?

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MR MAYNIER: The DM2 which begins on page 23, I included in the bundle simply because I think it could assist the Commission in respect of the Gripens, not the Hawks.

ADV LEBALA: Now page 24?

5 MR MAYNIER: Advocate, I think we might be speaking at cross purposes. Again page 24 also refers... is part of the same DM2 and I included it because I think it could be useful in respect of the Gripens. The [intervenes]

ADV LEBALA: Now... thank you. From page 22 to page 25, we are dealing exclusively with the Gripens.

10 MR MAYNIER: Advocate, we would from page ... from DM1 through to DM3 we would be dealing with the Gripens. DM4 beginning on page 43, I think would be relevant to the Hawks and the Gripens, but primarily the Hawks.

ADV LEBALA: Chair, we note again that the difficulty that is coming. The annexures have been changed and at this stage I am going to request a
15 short adjournment. It is very critical for us because we want to draw this witness' attention to a document that relates to a subject that he wants to deal with. We are sitting here with two documents, annexure A. The one that I have is completely different from the one which has been given to me in the morning, now. I do not [indistinct] I was assured that except for the fact
20 that the original one had 16 pages and the one that has been given this morning, has got 12 pages, I was told that the content is the same. Now the content has changed. If you could give us just four, five or 10 minutes, we would like to realign these annexures.

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CHAIRPERSON: I think maybe we will take our tea adjournment now and I am sure that will give you an opportunity of trying to arrange the bundles properly. So we will adjourn for 20 minutes. Thank you.

(PROCEEDINGS ADJOURN)

(PROCEEDINGS RESUME)

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

MR MAYNIER: I do.

DAVID MAYNIER: (s.u.o.)

ADV LEBALA: Thanks for the indulgence, esteemed Commissioners. My sense of relying on the notes I made on this occasion [indistinct] by all means
10 to expedite the testimony of MR MAYNIER. MR MAYNIER, before we adjourned we were dealing with the important term of reference of the Commission, "utilisation". Now under this heading, are you able to talk about the Hawks and the Gripens, or only the Hawks?

MR MAYNIER: I am able to talk to the Gripens and the Hawks.

15 ADV LEBALA: Now we have managed to sort out the annexures in line with the updated index and the list of annexure A. Let us start with the Hawks and I want to draw your attention to annexure A, page 4. The paragraph :

"Whether the arms and equipment acquired in terms of the SDPP are under utilised or not utilised at all.

20 1.2 *The Hawks aircraft are under utilised by the South African Air Force."*

[indistinct] the relevant documents that you would like to traverse. Let us simplify that. Annexure DM1 relates to the Gripens, am I right?

MR MAYNIER: That is correct.

25 ADV LEBALA: Annexure DM2 relates to the Gripens, am I right?

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MR MAYNIER: That is correct.

ADV LEBALA: Together with 3?

MR MAYNIER: That is correct.

ADV LEBALA: Annexure DM4 deals with the Hawks?

5 MR MAYNIER: That is correct.

ADV LEBALA: Now let us start with the Hawks as set out in Annexure 1.2. Now in as far as the Hawks are concerned, under the heading the 'utilisation', you are addressing the flying hours, am I right?

MR MAYNIER: That is correct.

10 ADV LEBALA: Now let us go to annexure DM4 on page 43 of the indexed and paginated papers. I see the Commissioners seem to be on that page. Page 43 of the indexed and paginated papers. Please identify this document.

MR MAYNIER: This document is part of an Auditor General's management
15 report and it relates to a performance audit conducted on the Hawks system by the Auditor General in the 2008/2009 financial year.

ADV LEBALA: Now your role as the then member of Parliamentary Committees does it qualify you to talk to this document?

MR MAYNIER: Yes, it does.

20 ADV LEBALA: Explain?

MR MAYNIER: The [intervenes]

ADV LEBALA: Please explain to the Commission.

MR MAYNIER: This document was provided to me and I provided it... I have decided to provide it to the Commission because I think it could be helpful to
25 the Commission in at least two respects. The first respect would be that it

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shows that the Hawks system was experiencing significant challenges in the year under review and the second is, I think, the document might provide insight for the Commission in how to test the utilisation of either an aircraft or such as a Hawk, or an aircraft system such as the Hawk system and I hope
5 that that might be useful to the Commission.

ADV LEBALA: Now are there specific parts that you would like to draw the Commission's attention to in as far as what you see on page 43?

MR MAYNIER: I would like to draw the Commission's attention to a number of factors in the document which I will try and traverse as quickly as possible
10 and in the first instance I would like to simply bring to the Commission's attention, the challenges which the South African Air Force were experiencing in implementing the Hawks system during that year under review and then I would like to pause and spend some time particularly on page 44, which begins with the heading "SAAF Corporate Management
15 Comments" and relates to comments made by General Gagiano which I hope will be helpful to the Commission in trying to establish a test for utilisation of either the... an aircraft as I have said such as the Hawk, or an aircraft system, because it strikes me as a key term... it is clearly Advocate, with respect, a key term of reference, the utilisation of the equipment
20 purchased as a result of the SDPP, and it would be important in my view, for the Commission to establish an objective test to test the utilisation of this equipment and it was my reading at least of General Bayne's evidence, that that test had not been established.

ADV LEBALA: Now let us be specific, page 44 that you referred us to, does
25 it traverse the Gripens and the Hawks, or it only talks to the Hawks and you

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have mentioned something very critical in assisting us with the test and I would like us to read the paragraph under "SAAF Corporate Management Comments". I would just like to test the test. May I take the liberty to read it to you :

5 *"Until such time that additional funding can be allocated to the
fighter line, the Hawks system will continue being under utilised
and the gap at current [indistinct] in service funding allocations
will widen as aviation escalation rates remain extraordinarily
high. The fact is, funding is a problem. The SAAF will only be
10 able to sustain around 200 Hawk flying hours per year versus
the required 4,000 flying hours per year."*

Let us pause there. Are you saying we can see the test if we look at [intervenes]

CHAIRPERSON: I am sorry, Advocate Lebala. I think it says 2,000, not
15 200.

ADV LEBALA: I beg your pardon, I beg your pardon, Chair. May the record reflect :

*"2,000 Hawk flying hours per year versus the required 4,000
flying hours per year."*

20 Are you saying we can establish a test when we read this paragraph?

MR MAYNIER: Advocate, what I am saying is that in traversing General Bayne's evidence, I did not see him establish a test. In this document, in the section that you referred to, General Gagiano who at the time was the Chief of the South African Airforce and has expert knowledge,
25 says in this section, that he refers specifically to *"the required 4,000 flying*

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hours per year” in order to achieve four things: fully utilise the system, grow the fighter training, execute collateral operational capabilities of the Hawk, and adequately feed the Gripen advanced light fighter aircraft system. And so I would argue that this may assist the Commission to establish a test.

5 ADV LEBALA: Ja, but the fact remains that this paragraph tells us that the Hawks are flying, funding is a problem and you bring the test in. Now what makes you to say that they are under utilised?

MR MAYNIER: If you look at the section, General Gagiano states that in order for the system to be fully utilised, the Hawk system must fly “*a required*
10 *4,000 flying hours.*” He establishes what in my view a base line number of flying hours per year. In the same statement as the Commissioner alerted us to, in that year the Hawks had only flown 2,000 flying hours and in fact if you look at exhibits in General Bayne’s evidence, in the outer years, from 2009 to 2012 the Gripens are only flying between a maximum of 2,000 hours and a
15 minimum of 1,000 hours.

CHAIRPERSON: Advocate Lebala, just in passing. I am sure you now realise the difficulties that I alerted to in the morning. We are now busy trying to interpret and we have said, the witness is trying to tell us what this document is supposed to be. This is the difficulty that I had in the morning.
20 He was not there. He is not the author of this document. He is now trying to tell us ... [indistinct] on this document. But [indistinct] proceed along those lines, let us see if the [indistinct] is going to be of any value, but then the point that I was trying to make this morning, the witness is trying to tell us, his understanding of this document. He is not telling us about whether he
25 knows... whether he has got any personal knowledge about the fact that the

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Hawks are flying the required hours, or not. He tells us about what other people are saying. This is the point that I was trying to make in this respect, without having that difficulty. He is now trying to interpret what other people are saying. But then we can proceed in that fashion and let us see how far
5 we go.

ADV LEBALA: MR MAYNIER, I suppose you appreciate the challenge that is being presented in as far as your testimony is concerned. Now in as far as this issue is concerned, I think let us assure the Commission that there is something that qualifies you to talk to it. Is it your oversight functions as a
10 member of those Committees that entitles you to testify to these issues?

MR MAYNIER: Yes, I would agree with that. I am as we have said I a member of Parliament. I do have an oversight function and as a result of that, I did come across this report and my real intention, with respect, Advocate, is simply to flag this and say, that it appears to me that
15 General Gagiano offers a view where there are required a base line number of hours, in this case 4,000 flying hours, in order to fully utilise the Hawk system and achieve the other three objectives, and my intention is simply to flag that and I hope that it would be helpful to the Commission. Because it seems to be ... it is certainly a different approach to the approach that
20 General Bayne took in his evidence.

ADV LEBALA: Now if need be we will come back to this aspect. Let us deal with the Gripens. In as far as the Gripens are concerned, Annexure DM1, DM2 and DM3 traverses them. With the Gripens we are talking about their storage. Let us look at Annexure DM1. It is on page 22. Now there the
25 Commission will see something that we can positively engaged and the

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reason why I want to take you to DM1 is just to show the Commission, why you are qualified to discuss the subject. Please identify the document in Annexure DM1, page 22.

MR MAYNIER: DM1 is the reply to an oral question in the National Assembly and that oral question was submitted by myself, and the reply was submitted to me.

ADV LEBALA: Now if you look at that document it says :

“Mr DJ Maynie to ask Minister of Defence and Military Veterans.”

Who was the Minister of Defence then?

10 MR MAYNIER: The Minister of Defence at the time was the honourable Nosiviwe Mapisa-Nqakula.

ADV LEBALA: Now the question posed, if you look at (a) is, you were asking about the Gripen fighter aircraft and its storage period and why is it in storage, am I right?

15 MR MAYNIER: That is correct.

ADV LEBALA: Now let us look at the reply.

“The South African Air Force has 12 Gripen fighter aircraft placed in long term storage. These aircraft are placed in a storage air supply [indistinct] in line with the utilisation and budget expenditure [indistinct] flow of the South African Air Force.”

Now with the Hawks one saw that the funds and the budget were in issue, but even here it comes again. Now what do you say about the fact that this reply informs that it was planned storage? It was not storage because they are not being utilised at all.

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MR MAYNIER: I think we can only infer from the reply which is slightly obscure, we know that there were 12 Gripen fighter aircraft placed in long term storage. As you correctly point out the reason was 'planned' and it is a factor of utilisation and the budget. I think Advocate, if we briefly look at

5 DM2, I think DM2 could be helpful for us in explaining the reason that the Hawks... I stand corrected, that the 12 Gripens were placed in long term storage, or apparently placed in long term storage.

ADV LEBALA: Now which particular page of DM2 do you want to take us to? DM2 [intervenes]

10 MR MAYNIER: I take you to DM2, page 28, 25. To a paragraph headed "forced development and support" and to the last sentence in that first paragraph, which reads :

"No steady state support contracts could be negotiated for the Gripen, resulting in 12 aircraft being placed in long term

15 *storage."*

I think that assist us with an explanation as to why the aircraft were placed in long term storage. If you would like me to expand on that point, a steady state contract would refer to a contract between the Department of Defence and the manufacturer, in this case, SAARB and that contract would deal with

20 issues of maintenance, repair, supply of spares and also updating technical publications and so forth.

ADV LEBALA: Now even if one appreciates your qualification that assists in you testifying to this point in the context of DM1, there is evidence before this Commission, and those who are qualified to cross examine you will come, I

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am going to mention briefly things of what General Bayne said in as far as this aspect is concerned. Do you know General Bayne, by any chance?

MR MAYNIER: I do not know him personally. I do know who he is and I have traversed his evidence.

5 ADV LEBALA: I appreciate that, you do not have waste time to qualify him. In pages just for the record, 1107 to 1110 of his testimony, General Bayne mentions the concept of [indistinct] preventative maintenance programme [intervenes]

CHAIRPERSON: Advocate Lebala, give us a chance to refer to those
10 documents. Where do those documents appear?

ADV LEBALA: I beg your pardon, Chair. It is in the Bayne's bundle, actually. We are advised that this bundle has been provided to the Commission.

CHAIRPERSON: What page?

15 ADV LEBALA: The page of the record, it is page 1107 at the bottom, going to 1108.

ADV LEBALA: Esteemed Commissioners, I am referring to the pages of the record. They are not indexed and paginated, but at the top you will see it is 1107 and 1108.

20 CHAIRPERSON: Thank you, we have got that.

ADV LEBALA: MR MAYNIER, I just want to draw your attention to the things of what General Bayne says, against what you have testified and the question that you posed to Parliament and what you added today before the Commission. General Bayne says that :

25 *"They embarked on a rotational..."*

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If you look at page 1108 at the top, I see the esteemed Commissioners are with us.

5 *“They embarked on what we call the rotational preventative maintenance programme to better retain the fleet system integrity, because what is very important is not lose our integrity on any aircraft, your airworthiness and if you can fly them every now and again, means that your ground crew are practising on it, the air crew are flying with it and one is able to continue.”*

Let us proceed to line 7 :

10 *“We also place the aircraft that was identified [indistinct] inside to prevent corrosion. This are [indistinct] that are dehumidified to ensure that it will prevent any corrosion, external damage to aircraft and you strictly control the environment in which the aircraft are secured. I know it is easy and I have seen many*
15 *diagrams and statements about aircraft standing and in various states of status. I can assure you this is not done without engineering and logistic professionalism and properly.”*

Now let us pause there. General Bayne says up to so far, that this storage is done logically with professionalism and properly. It is not being denied that
20 they are being stored. But he is explaining that there is rotational preventative maintenance, against what you are saying. Do you want to comment?

MR MAYNIER: Thank you Advocate. It appeared to me from the reading of evidence that the so called ‘rotational preventative maintenance system’
25 which General Bayne describes not only in his evidence, but also in one of

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the exhibits in his evidence, was a system implemented at some point by the South African Air Force, to try to manage the fleet optimally at current funding levels. But it appears... it appears to me that the whole issue of long term storage, is a separate issue and it appears to me from my reading of

5 General Bayne's evidence, that there is a dispute of fact here and the dispute of fact Advocate, if I could refer you to an exhibit in the same bundle, which is JW13. JW13 is a letter from General Bayne. The letter is dated the 16th of August 2013 and [intervenes]

ADV LEBALA: Esteemed Commissioners, it is on page 118 of the self same

10 bundle. Page 118, Annexure JWD13, page 118. Yes, you may proceed.

MR MAYNIER: Thank you Advocate. If we turn to paragraph 1 of JW13 on page 118, General Bayne says and I quote :

"During the first quarter of 2014 Director of Combat Systems investigated the possibility of inhibiting 12 Gripen aircraft due to

15 *the low allocated flying hours in the 2013/2014 financial year."*

It strikes me, with respect, that there is ... there are two versions. One version is the Minister's version wherein the reply to her question she says :

"The South African Air Force has 12 Gripen fighter aircraft placed in long term storage."

20 Versus another version, which is the version of General Bayne in his letter dated the 16th of August where he says that :

"He is investigating the possibility of inhibiting 12 Gripen aircraft."

It seems to me that what we have here is a... two versions and a dispute of the facts.

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ADV LEBALA: But that is not fair, because what the Minister advised confirms what General Bayne said.

“The [indistinct] activity in line with the utilisation and budget expenditure patterns.”

5 There is no doubt that budget and funding from the outset ...the witnesses have testified to that MR MAYNIER, funding and budget, even from the billing stage to the end, has always been in issue. What General Bayne says, this appears to be in line with the planned activity... do you see that what he says in as far as the rotational preventative maintenance programme is
10 concerned, but let us complete the picture and hear what you say against that. I do not want us to waste time on it. I just want to draw the Commission’s attention [intervenes]

CHAIRPERSON: I am sorry Advocate Lebala, maybe let him just explain to us what he means when he says that there is a conflict. There is one
15 version that we heard from General Bayne who came and testified before the Commission and there is this letter and we have this reply, which is not dated, I am not really sure when this reply was written. What do you mean when you said, there is a contradiction or a conflict as you said?

MR MAYNIER: Thank you Commissioner, I will sketch it as briefly as I can.
20 I argue that there are two versions. The first version is the Minister’s version wherein a reply to an oral question, the Minister states that :

“The South African Air Force has 12 Gripen fighter aircraft placed in long term storage.”

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In other words the 12 Gripen fighter aircraft are in long term storage. The second version is the version of General Bayne. Where General Bayne says that :

“During the first quarter of 2013 he investigated the possibility...”

5 In other words it appears to me that he does not concede that the aircraft were in fact in long term storage and it seems to me, that those are the two versions and the facts in dispute are, whether the 12 Gripen fighter aircraft were in long term storage or whether they were not in long term storage, and I cannot take the Commission beyond that because I cannot adjudicate
10 between the two... two versions.

CHAIRPERSON: When was this reply given?

MR MAYNIER: This... the reply was... the reply was furnished to me Commissioner on the 12th of March 2013.

CHAIRPERSON: And we do not know what happened in between, from the
15 date of that reply to the date of this letter?

MR MAYNIER: I ... the answer to the question is, I do not know. I could speculate.

CHAIRPERSON: No, thank you. Do not speculate. We want facts. We do not want speculation. You do not know what happened in between
20 [indistinct] Advocate Lebala, just help me here. Maybe I am not quite certain what the procedure is supposed to be. MR MAYNIER is under oath and I see the counsel and the attorney keeps on talking to him. Is it allowed or is it how it is being done these days? It is allowed? Can they talk to him as and when he gives evidence?

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ADV LEBALA: Chair, they have to ask the Commission's indulgence. In actual fact I was just about to say are there issues that they would like to confer, or just for them to put it on record if need be.

CHAIRPERSON: It is just that I have seen it happening and it is a bit
5 disturbing. I was not quite sure whether that is allowed and I see the attorney he keeps on talking to MR MAYNIER, once a question comes and the attorney [intervenes]

ADV DE WAAL: Mr Chair, maybe it is a good time for us to place on record,
we asked the Commission about a week and a half ago, whether we could
10 lead the evidence of MR MAYNIER ourselves, which is the practice followed at Marikana and the Khalitshu [?] Commission. So we are a bit at... that request was refused then. Now we are trying to be of some assistance. We would much prefer to be in Mr Lebala's position and to be able to lead MR MAYNIER and not do this at all. But I understand that you would not like us
15 to ask for him permission to speak to MR MAYNIER, but really frankly Mr Chairman, when he is led, I might as well ask the questions as well. So we do not really see what difficulty there could be with us conferring with him while he is led in chief. Certainly under cross examination that is a different story.

20 CHAIRPERSON: Maybe [indistinct] we gave you answer that you are not an evidence leader. Our regulations makes provisions that the witness will be led by an evidence leader and I think the Commission was correct to refuse your proposal about you leading MR MAYNIER. There is no such a provision in our regulations. I am not sure of what the regulations of the Marikana
25 Commission is saying. I cannot comment about that. I can only comment

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about what I know. Our regulations makes no provision for that and I am not quite certain why you think that you will be in a better position to lead MR MAYNIER than Advocate Lebala. Advocate Lebala is a evidence leader appointed by this Commission to lead witnesses and I do not think, that it is up to you to decide who must lead [indistinct]. It is to the Commission and the Commission has allocated Advocate Lebala to lead the evidence of MR MAYNIER, as a first thing. And secondly, on the second point, it is a bit distracting every now and then for you to be talking to a witness when he is supposed to answer a question. The proper procedure is that you must ask permission from us, or if you do not ask permission from us, you keep those questions as and when we adjourn then you can raise them with your client. Those are the procedures and I think that you know one is not being unfair to say that every now and then, because when I look up and the witness [indistinct] it is a bit distractive. You keep those questions and the issues that you want to raise with your client, when we adjourn [indistinct] Okay. Thank you. Advocate Lebala, let us proceed.

ADV LEBALA: I assure my colleague, Advocate de Waal, that if he wants to object and it is a valid objection, I will support it. We will proceed, Chair. MR MAYNIER, I do not want us to spend time on this aspect. You know what ignited it. We wanted to demonstrate to the Commission that you did play a positive conduct on one or two of the terms of reference, particularly this one dealing with utilisation, that you participated by asking the Minister questions, but whilst on this Annexure JWD13, on page 118, paragraph 2 sums what we read to you in as far as the rotational preventative maintenance is concerned, which demonstrates a planned activity, that those who may come and cross

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examine you, our duty is just to show you and direct your testimony and bring evidence and facts before the Commission. In line with what you have read in paragraph 1, paragraph 2 says the following, may I read it to the Commission?

5 *“Director Combat Systems supported by a statement to operator from SAARB then embarked on a rotational preventative maintenance, RPM Programme, to better retain fleet system integrity. RPM request that each aircraft is flown at least every 60 days.”*

10 Can you see that these relate to a planned activity?

MR MAYNIER: Yes, I can.

ADV LEBALA: Now let us complete the picture by just reading what General Bayne says in page 1109 on this subject of long term storage and planned activities. Page 1109 on the self same bundle. Let us just start from
15 line number one, two, three. Page 1109, line number three from the top, at the end.

MR MAYNIER: Just give me a moment.

ADV LEBALA: MR MAYNIER, it is the self same bundle of [intervenes]

MR MAYNIER: I am on page 1109.

20 ADV LEBALA: General Maynie, of General Bayne, I beg your pardon.

MR MAYNIER: I have been promoted.

ADV LEBALA: Line number three from the top. Towards the end :

*“I am not sure if it was last month or in June we got another enquiry as to how many aircraft are in long term storage and
25 the answer was, none. So there are no Gripens in long term*

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storage? There are Gripen fleet, is in this process that I have tried to explain, now which is I do not think one needs to debate it. It is clearly a much more cost effective and efficient way of maintaining the fleet in times when you do not require all your aircraft for utilisation and training.”

5

Is this not planned activity?

MR MAYNIER: It appears to me that it is planned activity and it is... the activity is to try to optimally manage the Gripen fleet at that current ... at the current funding level.

10 ADV LEBALA: Thank you. Towards the end if you look at line number 19 and 20, Brigadier General ... you know I could put these things to you in themes, but because this seems to be the basis of your positive assertion to be able to give facts to this, it assists that we should package the facts to assist the Commission and I assure you that probably the Commissioners do

15 know about this testimony. Let us look at what Brigadier General Bayne says from line 19.

20

“[indistinct] is basically long term storage another word. What happens is if you, I am sure most people have seen pictures in America of the Nevada desert, they have conditions there where the United States Air Force in its ... when it had thousands and thousands of aircraft standing in disposal, or that they could not fly, they just parked them in the desert and because of the conditions, they can be stored there, those ...”

Let us turn over to 1110 :

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5 *“Type of aircraft taken back, but then the cost to get them back
into flying is very high. Many air forces have gone into long
term storage on the older aircraft. It was necessary. We also
stored the F1’s when we phased them out for quite a long
period, while they were in the marketing phase and they also
had to go into this long term storage and then we brought out,
however, in this case due to the type of aircraft and
engagement, we believe we found a much more cost effective
and efficient way of doing the same, but through this rotational
10 process, Chair, and also I think to add to that the fact is that
we... it is not that funding that can also change at any time,
because the situation can change at any time. And as we have
seen ... as we have shown here, should that be the case, then
we can definitely take those aircraft back out and put a number
15 of aircraft required on to the line, Chair.”*

Is it not part of planned activity?

MR MAYNIER: Chair, I think to ...Advocate, to move us forward, I think
there are two issues here. At some point in the first quarter of 2013 it
appears that 12 Gripen aircraft were in long term storage, and that was a
20 result of planned... it was a planned activity and it was probably a response
as I alerted you to in DM2, it was a response to the fact that there was no
solid ... no steady state support contract for the Gripen. At some point later
in 2013, it seems that the Air Force then implements a ... what they call a
rotational preventative maintenance system, which again is a planned
25 activity, to manage the fleet optimally at that ... at the current funding level.

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The question at issue in early 2013, is as I have said, the Minister's version ... there were 12 Gripen fighter aircraft in long term storage and General Bayne's version, where he appears to suggest that that method of ... was being looked into.

5 ADV LEBALA: Let us proceed. I think if need be you may be re-examined on this aspect and that those who might have an interest in asking you further questions under this heading. I just want us to read page 4. In actual fact we are done reading page 4. I would like us to go to the next term of reference, in as far as your testimony is concerned. Jobs. That is page 5 of
10 Annexure A, esteemed Commissioners. But what has become critical and clear is that in as far as the first term is concerned, the 12 Gripen fighter aircraft have been placed in storage, they were insufficient flying hours, reasons have been given.

MR MAYNIER: Correct.

15 ADV LEBALA: Funding, planned activity and that has become clear. If I may ask, are you aware that some Air Forces in the world do the same thing, of putting their aircraft in storage, are you aware of that?

MR MAYNIER: I am aware of that as a result of traversing General Bayne's evidence. Advocate, before ... it is your intention to move on to jobs?

20 ADV LEBALA: Feel free, feel free.

MR MAYNIER: Okay.

ADV LEBALA: Well, we intend moving to jobs, yes.

MR MAYNIER: Advocate, just before we move into jobs, I just wish to draw the Commission's attention to DM3 which is page 29, which is a written reply
25 to questions from the Portfolio Committee on Defence and Military Veterans

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in respect of the Gripen fighters. I do not think it is necessary for me to traverse the text, but simply to point out to the Commission that the reply I think would give the Commission insight into just how acute the challenges were in operating the Gripen system in the year under review, and similarly in

5 DM4 which is the performance audit, again I just wish to draw the Commission's attention to the findings in respect of funding, personnel and training and again, draw the Commission's attention to just how acute the challenges were in respect of operating the Hawk system. That is all. Thank you.

10 ADV LEBALA: Just for the sake of completeness, if you look at page 29, annexure DM3, page 29, at the bottom, and I think that is what we wanted to draw the Commission's attention to, at the bottom the sentence starting :

"The problems of Gripen fighters that are unable to fly and what is the South African Air Force doing about the underfunding

15 *issues."*

What becomes clear is that the funding was in issue.

MR MAYNIER: That is correct. The ... in this reply the Air Force alert the Committee to the fact that the system is underfunded and as a result of that, you can see the language, literally the survival of the capability is in question.

20 I do not think, with respect, Advocate, we need to traverse these two exhibits in any more detail, just simply to alert the Commission to them and the Commission may find the data in those two exhibits helpful.

ADV LEBALA: Now in as far as Annexure DM4 is concerned, I would like you to, before we part ways we keep them, thanks for drawing the

25 Commission's attention to them and making your comments, I would like us

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to look at page 44 together with page 45. Of course you have identified these documents. You did mention to the Commission about the relevance of these documents. But is it the Auditor's report?

MR MAYNIER: That is correct. It is a ...it is the findings of a performance
5 audit conducted by the Auditor General of South Africa.

ADV LEBALA: Now there is something at the bottom under the paragraph headed "Auditor's reponse" at the bottom, on page 44. Please read it.

MR MAYNIER: The audit response in respect of funding reads as follows :

10 *"Note is taken of the confirmation of the finding in the
subsequent initiatives that have been launched by the DOD to
rectify the issues."*

ADV LEBALA: Now let us pause there. Have you made a follow up as to whether these issues were rectified?

15 MR MAYNIER: The first point Advocate, is with respect, I am not sure what those subsequent initiatives were. The answer to your ... the second part would be, this is regularly followed up on, but it does appear to me to be a consistent challenge for the South African Air Force.

ADV LEBALA: That appears also on page 45 at the bottom, the Auditor's response :

20 *"Note is taken of the confirmation of the finding on the
subsequent initiatives that have launched by the DOD to rectify
the issues."*

Does this tell us that literally there are subsequent initiatives launched and the DOD did rectify the issues?

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MR MAYNIER: I think on my interpretation it suggests that there were initiatives but that the issues have probably either ...have either not been rectified or are ... have been partially rectified. This refers, as you know to technical personnel and I am aware that the South African Air Force still
5 experiences a challenge retaining technical personnel. So initiatives have been taken. I would suggest that they have been partially rectified or not rectified.

ADV LEBALA: Have you established as to whether these technical challenges, not excluding funding, are common to Air Forces, all over the
10 world?

MR MAYNIER: With respect, Advocate, I mean I would be comfortable to say that it is a current challenge to the South African Air Force. I do not think that I have sufficient expert knowledge to provide the Commission with a comparative analysis.

15 ADV LEBALA: I thought the American example of your storage in Nevada sheds light and brings some fresh awareness, are you able to comment?

MR MAYNIER: I could only suggest that I am sure it is a challenge, but I do not have sufficient knowledge to give you an informed opinion and assist the Commission.

20 ADV LEBALA: MR MAYNIER, we are going to jobs. Is there anything that you want to say before we part ways with the subject "utilisation of the Gripens and the Hawks"?

MR MAYNIER: I am comfortable to go on to the next topic. Thank you Advocate.

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ADV LEBALA: Page 5 of Annexure A, Commissioners. This term of reference refers to:

5 *“Whether job opportunities anticipated to flow from the SPPD’s have materialised at all, and if they have, the extent to which they have materialised.”*

Paragraph 2.2, page 5, esteemed Commissioners :

10 *“The former Minister of Defence [indistinct] that the SDPP would create approximately 65,000 jobs. However, it now appears that far less jobs were created as a result of the SDPP under the National Industrial Programme and the data is [indistinct].”*

Let us pause here. Other than the late Minister of Defence Mr Modise, has there been any other department or person who made this pronouncement of the creation of approximately 65,000 jobs that you know of?

15 MR MAYNIER: I am not aware of such a statement. This statement seems to be a key statement which eventually creates a public expectation.

ADV LEBALA: Now paragraph 2.3 makes reference to two documents, former Minister Joe Modise [indistinct] the first budget [indistinct] speech, DM5, it has become common cause, we are not going to traverse it. The
20 Commission has heard about it so many times and it has become common cause. You do agree, am I right?

MR MAYNIER: I do.

ADV LEBALA: Just for the purpose ... thank you, MR MAYNIER if you look at me, please try to look at me but address the Commission. Then you will
25 see when I want to access the mike. Just for the sake of the record, I would

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like to draw the Commission's attention to page 50. Page 50 of the indexed and paginated papers. We have left the bundle of General Bayne. Page 50. There is a paragraph on page ... of that document. Are you at page 50, the indexed page 50 of annexure DM5. You will see page 1559 and 1560, are you with me, MR MAYNIER?

MR MAYNIER: Yes.

ADV LEBALA: And for the sake of completeness, paragraph 3 and 4, page 1559 deals with what Minister Modise said in that speech. It captures it, can you see?

10 MR MAYNIER: Yes, I can.

ADV LEBALA: Now you are confirming that no other department, the DTI, any other Minister did mention what Minister Modise said?

MR MAYNIER: What I am saying Advocate to the best of my knowledge, no other Minister made a similar statement and this statement, made on the 9th of March 1999 has become, if you like, the benchmark statement and the public expectation was created.

ADV LEBALA: Now the testimony which is before the Commission, before we go to annexure DM6, is that the issue of the 65,000 jobs, if need be we will take you to the relevant portions, if need be, we can deal with it in as far as things are concerned, 65,000 jobs were estimates. You ... you know they say in economics you cannot speak with precision and say 65,000 jobs would be created and this subject... the figure of 65,000 jobs was not part of the umbrella arguments, it was not part of the arguments between the DTI and the [indistinct] and it was not even part of the business plans, in as far as [indistinct] and making the subject of jobs to be part of the negotiations, in as

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far as the bidders and the interested parties representing our country were concerned. Now do you want to comment?

MR MAYNIER: I think I would comment as follows: I mean the statement was made by a Minister of State in this case Minister Joe Modise. The
5 statement was made in the National Assembly and on the Minister's own version, it was based on data provided by the Department of Trade and Industry, although we do not know the origin of that ... we do not know much about the nature of the data provided to ... to the Minister and as a result of that statement, a public expectation was created and so even although as
10 you correctly say, that jobs were not part of the crediting methodology of the national industrial participation programme, they nevertheless remained an important factor and I think that is borne out by the fact that there is a specific term of reference dealing with jobs. Also on your last point, I just want to draw your attention to the fact that in fact, even although jobs were
15 not part of the crediting methodology, jobs were recorded in some business plans and they ... those jobs were audited by the Department of Trade and Industry. At the end of the day though Advocate, the Department of Trade and Industry, did report on jobs. Those are the facts. That would be my comment.

20 ADV LEBALA: Ja, but there has been evidence before the Commission explaining the context in which we have to look at jobs, that even if you were to look at 65,000 jobs, you were not looking at jobs in the abstract. We are looking at new jobs created and [indistinct] direct jobs.

MR MAYNIER: The point Advocate, is you are correct. There was a public
25 expectation about and this is an estimate. The exact words in fact used by

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the Minister were “approximately 65,000 jobs”. I think the problem arises in the discrepancy between the number of jobs if you like promised, or the approximate number of jobs promised and the number of jobs that DTI claim eventually materialised and the discrepancy as you are aware, I mean
5 whereas 65,000 jobs were promised, approximately only 13,690 direct jobs were created and so it appears to me, that there is a large discrepancy and that discrepancy, I think, needs explanation and that of course is a key term of reference for the Commission.

ADV LEBALA: But you are confirming that we are dealing with estimates?
10 65,000 jobs, against 13,690 created. In your view... you see we are dealing with facts, you have got to bear in mind and I am following up on what you said, if you say 65,000 jobs have not been created, against 13,690 what would satisfy that estimate according to you?

MR MAYNIER: I cannot give you a specific number, but the discrepancy I
15 am sure you will agree of 50,000 odd jobs, is large and it does require an explanation. I do ... I absolutely concede that the 65,000 jobs was an estimate. But for 13 or approximately 13,690 jobs to materialise with a discrepancy of nearly 50,000 jobs, I think requires an explanation.

ADV LEBALA: Do you have a problem with the suggestion that in
20 economics when you talk about jobs, you cannot talk of approximates?

MR MAYNIER: It would... I mean it would appear to me reasonable that the jobs would be an estimate, but for a discrepancy of nearly 50,000 jobs to exist, I think as I say is ... requires an explanation. What I do... what I do differ with Advocate, you will now that when the DTI provided Parliament with
25 a report informing Parliament about the number of jobs created, they did

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count as you may know, indirect jobs which were simply using a multiply of two. They determined that there were 27,380 new indirect jobs and those jobs were calculated simply as a multiply, a multiplier of the 13,690 jobs created. I think ... I do not accept that those so called new indirect jobs which
5 were assumed to have been created, ought to have been counted and I see in fact, that another key witness, the Director General of the DTI in fact in his own evidence, discounts the jobs that were assumed to be created and counts the jobs that were either created or saved.

ADV LEBALA: Is there anything that you want to add under the subject
10 'jobs'?

MR MAYNIER: I think there... is it your intention to move on from 'jobs' after this? Because there are two points I would like to make.

ADV LEBALA: I lead your evidence, but you are the one who controls the evidence.

15 MR MAYNIER: Advocate, there are really I think two points that I would like to make. The first is that even if the Commission were to discount the statement made by Joe Modise and the 65, the approximate 65,000 jobs, we should also have a look at the internal... at the business plans. So in other words if you are ... do not accept the statement made by the Minister as a
20 benchmark there is an alternate and the alternate is the number of jobs in the business plans. Now if you look at the DTI's own performance review conducted by its internal audit unit, they find that of the 40 projects that they audited, 21 of those projects, business plans, in fact included estimates of the jobs to be created and in that internal audit, they audit 15 projects and I
25 just wish to draw the Commission's attention to this. Of those 15 projects,

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the number of jobs that were envisaged to be created in the business plans, were 65,641. The number of direct jobs that were actually created over those 15 projects was 3,664. In other words a discrepancy of nearly 60,000 and I think that also requires an explanation.

- 5 ADV LEBALA: MR MAYNIER, I know that you are referring the Commission to page 73 of DM6, but we have gone past our lunch hour. I just want to get a

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direction from the Commissioners. As the Commissioners can sense we are expediting your testimony. I am not going to leave everything out, but I am certain that we may finish your testimony today, I am confident. I need direction because we are after ...past one, our lunch hour.

5 MR MAYNIER: I have got one brief point, it will take me 30 seconds.

CHAIRPERSON: I think we will take the lunch adjournment. I think we should come back at quarter to. Let us see if we cannot gain the lost time. [indistinct] We will adjourn. Thank you.

(PROCEEDINGS ADJOURN FOR LUNCH)

10 **(PROCEEDINGS RESUMES AFTER LUNCH)**

CHAIRPERSON: [indistinct] that you are still under oath?

WITNESS: D MAYNIE: s.u.o.

CHAIRPERSON: Advocate Lebala.

ADV LEBALA: Thank you. MR MAYNIER, before we took an adjournment
15 for lunch, you testified about [indistinct] dealing with drops, and the testimony is that the sixty five thousand jobs estimated was an extreme expectation. You expected at least from what you say fifty odd thousand jobs. Am I right?

MR MAYNIER: All I can say without giving you a specific number is that
20 there ought to have in my view been a much smaller gaps between the number of jobs promised and the number of jobs that actually materialised.

ADV LEBALA: Thank you. And we heard that before we went on a break that total new jobs created was an inclusive term that included new jobs created, new indirect jobs and repayments safe jobs. Am I right?

MR MAYNIER: That is correct.

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ADV LEBALA: Now you were busy testifying about the auditing of the projects that out of 121 projects audited, only 40 were audited. Before we go there, we are just about to take the commission to page 73 of Annexure DM7. We made a mistake, it is DM6. MR MAYNIER, you have laid the
5 foundation that explains to the commission why you could talk about utilisation, given the fact that you started by raising these concerns when you asked the minister questions pertaining to utilisation of the [indistinct]. now what qualifies you, because you have to be careful, I do not want us to venture into an area where you do not have first hand information where you
10 did not took positive steps in a form of a conduct to qualify, you testified before the commission. What qualifies you to talk to this subject jobs, this terms of reference we are dealing with jobs?

MR MAYNIER: Well, not only was I a member of the various ... [intervene]

CHAIRPERSON: Sorry, can you just talk directly into the mike? We are
15 battling to hear you.

MR MAYNIER: Thank you for alerting me to that chairperson. I was obviously a member of the various parliamentary committees which I set out in my affidavit. But members of parliament are also allowed to attend a committee meeting of committees that are outside their portfolio. Now given
20 the fact that I was responsible for dealing with defence and military veteran matters which included in between 2009 and 2014, the so called Arms Deal. I had an interest in the national industrial participation program, and for that reason I attended meetings of the portfolio committee on trade and industry to deal with the national industrial participation program and I think it is fair to
25 say that as a result of at least some of the hard questions put by myself and

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pressure put on the department, these reports were released to parliament and then eventually became public knowledge.

So I had an interest in these matters as part of my oversight responsibility in parliament.

5 ADV LEBALA: Now let us go to Annexure DM7. That deals with the subject jobs, and speedily deal with it to go to the real [indistinct] which brings controversy before this commission in terms of reference 1.5. Annexure DM7 you were about to traverse page 73, but before we do that please identify this document. Look at page 70. Please identify this document.

10 MR MAYNIER: Annexure DM7 is a performance review report of the national industrial participation program, and it was conducted by the department of trade and industries internal audit unit. It was conducted largely or in part as a result of the work done by members of the portfolio committee on trade and industry. It was done in response to hard questions by that committee and I
15 might put it on record to the credit of the department.

ADV LEBALA: Now you did participate in deliberations pertaining to this document.

MR MAYNIER: I participated in deliberations relating to the strategic defence package, national industrial participation program, yes I did. This report was
20 released some time later and I speak under correction, but I do not think that the report has been deliberated on by the portfolio committee on trade and industry.

ADV LEBALA: My attention is being drawn to the fact that the interest parties seem to be struggling to hear your testimony, and I would try to remind you

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time and again to speak into the mike. There is an interest party, the Department of Trade and Industry fully represented before the commission.

Now the issue that you wanted to address pertaining to Annexure DM7, you wanted to start in page 73 and you have already
5 mentioned that there was not [indistinct] audited in as far as the national ...
[intervene]

CHAIRPERSON: MR MAYNIER, what is the date of this report?

MR MAYNIER: If you give me a moment chair. Chair, the report comes in two parts. The second part which is on page 80 of DM7 has a date of
10 October 2012. I would imagine that that is the date on which the report was completed. I do not recall the date on which the report was handed to me by the Department of Trade and Industry, but if the commission are interested in that date, I would be happy to furnish it to them.

ADV LEBALA: Let us proceed. You drew the commission's attention to
15 page 73 and I direct the attention to the [indistinct] page. Yes, you were about to read paragraph 3 thereof. You have laid the foundation already in as far as the preceding paragraphs is concerned. You may proceed.

MR MAYNIER: Sorry advocate, I have lost you there. There is a point that I wanted to make in respect of jobs on this report before we proceed to the
20 next topic. Are you asking me to make that point?

ADV LEBALA: Just proceed.

MR MAYNIER: Thank you. I would just simply like to draw the commission's attention to page 94 of DM7, where there is, where the findings of the audit in respect of employment creation are set out, and I just simply wish to draw the
25 attention of the commission to the second paragraph which reads as follows:

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“The audit team could not verify from supporting documents if the total number of jobs reported, were created and whether they were sustained or not sustained.”

There are then several bullet points which I do not think are
5 necessary to read into the record, but safe to say that as a result of the Department of Trade and Industry’s own performance audit into job creation under the national industrial participation program, they found that they were not able to verify whether jobs were created, actually created or sustained.

I am simply drawing the commission’s attention to this
10 section, because it suggests even the numbers that we do have. In other words the 13 690 jobs reportedly created, that that figure is possibly unreliable. That is simply the last point that I wanted to make.

ADV LEBALA: Against that point in actual fact, this aspect was traversed by [indistinct] and I am just going to talk about the things what he says against
15 what you are saying before the commission. In as far as his testimony is concerned, I am just going to summarise it to you and I know why we did not make this portion part of the record. We will refresh the commission about what is said in as far as this issue is concerned.

He says he has not accepted the conclusion, but they
20 disagree with it, and the relevance of the matter is that they were not taken to task about that, and this does not discount the importance of what you say today. Now standing before the commission it is what you say and the fact that they disagree, accepted the conclusion, but they disagree with it.

MR MAYNIER: Advocate, I am not entirely sure what, are you saying that a
25 previous witness disagreed with the finding of the Department of Trade and

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Industries performance audit? If that is what you are saying, I mean it is hard for me to comment, because I do not know what reasons that person would have given. The point I simply wanted to make, was that the performance audit conducted by the Department of Trade and Industry found that they
5 were not able to verify whether the jobs were actually created or sustained and it raises a question about the reliability of the figures.

ADV LEBALA: Please take us to page 73. You wanted to address the commission on page 73 before we went on the break adjournment. You were about to take us through paragraph 3, audit findings. Are you
10 refreshed?

MR MAYNIER: I am, but my intention was not to draw the commission's attention to page 73, it was to draw the commission's attention to the section on jobs.

ADV LEBALA: Thank you. Now anything that you want to add before we go
15 to the [indistinct]?

MR MAYNIER: No advocate, I am happy to move on.

ADV LEBALA: [indistinct], term of reference whether [indistinct] anticipated to flow from the strategic defence procurement packages if materialised at all, and if they have the extent which they have materialised. Page 6, for the
20 minister of defence, paragraph 3.2 is a claim that the strategic defence procurement damages would generate approximately 110 billion of investment of which 26 billion would be made out of direct investment.

However, it now appears that considerably less direct investments were made. Now 3.3 reference is being made to documents
25 there [indistinct] of 9 March 1999, and it is marked Annexure DM6.

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Department of Trade and Industry performance review report, final audit report Annexure DM7.

Now what is your testimony that qualifies you to talk to this subject before the commission before we ask the particular questions. What
5 qualifies you to talk to this subject?

MR MAYNIER: As a member of parliament I attended meetings of the portfolio committee on trade and industry dealing with the national industrial participation program, and I was present at meetings where these issues were traversed.

10 ADV LEBALA: Now the issue of the 110 billion of investments is an estimate and it approximates what was going to [indistinct] investments. Now do you have a comment that seeks to correct that?

MR MAYNIER: Again the minister, I do not want to diminish the statement made by the minister. Again the statement was made by a minister in the
15 national assembly and it was based on data provided by the Department of Trade and Industry. The point I do want to make advocate, is that in that statement in the house the minister said that 110 billion rands of new investment would flow, and he broke it down and include 26 billion rands worth of direct investment.

20 The point that I simply want to make is that if you look at DM6 which is a report, a statistical report on the 121 projects under the national industrial participation program, it appears that less investment materialised than was promised. In this case, if one looks at the numbers, if one adds up the total actual obligor investments which is a column in DM6, if
25 one looks at those figures, the total amount of actual obligor investments

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sums up to about six billion rand in 2012 rands, or 2.756 billion rand in 1999 rands.

The point that I simply want to make is that considerably less investment arose as a result of the national industrial participation plan, than
5 was promised in the national assembly in 1999. That is one point. The second point again is the whole question of reliability of the statistics.

Again if you go back to DM7 which as we have just discussed, is the Department of Trade and Industry's audit report. You will see, I refer the commission to page 101 where it appears that in at least two
10 of the forty projects audited, some investment that was committed to, did not materialise.

So again it raises the question about the reliability of the figures. Those in short advocate are the two brief points I wanted to make.

ADV LEBALA: Well, against that may the record reflect that standing before
15 the commission is evidence that the off sets exceeded the expectations of the Department of Trade and Industry. The [indistinct] justify and stuck their guns that in their knowledge and even the evidence that they considered, no matter what [indistinct] the offsets exceeded their expectations.

MR MAYNIER: Advocate, with respect I am not sure how those officials
20 could reach that conclusion. I have not read their evidence, but I would it is one thing to compare the amount of actual investment to the undertaking made by a minister in the national assembly. I think the more helpful figure is to compare the amount of actual investment to the investment obligations set out in the contracts in the so called nip terms between the Department of
25 Trade and Industry and the various obligors.

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I think that is a helpful exercise and if you would like to give me a minute and a half, I could draw the attention of the commission to those figures.

ADV LEBALA: Please [indistinct] your testimony, as long as it assist the commission, I assure you that if the commission must feel that it is relevant, they would draw out attention to it. You may proceed.

CHAIRPERSON: Sorry MR MAYNIER, before you proceed. These figures for instance we are now looking at page 60, this document, where does it originate from or is that Annexure F of Mr Gordon and Mr [indistinct] testimony? So basically you just took that document and you started analysing it?

Thank you.

MR MAYNIER: Chair, I just wish to clarify. This is a document compiled by the Department of Trade and Industry, I speak under correction furnished to the to myself on 18 April 2012 and in at least one respect it appears to differ from a similar exhibit I saw in a DTI bundle.

It differed in respect of the figure on total, on actual investment by DAE. This is the report that was provided to me by the Department of Trade and Industry and so I thought it would be best to work off this document.

CHAIRPERSON: No, what I am trying to find out is this was given to you in 2012. It is not the same document that was given to the commission when the DTI witnesses testified, or the two witnesses who testified about projects. They referred to it as Annexure F. In that Annexure F they had certain figures, and as I understood their evidence, [indistinct].

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Now you are saying they were talking up to [indistinct] to some time and I think this was December 2013. I am just trying to find out is this the same document or is this a separate document?

MR MAYNIER: Chair, this then would be a separate document, and not the same as Annexure F. Although I have not looked at Annexure F, I think that is a fair conclusion.

ADV LEBALA: Okay, thank you. Now were you aware that in as far as the credits that were given to [indistinct] were concerned, there was a formula that was being used where the total credit would amount to a calculation of the sum of investment credit, and the sales credit.

MR MAYNIER: Yes, I was.

ADV LEBALA: And were you aware that multipliers would be used?

MR MAYNIER: Yes, I was. The issue of multipliers arose in the committee deliberations and I think it is common cause that they were controversial.

ADV LEBALA: Were you aware that a number of projects under the national industrial participation materialised?

MR MAYNIER: I am not quite sure that I understand the question advocate?

ADV LEBALA: Are you aware of a number of projects under the national investmental participation program that did not materialise?

MR MAYNIER: Yes, I am.

ADV LEBALA: Are you aware of those that materialised?

MR MAYNIER: Yes, I am.

ADV LEBALA: Okay, we will deal with those that have not materialised if you want to address them. Let me tell you what is standing before the commission, and then I would like to hear your comment. The director

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general of the DTI, Mr October, statement which has not been [indistinct] deals with the benefits that have been realised from the SDPP's.

I am going to contextualise the statement in as far as the offsets are concerned. Do you agree that when you are dealing with offsets
5 you deal with investments?

MR MAYNIER: Yes, I do.

ADV LEBALA: [indistinct]

MR MAYNIER: Yes.

ADV LEBALA: Now he says, page 14 of his statement, paragraph 16:

10 "Data compiled by the DTI reveals that documentation of the SDPP's in 2000 earning an amount of R1 173 022.84 in American dollars and 136214.219 Euros was directly invested into the economy."

During your oversight function, because you keep on reminding the commission of this important function that you do the debates
15 that you have, have you come across detail that confirms this information?

MR MAYNIER: Advocate, I have to confess that I am aware of those figures, because I have not come across them before, and I was not certain how the department calculated those figures, and I am still frankly not certain, but I
20 cannot comment on those figures, because I do not know how they have been compiled.

ADV LEBALA: And you do not dispute it?

MR MAYNIER: The figures raise a question that I simply have not been able to determine how the calculations have been, how the calculations were made. So I have not done a detailed analysis and so I cannot dispute that.

25 ADV LEBALA: He says:

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“No counsels to the value of 1,7671512.604 American dollars and 468049,665 Euros were generated from business projects established as a result of the SDPP’s.”

Have you come across such figures?

5 MR MAYNIER: Again advocate, it is difficult for me to comment on these figures, because I am not sure how they were derived and aside from the figures on jobs, I am uncertain how they would derive. I cannot dispute the figures, I am just uncertain.

ADV LEBALA: Now, at no time during the debate because you have debated
10 these issues when you were exercising your oversight functions. Did you verify or come across this detail?

MR MAYNIER: To the best of my knowledge no. The figures that were
furnished to us, are the figures in DM6. I cannot, because I do not
understand how the figures were, would arrive they may have been derived
15 from this exhibit, but I am simply not sure and I cannot dispute those figures.

The figures that I did recognise in that section, were the figures on jobs which did seem to correlate with the data that had been provided.

ADV LEBALA: The figures on jobs, did you follow them up?

20 MR MAYNIER: If you mean by that were questions asked about job creation in parliament and was there interest from members in parliament and members of that committee and how many jobs arose from the national industrial participation program, answer to that question is yes.

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ADV LEBALA: See export sales to the value of 3696427,056 American dollars and 1,774583,075 Euros were generated, did you come across this detail exercising your oversight functions and during debates?

MR MAYNIER: Again advocate, I am not sure where those figures come from. I do not recognise them so I speak under correction and say I do not
5 recognise them and I do not recall coming across them. That is not to say that they may have been derived from a spreadsheet. I just simply do not know.

ADV LEBALA: And you do not dispute them?

10 MR MAYNIER: Again because I do not understand how they derived and I have not done a detailed analysis, I am not in a position to dispute them and take the commission forward.

ADV LEBALA: Anything you want to add under offsets before we part ways with this subject?

15 MR MAYNIER: Yes. I think the point that I, the first point that we made if you recall advocate, is that we compare the total amount of actual investment with the commitment made by the minister Joe Modise in parliament, and I said that possibly a more useful way of looking at the problem, would be to compare the actual investment with the commitments made by the various
20 obligors in the contracts.

I know that the commission would like to move forward, but you might just give me an opportunity to outline the figures and the reason I say that is at least up until the establishment of the commission and up until the I have read the evidence by the Department of Trade and Industry, I had

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not seen the actual investment obligations, the actual figures before and that is why I think it might be a useful exercise.

I can do it quite quickly, and can I begin advocate?

CHAIRPERSON: The actual investment figures they are not clear. Evidence
5 has been led about that. Actual investment figures, evidence has already been led about that.

MR MAYNIER: I am aware of that. The point that I wanted to simply make, was two points. One, there is a significant difference between the investment obligation and the actual investment. That is the first point, and the second
10 point is that it appears that that discrepancy arises as a result of the use of multipliers which again I know has been well traversed by this commission.

The point that I really wanted to make, was that in fact of the five obligors only in the end invested for example BAE SAAB invested only 19 actually invested only 19.95 percent of their actual investment obligation.
15 The German Frigid Consortium actually invested only 8.73 percent of their investment obligation.

The German submarine consortium invested only 7.27 percent of their investment obligation and Tarles invested 73.1 percent of their investment obligation. I just simply wanted to draw the commission's
20 attention to that fact. There was one last, before we leave this topic, one last point that I did want to make advocate.

I have seen in the testimony of the Department of Trade and Industry, that the performance audit clearly finds that there was a procedural deviation from the crediting methodology, and by that I mean that multiplies
25 were used, and what struck me in the evidence of many of the witnesses

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from DTI, they understood that the or they justified the deviation by saying that the crediting methodology was a function of a policy which was a guideline and the minister had discretion to authorise deviations.

I just wish to put the point that of course the crediting methodology was set out in that contract for so called nip terms between the Department of Trade and Industry and the various obligors, and it appears from the performance audit and also from contracts which we have sight of, that the crediting methodology in those contracts was in respect of investment for example.

There would be one credit for every one unit of investment, and there has clearly been a deviation from that, and the question arises well. Did the minister have discretion to deviate not from a policy, but from a guideline? I think that is a question which I hope the commission will be seized with.

The second point is the whole question about whether indeed these deviations were actually authorised, in the evidence of one witness there is in fact and that is the witness Mr Alec Irwin, he in fact if I recall correctly, attaches an example of an authorisation for a deviation, and the question is were all the deviations actually authorised by the minister?

Again I hope that, I am sure that this is an issue that the commission are aware of, and I am sure that the commission will take it forward. On that in respect of offsets, I have no further points which I wish to make.

ADV LEBALA: What you have just testified to, is found in page 424A of which [indistinct] testimony about the deviation, that it is the priority and

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discretion of the minister, and what you mentioned about the deviation in as far as compliance with the natural industrial participation procedures and processes is concerned, is found in page 74 of the paginated papers, paragraph 3.1.

5 Let us not waste time, but let me ask a question. If it be found that it is a policy that allows the minister to deviate, would that be right for him to deviate?

MR MAYNIER: Advocate, I am not an expert on contract law, and I am not sure that I can be helpful to the commission or take the commission forward
10 in this. It just simply struck me that if deviations were permitted, those deviations would presumably and I say this as somebody who is not a qualified expert in contract law, those deviations would have to be somehow authorised in the contract or by the contract itself.

I am sure that this is an issue that the commission was
15 seized with, and will take [indistinct].

ADV LEBALA: Let us go to the next term of reference. On page 8 of Annexure A. Now this is a very [indistinct] term of reference. I have got to be careful not to testify, and it applies controversies. Now before we start, I would like you to lay a foundation to the commission why you are qualified to
20 this term of reference.

MR MAYNIER: Advocate, simply put as a member of the various committees in parliament and with responsibility as the defence and military veteran spokesperson to deal with the so called Arms Deal, during the time that I dealt with this matter between 2009 and 2014 in my official capacity as a

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member of parliament and responsible for this issue, information was brought to my attention, which I as a responsible member of parliament acted on.

For that reason I think I can speak on this issue.

ADV LEBALA: Before we look at positive steps, the [indistinct] that you took to qualify yourself to [indistinct] with this term of reference, let us read it for the record. Page 8, paragraph 4 [indistinct] whether any persons within or outside the [indistinct] of South Africa if properly [indistinct] or conclusion of any of the contracts awarded and concluded in the SDPP process, and if so whether legal proceedings should be instituted against such a person, and the nature of such legal proceedings and whether in particular there is any basis to pursue such persons for the recovery of any losses that the state might have suffered as a result of their conduct.

Commissioners, I think it is appropriate at this time to mention that I have been approached by senior colleague Cilliers who represents an interest before the commission. This reminds me that I do not know whether he wanted to put himself on record or to address the commission before we traverse this term of reference, and I am in your hands, but he is seeking [indistinct].

I do not know whether it is because he wants to come forward. I am certain that there is an interest that he represents and I am in your hands for guidance.

ADV CILLIERS: I am JD Cilliers as senior counsel from the Pretoria bar, and instructed by [indistinct] on behalf of [indistinct] also mentioned now in the very first paragraph following the paragraph that Mr Lebala had dealt with, as well as on behalf of Mr [indistinct] mentioned in the following page.

At this stage I do not think it is necessary for us to put anything on record, apart from putting on record that we are here on behalf of those parties, that we have an interest in the evidence, especially this part of evidence that will follow now, and subsequently we may request your
5 indulgence to allow us to put some questions to the witness after he finished his evidence led by Mr Lebala.

CHAIRPERSON: Okay. Mr Lebala, am I right that the witness is going to testify about what he knows, that is within his personal knowledge when we come to this portion, because we want the facts. We want evidence from
10 where we can make a finding [indistinct].

ADV LEBALA: Certainly chair, and I assure you that this witness as far as you are concerned and I am happy that ADV DE WAAL is also sitting across. We will resist going into territories that we could not go into, and we will lay a foundation if need be as qualified if need be by ADV DE WAAL, where this
15 witness could testify on some of the issues to a particular extent chair.

I think it is appropriate at this stage just to look at what you did positively to bring us [indistinct] of this enquiry in term of reference. I want to start by drawing your attention to the following annexures. I want you to go to page 323, page 323 Annexure DM17 of the indexed and paginated
20 papers. Page 323.

I see both the commissioners are on that page. Now please identify this letter and summarise the context in which it was written with the view to lay a foundation in as far as this terms of reference is concerned. Start with this letter.

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MR MAYNIER: I refer the commission to DM7 page 323 which is a letter from myself dated 17 June 2011. Concerning an investigation and finding by SAAB that 24 million rand was transferred to a South African consultant in respect of the Arms Deal. The brief background chairperson.

5 On 16 June 2011 the chief executive officer of SAAB, Mr Bushker released a press statement which revealed that approximately 24 million rand had been paid by BAE systems to SANOP. That the payment had then been transferred to a South African consultant and that the transfers and payments had been made without the knowledge of SAAB.

10 The South African consultant in this case was reportedly Mr Fana Hlongwana and as a result of the information which I had, I wrote to General Dramat asking him to confirm that he was aware of this matter, and that the matter would be investigated by the hawks.

ADB LEBALA: Now you referred to a finding by SAAB. Is there any
15 reference to that finding or to be specific please look at page 321 and 322, that is from DM16. Please summarise it and let us not waste time. Look at the heading and just go to the relevant portions.

MR MAYNIER: Yes, the information was contained in a press statement
20 released by SAAB. The press statement was released on 16 June 2011 and the heading is SAAB completes internal investigation regarding consultant contract in South Africa, and the finding is essentially to summarise that approximately 24 million rand was paid from BAE to SANOP.

The payments were transferred to a South African consultant, and the payments were made without the knowledge of SAAB.

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As a result of that, SAAB handed the matter to the chief prosecutor in the national anti corruption unit in Sweden.

ADV LEBALA: Now you have just referred the commission to paragraphs 1, 2, 3 and 4. For the sake of completion, what you have said, let us read what paragraph 1, 2, 3 and 4 says starting with a person employed by BAE systems has without such knowledge signed for us up until now [indistinct] as well as signing the audit and appointing accurate financial statement for 2003.

Is that what informed the letter that we see in page 323?

10 MR MAYNIER: That is correct.

ADV LEBALA: [indistinct] before we go to the next letter.

MR MAYNIER: No.

ADV LEBALA: Just refresh me. Have I read the term of reference that we see on page 8 for the record, did I read it?

15 MR MAYNIER: Yes, you did.

ADV LEBALA: I remember I read it yes. Let us look at Annexure DM18. We know that we started by writing a letter to General Dramat, the head of the director of [indistinct]. Now Annexure DM18 let us traverse it quickly.

MR MAYNIER: I refer the commission to Annexure DM18. That is a letter from General Dramat. The head of the priority crime investigation unit. The letter is addressed to me and the letter simply says ... [intervene]

CHAIRPERSON: No, which page are you on now?

ADV LEBALA: I beg your pardon commissioners. I referred the witness to Annexure DM18, page 327. It is a follow up from the letter of 17 June 2011,

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on page 323 to 324, which started with Annexure DM17. Then we went to page 321 and 322. Annexure DM16, then to Annexure DM18 page 327.

I see the commissioners are nodding. You may proceed. Please go back and start afresh in dealing with DM18.

5 MR MAYNIER: Thank you. I refer the commission to DM18 page 327. This is a copy of a letter dated 20 June 2011. The letter is from General Dramat, the head of the directorate for priority crimes investigation and it concerns the findings by SAAB that 24 million rand was transferred to a South African consultant.

10 The letter in short simply says that the directorate of priority crimes investigation are aware of the disclosures and are in the process of assessing the information.

ADV LEBALA: Now by the way, as at that stage on 20 June 2011, the investigation in as far as the strategic defence procurement [indistinct].

15 MR MAYNIER: To the best of my recollection, yes.

ADV LEBALA: Let us go to the next page, Annexure DM19. Please identify the letter and quickly summarise it. Go to the top, and where does it come from?

ADV CILLIERS: Chair, I do not want to object, but may I just raise the question of relevancy, in fact that he wrote certain letters to police officials. I suppose it is common cause [indistinct] after the investigation that followed. The hawk decided that they would proceed with any criminal prosecution, because there was no case made out as far as their investigation is showed.

[indistinct] stated in his submission before you, if I can just read it, page 9 of the bundle of documents that was provided to us this

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morning. He states that Mr Hlongwana allegedly received questionable payments from BAE SAAB which [indistinct]. With great respect, we are here to collect facts in order to assist you to come to a finding.

That is our concern. This witness is specifically now dealing
5 with [indistinct]. He certainly does not provide either his submission and or in what I heard so far, any facts that he has knowledge of that can assist you. The evidence, if you can call it evidence, the speculation that he is providing you with now, clearly does not assist you in coming to a conclusion.

But surely suggestions are made against my clients relating
10 to their privacy and [indistinct] in the community, and then with great respect by going through the letters that he wrote to the police that certain documents that he states that he has no personal knowledge of, are facts contained in any of those documents.

[indistinct] coming to a conclusion and we are concerned in
15 that regard, because he now deals with the fundamental rights of current rights. As it pleases.

CHAIRPERSON: Thank you. Maybe advocate Lebala, let me hear what advocate Lebala has to say. Based on your concerns. ADV DE WAAL?

ADV DE WAAL: Yes chair, I accept that difficulty. Can I just perhaps at this
20 point place on record what we have done to try and overcome this problem? We have written to on instructions of [indistinct] we have written a letter to the commission dated 29 July 2014. That is now about two weeks ago.

We have dealt with three topics there, of which one concerns the south internal investigation. I will read to you what was said in paragraph
25 2 of that letter. There is a third category of documents which our client does

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not have in his possession, but this category is referred to in a press statement and quotes SAAB completes internal investigation regarding consultant contract in South Africa, 16 June 2011.

It appears that an internal investigation was completed and
5 that the core details in the findings must exist. Our client is in possession of certain consultancy agreements relating to the DAB / SAAB contract, but any attempt to refer to the consultancy agreement will face the same challenge.

The challenge that we refer to there, is of course the challenge that the chairman is putting to me now, which is that MR MAYNIER
10 does not have personal knowledge. Now the important part then follows. We then say in our earlier letter our client has requested the evidence leaders to advise him on one, whether the SAAB report is in possession of the commission, and two, whether reference to the KPMG report will expose our client's criminal prosecution.

15 We have not receive any response to those requests. We then say in paragraph 9:

“Ideally the authors of the above report, including the SAAB report, and the evidence collected from persons referred to in those reports, should be called to testify as to the allegations contained therein.”

20 Now that would include SAAB itself I suppose as the owner of the report. We do not know what effort is being made to achieve this, but the list of witnesses announced by the commission, does not appear to us to include the authors and others with personal knowledge, regarding the contents of the report.

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May I just finish chair? We then call on the evidence leaders to confirm whether or not the authors of the reports or those who have personal knowledge, will be called to introduce the evidence contained therein. If not, we ask them to advise what efforts are being made to secure
5 the attendance of the authors and people with personal knowledge.

Furthermore whether an application to introduce the contents of these reports as hearsay evidence, will be made to the commission and we ask for a response to those issues. Now chair, with great respect to advocate Lebala and the evidence leaders, this is a request that we made 14
10 days ago.

We are still waiting for a response, and in that light we are stuck with the situation, we do not know whether those authors will be called. We do not know whether the owners will be called. We do not know whether people with personal knowledge will be called.

15 We do not know whether an attempt will be made to have those reports introduced as hearsay evidence, and accordingly all we can do is to do what MR MAYNIER is doing, and that is to draw the commission's attention to the existence of these reports, and I guess repeat that, but I appreciate very much what ADV CILLIERS and the chair has put to my client.

20 That is indeed so. He cannot take it further than that.

CHAIRPERSON: Let me just try and clear one issue which I think it has caused us some trouble. When we do our investigations, I do not think that we have got a duty to be open to the parties what we have done up to now. The list of witnesses, we know exactly who we want to call, who we intend
25 calling and when.

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I do not think that it will be [indistinct] of anybody to expect us every now and then before we take a move to make an announcement. We do not operate that way. Two, as far as [indistinct] is concerned, I am sure we cannot be in a position to give legal advice.

5 Your client must do whatever he or she thinks is best for him. We cannot tell him whether he should say A or B or whether he is going to expose himself to possible defamation or not. That is the core that he must make together with his legal team. That I am sure the question of that letter, I am not quite sure if [indistinct] respond to that letter or not.

10 Let me find out from [indistinct] what the position is in that regard.

ADV MDUMBE: Chairperson, we did receive the letter and the contents of the letter we discussed at our consultation with advocate De Waal, advocate Lebala and advocate [indistinct] in the presence of the witness and
15 [indistinct]. These are sentiments which we just expressed chair.

We conveyed that our [indistinct] and that whether or not a document should be relied on, is a letter that you would refer to at the time to the witness in this regard.

ADV DE WAAL: Chair, perhaps we are talking past each other. We are not
20 asking the evidence leader or the commission for legal advice. What we asked him for, is factual information. we say here please advise us on whether or not you are going to call people with personal knowledge, and if you are not, we would like to bring an application of a kind to force the commission or to before the commission to allow these reports to be
25 admitted as hearsay evidence.

This is what we say in paragraph 12. If they are not going to be called, we would like to advise our client about whether he can pursue an application before the commission to have these documents introduced as hearsay evidence. Now chair, you will know better than me.

5 In such an application the first question which will arise is why are those people with personal knowledge, not testifying as to the contents, because one of the factors in hearsay evidence, is why is the person with personal knowledge not testifying? This is why we are asking for the facts.

10 We are asking for a simple factual response. Please tell us what efforts are being made, [indistinct] to give evidence and if you say to us all the evidence, all the efforts possible have been made, we cannot get hold of them, then I can advise my client as to whether he can pursue an application for the admission of the evidence as hearsay.

15 I cannot advise him if I do not get a respond to the factual question.

CHAIRPERSON: Advocate De Waal, I reiterate. When we do our investigation, we do not report to [indistinct]. We simply do not report. There are many people who have got an interest in what is going to happen. Now if
20 we keep on reporting to people, I am sure that is going to [indistinct].

What we do report about, is [indistinct]. The list of witnesses that we have now published, that is not the only witnesses that we are going to call. These are the witnesses that we thought we should start with in this session of the hearing. Then advocate Sibiya has raised a concern.

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Apparently the letter that you say you have written to us, it has been dealt with and [indistinct]. Then how we move forward now. Advocate Sibiya has raised concern.

ADV CILLIERS: Chair, can I just take an instruction on that objection?

5 ADV LEBALA: Commissioners, whilst ADV DE WAAL is confirming with MR MAYNIER, we would like to deal with the merits of Cillier's objections and the demerits of the comments made by ADV DE WAAL.

CHAIRPERSON: I am sorry. I should have asked you for your comments before.

10 ADV LEBALA: Chair, it has become clear that up to now ADV DE WAAL is confused about our role as evidence leaders. We have clarified this position. Now his approach, it is as if the commission ends tomorrow. Now he is not aware that we are [indistinct] to these reports.

He is not aware that we make memos to the commission to
15 inform and advise the commission that we would like to consult with this witness. This witness might assist us in traversing this term of reference, but that is not the issue. We are not the decision makers as to which witness is going to be called, which witness is not going to be called.

We made recommendations, and in that aspect we do it
20 efficiently. Let the record reflect and we are still going to make it. Now we are not legally advised. We have resisted that and we did not give merit to that letter for ADV DE WAAL and we are not going to advise his client accordingly.

We advise MR MAYNIER in as far as our role as evidence
25 leaders is concerned. Now the authors of this report chair, of course some of

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them are very critical, and you know how to deal with them, and we are confident that some of them might be witnesses before the commission.

Now let me deal with the merits of Mr Cillier's objection. This witness is laying a foundation to confine himself why he could talk to this term
5 of reference. That is all he is doing. He has not started traversing that term of reference. Now all that I could say, that this objection, valid as it is, it [indistinct]. Of course the fundamental rights of [indistinct] are primary, but that is subject to limitations.

If the commission [indistinct] these letters, these letters are
10 not evidence. These letters demonstrate what qualifies this witness to talk to this term of reference. For instance, what has become clear is that investigations have been closed. This witness receives detail and information.

As we go on with the letters, something that is to be clear, is
15 how he happened to receive [indistinct]. That is going to be the subject of what ADV CILLIERS is objecting to. That piece of testimony is coming. That stage is coming chair. You will see the basis why he could talk to this subject of this term of reference, why he could mention these parties.

He is not going to say [indistinct]. He is not going to say you
20 are involved in corruptions ... [intervene]

CHAIRPERSON: He is just going to mention that.

ADV LEBALA: But he is going to do it in the context of a report that he obtained chair, and that is coming. With respect chair, be rest assured. We do not want [indistinct] commissioners. We are not meant to take this

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witness where he would not go. That we are very careful about, and we advised him about it.

That you cannot talk about some of the issues. You can mention to the commission that you received such a document. What efforts
5 did you make to receive such documents, and from the onset that is what he did chair. Hence we took you through the three categories of the documents that he is talking to.

He is talking about the documents that he sourced himself through [indistinct]. Those that were given to him as confidential and those
10 that [indistinct] information. His role cannot be [indistinct]. He says I play a significant role in the oversight responsibility in parliament.

Now what is he telling us chair? You cannot look at his testimony in the abstract. There is something concrete behind that. He debates these issues. He was responsible for the arms procurement subject
15 in as far as this issue is concerned, in that [indistinct] in which he served.

Now can he talk about the subject? Of course he can chair. On this basis, I think up to so far we say that the objection of ADV CILLIERS, valid as it is, is premature. After we have taken you through these letters, then you get an informed decision as to whether this witness is concerned to
20 testify or not.

At this stage he is not leading evidence. Remember we said let us start where you did positive conduct. What did you do yourself with, outside these documentations which I have got the documents, that you received as confidential information from sources, that you access through
25 paying, what did you do.

He is explaining that in line with his functions in these different committees where he serves, and on this basis we [indistinct] that this objection is overruled.

CHAIRPERSON: Mr Lebala, let me do this. I think we are going to adjourn
5 for ten minutes. To give you sufficient time to consult, and we will come back after ten minutes and we will carry this topic forward.

ADV CILLIERS: Chair, if I can just raise this one aspect on Mr Lebala's argument.

CHAIRPERSON: If you do not mind, can you raise it after the adjournment?
10 Thank you. Maybe let us adjourn for about five, ten minutes and then we will proceed thereafter.

HEARING ADJOURNS

HEARING RESUMES

15 CHAIRPERSON: Thank you. Do you confirm that you are still under oath?

WITNESS: MR MAYNIER: s.u.o.

CHAIRPERSON: ADV DE WAAL, before we adjourned I think you said that you are taking instructions. Have you done that?

ADV DE WAAL: Yes chair. Our instructions are that all we can contribute is
20 to draw the attention of the commission to the existence of a report that was compiled by SAAB, sorry. An internal investigation in which certain allegations are made. We cannot really take it further than that.

We discussed the matter with advocate Lebala and in that light the evidence of MR MAYNIER on these topics may be considerably
25 shorter than what we anticipated.

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CHAIRPERSON: Thank you. Besides that, maybe let me make two points. Firstly it appears to me that your client has got no personal knowledge of the issue that he wants to effect. He has no personal knowledge about that. Secondly all these issues that he raised here we are aware of.

5 These are issues that we have been working on. We are fully aware of this. There is nothing new that he raises here. Lastly we will deal with the issues as we deem appropriate. You say that he is referring us to this document so that he can make us aware of this document.

 We are aware of this document. It is not news to us. We
10 have gone through most of these reports all along. We are aware of exactly what happened, and we know how to deal with it. Now if that is the position, what purpose does it serve for your client to go through this document?

ADV CILLIERS: We are in your hands and in the hands of the evidence leaders.

15 CHAIRPERSON: [indistinct]

ADV CILLIERS: If I can just make one response to Mr Lebala's answer to the objection. He says he is busy qualifying his witness. Now I have never heard of the fact that if a person wrote letters to somebody, that he then qualifies himself to testify about issues that he has no knowledge of.

20 You can qualify somebody as an expert witness by leading evidence on his expertise, but the only qualifying factor for a factual witness is certainly whether he has personal knowledge of the facts, which is clear from the deliberation between yourself and Mr Lebala.

 This witness has no personal knowledge of the facts, and
25 clearly if he only wants to bring the report to your attention, then so be it. Let

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him do so. You indicated that you are aware of the report, so there is no contribution in the evidence of this witness. Mr Lebala's contention that we are premature, chair, should we wait until our client's reputation is being destroyed based on speculation and or gossip before we raise objections?

5 Certainly that cannot be correct. Presently we know now that this witness cannot contribute to the [indistinct] provide you with any facts that relate to any of the terms of reference or especially the one that we are dealing with now, and with great respect we fully agree with the views that you expressed and or [indistinct] that should be the end of this in that regard.

10 CHAIRPERSON: Okay. Advocate Lebala, you heard [indistinct].

ADV LEBALA: Chair, certainly I agree with Cilliers as the legal runaway from [indistinct] after the first blow, but the importance of what we are doing as evidence leaders has to be qualified this way. These reports, one or the other have to be introduced. The office is not yet here. The reports are there
15 and this is what we said from the outset.

We said that ADV DE WAAL is just accompanying, I beg your pardon, MR MAYNIER is just accompanying these reports. He is a shepherd. He is just going to say here is a report. We are laying a foundation how you obtained that. Now he is not going to testify about the
20 contents of those, because I think that we set out from the onset.

Hence we said this objection is very premature. It is very premature. One or the other chair, we as evidence leaders have a very [indistinct] task, because after this report we are the only ones qualified to say to the commission you have read this report. This report refers to the

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following names. Please consider and we trust the commission's first instincts and its ability to apply its mind.

The commission I know reads and reads. The commission already knows where we are going with these reports that we are seeking to
5 achieve, but in line with our responsibilities and mandate and functions as the evidence leaders, we have to introduce these reports.

Nothing else. That is all what we are doing. Now remember chair and commissioners, we cannot do it if this witness is not qualified to talk about the subjects. What happens then, as evidence will be free floating and
10 hanging. What we need to do, we want to hear what this witness's testimony says in relation to what it is bringing before the commission.

That is all. He is not even going into the contents of those reports.

CHAIRPERSON: Advocate Lebala, you cannot because he is not the
15 originator of those documents.

ADV LEBALA: Precisely chair.

CHAIRPERSON: We are aware of these documents and [indistinct] in a fine and appropriate way of introducing the documents. Now if that is the position, what is the [indistinct] with these documents? What purpose is it
20 serving? I mean some of the names that is mentioned here, we have discussed them several times.

We have tried to find a way of how to get to them. We are aware of them. They are not telling us something new. So what will be the purpose of him going through something that we are aware of. Particularly if

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he does not have personal knowledge about the contents of those documents.

ADV LEBALA: Chair, then we can get to the point. Remember our challenge [indistinct] whether this witness can [indistinct] to these terms of reference.

5 Up to so far we are just seeking to demonstrate why this witness is better qualified to talk about these terms of reference, not as an expert, and I think better qualified is used as a misnomer, not in calling an expert.

But be that as it may chair, there is a simple way of dealing with this. We will take this witness to the relevant letters that he produced those reports and [indistinct] and then we will go to the end of his testimony, because he has got conclusions to make.

CHAIRPERSON: Okay, but remember [indistinct], because that he has personal knowledge of. About these other reports, he cannot give relevant evidence. It will not serve any purpose to let the witness testify about those documents.

ADV LEBALA: Indeed chair, but we need to over emphasise one thing chair, before we go deeper, because an objection may come again. [indistinct] will resist the rights of any witness and citizen is [indistinct].

CHAIRPERSON: Thank you.

20 ADV LEBALA: MR MAYNIER, I just want us to get to the letters that will assist this commission to appreciate where we are standing before you, particularly with this terms of reference. Now you will remember that we advised the commission that we will resist making you to talk about the contents of this reports, because you did not prepare them.

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Now we were dealing with Annexure DM19. We were just about to start with Annexure DM19. All that we know is that what we discussed up to so far was when SAAB announced that it has decided to launch an investigation and following thereafter you wrote a letter to the head
5 of [indistinct], General Dramat, and from there was a response.

Now something has to turn around. We are going through the letters that you have written in exchange between yourself and General Dramat, with the view to try and highlight to the commission how come that you obtained one or two of them and then we leave it there.

10 We are not going in to the reports. Please look at Annexure DM19, page 328. Just quickly summarise this letter.

MR MAYNIER: Chair, I take you to DM19 page 328. This is a letter from myself dated 25 June 2011. It concerns the investigation by SAAB into the 24 million rand transferred to a South African consultant, and in summary I
15 furnish the hawks with a number of documents, including consultancy agreements, a schedule of payments and amendments to a consultancy agreement, and I do so and say that I hope that this will assist the Directorate of Special Investigations in their assessment of the matter.

ADV LEBALA: Now for the sake of completeness, these documents that are
20 referred in the paragraph, the documents that you have copies of, are you able to tell the commission briefly how you obtained them?

MR MAYNIER: The documents were received by me. They were provided by a source and I cannot name that source.

ADV LEBALA: Let us go to page 348 to 349, DM20. Now something
25 happens in as far as this letter is concerned. On page 348, Annexure DM20,

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look at page 349 at the bottom. Who wrote this letter and to whom and why, and just explain why you have attached this letter?

MR MAYNIER: I refer the commission to DM20 page 348. This is a letter from General Anwar Dramat, dated 27 July 2011. It is addressed to the
5 honourable Mr Themba Ghodi of SCOPA in parliament, and it is providing him an update in respect of certain investigations.

In the second last paragraph of the letter on page 349, General Dramat says that he has instructed two officials on an informal basis to approach the relevant authorities in Sweden to deal with presumably the
10 matter which I raised.

ADV LEBALA: Now the subject of this letter, does it deal with the same issues you are testifying to?

MR MAYNIER: Yes, it does.

ADV LEBALA: Now what is the relationship between Mr Ghodi and yourself?

15 MR MAYNIER: Mr Themba Ghodi is as the letter shows, the chairperson of or was the chairperson of the standing committee on public accounts at the time, and the committee was looking into the Arms Deal and the closure of the Arms Deal. That is the context in which the letter was written.

ADV LEBALA: Annexure DM21 page 350 and 351, quickly just summarise it.

20 MR MAYNIER: I refer the commission to Annexure DM21 page 350. This is a letter from myself. It is addressed to General Anwar Dramat and it is dated 9 August 2011. The subject of the letter is an investigation into a report that [indistinct] had made approximately 36 million rands of questionable money transfers in respect of the Arms Deal in South Africa.

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What I do in this letter, is to alert General Anwar Dramat to the allegations and in the letter I asked General Dramat whether he is aware of the information and I asked him to confirm that the information will be investigated by the hawks.

5 ADV LEBALA: Now it is very critical for us to read paragraph 2 for the record, and this is one of the letters that we will read before we introduce the reports that we would like to [indistinct]. Let us read paragraph 2:

“However, since then there have been media reports concerning alleged bribery by [indistinct] which was part of the German
10 Submarine Consortium that supplied [indistinct] to South Africa in Germany.”

The next paragraph:

“The reports emerged in the [indistinct] copy of an internal audit report prepared by a law firm. Commissioned by [indistinct]. The internal audit report reportedly [indistinct] were made to South Africa.”

15 Now this report, have you attached it? I am talking about the [indistinct] report.

MR MAYNIER: Subsequent to this letter, I came into possession of the report, and that report is attached as part of DM22 on page 353.

CHAIRPERSON: What page is that?

20 MR MAYNIER: The report is part of DM22, it begins on page 353.

ADV LEBALA: It is the report that appears on two pages. It is also on DM9 page 214 to page 234. Am I right?

MR MAYNIER: That is correct.

ADV LEBALA: Now you are now going into the contents of this report. That
25 part I think you have made it clear. Now what we are seeking to establish is,

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you have mentioned that after you accessed this report, the report is standing before the commission. It is Annexure DM9 page 214 to page 234, and you also say it is in which annexure, just for the sake of completeness, which annexure?

5 MR MAYNIER: Part of DM22 beginning on page 353.

ADV LEBALA: Up to page 368. Is that correct?

MR MAYNIER: I am catching up with you advocates. 385. Up to page 385.

ADV LEBALA: Now let us complete this letter to accompany this report which has now come before the commission. Next paragraph:

10 “In a subsequent article published in The Citizen 5 August 2011, [indistinct] spoke to [indistinct] confirmed the existence of the internal audit report. They did not deny that the [indistinct] were made to South Africa.”

Page 351:

15 “Moreover, [indistinct] pledged that [indistinct] could assist and cooperate if they were approached by the South African public prosecutors. I am therefore writing to confirm that you are aware of this information and that information will be investigated by the hawks.”

20 Now what happened subsequent to what you put on record with the information assisting in an investigation by the hawks?

MR MAYNIER: Well, just to place on record subsequent to that letter I came into possession of the report and furnished the report to General Dramat, and that is DM22.

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ADV LEBALA: Let us look at DM22 on page 352. We will go back to what you [indistinct] the hawks to do. Please identify this letter and quickly deal with the relevant portions.

MR MAYNIER: I draw the commission's attention to DM22 page 352. This is
5 a letter from myself dated 14 August 2011. The letter is addressed to General Dramat. The letter concerns a final report by [indistinct] to question the improper payments made by [indistinct] in connection with the contract to supply submarines to South Africa.

Chairperson, I attach, enclose the report and I ask the
10 commission, the hawks to investigate this matter and I asked them whether to provide me with some clarification about whether the information will be investigated.

ADV LEBALA: [indistinct]. Look at paragraph 1 to 3:

“However it is not common knowledge that the report exists
15 and that the findings contained in the report are devastating.”

As at that stage, were you certain that the report is common cause and accessible?

MR MAYNIER: It is obviously I cannot recall exactly at the time, but I think based on my recollection and based also on what I have written in the letter, I
20 think it is fairly safe to say that it was common knowledge and that the report was at that time then probably widely distributed and in the public domain. That is certainly my best recollection.

ADV LEBALA: And the next paragraph confirms that indeed:

“The report finds inter alia that the sums of money were paid
25 to key consultants, particularly [indistinct] and [indistinct] to secure political

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access for [indistinct] and that they did not produce [indistinct] with the fees they received.”

Let us read on:

“Moreover the report evidently contains an annexure with a
5 detailed list of payments and the company is in possession of documents that they retrieved from [indistinct] South Africa Pty Ltd.”.

Next page:

“The report together with copies of the documents and
accounting that they retrieved from [indistinct] South Africa Pty Ltd, would no
10 doubt assist you in any preliminary investigation into the new Arms Deal rated information now emerging.”

As at that stage, did you understand the attitude of General Dramat?

MR MAYNIER: Again it is a long time ago, but I was disappointed and I felt
15 that again it appeared that General Dramat and the hawks had no appetite to pursue this matter.

ADV LEBALA: Let us read further:

“Surely therefore it will be possible for him to officially
approach [indistinct] to make a copy of the final report, together with the
20 documents and accounts that they retrieved from [indistinct] South Africa Ltd available to the hawks.”

Next paragraph:

“So far I am aware [indistinct] are on record in the media
stating that they will cooperate with investigators from South Africa. Now that
25 detail, where did you get it from?”

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MR MAYNIER: Advocate, my best recollection is that a statement to that effect was contained in this article in the citizen dated 5 August 2011.

ADV LEBALA: Now that completes the next paragraph. You have laid a foundation for it. You have referred to it earlier. Next paragraph:

5 “[Indistinct] the spokesperson was quoted in The Citizen on 5 August 2011, stating that if we were approached by South African public prosecutors, of course we would assist them and cooperate.”

 Now did you at any level debate in this report with any other persons?

10 MR MAYNIER: Could you repeat the question?

ADV LEBALA: The report is in place. You have sent a copy to Mr Ghodi, head of [indistinct]. You have sent a report to General Dramat. You have heard General Dramat’s response. Now did you debate the report with any other persons, if any, around that time? Did you debate the report, did you
15 discuss the report, did you share the report with other persons in discussion?

 We know you gave it to General Dramat. We know that you gave a copy to Mr Ghodi. Now did you debate the report, discuss it with any other persons?

MR MAYNIER: My best recollection at the time is that the report was widely
20 discussed in parliament and the media, and I certainly some time later used that report in parliament as essentially the political crow bar to leverage more information from the Department of Trade and Industry in the portfolio committee on trade and industry, and I did that because the report provided new insights, not only into the questionable and alleged questionable and

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improper payments, but also it gave us new insights at the time into how the offset program worked from [indistinct] perspective.

ADV LEBALA: Now we referred you to page 8 and we want to summarise and conclude your testimony. We referred you to page 8, paragraph 4 in
5 term of reference dealing with [indistinct], fraud and corruption. Whether persons within and or outside the government of South Africa improperly influenced [indistinct] of the [indistinct].

It appears that under this heading you referred to several names. We have seen that in one of the letters. We have referred to
10 [indistinct] and [indistinct]. What is the basis of the names? Where did you get these names from, without going we are not at all going into the report. What are the basis of these names, and I think for the sake of completeness, let us start with what you see in paragraph 4.1.

Please read the name in paragraph 4.1.

15 MR MAYNIER: Advocate, the name emerges in the final compliance investigation report conducted by [indistinct] and Clinton, and it is alleged in that report or the report says that [indistinct] allegedly received a questionable and improper payment from [indistinct] in the amount of 16.5 million Euro.

20 CHAIRPERSON: Advocate Lebala, I think you are doing exactly [indistinct]. You are doing exactly what we said should not happen. Now the witness is going to mention people's names, without giving any evidence against those people. I think [indistinct] at that time we were trying to clear that up.

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Now you are going back and you are asking to mention people's names. He is just going to mention people and he says he has got no evidence to back up the allegations.

ADV LEBALA: We agree, and that is the point. He is not going to say what they did. He will just say these are names I got from the report. That is all.

CHAIRPERSON: He does not even have to say that. Why should he tell us the name that he got from the report if we have the report? He is supposed to give evidence against those people. Why mention their names? I thought this was an issue that we debated just after lunch and I thought this issue was settled.

Now we seem to be going back again and ask him to mention people's names, without giving any evidence against those people.

ADV LEBALA: Chair, we will complete this part of the testimony by saying to this witness when you look at page 8, page 9, page 10, page 11, page 12, page 13, the report refers to the documents which is part of Annexure A refers to several documents and several names. Now where did you find these names, without mentioning the names?

MR MAYNIER: The names which are mentioned ... [intervene]

ADV CILLIERS: With great respect chair, I do not know where my learned friend is leading. He is trying to evade what you have ruled about, and whether we now not disclose the names, does not assist him any regard. You have made the ruling and this is just an attempt to get past the clear ruling that you have already made.

ADV LEBALA: Chair, if I may respond to this objection. The document is before the commission. It has become public knowledge. The names are

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there. We respected the commission's concern just to get us going. In actual fact, the witness is not going to testify about what the names did.

He is just mentioning the names, and he will say I either got them from my bible or I got them from this report or I was listening to the news. But the names are there. Anyone who has seen this document has got the names. Hence I say I just wanted to avoid that for the sake of experience.

CHAIRPERSON: Advocate Lebala, how is it going to be possible? If he tells us I got them from a newspaper, how is it going to help us, because we want evidence [indistinct]. He says he does not have that and these names that he has mentioned, we are aware of this report.

If we want to find out the names of the people that he has mentioned, we will find them from this report. With great respect, I am not sure what purpose is it going to serve by trying to find out from him where he got the names from.

ADV LEBALA: Chair, we will part ways with the names. I would like to draw your attention to another report which is standing before the commission. It has become academic I assure you, whether the names are mentioned, because the names are in your statement, which is public knowledge, but let us get going.

Let us look at Annexure DM27. Now what has become clear is the commission, I will take the commission to the relevant page. The document starts on page 390. Now you are not going to talk about the contents of this document. You could just mention to the commission how you accessed this document and just [indistinct].

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How you accessed it and what does it stand for without going into the contents, so that it will clearly be on record before the commission. Page 390, Annexure DM27. Explain to the commission what qualifies you to refer to it without going into the contents.

- 5 MR MAYNIER: The document is a forensic a draft report on factual findings of a forensic investigation in respect of the State versus Jacob G Zuma and Others. The report is dated 2 September 2006 and the author of the report refers, is Johan de Walt.

ADV LEBALA: Now this report, together with the names that are mentioned
10 from page 8 to page 13, is it relevant to the terms of reference without going into being specific? Is it relevant to the terms of reference before the commission?

ADV CILLIERS: With great respect, what is the relevance of this question? What is the value of this witness's opinion as to whether these names are
15 relevant? In the end it will be your decision and you decision alone to call a witness or not. He is not the author of this document.

This document is clearly only a draft document. It is for review purposes only. With great respect, to say do not go into the content, but what is your opinion of the content, I do not understand the question, with
20 great respect. Clearly this witness is not able to express opinions, and should not be allowed to express an opinion on the content of these documents.

ADV LEBALA: Chair, with the greatest of respect, I cannot think of the simplest way to respond to this objection, and this example might be nasty

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that I am making. This documents do not talk about a bona fide which is unfortunate. It is talking about what this witness is testifying about chair.

This witness is [indistinct] this document. The question is the commission [indistinct] to bring each and every document, hiding behind the value that the witness is not qualified to [indistinct] that document. All the witness has to say is to say yes, it is relevant and he keeps quiet.

He is not even going into the contents. Then it means I could bring a document that talks about the appointment or [indistinct] and say I have attached the report and keep quiet. I am just trying to qualify its relevancy and it is not an opinion. I say in the context of the term of reference that we are talking to.

This objection is not fair. He is not traversing the merits and the demerits of the names.

MR GOLDSTONE: Chair, might I also lodge a concern? I have to concur with my learned friend. It seems as though the evidence leader is inviting [indistinct] forensic report. The early submission was that would identify it and possibly [indistinct] it in for the attention of the commissioners.

I think with all respect, having heard that it is [indistinct] these documents are known to the commission. What further needs to be said, other than to identify it and properly address it. I do not believe that the witness, neither the author is competent to comment.

CHAIRPERSON: Yes.

ADV LEBALA: Chair, and I beg your pardon out of respect. The basic rules of evidence are based on three principles. Relevancy, admissibility and the best evidence. Up to so far there has never been a witness who have

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traversed this information that we have before the commission. We have not even delved into that.

It has never been tested whether it is relevant or not. It has never been tested whether it is admissible or not. One does not know
5 whether it is the best evidence, but as evidence leaders, we cannot bring testimony [indistinct]. We cannot refer this witness to any report.

We cannot refer this witness to any names. It would be unfair. All that was said is that these names and this report are they relevant to the terms of reference, yes or no. That is all.

10 CHAIRPERSON: What you are asking is that you are asking for his opinion whether this report is relevant or not. Whether he says yes or no, it will not assist us, because at the end of the day we must look at that report, look at the terms of reference and make a decision whether they are relevant.

What his views are about this report, total irrelevant. I am
15 not going to allow you to pose that question.

ADV LEBALA: Thank you chair. [indistinct]. From Annexure DM12 page 303 to page 904, is that correct.

MR MAYNIER: That is correct.

ADV LEBALA: Now MR MAYNIER, I would like you to conclude your
20 testimony. In that particular introductory part of leading your evidence, we mentioned how we intend dealing with your evidence. You heard about the concerns that the chair raised when we talked about the [indistinct] and the amendment and the additions to the terms of reference.

That they are limited. Of course we knew it, but we
25 mentioned to them that they could go, trusting their first instincts and

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[indistinct]. Is there anything that you want to add in the context of what one sees in page 14 ... [intervene]

CHAIRPERSON: Let me understand the question.

ADV LEBALA: In actual fact I am still relying on my old Annexure A and that is where the confusion comes. I went back to my old Annexure A where I have made my notes. In actual fact do not agonise. There is a better way of dealing with this question. MR MAYNIER, concluding remarks.

Is there anything you would like to say? Remember when we started leading your evidence we mentioned to the commission about the [indistinct] amendment and additions to the terms. Is there anything you want to say with regard to some of the evidence that we have led?

The letters that you have written. Your positive conduct that you took?

MR MAYNIER: Thank you advocate. I wish to point the commission to DM28 and DM29. DM28 is ... [intervene]

ADV LEBALA: I would like you to specify the pages if you can, to assist the commission.

MR MAYNIER: Thank you. DM28 begins on page 896 and DM29 on page 902.

ADV LEBALA: DM28 starts on page 896. It goes to 901 and DM29 starts on 902 and goes to 904. Let us start with DM28. Please identify the document and take the commission through it.

MR MAYNIER: Chair, DM29 on page 896 is an information note. The date is not clear, but the information note comes from Major General JW Meyring of the Directorate for Priority Crime Investigation. This document which I

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furnished to the commission about a year ago, was obtained by me through a [indistinct] application.

So I submitted it to the commission. Put as briefly as possible, the information note sets out the reasons for closing the investigation into two legs of the Arms Deal, and in my closing remarks I will be as brief as possible. Both the information note and the letter refer to the matter of the mutual legal assistance agreements.

Put simply in our deliberations in parliament, particularly with the investigative authorities, and here I am talking particularly with General Dramat and the hawks. One of the themes was that it appeared that to the extent that there was an investigation into the Arms Deal, one of the constraining factors was the investigator's ability to obtain MLA's.

I think the problem is well illustrated in paragraph 2.3, 2.4 and 2.5. Which I would just like to briefly read and I will do it as quickly as possible. Paragraph 2.3 essentially says:

"In October 2007 the British [indistinct] office requested the DSO at that the Scorpions, with an investigation in respect of corruption allegedly committed by certain companies and individuals in the United Kingdom. In a nutshell it revealed that BAE had paid huge commissions to agents based in South Africa and elsewhere to assist in securing contracts. These commissions were paid in offshore accounts, and BAE was unable to provide satisfactory details of the work done in return for these payments. The SCFO also requested that a joint investigation be conducted between them and the DSO. The two parties were cooperating through an informal sharing of information, and did not make use of a formal MLA."

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Now the former director general and the previous minister of justice ... [intervene]

CHAIRPERSON: With the greatest of respect, I am not sure where this information is taking us. [indistinct]. Just reading to us what other people
5 has said to him. [indistinct] is the person who was involved with those [indistinct]. We are aware of that. [indistinct] several steps and try and see how best can that information be.

Now letting the witness read that information into the record, I am not sure where is that taking us to.

10 ADV LEBALA: Chair, he is not only reading it into the record. We will hear what he says, and I [indistinct] both commissioners just to give me an opportunity, because the relevancy of it will come. He has laid the foundation. Hence at the outset, that is a decision which is going to call for your trusted discession and judgment.

15 He is just laying a basis to come to the conclusion that he begs this commission to even look as to whether there was interference. Nothing has been done or nothing ought to be done more, by this [indistinct] and assistance. We make it a point that these investigations are [indistinct] and that is all that he said.

20 CHAIRPERSON: We understand the terms of reference. We understand what is expected of us. It will not help us at all if you told this witness already to go through the terms of reference, go through other correspondence without him giving us evidence that can help us to [indistinct].

That information, we are fully aware of it.

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ADV CILLIERS: Chair, I do not know whether Mr Lebala's confuses this commissions terms. I have not seen any term relating to you investigating the police for not properly investigating this matter. This terms of reference of this commission is [indistinct] with facts in order to enable it to come to a
5 finding on this issue now whether or not there was corruption.

This witness had difficulties with the investigation for years. Now he has the platform to provide [indistinct]. We have spent now a full day with him in the witness box, and I have not heard one single fact that is worth mentioning in your report, because it is not relevant at all.

10 Now this question again. He must now tell you why he feels bothered. How will that assist you in order to come to a conclusion as to whether there was [indistinct]. With great respect, I do not know where Mr Lebala is going to with this witness.

ADV LEBALA: Chair, I can respond to that. ADV CILLIERS appear to have
15 come to the commission late, and I will tell you why this question is very relevant. This witness is talking about his oversight functions. This witness is talking about his constitutional responsibilities.

He is talking about his responsibilities as a member of [indistinct]. He says I have been a member of parliament dealing with the
20 sight of department of defence and veterans focussing on the [indistinct]. I have debated, I have observed, I have participated in deliberations.

Now perhaps the question is not properly put. I could put this question proper without saying why is he bothered. Maybe that would assist
ADV CILLIERS. In closing, if you permit me, then I could put this question
25 properly in closing. Perhaps firmly speaking, I stand corrected.

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I should not say why is this witness bothered. I should say why is he concerned. Of course his concerns are relevant in line with why is he standing before the commission. He is before the commission because he is concerned.

5 CHAIRPERSON: You are right, he is concerned. I want evidence from him and [indistinct] testify and give us evidence which will help us to carry out our [indistinct]. I am not quite certain how further questioning is going to help us. If you want to put the last question, you can put the last question to him.

ADV LEBALA: Thank you chair. I know that this commission has never
10 allowed us to asked irrelevant questions. This question is highly relevant. May the witness please address the commission and then the commission will weigh whether this question is relevant or not.

ADV CILLIERS: Chairperson, I do not wish to try your patience so I will be brief. The question that I have is was there any effort to frustrate the
15 investigations into the arms deal because it would also appear to me that the MLA's did not materialise from the department of justice, and it raises a question about whether there was an effort to frustrate the investigation into the Arms Deal over the last number of years.

I think this is a matter of enormous public interest. It is a
20 matter of enormous concern to me, and it is a matter that I hope the commission will address during its investigation.

Thank you.

ADV LEBALA: Chair, that completes the testimony of MR MAYNIER.

CHAIRPERSON: Is there any person who want to cross-examine the
25 witness?

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MR CHOWE: [indistinct]

CHAIRPERSON: Just hold on. How long do you think your cross-examination will take?

MR CHOWE: Less than 15 minutes.

5 CHAIRPERSON: Any other person who might be interested to cross-examine?

ADV CILLIERS: We do have questions, but we will also be quite short. I would say less than 15 minutes.

ADV DE WAAL: [indistinct]

10 CHAIRPERSON: I think we need about an hour or so. I see it is already almost five o'clock. Should we adjourn until tomorrow morning and start at nine o'clock?

ADV LEBALA: We are guided by this forum.

CHAIRPERSON: At this stage we adjourn until tomorrow and start with the
15 witness at about nine o'clock. Half past nine. Thank you. Mr Chowe?

MR CHOWE: No difficulty.

CHAIRPERSON: ADV DE WAAL?

ADV DE WAAL: We would very much like to finish, but we seem to be outvoted chair. So we will abide.

20 CHAIRPERSON: Thank you. We adjourn until tomorrow morning at 09:30.

HEARING ADJOURNS