

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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HEARING ON 2 SEPTEMBER 2014

CHAIRPERSON: Thank you. Good Morning. Advocate Mphaga?

ADV MPHAGA: Thank you, Chair and Commissioner Musi. Chair, today we, Mr Gavin, Dr Gavin Woods as our witness and he is ready to give evidence and to take the oath. But, I should also mention that we have Mr Robert Drieman, who is here for, I think, for the first time on behalf of Tait's, as one of the representatives.

DR WOODS: So help me God.

ADV MPHAGA: Thanks Commissioners. Mr Woods, you are currently a professor and Immediate Pasture of the anti-corruption centre for education and research at Stellenbosch University. Am I correct?

DR WOODS: Good morning, Chair. No. Not entirely. I retired from Stellenbosch University last year, when I turned 65 and I retired from both those positions. I retired as a full time professor. I am now professor emeritus. I also retired as director of the anti-corruption centre. So, I am no longer an acting professor.

CHAIRPERSON: Thank you. I am sorry Mr Woods, can you just talk into the mike, because we struggle to hear. Just talk directly into the mike.

DR WOODS: Would you like me to repeat that, Chairperson?

CHAIRPERSON: Ja.

DR WOODS: Yes. I retired as a professor from Stellenbosch University last year and I am now professor emeritus. So, I would not, as what you would say a practicing professor. I do the odd professor thing for them. But, my permanent employment is with the Public Service Commission at present.

CHAIRPERSON: Thank you. But, you are currently a Commissioner at the Public Service Commission?

DR WOODS: That is correct, Chair.

ADV MPHAGA: If you look at page 38 of your statement. Is that your signature

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that is appended on, on that page?

DR WOODS: It, it is Chairperson.

ADV MPHAGA: And it is reflected that it was signed on the 27th of August 2014.

Am I correct?

DR WOODS: You are correct, Chairperson.

ADV MPHAGA: Now, if, let us proceed then, to your statement on paragraph 2 thereof. You indicated, you are appointed as the Chairperson of the Standing Committee on Public Accounts, SCOPA, during April 1999 and you served as such, until you resigned on 1 March 2002. Is that correct?

DR WOODS: Yes, Chairperson.

ADV MPHAGA: Your, switch off there. Did you resign at the end of your term, or what were the reasons for your resignation?

DR WOODS: I resigned before the end of my term, under particular circumstances.

ADV MPHAGA: Can you switch of there? Are you able to tell us about those circumstances?

DR WOODS: I am. Would you wish that? My resignation primary came about as a result of the first investigation into the arms deal, the one of the Director of Public Prosecutions, the Auditor General and the Public Protector in that, I believe their final report, the findings in their final report to have been somewhat fraudulent and to not have carried out the instructions that have come via SCOPA and through the National Assembly. In addition to there being this, this waste of taxpayer's money, in conducting that investigation and producing such a report, I was also aggrieved by the numerous interventions that have taken place from members of the executive, at the time and indeed, from senior officials of Parliament, interventions, which served to circumvent the investigation and further served to circumvent the work of SCOPA in, in monitoring that

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investigation. So, that was the primary cause of my premature resignation. But, politics being what it is, that whole saga manifested into other developments, within SCOPA, where it got to the point, where everything I did or said was regarded with suspicion by the majority of the members in the Committee, who belonged to the majority party. So, the advocate council ultimately became dysfunctional and in my opinion, stopped doing the valuable work, which it ought to be doing. So, not only in protest about the arms deal investigation, also, in the interests of the Committee, finding a new chair and being allowed to regain its momentum, I resigned.

ADV MPHAGA: Thank you. I assume in page 39, you also, you have attached your curriculum vitae. Am I correct?

DR WOODS: Yes. Yes, you are.

ADV MPHAGA: And I just mentioned the highlights of your curriculum vitae and it mentions that you were a Member of Parliament for, in South Africa for 15 years. Is that correct?

DR WOODS: That is correct.

ADV MPHAGA: And currently, you are serving as a Commissioner in the Public Service Commission of South Africa. That is from January 2013 to present.

DR WOODS: That is correct.

ADV MPHAGA: You, you have been also, a professor in public finance management at University of Stellenbosch, involving teaching Honours students and Masters and supervising doctorate students in research.

DR WOODS: Correct.

ADV MPHAGA: You also have served as a, in various committees of Parliament, amongst them it is the, you were the chair of the subcommittee, which researched and enrolled the Public Finance Management Act 1999. Am I correct?

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DR WOODS: You are correct.

ADV MPHAGA: And as mentioned earlier, you were also the chairperson of SCOPA.

DR WOODS: Yes.

ADV MPHAGA: I see you also mention the, the fact that you have been involved in research and you have co-authored certain publications and books.

DR WOODS: That is correct.

ADV MPHAGA: And you mentioned that, amongst the books you were the co-author of the best-selling academic book, Managing Public Money, first and second editions.

DR WOODS: Correct.

ADV MPHAGA: And lastly, you say you have recently completed a university text book on public finance theory and practice, which is due for publication in 2014.

DR WOODS: That is correct. I am not sure that the publishers will meet the deadline, but that is the plan.

ADV MPHAGA: Thank you, Dr Woods. Let us then go back to your statement on page 2. In fact, I have three, you have just mentioned that you, you have been subpoenaed to give evidence that may be relevant to the acquisition of armaments, which form part of the special defence packages. Is that correct?

DR WOODS: It is, yes.

ADV MPHAGA: And you also confirm that the facts in your statement are correct and within your personal knowledge, to a [indistinct].

DR WOODS: Correct, yes.

ADV MPHAGA: Now, in paragraph, paragraph 5, you give the, the purpose of your statement. Can you take us through that paragraph 5, to explain the basis of, of a statement that you affirmed to the Commission?

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DR WOODS: What I am alluding to here is that, there have been no smoking guns, no absolutely conclusive evidence of corruption in the arms deal that has been put into the public domain. So, I, in being subpoenaed to appear before the Commission, I just want to make it clear that I do not have any smoking guns. But, what I do have is a great amount of, what we might term indirect evidence, circumstantial evidence. Much of it based on allegations. I have been very selective with the allegations I referred to. They have to be substantive allegations, produced by reputable people, who can indicate that they have reputable sources. It is all that evidence that I put together, together with some evidence, which I would suggest to be more direct, in forming and building a picture. I do this by building a number of arguments, which I hope to convince the Commission, as to the authenticity of those arguments and how those arguments ultimately fit together, how themes develop across and transverse those arguments, resulting in a, a picture which strongly suggests the probability of corruption, having taken place in the, in the arms deal. So, that paragraph that you referred to is more about my approach and a little about my methodology.

ADV MPHAGA: Thank you. In paragraph 6, you have just mentioned that your statement is also made on the understanding that the Commission's responsibilities, both in terms of the Commissions Act 8 of 1947 and its terms of reference go beyond simply accepting or rejecting the evidence it receives, by those who testify before it. Can you just explain that?

DR WOODS: I think it is exactly as it appears before you. I am, I just want to put on record, my understanding that the commission has a job to do, that is instructed by both the act referred to and there is terms of reference to conduct an enquiry, to conduct an investigation, its own investigation, if necessary and that the participation of us witnesses is simply to co-operate and to help you. I would hope that, at the end of my presentation, to have convinced you that there

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are some specific areas that, that you should look at and that if you were to look at them, that you are likely to come a lot closer to the very truth that has been so elusive, thus far.

ADV MPHAGA: Thank you. In paragraph 7, you are simply mentioning that your statement will be relevant, in respect of the commission in terms of reference 1.5. Is that correct?

DR WOODS: Yes, I, no, I respect that the Commission was given terms of reference and it would be a fruitless exercise for me to, to speak or to produce evidence, which was not relevant to the brief. So, I do offer here reference 1.5 of the commission's brief, as being, as being the item, which I am attempting to respond to, in giving evidence.

ADV MPHAGA: Thank you, very much. Now, you, we are proceeding in paragraph, from paragraph 8, under the topic evidence of wide ranging corruption in the international arms industry. So, in paragraph 8, you, you are trying to, to give that background. Can you take us through that paragraph 8?

DR WOODS: Yes, Chair. I believe it is, it is important, or perhaps essential that, that what the Commission is enquiring into here, is, is a particular industry. It is an industry that has its own history, has its own reputation that has its own way of doing things. I think, we have to recognise, as SCOPA did, and its 14th report, the 14th report, which gave verse to the first investigation. We there too said, we must acknowledge that this industry is an industry that, when we were looking into issues, which are a regular, which might be corrupt, we need to bear in mind that, that it is not, it is an industry like no other. I try to substantiate that, as I, as I have done throughout my statement herein, with a few references. If I could make a general statement that many thousands of documents, some degree of importance or not rather and it was a matter of always trying to select a few, which I thought, would give weight or substantiate a point I was making. So, in

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the case of, of me reminding everyone that the arms industry has its hard earned reputation that this is clear from a number of very deep research exercises, by statistics produced by the World Bank, by Transparency International, by other bodies, where it would seem there is consensus that it is the most corrupt industry in the world and could corrupt, for as much of the world's corruption. Even though, it accounts for only one or two per cent of the world's trade, it gives us a sense proportions, it gives us a good idea of what, what we are working with here. I think, to bear that in mind, I thought it was important for the statement I produced and, and hopefully also for, for the Commission. Now, I am saying, notwithstanding this reputation, notwithstanding the huge collection of literature, in research based literature that has been produced on this industry, it would seem that, that the executive and in particular, those executive members who made up, what was called the Cabinet Subcommittee, put there by Cabinet, at the time, to oversee the processes, the structures, the practices that were utilised in evaluating all the bids for, for arms business, for the SDP's and evaluate and be part of the selection, the decision making process, that those executive members, in particular, though, through documents that I offer you showed, sounds to be ignorant of the nature of the arms industry. There was a certain naivety and part of this first argument will be that it was that naivety and that ignorance that caused them to take the eye of the ball and just to trust the processes and trust the officials, who produced them, who produced information for them and produced recommendations for them. The three instances I produce here, are firstly, extracts from a, from a press statement, issued by the Cabinet Subcommittee.

ADV MPHAGA: I think that, are you referring to, to the extract on page 43 of the bundle?

CHAIRPERSON: I am sorry, Advocate Mphaga, Dr Woods can you perhaps try

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and talk into the mike, because we are really struggling to hear you. You are not as clear, I struggle hearing part of your evidence.

ADV MPHAGA: Maybe you can take us through that, that ANNEXURE GG882.

DR WOODS: Chair, your, your technical man did warn me, prior to, that I should not talk directly into the mike, because it creates a distortion, so I am trying to get the compromise here, so that you, you get everything on record clearly, but also that, of course, so that you can hear me clearly. Can I ask you, is that sufficiently clear? Thank you. Yes. I am referring to, to the ANNEXURE 2 on page 43 and I suppose, firstly, one could say it is the statements general, generally not acknowledging that the, the arms industry and its trails were an issue, or even worse, considering as possibly being people that you should be careful when you contract them with, when you transact with them. I refer to the fifth paragraph, which is the second [indistinct] of the paragraph, where the government, in fact, expresses strong reservations on the statement made on prime conjunctives. Any statement that was made, was one I referred to in the, in our 14th report. Of course, they go on and to manipulate the statement and try to suggest that, that I am making the statement, we are reflecting on the integrity of the Cabinet Subcommittee bids, that, if you look at the literal content of what we said, that is simply not correct. But, they, they do show some resentment to the fact that we, we dared, we dared offer our critique of, of the industry. We further, when three of the members of the Cabinet Subcommittee appeared before SCOPA, the issue again, arose.

ADV MPHAGA: I think it is on page 57 and you are referring to the comments, which were made by the Ministers at that hearing on the 26th of February 2001 ANNEXURE GGW4, page 57.

DR WOODS: Indeed, I am and on page 57, the third paragraph from Minister Alec Erwin, he says:

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“I would just like to draw your attention, which is not the subject of discussion, but very relevant, your opening remark and introductory comments, by many accounts the international arms trade industry experiences a high industry malpractice.”

And I think there is a typographical error here. He talks about many countries being victims. Mr Erwin goes on to say:

“It is fairly clear that your view is your, is your predisposition as a committee that there will be corruption according, accordingly for those responsible for the crime decisions.”

And once again, you can see it is a, it is a fantastic manipulation of words Mr Erwin's [indistinct]. But, at the same time, it is, it is being dismissive, of the observation, which we include that the arms industry is one where it has to be carefully, carefully dealt with when you, buy industry, buy goods from them. Then I conclude a third reference, which is, comes from a letter, which, I think, many have said is a controversial letter.

ADV MPHAGA: But, before you go to that letter, of the then President, can I also refer you on page 58, I think it is the comments made by the former Minister of Defence Lekota and I just want to hear your comments on what he is saying. He is, on page 58, Chairperson and Commissioner Musi, the last paragraph of page 58, he says:

“This Committee of Parliament, one would assume that, when it is faced with a matter like this one, whatever the World Bank may have said, I may think for instance, that by the time they made that conclusion, they probably would have made number of studies of a number of cases. So, they are drawing a conclusion like that, at the end of an assessment date. This committee has not, in its history, I think, has such reason to start from this kind of premise, in relation in this matter.”

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Commissioner, my apologies:

“In, this committee has not; in its history has such reason to start from this kind of premise, in relation to this matter here. It is as good as a judge saying, who may have tried many cases and now I am brought before such a judge and he says generally, I think the North Sotho are going to eat horse meat and since this North Sotho is accused of having eaten horse meat.”

Can you comment on, on this?

DR WOODS: Chairperson, SCOPA, however saw the accounts and finances of hundreds of government institutions, different government institutions doing very different things, some very personnel intensive, others not, some very procurement intensive, others not, some that interfaced, where public officials interfaced with the public in a very direct way, others not. These were all considerations that we bore in mind, when looking at the next set of accounts and where it came from. I think that happens in many areas of work, of investigation, of auditing, we consider [indistinct] of a particular department institution, or industry. That is also, all that we simply did here. For Minister Erwin, in the first place, to say that by doing that, we were prejudicing, prejudicing the, the enquiry and pre-judging it and reflecting on the integrity of the cabinet subcommittee went to ridiculous lengths. Mr Lekota’s comments went even further, to suggest that, that we were altogether pre-judging situations and generalising and it is just, it is just very unreasonable for them to, to try and suggest that.

ADV MPHAGA: Thank you. I think you wanted to refer the Commission to the letter of January 19, 2001, which was addressed to you, in your capacity as the Chairperson of SCOPA, which letter was written by the then Deputy President Mr Jacob Zuma. It is on page 45 of the, the bundle. Can you refer us to the specifics, or, in that letter?

DR WOODS: Yes. I continue on my, my argument that the executive was then

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very ignorant about the dark side of the arms industry and, and that weakened the oversight and caused vulnerabilities in the processes, the vulnerabilities, which I will later suggest and argue and most probably led to corrupt activities. The letter that I am referring to is a letter not without controversy. It was a letter written to me in the first person. Many references threw out the letter and what I am saying is it was not referred to me as Chairperson of SCOPA, even though some of the content might appear that way. Other parts of the content to the letter are directed at me, specifically. It is a, it is a very hostile letter, it is a, and part of the controversy and the speculation was that the letter possibly was not written by the person who signed it. It was signed by the then Deputy President, Jacob Zuma. The speculation is that it could have been written by the President, at the time, President Thabo Mbeki. I produced a number arguments, which, which raised its questions, but of course, I do not know the truth to that answer. It is a bit unsettling. If it were to be written by Thabo Mbeki, it would be all the more, a proper. But, either way, it was a member or the executive, who, ja, who says, makes many strong statements. But, on page 48, the first paragraph, he takes exception to the 14th report, having said:

“By many accounts, the international arms industry experiences a high incidence of malpractice, with purchasing companies often having been the victims of very costly exploitation.”

The writer says:

“With this amount the committee has considered the transactions and the broader financial and fiscal implications pertaining to the recent South African arms purchases.”

He says that in quoting SCOPA's report. But, then the writer raises the question, who gave what accounts to SCOPA and it goes on to, to quote SCOPA having said:

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“With international armaments market, having recovered, the committee feels that the large commitments by suppliers might now be resistant and even relayed upon. But, South Africa, unlikely to be a serious arms purchaser over the next few decades, this possibly needs to be watched closely.”

And there again, I am challenged, where he asked:

“What study has SCOPA done, which shows the recovery of the international armaments markets and possible resistance to the suppliers in this development?”

But, then, the simple answer was, in both cases we did no study, because studies have been done by arms experts all around the world and we relied on their experts to show that a, there was a large degree of malpractice in the arms industry and secondly that, there was this unsettling nature of this market, posed certain dangers. But, tellingly, if I can refer you to page 49 the third to last paragraph, where the writer, be it either Thabo Mbeki or Jacob Zuma referred to the prime contractors as, as Blohm and Voss, Thomson CSF, Ferrostaal AG, Vissen Noordzee Wegge and Augusta and Finland Kinika, excuse the pronunciation, British Aero Space, SAAB, it goes on to say and others. This is and the writer says:

“All of which are well known and prestigious international companies.”

Now, I would argue that that again, illustrates, demonstrates the, the lack of insights of Cabinet in general and the Subcommittee, in particular of the nature of the industry. I have, I have very quickly assembled a, a list, which is an annexure of, just a number of, of cases of other events of proven international arms deal and corruption instances, which I would be happy to respond to, if required. Having spent a great deal of time in researching corruption, in particularly in the public sector for many years, but more specifically, in the few years that I was director of the anti-corruption centre at Stellenbosch University and having

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attended many conferences and having accessed many, much research on the subject. One accepts that international contention that perhaps, only about 10 per cent corruption was ever discovered and that largely, due to the supposedly secretive nature of corruption. That 10 per cent is, it is further argued it is considerably less than 10 per cent, when it comes to the arms industry, because the arms industry is the most secret industry in the world. Transactions are conducted in a considerably more confidential way than most transactions from other industries. So, my list it is just to mention there are a few of the expose's over recent times, bearing in mind that there are possibly many more.

ADV MPHAGA: Thank you. But, if you go to page 50 of the very same letter, I just want to hear your response there, doctor. I think the then Deputy President writes there and say:

“Natural justice demands that you both substantiate the allegation that the persons, governments and corporations we have mentioned are prone to corruption and dishonesty and provide even the most rudimentary, or elementary evidence that any or all of these acted in a corrupt or a dishonest manner.”

And he continues to say:

“I believe it is a most serious matter, indeed, for our parliament or any section of it, to level charges of corruption against foreign governments and corporations, without producing evidence to back up such allegations.”

What would be your response to that?

DR WOODS: Ja. I believe the writer would have been correct, in saying that natural justice demands that I substantiate a statement, if that statement had been the accusation that the writer is trying to make it out to be. But, the statement is there, in writing and one can see that in no ways does it suggest that all of those had acted in a corrupt, dishonest way. There is no such suggestion at all. So, I have to, I have to dismiss the comments made in the letter in this

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particular instance.

ADV MPHAGA: Thank you, doctor. I see on page 202, paragraph 2, ANNEXURE GGW47, it constitutes your response to the very same letter from the Deputy President. Would you want to deal with specific issues from that response?

DR WOODS: I appear to have, let me say out of order, let me re-arrange my documents. It is the letter, which, the response, which I produced and, as part of my evidence in the Shabir Shaik trial, because the letter, signed by then President, Deputy President Jacob Zuma was fairly, a very prominent issue in the Shabir Shaik trial. So, I was asked to give my views and give an analysis of the letter, which, which I did in the document you referred to. If you would want me to go into specifics of my response, I would need to borrow your copy.

ADV MPHAGA: Oh. Thank you. But, I see in the letter, in paragraph 2 thereof, you mention that:

“As the respondent finds it difficult to reconcile the character of the letter in question with that of the Deputy President, whom he has long held in high regard, the responses are made to be some doubt, as to whether the writer of the letter in, is of the letter in question.”

Is it not what you earlier said to the Commission that you doubt the author of the letter?

DR WOODS: Yes, Sir. I also said earlier that, of course, I do not know who wrote the letter. But, the then Deputy President Jacob Zuma was someone, who I had met from time to time and had, on a number of occasions, either sat with him at a function, over a dinner or sat with him, sat with him in Durban airport on route to Cape Town and I felt I got to know him and the I, I just could not see the type of sarcasm in the letter, I, I could not reconcile that with, it is a more gentle person that I came to know. So, I, maybe my doubts are misplaced, but I did have some,

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some doubts, as to who the author might be.

ADV MPHAGA: Thank you. I have given you the copy of the, your responses. If you want to, maybe highlights any issue arising there from.

DR WOODS: Well, it was, there were a couple of issues raised by, let us just say the Deputy President in his letter. I felt I hoped the letter considered it seriously on its merits. But, established there were many discrepancies with the truth. I would say it raised many manipulations, including important issues, like the omission of the Special Investigation Unit from the first, from the first enquiry, the Joint Investigating Teams enquiry into the SDP's. It disputed that I had acted of a very, in writing, in writing to the then President, to ask him if he would consider giving a proclamation to the SIU. I took up the issue again on the international arms market and other issues, where I disagreed, where the letter misunderstanding the government to government agreement. So, I just wanted to correct the letter there. I also wanted to correct him on the argument that some ministers have claimed, at the time that they wish to appear before SCOPA, but we have never had a formal request. The letter seemed to assume that we were rejecting these ministers. It was later shown that when the ministers requested more formally, that we were happy to bring them before us and, and have discussions with them. You know, I do not have there any specific issues that add too much value to, to the case that I am building. But, I would invite, I would invite the Chair or yourself to pick up on any issues, you want me to elaborate on.

ADV MPHAGA: No. Thank you, very much for that explanation, doctor. Let us revert back to your statement, paragraph 11 thereof. I think you have dealt with some of the issues arising from paragraph 11. Maybe, if you can, you can go to page 60. You are referring to an article, titled corruption in arms trade there. I just find out from you, which aspects from this article do you want to highlight on page 60 of the bundle? Page 60 of the bundle, it is an article there, corruption in

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arms trade.

DR WOODS: I, I have it and I thought you were referring to the list, once again. One observation, I just draw your attention from the list. I would say it is the relatively short list, but hopefully, it is sufficient to, to prove my contention that the arms industry, that corruption prevails in the armaments deal. You will notice, amongst arms suppliers, that have strongly alleged to have been corrupt, or have been proven to be corrupt and a number of the suppliers, which supplied the arms packages in our case, in South Africa's case, so happen to have their own, their own hard earned reputations, in that regard.

Moving to the document, on page 60. Again, I could have produced books and volumes and boxes of documents and papers, but to, to show that there is a consensus here [indistinct] through associated industry, that the industry has the problems, I referred to. So, I just took an example here of one such article of, of one such article. The article, in addition reverts to the issue of commissions, which we will come to and, my, and one of this, the second or third arguments that I will build shortly. First, it is just to indicate that, it is not just me saying these things, but there is a body of literature out there that is researched based and substantiate what I am saying.

ADV MPHAGA: Thank you. I see on paragraph 11, you also make a reference there to ANNEXURE GGW6 and the background thereof, is that you indicate that 32 connected individuals, who received discounted motor vehicles in South Africa from an arms supplier, would be typical of such influence, seeking by the suppliers. Can you just explain that?

DR WOODS: If we study corruption in the arms industry, there are possibly six or seven types of corruption that are, that are common to cases that have been analysed and proven. At the top of that list is the issue of bribery or kickbacks and most often, they are referred to as commissions. The, how those bribes are

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commissions administered, I suppose in much the same way that happens in other industries, that government might do business with, or industries that might do business with each other. Bribes are, are paid to secure business. But, that can happen from two ways. It could be the, the purchasing company and it could be an official from the purchasing company saying I want to receive a bribe, so I will initiate that possibility with the supplier. In other words, he will say, I will make sure you get the deal, if I find a Mercedes-Benz parked in my driveway next week. But, more often than not, it would seem that it is initiated the other way around, it is the supplier, who looks at where the prospective business is. In the arms industry, we have people who are very skilled, who do an awful lot of homework, will study a government, where it is a government to government business. They will look at how the decisions are going to be made. Most importantly, they will look at who is who, in the overall process and identifying those individuals. They will have ways of giving them sweeteners, or small bribes with often, with the promise of bigger things to come, as, as the deal takes shape and as they, the supplier become increasingly the preferred supplier, in the minds of the decision makers. So, it was in explaining that theory, I just thought, I would include this list, which is just a factual list of 32 individuals, either South African politicians or, or public officials, there are few on the list, which are undisclosed, because the, the arms deal employer, employee, concerned here, the senior person, sometimes bought these motor vehicles in his own name, for distribution, to whom they went, we do not know about it. There are enough names there, to show us how strategic and how insightful bribers can be in, in finding their targets and then building their influence from there. I know this case was, was cut short, simply because the National Director of Public Prosecutions refused to continue with it. I went, I even fought with them personally and he, he showed no interest. I could elaborate on that, should I? Ja, it was said that everybody who received a

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car, could produce an invoice, showing, yes, they got a modest discount. So, on that paperwork, they felt there was not a case to, but I happened to have known one of the recipients and managed to extract from him that there was a massive kick back on all those vehicles, as can happen in, in the real world. There are, it might be Ford, for example, who would have an advert in the newspaper saying, buy a new car from us and we will give you R10 000.00 case. Because, as I suggested to the, to Mr Ngcuka at the time, that it is simply ridiculous to believe that this select group of people, who are, who was so, so particular to the decision making processes of the arms deal, that only they were chosen and it just so happened that everyone just happened to be in the market for one of the cars that was in this, this yard and they all bought these cars. You know, it just goes, goes beyond the bounds of, of what is, if it is believable. But, unfortunately, the case was not, was not followed through on, as did, as, as were none of the cases. So, I have, other cases, given to the NDPP were tend to nought.

ADV MPHAGA: Chairman, I see it is already 11 o'clock. I am not so sure we should proceed.

CHAIRPERSON: Maybe let us go on until quarter pass.

ADV MPHAGA: Thank you, Chairman. Dr Woods, thank you for the explanation. Let us proceed then to paragraph 12. I think you have spoken in detail, in respect of the, the corrupt industry, the arms industry being corrupt and reference to the transparency international, the World Bank and US Department of Commerce. But, of interest, I just want to refer you on page 6 then, you made reference to ANNEXURE GGW7 and made then, allegations that previously, there were dubious transactions by BAE, Forrestal, Thompson CSF and SAAB. Could you just elaborate on that?

DR WOODS: Chair, perhaps I had been moving a little ahead of myself, but I have been making reference to that list to the GGW7 and I have been pointing out

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that certain of those arms suppliers are, the arms suppliers within our package, in our SDP's happen to appear. In particular BAE and I am aware that not all of the cases were proven. There was the BAE case in Saudi Arabia, the one I ...[intervene]

ADV MPHAGA: Are you, are you referring, can you just hold, are you referring to GGW7 on page 65 of the bundle?

DR WOODS: I am, yes.

I just want to make it clear that not all of these cases were proven, the more majority of them were. But, sometimes the reasons of not having been proven, are, are worth taking note of, like, the Al-Yamamah deal. The, where the deal, much to the disgust of the serious fraud office in the UK was stopped by then Prime Minister Tony Blair, giving as his reasons that it could bring embarrassment to the British and Saudi Arabian governments. The SFO made it clear that they had a conclusive case.

CHAIRPERSON: Just on around that, Dr Woods, what was the source of the information, which is contained in these excerpts before me?

DR WOODS: Chair, I misheard you that the page you are referring to?

CHAIRPERSON: Page 65.

DR WOODS: Chair, there, there are various sources, these are claimed and many books written on the subject and many articles, also, many press releases. But, they are all cases where, where, you know, there is no contesting the allegations made here, especially in the cases of those that have been proven. So, so, various, what I would say reputable sources.

CHAIRPERSON: Dr Woods, my question is simple. You have given us this document here. This document contains certain information. What I am trying to find out from you is what the source of this information is that you have put before us? It is on page 65.

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DR WOODS: Well, Chair, as I have said that there are various sources. I have not accompanied the page by details of those sources, if that is what you would have required.

ADV MPHAGA: Thank you, doctor, will you just proceed then to paragraph 13 on page 6. Then you are alleging there:

“For the South African government to claim, without any substantiation that the South African arms deal was somehow different to so many other arms deals in, in terms of possibilities of corruption, without given any reason as to why this could be the case, is not easy to accept. The denial of any possibilities of corruption in the SDP’s by the former members of the executive, who have appeared before this Commission, is therefore, incomprehensible.”

Do you want to expand on that?

DR WOODS: Yes. There were many statements by government, including in the press statement that I referred to earlier on, where they were adamant that no corruption took place in the South African arms deal and that corruption simply was not possible. Paragraph 13, is my bringing into question how, how could they have been so sure, given the arms industry and what it has often proved to be? Why do they think that the South African arms deal was, was different to that, was different, was not vulnerable, was not susceptible to, to corruption, as so many others have been. Again, that depicts a naivety on their part and, without them giving any reasons, as to why our particular arms deal was so meticulously managed. One has to call into question this, this denial attitude of theirs. That leads me to the next paragraph, where is say, it speaks to the question why the executive, on one hand is so aggressively adamant that the SDP’s were free from anything dishonest. But, on the other hand, were equally aggressive, where they displayed anxiety about any investigation into the integrity of the SDP’s. There seems to be a contradiction in their behaviour there. Or the

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[indistinct] of the

Executive is so confident of the integrity of the arms deals; they would have opened their arms wide to any investigation. They did the Opposite. They went to extraordinary lengths to sabotage the investigation and sabotage those, who oversaw that investigation.

ADV MPHAGA: Thank you, Chair. Is seeing we have to take a new topic on page 7, it may be the right time for tea adjournment.

CHAIRPERSON: We will adjourn for 15 minutes. Thank you.

(COMMISSION ADJOURNS)

(COMMISSION RESUMES)

MS CHARLES: Do you confirm that you are still under oath? If you do, say I do.

DR WOODS: I do.

DR WOODS: (s.u.o.)

EXAMINATION BY ADV MPHAGA (Continues): Thank you, doctor. Can you proceed then to page 7 of the bundle, your statement, I think you are dealing there with a new topic, titled "Was there corruption in the SDP's?" and you start by referring to a sub-topic, Roman figure I, "Findings from a number of international investigations". Can you take us through that?

DR WOODS: Mr Chairman, I will now try and build my second argument and that is the argument to try and shed light on the big question. The big question was given what we know and given what is in the public domain, do we have reason to believe there was corruption in the SDP's and I will refer to a number of allegations, cases, findings, investigations and I had hoped to do so in a way that they are coalescent to a bigger almost self-re-enforcing picture, where themes develop, where we start to see patterns. We start to see personalities, we start to see certain common types of behaviour and all together that we come to acknowledge the probability that it cannot all just be nonsense.

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I do it in two parts. The first part concerns investigations that relate to the South African Arms Deal, that were undertaken in other countries and the countries of certain of the suppliers of the arms deal. I will just refer to the main ones and I have established that there have been other smaller international investigations, some in-house, the findings of which are there, not too well known.

But after having dealt with that, the international findings, I will then turn to some other allegations... another set of allegations which again we would have ... most of what we heard about. I am quite selective about the allegations I refer to, because I do not want to waste your time with wild allegations ... unsubstantiated allegations and as I said in the opening remarks, here too I will only refer to allegations which I believe we can say have some basis. And it is those two parts together, the international findings and these allegations that when we put them together, I hope we can conclude that it is reasonable to believe that corruption took place in the South African arms packages, perhaps on quite a wide scale.

I begin with the international investigations and here I am quoting from sources which are in the public domain, and so I think it ... and they are investigations which cover BAE, the SARB deals and Ferro Star and one of the common themes is that they all seem to refer to dubious payments which were made by the suppliers. Payments that were made to South African politicians, public officials, arms deal related businessmen and other middle men and I begin with a specific German investigation into Ferro Star. May I just continue?

ADV MPHAGA: Yes. As I indicated previously that the report that is mentioned in paragraph 16, subject to the Commissioners is subject to attorney and client privilege. So insofar as you refer to it just is conscious of that, but you may proceed to deal with it and where you stray away, I think the Commissioners will be able to guide us.

DR WOODS: Thank you. Thank you for that advice. Yes, I am referring to this

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particular case where the findings are in the public domain, from what was supposedly a leaked confidential document, so I appreciate the sensitivities around that. But nonetheless those allegations are in the public domain. They do have substance and I would want this opportunity to at least place them on record, and to ask the Commission that they do reflect on them.

So there was the audit by a US based law firm into the Ferro Star deal, which amongst other things showed that Ferro Star had close links with Chippy Shaik and you will find in other evidence that I provide later on, that that link between Chippy Shaik and Ferro Star, crops up all the time. It has those Chippy Shaik's links with other suppliers and that is I would like to register as one of the themes which I will build up to and then give some direct focus on ...towards the end of my presentation.

That regards the building of submarines. The allegations are of an amount of 40 million US dollars being paid to agents in South Africa. There is a report ... a leaked report, it is reported to say the chief attraction you know of these payments was their influence on politicians and I refer you back to my earlier illustration of Brian's work and who they target [indistinct]. Just to give some detail to this particular investigation, I refer to an annexure GTW8.

ADV MPHAGA: Is it on page 66?

DR WOODS: Yes.

ADV MPHAGA: Commissioners, [intervenes]

CHAIRPERSON: It is on page 66 of the bundle? [indistinct] just before we pass this point, I see there is an article by the Mail & Guardian. I am not quite sure that is the evidential relevance of that article from the Mail & Guardian. I am really not sure, unless if the [indistinct] of this report comes and testifies, otherwise it will be just an article from the Mail & Guardian. I am not quite certain about the evidential value of that.

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ADV MPHAGA: Thank you, Chairman. As you have heard the Chairperson, what value do you want to attach to this article which you have referred to in the Mail & Guardian?

DR WOODS: In that the contents of the article have not been contested. The fact that there was an investigation, even if the findings were leaked and it has not been contested. So I believe that it amounts to ... it amounts to allegations that we should take cognisance of and that as I requested, Chairperson, I would like to have put on the record. There also are allegations which as my evidence unfolds, you will see give credence to other allegations and prove ... offer a certain consistency of particular events which developed around the first [indistinct] submarine deal. So hopefully I am replying to your question and answering what I believe the relevance of this Mail & Guardian article is.

ADV MOERANE: Chairperson, we object to this particular account in the Mail & Guardian. It has lots and lots of allegations which do not add to the issues or ... elucidate the issues that this Commission has to decide. I am referring for instance to the allegation on page 66, in the Sunday Times, reported that Veruschdal [?] allegedly gave former President Thabo Mbeki R30 million in bribes and that after sharing this with Jacob Zuma before he became President, Mbeki gave some of the money to the African National Congress as a donation, then Mbeki has denied the claims. What is the value of this, apart from just throwing mud?

ADV CILLIERS: Mr Chairman, if I can come in here. We are actually dealing with an issue that we have dealt with in quite some detail with Mr Maynier's evidence and you have made a ruling there. It appears on page 7943 of the record, where I raised the same issue that you have now raised and that Advocate Moerane dealt with.

With reference to my client's Mr Hlongwane and Hlongwane Consulting,

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we studied the submissions by this witness and actually there is not a single aspect raised in the submission that is based on any admissible evidence. The witness clearly does not have any knowledge of facts and he relies on mostly Mail & Guardian press statements and articles, as well as a e-mail emanating from Mr Maynier, and with great respect, I submit that at this stage you maybe should give us some ruling again as to what the status of the evidence that this witness has now alluded to, ease and whether it is admissible in any way. Because clearly it does not contribute to your proceedings.

All that he tells you, definitely relating to my clients, is what the press in certain press statements said. I will in further reference when coming to that, indicate to you that I checked all the sources that he relies on and it all emanates from press statements and press releases.

CHAIRPERSON: Dr Woods, before you respond, when did we point to you that we have received correspondence from [indistinct] where they told us that the report [indistinct] it is still under a client and attorney's privilege. Their clients have not waived their rights to that document. [indistinct] want to respond to what the two advocates have said. Basically what they are trying to say is that, by referring us to press statements without adding anything to that that is not quite being helpful to the Commission. In other words, you know, we do not know what value is being added by various press articles, because they are trying to make factual findings [indistinct] do you want to respond to that before we proceed?

DR WOODS: Chair, I have of course accept your ruling and so I will divert my attention from the leaked report in question. But I will say that issues that will come up elsewhere of Ferro Star's relationship with Chippy Shaik, the fact that the German public prosecutions authority did an investigation into Ferro Star. It is a fact that Ferro Star then commissioned an investigation to investigate why there were so many, not only allegations, but proven instances of bribes being paid,

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which in turn led on to this investigation which as I said, in respect for your ruling, I will not entertain further.

But a number of these issues that are raised in this report will come up through other sources later on in my investigation.

CHAIRPERSON: Dr Woods, do I understand you to be saying that the Germans [indistinct] investigated? You said the Germans investigated? Or are you saying that they have investigated. I misunderstood you then.

DR WOODS: Chair, there was an initial investigation which is referred to at the bottom of page 66, where it says that it was an American law firm, was hired to clean up Ferro Star following a series of corruption scandals and the arrest of one of its board members, by the German public prosecutions authority last year. The German public prosecutions authority produced a report and that is what I am referring to.

CHAIRPERSON: Dr Woods, as far as the report from this law firm who were acting for Ferro Star, I think I have already made a ruling there. So that report at this stage is not admissible and two, when you deal with the newspaper articles, bear in mind the question that I have asked and which is, of what value is those newspaper articles going to be to us. I think if we can proceed, but then bear those two things in mind. Thank you.

ADV MPHAGA: Thank you, Dr Woods. Let us proceed then on page ... we are on page 8. You were now dealing with the German investigation of Thysson. Without reference to the newspapers, based on your knowledge during an action of SCOPA or during your investigation, just to take through those topics without making reference to the allegations raised in newspapers.

DR WOODS: Could you repeat that please?

ADV MPHAGA: I am just saying that are you able to assist the Commission with reference to the sub-topics that you have mentioned under the Roman figure I, II,

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III and IV, without making reference to the press statements?

DR WOODS: Starting on page ... ja, I am still battling with ... while I of course accept your earlier ruling Chairperson, I am just trying to make sure I understand the way it pre-empts my further evidence coming from press cuttings. I believe everything I have [intervenes]

CHAIRPERSON: Dr Woods, I am not pre-empting any further evidence. If you do have evidence we would like you to give us that evidence. We are just referring to you reading other people's reports and you have told us that those reports are still subject to client and attorney privilege. We are not stopping you from give evidence and we are saying to you that as far as newspapers cuttings are concerned, just bear in mind that you know we are worried about the [indistinct] because those are purely newspaper articles. You were not the author of those articles, you cannot tell us that those articles are correct in all respects. I am just saying that you must bear those two issues in mind when you testify. I am not stopping you from giving us evidence. If you do have evidence, give us the evidence. Give us the evidence.

DR WOODS: Thank you for giving me clarity, Chair. Ja, a lot of my evidence will come from newspaper articles. As I indicated earlier they will be carefully chosen articles which I believe offer substantive allegations. By virtue of who wrote the articles, by virtue of the content of the articles where they got their information from, the investigation they did. So it is not something I can just dismiss because it is a newspaper article. In a sense it amounts to research. So it has substance. It has ...very often it has credibility and I have also explained my approach of accumulating such evidence in order to show bigger pictures and patterns, and so we might not be of one mind here, where I believe these ultimately together add a lot of value and paint a fairly strong picture.

As I go through them it might not appear that way to anyone listening to

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what I am saying. So I hope you will give me that bit of latitude Chair that I am trying to use methodologies which are well establishing in producing knowledge. I have a strong background as a social scientist. My job being to produce knowledge in a different way to what the legal fraternity do, and so I might just need a bit of understanding from you as I go through.

ADV MPHAGA: You may proceed.

CHAIRPERSON: Just hold on Advocate Mphaga. I do not quite follow what Dr Woods is saying and I heard him [indistinct] he said that no we should just give him leeway. I did not quite understand what he meant by that. Can you just explain again Dr Woods if you do not mind?

DR WOODS: Yes. Chair, I think it would be disruptive and ... if I was to be challenged on each newspaper article I quoted from, on the basis that it was just a newspaper article. So I am trying to reason as to why these are not just newspaper articles. Why in the biggest scheme of my presentation, they offer in many cases a fairly compelling picture. So I am just asking you for a little bit of grace in allowing me to present excerpts from the press articles which are amongst the items in my evidence bundle.

CHAIRPERSON: You may continue.

DR WOODS: Thank you, Chairman.

ADV MPHAGA: I think we dealing with Roman figure III. You may proceed on page 8 of your statement.

DR WOODS: Yes, fortunately the client attorney privilege only happens in one case, so I am pleased to say that it should not get in our way again. Ja, the German investigation of Thysson, I refer to where the office of the public prosecutor in Dusseldorf investigated the GFC and an alleged 25 million US dollars paid and which it was said most of it flowed directly to South African officials or members of the Cabinet. It also said another 3 million was paid to

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former Chief of Arms Acquisition Schabir Shaik.

Now I have to be careful here because I would hate something to be coming into this investigation that infact existed that also existed in the investigation which you had ruled against. So I will have to be guided there.

CHAIRPERSON: Dr Woods, before we pass this [indistinct] I say you [indistinct] a very interesting thing is mentioned here. Where it says you know most of which flowed directly to South African officials, and members of the Cabinet. I am quite interested to know who is the members of the Cabinet who benefitted from this ...who got part of this money. I am sure it will really help us a great deal to deal with some of the difficulties that we have, if you can be in a position ... if you do know, tell us exactly who the Cabinet Minister is, who might have received this money. If you do know?

DR WOODS: It is a very fair question. I would like to pick up with the issue that was raised earlier on. I agree and if I had been allowed to entertain the previous document, I would not for a moment have referred to that Sunday Times article. I have no knowledge of funds having flowed to the Cabinet, especially to the President at the time or the Deputy President. I do have some evidence regarding monies having flowed to the late Minister of Defence, Joe Modise, but not to other Cabinet Ministers. So even though it is what a report might quote, the issue I am not trying to raise here, I am just trying to raise was there corruption and if it says there were dubious amounts, substantial amounts paid by suppliers to parties in South Africa, that takes me as far as I want to go.

CHAIRPERSON: Dr Woods, let me understand what you are trying to say. Am I correct to say that you are now saying you are not aware of any Cabinet Minister who was paid part of this money? Am I right to say that you are not aware of it?

DR WOODS: Yes, Chair, but I am aware of benefits that was through these monies and other forms, that were paid to a Cabinet Minister at the time, the late

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Joe Modise. The rest of the Cabinet I say I have no knowledge whatsoever of any of those and in my personal opinion, I doubt that any of the other Cabinet Ministers would have taken money. I separate the case of the current President's case, because that was very peripheral to the Arms Deal. It was very peripheral to the transactions that led to the supplying of the arms. So and in addressing your question, I believe that Cabinet Ministers, besides Joe Modise, and concerning commissions, bribes paid, I personally feel that it is very unlikely and I do not believe any of them did receive any money.

CHAIRPERSON: No, let me redirect again, concerning Mr Joe Modise, what evidence is there that he received money? And I will tell you why I am asking this question. Because we are trying to look at various angles where we can possibly find the trace of that money. Can you be in a position to assist any further and or you just saying that Joe Modise received money?

DR WOODS: Chair, I chose my words carefully and I never said the late Joe Modise received money. I said benefits and here we can talk about benefits. Whether it is ... you know whether it is, the shareholdings and a number of other issues which I do intend to touch on that I would like to distinguish between, suggesting that he took a bribe or received some other favours.

CHAIRPERSON: So we understand you to be saying that you never said Mr Joe Modise, received any monies as a bribe?

DR WOODS: Correct.

CHAIRPERSON: Now you are saying that he received benefits?

DR WOODS: That is right.

CHAIRPERSON: Are you in a position to give us full details of those benefits so that we can try and make a follow up?

DR WOODS: Certainly Chair. Would you like me to move on in my presentation to where we start dealing with those issues?

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CHAIRPERSON: You can do it the way that suits you as long as at the end of the day, if you can, then you tell us about the benefits that Mr Modise has received out of these transactions so that we can make a follow up.

DR WOODS: I will do that, Chair. Thank you.

ADV MPHAGA: Thank you, Dr Woods. You were dealing with paragraph 7 of your statement. Have you dealt with all the issues you wanted to deal with? Paragraph 17?

DR WOODS: Yes, I think it was information that came about through an investigation by a credible source, the office of the public prosecutor in Dusseldorf and I am simply making the point which I will be making over and over again, that dubious monies were paid by suppliers to parties involved with the South African arms deal. I do not need to go beyond that point. I have a collection of background documents if you wanted to [indistinct], but that is not ... I am just trying to build a case that there was probably corruption given all that we know.

ADV MPHAGA: Thank you.

COMMISSIONER MUSI: Can I just ask about annexure GTW9 on page 72. You referred to it as support for the averment that Chippy Shaik was paid 3 million US dollars. Can I ask you ...have you got it?

DR WOODS: Page [intervenes]

COMMISSIONER MUSI: Annexure 9.

DR WOODS: Is it page 70 [intervenes]

COMMISSIONER MUSI: Page 72.

DR WOODS: Page 72, sorry, Commissioner.

COMMISSIONER MUSI: It appears to me to be an e-mail that document. Who is the author of that e-mail?

DR WOODS: Ja, Chair, there is ... Commissioner I beg your pardon, there are a number of data bases that have focussed on the South African arms deal. Idasa

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had one. The Institute of Security Studies had one. I think [indistinct] and the Myburgh has one and ja, and an individual Richard Young has one. Part of this free service which Richard Young offers whoever is interested, is that any arms deal related press statements, in this case one by James Myburgh of Politics web and he will distribute to a distribution list he has, which is quite a considerable list, I believe. So the e-mail comes via Richard Young, but that is irrelevant. What is relevant is that it is an article written by James Myburgh and who discusses the case, the investigation I referred to a moment ago.

COMMISSIONER MUSI: So the author is James Myburgh?

DR WOODS: Yes, Commissioner.

COMMISSIONER MUSI: And the document was sent to you by Mr Richard Young?

DR WOODS: That is correct.

COMMISSIONER MUSI: Do you know something about who James Myburgh is and in what capacity is he writing this?

DR WOODS: I do not really, Chair. I believe that he is something of an expert, however one might define expert on the arms industry and has amongst other military issues, seems to have some interest in the arms deal and over the years has produced pieces from time to time, and concerning the arms deal and this would be one of those. But I am afraid; I cannot offer you more than that.

COMMISSIONER MUSI: Thank you.

ADV MOERANE: Chairperson, our objection to this annexure GG1, will follow that we raised with regard to GGWA and for the same reasons too. There is lots of mention of President Mbeki here and what he is alleged to have done or not done, but no real evidence and I do not think we will be seeing Mr Myburgh before this Commission.

ADV MPHAGA: Thank you, Chair. I think ADV MOERANE is raising a very good

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point, but I thought that the probative value in terms of the evidentiary value of those press statements, may be issues that the Commission may decide later on, when it consults the totality of the evidence. At this stage I do not see any prejudice, because these publications have been in the public domain and I guess for progress sake, we may carefully refer to those press statements, but the Commission will have, at the end, to be able to determine the evidentiary value thereof.

ADV CILLIERS: Mr Chair, sorry, if I can respond to what has now been stated? With great respect, it is a rule of law of evidence that if evidence is being presented to a [indistinct] which has no value, evidential value, then it becomes irrelevant and that makes it inadmissible. So it is not an issue where we can proceed and allow it and then subsequently make the decision. The problem that we have is that very serious allegations are made against various individuals and entities in these submissions, based on absolutely no source and or personal knowledge from this witness and on that basis, I would respectfully submit that the evidence having been tendered based on these newspaper articles and or persons that this witness does not even know and cannot stand in for reliability, etcetera, should not be allowed. It is simply inadmissible.

CHAIRPERSON: ADV Mphaga, just before you respond to what Advocate Cilliers has said, let us look at page 69, the e-mail. Apparently it comes from somebody else who then sent it to Dr Young. Dr Young then sent it to a list of ... a host of other people and the original author of this document we do not even seem to know who it is. Does that not demonstrate the point that Mr Cilliers is making? This e-mail I mean you know, who got it from Dr Young? Dr Young got it from so and so, so and so, got it from so and so. And I am not quite certain whether are we going to come to a point where the author of this document comes and testifies about the veracity of this document. Now if that is the

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position, [indistinct] newspaper article a lot of people's names have been mentioned in there, and we are not certain whether that journalist will come and testify, what then becomes the value of that document, that is the first thing.

Then the second thing, it is a question of relevance. I am not quite sure how do you suggest that we should deal with it. You know it is easy to say that you know, you can look at the evidential value of the document at the end of the day, but in the meantime because names have been mentioned. In the meantime people's names are being mentioned without any foundation, unless if [indistinct] at the end of the day there ... you know we are given evidence which supports the basis on which that article is based.

ADV MPHAGA: Thank you, Chair. Chair, I was just making the submission on the basis just for ...on the basis just for us to be able to progress, but I get the points. I mean the issues that are raised are points of law and I am saying this carefully because I am not acting on behalf of Dr Woods also.

CHAIRPERSON: Okay, even on mine, I see Advocate Sello is trying to give a message. Maybe just try and find out exactly what points does she want you to make. I saw her trying to send a note through to you.

ADV SELLO: Thank you, Chair. It is not so much a message as just an address. I was making a point to Advocate Zondi in response to a very limited issue that Chair had raised and I think the basis on which Advocate Moerane's objection is based and that is, that this document placed out there names of people and made allegations. The correction simply was seeking make is, if there are newspaper articles, the allegations are out there. So it is not like through this witness or through this process, the allegation will be made. There are newspaper articles, they have been published, and they have been highly circulated. It is really a reiteration of what is already out there. If there needs to be a debate about the value thereof, I believe it must centre around whether any

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reiteration is necessary in this Commission. But not to suggest that for the first time the allegations are being made.

I am not helping Dr Woods, I am not involved in his testimony, but I do not understand an objection that reference cannot be made to an article that has placed names out there. To some extent I agree with Advocate Mphaga, that the Commission will determine the evidentiary value thereof in the fullness of time. However, as a Commission I believe that the Commission is entitled to take on board all sources of information and the Commission is at liberty to consider even evidence that at first blush would be inadmissible in a court of law.

This Commission is faced with a whole number of allegations made from different sources. The question for me is whether the witnesses that appear before the Commission can substantiate those allegations. The fact that the allegations was made in the newspaper, is not the issue. The issue is whether or not that allegation can at any point be substantiated. So personally I do not believe that there is any expose that can be made unfairly through reference to articles. The articles are out there. They have been published. Over the course of the years they have been read. Maybe this witness must explain why it is ...it is necessary in delivering its testimony to make reference to those articles and where those articles assisted. But a complete ban on reference to articles is what I personally was struggling with and that is what I was telling Advocate Zondi.

CHAIRPERSON: I understand what you are saying. But then I think ...I am still making that point again, [indistinct] an article because names have been mentioned, there must be a reason why that person's name has been mentioned. Two, we must be satisfied that there will be evidence which will support the allegation which has been made in that newspaper article. Short of that, I think it will be unfair to say that, because your name had been mentioned in the past, you can continue doing that. I do not think that will be fair to those witnesses. We

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must be very careful when we are dealing with newspaper articles, particularly with a document like this one that I have just referred Advocate Mphaga to. Where [indistinct] four five people [indistinct] who [indistinct] end up on our desk, and we are not certain whether any of them is ever going to come and testify. So I think we will clearly allow some limited reference to this document, on condition that people's names are not published, unless later on there is going to be evidence to support that. I think this is what we are going to deal with now, unless at all there are other people who feel uncomfortable about this ruling.

ADV CILLIERS: Mr Chair, maybe just to indicate to you why we are concerned about the evidence in this regard. If I can refer you to page 87 for instance, that is another [indistinct] GGW12 [indistinct], that is another e-mail apparently emanating from Mr Richard Young and basically the gist of the allegations against my client, Mr Hlongwane, is to be found in this e-mail. If you look at a paragraph in the middle of the page, it starts off and they quote:

“The consultant who received the secret payments is purportedly Fana Hlongwane.”

And then it is alleged that he received up to R200 million in commissions relating to the acquisition of 26 Gripen Fighter Jets. That is clearly allegations of a very defamatory nature, accusing Mr Hlongwane of corruption. But the interesting part, Mr Chair, if you look just further who is the source of this information, it is Mr Maynier. Mr Maynier already testified to you that he has no knowledge of this. He does not stand in for the truthfulness of these allegations. He does not stand in for the reliability and or the correctness of any of the newspaper articles and or documents that he relies on. But what we have now is a repetition of that by this witness, relying on Mr Maynier and with great respect, that leads to ... to some extent to an absurdity. The repetition of inadmissible evidence does not make it relevant and or admissible.

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CHAIRPERSON: I am sorry, Advocate Cilliers, where does it appear that Dr Young got this information from Mr Maynier?

ADV CILLIERS: Mr Chair, if you turn to page 9 of his submission, paragraph 20 is basically the gist of the very serious allegations against Mr Hlongwane. Paragraph 20 on page 9 and then as his source that he relies on, he refers to GGW12A which is a newspaper article and GGW12B, which is this e-mail. If you look at 12A then it does not assist much in this regard. But 12B forms the very basis of the serious defamatory allegation against Mr Hlongwane and if you look what the source of this source of Mr ... of this witness is, then it is Mr Maynier who already said he does not know what ... he has no knowledge of it and he does not stand in for the correctness and or the truthfulness of this. And in the process Mr Hlongwane is being defamed in public based on this, with great respect, baseless sources quoted by this witness.

CHAIRPERSON: Advocate Mphaga, do you want to respond to this?

ADV MPHAGA: Chair, I agree, we have not necessarily at this stage come to that part that Mr Cilliers is referring to and to avoid that, I think Mr Woods, would have to be able to give evidence without necessarily referring to those press statements, in order to be able to avoid [indistinct] some defamation. But what is important, Chair, is that this is a Commission of Enquiry not as a court of law and an investigation and enquiry into and I understand the concerns that are raised at this stage and what I want to repeat is that these are newspaper articles that have been in the public domain and, I think that the very fact that Mr Woods is referring to these articles, does not make them new allegations and it is for the Commission to determine after he would have given evidence, whether they place any value in his interpretation of the press statements.

CHAIRPERSON: But then let us look at the question of relevance. Mr Cilliers says that Dr Woods relies on a particular document and the author of this

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document relies on Mr Maynier, as the source of the information. Now Mr Maynier we know that he was here, he said he knows nothing. Now where does that put this document? Are we going to go through documents which clearly will not help us in any way, which are totally irrelevant, simply because it is a newspaper article which has been attached? I think what are going to do and I think maybe in order to have progress, you carefully take us through those documents, but then just be careful. Just keep in mind what we have said, particularly those that it is clear that there cannot be any ... that it is not likely to give us evidence which is going to support the allegations contained in those articles. And then may you just proceed on that basis.

ADV MPHAGA: Thank you. Dr Woods, would you like to make any comments to the debate, or you are happy to proceed?

DR WOODS: Sir, I do Chair. Firstly I take exception to advocate Cilliers' [intervenes]

CHAIRPERSON: Doctor, if you do not mind, can you speak directly into the mike. We are struggling to hear you.

DR WOODS: Perhaps the technical people could turn the volume up a little. Chairperson, I take exception to Advocate Cilliers' suggesting that what I am presenting is not evidence and it does not add value. It is a subjective comment. He does not know where I am going with this and I do not know what his motive is. But I have explained on at least two occasions this morning, that I am building a case and across all these documents I will refer to, press statements and others, that a picture will emerge which I will support.

CHAIRPERSON: Doctor, let me help you. Advocate Cilliers is representing Mr Hlongwane's interest on instructions of a firm of attorneys and I think that is his motive. I do not think he has got any other motive except that one. He is an Advocate representing a client's interest on instructions of a firm of attorneys.

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DR WOODS: Okay, I concede that it is his right to be disruptive. Secondly, Chair, my evidence is contained in my statement and in each paragraph of my statement; I raise an issue to show that I have not just sucked this issue out of the air. I supply some documents which is often comes from a press article. As I have said repeatedly, I have chosen my press articles carefully and am I expected to take a press article and cut one single paragraph out of it which relates to my press statement? I thought I was going to have the opportunity as the ... my witness leader here is guiding me, my evidence leader, to show you which paragraph in that press statement. If some people want to entertain all sorts of other obscure and irrelevant paragraphs and make an issue of it to try and discredit my evidence and to have ...and have you rule that I cannot produce this evidence, then I am not sure where we are going here.

ADV MPHAGA: Thank you, Dr Woods. Maybe let us proceed then and where necessary if we can avoid making reference to the statements, let us do so. I think we are done with paragraph 17. You were now going to proceed to paragraph 18 in relation to the SFO investigation into the BAE.

DR WOODS: Okay, just on paragraph 17 and on GGW9, correct me if am wrong, but as far as I could see this information relates to the office of the public prosecutor of Dusseldorf Germany. It does not relate to the subsequent investigation, the one which you have instructed me not to quote from. So I believe I have the right to quote from this document, but I just want to be assured that [intervenes]

CHAIRPERSON: Just a minute.

ADV MPHAGA: Are you referring to a newspaper cutting on page 72, Dr Woods?

DR WOODS: Yes.

ADV MPHAGA: What particular reference do you want to quote? Maybe you can just refer the Commission to the specific paragraph?

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DR WOODS: They refer here to the German investigators they claimed in a letter for assistance to Swiss authorities last year, the consortium had paid considerable bribes to achieve the conclusion of the agreement, they refer to the amount of the bribes, and the kickbacks who they were from and to the letter box company in Liberia to whom it was paid. It mentions in that investigation 3 million US dollars the investigators allege had been paid to the former Chief of Arms Acquisition, Chippy Shaik through another letter box company and it mentions the name. It also mentions that the primary focus of this article will be on the [indistinct] platform equipment and it goes on to bring up the issue of Bazon who I will later argue unfairly lost the deal to... thank you.

ADV MPHAGA: Thank you, Doctor. Let us proceed then to paragraph 18, the SFO investigation into the BAE. Can you just take us to that paragraph?

DR WOODS: Ja, documents relating to this investigation showed that ... showed US bank statements relevant to BAE that paid over 14 million Pounds to advisors in order to have a system in securing and maintaining the South African Hawk and Gripen contracts. It says between September 2003 and January 2007 Hlongwane Consulting was paid in excess of 10 million Pounds by BAE. The SFO investigation revealed that Hlongwane also received R51 million and an agreement with the South African registered entity. In relation to this on the 9th of June 2003, the British Trade Minister, Patricia Hewitt, confirmed to the House of Commons, so this evidence will be in the British [indistinct], that BA Systems had paid a commission on its contract to supply Hawks to South Africa. Thank you.

ADV MPHAGA: Thanks. Thank you. Then let us proceed to the accounting [indistinct] discipline board investigation into BAE, that is page 9, paragraph 19 of your statement. Can you take us through that paragraph?

DR WOODS: Chairperson, to the best of my knowledge this investigation is on-going, even though it was announced a couple of years back and I have watched

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the media carefully, [indistinct] we have not seen the outcome of it, but we know for a fact there is this investigation. It is an investigation that does not ask whether commissions were paid; it has asked the channels through which they were paid. And particularly it has been asked to investigate the audit company KPMG as to how they organised the payments of these. So even though we do not know the outcome as to how these commissions were paid, it would seem that [indistinct] from very reputable bodies, seem to agree they were paid and let us hope that we get the findings from this investigation in the not too distant future, so it can add to the type of evidence which I am offering to you today.

ADV MPHAGA: Thank you, Dr Woods. Then I think paragraph 20 is the paragraph that Mr Cilliers was concerned about. It relates to the SA Sub Investigation into the Gripens and maybe let us now go to paragraph 21 and 22 in that regard, if you can take us through those paragraphs 21 and 22?

COMMISSIONER MUSI: Can I get assistance from you, Advocate Mphaga, this annexure GGW10, it is supposed to be on page 78. I cannot find this page 78.

ADV MPHAGA: Commissioner Musi, page 78, I think we might have misplaced the document. We will provide it to you.

CHAIRPERSON: [indistinct]

ADV MPHAGA: Thank you, Chair. May you proceed. We are on paragraph 18. Oh, sorry, 20, my apologies.

DR WOODS: May I just refer back to annexure 10, GGW10 and paragraph 18 regarding the BAE deal. The source here is the Mail & Guardian. The country is I think [indistinct] two leading investigative journalists [indistinct] who have a very impressive track record in producing responsible evidence. They talk about documents they have in their possession, documents which were used by the Scorpions to motivate a particular raid. So while I am arguing here the press article, but I am saying please accept it has some credibility. What it says, it

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shows ...once again it talks about, a commission is paid to agents by the British defence giant and the huge amounts concerned, which is part of the theme which I have been presenting to you. The paragraph that follows is interesting and this will, I will refer back to this later. They also that BAE could not produce evidence of legitimate services by the agents which could justify the huge amounts paid to them. So people receiving these so called commissions and British Aerospace were unable to say what they did for that money. I think it is an important point to note as I will later explain.

The documents which are affidavits by South African and British investigators, there are financial statements and correspondence, form the basis of the documents to which I am referring. They not only disclose the vast majority of BAE's commission payments, they also how the covert payments were made in a series of undisclosed ... to agents. Once again if it was purely commissions then it would appear in their books as commissions and there will be nothing to hide. But that is not what happened here.

Also how BAE allegedly tried to hide the extent and the timing of their relationship with Hlongwane from investigators. Details of interventions by Modise and the then defence procurement Chippy Shaik which also [indistinct] the BAE deal. That theme of Chippy Shaik which will be there to haunt us.

ADV MPHAGA: May you now proceed to take us through the SARB investigation into the Gripens?

DR WOODS: Yes, now I am ...there was an objection earlier on to the use of 12B. So I will only refer to 12A, but it says the same thing and it says nothing about Richard Young or David Maynier. It says what SARB's own investigation of themselves says, where they admit to guilt. They admit to bribes being paid. I think that is pretty hard evidence, Chairperson.

ADV MPHAGA: Anything further?

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DR WOODS: Sorry, not on the international investigation. I have got paragraph 23 when you are ready.

ADV MPHAGA: I am just mentioning that are you satisfied with your explanation ... with what you said in respect of the SARB investigation into the Gripen? Is it your contribution?

DR WOODS: Sorry, could you repeat that?

ADV MPHAGA: Is it your contribution in respect of paragraph 22 under the sub-heading, "SARB Investigation"?

DR WOODS: By international investigators?

ADV MPHAGA: Yes.

DR WOODS: Yes, that is the conclusion, but in summary I would like to make the observations that these were investigations made by organisations, by sometimes state organisations, sometimes other investigations which by all accounts were independent and free from outside influence and that each of these investigations, had amongst their wider findings, revealed dubious payments to have been paid to South African politicians, public officials, arms deal related businessmen and other middle men. That is the constant theme.

ADV MPHAGA: Thank you, Dr Woods. Then let us turn to page 10 of your statement. I think you then discuss the topic titled "Why commissions are likely to be bribes". Can you take us then through paragraph 23 and 24.

DR WOODS: Ja, I was informed that when former President Mbeki appeared before this Commission, he suggested there was nothing wrong with arms suppliers paying large commissions to whomever they choose and that is the nature of the business world and no doubt there are others that hold that view as well and no doubt the recipients of those commissions will also try and legitimise them. But I want to point out again and most of the ... most of the expose's in the arms industry as to where corruption has taken place, has concerned bribes or

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commissions that were in fact bribes. So the word 'commission' in the arms industry is most often just another word for 'bribe' or 'kick back'. So once again President Mbeki did not appear aware of that and how things have transpired in the arms industry and as they are recorded.

But more importantly if we look at the nature of how the South African arms deal was [intervenes]

ADV MOERANE: Chairperson, it appears that the witness is referring to the evidence of President Mbeki, without actually having read it. Because President Mbeki never spoke of large commissions. One will search in vain in the records to find any reference to large commissions and in any event his evidence did explain the difference between a bribe and a commission and, if the witness has to refer to evidence given by any other witness, I think it is important that he must have read that, otherwise the impression that is going to be given here, is that he is quoting correctly from the relevant evidence.

DR WOODS: I take the point, Chair. If the word "large" should not have been there, then I apologise for it being there. Secondly, the way the arms deal was constructed as a Government to Government deal, ultimately there was... it was left with no scope for middle men and no need for consultants, especially those who might otherwise be deserving of such large commissions and success fees.

The official position of Government is that the transactions were negotiated directly by the South African Government and the suppliers. So nothing ...and there was no other role for anyone else to play and I have referred that to a document I referred to a moment ago, in the BAE deal. BAE said exactly the same thing, that they have no records of ... I am not very good at finding my documents, but I did spell it out before that BAE themselves say they never paid any ... that there were no such services offered that deserved such payments, words to that effect. I can find the exact ... I will quote once again if you would

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like me to.

ADV CILLIERS: Chair, with great respect, I invite this witness to bring the source from within BAE where they stated that there was no services rendered for these commissions paid. It simply does not exist.

CHAIRPERSON: Are you in a position to respond, Dr Woods?

DR WOODS: That is perhaps not a relevant statement, but I am sure that BAE would have sued the Mail & Guardian and demanded those documents, if they were just making it up as is suggested.

CHAIRPERSON: Dr Woods, just listen to the question very carefully. Is there any evidence that you have which is going to back up that statement that BAE agreed that no services were rendered?

DR WOODS: Sir, I referred in some detail to the evidence as is ... in the documentation and the source as was quoted in the article. If you believe that is insufficient I am at the mercy of your judgment call.

CHAIRPERSON: Okay, let us proceed. I can assume that there does not seem to be any basis for that statement, that BAE agreed that work were done and they paid large sums without any services being rendered. Can we assume that is the position, Dr Woods? Except of course you referring to that Mail & Guardian article, if it truly does say so.

DR WOODS: Chair, I would obviously prefer you not to assume so, but I think reading the article carefully, who wrote the article, where they say their evidence comes from, and that from that evidence the argument that BAE could not produce evidence of legitimate services by the agents which could justify the large amounts paid to them, I think it would be wrong to simply discard that and throw it away.

CHAIRPERSON: Apparently understand me, I am saying that you know, that statement does not say that BAE admitted that they paid large sums of ... or an

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amount of money without any services being rendered to them.

DR WOODS: Well, if the investigators who spoke to BAE says that BAE could not produce evidence, I would think by deduction BAE are admitting that they do not have evidence to show that there was some ... that there was reasons for these payments being made.

ADV CILLIERS: Mr Chair, if I can refer you to GGW10, in fact the same investigative journalist stated the contrary. On page 79, the second paragraph, he in fact stated BAE has consistently maintained it acted legally. That is a far cry from suggesting that BAE admitted to the Mail & Guardian or to Mr Brummer that they acted ...or they paid large sums of commission without any services rendered. That has an innuendo of corruption. Here they clearly maintain that they consistently acted legally.

CHAIRPERSON: Dr Woods, do you want to respond to that?

DR WOODS: Chair, if I had five minutes I would push to respond to it but I need to just get the context here, whether the gentleman is not interfacing two issues that do not belong together. To take one paragraph on page 1 and another from another page and to say they contradict, I think requires only ... you know one needs to apply one's mind a little more responsibly before making the deduction that he made.

CHAIRPERSON: So, do you need some time to read that Mail & Guardian article so that you can be in a position to respond to what Advocate Cilliers said?

DR WOODS: Only if you would like me to respond, Chair. Because only if you would wish me to respond to the gentleman's point. I have already made my point in terms of my statement.

CHAIRPERSON: No, that I understand, but then my difficulty is this statement that he has referred to in this article, because whatever you have said and you have based on this article, but then there is a paragraph there which says that

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BAE has consistently maintained it acted legally and that seems to contradict what you said earlier on.

DR WOODS: Ja, I would ask in what respect does the article say BAE has consistently maintained it acted legally? Or maybe the gentleman could make up something [indistinct]

CHAIRPERSON: I am not quite certain whether I am going to allow that you ... for you to ask advocate answering questions. You are the one who relies on this statement. You are the one who put this document in the bundle and you are making statements out of this report. Probably you, sir, are the one who should explain to us what does this mean. This is a document that you are relying on.

DR WOODS: Chairperson, the statement raised was BAE had consistently maintained it acted legally. Acted legally in what regard? It does not say there that it acted legally in paying Hlongwane commissions. If it said that, then yes there would be a contradiction in what I said earlier on from the earlier paragraph. It does not say that.

CHAIRPERSON: Okay, it does not help us much. Advocate Mphaga, let us continue. That does not help. That [indistinct] in any event.

ADV MPHAGA: Thank you very much, Chair. Maybe let us conclude then this topic by looking at paragraph 25, page 11. I think it concludes the topic that you were discussing. Can you maybe take us through that?

DR WOODS: Ja, [indistinct] here Chairperson, that surely there is enough that arises from these international enquiries to suggest that big monies were paid and if you accept my arguments on commissions versus bribes issue, why there was any need for big monies to be paid to individuals both inside and outside the process. So the first question is why did this happen? They do conclude by saying ...to me it is incomprehensible as to why the South African Government declined to contemplate the foreign investigation findings referred to it. I know the

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head of the Hawks claimed to have written letters to a couple of these investigators and claimed to have not received a response. But the arguments that came from SFO for one and the public prosecutor from Dusseldorf, two, I think there was a third as well, claimed that they had been unable to get the co-operation of the South African Government. So I am assuming the latter to be more plausible and that a ... where it remains incomprehensible what the South African Government did not say thank you for the good work you did, how can we co-operate? Let us together get to the truth of these issues. They did not.

ADV MPHAGA: Thank you, Chair. I see it is one o'clock and we are starting a new topic all together.

CHAIRPERSON: Let us take a lunch adjournment until quarter to two. Thank you.

PROCEEDINGS ADJOURN

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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MS CHARLES: Thank you. Dr Woods, do you confirm that you are still under oath? Say I do.

DR WOODS: s.u.o.

ADV MPHAGA: Thank you chair. We are now proceeding with the topic other
5 substantive allegations on page 11 of your statement. Can you as an introduction just take us through paragraph 26 and 27, before you deal with the sub paragraphs A, B to D.

DR WOODS: Thank you chairperson. In the previous section I offered a number of allegations made in the main by some key international investigations, and
10 started to show there to be some consistency in the findings of those investigations. I want to build a little further on those key findings to show the patterns that the other allegations have also alluded to.

Again I am quite careful I believe in which allegations I am putting forward, and I am doing this in the interest of building my case to a level which makes it
15 fairly convincing that corruption took place, but so many allegations from different sources all having done their own type of investigation and research. That degree of correlation must say to the commission I believe that there are issues here which we need to enquire more deeply into and we cannot ignore them.

I will also show and the third argument I present after this current section
20 that when we look at the systems and the processes of the SDPs and I show you very clearly where the weaknesses were, where the opportunities of corruption were, how strongly and how directly they connect with these very allegations that we are now discussing.

ADV MPHAGA: Thank you. Then we can go to page 12 and then you can start dealing with the sub-marine deal.

DR WOODS: Sir, I refer to the government report. It is a report we have not made reference to so far. You will find it in GDW13. It is about halfway down the
5 first column. I do not know if I could be assisted with the reading of that paragraph and the two below it.

ADV MPHAGA: Page 91.

DR WOODS: Yes.

ADV MPHAGA: Which paragraphs on page 91?

10 DR WOODS: The paragraph starting the Mail and Guardian and then including the two paragraphs that follow. These copy is of very bad quality. I apologise and my eyes are not strong enough to read them to you.

ADV MPHAGA: Let me read it for you:

15 “The Mail and Guardian have obtained a copy of a report by German law firm [indistinct] dated February 2011 that focuses on the South African deal and exposes the company’s own [indistinct] assessment of the offset program. This comes as the Department of Trade and Industry has just released its final offset figures for the Arms Deal which claims to show how Ferrostal not only met but exceed its obligations. The Department has consistently refused to reveal how it
20 arrived at its figures and the [indistinct] exposes the contradiction between its claims and the Ferrostal internal assessment of key projects.”

Should I proceed?

DR WOODS: If you could continue to the second paragraph in the second column. Second and third paragraphs on the second column.

ADV MPHAGA: “Indicative of the real attitude of the German company was a
5 calculation done by senior executive wolf south Africa Ferrostal chief who took as
this base line that the penalty for failure to deliver the offsets was ten percent of
the sub marine contract value or 66 million pounds that meant spending anything
more would be more expensive that walking away from the offset obligation. In
the end, Ferrostal spent just 62 million pounds accounted for as contract
10 expenses, but was created with achieving a 3.1 billion pounds in offset credits by
the department.”

ADV MOERANE: Chairperson, I think those are Euros, not pounds.

ADV MPHAGA: My apologies.

DR WOODS: Towards the end of my statement sir, I have a brief section on the
15 offsets. Which I know is also a large part of your brief and there one will indicate
and give evidence of this is paragraph that we just referred to them, how they are
a consequence of what happened in the evaluation period of the process and
specifically the evaluation of the nips for both the sub marine and the [indistinct]
where they were grossly inflated for reasons that DTI could not explain.

20 Other than that they said more point were awarded for [indistinct] nips than
[indistinct] nips. If we look at what was promised by these companies, they were
going to be anchor [indistinct] of [indistinct]. We know that nothing really

happened. So I just tend to suggest there was something, because in both these cases the frigates and the sub marines going from the forensic arguments of the JIT report that were not for the very high points they scored on the offsets, in other words the two consortiums would have got those deals.

5 So one has to question why their nips were inflated in such a way. In a way which were as this article shows were impossible to achieve. Secondly ja, so I just believe it. That is a contentious issue which deserves further looking into.

ADV MPHAGA: Thank you Dr Woods. Do you want to proceed then with the other paragraphs 29 and 30 or you want to refer to the other annexures referred
10 to in paragraph 28?

DR WOODS: Your assistance please. If you could help me with GDW14 and if one could read the first couple of paragraphs of that article. Of the internal probe by Ferrostal.

ADV MPHAGA: The first paragraph?

15 DR WOODS: I think the first, the second and the first bullet point.

ADV MPHAGA: Thank you.

“Ferrostal the lead company in the consortium that sold South Africa sub marines as part of the controversial 1999 Arms Deal paid more than 40 million dollars. I hope that I am correct, to agents in South Africa whose chief attraction
20 was their influence on politicians. That is one of the key findings to emerge from a devastating internal compliance investigation compiled for [indistinct] new management by [indistinct]. other key findings in the South African section of the

report which the Mail and Guardian has seen, highlights concerns about Ferrostal business relationship with Mr Shabir Shaik, the former chief of acquisition who played a central role in the tender process.”

DR WOORDS: Sorry, I see this stayed beyond the internal investigation and it
5 has gone onto the other investigation on which the judge has already ruled we cannot talk about. Sorry. I beg your pardon. If we can just stop at that first paragraph on the internal investigation. That is adequate, thank you.

ADV MPHAGA: Thank you. Any further reference to any relevant paragraphs in relation to the sub-marine deal?

10 DR WOODS: I feel I am at this stage my report a little bit walking on eggs because of walking on the various reports and knowing that there is one report which I cannot refer to, so it is a little bit difficult to unscramble that egg while on the floor. So I am going to ask that we just move along. I ask that you have taken note of once again the allegations of corruption and of manipulations and in
15 the process we ultimately got awarded the business.

So I think we could perhaps move to paragraph 30 if I may. Yes. Chairperson, you will see the copy of an email which it was reportedly written by the one Graig Mundle. Individual who I seem to recall interviewing at the time that the Arms Deal saga began to emerge. I also would like to say that at that
20 time soon after the De Lille allegations it became apparent there were going to be investigations.

They were a degree of panic in a number of quarters and my former colleague Andrew Feinstein and myself were approached by a number of

individuals who reported manipulations in the process and [indistinct]. I appreciate to refer to those would amount to hearsay, even though from me those reports were made, I heard them and I recall them. But we have one here on record ... [intervene]

5 ADV MPHAGA: Can we just refer the commissioners to page 101 of the bundle.

DR WOODS: This is from a known individual who was part of the evaluation team, working on the submarines and without reading everything he has to say, simply just another bit of evidence information that we had this pretence of good practice, pretence of policies and procedures being followed. Yet what came up
10 time and time again as came up here, that there were people on the inside who could see that it was all a farce and that decisions were being made elsewhere and the nature of the process became how to achieve a predetermined result.

So people like [indistinct] it is an expression of his frustration in this regard.

15 ADV MPHAGA: Thank you Dr Woods. That then concludes your contribution in regard to the submarine deal. Can you then proceed to the Frigates deal on page 12, paragraphs 31 to 38?

DR WOODS: Thank you. Chair, we look at a number of annexures beginning with Annexure 18. Those are just some simply arguments which express the
20 degree of indication that the head of the hawks deciding to withdraw from this investigation and the arguments just endorsing a number of points I have made so far, that given amount of evidence circumstantial and otherwise that existed,

how proper it could be that if certain people, with the degree of suspicion that surrounded them concerning the Arms Deal just to be let off.

ADV MPHAGA: Sorry.

DR WOODS: I refer you to ... [intervene]

5 ADV MPHAGA: Sorry Dr Woods, could you always refer the commission to the pages and the paragraphs of what you are reading?

DR WOODS: Apologies. We are on paragraph 31 and I am looking at the top of page 13, and looking at Annexure GDW19. The heading there South African investigators are in position of express in more detail meeting with former Arms
10 Procurement boss Shabir Shaik allegedly asked for [indistinct] from the German consortium which [indistinct]. The contents of the memo is produced by the Sunday Times.

Written by a former executive in the German consortium by the name of Christopher Konings. He said that, he spoke about the if I could say controversial
15 visit of Thabo Mbeki to Germany in 1995. At a time when the GFC brigade was no longer in the race, being disqualified, but how it would appear as a result of Mr Mbeki's visit that instructions were issued to restart the frigates process and to reintroduce the GFC bid which has been ultimately won, the deal.

I would venture that that was irregular and that the process when we get to
20 it of how the GFC won, all adds up to say something does not smell good there. If we go to paragraph 32. We talk about how the Spanish bid Bizza lost a deal

through a manipulation of the evaluation process and I refer you here to an article GDW20 politics web 20 March 2010.

It also picks up on the memorandum prepared by Christo Konings. According to the newspaper which covered the memorandum, it says:

5 “The last trip on a particular date was suggested by Shabir Shaik, the director of the defence secretariat.”

During one of our meetings he asked once again for confirmation of the verbal agreement made with him for payment to be made in the case of success. The group represented by him, an amount of three million US dollars. When
10 Konings is reported to have said that he confirmed this to Shabir Shaik and offered to record this in writing at any time, and proposed to put the latter in a safe so that it can be at least jointly.

The memo goes on to say:

“Mr Shaik has emphasised that the [indistinct] and the other part of the
15 GSD consortium, offer was pulled into first place in spite of the Spanish offer being 20 percent cheaper.”

The Spanish offset was according to him also higher than [indistinct]. It was a simple exercise to get us into first place. I think that speaks for itself and as I have already mentioned how they pulled it into first place was to make the
20 GFC’s offsets , the nips in particular, better than [indistinct] simply by using a different scoring method. If I could refer you to page 35.

I do want to explain, page 34 I was unable to find my document in this case, so I do not know what the term is, but I withdraw paragraph 34. It seems I have no substantiation at this point. I move on to paragraph 35 and so on GDW23 an email addressed to Richard Young from Theo Honniball who I believe
5 was an Admiral or some high ranking official in the navy.

Who goes on to confirm what we saw in a previous report that I quoted from and if I could read part of this to you. He said:

“As far as I am concerned, the rot started when the then vice president Thabo Mbeki “

10 And briefly you might remember that [indistinct] was identified as a preferred supplier. This was after Armscor and the navy had been through the long process of proposals from many suppliers. When vice president Thabo Mbeki went on an official visit to Germany, he returned to South Africa and told Armscor to hold the tender process and start again and to give Germany a
15 chance to tender again.

By that time pictures of [indistinct] had been published in the newspapers which I could imagine he is implying that it would have disadvanced, but eventually the [indistinct] team left South Africa. Germany [indistinct]. That is the story in a nutshell.

20 ADV MOERANE: Chairperson, it should not be assumed because we are not objecting to each of these reports that we actually are not objecting. It is all in the interest of getting this witness; get to the end of his evidence. I think our objections should remain on record with regards to all these allegations to which

he cannot testify. Based on mostly emails from Richard Young whom I hope will make an appearance before this commission.

MR CILLIERS: May I in order to speed things up, express the same views than my learned colleague? We are now going to start shortly with further allegations
5 against my clients, and in order to speed things up I am not going to object each time. I see we are in the fortunate position here that we do not need courts or commission anymore because we have the Mail and Guardian.

The fact that we do not object should not be seen as a fact that we have no objection against the evidence.

10 CHAIRPERSON: Thank you. You can proceed.

ADV MPHAGA: Thank you chair. You may proceed Dr Woods.

DR WOODS: Chair, of course I welcome any objections and I will entertain them as constructively as I can, if at whatever stage they are as according to the one objector a call from Richard Young or whether they are as the objection from the
15 other objector or from the Mail and Guardian, whether they are from the various other sources [indistinct] which they can verify in their packs.

I have another one of these GDW24. I am referring to an article once again which I find difficult to read due to the smallness of the, this one comes from the Business Day and you will see there is a good number of sources and
20 documents. Sorry, I am unable to read this, but I am trying to pick up on the point where the subheading says Hint of political manoeuvrings may expose when [indistinct].

Chair, I submit this for the commission's consumption, for any value that it might add to my arguments that there are documents and accusations that they were untoward as they say here political manoeuvrings, which could have affected the tenders. So I do submit that to evidence, none the less.

5 ADV MPHAGA: Then we proceed to paragraph 37.

DR WOODS: Ja. Page 14 Annexure, sorry 25. Ja and paragraph 37 correct. So here the allegation is that Thompson CFS met Shabir Shaik shortly before the list was drawn up and this again is from the Business Day. Not from Mail and Guardian, not from Richard Young and ... [intervene]

10 CHAIRPERSON: Which short list are you referring to?

DR WOODS: I am referring to Annexure 25 A I think, or 25 paragraph 37.

CHAIRPERSON: Which short list are they referring to?

DR WOODS: This comes from the evidence of Johan van der Walt, who was a key witness in the Shabir Shaik trial. I think he worked for was it KPMG or one of the other big auditing firms, who presented evidence and who he said the departments, he said documents proved there were a number of meetings between the Department of the Defence Chief of Arms, acquisition Shabir Shaik and ThompsonCSF before the list of preferred bidders were finalised.

Now this concerns the, this is the platform of [indistinct] sub contracts which Shabir Shaik's brother did rather well, and which the Scorpions found confidential documents in Shabir Shaik's possession. So again I think it is

material to mention this and that the connection to Shabir Shaik's brother ...
[intervene]

CHAIRPERSON: I understand that, but then which short list are you referring to?
There were various short lists. I am not quite sure when you say short list that he
5 manipulated the drawing up of the short list. What does that mean? I am trying
to understand that. Unless if you also do not quite understand what they mean?

DR WOODS: It means what it always mean in tendering chair.

MR DRIMAN: Chair, sorry. It is just simply to serve I think as your question and
the lacking answer shows that the [indistinct] of evidence.

10 CHAIRPERSON: Thank you.

DR WOODS: May I give my response now chair?

CHAIRPERSON: Hang on.

DR WOODS: I apologise for not picking up your point, but if you had said to me
in the first line of paragraph 37 at first short list, then I would have known what
15 you were talking about. We are just using the word short list, so I am a bit
confused, but I do apologise. Short list and short listing in tender language and in
bidding language means that you get a number of suppliers who bid.

Usually in terms of predetermined specifications. Those specifications are
evaluated until you reduce them down to a short list. There can be one obvious
20 winner and the short list might comprise one. It might comprise a few. So what
they are saying here, before they reach that stage of the process, what is being

said here by the investigation that took place, that Shabir Shaik met with Thompson CFS.

I think that is quite clear and I think it would help the representative of Thompsons as well to understand.

5 ADV MPHAGA: Okay. Can you proceed now to paragraph 28 on page 14? You may proceed.

DR WOODS: Thank you. Thank you chair. Excuse my pausing. Ja, paragraph 38 essentially is connected to the evidence in 38 and connected to the evidence of 37 that says the awarding of many sub contracts to ADS and FBS. I think it is
10 more ADS, as politically connected companies included those type of [indistinct], including those in the Arms Deal process.

I refer you here to an article in the Business Day, dated 10 January, Annexure GDW26. Where questions around what safeguards were built into the 43 billion Arms Deal to prevent anything that has been dipped, and it suggests
15 there were a few. What emerges is that the absence of proper mechanisms to prevent conflicts of interest such as independent monitors [indistinct] key weakness in the process.

We refer here to information produced by the previous JIT investigation and the inadequate attention paid by the procurement team to potential conflicts
20 of interests. Even though interested parties were subjected to security clearance. They said material deviations from generally accepted procurement factors was discovered, and the auditor general at the time also raised concern about possible irregularities and contracts awarded to sub-contractors.

I think this is the auditor general's initial review, not the JIT report. And then you know the article goes on to explain that the conflicts of interest concerned Mr Shabir Shaik and his family, and the fact that they got business. I will not read that whole article for you, but ... [intervene]

5 ADV MPHAGA: Okay, thank you Dr Woods. Then we can proceed then to deal with the BEA deal, paragraph 39 to 44. That is with reference to the annexures.

DR WOODS: Ja. There is a repeat allegation of one billion rand being paid in commissions, including 250 million to Hlongwane, and on page 124 of the attachments the first evidence once again [indistinct]. [Indistinct] more than 115
10 million pounds on commission payments. Most of it through a secretive offshore network. Alleging that Hlongwane had received 250 million.

Investigators attempted to ascertain whether Hlongwane made onward payments to decision makers. A task admittedly complicated by difficulties in obtaining bank records, dating back as far as possible. Dating back as far as a
15 decade. So that is the, one of those common things which we I am sure you all know about that the allegations of British BAE paying these commissions.

It adds down to earlier allegations brought to the commission's attention. Paragraph 40. The motivation behind the manipulation of the Hawks evaluation in order to award the deal. From IOL. I will not go into the content. I will speak
20 just in order to summarise what the point is. Is that if we look at the JIT report which I will go into more detail, we see the extent of which the evaluation of the Hawks was, was manipulated in order to contrive a particular outcome.

I think even more powerful than this article would be the evidence produced by the forensic team working for the JIT which is in the next section that I will come to. [indistinct] some evidence in paragraph 41 and two articles which offer evidence of Mr Hlongwane besides any cash payments he might have received and having somehow built a not insignificant shareholding, insignificant share portfolio, part of it with BAE companies as I recall.

On the following page, continuation of 42, we see an interesting article on Hlongwane allegedly having bought a house for the head of the [indistinct] I am not sure what his title was, it was explained as a loan but there had been some difficulty, some investigators in confirming that. I thought it was interesting in that we will have that type of relationship.

43, we refer to unexplained deposits and [indistinct] bank account. Back to the Mail and Guardian, Annexure GDW31. Sorry, there is a copy of one of the [indistinct] and perhaps that is , [indistinct] response to my earlier arrangement that I would come back to you on any benefits received that we know of that were received by Mr Modise, even though this one does seem to involve cash.

Where in other might have been aware of offsets. I think this is some interesting evidence. Ja. Finally I come to paragraph 44, and article written by [indistinct] of the Business Day. Who amongst many other reports of people who got access to one of the earlier drafts of the JIT report, and of course that is a scandal in its own right, and many questions as to why the original report was as depleted as the final version turned out to be.

Especially sections of the AE, but from the copy that was obtained under the accessed information by Richard Young, it is there in black and white as to a number of serious and very dishonest manoeuvrings to hide the truth from South Africa. A truth that I am confident this commission is going to reveal, and it shows
5 how the final version as was tabled in the [indistinct] assembly justifies the inclusion of a non costed option of the hawk.

Evidence that were in the original draft and parts that were removed suggested the opposite. I do not think I need to elaborate beyond [indistinct].

ADV MPHAGA: Thank you Dr Woods. I think that then covers the BAE deal.
10 Can you then proceed and deal with the Augusta deal from page 45 to page 47?

DR WOODS: Thank you. The Augusta deal in page 45 refer to evidence that showed that figures were manipulated during the evaluation stage of the Augusta deal, and this will become clear from the [indistinct] information which is in the next section I will be presenting. One of the many instances where Shabir Shaik
15 amended tender criteria in a position as the chair of Softcom, a committee which really did not have decision making powers.

It was simply there to evaluate bids or analyse the evaluation of bids and submit information up to the next level in the chain of decision making and I am just harping on this a little, because and hoping that you recall how many times
20 the name Shabir Shaik comes up, whether it is inside the processes, inside the structures or whether it is outside, meeting with suppliers on numerous occasions.

A number of those suppliers saying Shabir Shaik asked for bribes, and indeed that is under the issues that came up with Bell Helicopters. I think it was

the CEO or a very serious person who stated openly to a number of [indistinct], and I am sure he would be happy to do so before this commission, that Shabir Shaik made it clear to him that if Bell wanted to stay in the reckoning, they had to pay a certain some of money.

5 The evidence here suggested that Augusta was happy to pay that some of money, and I think the outcome of this process says all that needs to be said, and [indistinct] in Hennie van Vuuren's book, they claim that and I do hope that you get them to change their minds chair and that they would appear when we lead their evidence.

10 CHAIRPERSON: I can assure you that those we can subpoena, we will subpoena them. Maybe those that might be difficult, is those who are in London saying that they cannot get Visas and those who are in South Africa we will subpoena them. You can be rest assured Mr van Vuuren will be subpoenaed. He will come and testify.

15 DR WOODS: Chair, I believe we, I believe the commission as well the rest of us are earnest in wanting to establish the truth. I believe that Van Vuuren and [indistinct] have contribution to make towards the commission's work, in a joint effort to establish the truth, so I would be pleased if they did appear before you. As an example they claim here, and obviously we have to assume they have
20 information that figures were manipulated.

We were told that the Augusta emerged as the preferred bidder. This was done by means of inducements offered by Augusta to connected political individuals and this is a statement put I believe Hennie van Vuuren according to

this article made it a press club meeting round about 12 November. If I can conclude the section then chair, I am arguing and hope to have convinced you and others that there is a high degree of corroboration between each and all of these allegations.

5 [indistinct] the findings of the foreign investigations, but also amongst other information offered, and that this amounts to enough given the nature and the consistency of these findings and the various sources from which it came to alert us to probabilities of corruption in the deals and to encourage the commission to deepen the enquiry and to [indistinct] these.

10 ADV MPHAGA: Thank you Dr Woods. I think now you are proceeding to paragraph 48 and 49, dealing with the topic entitled [indistinct] explanation of why corruption in the SDP was [indistinct].

DR WOODS: Chair, I will argue my case as to why the industry is one in which a lot of corruption takes place. As an issue of the environment of the context and
15 which we are considering the Arms Deal, I then argued about the evidence out there whether circumstantial and direct, indirect from newspapers, from articles, from investigations, from audits.

I have argued that the sufficient clear substance that it is not just wild allegations. It is something, [indistinct] it is some very strong themes which have
20 emerged, and now I want to argue the case as to why those issues we see emerging of bribes and individuals in the companies involved, why they were not only possible. They were indeed likely and I think criminological explanation of

why corruption and expertise was [indistinct] and something of crime and opportunity theory which is very well established in criminal logic text books.

There are [indistinct] many decades advises that for criminal action to have taken place, the perpetrator would firstly need a motive, secondly the
5 opportunity to which the exercise [indistinct] but certainly it needs to be an individual who [indistinct]. so many of us might have a motivation to want more money, and opportunities might appear before us and hopefully we [indistinct] that would not be the right thing to do.

We cannot rationalise this and we do not do it, so if we think about it, all
10 those three facets are needed. If any one of them is missing, then there would be perpetrators unlikely to commit a crime, the crime would simply not take place in fact. Now the condition pertaining to the first and the third, the motive [indistinct] now let us just assume that they are part of the makeup of any would be corrupt individual, involved in criminal action, including in South Africa SDP's.

15 This [indistinct] is well substantiated by way of the many recent cases of exposed corruption in South Africa. We have the motivation to dishonestly seek self enrichment, and where those are [indistinct] display the remorse having done so. I think for this discussion this leaves us with the issue of opportunity, specifically worthy opportunities for corruption in the SA Arms Deal.

20 We always know there is rational of human beings. We do not necessarily jump at every opportunity. We always in our own way risk assessment to see whether you want to take that chance or not. Some people are quiet risk of this

and would not just grab at every opportunity to gain this [indistinct]. Others will take the risk, but the operative word here being opportunities.

If I may move on to page 17, paragraph 50. The heading evidence of how and why the SDP's were open to corruption, and as I will demonstrate, the
5 processes and structures for which the SDP's were processed, offered many opportunities for corruption due to procedural weaknesses, administration failings and oversight over the applications, Particularly in the case of the cabinet subcommittee.

Just to mention as oversight. In work done by the Auditor General before
10 the [indistinct] report, examples of what, how structures and processes were constructed and most countries in dealing with large Arms Procurements. I was attempted to replicate that in most respects, except for one, and that was that in between the final expert evaluations and recommendations which in other countries would have gone onto the equivalent of the cabinet, we put this clearing
15 house body of a cabinet subcommittee, which if one looks at it, weaken the process.

[indistinct] the subcommittee to interact with officials and to get involved in the processes and just generally weaken the arrangement. Excuse me for that. Paragraph 51. Over many years good procurement practice known as
20 international [indistinct] has evolved and is strengthened through the ongoing collective international experience. This in order to discourage transaction related errors and to mitigate against possibilities of procurement related corruption.

So today we do not all do it our way. There is a convergence of how we do everything in the world today. How medical doctors conduct their procedures, and go across every area of human [indistinct] but this indeed happens in management. It happens in accounting practices. It happens in auditing. We all
5 learn from each other. We all share with each other.

We have all put together international bodies which we communicate through and that indeed is true of what constitutes the best procurement and tendering practice. Corruption and procurement transactions is set by transparency international to be the most common type of corruption experienced
10 worldwide. We looked at the fact that the Arms Industry amongst industries is according to the research of these reputable bodies, the Arms Industry is the most corrupt.

We now look at [indistinct] industries. We now dissect it and we say of what types of corruption it might, that any industry might be confronted with.
15 Where would the most corruption take place, and here again we have transparency international [indistinct] saying procurement is where most corruption takes place. So again we are forewarned, not only about the industry, but about the [indistinct].

The type of transactions or the type of dealings where corruption is seen
20 to be frequently. Now understanding the best practice systems and processes, our intention is at the same time focussed on problems that can occur should particular aspects of best practice not be properly applied and well adhered to.

By deduction we get to understand the possible exploitable opportunities that impacts weakness can offer.

To elaborate a little further chairperson. We say why do we have to do this. Why does best practice say we must do A, B and C. If we contemplate that,
5 we will soon establish why that has become best practice. It is because as I have explained, it is the result of the collective global experience of what can go wrong if we do not do that. So I am emphasising how important it is to apply these best practices and to manage them and oversee them and make sure they are applied to the fullest.

10 I do Annexure GDW35, a copy of red flags for corruption document. I was one of the contributing authors to that, but as was the World Bank and as was an organisation called U4, which is basically Norway and which represents five European governments, the search effort into corruption. So I believe it has an [indistinct]. we could go through each of those red flags, and at the end of this
15 section and ask ourselves did we fall down on any of these, and you will be shocked to see how many warning signs we just simply ignored.

If I can move on to paragraph 53. Chair, there [indistinct] if there were any significant weaknesses and result of possibilities of the [indistinct] processes. Here very sound evidence will be provided, showing that there was an abundance
20 of such witnesses, and further that there were many irregular and questionable actions which point to these weaknesses having been taken advantage of.

I think this evidence that I present to you, also amounts to pretty direct evidence. I think it would be very difficult to simply disregard it. Paragraph 54.

My enquire around possible witnesses, highlights a great number of procedural and control failures, which as I found in almost every case of procurement or tender fraud, I definitely found in the SDP's.

Paragraph 55. The evidence of these weaknesses and the opportunities
5 these can provide for poor or dishonest decisions, can be described to the following resources, and this is where I get my information from. It is just to mention them upfront. The first would be the initial review of the SDP's, conducted in November 2000 by the Auditor General.

Second will be the joint investigation teams report a year later. Thirdly will
10 be the testimony of the [indistinct] Steyn's before this commission. So this original brief report from the Auditor General beginning with paragraph 56 and an initial review of the Auditor General, and I add the annexure here GDW36, stated:

“Material deviations from normally accepted procurement practice as we discovered.”

15 See also in this regard and to support this as a business day article attached GDW37, which simply is an analysis by Linda Ensaw of the findings of the Auditor General, where she together with I suppose knowledgeable Business day they said what is the significance of these findings, because the Auditor General as I said conducted this brief review under a lot of pressure.

20 Once the first allegations emerged, [indistinct] and a number of us count on the Auditor General including [indistinct] except we need to know need we be alarmed or not. So he said he will do what he called a persory review. Amongst the concerns he discovered were these deviations. He was not able to go deeply

enough, because he only had a matter of nine, ten days or two weeks to conclude this review, to establish what manifested from these weaknesses and whether indeed they would lead to corruption or not, but he did go far enough to show us there were weaknesses.

5 As I say in Annexure 37 we get an opinion that says they were potentially exploitable. I do mention that the contrast of the JIT's, the contrast of these findings are in contrast to the findings of the JIT report where and please note that I am saying the initial report, and talking about the material deviations that contrasted the JIT report findings. It was endorsed by the JIT's forensic work. I
10 have explained, I will explain in a moment why there was a difference between the two parts of the JIT report, its forensic work and its findings.

 Anyway, the [indistinct] and in related management letters are listed in Annexure 38. So I have included here firstly just a summary under 36 of, you have 36, you have the review firstly of the Auditor General. You have the Mail
15 and Guardian's analysis, I mean the Business Day's analysis.

ADV MPHAGA: I think you are referring to page 145.

DR WOODS: Yes, firstly I am referring to page 135, which is the initial review by the Auditor General, which he establishes bad practices. Then referring to page 144 of the Business Day article. Which analysis talks about the consequences of
20 some of those findings. Then I am referring to page 145, which is GDW38, which I start to list some of the key issues identified by the Auditor General in respect of weaknesses.

But I also go on paragraph 56 to bring your attention to the very important document which starts on page 146, which is what we know as the management letter that the Auditor General when he does an audit or when any external auditor does an audit, communicates concerns and queries to the auditee in order
5 to give them an opportunity to respond.

You will notice in the letter and specifically in the attachments, we have I think it is in the range of about 20 or maybe a couple more procedural issues. The Auditor General felt it strongly enough to bring to the attention of the Department and asked them to explain themselves. So that is the first of the
10 three sources that I present as evidence of there having been major flaws and weaknesses in the process.

I now move to the second one, which is the JIT's report in November 2001. Paragraph 57, it is well known that the findings of the JIT report were the subject of much criticism as was the overall investigation, and this was due to a
15 perceived pandering to the executive's anxieties regarding the possibilities of damaging findings. That has borne out I think in most people's opinions when they notice firstly the Auditor General's attempt to hide the fact that he was allowing the executive to direct changes to his work.

[indistinct] to admit to it. Secondly the Auditor General's denials that there
20 were no substantive changes made, and then their efforts to getting to release the earlier drafts, till her was threatened by the high court on contempt of court and a possible jail term if he did not release them, as he tried to defy the courts which

ultimately forced him to release an earlier draft, sections of which he blacked out and we will never know whether that was the only draft.

But it was enough to show us that the JIT report we are grateful for what it does show in terms of the forensic investigation. It is really quite tragic as to what
5 it does not show that was originally in it. Now to explain this contradiction over the page and paragraph 58, an HR joint investigation team's report, it would seem to me and from many newspaper reports on the J80 report they looked at the findings and concluded what, it appeared as some people wanted them to conclude.

10 There was no instance of corruption. The government was beyond approach that a few little issues here and there, but basically it was a very remarkably honest deal the arms deal.

MR CILLIERS: [indistinct], what is the relevance of the criticism levelled at the J80 report? What value does it add to your investigation as [indistinct]? With
15 great respect they are wasting, almost through the first day and we are only half way through with his evidence in chief. With great respect, there is no value to this.

CHAIRPERSON: Advocate Mphaga?

ADV MPHAGA: Thank you chair. My understanding of the witness was that he
20 was trying to go through these documents, to be able to show that there were witnesses in the processes and therefore there was an opportunity for corruption. I think on what he is trying to say, that is how I understand the relevance of the JIT report and his discussion.

CHAIRPERSON: Should he not perhaps be brief about the J80? How many times have we heard about the JIT report? He is not the first witness to talk about the report. He is not the first witness to talk about the [indistinct]. We had similar witnesses who have spoken about these reports. Is it possible for the witness to
5 try and summarise whatever he wants to say, because we have heard those reports.

Many people have read those reports. We understand exactly what the report is saying. Is it possible maybe to [indistinct] to try and summarise those findings on the JIT reports that was referred to?

10 ADV MPHAGA: Thank you chair. Dr Woods, I guess you have heard the chairperson that we can just go to the summary of the report without getting into too much detail.

DR WOODS: There is a section at the end of the report which is called the suppression and disregarded relevant information, which I think is evident in my
15 arguments, and it ties up with [indistinct] does have value. It is also that I am speaking and trying to cooperate with the commission here, to explain so many things which transpired which I have no idea whether you know about or not.

So I include them in my statement. I am trying to show you that the report had two sides, and explain why. I have never heard anybody else speak about
20 this or write about this. Maybe it is familiar territory for you. So I will move away from the findings which I believe we contrive findings and which I believe were falsified [indistinct]. I move to the second section, which was the forensic work, which were disregarded by the findings in the very same report.

Sorry, I will have to edit as I go along in order to meet your request that I speed up chair. But there is a profound disconnect between the actual investigations as I revealed in this report and even more so in the earlier draft and the findings offered in the final report, and how this gives a light to the claim that
5 there were no material deviations as the findings [indistinct]. So I am talking about a sample of understanding number of shortcomings discovered by the Price Waterhouse Coopers, forensic work [indistinct] of the JIT report and it is produced by Annexure GDW39.

It should be born in mind that the highly appropriate executive led editing
10 of the initial draft of the JIT might well have removed reference to any number to maybe many more of such findings. In fact as we have proven it did. If I could draw your attention to that ... [intervene]

ADV MPHAGA: Page 163.

DR WOODS: Page 163. Chair, you want me to speed up and I want to put on
15 record that it is compromising my evidence. So can we just have that on record please.

CHAIRPERSON : I think it is good enough if you have put it on record. If you think it is compromising your evidence, that is good enough to put it on record, but I have made my ruling on that issue. Thank you.

20 DR WOODS: I accept your ruling sir. I cannot go through this evidence which I believe is critical and fundamental in which nobody else has spoken to this commission about. Evidence I am about to give ... [intervene]

CHAIRPERSON: Dr Woods, let me also point out this to you. What you are making, you are not giving evidence. You are making submissions. In order to allow your evidence to flow, we have given you that leeway of making submissions even before you finish your evidence. The stage at which we are, is
5 a stage of collecting evidence. We have not reached a stage where people must make submissions.

That is why I made that type of ruling. You are now getting into an area where you are making an [indistinct] of various documents in order to present an argument, and we have not reached that stage. The moment we are at the stage
10 where you are supposed to give evidence. Not to make [indistinct] of other documents and make or present a submission.

Nobody is stopping you from tendering evidence. We want evidence at this stage. We have not reached the stage of submissions. All the witnesses we have called up to now, they have not made any submissions. We were asking
15 them to give us evidence and not make submissions. The stage of submissions will come at a later date. Maybe I can just clarify that to you, because now you are getting into an area where you are making submissions.

You have read the JIT report. We have heard that report. You then give us your view. You are not giving us evidence. That is why we say we want to
20 give you that leeway, but at the same time keep in mind that whatever you are saying now, it is not evidence. But then [indistinct]. Just keep that in mind that these sections, you are now referring to the evidence of General Steyn. You are

not giving evidence. You are failing us to that evidence in order to present the submission and we have not reached that stage as yet.

But then we allowed you to do that, so that you can be in the position to let the evidence flow. I thought let me make this point, because I heard you saying
5 that we are now compromising you giving evidence. You are not giving evidence. You were making submissions.

The stage where we are now, you are making submissions and not giving evidence. I am prepared to allow you to make those submissions, if you can expedite issues.

10 DR WOODS: Thank you chair. Not being a legal man, perhaps that is the basis of my confusion. I felt that some earlier objections and comments by yourself called on me to give more evidence. I am trying to make a submission that contains what I think is evidence. Maybe the legal definition of evidence is different to that of the scientific world.

15 I am a little confused as to what I am allowed to do and not allowed to do, but I have made it clear from the beginning that I am trying to present and accumulate arguments to demonstrate to you, because I do not see this as a criminal case where A presents their case and B presents their case and the judge rules.

20 I see the nature of the investigation required here and the brief of the commission to make its enquiry, to perhaps allow a little more scope for witnesses to make their, to present their views. Whether theoretical, whether partially substantiated or not.

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PHASE 2

CHAIRPERSON: ADV Mphaga, Let us proceed in the manner you were proceeding. we have made the point that we wanted to make.

ADV MPHAGA: Thank you Dr Woods. Let us proceed on paragraph 60. You were about to refer us to Annexure GDW39 on page 163.

5 DR WOODS: I do thank you chair for allowing me, but in respect I will try to go through it more quickly and not [indistinct] the issues. Chair, the importance of this annexure is that it puts out views of expert forensic guys who have gone through the process, who had access to all the documents and show us through the deals.

10 As I say quite clear at the top here this is just a sample of some of the irregularities and problems they discovered. But I just want to draw, I will just pick up a few to show you the seriousness of it. If we talk about the submarine deal and we talk about the evaluation formula changed during the evaluation process, that is devastatingly improper.

15 I go to 6453 under the [indistinct]. [indistinct] evaluated included an approved business proposal. This is not in accordance with procurement practices, flaunting of the [indistinct] practices. Lack of supporting documentation in evidence. Some substantiated sanctions for sales.

No evidence of final scores. Chair, I do not need to go any further but I
20 will if you wish me to. There are far more serious observations that were made, to show you that the process, the very process of evaluation and decision making was riddled with the most fundamental flaws to the point that we have to accept

that we could have made the wrong decisions, and the nature of these flaws does not only suggest competence.

It suggests purpose for manipulation, and where we see these gaps appear, as I explained best practice is there for a reason. It prevents certain bad
5 things happening. When issuing the [indistinct] it opens a door. It offers that opportunity for the type of corruption which I was trying to explain in a previous part of my argument and also which is typical of that which happens in Arms Deal corruption around the world.

So this from coming from expert forensic investigators, I would love to
10 have given you a closer analysis to show you how it all ties up. It would be timorous, but I have confidence that the commission will study this and will make those deductions themselves to show that this thing is wide open to opportunity, and how in some of the deals every breaking of the rules advantaged a particular bidder consistently.

15 So if we get the hawk deal or the DFC deal we will see that repeatedly the mistakes were all in their favour until they came from nowhere to being [indistinct]. It is all here, and then we tie it back to so where the allegations of the corruption were, and we see how nice it fits.

All of us together does not produce a smoking [indistinct] but I think it
20 could help the commission in saying there are the key issues that we could answer those, we would be able to come up with the report that takes the country a lot closer to the truth than what we have been before.

ADV MPHAGA: Thank you Dr Woods. I think the [indistinct] topics relate to the [indistinct], evidence before this commission. I think you have heard the chairperson that this evidence has already been led. It is on record. If you can just summarise whatever views you have in respect of his evidence.

5 DR WOODS: Yes chair, I respect your request and I interviewed Lieutenant General Steyn right at the very beginning, and so I was quite clear on many of the observations he had made and his opinions. Some of these, he was interviewed by the JIT and he produced quite a big report.

Most of it which was in original draft, but once again because it was
10 [indistinct] in nature was left out of the final draft besides two sentences. Fortunately and I am very grateful that the commission called General Steyn and I think some of the observations he made here there must be about 10 or 11 of them, are very powerful.

Secretary of defence, the man very close to the action is a man seeing
15 what is going on. These are his statements. I am saying add him as a source to the JIT forensic work, to the earlier observations of the auditor general review and through that I hope my argument prevails.

My argument that the process notwithstanding its impressive organigram and structures and claims to have procedures that worked and we know this from
20 investigations into any number of cases of public sector corruption where we see the Auditor General ticks all the boxes [indistinct] and a year later the Sunday Times produces evidence that that procurement deal was corrupt.

So we have got to understand that the processes how they are administered and how devious individuals especially those that have increments can make a mockery of all the structures, the processes, the practices and the compliance requirements.

5 So I do if I may continue on with the next page, paragraph 62, I have summarised and I make my major observations here and again you will see that these conclusions, this analysis, the summary of all the procedural breakdowns just so happens to once again talk to the red flag list I have offered you.

10 [indistinct] talk directly to areas of where corruption is known to take place in the arms industry previously. Talks to very strongly many of the allegations I prefer to, whatever their source. I ask you to jump right along to paragraph 64 please chair, and I revert back to the strengthening case which I believe I am presenting, which involves the suppliers, which involves a number of individuals and I suggest that at least five of the prime deals were inappropriately influenced
15 and thereby wrongly awarded.

The likelihood being that such outcomes were contrived in order to accord with predetermined decisions as to which bidders would be awarded the supply contracts. This would of course render the entire process to have been a fast and an appalling exercise in deceit. Sorry.

20 I then come to the end of the section, into paragraph 68 where I could have singled out a few individuals, but I do single out the acquisitions manager Shabir Shaik, just to show that [indistinct] all this evidence and positions he held. I want to illustrate to you the position he was in.

I mentioned how he participated at virtually every level or the organigram that you will see on page 29. I can take you into a lot of detail as to his involvement at the evaluation level, chairing the [indistinct] level and going beyond his powers in making changes as the forensic auditors tell us.

5 His presentations through the ASB, the AAC, his being secretary of the Cabinet subcommittee, of being the presenter at the cabinet subcommittee and to the cabinet. I can elaborate on this whole situation in great detail and why it is in conflict. Why it is so fundamentally in conflict with best practices as to how duty should be separated, how responsibility should be separated and how those
10 divisions of the responsibility are part of the check and balance that any half decent procurement process should employ.

If one looks at the minutes of a number of these meetings, it becomes very apparent what is influences and it bears out the allegation I made earlier on that almost all the decisions were made at the softcom level. After soft com had made
15 its interventions as the forensic auditors show us and how that was sold upwards, again that was only the hawk deal where soft com proposed the possibility of two choices and I am sure you are very familiar with the details of how that worked its way through.

He also chaired the chairing of the project control board. He was also a
20 member of the INT and affordability team. He was everywhere with great influence, and as I said once he moved outside of the structures, he was sitting with the suppliers at both the prime and sometimes the sub-contractor level.

That ends that section of my presentation chair.

ADV MPHAGA: Thank you Dr Woods. I think now you want to take us through some few points, as you say it regarding the offsets which are basically covered by paragraph 70 to 77, with reference to annexures. If you can take us through that.

5 DR WOODS: Chair, as it would seem as with every other aspect of the processes, the DOD Armscor processes, the processes that dealt with offsets is also riddled with irregularities. I had a report done by a senior member of the Auditor General's office way back at the beginning and he pointed out many of these irregularities.

10 So I was forewarned, but many the arguments as to why offsets are perhaps were also ill advised. Sorry, I am just trying to think of how I can summarise this. You will have to forgive me chair, it is just two and a half pages with double spacing so it will only take a minute.

CHAIRPERSON: I think in the meantime try and think about how you are going to
15 summarise it and we will adjourn for 10 minutes. During that 10 minutes we can try and think of a way of summarising it. Thank you, we will adjourn for 10 minutes.

(HEARING ADJOURNS)

(HEARING RESUMES)

20 MS CHARLES: Thank you. Do you confirm that you are still under oath? Say I do.

DR WOODS: s.u.o.

ADV MPHAGA: Thank you. Before we adjourned, we were about to deal with the issue relating to offsets from paragraph 70. Can you take us through that discussion.

DR WOODS: Chair, when the president initially announced the commission and
5 my initial meeting with the evidence leaders when I met with other possible witnesses as well and it was suggested to me because of some papers I had written some 10 years back on the nature of offsets, that I might be useful to the commission, given that a substantial part of the commission's [indistinct] appears to be about offsets.

10 So it was with that in mind that I put in this very brief section at the end. Once again I hope that it could be helpful. So if you allow me, I will just make a number of points about the offsets and why they were perhaps ill advised and why they were badly managed, and I do view volunteer, shall it be helpful to the commission beyond my duty as a witness to assemble information on offsets, it is
15 relevant well researched, well substantiated information.

I would be very happy to do that for the commission. Chair, I argue that the importance given to the IP component of the SDP's was excessive given the international experience. The IP's proof to detract from the actual procurement transactions which were essentially about buying the right products at the best
20 price.

The evaluation of the IP projects by the Department of Trade and Industry, the nips in particular, has a possible means for which to make up for its failed industrial policy, considered given the international experience of the IP's. Bear

in mind at the time that the minister of trade and industry was under a lot of pressure, his industrial policy had not taken off.

Small business development did not take off, his competition [indistinct] and then he did not appear to be taking advantage of the very good economic environment which we give the then minister of finance credit for. So from things
5 that the minister of trade and industry said, we came to appreciate that there was a thought on his part that offsets were manna from heaven, the opportunity to boost the economy and make up for some of the slowness in economic growth.

[indistinct] the proportions of nips to dips was directly contrary to what
10 made sense from a risk point of view. It is a fundamental issue that there is an international law, a law which I quote just now when I refer to the annexure that shows that in Arms Deals, okay generally the offsets became fairly popular, but then through experience and 15 years ago started to get banned by an increasing number of countries.

15 But for a while offsets were a common feature of Arms Deal procurements. But the norm I am referring to, is that the proportions of your nips and dips should always been that your dips are perhaps three times the size of your nips, and the reason for that is very obvious.

That your dips are almost guaranteed, because they are attached to the
20 products being supplied. So in our case, if one of the dips was about Denel producing aeroplane wheels for the [indistinct], then they could not deliver the [indistinct] without Denel doing that dip.

So the way you connect your dips to the actual suppliers makes them fairly certain. Nips are a totally different story. That is why the norm is to keep them in the minimum, but we went the other way. I think we broke the world record in the volume of nips, which proved to be in my opinion wild and woolly business ideas.

5 In my meetings and investigation into [indistinct] and their offsets on the nips side, they demonstrated to me how easy it is to throw together nips, especially when the requirements from the South African side were very lacks. We did not require a full business plan which you had normally do if you wanted to start a new business venture.

10 It was a very abbreviated what they call an investment business plan, which asked three or four things which you can perhaps do on the back of your cigarette box in a few minutes around any conceivable business idea, and it is one of the areas where I consistently asked for information of the minister of trade and industry which [indistinct].

15 I said I want to see credible business plans for these nips. Otherwise they could just be pie in the sky. Do not forget, you sold the Arms Deal to South Africa on the basis of all the money we are going to make out of them, but later I did get the specifications and my worst fears were confirmed that there were never any possible proper business plans.

20 That simply gets back to the point that nips if you are going to have nips, if you keep them as few as possible, then you should make sure they are as water tight as business ideas as possible. [indistinct] which I referred to earlier, I stated

that the issue of industrial participation played a material role in evaluating tenders.

It constituted one third of the total score of the total evaluation. We have noticed in three of the deals it was perhaps manipulated to be worth more than
5 one third. The other two thirds obviously being finance and technology. There were issue of guarantees and where we noticed the international loan is between five and ten percent.

We asked for ten percent of the contract price, but this appears to be lower when measured against the important role industrial participation paid and
10 deciding the preferred bidders. So the fact that we had so many nips and then the way we even inflated the importance of the nips, it increased the risk and I think there is a strong argument to say that the ten percent was very low.

The DIT offset audit conducted in early 2014 which was referred to I think in the testimony of Alex Irvin, gives examples of two suppliers who would not
15 have won deals were it not for their massive offset offerings. You must note that the original evaluation criteria did not allow for bidders to win contracts simply by offering offsets beyond that specified tender requirements.

But here again the criteria was changed. The proposition that in addition to receiving products for money, one could also receive economic benefits three
20 times the value of the products, board was always non sensical and unprecedented in the realm of business and I think you have all heard that argument often enough.

The fact that DTI has to date not or not being able to produce business plans and I mentioned this, [indistinct] proper plans never existed and that the nips were based on little or no viability, meaning that their value and after the [indistinct] possibilities were always speculative and I think as the 2014 report
5 shows, it has been part of offsets that have fallen by the way side and a lot that has been changed, all within the conditions in the IP agreements.

In reality the situation means that suppliers in order to not be incurring substantial losses on the arms supply contracts, would either need to [indistinct] on their nips and suffer a modest ten percent penalty or would need to load their
10 arms selling prices to compensate for money to be lost through the nips.

I see this was anticipated by the Department of Finances affordability study and I refer to paragraph 15 of Appendix C of the affordability report, and that would be in GDW14. Affordability states never the less the risk remains that suppliers have already priced the present value of the nip performance
15 guarantees at least at its original [indistinct], and chair, I happen to have the cost in detail of the hawks and [indistinct] which was given to me.

As I indicated they appear to indicate a loading on prices. I have not included those in my bundle, because I do not know if I am at liberty to, given the secrecy and the provisions. I refer you to Annexure 42, page 179 ... [intervene]

20 ADV MPHAGA: 175.

DR WOODS: Yes, but I am going halfway through the document to 179 of the document which I wrote, which was the critic of the JIT report. When the JIT report came I have, I did two studies. One was critique in the JIT report findings

to show how superficial and how dishonest they were and then I wrote a second report which I refer to later on here.

It regards the interventions by the executive and the speaker which undermined parliament and SCOPA in particular, but in this critique of the JIT
5 report I single out a number of issues of the offsets and reference some of them to international experience and I do not think I need to go through to the detail.

Page 179 and 180 would be what I would refer you to.

ADV MPHAGA: Thank you. Thank you Dr Woods. I think that concludes your evidence, your submission on the offsets. Could we then proceed to chair, I see
10 it is almost four o'clock and I just need your guidance. I have noted advocate Moerane's request. So maybe if you can give us guidance going forward.

CHAIRPERSON: I am not aware of the request from advocate Moerane.

ADV MPHAGA: Thank you chair. ADV MOERANE just made a request that he is in Supreme Court of appeal tomorrow and he would have appreciated if possible
15 that he have opportunity to cross-examine the witness today. It is on that basis that, seeing that it is about four o'clock, maybe he can bring that request forward formally himself.

ADV MOERANE: Thank you chair. I did indicate to the evidence leader that I am only available today. In fact I was not aware that this matter could run over until
20 tomorrow. I am unfortunately I cannot be here tomorrow. I am actually in the commission's hands as far as that is concerned.

CHAIRPERSON: Thank you. Let us proceed and we will come back to you at a later stage.

ADV MPHAGA: Thank you chair. Dr Woods, you may proceed then with your topic under [indistinct] relevant information or evidence. That is paragraph 78 to
5 82.

DR WOODS: Chair, there are those that reflects on the Arms Deal and say as I believe from president Mbeki did before this commission, it has been 14 years and where is the evidence? I think there is a lot of evidence, amongst that which I have offered earlier on today. But then in view of the commission and its task to
10 establish [indistinct] the evidence, I thought it could provide a bit of context as to a significant part of the reason why our usually important evidence have not availed itself up until now.

I take you to paragraph 78 and its contention that needs to be challenged concerns that which claims that little evidence of corruption has been forthcoming
15 regarding corruption in the [indistinct] over the past 15 years. Paragraph 79, first it must be mentioned that wide ranging actions were taken to strategically prevent the establishment of primary evidence of corruption in the Arms Deal.

During the years 2001 and 2009 there were a number of interventions, mostly by the executive which served to prevent or discourage the discovery of
20 information which might otherwise have amounted to evidence of corruption in the 2000 South African strategic Arms Deal packages.

In essence of this include under 79.1 where I talk about the manipulations of Scopa to prevent or discourage it from, and examples here 79.1.1. to

discourage it from fulfilling its obligation as to the constitution, the rules of the national assembly and the specific undertaking contained in the national assembly's 14th report of 2000 to use its powers to investigate aspects of the Arms Deal.

5 I refer in this regard to a report I wrote titles SCOPA's intended Arms Deal investigation, the intervention has causes of [indistinct]. This is Annexure GDW43 where I elaborate in some detail on these very issues. The second manipulation of Scopa to prevent it or discourage it from [indistinct] being given the opportunity to have the investigation agencies account to it, either during or
10 after the investigation had been completed to ensure [indistinct].

As you might know the SCOPA was cut off from the investigating agencies, and the Auditor General banned staff of the JIT from talking to myself and Fanstein amongst others. SCOPA having this request for ASET related information, as it was so made by its chairperson, the members of opposition
15 committees positively responded to and here just to give you some substance I refer to articles by SAPA dated 13 June, Cape Town 11 June, News 24 dated 12 June etcetera and the Annexures 44, 45 and 46, where perhaps if I can just explain.

Scope had become a very effective oversight body and was having a
20 really big impact on the management of finances across a range of large government institutions. We had taken measures and presided. We have had corrupt people fired. Where we felt that the Auditor General's work was not good enough we rejected it and did it ourselves.

We had a bunch of well informed, well qualified people and I can tell you that most accounting officers were very afraid when having to appear before us, and they admitted as much. So we dealt with a number of big cases and we building this reputation. Having this impact on the public sector, which hopefully
5 would have led to less corruption and less other irregularities, until the Arms Deal came along.

When the Arms Deal initially came along, we were still in that vein. In this one unit we said let us get the Auditor General to do this review, and then we said no, these are signs enough to show that we need a deeper investigation, and we
10 acted so quickly and we wrote this report, or Andrew and I wrote it.

We did some research. I called for documents from the Department of Defence and we spent a few weekends going through them. We explained to the committee. There were some serious concerns. We needed the big investigation. We needed the four agencies involved, and we put our resolution
15 through parliament and it was through.

Before the executive realised what was happening, but within two days after putting that through as one reads and finds to his book the ANC component were called to [indistinct] reprimanded and things started to change from there. Where slowly one by one the things were circumvented. Not only the ANC
20 component, but the [indistinct] processes. The speaker's response was Andrew was removed from the committee.

Then where anybody in the committee wanted information on anything, especially the Arms Deal, the ANC component would say we want to go and

consult with members of the executive and they would come back the next day and say executives say no. So we vote that we do not want to see that information, and some of those press cuttings I referred to indicate that.

That is just another example of how information was suppressed. 79.1.4
5 and I then refer to the same letter we spoke to earlier on. I also ask you to look at my response to the letter. I think there is no doubt that that was a very crude attempt by whoever wrote the letter, to intimidate me and threaten me that I had acted illegally and there would be consequences.

Then besides what was done to SCOPA, there was the inhibiting of the
10 work of the joint investigating team, 79.2 by firstly 79.2.1. Refusing the special Heath unit permission to participate in the joint investigation. Now attached in this regard, an article in Business Day or it is a series of articles. Dated 26 June attached as Annexure GDW48, and that was the original wish of SCOPA to have the special investigating unit which was under judge Heath at that point included
15 in the investigation.

We have various particular reasons for that, because of certain features of his legal mandate which other agencies did not have. Also because he had a very accomplice forensic unit, which the Auditor General did not have and the DPP did not have, and the public protector certainly did not have.

20 So we wanted them included, he was the only agency that required the [indistinct]. When that was my forthcoming, the Auditor General wrote to me and I still have his letters asking me to please approach the president because Heath

who had been in early discussions with the early team was making a very good contribution and he said it is imperative that he is there.

I wrote to the president and I was reprimanded by the speaker of writing directly to the president, but eventually the president appeared on TV and firstly
5 referred to an argument which had been [indistinct] by the then Minister of Justice regarding a constitutional court ruling about the SIU, not having been [indistinct] by a judge and they tried to use that as a reason for excluding, but when half the legal wall came down on them, president Mbeki in his TV interview referred to an investigation he had done by the then judge president or Attorney General of the
10 Western Cape Khan and advocate Lubbe.

He quoted from that in his TV interview to say he would not include the joint, the SIU. Somehow that report was leaked, maybe by Khan and Lubbe I do not know, but it is what you see in this attachment here. Which shows that the president to have been very incorrect in his interpretation of what they said.

15 In fact they go as far in as clearly to say as they too say it is imperative that a unit such as the [indistinct] investigation unit be included in the Arms Deal. So I sight that as a, as just one amongst the very issues that I am bringing your attention to. Also the intervention of the executive which [indistinct] information was the holding of inappropriate and secret meetings with the head of the three
20 participating agencies as was exposed by the Mail and Guardian newspaper, and eventual editing and sanitising of the final JIT report which amongst other things decline to follow through on any of the irregular findings made by its forensic component.

So once again Mail and Guardian were correct, as newspapers have been in exposing all the biggest issues of corruption over the last ten years in this country. That is where we found out from. They produced the investigation and the facts which proved to be true. So I think we should be cautious about
5 demeaning considered newspaper articles as simply being newspaper reports.

As I say this one too the Auditor General had to admit that the Mail and Guardian was correct. He first attempted to suggest that it was under a particular under the then Auditor General's [indistinct] that he had to confer with the presidency and the minister of defence. When it was explained to him that he
10 was legally incorrect that that provision in the act only concerned audit reports, audits of the finances as in annual audits of the Department of Defence and the special defence account.

That in this particular instance this was not an Auditor General report, it was a JIT report. It was a special initiative which did not form fairly and squarely
15 in his act. So he changed his story and then he said it is good practice that he had to as with his first report engage in discussions with the [indistinct] to see whether there were any queries about these findings.

He claimed that that was the case, but once again he was using audit practice technologies which did not really apply to forensic investigations.
20 Especially a forensic investigation when the people was looking to see whether they were at fault or not, and that as [indistinct] lays down, if you want to when you do consult with the auditee, the management it should always be in writing.

You must have that paper trail. If there is no paper trail for the JIT and as we learned from getting the earlier draft, that it was just a spontaneous effort of people saying how do we change this damn thing to not get into so much trouble. So I state it was highly inappropriate that the intervention once again
5 compromised information they could have told us about more about the truth and the truth might have involved more direct accounts of corruption.

I also talk about the failure of government to cooperate, as I believe as they should have, with the international investigations. To try and establish more about the alleged substantial sums of unexplained monies that were claimed to
10 have been paid to South African parties.

As I am saying it is by design that all these interventions made it very difficult to discover if anyone had properly benefitted from SDP's because they key sources of information come from those sources. They are in those records. In their records. So it was very difficult to discover if anyone had improperly
15 benefitted from the SDP's but any of the prime contract, the sub contract or the industrial participation levels you know.

So that is why I say it is disingenuous of former members of the executive to say no evidence of wrongdoing in terms of the Arms Deal has been produced in the past 14 years. This evidence of the above interventions, by the very
20 individuals who were responsible for the being proper and honest SDP transactions, begs the question of why they made such efforts to keep important SDP related facts out of the public domain, while at the same time claiming there was nothing to hide.

ADV MPHAGA: Thank you Dr Woods. I think now you are almost there and can you then just take us through your concluding comments, the last paragraphs.

DR WOODS: Thank you chair. Paragraph 83 and if I could read directly from my statement. This statement presents a range of circumstantial and other indirect
5 evidence which together indicates that corruption in the South African Arms Deal was not only plausible, but it was very likely.

The management control and executive oversight of the procurement process was such that they appeared to have invited opportunistic activity of a corrupt nature. The evidence presented to substantiate the situation is almost
10 refutable. However, it is when one on one hand contemplating whether most likely opportunities of corruption existed and on the other hand looking at the most credible allegations of actual corruptions, the correlations are noted which are undeniable.

In other words it so happens that the most obvious opportunities for
15 corruption are those which the strongest allocations indicate to have been taken advantage of. But the many weaknesses and oversight control and the actual evaluation and selection processes, it is believed that the evidence presented shows serious incidents of manipulation of the selections of particular bids.

This most probably in accordance with decisions which were premeditated
20 as a result of bribery or kick back deals which were struck between agents of suppliers and politicians, public [indistinct]. As in most cases of bribery such deals could have been initiated by either side.

CHAIRPERSON: If you are in a position to give us more details, particularly with regard to the last two sentences of paragraph 85? 85, where you say that you know as a result of bribery kickbacks deals which were struck between agents of suppliers and politicians / public officials.

5 Are you in a position to give us more details about the politicians and the public officials that you are referring to?

DR WOODS: Firstly what you [indistinct] is I say this most probably so I do not think it is a statement of fact, and if you look at the context which I have offered you in the first paragraphs, I am summarising a whole statement and the
10 evidence I believe I have been presenting all day, and these are the deductions that I am making.

So I think I find your question difficult to respond to, but I do invite you to pursue your point if you wish.

CHAIRPERSON: Just for my own understanding, I do not understand you to be
15 saying that you have got direct evidence which implicates politicians and senior public officials. You are saying that from these factors a deduction can be made that probably these politicians were paid.

You do not have any direct evidence which deals with that then.

DR WOODS: I do want to do justice to your question. Through the chairperson
20 could I ask you just to repeat it one more time. I do apologise.

CHAIRPERSON: I am saying am I right to understand that you say that from this scenario that you have given in paragraph 85 you are making, drawing certain

inferences which brought into a position where you say public officials and or senior politicians were bribed. You do not have direct evidence which implicates to that?

DR WOODS: That is correct. Sorry, I thought the question was coming from this side. So I was a bit confused. Sometimes with the, so I apologise chair. Yes chair, this is just my deductions that I make which I take full responsibility for, which I do not state as inconclusive or as absolute fact.

These are my deductions, the way I summarise my evidence and I am hopeful that you would summarise it and see it in the same way. Paragraph 86.

10 What has long been needed in my opinion is an extended forensic investigation in order to try and trace the paper trails if possible between the JIT forensic work what it revealed and what it points to, and what the main allegations indicate.

So if for example there is a serious allegation which appears to be well founded that says so and so received a bribe and we go back to the forensic work that was done in the JIT and it is saying here there were many manipulations which allows for types of interventions which would have opened the exact opportunity that we see and other deals around the world where corruption took place to have entertained that.

So I am saying there is a slight disconnect, and I am saying it would have been desirable that the forensic investigation of the JIT had followed that through. They were stopped, but I am hoping that one day somebody else does that work. I am saying there is further need for a forensic investigation into who benefitted

from the allocation of sub contracts and who the beneficiaries were that received the NIP related business.

In order to detect whether there was any inappropriate distributions of business opportunities. So that would be another approach to saying the SDP's
5 were all about getting business. Some people have got the big business. That is the prime contracts. A lot of people have got billions in sub contracts and a lot of people made a lot of money having the businesses that came from the nips.

I think it would have been a worthwhile exercise to say let us see who has got all the business. Of course we know most of it in the prime contracts, and of
10 course there is further investigation needed, but the sub contracts and the IP's you will see nothing has been done.

Paragraph 87. I do recognise the judicial commission does not readily undertake forensic type investigation. Even though when I read your act and the brief, it does appear that you have the authority should you so wish, should you
15 so decide to, to initiate some forensic investigations.

But as I say I accept that the judicial commission is more likely to rely on a judicial processes. [indistinct] commission gathers existing evidence and related information from those who testify before it. And maybe from other secondary sources. It does this in order to try and establish a strong enough picture which
20 at least on the balance of probability indicates what took place.

It is my submission and through the evidence I believe I have offered, will contribute meaningfully to the efforts of the commission to achieve an

understanding against which it can produce substantive findings. Thank you chair.

ADV MPHAGA: Thank you Dr Woods. A link to the term of reference that you were giving evidence upon, is the question about whether then should the
5 commission find any evidence of corruption or bribery, should it cancel the supply contracts? What is your view on that?

DR WOODS: Ja. I was aware at one time of the four components which we nominated for the JIT that the special investigation unit was the only one that had the legal right to cancel contracts, but I do know in the prime contract there is a
10 clause to the effect that if corruption is found, the South African government has the authority to withdraw contracts.

But I look at this stage at the delivery of the prime contracts. I do not know if that is viable option.

ADV MPHAGA: Thank you chair. This will be the end of Dr Wood's evidence in
15 chief.

CHAIRPERSON: Thank you. Who are the parties who are interested in cross-examining Dr Woods?

ADV CILLIERS: Couple of questions as well Mr Chair

ADV CANE: Chair, on behalf of the Department of Defence I would like to take
20 an opportunity to take some instructions overnight and the probabilities are that we will have questions.

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ADV DRIEMAN: Chair on behalf of Taitus, again we will take instruction overnight but I suspect there will be a couple of questions.

CHAIRPERSON: I am coming to you sir.

UNKNOWN: [indistinct]

5 CHAIRPERSON: I have got three people. Adv Moerane, advocate Cilliers and advocate Cane.

ADV CHOWE: Chairperson the DTI would also like to pose few questions to Dr Woods

10 CHAIRPERSON: Thank you. I think there was a gentleman who was talking here, I could not quite hear.

ADV DRIEMAN: Yes Mr Chairperson, on behalf Taitus

15 CHAIRPERSON: I think on behalf of the people who want to cross-examine Dr Woods and from what I could see, probably [indistinct] tomorrow and advocate Moerane to proceed today, because of the difficulties that he says he has. Can we, is there any objection to those arrangements?

UNKNOWN: Not from our side.

CHAIRPERSON: Thank you. Advocate Moerane, how long do you think you are still going to be?

20 ADV MOERANE: Chairperson, in the light of the totality of the evidence of Dr Woods, I do not think I will be long. There are issues in respect of which I would

have loved to have had more time, particularly with regard to the bundles which were only handed to us during the course of this morning.

But as far as this afternoon is concerned, I will try to very brief.

CHAIRPERSON: ADV Moerane, I would like to [indistinct] I am just trying to find
5 out more or less what sort of time do you need to cross-examine? We just want to make a decision whether we should take five minutes adjournment and come back or whether we continue with you and then finish.

That is the only reason why I am asking that question.

ADV MOERANE: Probably not more than half an hour chairperson.

10 CHAIRPERSON: Okay, then we can continue.

ADV MOERANE: Thank you chairperson. Dr Woods, if I understand your evidence it really consists in a particular thesis and the thesis is based firstly on the theory that Arms Procurement decisions are usually attended by fraud and corruption.

15 DR WOODS: Ja. Chair, I quite like the way you put that. In a way it is a thesis. It is the gathering of lot information and trying to answer a specific objection, a specific search question. I would go along with you that far, but I think it will be unfortunate if you took my statement a step beyond where it actually went to, and I did speak to this earlier on and I said my reference to the Arms Industry and the
20 reputation it has, and I mentioned the major organisations in this world accorded that reputation.

It shows that it has earned itself that reputation. All I say is that when we look at this investigation, we must acknowledge it is in a particular industry which is often [indistinct] by corruption. In no ways do I suggest that should prejudice occur. We should learn from past corruption in the Arms Deal which could give
5 us some little warning signs which we could look out for.

If they do not exist they do not exist. If they do exist, then they do. But to say that Arms Deal are usually attended by fraud and corruption. I cannot quantify it. Usually it would suggest, if you said frequently I would have said yes, the body of a search out there and literate would suggest that it is frequently
10 accompanied by fraud and corruption, but I would not go as far as saying usually.

ADV MOERANE: Well, but that is your major premise that the Arms Industry, the process of arms acquisition is attended whether you use the expression usually or sometimes or often or rarely, but your major premise is that there is this element of corruption and fraud attended upon this process.

15 DR WOODS: It is not my major premise, but it is an argument that represented together with a number of other arguments, and I think the other arguments were far more major than that particular one, but I thought the reflection of the industry does give us some background, and where in my sighting allegations of corruption or where am I giving evidence of vulnerabilities and the processes,
20 where [indistinct] correlate to what has characterised the Arms Industry, then I say just observe that amongst other things.

So I cannot agree that I should elevate my explanation of corruption in the Arms Deal as being something more than what I am.

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ADV MOERANE: So I understand you Dr Woods to be saying that because of all the factors that you mentioned and circumstances that appear from your bundle and your evidence, there was probably corruption in this process?

5 DR WOODS: You are correct. I state that quite clearly in writing on a number of occasions that by deduction from what I have put together here, would be that there was probably corruption in the South African SDP's.

ADV MOERANE: Alright. Let us refer to the particular people that I represent, and those are president Mbeki, minister Manuel, former minister Irwin, Lekota and Kasrils. You are not saying that any of those persons was involved in any
10 corruption?

DR WOODS: Of the names you mentioned I think I heard you correctly. They are not saying that, and in fact I have defended president Mbeki. I observed him for many years, and not that I am the ultimate judge of character, but Self enrichment has never been part of his make up as far as I could observe. That
15 would surprise me and I would say the exact same for ministers Manuel, Mr Irwin and for [indistinct].

ADV MOERANE: And Lekota?

DR WOODS: And Lekota. Sorry chair.

ADV MOERANE: I think as you fairly conceded, you are not presenting any
20 evidence of a smoking gun. You actually have no direct evidence of corruption.

DR WOODS: Ja. I know in legal language the direct has a specific meaning. I know what it means. Then you would be correct, even though I have tried to

suggest that where I refer to an investigation that has been done and has proven something, to me that is fairly direct.

It is less indirect. So I suppose there is that level of information where there are facts on the table which had been admitted to. For example that came
5 from some of those international investigations. Then there are the, what I call the substantive allegations where a number of which came from media investigation and hopefully I did not go beyond that.

CHAIRPERSON: I am sorry Adv Moerane, Just for my own understanding. If you can repeat the question where I do not understand the answer. The question was
10 is there any direct evidence that there [indistinct] corruption. There was a long answer which I did not quite understand. Can we just rephrase that question or put that question again so that the witness can answer it in the manner in which you can also understand it.

ADV MOERANE: The question was actually a suggestion which anticipated a
15 certain answer. The answer which I anticipated was that you were going to agree that you do not have any direct evidence of corruption in the Arms Procurement deal, You yourself.

DR WOODS: Ja. I do not blame you chair for being confused. It is partially my fault. As I indicated it is because or you could help me, whoever. If you could
20 just define for me what in this discussion direct evidence means. Then I could give you a yes or no answer.

ADV MOERANE: Direct evidence Dr Woods would mean evidence to which you are a witness. In other words evidence in respect of which you are able to give

direct evidence. Not hearsay evidence, something you have heard from somebody or something that you have read in the newspaper or other article.

DR WOODS: And it is direct evidence of corruption. Because a number of issues I have raised today, I have seen the documents that it informed, so that
5 would be direct evidence because I personally saw it. I personally saw the costing of the hawks. Personally have copies of that.

But it is direct evidence of corruption. Thank you for your explanation and my answer is no, I do not.

ADV MOERANE: Thank you. You referred to I think it was Annexure GDW3 I
10 think it was. On page 45. Ja. This is a letter which was signed by the then deputy president Jacob G Zuma leader of government business. You see the signature on page 56.

DR WOODS: Yes.

ADV MOERANE: Now this appears to have been a response to a letter which
15 you addressed to the president, dated 8 December 2000. You see this on page 45.

DR WOODS: Yes. Sorry. Is there a specific question or point?

ADV MOERANE: I am asking you to confirm that this was in response to a letter from you to the president dated 8 December 2000.

20 DR WOODS: I cannot speak for the deputy president. I do acknowledge that the letter begins with reference to my letter. If we look at the letter, which is rather a

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lengthy letter, it raises multiple issues which have nothing to do with that letter. So I would agree with you in as far as saying that part of this letter was in response to my letter to the president and it is the part that speaks to the Heath special investigations unit.

- 5 ADV MOERANE: Is it correct that to understand this letter in its proper context it would have been necessary for you to annex the letter that you wrote to the president?

DR WOODS: I agree. I apologise for the omission.

ADV MOERANE: Do you have a copy of that letter?

- 10 DR WOODS: I do and I believe I furnished the evidence leaders with such a copy, but because I did not reference it in my statement, obviously there was no need to include it in this bundle, but I do apologise for the omission.

ADV MOERANE: Do you perhaps know whether that letter is accessible right now?

- 15 ADV MPHAGA: Chair, we may have to adjourn to get the letter. We do not have it in our possession.

ADV MOERANE: Chair, I do not know how long it will take to obtain a copy of that letter. It might be important to ... [intervene]

CHAIRPERSON: adv Mphaga 5 or 10 Minutes

- 20 ADV MPHAGA: Maybe 15 minutes chair.

CHAIRPERSON: The matter will adjourn for 15 minutes, thank you.

(HEARING ADJOURNS)

(HEARING RESUMES)

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

DR WOODS: s.u.o.

5 CHAIRPERSON: Thank you.

ADV MPHAGA: Chair, we have looked at the document and marked it Annexure GDW3 A. It is just before you. Thank you chair.

ADV MOERANE: Thank you chairperson. Now in this document dated 8 December 2000, the main purpose of the letter appears to be a suggestion or a
10 proposal by you as the chairperson of [indistinct] that the Auditor General, the special investigations unit, the public protector, the investigative director for serious economic offences and other appropriate investigating bodies be invited to participate in a joint investigation. Is that correct?

DR WOODS: Yes.

15 ADV MOERANE: Now did you elaborate on the other appropriate investigative bodies?

DR WOODS: No, I did not. When we through you chair, when we wrote the 14th report that was approved by [indistinct] and then endorsed by the national assembly, we prior to writing that we got legal opinions on the various
20 investigating agencies and the four that I mention by name here, are the ones whose legal mandates when we put them together, we felt produced a

comprehensive enquiry into the Arms Deal in as far as we understood the construction of the Arms Deal at the time.

So we found all four to be necessary, but we were advised that there could be possibilities that maybe the SAP would need to be involved or I cannot
5 remember what other bodies were around at the time, and I think it was before the Scorpions was part of the NDPP. Ja, rather than let me guess I am a bit forgetful on what our thinking was on the other part.

ADV MOERANE: Was there any idea that some international body or bodies might also be involved?

10 DR WOODS: Not in terms of the 14th report and not in terms of this letter, but there was an instance where I was approached by some UK organisation which [indistinct] that offered their services, and I mentioned this to the committee and that is as far as it ever went. We did not deem it necessary to take up the invitation or even to discuss the matter further with their representative.

15 ADV MOERANE: Do you know whether that idea or proposal to involve this UK outfit reached the executive?

DR WOODS: I do not know for a fact, but I imagine it would, because there was some statements made where I had to say that no, you know. Somebody approached me and I just done my duty by informing the committee. I have made
20 no move and I had no intention, and after I saw the anxiety and you know of some parties, I knew that this was not going to be pursued. So it died at birth.

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ADV MOERANE: Now as far as the numerous press reports that have been attached to your submission or concern, you cannot vouch for the accuracy of the factual matter contained in there?

5 DR WOODS: The simple answer is no I cannot, even though I would say some of the findings from international investigations must hold some weight.

ADV MOERANE: Just one final question. Somewhere in your report you it is in paragraph 11, with reference to Annexure GDW6 and GDW6 is on pages 63 and 64. You mentioned the fairly two connected individuals who received discounted motor vehicles in South Africa.

10 You see that?

DR WOODS: Yes chair, but I did point out that certain of them, the vehicles went to a [indistinct] who was the representative of [indistinct] in South Africa at the time. So while I might suspect that those vehicles he distributed elsewhere I cannot be sure of that. I cannot vouch for all 32, but I would agree that more than
15 [indistinct] connected individuals.

ADV MOERANE: Well, it is not a very important point, but it just relates to the accuracy with which you record your facts. In fact there are not 32 connected individuals here.

DR WOODS: Ja.

20 ADV MOERANE: I did not hear your reply?

DR WOODS: Well, I [indistinct] incorrectly. If I am wrong I am wrong. I do not know why the number 32, one should never apologise for what one says, but I think as other witnesses have said, we all have to think back 14 or 15 years and suddenly when you had to prepare to appear before the commission, you have to
5 scramble and somehow in this case 32 was the number that stuck. If I am wrong, I am wrong.

ADV MOERANE: And I see also in some of the discounts obtained here are as low as 3.28 percent and some 4.76 percent. That is not allowed, is it?

DR WOODS: Yes, not at all and that is part of the very point I made this morning
10 as to what was behind this deal.

ADV MOERANE: Chairperson, I have no further questions.

CHAIRPERSON: Thank you. Thank you. Can we adjourn until tomorrow morning and can we start at 09:30 tomorrow? Any objection to 09:30? Dr Woods, then come back tomorrow morning at well we will start at 09:30.

15 DR WOODS: Thank you.

CHAIRPERSON: We will now adjourn.

HEARING ADJOURNS TO 3 SEPTEMBER 2014

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