

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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HEARING ON 6 OCTOBER 2014

CHAIRPERSON: Good morning. Advocate Ramagaga (indistinct)

ADV RAMAGAGA: Good morning and thank you Chair. Firstly, I would like to apologise on behalf of the team (indistinct) to start at ten o'clock, because of circumstances outside our control. Firstly, I would like to place it on record that the witness, Mr Terry Crawford Browne is not legally represented and we held consultations up until yesterday, so there were still some outstanding parts of the statement that had to be sent to the team, yesterday night as well as in the early hours of this morning and copies had to be made. So it is not just out wilful (indistinct) that we were unable to start at ten o'clock and we would like to request the Commissioners to accept our apologies. Mr Terry Crawford Browne is present today and we are now ready to proceed, Chair. Thank you.

15 **TERRY CRAWFORD BROWNE** : (d.s.s.)

ADV RAMAGAGA: Commissioners, before we start let me just indicate to you that there are two volumes that are going to be relied upon for the purpose of the presentation of evidence. The first volume is made up ... is constituted of the witness' statement as well as the bundle of documents and the second volume is constituted of the bundle that contains the two books that were authored by the witness and those are the "Eye of the Money, on the Money" as well as the "Eye upon the (indistinct)" respectively. May I then proceed? Thank you.

ADV RAMAGAGA: Mr Crawford Browne, you reside at Sandown Crescent 105, Royal Ascot, Milnerton in Cape Town?

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MR CRAWFORD BROWNE: That is correct, yes.

ADV RAMAGAGA: You have made a written statement to the Commission and you are going to be relying on that statement for the purpose of presenting your evidence?

5 MR CRAWFORD BROWNE: That is correct, yes.

ADV RAMAGAGA: And the statement forms part of the bundle, that is bundle ... the first bundle and it is made up of 68 ... it is actually 71 pages which are marked pages 1 up to 68(c) of the paginated bundle.

MR CRAWFORD BROWNE: Yes.

10 ADV RAMAGAGA: Is that correct?

MR CRAWFORD BROWNE: Yes.

ADV RAMAGAGA: And I would like you to turn page 68(c) which is page 71 of your statement.

MR CRAWFORD BROWNE: Yes.

15 ADV RAMAGAGA: Have you found it?

MR CRAWFORD BROWNE: I have.

ADV RAMAGAGA: Now on the bottom left hand side, there is a signature that appears there just above the name Terry Crawford Browne. Do you recognise that signature and if you do, whose signature is it?
20

MR CRAWFORD BROWNE: That is my signature and I signed it this morning.

ADV RAMAGAGA: And on the bottom right hand side there is a signature that appears, just below the date, October the 6th 2014. Do you recognise that signature and whose signature is it?
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MR CRAWFORD BROWNE: Yes, that is my signature I made this morning.

ADV RAMAGAGA: Now do you confirm that you are the person that drew the statement and you signed the statement, while satisfied that the contents is a fair reflection of what you want to assist the Commission with?

MR CRAWFORD BROWNE: I do.

ADV RAMAGAGA: Right, thank you. Now I would like you then to go to page 2 of the statement and take the Commission through your statement. Now may I just indicate to the Commissioners that the witness has indicated that he would prefer to read the statement verbatim from the first paragraph to the end and we have indicated that here and there, there will be some interventions to seek clarity or to ask him to elaborate on those portions.

Now Mr Crawford Browne, you may then proceed to take the Commission through.

MR CRAWFORD BROWNE: Thank you. Mr Chairman, Mr Commissioners, my testimony here followed the terms of reference of the Commission in its order and format, so hence I believe it is appropriate to open with:

“The Commission’s six terms of reference that were established in October 2011, by the Minister of Justice, Mr Jeff Radebe as:

1. The rationale for the Strategic Defence Procurement Packages.
2. Whether the arms and equipment acquired in terms of the Strategic Defence Procurement Packages are underutilised or not

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utilised at all.

3. Whether job opportunities anticipated to flow from the Strategic Defence Procurement Packages, have materialised at all and, if they have, the extent to which they have materialised and if they have not, the steps that ought to be taken to realise them.

4. Whether the off-sets anticipated to flow from the SDPP have materialised at all and, if they have, the extent to which they have materialised and if they have not, the steps that ought to be taken to realise them.

5. Whether any person or persons within and or outside the Government of South Africa improperly influenced the award or conclusion of any of the contracts awarded and concluded in the SDPP procurement process and if so, whether legal proceedings should be instituted against such persons and the nature of such legal proceedings and, whether in particular, if there is any basis to pursue such persons for the recovery of any losses the State may have suffered as a result of their conduct.

6. Whether any contract concluded pursuant to the SDPP procurement process is tainted by any fraud or corruption capable of proof, such as to justify its cancellation and the ramifications of such cancellation.”

So I have followed that format but, I think before doing so, it is appropriate to give the Commissioners some background of my own position.

“Biographical data: my professional career was that of an

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international banking specialist my position at Nedbank in Cape Town until 1986 being the Regional Treasury Manager.”

CHAIRPERSON: Mr Browne, if you do not mind, (indistinct) that paragraph. Can you tell us what your qualifications are?

5 MR CRAWFORD BROWNE: I have a University degree, but I did not complete my Master’s degree. I have had subsequent tertiary education, but I did not complete my Master’s degree.

CHAIRPERSON: What career do you have (indistinct)

MR CRAWFORD BROWNE: An inter disciplinary degree from the
10 University of Minnesota in the United States in (indistinct) which include the economics of (indistinct) and science and international law on related subjects. I then (indistinct) a Master’s degree at the University of Witwatersrand that is why I came to South Africa in 1967. Instead of completing it, I got married. Thank you, sir.

15 “Although born in Ireland I grew up in Libya until the age of 17, when I went to the United States to attend university. I came to South Africa as a student in 1967 at the age of 24 to study the apartheid system, but then I had no intention of staying here. Instead I married a South African. My wife, Lavinia in due course became private secretary
20 and personal assistant for 22 years to Archbishop Desmond Tutu, during the years 1986 until 2008. In my private capacity, I became involved in 1983 as Alternate Church Warden at St Georges Cathedral in Cape Town, where I also chaired the Justice and Peace Committee and promoted the work of the End Conscription Campaign. I had
25 become aware that South Africa was fast moving towards civil war, a

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prospect that might both have killed millions of people and would have devastated South Africa's economic infrastructure.

As a result I was appointed by the late Archbishop Phillip Russell as one of four Anglican Church representatives to the Western Province
5 Council of Churches. The WPCC in turn related to the South African Council of Churches in Johannesburg and, in turn, the SACC to the World Council of Churches in Geneva.

Nedbank had fronted for its Rhodesian subsidiary Rhobank in assisting UDI Rhodesia to bypass and flout international sanctions, after
10 Rhodesia's unilateral declaration of independence in 1965. In so doing Nedbank became expert in sanctions-busting and was therefore the apartheid government's preferred financial institution to facilitate sanctions- busting operations.

Some of my colleagues and I warned our superiors that such
15 operations were fraudulent and in contravention of International Law, but such warnings were disregarded. I had become increasingly concerned about my own personal complicity in such transactions. Again warnings of pending financial crises were disregarded; the arrogant response of General Management being that unlike Argentina,
20 Brazil or Mexico, South Africa was not a "banana republic". Moreover South Africa had gold and then supposedly could therefore defy the world.

The debt, the 1985 debt standstill followed after President PW Botha's "Rubicon Speech" on the 15th of August 1985. Perchance I had
25 a transaction for DM 120 million (which was just under US\$60),

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scheduled for the last business day of August 1985. I had been instructed three months earlier to pay the dollar proceeds to Barclays Bank in New York for the account of Safmarine. Instead of transferring the funds to Barclays Bank, Bankers Trust which was Nedbank's
5 primary New York correspondent bank, seized our US\$60 million to set off against US\$200 million dollars in loans that Bankers Trust had outstanding in South Africa.

Six weeks later in October 1985 the South African Council of Churches sent me to Geneva, London, New York and Washington DC to
10 launch the international banking sanctions campaign against the apartheid system. I agreed to do so as a last nonviolent initiative to avoid a civil war in South Africa. To my own amazement I was not arrested or detained on my return to South Africa or subsequently.

Nedbank itself went bankrupt in June 1986 as one of the
15 ramifications that of the debt standstill and had to be entirely recapitalised by Old Mutual. I resigned with effect from 13th of August 1986 and then focussed on the banking sanctions campaign under the direction of Dr Allan Boesak, the late Dr Beyers Naude and Archbishop Desmond Tutu.

20 The effectiveness of the banking sanctions campaign was increasingly acknowledged internationally by late 1989. Both the United Nations and the US Bush (senior) Administration set 1990 as the deadline to abolish apartheid. The military "securocrats" had no comprehension that banking sanctions were far more effective and
25 dangerous than the ANC's armed struggle. All the military equipment

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including nuclear weapons acquired at an estimated cost of R175 million in 1994 values, proved utterly useless in defending the apartheid system.

The campaign became the background to President FW de Klerk's announcement on the 2nd of February 1990 to release Mr Nelson Mandela and to begin constitutional negotiations. Mr de Klerk has subsequently conceded that the pressures of the American financial system motivated that decision. Without access to the New York interbank payment system, South Africa would also have been unable to trade with third countries, such as Germany and Japan.

Just months after South Africa's democratic transition in 1994, Armscor was caught red handed selling AK-47's and other armaments to Croatia which was then in the process of succession from Yugoslavia. The resulting scandal prompted President Mandela to appoint the Cameron Commission of Inquiry into Armscor. In turn I was appointed by Archbishop Tutu to represent the Anglican Church at the Commission.

The Parliamentary defence review was established during 1996 to 1998 to consider South Africa's defence needs in the light of the transition from apartheid which had also coincided with the end of the Cold War. Involvement of civil society organisations in a Defence Review was internationally unique and I was appointed by Archbishop Njongonkulu Ndungane to represent the Anglican Church.

The 1996 Defence White Paper is premised on the realisation that poverty eradication is South Africa's primary security issue and that

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fortunately there was no conceivable foreign military threat to South Africa. Regrettably, however, European politicians flocked to South Africa after 1994 to pay tribute to Mr Mandela and our new constitutional democracy with one hand, but to peddle weapons with the other. The European armaments industry especially the British, was teetering on bankruptcy at the end of the Cold War and South Africa was seen as a new market until new crises could be engineered in the Middle East to replace the so called communist threat.

In particular Armscor lobbied that weapons purchases were a means towards economic stimulation through countertrade, which subsequently became referred to as “off-sets”. Given my experience at Nedbank, I was very aware of the corruption internationally associated with countertrade or off-sets and so spoke out vigorously against the malpractice, both at the Defence Review and in the media.

During 1999 I was approached by ANC intelligence operatives led by the Late Bheki Jacobs on behalf of ANC MP’s. They informed me that the arms deal was merely the tip of an iceberg of an interlocking conspiracy led by the Minister of Defence, Joe Modise, and the leadership of Umkonto-we-Sizwe. They alleged that arms deals, oil deals, toll roads, driver’s licences, Coega Harbour Development, Cell C, diamond and drug smuggling, weapons were trafficking and money laundering were all inter-related. The common denominator they declared was kickbacks to the ANC averaging 10% in return for political protection.

ADV RAMAGAGA: Now on this paragraph where you are talking about

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The information that you received from Bheki Jacobs and some other intelligence operatives, were you furnished with any evidence? Whether in the form of documents or in the form of details, relating to these allegations?

- 5 MR CRAWFORD BROWNE: What had happened was that during the Defence Review the civil society organisations had banded together as the coalition for (indistinct) the Parliamentary office (indistinct) and others and the MP's had to provide some administrative support to that and they had an intern from Columbia University who was actually
- 10 working with them and allocating some time as intern and allocating some time for the coalition for defence alternatives, they phoned her and said ... (indistinct) discussing various alternatives and at one of those meetings in fact ... (indistinct) Patricia de Lille (indistinct) was and so we needed to circulate papers within the CDA and so the operatives
- 15 called and they asked the intern, (indistinct) they wanted copies of the papers, so she phoned me in a panic and asked if we could, if we could hand them the papers and I said go ahead. They are in the public domain, they have it. So they phoned me about three days later and asked for a meeting in Cape Town, at the St George's Mall, and said
- 20 they are very interesting papers, but we will tell you what the real float is, the real corruption is not just in the off-sets around the arms deal, it is the leadership in Umkonto-we-Sizwe. Now there was a sufficient strand of what they said, that rang true and I was very alarmed at that stage, because both they were destabilising the country and something had to
- 25 be done about it, or alternatively if what they said was true, we also had

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a problem and something had to be done about it. So either way it could not be left untouched, (indistinct) so that is when I then briefed Archbishop Ndungane. Thank you, sir. What I would I like to [intervenes]

5 CHAIRPERSON: Just hold on. Just hold on.

ADV RAMAGAGA: Alright. Thank you, Sir. What I would like ...[intervene]

CHAIRPERSON: Just hold on. Just hold on. Advocate Ramagaga, I told you that your question was, was there any documents that were
10 given to Mr Crawford-Browne? That there is what he calls ANC operatives from the ANC intelligence offices. Were there any documents that were given to you?

ADV RAMAGAGA: That, that is correct, Chair. Those are the questions that, that I have asked and I just wanted to follow up from the
15 response that I have received.

CHAIRPERSON: Yes. Well, I am just raising this, because I realise that, you know, there was a very long explanation, but I could not find, I could not understand what the answer was, because I thought it was a simple question. This Bheki Jacobs and how is [indistinct] as they say.
20 Do you think they read the document?

MR CRAWFORD-BROWNE: Thank you, Sir. Let me clarify that one. No, they did not. They had asked for our documents and it was simply compensation. There were no documents exchanged, at that time, and for several months afterwards.

25 ADV RAMAGAGA: Alright. The, the question that I have asked you,

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you have answered part of the question. Just as a follow up and for clarification, I have also asked, as to whether you were furnished with any detail, not necessarily in the form of documents, but details that could sustain these allegations, relating to this alleged criminality.

5 MR CRAWFORD-BROWNE: Not at that stage, not for several months. As I say, Archbishop Ndungane, in August 1999, first called for a judicial commission of enquiry and the emphasis in that, in that statement was focussed on the offsets. That was dismissed and so, they then, the operatives then took some of the documents that the CDA had furnished
10 some months earlier and fashioned them into the so-called memorandum to Patricia De Lille, with horrendous spelling mistakes and grammatical errors and so forth.

ADV RAMAGAGA: Thanks you then, you may then proceed to the next paragraph, Sir.

15 MR CRAWFORD-BROWNE: Thank you. As I say, Archbishop Ndungane had called for the independent judicial commission of enquiry; particular focus to be given to the offsets and Mr, President Mbeki dismissed the call, as did President Motlanthe in 2008 when he came to office and then President Zuma in 2009.

20 ADV RAMAGAGA: Alright. Now, is, is ... [intervene]

COMMISSIONER MUSI: Can I, can I get a quick understanding, before we proceed further? He says that the operative then, compiled a dossier. Is that what became known as the De Lille dossier?

MR CRAWFORD-BROWNE: That is correct. It was early in
25 September 1999, they had sighted some of the documents the CDA had

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given them, that, and for some days, I thought that I had been conned. About three days later, they then furnished us with, with documents that allowed us even more. At that point, Patricia De Lille and I decided to forward them to Judge Willem Heath. We decided we are not capable
5 of making a judgment call on such documents. But, that was later on.

COMMISSIONER MUSI: Thank you.

ADV RAMAGAGA: Alright. Thank you, Commissioner Musi. Mr Crawford-Browne, on, on this paragraph, I just need some clarity and maybe some more information, relating to this particular paragraph.
10 You say, alarmed by the information, you briefed Archbishop Ndungane. Now, what I would like to know, or what the Commission would like to know, is whether, at the time, when you briefed Archbishop Ndungane, you already had received information be it, in the form of documents, or some detailed information from these operatives.

15 MR CRAWFORD-BROWNE: No. Up until that point, it was all verbal. No, no documents came to us, from them, until later, until after, after the memorandum to Patricia De Lille and then, they furnished documents after that.

ADV RAMAGAGA: So, would it be correct to understand your
20 evidence to mean that, at the time, when Archbishop Ndungane requested for, or called for an independent commission of enquiry, he had not, as yet, received any detailed information, either from you or from the operatives?

MR CRAWFORD-BROWNE: He had not received any information
25 from the operatives. But, I had, as I have recounted, the notes

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representing the church at the defence review, since 1996. So, I had kept him posted then, as to the various discussions and including, in particular that the idea of offsets was, was alarming. So, I had spoken out, both at the defence review and in the media, that offsets were a
5 recipe for, for corruption and malpractices and that is how, that is why I think, the operatives then came to me. Because they were saying you are talking about corruption, we will tell you where the real corruption is.

ADV RAMAGAGA: Alright. Still on, on that paragraph, when you participated in the public hearings, during the defence review, the
10 position that you presented, at the hearings, was the position of the church. Now, it is correct that, in your representations, the approach that was actually advocated by the church was that there should be no armaments, at the time. Is it correct? They should be eradicated.

MR CRAWFORD-BROWNE: The church leadership, as with the
15 defence white paper of 1996, emphasized that eradication of, of poverty was the, South Africa's priority and that the foundation toward that would be huge investment in education, health, job creation, housing and so forth. So, the church leadership, the bishops of the Anglican Church and other churches had spoken out quite forcibly, saying that
20 they were opposed to, to the acquisitions, as was now being discussed in public. So, they were quite forceful in, in their condemnation of it.

ADV RAMAGAGA: Now, then, then you say, still in this paragraph, that the request for an independent commission, was actually motivated by reservations, around the offset proposals. Now, are you able to say,
25 as to whether, when the request was also presented to President

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Motlanthe, whether it was still more about offsets than anything else and whether, when the request was also presented to President Zuma in 2009, whether it was also based on, the basis of the request was still the offset programmes?

5 MR CRAWFORD-BROWNE: The, the request to President Motlanthe in December 2008 was somewhat different. The Scorpions, at the end of November 2008, had raided BAE's premises, both here in Pretoria and in the Western Cape and they had seized a huge, huge amount of evidence. So, a week later, I prevailed upon Archbishop Tutu and
10 Advocate Paul Hoffman prevailed upon President De Klerk, to jointly appeal to President Motlanthe, who had just come into office, a few months earlier, to appoint a commission of enquiry. He then, dismissed our appeal and there were a few other people, who added their names to the list, notably the late Helen Suzman and Dr Mamphela Ramphele
15 and a few others. President Motlanthe, essentially told us to take our information to the police and we got no, nowhere with that. So, when President Zuma came to, came to office in June 2009, we again, asked for a commission of enquiry and the response, in July 2009, was there was no case to answer.

20 ADV RAMAGAGA: Alright. Thank you. You may then proceed to the next paragraph.

MR CRAWFORD-BROWNE: JA. The next paragraph, very briefly is that these issues had risen, there were other meetings with Mr Jacobs, with, the next month and that, in addendum 7, which is, is outside the
25 framework of the terms of reference and I will come to back, at the end,

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if I may. But, we have, we continued to have meetings with Mr Jacobs. Then, more personally, to wrap up my own biographical data ... [intervene]

ADV RAMAGAGA: Just, just, yes. Now, I, I notice from this
5 paragraph, that you, oh, thank you. You, you describe the arms acquisition, because this Commission, it is about that arms acquisition, as the Arms deal scandal, can you just explain as to why it is characterised as the scandal?

MR CRAWFORD-BROWNE: Well, it is an issue it is an issue that has
10 continued to dominate, the political discourse, in the media, for a 15 year period. There had been huge exposés, media and certainly the controversy, commissions of enquiry, I, you know, I have been involved in following this all through and every, every week would seem, the issue hits, hits the newspapers, yet again, as we saw for instance, in the
15 Sunday Times, yesterday and the previous Sunday. So, it continues over a 15 year period, despite efforts to, to suppress it.

ADV RAMAGAGA: So, it is characterised as a scandal, because it continues to be in the media, for the past 15 years.

MR CRAWFORD-BROWNE: Yes. It is a, it is a controversy that will
20 not go away, until it is dealt with.

ADV RAMAGAGA: Okay. Alright. You may proceed to the next paragraph then.

MR CRAWFORD-BROWNE: Thank you.

*“More recently, in, I have spent two assignments, as a peace
25 monitor, in 2009 and 2010, at the Israeli check points, in Palestine, for*

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the World Council of Churches Ecumenical Accompaniment Programme for Palestine Israel, which is known as EAPPI. As a result, I became involved in the Russell Tribunal on Palestine, which, during 2010 and 2013, held sessions in Barcelona, London, Cape Town, New York and

5 *Brussels.*

I was the secretary of the Cape Town local organising community, when the Russell Tribunal met in Cape Town in November 2011, to consider whether Israeli government behaviour towards Palestinians meets the legal criteria of Apartheid, as a crime against humanity. The Russell

10 *Tribunal has just held another special session in Brussels on the 24th and 25th of September 2014, to consider the recent Israeli war crimes in Gaza.”*

And I attended that conference.

“As one of the local conveners, for the War Registers’ International

15 conference, when it met recently, at the Cape Town City hall, during the 4th to the 8th of July 2014, War Registers’ International had provided the international support of the end conscription campaign, during the 1980’s.

I am the author of two books, Eye on the Money, published in 2007 and

20 Eye on the Diamonds, published in 2012. The title of Eye on the Diamonds is derived from the fact that BAE laundered bribers for the Arms deal, via a front company in the British Virgin Islands, called Red Diamond Trading Company to black diamonds, such as, so-called black diamonds, such as Fana Hlongwane.

25 ADV RAMAGAGA: Alright. Will, will you just ... [intervene]

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CHAIRPERSON: I am, I am sorry, Advocate Ramagaga. Just for my own understanding, I just want to, Mr Crawford-Browne to explain to us, what he means by a black diamond? What is a black diamond?

MR CRAWFORD-BROWNE: The generally accepted, I mean, these
5 are so-called black diamonds, someone who has, has suddenly become very wealthy for politically motivated reasons. Ja.

CHAIRPERSON: Does that refer either to a white person, who has suddenly become rich, or it only refers to black people, who suddenly become rich?

10 MR CRAWFORD-BROWNE: It is talking about, I regret, to refer to black people, who have suddenly become rich, who were under circumstances of the past, fairly impoverished and suddenly became very wealthy with, with the political transition. It is not unique to South Africa. I mean, South Africa's whole history is of white diamonds, such
15 as Cecil Rhodes, who suddenly became very, very rich. So, it is, there were white diamonds in the past and black diamond's today.

ADV RAMAGAGA: Alright. Then, I will, I will, the, the books form part of the bundle and I think, the appropriate place to deal with the contents, will be at the time, when we deal with the books. So, in the
20 circumstances, I would like to invite you then, to proceed to page 9 and the rest that deal with rationale. You may proceed, Sir.

MR CRAWFORD-BROWNE: Thank you. Okay. The rationale?

ADV RAMAGAGA: Yes.

MR CRAWFORD-BROWNE: Would you like me to include the
25 paragraph numbers, as I go along, or ... [intervene]

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ADV RAMAGAGA: No. You do not need to.

MR CRAWFORD-BROWNE: I do not need to.

ADV RAMAGAGA: Okay.

MR CRAWFORD-BROWNE: Yes. Thanks.

5 *“So, I submit that the rationale for the arms acquisitions was illegal, unconstitutional and fraudulent, right from inception. Given my expertise gained, as an international banker with Nedbank, I make the submission that the arms deal was also fraudulent.”*

ADV RAMAGAGA: Alright. Will you kindly inform the Commission, as
10 to, what is the basis of this statement that the acquisition was illegal, unconstitutional and fraudulent, right from the inception?

MR CRAWFORD-BROWNE: I base the, the proposition on Section
217 (1) of the Constitution, which sets out that government procurements must be conducted, in accordance with the system, that is
15 fair, equitable, transparent, competitive and cost effective. So, it, it follows from that.

ADV RAMAGAGA: Alright. I think your basis is developed further, later in, in your statement and for now; we leave it as it is and then, you will deal with it, more in detail, when we reach that point. Will you then,
20 proceed to the next paragraph, 1.2 and the rest?

MR CRAWFORD-BROWNE: Thank you.

*“Contrary to assertions by admirals, generals and officials in the earlier round of hearings, the real rationale for the arms deal, was not the need, in the post-Apartheid era, to replace obsolete warships and
25 warplanes.”*

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ADV RAMAGAGA: Now, here, you are touching on evidence that has been presented, about the reason why the acquisition was, was done. In your statement, then you say the need was not the real reason for the acquisition. Now, bearing in mind, the evidence that was presented by
5 the admirals and the generals, about the arms acquisition and steps that were taken, preceding the acquisition that the defence white paper, that defence review and there was also reference to even the defence white paper of 1984, where from, as far back as then, a need for the acquisition of armaments, especially for use in the Navy and the Air
10 Force area, was reiterated. Now, bearing that in mind, can you just explain to the Commission as to, what is the basis of your statement that the rationale was not the need for the acquisition, in order to replace the obsolete warships and warplanes, but it was something else? And, and, maybe even, state further, as to what was the
15 motivation then, if that was not the motivation.

MR CRAWFORD-BROWNE: You see, the emphasis, during the Apartheid era had, had been primarily on the Army and vast amounts of money had been squandered on that, together with also, the nuclear weapons. So, South Africa was hugely over-armed, relative, to our
20 neighbouring countries, particularly, in, in respect of the Army. The Air Force equipment had, had become increasingly obsolescent, as had the Navy equipment. But, as was conceded, during, during the defence white paper, there was no conceivable foreign threat to South Africa. We were not under threat from the Soviet Union or Russia or China or
25 the United States. The threat was internal and it was a question of

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poverty. That was the emphasis of the defence white paper.

ADV RAMAGAGA: Now, still on this point, when, when one looks at the defence review, as well as the white paper, there is, as you rightly point out that the main concern was about the socio-economic issues.

5 However, that document, the defence review, goes on also, to talk about the need for the protection of the sovereignty of the country. It goes upon, to elaborate on different categories, as to what the role, what type of role should be played by the SANDF within the region, on the international stage, as well as, what the armaments can be used, even
10 for local benefit. Now, bearing that in mind and this history that is there, in evidence, as to, since when there, it was established that the armaments have become obsolete. What is the basis, then, of saying that the purchase was not motivated by the need? Maybe, the correct question to ask now, is what, in your view, motivated the need for the
15 acquisition, other than the need to replace the obsolete armament?

MR CRAWFORD-BROWNE: Even before the transition, the Navy was interested in acquiring new vessels and they were called Corvettes, at that stage. It may be recalled that, in 1994, already, there was a proposal to buy four Corvettes, at a cost of R1.7 billion and there was
20 competition between Spain, Britain, Germany, France and Denmark. The decision was almost made by, for Spanish Corvettes at a cost of R1.7 billion and Spain was going to provide, as I recall R4.8 billion in offsets, which was to be split between increased imports into South African coal and increased imports of South African fish. They were
25 going to provide 30 trawlers and build two huge fish factories on the

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Cape Point, coast that would create 23 000 jobs. There was huge public uproar about this, marches to Parliament and so forth, people saying they want houses. This is our priority, we want houses. I was able to send some of their proposals, regarding the fish factories and the fishing suggestions and the offset proposals and it was still called counter trade, at that stage, to the managing director of one of my former clients at Nedbank. His response was that there is just not enough hake in South African waters to cope with this huge demand from Spain for South African fish. It will destroy what is, what remains of the South African industry, which then employed about 85 000 people. So, in return for creating supposedly 23 000, we were going to destroy an industry that employed 65 000, 85 000 people. So, the Spanish Corvette proposals were abandoned in June 1995. In a meeting I had, with Mr Modise, he, he conceded that, yes, that analysis had been correct and that they would, they would not make the mistake, next time around, I think, that was early 1996. Suddenly, we are going from four Corvettes, at a cost of R1.7 billion, into four frigates, which were very, very, considerably larger. A Corvettes runs from about 500 tons to 2 000 tons. So, now we are going frigates of 3 400 tons, plus submarines, plus fighter aircraft, plus, at that time, tanks. It became, it was covered, in due, in the defence review, as, in terms of various core fourth options. As I recall, core fourth option number one, estimated the cost would be about R6.9 billion. So, we had gone from R1.7 billion to R6.9 billion. Then, there is, other things got added and before we knew it got up to R30 billion.

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ADV RAMAGAGA: Mr Crawford-Browne, what, what I am trying to get from you, that will assist the Commission is ... [intervene]

CHAIRPERSON: I am sorry, Advocate Ramagaga, can you talk, can you go closer to the machine. We are struggling to hear you.

5 ADV RAMAGAGA: Alright. Thank you, Chair. Mr Crawford-Browne, what, what I would like you to assist the Commission with, it is, what in your view, was the real rationale for the arms deal? Because in this paragraph, what you are stating is that the acquisition, the arms acquisition, the rationale was not the need for the replacement. Now, in
10 the positive way, what do you say the rationale was? Because this statement just says, this was not the rationale. So, what was the rationale?

MR CRAWFORD-BROWNE: Okay. If, if the rationale for buying four Spanish Corvettes in 1994, had been, we will spend R1.7 billion to get
15 R4.8 billion in counter trade, which became offsets, the rationale evolved that we would spend R30 billion to get a R110 billion back in offsets and that would create 65 000 jobs. So, again, it was the offsets that drove the acquisition process, rather than the actual need for equipment. The more we spend, the more we would get back in offsets.

20 ADV RAMAGAGA: I will invite you to proceed with the next, next paragraph, because I think, you deal more in detail with the offsets in the ... [intervene]

MR CRAWFORD-BROWNE: Yes ... [intervene]

ADV RAMAGAGA: Later, in your statement.

25 MR CRAWFORD-BROWNE: Thank you. It says:

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“In contrary to the assertions of the generals and admirals, instead and in substantiation of my contention, the Commission’s senior evidence leader Advocate Tony Aboobaker, in his opening address on the 20th of January 2014, quoted as follows from the former Minister of

5 *Defence, the late Joe Modise’s budget speech to Parliament on the 9th of March 1999:*

In return for our expenditure, our economy will benefit, by an estimated R110 billion of new investment and industrial participation programmes and the creation of approximately 65 000 jobs. The sceptics have

10 *suggested that this is wishful thinking. The following breakdown has been very carefully calculated with the Department of Trade and Industry. Of the R110 billion, over R26 billion is made up of direct investment into the project. R25 billion is estimated revenue from local sales, stemming from the business projects that will be established and*

15 *R59 billion will be derived from export sales.*

Advocate Aboobaker continued:

On the basis of Mr Modise’s address to Parliament, the expectation raised, was that the economy would benefit by a R110 billion of new investment and industrial participation programmes and that 65 000 jobs

20 *would be created. What was actually delivered, by the SDPP in terms of said offsets and jobs, has therefore to be tested against this benchmark.”*

ADV RAMAGAGA: Now, this paragraph 1.3 of your statement is actually dedicated to a quotation of Advocate Aboobaker’s opening, as

25 part of the opening address. That is what it is. Alright. Thank you. You

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may proceed to the next paragraph.

MR CRAWFORD-BROWNE: Thank you.

"I repeat that final sentence: What was actually delivered in terms of offsets and jobs has therefore, to be tested against this benchmark.

5 *Predictably, the offsets did not materialise, as the Department of Trade and Industry now concedes. The whole process, I submit, was fraudulent and so, everything else, including the bribes, is simply mere commentary to, to illustrate the point."*

But the offsets were, I would, would suggest to the Commission, was a
10 fraudulent process, as well as being unconstitutional.

"In my written submission."

ADV RAMAGAGA: Okay. Just before you, you proceed to the next paragraph, on paragraph 4, you say, in conclusion:

15 *"The whole process was fraudulent. Everything else, including bribes is mere commentary."*

Now, I would like to draw the attention of the Commission to this statement that says the whole process was fraudulent. Will you please explain, as to what is the basis of that statement?

MR CRAWFORD-BROWNE: The idea that if you spend R30 billion,
20 you get a R110 billion back and it would create 65 000 jobs. Offsets are internationally notorious, as a scam, promoted by the international armaments industry, towards what in its proliferation and the history of offsets is that they do not materialise.

MR CHOWE: Mr Chairperson, before Advocate Ramagaga could
25 continue with the leading of the evidence of Mr Crawford-Browne, I just

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want, I hear Mr Crawford-Browne saying that the DTI has conceded that, actually the NIP did not materialise. I do not remember such a statement, made by the DTI that the DIP's or the NIP's did not, there was never such a concession.

5 CHAIRPERSON: Thank you, Mr Chowe, can you reserve that question for your cross-examination? You will have a chance to cross-examination if you, if you so wish. Just make a note of it; maybe you can raise it with Mr Crawford-Browne about the legislature.

MR CHOWE: Thank you, Mr Chair.

10 CHAIRPERSON: Thank you.

ADV RAMAGAGA: Thank you, Chair. Yes. Mr Crawford-Browne, will you please respond to that that question of clarification?

MR CRAWFORD-BROWNE: Yes. It is a point that will be canvassed later. It will be traversed later with the, the DTI audit report that came
15 out earlier. It, it is here and that the, the offsets had failed the various requirements, even in the DTI and that we have not received the jobs. There is a, for, we might, at best, to have got 6 000 jobs. But, these are actually only an estimate.

ADV RAMAGAGA: So, what you are saying is that the submission
20 that the whole process was fraudulent will be addressed later, in detail, when you deal with the topic that relates to the offsets?

MR CRAWFORD-BROWNE: That is correct.

ADV RAMAGAGA: Alright. Now, will you then proceed to the next paragraph, Sir, paragraph 1.5?

25 MR CRAWFORD-BROWNE: Yes.

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"It is my written submission to the Commission made in June 2012, includes a 12 page legal opinion, regarding offsets, by Advocate Geoff Budlender, that I commissioned, immediately after the Commission's terms of reference were established in 2011. It was

5 *appended as EXHIBIT A. Advocate Budlender's opinion finds that offsets fail the requirement of Section 217 (1) of the Constitution, regarding government procurements. In his conclusions, Advocate Budlender declares:*

The procurement contracts, in the arms deal, were required by law, to

10 *be in accordance with a system, which is fair, equitable, transparent and competitive and cost effective.*

In the system, which was used in these contracts, offsets played a very material role. There is reason to doubt, whether such a system is in accordance with those requirements.

15 *If the contract were not in accordance with those requirements, they were unlawful and invalid. Whether such a contract would be satisfied by a court, depends on the fact of the case.*

If the contracts were marked by bribery, or other improper conduct, a participant, in the corrupt arrangement cannot receive or retain any of

20 *the amounts payable, under the contract.*

Given Advocate Budlender's legal opinion and his high standing and reputation in legal circles, I can contend that the arms procurements were illegal and unconstitutional, because they did not comply with the constitutional requirement of a system, which is fair, equitable,

25 *transparent, competitive and cost effective."*

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ADV RAMAGAGA: Now, I would like to invite you to pages one, 111 to 122 of the bundle, where Commissioners, you will find the opinion that the witness is relying upon for the argument in support of a challenge or an attack on the acquisition. Now that, that appears 111 to 122. Now, in, in particular, I would like to take you to page 112, paragraph 3, page 112, and paragraph 3. Now, the last sentence in that paragraph says:

“One of the key points of the focus of Mr Crawford-Browne’s complaints and also of the subject matter of the Commission of enquiry is the offset agreements, which formed part of the contracts.”

And paragraph 4 says:

“I have been asked to advice on the legality, legal validity of the arms deal, in the light of the provisions of Section 217 (1).”

Now, is, is it correct that in terms of the brief that you gave Advocate Budlender, the key issue that you are raising there, was the use of the offset agreements?

MR CRAWFORD-BROWNE: That is correct. I would submit that three of the six terms of reference of the Commission deal with offsets, the rationale, the jobs and the technology.

ADV RAMAGAGA: And the, the brief that you gave him, was to advice on the legality, on the legal validity of the arms procurement, in the light of the provisions, I will, I will to prefer to use the word procurement, rather than deal. But, here and there, I may slip and still use it, because I am reading. But, the arms procurement.

MR CRAWFORD-BROWNE: Procurement.

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ADV RAMAGAGA: Yes. Now, he says, he has been asked to advice on the legal validity of the arms procurement, in the light of the provisions of Section 217. That is actually the brief that you gave him.

MR CRAWFORD-BROWNE: That is correct. And my whole
5 submission is really focussed on Section 217 (1), regarding government procurements.

ADV RAMAGAGA: And in paragraph 5 of that opinion then, he is actually quoting on the Constitution about the requirements, that the system must be fair, equitable, transparent, competitive and cost
10 effective. Now, is there any basis, upon which you state that the acquisition process was neither fair, equitable, transparent, competitive, nor cost effective? And, and when you respond, I will, I would like you, to request that you deal with each of those elements separately.

MR CRAWFORD-BROWNE: I may. Thank you. The, focussing on
15 these five issues ...[intervene]

ADV RAMAGAGA: Switch on please.

MR CRAWFORD-BROWNE: Oh. Focussing on these five issues, I would suggest that all the arms deal contracts are invalid for want of compliance of Section 217 (1), in that one, the procurement contract
20 were not fairly concluded, because of the socio-economic needs of South Africans, which militated against vast expenditures on unnecessary armaments. The anti-1996 defence white paper, which preceded the acquisitions, had noted, there was no conceivable foreign military threat to South Africa and that even the heavy militarisation of
25 the previous Apartheid era, priority must be given, in the post-Apartheid

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and democratic era to poverty eradication. Secondly, the procurement contracts were not equitably concluded, because the tender procedures were manipulated to arrive at a pre-determined conclusion, by inter alia, adopting a visionary approach to reach their conclusion. In the visionary approach, applied of the BAE for instance, cost was excluded as a factor for consideration. Thirdly, the procurement contracts were not transparently concluded, in that lower tenders were ignored, in favour of back room bribery, unnecessary middlemen and irregular considerations, such as offsets in serving a determining role in the negotiations. Commercial confidentiality was unwarrantedly claimed, in respect of offset contracts and the Auditor General and Parliamentarians were prohibiting details of the offset contracts, on various excuses of commercial confidentiality. Some, annexed, some replies from armed forces, regarding their [indistinct] including advice, regarding the financial risks of the arms deal acquisitions were ignored. The South African Air Force, as early as July 1997, had informed the government that the BAE proposals were both unsuited to South Africa's requirements and were too expensive. The Secretary for the Defence, resigned in 1998, rather than be forced to take account and responsibility for what he perceived, as corrupt and unwarranted preference, given to BAE.

ADV RAMAGAGA: Sir, it would be quite helpful if you were to deal with each of the elements. Like, if you deal with the element of fairness, say it was unfair, because of the following. Then, you proceed to the next element and, and that transitional sequence, at least, should be

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made, so that, at the end, the Commission knows, as to what is the basis of your assertion. What facts are you relying upon, to, to assert that the procurement was not fair. It was not equitable, it was not transparent, it was not competitive and it was not cost effective. If we
5 are to do it like that, at least, it will be neat, even for the purpose of the Commissioners, to understand, as to what it was.

MR CRAWFORD-BROWNE: Sure.

ADV RAMAGAGA: Alright.

MR CRAWFORD-BROWNE: Okay. These five elements of fair, as I
10 say, given the circumstances of the need for property eradication and huge amounts of it being expended, during the Apartheid era, it was not fair for the new government to expend such huge amounts on armaments, when they had so many other priorities. With regards, equitable, it is quite, in the light that there were all kinds of manipulated
15 conclusions that the warship contract would go to the Germans and the warplane contracts would go to the British and the Swedes. Allocations would be provided to Italians for, for helicopters. So, these were back, back room manipulations that really, did not take these, these constitutional requirements into consideration.

20 COMMISSIONER MUSI: Can, can I, can I interrupt you? My understanding of fairness, in terms of the provisions of the Constitution that have been quoted, relates to fairness, the fairness of the procedure, the acquisition process. Your testimony seems to suggest fairness of a different kind, unrelated to process.

25 MR CRAWFORD-BROWNE: Certainly, the emphasis of Advocate

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Budlender's opinion is whether the procurement process met the conditions of a system. And he finds in his opinion, it did not meet the criteria of a system, which was fair, equitable, transparent, competitive and cost effective. And so, in that system, one of the considerations
5 would be the requirements, for instance, of fairness in, in the circumstances we faced, while we such huge, such huge economic issues.

COMMISSIONER MUSI: My question is, my question relates to fairness, in relation to the process. What you are saying seems to
10 suggest that you say it was unfair, because preference should have been given to socio-economic needs. That relates to need and not, not process.

MR CRAWFORD-BROWNE: Except if you also, the, the emphasis of the defence white paper had been that the country faced no, no foreign
15 threat, but it did face the legacies of Apartheid and needed to be the priority. Those, those urgent socio-economic needs were discounted in favour of buying weapons. Consequently, as the affordability study would later have pointed out, it is quite an amount of expenditure. From those needs, in favour of buying armaments, for which there was no
20 need for the country, given the fact that there was no conceivable threat to the country. So, it was unfair, socio-economically, as well.

COMMISSIONER MUSI: What was unfair, in relation to the acquisition process?

MR CRAWFORD-BROWNE: I am sorry?

25 **COMMISSIONER MUSI:** What was unfair, in relation to the acquisition

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process?

MR CRAWFORD-BROWNE: Well, it is unfair that there were considerations to drive the whole acquisition on the basis of the idea that if you spend R30 billion, you get R110 billion back that is going to
5 create 65 000 jobs. It was covered over by the idea of the national security, where, when in fact, the real threat to national security was the domestic legacies of poverty that we have inherited from Apartheid era.

COMMISSIONER MUSI: I will, I will rather leave it there. Thank you.

CHAIRPERSON: Maybe just one question from you. Just for my own
10 understanding. I heard you talking about back room manipulations, as far as the revelation of the Navy's [indistinct] is concerned, if that is so, which equipment requirement falls under that particular, if all of them, can you just give us an example of, as far as each of the equipment is concerned?

15 MR CRAWFORD-BROWNE: Yes. I would suggest all of them, in different ways. The, the frigates had earlier, failed the tendering requirements for engine requirements, specifications and at one point, even the Armscor's legal department were suggesting that the Frigate Consortium should be excluded from consideration. It then,
20 subsequently transpired that the Combat Suite was an issue and also the gunnery was an issue. That is for the frigates. The submarines, we will come to later, that we spent R6 billion on submarines from the German Submarine Consortium, we would get an offset of R30 billion to a steel plant that was going to create 16 251 jobs. Of course, that steel
25 plant never materialised. As far as BAE is concerned, there is a huge

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amount of discussion in the, in the Commission about the idea of a non-costed option for the BAE contracts. As you recall, when, when former General Pierre Steyn was, was here, he was discussing that at some length. That is, that is one of those issue about unfair, as well and it comes in, in other areas. When, when there is a lack of transparency, when it is what is driving and why are we buying specifically warships from Germany, planes from Britain and Sweden and Italian helicopters, irrespective of the, of the technical specifications of that particular thing. For instance, the submarines of Germany came last in the military tendering criteria.

CHAIRPERSON: Mr Crawford-Browne, I am saying, the entire relation process, in the entire relation process, there was an agreement in the relation.

MR CRAWFORD-BROWNE: I have read that, that appears to be the case, yes.

CHAIRPERSON: Are you saying that is the case, or that appears to be the case? What is the reason?

MR CRAWFORD-BROWNE: I am coming, Sir, to the question of the Joint Investigating Team report, that followed the SCOPA enquiries in October 2000 and the JIT report was taken to Parliament in November 2001, with an executive summary that purportedly exonerated the government to many malpractices. I have furnished the Commission, in fact, with the draft of that JIT report, which finds that contrary to the public report that was going to be tabled in Parliament in November 2001, there was massive irregularity in the tendering process,

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processes. So, that that 741 page disc, I have now provided the Commission, for its own consideration, in comparison against the public document.

CHAIRPERSON: Mr Browne, can I go back to my question? My
5 question is simple, are you saying that relation of trusts, that relation of trust, reveals, could be [indistinct] was then manipulation. Yourself, was there any manipulation?

MR CRAWFORD-BROWNE: My answer, Sir, would be, yes.

CHAIRPERSON: Thank you. And I suppose, you know, those ones
10 that deal with this issue; again, we can deal with it again, at a later stage. Thank you.

ADV RAMAGAGA: Thank you, Chair. I would have preferred you, to deal with all the elements, before I bring them some information that is already part of the record. But, now, that there are questions, that have
15 been asked, I might as well, just stop here and start you know, bring to your attention, some evidence that has been presented, by some witnesses, in relation to the issue of fairness, in the context of how you characterise it. Because the fairness, you say it was not fair, because the socio-economic needs, were actually crowded out and preference
20 was then given to, to the acquisition and large sums of monies were spent on this acquisition. Now, on, on that point of fairness, in the context of your, your interpretation, I would like to bring it to your attention that Mr Andrew Donaldson has, has testified before this Commission. In his testimony, part of what he did, was to place the
25 fiscal, the national fiscal processing periods, where you would see the

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allocations that were made for the respective departments in respective projects, by the national government. What we became apparent from those tables is that huge sums of monies, not in terms of just monetary denominations, but even in terms of proportionate denominations were, 5 were actually allocated to the socio-economic groups, in particular and that was education, health and housing. I am not able to say, out of the top of my head, as to, in what order, they, they were getting, you know, that, that bulk. But, it is a fact that has been presented to this Commission, with supporting tables. Those tables also indicate as to 10 how much was being spent on the arms acquisition and also, broadly, on the department of defence, not only confined to the, to the arms acquisition. The SDPP's in particular. Now, in the light of this information, is there anything that you would like to say, or would you like to comment? And maybe, before you comment, it should also be 15 brought to your attention that Minister Manuel, as he then was, also confirmed the evidence of Mr Andrew Donaldson. So, this is the type of evidence that has come from the Department of Finance. Any comment?

MR CRAWFORD-BROWNE: Thank you. It is, it is well acknowledged 20 that there is there is a proportion of GDP South Africa actually spends a very high proportion on education and social welfare. The problem we faced, both in the old era and now, is that somehow, it does not down into results. So, most of it seems to wither away in bureaucracy, that which was, which was the specialty in the old era. I am creating 25 something levelled to bureaucracy, that it was a system intended to fail.

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So, our education system sad, that there is probably an amount of money that is spent on it, but it does not produce quality education. Sadly, consistently, South Africa falls at the bottom of international aids, for instance in assigning some ambassadorships. Likewise, in housing, with the collapse of the pass laws in 1986, we had a massive influx of, of people to the cities. So, we faced the, a huge housing crisis that was out of the, the response really to, to pent up demand, which the older era had, had to force people into the so-called homelands and then ultimately, yes, with the collapse of the pass laws, we have had this huge influx of people in the cities. That is another illustration. So, there is a land problem that needs to be addressed, which was not properly address, during the 1980's and 1970's.

ADV RAMAGAGA: Yes. I, I hear your explanation, but bearing in mind that, in your explanation of what you mean by fair, you say the poverty eradication was not given, or seems not to have been given priority, because the socio-economic needs were crowded out. Now, from what you have just explained now, I get the impression that you do accept and agree that, when it came to budget allocation, the socio economic cluster was given priority, in terms of the allocation, the budget allocation, is, is that correct? Let us just do it, just one, one by one. What, you know, one particular at the time, let us not, until there is a better understanding, by the Commission.

MR CRAWFORD-BROWNE: Yes. I, it is well acknowledged, there was a percentage of dealing in, we spend a high proportions and we do not receive the benefits that come out of it. One of the consequences it,

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of the last 20 years is that the government between rich and poor as measured by the GDP figures has in fact, got wider. South Africa now faces the worst GDP figures in the world, of the gulf between rich and poor.

5 **ADV RAMAGAGA:** And, and you will, you will also agree that the budget allocations, to an extent, is a reflection of the government policy, as to where it would like to spend money on. Let us, for a moment leave out, as to whether it filtered down, to what it was meant to be. But, let us talk about it at high level, that those budget allocations, at high level,
10 reflect actually, the policy of the government towards spending on specific clusters and, and projects. Will that be a fair understanding?

MR CRAWFORD-BROWNE: It is, that, that South Africa, in the newspapers, a high proportion of, of funding on social grounds and so forth and rightly so, given the legacies that we, we come from. But, as
15 the Minister of Finance and former Minister of Finance has repeatedly said, it is not sustainable to continue to do so, until we actually undergo the education system, so that we dramatically reduce the levels of unemployment. We have levels of unemployment that are variably measured as 25 per cent or 40 per cent. Hence, there is a massive
20 disparity between rich and poor. So, the church leadership and civil society, at the defence review, were putting now, emphasis on the desperate need to address poverty issues, given the fact that there was no conceivable foreign military threat to the country.

ADV RAMAGAGA: Just, just a final point on issue. It is, it is so that
25 the budget spending, or the budget spent will have nothing to do with

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the Commission and the Commission should not concerned yourself, itself with that. All it has to concern with, itself with is whether, actually, there was this responsible allocation, taking into considerations, the main concerns and so forth. But, as to whether it ended up, being used
5 for particular things or not, that is not the concern of this Commission.
Am I correct?

MR CRAWFORD-BROWNE: Yes. So, one of the issues of poverty that motivated the acquisitions were, were the job creation issues, and obviously, a very, very sensitive issue and with the idea that we get
10 65 000 jobs and as the affordability study points out, in fact, the consequences, the negative consequences, the consequences of the arms acquisitions would be economically negative and that will therefore, will also have impact on, on unemployment. As we know, the unemployment rate has in fact, increased.

15 **ADV RAMAGAGA:** Now, let, let us proceed, to get some, some clarity on the element of equitable. You have done this fair, and now, the element of equitable. You are saying there was some back room manipulation and in your view, all equipment, and this actually, accepted all equipment that was, was acquired. Now, the, the evidence that has
20 been present before this Commission is that the process would be initiated in the form of the request for information, commonly known as RFI's. This request for information would be sent to the companies that are identified as companies that could have the capability to offer what is required. But, that would not only be closed to that, those companies.
25 Any other companies, that would become interested, in that way,

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interested, would also request for the copies and, and express their, their interest. Now, and then, there would be the second level, of course, there are at all stage, in respect of some, I think, the, the Corvette or so, there were, there was the first RFI and then the second
5 RFI and then the RFO. Now, bearing that in mind that, they are similar, from the evidence that we have the similar, or identical documents would be sent to all the identified, interested parties, as well as, all those parties that expressed interest, even if they had not been invited. What, what would the, what is your basis of stating that there was some back
10 room manipulation of the processes? Especially bearing in mind that it is not only those that are identified that would be invited, if is others also, showed interest and request for the RFI, or, ja, the RFI's, they would be furnished with those RFI's and participate with the rest in their initial stage of showing interest in the furnishing or in service provision.

15 MR CRAWFORD-BROWNE: Two, two examples, the German Submarine Consortium came last in the two criteria in terms of military criteria, but was rocketed to first place, because of the exaggerated offsets that, against R6 billion spent on, on submarines, we will get R30 billion in offsets. So, this, the German Submarine criteria was selected
20 on that basis. But, for instance, with the BAE contracts, there was the visionary approach, whereby costs were taken out of considerations. Even though, BAE had also failed the tendering criteria, until cost was taken out of the, out of the issue. So, there were, those are illustrations of the manipulations.

25 ADV RAMAGAGA: Alright. Thank you. I am aware that, later in your

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evidence, you will be dealing more with offsets and I think we will spend more time; even to clean up all this debris you are now talking about, nè? I do not think it will serve much purpose to start dwelling on the issues of specific offsets now. But, all I would like to say is that, are you
5 aware of, of the fact that the evaluation system would have been made up of three components? Amongst them, there would be the offset component, which is referred to as the industrial participation and that component, was equalled to each of the other two. So, it was a third of the three components. Each was allocated an equal weighting, in terms
10 of scoring. Are you aware of that?

MR CRAWFORD-BROWNE: As I said, as I said, the submarine contracts were awarded on the hugely exaggerated offsets.

ADV RAMAGAGA: I am talking about the evaluation system. Are you aware of the fact that the three components were weighted equally,
15 each carrying 100 per cent, 100 per cent, 100 per cent? Are you aware of that?

MR CRAWFORD-BROWNE: Ja.

ADV RAMAGAGA: That is the evaluation system that I am talking about.

20 MR CRAWFORD-BROWNE: Yes. Yes. Yes. I am.

ADV RAMAGAGA: Okay. Thank you, then, Sir. You may then proceed. You, we are done with fair, equitable, for now, because, now, transparent was the next element that you were going to deal with.

MR CRAWFORD-BROWNE: Okay. One of the issues that came up
25 and repeatedly comes up with the offsets is the matter of commercial

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confidentiality, so that, even Parliamentarians and the Audit General, were not permitted to have access to the offset contracts, on the basis that they were secret and commercial, commercially confidential. It is confirmed in the JIT report, both in its public version and in the draft
5 report, that DTI prohibited the Auditor General in, in that investigation, from examining the offset contracts, on this [indistinct] idea that they were commercially confidential. So, that that report would be the answer, the answer I have given on that point.

ADV RAMAGAGA: And on competitiveness? Competitiveness is the
10 next element.

MR CRAWFORD-BROWNE: Sure. Okay. For instance, with the BAE tenders for the Hawks, versus the Italian Aermacchi, the Aermacchi was considerably cheaper and yet, the Hawks were selected. So, it was not in terms of competitive.

15 ADV RAMAGAGA: Now, on the Aermacchi in particular, you are aware of the evidence that was given by Mr Odendaal from Armscor, Armscor, as well as, Colonel Viljoen from the Department of Defence, about our, about how it came about that the Aermacchi should be chosen. We are talking about the engine in particular. Am I right?

20 MR CRAWFORD-BROWNE: No. The, the, the trainer aircraft. The Aermacchi, versus the BAE Hawk. I am afraid I am not familiar, I am not familiar with, I am not familiar with the evidence by Mr Odendaal.

ADV RAMAGAGA: Okay. No, that is, that is fine. Let me, for now leave it. But, maybe, before leave it, let me just indicate to you that
25 there is evidence, that has been led. That that highlights the reasons

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behind any choice that was made by, by government. Over and above, the choices would have also been influenced by the IP, Industrial Participation element, as well as, the military value of the equipment. So, if, if you find, that in respect of a particular armament, there is a lower scoring, in respect of IP for instance, you could also find that, in respect of the other elements, they score them high. Then, there is a motivation that happens, aggregating, and that then, spins out the equipment that should then be, be chosen. Will you then, proceed to deal with the issue of cost effectiveness?

10 MR CRAWFORD-BROWNE: Yes. Yes. We when we are coming from, from earlier testimony, the issue of, with BAE costs was removed from consideration, what deemed to be visionary approach, by the then Minister of Defence. So, this was the largest aspect of the, of the acquisitions and yet, costs result, was not even a, was excluded, so it fails that, that criteria, as well. In fact, in terms of again, the German Submarine Consortium, they came last in the military tendering criteria, but were selected, because of the drastically intended offset promises, that never materialised. The new management at that, I mean, Ferrostaal have conceded that the offsets were simply therefore to be bribes and that the management had, in fact, no intention of meeting those offset obligations.

ADV RAMAGAGA: Will you then proceed to the next paragraph?

CHAIRPERSON: Just hold on. I missed the last point that Mr Crawford-Browne made. You say the new management of Ferrostaal conceded, I did not quite follow this statement. When did the new

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management of Ferrostaal concede and what evidence do you, did we have about that?

MR CRAWFORD-BROWNE: Sir, this is included in the Debevoise and Plimpton report, which is included in my, my documentation and which,
5 we will come to later.

CHAIRPERSON: Okay. We will come to that later. You say in that document, the new management of Ferrostaal have, has made that concession?

MR CRAWFORD-BROWNE: Yes, Sir.

10 CHAIRPERSON: Okay. Thank you.

ADV RAMAGAGA: Alright. Thank you. You may proceed, Sir.

MR CRAWFORD-BROWNE: Oh boy.

ADV RAMAGAGA: We, you have read the, on the system, page 10, nè? The last two paragraphs. I think you were supposed to read the
15 final paragraph on page 10. You had read the second last.

MR CRAWFORD-BROWNE: In, in these conclusions of Advocate Budlender? That, that 1.6?

ADV RAMAGAGA: Yes. 1.6. You had read the first paragraph under 1.6 ...[intervene]

20 MR CRAWFORD-BROWNE: Oh. Okay ...[intervene]

ADV RAMAGAGA: As well as, the second. Now, you are proceeding to read the third one.

MR CRAWFORD-BROWNE: Yes. It says:

"In his conclusions, Advocate Budlender had declared:

25 *If the contracts were not in accordance with those requirements, they*

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were unlawful and invalid. Whether such a contract would be set aside by a court depends on the facts of the case.

If the contracts were marked by bribery, or other improper conduct, the participant in the proper management arrangement cannot receive or
5 *retain any of the amounts under that contract.”*

ADV RAMAGAGA: Chair, my, my apologies. In actual fact, the witness already read up to paragraph 1.7.

MR CRAWFORD-BROWNE: That is right.

ADV RAMAGAGA: And I think I actually strayed, when I started
10 dealing with the opinion itself. I wanted to refer you to particular portions of the, of the opinion. Now, I think, we have to go back to the opinion itself, because you are actually dealing with the opinion in the paragraphs that, that you, you have read. Now, please turn to page
122. I think, that is the confusion. Now, 121, then over to 122,
15 continuing on 122, those are the conclusions, nè?

“I therefore, advise as follows, the procurement contracts in the arms deal, were required by law to be in accordance with a system which is fair, equitable, transparent, competitive and cost effective.”

That that speaks for itself; there is no need for one to ask for clarity on
20 that. I read 27.2:

“In the system, which was used in these contracts, offsets played a very material role. There is a reason to doubt whether such a system is in accordance with those requirements.”

And 27.3:

25 *“If the contracts were not in accordance with those requirements,*

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they were unlawful and invalid.”

Now, the advocate states that:

“There is reason to doubt, whether such system is in accordance with those requirements.”

5 That is the system where offsets played a very material role. Now, bearing in mind that in the evaluation, the three will allocated equal weight, a third, a third, a third and believing that the advocate drew its opinion, based on the information that you would have given him, as a consultant, will you inform this Commission, as to, what is the basis of
10 the advocate, stating that the offsets played a very material role, in the acquisition.

MR CRAWFORD-BROWNE: As Advocate Aboobaker mentioned, as Advocate Aboobaker revealed to the hearings earlier this year, the benchmark is whether we have received R110 billion in offsets and so,
15 that really is what drove the process, the more, if we spent R30 billion, we would get R110 billion back. And, you know, I would, to illustrate the point, I would suggest, you know, can you name any business anywhere in the world, where you spend R30.00 in the shot and you get R110.00 back in change?

20 ADV RAMAGAGA: So, the basis of, the basis of this statement, in the, under the concluding paragraph, by the advocate is informed by that statement by the late Mr Modise about the number of jobs that would be created and the spin offs that would come out of, out of the acquisition. Is that the basis upon which this advocate makes this
25 statement in this particular paragraph?

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MR CRAWFORD-BROWNE: Advocate, sorry, Minister Modise had said this, during his last budget address in Parliament in March 1999 ...[intervene]

ADV RAMAGAGA: Yes ...[intervene]

5 MR CRAWFORD-BROWNE: As the basis for the arms acquisitions, that we received, the economic benefit of between R110 billion, in lines, that we did not. We did not get the jobs. It failed Section 217 (1) regarding government procurements. So, it failed constitutionally. Since, we did not get the offsets, which were the benchmark that
10 Advocate Aboobaker established, I would submit that the arms acquisitions were not only unconstitutional, but they were also fraudulent.

CHAIRPERSON: I am sorry, Ms Ramagaga, can you repeat the question? Mr Crawford-Browne, just listen to the question and carefully
15 answer the question. Just listen to what is being put to you and just try and answer the question. Okay. Can you just repeat the question again, Ms Ramagaga?

ADV RAMAGAGA: Alright. Thank you, Chair. Now, the question relates to 27.2, under the concluding remarks, by the advocate. Now, in
20 the light of what you have said, actually, you have already responded to the questions that I asked and I just summed it up to say, so what you mean is that the basis of the advocate making this assertion is that statement that was made by the late Mr Modise about the job creation, about the spin offs that would come out of the offsets. Is that correct,
25 Sir?

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MR CRAWFORD-BROWNE: Yes. And the emphasis also is that it must, it must comply with the system and hence, as we have discussed, it failed the criteria of complying with the system, as established, in terms of Section 217 (1).

5 ADV RAMAGAGA: Now, in 27.3, acting, of course, on the information that you would have given him, the Advocate, he says:

“If the contracts were not in accordance with those requirements, they were unlawful and invalid. Whether such a contract would be set aside by a court, depends on the facts of the case.”

10 But, I think, what should be of interest to the Commission is the first sentence in that paragraph:

“If the contracts were not in accordance with those requirements, they were unlawful and invalid.”

And the requirements are those requirements of the, in the Constitution.

15 MR CRAWFORD-BROWNE: Right.

ADV RAMAGAGA: Now, in this statement, it is correct that the, the advocate does not say that the contracts were not in accordance with the requirements. It is just saying:

20 *“In the event that the contracts were not in accordance with the requirements, they were unlawful and invalid.”*

Now, he, he makes this statement premising it with if and this was based on the information that you gave him for the brief, or in support of your brief. Is, is that so?

MR CRAWFORD-BROWNE: That is correct, and he played carefully
25 with words with, in terms of the system and that we must then work back

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to the benchmark, of whether we received the offsets or the jobs and Whether it met the Constitutional criteria, in terms of Section 217. So, if it failed those criteria, it was unconstitutional and in terms of the Constitution, in terms of Section 2 of the Constitution, which is the
5 supreme law of the country and all obligations must be enforced and upheld. So, if it fails Section 217, then it is illegal and unconstitutional. The question of whether it moved to fraud is a separate issue.

ADV RAMAGAGA: Alright. Thank you. Then, it goes on to say:

10 *“If the contracts were marked by bribery or other improper conduct, a participant in the contract arrangement cannot receive or retain any of the amounts payable, under the contract.”*

Now, again, he is saying if that has happened, or if that is the case. This opinion was written on the basis of the information that you had given the advocate.

15 MR CRAWFORD-BROWNE: That is correct and I come back then, as we will come back to, in terms of the terms of reference, in terms of provision 5 and provision 6 of improper influences and prospective remedies available to, to South Africa.

ADV RAMAGAGA: Now, for now, I would say, let us go back to
20 paragraph, was it paragraph one point, 1.8, ja. We, we are not yet done ... [intervene]

CHAIRPERSON: Ms Ramagaga, would this not be an appropriate time to adjourn, before we get into a new part?

ADV RAMAGAGA: Yes, Chair. That will be appropriate, thanks.

25 CHAIRPERSON: Okay. I think we will adjourn for five minutes. Let us

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come back at quarter to two. Thank you.

(COMMISSION ADJOURNS)

(COMMISSION REOPENS)

CHAIRPERSON: Yes. Thank you. Do you confirm that you are still
5 under oath? Say I do.

MR CRAWFORD-BROWNE: I do.

ADV RAMAGAGA: Mr Crawford-Browne, when we adjourned, you had
read into the record paragraph 1.8, on page 11. Will you then proceed
to paragraph 1.9?

10 MR CRAWFORD-BROWNE: Thank you. I have referred to this
earlier:

*“So, to illustrate the point of offsets, to, to note that it is impossible
to name any business, anywhere in the world, that gives back R110.00
change, in return for a R30.00 purchase. That even the most
15 economically illiterate person will do better than swallow such nonsense.
Multiply that by a billion and the extent that the arms deal fraud,
perpetrated against the people of South Africa becomes apparent.
The arms deal affordability study warned Cabinet Ministers in August
1999 that the arms deal was a reckless proposition that could lead the
20 government into mounting economic, fiscal and financial difficulties. It
also warned the Cabinet of the negative economic consequences,
including job losses, that the foreign exchange risks were high and then
specifically, that the so-called offset benefits could not be guaranteed.”*

ADV RAMAGAGA: Would like to refer the Commission to the
25 particular portion that deals with this part of your evidence, in the, in the

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affordability report?

MR CRAWFORD-BROWNE: Okay. The affordability report is, runs through pages 198 through to 244 to 261, 198 to 261.

ADV RAMAGAGA: Yes. That the, the portion that ... [intervene]

5 MR CRAWFORD-BROWNE: Okay ... [intervene]

ADV RAMAGAGA: Alerts the government to the possible recklessness or ... [intervene]

MR CRAWFORD-BROWNE: Sure ... [intervene]

ADV RAMAGAGA: Responsibility.

10 MR CRAWFORD-BROWNE: [Indistinct] at the end on, on page 244, in the summary.

“The main conclusions of the analysis conducted above here, are as follows. The economic impact of the defence procurement will be shared, by whether or not, there are problems regarding two major risks analysed, the interest rate shock and the performance of the NIP projects. This [indistinct] can be qualified in two ways and there are two distinct phases of the procurement that completely differ, with implications for us in our macro, macro-economic impact. The first phase has some material cost in macro-economic terms.”

15

20 But, it goes on:

“The macroeconomic cost takes the form of lost output and lower GDB than in the base liner. The second qualification is that either problem occurs, that is if there is larger than expected interest rate shock, or if significant important NIP commitments are not met, then the macro economic impact of the programme is likely to be significantly

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negative for the entire period. As the expenditure level rises, in more risky scenarios, negative impact increases very substantially, so that the values and the variables exceed sustainable thresholds very early in the period.”

5 That is the summary. Earlier on, it goes into a bit more detail. On page 37, for instance it ... [intervene]

ADV RAMAGAGA: 30 ... [intervene]

MR CRAWFORD-BROWNE: 237.

ADV RAMAGAGA: Two, three, seven. Okay. Two, three, seven.

10 MR CRAWFORD-BROWNE: It looks at the issue of employment projections:

*“The figure of seven per cent is the employment implication is measured in thousands of jobs. In scenario one, there is a positive impact on job creation, during the first phase of the period, when the
15 DIP is in process and when the NIP projects are under construction. The positive impact disappears entirely, during the second phase of the period, when the overall economy is growing slower than the base line and the capital intensive NIP projects create few operating jobs. In the other scenarios, the overall impact, impact routed to the base line of the
20 higher interest rate and or the reduced size of the NIP projects; means the net employment effects of the overall programme is negative.”*

There are various issues I am flagging voraciously regarding the Gripen project.

ADV RAMAGAGA: Alright. Thank you. The, it is correct that the
25 affordability report, or the affordability study was commissioned with the

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said [indistinct] the Inter Ministerial Committee being sensitized to, amongst others, any risks that might be out there, in relation to the acquisition. Is it correct?

MR CRAWFORD-BROWNE: That is true.

5 ADV RAMAGAGA: And, and having received the assessment, the Ministers would then have to apply their minds to the information before them and make recommendations to the Cabinet.

MR CRAWFORD-BROWNE: And whether it would create jobs, whether it would impact on other issues of government, such as social
10 expenditures, whether the guarantees for the offsets would be forthcoming and particularly the foreign exchange risks. They noted and emphasized that the foreign exchange risks were, were particularly high and that they could not be recovered from the financial markets and the results of the impact would be the issue of the interest rate crisis.

15 ADV RAMAGAGA: The purpose of the exercise was to inform the Ministerial Committee about the risks, pertaining to the acquisition of the armaments through the SDPP's. Is that the case?

MR CRAWFORD-BROWNE: Yes. And the point that is repeatedly
20 stated that the risks involved, were to be offset by the offsets and that there was, there was no way that the offsets could be guaranteed, which they called into questions, the whole wisdom of the project.

ADV RAMAGAGA: Alright. Shall we then proceed to the next paragraph?

MR CRAWFORD-BROWNE: The Auditor General had made similar
25 findings, as did business trade unions, civil society objections to the

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arms deal. Not only did the acquisitions dismally fail Mr Modise's DTI as bench mark, but I repeat my contention that the whole arms deal acquisition was unconstitutional, criminally fraudulent and it is actually stupid, right from inception.

5 ADV RAMAGAGA: Now, other than what you have already said to the Commission, regarding the unconstitutionality, the fraudulent or the fraud and so forth, is there anything that you would like to add in this paragraph to illustrate that the arms deal acquisition project was unconstitutional, criminally fraudulent and stupid from inception?

10 MR CRAWFORD-BROWNE: I had hearings in Parliament in February 2001 on the opportunities that would arise out of the, out of the offset project, chaired by the present Minister of Trade and Industry, Mr Rob Davies that obviously, Mr Alec Erwin was the focus of it. The, there were representations from trade unions, business academics, military
15 organisations and all the submissions were scathing, that offsets were inappropriate, the wrong way to create jobs. The end of the day, at the end of the hearings, a very glum and but, shaken Mr Alec Erwin was being interviewed by E-tv and I happened to be standing behind the E-tv camera, waiting to be interviewed and Mr Erwin volunteered that he and
20 his Cabinet colleagues were neither criminal nor stupid.

ADV RAMAGAGA: Is there anything that you want to say, in addition to what you have already said, to sustain a, an assertion that the project was stupid?

MR CRAWFORD-BROWNE: I do repeat my previous contention that
25 nowhere in the world do you spend R30.00 to get R110.00 change and

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multiply that by a billion, you begin to see the scale of fraud and it is perfect for a junk heap in South Africa.

ADV RAMAGAGA: You may proceed.

MR CRAWFORD-BROWNE: Thank you.

5 ADV RAMAGAGA: To paragraph ...[intervene]

MR CRAWFORD-BROWNE: 1.13.

ADVRAMAGAGA: 1.13.

MR CRAWFORD-BROWNE: Okay.

10 *“In contrary to the submissions by both Mr Manuel in June and Mr Thabo Mbeki in July, the legal doctrine of res judicata, does not apply on fraud.*

In his opinion Advocate Budlender also notes that offsets.”

15 ADV RAMAGAGA: Just before you proceed. Where do you, what you relying on, or which part of evidence are you relying on to suggest that both Mr Manuel and Mr Mbeki made a submission that the doctrine of *res judicata* does not apply on fraud?

20 MR CRAWFORD-BROWNE: Both Mr Manuel and Mr Mbeki in their testimonies in June and July made quite an issue of *res judicata*, that the arms deal had been investigated by the JIT report, that I had taken the matter to the Cape High Court, that I had lost the case and therefore, I was trying to resurrect the case, which he, which they said was *res judicata*. My submission is, there is no such thing as *res judicata*, or description, or term, or you may come to forward.

25 ADV RAMAGAGA: You know, when, when I read this, this part of the statement, it seems to be saying, or actually, it is saying that the two

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witnesses submitted that the legal doctrine of *res judicata* does not apply on fraud. That reading then suggests that this is a statement that is made, in relation to fraud, generally, to say *res judicata* does not apply on fraud. Is that the correct message that you would like to convey on this paragraph?

MR CRAWFORD-BROWNE: Sorry, I think, there is a difference of understanding. Both, Mr Mbeki and Mr Manuel said that the arms deal issue is dead and buried. I reported on Michael Dodo it is not dead or extinct. So, what I am saying is that it is not extinct and that ...

[intervene]

CHAIRPERSON: I am sorry, Mr Crawford-Browne. I am not quite sure later on; we do have any evidence from Mr Mbeki and on Mr Manuel, saying that the question of the arms deal is dead and buried. If you think we do have, please check the record, the transcript, and let me have the number of the, the relevant pages thereof, tomorrow morning, because I cannot recall anyone of them saying that the arms deal that the arms deal is dead and buried. I keep, what I recall, is Mr Mbeki saying that, we have been asking for people to give us evidence about corruption. He never said that he is, the arms deal is dead and buried. But, if he did, if you can then please, tomorrow morning, give us the relevant paraphrase.

MR CRAWFORD-BROWNE: Okay. The issue they raised was *res judicata*, in, in both their statements. I think, we will find from, from their statements that they both refer to *res judicata* and I am saying, it does not apply, when it comes to fraud.

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CHAIRPERSON: Mr Crawford-Browne, you say that both of them say that the arms deal is dead. I am saying to you, check the transcripts should they have this. Tomorrow morning, give me the relevant portions, so that we can know for sure. Because I cannot recall them
5 saying so.

MR CRAWFORD-BROWNE: Okay.

CHAIRPERSON: Okay. Then let us leave that for, for tomorrow morning.

MR CRAWFORD-BROWNE: Thank you.

10 ADV RAMAGAGA: Thank you, Chair. We, we would also assist Mr Crawford-Brown, by just indicating to him, as to which pages, in particular that can we find the evidence of both Mr Mbeki, as well as Mr, Mr Manuel.

MR CRAWFORD-BROWNE: Thank you. Thank you.

15 ADV RAMAGAGA: May I proceed then, Chair?

CHAIRPERSON: Proceed.

ADV RAMAGAGA: Thanks.

COMMISSIONER MUSI: Can, can I interrupt? This, this case law of *res judicata* can normally have, could only have arisen in relation to
20 issues, raised in a court case.

MR CRAWFORD-BROWNE: It arose out of the fact that I had made an application to the Cape High Court in 2001, to have the loan agreement, signed by Mr Manuel set aside. I, one of the discovery documents, the [indistinct] the financial working group pages, which Mr
25 Manuel then refused to supply. The whole thing went through, through

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the course of 2003 and eventually in 2004 the judgment against them was that in, in filing an application against Mr Manuel, I will, I had actually sued the wrong party. That is, that was his reference in his statement here. I am saying, this issue is not *res judicata*.

5 COMMISSIONER MUSI: You mean, if you talk of *res judicata*, that must me in relation to issues raised, in that court case. It cannot really have any bearing on investigations of this Commission. Can it?

MR CRAWFORD-BROWNE: I am sorry, would you repeat that?

COMMISSIONER MUSI: When you talk of *res judicata*, it could only
10 refer to issues raised in the case and it could not possibly refer to the as, issues that this Commission must investigate.

MR CRAWFORD-BROWNE: It is a question of whether the arms deal is done and dusted. I would say suggest that it is not and that it continues to be a major factor in South Africa's political discourse.

15 COMMISSIONER MUSI: Maybe the best is, thing to do is not make use of this concept.

ADV RAMAGAGA: Commissioners, may I just indicate to the Commission that, according to our recollection, the only time, at which the issues of *res judicata* were addressed, was when Mr Manuel was
20 testifying. Those related to the case that had been finalised in the Western Cape High Court. The transcript will show full deliberations, relating to that aspect. It was only, at the time when Mr Manuel was testifying. I do not remember that subject cropping up at all, at the time, when Mr Mbeki was testifying. Even then, as you correctly state,
25 Commissioner Musi, it related to a matter, that had been finalised in the

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Cape High Court. I do not think it is material, even to address, whether it was finalised on technicality or on merit. The fact of the matter is that it had been finalised. The, just, you know, I am just placing this on record, so that, whoever comes across this information, can be able to
5 understand that we can go back into the record and get some information that relates thereto. May I then proceed? Thank you. Will you then proceed ... [intervene]

MR CRAWFORD-BROWNE: Yes ... [intervene]

ADV RAMAGAGA: To paragraph 1.14.

10 MR CRAWFORD-BROWNE: One, four, sure.

"In his opinion, Advocate Budlender also noted offsets are internationally discredited, because of eight main reasons.

- a. *Offsets can and do distort acquisition processes.*
- b. *That the economic benefits of such programmes are uncertain.*
- 15 c. *That offsets lead to trade displacement, rather than offering additional trade.*
- d. *That offsets are economically inefficient.*
- e. *That the penalties payable, if offset obligations are not met, are included in the cost of the purchase price and the cost of non-delivery*
20 *has therefore, already been factored into the cost of the purchase.*
- f. *That offset programmes are usually very complex, technical and bureaucratically heavy arrangements that require close and rigorous international auditing.*
- g. *That offset agreements are usually protected by commercial*
25 *confidentially clauses that prevent the host government from publishing*

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the full details of the offset projects, thus undermining transparency.

h. The lack of disclosure and oversight may facilitate corruption.”

ADV RAMAGAGA: Yes. Now, before you proceed, maybe, let us, let us look at the opinion, from which paragraph 1.14 is quoted. That, that
5 appears on pages 117 and 118. Now, is it ... [intervene]

CHAIRPERSON: Ms Ramagaga, just for my own understanding, you have the copy of legal opinion. Mr Crawford-Brown, he was [indistinct] of that legal opinion, already in 2002. I am not quite certain, whether, is it necessary for you to go through the legal opinion at all, or everything.
10 Will you have a copy of the legal opinion? Now, for him to explain, to go through the legal opinion with him, ask him to explain to us, what the legal opinion says. I am not quite sure, you know, if that is necessary. Because it is not his opinion, it is an opinion, written by somebody. We do have it.

15 ADV RAMAGAGA: With, with your, ja, with your permission, may I respond, Chair? The, the purpose of the exercise that I, I am now embarking on, is not to require Mr Crawford-Browne to interpret the, the opinion, or even, to speak to that opinion, as appears in the papers. The purpose, for which I am taking him to the opinion, is simply to
20 highlight one thing. That thing is that, that that paragraph 1.14 is actually a quotation from the book of Paul Holden and Hennie Van Vuuren, to illustrate that the advocate himself is actually illustrating the contents of a book, in full.

CHAIRPERSON: I have heard of that.

25 ADV RAMAGAGA: Yes.

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CHAIRPERSON: You may continue with what you ... [intervene]

ADV RAMAGAGA: Okay. Thank you.

CHAIRPERSON: Yes.

MR CRAWFORD-BROWNE: If we can [indistinct] quote:

5 *"It can hardly be said that these are weighty to considerations."*

ADV RAMAGAGA: Excuse me, Chairperson, I am, I am, I was just responding to the ...[intervene]

MR CRAWFORD-BROWNE: Oh. I am sorry ... [intervene]

ADV RAMAGAGA: Commissioners. And I requested you to go to this
10 page, so that they can be able to ... [intervene]

MR CRAWFORD-BROWNE: Okay.

ADV RAMAGAGA: Just hear first.

MR CRAWFORD-BROWNE: Okay.

ADV RAMAGAGA: Alright. Thank you. Now, do you agree with me
15 that, that, which you have read, under paragraph 1.15, with, 1.15, 1.14,
which is then, you described as advocate it says:

"In his opinion, Advocate Budlender also noted offsets are internationally discredited, because of eight main reasons."

Now, this opinion of his and these reason that he mentions, the
20 advocate, is actually an extract from the book, written by Paul Holden
and Hennie Van Vuuren and which is now factored into this opinion, as
the basis of his opinion. He is relying on the extract from this book. Is
that the case?

MR CRAWFORD-BROWNE: That, that is the case. I would also say
25 that this is a very valid basis for the objections to offsets that, for

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instance, how prohibited in terms of the World Trade Organisation, because they are so distorted of marketing factors.

ADV RAMAGAGA: Yes. All, all, like I have said to the Commission, it is not about talking about the contents or the merits or anything. All
5 what I wanted to highlight is that the ... [intervene]

MR CRAWFORD-BROWNE: Yes. Well, definitely ... [intervene]

ADV RAMAGAGA: Advocate is actually relying on an extract from the book for his opinion.

MR CRAWFORD-BROWNE: I am saying it is a useful definition.

10 Thank you.

ADV RAMAGAGA: Will you then proceed to the next ...[intervene]

MR CRAWFORD-BROWNE: 1.15. Okay.

ADV RAMAGAGA: Paragraph 1.15.

MR CRAWFORD-BROWNE: Okay. Quote:

15 *"It need hardly be said that these are weighty considerations. There appears to be a good deal of evidence, which supports the criticisms, which have been made. It seems to be, at least prima face, that there is reason to believe that the use of offsets, leads to procurement processes, which are neither transparent, nor cost effective*
20 *and which may not be competitive, in the full sense of the word. It follows that if the criticisms of the use of offsets have any substantial validity and the arms deal procurements were entered into, in terms of a system, which permitted the use of offsets, they were unlawful, because the procurement was not in accordance with a system, which is fair,*
25 *equitable, transparent and cost effective."*

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Advocate Budlender then, deals with the consequences and makes the following five comments, a ... [intervene]

ADV RAMAGAGA: Just, just before you list, bear with me. Alright. Now, in, in a paragraph 1.15 of your statement does appear in the opinion, which appears on, part of the opinion, which appears on pages 118 to 119.

MR CRAWFORD-BROWNE: Yes.

ADV RAMAGAGA: Now, for, for easier reference, I would, I would prefer that then, my questions are based on the opinion itself. So, let us rather rely, or refer to those pages 118 to 199, paragraphs 18, 19 and 20.

MR CRAWFORD-BROWNE: Sure.

ADV RAMAGAGA: That is what you have just quoted from the ... [intervene]

15 MR CRAWFORD-BROWNE: Sure. Okay.

ADV RAMAGAGA: The statement. Now, in paragraph 18, you say the, the advocate says:

"It need hardly be said that these are weighty considerations. There appears to be a good deal of evidence, which supports the criticisms which have been made."

Now, when, when he appears there appears to be a good deal of evidence, is he, and I have to ask you, because you are the person that gave him the brief. Is he referring to this extract of the book, written by Holden and Van Vuuren? Is he relying on that?

25 MR CRAWFORD-BROWNE: No. No. He is not relying on that. That

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extract is a useful definition, which I would agree with myself, even though I think, I have been studying offsets, longer than Van Vuuren or, or Holden. Offsets are notorious for their, for their involvement in bribes, notorious for distorting trade systems and ... [intervene]

5 **ADV RAMAGAGA:** May, May I just come in here, because, I think, we, we need to, to try and spend time, of covering some mileage in your presentation of, of evidence. And, and mileage can be better covered, if we respond to the questions that are asked. The, the focal point of my question is this assertion by the advocate that there appears to be a
10 good deal of evidence. Now, what is this evidence that he is talking about? Are, are you able to ask, to answer that question just briefly, so it is not needed to explain again the offset issue, which you [indistinct]. If it is, he is basing it on the existence of offsets in the agreement, I think it will be enough to say, when he is basing it on that and then you can,
15 you can proceed with that.

MR CRAWFORD-BROWNE: No. The World Trade Organisation, for instance, prohibits, as does the European Union, they prohibit the use of offsets in civil trade, because of notoriety for which offsets have, have developing that this, this really came out of the era of the Comecon in
20 the Soviet Union, with trade of their satellites and with an awful lot of corruption and malpractices that flowed from there. The armaments industry then took it up and in particularly in terms of Saudi Arabia and the bribes was paid to Saudi Arabian princes, under the guise of, that is arms trade, transactions. Always the issue is, it will, the presence of
25 offsets will develop jobs and whatever and provide technology transfers.

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The experience has been that the technology transfers do not happen. That the extra costs of the offsets are built into the prices. That the suppliers then walk away from their agreements, because they, they have packed that into the prices and that, when the next arms deal
5 come, arms deal comes up they will switch and they, they will, that there is no, there is no follow through with it. Inappropriate offset projects, if any, are, are created and the, that it really is a scam to fleece the tax payers, both in the supplier countries and in the recipient countries. So, that is why offsets have such a, have such notoriety. They are
10 prohibited in civil arrangements, but there is an exception provided for national security. They use that exception to promote weapons proliferation around the world.

ADV RAMAGAGA: What you have just narrated now, is that what you say, informed this assertion, in paragraph 18, by the advocate. His ...
15 [intervene]

MR CRAWFORD-BROWNE: In paragraph 18, he says there is a good deal of evidence. So, for instance, corruption, arms deal contracts between England and Malaysia in the, in the early 1990's were, were notorious for that. Contracts with Turkey have been notorious for that.
20 So, there, there is evidence and so, yes, that is what I have said, there is a good deal of evidence ... [intervene]

ADV RAMAGAGA: Yes ... [intervene]

MR CRAWFORD-BROWNE: That offsets do not, that you do not get the technology transfers. You do not get the job creation and that, that
25 the, the costs of offsets are simply built into the prices.

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ADV RAMAGAGA: Yes. I, I hear your narrations about this and that. All I am asking, Sir, is that, because this is not your opinion. You sought for an opinion. It is an opinion of the advocate. What you have just said now, the narrations that you have made, are they the basis of this
5 opinion, of observing a great deal of evidence by the advocate?

MR CRAWFORD-BROWNE: Those, those were his words, that were put into the opinion.

ADV RAMAGAGA: Alright. Thank you. Thank you. Turning to page 119, he says at 20:

10 *“It follows that, if the criticism of the use of offsets, offsets has any such potential validity.”*

So, in, in this statement, he does not say that there is some validity, or any substantial validity, on the criticism. But, he is saying supposing there is, if there is criticism. Is, is it correct?

15 MR CRAWFORD-BROWNE: Yes. That will be correct.

ADV RAMAGAGA: Alright. Thank you. Then, let us go back to the statement. You were going to start dealing with paragraph 1.16, please go ahead, Sir.

MR CRAWFORD-BROWNE: Okay.

20 *“Advocate Budlender then deals with the consequences and makes the following five comments:*

a. In the ordinary course, a contract which is contrary to statute is unlawful and unenforceable. That much is trite.

*b. There are circumstances in which an invalid tender will
25 nevertheless, not be set aside. These considerations related in part to*

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the problems, which may flow from the declaration that the contract is null and void. The Supreme Court of Appeal has pointed out in this regard; these problems may not be of any consequence, in the case of corruption or fraud, where the successful tenderer was complicit in the

5 *irregularity.*

c. *That reservation identifies a further consideration, which is relevant. There have been well publicised allegations of corruption or improper purpose in the arms deal. Professor Quinot has pointed out that there is a general principle against the enforcement of such*

10 *contracts, where improper conduct can be established.*

d. *Once fraud is involved, the general approach has been said to be that, in the Lord Denning, fraud unravels everything. The principle has more generally been applied, as establishing a ground of review of administrative action, even where there is a strict ouster of the*

15 *jurisdiction of the courts.*

e. *Ordinarily, where a contract is cancelled as invalid, the principle of restitution usually applies. Each party must restore the performance it has received, under the contract. This is subject to various qualifications, which are not relevant here. Where, however, the cause*

20 *of cancellation is bribery, the principle becomes quite different. The approach has been set out as follows in K&R Engineering Company Incorporated v The United States:*

“Once a contractor is shown to have been a participant in a corrupt arrangement, he cannot receive or retain any of the amounts

25 *payable there under. Permitting the contractor to retain amounts,*

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already received, would create the danger that men inclined to such practices, which have been condemned, generally by the courts, would risk violation of the statute knowing that, if detected, they would lose none of their original investment. While, if not discovered, they would

5 *reap a profit for their perfidy. To deny the government recovery of amounts paid under such tainted contracts would reward those contractors, who can conceal their corruption, until they have been paid.”*

ADV RAMAGAGA: Thank you. For a better understanding of this

10 opinion and this portion that you have just read into the record, I would like to take you to pages 119 to 120, where this quotation comes from. Again, I am not going to be asking you to try and explain the, the opinion. All what I would like to highlight is the fact that the advocate, when he deals with this portion, the consequences, because what we

15 are reading from, from your statement, it is actually an extract, relating to the consequences. Now, it is correct that these consequences that he outlined here, he outlines them, without having concluded that the acquisition was unlawful, or unconstitutional, or illegal. Is that correct?

MR CRAWFORD-BROWNE: That is, the issue is whether it met the

20 criteria of the system of 217 and the issue of fraud is a separate, separate matter.

ADV RAMAGAGA: Yes. The question is that you agree that in his opinion, the advocate has not made a conclusion that the contracts, or the contract, in respect of which you sought for the opinion was actually

25 unlawful. What he has done, has been to deal with respective topics

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and then, to deal with the Section 217 and then to talk about the consequences of any unlawful procurement contract. He does not attribute these consequences to the arms procurement contracts, in particular. But, he is saying, the next question is what the consequences are of an unlawful procurement contract and then he outlines those, those consequences.

MR CRAWFORD-BROWNE: That that is correct.

ADV RAMAGAGA: Thank you. Then, we can go back to the statement. You may then proceed from paragraph 1.17.

10 MR CRAWFORD-BROWNE:

“Again, fraud unravels everything. The principal applies that the fraudster should not be allowed to benefit financially from his fraud. In addition, the internationally accepted remedy for fraud is to cancel the contracts, return the goods and recover the monies. I will revert to this matter of cancellation of arms deal contracts and foreign loan

15 *agreements, when I deal with the sixth provision of the Commission’s terms of reference.*

Before proceeding to the second provision of the terms of reference, I wish to place on record that my previous evidence leader, Advocate

20 *Barry Skinner, in February 2013, undertook to obtain for me, the International Offers Negotiating Team and Financial Working Group papers for the arms deal.*

The Cape High Court awarded discovery to me, of these documents, in March 2003. In so doing, the court rejected objections by Mr Manuel

25 *and Ms Maria Ramos that it was not in the national interest to disclose*

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how the government conducts its financial arrangements. Despite two applications for contempt of court, Mr Manuel still continued to refuse to comply with the court order, yet certified in November 2003 that he had finally done so.

5 *My letter to Judge Seriti, dated the 27th, 27th of February, February 2013, informed him that the nine lever arch files of approximately 3 500 pages of documents, offered to me, by the Commission, as being the IONT and Financial Working Group papers were a mess, albeit they did confirm that Mr Manuel committed perjury, when he certified he had*
10 *complied with Cape High Court discovery order.*

When Mr Jayendra Naidoo testified on the 9th of June 2014, he stated that the documents were referred to, as the blue file. Accordingly, I wrote to Advocate Fanyana Mdumbe on the 1st of July, asking for the blue file. The Joint Investigating Team JIT reports in 2001 have
15 *described the IONT and Financial Working Group papers as voluminous and highly professional.*

Chapter 8 of the JIT report deals with the IONT documents. Chapter 9 of the report deals with the Financial Working Group. Mr Naidoo was unable to answer my questions, as to just how many pages the blue file
20 *comprised. Pagination numbers on random pages, I had previously obtained, indicate that these documents would comprise of at least between 8 000 and 9 000 pages.*

Advocate Mdumbe, together with Advocate.”

COMMISSIONER MUSI: Can, can, can I interrupt you, Mr Terry
25 Crawford-Browne, I am sorry and can you go back to that 1.20,

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paragraph 1.20 on page 16?

MR CRAWFORD-BROWNE: 1.20, sure.

COMMISSIONER MUSI: I did not quite follow what, what you are saying here. The, the passage:

5 *“Albeit that they did confirm that Mr Manuel committed perjury, when he certified that he had complied with the Cape High Court discovery order.”*

Who, who supposed have confirmed that Mr Manuel committed perjury?

MR CRAWFORD-BROWNE: I came to the Commission's offices in
10 February last year, Sir, to have a look at the IONT and Financial Working Group papers that had been offered to me. There were nine lever arch files. They, the volume alone, confirmed that after the, the discovery order in 2003, Mr Manuel provided 18 pages to my advocate, but told him that I was not allowed to see them and that he could not
15 communicate the contents to me. Subsequently, we went to court and got the first 18 pages. I, immediately recognised that these were not the documents on which the, the Cabinet had the made the decision for the arms deal procurements. I went to court again, got 224 and immediately, again, I realised that these were not in compliance with the
20 court order. So, at that point, Mr Manuel provided me with 224 pages. We are now looking at a question of whether there are 17 000 that comprise the IONT and Financial Working Group papers. There is a huge amount of difference in documents that have been and have not been included. So, on volume terms alone, I did not receive the
25 documentation to which I was entitled, in terms of that discovery order,

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back in 2003.

COMMISSIONER MUSI: All I wanted to know is who confirmed that Mr Manuel committed perjury?

MR CRAWFORD-BROWNE: He had certified in 2003 that he had
5 complied with the court order. It is very evident, he did not.

COMMISSIONER MUSI: But, who confirmed this, in the context of this paragraph? Who confirmed it?

MR CRAWFORD-BROWNE: The volume of the evidence confirms that.

10 COMMISSIONER MUSI: Maybe I should leave it there. Thank you.

ADV RAMAGAGA: Thank you, Sir, Chair. Will you please proceed to ...[intervene]

COMMISSIONER MUSI: Proceed. Thank you.

ADV RAMAGAGA: Page 15 that is where you were.

15 MR CRAWFORD-BROWNE: Page ...[intervene]

ADV RAMAGAGA: Page 16.

MR CRAWFORD-BROWNE: 16, ja.

ADV RAMAGAGA: Okay.

MR CRAWFORD-BROWNE: Thank you.

20 ADV RAMAGAGA: 1.23, Sir. Thank you.

MR CRAWFORD-BROWNE:

*“Advocate Mdumbe, together with Advocate Moses Mphaga and Advocate Ramagaga, flew to Cape Town on the 12th of September to discuss the matter and agreed to obtain the blue file. The pagination in
25 the blue file, suggested it should contain not just 8 000 to 9 000, but*

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over 17 000 pages.

Two copies of the blue file were couriered to me on the 18th of September 2014. Instead, however, of the expected 17 000 pages, the blue file comprises less than 400 pages. It therefore, falls far short of what might be described as voluminous. Yet the pagination ranges from 17098 to 17464. This suggested, whilst the IONT and Financial Working Group papers, were indeed, voluminous, only a small fraction of those documents were included in the blue file.

Most notably missing from the blue file, are documents that had been included in Mr Naidoo's package of documents, submitted to the Commission. These include the recommendation on the Alfa package, which is pages 17101, 17102 and 17103, plus annexures were the minutes of the meeting of a sub-committee of the Cabinet Ministers, held on the 26th of May 1999.

Deputy President Thabo Mbeki, Ministers Joe Modise, Alec Erwin and Stella Sigcau attended that meeting. Ministers Manuel and Kasrils tendered their apologies. The annexures, pertaining to the procurement of the Gripens, recommended the procurement should be deferred, failing which, the tender should be scrapped. The reasons given include. The Gripens, at a cost of R11.1 billion and that is by far, the greatest expense, are not required immediately. The South African Air Force already has 50 Cheetah fighter aircraft, but only nine pilots capable of flying them and the foreign exchange currency risks.

Amongst the documents I would expect to see, are the umbrella supply agreements, such as the BAE agreement, in my possession, stemming

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from the Diesel Management System court case, plus the Barclays Bank and Commerzbank loan agreements and various memos about terms and conditions. But these, apparently in August 1999, were still under negotiation.”

- 5 For instance, the BAE supply agreement in my possession is paginated 00002/282 and the German Frigate agreement is 0194201352.

“Between that meeting, on the 26th of May and the presentation of the Affordability Study on the 31st of August 1999, the recommendations, regarding the BAE/SAAB Gripen veered from should
10 *be deferred, failing which, the tender should be scrapped to the bewildering status of not an option to purchase, but instead, an option to cancel.*

The executive’s summary of the affordability studies declares:

It was generally accepted that it is risky to make procurements so far
15 *ahead of the actual requirement. On the other hand, the procurement of the Gripen from BAE/SAAB was perceived as generating substantial benefits, through the strength of their industrial participations offer and the role of BAE/SAAB and Denel. As a result, the Ministerial Committee decided to defer the procurement of the Alfa (Gripen) and mandated the*
20 *negotiating team to explore the possibility of taking an option, which would allow BAE/SAAB to supply Gripen to the SANDF at a future time, on condition, this did not lead to a price premium, or technological obsolescence and on the basis that BAE/SAAB would continue their participation in Denel and would deliver on their DIP and NIP*
25 *commitments in the meantime.*

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In response to this proposal, from the NT, BAE/SAAB have indicated, this option would not assist them with the promotion of the Gripen into new international markets. Hence, they would not be able to deliver on their DIP commitments, which are linked to the Gripen and work related

5 *to the Gripen, going to Denel, would also not materialise and thus, affecting the viability of Denel. In the circumstances, there was little incentive for them, to undertake their NIP commitments, in advance.*

As an alternative, BAE has proposed a combination transaction, for the supply of 24 Hawk and 28 Gripen. The offer involves a supply of a

10 *combination of Hawk and dual seaters, seater Gripen up front, with an option to the South African government to cancel on the remaining Hawk, followed by another option to cancel on the single seater Gripen.”*

These issues are dealt with, in greater detail on pages 233 to, sorry, 203, 204 and 205 of the documents, the bundle of documents.

15 *“In essence, this meant that South Africa was being used by BAE/SAAB, as a marketing exercise and a guinea pig, to promote Swedish exports of the Gripen to other countries. The Gripen had proven to be a political and financial disaster in Sweden and the Swedish government was desperate to recoup some of the costs, by*

20 *exports to so-called third world countries. Per paragraphs 1.4 and 1.42, 1.41 and 1.42 below, the matter continues to be, even in 2014, to be highly contentious in Sweden, given allegations that the new Swedish prime minister, whilst then, a trade union official, facilitated the laundering of BAE bribes, back in 1998.*

25 *Seven books have been written on the arms deal, including two books.*

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In this respect, I also draw the Commission's attention to the chapter on commissions in the book The Law of South Africa, Part two, on page 150, which quotes:

The duty to act fairly does not mean however, that a commission is
5 *bound by rules of evidence, applicable to a court of law. A commission*
is responsible for collecting evidence and obtaining statements from
witnesses. It may receive evidence either orally or in writing. It may
consider information that, in nature, including hearsay evidence and
newspapers reports, or even submissions and representations that are
10 *nothing more than opinions.*

This issue of any nature is also highly germane, given my reference
below, to crime, in paragraphs 5.30 to 5.39, to the Debevoise and
Plimpton report on the Ferrostaal/German Submarine Consortium to
offsets, as being simply vehicles to pay bribes, as well as the
15 *Commission's previous exclusions of documentation or evidence.*

Archbishop Tutu had sent me to Stockholm, in his place, in June 1998,
to attend a conference, debating the politically contentious issues of
Swedish arms exports. These issues and heavy lobbying by the
Swedish government, on behalf of BAE/SAAB, are covered in my book,
20 *Eye On The Money, from pages 131 to 133 and again, on page 141.*

But, also missing from the blue file, are memos and recommendations
by Mr Roland White, who headed the IONT team."

ADV RAMAGAGA: Ja. On 1.34, I think it is just to bring it to your
attention that there is just a minor mistake here, because Roland White
25 did not head the IONT team.

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MR CRAWFORD-BROWNE: The finance team ...[intervene]

ADV RAMAGAGA: He headed the Finance Working ...[intervene]

MR CRAWFORD-BROWNE: Finance team ...[intervene]

ADV RAMAGAGA: Team and you do agree.

5 MR CRAWFORD-BROWNE: Yes. Sorry, correct. It is the finance team ...[intervene]

ADV RAMAGAGA: You can accept that the statement be amended to read as such, that White, who headed the Finance Working Group team.

MR CRAWFORD-BROWNE: Yes. Agreed.

10 ADV RAMAGAGA: In page 19. Has the amendment been effected? Should we proceed?

MR CRAWFORD-BROWNE: Okay.

ADV RAMAGAGA: Thank you. Please proceed, Sir.

MR CRAWFORD-BROWNE:

15 *“Also missing from the blue file, are memos and recommendations by Mr Roland White, who headed the Financial Working team. Mr White left the Treasury for a job with the World Bank in Washington. He was reportedly so in fear for his life, that he refused to return to South Africa in July 2001 to testify at the Public Protector’s*
20 *hearing into the arms deal. Why has Mr White not been subpoenaed to testify at this Commission, given his key role in the affordability and financing of the arms deal, including the whole issue of offsets?”*

ADV RAMAGAGA: On Mr White, are you aware of the fact that Mr White did give evidence, through the ...[intervene]

25 MR CRAWFORD-BROWNE: The video ...[intervene]

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ADV RAMAGAGA: Yes.

MR CRAWFORD-BROWNE: Yes. He gave evidence today, by video. He, he did not, he refused to return to the country. I do not know if he is still in Washington, or where he is.

5 ADV RAMAGAGA: And, are you aware that, in the conference, that, or in the evidence that he gave, he also alluded to the fact that the, the procurement was, was good.

MR CRAWFORD-BROWNE: I would dispute that.

ADV RAMAGAGA: You ...[intervene]

10 CHAIRPERSON: I am sorry [indistinct] we could not hear your last question.

ADV RAMAGAGA: The last question is that he, Mr White alluded to the fact that, oh, sorry, sorry, Chair. Mr White alluded to the fact that the procurement deal itself, was a good procurement, or was a good
15 deal. That is the question I have asked and the witness has said he, he denies that.

CHAIRPERSON: That would not be my interpretation of what he said.

ADV RAMAGAGA: Okay. Alright. Then, you can then proceed.

MR CRAWFORD-BROWNE: Thank you.

20 CHAIRPERSON: Just hold on a second. Just before we proceed, in that same paragraph, it is stated that he was reportedly so, and then quotes in fear for his life, reported by whom? Where does Mr Crawford-Browne get this information from?

MR CRAWFORD-BROWNE: This, that, this is a newspaper coverage
25 of the circumstances, at the time, in 2001 and that is why he had to be

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interviewed by video, rather than coming to South Africa. He refused to come back to South Africa. I do not know if he has ever been back to South Africa, since then. But, that was the atmosphere, at the time. As I say, I do not know if he has ever come back, or where he is now.

5 ADV RAMAGAGA: Shall we proceed, Chair? Thank you. 1.35, please, Mr ...[intervene]

MR CRAWFORD-BROWNE: Okay.

“Offsets were not simply a clever to, nicely have clever image, to reduce the costs of warships and warplanes. The defence white paper in 1996 acknowledged the eradication of poverty was South Africa’s overriding security priority and there was no foreign conceivable military threat.

As examination in chief, in June 2014, by Minister, of Mr Ronnie Kasrils, by Advocate Simmy Lebala confirmed, a clever confidence trick had to be devised. That confidence trick was the offset programme, devised by the European arms industry and governments with collusion by the Ministers of Defence and of Trade and Industry, messrs Modise and Alec Erwin. That extraordinary confidence trick was that R30 billion spent on armaments would somehow generate R110 billion in offsets.”

20 ADV RAMAGAGA: Now, what is the basis of, of stating that Mr Kasrils confirmed that a clever confidence trick had to be devised?

MR CRAWFORD-BROWNE: The transcript of the, the hearings in June, will confirm it. It is a long discussion back and forth, as to what the meanings were of particular Cabinet discussions and how they were having difficulty in, they were having to disguise, what the meaning was

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of, of the benefits of the arms deal and the figures were subsequently hugely inflated, from R6 billion on.

ADV RAMAGAGA: Are, are you saying that Mr Kasrils ...[intervene]

CHAIRPERSON: I am sorry, Ms Ramagaga, before we proceed to that, 5 can I ask Mr Crawford-Browne to check the transcript tonight, so that tomorrow morning, we can get the relevant portions of, of what he is saying, because I cannot recall any of this, ever being said in this Commission. But, then, you know, he seems to recall, can you please check the, the transcripts so that you can make the relevant pages 10 available to us?

MR CRAWFORD-BROWNE: If these transcripts can be made available to me.

CHAIRPERSON: Ja. Okay.

MR CRAWFORD-BROWNE: But, as I sat over there, while he was 15 sitting here.

ADV RAMAGAGA: Yes. We will request for copies from the Commission ...[intervene]

MR CRAWFORD-BROWNE: Thank you ... [intervene]

ADV RAMAGAGA: And tender it to him. Shall we then proceed to the 20 next paragraph? This one will then be deferred to tomorrow, for further clarity. Page 20.

MR CRAWFORD-BROWNE: 20, okay.

ADV RAMAGAGA: Yes. 1.37.

MR CRAWFORD-BROWNE: Three, seven.

25 *"The annexures to the Alfa recommendation, as well as the*

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affordability study confirmed that BAE was expected to take over Denel and hence, the Defence Industrial Participation programmes would generate sufficient offset benefits for South Africa. The reality however, is that BAE's due diligence study of Denel revealed such massive

5 *financial and environmental liabilities that even BAE balked and the takeover never materialised.*

Per the late Mr Modise's speech in Parliament in 1999, which I quoted in greater detail in my written submission back in June 2012, it is the offsets that drove the bribery and culture of corruption, which the arms

10 *deal unleashed. Again, I ask, where in the world does one spend R30 to get R110 back in change? I remind the Commission of the dictum if it sounds to good to be true, it invariably is."*

ADV RAMAGAGA: On, on what basis do you submit that it is the offsets that drove the bribery and culture of corruption, which he arms

15 deal unleashed? And, and I am asking you this question, based on the background that has already been painted that the offsets had been in use, for quite some time. Actually, at the time of the conclusion of the acquisition contracts, the offsets had actually been legislated. It was part of the policies of the government.

20 MR CRAWFORD-BROWNE: And that is the point that the, the National Industrial Participation programme, adopted in 1997, following a lobby, by narrow representation by Armscor and DTI, to make all government procurement in excess of 10 million dollars had to have this offset said component. My contention is, that is incompatible with

25 Section 217 of the Constitution and that the whole history of what, what

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used to be referred to as counter trade and now as offsets, is internationally notorious for, for, with a reputation for corruption, as well as market manipulation. That there are, for instance, 160 pages of affidavits that show the bribes paid, for the BAE contracts and the

5 Debevoise and Plimpton report makes the point that offsets were simply a vehicle to pay bribes.

MS MARQUES: Sorry, Mr Chair, may I please interrupt. I represent Ferrostaal. I am here, on behalf of Webber Wentzel and I just want to make it known to the Commission that our client Ferrostaal has objected

10 to the admission of the report, on the basis that it is being privileged. I would just like to get a ruling from you, Chair, whether, I know, we have had a few references to a report his morning and this afternoon, whether that will, those references will be admitted in Mr Crawford-Browne's testimony and if so, whether the Commission can please stand down, as

15 Ferrostaal would like to brief council.

ADV CILLIERS: Mr Chair, if I can assist. Previously, Leon Nel, Mr Hlongwane, I previously objected on the very same basis to the document. As far as I can recall, you did, in fact, make a ruling in that regard, on the basis that, that it is on the face of it privileged. You can

20 check the record and find that specific place.

CHAIRPERSON: Maybe one should also add that we are not hearing this for the first time, that Ferrostaal still claim privilege with that document. In fact, we do, I think, up to now, we have received almost three letters, from Webber Wentzel confirming, confirming that point,

25 that that document is not, you know, that your clients have not

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relinquished privilege over that document. But, then, if I am not wrong, I think, in this document, I have seen a paragraph, where there is an allegation that, at some stage, Ferrostaal end up abandoning their privilege over that document. I am not sure, whether should we wait, 5 until we come to the, that paragraph, which I think, Mr Crawford-Browne is going to, to deal with that, before we take a firm decision on what you are on about. I agree with Advocate Cilliers, he is correct. There was a time we had problems with this, to, with this document. Should we not just allow Mr Crawford-Brown, so that his evidence can flow? Then, 10 once we come to that paragraph, which he deals with that, the question of whether your client has abandoned privilege of that document, or not, only then, should we deal with that issue. Mr Crawford-Browne am I right, you know, I know we have received 34 version of your statement. I hope that the paragraph, I am referring to, is contained in the last 15 version that you gave us, because it is the, it is the last version, where it was given to us, just before we came here.

MR CRAWFORD-BROWNE: Just one point on, in, in this report, first I have, first I have spent a considerable amount of money, more than sixty ...[intervene]

20 CHAIRPERSON: Mr Crawford-Brown, just listen to my question very carefully. I am not asking you about that report. The question that I am asking is that, you have given us 34 version of your statement. But, then, I know, that in one of your statements, that I read over the weekend, or something like that, you are dealing with the question of 25 whether that document is privileged, or not. The question that I am

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asking you is, in this last version, which was given to this morning, are you still dealing with that question of privilege of that report, or not?

MR CRAWFORD-BROWNE: If I may, Sir, may I read from this, this reference, The Law of South Africa, second edition, in the, in the
5 ...[intervene]

CHAIRPERSON: Mr Crawford-Browne, for the last time, please listen to the question.

MR CRAWFORD-BROWNE: I am listening. Yes, Sir.

CHAIRPERSON: Just listen to what I am saying and answer only what
10 I say.

MR CRAWFORD-BROWNE: Ja.

CHAIRPERSON: In one of the statement that was given to us, because I think, up to now you have given us your third version of the statement, I remember the version, or the statement that I have read
15 over the weekend, you deal with the allegation about that that Ferrostaal report, it is not privileged, because, I think, you said something like, because, you know, management of Ferrostaal wanted to cleanse their reputation, by releasing this document. Now, my question is, that paragraph, is it contained in this version of the report that you gave to us
20 this morning, or is it only in the previous versions of your, of your statement?

MR CRAWFORD-BROWNE: It is, it is in this statement, for I have not altered that aspect at all. I have not, I have not, it is, I have not altered that aspect in this version. It has just been tabled, signed this morning.
25 That, that statement remains. But, it, the demo, Ferrostaal released,

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although they said it is privileged; Debevoise and Plimpton are known to have released that document for, for a wider audience. It came to me and it is therefore, the, the prerogative of the Commission, I would suggest, including it, in terms of the rules of evidence, determining for
5 commissions. This, this is a very critical issue, as to how do we, how we address why we got, why the bribes were involved in the offsets, that offsets was ... [intervene]

CHAIRPERSON: Just hold on, Mr Crawford-Browne, you are still not answering the question. Advocate Ramagaga, what is the position,
10 because I do not seem to be getting any right answer from Mr Crawford-Browne?

ADV RAMAGAGA: Thank you, Chair. May I just assist here? Thank you for giving me the opportunity to assist, in this respect. Thank you for giving me the opportunity to assist, in this respect. Yes. It is true,
15 that paragraph is paragraph 5.13 and may I just, 5.30, 5.30. But, may I also just indicate to the Commissioners, that the changes that have been effected to the statement, has been to supplement the statement. So, nothing has been deducted from the statement. Anything that you have read yesterday, or when you received the first draft, or second
20 draft, still remains in the statement. I am just highlighting this, moving forward, so that you are assured that nothing has been deducted from the statement.

MS MARQUES: Sorry, Chair, we are aware of the allegation. We are aware of the allegation and our client strongly denies that it has been
25 placed in the public domain, on, on purpose and in the interest of

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fairness, we ask that we have time to brief council, in order to, to probably prepare, if in fact, that the Commission does decide to, to report into evidence.

CHAIRPERSON: Can I perhaps suggest this, Mr Crawford-Browne,
5 can you defer your question of, of reference to this document, regarding that report, until we have heard what Ferrostaal's council is saying? Can we deal with the [indistinct] of admissions, except the question of that report until we have heard what the council for Ferrostaal are going to say?

10 MR CRAWFORD-BROWNE: Yes. Yes, I think, I will get back to that in section five. So, we are now still on section one. So, it comes up in section 5.3.

CHAIRPERSON: Ms Ramagaga?

ADV RAMAGAGA: Thank you, Chair. We, we will accept the
15 suggestion made by the Commissioners, that this portion of the evidence be deferred, until council for Ferrostaal has been heard. The only thing that bothers us is the time frames, certainty about when, she says we need time and I think it needs to be defined, as to what is time and ...[intervene]

20 CHAIRPERSON: Let us first deal with the principal. The question of time, we will deal with it later, because once the principal is agreed upon, I was going to suggest that we start tomorrow morning at nine o'clock, we hear them, so that we be in a position to, to proceed. I did not have in mind that, you know, we will wait for another two weeks,
25 before we come to that issue.

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ADV RAMAGAGA: As, as it pleases the Commissioners, yes, we are agreeable to this portion of the evidence being stood down, until tomorrow.

CHAIRPERSON: Thank you. Let me hear you, can your council be
5 here tomorrow morning, to address us on that question?

MS MARQUES: Yes. Tomorrow will be fine.

CHAIRPERSON: Thank you. Can we start at nine o'clock, so that by
10 o'clock, we are back to our witness?

MS MARQUES: It is nine o'clock, you say? That, that is great.

10 CHAIRPERSON: I hope there is no objection from other legal
representatives that we start at nine o'clock. We hear arguments, so
that we can proceed with Mr Crawford-Browne.

ADV CILLIERS: It is fine with us, Sir, Mr Chairman.

MS MARQUES: That you, Chair, that would be fine.

15 COMMISSIONER MUSI: That will be in order for us.

CHAIRPERSON: Thank you. Then we will start tomorrow morning at
nine o'clock with your council and then, from there, we will go back to Mr
Crawford-Browne. Thank you.

ADV RAMAGAGA: Alright. Thank you. Shall we then proceed with
20 the report?

COMMISSIONER MUSI: But, but, before, before you proceed, can,
can I get clarity on what, what appears in paragraph 1.37? 1.37 on page
20.

MR CRAWFORD-BROWNE: Yes. In what respect, Sir?

25 COMMISSIONER MUSI: In, in particular:

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“The reality, however, is that BAE’s due diligence study of Denel revealed such massive financial and environmental liabilities that even BAE balked and the takeover never materialised.”

Where, where do you get this information from? Is there, is there any
5 document from this, from which this passage is, is extracted?

MR CRAWFORD-BROWNE: This was information that came to me from, from the whistle blowers. But, I was also aware that the intention of BAE was to mark, was to license Denel to manufacture weapons in South Africa for exports to countries, such as Saudi Arabia and
10 Indonesia that had human rights difficulties, so that the British could, could then claim that these were weapons supplied from South Africa, rather than from Britain to avoid the human rights implications of that. So, the intention was, and this comes out, as Mr Modise’s intention with, for, with promoting the BAE contracts, that Denel, as its major offset
15 component, would, would, the BAE, as its major offset component, would take over Denel. That never materialised.

COMMISSIONER MUSI: When, when you talk about the reality is that, et cetera, the realities, is what was conveyed to you, by other people.

MR CRAWFORD-BROWNE: I was involved, also, in 2002, I was
20 asked to investigate, whether Denel, in Cape Town, at the Swartklip plant, was manufacturing components from, for Krafter bombs, in violation of the Ottawa convention. That led into awareness of what had gone on, at the Swartklip plant, since 1948. As it was initially a fireworks plant that was then used for manufacture of ammunition and
25 the huge, huge contamination that resulted, that has probably

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irreparably damaged the aquava, under the, under the Swartklip lands. It is about 571 hectares of land. The, then, CEO of Denel testified before the Department of Public Works Committee in Parliament to say it is untenable to have an ammunition plant in a residential area, such as

5 Khayelitsha and Mitchells Plain. Swartklip has now been closed down. It remains, it appears hugely contaminated and apparently this is, this kind of thing is repeated elsewhere. That has prompted, for instance, the, the other plant in Cape Town is at Sonkem, outside Somerset West. We do not know the extent of the contamination there. But, apparently,

10 the contamination at Swartklip is, is very substantial. It needs proper environmental study to actually confirm that. But, it does seem that, that was the story we heard, during the defence review, that that, even BAE was having qualms about getting involved with the taking over of Denel.

COMMISSIONER MUSI: I do not quite, I do not quite follow. I must, I must confess. Are you saying this information came out, during a

15 discussion of the defence review?

MR CRAWFORD-BROWNE: Defence review and as I say the, the whistle blowers. I am, I am not the whistle blower. I am simply a voice for the whistle blower. But, I was representing the Anglican Church at

20 the defence review, where we were saying property eradication, not weapons, is our priority.

COMMISSIONER MUSI: I cannot quite follow. I do not quite follow. But, let me leave it there.

CHAIRPERSON: Maybe, let me try. 1.37 the allegations that you are

25 making in this paragraph, is there any documents, that you can give to

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the Commission, to support these allegations?

MR CRAWFORD-BROWNE: As you will see, from the recommendation on the Alfa Gripen project, the documentation that, that was annexed to the Cabinet minutes, the prime offset intention, was for
5 BAE to take over Denel. That was the prime offset. You will pick that up from that, that annexure. That has not happened. So, the reason, evidently, was that they had a look at the liabilities of Denel, both financial and environmental and then walked away from it. I think, you would also pick that up from the draft JIT disc, which I have now made
10 available to the Commission, which, which is a report of 741 pages, that has not, previously, been made available.

CHAIRPERSON: Now, where, what did the whistle blowers say to you, if at all, you said that information is contained in the document that you have referred us to?

15 MR CRAWFORD-BROWNE: No. The whistle blowers were not referred to in the document. The, the document, I have just provided the disc, I provided to the Commission is the draft JIT report, that was, that was edited down from 741 pages to 380 pages, in the period October 2001 to November 2001. The whole tenure and thrust of that,
20 that draft report is dramatically different, from the report that went to Parliament in November 2001. I would suggest the Commission would find the dynamite to go through the, the conclusions of that report and in particular, the interference by the then, Minister of Defence, Mr Modise.

CHAIRPERSON: Mr Crawford-Browne, can you do us a favour; tell us
25 about that dynamite that we will find in that report?

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MR CRAWFORD-BROWNE: The, what drove, what drove the BAE project and the Hawks and the Gripen, was Mr Modise's expectation that Denel, that BAE would take over Denel. That is why BAE was driven and given preference, to which even the, the Auditor General
5 objected in various forms in 1998 and 1999, that BAE had been given unduly preference and the reason for that undue preference, is the expectation that, that BAE would take over Denel as its offset contribution. That is why cost was removed from consideration, in, in the acquisition programme for the BAE contracts. It is Mr Modise's so-called visionary approach.
10

COMMISSIONER MUSI: We, we have seen the minutes of, of meetings, where there his visionary approach appears. But, there is absolutely no mention of Denel, being taken over by BAE.

MR CRAWFORD-BROWNE: That you will find in the annexures that
15 were provided in Mr Naidoo's bundle of documents. As the annexures to the Cabinet Minister's meeting of May 1999.

COMMISSIONER MUSI: Are you saying, those documents contain the, that information to the effect that BAE was supposed to be taking over Denel?

20 MR CRAWFORD-BROWNE: Yes.

COMMISSIONER MUSI: We will, will we find it there?

MR CRAWFORD-BROWNE: You will, you will find that in, in the annexures that went to that, that cabinet meeting, as the recommendation on, on Denel. In fact, that comes out elsewhere, in the
25 affordability study.

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COMMISSIONER MUSI: Well, we, we will have a look at it. Thank you.

ADV RAMAGAGA: Alright. Thank you. Mr Crawford-Browne, the next paragraph that you are invited to deal with and proceed for the rest, with the rest, until advised otherwise, it is paragraph 1.39.

MR CRAWFORD-BROWNE: Three, nine. Yes. May I read? Chairperson, Judge Seriti will recall. Chairperson:

“Judge Seriti will recall that in August 2012, I requested the former British Prime Minister Tony Blair, to be subpoenaed to testify about the bribes and pressures he exerted on our government on behalf of BAE. Regrettably the Chairperson ruled that it was premature to subpoena Mr Blair, a man who is rightly regarded internationally as a war criminal.

The opportunity was thus lost to investigate the roles of BAE and the Bank of England in deliberately destabilisation of resource rich countries in Asia and Africa. Not only is Mr Blair remembered for this lies in 2003 about Iraqi weapons of mass destruction, but he is now closely associated with the wars both in Democratic Republic of Congo and in Palestine. I will revert to this matter later.

The Swedish TV4 in 2012, exposed the role, back in 1998 of the new Swedish Prime Minister Stefan Lofven, who has just come to office, in facilitating BAE bribe repayments of R30 million to ANC MP’s, which were laundered by Swedish trade unions, as funding for an industrial training school.”

I came to this information in December 1998, when Denel’s, when

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NUMSA shop stewards asked me to speak to them on offsets. This was early December 1998. NUMSA was split on the whole issue of the arms deal and the, and the issue of offsets. At that time, I was informed that Swedish trade unions were transferring funds described as funding for an industrial training school, but which were in fact, bribes to ANC members of parliament to get them to support the arms deal.

CHAIRPERSON: Just hold on, Mr Crawford-Browne, by whom where you told?

MR CRAWFORD-BROWNE: The, the education officer for National Union of Metal Workers.

CHAIRPERSON: What is his name? Can we get his details, because we might want to follow, follow this information up with him?

MR CRAWFORD-BROWNE: Sure, he, his name was Dinga Sikwebo and he was corroborated by his colleagues.

CHAIRPERSON: Just hold on. You say, what was his name?

MR CRAWFORD-BROWNE: Dinga Sikwebo. Dinga Sikwebo. He is the education officer at the National Union for Metal Workers.

CHAIRPERSON: How, how does one write his name?

MR CRAWFORD-BROWNE: D i, D i n g u, S i q u, S i k w e b u, I think it is.

CHAIRPERSON: Mr Crawford-Browne can you just spell it slowly, so that we can write the name down?

MR CRAWFORD-BROWNE: D i n g a, Sikwebu, S i k w e b u. And he was corroborated with, by his colleagues. I spent the day with them in early December 1998.

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CHAIRPERSON: Thank you.

MR CRAWFORD-BROWNE:

*“Mr Lofven in 1998 was then the international officer for the Swedish Chemical and Metal Workers Union and the bribes were
5 alleged to be laundered via SANCO and Mr Moses Mayekiso. This illustrates the extent of corruption in the international arms trade, even in squeaky clean Sweden. After my request in.”*

ADV RAMAGAGA: Now, in 1.42, you say the bribes were alleged to be laundered via SANCO and Mr Moses Mayekiso. Where did you get
10 this information from?

MR CRAWFORD-BROWNE: From the NUMSA shop stewards and Mr Moses Mayekiso had been chair of NUMSA, prior to that. He was at that time, a member of parliament.

ADV RAMAGAGA: Yes. The, the question is, who, who gave you the
15 information?

MR CRAWFORD-BROWNE: Dinga Sikwebo and his colleagues.

ADV RAMAGAGA: Amongst the colleagues is it Dinga Sikwebo, the only one whose name you know, or was he the main person that, that is leading the discussions?

20 MR CRAWFORD-BROWNE: He was the main person. There was another man called Gibson, Gibson.

ADV RAMAGAGA: Michael ...[intervene]

MR CRAWFORD-BROWNE: No.

ADV RAMAGAGA: Gibson.

25 MR CRAWFORD-BROWNE: Gibson was his first name.

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ADV RAMAGAGA: Gibson.

MR CRAWFORD-BROWNE: I do not remember his last name.

ADV RAMAGAGA: And was he also from the union.

MR CRAWFORD-BROWNE: Yes.

5 ADV RAMAGAGA: Which union?

MR CRAWFORD-BROWNE: NUMSA.

ADV RAMAGAGA: NUMSA. And, are there any documents that they gave you? Or was it just an oral discussion?

MR CRAWFORD-BROWNE: It was oral. And so, at that point, I then
10 used my contacts in Sweden to try to verify, whether this was in fact, the case. I, as I have mentioned, I have been in Sweden, earlier, in June 1998 and Swedish TV1 then sent a team to look at the whole issue of Sweden's involvement in, in marketing the weapons in South Africa. So, I had to establish some, some connections with TV1. They were able to
15 confirm the payment, but thereafter, the shutters came down. They could not get any, they confirmed payment, but they could not give me any details. So, it was at, then at that point, through my connections with Campaign against Arms Trade in London, I asked the British government to investigate whether BAE was laundering bribes via the
20 two Swedish trade unions. The, then Secretary of Trade and Industry Stephen Byers appointed Scotland Yard to, to investigate the issue. Scotland Yard, an Inspector Harvey contacted me a couple of times. I put him in touch with Mr Sikwebo. Eventually it came back to us that it was not illegal in, in England to bribe foreigners and therefore, there
25 was no crime for Scotland Yard to investigate. That was in 1998 into

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early 1999.

ADV RAMAGAGA: Alright. Can we proceed then?

MR CRAWFORD-BROWNE: Thank you. So, that takes us to ...[intervene]

5 COMMISSIONER MUSI: But, but did they confirm that these bribes were indeed paid?

MR CRAWFORD-BROWNE: They would, then there had subsequently been a tv documentary in 2012, to, but that is a Swedish documentary, which exposed the role of Mr Lofven in facilitating these
10 bribery payments, to his friend, Mr Moses Mayekiso. In fact, there was a press statement from the ANC in July 1999, confirming payment for an industrial training school. So, that, in fact, became the, the basis in which the investigation then flowed by TV4, when it exposed this in November 2012, in, in a documentary on Swedish TV4.

15 COMMISSIONER MUSI: I was referring to the investigations by the British authorities. You then said that it was not illegal in English law, at the time, to bribe foreigners. Did those investigators, the Scotland Yard people confirm that indeed, these bribes were paid?

MR CRAWFORD-BROWNE: They just said there is nothing for them
20 to investigate.

COMMISSIONER MUSI: I am, I am referring to your evidence that you requested the British to investigate these payments and 'bribes' made to, through a trade union. I am asking whether the British investigators did confirm that in fact, these bribes were paid.

25 MR CRAWFORD-BROWNE: No. They, their response was that it is

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not that issue. It was not illegal in English law to bribe foreigners and therefore, there was nothing for them to follow up on. A submission that came up again later, about, about a year later, and, and as I think I come in, refer to it later on, Mr Peter Hain, who was then Minister in the
5 Foreign Commonwealth Office, both in writing and verbally to me, said there was absolutely no evidence of BAE corruption. That was later on. But, the issue continues and as I say, there are about 160 pages of affidavits from Mr Gary Murphy and Johan Du Plooy, that, of which the Commission will be familiar. So, the issue of BAE bribes have been a
10 very contentious matter for, since 1998, 1999.

COMMISSIONER MUSI: Thank you. I think, my question was answered.

ADV RAMAGAGA: Ja. Before you proceed to the next paragraph, I just want to follow up with a clarity seeking question. You say the British
15 then, the British government's response was that they, they do not regard bribery as a crime. Now, what I what I would like to know, because bribery, according to my understanding, the meaning of bribery is the same across, across the world, I want to believe. Are you saying that the British were using the terminology bribery, saying bribery could
20 be paid, we accept that bribery can be paid and we do not see bribery as a crime? Were they using the word bribery? Or what is the position?

MR CRAWFORD-BROWNE: Prior to 1997, you, if you go back a bit, historically, the British and so the Americans in 1977, following the Lockheed Martin scandal, instituted their foreign practices act. But, they
25 were quite unique, internationally in that. They then led the OECD, the

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Organisation for Economic Co-operation Development in 1997, to pass the, or to introduce the conventions against bribery of foreign officials.

That was 1997, but Britain continued to refuse to pass, implementing legislation on that, until after 2001, when the Americans, after 9/11 put

5 pressure on the Europeans to actually implement their commitments, in terms of the OECD conventions. So, Britain, had at that point, in 1997

had, had signed the OECD conventions, but there was no implementing legislation. So, at that point, in terms of British law, it was obviously,

illegal to bribe Englishmen, but foreigners were fair game. That was

10 also true in Germany, where bribes could even be deducted as a useful business expense, tax deducted.

ADV RAMAGAGA: Ja. What I have asked is whether the British, when you were communicating with them, did they describe the activity as bribery, or did they use different vocabulary? That is all I would like

15 to know.

MR CRAWFORD-BROWNE: Just that there is no crime for them to investigate.

ADV RAMAGAGA: Did they say they cannot, they are not going to investigate bribery?

20 MR CRAWFORD-BROWNE: They are not, ja, there is nothing for them to investigate.

ADV RAMAGAGA: What did, what did they say, Mr Crawford-Browne?

MR CRAWFORD-BROWNE: I had asked the, the briefer, the briefer I
25 had asked, through the Campaign Against Arms Trade, was for the

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British government to investigate, whether BAE was laundering bribes to South Africans via two Swedish trade unions. As I said that the said Minister of Trade and Industry detailed Scotland Yard. Scotland Yard contacted me, eventually they came back to me with, it is not illegal in English law to bribe foreigners and therefore, there was nothing, there was no task for, for Scotland Yard to undertake.

ADV RAMAGAGA: So, they said it was not criminal.

MR CRAWFORD-BROWNE: It was not criminal.

ADV RAMAGAGA: Okay. Then proceed to the next paragraph.

10 MR CRAWFORD-BROWNE:

"160 pages of affidavits from Mr Gary Murphy, an investigator at the British Serious Fraud Office, and Colonel Johan Du Plooy, previously at the Scorpions and now with the Hawks, detail how and why BAE laundered bribes of 115 million pounds or R2 billion approximately, to secure its warplane contracts with South Africa, to whom those bribes were paid and which bank accounts were credited.

The names of prominent beneficiaries of those BAE bribes include Fana Hlongwane, John Bredenkamp and the late Richard Charter. Mr Hlongwane, it will be recalled was the advisor to the former Minister of Defence, the late Joe Modise.

Although it may not have been illegal in 1998/1999 in Britain or Germany to bribe foreigners, it has long been illegal in South Africa to receive bribes. As Minister of Finance, as well as the senior member of the ANC's National Executive Committee, Mr Manuel had both fiduciary and constitutional obligations to investigate all allegations of bribery and

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corruption. Instead, and in gross abuse of those responsibilities, Mr Manuel actively engaged in the cover up of corruption and fraud associated with the arms deal.”

ADV RAMAGAGA: Will you please elaborate on the basis, upon
5 which you submit that Mr Manuel actively engaged in cover up of
corruption and fraud, associated with the arms deal?

MR CRAWFORD-BROWNE: This is, this is, as you recall an incident
that came out, regarding Mr Feinstein’s book, *After the Party*, where he
recorded a lunch he had, with, with Mr Manuel and in Mr Manuel’s
10 testimony, he blustered his way, or attempted to bluster his way to say
that JM Julius Malema or Mr, another man, whose letters were JM.

ADV RAMAGAGA: So, the basis of this statement is the, some
extract from the book, *After the Party*, by Feinstein.

MR CRAWFORD-BROWNE: It comes up in that book. But, as we
15 know, subsequently, at the SCOPA investigations in 2001, Mr Manuel
was a very active participant in, in trying to squash the SCOPA
investigation. So, although there were allegations of corruption, he and
his colleagues did absolutely nothing to try to investigate them.

ADV RAMAGAGA: Why do you say that Mr Manuel was very active,
20 in trying to squash the SCOPA investigation?

MR CRAWFORD-BROWNE: There was a, there was a meeting
recorded in February 2001 and I think, Renè Taljaard has also referred
to it, about, in her book, as well as in her testimony, as the pressure put
on, on SCOPA by the Ministerial, by the Ministers to, to squash the
25 Parliamentary investigation.

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ADV RAMAGAGA: Now, in this respect, I think, it will be proper as to indicate to, to you that Dr Woods, as well as Ms Taljaard have testified before the Commission and, and none of them has said that Mr Manuel tried to squash the SCOPA investigation and also, none of them has

5 stated that Mr Manuel was actively engaged in cover up of corruption and fraud, associated with the arms deal.

MR CRAWFORD-BROWNE: With respect, I would suggest the transcript of that meeting in the Marks building in Cape Town in February 2001, would confirm the opposite. I think, I do refer to it in my

10 book, Eye on the Money.

ADV RAMAGAGA: Yes. My question relates to the two witnesses, Dr Woods, who, at the relevant time was the Chairperson of SCOPA and Ms Taljaard, who became a member of SCOPA some time later, but she had started to participate within the SCOPA environment, as far back as

15 around, I think, November 1999 or so.

MR CRAWFORD-BROWNE: Ja. That is correct.

ADV RAMAGAGA: Yes. So, I am, I am just bringing it to your attention that these two witnesses, that have testified, who had a relationship with SCOPA, who have not stated that Mr Manuel was

20 actively engaged in, in the cover up, or even that he tried to squash the investigation.

MR CRAWFORD-BROWNE: As I said, the transcript of that meeting, it is about a four hour meeting, would suggest otherwise. But, in addition, there is also the 13 page letter to Dr Woods, purportedly from Mr Zuma,

25 as head of Government Business, which subsequently became revealed

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as having originated from Mr Mbeki, which also squashed that investigation.

ADV RAMAGAGA: Alright. I think the, the issue of, of that letter, it is something that will be addressed later, when we deal with your, the
5 contents of your books. Because, I think, that is where you elaborate on, on that letter. For now, let us just try to be focused on what we are dealing with.

MR CRAWFORD-BROWNE: Sure.

ADV RAMAGAGA: When, when I ask you questions, Mr Crawford-
10 Browne, I am not asking questions to suggest that I agree or I do not agree with what has been said. I think, it is only proper that anything that I am aware of, that may contradict what you are saying, I should bring to your attention, for you to comment.

MR CRAWFORD-BROWNE: Sure.

15 ADV RAMAGAGA: So, it is not an invitation to defend or to do anything, but just to bring it to your attention and then you respond to that. Then, the rest, that needs to be dealt with, will still be dealt with, at the right time, at the right moment, when we deal with relevant portions of your statement.

20 MR CRAWFORD-BROWNE: True enough, I think, I think the Commission is however, very aware of that aspect in Mr Feinstein's book, After the Party.

ADV RAMAGAGA: Yes. You may, we are still on page 22. Will you then please proceed to paragraph 1.47?

25 MR CRAWFORD-BROWNE: Ja.

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“The Sunday Times exposé on the 28th of September, about bribes allegedly paid to President Jacob Zuma, for assistance in blocking investigation into the Thomson CSF highlights the abuse of state institutions since 1999, especially the National Prosecuting

5 *Authority to cover up the arms deal scandal. These revelations are not new, but they do confirm the malevolent roles of the European governments, in fostering corruption in countries, such as South Africa.”*

ADV RAMAGAGA: Why, why do you say that the National Prosecuting Authority was involved in trying to cover up the arms deal

10 scandal?

MR CRAWFORD-BROWNE: Because whenever evidence was taken to the National Prosecuting Authority, it very conveniently did nothing about. In, including a request for seizure of bribes, paid to Mr Hlongwane that had been frozen in Lichtenstein.

15 ADV RAMAGAGA: Alright. I think, somewhere later, in your, in your statement, you deal with the Prosecuting Authority’s conduct. So, I, I will not pursue that, this aspect, this moment. Will you then proceed to ...[intervene]

MR CRAWFORD-BROWNE: Sure ...[intervene]

20 ADV RAMAGAGA: Item, to paragraph 1.48?

MR CRAWFORD-BROWNE: Sure.

“Whilst I still await the International Office Negotiating team and Financial Working Group papers of which I was awarded discovery, by the Cape High Court in 2003, I have late on Wednesday, the 1st of

25 *October 2014, obtained a disc of the draft copy of the Joint Investigating*

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Team report. I have now made a disc of this draft JIT report available to the Commission, for its comparison of the draft with the public report, with the published report, tabled in the Parliament in November 2001.

The draft runs to 741 pages, instead of the 380 page document. Very cursory examination of the draft reveals massive editing, to dilute disclosures that were highly critical of the arms deal tendering procedures. It has been alleged that such doctoring the JIT report took place in President Mbeki's office, during October 2001. It has also been alleged that this was when an executive summary was inserted into the

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JIT report, to exonerate the President and the Ministers and which declares:

No evidence.'

CHAIRPERSON: I am sorry, Mr Crawford-Browne, before you proceed, you say that it has been alleged that such doctoring of the JIT report

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took place. Alleged by whom? Then, secondly, the next, the very next paragraph you say that there has been alleged:

"It has also been alleged that this was when an executive summary was inserted."

Alleged by whom?

20 **MR CRAWFORD-BROWNE:** Okay. I, I received this, this disc from Dr Richard Young on Wednesday evening. Dr Richard Young, I received the disc from him and they, they are his allegations. These had, he received that disc, as a result of court, court litigation, to obtain the draft copies, which he then has compared over some time, with the, with the

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published report and has found them, there to be major discrepancies.

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CHAIRPERSON: So, do I understand you to be saying that the person, who made that allegation, is Dr Richard Young?

MR CRAWFORD-BROWNE: That is correct.

CHAIRPERSON: Thank you.

5 ADV RAMAGAGA: Thank you. And, and just, just to, to conclude that, you say it is Dr Young, who has had the opportunity to do the comparisons and, and then give you information on some highlights.

MR CRAWFORD-BROWNE: Yes. He, he undertook litigation, to obtain that draft, draft report and, on the basis of that court award, he
10 gave me the, a disc of, of the draft report. He studied it quite extensively over the years.

ADV RAMAGAGA: Okay. Will you proceed then?

MR CRAWFORD-BROWNE: Thank you. The executive summary, in the published JIT report, said:

15 *“No evidence was found of any improper or unlawful conduct by the government. The irregularities and improprieties, referred to in the findings, as contained in this report, point to the conduct of certain officials of the government departments involved and cannot, in our view, be ascribed to the President or the Ministers, involved in their
20 capacities, as members of the Ministers’ Committee or Cabinet. There are therefore, no grounds to suggest that the government’s contracting position is flawed.*

By contrast and in respect of the offset programme, the draft JIT report declares in paragraph 13.3.”

25 CHAIRPERSON: Sorry, Advocate Ramagaga, the witness seems to be

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dealing with a new point. Would this not perhaps be an appropriate moment to adjourn until tomorrow?

ADV RAMAGAGA: Yes, Chair. I agree, this would be the appropriate time.

5 MR CRAWFORD-BROWNE: Until tomorrow?

ADV RAMAGAGA: Yes.

CHAIRPERSON: So, I think, we are going to adjourn until tomorrow and tomorrow, I think, we will start at nine o'clock, in order to deal with the question of that, of that report. Good. Mr Browne, we are going to
10 adjourn, until tomorrow only, at nine o'clock and tomorrow we will start slightly earlier than we did today. We will start at nine o'clock.

COMMISSIONER MUSI: That is fine.

CHAIRPERSON: Alright. Ms Ramagaga, nine o'clock.

ADV RAMAGAGA: That is fine. Yes. Thank you. Thank you, Chair.

15 CHAIRPERSON: Advocate Mphaga, nine o'clock.

ADV MPHAGA: That is fine.

CHAIRPERSON: Thank you. We will adjourn, until tomorrow.

(COMMISSION ADJOURNS)