

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

PHASE 2

DATE : 07 OCTOBER 2014

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CHAIRPERSON: Good morning. I think yesterday when we adjourned we said that this morning we will deal with the question of the document which MR CRAWFORD BROWNE wanted to refer to and I think there was documentation from fellow staff and they promised that today they
5 will come [indistinct] to deal with the admissibility or otherwise that document.

I think in the previous sittings this issue was [indistinct] and I think that I should mention that it is clear from the transcripts, I did make a ruling that that document is not admissible. During argument Mr
10 Hoffman appeared on behalf of MR CRAWFORD BROWNE when cross-examining one of the witnesses, wanted to use that document and there was a feeling that that document might not be admissible at that stage.

If you look at the transcript, I think page 7570 Mr
15 Hoffman said the following:

“Mr Commissioner, my instructions are that this document is in the public domain and there was indeed [indistinct]. The document was brought into existence in order to clean up the image of [indistinct] so that they could do business in the United States.
20 [indistinct] with anybody and I have had a personal conversation with the relevant official asking about it and the answer was you can have it and we will give you anything else that you need.”

That is what advocate Hoffman has said according to this transcript. Now maybe even before we go into details on this issue, let
25 me find out from [indistinct] whether what advocate Hoffman said to this

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commission on that day truly represents the feelings of your [indistinct].

ADV BURGER: Thank you chair. I am [indistinct] Burger instructed by [indistinct]. Commissioner, the position is that the submissions made by Mr Hoffman, [indistinct] and as far as I am instructed those documents
5 were not prepared for [indistinct] in the United States, and I think it is a matter of record that those documents were on [indistinct] prosecuting authorities.

How they obtained this is uncertain. [indistinct] seize the bond or was it provided to them. Be that as it may the version put
10 forward by Mr Hoffman does not stand as evidence. There is no factual foundation for those submissions.

CHAIRPERSON: As I said at the beginning, there is already a ruling that we may have made at an earlier stage. Then I am prepared to hear evidence again on that issue, simply because of the importance of this
15 question. Then secondly I will tell you why I thought maybe we might want to have a look at this document.

I have had a look at the report. I think I read it twice already, and the portion of the report which [indistinct] ten pages, the first four pages deals with other issues and I think the last six pages
20 deals with the offsets. I am not quite certain whether [indistinct] would not want to consider their position as far as this document is concerned.

Particularly as far as the portion which relates to South Africa, and I will tell you why I am saying so. There is a perception there or the other people want to create an impression that this document
25 contains valuable evidence which the commission cannot ignore. They

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say it contains [indistinct] information, and when you look at it, it does not seem so.

I have discussed this matter with my fellow commissioner here, and we thought that it might just be in the interest of [indistinct] to
5 waive privilege in as far as these ten pages are concerned, because the perception out there is that you know there is very explosive information which indicates that [indistinct] admitted that they have paid bribes.

They have paid bribes to senior politicians, and if we keep on saying that you know strictly speaking this document is not
10 admissible. That fuels their perception and which perception when you try and analyse this document, you then realise that this perception is misplaced.

Our view seems to be that it might just be in the interest of [indistinct] and this commission for [indistinct] to concede or waive
15 privilege to that portion of the report which relates to South Africa, and I tell you why I say so. This document again deals with the question of offsets.

We have had a lot of evidence dealing with the offsets, and some of the issues which I raised, are raised in this document
20 relating to offsets, we have heard direct evidence from people who were managing those problems. But then [indistinct] keeps on to maintain the position that these documents are not admissible.

It does not help to deal with that perception that there is very explosive information which is contained in this document.

25 ADV BURGER: Thank you chair. I will obviously take a [indistinct] on

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that point, but it might well be a point well made. I do not know how we should proceed with that. Whether or not we should stand down for five minutes.

CHAIRPERSON: Before we come to that, maybe let me hear what the evidence leaders has got to say before we will finalise dealing with this issue.

ADV RAMAGAGA: Thank you chair. The view of the evidence leaders is that the, it would support an argument that this document be used in this commission, in the public hearings and that view is supported by a constitutional court decision, but the commissioners I hear at this point they are not calling for arguments, but what they are calling for is just the view of the evidence leaders with regard to whether that document should be used in these hearings or not.

That is the view that we hold. Briefly chair we support the suggestion that the, we should adjourn in order to enable the legal representatives of [indistinct] to take instructions.

CHAIRPERSON: Okay. Any of the counsels want to say [indistinct]?

MR CHOWE: Thank you. We have not taken instructions in that issue, but we will suggest that if the commission is inclined to grant the applicants maybe a few minutes just to take instructions, we will support that.

CHAIRPERSON: Thank you.

ADV CILLIERS: I must say I fully agree with the sentiments that you expressed. I went through the document myself last night again, and the [indistinct] is being created that this is as the witness called it

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[indistinct]. It is clearly not, and it creates the wrong impression.

CHAIRPERSON: Thank you. Maybe even before I come to [indistinct], when you look at the statement of MR CRAWFORD BROWNE, he deals with this document [indistinct]. You understand. It is only one
5 paragraph, but then the perception that it creates out there, I think is problematic.

We want to perpetuate the perception or do you want to deal with this one paragraph by allowing MR CRAWFORD BROWNE to go through it, because I do not think he can add anything, except just to
10 read what the report says. If you want to take instructions, I am going to suggest that you do so.

But in the mean time we will proceed with MR CRAWFORD BROWNE. This report it deals with it in one paragraph, almost towards the end of the statement. Will that suit you? I am trying
15 to avoid a situation where we must adjourn altogether.

ADV CILLIERS: Thank you chair. I think that is quite sensible. Chair, I will seek instruction on the basis that privilege is weighed in respect of the South African portion of the report only. Unfortunately I have been brought into this very later. I have not had sight of the report. I do not
20 know what it says, I do not know what it looks like.

I will take instruction.

CHAIRPERSON: You will see the South African portion is only about ten pages, from page 58 to page 68 and the first four pages, those are the ones which deals with the commissions, and the other six pages
25 deals with the offsets. Maybe have a look at it, and then when you are

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ready [indistinct].

In the mean time we will proceed with the evidence of MR CRAWFORD BROWNE. Thank you. Mrs Ramagaga?

ADV RAMAGAGA: Thank you chair. MR CRAWFORD BROWNE,
5 when we adjourned yesterday ... [intervene]

CHAIRPERSON: I am sorry. Has the witness been sworn in?

ADV RAMAGAGA: Yes, he has been sworn in. If you look at the main bundle, page 24. Page 24. The main bundle. The statement.

MR CRAWFORD BROWNE: That is paragraph 152?

10 ADV RAMAGAGA: Yes. You may then proceed to take the commission through that paragraph. When we adjourned yesterday, we had dealt with paragraphs, I think the last paragraph that you dealt with, was paragraph 1.50.

MR CRAWFORD BROWNE: [indistinct]

15 ADV RAMAGAGA: Yes. That is right. And then 1.52 you have also dealt with that one.

MR CRAWFORD BROWNE: Yes. At the end, this is the end of the first section. In summary the offsets were simply a [indistinct] to pay bribes and Mr Modise's benefits of 110 billion rand never materialised.

20 ADV RAMAGAGA: Yes, continue to the next paragraph.

MR CRAWFORD BROWNE: Okay. Now this moves into Section 2 in terms of the terms of reference, and on Arms Deal acquisitions used or unused. The Sunday Times report in December 2012 in an article headlined SANDF on sick parade, reported on testimony to the
25 parliamentary defence committee by admiral Green, that the four

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German [indistinct] only one was fully operational.

But the three German submarine consortium [indistinct] only one was operational. And the 26 [indistinct] air craft were flying only two hours per month. That article can be found on pages 262 to
5 264 of this bundle.

As the SANDF's head of strategy, admiral Green was recorded by the Sunday Times as having told the parliament:

"There was a capacity problem with the [indistinct]. The [indistinct] does not have the capacity to turn around these ships in what
10 we would terms [indistinct] he said."

Another thing that we need to bear in mind, is that in the previous dispensation when we bought [indistinct] nature, we would have had a huge integrated logistics support system with it which would include some main equipment like engines and the [indistinct]
15 equipment.

We do not have that luxury within our budget. Green also told parliament about budget problems affecting the Gripen squadron which flew only 173 hours during the second quarter of the year in 2012. These aircraft particularly are far more costly to operate
20 than originally determined.

This is something we are living with. As the Mail and Guardian newspaper records, admiral Green in August 2013 denied at the commission that he had made such remarks in parliament. This raises the issue whether he deliberately misled the commission and thus
25 committed perjury.

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Alternatively did admiral Green deliberately mislead parliament or did the Sunday Times [indistinct] fabricate the story. Corroborating the Sunday Times report, defence web on 13 March 2013 reported and this article can be found in pages 394 to 396 of the bundle:

5 “Twelve of the South African Air Force’s 26 Gripen fighter jets are in long term storage, according to the defence minister [indistinct]. The air force does not have the funding to fly them. This emerged yesterday in a reply to a parliamentary question posed by the opposition democratic alliances party, [indistinct].

10 The South African Air Force has 12 Gripen fighter air craft placed in long term storage. These air craft are placed in storage as a planned activity in line with the utilisation and budget expenditure pattern flow of the South African Air Force. At present the SAF can only [indistinct] six qualified Gripen pilots who only have 150 flying hours
15 available across the whole Gripen squadron this year.

One of the biggest scandals of the arms deal is that we bought military equipment we could not afford to operate. There is no better illustration of the point than the Gripen fighter jets in long term storage.”

20 This appalling state of affairs was widely predicted during the parliamentary defence review. Both by South Africans and by diplomatic observers. Members of parliament who objected to the arms deal expenditures were later removed from the ANC party list.

ADV RAMAGAGA: Will you please indicate to the commission as to
25 who are these members that were removed? The ANC members that

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were removed?

MR CRAWFORD BROWNE: One in particular was [indistinct] Govender.

CHAIRPERSON: Sorry, I did not hear that?

5 MR CRAWFORD BROWNE: One in particular was [indistinct] Govender.

CHAIRPERSON: And who else?

MR CRAWFORD BROWNE: I prefer not to disclose their identities.

CHAIRPERSON: But then I do not understand. You are testifying
10 about [indistinct] and you say that you cannot disclose their identities.

MR CRAWFORD BROWNE: Sir, may I refer to a statement I make in
paragraph 2.5 which I will come to in just a moment. Okay. The auditor
general in his report to parliament in September 2000 noted no
consideration had been given to the personnel requirements for the
15 acquisitions.

Paragraphs 126 and 127 above, it was recommended to
cabinet in May 1999 that the BAE [indistinct] procurement should be
scrapped. The failure of the cabinet to take heed of such basic realities,
gave prudence to the suspicions, the arms deal acquisitions were in fact
20 bought for the bribes rather than for any rational defence requirements.

The former deputy minister of defence [indistinct] has
publically disclosed that when she took office in June 1999, one navy
admiral told her:

“Madam, we bought the wrong equipment.”

25 He then added:

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“These are hardly the weapons we need for peace keeping.”

[indistinct] has by email also authorised me to [indistinct] list of the commission.

5 ADV CANE: May I interject at this point. The difficulty with this evidence, which I [indistinct] be struck from the record, is that there is no possible way to establish the [indistinct] for this double hearsay. The identity of the person who supposedly had expertise to venture the [indistinct] has not been disclosed.

10 So it makes this evidence entirely objectionable, unreliable and completely incapable of [indistinct]. On those grounds, [indistinct].

CHAIRPERSON: Advocate Cane, before we come to that. When MR BROWNE were dealing with 2.3 I asked a question who are the
15 members of the ANC who had been removed because of their objections to the [indistinct]. You mentioned one person, and from there you then said to me wait until I deal with 2.5.

But I cannot see the correlation between 2.3 and 2.5. You are talking about members of the ANC who were removed from the
20 list, and my question was who was those members. You mentioned only one. Can we go back to that question? Tell us who are the members whose names were removed, so that we can also try and contact them and find out what transpired.

MR BROWNE: Okay, during the debate on the national convention
25 arms control [indistinct] in I think it was first presented in 1999. It was

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withdrawn following the objections from NGO's including myself to the huge embarrassment of Mr Kadar Asmal who was presenting it, in that I was waived down in [indistinct] by Mrs Thandi Modise, who was then the head of the committee.

5 She said the cabinet ministers had subjected to having been embarrassed by having to withdraw this legislation, but she said it is time that the cabinet ministers in Pretoria realise that we are serious about democracy and if they do it again, we will do the same thing.

A year later that same [indistinct] was resubmitted.

10 Again we now had 15 NGO's who objected. Over the Christmas recess the offending clause 23 or paragraph 23 was completely re-written to give parliament oversight over arms exports. The new minister of defence, Mr Lekota then came in, in his capacity of chairman of the ANC, and he read the riot act to the members of the ANC, members of
15 their committee.

Saying you are here in parliament not to represent the people, but to represent the ANC. You will obey instructions or else ...
[intervene]

CHAIRPERSON: MR CRAWFORD BROWNE, if you do not mind. Just
20 answer my question. That long explanation does not deal with my question. My question is simple. Here you say that members of parliament who objected to the arms deal expenditure were later removed from the ANC.

Who are those people that you are referring to?

25 MR BROWNE: I have given one name of [indistinct] Govender, who

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voted against the arms acquisition. We also know the whole record of the Scopa investigation including the treatment metered out to Mr Andrew Feinstein as a member of the ANC.

CHAIRPERSON: And those are the only two names that I can tick of?

5 MR BROWNE: As I say I prefer not to publically disclose those names without their authority.

CHAIRPERSON: Okay, thank you. Now 2.5 you are talking about [indistinct] who told you that somebody else told her that. Are you in the position to tell us who is this navy officer or navy admiral that Mrs
10 [indistinct] is referring to?

MR BROWNE: She has now disclosed the admiral's name, but she has given me authority to her email to disclose the fact, but pertinently if you will a commission of enquiry has the right I submit to accept even hearsay evidence.

15 CHAIRPERSON: Just hold on MR BROWNE. We will come to that. I just wanted to find out who is this man who is alleged to have said, to have had a discussion with [indistinct]. Do you know who she was referring to?

MR BROWNE: She has not disclosed the name to me, but presumably
20 she would be prepared to disclose the name to the commission. As I say, I have sent an email to the commission confirming this account.

CHAIRPERSON: Thank you. Advocate Cane, I think in that case because [indistinct] provisionally admit this paragraph and from there try and make contact with her and see how do we deal with that in order to
25 try and get confirmation from her. We might even be lucky to get the

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name of this admiral who seems to be having very important information, and probably try also to subpoena that admiral to come and testify.

So I will provisionally admit this 2.5 statement of MR

5 CRAWFORD BROWNE.

ADV CANE: Yes, as you please chair.

ADV RAMAGAGA: Thank you chair. You may then proceed to the next paragraph. Paragraph 2.6.

MR CRAWFORD BROWNE: [indistinct] first round of hearings extended
10 [indistinct] amount of time and financial resources on testimonies by admirals, generals and officials who played no or minimal roles in the acquisition decision making process. Their testimonies were [indistinct] of a presentation in 1997 by admiral [indistinct] during the defence review that submarines [indistinct].

15 CHAIRPERSON: MR BROWNE, you say that generals and officials who played no or nominal roles in the acquisition decision making process. How do you come to this conclusion?

MR BROWNE: Sir, the decisions were made at cabinet not in either department of defence or amongst admirals or generals. The decisions
20 on what acquisitions to make, were made by the cabinet subcommittee headed by Mr Thabo Mbeki.

CHAIRPERSON: So you are saying that the generals played no role whatsoever, or a very limited role?

MR BROWNE: As the message from [indistinct] confirms, we bought
25 the wrong equipment.

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CHAIRPERSON: I do not understand what you are trying to say. I ask you a simple question. You are saying that the generals and the admirals played no role whatsoever in the acquisition process, or in deciding which equipment to [indistinct].

5 MR BROWNE: Yes sir, the decisions were made at cabinet. As we know from the testimony of Mr Pierre Steyn the hawks and [indistinct] were [indistinct] on the basis of a visionary approach by Mr Joe Modise over the objections of the SAF.

CHAIRPERSON: You can proceed.

10 COMMISSIONER MUSI: Sorry, I just want to get clarity on this 2.6 as well. You say that the commission expanded an [indistinct] amount of time and financial resources on testimonies by admirals, generals and officials who played no roles in the decision making process. You are referring to the people who testified before this commission.

15 Is that correct?

MR BROWNE: The point sir, is the rational for the acquisitions was not the equipment itself, as these witnesses described. The rational for the arms acquisitions was the offsets and the bribes. The [indistinct] of 30 billion rand would somehow generate a 110 billion rand in offsets.

20 It would create 65000 jobs. That was the rational. Not the need for [indistinct].

COMMISSIONER MUSI: Did you listen to the evidence of all those witnesses? Did you read the transcript of the record?

MR BROWNE: I have read many of the transcripts. I cannot say that I
25 have read all of them, but I have read many of them and that is my

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submission that they were incidental players and the decisions were made by cabinet overruling for instance the air force in terms of the [indistinct] fighter air craft and as their admiral told [indistinct] when she was the deputy minister of defence, we bought the wrong equipment.

5 COMMISSIONER MUSI: Are you aware that each one of them testified about the specific role that they played in the whole process? They may not have taken part in the decision making process, but they played a role in the whole acquisition process, and each one of them testified about a specific role that he or she played.

10 Are you aware of that?

MR BROWNE: Of course. They have jobs to protect sir, and as we have heard from admiral Green, he tells parliament one thing and he tells the commission the other.

15 COMMISSIONER MUSI: Well, I do not follow. I think I will leave it there.

ADV RAMAGAGA: Right. MR CRAWFORD BROWNE, the question that I would like to ask relates to what you term as the decision making process. Now would you agree that there was a process in place which led to the decision making by those that had the power to make
20 decisions?

MR CRAWFORD BROWNE: In the first instance, the defence review was as you have established to consider the whole issue in terms of the [indistinct] and that is why I was pointed to the defence review. Amongst the testimony, surprisingly perhaps was that of Mr Shabir
25 Shake who report to parliament in March 1998, that the department of

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defence now conceded after all the conferences and meetings and so forth, that the country could not afford the acquisitions and he asked the committee for new instructions.

He was then over ruled at that point by Mr Tony
5 [indistinct] as chairman of the committee on the instructions to proceed on the assumption of better financial days ahead for South Africa. At that pointy the offsets really took over. The issue then was if we spent 30 billion we would get 110 billion back in the offsets and that was driven by cabinet.

10 CHAIRPERSON: He is not answering the question. Just put the question to him.

ADV RAMAGAGA: I will do so chair, thank you. MR CRAWFORD BROWNE, the question that I am asking relates to the decision making process. Now I am saying prior to the decision being made by those
15 that had the powers to make the decisions, there was a process that was put in place, where there were other role players.

Do you agree that there was a process that was put in place prior to the decisions that were made?

MR CRAWFORD BROWNE: Yes, there was a [indistinct] paper of 1996
20 followed by the defence review.

ADV RAMAGAGA: Right. There was the defence white paper and then there was the defence review which was actually adopted by all parties.

MR BROWNE: It was adopted by all parties with the provisor if you will, that it did not include authority for financial expenditures and would
25 require further parliamentary authority for such expenditures.

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ADV RAMAGAGA: Now after this review was adopted by all parties, in order to execute what was actually agreed upon in terms of the defence review, then processes were put in place in preparation for the decisions. In order to facilitate decisions to be made ultimately by those
5 that had the powers to decide.

Do you agree with me on that point?

MR BROWNE: Yes, as the defence review found if you [indistinct] the acquisition was simply a wish list, and as I said would require further parliamentary authority. This was then taken up by the cabinet
10 subcommittee which comprises five members, and they have made the decisions.

ADV RAMAGAGA: And the processes that we are talking about, there is evidence already that has been presented to the commission, would include the processes of inviting parties that have been identified as
15 those that seem to have the capability to deliver what is required.

MR BROWNE: Yes.

ADV RAMAGAGA: Having received that information, then there would be the evaluation systems that were developed. Do you agree sir?

MR BROWNE: Yes, I agree.

20 ADV RAMAGAGA: And in that space where there were evaluations [indistinct] and recommendations, that space was occupied by mainly the people that knew better about the relevant equipment, or the equipment that would be relevant in their territory. Is that correct?

MR BROWNE: That is correct.

25 ADV RAMAGAGA: [indistinct]

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MR BROWNE: If you want, the issue was proceeded by the question of the four Spanish corvettes. Then we proceeded to the defence review, defence white paper and the defence review. During that period the issue arose of the submarines, because the British were giving away
5 [indistinct] submarines and there are navy admirals who suddenly decided we would like some British submarines free of cost.

The delays were such that the British finally gave them to the Canadians, where they have been another political and financial disaster in Canada. The point however was suddenly if submarines
10 were the new toy that the admirals wanted to protect fish.

ADV RAMAGAGA: The question that I have asked relates to the evidence that has been led about the rational for the acquisition.

CHAIRPERSON: I am sorry. MR CRAWFORD BROWNE, are you saying that [indistinct]?

15 MR BROWNE: That is the testimony from a man who is now an admiral.

CHAIRPERSON: Okay.

COMMISSIONER MUSI: Can it be taken seriously?

MR BROWNE: It went from his mouth to my note book. I was so
20 astounded at the time.

ADV RAMAGAGA: Right. Let us proceed to the next paragraph. I have brought to your attention as to what it is that was stated as the motivation for the acquisition. Proceed to the next paragraph, 2.8.

MR BROWNE: Millions of South Africans struggle daily with the legacy
25 of apartheid and poverty, these men [indistinct] their pride in so called

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toys for boys and other irrelevancies. Astonishingly and there is another example, the purported justification for the acquisition of the BAE [indistinct] war planes, included protection for the 2010 world cup.

ADV RAMAGAGA: Now would you agree that at the time of the
5 decisions being made to acquire the equipment, at that time there was no indication that there is a chance that we may host the world cup?

MR BROWNE: That is correct, but it goes to illustrate if you will the [indistinct] submarines could protect fish, and weapons could protect the world cup.

10 ADV RAMAGAGA: Proceed with the next paragraph, 2.9.

MR BROWNE: The acquisitions decisions were made by the cabinet and often as is confirmed by the JIT report, over the objections and the leadership of the SAF and SA Navy, including the former secretary for defence, Pierre Steyn. Mr Steyn will be recalled resigned in 1998 rather
15 than take a counter responsibility for the cabinet's unconstitutional decision to exclude costs from consideration the BA hawk and BA [indistinct].

ADV RAMAGAGA: Will you please inform the commission as to what the objection of the air force was in relation to the acquisition?

20 MR BROWNE: Yes. In July the JIT report confirms that in July 1997 the air force had informed the government that the British proposals for the hawks and Gripens were unsuited, in that they are both too expensive and [indistinct] to South Africa's requirements. That was July 1997 and that is confirmed in the JIT report.

25 ADV RAMAGAGA: Right. In this paragraph you are talking about the

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confidence trick played. Now you will remember that yesterday when you were dealing with the evidence of Mr [indistinct], you said that he is the person who actually stated in his evidence that the government had to play a confidence trick in order to do the acquisition.

5 Maybe this is the right time to talk about this and so that the commission can understand better what is meant. What do you mean when you talk about the confidence trick.

MR BROWNE: Quite obviously Mr Kasrils did not use the term confidence trick, but if you go back to the transcript of his examination
10 here in June, there are various references in that transcript where it crops up for instance at page 6800. The meeting of 9 February 1998 when this meeting in [indistinct] and defence was taking place, Mr Modise was present.

 Some of the issues were entailed and captured as
15 follows. The minister warned that the figure of 6.6 billion must never be mentioned. If so, we will fail irrespective of what Mr Irwin says. Our aim [indistinct] a one to one ratio. Advocate Lebala goes on. Would you agree that finances were the issue there? Yes, of course. Advocate Lebala. Now what does the minister say when he says the figure of 6
20 billion rand must never be mentioned? Are you able to tell the commission?

 Now this goes on as you will recall at some length about this 6 billion, about which the South African public must never be told. Because Mr Irwin is minister of trade and industry has a scheme in
25 terms of offsets. I do not think it is necessary to make reference to all

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that there is interactions between advocate Lebala and Mr Kasrils during their testimony.

But as you can see from the flags I have inserted into the transcript, this is a recurring issue of the SA lack of money to buy the acquisitions and therefore there is [indistinct] if you will had to be created that if we spend what we claim 30 billion in war ships and war planes can somehow miraculously generate 110 billion rand in offsets.

That was the confidence trick.

CHAIRPERSON: Just hold on. Just from my part MR BROWNE, I have not quite understand that. I do not understand the statement that you have made. I do not understand it.

MR BROWNE: Sir, in the examination of Mr Kasrils by advocate Lebala, there is this repeated thing about 6 billion rand of which South Africans and the overseas contractors must never hear about the difficulties that we have, that South Africa cannot afford to extend the kind of money that is necessary.

Therefore with the offset program being developed by Mr Irwin and Mr Modise, there will be this question of the offsets. Obviously the term confidence trick was not used. But that in essence is what it was all about. The confidence trick of the offset program.

CHAIRPERSON: On that portion of the transcript that you have read, [indistinct] refer to offsets?

MR BROWNE: On page 6809 if 6 billion came into the country and we have said are you looking at any other investments or offsets, you mentioned offsets, but what qualifies offsets, because the offsets is

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being spelled out. Am I right? Yes, I follow you. I agree with your approach. Advocate Lebala, let us proceed.

Let us go to paragraph 5.46, paragraph 5.45. Is that not relevant? [indistinct] informed regarding the financial side. Mr Irwin
5 foresaw possible [indistinct] not only on the financial packages but there is also other aspects which he had in mind [indistinct] setting up a fund to ensure sustainable employment.

It goes on. Do you remember that I mentioned to you there is a gentleman by the name of Mr R Haywood. If you look at page
10 187, just to refresh you he was present at the meeting of the counsel of defence. That is a repeat of a previous thing. Now you will be [indistinct], this is advocate Lebala.

At one time Mr Kasrils might have been deputy minister, but it will be subject to what he was doing in terms of functions. Is that
15 right? We want you to look at paragraph 5.49. Now you will be refreshed about why we took you to paragraph 5.43, the 26 billion and the 6 billion you remember.

Now let us go to paragraph 5.49. The minister warned that the figure of 6 billion, now let us pause here. Is it the same 6 billion
20 that we see in paragraph 5.43. I am reading, it looks like it. Advocate Lebala. Deputy minister, you were part of that meeting. I do not have to remind you.

Mr Kasrils. [indistinct] that Mr Modise is referring to the 6 billion of the 543 stated by Mr Irwin. That is only my reading, I cannot
25 remember. Advocate Lebala. The minister warned that the figure of 6

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billion rand must never be mentioned. Mr Kasrils. [indistinct] negotiations that are now arising on the whole question of the defence equipment.

Very hard negotiations and these ministers, those
5 present are discussing how to handle it. How to get the best result. In the process minister Irwin makes this point. He is positive. He expects to land a 6 billion rand investment. He is not sure whether [indistinct] the 26 or whether it is a particular item.

Mr Modise is saying for goodness sake, do not mention
10 the figure of 6 billion. It is [indistinct] going to who I hand is going to show how desperate we are. Let me repeat that. How desperate we are. I am trying to read into this what must have been on the minister's mind at the time.

It is not easy in terms of all these years. Now advocate
15 Lebala. Now of significance is the minister want the figure, 6 billion must never be mentioned, because there are budget [indistinct]. I think there is something we can only surmise there are budget constraints.

There are business issues. There are all sorts of aspects
taking place around negotiations and we do not want to show the
20 outside world, that we are going to have big problems timing the funds. At the same time the minister of finance is embarked. Trade and industry. They may be considering how best to finance the coming acquisitions.

[indistinct]

25 ADV RAMAGAGA: Let us move to the next topic, the offset benefits.

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MR BROWNE: This Section 4 refers to the terms of reference 4, the commission's terms of reference where the offsets anticipated to flow from the strategic defence package have materialised at all, and if they had the extent to which they have materialised and if they had not, the steps that ought to be taken to realise them.

Notwithstanding the constitution obligations of Section 217 (1) regarding government procurements. The national industrial participation program or offsets was instituted in 1997 after combined representations to cabinet by the department of defence on behalf of Armscor and DTI.

Armscor [indistinct] widely about its purported offset expertise. Much of it derived from sanctions busting operations during the apartheid era. In fact a [indistinct] of enquiry into Armscor in 1994 and 1995 found that Armscor was both extraordinarily corrupt and incompetent.

That Armscor is the function of the department of defence who has given the roles to manage both the arms deal acquisitions and the offset program. It is worth recalling that the late Oliver Tambo during the 1980's reportedly [indistinct] as a Frankenstein monster that cannot be reformed, it must be destroyed.

In addition to the two paragraphs in the late Mr Modise's 1999 budget speech quoted by advocate Lubaka in his opening address on 20 January 2014, a third paragraph by Mr Modise in parliament in 1999 declared:

"As to concerns that such transactions are open to

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improper influences, I want to assure you that the bids have gone through a fine tooth comb to ensure an ethical outcome. It is clear that the acquisition project will benefit South African industry as a whole.

It will benefit the defence industry in particular which
5 receives a new lease of life.”

In reality Denel’s former chief executive officer, the later Dr Victor [indistinct] reported to the parliamentary committee for public enterprises in November 2004 that Armscor had foisted the arms deal offset projects, the DIP projects onto Denel and that Denel was losing
10 money on 80 percent of these projects.

Because of that discession Dr [indistinct] was dismissed within three months by the incoming minister of public enterprises that moved from DTI Dr Alec Irwin.

ADV RAMAGAGA: What is the basis of your assertion that Dr
15 [indistinct] was dismissed as a result of his indiscessions about these offsets?

MR BROWNE: I was present during that meeting with the portfolio committee. We are at the time endeavouing with the organisation [indistinct] to prevent the manufacturer of ammunition at [indistinct]. Dr
20 [indistinct] at that meeting confirmed that it is totally unsustainable to have an ammunition [indistinct] in the middle of a residential area, and that that ammunition plant should be closed.

In the course of subsequent discussions, both he and the then DG for public enterprises were wanting to open up the whole
25 question of Denel and the impact it had on neighbouring communities.

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Both of them, Dr [indistinct] and Dr [indistinct] were then dismissed a few months later by Mr Irwin. I think it would follow that up in reports.

But both of them were dismissed. [indistinct]. A report in May 15, 2012 in the Cape Times newspaper by [indistinct] and quoted in
5 full in my written submission in June 2012 records:

“Trade and industry minister Rob Davies has revealed that usual departmental practices widely flouted in calculating offset credits awarded to contractors in South Africa’s notorious arms deal. As a result the weapons manufacturers came to be [indistinct] between
10 nearly 50 and about 200 times what they invested. In several cases on the basis of investments that failed to benefit the economy at all, and in some cases have turned out to be a burden.”

Finally in terms of this section there are no means available to remedy the non delivery of the promised offsets. In short
15 South Africans were the victims of an ommece confidence trick now estimated to have cost the country over 70 billion rand.

ADV RAMAGAGA: Now are you aware of the fact that the contracts, the offset contracts, also provided for the penalties that would be levied in the event of default?

20 MR BROWNE: Absolutely. This is one of the standing objections to offsets, that the so called penalties are built into the prices. The prices are inflated to cover any penalties of five or ten percent. So the introduction of penalties is actually [indistinct]. It is built into the prices.

ADV RAMAGAGA: The question, I am asking you this question,
25 because in this paragraph you say there are no means available to

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remedy the non delivery of the promised offsets. So what do you view the penalties as?

MR BROWNE: The penalties of five or ten percent are incidental. We did not get the jobs. We did not get the technology. We [indistinct] an
5 amount of money that should have gone to other issues.

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

MR BROWNE: Thank you. Improper influences, and this is Section 5

...

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[intervene]

CHAIRPERSON: I am sorry. Maybe at this point it is an opportune time to take the tea adjournment.

HEARING ADJOURNS

5

HEARING RESUMES

CHAIRPERSON: Thank you. Do you confirm that you are still under oath, say I do?

MR CRAWFORD-BROWNE: I do.

ADV RAMAGAGA: Alright. Thank you. Mr Crawford-Browne, the
10 next topic that you will be dealing with, just a minute. Ja. Thank you, Chair, the, maybe it is the time to find out as to what, whether there are instructions or how do we deal with the Debevoise report?

ADV BURGER: Thank you, Chair. We have taken instruction from our
15 client and they continue to assert their right to claim legal privilege, in respect of the document. Chair, I under criminal, there are no circumstances that bridge, that warrant a new ruling on the issue of privilege. It is to remain that, the provision of privilege remain as is, as they are presently. Chair, on, on that, it needs to remain.

CHAIRPERSON: Can you just raise up your voice a little bit?

20 ADV BURGER: I certainly can. Just to say that we have taken instruction and our client will continue to assert their right to claim legal privilege and that the ruling on the admissibility of that report is unaffected by any new evidence. So, the submission is that that ruling should, should stand. Thank you, Chairman.

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CHAIRPERSON: I suppose in that case, we will have to hear arguments all over again, because as I have said that, you know, I will not be able to look at that day, on another date. If at all, I am going to hear evidence, I would suggest that we do it at two o'clock, so that we
5 can finish with the evidence of Mr Crawford-Browne, relating to other issues, except that one paragraph, where he refers to that report. Can you perhaps come back after that time?

ADV BURGER: Certainly, Chair, and to the extent that the evidence the written statement deals with that report, even though it is not
10 expressly with, with the Debevoise report, I ask that evidence not be led in those respects.

CHAIRPERSON: I will request for this.

ADV BURGER: Maybe, if I could clarify that. For example, if, if the witness statements, there is a reference to the report, obviously,
15 evidence will not be led, in respect of that paragraph. But, where ever there is an express reference to the report, but it deals with the content of the report, I ask that those paragraphs also stand down for later.

CHAIRPERSON: Ja. I am not sure, whether I am aware of any, of any such parallels, but then, we were told, the source of that information is
20 from some other document. I cannot stop the witnesses from, from leading that, unless in instances, where I am aware of the source of that information, and is there in the report itself.

ADV BURGER: Thank you, Chair.

CHAIRPERSON: I think, in the mean time, we can proceed. Let us
25 see how far we go, Mr Crawford-Brown.

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ADV RAMAGAGA: Alright. Thank you, Chair. Sir, are you at page 31, so that we can proceed?

MR CRAWFORD-BROWNE: Thank you, but, so, may I point out that a large part of my testimony in this section does refer to this report? From
5 paragraphs 9 [indistinct].

CHAIRPERSON: Mr Crawford-Browne, I am not sure what you are referring to.

MR CRAWFORD-BROWNE: At, at the top of page 37, I say:

*“Although marked privileged and confidential the Debevoise and
10 Plimpton report has been deliberately placed in the public domain, by
Ferrostaal, in the hope of sufficiently cleansing the company to become
a supplier of the US arms market.”*

And it goes on from there. So, I am making, I am making substantial use of this report in this section and in fact, I will come back to that in
15 the following section.

CHAIRPERSON: Mr Crawford-Browne, I said that I will deal with your evidence ...[intervene]

MR CRAWFORD-BROWNE: Okay.

CHAIRPERSON: Relating to other issues. Then, when we are dealing
20 with this report that will have to stand over, until after argument has been presented on this issue. The point, that they are referring it to, it is on page 37. You can deal with other issues, before, before a conclusion is served.

MR CRAWFORD-BROWNE: Okay. Thank you, Sir. Okay. In proper
25 influence, in Section 5 and again, the, the terms of reference of the

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Commission, in terms of Section 5:

“Whether any person or person, within and or outside of the government of South Africa improperly influence the award of inclusion of any of the contracts awarded and concluded in the SDPP procurement process and if so, whether legal proceedings should be instituted against such person and the nature of such legal proceedings. Whether, in particular, there is any basis to pursue such persons for the recovery of any losses the State might have suffered as a result of their conduct. So, to proceed with Section 5, the Arms Procurement Commission was appointed in 2011, after President Jacob Zuma’s legal council, was unable, at the Constitutional Court in KCC103/2010 to rebut the massive volume of evidence of corruption, associated with the Armsdeal. General Anwar Dramat of the Hawks, so-called Hawks, in September 2010 acknowledged that the Hawks had inherited from the so-called Scorpions 460 boxes and 4.7 million computer pages of evidence against BAE, in terms of CAS916/11/2009. The Hawks had also inherited the evidence against the German Frigate Consortium in CAS914/11/2009 and against the German Submarine Consortium, CAS915/11/2009.”

20 ADV RAMAGAGA: Now, in, actually, let us, let us go back to 5.1.
Where you say:

“There was a massive volume of evidence of corruption, associated with the Armsdeal.”

Is it not perhaps so that you are referring to the allegations of corruption,
25 rather than, evidence of corruption?

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MR CRAWFORD-BROWNE: No. Preceding our submission to the Constitutional Court, there was a meeting on Parliament where the national, the head of the National Prosecuting Authority, Mr Simane and General Dramat were, were present. General Dramat confirmed that they had inherited all this evidence. There was so much evidence, that it would take 10 years to analyse it all. Therefore, he asked Parliament to authorise him to close down the investigation. The response of Parliament was that that was an executive issue and not for Parliament and so, they refused to comply with his request. Two weeks later, General Dramat announced that the investigation into the Armsdeal had been abandoned. It was at that point, we then, lodged an application to the Constitutional Court.

ADV RAMAGAGA: Proceed. Paragraph 5.3 and on.

MR CRAWFORD-BROWNE:

15 *"In particular, the documentation against BAE followed seizure in November 2008 of evidence at BAE's premises in Pretoria and the Western Cape. This followed presentation to the North Gauteng High Court, of a 160 pages of affidavits, by Mr Gary Murphy of the British Serious Fraud Office and by Colonel Johan Du Plooy formally the Scorpions and now the Hawks.*

20 *These affidavits detailed how and why BAE laundered bribes of 115 million pounds, or approximately R2 billion, to secure its contracts with South Africa, to whom the bribes were paid and which bank accounts in South Africa were credited. They formed part of the documentation,*

25 *which I submitted to the Constitutional Court in KCCT103/2010 and are*

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thus available both to the public and to the Commission.

In particular, BAE's history contains details of weird, indeed bizarre transactions, laundered through Red Diamond Trading Company. One of BAE's many front companies, incorporated in the British Virgin
5 *Islands. These transactions called for explanations from BAE, yet, BAE has not been subpoenaed to testify.*

Despite a written request to the Commission, from my lawyers, Abrahams Kiewitz, this evidence should be secured. City Press newspaper in August 2013, revealed that the documents, referred to, in
10 *my Constitutional Court application are still lying in two shipping containers in the Hawks premises in Pretoria.*

Apparently, that remains the case and that no efforts have been made by the Commission to scan or properly archive this evidence or any semblance of documentation management.

15 *Now, there is a long history to British government complicity and bribery payments by BAE. The British Secretary for Trade and Industry in, in June 2003, admitted that BAE had paid bribes, to secure its contracts with South Africa, but she pleaded the commission, the commissions, for which read bribes, were within reasonable limits.*

20 *Similarly, in December 2006 on bogus grounds of national security, Prime Minister Tony Blair squashed the British Serious Fraud Office investigation into BAE bribery payments to Saudi Arabian princes. The Guardian newspaper, a few months later, exposed how BAE, with collusion of the British Defence Department had laundered over one*
25 *billion pounds in bribes to Saudi Prince Banda, by Riggs Bank in*

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Washington D.C.

The BAE contracts with Saudi Arabia were massive. The 1985 Al Yamamah contract, negotiated between Prime Minister Margaret Thatcher and Prince Banda is estimated to have amounted to 43 billion
5 pounds. The bribes are alleged to have amounted to about 25 per cent.

In citing national security considerations, Mr Blair, in 2006 was furiously attempting to protect negotiation in 2007 of the Al Salam contract, which may be, which may yet be worth another 43 billion pounds, the equivalent of over R850 billion.

10 These BAE contracts with Saudi Arabia complete eclipsed the BAE and BAE/SAAB Armsdeal contracts with South Africa. Nonetheless, South Africa ranked second on the list of countries, where BAE bribes had been investigated and which include Chilli, Czech Republic, Rumania, United Arab Emirates, Qatar and Tanzania.

15 The US Federal Bureau of Investigation then became involved in investigations into why BAE was laundering bribes through the American banking system. In a plea bargain arrangement BAE was fined 479 million US dollars in 2010 and 2011 for what were euphemistically described as accounting irregularities.

20 Prince Banda as a bagman for BAE was a very frequent visitor to South Africa, when the Armsdeal contracts were being finalised. He was also the only foreigner present, during President Nelson Mandela's secret wedding to Graca Machel. As Mr Mandela acknowledged, Saudi Arabia made very substantial donations to the ANC."

25 CHAIRPERSON: I am sorry, just for my own understanding, Mr

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Crawford-Browne, how do you know that there was only one foreigner present, during the then, marriage of former President Mandela?

MR CRAWFORD-BROWNE: Prince Banda has, himself said that in, in a biography, which was published in 2007, entitled The Prince. There
5 have been other issues, as well, where, where he has acknowledged that, he publically announced on tv, on CCN, I think, it was, at the time of the wedding that he was the only, the only foreigner present, at that wedding.

CHAIRPERSON: Okay. You may proceed.

10 MR CRAWFORD-BROWNE:

“Still more importantly, the Al Yamamah and Al Salam contracts, between BAE and Saudi Arabia are unique, given the extraordinary arrangements for the Bank of England and covered by the British Official Secrets Act, which prevents investigation in England.

15 *These arrangements are why I requested the Arms Procurement Commission to subpoena Mr Blair, whilst he was in South Africa in 2012. They are the means, by which the US and Britain, use Saudi Oil to fund covert destabilisation of resource rich countries in Asia and Africa, under the guise of the war on terror.*

20 *The tragic consequences of British and American covert and false flag destabilisation strategies, over many years, in Vietnam, Afghanistan, Pakistan, Yemen, Somalia, Iraq, Syria, Palestine, Libya, Nigeria, the Democratic Republic of Congo and other countries are now evident daily, on your television screens. Millions of people have died. Millions
25 more are refugees, or are internally displaced, described as so-called*

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collateral damage to an Anglo-American obsession to control the world's oil and other natural resources.

Mr Blair chairs the so-called quartet in Palestine. He is also an advisor to the Rwandan dictator, President Paul Kagame, who has been named
5 *and shamed by the United Nations as one of the godfathers of Africa, Africa's so-called First World War in DRC. Mr Blair has just recently also been appointed as the advisor to the new Egyptian dictator, President Abdel El-Sisi.*

As the world's mineral treasure house, South Africa is a prime target of
10 *such deliberate destabilisation by the British and American war business. Mr Blair was the lobbyist for BAE even before he became British Prime Minister in 1997. He Lobbied heavily, on behalf of BAE, both before and after the South African Air Force, in July 1997, rejected the BAE proposals, as being both unsuited and too expensive for South*
15 *Africa's requirements. He made several trips to this country to do so. It was said, famously, during Mr Blair's 10 year, as Prime Minister that: BAE held the key to the back door at number 10 Downing street."*

That was a quote by a Mr Robin Cook, who was formally the British Foreign Secretary.

20 "Coinciding by those fines of 479 million US dollars, exacted against BAE, in 2010, in 2011 by the US authorities, Judge Willem Van Der Merwe, in March 2010 reportedly placed some 500 pages of documentation into the records of the North Gauteng High Court, after the National Director of Public Prosecutions, Menzi Simelane, refused to
25 seize the proceeds of bank accounts in Lichtenstein, held by Mr Fana

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Hlongwane.

Mr Simelane spuriously claimed there was a lack of evidence. These accounts have been frozen by Lichtenstein authorities against evidence furnished by British authorities that they held bribery payments by BAE
5 to Mr Hlongwane. Mr Simelane was subsequently removed as head of the National Directorate of Public Prosecutions.

Accordingly, there is no shortage of evidence of corruption, associated with the Armsdeal. However, there is a complete lack of political will, both at the NPA and the Commission, I submit to pursue these matters.
10 Nonetheless, having brought this evidence to the attention of the Commission, it is not the role of the so-called critics, including myself, to investigate or prove this evidence.

The German Frigate Consortium has acknowledged that it paid bribes to secure the frigate contracts. ThyssenKrupp, on behalf of the German
15 Frigate Consortium paid a plea bargain fine in Germany, of 46 million Euros, after German tax authorities had rejected claims that bribes constituted a useful business expense and should be tax deductible.

Now, I come to the Debevoise Plimpton report. In, in paragraph 5.25.

CHAIRPERSON: ADV RAMAGAGA, I previously suggested that we
20 deal with all issues, except the one issue. Deal first with the rest of the report until, then from there, we can adjourn, if at all, we finish before one o'clock and then, after two, we will deal with the question of that report here.

ADV RAMAGAGA: Chair, I will, I will have to ask for just a short
25 adjournment, so that I can re-align ...[intervene]

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CHAIRPERSON: You, you can do it, while we are sitting here.

ADV RAMAGAGA: Yes. While, while you are sitting there.

CHAIRPERSON: ADV RAMAGAGA, if I am not wrong, from 5.35, on page 39, it seems to be dealing with other issues, except that report.

5 ADV RAMAGAGA: Chair, from 5.37, page 40 that is where we can continue from.

MR CRAWFORD-BROWNE: Thank you.

“When I visited Germany in March 2011, I met the Federal government official in Berlin, who is responsible for enforcing the German governments international OECD, that is the Organisation of the Economic Co-operation Development obligations on bribery of foreign officials and to which South Africa is party. I also visited the Bavarian prosecutors in Munich, who were then assembling a case of corruption against MAN Ferrostaal.

10 *German officials informed me about their frustration at the lack of co-operation from Mr Simelane, as National Director of Public Prosecutions in implementing a German request for mutual legal assistance in respect of bribes, paid by the British, by the German Frigate Consortium and the German Submarine Consortium to South African residents, including Mr*

15 *Georgiadis.”*

20

CHAIRPERSON: I am sorry, MR BROWNE, 5.37, are you in a position to give us the details of the federal government officials that you spoke to and also in 5.38, the German officials that you say you spoke to? Are you in a position to give us any, more details about those officials?

25 MR CRAWFORD-BROWNE: I do have their names, but I do not have

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them with me. I have their, I have the business card of the official in Berlin, who had, who had particular responsibility for the OECD conventions. I understand that the prosecutors in Munich are no longer in that position. I do, but I do have their names, but not with me.

5 CHAIRPERSON: Ja. I am trying to determine the names of officials, who you were in a position to discuss this matter with.

MR CRAWFORD-BROWNE: Ja. Ja. I do not have, I would have to send them, send you those names from Cape Town.

CHAIRPERSON: Ja. I would be very interested in the details of those
10 officials, who engaged you, because we were not successful. But, then, apparently, you were successful and the, the officials were prepared to, to discuss these issues with you. If you give us the details of those officials, then we can try and make a follow up.

MR CRAWFORD-BROWNE: Yes. We, we, I was accompanied by a
15 German lawyer, Hugo [indistinct] and he introduced me first to the Department of Justice in Berlin and it was on the, in, on the instruction of a Berlin official that the prosecutors in Munich, not only made us welcome, but even gave us coffee and biscuits, which apparently in the German system of things, was quite a welcome.

20 CHAIRPERSON: Ja. Let us have those details, although, I want slightly more than just tea and biscuits. I want something much more substantive, substantiating.

MR CRAWFORD-BROWNE: Certainly.

CHAIRPERSON: Thank you.

25 ADV RAMAGAGA: Alright. Thank you. Proceed to the next

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paragraph, 5.39.

MR CRAWFORD-BROWNE:

“These issues were the subject of correspondence, between my lawyers, Abraham Kiewitz and the Commission, during March 2013. I understand, they are also the subject of consultations, between Dr Richard Young and Ms Kate Painting, before she resigned.”

ADV RAMAGAGA: Now, who is the source of this information that relates to Dr Young and Ms Kate Painting?

MR CRAWFORD-BROWNE: Richard Young.

10 ADV RAMAGAGA: Do you know, as to, in what capacity did Ms Painting, consult with Dr Young, then?

MR CRAWFORD-BROWNE: In terms of the German request for mutual legal assistance, which had a whole list of South Africans who were named in, in that request.

15 ADV RAMAGAGA: Ja. What I would like to know, or what I would like you to inform the Commission about, is the capacity, in which she was acting. Was it perhaps accompanied by evidence leaders, or was it a private discussion between herself and Dr Young or you do not know?

MR CRAWFORD-BROWNE: The details of that, I do not know. But, he had provided her with a copy of that request and he then forwarded a copy to me.

ADV RAMAGAGA: Alright. Then, you may proceed.

MR CRAWFORD-BROWNE:

“The Armsdeal supply contracts all contained clauses, described as remedies, in case of bribes. They appear at paragraph 19 in the

25

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Armsdeal agreement with the German Frigate Consortium, which comprise Blom and Voss, Howardswerke-Deutsche Werft, Thyssen Rheinstahl, Thomson CSF and the African Defence Systems and at paragraph 20, in the agreement with British Aerospace Operations, otherwise referred to as BAE. The wording, with one exception is identical.

Paragraph 19 of the German Frigate Consortium Agreement declares:

If the seller or any of its members or representatives, in relation to negotiating, entering into, or execution of the agreement has:

10 *19.1.1 been convicted of having committed an offence under the prevention of corruption act, or analogous legislation in any jurisdiction, relevant to the performance of the agreement, by for example, having promised or caused on its behalf to be promised, offered, or given any kind of illegal gift, illegal advantage or an illegal consideration or;*

15 *19.1.2 been convicted of fraudulent, illegal or criminal acts in obtaining or in the execution of the agreement:*

Arm Scor and the South African government may summarily cancel the agreement and claim damages, resulting from the cancellation, or claim an amount equal to 10 per cent of the contract price as liquidated damages.

In the BAE contract, the provision for damages is only 5 per cent, instead of 10 per cent.”

But, otherwise the wording is the same.

“Although it is common cause in Britain and Germany that bribes were paid to secure the BAE, German Frigate Consortium and German

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Submarine contracts, as traversed elsewhere, South African authorities, including the formal National Director of Public Prosecutions have gone to unprecedented lengths to avoid enforcement of those bribery clauses. I submit that the failure by government, to enforce these remedies, in

5 *case of bribery, clauses, has inflicted huge damage to South Africa's international financial standing. The country has become notorious for its tolerance of corruption and accordingly, its credit ratings have been repeatedly down rated. As I related."*

ADV RAMAGAGA: Can you just indicate to this Commission, as to

10 what, what factors affect the credit rating? What are the factors that are taken into consideration?

MR CRAWFORD-BROWNE: Okay. There is a whole range of credit, of issues, including economic performance, corruption and, ja.

ADV RAMAGAGA: It is a whole range of things.

15 MR CRAWFORD-BROWNE: Yes.

ADV RAMAGAGA: Alright. Thank you.

MR CRAWFORD-BROWNE: Moody's, Standard and Poor's and others are the main credit agencies.

ADV RAMAGAGA: Alright. You may proceed with the next

20 paragraph, 5.45.

MR CRAWFORD-BROWNE:

"As I related in my written my written submission in June 2012, I stood near Mr Alec Erwin in February 2001, whilst he was being interviewed by E-tv, after the Parliamentary Committee for Trade and

25 *Industry held public hearings on the purported economic benefits of the*

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offset programme. Representatives of business, trade unions, the church, academics and non-governmental organisations were unanimous in their condemnation of offsets.

At the end of those hearings, a glum and shaken but unrepentant Mr Erwin, told E-tv reporters that:

I and my Cabinet colleagues are neither criminal nor stupid.

Given even the belated, yet mooted audited acknowledgements by DTI that the offset programme was a total disaster, it is evident to use Mr Alec Erwin's own words against him that he and his Cabinet colleagues with both criminal and stupid.

The Commission's responsibilities include the provisions of 5.1 and 5.2 of its terms of reference, namely whether legal proceedings should be instituted and whether losses, suffered by the State can be recovered.

The Constitution repeatedly guarantees and assures South Africans that our country is committed to the rule of law. Section 2 declares:

This Constitution is the supreme law of the Republic, law or conduct inconsistent with it, is invalid and the obligations, imposed by it, must be fulfilled.

Section 237 also requires that all Constitution obligations must be performed diligently and without delay.

Sections 83 and 92 of the Constitution, set out the powers, accountability and responsibilities of the President and Cabinet Ministers, inter alia, they must uphold and act in accordance with the Constitution. They are required to be accountable, both individually and collectively for the exercise of their powers and performance of their

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functions.

Section 195 of the Constitution, sets out that public administration must be conducted with a high standard of professional ethics. That efficient, economic and effective use of resources must be promoted and that

5 *public administration must be accountable.*

As traversed in greater detail in Advocate Geoff Budlender's legal opinion and in paragraphs 1.1 to 1.44 above, the Armsdeal dismally failed the Constitutional requirements, regarding government procurements, as set out in Section 217 (1).

10 *Accordingly, one of the Commission's responsibilities is to recommend President Jacob Zuma, what legal actions must now be taken against Messrs Thabo Mbeki, Trevor Manuel and Alec Erwin, as the three surviving members of the Cabinet's Armsdeal Sub-Committee. They wilfully ignored all warnings and recklessly inflicted the Armsdeal*

15 *scandal upon South Africa and then, abused the powers of public office deliberately, to obstruct the course of justice, by engaging the multi faceted cover up of the Armsdeal scandal."*

ADV RAMAGAGA: Alright. Then, the next topic that you will be dealing with will be remedies for fraud and ramifications of cancellation

20 of Armsdeal contracts. That is dealing with page 43 of your statement. You may proceed.

MR CRAWFORD-BROWNE: Thank you. Section 6 and this is, is focussed on, in terms of reference number six:

"Whether any contract, concluded pursuant to the SDPP

25 *procurement process is tainted by any fraud or corruption, capable of*

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proof, such as to justify its cancellation and the ramifications of such cancellation.”

Provision on point six and again, 1.6 of the Commission’s terms of reference, requires the Commission to investigate, whether a contract
5 concluded, was, concerning to the SDPP procurement is tainted by fraud or corruption, capable of proof.

*“It is already established that the Armsdeal was illegal and unconstitutional and fraudulent. Even the Department of Trade and Industry, after years of lying to Parliament and to the people of South
10 Africa, has finally admitted that offsets were a scam.”*

ADV RAMAGAGA: Now, in this paragraph, is it correct that you are expressing your view?

MR CRAWFORD-BROWNE: The audit report, which is also appended to my, my submission, which was released to the public, earlier this
15 year, has confirmed that DTI failed to meet all the normal auditing requirements and that we did not get the R110 billion worth of offsets that Mr Modise had, had promised, during that speech in Parliament in 1999. So, we, we failed to get the offsets, but in addition DTI failed in its obligations to audit the process properly.

20 ADV RAMAGAGA: Ja. The conclusion that you are making here and expressing is that the, the arms acquisition was illegal and unconstitutional and fraudulent. Hence, the question, is this your conclusion? If it is the, these are the findings of the audit, can you take the Commission to that area, where the auditors formed a view that the
25 acquisition was illegal, unconstitutional and fraudulent?

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MR CRAWFORD-BROWNE: An audit report, obviously, does not say so, in such words. It is very much more muted in, in its language. But, I think, in what we, we have come to so far, it is fairly evident that it was. I think, we then have to go and the, the audit report is amongst the
5 document that I have submitted. It is, I think, it is a bit, let us see ...[intervene]

ADV RAMAGAGA: I think, while, while you are looking for the, that document in the bundle, it will, it will assist to take the Commission to the portions that illustrate, or suggest that the acquisition was illegal,
10 unconstitutional and fraudulent, all these three elements. The audit report is on what pages?

MR CRAWFORD-BROWNE: 267 to ...[intervene]

ADV RAMAGAGA: Yes. 267 to 303. Now, I am not inviting you to read the entire, the entire audit report. But, what I am inviting you to do
15 is to, like for instance, is the three, criminality, illegality as well as unconstitutionality to say, this is where the Commission, the auditors actually suggest a weight can be inferred that, they mean that the whole acquisition was unconstitutional and it was illegal and it was fraudulent. I think, if you were to start with fraud, because fraud, if you talk about
20 fraud and you have been able to show that, it goes with illegality.

MR CRAWFORD-BROWNE: Yes.

ADV RAMAGAGA: Alright.

MR CRAWFORD-BROWNE: Might I suggest, might I suggest that the executive summary on page 274, of the bundle, is a, is a place to start
25 on this. May I proceed?

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ADV RAMAGAGA: Yes. You may proceed.

MR CRAWFORD-BROWNE: Okay. The executive summary risk rating, category significant, less significant, housekeeping, value added process improvement. It starts off, with the description:

5 *“A fundamental critical weakness, whereby the possible failure, related internal control may result in the TR financial loss of significant breakdown in service delivery. Such weakness requires immediately management attention. Certain audit findings were not auctioned by*
10 *significant for auctioning purposes. Less significant weakness may have a notable effect on the operation of the process audited, and could result in probable financial loss, or probable breakdown in service delivery. This weakness is considered to a moderate to serious nature and should therefore, receive management attention in the short term.*
15 *Control weaknesses, which are not considered serious. There is no risk to [indistinct] that can be brought to immutable costs. The resolution of such issues, would lead to more controlled environment in the long term. An opportunity of improvement was identified and brought to management’s attentions. These are control of process enhancements,*
20 *the resolution of which will be really to enhancing operation efficiency or effectiveness. Then, non-compliance risk, resulting from non-compliance with existing policy or procedures.”*

Over the page:

25 *“Risk, resulting from non existence in adequate design or appropriate controls, policies and procedures. Risks resulting from*

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design control, not operating as intended period, of intended reliance. These are control or process enhancements, identified, during the audit process, at the specific areas audited. They should rely upon enhancing the operation efficiency in the process. Area audited are reaching up to

5 *standards for process carried out.”*

CHAIRPERSON: MR BROWNE, I am sure you are aware of the fact that this was not an invitation for you to read the entire report. Just take us to that portion of the report, which supports the statement that you have made.

10 MR CRAWFORD-BROWNE: Thank you, Sir. I certainly do not want to read the whole report. Thank you, Sir. No, I do not want to read the whole report. What, what it finds primarily, is that the DTI, amongst other things, established multiplier effects, which were totally inappropriate. Multiplier effects, in many instances, were as much as

15 200 to one. It then, lacked the administrative capacity to oversee the, the offset projects that a number of the projects failed miserably. We did not get the jobs. We did not get the technology. But, there had been a complete lack of enforcement ...[intervene]

CHAIRPERSON: Mr Crawford-Browne, refer us to, refer us to the page

20 of the report that supports the statement that you have made.

MR CRAWFORD-BROWNE: Page 276, findings identified.

“The national industrial petition with terms for the defence obligors prescribes the following NIP credit calculation methodology. One NIP credit were awarded for each US dollar, Euro of investments, local sales

25 and net export revenues, caused or earned by the Defence obligors in

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implementing any NIP projects. IPS and IPCC took a decision to adopt the concept of package deals in this strategy, to direct NIP investments towards industrial areas, except as communities would traditionally not be favourable to potential investors. Compensate those NIP obligated
5 companies that are willing to invest in the industrial areas, except in businesses where the return investment is not attractive, the risk of not earning NIP credits or revenue is high, at the time of generating NIP credits is longer than the timing frames. This resulted in defence obligors obtaining more NIP credits, compared to the investments and
10 sales created or caused them. The NIP terms for the defence obligors, prescribed that one NIP credit will be awarded for one dollar or Euro of investment, et cetera.”

As I said, these, these, these parameters were, were flouted. The Debevoise report will go into further details, particularly in terms of the
15 failure of the submarine offset projects and that ...[intervene]

CHAIRPERSON: MR BROWNE, refer us to the portion of the report, which supports the statement that you made that these transactions were illegal. They were [indistinct] criminal.

MR CRAWFORD-BROWNE: As I say, as I say, being an audited
20 report that the language is deliberately muted. The, the conclusions, however, are quite obvious.

CHAIRPERSON: Thank you. Maybe, ADV RAMAGAGA, let us leave that question, deal with the next question.

ADV RAMAGAGA: Alright. Thank you, Chair. Will you then turn over
25 to page 44 and proceed with your evidence, paragraph 6.3, page 44?

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MR CRAWFORD-BROWNE: Which, which paragraph?

ADV RAMAGAGA: Paragraph 6, 6.3.

MR CRAWFORD-BROWNE: Thank you.

*“At issue is the ramification of cancellation of Armsdeal contracts
5 and whether the expended funds can be recovered from the European
export credit agencies, which guaranteed the loans.*

*The Armsdeal supply agreements were signed on the 3rd of December
1999, by Minister Mosiuoa Lekota, who six months earlier had
succeeded Mr Modise, as Minister of Defence. Mr Lekota, until then,
10 had apparently had nothing to do with the Armsdeal, but since 1997, he
had also been the chairman of the ANC.*

*The supply agreements were, however, subject to finalisation of foreign
loan agreements by the Minister of Finance, Trevor Manuel, whose
responsibility, within the Cabinet sub-committee.”*

15 COMMISSIONER MUSI: Can, can I interrupt you, Mr Crawford-
Brown?

MR CRAWFORD-BROWNE: Sure.

COMMISSIONER MUSI: And, and take you back to 6.2. I just
wonder, if you can enlighten on, on where is this concession by the
20 Department of Trade and Industry found that the offsets were a scam?
Where is it found?

MR CRAWFORD-BROWNE: As I say, it is with, the Minister reported
to Parliament in 2012 that the, his department had grossly abused the
guidelines and requirements, in terms of administering the offset
25 programme, that for instance, the multiplier effect was unacceptable.

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Eventually, that, despite previous reports to Parliament about how the contractors had even exceeded their mild standards, had not been the case. Obviously, there is no such wording as a scam in, in a document of, by auditors, but that is, I think, quite evident that we did not get R110
5 billion in offsets, which is what motivated the whole Armsdeal acquisition process.

COMMISSIONER MUSI: So, the department itself never said that the offsets were a scam. It is your own interpretation.

MR CRAWFORD-BROWNE: As I say, when, when we had hearings in
10 Parliament in February 2001, all the submissions, from business, to trade unions, to churches, were scathing in their criticisms of offsets. At the end of the day, Mr Erwin was very shaken but said he and his Cabinet colleagues were neither criminal nor stupid. I would suggest that they were both criminal and stupid that they got us into this
15 [indistinct]

CHAIRPERSON: Mr Crawford-Browne, my colleague was just trying to find out, whether, did the DTI use the word scam? Or is that your own word?

MR CRAWFORD-BROWNE: No. I have said, no. Obviously, the DTI
20 would not use such a word. It is my word.

CHAIRPERSON: Thank you. That is all he was asking.

MR CRAWFORD-BROWNE: But, it is evident.

COMMISSIONER MUSI: Thank you.

ADV RAMAGAGA: Alright. Thank you, Commissioner. You may then
25 proceed, Sir. The next paragraph is paragraph 5.53

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MR CRAWFORD-BROWNE: The sixth, 6.5. The supply agreements were subject.

ADV RAMAGAGA: Okay. Thank you, thanks. Yes. Proceed with 6.5.

5 MR CRAWFORD-BROWNE: Thank you.

“The supply agreements were, however, subject to finalisation of foreign loan agreements by the Minister of Finance, Trevor Manuel, whose responsibility within the Cabinet’s Armsdeal sub-committee included affordability and funding of the Armsdeal. This occurred eight
10 *weeks later, on the 25th of January 2000, when the loan agreement, signed by Mr Manuel, thereby gave effect to the Armsdeal purchases.*
In the months, before the supply agreements were signed, ANC whistle blowers produced boxes of documentation to support allegations of corruption and fraud. Ms Patricia De Lille and I made the decision to
15 *forward this evidence to Judge Willem Heath for his assessment. We kept both the South African and British governments fully informed and also publically announced that we had done so.”*

ADV RAMAGAGA: Now, what happened to these alleged boxes of allegations, of corruption and, and fraud, the documents?

20 MR CRAWFORD-BROWNE: We, we sent them to the Heath unit, who advised that they would make an assessment by January 2000. I gather that much of that evidence was subsequently stolen from the Heath offices. But, that evidence was submitted, we, Patricia De Lille and I decided that it was obviously, way beyond our competence, to make
25 judgment call on such evidence and that is why we sent it to Judge

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Heath. But, a lot of that evidence, in fact, was acquired from Richard Young, so he might be in a position to, to flush out more of the information, but it also, included a lot of evidence against BAE. How much of that, which evidence was actually stolen from the Heath office
5 that I do not know.

ADV RAMAGAGA: So, you are saying...[intervene]

COMMISSIONER MUSI: Can I, can I just, sorry. May I interrupt again? 6.6 There, these ANC whistle blowers that produced boxes of documentation to support the allegations of corruption and fraud, who
10 are these? Are these the intelligence operatives, you referred to, yesterday?

MR CRAWFORD-BROWNE: Yes, Sir. Yes. They were led by Bheki Jacobs. He was the leader of this group. A couple of others have died and others have left the country. I think that the others were actually
15 Namibians. But, Bheki Jacobs as we, we will later, unfortunately, died in 2008. But, he was the leader of, of this group.

CHAIRPERSON: Just as a follow up, who are the members of this group, besides the late Bheki Jacobs?

MR CRAWFORD-BROWNE: Vulani and, he subsequently died and I
20 do not remember their names. There is one man, by the name of Mlungu, Mlungu Mjoli.

CHAIRPERSON: Can you spell it for us?

MR CRAWFORD-BROWNE: M l u n g u, Mlungu, white man, Mlungu Mjoli, M j o l i.

25 CHAIRPERSON: And you have any further details of Mlungu Mjoli?

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MR CRAWFORD-BROWNE: He, he is still alive. He is, I am not quite sure where he is these days. But, he is, he is in South Africa. The, the others, two have died. Others have left, they were Namibians.

CHAIRPERSON: Now, Mlungu Mjoli, where can he, or were can we
5 find him?

MR CRAWFORD-BROWNE: He is in the country. I have not seen him for some time. But, to my knowledge, he is in South Africa.

CHAIRPERSON: Ja. I understand that he is in the country. He is here. The Eastern Cape, the Western Cape, in Gauteng, Free State?

10 MR CRAWFORD-BROWNE: I think, I think he is mainly in Gauteng.

COMMISSIONER MUSI: And, and where are these, these reports? The documentation that was compiled by these whistle blowers, where are they, you handed a lot to, to Willem Heath, and what happened to them?

15 MR CRAWFORD-BROWNE: Yes. We, as I say, Patricia De Lille and I decided this way beyond our judgment call and so, we handed the, we forwarded the reports to Judge Heath's office and subsequently we learnt a lot of that information, whether it was all of that information, I do not know. But, a lot of that information had been stolen, in a raid on, a
20 break-in to the Heath's offices. But, a lot of that information was also had been submitted by Richard Young, in connection with his case. But, it, it also had information about BAE, which is why I then wrote to the Director of the Export Credit Guarantee Department in London, to say that BAE was very severely compromised in the information that we
25 have forwarded to Judge Heath.

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COMMISSIONER MUSI: You, you did not keep copies?

MR CRAWFORD-BROWNE: No. I did not. No, Sir. I did not keep copies.

COMMISSIONER MUSI: These, these whistle blowers, are they the
5 same people that provided the information, contained in the De Lille dossier?

MR CRAWFORD-BROWNE: The same team, yes.

COMMISSIONER MUSI: I am sorry?

MR CRAWFORD-BROWNE: Yes. The same team, headed by Bheki
10 Jacobs.

COMMISSIONER MUSI: They are intelligence operatives?

MR CRAWFORD-BROWNE: They are intelligence operatives. They had left the country in the 1980's and been trained in the Soviet Union. They then came back here in 1994 and were assigned to Shell House.
15 Bheki Jacobs worked under Mr Thabo Mbeki, at that point. He was, then, he and Mr Mbeki apparently had some disagreement. He worked initially in terms of how to break the De Beers Diamond Cartel. But, he was then involved in dirty tricks operations, of which, I am told, he was paid R20 million. That then, led into all kinds of things. As I say, he
20 was then, he was then employed by the Africa Institute as its Parliamentary liaison person in Cape Town. So, he, he approached me in June 1999, because, as I had said, I had spoken out quite [indistinct] at the defence review and bringing in the media, about the corruption, internationally associated with offsets. He approached us through the
25 Coalition for Defence Alternatives through the Quicker Peace Centre in

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Cape Town. They, they phone me and, and he wanted copies of our documentation. So, I told the woman, the intern, who was handling the CDA material at that point, yes, give it to him, give it to him, as they are all public and quite open about it. Three days later, they asked me, 5 asked me for a meeting. At that point, yes, he sent me very interesting documents, but we will tell you where the real corruption is and that, as I related earlier, was where I then briefed Archbishop Ndungane about my concern that either they were destabilising the country, in which case, something had to be done about it. Or if what they said had, had 10 substance, something else had to be done about it. So, that is why we, we called for a judicial commission of enquiry and that is why it was brushed off. Obviously, I had subsequent meetings with the, with the whistle blowers, including in November 2003, when Jacobs came to my house in Cape Town, to say he had just come back to Cape Town from 15 Pretoria that morning, to find his house had been trashed and there was an arrest warrant out for him to, for conspiracy to murder President Mbeki. He told me to get rid of any incriminating evidence. He then left my house and apparently, at that point sensed that he was being tailed. So, he went to his, straight to his parent's house. He was, 20 minutes 20 later he was detained, without an arrest warrant. He told, apparently there were about 20 police that came to detain him, trashed his parent's house. He told them to get an arrest warrant. They got an arrest warrant very quickly. They then, drove him off to Ysterplaat Air Force base, about midnight on a Saturday, Sunday night. He was flown off to 25 Pretoria. His sister managed to alert the Sunday Times. There was a

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paragraph about this issue, on the front page of the Sunday Times, the next morning. It was the time of the Heever Commission of enquiry and on the Monday morning, Mo Shaik very proudly stood up at the Heever Commission, which is [indistinct].

5 COMMISSIONER MUSI: Can we, can we perhaps stop it there, Mr ...[intervene]

MR CRAWFORD-BROWNE: I am sorry?

COMMISSIONER MUSI: Can we rather stop there and not go any further with this elaboration?

10 MR CRAWFORD-BROWNE: Okay. But, the point I want to make was, at that, at that point, about 30 people ...[intervene]

CHAIRPERSON: Mr Crawford-Browne, that large explanation, the plot against Mr Mbeki has got nothing about what we are investigating.

MR CRAWFORD-BROWNE: Except, we were to be arrested and
15 charged with conspiracy to ...[intervene]

CHAIRPERSON: Ja. I know you, you were arrested at that time, it has got nothing to do with what we are investigating. You have given a very long explanation, some of the issues that you have mentioned has got nothing to do with what we are investigating.

20 MR CRAWFORD-BROWNE: Thank you.

CHAIRPERSON: Thank you.

MR CRAWFORD-BROWNE: Thank you.

COMMISSIONER MUSI: Can, can I just, rather no, just conclude what I was trying to, to get clarity on? Are you saying that this De Lille
25 dossier was compiled by the security operatives?

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MR CRAWFORD-BROWNE: Yes. It was.

COMMISSIONER MUSI: My understanding was that it was compiled by ANC MP's.

MR CRAWFORD-BROWNE: They were working, they were also
5 working with the ANC MP's. They were working on behalf of the ANC MP's. There were, amongst those, within Parliament, who were very suspicious of the whole Armsdeal issue and fearing that it was a misallocation of resources given the circumstances, we faced in those days.

10 COMMISSIONER MUSI: But, when the report was handed to, to Ms Patricia De Lille, were you also present?

MR CRAWFORD-BROWNE: No. I was not, I was not present, although, I think I got a copy about 20 minutes after they had handed it to her. At the time, I was horrified by it. I did not understand the
15 meaning of it and the, the spelling mistakes and the grammar were appalling and I thought, I thought Patricia De Lille and I have been conned. So, for about three days, I did not know how I was going to possibly explain this. Then, in fact, I had a meeting with Jayendra Naidoo and he immediately, as they walked into the room, he said: 'Did
20 you write this?' And then, he answered himself and said: 'No, no, it was obviously written by someone, more familiar with an AK47 than with a pen.' So, I was quite relieved, at that point. But, as I say, they then produced the evidence and ...[intervene]

COMMISSIONER MUSI: Who, who are the authors of this document,
25 the security operatives?

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MR CRAWFORD-BROWNE: The security operatives, who were working with a group of ANC MP's, who were then in Parliament, who were opposed to the Armsdeal. I do not think any of those MP's are, are still in Parliament. I think, they have all left, for one reason or another.

5 CHAIRPERSON: Maybe the last point from, last question from me. Do you know those MP's? Can we, can we have the full details of those MP's?

MR CRAWFORD-BROWNE: I know, I know some of them. But, really, Sir, I would not think it appropriate to disclose their names
10 publically.

CHAIRPERSON: But, then, those are the people, who gave you very, relevant and important information. Why you are not prepared to disclose their names? Because we want, we might want to then consult with them and in order to take this matter further. Why are you are not
15 prepared to disclose their names?

MR CRAWFORD-BROWNE: May I give you the name personally?

CHAIRPERSON: No. I want you to do it in public, not personally.

MR CRAWFORD-BROWNE: The prime names, in fact, the leader was Ms Winnie Mandela.

20 CHAIRPERSON: Okay. Thank you. Can we, can we now proceed?

ADV RAMAGAGA: Thank you. Maybe, before you proceed to the next paragraph, I will try to get some more, some more information or detail about this Mjoli. Now, Mlungu, this Mlungu Mjoli that you are talking about, was he a member of the ANC?

25 MR CRAWFORD-BROWNE: Yes. They were all members of the

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ANC.

ADV RAMAGAGA: Yes. And at that time, do you know, as to which branch he belonged to, at the time when he came with the, with the other whistle blowers?

5 MR CRAWFORD-BROWNE: No. I do not.

ADV RAMAGAGA: Now, you say, you received boxes of documentation, but a large portion of these documents originated from Dr Young. Now, the documents that originated from Dr Young, did you receive them from the whistle blowers, or did you put it amongst the
10 box, the documents that were to be delivered to Judge Heath, as he then was?

MR CRAWFORD-BROWNE: They delivered the documents directly to Patricia De Lille and she and I made the, the decision that it was beyond our competence to make any judgment call on, obviously, we had a
15 peek at some of the documents. But, we did not retain any of them. We forwarded them.

ADV RAMAGAGA: Ja. So, so these boxes were delivered to Patricia De Lille. They were not delivered to you.

MR CRAWFORD-BROWNE: No. They were not delivered to me. But,
20 we had, had a peek at them, but, you know, we said it is beyond us to make any, any call on this.

ADV RAMAGAGA: And, and you were not present, or you were not in the company of Patricia De Lille, when these boxes of documents were delivered to her?

25 MR CRAWFORD-BROWNE: No. But, Patricia De Lille and I

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subsequently held a joint press conference in Parliament in November 1999, to announce and we, we had canvassed this with about 15 NGO's in the Cape Town area, for their support to announce that we had forwarded this information to Judge Heath for his assessment. And, and
5 that was November 1999 and he responded to it. He then, interviewed Bheki Jacobs and the others and found that their story is corroborated, in many of his other investigations. As I say, he said that he would make a decision on, on these issues by January 2000 and a lot of other things intervened. He, he had particular powers, given to him by
10 President Mandela to cancel contracts, if ...[intervene]

ADV RAMAGAGA: Ja. The, well, so, you were not with her, when she received these boxes. But, then, you, you were able to later, establish that the large portion of these documents, are documents that originated from Dr Young.

15 MR CRAWFORD-BROWNE: Yes. They were.

ADV RAMAGAGA: Now, can you tell the Commission, as to where some of the other documents came from, other than those, that came from Dr Young?

MR CRAWFORD-BROWNE: As I say, particularly, BAE and this is
20 why I alerted the Export Credit Guarantee Department that we forwarded those documents to, to the Heath unit, but the bulk of them were, were from Dr Young, but then, there was a good mixture of BAE documents, in them, as well.

ADV RAMAGAGA: When the documents were delivered to Judge
25 Heath, as he then was, were, were you present? Are you one of those

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that delivered the documents to, to the Judge?

MR CRAWFORD-BROWNE: No. They were delivered by Patricia De Lille.

ADV RAMAGAGA: And she told you, that she delivered the
5 documents?

MR CRAWFORD-BROWNE: Yes. We, we jointly announced that she had, had delivered them.

ADV RAMAGAGA: Proceed to the next paragraph 6.7.

MR CRAWFORD-BROWNE:

10 *"In my correspondence with Mr Chris Leeds as director of the British government's Export Credit Guarantee Department, I specifically informed him that the evidence against BAE was extremely serious. I also emphasized that given the evidence of fraud, finalisation of the financing arrangements should be deferred, pending Judge Heath's*
15 *decision.*

Judge Heath had informed Ms De Lille that his decision would be made by January 2000. Instead of waiting for his findings, the government and contractors now proceeded with undue haste, as if to present South Africans with a fait accompli."

20 ADV RAMAGAGA: Alright. Why, why do you say that the government proceeded with undue haste? And, and I will tell you why I am asking you this question, because from, I think, the evidence that has been presented, the, ja. I think, it came from either Mr Naidoo or so, but the evidence is that Mr Modise signed the contracts, on the 3rd of
25 December, on the understanding that Minister Manuel would sign the

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loan contracts as soon as possible, as soon as any other outstanding issues were settled, he would have to sign. Now, Minister Manuel signed the documents in or around the 25th day of January. Now, bearing in mind that, it was clear, from the onset, that once the, the contracts were signed in December, soon thereafter, as soon as whatever was outstanding had been settled, then the, the Finance Minister would have to sign the loan contracts. What is the basis of saying that this was done at great speed, or at their ...[intervene]

MR CRAWFORD-BROWNE: Because as I, as I say, the, the documentation and Patricia De Lille forwarded the documentation in November, and we publically announced that we had done so and that it would be inappropriate to proceed, until Judge Heath made a decision. So, suddenly the Minister of Defence is signing the agreements on the 3rd of December, subject to finalisation by the Minister of Finance. But, in the meantime, if you will, we had a huge delegation of, composed of the Swedish Prime Minister Goran Persson, who brought a delegation of 700 to South Africa at the end of November 1999 to lobby for the acquisition of the Gripens. So, there was all of this pressure being placed on our government to sign the supply agreements, even though, we had publically asked for the decision to be deferred, until Judge Heath made a decision by, by January.

ADV RAMAGAGA: Alright. Continue to the next paragraph.

MR CRAWFORD-BROWNE:

“Literally before Mr Manuel signed the loan agreements, I then, verbally informed him on SABC radio that the Armsdeal contracts were

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fraudulent. I warned him, he should refuse to sign them. Again, the warnings were brushed off. It later transpired, despite my clear warnings to him, that it was Mr Leeds, on behalf of Her Britannic Majesty's government, who signed the British, the Barclays Bank loan agreements for the BAE Hawk and BAE/SAAB Gripen fighter aircraft contracts."

ADV RAMAGAGA: Now, in what capacity, did you advice Mr Manuel to refuse to sign the contracts?

MR CRAWFORD-BROWNE: Well, we, I have known Mr Manuel since the 1980's I presume and we have known that in the early stages he had been opposed to the Armsdeal and yet, was being increasingly sucked into this. It seemed totally inappropriate, given his standing that, as Minister of Finance, he would sign something of this nature. I was operating as the co-convener of the Coalition for Defence Alternatives, in representing the Anglican Church, when I, when I affirmed. I had also written to all, we also wrote to all the government Ministers in Cape Town, through their Cape Town offices, to warn them, that we, we had sent this document to Heath, plus, as I say, the press conference and that this then, should be deferred until Judge Heath had made his, made his decision.

ADV RAMAGAGA: Mr Crawford-Browne, I would like to just come in here. The, the focus of my question is what you said, not what the rest of the others said. Because you say you verbally spoke to him.

MR CRAWFORD-BROWNE: Ja.

25 ADV RAMAGAGA: And you verbally said this to him.

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MR CRAWFORD-BROWNE: Ja.

ADV RAMAGAGA: And the question is, in what capacity did you, as Mr Crawford-Browne, warn him to refuse to sign the contract, or warn him against agreeing to sign the contract?

5 MR CRAWFORD-BROWNE: As a former international banker, who recognised these, these contracts were fraudulent, because of the allegations of corruption hanging over them.

ADV RAMAGAGA: So, it is in your capacity as an international banker?

10 MR CRAWFORD-BROWNE: Yes.

ADV RAMAGAGA: Continue to the next paragraph, 6.10.

MR CRAWFORD-BROWNE:

“In January 2000, in writing, plus personally in a face to face meeting, when he goes to Cape Town in February 2000, Mr Peter Hain, as a Minister in the Commonwealth and Foreign Office, insisted to me, that there was absolutely no evidence of BAE fraud or corruption. As the affidavits from the British Serious Fraud Office and the Scorpions confirmed, this was a blatant lie. Dr Gavin Woods, Mr Andrew Feinstein, Mr Renè Taljaard, as members of Parliament and respectively as representatives of the IFP, ANC and the DA and the Standing Committee on Public Accounts can verify that Mr Manuel, then very actively participated in the attempt to cover up the Armsdeal scandal, during the SCOPA hearings.”

25 ADV RAMAGAGA: Dr Woods, as well as Ms Taljaard, have already testified and they did not say that Mr Manuel actively participated in the

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attempt to cover up for the Armsdeal.

MR CRAWFORD-BROWNE: Mr Feinstein, in his book, has argued very differently. But, I also have the transcript of that very tense meeting in the Marks Building in Cape Town in February 2001, where I
5 was present and the transcript of that meeting confirms huge pressure from Mr Manuel.

ADV RAMAGAGA: Ja. The, please just listen to my question. The question, in my question, I, my focus is on Dr Woods and Ms Taljaard. I have not said anything about Mr Feinstein, because Mr Feinstein has
10 not as yet, testified. Now, I am, I am saying to you, I bringing it to your attention, that neither Dr Woods, nor Ms Taljaard testified that Mr Manuel actively participated in the attempted cover up of the Arms acquisition.

MR CRAWFORD-BROWNE: I think, that transcript would also confirm
15 the very sarcastic remarks made, by Mr Manuel to Ms Taljaard. In my subsequent conversations with her, she was particularly aghast at the financial implications of the offsets and the abuse she, she had received from the Ministers.

ADV RAMAGAGA: Yes. Mr Crawford-Browne, I hear you. All I am
20 addressing, this, this, in this paragraph, you are seeking to say that amongst others, Dr Woods and Ms Taljaard can bear you out on this statement that you are making. Now, I am saying to you the two have already testified and they have not said that Mr Manuel was, participated in the attempt to cover up, whether actively, or so, they did
25 not say that. So, that is the focus of, of my question, not what happened

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there, because if you mention names here and say these people can bear me out. You are not saying that transcripts can bear me out. Just in order to clarify that, I am, I am bringing this to your attention that these two, of the three that you have mentioned. There are two that
5 have already testified and they have not said anything about it. Now, the transcript is something else. Here, you are not saying the transcript will bear me out. You are saying these two, these three persons, can actually confirm that. Now, that is the focus of the question. The two person, out of the three that you have mentioned, that, that is, ja.

10 MR CRAWFORD-BROWNE: If Dr Woods and Ms Taljaard would now prefer to be more muted about it, so be it. They were quite vocal 13 years ago.

ADV RAMAGAGA: Thank you. Then, you may proceed to the next paragraph. That is paragraph 6.12.

15 MR CRAWFORD-BROWNE:

*“The Joint Investigating Team report, tabled in Parliament in November 2001, was immediately described as a white wash, because the executive summary that purportedly exonerated the Cabinet and government of any wrongdoing in the Armsdeal. By contrast and in
20 contradiction, the rest of the 380 page report confirmed that every Armsdeal tender was flawed by tendering irregularities.*

Accordingly, one week later I, one week later, I filed an application to get that report.”

ADV RAMAGAGA: Just a minute, Mr Crawford-Browne. I am just
25 checking something. Okay. Yes. You may proceed.

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MR CRAWFORD-BROWNE: Thank you.

“One week later, I filed an application with the Cape High Court, in the public interest of Case 9987/2001. As a former banker, I reasoned that collapsing the loan agreements, signed by the Minister of Finance, would thereby also collapse the supply agreements.

To the bewilderment of both my lawyers and me, Ms Maria Ramos, with a confirmatory affidavit by Mr Manuel, responded under oath:

The agreements he signed are self standing loan agreements, with binding force and not dependent on any other agreement, entered into by government.

This reply contradicted public knowledge that the supply agreements, signed by Mr Lekota, were subject to finalisation of the financing agreements by Mr Manuel. It also made no sense from a banking perspective. Ms Ramos and Mr Manuel were obviously lying, but my lawyers rightly cautioned me that no court would accept my word, over that of the Minister of Finance. Accordingly, I filed for discovery of documents, to prove the point, which was case 5129/2002.

Soon after filing for discovery of documents, I obtained, from a source in London, some 255 pages of documents, relating to the BAE loan agreements. Of particular interest and relevance is the Barclays Bank Export Credit Guarantee Department loan agreement, signed by Trevor Manuel, for and on behalf of the Republic of South Africa, acting to, as Department of Finance. I provided this 47 page document to the Commission, as EXHIBIT B, appended to my written submission, made in June 2012.

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Mr Manuel's signature appears on page 47. Immediately below Mr Manuel's signature is the signature of Mr Chris Leeds, he signed the agreement, for and on behalf of Her Britannic Majesty's Secretary of State, acting by the Exports Credit Guarantee Department.

5 *The purpose of the agreement is set on page 12, as the purchase in five tranches of the BAE Hawk and BAE/SAAB Gripen fighter aircraft in accordance with the supply contract, signed by Mr Lekota.*

The agreement proved conclusively that Ms Ramos and Mr Manuel had lied under oath. The representation, covenant and default clauses, paragraphs 21 to 23 on pages 30 to 35, of the agreement, are a text book example, in my view, as an international banker of third world debt entrapment, by European Banks and governments. The threats are implicit, default on such loan agreements and economic and political calamity will follow.

15 *Accordingly, I filed all 250 pages with the Cape High Court, which Ms Ramos responded in October 2002, as follows:*

The loan agreements set out the terms and conditions, upon which, the Republic of South Africa, acting through its Department of Finance, as it was then known, was able to raise monies, by way of advances.

20 *Detailed provisions relate to advances, commitments, optional currencies and the interest capitalization advances, interest, repayments, prepayments and repayments and covenants of various kinds. Exposure of the content of these arrangements, by way of the production of the documents, suggested, would, in the considered view*
25 *of the second respondent and National Treasury, be contrary to the*

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public interest. The transactions in question are part of the financial business carried on, by the government and the terms and conditions, upon which it does so, ought not to fall within the public domain. I therefore, record an objection, by the second respondent, to the

5 *disclosure of these documents, as contrary to the public interest and further, by reference to the confidential nature of the material in question.*

In other words, in contradiction of Section 195 and other provisions of the Constitution, the people of South Africa should not be allowed to

10 *know what the government, foolishly or otherwise, does in its name.*

It was not surprising that Ms Ramos and Mr Manuel were so anxious to block disclosure of these loan agreements. Mr Manuel had grossly exceeded his borrowing authority, both in terms of the erstwhile Exchequer Act and the subsequent Public Finance Management Act, as

15 *well as Section 216(1) (a) of the Constitution, which requires the Treasury to comply with generally recognised accounting practice.”*

ADV RAMAGAGA: Now, I would like you to refer us to the provision, in the Exchequer Act, that illustrates that the, Mr Manuel had exceeded his borrowing authority.

20 MR CRAWFORD-BROWNE: The Exchequer Act is included in the bundle from pages 304 to 335. But, it is really only page 311 that is of relevance and paragraph 16, at the bottom of the page. That section is the raising and granting of State loans and the power of the Minister to borrow monies on behalf of the State. It states, 16.1:

25 *“The Minister may, at any time, borrow monies to:*

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- a. *Finance anticipated deficits in the exchequer account.*
- b. *Obtain foreign currency.*
- c. *Maintain such credit balance in the Exchequer Act, as he may deem necessary in the public interest.*

5 *Subject to the provision of this act or under the law of the Department of the State, should not borrow monies, on behalf of the State and shall not, without the approval of the Treasury, accept financial assistance from any other person.”*

The pertinent issue here, is Clause 16 (1) (b), obtain foreign currency
10 and it is under this act that the Minister claims that he had authority to enter into the loan agreements. He has not obtained foreign currency. He has instead, entered into long term, 20 year, foreign currency liabilities, which is an entirely, entirely different matter. So, he is, in that respect, in contravention of the powers, granted to the Minister, in terms
15 of the Exchequer Act. This wording then, is repeated virtually, in, in the Public Finance Management Act and there was a messy period, where the act had been drafted and passed, but it was not yet implemented in early 2000, early 2000. So, the Ministry claims that although the Public Finance Management Act had already been passed, it was not yet
20 implemented and that he acted under the Exchequer Act.

ADV RAMAGAGA: Alright. Let us get back to page 48 and then you may proceed, with paragraph 6.23.

MR CRAWFORD-BROWNE:

“*The affordability study, in August 1999 had warned Cabinet*
25 *ministers that the Armsdeal was fraught with risks, including reckless*

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foreign exchange liabilities and long term foreign currency borrowings. Ironically, this was precisely the cause of South Africa's 1985 debt still."

I remind you, this is how I became involved as an activist, after the Rubicon, PW Botha's Rubicon speech and the financial crisis that
5 followed.

*"Advocate Michael Kuper SC, as legal council for Mr Manuel, confirmed the authenticity of these loan agreements, when the matter came before Judges Andrè Blignaut and Dennis Davis in February 2003. He also referred to those representation, covenant and default
10 clauses and inadvertently let the cat out of the bag, by acknowledging that the default clauses are potentially catastrophic for South Africa. Ironically I agree with Advocate Kuper's assessment."*

In my view, as an international banker, they are potentially catastrophic for South Africa.

15 "Barclays Bank, in particular, has been internationally notorious, for many decades for a variety of fraudulent and corrupt practices, of which the Libor scandal in 2012 was merely one of the more recent. Barclays Bank was also, by far, the largest foreign bank lender to Apartheid South Africa, at the time of the 1985 debt standstill.

20 The Cape High Court rejected Mr Manuel's arguments and in March 2003, awarded me discovery, within 10 days of"

The documents containing the advice of the International Offers Negotiating Team and Financial Working Group, referred to in paragraph 36 of the answering affidavit in the main application.

25 Ms Ramos and Mr Manuel then refused to comply with the discovery

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order. My first application against them, for contempt of court, yielded 18 pages. The second application yielded 224 pages in November

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2003. I immediately wrote to, emailed my lawyer Charles Abrahams as follows:

The documents received yesterday, are very uneven and incomplete. Of 224, 51 related three steel projects. The opening paragraph says
5 South Africa does not need another, yet another steel mill. After comparison with chapters 8 and 9 of the JIT report, it is evident, we only got part of the IONT and Financial Working Group documents. The Cabinet most certainly did not approve of the Armsdeal, on the basis of the documents we have got, given the repeated and unambiguous
10 warnings they contained and the risks involved. If they did, they most certainly did not apply their minds. Having ignored these warnings and signed the loan agreements, Manuel should be facing criminal charges. By then, I was both mentally and financially exhausted and regrettably, I declined to make a third application for contempt of court. Mr Manuel
15 and Ms Ramos certified that they had complied with the court order.

*The judgment against me, in case 9987/2001 in March 2004 was that the Minister of Finance was merely implementing a prior Cabinet decision and I had therefore sued the wrong party. Notwithstanding the fact that the application had been brought against
20 the President of the Republic of South Africa as first respondent, the Minister of Finance as second respondent and the National Government of the Republic of South Africa as third respondent.*

*Mr Manuel would like the Commission to believe that the Armsdeal is res judicata. As I submit that res judicata does not apply in cases of
25 fraud and inadvertently, Mr Manuel resurrected the issue during is*

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testimony in June.

Mr Billy Matsetla, as Director General of South African Security Services on 6 October 1997 contracted with a British organisation CIEX for the recovery of assets plundered in South Africa, by members of the

5 *Broederbond during the dying days of Apartheid. It has been guesstimated these assets amounted in today's values to between R200 billion and R300 billion. The late Bheki Jacobs informed me in 1999 the Armsdeal is just the tip of the iceberg, but it also extends to money laundering through the Reserve Bank."*

10 If you will excuse me a moment.

CHAIRPERSON: Mr Crawford-Browne, can you just explain to us the last sentence, where you say that money laundering through the Reserve Bank how is that being done?

MR CRAWFORD-BROWNE: That is about, that is what I am about to

15 come to. Okay. This was the addition to, to my statement that I had added yesterday morning, which is, so this was, that was 6.3. I am now looking at 6.32.a:

"a. Achbishop Tutu ask me to join panel of assessors at the Truth and Reconciliation Commission's hearings conducted at the Carlton

20 *Hotel in Johannesburg in November 1997. In her submissions to the TRC the representatives of both the South African Banking Council and the South African Reserve Bank acknowledged that in the national interest rational banking practices had subordinated, during the Apartheid era to the governments policies and ideology.*

25 *b. Illustrating the point, before being transferred in Cape Town in 1981, I*

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was Nedbank's international representative in Natal from 1976 until 1981. We received a telex message from the South Reserve Bank in November 1979, requesting us to meet Durban City Councillor Smith and his guests. They in turn, also brought a telex message from the

5 Strategic Field Fund in Sasolburg, requesting Nedbank to issue a letter of credit for 56 million US dollars. Councillor Smith's two guests turned out to be Greeks, whose names I forgot. The beneficiary of the letter of credit was to be company, as yet, to be formed in Switzerland, which with the approval of the Reserve Bank, would be the recipient of a

10 substantial commission, to be paid into a Swiss bank account. I was already anticipating difficulties in how I could structure such a letter of credit and was suspicious why the Reserve Bank was requesting Nedbank to be party to such an arrangement. I requested more details and clarifications. The jest of that story was that a ship laden with oil

15 would leave Kuwait, bound for Rotterdam. But, after Kuwait, would change its name and would then offload its cargo at Durban in a Shell/BP mooring facility. As I asked questions, the two Greeks got more agitated and suddenly got up and stormed out of the bank, saying that I was being obstructive and they were only trying to help South

20 Africa beat oil sanctions. I do not know, whether one of the Greek men at the meeting was Mr Toby Georgiadis, but it was later reveal that he was one of the principals in this fraudulent transaction. The men were apparently more successful at Motor Bank, which was a small bank within the Sanlam Group, and which was already under judicial

25 management. The ship arrived in Durban over the 1979/1980 New Year

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holiday period, having changed its name from the Salem to Lema. After offloading almost all of its cargo of nearly 200 000 tons of oil in Durban, the ship proceeded to Rotterdam, filled with sea water. On route to Rotterdam the ship was scuffled of Dakar in Senegal. A huge scandal erupted in Europe with Lloyds of London describing the matter as the worst ever case of piracy and maritime fraud in its history. Details were kept secret from South African public and tax payers, who footed the bills. When Mr John Martinez MP asked questions in the South African Parliament, he was censured by Mr FW De Klerk that even discussing the matter in Parliament was close to treason. Mr De Klerk was then the Minister of Mineral affairs. Mr Georgiades then, became one of the most active oil and weapons sanctions busters for the Apartheid government, during the 1980's. Mr De Klerk then had an affair with Ms Georgiades, who subsequently became the kind Ms De Klerk. Mr Georgiades then apparently switched sides in the Apartheid government to the post 1994 democratic government and became a bagman for both the German Frigate Consortium and the German Submarine Consortium. His role in facilitating bribes on behalf of Ferrostaal and the German Submarine Consortium is detailed in the Debovoise and Plimpton report. The report also records that offsets were merely a vehicle for mutzlicher auf Benjamin, a term meaning."

CHAIRPERSON: Mr Crawford-Browne, I see, council for Ferrostaal have not yet [indistinct]. Do you remember what was ...[intervene]

MR CRAWFORD-BROWNE: Okay.

25 CHAIRPERSON: The agreement we made, as far as that matter is

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concerned?

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

CHAIRPERSON: Just keep that in mind.

MR CRAWFORD-BROWNE: Okay.

- 5 *"I understand Mr Georgiades' still lives, [indistinct] in Cape Town. He was named at the German, German request for mutual legal assistance and of course the, the matter of the Salem incident, is recorded in my book, Eye on the Money at pages 38 to 40.*
- This collusion by the Reserve Bank in financial fraud was ramped up*
- 10 *dramatically, after the introduction of the financial Rand system in 1981. The financial Rand typically traded at discount by 45 per cent to the commercial rand. In theory, exchange controls were meant to protect the value of the Rand on foreign exchange markets. In reality, the exchange control department of the Reserve Bank allowed round*
- 15 *tripping between the financial and commercial Rand for political influential and politically favoured transactions. As an example, Israel and South Africa were colluding to flout the Union Nations arms embargo. Israeli diamond dealers were allowed to pay for diamond exports through financial Rand system, instead of in commercial Rand.*
- 20 *The critical importance of the exchange rate, as the primary economic indicator is highlighted in Section 224 of the Constitution, which declares:*
- The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable*
- 25 *economic growth in the Republic. The Reserve Bank is also required to*

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perform its functions independently and without fear, favour or prejudice. The Rand/US dollar exchange rate in 1979, at the time of the Salem incident for instance was one US dollar per Rand. By 1983 the Rand had collapsed to R1.00 per US dollar. By 1994, the exchange rate was

5 *R3.60 per US dollar. It is currently R11.37 per US dollar. This mismanagement and collapse in South Africa's currency would in fact, have been even worse, since the Armsdeal was signed, except fortuitously the price of gold has increased six fold from 200 US dollars*

10 *per ounce in 2000 to 1200 dollars per ounce, currently. The mining industry, since the 1930's has continually lobbied the Reserve Bank for weakening currency extensively to promote exports. The reality of currency depreciation is increased inflation, high interest rates and rising unemployment and a failure to upgrade economic technology. The result, during the past 40 years, is that the South Africa have been one*

15 *of the World's economic disaster stories and present, unemployment levels of 25 to 40 per cent, depending on how it is defined, are a recipe for political turmoil and social unrest. The TRC business hearings, in 1997, recommended a modest wealth tax of one per cent on companies, quoted on the Johannesburg stock exchange as a token contribution*

20 *towards funding the reconstruction and development programme. The mining industry lobbied furiously against even this very token proposal. The mining industry had been a prime beneficiary of the Apartheid system. They now also, lobbied to be allowed to transfer their domicile from South Africa to Europe. In contravention of exchange controls, as*

25 *well as the Constitution imperative to perform without favour, eight major*

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corporations and financial institutions were permitted to do so by the Reserve Bank over a short period in mid 1998, until someone finally woke up and stopped the miss-practice, the practice. The signal, however, sent the international, sent the international, was that the international financial community was that post Apartheid South Africa was on the skids and the Rand collapsed further. There remains no rational explanation for this inexplicable decision by the Reserve Bank and Treasury to allow Anglo American, De Beers, Gencor, Old Mutual, South African Breweries, Di-Data, et cetera to transfer their domicile from South Africa to Europe. Were bribes paid? I do not know, perhaps. The CEO of Old Mutual Mike Levett, awarded to himself a bonus of R150 million.”

ADV RAMAGAGA: Chair?

CHAIRPERSON: No. ADV RAMAGAGA, I was just conversing with my Commissioner, trying to find out, what does this have to do with us? We have spent some time listening to this evidence about the Reserve Bank and all of that. I am not quite sure, whether it has anything to do with our mandate. I know, it is not your fault. The statement was drafted by Mr Crawford-Browne himself. I know that. But, maybe try and lead the, just try and avoid those things, which have nothing to do with this.

MR CRAWFORD-BROWNE: Sir, the point is that the Armsdeal extends beyond the Armsdeal to a variety of things, including oil deals and money laundering.

CHAIRPERSON: Mr Crawford-Browne, I have made my point and that is a ruling. I have made my point. Let us concentrate only on issues,

which have got something to do with the, with this [indistinct].

MR CRAWFORD-BROWNE: Sir, in, in my testimony, I, I refer to the fact that this matter is currently before the Public Protector. Her report has been delayed. Evidently, I will have to skip over that point. But, the
5 point was, that as a result of these, these companies, transferring their domicile from South Africa, the South African banking system is now controlled by British Banks, rather than South African banks. This had been one of the foundation issues that South African banks should be South African controlled. They are now, in fact, British controlled. So, if
10 I may proceed from, at point 6.35.

ADV RAMAGAGA: Chair, I notice that it is now one, past one o'clock and I would like to request that we, we adjourn for lunch and maybe, that will also give us an opportunity to discuss, to discuss some aspects of the statement and see whether the statement, or, or the evidence can
15 be changed then.

CHAIRPERSON: Okay. We will adjourn until quarter to two and 35 minutes should be more than that. So, let us come back at quarter to two. Thank you.

ADV RAMAGAGA: Thank you.

(COMMISSION ADJOURNS)

(COMMISSION REOPENS)

CHAIRPERSON: Do you confirm that you are still under oath, say I do?

MR CRAWFORD-BROWNE: I do.

CHAIRPERSON: Maybe, let me start by confirm that, in the last, last
25

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time, when this issue was debated, I made a ruling that that report is not admissible and in the first place I am referring to that, we received amongst others a letter from Webber Wentzel, saying that their clients have not waived the privilege for that document. I am prepared to have
5 a, leave open that question. I am doing this, on the basis of the fact that I have seen that document. I have read that document. I have gone through it. I am not quite sure, if at all, it will cause any harm to any party, if the court, if we end up having a document, particularly those portions that relates to South Africa. This morning, I did ask a
10 Ferrostaal representative, to try and see if their clients will accept that they should waive privilege over the or the 10 pages, that relates to South Africa. From what I understand from them is that, that their client is not prepared to waive privilege over that document. I am not sure, actually, if you want to add something to what we have said, before I
15 hear from the evidence leaders, including other parties that may be interested.

ADV BURGER: Chair, I am hoping for the evidence leaders to make their submissions now and address that. I am hoping for the evidence leaders to make their submissions and I will then address those
20 submissions entirely. Thank you.

ADV RAMAGAGA: Ja. Thank you, Chair. The, in fact, the expectation from the evidence leaders was that the objecting party would register his objection and indicate the grounds of the objection, where after the party that seeks to use the document would then give
25 the answer and maybe then, we get the chance to reply. I, I, it is, it is,

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and, and, if, if, well it is just an expectation. But, we are in the court's, in the Chair's hand and it would seem, my learned friend is, seems to be amenable to that approach.

ADV BURGER: Chair, I registered the objection, to the admission of
5 the report, on the basis that it is privileged.

CHAIRPERSON: Then, I understand. Are you, are you in a position to go further than that? Because yesterday, the same statement was made by, the statement made by your attorney, she told us, you know, your client is objecting to the admission of this, of this report. I am sure
10 that is not the only thing that you can [indistinct] to the story.

ADV BURGER: Chair, the, the onus rests on the party, who wishes to introduce this report, to persuade the Commission, why this document is, why the privilege has been waived. I am curious to know, what basis will be advanced and for that very reason, I invite my learned friend for
15 the evidence leaders to elude that to us, on what grounds, they now allege that privilege has been waived. Our position has remained throughout that the privilege had not been waived. There was an invitation by the Commission that was extended to, to Ferrostaal, to waive it. That was politely declined and in subsequent correspondence,
20 that position has been reaffirmed. There are no new facts that changes that the, the position. It is for that reason that we would like to hear from the party, bearing the onus, to tell us why this privilege must now be waived.

CHAIRPERSON: ADV RAMAGAGA, as I said, in the last sitting, I did
25 make a ruling that the document is privileged and it will not be

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admissible then. Now, you want us to change the ruling. So, I think will not be necessary. Because the Ferrostaal council can just rely on what has already happened. If you want us, you want me to change my ruling on that point, I think, you, you have got a duty to [indistinct] that.

5 ADV RAMAGAGA: Thank you, Chair, the witness, Mr Crawford-Browne has indicated that he, he would like to address the court on the, the Commission on that point and we, as evidence leaders will then supplement what he is going say. He has prepared sort of an argument and I will thus request that he be given the opportunity, to present his
10 address.

MR CRAWFORD-BROWNE: Thank you, Chair. I wish to lodge the following objection to the attempt, yesterday afternoon, by Webber Wentzel attorneys to suppress the Debevoise and Plimpton report, as evidence before the Commission. The law firm that is apparently
15 representing the German firm, Ferrostaal in South Africa. In the public interest in terms Section 38 of the Constitution, I object to this attempt to suppress information, the knowledge of which is the right of all South Africans. The so-called Secrecy Bill remains in limbo. Yet, a foreign entity is already attempting to deny South Africans knowledge about
20 how bribes were used to secure the submarine contracts. I also bring to the Commission's attention the basic values and principals governing public administration, enshrined in Section 195 of the Constitution. In the first instance and in support of my objection, I cite Section 732 and 16 of the Bill of Rights, as well as, Section 2 of the Constitution, which
25 is, which establishes the supremacy of the Constitution and declares:

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“The Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid and the obligations imposed by it, must be fulfilled.”

Section 7 of the Bill of Rights says this Bill of Rights is the corner stone
5 of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

2. The State must respect, protect and promote and fulfil the rights in the Bill of Rights.

10 3. The rights in the Bill of Rights are subject to limitations contained or referred to in Section 36, or elsewhere in the bill. Nowhere in 36, or elsewhere, is there any provision to suppress information, simply because a document is marked privileged and confidential. Let alone, to suppress a document and information, revealing corruption and fraud in
15 South Africa, perpetrated by a foreign corporation.

On the contrary, Section 32, regarding access to information declares:

1. Everyone has the right of access to any information, held by the State and b, any information that is held by another person and that is required for the exercise or protection of any rights.

20 2. National legislation must be enacted to give effect to this right and may provide for reasonable measures, to alleviate the administrative and financial burden on the State.

Section 16, regarding the freedom of expression, declares:

1. Everyone has the right to freedom of expression, which includes:

25 a. Freedom of the press and other media.

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- b. Freedom to receive or impart information or ideas.
- c. Freedom with regard artistic relativity and.
- d. Academic freedom and freedom of scientific research.

Again, nowhere in Section 16 or elsewhere is there any provision to
5 suppress information, simply because a document is marked privilege
and confidential. Let alone, to suppress a document and information,
which reveals corruption and fraud in South Africa, perpetrated by a
foreign corporation. On the contrary, Section 16 (1) (b) constitutionally
guarantees the right and freedom to receive or impart information about
10 such corruption. I now refer the Commission to the chapter, entitled
Commissions, by DW Friedman, contained in the Law of South Africa,
second edition, part 2, copies of which, I made available. The chapter
notes are on page 146 and 169 in the annexure:

“Courts have continued to argue that the requirement of procedural
15 fairness do not apply to the proceedings of purely investitory or advisory
bodies, because they decide nothing in themselves. Recently, however,
there has been a move towards a more expansive approach in so far as
the application of the requirements of procedural fairness is concerned.:

This more expansive approach is applied by the Supreme Court of
20 Appeal in Chairman, or Tariffs and Trade versus Brenkel Inc. In this
case, the court carefully examined the proceedings of an investigate
body, in order to determine whether they complied with the principals of
fairness. Of great significance is the fact that there was no suggestion
in the judgment that the duty to act fairly did not apply, because the
25 functions of the body in question, were purely investigate [indistinct]. A

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more expansive approach has not, however, been excepted in every case. Yet, while the extent of which the requirements of procedural fairness apply to investigative bodies might be uncertain, there is no doubt that these requirements do apply to commissions appointed by the President. The Arms Procurement Commission was appointed by the President and therefore, the requirements of procedural fairness, in compliance with the Bill of Rights, do apply. Under 171, witness and evidence the chapter declares:

“A person giving evidence before a commission of enquiry does not present a case. The Commission is not a court of law. There are no issues for it to try. There is neither a plaintiff nor a defendant. Unless, provided otherwise, by the Commission Act, or the President, the Commission is entitled to adopt its own procedure, governing the receipt of evidence or information relevant to the issues before it. The procedure adopted by a Commission, must however, comply with the provision of the promotion of Administrative Justice Act, the fundamental rights, guaranteed in the Bill of Rights and other provisions of the Constitution. The duty to act fairly does not mean, however, that a Commission is bound by the Laws of Evidence Act, 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 of any nature, including hearsay evidence and newspaper reports or even submissions and representations that are nothing more than opinions.”

Ferrostaal is not on trial, either in South Africa or elsewhere. Therefore,

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the Commission has the discretion, even to accept hearsay evidence. The Debevoise and Plimpton report was compiled by a firm of American lawyers at the behest of Ferrostaal's new management and the report is dated 13 April 2011. As I have related elsewhere, Advocate Paul Hoffman and I visited Belgium and Germany in March 2011 and I was accompanied by a German lawyer Hetter Menzel and I visited the prosecutor's office in Munich and the Federal Department of Justice in Berlin. Some months after our return to South Africa, on the 4th of August 2011, Advocate Hoffman received a phone call from an employee of Ferrostaal, acting, following an introduction by Mr Menzel. Ms Schmidt or Ms Schultz, we are not too sure of the name, informed Advocate Hoffman that the Debevoise and Plimpton report had been compiled by American lawyers in an effort to clean up Ferrostaal's image in the United States. This Ms Schultz or Ms Schmidt specifically told Advocate Hoffman that the new management of Ferrostaal had waived any rights of confidentiality and in fact, were agreeable to have the report widely distributed, in the effort to avoid being blacklisted in the United States. In cross-examining Mr Thabo Mbeki on the 17th of July 2014, Advocate Hoffman confirms, on page 7490 of the transcript that Ferrostaal in Germany released this document from privilege. Advocate Hoffman, then, on page 7491 is recorded as having, having asked Mr Mbeki, whether he was aware that Mr Georgiades features in the report, as a major donor to the ANC. He continued:

"Tony Georgiades, donor to the ANC, yes or no, or I do not know?"

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Mr Mbeki replied:

“I am sure he did, but whether he was a major donor or not, which was the original question, that I do not know. But, certainly, I am sure that he did donate, at some point to the ANC.”

5 Given the waiver of privilege granted by Ferrostaal to Advocate Hoffman in August 2011, I respectfully suggest that Webber Wentzel refers the matter to Ferrostaal in Germany, rather than to its South African office. When I return to Lord Denning’s [indistinct] fraud unravels everything. The passages in the Debevoise and Plimpton report, pertaining to South
10 Africa, refer repeatedly to Mr Tony Georgiades. When Advocate Hoffman cross-examined Mr Thabo Mbeki in July, Mr Mbeki acknowledged that Mr Georgiades was a donor to the ANC. In confirming Mr Georgiades as a donor to the ANC, Mr Mbeki thereby, also opened the use of investigation of the Debevoise and Plimpton
15 report by the Commission. Indeed, the Debevoise and Plimpton report suggests that Mr Georgiades’ sole role in the acquisition process was to provide access to ANC politicians in the German Submarine and German Frigate Consortium. Independent of the Debevoise and Plimpton report, I also recorded in paragraph 6.32 a to 6.32 m of the
20 testimony, which I read earlier, but which I think, I should now repeat.

6.32a:

*“a. Achbishop Tutu ask me to join panel of assessors at the Truth and Reconciliation Commission’s business hearings conducted at the Carlton Hotel in Johannesburg in November 1997. In their submissions
25 to the TRC.”*

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CHAIRPERSON: MR BROWNE, can we, confine yourself to the issue before me.

MR CRAWFORD-BROWNE: Okay.

CHAIRPERSON: I am not quite certain, what does the Truth and Reconciliation Commission have to do with the admissibility or otherwise of that, of that report, which is before us.

MR CRAWFORD-BROWNE: I was giving ...[intervene]

CHAIRPERSON: Please, just confine yourself to what you are supposed to be doing now.

10 MR CRAWFORD-BROWNE: I was going you the background to Mr Georgiades' involvement in the Salem incident of 1997. But, I will skip down to, to the final parts of, of this aspect to it. In item 6.32, I am sorry, I thought I had it switched off. My apologies. I will skip down to paragraph 6.32L:

15 *"Mr Georgiades' role in facilitating bribes, on behalf of Ferrostaal and the German Submarine Consortium is detailed in the Debevoise and Plimpton report. The report also records that offsets were merely a vehicle, a nutzliche auf [indistinct] a term meaning useful business expenses, which is a German euphemism for bribes. The matter of the*
20 *Salem incident, as I have said, is recorded in my book, Eye on the Money. But, not only is Mr Georgiades referred to in considerable detail in the Debevoise and Plimpton report, but as I say, the report records that offsets were merely a vehicle for bribes."*

Now, overnight, I have taken legal advice from Advocate Hoffman on the
25 matter. He suggests that should the Commission exclude the

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Debevoise and Plimpton report, I will require a detailed and motivated reasoning for such a decision and explanations why the Commission choose to turn a blind eye to such evidence, given the lengthy record of [indistinct] by Mr Georgiades, which I pointed out, goes back to 1979.

5 Any attempt by the Arms Procurement Commission to suppress the Debevoise and Plimpton report, as evidence in these hearings, would, I submit, place the Commission in contempt of the Constitution and in contempt of the Rights in particular. Further, should this evidence be excluded, I shall then consider, whether to bring the matter, at an
10 appropriate stage, to a court in review. Thank you, Sir.

CHAIRPERSON: Thank you. When are you going to be able to court, shall we, we end up not admitting the, the report? When are you likely to go to court? I am just trying to ...[intervene]

MR CRAWFORD-BROWNE: We, we ...[intervene]

15 CHAIRPERSON: To find out, when you are likely to bring that litigation.

MR CRAWFORD-BROWNE: As I say, that is simply a matter, a possibility. We have not had further thoughts on that. That is one of the issues that, in discussing it with Mr Hoffman last night, he suggested it would be appropriate just to mention it.

20 CHAIRPERSON: Okay. ADV RAMAGAGA, [indistinct] on this.

ADV RAMAGAGA: Thank you, Chair. My, my address would be brief, because most of the points that one would like to highlight are highlighted in the address that has been given by, by Mr Terry Crawford-Browne. Now, the basis of the objection to the admission of this
25 document into the record, it is privilege, as stated by my learned friend

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and further she has, he has also indicated that the Commission has ruled previously on, on the subject. Now, I will start off, by addressing the issue of privilege, the attorney and client privilege. When one looks at the document, in particular, I would like to draw the Commissioner's

5 attention to page 181, of the bundle, which is page 60 of that document. You will notice that the footnote reads, it passed its findings regarding Ferrostaal for that Bavarian public prosecutor who passed the case to the Bocum Economic Crime Unit. Bocum ceased investigations in 2008. So, the investigations ceased in 2008. This report was drawn or it is

10 dated the 30th day of April 2011, as appears on page 173 of the bundle. Now, the attorney and client privilege that is sought to be protected is the attorney and client communication that relates to litigation, where a client seeks for assistance and discloses certain information to the attorney and there is a discussion between the attorney and the client,

15 regarding, or in anticipation for a lawsuit or even, in preparation, or to get information on, on whether there is merit in pursuing the matter in the form of litigation. When I talk about litigation, Commissioners, I am talking about litigation in broader, broader terms. We should also include arbitration, any dispute that may be resolved at, at dispute

20 resolution, the forum. Now, if one looks at the fact that the investigations ceased in 2008 and this report is dated April 2011, there is doubt that this document was prepared for the purpose of litigation or anticipated litigation. It is now three years that this document has been produced. Now, further on, I am aware, Commissioners, that the, an

25 indication that this document has been in the public domain, or a

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submission to that effect has already been made. But, for the purpose of this application, or for the purpose of this objection, it is appropriate that I reiterate that, that this document has been in the public domain for some time and this document has been quoted or relied on in so many occasions and in so many instances. This document that we are talking about is actually, actually forms part of the submissions that were made by Mr Terry Crawford-Browne and were submitted to this Commission, as far back as June 2012. I do not seek to suggest that those submissions were actually the only basis, upon which, I submit that this document has been in the public domain for some time. Now, alive to the fact that this Commission has made a ruling about the admissibility of this document, I would like to take the opportunity to say that this Commission does have the powers to re-visit its own rulings. That submission is, is made on the basis that this Commission is not a court of law. This Commission develops its own rules and regulations. In the event that there is a gap, what should be the guiding factor on which way to go and how to go about dealing with that? My submission is that, in the event of any gap, this Commission should look at fairness and equity, in order to be able to execute its mandate properly. This Commission and the Commissioners should make it their duty and responsibility to make sure that they remove, or they do not allow obstacles to stand in their way, in their fact finding mission, because that is exactly what this Commission is all about, a fact finding mission, so that proper recommendations and informed recommendations may be, may be made and presented. Now, dealing with the issue of the nature

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of the Commission of inquiry, I would like to refer the honourable Commissioners to the Constitutional Court case of the Minister of Police and others v The Premier of the Western Cape and others 2014 (1) (SA) 1 (CC). Now, from this, this citation, you will see that it is a case of 5 2014. There is a whole host of cases that were decide on, that were decided on this subject, prior to then. But, I will only then refer this Commission to this Constitutional Court that was decided upon recently and in particular, Commissioners, I would like to refer you to paragraphs, paragraphs 45 and 50 of that case. May I then proceed to 10 read paragraph 45, into the record? And this where the court was dealing with issues, pertaining to the Commission, the nature of the Commission and, and how the Commission should deal with issues, relating to, amongst others, evidence:

“In addition to advising the executive, a Commission of inquiry 15 serves a deeper public purpose, particularly, at times of widespread disquiet and discontent. In the words of [indistinct] of the Canadian Supreme Court in Phillips v Nova Scotia and it was quoted:

One of the primary functions of public inquiries is fact finding. They are often convened in the wake of public shock, horror, disillusionment or 20 scepticism. In order to uncover the truth, in times of public questioning, stress and concern, they provide a means for Canadians to be apprised of the conditions, pertaining to a worrisome community problem and to be a part of the recommendations that are aimed at resolving the problem. Both the status and high public respect for the Commissioner 25 and the open and public nature of the hearing helped to restore public

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confidence, not only in the institution or situation investigated, but also in the process of government as a whole.”

Now, permit me Commissioners to then, turn over to paragraph 50. It is just overleaf and I read that paragraph into the record:

5 *“In this context, a Commission without cohesive powers would be indeed, be unable to fulfil its mandate. It will be no different from an investigation. The objects envisaged in Section 206 (3) would never be achieved, if police enjoyed immunity from being called upon to testify or produce documents on their policing functions.”*

10 *And I would like to pause here and say, when reference is made to documents on their policing functions, Commissioners, this includes documents that the police normally refer to as privileged documents, because those, they are documents that they use, in the course and scope of the execution of their duties.”*

15 I would now like to proceed. May I just proceed?

“When the target of the investigation is the police and how they fulfil their duties, in relation to a particular community, they are obliged to account to a lawfully appointed Commission, as envisaged by Section 206 (5). If they were to be shielded from the cohesive powers of, of
20 *subpoena, the effectiveness of the Commission would falter. The entitlement in Section 206 (3) would be rendered nugatory, as it would depend on whether members of the police service are willing to co-*
 operate with the Commission.”

Now, the point that I would like to make, out of this paragraph,
25 honourable Commissioners is that the Commissions are at a higher

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level. One of the distinguishing factors between ordinary investigation by ordinary investigators is the fact that the Commissions, the Commissions are closed with powers to direct, whether information should be used in the public hearings or not, bearing in mind the
5 motivation for the establishment of the Commission. Generally, the President does not just, at every whim, refer matters or establish Commissions for anything that comes about and seems to be controversial. It is an undisputed fact that the appetite for information relations, relating to this Commission has been there, since around
10 September 1999, at least, to the entire, generally, the entire public of South Africa. I would not then, want to talk about, even those that came to know about, or to get allegations at an earlier stage. And, and this has been over and over, or lingering over South Africa over a period, a stretched period of time. As you have correctly stated, Chair, when,
15 when you were trying to look at whether this issue can be put to bed, in an amicable way, you, you have had the opportunity to look at the document and without giving a ruling, you sort of gave guidelines and just a *prima facie* view on the desirability or otherwise, of the use of this document. In actual fact, this document is one of the grounds upon
20 which, people are generally saying there is some cover up. So, in the circumstances, Commissioners, we the evidence leaders, who are leading this witness, in particular now, do actually, would actually, actually would like to request that the Commissioners revisit the ruling that was made and find that it is in the public interest and also, it is in
25 the interest, best interest of this Commission, that this obstacle be

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removed and this document be admitted into evidence. Unless, there is anything else that the Commissioners would me to address them on, I will rest here and maybe reply, should it become necessary.

CHAIRPERSON: Thank you.

5 ADV BURGER: Thank you, Chair. I will try and be brief. Chair, I would like to respond to the evidence leaders, first. The suggestion was there, that the Plimpton report, events from 2008 and it is dated in 2011 and it is not possible that that report was prepared in the context of these proceedings. That, of course, misses the point entirely, because
10 we are not dealing here, for litigation, for purposes of this litigation, we are dealing with legal advice privilege. This document bears all the hallmarks of a privileged document. If there is any doubt, in anybody's mind, one simply needs to cast your eye onto the left hand top page, where it says privileged and confidential, attorney work product, attorney
15 client communication, confidential, EU personal data. That, that warning sign appears on every page. There was a suggestion by my learned friend that, because more than three years have passed, once you take account of that, that was not, was not fully developed. But, if there is any suggestion that privilege prescribes, well, it is not so in the
20 South African law, not as far as I am aware, it is not a [indistinct]. Then, the submission that, that the report forms part of the submissions before the Commission, is also misplaced, because it is the very report that we are objecting against. It is the report that is annexed to Mr Crawford-Browne's statement that we are objecting against. That he alleged that
25 means nothing. There was some suggestion that, that this Commission

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is clothed with more power than possibly a High Court, although that point was not fully developed either. My submission in that regard is that this court has extensive powers of investigation. But, ultimately, the purpose of this Commission, but the right to claim privilege, is a right that is written into the law books. If I may refer the tribunal to the regulations that were promulgated for purposes of this very Commission was promulgated on the 8th of February 2012 and Clause 8, I am going to read that into the record, provides as follows:

“No person, appearing before the Commission, may refuse to answer any question on any ground, other than the privilege, contemplated in Section 34 of the Commissions Act of 1947. Privilege is a substantive right. It is not a right that can be disregarded. It is a right that is afforded to witnesses and parties involved in these proceedings.”

That brings me to a response to Mr Crawford-Browne’s suggestion that, just because you will not find any privilege in our Constitution that one cannot rely on it. Well, the flaw in that, I mean, it is obvious. I do not need to belabour that point. It is a substantive right. The issue of these reports was first raised in a letter that the Commission addressed to Webber Wentzel and that was in 2003 on the 3rd of April, where the Commission refers to, inter alia, the Debevoise report and correctly says that, these reports are available online. But, we the Commission are apprehensive about using them, first, because the words privilege and confidential have been inscribed on the cover of both reports and also, the Commission raised the concern that they were not sure that

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Ferrostaal had waived the privilege, or had consented to the publication of these reports. It then requested Ferrostaal to waive the privilege. Webber Wentzel, acting for Ferrostaal replied to that, in a letter dated 29 March 2013, where they asserted their privilege. They made it clear

5 that Ferrostaal did not consent to the publication of those records. It sought and it continued to seek the protection of those reports. It then also, favoured the Commission with an explanation of the origin of these reports, which is that they were done, in relation to investigations and enquiries by the German Public Prosecution. The fact of the matter is it

10 is not Ferrostaal that caused the publication of these reports. They were, so to speak, leaked onto the internet. To the best of our research, they were leaked onto the website of Greekme.com, which is a, it is website, similar to wikileaks, on which it clear that those documents were not, certainly not put there by Ferrostaal. Since their response on

15 the 29th of April 2013, there have been a number of communications addressed to, to the Commission, where Ferrostaal, reasserted their claim for privilege, four or five letters, I am not entirely sure. There is no new evidence that suggests that the ruling pertaining to privilege has changed. The, if I may briefly address the Commission on the issue of

20 waiver? In our law, you can waive privilege in three possible ways, either expressly, impliedly or implicitly. There is no, all three are dependent on the facts of the matter, recess upon that, of the owner of the privilege. That is the only part of it, that you can waive privilege. Nobody else can waive this for them. You assess the conduct. If it is

25 expressed, it is quite obvious, this is obviously not an express waiver

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situation. Thereafter, you go and look at, whether or not, there has been an implied waiver. Implied waiver also requires one to look at the conduct at issue and you ask yourselves the question, whether objectively speaking you can say that there was an intention, by the owner of the privilege to waive. Now, if you apply that to the fact that this report was leaked onto the internet and was not put there by Ferrostaal the only conclusion that you can draw is that there is no evidence of intent to waive privilege.

CHAIRPERSON: Maybe, let me just interrupt you there. I do not think, at the moment, there is any doubt in my mind that your client did not waive privilege. So, I think, you can assume that I am going to accept that your client does not waive privilege. But, then, that is not my difficulty. I will tell you where my difficulty is. I think, I have seen this document four, five, seven, six, seven, eight times when I read through it several times and I will tell you, in fact, what I have done. I have given certain instructions, in regard to Tony Georgiades and having regard to the second person [indistinct]. I can tell you also, what we did, some of the, Tony Hemmingfield. Some of the entities in this document, we have started look at it. I have started looking at it. Our forensic auditors have started looking at some of the, at some of the entities that were aware of the allegation against them, that they have, they have received commission. We have started looking at some of those things. Now, if that is the position and then this report, the portion, which relates to South Africa, is about 10 pages. The first four pages deals with commissions. Then, the other six pages deals with the, with the offsets.

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We have detailed information about offsets. Several witnesses have testified, so that his not the portion where, which bothers. We have more than sufficient evidence on record about offsets. But, then, about commissions, we do not have any evidence. I have looked at the

5 documents. Now, I, if I have looked at the documents and I have given instructions to the Commission to do certain things, arising of, out of what I have seen here, even if you say this document is privileged, what does it mean, in practical terms, what does that mean? Because I have taken note of what is written here. The report, I accept, you know, what

10 is, or what I have seen in this document is correct. But, I mean, the information that was contained in here, gave me some leads, which we are trying to follow. Now, if we are trying to follow those leads, you will this document is still privileged, it cannot be used. What benefit is your client going to derive from that? Or whether we allowed Mr Terry

15 Crawford-Browne, to read this paragraph into the record or not, we have started following the leads, which are contained in this document. So, if we say that this document is privileged, what does that mean? What practical effect does that mean? Does it mean that we must not follow the leads and that we have started following must stop? Because I

20 think, that we need to follow up those leads, because we need to discover the facts. So, I am not quite sure, you know, if at all, we end up saying that this document is privileged, of what benefit is going to be to, to your client, particularly the eight, 10 pages that refers to, to South Africa. If you can probably try and assist us in that regard, I would be

25 grateful.

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ADV BURGER: Thank you, Chair. The court story, consider the question of privilege, in the context, very often, in the context where there has been a breach or a violation of privilege in a particular document. It is usually in the context of the State, of, of criminal proceedings, or access to a document. But, it is typically so, in a proceeding. Then, the courts will, will have a look at the privileged document and assess, whether or not, it influences typically a criminal, an accused person, to see whether or not it affects his right to a fair trial. The, the objects, I am going to deal with them expressly. The, the [indistinct] of the point is that this document, this, this Debevoise report, the privilege is owned by Ferrostaal, which means that that document cannot be used against it, because the concept of it is privileged and to the extent that there is a prosecution against Ferrostaal, that would be a consideration. So, what it means effectively is that that information that cannot be used against the person that owns it. That, in fact, would be my submission.

CHAIRPERSON: I understood what you are saying. But, then, what should I do with the knowledge that I have, of the contents of this document? Should I pretend that I have never seen this document? Should we not try and follow the leads that we find in this document and the people that have been commission, should we not try and follow up those people and try, and find out what that, why did they get that commission? That is, that we have already started on checking them out. That is why I am trying to find out, what is going to be the practical implications of us saying that, you know, this document is privileged?

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Should we stop the enquiries that we are making, because, you know, this document is privileged? Or should we continue with those enquiries? If we do continue with the enquiries, what will be the purpose of saying that this document is privileged, it cannot be used?

5 Not saying that it will be used, but then, what I want you to address us on, is that, can we use the contents thereof? Or can we use the information that we have gained from this document, which we think, it might have an impact on terms of reference?

ADV BURGER: Chair, Chair, I would have thought ...[intervene]

10 CHAIRPERSON: Just, just hold on. Okay. You can continue.

ADV BURGER: Thank you, Chair. I think, from a consensual point of view, if, if there is information in that report that only exists in that report and nowhere else that is privilege and it cannot be followed on. It cannot be acted on. That is not a lead. Essentially, if there is evidence
15 that is corroborated elsewhere in other sources, which is also contained in the privileged report, well, that is not, that is not covered by the privilege, because the source is elsewhere. I think, from a consensual point of view that is the only solution that I can think of. But, there is, if there is information in the report and I do not know if this is the case, but
20 if there is information in the report, that you can find nowhere else, that is privileged. The privilege attaches to that information. I can see no other way around it.

CHAIRPERSON: Before my colleague comes in, let me give you a simple example. This report deals about the [indistinct] tea plantation
25 project. Further information is not, would it be much more information

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than you people have on this report. Now, where does put your argument about this report being the only source of information?

ADV BURGER: Judge, that type of, that type of information, that you can source elsewhere, outside of the report, is before this Commission.

5 But, but the report is not the source of it. So, so, you cannot, you cannot say everything that is in the report, now, cannot be acted on, even if you enquire elsewhere. That would be, it would be silly. So, if you, if I can get back to my two consensual classes of information. If information cannot be found anywhere else, but in the report, that is
10 privileged, it cannot be used. If information can be found elsewhere and in other similar reports, well, it is before the Commission. I think, I think that the simple distinction that I can draw.

CHAIRPERSON: Maybe the last one from me, what do mean, when you say it cannot be used. I, I know, those in terms of this, four certain
15 commissions have been paid. Are you saying, when you say it cannot be used, I, do you imply that I cannot follow up those, about having paid commission, in order to try and confirm what I know, further than calling [indistinct]. It is what you mean, when you say that the report cannot be used?

20 ADV BURGER: If, if information falls into the first category that it cannot be found anywhere else, but in the privileged report, the information must be treated as if, it has never seen it. That perception.

CHAIRPERSON: Are you saying essentially, even after reading this report, I must pretend as if I have never, I never read the report.

25 ADV BURGER: It is very much like judicial peek, yes.

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CHAIRPERSON: Okay. Thank you.

COMMISSIONER MUSI: I, I have slightly different view from council and I am sorry, I did not remember your, your name. But, I am sorry, Mr?

5 ADV BURGER: Burger.

COMMISSIONER MUSI: Schalk Burger?

ADV BURGER: Burger.

COMMISSIONER MUSI: I think, I think it has got to do with the uniqueness of the Commission of inquiry, in the sense that it is an
10 investigative order. It is agreed that it is, does not necessarily follow the rules, applicable in a court of law. You will find members of the public submitting information to the Commission of inquiry, on the basis of confidentiality. They do not want to, to disclose outwardly, information they have given you. They have given you the information purely to
15 assist you in your investigations, to give you leads. I, I tend to think that, you can, contrary to what Mr Burger says, you can, without admitting a document, basically the Commission can utilise the information contained on a confidential basis, if you use the information as leads. You, you are not going to, to admit this document formally as
20 evidence. It may be part of the record. But, once it is in our hands, I think, we can, we can use the information for purposes of our own investigations. Of course, we are not going to, to provide that we got this information from, from this document, for example the leads, are the ones that may appear in our report, if we can find, if we found something
25 flowing, the information report, in the document. In this regard, I, I know

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what, the quotes that is being referred to, by, by Mr Terry Crawford-Browne, where he quotes this passage that reads as follows:

“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 of any nature, including hearsay evidence and newspaper reports or submissions and representations that are nothing more than opinions. It may (and my emphasis is on the expression) it may, it may consider information.”

It may not be admissible information. The document may not be admissible when it is handed us and we look at the document. We, we may consider it and use it, the, the information that form the document, for purposes of our own investigations. So, for instance, we may decide that this document is not admissible. But, if the document is still useful to the Commission in, in so far that it can be used as leads. That is, that is the, the one view, I wish to express on this matter. But, then, and I do not know whether, whether you will agree with me, but, what was the [indistinct], but even if the document is inadmissible, for purpose of this Commission's investigation, it tends to, and then, we will, because we will be merely consider the information. Can you comment on that?

ADV BURGER: Thank you, Commissioner. Yes. I think, one needs to be very careful, when one deals with different types of evidence that would otherwise be inadmissible. I accept that the Commission has got different powers to hear, hearsay evidence and evidence that has got a much lower probative value, than direct evidence. It is a fact finding exercise. But, for purposes of, of the law of evidence, one would

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exclude that type of, of evidence, ordinarily in a High Court, on the basis that it is such weak evidence that it does not really further the matter. Now, it might lead to something, but, it, it is either hearsay, or it is irrelevant, it does not address the issue in question. Privilege is a completely different beast. Because privilege can relate to evidence that is very potent and very powerful and persuasive and it can have an outcome on High Court proceedings. Yet, the law affords that protection to the owner of privilege, to invoke that right. So, that is why I want you to be very careful to have, to, to compare hearsay evidence with privileged evidence. They are different beasts and moreover, privilege is, there is a right that is protected in the regulations, that governs these proceedings. A witness, I beg your pardon, a witness is entitled to rely on privilege. It is a specified right. I think, I think it is regulation 8, which I referred the Commission to. In the same vein, the Commission can have regard to hearsay. So, it ends with both, both ends. Have regard to hearsay, but give the person an opportunity to invoke privilege. The tendency by our courts, the Supreme Courts of, of our country is to see privilege as a substantive right. It is not simply a procedural right.

COMMISSIONER MUSI: I, I, hear you. I have got something else, and I have noted that this document is very explicit. It is marked very clearly. Let me go to it quickly, 173. It is marked very clear. It is right at the front. Privileged and confidential, attorney work product, attorney client communication, confidential, it is marked clearly, it is a confidential document. I, I do note, also that, in terms of the regulations of this Commission, the only basis, on which the witness can refuse to

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answer questions is his privilege. So, in the right way is that we also recognise the, the important defence of privilege. By way of analogy, there is a case that, that has been old for some time, I have not read the case. I will tell you, but, but the case involving the, the spy tapes. You
5 have heard about it. Those were South African lawyers. You have heard that representations, made on behalf of the President, are excluded from, from material that was supposed to be supplied to the DA, in terms of the court order. I think it is the order of the SCA that those representations, made on behalf of the President, are privileged
10 and therefore, cannot be disclosed to the other party. Do not use the certifications for, in the same categories, categories. It is, it is a privilege claim to dispel of this kind of document. It is something for, for, some kind of thought. It may well be supporting your argument, but, but this privilege cannot be briefed.

15 ADV BURGER: Commissioner, unfortunately, I fall in the same category. I have not read that case in full, neither have I considered it. But, but there are different types of privilege that I our law recognised this, from litigation to legal privilege and there may well be a privilege attached to communication from the President's Office. I, I just do not
20 know enough to respond, to make a submission on that.

CHAIRPERSON: Before we make a ruling, ADV RAMAGAGA, do you want to, to say something?

ADV RAMAGAGA: Yes. Just, just ...[intervene]

CHAIRPERSON: Can I, can I ask you to deal with this question?

25 ADV RAMAGAGA: Yes.

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CHAIRPERSON: Amongst others, can we recognise privilege of this, that Ferrostaal is claiming over this document and, at the same time, consider the contents of this, of that document, without interfering with their privilege? As I have said, I am aware of what has happened, of the contents of this document. I have given certain instructions to the, to the staff of the Commission. They are following up some of the leads that we have picked up, from this document. Can one rule, both, at the same time uphold the privilege, but at the same time consider the contents of this document, particularly those issues, which I think, are relevant to, to the Commission and act, in following the leads, that are contained in this document?

ADV RAMAGAGA: Alright. Thank you, Chair. It is a bit difficult, but I will try. Let me start off, by just clearing one or two things that my learned friend seems to have characterised my address with. Those are a statement, relating to the prescription of privilege and a statement, which says that, in my address I said the Commission has more powers than the High Court. Prescription, I have not, in any way, whatsoever tried to even suggest that privilege does prescribe. So, I am just setting the record straight, before I deal with issues. With regard to the powers of the, of, of the Commission, I have not said that the Commission has more powers than the High Court. What I have said is that the Commission has certain powers, with regard, or different powers, with regard to the presentation of evidence. Just to close it neatly, I think it will be appropriate for me, to refer to case law. I am not going to quote a long passage, Chair. I would like to quote from the case of Bongosa v

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Minister of Correctional Services and others 2002 (6) (SA) 330 (Tk) Transkei high court. In particular, I would like to draw your attention to paragraph 17. Now, quoting from that paragraph, permit me to read the following into record, where clarity is being given, especially on the powers of the Commission, as against the courts and even their distinction. A court of law is bound by rules of evidence and pleadings, but a Commission is not. It may inform itself (the Commission may inform itself, because it is the fact finding forum) of the facts in any way it pleases, by hearsay evidence and from newspaper reports or even through submissions or representations, or representations or submissions, without sworn evidence. Now, the Commission may even inform itself in the way that it pleases. But, when it says, in the way that it pleases, it does not then mean that the Commission can just act arbitrarily. The focus of the Commission will be on executing its mandate properly, adequately and efficiently. For a Commission that is aware of information to turn a blind eye to that information and yet, to continue to execute its mandate, will be problematic, because it is contradictable in terms. Now, let me then come to the question that the Chair has invited me to address. Maybe, before I, I do that, I should just reiterate that. When we talk about privilege, privilege relating to litigation, or rather, I think it was Commissioner Musi, who spoke about the privilege that his now being claimed, in relation to the representations that were made by the President, to the NPA or so. Now, that privilege is privilege that pertains to litigation, because it is about a case, that, litigation that has, has been withdrawn against the

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President. Now, this, which we are dealing with here, is the fact finding forum. So, it does not involve litigation. It does not seek to make a finding against a particular person. It seeks to gather information, in order for it to be able to make recommendations. But, those
5 recommendations, of course, they have to be informed recommendations. And the information will come from, even sources such as this report that we are talking about. Now, regarding the question, as to whether the Commission can then use the information, without relying on the document that, in my view, is a difficult thing to
10 do. Because, what it means is that you look at the document, you get all that information in the document and you migrate it to somewhere, in order to use it. The reason is, why should the Commission get into the pains of doing that, when the Commission has the power to inform itself, as it pleases, with an intention of executing it, its mandate properly? It
15 is a reality. We cannot wish it away, that the Commission is in possession of this document. We cannot wish it away that this document has been in the public domain for some time.

CHAIRPERSON: Ms Ramagaga, if I may just interrupt you. In fact, the instruction, more than [indistinct]. We have already started following the
20 leads, as a result of information that we have, that we have picked up from this document. Some of these people, who are mentioned in this report, we have already tried to trace them, because we want to consult with them. Now, the question is, after having started such an exercise, if we do find that this is a privileged document, does it mean that we
25 must stop what we are doing and pretend as if we do not know what has

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happened?

ADV RAMAGAGA: Chair, with, with great respect, I, I would say, it would be, it, it would be very irresponsible for the Commission to come across information, but because this information and that information, 5 perhaps, it is even relevant to the Commission. But, because that document is stamped privileged, for the Commission then to decide to bury it and pretend it is not there, bury it somewhere, it, it would be, it would be improper for the Commission to do that. That is why there is a differentiation between the Commission and the court of law. The court, 10 courts of law, depends on investigations that have been done, by people that do not even the powers that you have. Now, if there is that elevation to the position of a Commission and a Commission says, oh, it is just, and you know, I will not get deeper in, even into the question of privilege. When you say, I am protecting this document, because it is 15 marked privilege, the question is, what are you protecting? Otherwise, we can all stamp our documents privileged, privileged, secret, secret and because it is marked secret, I say it is privileged.

COMMISSIONER MUSI: Can, can I, can I see, these are not as straight forward, as one might, might want to think. The reason why, 20 why the information was used by way of a lead, I think, it was on the assumption that the document that was given to us, to assist us in our investigation and not for purpose of, of this hearing, I think, that was the assumption. But, I, I have this question. Is it, would it be very simple for the Commission to perpetuate the legality, if this document is [indistinct]. 25 Can we nonetheless, insist on, on using it, as part of the clear

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integration and that this, it is in fact, it has been disassembling it without the consent of the owner and we know it is privileged. Now, we know, is it still, it is a proper story, can, can we perpetuate that on the legality by, by using it, in spite of the fact that it is privileged.

5 ADV RAMAGAGA: Sir, thank you, Commissioner Musi. What, what we know and what is common cause is that this document is stamped privileged and confidential. What we know for a fact is that this document, it is a Ferrostaal document. But, the question as to whether this document is stolen, as to whether this document was put in the
10 public domain by a person that was not authorised to do that, it is something that we cannot say ...[intervene]

CHAIRPERSON: No. We, we understand that ...[intervene]

COMMISSIONER MUSI: Sorry, but we have been told, by the, the Ferrostaal, the owner of the document, because the document was
15 prepared by, via their attorneys for them, and we say so, and there is no excuse about that. It is privileged, there is no dispute about that. It is also confirmed to other [indistinct] that we did not approve of its dissemination. In other words, it has been disseminated, without their permission. It is unlawfully disseminated. Though, though, I think those
20 two, two facts that we will accept. One, it is privileged, two, it has been disseminated without the permission of the owner. Can we, can we perpetuate this illegality?

ADV RAMAGAGA: Commissioner, I beg leave to address the, the issue of whether the dissemination has been done with consent or not.

25 CHAIRPERSON: MS RAMAGAGA, can we accept that? We are going

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to accept that this document was disseminated without the permission of Ferrostaal. Can we then accept that we are going to loose our departure point?

ADV RAMAGAGA: Thank you, Chair. In the, actually, my submission
5 is that, it is in the public interest that this document be used and admitted, bearing in mind that, notwithstanding the fact that it bears the stamp of privilege and it is privileged, this document has been in the public domain for some time. Bearing in mind that these, this Commission does have the power to inform itself of the facts and the
10 reliance will be on this document. It is my submission that it would not be improper for this Commission to admit that document and allow it to be used.

CHAIRPERSON: MS RAMAGAGA, do you, would I be right to say that it is possible to use the information, without accepting the document?

15 ADV RAMAGAGA: It is possible to use the information, without accepting the document.

CHAIRPERSON: Because now, we have not accepted the document, but then, we have started following the leads. I mean, I think, we gave some instructions some time ago, that at leads, this document must be
20 followed. Would that be the correct position, that we can follow the leads, without accepting the, the document?

ADV RAMAGAGA: Yes, Chair. You can use the information in the document, like you have already started using that. Unless, there is a suggestion that your conduct is unlawful and I would not subscribe to
25 that.

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COMMISSIONER MUSI: Mr, Mr Burger's view that, once it is found that a document is privileged, you cannot touch it, in terms of the law, you cannot, you cannot use it. It is privileged. That is his submission.

ADV RAMAGAGA: Commissioner, I, I will accept that the information
5 can be used. But, as regard to the question as to whether the document should be admitted, I have made my submissions. I cannot take them any further.

CHAIRPERSON: Thank you.

MR CRAWFORD-BROWNE: Commissioners, may I make a brief
10 point? Thank you, Commissioners. I would like to make two very brief points. Advocate Burger relies on the Commissions Act of 1947 for the basis of his arguments on privilege. I would point out, that although the Commissions Act is 1947, we are in a new era. We are in the era of a Constitution and democracy in which the Bill of Rights is supreme and
15 the Constitution is supreme, not the 1947 Apartheid era. So, his reliance on privilege from a 1947 Commissions Act is very shaky. But, secondly, Commissioner Musi raises the question of whether we can perpetuate the theft of a document and I think there must be some dispute on that, but nonetheless, overriding and trumpeting, trumping
20 that argument that argument, I submit is, can the Commission be seen to be perpetuating the practice of fraud? This is the issue, which the Commissioners have to deal with. Was the Armsdeal fraudulent and it comes back to Lord Denning, maxim, fraud unravels everything, including, I would suggest privilege. Therefore, this document should be
25 made available to the Commission and entered as evidence, it should

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be accepted by the Commission, as evidence.

COMMISSIONER MUSI: You know, Mr Crawford-Browne, you are saying this, on the assumption that the document discloses fraud. I am not sure that is the case.

5 MR CRAWFORD-BROWNE: As you know, the, my argument throughout this is the Armsdeal is illegal, unconstitutional and fraudulent and fraud unravels everything.

CHAIRPERSON: Mr Crawford-Browne, we hear what you are saying. Maybe, we do not agree with you, but however, you are saying. I can
10 tell you, I have not discussed it with my co-Commissioner. I will still do that, this afternoon. My *prima face* view is that, we are not going to allow the document, but we are going to use the contents thereof, because we have already started using the contents thereof. I think this is a position that I am going to, it is my *prima face* position that I am
15 going to, to, that we are going to take, that I am not going to allow the document. But, I made mention that we have already pick up from that document and we are going to use it. As I said, we have already started communicating with some, trying to communicate with some of the people, who are mentioned in this report. I think, we are going to be
20 telling to you that, because this is a Commission, I think, we have got a duty to try and find facts and investigate them. But, it is not the final position. We will have something very brief and in writing tomorrow morning, that is the first. Then, the second thing, I had Mr Crawford-Browne threatening about legal action and Ferrostaal also saying like
25 this, also threatening that there might be going to court, if I am not

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wrong.

ADV BURGER: No. There is no indication that we are going to court.

CHAIRPERSON: Oh. I am sorry.

ADV BURGER: Nothing has been said about that.

5 CHAIRPERSON: I am sorry, I made a mistake. We will give that ruling tomorrow morning and immediately thereafter, then we will proceed with the evidence of Mr Crawford-Browne. Mr Crawford-Browne, you have heard me on what I say. This is what I am likely to do tomorrow morning. If you still wish to go to court, please try and approach the
10 High Court, by way of urgency, because nine o'clock tomorrow morning, I am going to continue with this [indistinct].

MR CRAWFORD-BROWNE: Chairs, I think, I, I did say in my communication, it is something that we would not necessarily do immediately. It would be something that we would consider in the
15 future, depending on the recommendations of the Commission. The, the Commissioner, of course, has to make the recommendations to the President as to what would be an appropriate course for him to take, including the ramifications of cancellation and the recovery of the monies. So, we await your recommendations to President Zuma.

20 CHAIRPERSON: Oh. So, if you do go to court, you are going only at that stage, after we have made our recommendations?

MR CRAWFORD-BROWNE: We await your, that is, obviously, your Commission is, is to make recommendations to the President.

CHAIRPERSON: Oh. So, you are not likely to take us to court now?

25 MR CRAWFORD-BROWNE: Not tomorrow.

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CHAIRPERSON: Oh. Thank you, thank you, thank you. There is a suggestion that we adjourn now and start tomorrow morning at nine o'clock. Maybe, in the meantime, I will try and prepare this document about my ruling. Fortunately, Mr Crawford-Browne said to me, he is not
5 likely to take us to court now.

MR CRAWFORD-BROWNE: Tomorrow.

CHAIRPERSON: Can we adjourn, until nine o'clock tomorrow morning?

ADV RAMAGAGA: Yes, Chair. No objection.

10 CHAIRPERSON: Thank you. I think, we will come back here, tomorrow morning at nine.

(COMMISSION ADJOURNS)

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