

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

PHASE 2

DATE : 11 DECEMBER 2014

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HEARING ON 11 DECEMBER 2014

CHAIRPERSON: Thank you. Good morning everybody. Advocate Mphaga?

ADV MPHAGA: Thank you chair and Commissioner Musi. Chair, we
5 are almost ready to proceed, but before we can proceed advocate Cilliers wants to address the commission in respect of an application they intend to bring.

CHAIRPERSON: Advocate Cilliers?

ADV CILLIERS: Thank you chair. I confirm that I am attending the
10 proceedings on behalf of Mr Fana Hlongwane, the witness arranged to be here on instructions of Mr Stockenstroom and Fouche. We indeed have an application relating to the issue of creating ample publication of photographic material of our client during these proceedings. Mr Chair, let me upfront raise certain issues pertinently. Our client acknowledge
15 the right of everybody to attend these proceedings.

We do not wish to or request the exclusion of anybody, not any member of the public and or the press. So we want to make that very clear at the outset. Our client acknowledges the rights of the public and the press to have full access to the proceedings, the voice recordings
20 and to their right to publish on the factual issues and or the evidence being delivered during the proceedings, including the evidence of our client.

We do however request some order or arrangement from you which may be seen or may be referred to as a limitation maybe of the
25 full right to disclose and or publish on the issue, and that relates to the

taking and or publishing of photographic material of our client during the proceedings. We will request you for an arrangement or a ruling that would include the prohibition to have the TV cameras focussed on our client during the proceedings and or the taking of photographs during
5 the proceedings.

What we therefore request is that the taking of any photographs and or the making of any TV and or video material be prohibited during the proceedings and or in this premises during for instance adjournments of the commission. In so far as it may be seen as a
10 limitation of the right of the press, we wish to refer to the following. In the event of conflicting rights there should be of course a balance of these rights provided for in Section 39 of the constitution.

Now we have here two possible conflicting rights, and that is the right of the individual. That is our client and his family to their privacy.
15 His right to do his business and not be prejudiced in that and also the right to the safety and security of he himself as well as his family, which will all come into play as issues to be considered in evaluating this balancing of rights.

On the other side there is of course the press's right to publish
20 photographic material of a specific person. we submit chair that there is a third very important, and maybe the most important issue and entity that should also be thrown into this pot of consideration that you have regard to in order to come to a just and a fair decision, and that is the rights of this commission to function properly.

25 We submit that is the most important issue at hand. That is the

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true and the real reason for everybody's presence here. That is that the commission has to fulfil its mandate and the mandate is to obtain and gather evidential material on the issues relevant to the terms of reference provided by the president. That certainly does not include the
5 obtaining of photographic material of any individual.

By agreeing to the order we submit the functioning of this commission will not be curtailed in any manner whatsoever. You will get all the facts and all the relevant evidential material relevant to the issues in and which our client of course may have knowledge of and he
10 can be of assistance to you. He is willing to fully cooperate and he has already cooperated.

He has provided a statement to the evidence leaders and I can disclose that he already had a personal lengthy consultation with the evidence leaders during the course of yesterday. So there can be no
15 doubt that he intends to fully cooperate and he showed the cooperation already by having this consultation with the evidence leaders in preparation for his evidence.

By disallowing the request for an order in the above regard, the functioning of this commission and the effort to fulfil its mandate, will be
20 seriously [indistinct] we submit. It will inhibit the witness and may even lead to his refusal to participate or fully cooperate and deal with all issues raised properly and fully and in the detail that he might deem necessary depending on questions being asked and the relevance of course.

25 Chair, we are aware that a quite a similar situation arose

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previously during the proceedings. I am referring to the evidence of general Steyn where a not an exactly similar request was forwarded on behalf of general Steyn, but it was quite similar. If I have it right, it occurred on 15 June 2013 and you in fact adhered to the request and

5 [indistinct] from the record it was clear that that did not hamper the proceedings in any manner in fact I would submit it is clear that it facilitated the proceedings, because the witness was then willing to proceed in delivering his evidence without inhibitions of any nature.

So we submit if you balance the situation as is required from you

10 in terms of Section 39 of the constitution, the limitation if you can even refer to it as a limitation on publication, is really [indistinct] in nature. On the other hand the rights of our client, infundamental rights to privacy, his rights to safety and his rights to doing business in future, we would submit outweigh the right of the press in this regard to take

15 photographs.

By far it outweighs it and then the very important consideration that the functioning of this commission will be hampered if you disallow the request and do not adhere to the request to make an order and or a ruling in this regard. We submit that there can be no doubt that it is a

20 reasonable request and that under the circumstances that our client is entitled to such a ruling.

We therefore request that before our client enters the room in order to deliver his evidence, that you provide us with such a ruling. As you please.

25 CHAIRPERSON: [indistinct]

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ADV MPHAGA: Thank you chair. Yes, we confirm that we have had cooperation from advocate Fana Hlongwane so far, and in so far as the merits of the applications are concerned, we would leave it in your discretion Chair.

5 Commissioner MUSI: Maybe let me just get some clarity advocate Cilliers. In what way precisely will the publishing of his photos impinge on his privacy, his safety and that of his family as well as [indistinct]. In what way? I have not heard anything about that.

ADV CILLIERS: The position is that we have knowledge of the fact
10 and you may have seen in newspapers in the recent past, well past couple of years, when these issues relating to our client's position and or the arms procurement process, although there was wide publication of certain allegations and or issues that he had been involved with according to certain of the press statements and according to the books,
15 you have never seen any photographic material of our client.

He is a very private person and until this stage there is no photographic material of him available in the press, which gives him some freedom of movement and is a very important factor to his safety. If it is allowed today that widespread photographic material of himself be
20 made available, then you can see what type of a hype these proceedings have been created today, and that will mean that probably everyone in South Africa will immediately recognise him if he is in the public as from today.

That then will of course include his family. Unfortunately there
25 was previously threats made etcetera. I do not want to go into any of

the detail in this regard, and our client and we submit that it is just not necessary for purposes of these proceedings that we jeopardise that position of our client. Especially under circumstances where it would not curtail the functioning of this commission.

5 The request that we make, and we feel very strong and I make strong submissions in this regard, that it will not create the functioning of this commission in any manner whatsoever. It will not curtail the rights of the public to come and attend, the right of the press to attend the proceedings and to publish whatever they deem necessary with
10 reference to the evidential material that it provide.

 The fact that a photograph being taken and or published, with great respect does not assist the commission in any manner. It would not in any manner contribute to the contents of any publication and or media report in this regard. It will just create with great respect maybe
15 sensation on the one hand, and that must be seen against as what I have already explained.

 I do not want to repeat it. It will not strengthen it. The possible jeopardising of his safety, his privacy and also that of his family. As you please.

20 CHAIRPERSON: Advocate Cilliers, we seem to have difficulties in conceptualising what you are asking us to do. My first difficulty is what authority do we have outside this chamber? Can one give an order which is binding to people who are outside this [indistinct]. The second difficulty is can we give an order saying that the newspapers or the
25 electronic media should not publish a photo of Mr Hlongwane? Do we

have powers to do that?

ADV CILLIERS: No chair, I think you are right. You do not have the authority, you do not sit, although you are both judges you do not sit as a court of law. So I cannot make a submission that you can prohibit the
5 publication of any photographic material outside this premises that falls within your jurisdiction, but what you can order and that is all we request, is that the taking of photographs and or the making or video material and or the focussing of cameras on our client during the proceedings in this chamber should be prohibited.

10 CHAIRPERSON: In other words you are asking us to make a similar order that we make in regard to [indistinct]?

ADV CILLIERS: More or less the same. I do not think that I read it. I do not think it went as far as to exclude photos taken by ordinary cameras, although usually they do not do it, but you are right. That is a
15 more or less similar request and or a similar arrangement that we request.

CHAIRPERSON: [indistinct] I right to say that [indistinct] only in so far as we are here in this chamber doing the hearing. What happens after the hearings, we cannot control.

20 ADV CILLIERS: In order to give it practical effect, I would submit chair that you can make the order relating to this chamber, or the premises that is under your control. So what I would submit that you can say is that the prohibition will be in force even if you adjourn for a tea time or a lunch time, but only whilst our client is on this premises. If
25 he leaves the premises, clearly you do not have the right to prohibit the

press to take a photograph in a restaurant next to this premises.

So just in order to give it practical effect, we would submit that you can make the order a valid order for purposes of the proceedings in this auditorium as well maybe as the foyer. Up and until our client
5 leaves this premises and or the foyer. From there on I agree. If we want an order, we will have to approach the court.

CHAIRPERSON: With the greatest of respect, I do not think that I have any powers or jurisdiction to determine what happens in the foyer. [Indistinct] starts in this building when we sit for the hearing and ends as
10 soon as we leave this chamber. What happens thereafter, with the greatest of respect, I think there might be other forums which might help you and not this forum.

ADV CILLIERS: Chair, can I just take an instruction on the foyer issue? Sorry chair, no we will accept your prima facie view that you do
15 not have jurisdiction in the foyer and that you are limited to the auditorium.

CHAIRPERSON: Thank you. Any other person who wants to make inputs to this debate?

MR CHOWE: Thank you chair.

20 CHAIRPERSON: Can you just switch off your mike, we will come back to you.

MR CHOWE: Thank you chair. I have listened to my colleague's argument and I think the concession be made in as far as the jurisdiction of this commission, in as far as the foyer is concerned and
25 accepting the fact that it is a prima facie [indistinct] correct and I have

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no further submission in as far as that issue is concerned. Thank you.

CHAIRPERSON: Yes.

MR BARRY: Thank you chair. My name is Barry [indistinct] from eye
witness news. Chair, on the issue of the media, if it would perhaps be
5 granted by this commission that as a media person that we could speak
to our editors who might be interested in seeking counsel on this matter,
and taking some advice to make representation, because clearly this
application being brought is a curtail on immediate freedom.

So if we could just be granted that couple of minutes to check.

10 CHAIRPERSON: When you say [indistinct]?

MR BARRY: Chair, it would be five minutes. A quick call to the editor
who would make a decision, whether they would like to take it further,
like to come back and report to you. I am sure my colleagues would
probably be doing the same. Particularly from the print media, I think
15 they would be interested in seeking some guidance from our [indistinct]
really.

CHAIRPERSON: Five minutes. 9

Mr Chauke: Commissioner, also in respect of the SABC, due to the
public interest in this investigation of fraud and bribery in the 1999 Arms
20 Procurement packages, there has been a lot of interest. The public
relies on us for information. There has been a lot of questions that have
been raised about the credibility of the commission itself. So if the
media is being denied access into this [indistinct], this would be
[indistinct].

25 We also would like to consult with the SABC lawyers for advice,

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because as we speak [indistinct] and a whole lot of people is expecting to see the witness on television.

ADV CILLIERS: Chair, if I can just make it clear. We do not have any difficulty with the streaming of the voice recording live. We have no
5 difficulty with that. It is only the photographic section that we request you to make and order on. So we just want to make it clear in so far as the person on behalf of the SABC maybe have misunderstood. We do not have any difficulty of allowing them access and or publication of the evidential material being led, and they can do it live.

10 We have no difficulty.

Mr Chauke: SABC TV News we are a television medium. We rely on [indistinct] to tell our stories. Both for our digital platform as well as television. We do have radio stations that rely on audio, but radio stations are also very much attached to the social media or whatever
15 audio that they broadcast, they also have to put content on line which has to be backed up by pictures as well as footage where possible.

So we would like to consult with our legal team at the SABC, as I said earlier that South Africans relies on us to relay the information to them live.

20 CHAIRPERSON: [indistinct], I want you to assist me in this regard. If the witness says to me that when he testifies, if you focus on him, that makes him uncomfortable and we may not get the best evidence out of that witness for as long as we will focus on him when he testifies. Will that not be a justification not to allow your TV cameras to focus on him
25 when he testifies?

I think try and raise that also with your legal representatives. My prima facie view is that once we have the request which says that do not give us an order which are saying they are not to focus on me when I testify, because that might [indistinct] my thinking. We might just be inclined to grant such an application. We have done in the past. Particularlly when he testifies.

[Indistinct]. We will adjourn for 10 minutes and come back after 10 minutes and we will give our ruling at that time. Okay. Any other person who want to say anything?

10 **ADV CILLIERS**: If I can maybe assist. This is in line with the so called Oscar Pistorius ruling as well, where the witnesses felt intimidated by the focussing of video cameras and or photographic material on them whilst testifying and exactly the same ruling was never challenged by the SABC who also televised live the whole proceedings.

15 **CHAIRPERSON**: [indistinct] we also want the witness to be comfortable and not be intimidated so that the witness can testify and assist the court and I am sure in this instance [indistinct]. But then let us adjourn for 10 minutes. Thank you.

HEARING ADJOURNS

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HEARING RESUMES

CHAIRPERSON: Thank you.

MR BARRY: Chair, I have spoken to my editor and she has instructed that EWA will be opposing this application. We have requested time that the matter stand down for a reasonable amount of time for lawyers to instruct, or I understand that there are instructing

counsel on this matter and would like to make presentations.

CHAIRPERSON: In your view, what is a reasonable time?

MR BARRY: Well chair, not being a legal expert and not understanding the exact process that needs to be [indistinct] would have to see papers
5 and the application be submitted to this commission, and perhaps later this afternoon or tomorrow morning.

CHAIRPERSON: Mr Chowe?

MR CHOWE: Commissioners and Musi, I would like to concur with my colleague from eye witness news. We have also been in
10 consultation with our legal team and the editors and they are also requesting more time in order for our legal team to be able to make certain submissions here at the commission to [indistinct], because they are saying the application or the showing of the footage of Mr Fana Hlongwane is in the public interest, considering the allegations that
15 have been levelled against him for all those years.

So they are also requesting a reasonable time in order to prepare the papers.

CHAIRPERSON: Before I continue, Mr Chowe, what is a reasonable time?

20 MR CHOWE: I think also maybe before close of business today actually they will be consulting advocate [indistinct] in a short while.

CHAIRPERSON: I am not quite sure what advocate [indistinct] has to do with your application. That is why I am trying to find out what do you deem to be a reasonable time? The last gentleman from [indistinct] he
25 seems to be suggesting that if I give them this afternoon, then he will be

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ready tomorrow morning. Will that be the position with you too?

MR CHOWE: That will also be our position.

CHAIRPERSON: Thank you.

MR PRINCE: Good morning commissioner. I am [indistinct] from
5 Beeld and ER24. I have also spoken to [indistinct] and they also say
that they opt to oppose the application. They were consulting with our
legal advisor at the moment and they also ask just for more time.

CHAIRPERSON: Thank you.

MRS EDWARDS: Chairperson, my name is Sarah Edwards. I am from
10 the Mail and Guardian. If I may make a suggestion. I do not think that
we are in a position to speak on behalf of [indistinct] as for how much
time they need to consult and [indistinct]. So would it possibly make
sense to adjourn for maybe until after lunch so that we can get
[indistinct] as to how much time they need.

15 I also understand that there is no written application, and we
would request that that could be given to us as soon as possible.

CHAIRPERSON: [indistinct]

MRS EDWARDS: Well, the application that the advocate Cilliers has
made.

20 CHAIRPERSON: But I think it was an oral application. I am not quite
sure which written application you are referring to.

MRS EDWARDS: Well, we would like to, we would like to understand
exactly what it is that Mr Cilliers is asking for. So if there is a written
application, we would like to see it. If not, again I would just have to
25 come back.

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CHAIRPERSON: I think the journalists seem to suggest that if they are given time until tomorrow morning, that would be sufficient, and I think this is what I am inclined to [indistinct]. We really want to get on with the evidence. I think if it answers your question of giving people a
5 chance up to tomorrow morning, we might be inclined to make such an order.

We are not inclined to just give a general adjournment, depending on how long your legal representatives think that they will take to prepare their papers in order to oppose the application.

10 MRS EDWARDS: Chair, I do understand. We cannot speak on behalf of our representatives who probably should be speaking on our behalf here. So I just think if we just have an opportunity to consult with them again, so that [indistinct]. I cannot see that it will be a problem to adjourn until tomorrow. I just feel that it is a bit to everybody else
15 [indistinct]. We are not lawyers.

ADV CILLIERS: Chair ... [intervene]

CHAIRPERSON: I do not understand what you are saying. I understand what the other journalists was saying, and I think I am inclined to [indistinct] depending on what you say.

20 ADV CILLIERS: Chair, my present instructions is that we do not want to get involved in legal games and I am to some extent astonished by the reaction that we have. Can we have a five minute adjournment to get an instruction? What we foresee now is that we are going to play legal games for the next month or three and to the detriment and the
25 prejudice of the commission.

Our main instruction is that our client wish to assist the commission in so far as he can. Can we get a 10 minute adjournment to ensure what the position is and maybe consider withdrawing the application?

5 CHAIRPERSON: Advocate Mphaga?

ADV MPHAGA: I do not have any objection if we adjourn, and maybe come back after 10 minutes.

CHAIRPERSON: Advocate Cilliers, in that case we are going to adjourn and take as much time as you want, particularly if you consider
10 withdrawing the application. In that case we are going to adjourn and as soon as you are ready and [indistinct] then we can reconvene. From what you said, you will need about 10 to 15 minutes.

ADV CILLIERS: Yes, no we know that the commission is probably
15 only available till tomorrow and what I hear from these people is we are moving into court applications and appeals and I wonder whether we will finalise that before the end of the commission's mandate, and we do not want that, and therefore our client's view is that he will discuss it with us and he will reconsider.

CHAIRPERSON: [indistinct] if your client then considers withdrawing
20 this application, then [indistinct] assist us to [indistinct].

ADV CILLIERS: That is his approach now as well chair.

CHAIRPERSON: [indistinct]. It is 12:00. Can we come back at 12:15?
Thank you, we will adjourn then.

HEARING ADJOURNS

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CHAIRPERSON: Thank you.

ADV CILLIERS: May it please you chair, I indeed have instructions that in order to assist the commission and to avoid this media hype that has been created and maybe cause the situation where you will not
5 have the evidence and or the contribution of our client, he gave me instructions that he withdraws the application and he is ready to proceed with evidence.

CHAIRPERSON: Thank you.

ADV MPHAGA: Thank you chair. Chair, advocate Hlongwane is
10 ready to take an affirmation.

WITNESS: FANA HLONGWANE (herein after referred to as Mr Hlongwane) GIVES EVIDENCE UNDER OATH

CHAIRPERSON: Yes.

ADV MPHAGA: Thank you chair. Before advocate Hlongwane
15 proceeds with his evidence I will just give a synopsis of the evidence he is going to give. He will testify basically on term 1.5 of the terms of reference, which states that whether any person within or outside the government of South Africa improperly influenced the award of [indistinct] of any of the contracts awarded in [indistinct].

20 If so whether legal [indistinct] against such person and the nature of such proceedings. Whether in particular there is any basis to pursue such persons for the recovery of any losses that the state might have suffered as a result of their conduct. In this respect he will also proceed to deal with the whole question that has been on the public domain.

25 That is the quantum in respect of the amounts that he is alleged

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to have received, and the justification of that quantum, and he will in line with that also deal with the issue of class and race and he will also deal briefly on the impact of the rule of law when he makes reference to the various investigations which were lost against him and lastly he would
5 want to deal also with the issue of failure to accept political outcomes.

I would then proceed chair to lead advocate Hlongwane. Advocate Hlongwane, you have your statement before you? Thank you chair. Chairperson and commissioner Musi you will see there is a bundle of documents and also a separate affidavit marked from page
10 141. It is separated from the bundle for a particular purpose. Because advocate Hlongwane would like to do a comparison between the affidavit which is in the bundle and this one.

So we have just put it separately so that when he does that, it is practical to do so. Advocate Hlongwane, are you ready to proceed?

15 ADV HLONGWANE: Yes I am ready.

ADV MPHAGA: You have made a statement [indistinct] of giving evidence before the commission and if you look at page 1.12 A you have also signed your statement. Am I correct?

ADV HLONGWANE: Yes indeed.

20 ADV MPHAGA: Chairperson and commissioner Musi, your statement is not signed, but we will give a copy of the signed copy.

CHAIRPERSON: Thank you, they have already given us.

ADV MPHAGA: Thank you. Advocate, can we just proceed to paragraph 1 of the statement. Can you just quickly take us through
25 paragraph 1 of your statement?

ADV HLONGWANE: You mean I should read paragraph 1?

ADV MPHAGA: Yes.

ADV HLONGWANE: I Fana Hlongwane do hereby provide the following statement regarding my and my related company's alleged
5 involvement with the strategic defence procurement package of the Government of the Republic of South Africa. Referred to as the SDPP.

ADV MPHAGA: Advocate, when you refer to your related companies, which companies in particular? Can you read it to me?

10 ADV HLONGWANE: Aero Space.

ADV MPHAGA: And you can proceed with paragraph 1.

ADV HLONGWANE: Thank you. The object of this statement is to provide the commission with the relevant [indistinct] pertaining to my alleged involvement in the SDPP. In order to assist the commission to
15 properly evaluate the facts and prepare its report in terms of [indistinct].

ADV MPHAGA: And in paragraph 3 you are simply dealing with the terms of reference that you want to assist the commission to comply with its mandate and having regard to the terms of reference and in particular if you go to paragraph 4, you also mentioned that you cannot
20 assist the commission with the terms of reference 1.1 to 1.4 and 1.6.
Am I correct?

ADV HLONGWANE: Yes, that is correct.

ADV MPHAGA: And paragraph 5, I have already read paragraph 5 into the record. It is a relevant term of reference that you want to assist
25 the commission with, namely whether you would have properly

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influenced the award of confusion of any of the contracts awarded and [indistinct] in the SDDP. Am I correct?

ADV HLONGWANE: That is so.

ADV MPHAGA: Now in paragraph 6 of your statement, you
5 mentioned that it is common cause that evidence has been presented to the commission indicating that you or your companies influenced the award of the [indistinct] contacts. Can you maybe expand on that?

ADV HLONGWANE: During the entire period of the commission and all its hearings, I have strained my ears and everything in my body to
10 hear anybody from anywhere to present evidence about my alleged involvement in the process [indistinct]. Unfortunately to this day I have not heard anything.

ADV MPHAGA: Thank you. Paragraph 7 you mentioned in paragraph 7 that you were never employed by the government of the
15 Republic of South Africa. What do you mean by that?

ADV HLONGWANE: [indistinct] at the event of democracy in 1994 the Government of the day needed all sorts ... [intervene]

CHAIRPERSON: I am sorry. If you do not mind, can you just pick up your voice, we are struggling to hear you.

20 ADV HLONGWANE: My apologies. At the event of democracy in 1994 the new ANC Government obviously needed all sorts of capacity and institution of advisors was established. [indistinct] whose purpose was to give create consultancy capacity for ministers of the various portfolios for them to execute their duties, and such contract clearly
25 stipulated to the people who had such appointments that they were not

employees of government in any [indistinct].

Then they might interfere with the respective departments and [indistinct] pension and medical aid when the responsible minister if you were to die or leave office of the [indistinct] over and those kind of thing, and the contract states that we are appointed as independent
5 contractors and it is established practice that people could do [indistinct] what they would do for in terms of the contract agreements with the relevant political heads.

ADV MPHAGA: Thank you. In short you say you are not a public
10 servant. Do I understand you to say that?

ADV HLONGWANE: I never was and I am not now.

ADV MPHAGA: And maybe once you are there, maybe it would then be appropriate to refer to the agreements that you are referring to with the relevant clauses. If you, page 1 of the bundle commissioners, ja on
15 page 1 you will find it is an agreement that was concluded between yourself and the government of the Republic of South Africa, wherein it was held by Joe Modise in his capacity as the minister of defence then and yourself.

This contract on page 4 it was concluded on 14 December 1994.
20 Am I correct?

ADV HLONGWANE: Yes, that is correct.

CHAIRPERSON: To which contract are you referring to?

ADV MPHAGA: Chair, you will see that the statement goes until 1.15 and immediately thereafter then you have 1, 2, 3, 4 and 5. So it is the
25 agreement marked FH1. I was just mentioning that on page 4 of the

contract, it indicated it was concluded on 14 December 1994.

CHAIRPERSON: Okay.

ADV MPHAGA: Now if you look on page 4 of the agreement, it was [indistinct]. It says the advisor acts as an independent contractor and
5 not as an agent or employee of the employer and has no authority from the employer to bind the employer. Are you referring that was when you want to emphasise that you are not a public servant?

ADV HLONGWANE: Yes. I am chair referring to this particular clause and the briefings that all these advisors were given at a material
10 time.

ADV MPHAGA: Okay. We will refer to the contracts later. Now let us proceed to paragraph 7.2. If you can just take us through that. On page 1.4.

ADV HLONGWANE: I became involved as a consultant to BAE in
15 order to assist [indistinct] with the implementation of the [indistinct] participation program. My company's [indistinct] for its involvement as a consultant to BAE is fully explained in the BAE submission to the commission. My company's involvement was under [indistinct] and supported by contract and documentation which is already before the
20 commission.

ADV MPHAGA: The BAE submission you are referring to is also attached on the bundle on page 23 to 46 as Annexure FH5.

ADV HLONGWANE: Yes.

ADV MPHAGA: If you can just go to page 23.

25 ADV HLONGWANE: Yes.

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ADV MPHAGA: Can you identify the document? It is written statement to the commission of enquiry into allegations of fraud, corruption, [indistinct] or irregularity in the strategic defence [indistinct] package by BAE systems ELC. Is that the submission you are referring to?

ADV HLONGWANE: Affirmative chair, that is the submission I am referring to.

ADV MPHAGA: And if you proceed then to page 36 of the same submission, it then deals with the [indistinct]. Can you see that?

10 ADV HLONGWANE: Yes, I can chair. Thank you.

ADV MPHAGA: Now if I can read it into the record, it says there the [indistinct] obligations amounted to you as 7.2 billion and were required to be discharged over an 11 year period ending in 2011. The mid objectives set down by [indistinct] where it mentions those objectives.

15 Can you see that?

ADV HLONGWANE: Yes, I can chair.

ADV MPHAGA: Now at the bottom it also indicates that the [indistinct] program achieved these objectives via a package of major industrial activities spending many industrial sectors. It sought to focus

20 on the technological and industrial areas that had been identified by the Department of Trade and Industry as priority areas and which for the nature of the projects in the companies involved would help the South African manufacturing market developed across borders.

Now were you also involved in this whole process of the

25 [indistinct]?

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ADV HLONGWANE: To the extent that my contract stipulated, yes that is so.

ADV MPHAGA: And finally on that same paragraph, on page 37 the last one, it says. In October 2011 the industrial participation control
5 committee informed BAE that it had successfully met its entire [indistinct] obligation of US 7.2 billion. This was confirmed by the South African Department of Trade and Industry in March 2002. Do you agree with that statement?

ADV HLONGWANE: I was accordingly informed by my client, then
10 British Aero Space that they have received such confirmation from the South African Government, in particular the Department of Trade and Industry confirming that statements.

CHAIRPERSON: For purpose of the record it is March 2002, not 2012.

ADV MPHAGA: Thank you for that chair. We revert back to the
15 submission later. Maybe if you can go back then to your statement. If you can go back to paragraph 8 on page 1.4 of your statement. If you can read paragraph 8 into the record.

ADV HLONGWANE: I can further categorically state that I did not
20 pay any gratification to anybody who was involved in the procurement process in order to influence such person relating to the award or conclusion of any of the contracts awarded and concluded in the strategic defence procurement program.

ADV MPHAGA: Thank you.

ADV HLONGWANE: I did not participate in the decision making
25 process relating to the procurement process, and can therefore

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unfortunately not assist the commission in this regard. I can further state that I have no knowledge of any other person paying such gratification to influence the award of contracts. I can also state that I have no knowledge of the fact that any person who had been involved in the acquisition process had received any gratification relating to the award and or conclusion of the contracts.

ADV MPHAGA: Thank you. Now in paragraph 9 you are basically repeating the fact that you were appointed as an advisor to the then Minister of Defence and that you were never a government employee, but you proceed then to discuss further that your obligations towards the minister were set out in the agreement concluded on 14 December 1994. If we can proceed to the agreement on page 1, FH1.

ADV HLONGWANE: Yes, I am there.

ADV MPHAGA: Paragraph 1 of the agreement Annexure FH1 states that the employer will appoint the advisor to perform a specific advisory service in respect of the following. Legislative constitutional matters, legal matters with relation to the political SA National Defence Media and any other [indistinct] of the employee's mandate, preparation of documents as required in relations of A, B and C above, any other matter that the employer may deem necessary for the fulfilment of his duties.

Were these your obligations as an advisor?

ADV HLONGWANE: To the then Minister of Defence Joe Modise yes chair, that is so.

ADV MPHAGA: Now on paragraph 10 you are referring to clause

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18.2 of the agreement which states that should minister Joe Modise at any stage during the course of this agreement [indistinct] office as Minister of Defence for any reason, this agreement shall automatically lapse on that date that [indistinct] such office. What is the efficiency of this clause?

ADV HLONGWANE: In my view chair, if anyone [indistinct] public servant so surely there was no employment security and it was clearly stated to us that we are consultants to provide a particular service at a particular period in the development of the democratic state, and therefore we should be under no [indistinct] that whoever appointed us, appointed us to advise them only and should they relinquish their posts, [indistinct] whether by death or for any other reason.

ADV MPHAGA: So your term of office was linked to the term of the minister, am I correct?

ADV HLONGWANE: Yes chair, if the minister for instance were to [indistinct] for the past six months, so would I be [indistinct] with my contract.

ADV MPHAGA: And I, there were simple agreements that were concluded which are also in the bundle. It appears as if it was annual agreements or how, what was the duration of these agreements?

ADV HLONGWANE: In general chair the duration of these agreements because of the nature of the job there was no guarantee whether they are there or not. It was a consultancy in essence. So it was not permanent. There were times where the agreement would be six months, there were times for it to be a year and so on. So they

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would be renewable.

You enter into fresh negotiations and [indistinct] the particular client is having with you at that time. If not, the agreement is terminated. So there was no security.

5 ADV MPHAGA: Thank you. I think we have already dealt with clause [indistinct] in respect of the fact that you are an independent contractor. Paragraph 12. You indicate in paragraph 12 that the termination of your agreement with the Minister of Defence was agreed upon during 1998, with effective date of termination being 31 January 1999. Is that
10 correct?

ADV HLONGWANE: That is correct chair.

ADV MPHAGA: Now you also indicate that you were appointed as a director of Dinell from 1 June 1998. Is that correct?

ADV HLONGWANE: That is correct.

15 ADV MPHAGA: So would I be correct then that after 31 January 1999 you had no role to play as an advisor of the Minister of Defence?

ADV HLONGWANE: Indeed but technically speaking it was already mid 1998. We disagreed with the administration of the Department of Defence at the time that the effective date of termination shall be
20 agreed upon as 31 January.

ADV MPHAGA: Now can you just read paragraph 13 into the record and if necessary expand on it?

ADV HLONGWANE: It must be emphasised that it was never within the ambit of my duties to advise the Minister of Defence on matters
25 relating to the strategic defence procurement program, and more

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specifically as to the preference of any of the options submitted by the bidders, it is written here in the arms deal, but in the SDPP.

ADV MPHAGA: So during your advisory role as the advisor of the Minister of Defence, you never participated in any of the committee's evaluation, [indistinct] and so on in respect of the SDPP's?

ADV HLONGWANE: Contrary to [indistinct] chair I was never appointed or requested by the minister of defence at that time to participate in the SDPP processes in any manner, shape or form.

ADV MPHAGA: Let us proceed then to paragraph 14 where you are now dealing with the evaluation of the evidence before the commission. Now can you just take us through that paragraph 14?

ADV HLONGWANE: When evaluating the evidence already heard by the commission relating to paragraph 1.5 of the terms of reference, it appears that the evidence can be divided into three categories. One, evidence by the decision makers who finally evaluated all documentations and took the final decision relating to inter alia the [indistinct], former president Mbeki and members of cabinet.

Two, evidence of technical witnesses who participated in the evaluation of the various tenders, mostly witnesses who were members of the Department of Defence. Three, evidence of critics and [indistinct] of the Arms Deal who alleged untoward conduct in the strategic defence [indistinct].

ADV MPHAGA: In paragraph 15 then you refer to the evidence of former president Mr Thabo Mbeki and in various other cabinet ministers who testified, that is formal minister Manuel, Erwin Casrils and Lekota.

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Now can you proceed then to deal with the evidence on paragraph 16?

ADV HLONGWANE: The evidence was clear. They rejected any suggestion of improper influence relating to the award or conclusion of any of the strategic defence procurement contracts. Apart from the fact
5 that their evidence was clear on this issue, their evidence was never disputed. There was not a suggestion of any influence [indistinct] by me or my companies, whether direct or indirect in the evaluation by either the presidential subcommittee or cabinet.

[indistinct] that I was at any stage involved in this process.

10 ADV MPHAGA: Thank you. In corroboration of that fact, can we then look at the [indistinct] report on page 33 of the bundle, paragraph 4.6.7.

ADV HLONGWANE: Paragraph?

ADV MPHAGA: Paragraph 4.6.7.

CHAIRPERSON: [indistinct]

15 ADV MPHAGA: Yes chair. Do you have that page advocate?

ADV HLONGWANE: Yes, I do.

ADV MPHAGA: Can you just read paragraph 4.6.7 into the record.

ADV HLONGWANE: During the public phase of the investigation it was explained by witnesses that the minister's committee decided on
20 and prepared final recommendations in respect of the procurement to cabinet. It was contended by government that the nature of the structure of the [indistinct] process was such that any corruption in the awarding of the tenders would have had to infiltrate effectively up to ministerial level, which was impossible.

25 The committee [indistinct] preferred bidders on the basis of the

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evaluation that was done in the other forums discussed about. It was the contention of the committee that industrial participation can never be used to justify a decision to purchase any equipment. Any procurement must be justified in its own right.

5 ADV MPHAGA: Do you agree with that statement?

ADV HLONGWANE: In my capacity as a citizen who is aware of what is going on in this country, I concur with the statement.

ADV MPHAGA: Thank you. Then let us proceed to paragraph 17 on page 129 of your statement. You can proceed then to read the
10 paragraph and sub paragraphs into the record.

ADV HLONGWANE: Paragraph 17?

ADV MPHAGA: Yes.

ADV HLONGWANE: The expert witness is dealing with the technical evaluation of the tenders relating to the relevant aircrafts, was
15 also clear on the relevant issues. There was one, there was never any attempt to improperly influence them in their evaluation and or preparation of their conclusions. Two, there was no suggestion of any kind that I was ever involved in these processes.

ADV MPHAGA: Proceed to 18.

20 ADV HLONGWANE: To 18. The third category of witnesses and or potential witnesses were the so called critics of the strategic defence procurement program. In the initial submissions reference was made to me and some accusations levelled against me relating to my involvement with BAE systems and my position as advisor to the late
25 Minister of Defence Mr Joe Modise.

When evaluating the submissions, evidence and subsequent conduct of the critics, the following picture emerges. During the evidence of all of these critics, sorry. During the evidence all of these critics admitted [indistinct] that they had no personal knowledge and or
5 any evidence to substantiate the allegations and or accusations against me. Some of the critics refused to appear at the commission, and testify and to be subjected to cross-examination.

Their allegations and accusations in their submissions of courses lies in the face of all evidence under oath by all the witnesses with
10 actual knowledge of the acquisition process. There were a number of investigations by a number of governmental agencies, in South Africa and abroad, and not one of the investigations produced any evidence of misconduct by me relating to the strategic defence procurement program.

15 This include inter alia the following. The joint investigation team, [indistinct], a director of special corporations [indistinct], the [indistinct] office of the United Kingdom, the SAPS investigation by the hawks.

ADV MPHAGA: Let us deal with the joint investigation team. We have briefly referred to the references in the report, but let us proceed
20 then to page 95 of the bundle. Paragraph 4.12 of the [indistinct] report. Can you read that paragraph into the record?

ADV HLONGWANE: The decision to recommend the [indistinct] to cabinet as a preferred selection for the light intermediate fighter trainer and the advanced light fighter aircraft was taken by the committee for
25 strategical reasons, including the total benefit to the country in terms of

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countertrade investment and operational capabilities of the SANDF.

ADV MPHAGA: What is your comment to that statement?

ADV HLONGWANE: Chair, given that I was not involved in this process, my comment would be of academic value.

5 ADV MPHAGA: And if you can read on page 96, against the background that there were allegations that the prices of the [indistinct] were inflated so that it could enable the BAE to be commissions. Now can you read paragraph 4.12. 6 into the record?

ADV HLONGWANE: No evidence will be found in support of the
10 allegation that South Africa is paying more than the normal basic [indistinct] for the aircrafts.

ADV MPHAGA: Do you have any further comment on that statement?

ADV HLONGWANE: As my non involvement was canvassed before
15 the [indistinct] and my non involvement is common cause, I am unable to comment on the veracity of the statement.

ADV MPHAGA: Thank you. So it is common cause advocate that you concluded certain consultancy agreements with BAE as you have already indicated during 2003, where you were [indistinct] as an advisor
20 and in particular, in their submission BAE makes reference to the whole question of advisors. How they went about to appoint them, and it may be important just to read through page 37 of the bundle, paragraph 6.

I will then read the paragraphs and ask your comment. Page 37
25 commissioners. BAE's [indistinct] advisors in relation to BAE

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[indistinct]. BAE paid approximately 115 million rand in pounds to advisors in connection with the sale of civil and military aircraft, including hawk and Grippon in South Africa and in fulfilling of said obligations. Were you also paid for your services?

5 ADV HLONGWANE: In accordance with my contract, yes I was.

ADV MPHAGA: Now if I can proceed then to read the next paragraph, it says that some [indistinct] have suggested that the payment of these commissions is evidence in itself that there was corruption in the procurement process and they referred to the institute
10 of for accountability, I think which is led by advocate Hoffman and when he was leading Mr Crawford Brown, also made reference to, no.

He was [indistinct] made reference to the fact that these commissions were bribes. What is your comment on that?

ADV HLONGWANE: Chair, those were their opinions.

15 ADV MPHAGA: Now if I may proceed then to read just the [indistinct] paragraph. It says there that the institute for accountabilities [indistinct] to the valued evidence leader of the commission, dated 14 November 2004, submitted that [indistinct] characterise the statement made by the secretary of the state. They also reflect the misunderstanding of the
20 nature of the procurement process.

What is your comment on that?

ADV HLONGWANE: Sorry chair, what paragraph is that again?

ADV MPHAGA: Just before the last paragraph on page 37. Where I read the institute ... [intervene]

25 ADV HLONGWANE: I see it.

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ADV MPHAGA: Yes.

ADV HLONGWANE: And the question is?

ADV MPHAGA: What is your comment on that statement?

ADV HLONGWANE: As I understand Mr Hoffman was here, and he
5 cross-examined former president Mbeki. And the points so to canvass
[indistinct] points and as all the evidence before the commission
suggests, these points or views do not have credibility unless supported
by evidence. For the better part of 15 years the country has been
waiting for this wonderful magical evidence that the democratic
10 government of the day was involved ... [intervene]

CHAIRPERSON: Can you pick up your voice again?

ADV HLONGWANE: My apologies. It is my first experience of
commission, so I will get use to it. My apologies once again.

ADV MPHAGA: Yes. Your response?

15 ADV HLONGWANE: I am saying for te better part of one and a half
decades all manor of accusations were made against the democratic
government. Misconduct, corruption, fraud and to the extent that no
evidence has been led to prove such, it makes one wonder what the
commission will do in his report and the country for that matter, about
20 the optimate refusal to accept democratic outcomes by certain sections
of our society.

It makes me wonder how is it then that a [indistinct] within the law
enforcement agencies can actually set the agenda for the nation that in
the middle of Christmas holidays we are here. For what? So maybe
25 the commissioner will assist and indicate, given the [indistinct] such

decisions before and they were never questioned.

In my understanding of democracy you go to elections as political parties, you canvass the people, you [indistinct]. As the government you have the duty to govern. You make choices within the context of the law as has been stated by former president Mbeki and many other
5 ministers here. That is exactly what he did. Every other right thinking South African knows that.

One should not be tempted to introduce the narrative of race and colour in this, but it makes people wonder what actually is the story. As
10 a matter of fact, the chair I am sure would know that the democratic government found this procurement process in [indistinct] in the minister of defence. They were continuing that which was started. It may be that the issue is that the selected bidders could may [indistinct] economic interest in the defence industry, who then decided to set an
15 agenda for the media to attack the government on that day.

That does not mention that we condone corruption. It must be fought vigorously and as I suspect this commission is about the fight against corruption. Thank you chair.

ADV MPHAGA: Thank you for your response advocate. [indistinct]

20 ADV HLONGWANE: Does it really matter chair?

ADV MPHAGA: The last paragraph refers to the fact that there was a joint investigation team which was appointed and also it found no evidence of improper or unlawful conduct. Did you participate in the [indistinct] hearings?

25 ADV HLONGWANE: No chair, this is the first time that I am

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appearing before any commission or structure, long after the conclusion of these contracts. It is the first time.

ADV MPHAGA: But [indistinct] a subject of investigation by the SFO in the UK and also the SFO scorpions and the Hawks. It is common
5 cause that there were also search warrants which were seized from your properties. Am I correct about that?

ADV HLONGWANE: Chair, I later discovered that I was a subject of investigation by the SFO. The SFO never approached me. I was never informed of any investigation. I always travelled in and out of the UK to
10 service my clients at all material times. I was never stopped at any airport or [indistinct]. Equally the reports that I read that the DSO itself is investigating me, but I have never had any contact with anybody from the DSO to tell me such.

Except an ex parte application around 2008 [indistinct] Van der
15 Merwe, where in my humble and respectful submission chair, manufactured and fabricated evidence was presented to the judge for him to grant the [indistinct]. And I have asked my legal team to [indistinct] this matter vigorously with this [indistinct]. As it relates to the rule of law. As it relates to how we conduct ourselves. As responsible
20 citizens.

Because we are going to end up teaching our children funny and strange law creating [indistinct], because of the unlawful conduct of rope elements within the justice system in the name of the administration of justice. [indistinct] and I would like the commission to assist in that
25 regard. I have asked my senior counsel to address this matter with the

evidence leaders, wherein the [indistinct] affidavit of Murphy is used in the many books that are written by the Arms Deal critics.

It is an [indistinct] ignorance. The very basis of the affidavits is a problem. In one case on the same day, the same person is alleged to
5 have signed an affidavit. It is 34 pages from the same sources, same person signs an affidavit, 37 pages. With material differences [indistinct] and the insertion of paragraphs to justify a particular outcome. To justify search warrants and to pursue a particular agenda which I am sure the commission's best to address. Thank you.

10 ADV MPHAGA: Maybe for enlightening the commissioners, I refer you to page 104 of the bundle. It is the affidavit chair of [indistinct]. It is indicated as the [indistinct] the SFO and should I also refer you to the separate affidavit which I have also put before you advocate, marked page 141.

15 ADV HLONGWANE: Got it.

ADV MPHAGA: It is a separate document. I would like you to open the last page of page 140 of the document and page 174, the last pages of the bundles. It is 140 and page 174.

ADV HLONGWANE: Yes, got it.

20 ADV MPHAGA: Now maybe you want to illustrate by [indistinct] example why you say that there are distortions in these affidavits, by referring to the last page of the affidavits and taking the commissioners through that page.

ADV HLONGWANE: By way of example if you look, when you look
25 pay attention to this particular page, the page on one is 37 on the other

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it is 35. Number two, if you go to the paragraph above you see the point is different. The words are together in the above paragraph and in the 174 one there is a difference between the sentences. Thirdly if you look at the first sentence, it states I certify that the deponent has
5 acknowledged that he, she is [indistinct], knows and understands.

But in the other one there is no such cancellation of she. Of the word she. Further commissioners the date of signature on this last page, on the one by the same person it is written 9 October 2008 and in the other by the same person is 9 October. The 2008 is not included
10 there. I am no handwriting expert, but I am sure the commission in its wisdom will pursue this particular matter.

If you look at the two signatures of the said person, the signatures are [indistinct] forgery. If you pay further attention to the name full name and print Benjamin John [indistinct], if you look at the J's, the J's here
15 have [indistinct]. In this other one such is not the case. You look at the way the E's are written and they are different. There are many such contradictions in this document.

Many. I was saying to my legal team that there is a Hlongwane clause in this affidavit, because there was something that was inserted
20 [indistinct] to make a particular ruling. Not knowing which of these affidavits are indeed true and original ones. We find the affidavit by the DSO in the ex parte application to the judge, contains these fundamental problems.

If one is faced with the might of the state as an individual and
25 there is this kind of unlawful conduct, it makes one wonder what is the

future of the rule of law. Thank you.

ADV MPHAGA: Thank you very much advocate, I see you have dealt extensively with the comparison between the two affidavits further in your page 1.13 to 1.15. Am I correct?

5 ADV HLONGWANE: Yes.

ADV MPHAGA: I say that in your affidavit on page 1.13 to page 1.15 you have dealt with the comparison between the two affidavits?

ADV HLONGWANE: Yes.

ADV MPHAGA: Thank you. Now you have also made reference to
10 the submission that was made by [indistinct] and [indistinct], Annexure FH6 and 7.

CHAIRPERSON: Maybe this might be an appropriate time to take an adjournment. We will adjourn for 30 minutes.

ADV MPHAGA: I was only five minutes away from finishing.

15 CHAIRPERSON: [indistinct]

ADV MPHAGA: Thank you chair.

CHAIRPERSON: Thank you. We will adjourn.

HEARING ADJOURNS

HEARING RESUMES

20 ADV MPHAGA: Thank you. Before we adjourned, I was trying to refer you to the joint submission which was made by Andrew Feinstein and Paul [indistinct]. But in particular I wanted to refer you to page 101, paragraph 2. You will see there they mention that much larger payments were made directly to Hlongwane himself through his
25 company, Hlongwane's Consulting and [indistinct].

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They refer to certain payments which were made, and I think that the critics or witness who gave evidence amongst others Dr Woods and also Crawford Brown, they have also made reference to the fact that you have received large payments and seemingly their evidence was that it is not justified in that they were not [indistinct]. We will deal with the issue relating to the quantum once and for all.

ADV HLONGWANE: Thank you chair. In respect of the issue of quantum [indistinct] entities. How the two [indistinct] agree within a legal context. I do not think [indistinct] have any right to question that. However, it would be strange indeed [indistinct] based on quantum. I say this because there is many cases, I read in the paper all the time everybody is congratulated on quantum.

But for some strange reason that I am sure the commissioners will help me on. I am [indistinct] for quantum. You may be tempted to think that [indistinct] are suited by quantum and others not suited by quantum. [indistinct] the narrowness of the democratic dispensation is [indistinct] relations. I have many friends in the taxi industry, but surely our people cannot [indistinct] to the taxi industry will kill each other.

The narrative of democracy is that we should improve all of us. We should live like all other people, and you cannot criminalise a business man purely because of quantum. I can give examples I saw in the papers. [indistinct] huge amounts of money. The Sunday Times running a huge headline of the [indistinct] quantum, quantum, quantum. But it was celebrated.

So maybe the commission will assist me. Why is it an issue, as I

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asked the question before, there are many other people who received greater quantum. Why is there a problem in our case? I have a small problem there, but I am sure that the commissioners [indistinct] they will be able to tell me what is it that I must tell my children. Have I ventured
5 into sacred holy land that I am not supposed to go into?

Is this a mechanism to say that you must not venture into that area again to be taught a lesson. Did I go through without a Visa into the state that is reserved for others? Because when you begin to look at the issues, with respect to the commissioners and I have got the
10 greatest of respect for the commissioners and the way they are doing. But the fundamental question to me is no evidence has been led about my influence or doing anything untoward.

If no evidence has been led, again I say it with respect, I am here now, yes. 1.5 does not apply to me, but if the issue is quantum, then
15 my fellow consultants should be here with me, canvassed by the same major. I am here, they are not there. I am justifying myself. So commissioners, I will not and I do not support the inferiority mindset I am supposed to be a victim of.

I accept my rights. We fought for deliberation which entailed as
20 the commission states the right to trade, economic activity, regardless of colour, regardless of race, regardless of gender etcetera. We cannot hear the [indistinct] commissioner, a situation where a historical poverty and poor relations are [indistinct]. We cannot do that. This commission cannot [indistinct] that.

25 I will insist upon that. [indistinct]. This was an African project by

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the democratic government to redefine the defence and security architecture and it must do so on its own. [indistinct]. Our program must be commented on. People come here and they bring [indistinct], they arrange press conferences to comment on our procurement
5 program. It was indeed the case that [indistinct] showed pictures of African children, a human carrying bag running away from [indistinct].

But what you have done for us with our civil security, it created a situation where no South Africans run away from [indistinct]. Our people are safe. Thanks to the same procurement by the World Cup
10 and the recent [indistinct]. Everybody looked up with pride. Admired our success. Now the issue here as the term of reference, as it was stated at the beginning, as a nation you need to draw a line and move on, but indeed move on [indistinct] the new Voortrekkers in this new South Africa.

15 It is about [indistinct] with the greatest of respect addressing the property in power relations. We need to address poverty. You cannot start with reconciliation and not [indistinct]. You cannot do that. So all of us, black and white, must address the challenges and the challenges is poverty and [indistinct]. In that process the racial [indistinct] will be
20 addressed.

Commissioners, the notion that any [indistinct] any other person must justify themselves for what they earn in a private commercial transaction. I read all the time young men [indistinct], big bonuses and it is celebrated. It is called business [indistinct]. It is called brilliance.
25 This court is doing very, very well. In my case it is corruption. Undue

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benefits.

Somebody came here and gave evidence that what qualifications do I have to justify the amounts paid by [indistinct]. Commissioner, I must say I [indistinct] if British Aero Space failed to consult that global
5 networks about who it is that they should employ. Maybe they employed somebody from Soweto. It should be from a different space. So you get this refusal to accept democratic outcomes.

You get this unintended kind of clarity that brings you to this. You further get the [indistinct] of this thing called the commission. It goes
10 further. For the first time when we look at the [indistinct] of this commission, we begin to see there is transformation. All credit to the commissioners because [indistinct] cannot do anything right. The evidence leaders are earning too much now. All of a sudden the evidence leaders are earning too much.

15 So we cannot support the narrative [indistinct] black and white. This country belongs to [indistinct]. My fundamental issue commissioner is [indistinct] are not being asked by anybody how do they justify their ability to live in London in Palms, but they must from London ask me being here to justify why [indistinct]. So it fits to pay me
20 what they pay me.

They pay for services rendered. They have the necessary qualifications and from all evidence led on the [indistinct], they met all their obligations and were given the appropriate certificates by the government of the republic. So to make a confession chair, for the
25 reasons that I have just given, that is why I was reluctant about coming

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to this commission.

I do not feel that I should justify myself. Why should I? If the principle is justification, then it must be [indistinct] justify themselves. Then there is a commission for the justification of quantum. If that is the case we will consider that. So my last point on this issue is as judges
5 please save us and [indistinct] from funny law and fundamentally flawed presidents arising out of illegally obtained information.

We are becoming a laughing stock to the world. This cannot be the foundations of the [indistinct]. It is fundamentally problematic and
10 the commission must address this. We have these examples of [indistinct] getting a search warrant to raid somebody's premises and misrepresenting the people that they were going to raid and those people are attorneys of the particular client.

When the learned judges [indistinct], instructed them to return the
15 documents, they went to the SCA. While the trial was taking place in a place called Maritzburg, and in that trial they used a document that was supposed to have returned. Now we have a situation that [indistinct] is taken and used. What kind of foundation of law are you going to build.

I will not pronounce on judgements, but I am saying there is a
20 fundamental problem because if the input is fundamentally flawed, the output would be. [Indistinct] how then do we deal with this particular [indistinct] of unlawful conduct in the administration of justice. The existence of [indistinct] of these law enforcements [indistinct] as was shown by the recent [indistinct] and many other examples.

25 Thank you chair.

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ADV MPHAGA: Thank you. I think then we have come to the last portion of your statement on page 1.12A. I think you have already indicated that the obligations in respect of the need were discharged and no penalties were imposed on BAE by the Department of Trade and Industry, and I have already indicated also that BAE in their submission have indicated that by the employment of [indistinct] in respect of the obligations they say in paragraph 4.2 million pounds. Do you have any comment on that?

ADV HLONGWANE: Yes chair, I think I do. The noise that was generated, this particular set up, was generated by inaccurate information being [indistinct]. That same inaccurate information was passed on to the next group. The next group then decided to take this inaccurate information and present it to this commission of enquiry.

Standards of [indistinct] might be high, but ethics are poor because clearly there is no editorial interrogation, because you cannot have people who come with newspaper reports, that they then [indistinct] themselves inaccurate to present this particular thing, because you [indistinct] this [indistinct] and ignorance that I spoke about earlier, and then what then do we end up dealing with?

We have to call former presidents, former leaders and everybody into this commission and when you do and some of us [indistinct] because as a private citizen I do not think I should be here. When we do to respect the commission, the major interest clearly is not what the commission is uncovering. So I suspect with the greatest of respect that it is a battle of narratives.

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Indeed [indistinct] continue. Thank you chair.

ADV MPHAGA: Thank you advocate Hlongwane. You have come to the end of your statement. Any concluding remarks you want to make?

ADV HLONGWANE: I would like to apologise to the commissioners
5 and the evidence leaders about the little drama that took place here before my arrival and I advised my legal team that it cannot be correct that [indistinct] principles must [indistinct] interest of the commission. It is not because I am not photogenic, I am just, I choose to be a private person.

10 And two, I would record that I support and admire the commission in all its work and the [indistinct] that the commission has shown in the face of this battle of narratives. It is at the end of the day what this is all about. It is not about the Arms Deal per say, it is economic interest in the defence industry of [indistinct] the agenda and the media that must
15 bring us here.

It is interesting for me that when I came here, I was [indistinct] but now there is sirens in this place. Surely the interest was information and educating the public. The same preponderance and [indistinct] of media representatives will be here, because you need to address these
20 issues. We cannot be in a situation, in the position where our children would be afraid of going into particular industries because of the Hlongwane example.

We cannot [indistinct]. Freedom pre-supposes the ability to pursue the professions without fear or favour, in accordance with the
25 capabilities and capacity. It therefore becomes important that the

message here is [indistinct] all races have the right to pursue and enter into legal contracts, [indistinct] to be decided by those contracts and not by [indistinct] in London.

CHAIRPERSON: Thank you. Any person who wish to cross-examine
5 advocate Hlongwane? Any re-examination?

ADV CILLIERS: No re-examination chair.

CHAIRPERSON: Advocate Mphaga?

ADV MPHAGA: Nothing further chair.

CHAIRPERSON: Advocate Hlongwane, thank you for coming to testify
10 and also thank you for assisting me and making it possible for me not to make an order as far as [indistinct] the application that your counsel brought this morning. You made life much easier for us. We are going to excuse you and for the last time, thank you for coming to testify. Advocate Mphaga, it appears to me now we have come to the end of
15 our public hearings for the year.

We are going to adjourn, and we will come back some time next year on a date to be arranged. Thank you we will now adjourn.

HEARING ADJOURNS