

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

PHASE 2

DATE : 18 MAY 2015

(PAGE 10735 - 9024)

18 MAY 2015

PHASE 2

PROCEEDING ON 18 MAY 2015

CHAIRPERSON: Good morning. Advocate Lebala are we ready?

ADV LEBALA: Esteemed Commissioners and Colonel Du Plooy standing before the Commission I am certain that my colleague Mr
5 Pansergrow would like to address you.

ADV PANSENGROW: May it please the Commission. The situation are that we are in a situation where he have to unfortunately beg an indulgence from the Commission to ask that guidance be given to us in respect of certain aspect. First of all the admissibility of proposed
10 evidence by Colonel Du Plooy. Should the evidence be admissible according to the ruling of the honourable Commission then guidance as to the further proceedings.

The request for guidance is also clothed in the form as a request or an application that I will deal with a bit later. I have prepared written
15 heads in respect of the request for guidance which I believe was available to the honourable Commission during the proceedings. I do not know whether the honourable Chair wish me to read it into the record or if I may just deal with certain issues or aspects of the heads as offered to the honourable Commission.

20 **CHAIRPERSON:** Thank you very much. We have read this motivation. Can you just tell us in short what do you want, basically what you are asking for is saying that the Commission must give you guidance as to the admissibility of certain documents before your clients testify?

ADV PANSENGROW: Honourable Chair and Commissioner the
25 situation is indeed that we have prepared the past week but due to the

18 MAY 2015

PHASE 2

volume of the work we have only scratched at the surface. There are many a varied document and information and aspects that one can further look at and that one have to conceivably go in depth into, to enable one to testify as regards everything.

5 The problem is if we do indeed do that and if we prepare properly it is going to take quite a bit of additional time on the Commission and it would be wasted cost and time if not prima facie within the terms of reference of the honourable Commission. The situation is regards the admissibility that it is circumstantial evidence to a large extent with more
10 direct evidence in certain aspects and we are not able to clearly ascertain ourselves whether it will be in the end be closely enough related to the terms of reference to allow the evidence before the honourable Commission. As such seen in this light and the fact that we feel the evidence has to considered as a whole holistically where some
15 of the evidence might conceivably constitute *prima facie* circumstantial evidence or it might be irrelevant. We need guidance on that.

There are aspects which has not been followed up which are not investigation to its conclusion due to various reasons and that information or those aspects which might not be considered of sufficient
20 probative value to be placed before the honourable Commission would be a waste of time if we explored that and canvassed it and try to bring it before the the Commission. The time in preparing for that would be in similar vein be a problem. The fact that the statement of Colonel Du Plooy has been made available with the annexures and that the
25 evidential material as contained in the Merce Containers and elsewhere

18 MAY 2015

PHASE 2

have been available to the honourable Commission should perhaps be able to or should assist in enabling the Commission perhaps to give us guidance in this regard.

The situation briefly then is should all the evidence be ruled to be
5 admissible and allowed in terms in the terms of reference we have had a
brief meeting or a brief meeting of a view hours on Friday as well as
Sunday with the evidence leaders. The evidence leaders during
consultation with Colonel Du Plooy informed us or it appeared that there
were approximately 1000 pages which has to be consulted on with the
10 witness. There are aspects raised in the evidence by the previous
witnesses which has not been dealt with in the statement by Colonel Du
Plooy and which apparently might be irrelevant or perhaps not relevant.
It has to be canvassed with the evidence leaders, so should the
evidence be admissible we have to take it further and properly consult
15 with the evidence leaders to assist us so that we might deal with the
evidence which is already before the Commission to assist the
Commission to get proper prospective of that evidence which is already
before the Commission.

The fact is that due to time constraints and the massive volume we
20 have not been able to do that properly with the evidence leaders. This
is in fact to prevent us from falling prey to fishing expedition where
Colonel Du Plooy starts testifying and then has to revert back and forth
to documentation and go do research in order to give a correct answer
to any questions or aspects that might be raised. The request if
25 therefore first of all Honourable Chair and Commissioner that guidance

18 MAY 2015

PHASE 2

be given as to the admissibility if one has regard to the statement and annexure of Colonel Du Plooy as made available; as to whether it would be admissible and if certain portion or parts thereof not be admissible? Then at least we are grateful for the guidance and we can then focus on
5 the rest should there be evidence that we need to present or adduced before the Commission so that we can then prepare on that specifically. In order to do that in a nutshell we need an opportunity to properly consult with the evidence leaders so that they might guide us.

I might also just confess to the Honourable Chair and Commissioner
10 due to the massive volume of documentation and information and the facts at hand, taking note that I am only coming on (I would almost want to say the tail's end of it all) it have been an ghastly etude of enormous proportions of trying to get up to speed and understand what is going on.

15 As such I am also not able to say that I have read though the paperwork and or fey with an adequate amount of information to assist the Commission in any detail. The problem is in this regard, although I am the counsel for Colonel Du Plooy the evidence leaders are the people in control of Colonel Du Plooy as a witness. Colonel Du Plooy
20 becomes their witness. Although I try my utmost to assist in preparing Colonel Du Plooy and to assist I am left in the hands and in the mercy of the evidence leaders who although competent are also amidst a vast amount of information which Colonel Du Plooy has to research and provide them in order to sufficiently and properly place evidence before
25 the Commission.

18 MAY 2015

PHASE 2

I do not know whether that is sufficiently explained Honourable Chair and Commissioner?

CHAIRPERSON: Thank you. Maybe firstly let me point out to you. I do not expect you to know all the information that is contained in this
5 Commission. We have been at it for the past four years. We are only, you only came in about two weeks ago, that is the first point. The second point is that you have been called to try and assist Colonel Du Plooy to prepare his statement. The evidence leaders are the ones who are responsible to lead his evidence. Thank you a lot. The statement
10 has been prepared.

Be have been having this statement for the past seven or eight days together with the annexures that Colonel Du Plooy says that he wants to provide all in order to testify. Thank you very much again. Colonel Du Plooy is one of first witnesses that the Commission consulted with
15 almost four years ago. Most of the documents that we received right at the beginning were from Colonel Du Plooy. Most of the documents that are contained in these six arch lever files these are documents that Colonel Du Plooy gave to us almost four years ago. It is not new documents.

20 Colonel Du Plooy knew four years ago that he was meant to testify. He knew four years ago. So I am not quite sure if there could not have been prepared properly in the past four years whether [indistinct]. He is not in this investigation and we want him to re-investigate. We want him to tell us what he knows. We have seen his statement. I think in his
25 statement he is trying to tell us exactly what he knows. We want him to

18 MAY 2015

PHASE 2

testify about that. We do not want him to go and do new investigations. He want him to testify about he knows. What his investigations revealed. He has been on this matter he has been investigating this matter for the past 10 years or so. So today I am not sure how it is going to happen.
5 Unless we are given no time reference to Colonel Du Plooy's evidence. We cannot [indistinct].

We are left with a few weeks and we need to wrap up this investigation. Colonel Du Plooy knew all along, he has been consulting with our head of legal researchers. He has been consulting with the
10 evidence leaders. He knew that he was going to coming to testify today. I am not quite sure whether another day or another week or so whether it is going to be of any assistance. If you could not be ready in the past 10 years I am not quite sure how another week is going to help. Lastly, we have his statement and we are happy to work on the basis of this
15 statement. We are unable to deal with a ruling about the admissibility of certain documents in advance. I do not think that it is done that way.

He must testify. When it comes to that particular document if we are of the view that, that document is not admissible then we will deal with that issue at that time. I am afraid that we are unable to tell you that this
20 documents that he has given this they are admissible or they are not admissible. He must testify, as and when he comes the relevant document where we feel that there is a need to give a ruling about the admissibility of those documents, we will do so. Last week you promised me that you would be presenting to us today. I want to hold
25 you to that. We need to continue to that.

18 MAY 2015

PHASE 2

COMMISSIONER MUSI: I think this is a shifting of the border post. The postponement was purely enable you to prepare yourself and familiarise yourselves and the evidence leaders with the supporting documents that Colonel Du Plooy was to use. This is a new issue that has not been
5 raised. I agree with my Chairman. We must simply proceed on the basis of the statement before us.

CHAIRPERSON: Lastly Advocate Lebala I am sure the six arch lever files you were not seeing them for the first time. Most of these documents were provided to the Commission much, much earlier. Will
10 that be a correct statement?

ADV LEBALA: Chair certainly we assure you that we are guided by the disposition of the witness's readiness to proceed.

CHAIRPERSON: Thank you colonel did you still want to add something because I think we need to proceed now?

15 ADV PANSENGROW: Mr Chair if I might just add. .This is not an application to do further investigation and we are completely in agreement that it is only for purposes to tell what he knows, referring to Colonel Du Plooy. The problem is that there are so many facts that you will need to know what the witnesses have put on record previously so
20 that he is able to at least refer to that during his evidence that. That he is able to put it in a coherent manner, which he is not able to deep-up or to retrieve from the memory banks without having looked at the documentation and investigation notes in his possession.

So that briefly Honourable Chair and Commissioner is the situation
25 where we wish to at least perfunctory or quickly go through the evidence

18 MAY 2015

PHASE 2

of certain of the important witness and take that up with the evidence
leaders so that we might inform them what we know and tell them that
we need to research a bit and give them the correct information. Just so
that the evidence is least put before the honourable Commission in a
5 steadfast and logical manner and not as a fishing expedition where we
seem completely imbed and researching and running away to get
answers while the evidence is suppose to proceed. So it is not to stop
the proceedings or to brake it or in fact delay it. It is in an attempt to
ensure that we are more properly prepared. We want to assist the
10 honourable Commission. Colonel Du Plooy is *bona fide* witness. He
wishes to assist the Commission.

That briefly put it in so far as I have might not have conveyed it
properly in my first address to the honourable Commission.

CHAIRPERSON: Advocate Pansergrow I can assure you I have looked
15 at the statement. I have looked at the statement that the colonel
prepared. I am not quite sure what further preparation does he want to
do. Firstly we have had 54 witnesses up to now. If you wanted to know
what other witnesses has said you should have done that some time
ago.

20 It is not a exercise that he is going to do, it is not an exercise that he
can put forward within the coming two days. Then his statement it has
got nothing to do with the other evidence that has been led before this
Commission. He gave us a statement and we want him to testify on the
basis of the statement that he has given us. We can this any further
25 information that he wants to add to his statement he can do so. We are

18 MAY 2015

PHASE 2

trying to keep on deferring his evidence on the basis that he still wants to go and look at the evidence of other people. He should have done that some time ago. He has given us a statement and I think we need to proceed now. We are not prepared to grant him any further referents of
5 his statement. If he is asked to testify today the [indistinct] wants to look at other documents he can do that at his own leisure time.

Unfortunately we have a very tight time frames. We need to proceed with the evidence of Colonel Du Plooy. Advocate Lebala?

ADV LEBALA: Chair I would like to request the Commission to pose the
10 question directly to the witness. I wish I could second guess what is on the witnesses' mind. This is a very difficult albatross for me to carry. May the witness please be able to tell the Commissioners to whether he is prepared to testify today?

CHAIRPERSON: Colonel Du Plooy we have got your statement which
15 was given to us last week Monday or so. We have the annexure that you said that you are going to refer too. Are you prepared to testify today or not?

COL DU PLOOY: Honourable Chair and Commissioner yes as I went
20 through the past week the evidence. I did not have ample or enough time to discuss the evidence with the evidence leaders. As the evidence according to my statement is available I can testify to that part. My concern is the fact of what the witnesses previously testified about.

Now the past five years and even the past three years while the Commission was in sitting it was difficult for me it was not possible for
25 me to sit or to walk away from my daily duties that I had to work every

18 MAY 2015

PHASE 2

day to sit in the Commission and to listen to each and every person's testimony. To see whether it is applicable on me or not. Further to that I asked many times the Commission to what aspects I have to testify about and to give me guidance. I never received that specific guidance
5 up to about a month ago where I have my first meeting with a team where they say now I will testify.

It is difficult if they cannot if the Commission could not give me not just an undertaking or say that you will definitely will testify in on this and this day. I first, the first time that I was subpoenaed I think was in 2013.
10 After that I was contacted and said next week you will testify. In two weeks time you will testify. It is even now to postpone for weeks on end and go back to my daily job will be difficult because in a way, there is a lot of facts and I used the past month to refresh my memory again on those facts.

15 Now to go again back and get other info, how can I say in my head then again I have to re-prepare again. All that I am asking is an opportunity a chance to sit with the evidence leaders, at least on the evidence that was led previously. For instance I was shown last night just a paragraph or two from Mr Alain Thetard affidavit of Thint. An
20 affidavit that he deposed to a while ago or years ago. The things that he said in there is not correct.

For instance in practice he would say that it was an idea the facts the encrypted facts that the road and he threw it away. He crumpled it up and he threw it to away according to his affidavit. We have evidence to
25 that, that he never did it. We have forensic evidence ...[intervenes].

18 MAY 2015

PHASE 2

CHAIRPERSON: Let me interrupt there. You might be right but I do not think that, that particular fact has anything to do with us. That is why last time I asked your counsel that he must carefully look at the terms of reference and make sure that you testify in accordance with the terms of
5 reference. Two, you would have more than enough time, Colonel Du Plooy.

We have consulted with your four years almost four years and besides the consultation that I was present in our other staff members had consultations with you. Two or three years ago. I am not quite sure
10 what further facts are you going to investigate in order to be in a position to testify. I think that we have made a ruling. We must proceed with your evidence today. You have given us a statement and we have to proceed on the basis of the statement that you have given us.

The [indistinct] you want to add you can add. You cannot say to us
15 that you still want to go through the evidence of other people who have already testified. 54 witnesses has already testified. A transcript runs over just over 10 000 pages. The annexures runs into 100's and 100's of arch lever files. You cannot just simply say to us that you still want to consider the evidence of other people. We have come to a point where
20 you must testify. Are you prepared to take an oath?

COL DU PLOOY: If I have to testify I have no other choice. Then I would asked the Honourable Chair and Commissioner that I am given a change when a question in cross-examination is posed to me that I have a chance to do the necessary research or given the necessary time to
25 prepare myself to answer that question?

18 MAY 2015

PHASE 2

CHAIRPERSON: We will come to that at a later stage. Maybe before we can finalise. I see there are some counsels who have been coming to the Commission for several months. Do they have anything to add to this. Advocate Cane?

5 ADV CANE: Chair, good morning. Thank you for the opportunity. The Department of Defence has not particular stance in this regard. I would admit that there may be issues that affect the department in relation to which I may take a stance, At this stage it is too broad and general for us to take a view whether or not to proceed. We will leave that in your
10 hands.

CHAIRPERSON: Mr Chowe?

MR CHOWE: Thank you Chairperson. I must state from the onset that I am the instructing attorney for [indistinct] what he has put the Commission I will stand by it. On the side of the [indistinct] other
15 additional issues to say and will abide by what the Commission rule at the end of the day. As the Commission pleases.

CHAIRPERSON: Thank you. Advocate Geabashe?

ADV GEABASHE: Thank you Chair. We will abide with what the Commission is saying in respect of going forward.

20 CHAIRPERSON: Thank you. Advocate Lebala?

ADV LEBALA: Chair perhaps let me explain, I am certain that Colonel Du Plooy will confirm what I am going to say. He is concerned about the testimony only four witnesses. He is concerned about the testimony of Mr Hlongwane. Ms Christian [indistinct] the in-house counsel of Thales
25 Group in France. We took him through just a portion of that testimony

18 MAY 2015

PHASE 2

yesterday. General Meiring whose testimony who we are still looking for. He would like us to sit down with him and discuss it. If need be with him and his legal team is also concerned about that. Mr Chippy Shaik. The how long part of it is relative. We do not know if we can do it in 15
5 minutes or 15 seconds. If the witness is assured that it could be done without interfering with the confidence with which he would like to testify then we are ready to proceed. Here we call upon you direction Chair.

CHAIRPERSON: Thank you. The four witnesses that you have referred to Advocate Fana Hlongwane. His evidence is very short. I think if you
10 look at the transcript you will see how short it is. Extremely short. Something that can be done in 30 minutes to an hour. The French counsel that came to testify his evidence is extremely short. If you look at the transcript you will realise that this is the type of evidence that you go through in 30 to 40 minutes.

15 General Meiring's statement is about 34 pages. Chippy Shaik his evidence was relatively short. I am sure for the witness to go through that evidence it does not need weeks and or months. That can be done overnight. I do not think the evidence of these four witnesses one has to guess will be more than 50 pages. I think what we are going to do as
20 we have already said. I am going to start with his evidence.

We will adjourned for another 10 to 15 minutes in order to give you chance to prepare your things so that we can start with the evidence of this witness. The witness wanted to go through the evidence of these four witnesses he can do that tonight or in the afternoon when you
25 adjourn so that we can finish his evidence tomorrow. If he finishes

18 MAY 2015

PHASE 2

testing today tonight he can go and look on the evidence of these four witnesses and then tomorrow he can comment if he wants to comment on that evidence. We will give him chance to comment on the evidence of these four of these four witnesses.

5 ADV LEBALA: Thank you for the assurance Commissioners.

CHAIRPERSON: We will adjourn for about 15 minutes.

COMMISSION ADJOURNS

COMMISSION RESUMES

JOHAN DU PLOOY: (d.s.s.)

10 ADV LEBALA: Colonel there is a statement before the Commission prepared by yourself. I would like to direct you to page 42 of your statement. I see a nodding are you on page 42?

COL DU PLOOY: Sorry I thought you said 32?

ADV LEBALA: 42. It is noted that you signed the statement?

15 COL DU PLOOY: Yes, it is my signature I signed it on 11 May 2015.

ADV LEBALA: May the record please reflect about your signature on the statement?

COL DU PLOOY: I signed the affidavit on 11 May 2015 and it is my signature on page 42.

20 ADV LEBALA: Accompanying your statement is an index expanding from page 43 to 48. Am I right?

COL DU PLOOY: That is correct.

ADV LEBALA: Let me refer you to page 1 of your statement just to complete this introduction and to reflect and relax you. We would like
25 you to talk about yourself in the beginning. Let us look at paragraph 1 of

18 MAY 2015

PHASE 2

your statement headed, introduction. May I read it to you:

*"I am a colonel in the South African Police Service attached to the Anti Corruption Task Team (ACTT) Directorate for Priority Crime Investigations with offices situated at Rentmeester Building, 74
5 Watermeyer Street. Meyerspark, Pretoria with telephone number 012 843 ..."*

With the cell phone number and the email address. Just inform the Commission where were you before you joined the Anti Corruption Task Team in terms of the capacity; position and the status in your work?

10 COL DU PLOOY: I understand the question not from my whole career. I was just in short. I started in the SA Police in 1988 and then in 2001, January I joined the DSO, the Scorpions as they are known. In July 2009 the Scorpions were disbanded and I came back to the police. Since then I have been for a very short period of time I have been with
15 the Very Serious Economic Offences Unit. Where after the Anti Corruption Task Team was established. Since then I was a group and team leader at the said task team.

ADV LEBALA: I would like to direct you to page 8 of your statement where we now want to talk about the background in your involvement in
20 the Arms Procurement Packages Investigations. I would like to specifically direct you to paragraph 17. I will read it on page 8 paragraph 17:

"On 6 November 2000 the director of the then (IDSEO) instituted a preparatory investigation in terms of section 28(13) of the NPA Act."

25 I am not going to waste time on things that has become common

18 MAY 2015

PHASE 2

cause before the Commission. We know that at one we had the DSO and the DSO was disbanded. For the moment we just want to assist the Commission by talking about your involvement and relaxing yourself so that one should appreciate why you are qualified to testify.

5 “...empowering the investigation director to hear evidence to enable him to determine if there are reasonable grounds to conduct an investigation in terms of section 28(1)(a) of the NPA Act.”

At that stage, were you acting as an individual or were you acting with teams?

10 COL DU PLOOY: At 6 November I was not part of an investigation team as we normally call it the Arms Deal. At the DSO the work method was [indistinct].

ADV LEBALA: Now this destination between your function at the DSO and what you were doing as what is set out in paragraph 17 would
15 assist us in appreciate the following. Would you briefly tell us about your involvement starting with the period 2000 to 2001 in as far as your role in the Arms Procurement Purchase Investigation is concerned?

COL DU PLOOY: Yes. In August 2011 I was requested by Advocate Gerda Ferreira it was the project manager in the arms deal acquisition
20 investigation to assist with certain seizure operations regarding the Shabir Shaik leg of the investigation which involved the combat suite. The combat suite is part of the Corvettes that was bought with the ships.

So my main involvement started in August 2001 where I assisted in organising the research and seizure operations in South Africa, France
25 and in Mauritius. After the operation the search operations she

18 MAY 2015

PHASE 2

requested me to stay on and take over from the previous investigating officer Graeme Dows. Our ranks were special investigator, I myself was a senior special investigator and we only had three ranks there for investigators. It is an SI (special investigator). senior special
5 investigation and then the CI (chief investigating officer).

So from 2001 I was involved specifically with that part of the investigation called Vogue. If in my statement paragraph 18 I say that I was designated to investigate in respect of Shaik/Nkobi/Zuma/Thomson the GFC the ADS and FBS and discount sales of luxury vehicles by
10 DASA, from 24 August.

That is annexure JDP3. If I can read from the document and it is page 0054 marked *0058.

ADV LEBALA: We will get there. I am happy that you differentiate in what we see in paragraph 17. You are starting to be involved in
15 investigation in 2001. Just to assist for the sake of completeness. What is the difference in what you are doing as set out in paragraph and you starting to be involved in the investigations of the arms procurement packages in 2001?

COL DU PLOOY: As I understand the preparatory investigation in terms
20 of 28(3)(10) of the NPA Act. It was for a director was it was to enable him to determine if there are reasonable grounds to conduct an investigation. When reasonable grounds were found I was designated in respect as in paragraph 18 of my affidavit. Then they say that it is a full investigation. It is not anymore a preparatory investigation.

25 As soon as that investigation, I am designated I receive my powers in

18 MAY 2015

PHASE 2

normal terms as a policemen then I can arrest and search and do what I need to do. The DPP delegates these powers to the investigators.

ADV LEBALA: You were involved in 2001 and you have told the Commission and as confirmed in paragraph 18 about the investigations
5 in respect of the Shaik/Nkobi/Zuma/Thomson the GFC the ADS and FBS and discount sales of luxury vehicles by DASA, as amended from time to time from 24 August 2001.

Let us be specific. Which in these investigations were you directly involved in as in directly involved?

10 COL DU PLOOY: I myself was for the period 2001 up to 2007/2008 only involved as we call it the Shaik/Nkobi/Zuma/Thomson Matter of the combat suite of the corvettes. I only dealt with that specific part due to the encrypted facts that were found I think it was April/May 2001 which indicated a relationship or a possible bribe regarding Jacob Zuma and
15 Shaik.

The GFC although we were appointed ADS, (African Defence System) FBS (Futuristic Business Solutions) and GFS (German Frigate Consortium) the GFS did the platform of the ships the building of the ships. It was a German consortium as I have just said. Although we
20 were appointed and also on the DASA we had a lack of resources and the Advocate Ferreira as I remember said that let us the team or all the members being appointed on all these legs so that we can assist on a cross-basis where it is needed.

Therefore also I was involved in the Ngeni Matter that went to court
25 but in a very brief time. Only before court to assist with a few things. I

18 MAY 2015

PHASE 2

was not involved in the DASA if you can look at page 15 and 16 of my affidavit. Paragraph 46 and I will sure you will refer to that maybe later. The DASA, I was involved in the Shaik/Nkobi/Zuma/Thomson, ADS which forms part of, that was the BEE partner in the Thomson leg. So it
5 overlapped. FBS was also the BEE partner in ADS although we did not specifically investigate that.

GFC although I was appointed it only came in 2008/9 I think more to 2009 when we received information from the Germans and there were newspaper articles regarding possible bribes. BAE came although it was
10 open from 2001 or 2000 the preparatory investigation it must be understood that other people were investigating or investigators and prosecutors on the matter. I will later explain how our teams worked and how the DSL investigate.

It was the prosecutors who made the much more investigative role I
15 think in the long term. Conlux I was not involved with, BAE from 2008. Then Gifts to Armscor I do not know. Also the complaint I was not involved with.

ADV LEBALA: I was just trying to draw your attention to what we see in paragraph 18 but thanks for elucidating and giving us detail because we
20 already know that you were involved in BAE which is not written here. To be specific in relation to what we see in paragraph 18 you were not involved in DASA and you were all involved in these other investigations. Shaik/Nkobi/Zuma/Thomson the GFS and ADS and FBS. Am I right?

25 COL DU PLOOY: That is correct Mr Chair although I was a little bit

18 MAY 2015

PHASE 2

involved in the DASA but it was only regarding as we called it the Ngeni Matter where the [indistinct] luxury vehicle but not in detail.

ADV LEBALA: Just explain to the Commission how the investigations were being done particularly in the context of teams. Whether you were
5 working alone or were you working with teams?

COL DU PLOOY: Honourable Chair how we worked at the DSO is a bit different in a manner in a manner in which we normally work in the SAPS. The team consisted of a prosecutor, sometimes more than one prosecutor. An investigator and sometimes more than one and there
10 would be an analyst not in all cases it depends on how voluminous or how big the case is.

Then in some instances also auditors will be appointed, external auditors will be appointed to assist. In the time of 2001 to 2003 when I was involved regarding the Shabir Shaik matter we had the internal
15 auditor namely David Cedar that assisted with the internal forensic auditing. Due to the number of cases it is just impossible for one person to deal or to draft a forensic report. Therefore we normally or many times we requested the appointed of external auditors.

So what will happen in the team itself, each one had their roles to
20 play. The prosecutor will deal with all legal issues when and in respect of counsel after or before a person was arrested or before MLA's. Any other legal issues that would come up, charge sheet as normal. The investigating officer will obtain the necessary affidavits.

There would be constantly meetings between the team to decide the
25 way forward, If you look at some of my memos that I drafted regarding it

18 MAY 2015

PHASE 2

that you will see that each and every person had a role to play and what to do. Prosecutors did get involved sometimes or many times in the interviews. The section 28 interviews, it is a section of the NPA Act where were subpoena same as a 205, where we subpoena in the
5 Criminal Procedure Act, NPA Act, 28. When we subpoenaed a person and it was compulsory to appear in front of us. More or less the same as here in the Commission and then an affidavit was obtained.

Then an investigator was also responsible for search and seizure and so forth. His role or the analyst, the analyst's role was that the
10 information that was obtained is to peruse the information and try to make the necessary connections or to connect the dots and to advise the investigators to say maybe if they read something, they can say this person's name pop up every time or money flew from that to that account and they assist in that regard.

15 The auditors was a little bit more. Sometimes they were used just to do a cash flow. In the instance of this investigation the Shabir and the Jacob Zuma one we requested them to do a full forensic report, my definition thereof is that then you give a summary, if I can say that of all the evidence that is available in respect of that specific leg. By that I
20 just want lastly to say that in the practice we will let us say in the search that investigator organised and did the seizure, they will go through the documents together with the investigators and then they will come up with a letter.

They will see a letter and says that it refers to a meeting between Mr
25 X and Y. They will give that to me. Then the report will read that there is

18 MAY 2015

PHASE 2

a letter on this date between so and so and what the letter is saying. Then I will go and I will have to go and trace X and Y. I have to consult them I will have to obtain an affidavit and then I go back with that affidavit to the forensic auditor and he says, then I say ‘ what happened
5 at that meeting is X; Y and Z’ Then he add that to his report. Therefore that is the way in which we worked and whole time the prosecutor was close to us in a sense to guide the investigation and in a sense of in accordance the crimes that could have been committed or a possible charge and so on.

10 ADV LEBALA: Thank you for the extensive background. Now we appreciate the relationship between the auditors and the investigators. Now in essence the teams composed of external auditors; prosecutors; counsel and investigators?

COL DU PLOOY: That is correct. Then sometimes if need be the act
15 made provision for an expert like a quantity surveyor or anybody else that we would have need that can be seconded[?] on the deed.

ADV LEBALA: Up to so far we have traversed 16 pages of your testimony. Before we go to paragraph 8 of chapter 3 I would like you to tell the Commission up to so far, the detail that you testified too expired
20 to 2009 before the disbandment of the DSO, am I right?

COL DU PLOOY: Yes that is correct.

ADV LEBALA: This detail that you were testifying about the compositions of the teams and your involvement in the arms procurement investigations in 2001. We are talking in the context time
25 prior to 2009 before the DSO was done away with, am I right?

18 MAY 2015

PHASE 2

COL DU PLOOY: I must put 100% correctly if I understand your question. I was also involved in the BAE investigation and it was recorded as the GFC investigation after 2009 where it was closed by the DPCI, General Dramat's in September 2010.

- 5 ADV LEBALA: Now we know that you were talking to the period before the disbursement of the DSO but we also know that you got involved in the BAE leg investigation and part of the GFC investigation even after the disbursement of the DSO, is that correct?

COL DU PLOOY: That is correct.

- 10 ADV LEBALA: I would like to direct your attention to page 16 of your statement. Chapter 3. Before I take you through the specific paragraphs because of the importance of this part of your testimony. Would you like to give a background on the formal and informal process/corruption. I see that you were reading as I was directing. I will repeat my question.
- 15 Because of the importance of this chapter I will be taking you to specific paragraphs relating to this chapter. Just give a background why this chapter you have isolated it, formally and informally process/corruption?

- COL DU PLOOY: This Chapter 3 the informal process and formal process. It is more a definition there is no specific definition that I can
- 20 say go and read about it. It is our team's interpretation of how the arms deal or possible corruption happened and could have happened. Also where government, high-ranking government officials could have enriched themselves and also did enrich themselves via this informal process.

- 25 If you turn to page 18, paragraph 54 of affidavit the two pictures that I

18 MAY 2015

PHASE 2

draw there I am trying to explain the difference. It is not necessarily I am talking about the supply chain management process and therefore. It is also more in a sense of corruption point of view. In, I call it traditional corruption and by that I mean. Mr A come and he bribes or corrupt Mr
5 B. So Mr A is the corrupter and Mr B is the corruptee. It is very easy in a sense in a practical maybe way to say that if you there under the BEC or BAC the Bid Evolution Committee or the Bid Education Committee that decide who will receive the tender.

Now A comes to the person or the chairperson of the BAC but many
10 times will be the BEC where they do the scoring. Then person is then paid an X amount of money to say 'right I want to win this contract' they pay him money to make sure that they score the necessary points and then win the tender.

That is the role to investigate because it is very direct. You go and
15 find evidence in bank statement or his lifestyle analyses to see that this government official is only earning R20 000 but he lives in a mansion and he drives a very luxurious car. So there is different ways, it is still it is in a way more direct and much easier. In the informal process what we are trying to explain and what made this investigation for me very,
20 very difficult investigation.

It was at a certain stage where Advocate Ferreira even came to me and said she and Advocate Billy Downer see this informal process in such a manner that there are many let us say other advocates and prosecutors that would say that this does not fall in the ambit of
25 corruption, it is not possible and you will never be able to prove that

18 MAY 2015

PHASE 2

corruption was committed. She explained it to me and I believed in the method or I understood what she was trying to tell me because at that stage I thought that, that was the only way or in the only manner in which we would be able to prove that a government official standing
5 outside the process like the P that is what I am referring there to, the triangle with the P inside. It is standing outside this process and influencing the more formal process that is on paper.

What I mean of the informal process of what that second picture is the G in the square is for government. The C is the company and the
10 BE is the BEE partner. Now I am just using this as an example but I know that this picture can be changed and it can be add too if you look, this is more in respect of the combat suite investigation of the corvettes.

If you take the BAE system the convert system that was used by BAE to pay agents it will be slightly different. At the end of the day it is still a
15 matter of officials that would receive or would benefit financially by not necessarily or let me say that we know that there is specific evidence where they influenced the awarding of the main contract. Like between the G and the C on this picture. What would happen is that this high ranking political official will interfere with the appointment of the BEE
20 partner.

In this case like what happened with ADS and Shabir Shaik to become the BEE partner of Thomson. As Pierre Moyot said in his evidence. In the Shabir Shaik trail, he was from Thomson Thales. He testified on page 17, paragraph 49:

25 *“You must deal with people at high political level who take the*

18 MAY 2015

PHASE 2

decisions. It was hoped that this informal contact at high political level would give the edge over competitors who might not have such contact or might not even be aware of such contact. The proceedings of such meetings are not minuted. it is particularly the advantages to employers
5 *trusted confidant of a politician to facilitate contact with the politician. The closer to a politician the better. Allowing access to the corridors of power which would not otherwise be available.”*

ADV LEBALA: I would like us to come back. I allowed you to go deeper, if I could measure your testimony in depth so that you should lay the
10 foundation. Now what we see on page 18 is the basis for you to testify as to what happened in as far as the arms procurement packages are concerned.

COL DU PLOOY: Yes.

ADV LEBALA: You testified that figure 1 is traditional direct and figure 2
15 is not as direct and obvious as we see as demonstrated in figure 1?

COL DU PLOOY: That is correct.

ADV LEBALA: As far as the BAE is concerned it is re-arranged you said?

COL DU PLOOY: That is correct.

20 ADV LEBALA: We will get back to this piece of testimony if need be as we go deeper. I think you have summarised what one could detail as pages 16 up to 19 of your statement. Now I would like us to confront the subjects of why you are before the Commission. We are starting to deal with the investigations. By way of background, how many legs of
25 the investigations were you involved with. I see I do not know whether

18 MAY 2015

PHASE 2

Commissioner Musi is objecting or trying to bring my attention to something?

CHAIRPERSON: No he was not objecting he was not bringing your attention to anything. He was responding to me [laughing].

5 ADV LEBALA: Thank you Chair. Let us deal with the subjects of your investigations. You testified that you were involved in the BAE leg of the investigation, am I right?

COL DU PLOOY: That is correct.

ADV LEBALA: You mentioned the Shaik/Nkobi/Zuma/Thomson?

10 COL DU PLOOY: That is correct.

ADV LEBALA: By Zuma you refer to the President.

COL DU PLOOY: I refer to the current President but for practical purpose must I always refer to President Zuma. I am not sure how to refer to a president in this manner?

15 ADV LEBALA: Well he is the president and I think you should accordingly respect that. Let us start with the Shaik/Nkobi/Zuma/Thomson investigation on page 19. What is your role in as far as this investigation is concerned? Remember that you told us about that you worked in a team and the teams were headed by
20 Advocate Ferreira, is that not?

COL DU PLOOY: That is correct.

ADV LEBALA: Let us start with your role. You have told us that normally ordinarily a team would be yourself as the investigator, the prosecutor and if need to an expert like a quantity surveyor. There
25 would be counsel and there would also be external auditors?

18 MAY 2015

PHASE 2

COL DU PLOOY: That is correct.

ADV LEBALA: Let us deal in your role now in as far the Shaik/Nkobi/Zuma/Thomson investigation is concerned. What was your role?

5 COL DU PLOOY: As I stated earlier honourable Commission I was the senior special investigator one of a group of other investigators that dealt with other parts of the investigation. At that stage we were, I cannot remember precisely how many special investigators assisted me because they were also assisting in as I said previously said other legs.

10 My role specifically was in the beginning how it started was to organise a search and seizure operations in the Shaik Matter. Gerda requested me due to my background at the Serious Economic Offences Unit where we dealt with many search and seizure operations and she felt that I am the right person to assist with this matter. I organised the
15 searches and then it was executed. We seized thousands of documents and then also computer hard drives or mirror meters, we made mirror meters of the computers.

Searches were conducted in Kwazulu Natal and then as I say in France and in Mauritius. After the searches you have to index and
20 number these documents. That was also part of my duties. That took a lot of time. We tried to get assistance from clerks and administration people but it is very difficult to have that and to get it done correctly.

So most of the part of it the first six months after August I think we did the search in September there was some difficulties and it was
25 postponed to September 2001. So at least till mid 2002 I was very

18 MAY 2015

PHASE 2

much involved in making copies, numbering and index the documentation. It was very important and when we went to court in 2003 August regarding Shabir Shaik the fruit were reaped from that I took that many months to do it correctly. We were in a position that no document got lost and also that we could find any document in a matter of minutes to assist us. We could refer and found out exactly we received it was an example.

Many of the documents we relied up on the Shaik Matter were seized in his office. We could even say it was found in what drawer and what table in his office, that helped us a lot. After that the normal calls my role was to obtain affidavits to trace witnesses and when there was applications MLA's and so on I also had to assist with that draft affidavits in that respect. Honourable Chair and Commissioner you will also see, maybe not in my papers here but application for this search in the Shaik Matter was in the name of Advocate Billy Downer.

As I indicated before they sometimes played a very close role as prosecutors but it was before also my time in the, in the Honourable President Zuma Matter it was then drafted in my name and the same. To come back to the question. My role was in essence and then to assist the forensic auditors by as I explained earlier to subpoena banks, for bank records. Those records will be obtained and even handed over to the forensic auditors, in this case it was KPMG. It was handed over to them. They will peruse and analyse and draft then a schedule. That schedule will be handed back regarding payments that had been identified. The supporting documentation would then be obtained, the

18 MAY 2015

PHASE 2

supporting documentation I mean my deposit slips to see what was the payment for.

ADV LEBALA: I just want us to be specific. I think background I allowed you to go into the role that you played. Let us go to the real
5 issues. Remember you are testifying to an importance term of reference that has to address the following. Whether people within or outside government have influenced the awarding or conclusion of the contract in as far as the strategic defence procurement packages are concerned. Whether corruption and fraud could be imputed therefore. I am just
10 restating the terms of reference. Now we know your role and you have given us the background about formal and informal corruption with the figures. Now you are starting to tell the Commission about the Shaik/Nkobi/Zuma/Thomson investigation.

In the context of what you have testified and corruption and whether
15 persons is being involved within or outside government what did you establish?

COL DU PLOOY: Is the question only in respect of the Shaik Matter or is it also regarding the ...[intervenes].

ADV LEBALA: Remember we are on page 19 the paragraph headed
20 the Shaik/Nkobi/Zuma/Thomson Investigation. We are following a sequence. What did you establish. You told us that you were an investigator. Searches were done. Documents were seized and you had to look at them with the auditors. That is where I would like you to direct the Commission. Remember we are following a sequence on your
25 statement.

18 MAY 2015

PHASE 2

COL DU PLOOY: Honourable Chair and Commissioner as I understand please indulge with me as I said that I have not have an opportunity to sit down with the evidence leaders. There are so many facts and it is over time. I will try to stay on one topic. If you can just direct me. The
5 answer to your question, just before I say this, you must remember that the incrypted facts was obtained in May/June or April/May in the year 2001 before I was appointed.

The investigation was then directed in a sense of this relationship between Shabir Shaik and the current Honourable President Zuma. We
10 although as I said again if there is must also be a BEE partner in ADS. Lots of our investigation of focus due to logistics is just a vast amount of information to follow up.

For instance if there was a payment made and we came across a payment that was made to Honourable President Zuma we had to
15 investigate that specific payment from where it came from and the background surrounding it.

ADV LEBALA: Now who did you investigate this payment too. I would like you to be able to confront the facts if need be. Remember you have to be careful to know whether you are dealing with direct evidence or
20 circumstantial evidence. What we know up to so far is that in teams you work with forensic auditors. It is you, now we are talking about your involvement in the Shaik/Nkobi/Zuma/Thomson. You seized documents and you are working with auditors. What is that which you established. Are you able to refer directly to facts. If we are going to talk about
25 diddely dudly then the Commissioners might as well say to us 'wait we

18 MAY 2015

PHASE 2

are wasting the the Commission's time'.

We know that you have laid the foundation about direct involvement where one can impute, corruption and informal process of corruption. I would like you to deal with the evidence so that the Commissioners
5 could be able to say that we accept or we do not accept?

COMMISSIONER MUSI: May I interject. I was under the impression that the witness want to illustrate how this system depicted by figure 2 at page 18 how that system operate. I think he was trying to illustrate and I would suggest that maybe it would be better if he does that with
10 reference to the Shaik Matter where facts has been established. He can illustrate the operation of this figure with reference to that case specifically.

CHAIRPERSON: I am sorry Advocate Lebala. I am not quite certain in the evidence that is being adduced whether it fits into [indistinct] facts. I
15 am really not sure. Last Monday I said I said to Advocate Pansergrow I said he must make sure that whatever he testify or his clients testify about falls within our terms of reference. Now the Shaik Matter that we are being told about now, I am not sure whether it falls within 1.5 in our terms of reference. My reading and understanding of that trial deals
20 with issues which happened after the contract was signed. Advocate unless if you are talking of something that I do not understand maybe you can help me there?

ADV LEBALA: It is easy to deal with it Chair by bringing evidence before the Commission by asking this witness an incremental question
25 following from your question sir, if you will permit me? Colonel

18 MAY 2015

PHASE 2

remember that this stage we are concerned with the following term of reference.

Whether persons within or outside government have improperly influenced the award or conclusion of the contract arising from the strategic defence procurement packages. At this stage where you are
5 talking about one leg of your investigation you have demonstrated the Commission that we should look at the way corruption occurs.

It could be traditional, direct and it could be indirect. Be specific that in as far as the combat suite of the corvette is concerned it is depicted
10 informally by a process in figure 2. If it has to happen to be a BAE it would have changed. Now you are testifying about the role that you played in the investigations in as far as the heading that you are testifying is concerned, the Shaik/Nkobi/Zuma/Thomson link. The Commission is saying, given this term of reference are you able to
15 assist with your testimony thus far the role that you played?

The team in which you belonged to demonstrate that there were persons within or outside government who improperly influenced the award of the packages?

COL DU PLOOY: Honourable Chair and Commissioner the short
20 answer to that is yes and no. I have to qualify as I understand the informal process and therefore I would appreciate (if that is the correct word) if I am given an opportunity to explain my answer that I state yes and no to the question that was posed to me?

ADV LEBALA: Which one would you like to deal with, the yes or no
25 first?

18 MAY 2015

PHASE 2

COL DU PLOOY: I would like to deal with both if I can [laughing]. If you look Honourable Chair and Commissioner at page 18 of my affidavit the second figure of the informal process. What we are saying there is that in the Shaik Matter. If you make the or change the P and you make that

5 that the Honourable President Zuma and the BEE or the BE you make that Shaik, Shabir Shaik and you make the company the C you make that THINT and the government stays government.

In relation to the explanation of the informal process is what happened and if you read the KMPG Report that is also attached to my

10 affidavit in volume 1 I think. It explains in much more detail. In short Shabir Shaik as a BEE partner or let me turn it around THINT, Thales or Thomson there are three names and all of them are the same company they just change it at different stages. Let us for practical purposes call it THINT.

15 THINT needed a BEE partner to correct BEE to get or to be awarded this tender on the corvettes or the combat suite. We are only talking about the combat suite part of the corvettes. They needed the correct BEE partner and to that effect there are many or several entries or documents and so forth internal documents where they talk and say we

20 need the correct partner. Shabir Shaik had to find or to be the right partner because African Defence System as I understand it was identified as the correct BEE partner for this specific part of the arms deal. Shaik wanted to be part of that of ADS.

CHAIRPERSON: Who identified ADS as a corrupt [Indistinct].

25 COL DU PLOOY: I am not saying corrupt but the BEE part.

18 MAY 2015

PHASE 2

CHAIRPERSON: Who identified ADS as a correct partner according to your evidence?

COL DU PLOOY: Honourable Chair I am not 100% sure but according to my knowledge and my recollection ADS it was first Altech Defence Systems and apparently they were the only South African Company that would or had the expertise and to assist in this specific part of the arms deal with the suite. They were identified on the basis as the only South African Company to be part of this combat suite.

I do not have all the facts to my disposal to give you an in-depth answer honourable Chair. What I do know is that the ADS when they were part of the or made to be partner Shabir Shaik had to be part of that and then he used the Honourable President Zuma to assist him in becoming that partner in ADS.

CHAIRPERSON: I just want to understand what you are saying. Are you saying that ADS was also a BEE partner. If it was a BEE partner to which company was it a BEE partner?

COL DU PLOOY: ADS as I understand was the BEE partner to Thomson and therefore [indistinct] if THINT got the contract a certain percentage ought to be awarded by actively being partner must be part of their tender. The BEE partner was then ADS. Shaik got a stake in ADS via Thomson or THINT via shareholding agreement. If I can be more specific and much more detail if I read it from the KMPG Report because it is very well set out, how the shareholding changed.

FBS had a 20% share in ADS. Which they as a BEE partner. The part that Shabir Shaik received via the share in Thomson CFS if I

18 MAY 2015

PHASE 2

remember correctly was that in money it would have been about R30 million plus the price of his shares. After his conviction we as a forfeiture part he had to pay with interest and so forth I think more or less R40 million to the [indistinct] funds to the state. In essence the
5 investigation of Shabir Shaik was to no profit of the state.

To come back to this picture. The Honourable President Zuma would have interfered with Thomson or THINT where it was very important for them to get the correct let us say person with the correct political connectivity. In the matter we always said that the only thing that Shabir
10 Shaik could bring to the table was his political connectivity. There was nothing else, there was no expertise. There was no money. Even to buy the shares in Thomson he had to borrow money from THINT to pay for that shares.

So what would happen is there is several meetings, again it is
15 referred to in the KMPG Report each and every meeting and it comes with if you look at the timeline, which I unfortunately do not have here today it says where it was crucial times and where Shabir Shaik, Thomson according to intelligence was thinking of not going with Shabir Shaik but rather with Rio Khoza from the other company and then he
20 asked for Honourable President Zuma's assistance and there was a meeting. Then between, more than one meeting between THINT and Honourable President Zuma where shortly after the shareholding as then changed where Shaik was then back in to get his share.

Whilst all of this, I am talking from let us say 1997/98 because of 3
25 December as honourable Commission 1999 the contracts were signed.

18 MAY 2015

PHASE 2

During that period Shabir Shaik paid Honourable President Zuma his daily expenses and assist him on his living expenses. Although it was the Shabir Shaik matter I think only R1.2 million and then later on in the KMPG Report that is now attached. According to the *S v Jacob Zuma* it went up to R4.2 million. We may argue that it was not maybe much but if you look then at the encrypted facts it did not stop there.

Another fact is that in 2000 after they signed it and the fax says that dividends R500 000 per Unum and then afterwards dividends from ADS. What will happen and not just in this matter is that sometimes a BEE company does not have the capital to buy into the company that will receive or will be rewarded the main tender. The money there would be a loan. As the dividends pay out for two or four years of that specific company it is being deducted from that loan.

As soon as that loan has then been paid back it is then immediately then the person makes the BEE partner makes the necessary money and then the necessary payments to be effected. All in all what I am trying to explain informal process Honourable Chair is it is very difficult or it is not possible the evidence is not there to answer that yes, we have the necessary evidence against any government official that received money for influencing the rewarding of the contract.

What we have is that there is red lights, there is reasonable suspicion and in the Shabir Shaik Matter if you look at the whole puzzle, that is one thing about the arms deal investigation is that we must not look at a little bit of the puzzle a piece here and a piece there. You have to look holistically to all the evidence. All that evidence and many of that could

18 MAY 2015

PHASE 2

be circumstantial. With all that circumstantial evidence it draws a picture. In the Shabir Shaik Matter the court came to the inference and said, yes it could ...[intervenes].

CHAIRPERSON: We know exactly the facts of the Shabir Shaik Matter.

5 We know exactly what the [indistinct], J said. Can you try and give us evidence except to tell us what happened exactly in the Shabir Shaik trail. I think we have allowed you enough time to interpret what the judgment says or what the judgment means. Can you try to get facts from you and not an interpretation of the Shabir Shaik matter?

10 COL DU PLOOY: M'Lord I am just using that as support of what I am saying. Sorry in informal process you do not have then specifically the necessary information like in minutes or meetings and so forth. I would like to refer honourable Commission to Volume 6, page 2238 as an example, 2238. This document 2238 I received from the Serious
15 Fraud Office whilst we were being busy investigating the BAE matter.

ADV LEBALA: Can I just come back? You know, I allowed you to talk to the Commissioners, as you addressed then, in as far as this piece of testimony is concerned. I do not have to loose you and I would not like you to loose me. I know that you are illustrating, in giving example. We are
20 going to the BAE leg. You are trying to answer the Commissioner's question. Perhaps I should come in here, because the Commissioners would like to hear you, not us. Let me ask the following question, based on your analogy and what you are saying about figure 1, figure 2 and the terms of reference. There is evidence before the Commission that says the Ministerial
25 Committee informed and guided Cabinet, in as far as the award of the

18 MAY 2015

PHASE 2

successful bidder is concerned, during November 1998. We know that during December 1999, the contracts were signed. But President Zuma was not part of that decision making body. Based on this, would you still like to go on with your testimony, along these lines of these two figures you are demonstrating, particularly figure 2? We know, when he was a MEC, unless you say, he was part of the government, but not within. I am saying this, with a view to try and guide, so that we should get to the point now. Because we still have to deal with the BAE leg.

COL DU PLOOY: I want to [indistinct] just to explain this part, because it is important for me, as I understand the informal process, to say that, on Ministerial level, before the signing of the final contracts, there was a letter, dated 4 September 1998. It is an internal document that was from Allan MacDonald and Terry Morgan, as part of BAE and [indistinct]. The second paragraph:

15 *“There is one Michael Brown, known to me, during intense professional help over the coming months. You know from the information I attach that the fact that we have got Hawk onto the final list is very much due to our friends in the country, rather than the quality of our ITP response. One friend to us and remains absolutely critical to our ultimate success for both Hawk and Grippen is Ms Stella Sigcau. You may recall she visited the UK recently and met with Peter Mandelson and I interrupted my leave to [indistinct]. She very privately asked for my support on a personal family matter. She was very worried about her daughter, who is 29 years of age, who has recently had the misfortune of experiencing an unhappy marriage arrangement. The*

20

25 *Minister is a princess in African culture and even President Mandela has*

18 MAY 2015

PHASE 2

regard to this fact, in respect of Minister Sigcau. The breakdown of her daughter's marriage is causing her severe embarrassment. In the coming months after our success, she wants BAE for two to three years, to provide a marketing job for her daughter in London. Such a job will have to pay
5 sufficiently to provide a reasonable quality of life for the Minister's daughter and her two children."

And if you look at 2240, the document 2240, it is a document on a British Aerospace letterhead and it is to Terry Morgan again, from Alan Wartun:

10 "After the second week, his attitude changed and he was telling a number of people that Dick has asked him to stay on the deal with South African issues, certainly until June."

A little bit further:

15 "This was confirmed, when he was asked to be put through certain, to key people. They were Julius Pele, South African, Fana Hlongwane, South African. He also spoke and we believe met Portia Sigcau the daughter of Stella Sigcau, Minister, who I subsequently found out has been influenced to send a letter of support, regarding Alan, into the company. Portia has been supported by BAE, while doing a course in London. This includes accommodation and all finishes plus a large number of other items."

20 I am just referring to, this is the time of documents that we, that there is. It was the same with the encrypted fax. That when you find this document, it may not be per se, a prima facie case and you have to investigate the background and the surroundings, sorry, excuse me. But, the answer, as I said, in the beginning, it is a yes and no, did anyway influence government
25 official the award of the main contracts. I say, no, we do not have direct

18 MAY 2015

PHASE 2

evidence to that effect. But, what we do have is this informal process of this kind of documentation that had to be investigated. To come back to the fact of and we will deal with it again, when you talk about BAE. We talk about the Schabir Shaik matter. It was a question of President Zuma, he interfered and he met with Thomson, the main contractor, to get Schabir Shaik appointed, as part of the BEE company, where he would have received and did receive financial gain or money. With that money then, he was then campaigning to President.

CHAIRPERSON: Just hold on, Colonel Du Plooy. Do you remember the question that Advocate Lebala asked you? Can you perhaps deal with it?

COL DU PLOOY: Chair, I was interrupted, while I was trying to explain the informal process. If Advocate Lebala could just repeat his question please?

ADV LEBALA: Assume, I agree with you, about the [indistinct]. But, I am mentioning this, in the context of the terms of reference of the Commission, because if I do not do it, I am going to be in trouble. I will loose control of directing your evidence. What occurred was, there has been evidence before the Commission that says the following. An important Committee of the Ministers advised and made recommendations to Cabinet, after they were advised by other committees that the successful bidder is, for instance the GFC, in as far as the Corvettes are concerned. This occurred, during November 1998. President Zuma was not part of that Committee. What occurred, we know, it has become common cause that the strategic defence procurement packages were signed, by Minister of defence, on behalf of the government, during December 1999? By then, it was [indistinct], it means it was closed. The successful bidder had been chosen. Recommendations

18 MAY 2015

PHASE 2

were made in November 1998. Now, during that time, President was a MEC in Kwazulu-Natal. Given what you are saying, with these red flags and what we know and what we have, before the Commission and this important term of reference we are dealing with, what are you saying? Unless you are

5 saying, without suggesting to you that it does not matter, the red flags are there. Albeit he was not a decision maker, but he is still part of the government, as a MEC in Kwazulu-Natal. Do you understand my question?

COL DU PLOOY: I hope I do. That is why, to ensure the answer, we have now evidence that President Jacob Zuma influenced, directly influenced a

10 committee, a Ministerial Committee and at level, to a point Thomson got that money. But, what we do have and is, is that he financially benefitted in assisting Schabir Shaik, in obtaining a stake in ADS that was BEE partner for the Thomson, which they needed, to obtain or being awarded the tender. That is what I am trying to convey, that there is no direct evidence in these

15 matters on the Armsdeal, saying, that is why I say, in that picture, that first picture, figure 1. Paid by BE and it did not happen like that. It is like, on the outside, behind the scenes things happened. From that appearance we have and what happened in the Schabir Shaik matter, the court had to make certain inferences, to say that, if you look at all this evidence, nothing else

20 could have happened, than it was, when it appears like that. Or there was assistance from President Zuma, to assist Shaik to get his stake in the BEE, in ADS and therefore, he financially benefitted.

ADV LEBALA: I assure you, that if need be, these red flags, you could come and debate on, with the Commission, at a later stage. I call them red

25 flags in the context of figure 2. But, let us be precise. If you agree that the

18 MAY 2015

PHASE 2

decision making body, at this stage is the Ministerial Committee that advises Cabinet. He was not part of that Ministerial Committee and was not even part of the, the Cabinet Committee, would you still insist that, in the context of figure 2, he played a significant role, because we have that evidence before
5 the Commission that we cannot ignore. Not discounting the red flags and the analogy that you made, in figure 2.

COL DU PLOOY: From my own view or if I could call it common sense view, is that President Zuma, I am not sure which [indistinct] he was, in the stage of the ANC. But, I think, at that stage, he was a very, very senior ANC
10 person, maybe number three or number four. Certainly, with the history, his friendship with the Ministers, that were part of that Cabinet or that meeting, he could have informal most, spoke to the, we do not know. That we do not know. But, it is not impossible. But, we do not know that part.

COMMISSIONER MUSI: Well, well, maybe we have direct evidence from
15 the former President Mbeki. He specifically said that they were not influenced, by anybody, coming to those decisions. He acted on the recommendations of the Committees that did the evaluations. That is direct evidence.

COL DU PLOOY: Commissioner, yes. That may be so. That is something
20 we will not know. But, what we do know, in, well, what we know, according to, and that is now, we are going to jump to the BAE matter. That is why it is for me difficult to give answers just on one specific, because I do not have all that information. But, on the BAE matter and you look at General Steyn's affidavit and Esterhuyse and Dawie Griesel, it is not attached here. It is just
25 a summary of my application that was for the researchers. But, again you

18 MAY 2015

PHASE 2

made available and, I think, some of them already testified. But, I understood that the non-cost option, everything was, the, how can I say, the formula that they used, to determine the correct tender or company to appointed in the BAE matter, it was changed and cost was changed at a later stage. Then, 5 they mention also, about minutes of meetings, where Esterhuysen says, General Esterhuysen says, I, and I think Deon Swanepoel said, I disagreed with Chippy Shaik, in his minutes. That was not discussed. And for me ...[intervene]

CHAIRPERSON: Colonel, let me help you. Maybe, do not talk about 10 things that you do not understand. The question of that, the minutes of that Durban Convention, we have got a lot of evidence on that. Four, five, six people have testified, in detail about that. The question of the non-costed options, we have evidence. In actual fact, if I must, if I still recall very well, it says that the South African Air Force has requested that to be done. If you 15 want to talk about that, then you must comment about the evidence that has already been led, by the South African Air Force. Do not speculate. Do not speculate about that and even your question on those minutes on a meeting of 31st of August [indistinct], the Inter-Ministerial Committee meeting. Do not speculate. The Ministers have come here. They have testified. We have got 20 copies of those minutes. Things that you do not know do not talk about it and do not speculate, if you speculate, it does not help us much.

ADV LEBALA: Colonel, I just want us to get going with your testimony. I just want to pose one question. Perhaps, if you would guide us, as to whether we pursue this evidence or not. I have asked the question that here 25 is an important decision making body that makes a recommendation to

18 MAY 2015

PHASE 2

Cabinet and President Zuma plays no role there. Of course, he plays a role in the government, because he is a MEC. Unless you say the influence that he plays at a lower level, because we do not see him at the higher level, irrespective of this, of these red flags. Honestly speaking, they are there.

5 They cannot be blocked. The judgment of Judge Squires cannot be blocked. The investigations that you have done and you may probably want to take us to the KPMG report. They are there, the red flags. It is okay. That is one thing. But, is a decision making body very critical, where the Ministers sit and President Mbeki came to testify and said, I challenge anyone to come and

10 demonstrate that my Ministers were corrupted. Let me ask you a question, who do you want the Commission to look at? Because my role in bringing this evidence is to assist the Commissioners, to enquire into, make findings and recommendations and establish facts. Should they look at what was happening at the lower level, where these red flags were happening? I give

15 you credit, the red flags were there. But, at the higher level, where decisions have to be made, do you agree that there is nothing?

COL DU PLOOY: We do not have evidence to that effect, direct evidence. But, again, as I say, you must see everything in holistic view. Then, what we are trying, I am trying to say, the inferences should be made from there. But,

20 just to, I just would like to answer the honourable Chair is that, that is why I requested this morning, honourable Chair, to sit with the evidence leaders, to go through the previous witness's statements. Because they had the opportunity to put their view and it is not necessarily that I speculate. What I am saying is, is from evidence under oath that, as I said, there is a general

25 and senior officials that, what I am saying is, from their evidence under oath,

18 MAY 2015

PHASE 2

not necessarily here, but previously. We used that evidence, to obtain the search warrant. So, if they did not talk the truth, well, I do not know. All I am just saying, it is not for me. It is not something I sucked out of my thumb. I am talking from other people and it is evidence under my control. I speak
5 from that evidence that I have under my control. That is all I am trying to do today.

ADV LEBALA: Let me ask you still, because I just want us to decide and I see Advocate Pansergrow is frowning his face. Look as figure 1 and figure 2. I have demonstrated to you that an important body, at the higher level, where
10 President Zuma did not play a role, make a decision and he was not part of it. But, you are saying, he would have had an influence with the member of the ANC. But, we have testimony of the former President, who is a member of the ANC, saying, I challenge anyone, who could come and demonstrate that that body, that finally made decisions and made recommendations to the
15 Cabinet was not influenced in the context of figure 1 and figure 2. We know that we have the red flags. But, we have them down there. Permit me to say, down there. What was happening, probably between President Zuma and whoever, down there, in the context of what you are trying to demonstrate. Now, let me understand. I am saying that the Commission
20 should ignore what was happening down there and focus on what was happening at the lower level and come to the conclusion that figure 2 holds.

COL DU PLOOY: I have no, I do not know of any direct evidence that exists at that higher level that they were influenced. But, again, with that, I am saying that we did, in the Schabir Shaik trial, not to say that at the end,
25 honourable President Zuma influenced that process, at that level. We say

18 MAY 2015

PHASE 2

that he financially benefited. So, we are saying that the higher profile politicians financially benefited.

ADV LEBALA: But, you see, that is the issue, colonel. Whatever came out of the, Mr Shaik's trial does not answer the question ...[intervene]

5 CHAIRPERSON: Advocate Lebala. Maybe, let us get to the next point. I am not sure whether you are going to get a correct answer from this witness on that point. I understand what you are trying to say. Sir, you are saying that he did not play a role in this arena. How could he have influenced the outcome? But, then, the witness keeps on going back to the Schabir Shaik
10 matter. Maybe let us get on to the next point.

COMMISSIONER MUSI: And just to add onto that. You see, I specifically suggested to Colonel Du Plooy that maybe he illustrates figure 2, with reference to the Shaik matter. Not purely for illustration of how this would operate, this system would operate. But, then, maybe as far as this matter of
15 Shaik, Nkobi, Zuma, Thint investigating is concerned, if you look at page 271, of file number one. I think, that is the, the last paragraph and the last sentence, 271, paginated 271. I think, that is a report compiled by Advocate Steynberg, for SCOPA. I think, that would be the report. He specifically says and you will find this kind of a sentiment somewhere else in his report, as
20 mentioned above:

"The Shaik/Nkobi/Zuma/Thint team bore no responsibility for and no personal knowledge of the [indistinct] arms deals investigation."

ADV LEBALA: Commissioner Musi, it appears that the witness is not following ...[intervene]

25 COMMISSIONER MUSI: Oh.

18 MAY 2015

PHASE 2

ADV LEBALA: It might not be the proper page.

COMMISSIONER MUSI: 271.

ADV LEBALA: Volume? Of the statement?

COMMISSIONER MUSI: No, no. I said file two. It is an annexure. It
5 is a report by Advocate Steynberg. File one, paginated page 271.

ADV LEBALA: Commissioner Musi there are ...[intervene]

COMMISSIONER MUSI: No, no. The pagination is 0066. You see, I
think, there is a problem with the pagination there. It is marked in a
black pen there, 271. But, in typed form it is 0066.

10 ADV LEBALA: It is page 66 of the index papers file one, 0066, 271
handwritten.

CHAIRPERSON: And that will be in the middle of the first paragraph.

COMMISSIONER MUSI: You have located that now? Yes. In the
middle there, sorry, in the middle there, you will see it says:

15 *"It has vast become a misnomer to regard the
Shaik/Nkobi/Zuma/Thint leg as an Armsdeal prosecution, when it is not,
in fact."*

And the last sentence of paragraph 4, it repeats the same sentiment.

COL DU PLOOY: [Indistinct] what is the question?

20 COMMISSIONER MUSI: It appears to suggest that it has got nothing
to do with the arms procurement process, this particular leg of the
investigation.

COL DU PLOOY: Honourable Commissioner, what we try do, it was a
request from SCOPA, from Parliament, to give an update. You know, if I
25 am not mistaken, I just checked the date. I think, it was in 2008. Ja.

18 MAY 2015

PHASE 2

December 2008, that memo, that we were requested, from SCOPA, to give an update on the all the legs of the Armsdeal investigation. What Advocate Steynberg tried there to say is that, first of all, the, we as a team, as I explained in my affidavit, were only working on the Schabir Shaik, Nkobi, Zuma, Thint matter. Now, to give them a background, or an in depth detail of DASA and let us say BAE, at that stage and so forth, would have been difficult, because we were not that part of it. Second of all, why it says there, I think, in the third paragraph that it is not just the Armsdeal. Because when we investigate and that will come out, also from the KPMG report that is attached, it is only from chapter 18 that really deals with the Armsdeal part, of Schabir Shaik, because Schabir Shaik was also involved in other companies. He also, and when, even in the trial, we, other witnesses testified that it is not related, in a sense, to the Armsdeal, but also to, for instance, the point about a [indistinct] in Durban, where we felt that President Zuma's name, Shaik also abused. Because he was the financial advisor for the, he always told people he is the financial advisor for Jacob Zuma. That is why Wilson will come, also from Malaysia. We heard the Produba Project, where Shaik did the licenses. That is also part of the KPMG report, if I am not mistaken. So, what we are trying to say, is that the SCOPA, the Committee must not think that the whole Armsdeal, because at that stage, people thought that and some, even still today, think that the whole Armsdeal was the Schabir Shaik matter and it is not. It is about five per cent, because only the Corvette combat suite part that was investigated. That is what we tried to say there and that is how I

18 MAY 2015

PHASE 2

understand it.

ADV LEBALA: Colonel ...[intervene]

CHAIRPERSON: Just hold on, Advocate Lebala. Colonel Du Plooy, this memorandum, written by Advocate Steynberg, who was part of your
5 team, who was part of your team, he says that it is wrong to regard that investigation, as part of the Armsdeal investigation. That is what he says in this, in this memorandum. You want to say that is not correct?

COL DU PLOOY: Commissioner, I am trying to explain, he may have said that in that sentence, but it is not correct, in that specific part, as to
10 say, sorry, I [indistinct] the document now. If you read ...[intervene]

CHAIRPERSON: Advocate Pansergrow ...[intervene]

COL DU PLOOY: The whole paragraph 3 ...[intervene]

CHAIRPERSON: Advocate Pansergrow, are you trying to help me with an answer? Or should it be amended to read the note and then, and
15 that you have given him?

ADV PANSEARGROW: Honourable Chair, all I have handed him is the specific page, which is highlighted, the whole paragraph 3 and not specifically only a portion thereof, so that the witness can at least, read the whole paragraph 3 and then attempt to answer the Commission.
20 Because I foresee that the witness has not read paragraph 3, only one sentence of it that was handed to the witness. I beg the Commission's pardon, if I should not have done so. But, I thought it was prudent to give it to the witness that he has it in front of him. Thank you.

CHAIRPERSON: Okay. Did the witness then go through that, that,
25 maybe, let us take a five minutes break, to allow you to go through that.

18 MAY 2015

PHASE 2

Because, I mean, it is important for us to understand exactly what you are saying. Because this is a matter that I am going to refer to, by an advocate, who understood and was part of that team. So, we will give you some few minutes to go through the document and maybe will take
5 a five, 10 minutes, adjournment. Thank you. We will adjourn.

COMMISSION ADJOURNS

COMMISSION RESUMES

JOHAN WILLEM DU PLOOY: (s.u.o)

CHAIRPERSON: Advocate, Colonel Du Plooy, did you have a chance
10 to look at that document?

COL DU PLOOY: Yes, honourable Chair.

CHAIRPERSON: Do you, what is your comment?

COL DU PLOOY: I have read through the document and I recall, if you look at the whole paragraph, if I can just read that, it must also be
15 pointed out in paragraph 3 that the mandate of the present members of the NPA in the Armsdeal investigation was limited to the Shaik, Nkobi, Zuma, Thint leg. Advocate Downer SC of the NPS was tasked in 2001, to assist the DSO to investigate this leg. So, up to there, it says it is part of the Armsdeal investigation. But, this part of the investigation led to
20 decision to prosecute Shaik and Thint in 2003. As will be seen, this investigation and prosecution ultimately includes offences that were entirely unrelated to the Armsdeal. When we investigated and in the KPMG report, chapter 19, as I indicated, there are lots of other, how can I say, developments, where Shaik wanted to be involved in and he used
25 President Zuma, being his legal advisor, to assist in obtaining a stake in

18 MAY 2015

PHASE 2

these projects. Just to mention a view, it is like and they testified in the Schabir Shaik matter, some of them. But, the Glasgow Caledonian University, Brown Cooper Smith, Benson Group, Point development project and so forth. But, if you look at it further and that is what we are

5 meaning with that, it has thus become a misnomer to regard the Shaik [indistinct] as an Armsdeal prosecution, when it, when in fact, it is not. What he is trying to say and I do agree, honourable Commissioner, that it can be a bit confusing with what he is trying to say there. But, in my understanding, all that Advocate Steynberg tried to tell the, tell SCOPA

10 is that we, as a team investigator, this Schabir Shaik, or the Shaik, Nkobi, Zuma, Thint leg that forms part of the Armsdeal investigation. But, in that, while we are investigating that, there we also found other projects that, where Shaik was involved with. Because you must remember, our focus was the Nkobi Group of Shaik. What he did,

15 where he was involved in. To say then, that is not, so we tried to tell them this is part of the Armsdeal, but there were also other projects that were not part of the Armsdeal, but were also investigated. Then, we have to now give feedback on projects or legs of the Armsdeal investigation, for instance, BAE, GFC that we did not deal with, like the

20 DASA leg. So, in essence, as I understand, what Advocate Steynberg tried to say and it may be, if you look at that one sentence or two sentences, a bit confusing. But, according to me, and I was there, I understand that the Schabir Shaik is part of the Armsdeal, some other parts, which were identified that we also looked at. Further to that, we

25 were not part of the greater Armsdeal investigation, including, if I say the

18 MAY 2015

PHASE 2

greater Armsdeal investigation, including BAE, GFC. According to that, memo of Gerda Ferreira, I think, what also needs to be taken into consideration is the Patricia De Lille, there was a document, with concerned ANC members that also, a few allegations that were made.

5 So, what we are trying to say here is that, we will try our utter best in the same, I am in the same situation at the moment. I am asked by the Commission to testify about the Armsdeal, although I was, a big part of my, of the, of my part of the Armsdeal investigation, we concentrated on the Shaik, Nkobi, Zuma, Thint leg. Only in 2008, I became involved with
10 BAE and then GFC, later on, 2009, in a way. So, what I am trying to say is, this is, and again, I have to testify about [indistinct] for instance. The only thing I have on Condoc is the affidavit of Mark Wesley. He is also a prosecutor. I do not know the facts. But, what I know is, this is what we that was, what I could find. I think, this is what Advocate Steynberg also
15 tried to SCOPA is to say, we are part of the Armsdeal, but we only, our team, do not see our team as the team that investigated the whole Armsdeal. We did not. We only investigated the Shaik, Nkobi, Zuma, Thint leg of the combat suite. Does that answer the Commissioner?

CHAIRPERSON: Ja. To some extent, but I think, that is up to you.

20 **ADV LEBALA:** Thank you, Chair. Colonel, let me be precise and ask the following question. From the investigations that you have done, under this heading the Shaik, Nkobi, Thint leg is there evidence that directly demonstrates that, let us be specific. Mr Shaik improperly influenced the award or conclusion of the strategic defence procurement
25 packages.

18 MAY 2015

PHASE 2

COL DU PLOOY: I do not have direct evidence that Schabir Shaik influenced the final decision, in awarding the contract. But, there is, for me a lot of red lights, suspicions, at the lower level that we have those red lights and suspicions. That he may, could have influenced at the
5 Ministerial level or maybe knew somebody. In fact, his brother, Chippy Shaik is close to Minister Modise. He was the head of acquisitions. I do not know. But, those red flags, for me were important or are important to look at. But, I cannot say that he influenced directly.

ADV LEBALA: Is there any direct evidence that you gathered, during
10 your investigation that could demonstrate this Commission that President Zuma improperly influenced the award or conclusion of any of the contracts awarded in the strategic defence procurement packages?

COL DU PLOOY: Again, I do not have direct evidence. But, you have
15 to take into consideration all these red flags, the suspicions that what happened, interfered, is the meeting that happened between Thomson and Shaik and President Zuma, before the contract was awarded and even afterwards. The same applies to Fana Hlongwane. But, there is no direct evidence. But, he was the special advisor to Minister Joe
20 Modise that was on the Ministerial Committee. But, we do not have that direct evidence. But, there are lots of red flags and suspicions as they say that needs to be looked at from my side and that are what we looked at. That is the evidence that I have, under my control to present.

ADV LEBALA: Now, let us be specific. You are telling the Commission
25 that the relationship between the President and Mr Shaik and the

18 MAY 2015

PHASE 2

judgment of Judge Squires is that type of evidence that you could relate to figure 2 on page 18. Am I right?

COL DU PLOOY: That is correct, honourable Chair.

ADV LEBALA: Now, there is a document, called KB, KP, annexure
5 JDP 8. It is a KPMG report. You will find it on file one. It starts on page
89 to page 597, on file two, a document called KPMG, KPMG report on
chapter 19. It starts on page 89. It ends up in page 597, file two. Ja.
This document, is it also part of the documentation that demonstrates
this relationship between Mr Shaik and President Zuma, in the context
10 of figure 2?

COL DU PLOOY: That is correct.

ADV LEBALA: Now, I would like you to understand your testimony, in
the context of the term of reference and I think, it will simplify our way
ahead in leading your evidence. If you do not understand, please ask
15 me. I will repeat it time and again. The term of reference says that we
are dealing with, whether any persons within and or outside the
government, either they are within and outside the government of South
Africa, improperly influenced the award or conclusion of any of the
contracts awarded and concluded in the SDPP procurement process.
20 You remember, I mentioned to you that there has been testimony about
this important committee of the Ministers that made recommendations to
Cabinet. Is it your testimony before the Commission that, even if it is
true that the decision makers were that committee at that upper level.
But that committee was informed, by what happened on the ground. Is
25 that what you are telling the Commission?

18 MAY 2015

PHASE 2

COL DU PLOOY: Honourable Commissioner, I do not have, again, direct evidence to that. But, what I do have is the red flags of the suspicion, where certain meetings were attended. Certain documents, under my control, showing that meetings took place, certain flow of funds, from certain accounts, systems that were used that in essence, 5 for me [indistinct] that somebody somewhere might have influenced that Ministerial Committee as put to me. But, I do not have direct evidence to say so and so did influence that Ministerial Committee or the previous President, Thabo Mbeki to make a, I do not have that. But, it is 10 important for me, or my evidence is about that happened on a lower level and the financial benefit people received and they could have somehow, I do not know, could have influenced.

CHAIRPERSON: Just hold on, Advocate Lebala. Colonel Du Plooy, is it a responsible statement, to say that I suspect that there are Cabinet 15 Ministers, who could have been bribed? But, it is just a suspicion that I have. I have got no evidence to backup that. Is that a responsible statement, from a senior investigator, like you? To say that, you know, there is a suspicion that happened and that has been brought, but I do not have evidence to back that up. You have been investigating this, 20 your unit has been investigating this matter for the past 10 years. Do you think that is a responsible statement, to come from a senior investigator?

COL DU PLOOY: Honourable Chair, I am not saying that they could have or could have been bribed. I am saying, I do not know, who could 25 have or I, all I am trying to say is that the red flags that, in the evidence,

18 MAY 2015

PHASE 2

under my control says that certain individuals benefited financially. Those individuals had a close relationship with certain Ministers or, if I take the letter of, which I just read earlier of Stella Sigcau. But, I am not saying, to say they did influence. I do not know about that. I am not
5 saying they did. All I am saying is that here are some red flags. Here is suspicion at the lower level that happened. At the end of the day, because of this what happened in this informal, behind the scenes room, if you can call it like that, at the end of the day, that company that paid these individuals, that company received the contract. I do not know if
10 that is clear, I ...[intervene]

CHAIRPERSON: I think, that is enough. That is good enough for the moment. We will deal with that issue at a later stage again.

ADV LEBALA: I have got to be cautious in taking you through the KPMG report. Because no matter what it demonstrates, the question
15 would be, does it answer the question, in terms of the term of reference. Assume, there are red flags, the KPMG report of course, you played a role in it. Am I right?

COL DU PLOOY: Yes. I played a role in the KPMG the report, by providing the KPMG, to draft the report.

20 ADV LEBALA: Now, this is a document that we see, from page 89 to 597. Page 89, file one to 597, file two. Is that not so? Please, it is ANNEXURE JDP 8. I am not taking you through it yet. I just want to lay the foundation, as to whether, would it be appropriate to take you through it, if you answer particular questions? Please go to page 89.
25 Page 89, file one, ANNEXURE JDP 8. Now, the document is headed:

18 MAY 2015

PHASE 2

“The State versus Jacob G Zuma and others. Forensic investigation. Draft report on factual findings. For review only.”

If this document demonstrates that the President has received payment, does it answer whether any persons, within or outside the government
5 of South Africa influenced, improperly influenced the award or conclusion of any of the contracts, especially at the decision making level?

COL DU PLOOY: This report, if I remember correctly, It is [indistinct] it is about, it is dated, I think, in 2006, 2 September. It deals with Nkobi
10 Holdings, where Schabir Shaik shared his financial benefit with President Zuma, inter alia, his share that he obtained in Thomson, which again, were awarded the main contract. But, this report is not the saying, as far as I know that a specific Minister in that Committee received an X amount of money, to influence him or her to award the
15 contract for that specific company. It is not in the report. But, saying that it is important to look at the, again, the suspicions on the lower level, to explain that informal, behind the scenes that what happened there. But, I do not have that, to say even if, well President Zuma received financial benefit from Schabir Shaik, I do not know, I do not
20 have evidence to say, yes, he did influence specifically, the, let us President Mbeki to sign. I do not have.

ADV LEBALA: Now, then, it haunts us, in our [indistinct] to take you through the report. I will tell you why. Are you able to say the following? If one takes the report, with its red flags, is it telling us that someone
25 was able to make it a point that the decision making persons, at the

18 MAY 2015

PHASE 2

Ministerial level and even to Cabinet level, have been influenced to give the contracts to the successful bidder?

COL DU PLOOY: I do not have proof of that. But, it is for the, for me, myself, maybe possible. That is for the Commission to decide. It is not
5 for me, as investigator. All I argue is, in normal terms also and I, and I opted, or I understood the Commission, in my evidence as the same. It is what I normally elicit as investigator. I go out, collect the evidence. I put it in front of the prosecutor. The prosecutor must make an informative decision, if there is a prima facie case, to prosecute. Then,
10 even if he makes that decision, it is still not the end of the road. There is still the judge or the Magistrate to make the final decision to say, the evidence that was in front of him, is the person guilty or not? That even in my way of investigation and you will see it, as an example of Fana Hlongwane, I give a person an opportunity, before an arrest occurred to
15 take a warning statement. Or I give him not necessarily always a warning statement, but I give him the opportunity to also give his side. That is how we, that is how I conduct the investigation.

ADV LEBALA: Now, if you were to take figure 1 and figure 2, on page 18, the KPMG report, the red flags are rising from the relationship
20 between Mr Shaik and President. And without undermining the investigation that you have done, are you able to say the following? That there are persons within and outside the government, who improperly influenced the award or conclusion of the contracts that were awarded to the successful bidder?

25 COL DU PLOOY: To answer just yes or no, for me to say, no, I do not

18 MAY 2015

PHASE 2

have, again, as I said, maybe I misunderstand the question. But, for me, I do not have direct evidence that a person at that level, Ministerial level influenced. But, I think, it is important to take all these suspicions and everything, of the whole, of my evidence, including, not just, we are

5 talking about the Schabir Shaik, all evidence, you take Concor, you take BAE, you take GFC and you take everything into consideration. I think, that will help the Commission, to make a better or more informative decision, to answer that specific question. Having that, under the, this [indistinct] and to make then a decision.

10 ADV LEBALA: Can I assure you that your investigation is not being undermined and it would not? On this basis, I would like to leave this leg of the investigation. Because from what you say, looking at its important components, what we see on page 18, figure 1 and figure 2, the evidence that we have, that is telling us about red flags, the

15 relationship between the President and Mr Shaik and we know the judgment of Judge Squires. The KPMG report, it can never be said that persons within and outside the government of South Africa improperly influenced the out, or conclusion of any of the contracts, awarded in the strategic defence procurement packages.

20 COL DU PLOOY: It will be the ruling of the Commission. But, from my side then, as I understand the Armsdeal investigation, the focus, or the, let us say, the evidence at hand or the information, depends on how you look at it, only shows that there were behind the scenes, strings were pulled, influences were conducted. But, not, again, at that level that I

25 know of and that is for the Commission to decide, or a court of law to

18 MAY 2015

PHASE 2

decide, was there any influence at that level. I do not know. I do not have evidence to that effect.

ADV LEBALA: Let me ask this question, by way of analogy. I am forced to give an if, because I need to understand this testimony.

5 Because I want us to leave this part and go to another leg, of your investigation. If, for instance, someone in the Armscor bid adjudication committee had a relationship with a bidder, in [indistinct] 6010, at that lower level and nothing demonstrates that that relationship affected any of the Ministers at the Ministerial Committee level, any of the Cabinet
10 members. Would you say that that evidence has to be considered, before this Commission? And in all fairness, in all fairness, I am forced to give you if, because we do not have that evidence. I am just making analogy, to understand your testimony. The example made, at the [indistinct]. I just want to know, because there are many, probably, there
15 have been such processes and you could not investigate them. They did not come to your attention. There might have been. There might not have been.

COL DU PLOOY: I am not going to say [indistinct] I do not answer. Because I feel, I did answer. I do not know of evidence, that direct
20 evidence. It does explain in Figure 1, where, let us say the Minister was directly paid for influence. But, there were red flags. If you take, for instance, Minister Modise and you look at the affidavit of Mark Wesley, Advocate Mark Wesley, the prosecutor, whereto the, in respect of the NIP and as I, and I am talking from his affidavit. I understand his
25 affidavit, saying that there was this manner, in which [indistinct] was

18 MAY 2015

PHASE 2

obtained, was bought by Logtech and Logtech was the project for the NIP for BAE that gave them points that assisted in the formula of obtaining those, the contract. But, it was bought by Optech and Condor, the shareholders were its trusts. As I understand, one of the trusts, it

5 seems like, was the former Minister of Defence, Joe Modise was, I think, the trustee of that trust, Ledwaba trust, if I remember correctly. Using that example, using as a ref, earlier about Minister Stella Sigcau, in 1998 September there was a meeting they called. That kind of evidence, where an internal memo in BAE, where employees talk to

10 each other, that is the same date we have, with encrypted fax. So, we do not know what happened at that meeting. We do not know what was said. But, we make an inference. By what is this person is saying to his head, saying we must assist, we must assist her daughter. Now, she was on the Ministerial Committee. Now, if she did influence, or she did

15 not, I do not know. I was not there. I do not have any minutes of those meetings. If President Mbeki says it was not. Then, I do not know. All I am saying is, I have this document. This document, what is it? If I take a similar document, even the document in the GFC that we received from the Germans, on Chippy Shaik, that he would have received 3

20 million US dollars. It is a memo, but it is in the same content, of what we received the encrypted fax. That encrypted fax, in respect of President Zuma was proved in a court of law. Schabir Shaik was found guilty. Now, I am not going to say anybody else is then guilty of something. I am just saying that we have the same suspicions. We

25 have the same red flags. There was an encrypted fax. Now, I have,

18 MAY 2015

PHASE 2

here is this document of Minister Stella Sigcau. Here is this document of Chippy Shaik. Maybe it is also proof. I do not know. So, that is why it is for me, important, if the Commission allows them. If they do not, it is fine. I am just trying to suggest, this is the, that is the kind of
5 evidence, I have under my control, to present to the Commissioners. I, you must make a decision, how you want to deal with it.

ADV LEBALA: Colonel, would the same hold with the GFC leg, that, the red flags? You cannot say that there is direct evidence demonstrating that, persons within and outside government improperly
10 influenced the award or conclusion of the contracts, awarded in the strategic defence procurement packages, without even undermining the investigation that you have done.

COL DU PLOOY: [Indistinct].

ADV LEBALA: Colonel, I am just trying to emphasize, this
15 investigation that you have done. It is so important. It is standing before the Commission. I can take you through it, page by page. But, you are giving us information and evidence that is telling us that there might not be need, to take it page by page, to assist this Commission, because it is in front of the Commission. It is known that it has been
20 done. It is very important, we do not dispute that. But, whether it addresses the following, whether in as far as the German Frigate Consortium is concerned are there persons, is there direct evidence that demonstrates that persons within and outside the government of South Africa improperly influenced the award or conclusion of any contracts
25 awarded in the procurement packages. May I add, not undermining the

18 MAY 2015

PHASE 2

red flags? The red flags are one thing. I am talking about direct evidence. We can go to figure 1 and figure 2 on page 18.

COL DU PLOOY: There is no direct evidence in that regard. But, again, that is my position, is that Chippy Shaik was close to Mr Modise.

5 Mr Modise made, they made recommendations to the Ministerial Committee. Before that, [indistinct] I cannot say that there was influence. What I am saying is, they were very close. They would have been in prominent positions. Now, I am sitting with this document of Chippy Shaik, being paid 2 million US dollars. In a report from the
10 German, I assume, it is the investigators. But, we try not obtain, talk about influencing, before. They talk about the, another 22 million, if I am not mistaken, that was paid to certain government officials. All I am trying to say is, I am sitting with this document on my hand here. The investigation was not that far in depth, to get to that point. So, we did
15 not have that. Due to different reasons that I can deal with later, that is what my evidence was also about. But, we did not get to that point. But, all I am saying is, we had that red flag. In the GFC matter and the BAE, it was, as far as that one, I was the advisor to Germany. But, I have no evidence, directly to say, he did influence. He did influence
20 Minister Joe Modise. I do not know. But, there is his reference. I do not know what else, or how to explain.

ADV LEBALA: Thank you ...[intervene]

CHAIRPERSON: I am sorry, Advocate Lebala. Just for my own understanding. Colonel Du Plooy, are you saying that Mr Modise made
25 certain recommendations? If that is correct, can you just tell us about

18 MAY 2015

PHASE 2

the recommendations that were made by Mr Joe Modise? And then, secondly, I heard you talking about, the 22 million being given to government officials. What does that mean? To which government officials were given this 22 million? Can we have the full details of those, who were given this 22 million?

COL DU PLOOY: Honourable Chair, that is what is struggling. It is a bit difficult for me, to just immediately refer to the second document. But, on the first question, about Joe Modise, that would have recommended, maybe I chose, I chose my words wrong. But, I understand and I did, will check the wording of the affidavits. It is either Mr, ag, General Esterhuyse, I am not sure who had said it. Mr Modise, he was like, in charge of, he was the Minister of Defence. The recommendations to the Ministerial Committee were made. So, I think, the assumption is that he would have gone through the Committee and it is then, what is already has been decided, who should number one and then, who should be number two. If I remember correctly, Esterhuyse's affidavits saying that, and I think, Pierre Steyn also, the Secretary of Defence says that, at that, in one of those meetings, it was between Aeromacchi and BAE, the Gripens and the Hawk. They thought that, at the Ministerial level, it will be then discussed. But, it was ...[intervene]

CHAIRPERSON: Colonel Du Plooy, on that we understand. I was just interested in the statement, where you said Mr Modise made certain recommendations. What you are talking about now, is there are recommendations, which were being made to the Inter-Ministerial

18 MAY 2015

PHASE 2

Committee, by [indistinct] Mr Modise as a person. Or was it [indistinct] and you said, it was, Mr Modise made certain recommendations. He never made any recommendations, if I understood the evidence that was given. He did, in his capacity, as a Chairperson of the AAC, and not
5 him, [indistinct] as a person. I thought the evidence was that he made those recommendations, as a person. The second question, if you can just deal with that, very quickly. Who are the people, who you say that, you know, they are government officials, who received the R22 million?

10 COL DU PLOOY: Honourable Chair, the 22 million is from a document, again, that we obtained or received from the German Authorities, where it is mentioned in a report. But, it has not been investigated. All I am saying is, there are, there is the report and those documentations are of the Germans that we could not obtain. There
15 were several reasons. But, that is the only way I saw, is in those reports, of a payment that would have been made.

COMMISSIONER MUSI: I do not quite follow, colonel. You are aware of the information. You say it comes from the German documents. But, you did not obtain those documents. What do you mean? Did you see
20 the documents? Or did you not see them?

CHAIRPERSON: No. He said allegations.

COMMISSIONER MUSI: Oh. Where did you get the allegations?

COL DU PLOOY: I beg your pardon, honourable Commissioner. I did not get the question.

25 COMMISSIONER MUSI: Yes. Let me just clarify. I did not quite

18 MAY 2015

PHASE 2

understand your evidence. You say that, you say 22 million was paid, to officials. That information, you got from some German document. But, you say, you are not able to get, obtain these German documents. Can you explain? How then, do you know about this 22 million, if you did not
5 obtain the document from the Germans?

COL DU PLOOY: Honourable Commissioner, I can take you to. I am just checking, I think it is file six.

CHAIRPERSON: Colonel Du Plooy, maybe I can help you. That document talks about allegations. It does not have one, to us to say
10 that it makes allegations. It does not have that proof, of which politicians were paid. Now, you, what my fellow Commissioner is asking you about. You put it, as if it is a fact, when in actual fact, if I understand your statement, this is an allegation, which is made in that report. So, why you want to take us to, it is an allegation, contained in that
15 report. Unless, you are going to talk about the [indistinct] from the document.

COL DU PLOOY: Well, Chair, that is why I said, earlier, that there are lots of, many red flags, many suspicions, suspicious, I would not say transactions, but if you look at these documents, that we received from
20 the Germans, the person, sending the documents, as she explains, and in her email, to Advocate Downer, she explains and says:

*"I was a member of the police investigation team that dealt with the Corvette contract and in charge of the investigations into South African side of the assumed bribes. In your email A, you should refer to the
25 enquiry of the [indistinct] Dusseldorf file, number 130 JS2/06 and*

18 MAY 2015

PHASE 2

mention in this case that they have dealt with [indistinct] (very difficult to pronounce) so that we hopefully will become involved. We managed to keep copies of documents, relating to SA entities and to make them in the official parts of our case files, as we had to return the seized

5 *material.”*

So, it seems like they seized, they had maybe, a search and seizure and they obtained it. So, these documents, what I am trying to do is to explain to the Commission. The question is, I do not have that direct. But, here is documentation that the person from Germany, one of the

10 investigators is saying we have this information, under our control. But, you need to obtain it officially. Then, we tried via email A, but due to different or certain issues, certain things that happened, we, at the end of the day that email A, the email was not sent. So, at the end of the day, then, in September the matter was closed. But, to explain that

15 specific part, there is par of my affidavit. I explained the difficulties, the challenges, we had, what we endured, during our investigation, to obtain overseas, information that we never received. I can deal with that now, if the Commission wants to. But, that, I just want to try now, to show the Commission that there is all this information. It was sent to us. So, the

20 guys in German say help us, but you can, in your country and we say, yes, we need that, but we just did not get to each other. But, it is there. They say they obtained it.

COMMISSIONER MUSI: Did I understand you to say that you have this report, from the German investigators? But, what you could not

25 obtain, is the documents referred to, in that report. Is that what you

18 MAY 2015

PHASE 2

mean?

COL DU PLOOY: Honourable Commissioner, yes. We could not, in official manner, then, obtain those documents. It was, according to my statement, I think, I said there, it was sent either to Advocate Helmann.

5 I found this, or he gave that to me and it is on my computer, this folder. Or Isak Du Plooy, my colleague, he could have received it, with a transcriber, all these, all the documents. What I am trying to say is, and I was asked to present to the Commission, the documents that I could find that may show some signs of possible corruption or bribes. When I
10 found this, I am just trying to say, this is what I have found. It has not been investigated. But, this is what investigators in Germany say, this is what they have.

ADV LEBALA: Chair, we are at half past one. I know that we have not taken any lunch, if you want me to go on. I just want to complete this leg of
15 the GFC, if you do not mind. We will start with the BAE leg, after lunch.

CHAIRPERSON: I think, maybe let us take a lunch adjournment. It is half past one. Then, let us come back at two o'clock. Thank you.

COMMISSION ADJOURNS

COMMISSION RESUMES

20 JOHAN WILLEM DU PLOOY: (s.u.o)

CHAIRPERSON: Yes, Advocate Lehaba.

ADV LEBALA: Colonel, before we adjourned for lunch, we dealt with the Shaik-Nkobi-Zuma-Thomson investigation, which is covered in pages 19 to 25 of your statement, and we also dealt with investigation
25 and the prosecution of President Zuma, which is in page 25 and 26 of

18 MAY 2015

PHASE 2

your statement. Am I right?

COL DU PLOOY: That is correct.

ADV LEBALA: I just want to, I want to complete the GFC leg of the investigation, before we go to the BAE leg, because we have started
5 with the GFC leg and I will demonstrate which pages of your statement cover GFC's leg, and it is chapter 7 pages 39 to page 41. Am I right?

COL DU PLOOY: The JFC version. It is correct.

ADV LEBALA: At this stage specifically the JFC's leg of your investigation. Now, we will deal with the GFC's leg just to complete
10 about the challenges in as far as the German leg is concerned. Now, before we adjourned, you remember you testified that because of the relationship Mr Shaik had with former late Minister Modise, he received payments, I am talking about Mr Shaik, and therefore he influenced the process. Do you remember?

15 COL DU PLOOY: That is correct.

ADV LEBALA: Now, that is where the unfortunate part comes in that we did not consult with you. But, I just want to test whether you would still say the same, given what I am going to tell you, which is evidence before the Commission. What happened is was this evidence before
20 the Commission, that has not been contested, it comes from navy officers and officials in the area of submarines and coverts. We know that once we talk of submarines and coverts we are talking about the German leg, and coverts we talk of the German Frigate Consortium. Am I right?

25 COL DU PLOOY: That is correct.

18 MAY 2015

PHASE 2

ADV LEBALA: We know that we did that investigation. Let me tell you what the evidence says before the Commission. The evidence says before a matter gets to be decided by the Ministerial Committee for it to refer to Cabinet, it starts at the lowest level where there are committees, for instance let me give an example. In as far as the Coverts Frigate [indistinct] was concerned, what happened is that there were committees from [indistinct] side in the DOD, to be specific from both, and those committees consisted of the Nip and Dip Committee, the Finance Committee and the Technical Committee. What happened is when the promises of trying to weigh whether an entity should be considered as a bidder to succeed, those committees had to advise a higher committee, and that committee would be SofCom. Now, the evidence is Mr Shaik sat at SofCom and he [indistinct] SofCom with Mr Esterhuizen, but at this lower level of these committees, Mr Shaik was not involved and the naval officers say Mr Shaik had no influence on them, albeit this evidence, in all fairness, demonstrates that Mr Shaik at times could interlope between these committees. Now, the evidence further demonstrates the following, when these committees have made their pointes whether the German Frigate Consortium succeeds or not, they take their report to SofCom. SofCom considers the report and SofCom takes the report [indistinct] the Ammalman's Acquisition Steering Board. Mr Shaik is not involved there, it means Mr Shaik got cut off from SofCom. Now, from the Ammalman Acquisition Steering Board it goes to the Ammalman's Acquisition Committee, Mr Shaik is not involved there. From the Ammalman's Acquisition Committee it

18 MAY 2015

PHASE 2

goes to the Ministerial Committee, and then it ends up at Cabinet level.

Now, did you interview these committees during your investigation?

COL DU PLOOY: No, I did not.

ADV LEBALA: Now, if these committees were to say, all of them, that
5 there is no way Mr Shaik would have influenced the decision, not even
the Minister, irrespective of their relationship because it was separate
levels, who would dispute that?

COL DU PLOOY: Honourable Chair, again, I want to reiterate that I
assume my role here only to hand the documents, or to show the
10 Commission that... [intervene].

CHAIRPERSON: Colonel Du Plooy, can you please listen to the
question and answer the question? The question is simple, it is not
complicated. Just listen to the question and answer the question,
please.

15 COL DU PLOOY: I am trying to answer the question to the best of my
ability, Honourable Chair. So, I ask the Commission just to indulge with
me. I am trying, because some questions when it is asked there is a lot
of information going through my head, and I did not have the opportunity
to consult [indistinct] my evidence, and... [intervene].

20 CHAIRPERSON: [Indistinct] the question is, and I remind you
[indistinct] that Advocate Lehaba has mentioned. Can you dispute that,
or not? It is not that difficult.

COL DU PLOOY: I come back to my answer again, it is to put in front
for the Commission what I have, and if he ask who is going to ask if
25 there is evidence at Ministerial level, I do not have evidence of

18 MAY 2015

PHASE 2

influence. I do not know if Chippie Shaik influenced at any level above SofCom. I do not have evidence to that, but what I do have is the red flags and the suspicions in respect of what I just mentioned of the letter, or the evidence that the Germans have, or for \$3 million, if you want to
5 call it a bribe. I do not know if it is a bribe, all I am saying is that there is a document saying that he was paid \$3 million to assist for the German Frigate Consortium to win the deal.

ADV LEBALA: Now, if you say you do not have evidence that Mr Shaik influenced above SofCom level, do you have detailed information as to
10 whether did he influenced below SofCom level?

COL DU PLOOY: The only evidence that I can immediately think about is the affidavits, the Section 28 interviews of General Pierre Steyn and General Esterhuizen, that assisted in my application of the search and how I understood that the minutes that was changed, or not changed,
15 but that the minutes of Chippie Shaik did not reflect according to them what happened at a certain meeting, it should have reflected. But, I do not have that. The influence, I do not have that evidence. But, I...
[intervene].

CHAIRPERSON: Colonel, again, just listen to the question. He said
20 below the SofCom level he might have influence there, he might have [indistinct] influenced the process. Below the SofCom level you will find the [indistinct], the Ministerial Committee is above the SofCom level. You said that below the SofCom level it could have influenced the process. According to the evidence, below the SofCom level you have
25 the various evaluation teams. Are you saying that he could have

18 MAY 2015

PHASE 2

influenced the various evaluation teams? If so, can you give us that evidence?

COL DU PLOOY: Honourable Chair, again, according to my affidavit as I understand, I do not know all these committees and all the in depth of
5 the committees and what they did. The only information I had, as I said, I started only with the BAE investigation in 2008, and the only information I have is according to what General Esterhuizen and General Pierre Steyn, their affidavits we used. So, I do not have evidence saying that Chippie Shaik influenced anybody at any level. All
10 I am saying is that what I have in my affidavit, is that the formula was changed and there was a non-cost option that was brought in, that assisted BAD becoming number one. He was not initially number one in the tender, and that is the only information I have. There is nothing more I can add. The only things I have is the documentation under my
15 disposal, under my control, to hand it to the Commission and to decide if it is applicable or not, or can use it. But, to answer that question, I do not know.

ADV LEBALA: Colonel, that is another question that makes me uncomfortable, because these type of questions we could have
20 discussed with you before you came to testify, but they come out of your statement and investigations. The issue of the non-cost options was also dealt at a lower level, at one time or the other by committees. Now, if I may ask, why did you not investigate the evaluation teams, the Nip and Dip team, the Technical team and the Finance team? Why were
25 attempts not made, or steps taken to go and ask those officials

18 MAY 2015

PHASE 2

questions?

COL DU PLOOY: If you talk about the BAE investigation itself, the investigation was in very early stages. So, that part has not been dealt with yet. And, as I understand the Arms deal Investigation, there was
5 another team in 2000 part of [indistinct], and it is according to what I understood from Gerhard Ferreira, is that they dealt with the process. They would have investigated and questioned under Section 28 people involved with the process. When you investigate and for instance, as I say, you only have to investigate this magnitude of information, even on
10 BAE when we received from the British the information that they have, we worked every day on that, and whilst that was there we still had the case regarding the President that was still going on. So, we tried to get other investigators to assist, which did happen, but it was very difficult also for them to understand the case. So, therefore I was busy with so
15 many things that I did not interview, I did not get to that stage.

ADV LEBALA: This question was directed to you, we know that there has been [indistinct] foreign process and other processes, but this question was just directed to you, with your cap on as an investigator, and we know that the answer is no. Am I right?

20 COL DU PLOOY: The answer is no.

ADV LEBALA: Now, I would like to cut ways with the GFC investigation. I will come back to it under a different context, when we conclude your evidence. Let us look at the BAE investigation. Let us start here. We have looked at the time of reference, we have looked at what you are
25 demonstrating in page 18 of your statement, figure 1 and figure 2. We

18 MAY 2015

PHASE 2

have seen the red flags, the investigation that has been put in place, what it sought to achieve. Now, under the BAE leg, in all fairness, let us look at what we have, the red flags. What red flags are there in the BAE leg, starting with the payments, if any, made to any individual
5 including/excluding Mr Fana Hlongwane?

COL DU PLOOY: I will need time to prepare thoroughly on to mentioning [indistinct] payment had to go through [indistinct].

ADV LEBALA: Now, let us not be specific with regard to how much, but were there payments made from what you have established during your
10 investigation to Mr Fana Hlongwane?

COL DU PLOOY: I can only refer to my statement I made regarding the application for the [indistinct] in November 2008, and that information I will take from Gareth Murphy, the Investigating Officer at the SA Serious Fraud office. I totally utilised or depended on his information that was in
15 his affidavit. Must I go through his affidavit to mention all that?

ADV LEBALA: The question is yes or no, were there red flags? You could just summarise and say there were red flags, and from we know that you do not have direct evidence, except relying and Mr Murphy of the Special Fraud office, the UK based office. You can tell the
20 Commission that there were red flags. That is all that I am trying to establish, as to whether there were, let me use this expression, red flags.

COL DU PLOOY: There were red flags according to his statement, as he explained the covert system that the BAE used. And, if you read his
25 statement and how he explained it, there are certainly red flags in the

18 MAY 2015

PHASE 2

manner in which the payments were made to Mr Hlongwane.

ADV LEBALA: You see, Mr Hlongwane's testimony before the Commission is that irrespective what your investigation found, he was entitled to this payment because he rendered services.

5 COL DU PLOOY: He rendered services as I understand, and there is even a consultancy agreement or more than one that he entered into, and if my memory serves me right it is either 2001 and/or 2003, where he entered. But, according to Gary Murphy's affidavit, and if you also take Advocate Howner's affidavit and his application for the asset
10 forfeiture in Lichtenstein, and the information from Lichtenstein, it seems that there was a relationship between Fana Hlongwane and members, employees of BAE before 2001. And, as I understand it is that Alex Roberts, whose interview is also part of my evidence that I attached to my affidavit, where moneys were paid to Fana Hlongwane via a covert
15 system, according to Gary Murphy's affidavit by [indistinct] and I think another few and so forth. The question is why would it have, why was it necessary to make payments, if he was in the employment of BAE that payments were made via that system. Secondly, in his affidavit Gary Murphy also refers to a two page report that Mr Hlongwane would have
20 prepared and seemed to be regarding Black Economic Empowerment, and he was paid 4.5 million for that. He also attached two reports, I think the one is 20-something pages and the other one is eight pages, and again, as I remember from his affidavit, saying that [indistinct], another company that was part of the NIP, paid Mr Hlongwane 51
25 million for those reports. BAE, when they questioned BAE, BAE could

18 MAY 2015

PHASE 2

not, except these reports, hand to them for all the work that was done by agents, including Mr Hlongwane. Further to that I also gave Mr Hlongwane the opportunity to show what did he do, his employment, when he was employed or as employer then who had a consultancy agreement with BAE, what work did he do, and then also prior to 2000 and 2001. But, I only received a memorandum from his attorney, Mr Stockenstrom, signed by his attorney, but not really explaining everything in detail, his involvement at BAE.

ADV LEBALA: Now, let us go to the terms of reference before the Commission, probably they could guide us to [indistinct] whether persons within or outside the Government of South Africa improperly influenced the award, or conclusion of any of the contracts awarded and concluded in the Strategic Defence Procurement packages. Do you have evidence that demonstrates that Mr Hlongwane has improperly influenced, let us start at the top, or let us start at below, members of the evaluation committee?

COL DU PLOOY: Again, Honourable Chair, I do not have any evidence at any level that he would have influenced any person. He was the Special Advisor to the late Minister Joe Modise, but I do not have evidence at any level that he would have influenced. But again, I go back to the red flags that was raised by this covert system that was implemented by BAE.

ADV LEBALA: No, we will come to the red flags, but I would like you to be specific, yes or no. Is there evidence, direct or indirect, that he influenced members of the evaluation committees at the lower level?

18 MAY 2015

PHASE 2

COL DU PLOOY: There is no direct evidence.

ADV LEBALA: Is there direct or indirect evidence, circumstantial, looking at figure 1, figure 2, that he influenced SofCom?

COL DU PLOOY: We go back again, as soon as you say indirect and
5 circumstantial, because what I am trying to carry over the whole day is
the fact that there is no direct evidence of any minister specifically being
influenced to award the contract. But, you have to look holistically to the
circumstantial evidence, and then the circumstantial evidence helps you
to make the necessary inferences, and that is only a court of law, or the
10 Commission that can come to that conclusion. All I do is, all I have is to
say I have the red flags. How much worth it is, I do not know, but I have
the red flags.

ADV LEBALA: Colonel, I assure you that if need be this thing will
definitely come to [indistinct] red flags, without ignoring, if need be, after
15 we weighed the evidence, after we have read the documentation that we
have read, we will definitely do that. Let me understand this, it has
become common cause that Mr Hlongwane was an advisor to the late
Minister Modise. Are you saying that relationship is the bases for your
circumstantial evidence, in the context of figure 1 and figure 2? And
20 remember, I do not want to detract from your evidence, I will always ask
the questions based on what you bring as evidence before the
Commission. Do you understand my question?

COL DU PLOOY: If you look at the memo that we drafted, or the memo
I drafted for General Meiring and in the final version of that he later
25 compiled, he talks there about three suspects they are deceased, of

18 MAY 2015

PHASE 2

which one is Joe Modise, the late Minister. So, from our perspective, an investigative perspective, was Minister Joe Modise a suspect in the BAE investigation. But, SFO, the SFO asked us to obtain an affidavit from Fana Hlongwane to assist them in their investigation in the hands of
5 BAE, the directors of BAE. When we had that consultation, we explained to them that if we from our side in South Africa, we could see him as a possible suspect in the manner in which the money was transferred to different accounts and how he received the money, the [indistinct] as they explained to us, and we said if we do talk to him, he
10 will have the opportunity or the right to remain silent, he does not have to answer. And, then we made the decision to say "Let us wait and obtain more information before we approach him, just as a witness."

CHAIRPERSON: [Indistinct].

COL DU PLOOY: The question?

15 ADV LEBALA: The relationship... [intervene].

CHAIRPERSON: Sorry, Advocate Lehaba. You know, I suspect that Colonel Du Plooy does not quite understand you on your question. Can you put the question [indistinct], and then Colonel, it is also helpful for you to try and answer the question straight. You will not end up
20 forgetting what the question was. Now you have forgotten what the question was because you are not answering the question. If you can just remember what the question is and try to be direct to the question, you will not end up losing concentration or end up forgetting what was the question. Okay? Thank you, can you just repeat the question,
25 Advocate Lehaba?

18 MAY 2015

PHASE 2

COL DU PLOOY: Honourable Chair, I just want to add that [indistinct] I am just a [indistinct], I do not have the facts on the points of fingers. I do not have so. If a question is asked, sometimes I do not know what the correct answer is. I have to try in a couple of seconds think of all the information, sift through it and think of what is applicable or not, because
5 it is a vast amount of information that I have not dealt with in the past five years, or even longer. I am asking the Commission just to indulge with me. And second of all, English is not my first language, so sometimes I will use the wrong words, but for me I am just a [indistinct].
10 I am just trying to say this [indistinct], I just want to give it to the Commission. I do not have all the information, all the knowledge about all the facts to sit here and say one, two, three, this is what it is. So, I am just asking the Commission to indulge with me.

CHAIRPERSON: I understand that. But, for you to listen to the
15 question you do not have to have all the facts. If you do not have an answer, just say to him "I do not have the answer." If you do not know you just simply say "I do not know." Do not start speculating in that any other things [indistinct] end up forgetting what the question was. If you do not have an answer, say to Advocate Lehaba "I do not have an
20 answer." If you do not know, simply say "I do not know." [Indistinct] say to him "I cannot recall it." We do not expect you to do the impossible trying to talk about things that you do not know. If you cannot recall it, say to Advocate Lehaba "I cannot recall it." Okay? I am sure we will make progress much faster. Thank you.

25 COL DU PLOOY: Thank you, Mr Chair.

18 MAY 2015

PHASE 2

ADV LEBALA: As jy wil dat ek die vraag herhaal in Afrikaans, ek sal dit doen.

COL DU PLOOY: No, it is fine.

ADV LEBALA: Ek sal dit ook vertaal. Remember the terms of reference, we have got to come back to the terms of reference. We can talk about many things. I assure you. I repeat, the red flags, the investigation, is not being under mind. We will still debate it with the Commissioners at a later stage, at the right time. Given what the terms of reference say, let me remind you of the terms again. Whether any persons within, and or outside the Government of South Africa improperly influenced the award or conclusion of any of the contracts awarded in concluding the Strategic Defence Procurement Packages. Are you saying the relationship between Mr Hlongwane and the late Mr Joe Modise, qualifies you to say there was that influence?

15 COL DU PLOOY: Just the fact that he was his Special Advisor does not qualify that he could have or he did influence.

ADV LEBALA: Is there direct evidence that demonstrates that Mr Hlongwane gave the late Minister Modise money?

COL DU PLOOY: No.

20 ADV LEBALA: In terms of figure 1 and figure 2 on page 18, is there such evidence? Is there circumstantial evidence? It means we leave figure 1, figure 1 is the obvious one that there is direct corruption. Figure 2 is circumstantial and informal. Based on figure 2, is there evidence to that effect?

25 COL DU PLOOY: The effect that Mr Hlongwane would have given

18 MAY 2015

PHASE 2

money to the late Minister? No.

ADV LEBALA: Is there any other way in which you could imagine, be imaginative, that Mr Hlongwane used to influence Mr Modise, other than giving him money, based on figure 1 and figure 2 on page 18 of your
5 statement?

COL DU PLOOY: I have no evidence to that effect.

ADV LEBALA: Have you come across such evidence, we know that you do not have it, have you come across such evidence in any manner?

COL DU PLOOY: [Indistinct].

10 ADV LEBALA: The affidavit of Gary Murphy, SFO, your investigations that were halted, if any.

COL DU PLOOY: I have no evidence where Mr Hlongwane would have given late Mr Joe Modise any money in influencing the awarding of the contract to GFC.

15 ADV LEBALA: Have you come across evidence that demonstrate that Mr Hlongwane influenced members of the Ministerial Committee, other than Minister Modise? If you do not know their names I could refresh you of their names.

COL DU PLOOY: There is no evidence that I know of, that Mr
20 Hlongwane [indistinct] or paid any government official at any level, that I know of, to influence the awarding of the contract.

ADV LEBALA: Let us forget about the payment. Is there any other evidence based on figure 1 and figure 2, outside money, not money, *nie geld nie*, either in a form of a service, *'n dienste*, or in any other form
25 that demonstrates that Mr Fana Hlongwane improperly influenced

18 MAY 2015

PHASE 2

members of the committee in as far as the Strategic Defence Procurement Packages are concerned?

COL DU PLOOY: No.

ADV LEBALA: Have you tried to talk to members of the [indistinct] Acquisition Committee? We know that you did not investigate, but have you tried to talk to them?

COL DU PLOOY: Not myself, but I think [indistinct] tried to talk to Mr Dawie Griessel at Armscor, or his affidavit, to just get a more specific affidavit [indistinct].

10 ADV LEBALA: Mr Dawie Griessel was not a member of the [indistinct] Acquisition Committee. So, you do not know whether any. We know that you did not, but you are saying some of your colleagues tried to Mr Dawie Griessel. If I could be specific, do you know of any detail that informs us that your colleagues in the teams, tried to talk to members of
15 the [indistinct] Acquisition Committee, in as far as this issue is concerned of improper influencing of awards?

COL DU PLOOY: Not the members on my team that I know of.

ADV LEBALA: Did they talk to the [indistinct] Acquisition Steering Board?

20 COL DU PLOOY: No.

ADV LEBALA: From what you are saying they did try to SofCom, because you are saying that one of your colleagues talked to Dawie Griessel.

COL DU PLOOY: That is correct.

25 ADV LEBALA: Is there [indistinct] the discussion between your

18 MAY 2015

PHASE 2

colleague and Mr Dawie Griessel?

COL DU PLOOY: The only thing I have on my computer is a draft affidavit. I am not sure, but I doubt if it was finalised [indistinct]. The reason for the one point is to try to concise the Section 28 affidavit, 5 because it is like on tape, so you talk a lot so the record is very long. That was the one purpose, and the other was also to maybe add certain aspects, but I do not know.

ADV LEBALA: If you were to stretch your memory backward, does that report tell us that any person within and outside the Government of 10 South Africa, improperly influenced the award or conclusion of any of the contracts arising from the Strategic Defence Procurement Packages?

COL DU PLOOY: I am not 100% sure how to answer that question, because the only way I know how to answer that specific question is 15 what I am trying to say the whole day, is directly, I have no direct evidence of any level that was paid. But, I have evidence under my control, or information under my control, showing that certain individuals financially benefitted, and what they did, influence or no influence, I do not know. But, that is where the circumstantial evidence come in, to say 20 here is evidence or here is information saying they received X amount of money. But, if that person influenced the process I cannot say.

ADV LEBALA: Colonel, let me understand. Is there anything wrong in commercial context, given the country in which we live, it is a capitalist society? If someone benefits from a transaction that is one thing, that is 25 one thing. You could even reduce it in the context of the Arms

18 MAY 2015

PHASE 2

Procurement Commission, but in the context of term of reference 1.5, because my question is to try and establish, because I could take you to the pages of BAE, page by page, the Annexures attached, to establish what comes out of the evidence [indistinct] by term of reference 1.5.

5 But, you are laying a bases for me that there might not be need for us to go there. What has become clear is that there are red flags, and there is no doubt that an investigation has been done. I cannot say to you “So what, benefits were there, so what. Fana Hlongwane got the money, so what.” He got the money, he benefitted, but let us demonstrate that
10 after he did that, this resulted in an improper influence of members of the Ministerial Committee, and the result was the bid was given to the German Frigate Consortium, the bid was given to BAE. Do you understand my question, sir? Because the Commissioners are going to call me to order if I ask you questions in the abstract.

15 COL DU PLOOY: Honourable Chair, [indistinct] I asked the question, because I interpret the terms of reference that it only deals with the influence of the main contract. As I explained that the evidence, information under my control and what we looked at, we did not look at that part where direct evidence exist of influencing or paying a minister
20 off, and then influencing the awarding of the contract. I am not saying that we only looked at the informal process, and when the case came in 2000 they sat around a table and say we are only going to look at the informal process. We did not understand the arms deal, and as I understand from Advocate Ferreira, it was when they went through the
25 documents, the affidavits of Section 28, or the process, subpoenaed

18 MAY 2015

PHASE 2

documents via Section 28 and so forth, it was discovered by for instance our analyst, Lucas Venter. And this is my version, how I understand everything work, that he found that more, he actually alerted us to this informal process behind the scenes. Then the investigation, where I was involved in, only focussed on that behind the scenes, receiving of money, not influencing the main contract, but it was on the President's matter and Shabir Shaik when he was part of the BEE part. If we come back to BAE, again, the British say that there was a covert system in using ages of which somebody in South Africa to influence people, Government officials, or the correct people that has a say in the awarding of. But, if those agents ever paid money or influenced I do not know. All we have, and the evidence we have on BAE is, that Fana Hlongwane, a Special Advisor to Minister Joe Modise, received money via a covert system that BAE implemented in a way to stop, or to prevent journalist or other people to find them, or to investigate them. So, if you make an inquiry, the inquiry will not be to say this money was paid to Fana Hlongwane. BAE you will not find, because in the bank statements it will not say BAE it will say Red Diamond, and that company cannot be linked to BAE, and that is where the covert system comes in. We only looked at that part, not at the other levels, the direct [indistinct]. Hopefully that answers the question.

ADV LEBALA: Perhaps, I think my last question on this would be in the context of what one witness said before the Commission. Former President Mr Thabo Mbeki said the following: "I have challenged, and I still challenge that anyone should show me that my ministers received

18 MAY 2015

PHASE 2

payment, or someone improperly influenced them.” Let us park there. It is common cause that this relationship between Joe Modise, the late Minister Joe Modise and Mr Fana Hlongwane, that is not in dispute. Mr Fana Hlongwane in his statement says “I was the advisor.” That is not
5 disputed. But, let us take it beyond that. Look at figure 1, figure 2, because that is the nearest that we can appreciate about improper influence in the context of term of reference 1.5. Is there something that you have, or that Gary Murphy from the UK gave you, or that the German investigation give you, limited as it was, that demonstrates that
10 Mr Fana Hlongwane gave the late Mr Joe Modise money, and not only that, improperly influenced him to make it a point that the bid goes to BAE, or to German Frigate Consortium, in the context of term of reference 1.5?

COL DU PLOOY: I do not know of any evidence [indistinct]. I do not
15 have evidence to that effect. But, [indistinct].

ADV LEBALA: [Indistinct] it is a problem, because your investigation was limited. For instance, look at what you say in page... Look at your statement quickly, in page 41 paragraph 145, and I hope I am not being called to order, that I have [indistinct] to go into detail unnecessary. You
20 yourself, may I read it for the record? The heading is [indistinct]:

“I was not involved in the investigation.”

Even in the terms of figure 2, because you were not involved at all. Here you make absolute reliance on what others said. But, if you want us to go into it we will. I know that you want to testify about the
25 payments made to the late Minister Modise, the red flags. And, those

18 MAY 2015

PHASE 2

red flags, I wish you could see our closing submissions if need be, we will debate them with the Commission. I am not the one to say payments were made, so what, I am not a witness. Now, in this context, if need be, I will invite you to say anything about Conlog at a later stage,
5 if you permit me.

COL DU PLOOY: I can address Conlog at a later stage, but again, and that is what makes it so difficult today to testify, because when you ask a question about did late Minister Modise, was he influenced, and it is regarding the BAE I say no. But again, we looked at the informal
10 process, and again, I am only here to say there was this information, then it is for the Commission to call, [indistinct] or anybody else [indistinct] or Annemarie [indistinct]. But, all I am trying to say is here is information under my control, where he stated it under oath, [indistinct], stating how the late Minister Modise received shares in Conlog as part
15 of the Nip process, and where that Logtech was part of BAE. It brings me also to a document, just for interest, just allow me I am trying to explain, on page 227, it is a faxed document from Allen McDonald, Marketing Director of South Africa on BAE, from Richard Chate to him, that was one of the [indistinct], and CC [indistinct] Irving, BAE Executive
20 based in South Africa, and that was on 10 June '97. Not to say that this means anything, but that is what I am calling circumstantial evidence. It shows in the third paragraph from the top:

*"This morning I discussed this intelligence with [indistinct], and we agreed that it was necessary to deploy all our resources to ensure that
25 JM intervenes in the process, and to come to the conclusion that the*

18 MAY 2015

PHASE 2

short term Corvette Solution would in fact be detrimental to his long term complete force design ambition. I am meeting with our Durban friend tomorrow and will ask him for his assistance.”

That is what I am trying to explain, to say I have to bring in Conlog to
5 say if you ask the question was there any payment that they know of,
was there any direct influence? No, I do not have that, but I have this
circumstantial evidence [indistinct].

ADV LEBALA: You know, and the other difficulty come, and this is part
of the testimony [indistinct] taken you through, former Minister Kasrils
10 came to testify about the bigger picture that Cabinet and the
Government was looking at, irrespective of who was giving us a better
price in as far as some of these [indistinct] are concerned. Short of
saying, and I am not testifying, it does not matter whether the prices
were low, whether we were going to get a better good deal [indistinct]
15 relationships between South Africa and the success will become
compelling, he says it was a bigger picture. Did you and your team go
and interview him and his colleagues about some of these issues that
were of concern?

COL DU PLOOY: No, we did not. But, I would like to maybe let the
20 Commission can just understand. That is one of the challenges, or were
one of the challenges, to get, or to interview a minister. It is not, in
investigation everybody would say they will assist, but not everyone is
willing to put it under oath. So, we did not, due to my previous
experiences trying to, we even tried to get an audience with previous
25 President Mbeki, we could not get that also, to find out certain issues

18 MAY 2015

PHASE 2

that he had to clarify for us. We could not, and although the one minister that I did get an affidavit from was Mr [indistinct]. But, to answer you, no, I did not.

ADV LEBALA: Now, let me test this. We know your testimony in as far
5 as the relationship between Mr Fana Hlongwane and the late Minister Joe Modise is concerned, and we know... [intervene].

CHAIRPERSON: I am sorry, Advocate Lehaba. Just [indistinct]....
[intervene].

ADV LEBALA: This is the last... [intervene].

10 CHAIRPERSON: Just a rough estimation.

ADV LEBALA: 30 minutes.

CHAIRPERSON: 30 minutes. So, it is 14:55, so you will be done with
15:25 with all of this. Thank you.

ADV LEBALA: Certainly. We know what you testified about, what could
15 not be established between the relationship between Mr Fana Hlongwane and late Minister Joe Modise. Now, let me ask this question, was there any investigation either by yourself or your team or other teams, in as far as the relationship between Mr Fana Hlongwane and former President Mr Mbeki is concerned, in as far as the Strategic
20 Defence Procurement Package are concerned, in the context of term of reference 1.5?

COL DU PLOOY: Honourable Chair, you are asking again about
relationship between Fana Hlongwane and President Mbeki, no there
was none.

25 ADV LEBALA: Between Fana Hlongwane and Minister Irvin?

18 MAY 2015

PHASE 2

COL DU PLOOY: None.

ADV LEBALA: Between Mr Fana Hlongwane and Mr [indistinct]?

COL DU PLOOY: None.

ADV LEBALA: Between Mr Fana Hlongwane and Mr Terra Lekhota,
5 who replaced the late Mr Joe Modise after he passed on?

COL DU PLOOY: None.

ADV LEBALA: I just want to refer you to one or two paragraphs in Mr
Hlongwane's statement, something that if he had sufficient time, I would
have wished to take you through before you came to testify. I will read it
10 to you, but the theme of the paragraph I am going to take you through,
just informs us that Mr Hlongwane's testimony is that he signed the
contract with the late Minister Modise, and he was not an employee of
the Government. He says he was a consultant. Do you want to
comment on that?

15 COL DU PLOOY: I did some investigation in that regard, because as
the Commission knows that before 2004 in the old Act 92 you could not
[indistinct], that is how I understand it. According to the records there is
an email, and I do not think it is part of my bundle if I can remember I
went through as I prepared the past two weeks to look for documents,
20 he was a special advisor according to [indistinct], there was an
agreement. But, according to the records of the DOD they said he was
appointed one day in 1998, and then the next day his employment was
terminated, but he was an advisor to the minister, and we had a
consultation with General Steyn, and the SFO, where [indistinct]
25 mentioned in her notes where General Steyn said according to him,

18 MAY 2015

PHASE 2

when he was there and the role Mr Hlongwane played, he was a government official in his eyes. But, I know in court of law this may be different aspects to prove. So, according to me at this stage, what we have and what I know about, that is for the court to decide at the end of the day, and if you put all the information in front of them, his role and what he did, and then to make a decisions, he could have been regarded as a government official. But, there is no salary advise, because what we were looking for is to see if there was a salary per month, like all of us on PERSAL, did he receive, and he could not find. According to them, no, there was no salary payment to the record.

ADV LEBALA: On those bases, am I right to say there was nothing that demonstrated that he was a public servant?

COL DU PLOOY: Not official documentation that demonstrates that, yes.

ADV LEBALA: He further says in line with what you say that there is no direct evidence in the context of figure 1 and figure 2, to demonstrate that he improperly influenced by way of money or in any other form, let me read to you what he says in page 8961, public hearings where the testimony of Mr Hlongwane was dealt with, on the 11th December 2014.

I am reading from line 18:

ADV HLONGWANE: I can further categorically state that I did not 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.”

18 MAY 2015

PHASE 2

Then he further says, page 8961 line 24 to 25:

“ADV HLONGWANE: I did not participate in the decision making process relating to the procurement process, and can therefore unfortunately not assist the commission in this regard. I can further state
5 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 5 in the acquisition process had received any gratification relating to the award and or conclusion of the contracts.”

10 Now, if one reduces it to what President Mbeki said when he said “I challenge anyone to demonstrate to me that my ministers received gratification improperly, or through money, or someone influenced my ministers”, and I am mentioning my ministers because he was the chairperson of that Ministerial Committee. Do you want to comment on
15 this?

COL DU PLOOY: My comment is the same, that we do not have prove of money paid, or any other benefit paid, that we know of. But again, if you look at the manner in which Fana Hlongwane received the money. But, to answer your question, no, we do not have that.

20 ADV LEBALA: We are going to the red flags. It is okay, we will deal with the red flags when we make closing submissions, and it does not mean that they should be ignored, I assure you. We trust the judgment of the Commissioners on the red flags. I just want to deal with two aspects in the remaining 20 minutes. Let us go to your statement, page
25 38 paragraph 127. I am going to request you to just flag that paragraph,

18 MAY 2015

PHASE 2

page 38 paragraph 127, and look at page 36 paragraph 118. Permit me to put the cart before the horse.

The bases of what starts on page 36 is better qualified by what we read in page 38 paragraph 127, and let me read it to you and the
5 Commission.

"I came to the conclusion, and formed the perception that there was little or no political will to continue with this particular leg of the investigation, which would apparently include the arms deal as a whole."

Now, we know that after the DSO was [indistinct] in 2009, you joined the
10 DPCI, am I right?

COL DU PLOOY: SAPS.

ADV LEBALA: And you worked under the guidance of General Meiring, who was your senior.

COL DU PLOOY: That is correct.

15 ADV LEBALA: General Meiring came to testify that it can never be found that there was no political will to make it a point that investigations are [indistinct] and concluded. But, before we test that, I would like us to go to page 36. Now, Commissioners, this is being made in the context of the challenge that the investigators found in trying to establish
20 some of the evidence. We see the limitations. I am not making submissions, I have got to be careful. Up to so far we have seen some limitations in as far as some of the evidence that came before the Commission is concerned.

Now, this [indistinct] has to be appreciated in the context of the
25 following, and I would like to start reading from page 36 paragraph 118:

18 MAY 2015

PHASE 2

“Numerous challenges were experienced during the investigation, as evidence per the copies of memorandums dated 13 February 2007, 10 March 2009, 18 August 2009, 7 December 2009, 10 February 2010 in a [indistinct] draft letter to the minister, and 31 May 2010. See attached
5 Annexure JDP42, JDP43, JDP44, JDP45, JDP46 and 47.”

Now, I would like us to start with, and let us be quick, JDP42 file 6 page 2212. Now, you have got to bear in mind that your colleague, or your [indistinct], General Meiring says that there is no way that you can talk of lack of political will. You say there was lack of political will. We
10 do not know if the Commissioners concluded on this evidence before the Commission, that one could say there was adequate evidence, or there was inadequate evidence, I trust them. But, let us see in the context of what the investigators came across. Page 2212, now, just briefly tell the Commission what this letter is about? But, I am going to
15 introduce it. If you look at page 2212 you will see that the letter is from the Director General of Justice and Constitutional Development, am I right?

COL DU PLOOY: That is correct.

ADV LEBALA: If you look at page 2214 you will see [indistinct].

20 COL DU PLOOY: That is correct.

ADV LEBALA: At the bottom you see that the letter is date 14 February 2007.

COL DU PLOOY: That is correct.

ADV LEBALA: Let us go to page 1. The subject of the letter, the letter
25 is addressed to “Dear Advocate Semelane”. Look at the topic, the

18 MAY 2015

PHASE 2

subject, RE. What was the issue about here? You could summarise it quickly.

COL DU PLOOY: I added these memorandums trying to show the Commission the challenges we had. So, this is not necessary, you will
5 see it is already in 2007 we had a difficulty from BAE to obtain the MLA, and you will see that in the German part also that they sent the MLA. As I understand, and I am not a prosecutor or an advocate, but as I understand from all of this, that the DG at that stage was Advocate Semelane that became later the NDPP. He had a difficulty, or a
10 difference in opinion that all MLA's have to be directed through his office, Central Authority, and Advocate [indistinct] argued that it is not necessary, that is not why the ICCMA Act stands for, because we already had an investigation at the DA's [indistinct]. Now, then it does not have to go through to the Central Authority and to the police to
15 handle, that information can be sent to us. This is what I understood, the background of all this, between the two of them [indistinct].

ADV LEBALA: Let us complete the picture by reading paragraph 123:

*"With reference to your comment, the department has reached the decision after noting from your request, that the said individuals and/or
20 companies are not being investigated by the South Africa Law Enforcement Authorities. I respectfully wish to draw your attention to the following: The Act does not require that a criminal investigation should be conducted locally in respect of the persons being investigated by the foreign state, or in respect of the information sought via mutual
25 legal assistance by such foreign state."*

18 MAY 2015

PHASE 2

By the way, the issue of the mutual legal assistance was a burning issue at that time, am I right?

COL DU PLOOY: That is correct.

ADV LEBALA: Let us go to page 2213. For you to appreciate the
5 [indistinct] paragraph 3 that I would like to refer you to, let us read the paragraph starting with furthermore, page 2213:

*“Furthermore, in light of the duties and obligations contained in the scheme, as it relates to the requesting and requested countries, it is submitted that the decision whether or not to render assistance, must be
10 made, and should the request be refused, the requesting country is to be informed accordingly, citing reasons for the decision.”*

Why are we talking about countries here, are you able to explain?

COL DU PLOOY: At that stage, if I remember correctly, that is when it first came to our attention that there is an MLA at the Serious Fraud
15 Office in the UK, sent an MLA if I am not mistaken, to South Africa and that they had certain information. If I recollect correctly.

ADV LEBALA: Paragraph 3:

*“I therefore wish to state that as the Central Authority, you are called upon to decide whether or not assistance is to be granted in the matter
20 at hand, in terms of the [indistinct] scheme. Should you refuse to render the requested assistance, you are furthermore obliged to provide reasons to the requesting country for this decision.”*

Let us go to page 2214, the last paragraph:

*“In closing, I therefore wish to submit that the clear decision whether or
25 not to grant approval for the assistance sought in terms of the [indistinct]*

18 MAY 2015

PHASE 2

scheme should be made. Alternatively a decision in terms of Section 7 of Act 75 of 1995 is called for at this point already, so as to avoid unnecessary delays and compromise the evidentiary value of the information obtained.”

5 Tell me, were there differences in your view, in as far as the subject of the mutual legal assistance is concerned, between the NDPP, then Advocate Pikole, and the Director General, Advocate Sinora?

COL DU PLOOY: I only found this letter, as I said, as I searched through the MLA's. But, according to my memory there was a difference
10 in opinion between the NDPP and the DG.

ADV LEBALA: Let us quickly go to Annexure JDP43, 56 page 2215. You will see that if you go to page 2216 the letter is from the Director General, Advocate Simelane, to Advocate Nkhotedi [indistinct] Acting National Director of Public Prosecution. Now, the subject, if you read on
15 page 2215, is request from which your legal assistance column BAE [indistinct] of New Jersey. If you look at page 2216, the date is 10 March. What does that line stands for? Please look at 2216, are you able to assist at the bottom of page 2216, under the italics and name of Advocate Menzi Simelane. Date 10-3-9, what does it signify, are you
20 able to tell the Commission?

COL DU PLOOY: As I stated before, these letters and memorandums I attached just to show that there was difference in opinion, and some challenges that we had to overcome. In other memo's I must just check, in other files that is attached to my affidavit, I know there is
25 memorandums where Advocate Downer addressed these issues in

18 MAY 2015

PHASE 2

depth.

ADV LEBALA: Would you quarrel with me if I was to say 10-3-9 signifies 10-03-2009?

COL DU PLOOY: That should be correct, I also assumed that.

5 ADV LEBALA: Now, let us go to page 2215 paragraph 2:

"I have noted in particular that the order of Honourable Justice Shongwe, dated 5th December 2008 is attached."

Paragraph 3 of which is instructive:

10 *"The request by the National Prosecuting Authority does not comply with this part of the order. Further, it is unclear from National Prosecuting Authorities memorandum, how part 1 and 2 of the order have been dealt with. As you should be aware, the approach followed by the National Prosecuting Authority, in making a direct court application, is taking where the applicant (the National Prosecuting Authority in this case)*

15 *intends pursuing the matter without going through the Central Authority. It is therefore unclear on what bases the National Prosecuting Authority's request is being sent to the Central Authority. You are requested to provide clarity and lay legal bases in this regard, so that I can consider legal position applicable to me as a Central Authority.*

20 *Regarding the manner in which the National Prosecuting Authority has dealt with this matter, I am concerned that it was represented to the court that this matter was urgent, hence the extraordinary step taken to not inform the Central Authority of the court application. This notwithstanding, neither the minister nor the Central Authority were*

25 *advised that the application was being made, or provided with the*

18 MAY 2015

PHASE 2

relevant documents. You are hereby requested to provide the Central Authority for consideration with a copy of the papers used in the ex parte application, except the statement by Advocate Mwendwe, which is contained in the memorandum.”

5 Now, we start to see that there were challenges in as far as this two organs of state are concerned, in as far as the MLA issue comes to the surface, is it not?

COL DU PLOOY: That is correct. I think this document refers to the four MLA's that was sent just after the searches in November 2008, in
10 the earlier offices of Fana Hlongwane. These MLA's early December, I am not sure when it was sent, and there was an *ex parte* application [indistinct] Lichtenstein, Switzerland and I think it refers to them both.

ADV LEBALA: Well, I do not want to spend time, but there is one or two of these Annexures that really demonstrate the real problem, or the
15 challenge that the investigating team faced, for instance let us look at JDP44, starting on page 2217. If you see page 2216 you will see it is going to the Acting National Director, it is from the prosecuting team, Advocate Downer, am I right?

COL DU PLOOY: Correct.

20 ADV LEBALA: Jy het nie antwoord gegee nie.

COL DU PLOOY: You asked if it was Downer, I said yes.

ADV LEBALA: The subject, page 2217, outstanding arms deal investigation, German Frigate Consortium Investigation, Project BAE.

*“Background: The purpose of this memorandum is to request a
25 meeting to resolve certain outstanding issues regarding the*

18 MAY 2015

PHASE 2

abovementioned investigations, and to check the way forward. To recap, the following issues need to be resolved:

3.1 A copy of the MLA request receipt from the German Authorities by the Department of Justice still needs to be obtained.

5 *3.2 In this regard our draft letter to the Minister of Justice, dated 15 June 2009 refers. We are advised that this letter was placed on hold, pending the establishment of the DPCI. It would appear that the time is now right to take the matter further.*

10 *3.3 The position of the German Investigation with the DPCI needs to be clarified, while let to believe that this investigation was not referred to the DPCI as one of the main investigations referred to the DPCI, despite the fact that it forms part of the declared investigation into the Corvette program, but has not been completed.”*

We do not have to complete all the letters, but I just want to take the
15 Commission through the themes, now that we do not have enough time. Let us go to the next letter, JDP45... [intervene].

CHAIRPERSON: Advocate Lehaba, you can be rest assured, we have seen these letters. They indicate that there seems to have been some tension between the NPA and the Department of Justice. It is
20 [indistinct]. Can you get to the next point, if you can?

ADV LEBALA: Now, the context of all these letters in as far as the MLA request is concerned and your investigation... I see you are reading, I can repeat so that you should be able to answer the Commission. Now, all these letters and information that we are taking you through, it
25 demonstrates two things: The challenge created by the MLA which was

18 MAY 2015

PHASE 2

being requested from both sides, and the tensions between the departments.

In as your investigation is concerned, what would you like to say with regard to this aspect and the [indistinct]?

5 COL DU PLOOY: I am saying in my affidavit that is how I felt at that stage. I formed that perception because it did not just come in a sense of just the BAE. Honourable Chair, you must also understand that in 2009/2010 it was difficult times in the sense of, if I can call it the politics, because in April 2009 President Jacob Zuma's matter was withdrawn, 10 although the team, the investigation team, differed from Advocate Mhlele, the acting NDPP at that stage, and we believed there was a *prima facie* case, and after nine years of investigation and a big part of my career I spent on that specific matter, and it was withdrawn [indistinct].

15 Then, after that with the BAE matter, we sent the MLA's and what I am trying to demonstrate with all the memo's is to make the Commission aware that me, as an Investigating Officer, let us say very low in the hierarchy, had it very difficult and it was basically impossible for me to investigate such a matter without the assistance of a 20 prosecutor or an NPA for that matter. Because of the MLA's we also, there was the Lichtenstein application for the asset forfeiture, and after the order was obtained, Advocate Simelane also, if I remember correctly, filed a certificate and said we are not going to continue with that specific asset forfeiture in respect of Fana Hlongwane.

25 Also, in my bundle there is a [indistinct] side to it, where he is an NPA

18 MAY 2015

PHASE 2

[indistinct], where he also set out his views. We also had the Swiss authorities that sent as an MLA saying that they have information on their side, in respect of an MLA that was sent from the SFO to them, and then they found moneys were paid into an account, \$11.0 million, or
5 something, for Mr Hlongwane.

But, the situation was that we had to travel to Switzerland, and according to their law in short was that we had to be there, and to sit down with Mr Hlongwane's legal representative, representatives and ourselves and to go through the documentation to indicate which
10 documents are applicable in our investigation, and then we can have it. That specific trip oversees was also difficult too, because Advocate Simelane felt that it is a police matter, which is correct, and that he must deal with it.

So, I applied also through assistance for appointment of prosecutors,
15 but you have to make appointments like three months in advance to get a date with Mr Hlongwane's legal team. So, the logistics is very difficult, and I only received a week before the date of the meeting with the defence in Switzerland authorisation from General Dramat. After that I still have to obtain from the minister and also then the prosecutor, so it
20 is just impossible.

It is also, there is in a memo, I also understand if I can take the Committee to page 2232 in the same memo, it is paragraph 5 on page 2232, where Billy Downer drafted to Advocate Simelane a memo where he states in paragraph 5:

25 *"It was subsequently established that the Director General Justice*

18 MAY 2015

PHASE 2

[indistinct] had informed Switzerland and Lichtenstein that the letters of request were withdrawn.”

I understood from Advocate Elise le Roux, who was the prosecutor in the BAE matter with the MLA's which was her responsibility, informed
5 me that we were waiting for the MLA's, besides the fact that we struggled to locate the MLA's that we sent to our own Central Authority, as I mentioned in my affidavit, where it was given to the NPA and it just could not be found by a justice, was it sent over or not. Those ones that were sent over, Lichtenstein and Switzerland, seemed like they were
10 withdrawn.

So, at that stage I felt what can I do as Investigating Officer here on the ground, and I do not have the power. Even if I do send the information, I am requesting the information, it was cancelled or withdrawn. As I say, it was my perception I am not saying that anybody
15 intentionally did anything wrong or tried to throw a spanner in the wheel or trying to derail the investigation, I am not saying that at all. All I am saying is my perception at that stage was I am the only investigator left, it is lots of information to be handled, you actually need a team to investigate. I went to General Meiring, after I numerously drafted
20 presentations for General Dramat and other generals, and I said I even worked out a budget, I worked out how much it will cost, how long it will take, everything, and even after that nothing still. At that stage in September, as I said, General Meiring informed me and said he doubt whether this is going anything further, there is nothing and direct
25 evidence, and maybe he did not understand the fact of the informal

18 MAY 2015

PHASE 2

process, the circumstantial evidence that we needed to obtain. I doubt it, and therefore he could say there was nothing, it is true.

He said to draft him a memo, which I did, and I explained that these reasons are what is making it difficult to continue with these
5 investigations. It is also attached to my affidavit, whereafter he and Colonel Ronel van Wyk, who is now Brigadier, drafted the final memo and that was sent to General [indistinct] to close the case.

ADV LEBALA: Thank you. There are just one or two aspects that I would like to... [intervene].

10 CHAIRPERSON: Advocate Lehaba, before you come to one or two, ask that. You promised me that by 25 past we will be done. I see it is 15:40 now.

ADV LEBALA: Chair, let me... [intervene].

CHAIRPERSON: How long are you still going to be, or what sort of time
15 you still need to finish this witness?

ADV LEBALA: I will tell you. We have a question on the containers, just one or two questions. We have the question on the testimony by Ms Christine Guerrier, the in house counsel from... [intervene].

CHAIRPERSON: That I understand, Advocate Lehaba. We are just
20 trying to find out the time estimation, more or less.

ADV LEBALA: I assure you that I will not be long.

CHAIRPERSON: Well, what does that mean, five ten minutes?

ADV LEBALA: I have learned to mislead seniors and presiding officers since I came to this Commission. Let me handle it with care. We will be
25 done before 16:00, Chair, I assure you.

18 MAY 2015

PHASE 2

CHAIRPERSON: I will [indistinct] long before 16:00. Can I suggest in that case that... [intervene].

MR PANSEGROW: Mr Chair, I apologies profusely. My client has informed me also that the call of nature is inhibiting his mind processes
5 at this stage, he will need a brief adjournment. I can also inform the Honourable Court and Commissioner that I might have one or two questions on re-examination also, that might take a few minutes. I respectfully suggest that it might be appropriate perhaps to refer the matter till tomorrow morning.

10 CHAIRPERSON: Well, I agree with you. But the probabilities are that it will take another three or four hours before you will re-exam. I suspect that there are other people who will want to cross-examine your client, and you can only re-examine after cross-examination. Advocate Lehaba, we are going to adjourn until tomorrow morning. You say
15 tomorrow, what sort of time you think you might need?

ADV LEBALA: If we start at 09:00 we will be done by 09:30.

CHAIRPERSON: 30 minutes at most.

ADV LEBALA: Yes.

CHAIRPERSON: Colonel, I think you do have now an opportunity of
20 going through the evidence of those four people that we have mentioned, so that we can be in a position to proceed with your evidence tomorrow morning. I am going to work on the bases that we will start at 09:00 and by 09:30 the cross-examination will stop.

ADV LEBALA: Certainly, Chair.

25 CHAIRPERSON: Thank you. We will adjourn until tomorrow morning

18 MAY 2015

PHASE 2

and we will start at 09:00.

(COMMISSION ADJOURNS)

5

10

15

20

25