

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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HEARING ON 29 JUNE 2015

CHAIRPERSON: Thank you. Good morning everybody. Maybe firstly, I should apologise for starting late. There were one or two issues that we had to attend to, before we could start with today's proceedings.

5 Advocate Moerane, I am made to understand that you are going to be the first one to kick off.

ADV MOERANE: That is correct, Chairperson. Now, Chairperson, Commissioner Musi, I will start of with a, I will have to make an expression, which goes as follows. Parturient montes, nascetur
10 ridiculus mus which means the mountains will be in labour and an absurd mouse will be born.

In simpler terms, Chairperson, it means all that work and nothing to show for it. About twelve years ago I opened my closing address in the Commission of Inquiry, in which I was involved with that Latin
15 expression from Horace, attributed to that Roman poet and author Horace.

I believe that those sentiments are even more appropriate to the labours of the critics and the whistle blowers in this Commission, under the leadership of the mid-wife in chief, Dr Richard Young. These critics
20 and whistle blowers have inundated this Commission with a mountain of paper, books and other documents.

They have propagated theories and hypothesis, but have given very little, by way of facts. Without laying any foundation, they have asked this Commission to draw inferences from their theories and hypothesis,
25 which I will respectfully submit that except where their evidence is

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confirmed, by the evidence of the State actors and witnesses, who gave evidence in this Commission, their theories should not be accepted, as having any credibility and validity.

In this context, Chairperson, Commissioner, we are referring in particular to Ms Patricia De Lille, Mr Terry Crawford-Browne, Dr Gavin
5 Woods and Dr Richard Young. The last mentioned, who appears to have been the fons et origo of most of the allegations of corruption and other impropriety that appear in seven books and other publications.

These allegations, Chairperson, Commissioner Musi, have a way of
10 being recycled and reprocessed, under different colours. Well, the interesting thing about Dr Richard Young is that, in transactions, where he benefitted as a successful bidder, he sees no corruption. He sees no irregularity. He sees no impropriety.

These allegations of his have been [indistinct] criticised, particularly in
15 the submission of Department of Defence. But, what we found most disturbing, Chairperson, is that last Tuesday, 23rd of June, Dr Young told a bare faced lie to the Commission that he had removed the offending references, in particular to the Chairperson of this Commission and the co-ordinator, Mr Mdumbe, from his website.

20 That is not correct. If one visits that website today, you will still find those offensive remarks. He refers, Chairperson, to the Chairperson and Mr Mdumbe as unapologetic bare faced liars. He undertook, when he gave evidence, on the last day that he gave evidence, to remove those references from the website. Last week he, with a straight face,
25 told the Commission that he had done so and he has not done so. This

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is a person, who wishes the Commission to accept his theories and his hypothesis.

Chairperson, Commissioner Musi, we submit that this matter is about a government, which went out of its way, to ensure that the acquisition
5 process is as transparent as possible and that it is executed in the most cost effective way, resulting, at some point in a surplus, even as payments were being made. We submit that this acquisition process addresses the transformation challenges, of a new Constitutional dispensation.

10 It was based on the values of dignity, achievement of equality, advancement of human rights and freedom, achievement of non-racialism, non-sexism, supremacy of the Constitution and the rule of law. Notwithstanding all the above, the government and the country became the target of a sustained and vicious attack, over a period of
15 more than 16 years.

But, fortunately, Chairperson, Commissioner Musi, we have come to realise, through the rigorous details and far reaching enquiry, where everyone, including the critics and the whistle blowers were given every opportunity to place factual evidence, before this honourable
20 Commission. We have come to realise that these attacks are malicious. They are spurious and have no factual basis.

We hope and trust that this Commission will finally bring this matter to an end, lifting the cloud of suspicion that has hovered over the country and the government for so long. We fully associate ourselves with the
25 trenchant criticism of all these critics and whistle blowers, made in the

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submission of the Department of Defence.

Chairperson and Commissioner Musi, we commend of written submissions, our main and supplementary submissions to the Commission and we shall speak to them. At the outset, we wish to
5 summarise the terms of reference of the Commission, in particular term of reference one, five and six.

That is with specific reference to the role of the members of the Inter Ministerial Commission, Inter Ministerial Committee, I beg your pardon. We believe the Commission's task, as far as the Committee is
10 concerned, is to establish the rationale, for the SDPP, including the affordability of the SDPP programme.

Secondly, to find out whether any person within or outside the government of the Republic of South Africa improperly influenced the award or conclusion of any of the SDPP contracts. Thirdly, to establish
15 whether any of the contracts awarded in the SDPP is tainted by fraud or corruption, capable of proof, such as to justify its cancellation and that the ramifications of such cancellation.

Chairperson, I do not think it is necessary to have an overview of the Constitution and the provisions of the Constitution that have a bearing
20 on the role of the Inter Ministerial Committee, save just to mention them, because they have been dealt with in numerous of the submissions. The most important of course, being Section 85 of the Constitution, which deals with the President and the National Executive and their role in policy creation, policy formulation, policy implementation.

25 A great deal of what this Commission has heard, deals with their

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functions, as members of the National Executive. We submit that their mandate, Constitutional mandate is actually found in Section 85 of the Constitution, read in particular with Section 200 of the Constitution, which establishes the Defence Force, 200 Subsection (1):

5 *“The Defence Force must be structured and managed as a disciplined military force.*

2. *The primary object of the Defence Force is to defend and protect the Republic, its territorial integrity and its people, in accordance with the Constitution and the principals of international law, regulating the use of*
10 *force.”*

We know, Chairperson, that some about pacifists, like Mr Terry Crawford-Browne would rather, there were no Defence Force and all the revenue of this country be spent on socio-economic development. But, instruction of the Constitution is that there has to be a Defence Force
15 and its primary object must be to defend and protect the people of the Republic.

And this is the supreme law of the country. With regard to political responsibility, Section 201 states that, Subsection (1):

“A member of the Cabinet must be responsible for defence.”

20 And 2:

“Only the President, as head of the National Executive, may authorise the employment of the Defence Force, in co-operation with the police service, in defence of the Republic, or in fulfilment of an international obligation.”

25 And Section 202 deals with the command of the Defence Force,

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Subsection (1):

“The President, as head of the National Executive, as Commander in Chief of the Defence Force, then must appoint military command of the Defence Force.”

5 Subsection (2):

“Command of the Defence Force must be exercised, in accordance with the directions of the Cabinet member, responsible for defence, under the authority of the President.”

Now, the policy framework relevant to the mandate and terms of
10 reference of this Commission includes the white paper on defence that was developed by the new democratic government that assumed office in 1994, as well as the national industry policy. At the time, when these acquisitions were commenced, we all know that the President of the country was the late President Mandela.

15 I know, Chairperson that many of the critics and whistle blowers wished to divorce the late President Mandela from the acquisition process. But, the fact of the matter and the uncontradicted evidence is that this happened under his watch.

He went to Parliament and the opening of Parliament, State of the
20 Nation address on the 7th of February 1997 he stated the following:

*“Debate will continue this year on the white paper and the defence review. But, what is critical is to move towards practical implementation. One of the issues in this regard is the Defence Force’s requirements for equipment. The question here is not whether, but how these
25 requirements and how much the country can afford. As Commander in*

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Chief, I wish to emphasize that we shall not shirk our responsibility to the Defence Force.”

Now, the quotation here, Chairperson, is from paragraph 46.1 of the written submission by Minister Trevor Manuel, which is before the
5 Commission. The members, and this is common cause, of the Inter Ministerial Committee were Deputy President and later President Mbeki, who was Chairperson of the committee, Minister of Finance, Mr Trevor Manuel, Minister of Defence, the late Mr Joe Modise and later Minister Mosiuoa Lekota, Minister of Public Enterprises, Ms Stella Sigcau and
10 later Minister Jeff Radebe.

Incidentally, Chairperson, there has not been a single allegation made, against Minister Jeff Radebe. But, from June, 17th of June 1999, he was a member of that committee, which in December decided that the contract should be signed. Ms Stella Sigcau, at that time, was no
15 longer a member of the Inter Ministerial Committee, as she was then the Minister of Public Works.

But, Deputy Minister Kasrils, who gave evidence before the Commission, was not a member of Cabinet, because he was a Deputy Minister and attended deliberations of the Inter Ministerial Committee,
20 by invitation. The last member of this committee that I have not mentioned was Mr Alec Erwin, who gave uncontradicted evidence before this Commission.

Now, interesting thing, Chairperson, is that some of the critics, wished to attack the evidence of Mr Alec Erwin, when they were given more
25 than ample opportunity to come and contradict that evidence and they

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did not. Unfortunately, some of the criticism also emanates from some of the submissions by the evidence leaders.

But, let us say, at the outset that one cannot contradict credible evidence, given under oath, by other evidence that is hearsay, which is theories and hypothesis, particularly without putting those matters on
5 which the contradiction is sought to the witness, to react to such allegations. Chairperson and Commissioner Musi, we commend to the Commission the testimony of Mr Alec Erwin and his written submission, particularly at paragraph 25, of his written submission.

10 I think it is important to read this out, to refresh our memories. Mr Erwin expressed himself in the following terms.

*“The evolving policy framework of the mid to late 1990’s was informed by the public hearings that formed part of the consultation process, the addresses by Minister and the Presidency on pertinent issues of the
15 SDPP and related records. But, finally, the mechanism for implementing the SDPP was developed in, in the 1996 white paper on defence, the defence review of 1998, the National Industrial Participation programme and its operating guidelines, the NIP and related policy documents.”*

Now, we submit, Chairperson, Commissioner Musi, that although each
20 member of the Ministerial Committee dealt with his or her particular area of responsibility, in terms of the executive functions assigned to that particular member, the decisions taken and recommendations made that were presented, the collective wisdom of the IMC members. Then, it bears pointing out that in presenting their evidence, the members of the
25 IMC sought to make it clear that they were constituted as a sub-

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committee of Cabinet.

As such, they understood that they were tasked with taking charge of a project that was of strategic value to South Africa. That it was recognised that the reach of the SDPP had to extend beyond the
5 Department of defence, to encompass trade and enterprise development and advantage the country as a whole.

They were also guided by the values and principals of the Constitution, in particular the founding values and the supremacy of the Constitution, to which I have referred at the opening of my address, read
10 with the provisions of Chapter 11, to which I have also referred.

And that the committee were duly authorised to focus on the objectives that the National Executive sought to achieve with this strategic defence acquisition. The committee called for reports, including affordability reports, because there was more than one and
15 reports from officials.

They used their collective expertise and wisdom to consider reports that they had received and incorporated these in recommendations that they made to Cabinet. They presented the Cabinet with reports on the SDPP, as and when appropriate.

20 They also made recommendations to Cabinet on the available options for the procurement of this equipment. On the 18th of November 1998 and the 25th of November 1999 they participated in the taking of the final decisions by Cabinet.

What is of significance, Chair and Commissioner Musi, is that the
25 process between November 1998 and 1999 was a long and thorough

process, where they interrogated, in particular, the cost options and affordability. Finally, Cabinet decided that the way in which the procurement was to be implemented, satisfied the scriptures of the Constitution and the packages were affordable.

5 In essence, Chairperson, what their submissions traverse, is the material that was placed before the Commission, for purposes of fulfilling its mandate. In particular, to establish, whether there is any merit in the allegations of fraud, corruption, impropriety and irregularity that have over the years, been levelled by critics of the SDPP.

10 Then, we submit that the members of the IMC have understood that the task of this Commission extends to making findings, reporting and making recommendations to the President on the matters that they were charged, to investigate. One matter, Chairperson and Commissioner Musi, that we wish to emphasize, is that throughout their evidence
15 before this Commission, all the members of the Ministerial Committee, including former President Mbeki, were trying their best to assist this Commission in its task.

They did not have to be dragged here. They did not have to be subpoenaed. They came voluntarily, in spite of the fact that many of
20 them had not been in Cabinet for some seven years, six to seven years. But, they voluntarily came to assist the Commission.

We submit, on behalf of the members of the IMC unequivocally, that there has been no evidence of wrongdoing on the part of any of them, or in relation to their collective functions. As Minister Manuel has said:

25 *“The IMC has always maintained that as a sub-committee of Cabinet,*

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it acted within the framework of the law. The court challenges to the 18th of November 1998 decision of the Cabinet, to procure defence armaments under the SDPP, which have been adjudicated with finality, by our courts have found no merit in the complaints lodged, in those

5 *court proceedings. This is essentially, due to the fact that the executive decisions taken were in accordance with the prescripts of the law and the Constitution, in particular.”*

That is found in the written submission of Mr Manuel, at paragraph 20. The Commission was furnished with evidence of those court matters,

10 the applicant having been Mr Terry Crawford-Browne, who applied for the cancellation of the contracts, on various basis. He lost in the Western Cape High Court.

He applied for leave to appeal to the Supreme Court of Appeal. Leave was refused. He applied to appeal to the Constitutional Court.

15 Leave was refused. We submit, Chairperson, that the decision of Cabinet, to procure these armaments was rational and the process adopted, in arriving at the decision were authorised and they were thorough. They passed Constitutional [indistinct].

Our submissions are anchored in the testimony of various witnesses,

20 including the critics of the SDPP. Not one of those critics was able to produce evidence, as contrasted with theories and hypothesis of fraud, corruption, impropriety or irregularity in the decision making process.

If the Commissioner will bear with me. Now, in its final submission, the Ministerial Committee relies on the following evidence, the written

25 statements and the submissions, including the final submissions and the

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evidence of firstly, Mr Alec Erwin, Deputy Minister Ronnie Kasrils, Minister Mosiuoa Lekota, Minister Trevor Manuel, President Thabo Mbeki, the national treasury officials, including the final submission by Advocate Bruinders SC, defence, Department of Defence officials, including the final submission of Advocate Cane SC.

Ja. The Armscor officials, the DTI officials, including the final submission by Mr Chowe, the final submission of the evidence leaders, Ms Ramagaga and Advocate Mphaga SC. In paragraphs 94 to 103 of the final submission of Advocate Sibeko SC and Advocate Sello, and we say that, so that we do not have to repeat their submissions. They are all in line and form the basis of not only the evidence that was given, on behalf of the IMC, but also the submissions that we are making.

As I have already stated, Chairperson, the submission that we advance in so far as the critics of the programme concerned, they tendered evidence that was based on allegations, suspicions, theories, probabilities of impropriety and corruption. In the nature of Commission of Inquiry, which is a fact finding exercise, is facts, not conjecture, is what is required.

As I have already indicated, Chairperson and Commissioner Musi, on the 18th of November 1998, the Cabinet took a decision to procure the packages. This was an in principal decision, in that Cabinet required further interrogation of the cost and in particular the risk element of this acquisition.

Minister Manuel was tasked with, amongst other things, looking into the most practical, efficient and affordable method of servicing the

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financial obligations that were anticipated. As I have already submitted, on the 25th of November 1999, unfortunately, in our submission, it reflects 1998. It was 1999. After an affordability review had been undertaken and negotiations with identified suppliers embarked upon, 5 the SDPP was finally approved.

In giving context to the collective decision making functions of Cabinet, President Mbeki explained the following in his testimony before the Commission, that Cabinet is the senior committee that considers information placed before it and takes final decisions. That Cabinet 10 received reports from the Ministerial Committee in the same manner, as it would normally receive reports and recommendations from particular Ministers.

Therefore, take a final decision on the matter, tabled in the Cabinet. These kinds of processes of Cabinet did not change, during Cabinet's 15 consideration of the defence packages. In the result, Cabinet's collective wisdom was applied to the final decision, to purchase the various items of equipment that make up the packages.

With regard to the nature of the executive decision making and the role of Cabinet, we refer this honourable Commission to the submission 20 of Minister Alec Erwin, particularly in paragraphs 3, 6 and 14. With regard to the NIP's, we also refer this honourable Commission to Minister Erwin's evidence, as it is found in the transcript from pages 4364 to 4393, 4395, 4403 and 4406.

With regard to the decision that was taken on the 18th of November 25 1998, we respectfully refer this Commission to the written submission of

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Minister Trevor Manuel, paragraph 10. With regard to the decision, taken on the 25th of November 1999, the same submission by Mr Trevor Manuel, footnote 5 on page 23. With regard to the final decision that was taken on the 1st of December 1999, we refer the Commission to the
5 written submission of President Mbeki, paragraph 10.

Now, with regard to the rationale, we elected to make submissions, using the evidence of President Mbeki, as Chairperson of the IMC. The views articulated by him, are similar to those, expressed by other members of the IMC. We used President Mbeki as a focal point, in an
10 effort to avoid prolixity and repetitiveness.

Where apposite, we illustrate the points made, by President Mbeki, by referring to the evidence of his Cabinet colleagues. For the major issues that comprised the material traversed, under the question of the rationale, is firstly, how Cabinet arrived at the decision to extend the
15 purchase of the defence equipment beyond the purchase of the Corvettes.

It is common cause that the purchase of the Corvettes for the Navy have been considered within, by the pre-democratic government structures, such as the State's tender board that were charged at the
20 time, with the purchase of such equipment. We also consider socio-economic and developmental objectives that informed and influenced the taking of the decision to acquire these weapons.

The affordability of the packages and the risk analysis that was undertaken, to ensure that the procurement of the identified defence
25 equipment would be affordable and whether or not, once the decision on

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the packages was made, the expenditure framework of government, prejudiced the delivery of services, such as education and health care.

Because government spending was skewed, as was alleged by the critics, in favour of defence. They also considered the strategic nature
5 of the programme. We submit that this programme was actually informed, in part, by the developmental objectives of the government. This becomes evident in the testimony presented, on how the packages could be used, to move away from the pre-1994 government's industrial development policies that were focussed on separate development.

10 We submit that there was a Constitutional imperative, to equip the defence force, in a manner consonant with the functions and obligations with which it was charged, under the Constitution. Chairperson and Commissioner Musi, I think, the question of the rationale is well dealt with and comprehensively dealt with, in the submission by the DoD,
15 where they set out the basis for the acquisition.

The main thesis being that the equipment that the Defence Force as a whole had, at the time, had become obsolete. Other equipment was becoming obsolescent and it needed to be replaced. That submission deals with each of the acquisitions. We are not going to repeat it here.
20 But, we ask that that be incorporated in our submission.

But, what we do need to emphasize is that Mr Kasrils and President Mbeki were sensitive to the fact that the new democratic government had to reposition the National Defence Force, in the eyes of the people of the country. In essence, the government had to ensure that the
25 National Defence Force had the necessary capability and functionality to

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discharge its constitutionally mandated functions.

President Mbeki, Minister Erwin and Minister Manuel gave further context with respect to the rationale, in their testimony on the imperative to address the socio-economic rights that the Constitution expected government to respect, protect, promote and fulfil. In so doing, assist
5 the majority of the population to realise.

Mr Erwin, in particular, referred to the socio-economic objective that was informed, by the need to attract foreign direct investment and to create jobs. He clearly stated that he understood, as the executive
10 authority of the Department of Trade and Industry, the imperative of leveraging the opportunities created by the government's procurement programme, to sustain South Africa's economic growth, liberate foreign direct investment and create jobs and so forth. Put differently and I am quoting from his written submission:

15 *"The focus of our industrial participation policy was on finding and creating opportunities for economic growth and development at a broad societal level and the SDPP, being the largest procurement process government had ever undertaken, seemed to present the appropriate opportunity to put government's industrial policy imperatives and
20 strategies to the test."*

This is found at paragraph 42 of Mr Erwin's written submission. Also, paragraph 70 of that submission, where he supports his views, by explaining that:

25 *"In a situation where available funds were scarce, to support industrial policy, the application of the NIPP for the SDPP made eminent sense."*

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In the context, Mr Erwin testified on the policy related purposes of the non-defence packages of the SDPP, in the context of the national industrial policy and the national industrial participation programme. In his testimony, he also touched on the benefits that were realised and
5 the challenges that the NIP presented, in the implementation of the SDPP.

Now, dealing with affordability, Minister Manuel pointed to the balance that was attained in ensuring that regardless of the decision to sign the SDPP, service delivery by government departments remained
10 optimal. Then, one has to marry this with the evidence of President Mbeki, who said that at no stage, did the IMC take any decision, without reference to cost.

President Mbeki also confirmed, under cross-examination that the affordability report was discussed by the Ministerial Committee and by
15 Cabinet. Cabinet accepted the report. To a large extent, this evidence is supported and finds resonance with the written submission of Mr Andrew Donaldson, under the heading, the cost to budget of the procurement decision and in particular paragraph 76 thereof, which Minister Manuel supported at paragraph 63 of his written submission.

20 This is also referred to, in the evidence, Chairperson and Commissioner, pages 7188, 7189, 7201, 7203 and also in the evidence of President Mbeki, 7303 and 7304, where President Mbeki pointed out that government in fact, reduced quite sharply the expenditure on defence. In this connection, Chairperson and Commissioner, with
25 regard to whether or not the expenditure framework of government

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prejudiced the delivery of services, we submit that the evidence of National Treasure, of Minister Manuel and President Mbeki is a complete answer to that issue.

Also the concluding remarks in paragraph 32 of our submissions that
5 the Inter Ministerial Committee and Cabinet, did not ignore anything. In other words, they took everything into account, including cost and affordability. So, in conclusion on this topic, we submit, Chairperson and Commissioner, there was a very sound rationale for these purchases and the SDPP passed Constitutional muster.

10 Now, coming to the next topic of alleged wrong doing or irregularity, we submit that we have not been able to find any material evidence, before the Commission that supports the allegations made by certain critics of the SDPP. The members of the IMC, who presented evidence before this Commission, responded to the allegations that were brought
15 to their attention.

They dealt with these allegations, in particular, those relating to the reasons for the defence review process and the decision to burden the procurement of defence equipment beyond the purchase of Corvettes. Criticism, relating the NIP's was also ventilated and responded to, by
20 the DTI and Minister Erwin.

In this regard, Chairperson, I wish to refer to the transcript evidence of Minister Erwin and the relevant pages are 4365, 4367, 4369 up to 72, 4372. Further, from 4373 to 4378 and dealing with the subject of credits, 4387 up to 4388. Now, President Mbeki was cross-examination
25 at length about matters relating to the recommendations of the IMC and

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the decisions of Cabinet.

He was also asked about corruption and bribes, being paid to certain parties, who were involved in the SDPP. He responded fully to those questions, stating amongst other things:

5 *"I am not aware of any single fact that has been produced by anybody, to say the Inter Ministerial Committee took any decision in a corrupt manner, that the Cabinet took any decision in a corrupt manner. I am not aware of this. But, in the, at the process of determining for instance, the preferred bidders, that that decision was influenced by*
10 *corrupt intervention."*

And this is to be found at page 7490 of the transcript and also page 7461. None of the witnesses, who had made these allegations, were able to support any of them with facts. In fact, Ms De Lille, Dr Young, Dr Woods, Colonel Du Plooy and General Meiring were those, who
15 categorically stated that they had no factual evidence of wrong doing on the part of any member of the IMC.

I think, it is illuminating to refer to the evidence of Dr Young. This is found at page 10622 to 10628. Now, Chairperson, dealing with one allegation, by Mr Young, Dr Young, I beg your pardon, relating to the
20 alleged meeting by former President Mbeki with the French.

That evidence is found on those pages to which I have mentioned. He says, in his final submission that it is common cause that such a meeting took place. That is wrong. It is not common cause. The Commission will recall President Mbeki's evidence on this matter. That
25 evidence is to be found at pages 7494 to 7495.

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Where he states, I will summarise the evidence that he has no recollection of such a meeting. He has tried to find out, from people, who might have had knowledge about this meeting, whether it in fact, took place. A meeting was arranged, by the then ambassador,
5 Ambassador Barbara Masigele.

She would not have attended that meeting. He was in France with former Minister Essop Pahad. He enquired from him and Mr Essop Pahad had no recollection of such a meeting. Because President Mbeki was a guest of the government of France, he also enquired from the
10 French, who in any event, would have facilitated such a meeting, whether such a meeting actually took place.

He drew a blank there. So, it is not common cause that such a meeting took place. The allegation that Dr Young wishes to urge upon this Commission, relating to that meeting is that President Mbeki gave
15 the assurance to the French that the deal was theirs.

That evidence is generally denied by President Mbeki. Obviously, that allegation was not put to him, when he was before the Commission. The only allegation that was put to him was whether in fact, he had any recollection of meeting the French. So, it can be taken, Chairperson,
20 that there is a denial on oath, of such an assurance, given to the French.

And what do we have, to counter that evidence? Hearsay evidence from an unknown source, a document whose provenance has not been established, a witness, who refuses to disclose the source of that
25 information and when one contrasts that hearsay evidence, from a

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shady source, I call it a shady source, like Dr Young, one cannot, with any conviction, find that allegation, that hearsay allegation to be true.

There is also an allegation in the same connection, that Mr Yusuf Surtee was an interlockator of President Mbeki. In fact, even that
5 allegation is confused, because the thumb part of that story, the person, who was said to be close to Mr Surtee was the late President Mandela. But, President Mbeki was supposed to be operating through Mr Yusuf Surtee.

There is absolutely no evidence, relating to such a relationship
10 between Mr Surtee and President Mbeki. This evidence of Dr Young, Chairperson, Commissioner Musi, we find on page 9722 to 9747. So, Chairperson, it is our submission that these scurrilous allegations should now finally be put to rest.

In fact, it will be recalled that when the witness, Patricia De Lille gave
15 her evidence, after bringing these allegations into the public space, via the so-called De Lille dossier, which strangely enough was condemned by a fellow critic and whistle blower, as bizarre and lacking in substance. It is the evidence of Mr Terry Crawford-Browne.

She finally conceded that she had no personal or direct evidence of
20 any wrongfulness, corruption or unlawfulness. She was relying on this so-called bizarre document, which lacked substance, to make these allegations. Of course, that document spanned a [indistinct] industry of such allegations.

It was the basis of some books, which have been written about this.
25 When the people, who make these allegations, are invited to come and

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give evidence, they conveniently hide, out of jurisdiction. The one, who was within jurisdiction flatly refused to give evidence on some suspicious and unsupportable ground.

COMMISSIONER MUSI: Can I just ask you something, Advocate
5 Moerane? Suppose those meetings did in fact, take place, between former President Mbeki and the French, suppose it did take place and the assurances were given, how do you reconcile that, with how the French come and their [indistinct] came into the SDPP?

We know they are not, they were not the original bidders, winners of
10 the bidders. They came in through ADS. They purchased a share into ADS and that is how they came into the process, apparently through their own ingenuity. How do you reconcile that with the possibility of that meeting having taken place and the assurance having been given?

ADV MOERANE: We will submit, Commissioner Musi, that it does not
15 make sense. There is no linkage. I think, it can be dismissed out of hand.

Dr Young, I asked him the question. The question was, if you must make a recommendation that somebody must be charged who is that person?. He said that on the available evidence he cannot make a
20 recommendation that anybody should be charged. Then he went further and said that this Commission should recommend that there should be another Commission. What is your comment on that?

ADV MOERANE: Chairperson there was a far reaching Commission that was appointed to investigate these very issues. Headed by the
25 previous Head of National Prosecution and the Auditor General Mr Faki

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and the representative of the National Director of Public Prosecutions. That Commission incidentally Chairperson you have reminded me of an issue. Dr Young gave evidence at that Commission and before he could complete the evidence and before he could cross-examine Admiral
5 Kamerman he ran away. He left that Commission and there was a sequel to that because an article appeared in one of the Afrikaans Newspapers which attributed coward-ness to Dr Young. He sued the Public Protector for damages. Off course he lost that case and he ordered to pay the cost of two counsel. The point that I am making
10 Chairperson is that, that was the one investigation which found no wrongdoing on the part of Government, particularly the Cabinet and the IMC.

This Commission has been even more thorough than the one that was held some 15 or 14 years ago. It has looked at every angle and
15 every aspect given. It gave everybody an opportunity of coming forward to give evidence. The Commission will be writing it report in the next couple of months. For the life of me I do not see what any other investigation will achieve. What purpose will be served by further investigation. Particularly in the light of the evidence of the Dr Young
20 himself. Where he says that well I cannot say who or I cannot actually suggest who should be charged.

Of course saying that the contract that he received must not be cancelled because they were not attended by fraud and irregularity. Of course Dr Young has demonstrated the type of person that he is before
25 this Commission. His evidence, I am afraid should be rejected. Thank

you. That is my response that you Chairperson.

Now at a very late stage Dr Young also made allegations against former and later Minister Sagua. Now this related to allegations that her daughter had received assistance from one of the successful bidders.

5 Minister Sagua was Minister of Public Enterprises as such she had indirect oversight over the application of the dips and the nips. Direct oversight fell within the DTI's jurisdiction. In any event for her to have had undue and improper impact on which primary contractors would be appointed she would have had to influence all the colleagues in the IMS
10 and Cabinet. There is no evidence of such influence. Her tenure in any event on the IMS ended in May 1999. In the new Cabinet which took office from about 16 or 17 June 1999 she was appointed Minister of Public Works and she was no longer in the IMC. So she did not take part for instance in the decisions that were taken on 25 November 1999.
15 Also the decision that were taken on 1 December 1999.

Except as part of a large collective Cabinet member, certainly not part of the IMC. So we submit Chairperson that there is no evidence of any improper influence by Minister Sagua particularly when this allegation comes at a very very late stage. When all the witnesses that could have
20 dealt with it have given their evidence. Also when Ms Sagua herself had passed on for nine years. Finally Chairperson, Commissioner I refer to some floating allegations with regard to Mr Joe Modise.

Well, the Ministerial Committee firstly was not concerned with any sub contracts. There is no satisfactory evidence that late Minister Joe
25 Modise was involved in any corruption or receipt of money or bribes.

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This matter was dealt with last week when the issue was raised and when reference was given to the evidence that was given under cross-examination by Mr Joe Modise's daughter.

Where, I believe it was Dr Gavin Woods who had to re-draw the
5 spurious allegations that were made. In any event he was also dealing with evidence obtained from very shady and dubious sources. The fact of the matter is that at the end of it all, after all the evidence had been heard, after cross-examination had been given those allegations we submit have found not traction at all.

10 CHAIRPERSON: Advocate Moerane if I recall I think Dr Wood end up withdrawing that allegation that Mr Modise received a bribe. He end up reducing it to a benefit. He end up saying that in actual fact he received a benefit He no longer called it a bribe. So although he did not give us evidence about the nature of the benefit and how he received that
15 benefit. I do not think that he stuck to his version that he received a bribe. He end up saying that it was a benefit?

ADV MOERANE: That is perfectly correct Chairperson. In fact when he started with his evidence he said to Mr Modise received money and he ended up retracting that, even that particular allegation. He said no, no
20 no. He did not receive money he did not receive a bribe. He received a benefit. The nature of which Honourable Commission correctly says was not characterised it was not described. I think there is absolutely no basis even for a that finding.

COMMISSIONER MUSI: I am not sure about one think relating to
25 former Minister Sagua. The allegation that BAE assisted the daughter,

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is that disputed? The allegation that BAE assisted her daughter in the UK. Is it disputed?

ADV MOERANE: Chairperson the fact is that we do not know. Commissioner Musi will recall that this evidence came through Dr Young
5 when all the witnesses representing the IMC had given their evidence. In the short time that were available to us, we were not able to investigate that because amongst other things Minister Sagua is late. We were not able to establish whether that is true or not. Based on the source of that allegation, in other words Dr Young who receives
10 information from some other undisclosed source.

A source that he is not prepared to disclose to this Commission. Also the credibility of Dr Young and the question of improper influence which is really the important issue relating to this evidence. We would say that there is no evidence to confidently say that there was any improper
15 influence. That is the end point, that is the end point.

COMMISSIONER MUSI: He backed up that allegation by producing correspondence to that effect. What do you make of that?

ADV MOERANE: Chairperson, our submission is that even that correspondence was not proved. With this documents which in our
20 submission whose [indistinct] really has not been established. Even if, even if there was such assistance one has to go further and establish that Minister Sagua improperly influenced the acquisition of these. IMC up to the time when she was a member and later when she was no longer a member but still a member of Cabinet that she also influenced
25 Cabinet. I do not think that finding can be arrived at.

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That is the cardinal finding that the Commission is called upon to find.

COMMISSIONER MUSI: Yes, that is what was bothering me. What do
make of this allegation. Suppose it is true, what do we make of it. How
does it impact on the decision there is no evidence that the favours
5 done to her had an impact on a decision to award the contracts. That is
the issue.

ADV MOERANE: That is correct Commissioner Musi. It does not follow
as a matter of logic that if in fact she did receive a benefit for her child
that she influenced the acquisition particularly an acquisition that went
10 through so many hoops. Which had so many checks and balances
within it. So many people involved. So many Committees through which
it went. I do not think even by way of inferential reasoning that
conclusion can be arrived at.

Therefore we conclude Chairperson and Commissioner Musi that the
15 inquiry by this Commission has been wide ranging and thorough.
Interested parties sought to assist the Commission. They had a full and
adequate opportunity to do so. Members of the IMC who appeared
voluntarily did so in an effort to assist the Commission in discharging its
mandate. The evidence leaders of the Commission assisted in the
20 preparation and submissions and led their evidence. Other than
Minister Irvin the members of the IMC were cross-examined on the role
they played individually and collectively as members of Cabinet as it
was then constituted. They were able to shed light on the decision
making processes of Cabinet and at how Cabinet arrived at a particular
25 decision that related to the packages.

We submit that on a conspectus of all the admitted and admissible evidence, oral and documentary it is have been conclusively demonstrated that there was sound and Constitutionally compliant rationale for the packages. Also that the packages were affordable.

5 Furthermore we submit that there is no evidence that any person within or outside Government improperly influenced the award of conclusion of any of the packages. Hence we submit that the question of their cancellation does not arise.

We also submit that the decisions taken by Cabinet were consistent
10 with the obligations of Government as set out in the Constitution. In particular the IMC and Cabinet sough to comply fully with the injunction of section 200(2) of the Constitution to which reference has been made. We also recognise that the Commission is conscious of the fact that this is not the first probe into the packages. We submit that none of the other
15 probes or court proceedings have found merit in the allegations that the decisions taken by Cabinet on the packages were not rational. There is no gain saying that the decisions of Cabinet were strategic in nature and were policy laden.

One of the functions of the National Executive as set out in section 85
20 of the Constitution is to develop and implement National Policy including Defence Policy. In the result and in the absence of any evidence of *mala fides* on their part we submit there can be no finding of impropriety, irregularity fraud or corruption by members of the Ministerial Committee of Cabinet that was headed by President Mandela at the time that the
25 decisions on the SDPP were made. Chairperson and Commissioner

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Musi those are our submissions.

CHAIRPERSON: Thanks a lot Advocate Moerane. I think your submission will us a great deal when we repair our report. Thank you for the submissions.

5 ADV MOERANE: Thank you Chair and thank you Commissioner Musi.

COMMISSIONER MUSI: I am not sure what the pecking order.

ADV CILLIERS: Mr Chairman, subject to your view. The arrangement as I understand is that I will follow at this stage.

CHAIRPERSON: Thank you.

10 COMMISSIONER MUSI: Thank you.

CHAIRPERSON: Sorry Advocate Cilliers. How long do you think you re going to be. Just roughly.

ADV CILLIERS: Our estimate is 30 to 40 minutes Mr Chair.

CHAIRPERSON: Can we maybe take the tea adjournment now?

15 ADV CILLIERS: As you please.

CHAIRPERSON: Then we will come back 12:20.

ADV CILLIERS: If it suits you, yes.

ADV MOERANE: Can we be excused Commissioner?

CHAIRPERSON: Yes, this marks your end in this Commission. Thank
20 you.

COMMISSION ADJOURNS

COMMISSION RESUMES

ADV CILLIERS ADDRESSES COMMISSION: Thank you Mr Chair and
Commissioner Musi. Before I start with the written submissions that we
25 have prepared. I would like to deal with two general issues which I hold

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the view would be of assistance to you in dealing with the evidence.
Further to prepare your report.

The first issue that I want to start off with has in fact been referred to you also to Mr Moerane this morning. That is the question of a mother or
5 a referral by yourself to some other Commission and or body and or entity to make inquiries and/or to do some sort of investigation that was suggested by some of the parties including the evidence leaders. In this regard I refer to paragraphs 5, 79 of the evidence leaders submissions. Mr Sibeko and his juniors submission. In paragraph 5 of the submission
10 he/they stated:

*“The Commission offers as a platform to interrogate whether the allegations and inferences made in the books and in the various newspapers referred to above and those expressed in the various opinions that have been published. Properly tested makes for a
15 compelling argument to justify a recommendation to be made for a proper investigation by competent investigative agencies to be conducted with a view of bringing these allegations to a proper determination.”*

In paragraph 79 on page 37 of the same submission the following
20 was submitted:

“By virtue of the facts set out above the paper trail referred demonstrates that BAE maybe regarded as an entity which may have unlawfully influenced the award and contracting in respect of the Lift and Alpha Programs in the SDPP which require further investigation.”

25 Now at the outset, Mr Chair and Commissioner Musi may I state that

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with great respect to the counsel who made these submission I completely differ from them. Also I wish to raise certain aspects in this regard. I would submit that it is to a large extent illogic and impractical to suggest that the Commission should refer the matter for further
5 investigation and submit the following material issues in this regard.

I first wish to start off with the terms of reference. I would submit that that should be your starting point in this regard. If we look at the terms of reference it is clear that you had been instructed on the following basis:

10 “ *The Commission of Inquiry shall enquire to make findings , report and make recommendations concerning the following, taking into consideration the Constitution and relevant legislation policies and guidelines ...”*

Then the five paragraphs that has been mentioned. Now with respect
15 at the outset I would submit that it would be a, I say it with respect. That the [indistinct] of your duties if you now just refer it for a further investigation. You are the body that had been instructed and empowered to do this investigation. We must ...[intervenes]

CHAIRPERSON: I am sorry Advocate Cilliers. Just on that point. If we
20 refer to another body for investigation, which body would that be?

ADV CILLIERS: That is what I want to deal with because that is why I say it is illogical because whereto does it go from here? What we have to consider in this regard Mr Chair and Commissioner Musi is the following. I would submit that this Commission was in a perfect position
25 to properly and finally investigate and evaluate the issues raised in the

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terms of reference.

We should take the following into consideration. We have a Commission presided by senior judges. Where can we find a better body to investigate a certain factual position and make conclusions and finding than a Commission led by two, at this stage two very senior judges of our High Court.

Secondly we have a whole group of evidence leaders appointed to assist in this regard, consisting of senior legal practitioners including more than one senior counsel. That is a situation that you will not easily in any other investigative body.

Thirdly the Commission had vast resources and the Commission had the right to compel witnesses to testify before it. The Commission had the right to and in fact attended witnesses and gathered in material in foreign countries. They were in fact entitled to do so. In practice basically all participants in this procurement process testified before you, apart from the few critics who refused to testify, they had their opportunity. In fact the omitted offences by refusing to testify before you.

So everybody had the opportunity to do so. Mr Chair maybe just to deal with the next question that, or the question that you have raised just now. We further have the situation that we have numerous investigative bodies looking into the matter up and until this stage. We had the Joint Investigating Team of Inquiry. We had the Director of Special Operations, the so-called Scorpions who investigated the matter. We had the Serious Fraud Office in the United Kingdom, the

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SFO investigating it. The South African Police through their specialised unit the Hawks looked into the matter.

We had abroad the investigating units. That is now apart from the SFO and the Sweden Authorities looked at the matter. We know that the
5 Lichtenstein Authorities looked into the matter. Not any of those bodies could come up with any facts and or substantial evidence that could lead to a finding in to assist you with findings and recommendation that you have to make in the terms of reference.

Now what conceivable assistance and or purpose can a reference to
10 a further investigative body serve at this stage? Should you with respect or it is it expected from you to refer it to a further body maybe consisting of three judges having 50 advocates assisting them. What sort of a body should that be? With great respect it just does not make any sense to expect from you to refer this matter to a further body and
15 or person to investigate. I want to go further.

I would submit that it would be a travesty of justice if this Commission refer the issue for investigation by any other body who will clearly be less equipped to do what you have done now over the past approximately three years. I would think that there would be an outrage
20 in the general public circles if they hear that they have to go through a further investigation, maybe again for three; four of five years this time. Costing the country a substantial amount of money in order to do what you have done now for the past years listening to all relevant evidence from all witnesses who participated in the process.

25 At some stage with great respect Mr Chair and Commissioner Musi a

body or presiding officer's body must make the decision. They must bring out their findings and the must bring out their report which will then explain their finding and make the necessary recommendations. That is where we are this stage. That is your duty and you have to do it. You will with great respect conduct yourself, I again say with great respect improperly if you do not do what you were instructed to do and what you are suppose to do now. So I respectfully disagree in the strongest terms possible on any submission that you should refer the matter for a further investigation by whatever body.

10 The buck has to stop some place and it should stop here. That is why this Commission had been appointed. Presided by senior people, senior judges assisted by specialist investigators and that is where we are now. The second point that I wish to deal with is also, you will not find it in the written submission is what I will refer to as the evaluation of
15 evidential material.

I have read again in the submissions on behalf of the evidence leaders, I refer to paragraph 11 of the submissions by Advocate Sibeko and his team where they stated:

20 *“At the outset we point of that a Commission of Inquiry as is apparent from the name is meant to be inquisitorial rather than adversarial. Its focus is an inquiry to establish facts it starts primarily to gather information what is relevant to its mandate. The outcome of its process does not result in the passing of a verdict on the evidence adduced before it.”*

25 They then refer to the case of *S v Parks* were it was stated that a

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court of law is bound by rules of evidence and the pleadings. A Commission is not. It may inform itself in any way it pleases by hearsay evidence and from newspaper reports or even through submissions or representations or representations on submissions without sworn
5 evidence.

Now it is apparent that they portray to you is that you are not bound by any rules of evidence at this stage. Now I spent some time attempt to evaluation where this submission comes from. In my view at that stage was that it was wrong, the foundation was wrong. After giving it
10 some thought I would submit that the fundamental flaw in this argument is the following:

A Commission of Inquiry has different duties and it actually consist of three phases I would submit. That is where the difference between a court of law and a Commission of Inquiry in fact lie. The Commission of
15 Inquiry unlike a court also have the right to gather the evidence and the evidential material. After gathering the evidential material it should then proceed to evaluate same and then thereafter make finding and make recommendations as instruction in the terms of reference.

A court of law differs in this regard. A court of law does not involve
20 itself in the gathering of information process. If we compare it to a criminal trial there you will have a police investigation and the a prosecution team will gather the evidence. Then evaluate the admissibility thereof and then put forward before the court of law, admissible evidence. A Commission of Inquiry goes wider than this and
25 their ambit is broader. Because of the very nature of its duty which

include the gathering of evidence and evidential material.

I would respectfully submit that the difference lies exactly there. That insofar that you will find law and references to cases where it is stated that a Commission is not bound by the strict rules of evidence. That
5 clearly refers to the gathering of material phase. That makes absolutely sense. The Commission when gathering material can listen to hearsay evidence. It can maybe listen to documentation which the reliability of is not proved at that stage.

That all forms part off, I would respectfully submit the gathering
10 phase. At this stage now we have completed the gathering phase. You completed that. Now I would respectfully submit we are in the phase of evaluation and making of findings. In this phase I would respectfully submit that it should be more strict to apply the law of evidence. The very reason for that is that in the gathering phase you have listened to
15 hearsay and some of the hearsay may have shown to be incorrect et cetera, et cetera. Clearly in the making of your findings you should not allow yourself to be influenced by for instance hearsay evidence that had been shown to be incorrect and unreliable. You could have listened to that initially but now you must evaluate it and at this stage you must
20 differentiate between sustainable evidence and just speculation.

It would be with great respect irresponsible of you to make findings and recommendations to the State President based on an unsound foundation. Clearly you cannot make findings at this stage and recommendations which may have dire effect on certain entities and or
25 individuals, based on hearsay that you have realised has not been

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proved and or even stronger put, has been proved and or shown to be probably incorrect.

So I would respectfully submit that it is very important for you to at this stage of the proceeding realise and in fact approach the evidence
5 on the basis that it is now a stage of makings findings and recommendation and that your approach should be very much the same than a court of law. I would like to illustrate this to you. I may be referring you to some examples. I will restrict myself to two examples. In the evidence of Mr Crawford-Browne he made a very serious
10 allegation in paragraph 5.9 of his written submissions where he stated:

“The British Secretary for Trade and Industry in June 2003 admitted that he had paid bribes to secure his contract with South Africa.”

He stated that in his written submissions and he repeated that when he testified orally. When taxed on...if you make a notes, it appears on
15 page 847 and further in the transcript of the proceedings. It appeared that they relied on a specific press report that appeared in the Guardian Newspaper in the UK. The date is there. I think it was 16 June on that particular year.

What then transpired is that in cross-examination we were able to in
20 fact locate that newspaper that he relied on. It appeared that he was, with great respect to him. He mislead you in suggesting to you in his written submission as well as in his oral evidence that, that was in fact the position that the British Secretary for Trade and Industry in June 2003 admitted that he had paid bribes to secure his contract with South
25 Africa.

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I have taxed[?] him on that issue in cross-examination. A couple of pages, he never really answered. He then eventually when he was given the article and invited over and over again to show the Commission where this admission is appearing. He then to a large extent changed his version and added that no, the newspaper in his evidence was. I quote from page 8474, line 5:

“The newspaper article was backup by the authors of the newspaper article by way of an email that I received.”

So suddenly when he was confronted with the hard evidence that he relied on and gave as the reference to his written submission then it all changed. Then it was a vague oral backup people who made some submissions to him or some allegations to him on email. Off course the emails could not be located by himself. to the extent that you intervened Mr Chair on page 8476, line 16 and further. You said the following:

“Just hold on Advocate Cilliers Mr Crawford-Browne I am getting a bit lost when I look at 5.9 of your statement is it not complicated. It is a simple statement (then you quoted it). The British Secretary for Trade and Industry in June 2003 admitted that BAE paid bribes to secure its contracts with South Africa.”

Then you further went on:

“I understood your evidence earlier on to be that for the purposes of this statement you relied on this article from the Guardian, the Guardian Newspaper. Now I think what Advocate Cilliers is trying to do, is he is trying to find out which portion of this statement that you said relied on supports the allegation that are made in 5.9 of your statement. Which

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portion of that statement?"

Again no answer to your very direct and clear question. To the extent that on page 8477, line 10 you said the following:

5 *"So if I must understand your evidence you are not relying on this document because this article does not say so."*

You are referring now to the Guardian. He again attempted to evade what you put to him and to the extent that you then a couple of lines further from line 17 said:

10 *"Mr Crawford-Browne, does this document support the allegation that you are making for which you cannot produce now. Before we adjourned I understood you to say that you are relying on this document. You never made any mention of an email. (You then concluded) Advocate Cillier let us get to the next question. Clearly Mr Crawford-Browne cannot answer this question. Well I clearly understood it before*
15 *we went for lunch but now he is relying on this document and now all of a sudden he is adding other emails which he cannot find now."*

This is just to illustrate how dangerous it is to follow this vague principle-less method that has been suggested. If you disregard rules of evidence. This is what you will get. What are people submitting to you
20 or suggesting that you should disregard rules of evidence in compiling our report and making your findings and or your recommendations. What do they expect from you now when you deal with evidence of Mr Crawford-Browne in this regard.

Must you now include in making your findings on these allegations
25 that he made some of them under oath on which he went to the

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Constitutional Court in application, which is repeated on several occasions. Now it has been clearly illustrated that he either made a mistake or he was plain dishonest. The fact is, let us not get into that issue. The fact is, how can you deal with that or how should you deal
5 with that?

My respectful submission is the way to deal with that is the way that an ordinary court of law with it. You have now allowed him to make his submissions. You have allowed him to put forward to you the sources on which he allegedly rely. Now you also have further information at
10 your disposal and clearly what is expected from you is to make a proper finding on based on the rules of evidence, after considering everything and then come to conclusion. Make a finding and make a recommendation based on that. That is your duty. I would respectfully submit that is the least that the public will expect from you.

15 That is the reason why the State President decided to appoint senior judges to lead this Commission because they are trained people who have regard to all material put before them, even hearsay and theories and hypothesis et cetera, et cetera. In the end to be able because they are trained to do so, to come up with the findings and recommendations
20 that are based on sustainable facts and sustainable law.

Very important in this regard in this regard is, if you make a recommendation not based on the method that I suggest that you should follow it will lead to really a disaster. If you just make findings and recommendations and ignore the principles of evidence, what will
25 we land up with? Now you will maybe make a finding based on

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speculation and hypothesis and theories from one of the so-called critics and then there will be a prosecution. Once the people land in court there is no sustainable evidence to substantiate your finding. So you will have the result that a prosecutor will land in court in a criminal trial
5 or a civil trial from matter without sustainable evidence to substantiate the allegations contained in the charge sheet.

The reason is very easy to find. The findings were then based on hearsay, speculation; slanderous gossip not sustainable in law. That will be the result with respect do not follow a proper approach of
10 evaluating the material before you in a matter prescribed by our century old rules of evidence.

A further example, I will not deal with that in the detailed manner in which I have dealt with the previous one. It is even worse I would submit. I am referring you to page 8113 of the transcript of the record.
15 During the cross-examination of Dr Woods. You would recall, Chair and Commissioner Musi that he made a serious allegation in paragraph 20 of his written submissions where he stated that Mr Hlongwane, Advocate Hlongwane in my client received secret payments of R200 million and he equated that to bribery, clear indications of bribery. He
20 relied in main on a newspaper article that appeared in the Sunday Times. It is indeed an article that was annexed to his submissions at GGW12A.

This article Mr Chair was stating the following. You will find that on page 8114 of the record. It stated, that is now the Sunday Times article:

25 *“Swedish Defence Group SAAB yesterday admitted that millions were*

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paid to clench the South African contract for fighter jets, the [indistinct] British Partner BAE Systems had paid the bribes.”

It was then established in cross-examination over the next couple of pages, that this the source of this newspaper article was in fact a press
5 release by SAAB the day before. Again fortunately for the assistance of internet we during cross-examination could in fact trace and obtain a copy of the SAAB press statement that the author of this newspaper article relied.

Of course it appeared that there was not a suggestion of his
10 admission by SAAB that the newspaper article alleged. It was absolutely and I described it and you can again look at it. In the following manner on page 8117:

*“What I am further informing you is that this article is outrageously scandalous because there is no basis for the very first paragraph
15 suggesting or alleging that SAAB in fact accused their British partner BAE Systems of receiving or paying bribes.”*

Now this again illustrate the point that I have raised earlier Mr Chair and Commissioner Musi why you should be very careful in your evaluating process and in making your findings and recommendations.
20 You have been appointed, as already stated as two senior judges to preside over this inquiry and you should evaluate the evidence on a proper basis in order that your findings is justified and based on sound sustainable evidence. To suggest at this stage that you should follow a vague process in evaluation and making finding where you allow all
25 sorts of unfounded hearsay allegations and or documentation that we do

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not know who the author was. Or whether the source documents had been correctly quoted and or interpreted. You should not allow that Mr Chair.

I would respectfully submit it is of cardinal importance that you in
5 evaluating the evidence and the material put before you should be very, very strict and you should consider an approach on the same basis as a High Court judge would evaluated evidence. The reason for that is not hard to find Mr Chair. You have indeed a huge responsibility in bringing out your report.

10 You can with great respect destroy lives and reputations in your report. You should with great respect refrain from doing so unless you are certain in your minds that whatever findings you are making and or whatever recommendations you are making is indeed justified and based on sustainable evidence. So in that regard Mr Chair I distance
15 myself in great respect of the allegations or the submissions to the extent that you should follow loose approach as has been suggested by some of the persons making submissions to you.

That concludes the two basic principles. I can maybe just refer to one further issue in this regard. Which also illustrates it quite well. That is
20 the issue of the Murphy statements. In all these submissions made in all the newspaper allegations and even in some of the court applications statement and or allegations of which the SFO investigator Mr Murphy was allegedly the author, played quite a central role. You will recall that during the evidence of Mr Hlongwane he pointed out to you that there
25 was something very strange relating to the statements of Mr Murphy.

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The fact that there were two statements on the face of it, commissioned on the very same day by different Commissioners of Oath and differing in material terms.

There was in fact a Murpy affidavit document comparison handed to
5 you during Mr Hlongwane's evidence. I am not going to read from it but
you can go to that document for a comparison. Despite the challenge
that Mr Hlongwane made during his evidence in this regard, pointing out
these inconsistencies and these on the face of it a very suspicious
situation. The police officer, Colonel du Plooy did testify and he was
10 the person dealing with Mr Murphy and not a word of explanation or
what is the explanation of this on the face of that very suspicious
situation.

I do not want to take it further. Just again to say to you that, that is a
further illustration why you should be very careful to have regard to
15 hearsay evidence. I am not saying to totally exclude it from that. All that
I am saying to you with respect. You should approach it very carefully
as a court of law would approach it before you make findings based on
unsubstantiated hearsay. Off course if the hearsay is substantiated and
corroborated by objective facts and or other reliable evidence then
20 clearly you are entitled to have regard to that. You should with great
respect approach it very carefully as we would find in courts of law.

I would then briefly refer you to our closing submission that we made
in writing and filed with the Commission. I am not intending to read
through it. You have it before you and I am sure that you have either
25 read and or you intend to read it. I attempted to assist you by giving you

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a sort of approach that you can follow in evaluating the question of paragraph 1.5 of the terms of reference, with reference to Mr Hlongwane. I would submit, well it is only 1.5 that may be applicable in Mr Hlongwane's case.

5 That is the question whether any person within and or outside the Government of South Africa improperly influenced the award or conclusion of any of the contract awarded and concluded in the [indistinct] SDPP Procurement Process, if so then further questions.

I started off with referring you to the evidence of the evidence of Mr
10 Hlongwane himself. His evidence was with great respect very emphatic. You will find it on page 5 of the written submissions that we have filed with you. The important part is he unequivocally stated and categorically stated that he did not pay any gratification to anybody was involved in the procurement process in order to influence such person;
15 relating to the award of conclusion of any of the contracts awarded and concluded in the SDPP. You will find that on the transcript page 8961 line 1, sorry line 18 to 22.

He further emphatically stated that he had no knowledge of any other person paying such gratification to influence the SDPP. Now very
20 important in this regard was of course the fact that he was not cross-examined. All those critics which over many years slandered him and made very serious allegations of the worst kind knew that he was going to testify. They had the opportunity to cross-examine him. They all decided and chose not to do so. We respectfully submit that, that is of
25 significance. You cannot disregard that in your report.

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I fully agree with the submissions made by Mr Moerane in this regard. It would with great respect be greatly unfair to make findings against a witness who came to the witness box to put his case. The fact that he was to testify was widely published and well known in all the relevant
5 circles. Everybody chose not to cross-examine him. I will submit to make findings contrary to what he testified without him having had the opportunity of being informed of any disputes and or being confronted with any disputes and or inferences and or theories by the so-called critics and or anybody who did not agree with his evidence would be an
10 unfair situation.

Then, we had the evidence relating to Mr Hlongwane of all the decision makers. Mr Chair, in this regard, and that maybe also is relevant to the submissions that I first made relating to another body to inquire into this matter. You really had the opportunity to listen to all the
15 participants and all the people involved in this process, from the then State President Mr Mbeki, various members of Cabinet, down to the officials from the Department of Defence, the Department of Trade and Industry.

Everybody involved in the process did testify before you, which I
20 think a further body will have very serious difficulties to again be able to arrange. But, the fact is, Mr Chair and Commissioner Musi, is all these people unequivocally testified that there was no suggestion of any improper influence in this regard. Not only by Mr Hlongwane, but by nobody in particular, but I... [intervene].

25 **CHAIRPERSON:** I am sorry, Advocate Cilliers. Colonel du Plooy, when

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he testified, he said that there is no evidence of direct corrupted [indistinct]. But, then he went further and used words like there are red flags, there are suspicions. What should we make about that? I am not quite sure in law what he means when he say that there are red flags, 5 because I thought we were working on the bases of evidence.

ADV CILLIERS: Mr Chair, I have dealt with, and I can refer you to page 20 of their written submissions, and let me go there and deal with it. Two members of the Hawks testified, you will recall Major General Meiring and Colonel du Plooy. Now, on page 21 of the written 10 submissions I referred you to the evidence of Major General Meiring, and I will quote it for you because it is of assistance relating to your questions. It appears on the record, the transcript, page 10 730 lines 13 to 21.

“ADV CILLIERS: So clearly he never suggested to you that there was 15 evidence of corrupt payments relating Advocate Hlongwane if that were 15 so you would have told the Commission about it?

MR MEIRING: I can state that there was no direct evidence to corrupt payment but specific names I cannot deal with Honourable Chair.

ADV CILLIERS: It is a matter of inference. He told you that no evidence 20 of corrupt payments could be identified by anybody that is 20 what he said.

MR MEIRING: That is correct, Honourable Chair.”

If you turn the page to 23, paragraph 34 of the written submissions, where we stated the following:

25 *“34. The high water mark of evidence of Colonel du Plooy can be*

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summarised on the bases that he admitted that there was no direct evidence of any corrupt payments, but he only stated that there are red flags and suspicions.”

That you will find on page 10 788 line 14 to 23 of the record.

5 “35. *When he was in fact tested on the alleged red flags, he could not assist by providing any specific reference to facts that could give rise to these red flags.”*

So, he said there were red flags, but he could not assist by saying what then created these red flags, whatever that means, Mr Chair. But, we then quoted paragraph 36 of our written submissions the following, and that was in questioning by Advocate Lebala:

10 *“ADV LEBALA: Do you have evidence that demonstrates that Mr Hlongwane has improperly influenced, let us start at the top or let us start below members of the Evaluation Committee?*

15 *COLONEL DU PLOOY: Again, Honourable Chair, I do not have any of the evidence at any level that he would have influenced any person.”*

That you will find on page 8994 of the transcript. There is some discrepancy in the record that it at one stage moved back in numbers, that I just have to warn you about. Then further in paragraph 37 we refer to page 8994 line 23 and further:

20 *“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 the influenced members of the Evaluation Committees at the lower level?*

COLONEL DU PLOOY: There is no direct evidence.”

25 Now, Mr Chair, that is again taking us back, and that is why I

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spent some time upfront with making submissions regarding the approach that you should follow. Any finding, and let us be practical, any finding by yourselves that there are indications of Mr Hlongwane having had received bribes and/or influencing the process unlawfully in
5 a corrupt manner, will destroy not only the reputation of Mr Hlongwane, it will destroy his financial ability to earn a living. It is all fundamental rights being entrenched in our Constitution.

And, will it with great respect, be fair of any Commission appointed to investigate and make factual findings, to on a speculative
10 bases where the person involved in an investigation of 10 years, tells you in no uncertain terms that there are no evidence to destroy the reputation and financial ability of an individual. Clearly, that would be with great respect, greatly irresponsible and nobody, with great respect, can ever require that from you, apart maybe from some of the critics,
15 who were more than willing to make these wild allegations based on sources that we have already illustrated to you of what dubious nature and just plain wrong sourced documents that they relied on.

So, with great respect, we submit that there is no bases for any finding of any untoward conduct, corrupt conduct and/or whatever
20 unlawful conduct against Mr Hlongwane to be made. The contrary is true, Mr Chair and Commissioner Musi. There is absolutely no fact that illustrates any unlawful conduct by Mr Hlongwane and/or anybody else for that matter.

But, we submit that the only finding that you can make, is that
25 despite various serious allegations made prior to the Commission or

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during the Commission by certain of the critics, after a careful consideration and evaluation of the material before you, there is not a single fact to illustrate and/or to indicate untoward and unlawful conduct on the side of Mr Hlongwane.

5 That concludes our submissions. If there are any specific issues that you wish to raise, we will be glad to attend to any.

CHAIRPERSON: Thank you, Advocate Cilliers for your submissions. I hope they will help us to prepare our report. I am not sure if my fellow Commissioners has got any questions. He says no. Thanks a lot for
10 your [indistinct].

ADV CILLIERS: Thank you, Mr Chair.

CHAIRPERSON: I think we are left with two groups now, SAAB and BAE. Have you made arrangements on who goes first?

ADV WILSON: Chair, we have. We are grateful to BAE for letting the
15 SAAB representatives make their submissions first. BAE will follow those. Chair, we have submitted to the Commission's representative a written closing submission, and we do hope that you, Chair, and Commissioner Musi have got copies of that written submission. Again, it is not our intention to read that line by line to you, but simply perhaps to
20 highlight a couple of important themes for the respectful consideration both of the Chair and also Commissioner Musi.

Chair, as has been remarked I am sure many times by various representatives before this Commission, it is now being three and a half years that this Commission has been vested with an important process
25 in considering the allegations of fraud, corruption, impropriety and the

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like in respect of the SDPP. We have highlighted in paragraph 2 of our written submissions comments made by the then Minister of Justice, when he announced the details of this Commission on the 27th of October 2011. I am sure that these are well known to you, but it does
5 highlight one aspect of our submissions that has been referred to both by the Chair and also in submissions made by the other parties this morning.

If we could briefly refer to a couple of aspects of that explanation. This Commission has been instituted as a consequence of allegations
10 that had persistently been in the public domain for a long time. The allegations surfaced soon after the dawn of democracy, following the procurement of multi-billion Rand armoury that was intended to address the needs identified by the South African National Defence Force, during 1996 to 1998. This culminated in the Cabinet decision to purchase
15 aircraft, Corvettes and submarines at the cost of R29 billion over 12 years.

Then, this is the part that we would with respect like to emphasise:

*“The allegations were probed by the different state institutions,
20 and were also a matter of public debate in Parliament. Every time an end appeared in sight, new allegations would emerge. It is our conviction that the Inquiry will enable us, collectively as a nation, to reach closure on this otherwise contentious matter. We are hopeful that we will emerge from the Commission as a stronger nation, glued
25 together by values of social cohesion and nation building, in a common*

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endeavour to build a united and prosperous South Africa.”

Chair, Commissioner Musi, with respect, SAAB agrees wholeheartedly with the important imperative that underlies this Commission, and also shares the hope and belief that was expressed at the onset of this Commission process, by the then Minister of Justice. Every time an end appeared in sight, new allegations would emerge. That has been a theme that has [indistinct] the SDPP for many years, including the role of SAAB in that process. The Commission has now had an opportunity to hear the most extensive evidence and to reach conclusions.

With respect, we would submit along with our learned friends, that the time has now come for this Commission to discharge the important constitutional mandate, and to make final findings and recommendations in this matter. There is no room and there is no scope for further enquiries. This is the place, with the esteemed members that are placed on this Commission, to make these findings, and the evidence and information has been heard and considered by this Commission.

The second perhaps important theme, is the cooperation that SAAB wishes to record, that it has exhibited throughout the Commission process. This cooperation included meetings with the Commission's representatives in Sweden and the provision of various documents and other information, going back to 2012. SAAB has also submitted a detailed written submission to this Commission on the 13th of May 2015, where it sought to address particular issues that it believed, based on its interactions with the Commissions representatives, would be useful to the Commission in its important work in this matter.

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On the bases of the evidence that has been heard by this Commission from various representatives, including the statement that is being made by SAAB and the other information that has been provided at its behest, our earnest and respectful submission is that
5 there is no evidence of wrongdoing whatsoever on the part of SAAB in relation to the SDPP.

The Gripen Aircraft System that was contributed to the SDPP, has succeeded. We understand it to be common cause, the demanding requirements of the South African Air Force, and has also proven to be
10 highly successful internationally. SAAB again, we understand it to be undisputed, has complied fully with its DIP and NIP commitments under the SDPP, as a result of which it is made a lasting, and it respectfully submits, ongoing contribution to the development and success of South Africa's higher technology defence industry.

15 SAAB is indeed proud of its achievements and contribution in this regard, and respectfully trusts that the Commission's finding arising from this inquiry, will finally dispel the allegations of wrongdoing that have [indistinct] the SDPP, including SAAB's involvement in that process for so many years.

20 Chair, Commissioner Musi, as I indicated at the outset, we do not seek to repeat the detail under each of the headings that is contained in our written submissions. But, may I make a few observations in relation first to the Gripen Aircraft System, and then to the commitments that SAAB has met in respect of the DIP and NIP process.

25 In the written statement that was submitted by SAAB on the 13th

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of May, SAAB explained the design philosophy behind the Gripen Aircraft System, its original genesis, its development, its development within Sweden, and then in order to exploit the export potential of that system, its collaboration with British Aerospace, later named BAE
5 Systems to market the aircraft to a global market. As part of that collaboration British Aerospace contributed its knowledge and experience in adapting the aircraft for export purposes, and in marketing and sales of complex defence products to export customers. SAAB for its part, primarily contributed its knowledge of the Swedish Aircraft
10 System to the collaboration.

In respect of the engagement of the joint venture in relation to the SDPP. The arrangement within the joint venture was that British Aerospace would take the lead in the management of the bid and the contract negotiation phase. SAAB's primary role on the other hand was
15 to ascertain whether the technical requirements, as set out in the documentation, were understood, to support the negotiation team with input regarding a time and cost implications of South African specific product adaptations, and to address any perceived program risks.

British Aerospace also signed the supply agreement, including
20 DIP and NIP, with the South African customer, which covered both the Hawk Aircraft, in which SAAB had no role, and the Gripen Aircraft, which was contracted by British Aerospace under the framework of the JV agreement.

We have indicated in detail in our written statement, the
25 requirements for the Gripen Aircraft System, that were demanded by the

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South African customer, and the extensive process that was engaged upon in the development of the system to meet the specific requirements of the South African Air Force. The final aircraft was contractually delivered in late 2011, after an initial transfer to South Africa in August 2006, and a flight test program that was finalised in early 2008.

Chair, not from SAAB blowing its own trumpet, but from various high ranking representatives of the South African National Defence Force and the SAAF, now you have heard evidence regarding the rational for and the utilisation and success of the armoury procured pursuant to the SDPP, including the Gripen Aircraft System. We have referred in our final written submissions, as has the Department of Defence, to the evidence in particular of General Bayne of the SANDF, and formerly the Director Combat Systems of the SAAF, which recorded that the Gripen System constitutes an integral part of the capability of the SAAF and South African Defence Force, to meet its air defence and other mandates. In the words of General Bayne, it has exceeded the expectations of both the Air Force and the National Defence Force in its domain.

Chair, we do not repeat in our submissions the evidence that has been extensively canvassed in the heads of arguments submitted on behalf of the Department of Defence. Perhaps we can simply for the sake of convenience refer you to paragraphs 106 to 135 of those submissions. It is stressed there that the Gripen Aircraft System was the cheapest on offer, that its operational capacity has exceeded

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expectations and also, it has had good utilisation. Even in the evidence of Dr Woods, he readily conceded that the Gripen was a deserved winner in the Alpha category.

5 So, as regards operational specifications, performance and utilisation, in our respectful submissions there can be no question as to the reasonableness and as to the rightness of the selection of the Gripen Aircraft System for its particular category.

Chair, Commissioner Musi, as regards the DIP and the NIP participation of SAAB, those are addressed in paragraphs 15 and
10 onwards, of our written submissions. As indicated earlier, there was a division of responsibility between SAAB and British Aerospace in relation to these matters. SAAB took management responsibility under the framework of the joint venture, for the fulfilment of the Gripen elements of the contract, including Gripen related DIP, while British
15 Aerospace retained management responsibility for the NIP fulfilment in respect of both the Hawk and Gripen elements of the contract.

The DIP program relating to the Gripen element of the contract, included significant technology transfer, development of Gripen functionality, flight testing, production of Gripen equipment and air frame
20 parts, all of which we have extensively set out in paragraphs 7 and 8 of SAAB's written statement. In February 2012 SAAB was informed by BAE Systems that ARMSCOR has approved the contractual discharge of the entire DIP obligation, relating to the Gripen element of the contract.

25 So, not only in respect of the qualifications of the aircraft itself, but

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also in relation to the DIP program, in our respectful submission, the evidence before this Commission is that SAAB has more than satisfied its contractual commitments.

As regards the NIP requirements, those again have been
5 canvassed extensively in these proceedings, SAAB contributed to the best of its ability to the NIP efforts by developing, engaging and supporting a wide variety of business ventures, which are listed in an attachment, I think it was attachment 1, to the written statement that was submitted by SAAB in May. Again, I do not intend to go through all of
10 those, but I do not understand there to be any material dispute regarding that contribution. Again, as in respect of the DIP, SAAB was informed by BAE Systems that the Department of Trade and Industry had approved the contractual discharge of the entire NIP obligation.

As regards SAAB's business development in South Africa, as a
15 result of its DIP and NIP commitments, those are set out in paragraph 10 of our written statement, and summarised in paragraph 19 of SAAB's final submissions. That industrial presence that SAAB now has in South Africa commenced in 1999 with the acquisition of an interest in a South African company. It subsequently purchased shares in another
20 company, which are now know as SAAB Grintek Defence and SAAB Grintek Technologies. They employ 850 employees and have an annual turnover of well over R1 billion.

SAAB Grintek defence has become a leading defence technology company in South Africa. It supplies state of the art products for local
25 and export customers, which had been designed and developed by

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South African engineers, and are manufactured in state of the art production facilities located in Pretoria and Cape Town. Before SAAB's investment in these companies their export share amounted to some 35% of total revenue, whilst today that has increased to almost 85% of total revenue, making a substantial contribution to the export income of South Africa.

The success of SAAB Grintek defence has been acknowledge in South Africa with the bestowal of the DTI's best South African export company award for two successive years. The success of SAAB South Africa, which is a product of the offset requirements of the SDPP, is a result of a combination of investments, long term management commitment and the technology driven environment within the SAAB group.

Chair, Commissioner Musi, can I finally address the question of unlawful conduct, which is central to the inquiry with which this Commission is engaged? The Commission has now had over the last three or so years the benefit of an extensive and comprehensive investigation of the relevant facts. It has also received a very considerable body of evidence regarding the procurement process that was followed in awarding the contracts, and in the subsequent negotiation of those contracts following the conclusion of the procurement process.

SAAB respectfully submits that in the light of all this documentation and information that has been presented to the Commission, and all of the other evidence that the Commission has

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obtained, there is with respect no bases whatsoever for any finding of unlawful or improper conduct on the part of SAAB. The only conclusion, with respect, that can be drawn on the bases of the evidence before the Commission, is that SAAB acted lawfully at all times in the procurement
5 process, and in the negotiation and execution of the Hawk Gripen Acquisition Contract.

The role of advisors to the arms supplies was also dealt with by the Commission. This has been extensively engaged in other submissions, including the submissions of my learned friend, Mr Cilliers,
10 just before me. SAAB was requested to address a [indistinct] question regarding a consultancy agreement concluded between [indistinct] and Hlongwane Consulting in 2003. As explained in SAAB's written statement, and I refer to paragraph 11.3.2 of that statement, that agreement was not known to SAAB at the time it was concluded. The
15 circumstances supporting that statement was summarised in a report that followed an investigation of this matter in 2011, and that report SAAB understands has been made available to the Commission.

The investigation further resulted in the conclusion that [indistinct] was not to be intended counterparty to the consultancy agreement with
20 Hlongwane Consulting, and that the true counterparty was BAE Systems. SAAB also notes that in 2007 the Swedish Prosecutor's office initiated an investigation in Sweden into alleged improper business practices in connection with Gripen export activities. SAAB again cooperated fully with that investigation, and submitted substantial
25 documentation in numerous responses to questions from the

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prosecutor's office. In June 2009 that investigation was closed without any charges being raised against SAAB or any of its employers or directors. SAAB believes this information was independently obtained by the Commission during its visit to Sweden.

5 Chair, Commissioner Musi, we also noted that in the written submissions that were made to the Commissioners by evidence leaders Sibeko and Sello, there is reference to a proposed charging letter from the United States Department of State to BAE Systems, which referred inter alia to cooperation between BAE and SAAB, regarding the
10 marketing and sale of Gripen Aircraft. Now, there is no suggestion in the written submissions of the evidence leaders that there was any finding made in relation to SAAB's involvement in that particular process. And for the sake of clarity, SAAB simply wishes to record that no charges by the United States Authorities were ever raised against
15 SAAB, or any Gripen company formed as a result of the cooperative efforts between SAAB and BAE Systems. Indeed, in footnote four to the exert that is quoted in the evidence leaders' submissions, the document, the charging letter expressly notes that SAAB and its subsidiaries are not the subject of any investigation related to the transactions described
20 herein.

In conclusion, Chair and Commissioner Musi, SAAB respectfully submits that it has cooperated fully with the Commission in its investigation process, and in light of the information and the evidence that this Commission has received, there is no bases for any finding of
25 unlawful or improper conduct by SAAB in relation to its involvement in

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the SDPP. SAAB respectfully trusts that SAAB's role within the SDPP has been clarified to the satisfaction of the Commission, and respectfully submits that the Commission's findings should conclude that there is no evidence whatsoever of any unlawful or improper conduct on the part of SAAB in relation to the SDPP.

Chair, Commissioner Musi, those are the closing submissions of SAAB, but to the extent we are happy to respond to any particular questions that the Commission may have.

CHAIRPERSON: Thanks a lot for the submissions. I am sure you contributed a great deal to the preparation of the report. Some of the points that have been [indistinct] some other document that were not quite clear to us. Now, I think you have clarified some of those issues.

ADV WILSON: Thank you, Chair.

CHAIRPERSON: Thanks a lot.

ADV MEIRING: Honourable Chair, Honourable Commissioner, we received a request from Mr MDumbe that we read the written submission of BAE into the record, dated 26 July 2012. Those written submission remain [indistinct], and by leave, I will proceed to read them into the record.

"BAE Systems PLC welcomes the appointment by the President of the Republic of South Africa for the Commission of Inquiry into allegations of fraud, corruption, impropriety or irregularity in the Strategic Defence Procurement Package, to investigate issues [indistinct] from South Africa's Strategic Defence Procurement Package, the SDPP.

BAE very much hopes that the Commission will be able to bring this

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long running affair to an appropriate conclusion. As the Commission knows, the history of the SDPP is long and complex. BAE's documentation surrounding both that history and the subsequent investigations into what happened is voluminous and already in the

5 *hands of a number of investigatory authorities, including the South African authorities.*

BAE understands that the Commission has approached the United Kingdom's Serious Fraud Office, the SFO, concerning documents collected from BAE and others in the course of the SFO's investigation

10 *of BAE. Over 12 years have passed since the contracts comprising the SDPP were concluded. Over 20 years have passed since BAE's predecessor, British Aerospace, began marketing its civil aircraft in South Africa. There is now no member of Senior Management within BAE with any direct knowledge of those events. For this reason BAE is*

15 *not able to provide a sworn statement, but hopes that instead it may assist the Commission to give a concise overview of the SDPP in so far it involved BAE and of BAE's activities in relation to the SDPP.*

BAE is a global defence aerospace and security company. It delivers a full range of products and services for air, land and naval forces, as well

20 *as advanced electronics, security information technology solutions and support services. In 2011 it was the fifth largest aerospace and defence company in the world. BAE is committed to be having ethically on all aspects of its business, recognising that success depends, amongst other matters, on maintaining and enhancing its corporate reputation.*

25 *It is well known that BAE was investigated for many years by the UK*

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and United States Authorities about allegations of bribery and corruption, relating to its global defence business. As explained in Section 7 to follow, these investigations ended in 2010. In 2007, while the investigations were continuing, the board of BAE appointed an

5 *independent committee, chaired by the right Honourable Lord [indistinct] of Barnes, the former Lord Chief Justice of England and Wales, to report publically on the company's ethical policies and process, the Woolf Committee.*

The Woolf Committee sought to identify the high standards to which a

10 *global company is expected to adhere, the extent to which BAE currently met those standards, and to make a series of recommendations about actions that BAE should take to achieve them. Before the Woolf review commenced, BAE's Board of Directors, the Board, committed itself to accepting and implementing the Woolf*

15 *Committee's recommendations in full. This was an unprecedented step for a major international company. In presenting his Committee's report to the Board on 6 May 2008, the Woolf report, the Lord Woolf stated that its 23 recommendations provide a route map for the company to establish a global reputation for ethical business conduct that matches*

20 *its reputation for outstanding technical competence.*

The Woolf report noted the importance of appointing an independent external auditor to provide assurance to the Board about the progress of the Woolf implementation program. BAE appointed Deloitte LLP for this purpose. In May 2011 BAE completed the implementation of the Woolf

25 *Committee's recommendations. This implementation was assured by*

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Deloitte. In 2010 the ethical leadership group independently reviewed BAE's progress and concluded that it has a solid business conduct program, that includes many best practice elements.

It identified some opportunities for improvement. These have been
5 *incorporated into BAE's continuing business conduct program, consistent with BAE's objective to be in vanguard of ethical best practice."*

Section 3, an overview of the negotiations.

"From 1991 BAE... [intervene].

10 CHAIRPERSON: I am sorry, sir. If you do not mind, you know, there are other [indistinct] which we [indistinct] important during your submission, but [indistinct] had over 12, 13 witnesses dealing with paragraph 3. So, we will not mind if you can skip that.

ADV MEIRING: I am in your hands.

15 CHAIRPERSON: Thank you.

ADV MEIRING: If I may proceed to Section 4, it is a comparison of the aircraft in question.

"There have been allegations that the Hawk was inferior to, and more expensive than other aircraft in the bidding process for South Africa's lift
20 *programme, which included the Aermacchi MB-339C, the Aero L-159, the MiG 8-80 and the Yak-130. BAE considers that a comparison of the Hawk with its principle rival for the SDPP, the Aermacchi, demonstrates that the Hawk is the superior and overall most cost effective aircraft.*

The version of the Hawk aircraft purchased by the SAAF represents a
25 *new generation of aircraft. It features a new wing, forward and centre*

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fuselage, fin and tail plate and has only 10% commonality with the existing first generation Hawk aircraft. The SAAF Hawk is equipped with a powerful Rolls Royce engine, and has a high level technology navigation and weapon delivery systems. The Hawk aircraft has had

5 *strong export success throughout the world. It has been consistently selected in competitive tenders and is used in Australia, Bahrain, Canada, Finland, India, Indonesia and many other countries. It has operated successfully in a wide range of conditions, including the Arctic Circle, the Middle East and the tropics.*

10 *The Hawk introduces the student pilot to operational frontline fighter aircraft performance, in a training environment, reducing the time needed on expensive to operate frontline aircraft, and is the training aircraft of choice for many countries. With its advanced avionics equipment, reliable airframe and 3 000 kilogram payload, the Hawk*

15 *provides advanced flying and weapons training, which addresses the skills of a student pilot needs to master to become a frontline pilot. With proven low maintenance requirements and low life cycle costs, the Hawk provides a cost effective realistic training environment for future frontline combat aircrew.*

20 *The Hawk program of South Africa provides a training system which is ideally suited to young, inexperienced pilots through to more experienced pilots. The new aircraft replaced the SAA's Impala aircraft, which had started to be produced in South Africa in the 1960's. As a result, South Africa's new pilots benefit from far more effective fighter*

25 *pilot training that facilitates a smoother transition from basic training to*

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more advanced roles. It also means that South African pilots enjoy the benefits of a new jet trainer program, comparable to programs being offered by the Royal Air Force, the US Navy, the Royal Australian Air Force, the Canadian based Nato Flight Training Program and the Air
5 forces of Kenya and Zimbabwe.

There has been a continuing development program for the Hawk, which has enhanced its capabilities and embodies many product improvements, derived from the experience of over 1 million flying hours in service worldwide.

10 The Aermacchi. The Aermacchi was the Hawk's principle competitor in the competition to supply the SAAF. It is a modified and updated version of the Aermacchi MB-326 basic jet trainer, which first flew in 1957. Improvements consist of an upgraded engine, new front fuselage for improved view from the rear cockpit and re-profiled wing leading
15 edge. The design of the airframe and its Rolls Royce Viper 680 engine, however, remain those of the original MB-326 aircraft. The Aermacchi is used in Dubai, Ghana, Italy, Malaysia, Nigeria, Peru, Singapore and the United Arab Emirates.

The overall performance of the Aermacchi falls between that of a
20 turboprop and a proven advanced jet trainer. As a basic jet trainer the aircraft performs both competently and safely. In comparison to the Hawk however, the Aermacchi does not offer a wide range of performance skills training. The initial unit cost of the Aermacchi is lower than the initial cost of the Hawk, but this figure is misleading when
25 calculating cost of ownership. When the real cost of maintenance and

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support for the Aermacchi over its lifetime is added to that of acquisition, the cost of ownership of the Aermacchi compares unfavourably to the Hawk. The average cost of the Aermacchi is \$1 609 per flying hour, compared to the \$1 060 per flying hour for the Hawk. In other words the
5 Hawk is \$549 per hour cheaper.

This demonstrates that the Hawk provides better value for money. The Aermacchi is also inferior to the Hawk in a number of other areas, including the Hawk's abilities to give the student pilot a realistic experience of frontline aircraft, to carry a greater payload and full fuel,
10 which enables a much greater range, and to fly night time missions, whereas the Aermacchi aircraft is limited to short range daylight missions only.

A comparison of the Hawk and the Aermacchi aircraft. The number of comparable features of the Hawk and the Aermacchi, the Hawk is widely
15 regarded as superior when assessed against those features. The Hawk is widely acknowledged as having broader operational performance than the Aermacchi. The Hawk can be used for both training and operational purposes, meaning that an air force could deploy Hawks during times of crisis and redeploy for training purposes during peace time. Further, the
20 Hawk offers forward looking infrared, which enables it to carry out missions both during the day and at night, and in a range of conditions, unlike the Aermacchi which is limited to short range and daylight ground attack missions.

BAE provides a proven operational flight trainer and simulator with the
25 Hawk, which is more advanced and realistic than the fixed based cockpit

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simulator provided with the Aermacchi. With respect to operational capabilities the Hawk has a higher maximum payload and is the most capable trainer aircraft in delivering heavy ordinance over the furthest distance. Unlike the Aermacchi, the Hawk does not require a choice

5 *between reduced payload and reduced fuel, which limits the capacity of the aircraft in operational missions.*

The Hawk is also equipped with various defence aids such as [indistinct] and an RWR system, which provide a high level of protection for the aircraft when flying. The Hawk has an advantage over the Aermacchi in

10 *relation to life cycle and maintenance requirements. It has a longer aircraft lifespan and a lower average cost per flying hour than the Aermacchi. The Hawk requires a shorter time on the ground for maintenance during the life cycle of the aircraft, meaning that it is available for more time during the course of the year for operational*

15 *missions and training. The Hawk uses a more advanced engine than the Aermacchi, the Rolls Royce Adour Mk 951 engine. Fitted on the Hawk offers better fuel consumption, greater thrust and generally have fewer problems reported than the Rolls Royce Viper Turbo Jet engine fitted on the Aermacchi.”*

20 A technical comparison of the two aircrafts can be found in Appendix 1 to BAE’s written submission.

CHAIRPERSON: I am sorry. Again, [indistinct]. So, that we can skip. Same applies to the DIP and the NIP and [indistinct], I think it appears on page 14 of your submission.

25 ADV MEIRING: All right.

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“BAE engaged advisors in relation to BAE and SAAB. BAE paid approximately 115 million Pounds, to advise us in connection with the sale of civil and military aircraft, including the Hawk and Gripen, in South Africa and in fulfilling offset obligations. Some campaigners have suggested that the payment of these commissions is evidence in itself that there was corruption in the procurement process. The Institute for Accountability has suggested to the Commission that an admission of bribery was made in the UK’s House of Commerce in 2003.

In fact, the statement made by the then Secretary of State for Trade and Industry, Patricia Hewitt [indistinct] on 9 June 2003 in relation to BAE sale of Hawk aircraft in South Africa, was ECGD’s application process required certain details of agents’ commission to be disclosed to ECGD, in order that it can follow its due diligence procedures. In this case such due diligence procedures were followed and no irregularities were detected. For reasons of commercial confidentiality, specific details of the commission paid cannot be revealed.

The Institute of Accountability’s letter to the then evidence leader of the Commission, dated 14 November 2011, submitted that the word commissions meant bribes. These assertions do not accurately characterised the statement made by the Secretary of State, they also reflect a misunderstanding of the nature of the procurement process. The use of advisors by international companies exporting to countries where they have no material in country capability or staff, was and is common place across many industries. This approach offers a lower cost base for long lead time programs, compared to the basing of staff

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in country, ultimately leading to a lower cost of sales to the customer. It is widely accepted that offset obligations require contractors to employ advisors to perform roles, which include providing local knowledge of market specific procurement processes and practices.

5 *In the 1990's BAE's sales strategy worldwide was to incur no cost in the country itself, but rather to engage local advisors upon whom the cost fell. Further, the advisors assumed all the financial risk of the procurement process, saving BAE a fixed overhead, which in the case of South Africa BAE estimates based on the cost of other overseas*
10 *offices, to have been in the order of approximately 4.2 million Pounds annually. BAE's work in South Africa began in 1991 and has run for more than 20 years. The SDPP contracts were worth in excess of 2 billion Pounds, and incorporated very significant offset and obligations. The actual spent on advisors in relation to BAE and SAAB was well*
15 *within what any company bidding for contracts of this sort, would have expected to incur.*

This is not to say that BAE would adopt exactly the same approach for a similar procurement process today. BAE undertook a comprehensive review of its relationships with advisors in 2007, as a
20 *result of which BAE terminated its contractual relationships with its advisors globally, including those acting in relation to the SDPP. In its report the Woolf Committee considered BAE's revised process for the appointment selection and management of advisors, was leading edge practice.*

25 *The conduct of advisors relating to BAE and SAAB, products in*

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the course of the SDPP has been subject to a number of detailed investigations over many years. None of these investigations has demonstrated unlawful conduct on their part. As is well known, in July 2004 the Serious Fraud Office began investigating allegations against the BAE group. That investigation included an investigation of the sale of the Hawk and Gripen aircraft to South Africa. In the course of the five years of that investigation, BAE disclosed 100's of 1000's of documents to, and made relevant employees available for interview by the SFO, at a cost to BAE of 10's of millions of Pounds.

BAE believes that the SFO obtained documents from others in the UK, South Africa and elsewhere, and interviewed many individuals. In 2007 the US Department of Justice also began an investigation of BAE's business. In February 2010 BAE agreed with the SFO and the Department of Justice the bases upon which the investigation should be concluded. In the UK BAE agreed to plead guilty to one charge of failing to ensure that the books and records of one of its subsidiaries were reasonably accurate in relation to a transaction in Tanzania, and to make a payment for the benefit of the people in Tanzania. In the US BAE agreed to plead guilty to making false statements to the US Government, and certain export control violations. None of these charges against BAE related to its activities in South Africa. BAE did not plead guilty to any offences of bribery or corruption.

BAE understands that the South African authorities have also investigated allegations concerning the sale of Hawk and Gripen aircraft to South Africa. In 2001 the joint investigation team reported that it had

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found no evidence of improper or unlawful conduct by the government. It appears that the matter is also being investigated by the Scorpions, but BAE has not been informed that the investigation made any adverse findings.

5 *In conclusion. In the 1990's BAE in partnership with SAAB, responded to the South African Government's request for a replacement of the SAAF's Impala aircraft. In so doing, BAE offered and sold to South Africa Hawk aircraft, which has been successfully exported to countries throughout the world. BAE and its predecessor companies*
10 *are proud of their partnership with South Africa over the past two decades. They have met their obligations both in the delivery of the aircraft themselves in relation to offset, each to the evident satisfaction of the South African authorities.*

BAE hopes that the Commission finds [indistinct] useful and is
15 *able to bring the investigation to a satisfactory conclusion."*

This written submission was made three years ago by BAE. BAE's instructions are to me that they remain [indistinct] and they stand by that, and there is nothing that has unfolded over the course of the Commission, or otherwise, that necessitates any amendment or addition
20 to that.

CHAIRPERSON: Thanks a lot, sir. You are correct, their submissions were made to the Commission by BAE in 2012. Then, because there were certain issues which arose in the meantime, we thought it will only make sense that the submissions should be read into the record.

25 Thanks a lot for reading that into the record.

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MR MEIRING: Thank you.

CHAIRPERSON: Thank you. I think this brings us to the end of the participation of [indistinct]. I am not sure if any of the evidence leaders wants to make any comment about the submissions of other people. It is up to them. It does not seem that any of the evidence leaders want to make any further submissions. Thank you.

I think now we have come to the end of Phase 2 of this Commission's proceedings. The next phase that I would like to go to is to prepare a report. Commissioner Musi and I agreed that we are going to prepare a closing remarks statement, which were [indistinct] time enough to sign it, and we will try and make it available to everybody, after reading it into the record.

Today's sitting of the Commission is significant for a number of reasons. It marks the end of the [indistinct] phase of the Commission's work, the public hearings which commenced on 19th August 2013. Most importantly, it concludes the Commission's inquiry into the Strategic Defence Procurement Package, which as you may recall was announced by the President in September 2011, and began in earnest on the 16th of April 2012, when we moved to temporary offices in Civil Court. In the coming few days Commissioner Musi and I will begin the solitary and [indistinct] task of writing our final report. We have until the 31st of December 2015 to finalise it, and submit it to the President. We will however endeavour to submit it much sooner than stipulated in the Terms of Reference.

This being the last sitting of the Commission, it may be [indistinct]

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to reflect briefly on each journey thus far. We do so with circumspection, mindful of the injunction that we must report to the President, and only to him. This inquiry launched as a consequence of incessant allegations of [indistinct] relating to the SDPP's. These

5 *accusations, which cast doubt on the wisdom of the first democratic elected government of South Africa, impeach the integrity of members of the Executive, Government Officials, Defence Companies that won the bids, their employees and agents and consultants have been in the public domain for quite some time.*

10 *They have also chronicled to several books and numerous press articles, who deemed it appropriate from the onset to solicit information from all interested parties. In May 2012 the Commission invited everyone with information relevant to his Terms of Reference, to bring such information to his attention by way of an affidavit. The response*

15 *was disappointing [indistinct]. We received a meagre eight submissions.*

Simultaneously we requisitioned information pertaining to the SDPP in the custody of Cabinet, Parliament, Department of Defence, Department of Trade and Industry, National Treasury, Ammelman's Corporation of South Africa, Directorate for Priority Crime Investigation,

20 *which inherited the investigations into Arms Acquisition from the Directorate of Special Operations when it was disbanded as well as the Investigating Directorate Serious Economic Offences, National Prosecuting Authority and the office of the Auditor General. Their response was [indistinct].*

25 *These institutions did not only provide us with information, but*

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also affirmed that they will cooperate with the Commission in discharging its mandate. The commitment of these institutions and their unwavering support, was also demonstrated by the swift manner in which they declassified documents required by the Commission, including Cabinet minutes, their affordability study report and the contracts concluded between Government of the Republic and various arms manufacturers.

It is apparent from the above, the Commission is not the first institution to grapple with the allegations of [indistinct] in connection with the SDPP's. The Directorate for Special Operations and subsequently the Directorate for Priority Crime Investigations commences investigations into the various legs of the Arms Procurement in 2000. These investigations were discontinued in 2010. The allegations also spurred investigations in the United Kingdom, Sweden, Switzerland, Lichtenstein, Germany and France.

Some witnesses who appeared before the Commission, testified that BAE Systems who supplied the leading fighter trainers, the Hawks and advanced light fighter aircraft, the Gripen, was investigated by the United States Department. It would have been remised of the Commission not to make an effort to access information in all evidence amassed by these investigative bodies. Accordingly, the Commission consulted with the prosecutors, auditors and investigators who were involved in the local investigation into the acquisitions between 2001 and 2010, and visited a number of overseas countries, and met and consulted with the representatives of the foreign investigative agencies

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referred to above. The outcome of our interactions, with all these entities and people will form the subject of the Commission's final report, and cannot be discussed here.

We should concede that the road to thus far has not been plain sailing. In the period prior to the commencement of the public hearings, we enjoyed a barrage of criticism, which was sparked by the resignation of two officials, one of whom made serious allegations against the Commission. Sections of the media insist upon these allegations, and tried to discredit the Commission and [indistinct] its work.

The Commission dealt [indistinct] with allegations in a number of media statements. Then, on the eve of the start of the public hearings, one of the Commissioners resigned, which resulted not only in another round of media lashing of the Commission, but also in the commencement of the public hearings being postponed by two weeks, and the Commission being reconstituted. When we thought that we had weathered the storm, one senior evidence leader resigned, to be followed shortly by other two evidence leaders right in the middle of the public hearings. However, this only served to strengthen the result on the remaining teams of evidence leaders, our internal legal team, our support staff and of course the Commissioners, to soldier on and execute our mandate.

The Commission has heard approximately 56 witnesses, and heard extensive evidence, including evidence of a technical nature by the senior officials of the military, officials of ARMSCOR and seen experienced officials of Government Departments that took part in the

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procurement process. Among the high profile people who testified are members of the Inter Ministerial Committee, that oversaw the whole process, and we can mention former President, Thabo Mbeki, former Minister of Finance, Mr Manuel, former Minister of Trade and Industry,

5 *Mr Alec Erwin, former Minister of Defence, Mr Lekhota and former Deputy Minister of Defence, Mr Kasrils. Among the senior military officers who testified, are the current Chief of the National Defence Force, General Solly Choke, and the former Chief of the Air Force, General Hechter, as well as Deputy Chief of the Air Force, General*

10 *Malinga.*

On the other spectrum the Commission has heard evidence of prominent individuals, who are popularly referred to as critics by virtue of the fact that they have publically criticised the SDPP's over the years. This includes Mr Terry Crawford-Browne, Dr Richard Young and career

15 *politician, Ms Patricia de Lille and Mr David Menya, as well as former MP's, Mr Taljaard and Dr Gavin Woods. Misters Feinstein, van Vuuren and Holden, who have written books on the subject, were scheduled to appear before the Commission, but refused to testify. We, however, do have their submissions that they handed in in 2012, and these will be*

20 *looked at. The last witness who testified were representative of the three other companies that were awarded the contracts, the winning bidders namely Thales of France, ThyssenKrupp, part of the German Frigate Consortium and Augusta Helicopters of Italy.*

We take this opportunity to thank all the legal representatives who

25 *represented the various witnesses during the hearings, and also those*

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who participated in the closing submissions. Their participation was critical in facilitating the smooth running of the hearings.

Last, but not least, we thank all the witnesses who testified. We know that appearing in a forum of this nature is not an easy task, especially considering that they will be subjected to possible cross-examination. [Indistinct] to take this opportunity to thank our staff members for their unwavering commitment and loyalty to the cause of the Commission, and stay the course in the face of all the tribulations. To them I say job well done. In this regard I wish to make special mention of the following:

- 1. Evidence leaders: Adv Sibeko SC, Adv Lebala SC, Adv Mphaga SC, Senior Attorney Ms M Ramagaga, Adv Ngobese, Adv Sello and Adv Zondi, Adv Mdumbe, head of the internal legal team. He has been a pillar of strength and operated as a conduit firstly between the evidence leaders and the Commission, and*
- 2. Between the Commission, witnesses and interested parties.*
- 3. Secretary to the Commission, Ms P Lumphondo and her staff, who have throughout ably provided the Commission with the necessary administrative support, including Ms Hlatswayo, our office manager.*
- 4. The Communications Manager, Mr W Baloyi, who has had to deal with inquiries and queries from the media, and kept the public abreast of the Commission's programs and activities.*
- 5. Mr Mama, who has provided the Commission with assistance in the form of research, as well as ensuring that the documents used at the public hearings are made available to all stakeholders.*

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6. *Personal assistant to the Commissioners, Ms M Khumalo and Ms C Sipeng, who have throughout provided the necessary assistance to the Commissioners.*

7. *Captain Coetzee and his staff for providing us with security at the*
5 *public hearings.*

8. *Mr Twala and his team of security personnel whom are looking after the Commission's offices.*

Our sincere gratitude also goes to the City of Tswane, for providing us with office space and this venue where we have held our
10 *meetings since 2013. We will also like to thank the Department of International Relations, the Department of Justice and Correctional Services for their assistance. Lastly, we would like to thank the media in ensuring that the proceedings of the Commission reach all members of the South African society.*

15 I think that is all, concluding the statement.

Lastly, I would like to thank all of you who are even present today, and some of you [indistinct] who has been here on every single day that we have been sitting. Thanks a lot, without your support we would not have reached the point we have reached today. I thank you all, and we
20 will now adjourn. Thank you.

COMMISSION ADJOURNS