

## **MEDIA STATEMENT: WITHDRAWAL FROM THE ARMS PROCUREMENT COMMISSION**

The Arms Deal was a uniquely damaging moment in our young democratic history. It was concluded after decades of uncontrolled spending on foreign and internal wars by the apartheid regime. From the signing of the contracts in 1999 up to R70 billion of public money continues to be spent on weapons of questionable utility. The country was not and is not facing any meaningful military threat. But rather the most pressing problems that faced us then as they do now are inequality, poverty and unemployment.

Since its inception the Arms Deal has been dogged by well supported allegations of corruption. We together with many other activists have consistently challenged the State to fully investigate and prosecute these allegations. Four previous investigations have failed to fully probe the Arms Deal.

We have engaged with these matters in different capacities over many years and we have done this out of the commitment to the primacy of the Constitution and the rule of law in our democracy. Given this commitment we believe that all allegations of corruption must be investigated and prosecuted without fear and favour.

After careful consideration, with great disappointment we have decided to withdraw all participation in the Seriti Commission of Inquiry into the R70 billion Arms Deal.

The appointment of the Commission raised great expectations that the truth would finally be established, and that this would challenge the interests of politicians, middlemen and large corporations in one of the most corrupt industries in the world. The Commission had the prospect of serving not only South Africans but all people across the globe campaigning against the devastating impact of corruption in the arms trade.

The Commission has failed on both accounts. It has missed a historic opportunity to support the struggle for transparency and accountability of the powerful.

We have not made our decision lightly. It follows nearly two years of actively trying to support the work of the Commission, assisted by an exceptional pro bono legal team led by Lawyers for Human Rights.

We have taken our decision due to serious and fatal concerns we have regarding the manner in which the Commission has conducted itself. There are four key reasons why we have decided to withdraw:

1. The Chairman, Judge Willie Seriti, indicated that he was not interested in hearing evidence from witnesses about documents that they had not themselves written. Judge Seriti made this ruling during the testimony of Member of Parliament Mr David Maynier. This prevented Mr Maynier from giving any substantive evidence, as he was not the author of documents that emanated from investigations or government departments. This is particularly disturbing as this limitation was not applied to previous witnesses who were supportive of the Arms Deal. The implication of this ruling is that only those who have been involved in the Arms Deal can introduce evidence. How the Commission intends to discover the truth by only hearing from participants in the Deal is a mystery.

The Chair has also ruled that witnesses should only speak to corruption allegations of which they have personal knowledge. The logical conclusion of this ruling is that only those who have been corrupted, who have corrupted others, or who were intermediaries in such corruption, can give evidence of it. It is obvious that all of these parties have an interest in hiding the truth. Why would the Chair choose to rely solely on their opinions?

We have conducted extensive research into the Arms Deal. We have analysed thousands of documents, and interviewed people who are able to point to where evidence of corruption is likely to be found. We were not direct participants in the Arms Deal. If we are not allowed to talk to documents that we have not written, nor speak to corruption allegations based on documentary evidence, there is no point in our appearing as witnesses. This process will serve to undermine the critics without addressing the evidence they have accumulated. This can only serve to protect the corrupt and compromised.

In response to our attempt to resolve this issue, the Commission has informed us in their correspondence of 27 August 2014 that "The decision [to admit evidence of which a witness not the author, nor facts within a witness' personal knowledge] will be influenced by the circumstances of each case, including the document's relevance to the terms of reference and the purpose for which it is sought to be used." There is no basis on which we can have any expectation that we will be permitted to give evidence on matters not within our personal knowledge, and rely on documents we are not the authors of. The Commission's rulings to date in respect of other 'critic' witnesses, and the Commission's rulings to date in respect of our cross-examination of other witnesses, clearly indicate the contrary. The Commission has not undertaken that it will now reverse its previous approach. (If it did so, procedural fairness would require the recall of a number of witnesses).

2. The Commission has consistently failed to provide us with access to relevant documents. We have attempted to resolve this issue during the last 18 months through in excess of 20 letters directed to the Commission. In reply to our latest repeat request received from the Commission last night, the Commission made it clear that it will not release documents to which we are entitled, and which it initially promised to give us. The Commission has breached our legal rights.

3. The Commission has refused to admit key documents. On two occasions we have attempted to submit extremely important documents to the Commission. They are the draft Auditor General's Report and the Debevoise & Plimpton Report. The former provides evidence of severe irregularities in the Arms Deal selection process. The latter provides evidence of actionable allegations of potential corruption in the Arms Deal. The Commission has ruled both documents inadmissible. Advocates Skinner and Sibiya, who recently resigned as evidence leaders from the Commission, stated that failing to admit documents of this type 'nullifies the very purposes for which the Commission was set up.' We agree.

4. Information from parties who have resigned from the Commission, and the Commission's own public conduct, suggests that it does not intend to properly investigate the Arms Deal. There is evidence to suggest that the Commission is following a second

agenda, namely, to discredit critical witnesses and find in favour of the State and arms corporations' version of events. The Commission has not adequately responded to this serious allegation. Our recent interaction with the Commission reinforces our fears in this regard. We have discovered that the Commission has not bothered to review or even index all the documents in its possession. In particular, it appears that the Commission has not engaged, at all, with documents collected by the Hawks and the Scorpions in their investigations into the Arms Deal, which produced millions of pages of evidence. It is difficult to understand why the Commission has failed to do this. There is no indication that it intends to do so. It is now nearly three years since the Commission was appointed. If the Commission still intends to examine, analyse and use these crucial documents, it is unclear how it will be able to do so within the time limit of its current mandate – and it is unclear why it did not examine and analyse them in the past nearly three years, before witnesses gave oral evidence. The Commission has also failed to collect a number of equally crucial documents from international sources.

Former President Thabo Mbeki asked critics to 'show us the evidence.' We have evidence, which we will outline shortly, and which we have published repeatedly. It is the job of the Commission to access all evidence available here and abroad, to assess its veracity, and to make it available to the public. The Commission has the legal powers to undertake the required investigations, and a legal obligation under its Presidential mandate to do so. It is only because the Commission has failed to do its job that it falls to the critics to do so again. Yet we are restricted from doing so, through the Commission failing to provide us access to documents, and inexplicably refusing to allow relevant documents to be admitted, or relevant evidence to be given.

The Arms Deal was an attack on our democratic order. It has undermined and continues to undermine the rule of law and weaken state institutions. The Deal and the cover up have robbed many ordinary South Africans of jobs and access to public services. It has entrenched political and economic inequality. We call on all South Africans to continue the fight for transparency, a full investigation, and accountability of all those implicated. We are distraught that the Commission, with which we have attempted to cooperate since its inception, has indicated that it will be yet another exercise that fails to take the opportunity to fully investigate the Arms Deal, without fear or favour, once and for all.

For these reasons we have decided to withdraw all participation in the Commission. We believe in the rule of law and the primacy of the Constitution, but cannot co-operate with an institution that is so deeply compromised that its primary outcome will be to cover-up the facts.

We believe the Commission is no longer salvageable. We call on civil society organisations and the public to join us in calling for:

- the dissolution of the Commission;
- a full, unfettered and independent criminal investigation into the arms deal;
- and consequent criminal prosecutions of all against whom there is evidence of wrong doing.

We have devoted many years to exposing the wrongdoing at the heart of the arms deal because we believe that the public, who financed the deal, has the right to know. Our commitment to establishing the truth remains undiminished. We call on all peace-loving South Africans who demand a fairer future for all our people to support this call.

**Andrew Feinstein, Paul Holden and Hennie Van Vuuren**

**28 August 2014**