



**Evidence for the People's Tribunal on Economic Crime
(03-07 February 2018)**

2. The 1999 Arms Deal

**Drafted by: Corruption Watch
January 2018**

Table of Contents

Introduction	3
The Seriti Commission of Inquiry into the Arms Deal	4
The Establishment of the Commission	4
Resignations from the Commission	4
The Seriti Commission and the Implications for Methodology.....	6
The Irrationality of the Arms Deal.....	7
South Africa’s Apartheid-Era Military Dominance in the Sub-Saharan Region	7
The Political Context, Civil Society and the Majority of Parliament.....	8
South Africa’s Post-Apartheid Military Posture	10
The Economic Context and the Potential Economic Cost of the Arms Deal	11
Mutual Enrichment: The Real Motivation for the Arms Deal, 1994 to 1999	14
Inducements During the Early Stages of the Arms Procurement Process and their Implications for the Probity of the Initiation of the Arms Deal	18
The Selection Process and Allegations of Corruption.....	20
The LIFT/ALFA contracts.....	20
The LIFT/ALFA Contracts and Corruption.....	25
The Corvette Contract.....	31
Irregularities in the Selection of Subcontractors for the Corvette Combat Suite	34
The Sub-contract for the Supply of Gearboxes to be used in the Corvettes.....	37
The Corvette Contract & Corruption	38
The Corvette Contract & Corruption	42
The Submarines, Corruption & the Debevoise & Plimpton Report.....	45
The Light Utility Helicopter Contract	48
The Sub-contract for the Supply of Engines to be used in the Light Utility Helicopters.....	49
The Sub-contract for the Supply of Gearboxes to be used in the Corvettes.....	50
The Arms Deal and ANC Party Funding.....	51
ANC Efforts to Conceal Corruption	54
The Cost of the Arms Deal	56
Conclusion	56

Introduction

1. This submission seeks to provide a salient narrative of all the currently known evidence relevant to the South Africa's 1999 Strategic Defence Procurement Package ("SDPP"), more commonly known as the Arms Deal.
2. Occuring during South Africa's transition period from apartheid to democracy, the Arms Deal exemplifies the continuities between old and new elements within the shadowy criminal 'deep state' networks. It continues to haunt present South African politics, directly implicating the current President, Jacob Zuma. In addition, the Arms Deal also had a catastrophic effect on the post-apartheid economic project adding to rising inequality and entrenched poverty. The Arms Deal was not a single event, but rather a series of scandals that has contributed towards undermining accountability and transparency within the security establishment and the state. It thus remains vital to understand the Arms Deal as South Africans continue to grapple with its legacy of corruption and secrecy within public and private institutions.
3. The following text is based primarily on the joint submission made to the People's Tribunal on Economic Crime in South Africa by Andrew Feinstein and Paul Holden. Their joint submission is annexed hereto and marked as "**AD1**". This is based on their submission to the Seriti Commission of Inquiry into the Arms Deal, which was submitted to the Commission in January 2013. What follows below is a summarised version of events and should thus be read in conjunction with annexure AD1.
4. This submission seeks to address the following questions:
 - i. What was the Arms Deal?
 - ii. What wrongdoing was covered up?
 - iii. Who were the actors involved and how did they benefit?
 - iv. What was the Seriti Commission and where did it fail?
 - v. What is the legacy of the Arms Deal?
5. In order to answer these questions, the submission takes the following structure. The first section details the Seriti Commission and its failures. Although, chronologically this comes later, it is important to discuss upfront as it has implications for the sources and methodology used in this submission. The next section lays out the what the Arms Deal was and why it was irrational. The final section covers the particulars of the contracts, the characters and the cover-ups that make-up the Arms Deal. The final section points to the cost of the Arms Deal.

The Seriti Commission of Inquiry into the Arms Deal

6. Before moving onto the substantive content of this submission, it is necessary to briefly discuss the Seriti Commission of Inquiry and how this submission will deal with both the evidence led therein and the findings of its final report.

The Establishment of the Commission

7. On 24 October 2011 President Zuma formally established a commission of inquiry. He appointed Judge WL Seriti as Chairperson of the Commission. He appointed Judges WJ van der Merwe and M F Legodi as additional members of the Commission.
8. On 28 October 2011 the Presidency announced that Judge van der Merwe had asked to be released from his duties due to ‘personal reasons’, to which the President had assented.
9. On 6 December 2011 the Presidency announced that the President had appointed Judge HMT Musi as a member of the Commission to replace Judge van der Merwe.
10. On 1 August 2013, the Presidency confirmed media reports that Judge Legodi had tendered his resignation from the Commission. The Presidency stated that the President was satisfied that the Commission could proceed with its two remaining Commissioners.
11. The Commission was given far-reaching and wide-ranging powers of investigation, an extended period, and substantial resources in order to carry out the enquiry. The Commission was given more than four years to carry out its functions.

Resignations from the Commission

12. During the life of the Commission it suffered numerous resignations, including two commissioners (Judge van der Merwe and Judge Legodi).
13. On 31 July 2013 Judge Legodi resigned from the Commission. This was just before the first public hearing, on 5 August 2013. The reasons for his resignation were not made public. Quoting sources within the Commission, the *Mail & Guardian* claimed on 31 July 2013 that his resignation was brought about by his unhappiness with the manner in which Judge Seriti was managing the Commission. The report stated ‘Legodi is known to have been unhappy with the secrecy surrounding the workings of the commission, the covert handling of the documentation, the fact that Seriti ruled with “an iron fist”, according to sources close to the process.’ The *Mail & Guardian* report is annexed hereto and marked as “AD2”.
14. The Commission suffered further resignations. Advocate Tayob Aboobaker SC was appointed as the chief evidence leader for the Commission. It was reported that he was deeply unhappy with the way that the Commission was run. In April 2014, it was confirmed that Adv Aboobaker SC had resigned from the Commission. No reason was given publicly for his resignation.

15. Attorney Mokgale Norman Moabi was appointed as a senior investigator at the Commission. He resigned from the Commission in protest at the manner in which the Commission was undertaking its work. His resignation letter, dated 7 January 2013, was subsequently made public. It claimed that the Commission was operating according to a ‘second agenda’, which ensured that the Commission did not fulfil its mandate as outlined in its terms of reference. His resignation letter is annexed hereto and marked as “AD3”.
16. Attorney Kate Painting was appointed as the Principal Legal Researcher assisting the Commissioners. She resigned from the Commission in March 2013. In August 2013, she released a short statement clarifying the reasons for her resignation. She, like Moabi, referred to a ‘second agenda’ at the Commission. Her statement is annexed hereto and marked as “AD4”.
17. Advocates Barry Skinner and Carol Sibiyi were appointed as evidence leaders to assist the Commission. They both resigned from the Commission on 22 July 2014. Their resignation followed a hearing of the Commission on 21 July regarding procedural matters surrounding the evidence to be given by Dr Richard Young, a ‘critic’ witness. Skinner and Sibiyi had been appointed as Dr Young’s evidence leaders.
18. The joint resignation letter of Skinner and Sibiyi, dated 22 July 2014 (annexed hereto and marked as “AD5”), was released to the public. It set out an extensive list of problems with the operation of the Commission, much of it related to the Commission’s approach to Dr Young. Other material issues raised by Advocates Skinner and Sibiyi raised serious issues around the conduct of the Commission and its ability and intention in conducting a full and unbiased investigation. A key issue raised by the letter was the Commission’s approach to documentary evidence. They indicated that the Commission had refused to permit documents into evidence, which in their view nullified the very purpose for which the Commission was set up.¹
19. A second matter raised in their letter related to the Commission’s ruling that evidence leaders were forbidden to cross-examine witnesses, thereby limiting any cross-examination at all:

‘The Chair has made it clear that in his view the evidence leaders have no right to re-examine a witness after the legal representative of such witness has re-examined. ... There has been very little cross-examination and accordingly the re-examination of the various civil servants/members of the defence force by their legal representatives, while clearly permissible in terms of the regulations, has naturally been designed to protect the status and credibility of such witnesses.’²
20. A third matter related to claims that the Commission’s forensic auditor/researcher, Mr Mahlangu, had not produced his findings sufficiently timeously to be used by the Commission effectively, and that he had only conducted investigations into a small number of bank accounts.³

¹ AD6 at paragraph 10.

² AD6 at paragraph 12.

³ AD6 at paragraph 13.

21. On 28 August 2014, three independent witnesses – campaigners and researchers Andrew Feinstein, Paul Holden and Hennie van Vuuren – withdrew from the Commission in protest, and called for the Commission to be dissolved entirely and for those implicated in corruption to be prosecuted. Their statement is annexed hereto and marked as “AD6”.

The Seriti Commission and the Implications for Methodology

22. This submission will not substantively engage with each and every piece of evidence or testimony led before the Seriti Commission nor with the final report of the Commission. This is done for three primary reasons.
 - i. First, the Seriti Commission’s findings have been challenged in the High Court by Corruption Watch and Right2Know (“R2K”). The founding papers thoroughly illustrate the failures of the Commission, thus there is no need to duplicate the content thereof in this submission. The founding papers are annexed hereto and marked as “AD7”.
 - ii. Secondly, in light of the Corruption Watch and R2K litigation, it is apparent that the final report of the Commission is entirely lacking in rigour, credibility and factual accuracy. Addressing such a flawed report in depth is a fruitless endeavour.
 - iii. Thirdly, the usefulness of the evidence led before the Commission is questionable. As the Corruption Watch and R2K founding papers conclusively show, the evidence led before the Commission was not tested in any meaningful way, either by the Commissioners or other interested parties. The accuracy of untested evidence presented before a Commission that made challenging the evidence of State parties virtually impossible is highly dubious.
23. In April 2016, following a televised announcement by President Zuma, the final report of the Seriti Commission was published. The Seriti Commission found that there was no evidence of any wrongdoing in the Arms Deal. It also found that the Arms Deal was a rational government decision and that the industrial participation programme attached to the Deal (known as offsets and dealt with more fully below) had fully delivered the jobs and economic benefit originally envisaged. Or, more briefly, it found entirely in favour of the argument made by the State and its actors and entirely against the argument made by ‘critic’ witnesses. Reading the final report creates the distinct impression that the Commission was doing everything in its power to come to a conclusion that supported the State’s version of events, regardless of voluminous contradictory evidence.
24. It is important to point out that not all the evidence presented before the Commission is not worthy of note, especially where evidence submitted to the Commission included significant primary sources. This is particularly true in matters related to the offsets programme, the primary material of which is both deeply enlightening and alarming. It is also true of the substantial primary evidence submitted by Col. Johan Du Plooy, which consists largely of primary material.

The Irrationality of the Arms Deal

South Africa's Apartheid-Era Military Dominance in the Sub-Saharan Region

25. During the 1970s the Apartheid state spent a considerable amount of the national budget on the military. This was particularly true during the presidency of PW Botha. Consequently, during the tenure of his presidency, South Africa was highly militarised. This was reflected in the creation of Armaments Corporation of South Africa SOC Ltd (“Armscor”)⁴, which was designed to help the country ameliorate the impact of the United Nations sponsored arms embargo.⁵ Moreover, the substantial increase in military spending and the adoption of Total Strategy as government’s centrepiece policy in 1979 augmented the militarisation of the South African state.
26. The military budget increased steadily over the next decade so much so that in 1960 the operating budget for the South African Defence Force (SADF) was R44 million and by 1985/6 the operating budget had increased to R4 772 million.⁶
27. In addition to the main military budget, there was large scale defence expenditure which was conducted via the Special Defence Account. The Special Defence Account was created in 1974 to conceal additional defence spending from the United Nations arms embargo against South Africa. Although there is no official figure, one authoritative estimate suggested that the total defence budget, including the Special Defence Account, was in the region of R15 billion in 1986.⁷
28. Although the defence budget was reduced in the lead up to the 1994 elections, by 1996 it was double that of all other Sub-Saharan Africa countries combined.⁸
29. As a result of such sizeable defence expenditure, by the end of apartheid South Africa had a substantial weapons stockpile.⁹ Moreover, at the time of the Arms Deal, South Africa had an existing defence budget that was larger than the entire Sub-Saharan region ensuring that the country had the military capacity to defend itself against any foreseeable regional threat.¹⁰ It is therefore reasonable, considering that there was no tangible external threat of aggression to South Africa that the military as it stood did not require any substantial improvement.¹¹

⁴ Created in terms of the Armaments Production and Development Act 57 of 1968.

⁵ United Nations Security Council Resolution 418, adopted unanimously on 4 November 1977.

⁶ Grundy, K. *The Militarization of South African Politics*, London and New York: I B Tauris & co., p. 49

⁷ Van Vuuren, H. 2006. ‘Apartheid Grand Corruption: Assessing the Scale of Crimes of Profit in South Africa From 1976 to 1994’, Report prepared for presentation at National Anti-Corruption Forum, May 2006, p. 44. Available for download from www.issafrica.org.za

⁸ ‘Can South Africa afford this’, *Weekend Argus*, 22 May 1994 and Willett, S. ‘Regional Military Expenditure’ in Cock, J. and Nathan, L. (eds) 1998. *From Defence to Development*. Cape Town: David Philip, p. 30. For further details on this please refer to the joint submission annexed hereto as “AD1” at p 19- 21.

⁹ For details on the amount of certain weaponry available to South Africa see Table 2 on p 20 of annexure AD1.

¹⁰ For further details on this please refer to the joint submission annexed hereto as “AD1” at p 21.

¹¹ For further details on this please refer to the joint submission annexed hereto as “AD1” at p 21.

The Political Context, Civil Society and the Majority of Parliament

30. In 1993 Vice-Admiral Robert Simpson Anderson announced that he was pursuing a plan to purchase four corvette ships.¹² In December 1993, South Africa's state-owned arms company, Armscor, was forced to admit that following a two year project study it had sent out requests to four different potential bidders (Britain, Denmark, Spain and France) to submit offers to provide the corvettes. Therefore, Armscor had dedicated resources to a project with no indication that the new dispensation would go through with the deal.¹³
31. In January 1994, both the British and French navies raced to be the first to visit a soon-to-be-democratic South Africa.¹⁴ Final confirmation that the corvette project would go ahead was received in May 1994 – only a month after the first democratic elections – when the Minister of Defence, Joe Modise, rubber-stamped the decision taken by Armscor in December 1993 to put the corvette contract out to tender. The projected cost of the corvette project was R1.7 billion.¹⁵
32. Defence Minister Modise was the most vocal proponent of pursuing the purchase of the four corvettes and expanding the role of the military in the new South Africa. He was frequently quoted in the media extolling the corvette deal and the virtues of a big budget for defence by stating that it would lead to job creation and economic upliftment.¹⁶ Moreover, he claimed that further investment into the military would lead to a defence-led economic boom.¹⁷
33. In August 1994, Defence Minister Modise outlined the two key arguments presented by militarists about the need to maintain or increase defence spending in the post-apartheid period. First was the notion that even if South Africa faced no conventional military threat, it might end up facing some unknown and unquantifiable threat.¹⁸ The second argument was that cuts in military spending would threaten the existence of the South African National Defence Force (“SANDF”), and that reductions in the defence budget meant that South Africa was at odds with defence developments in the rest of the Sub-Saharan region.¹⁹
34. The decision to pursue the purchase of the corvettes received a response of unmitigated indignation from Parliament and members of broader civil society. It was

¹² ‘Adrift on uncertain seas’, *Pretoria News*, 9 March 1993.

¹³ For further details on this please refer to the joint submission annexed as “AD1” at p 22.

¹⁴ ‘French warship may visit Cape’, *Sunday Tribune*, 2 January 1994

¹⁵ For further details on this please refer to the joint submission annexed as “AD1” at p 22.

¹⁶ ‘No big cuts in defence, says Modise’, *Business Day*, 25 May 1994 and ‘Arms sales could boost employment – Modise’, *The Star*, 27 May 1994. For further details on this please refer to the joint submission annexed as “AD1” at p 23.

¹⁷ For further details refer to the joint submission annexed hereto as “AD1” at p 23.

¹⁸ Modise, J. 1994. Speech in Debate on Vote No. 7 – Defence (Appropriations Bill), 10 August in *Debates of the National Assembly (Hansard)*, Government Printers, Col. 1160 – 1170. See annexure AD1 at p 23 for further details.

¹⁹ For further details on this please refer to the joint submission annexed as “AD1” at p 24.

not only the corvette deal that was being contested, but also the role and nature of the SANDF as well as the budgetary allocation it was to be accorded. This was of considerable importance, as the African National Congress's ("ANC") effective election manifesto, the Reconstruction and Development Programme ("RDP"), aimed at uplifting ordinary South Africans from poverty following decades of colonialism and apartheid that had systematically impoverished the majority of South Africans. Such a programme would require considerable sums to be put into action. The problem was that, at the end of nearly a decade-long recession the economy remained stagnant and the flexibility of government expenditure limited. The RDP would require considerable resources, which would mean that state expenditure patterns would need to be shifted away from the SANDF towards socio-economic upliftment projects and the eradication of poverty.²⁰ Moreover, the ANC had pledged to cut defence spending, which it characterised as an apartheid-era strategy.²¹

35. Importantly, a large section of high profile members of the ANC in Parliament, such as Tony Yengeni, Max Sisulu and the new Minister of Housing, Joe Slovo, raised strong objections to the arguments presented by Modise.²² Slovo raised the concern that big military budgets, and new corvettes, would detract substantially from the RDP effort when the lives of so many needed to be bettered.²³ Sisulu argued that the threat analysis presented by Modise and proponents of sustained or increased military spending ignored the real dangers posed to people's well being. Articulating an argument that eventually featured in the Defence White Paper of 1995, Sisulu pointed out that there was no external threat to the country's security, but rather an internal one. Such a threat, he argued, came from unemployment, poverty and deprivation.²⁴
36. Civil Society also vociferously condemned increased defence spending and the corvette deal. The media almost universally lambasted the idea. The South African Council of Churches stated that the real enemy is poverty, hunger and homelessness and that the diversion of resources to pay for expensive boats for the Navy would be uncalled for.²⁵ The South African Students Congress and the Congress of South African Trade Unions ("COSATU") objected that either the money could be better spent or the project could be implemented in a different and more beneficial way.²⁶
37. When it became clear that the arguments for the corvettes were failing, a more enticing approach was taken. In particular, Armscor argued that the purchase of the corvettes would lead to a massive amount of offset investment. In 1995, it was widely proclaimed that the corvette deal would be beneficial for South Africa because it would lead to between R3 billion and R7.6 billion in economic investment.²⁷ The two contractors leading the race to supply the corvettes promised substantial economic

²⁰ For further details on this please refer to the joint submission annexed as "AD1" at p 22 -23.

²¹ Gumede, W. M. 2005. *Thabo Mbeki and the Battle for the Soul of the ANC*. Cape Town: Zebra, p 138.

²² For further details on this please refer to the joint submission annexed as "AD1" at p 25.

²³ Slovo, J. 1994. Speech in Debate on Vote No. 7 – Defence (Appropriations Bill), 4 August in *Debates of the National Assembly (Hansard)*, Government Printers, Col. 803-6. See annexure "AD1" at p 25.

²⁴ Sisulu, M. 1994. Speech in Debate on Vote No. 7 – Defence (Appropriations Bill), 3 August in *Debates of the National Assembly (Hansard)*, Government Printers, col. 745-6. In addition, see annexure "AD1" at p 25.

²⁵ *Sowetan*, 21 April 1995

²⁶ For further details on this please refer to the joint submission annexed as "AD1" at p 26.

²⁷ 'Buying of warships defended', *Cape Times*, 1 March 1995.

incentives. These incentives included job creation, housing as well as investment into other industries such as fishing.²⁸

38. In the end, public outcry prevailed and halted the corvette deal in its tracks. Combined with a Cabinet that was still split about the deal (Trevor Manuel was reportedly against the deal from an economic standpoint²⁹), the concerted efforts of opponents to the purchase had blocked the deal progressing. Answering a question in Parliament, Modise was forced to acknowledge that the deal had been put on hold as there was not sufficient ‘national consensus’ for the matter to be pursued.³⁰

South Africa’s Post-Apartheid Military Posture

39. Following the rejection of the purchase of the four corvettes, it was widely considered necessary for a full and formal articulation of South Africa’s post-apartheid military posture and the conduct of a rigorous threat assessment. The first formal document that addressed these issues was the 60-page Defence White Paper.³¹ The Defence White Paper was presented to Cabinet for consideration and approval on 8 May 1995.
40. The White Paper redefined the way threats to South Africa would be viewed and also prioritised which threats needed more urgent attention.³² In the new South African dispensation the greatest threats to the security of people were socio-economic problems like poverty, unemployment, poor education, the lack of housing and the absence of adequate social services, as well as the high level of crime and violence.³³ Importantly, the White Paper argued that a broad concept of security did not suggest that the military expand its roles into civilian domains.³⁴ Although the White Paper promoted budget cuts, it was ambivalent about the future size of the Defence Force.³⁵ Moreover, there was the caveat that South Africa would need to maintain a ‘modern’ and sophisticated ‘core-force’.³⁶
41. The White Paper was replaced by the 1998 Defence Review. The Defence Review was a more comprehensive analysis of the country’s defence needs in the new dispensation. Upon its adoption by Parliament in 1998, the Defence Review became the official policy of the Department of Defence. The Defence Review amplified the points discussed in the Defence White Paper.³⁷

²⁸ For further details on this please refer to the joint submission annexed as “AD1” at p 26.

²⁹ ‘Modise takes military begging bowl to Mbeki after no joy from Manuel’, *Sunday Independent*, 25 May 1997

³⁰ Minister of Defence (Joe Modise) answer to question from Mr N J Gogotya (question N971E), Wednesday 23 August 1995 in *National Assembly: Interpolations, Questions and Replies (Hansard)*, Second Session – First Parliament, Vol. 7, col. 1577-8

³¹ ‘Defence in a Democracy: White Paper on National Defence for the Republic of South Africa’, May 1996. Available for download from

<http://www.dod.mil.za/documents/whitepaperondef/whitepaper%20on%20defence1996.pdf>

³² ‘Defence in a Democracy: White Paper on National Defence for the Republic of South Africa’, May 1996, para 1–7. A.

³³ ‘Defence in a Democracy: White Paper on National Defence for the Republic of South Africa’, May 1996, para 1–7. A. See further annexure “AD1” at p 28.

³⁴ ‘Defence in a Democracy: White Paper on National Defence for the Republic of South Africa’, May 1996, para 8-9 and 11.8-11.9.

³⁵ *Ibid*, para 6.1–6.2 and 27-28

³⁶ *Ibid*.

³⁷ For further details on this please refer to the joint submission annexed as “AD1” at p 29.

42. In short, both the Defence White Paper and the Defence Review, which established the defence policy, found that:
- i. South Africa faced no ‘foreseeable external military threat’
 - ii. South Africa’s greatest security threats were poverty and unemployment and the social maladies that flowed from this
 - iii. Defence spending in the post-apartheid era would have to be constrained by the need for state resources to be directed towards socio-economic upliftment.
43. Thus, pursuing the Arms Deal in this context was clearly unwise and arguably irrational.
44. Following the approval of the Defence Review in Parliament, government quickly got down to the business of selecting and buying the desired military hardware. In charge of the process was a Cabinet sub-committee on acquisitions. The members of the sub-committee were Thabo Mbeki (Deputy President), Alec Erwin (Minister of Trade and Industry), Trevor Manuel (Minister of Finance), Stella Sigcau (Minister of Public Enterprise) and Joe Modise (Minister of Defence).³⁸
45. Buying of the arms was meant to be governed by Armscor’s own practices regarding arms acquisitions. However, the Cabinet sub-committee issued a series of invitations to tender. These invited various arms companies around the world to submit information about the arms they had to offer, including technical specifications and cost of the goods that would be provided, detailed information as to what offsets would be offered as part of the package, and what financing terms the arms company or its home country could provide.³⁹
46. These tenders would be provided to the government, which would then evaluate them in a series of different sub-committees, each one looking at a different piece of equipment. On these sub-committees were representatives of Armscor, the Department of Defence and its Secretariat, the Department of Trade and Industry and the Department of Finance. Once the sub-committees had completed their assessments, they would be sent to the Arms Acquisition Council, which was the last level of approval before the potential purchase and its terms were presented to Cabinet. The Arms Acquisition Council would then evaluate the proposals, and provide a final approval of the Acquisition Plan. The Arms Acquisition Council would then provide the Acquisition Plan to the Cabinet sub-committee on Defence or to Cabinet, which would make the final decision on the purchase. This process was intended to ensure that the country received the best possible weapons and the best price, and to limit potential corruption in the arms acquisition process.⁴⁰

The Economic Context and the Potential Economic Cost of the Arms Deal

47. Between 1996 and 1999 South Africa’s economy suffered a number of setbacks. Notwithstanding that South Africa’s macroeconomic policy, the Growth,

³⁸ Paul Holden, *The Arms Deal in Your Pocket*, 2008 at p 16.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

Employment and Redistribution Strategy (GEAR) predicted that average annual growth would reach 4.2 per cent between 1996 and 1999, paving the way for a 6 per cent growth rate in the years subsequent to the transition to GEAR, the economy was growing at a rate of 2.4 per cent.⁴¹ The economy's performance deteriorated year-on-year and by 1999, the year in which the Arms Deal was signed, growth had stuttered to 0.5 per cent.⁴² Consequently, unemployment rose from 1.8 million to 3.2 million in the same period.⁴³ According to the official description of unemployment, the unemployment rate was 23.3 per cent of the adult population. However, in terms of the unofficial definition of unemployment the unemployment rate had reached 36.2 per cent by 1999.⁴⁴ Economic inequality was deepening.⁴⁵

48. The Arms Deal was presented as an economic benefit to South Africa based on the assumption that it would lead to significant job creation through offsets: this would have arguably made the Arms Deal rational from an economic and strategic point of view. However, the Cabinet Sub-Committee were made aware that, even in the best case scenario, the Arms Deal was likely to cause severe macroeconomic distress.
49. In August 1999, the Affordability Report was presented to the Cabinet Sub-Committee. The Report presented detailed information regarding the potential macroeconomic impact of the Arms Deal. The Report made it clear that the economic impact of the Arms Deal would be broadly negative.⁴⁶
50. The Affordability Report outlined the potential cost of the Arms Deal and its economic impact. In terms of the Affordability Report, if national interest rates increased and offsets failed to materialise, this would result in a substantial increase in the negative impacts of the Arms Deal.⁴⁷ The Affordability Report set out twelve scenarios that highlighted different dynamics between the fluctuation of the interest rates and the materialisation of the offsets.⁴⁸ None of these scenarios led to a beneficial conclusion for South Africa.⁴⁹ The scenarios were then compared with a 'baseline' scenario which showed how the economy would have performed if the Arms Deal was excluded from the calculations.⁵⁰
51. For the purposes of this submission, the most relevant scenario is the one that calculated the impact of the highest-cost acquisition, as it details the impact of a deal that is most equal to the size of the Arms Deal. The most expensive purchase modelled for in the Affordability Report was a R25bn acquisition. However, it should be noted upfront that this was smaller than the eventual Arms Deal. The R25bn level

⁴¹ Makgetla, N. 2004. 'The Post-apartheid Economy', *Review of African Political Economy*, No. 100, p. 269. See especially Table 7: GEAR Projections & Actual Achievements, 1996 - 1999

⁴² See further annexure "AD1" at p. 31.

⁴³ *South African in Transition*, 2001, Statistics SA: Pretoria, p. 45 - 51

⁴⁴ *Ibid.* See further annexure "AD1" at p 31.

⁴⁵ For further details on this please refer to the joint submission annexed as "AD1" at p 31 - 32.

⁴⁶ For further details refer to the joint submission annexed as "AD1" at pp 32 - 35.

⁴⁷ Affordability of the Defence Strategic Armaments Packages: An Assessment of Their Economic, Fiscal and Financial Impacts', Confidential Report to the Ministers Committee, August 1999, p. i. In particular, the Affordability Report referenced the 1997 journal article Smit, B.W. and Pellisier, G.M. 1997. 'The BER Annual Econometric Model of the South African Economy: A Co-Integration Version', *Journal for Studies in Economics and Econometrics*, Vol. 21, No. 1.

⁴⁸ For further details on this please refer to the joint submission annexed as "AD1" at pp 32 - 35.

⁴⁹ For further details on this please refer to the joint submission annexed as "AD1" at pp 33 - 35.

⁵⁰ For further details on this please refer to the joint submission annexed as "AD1" at pp 32 - 35.

acquisition was arrived at on the basis that South Africa would purchase 12 Hawks and 9 Gripens from BAE; in reality 24 Hawks and 26 Gripens were purchased. Judging from the Affordability Report, the addition of these extra Hawk and Gripen aircraft would have increased the cost of the Arms Deal to R36.482bn – an increase of over R11bn, or nearly 30 per cent. What this suggests is that the models⁵¹ - calculated as they were in the Affordability Report on the basis of a R25bn purchase - understate the potential impact of the Arms Deal because they do not include the full cost of what was actually bought.⁵²

52. Even if the offsets had been fulfilled and interest rates had remained low, the impact of the Arms Deal on the economy would still have been broadly negative. Indeed, this is even acknowledged in the Affordability Report. Moreover, while the Affordability Report did not consider the opportunity cost associated with the Arms Deal, this was clearly substantial.
53. In other words, the Cabinet sub-Committee in charge of the Arms Deal were made well aware, months prior to the Arms Deal contracts being finally signed, that the Arms Deal was irrational from an economic point of view. It is germane that the broadly negative impact of the Arms Deal on the economy would have further exacerbated South Africa's greatest security threats: poverty and unemployment. Thus, it is clear that the Arms Deal sub-Committee pursued the Arms Deal despite clear evidence that it could have substantially decreased South Africa's national security by means of increasing unemployment and poverty.⁵³
54. It has often been claimed that the Arms Deal was mandated by Parliament by virtue of the adoption of the 1998 Defence Review. Multiple state witnesses repeated this assertion before the Seriti Commission of Inquiry. However, this claim is patently untrue.⁵⁴
55. It must be noted that the Defence Review did provide for a new 'core-force' structure for post-apartheid South Africa. The Defence Review outlined four different force design options. Two were recommended, albeit with limitations. The first option was the largest and most expensive, which the Defence Review claimed 'should remain the vision of the Department [of Defence].' However, it was acknowledged that the second option, a slightly smaller force design, was the most realistic at the time.⁵⁵ Importantly, Option 1 included all the items that would eventually become the Arms Deal shopping list.⁵⁶
56. Importantly, the Defence Review clearly indicated that it was unwise to pursue either force design option in the short to medium term because of budgetary constraints and the need to divert funds towards socio-economic needs.⁵⁷ Moreover, the Defence Review stipulated that its approval of a force design does not constitute a blanket

⁵¹ These models are reproduced in annexure "AD1" at pp 33 – 34.

⁵² The figure of 30 per cent is derived by calculating the percentage that R11.118bn constituted of the final estimate of R36.482bn.

⁵³ For further details see the joint submission annexed as "AD1" at pp 34 – 35.

⁵⁴ For further details on this please refer to the joint submission annexed as "AD1" at p 36.

⁵⁵ *South African Defence Review*, 1998, Chapter 8, para 9–12. Available from www.dod.mil.za.

⁵⁶ For further details refer to the joint submission annexed as "AD1" at p 36.

⁵⁷ *South African Defence Review*, 1998, Chapter 8, para 9–12. Available from www.dod.mil.za.

approval to pursue the Arms Deal – ‘[a]t best, it constitutes approval in principal for the maintenance of the specified capabilities at the approximate level...’.⁵⁸

57. Given these qualifications, Parliamentary approval of the Defence Review in 1998 cannot be construed as a mandate to buy weapons.⁵⁹ Instead, it was arguably envisioned that any future defence purchases as predicted by the core-force design would be tabled before Parliament for approval. This was never done; meaning the Arms Deal never received Parliamentary approval. Thus, Cabinet and the Ministry of Defence had no Parliamentary mandate to pursue the Arms Deal. It is therefore submitted that the Arms Deal was both undemocratic and arguably irrational considering South Africa’s democratic political dispensation.
58. It is submitted further that the fact that the Cabinet Sub-Committee were aware that the result of the Arms Deal would be largely negative for South Africa further exacerbates the irrationality of the decision, as there was no basis to believe that the offsets would lead to prosperity generally for the South African economy. Therefore, the reasons relied upon as the basis for pursuing the Arms Deal do not support the decision.

Mutual Enrichment: The Real Motivation for the Arms Deal, 1994 to 1999

59. In the period from 1995 onwards, a number of influential individuals established businesses and contacts that would allow them to benefit financially if the Arms Deal was pursued. While no definitive claims can be made, inferences can be drawn about the real motivation to pursue the Arms Deal.
60. Minister Modise made the first moves by gaining stakes in controversial companies, which would be set to gain through the Arms Deal. In 1995, Minister Modise participated in the defence-related company, Marvotech (part of the larger Marvol Group) with his Russian partner, Mark Voloshin.⁶⁰ Marvotech placed its stock in a programme to upgrade the engines of the Air Force’s existing stock of Cheetah and Mirage airplanes, replacing them with engines from the new MiG-29 aircraft.⁶¹ One of the Air Force’s reasons for scrapping the Cheetahs and Mirages was their slow speed, however the engine upgrades would have changed this. Thus, all that was needed was cheap access to a ready supply of second-hand planes.⁶²
61. Marvotech also had a number of other politically connected individuals on its board. In key instances, Minister Modise appointed them to positions within Armscor or the Department of Defence. Another director in the company was Alfred Nzo, then Minister of Foreign Affairs.⁶³ Fana Hlongwana was also present in the broader company structure through a Marvol subsidiary named Liselo. Hlongwana was

⁵⁸ *South African Defence Review*, 1998, Chapter 8, para 9–12. Available from www.dod.mil.za.

⁵⁹ This is clearly elucidated by Prof Laurie Nathan in ‘Parliamentary approval of original defence review was no mandate to buy weapons’, *Sunday Independent*, 22 July 2001. This is reproduced in the joint submission annexed hereto as “AD1” at p 37.

⁶⁰ According to information accessed via the Companies and Intellectual Property Rights Database. See further annexure “AD1” at p 38.

⁶¹ For further details see annexure “AD1” at p 38.

⁶² For further details see annexure “AD1” at p 38.

⁶³ According to information accessed via the Companies and Intellectual Property Rights Database. See further annexure “AD1” at p 38 – 39.

Minister Modise's Special Advisor from 1995 onwards, and was later accused of being the main man distributing illegal funds from BAE. Moreover, Hlongwana was appointed to the board of the state-owned arms manufacturer, Denel Soc Limited (Denel) in 1998 after serving as Minister Modise's right-hand man during the Defence Review process.⁶⁴ Mr Llew Swan, too, was a director of Marvol. He would later be accused of receiving a discount on a luxury vehicle from an Arms Deal-related company. In 1998, Minister Modise appointed Swan to Armscor. During the Arms Deal, Swan was a key figure in the selection process, serving on some of the most important decision-making bodies, including the International Offers Negotiating Team, the Strategic Offers Committee (SOFCOM) and the Project Control Boards for the Naval (submarine and corvette) and Air Force programmes.⁶⁵

62. Minister Modise was also involved in a company called Conlog along with three others namely Tony Ellingford, Major-General Ian Deetlefs and Ron Haywood.⁶⁶ Conlog would later be set to receive a considerable amount from the BAE offset programme.⁶⁷ Minister Modise later appointed Haywood as the Chairman of Armscor, and Deetlefs was appointed as a member of the board at Denel.⁶⁸ Incidentally, Haywood was later accused of receiving a discounted luxury vehicle from the Arms Deal company via the same means as Tony Yengeni and Llew Swan.
63. Modise was also involved in a network of businesses and associates through a body called the Defence Industry Interest Group of South Africa (DIIGSA), of which Modise was a patron.⁶⁹ Within DIIGSA an informal group was formed which has been referred to as 'MK Inc.'.⁷⁰ Amongst the members of 'MK Inc.' were Futuristic Business Solutions (FBS). The key shareholders of FBS were Modise's family members, acquaintances, struggle veterans and business associates.⁷¹ It has been estimated that FSB would later receive 70 sub-contracts to the combined value of roughly R750 million, making it responsible for handling roughly R1bn in goods and services flowing from the Arms Deal.⁷²
64. FSB also had a close working relationship with Schabir Shaik who was also a member of MK Inc.⁷³ FSB eventually gained a stake in Schabir Shaik's company that received a massive contract from the Arms Deal. Schabir Shaik was eventually found

⁶⁴ 'People on the move', *Sunday Times (Business Times)*, 19 July 1998. See further annexure "AD1" at p 39.

⁶⁵ For further details see annexure "AD1" at p 39.

⁶⁶ For further details on this please refer to the joint submission annexed as "AD1" at p 39.

⁶⁷ See: 'Modise was bought', *Nosweek*, December 2003, Issue 52; 'Three foresightful architects', *Citizen*, 16 December 2003 and 'The musketeers who bought the jets', *Mail & Guardian*, 2 February 2007

⁶⁸ For further details on this please refer to the joint submission annexed as "AD1" at p 39.

⁶⁹ For further details on this please refer to the joint submission annexed as "AD1" at p 40.

⁷⁰ Arms and empowerment: cadres cash in', *Financial Mail*, 4 May 2001, DIIGSA was later merged with two other major lobbying groups representing the Defence Industry and incorporated into a new group known as the South African Aerospace, Maritime and Defence Industries Association, or AMD. See: 'BEE and Exports Top Association Agenda', *Engineering News*, 18 January 2002. See further annexure "AD1" at p 40.

⁷¹ Minister Modise's family has, subsequently denied this – see 'Letter to the Editor: Feinstein's article besmirches the legacy of Joe Modise' *Daily Maverick* 16 October 2017 <https://www.dailymaverick.co.za/article/2017-10-16-letter-to-the-editor-feinsteins-article-besmirches-the-legacy-of-joe-modise/#.WgAxp9Bl9dg>. See further annexure "AD1" at p 40.

⁷² 'A deal that just won't go away', *Traders Africa*, Issue 7, July–October 2001. For further details especially relating to the nature of the connections between Modise and MK Inc please refer to the joint submission annexed as "AD1" at p 40.

⁷³ For further details on this please refer to the joint submission annexed as "AD1" at p 40.

guilty of bribery and corruption for incidences involving now President Jacob Zuma. Two of Schabir Shaik's brothers would play central roles in the Arms Deal saga: 'Chippy' Shaik, who was central to the Arms Deal selection process as the Chief of Acquisitions, and Mo Shaik who, in addition to the Arms Deal, was also a participant in the Defence Review process, appointed as a result of his connections to the MK in exile.⁷⁴

65. In September 1995 while the Defence Review process was underway, but after the initial corvette plan had been rejected,⁷⁵ Schabir Shaik met with Jean-Marc Pizano, the representative of a company by the name of Advanced Technology and Engineering (ATE), to discuss a potential joint venture between Schabir Shaik's business interests and ATE.⁷⁶ Although no arrangement was ever agreed to, ATE was to remain somewhat controversial, as it was to receive some important post-Arms Deal contracts⁷⁷, and included both Richard Charter and Diliza Mji on its board.⁷⁸ Charter was later accused of facilitating bribes from BAE to a number of politically important individuals, while Diliza Mji was a highly connected ANC politician from KwaZulu-Natal who was later to go into business with the brother of Thabo Mbeki, Moeletsi Mbeki.
66. Through his discussions with ATE, Schabir Shaik was introduced to Pierre Moynot, a representative of the French multinational arms producer, Thomson-CSF (later renamed Thales).⁷⁹ Subsequently, Schabir Shaik formed a close working relationship with Thomson-CSF. It was through this relationship that Schabir Shaik was accorded a share in a company called African Defence Systems, which would receive a massive contract flowing from the Arms Deal's corvette contract decision.⁸⁰
67. What is interesting is the timing of these meetings. It would be understandable if Shaik and Pizano and Moynot had met earlier in 1995, when the first corvette contract was still under discussion. But the meeting occurred in September 1995, and faxes

⁷⁴ For further details on this please refer to the joint submission annexed as "AD1" at p 40.

⁷⁵ Testimony of Pierre Moynot in The High Court of South Africa (Durban and Coastal Local Division) in the Matter of the State vs. Schabir Shaik (et al.), Case Number CC27/04, 11 March 2005. Attached as **Annex D** of the witness' submission. For further details on this please refer to the joint submission annexed as "AD1" at p 41.

⁷⁶ Testimony of Johan Van Der Walt in The High Court of South Africa (Durban and Coastal Local Division) in the Matter of the State vs. Schabir Shaik (et al.), Case Number CC27/04, 22 October 2004, attached as **Annex C** of the witness submission; Testimony of Pierre Moynot in The High Court of South Africa (Durban and Coastal Local Division) in the Matter of the State vs. Schabir Shaik (et al.), Case Number CC27/04, 11 March 2005, Attached as **Annex D** of the witness submission. For further details on this please refer to the joint submission annexed as "AD1" at p 41.

⁷⁷ *South African Defence Industry Directory*, 2006, available for download from www.ate-aerospace-group.com; 'Fact-File: Denel CSH2/AH2 Rooivalk Attack Helicopter', *DefenceWeb*, 5 November 2008; 'ATE In World-First With BAE', *Engineering News*, 24 February 2004.

⁷⁸ According to records filed with Companies and Intellectual Properties Registration Office, www.cipro.gov.za

⁷⁹ Testimony of Pierre Moynot in The High Court of South Africa (Durban and Coastal Local Division) in the Matter of the State vs. Schabir Shaik (et al.), Case Number CC27/04, 11 March 2005. Attached as **Annex D** to the joint submission annexed hereto as "AD1".

⁸⁰ Testimony of Johan Van Der Walt in The High Court of South Africa (Durban and Coastal Local Division) in the Matter of the State vs. Schabir Shaik (et al.), Case Number CC27/04, 22 October 2004, attached as **Annex C** of the witness submission; Testimony of Pierre Moynot in The High Court of South Africa (Durban and Coastal Local Division) in the Matter of the State vs. Schabir Shaik (et al.), Case Number CC27/04, 11 March 2005, Attached as **Annex D** to the joint submission "AD1". For further details on this please refer to the joint submission annexed as "AD1" at p 41.

continued to be relayed between Pizano and Shaik until the following year,⁸¹ while Shaik and Thomson-CSF, too, would continue discussing their future relationship from September 1995 onwards. This suggests that Schabir Shaik, through his inside information about the future of the Arms Deal, may have strongly suspected that a corvette deal was going to happen regardless of what emerged from the Defence Review or any other formal process. One could argue that the confidence in a future corvette deal was based purely on the publicly stated facts of the matter: that South Africa needed new weapons, sooner or later, and the corvette deal would be an inevitability. However, this could not have been taken for granted considering the information in the public realm. The inference that can be drawn is that a number of politically connected individuals, from Schabir Shaik to Joe Modise, were extremely confident that the Arms Deal would happen, even after the corvette deal was rejected by both Parliament and civil society.

68. During this time there were international lobbyists who were promoting South Africa's purchase of new weapons. The main company promoting arms procurements was BAE with the support of the British government through the Defence Export Service Organisation ("DESO") who had started to make contact with key South African figures from as early as 1993.⁸²
69. In 1996 South Africa and the United Kingdom signed a military pact that made space for future joint ventures.⁸³ In addition, Richard Charter initiated a programme to help the ANC set up a scholarship fund to progress the ANC's archives at Fort Hare University. Through this initiative Charter was assured of a personal meeting with Mandela and Thabo Mbeki.⁸⁴
70. In January 1997, months before the Defence Review approval, DESO arranged to brief the Department of Defence. During this briefing DESO proposed a package deal for various UK suppliers to provide South Africa with all the weapons systems that would be needed.⁸⁵ These proposals were rejected but some of the officials at the meeting stated they felt that DESO was already in consultation with other state officials including Modise.⁸⁶ Other European countries had made similar inroads with South African officials (including Thabo Mbeki) in order to secure business in the arms procurement.⁸⁷ For example, in early 1995 Thabo Mbeki, who had recently been installed as Deputy President, travelled to Germany. During a meeting with the Foreign Minister, he claimed that the 'race is still open' for the corvette deal.⁸⁸ This provoked outrage from the Spanish and British bidders. Curiously, when the Arms

⁸¹ Testimony of Pierre Moynot in The High Court of South Africa (Durban and Coastal Local Division) in the Matter of the State vs. Schabir Shaik (et al.), Case Number CC27/04, 11 March 2005. Attached as **Annex D** to the joint submission attached hereto as "**AD1**".

⁸² For further details on this please refer to the joint submission annexed as "**AD1**" at pp 42 - 43.

⁸³ For further details on this please refer to the joint submission annexed as "**AD1**" at p 42.

⁸⁴ Whether the meeting took place remains unclear. For further details on this please refer to the witness submission annexed at as "**AD1**" at p 43.

⁸⁵ *Strategic Defence Packages: Joint Report*, 2001, Chapter 4, paragraphs 4.1.12–4.1.13. Available from www.info.gov.za. For further details on this please refer to the joint submission annexed as "**AD1**" at p 43.

⁸⁶ BAE and the Arms Deal: Part 1', *Moneyweb*, 14 August 2007. Available at: www.moneyweb.co.za. For further details on this please refer to the joint submission annexed as "**AD1**" at p 43.

⁸⁷ 'Corvettes – Thabo all at sea', *Weekend Argus*, 20 May 1995. For further details on this please refer to the joint submission annexed as "**AD1**" at pp 43 - 44.

⁸⁸ 'Corvettes – Thabo all at sea', *Weekend Argus*, 20 May 1995 cited in the joint submission annexed hereto as "**AD1**" at p 43.

Deal eventually did take place, it was Germany that emerged as the successful bidder.⁸⁹ There was therefore massive interest from Europe to secure business with South Africa and the depths necessary to achieve this were often covert in nature.

71. In 1998, when the Arms Deal was being pursued, there was already a network of individuals and companies, including many linked to Minister Modise and other influential persons, who would have benefited substantially from the Arms Deal. This created an environment with potential conflicts of interest, which could taint the decision to undertake the Arms Deal.

Inducements During the Early Stages of the Arms Procurement Process and their Implications for the Probity of the Initiation of the Arms Deal

72. The Arms Deal was formulated and pursued between 1994 and 1998. During this time a number of politically connected individuals had positioned themselves in a way that would allow them to benefit if an Arms Deal took place. However, what emerged during the Seriti Commission suggests that, in fact, there were considerable payments made to key decision makers and influential individuals in order to change the course of the South African Arms Deal.⁹⁰
73. These claims emerge from a document, referred to as the German Police Report, which was submitted to the Seriti Commission. This document is annexed hereto and marked as “AD8”. The document, dated November 2007 was drawn up by a police officer named Lioba Borowski. In emails to Advocate William Downer in which the document was transmitted, Borowski confirmed that she was a detective chief superintendent with the German police in Dusseldorf. The German Police Report served as an unofficial summary of information and inferences based on, amongst other things, evidence seized from raids of the properties of the German company ThyssenKrupp in 2006. The raids uncovered numerous key documents, including voluminous contemporaneous memoranda and notes kept by a key ThyssenKrupp executive, Christoph Hoenings.⁹¹ The raids followed a tax investigation into ThyssenKrupp that revealed that the company had made payments, classified as ‘Useful Expenditures’ to a number of companies on the South African deal. ‘Useful Expenditures’ was used, prior to 2000, as a euphemism for commissions or bribes in Germany, which, until late 1999, were tax deductible.
74. It is submitted that the Corruption Watch and R2K High Court Challenge persuasively proves that the Seriti Commission entirely failed to consider the content of the German Police Report. Moreover, the Commission failed to properly investigate the claims therein. It is submitted further that a large amount of the content of the German Police Report was subsequently reproduced in Mutual Legal Assistance Requests filed by German authorities in Switzerland, which has lent considerable credence to the material contained within the German Police Report.

⁸⁹ See further the joint submission annexed hereto as “AD1” at p 43.

⁹⁰ For further details on this please refer to the joint submission annexed as “AD1” at p 45.

⁹¹ As indicated in annexure “AD1” the origins and the veracity of the content of the document is dealt with in depth at paragraphs 279 to 284 of the founding affidavit in the Corruption Watch/R2K High Court challenge annexed hereto as “AD7”.

75. As noted previously, by early 1995, South Africa had reached an advanced stage in the selection process to buy corvettes. Reports indicate that the selection choices had been narrowed down to Spanish and British bidders. At this point, the German companies, who had bid for to supply the corvettes, were out of the running.
76. The German Police Report reveals that ThyssenKrupp had reached out to a Mr Tony Georgiades, a Greek shipping merchant who has long been alleged to have been one of apartheid's leading oil sanctions busters. Georgiades would later receive huge commission payments from Arms Deal bidders for both the corvette and submarine contracts. Media reports indicate that, subsequent to 1994, he had a close relationship with, amongst others, Thabo Mbeki.⁹²
77. The German Police Report indicates that Georgiades was involved in reviving the corvette contract, which he was ultimately successful in doing.⁹³
78. Dating from at least August 1995, if not before, ThyssenKrupp established a close and arguably corrupt relationship with Tony Yengeni. According to the German Police Report, Yengeni, who was later convicted of fraud for lying to Parliament about receiving discounts on luxury vehicles from an Arms Deal contractor, entered into extremely lucrative consultancy agreements with ThyssenKrupp.⁹⁴ The German Police Report reveals that when ThyssenKrupp's offices were raided an agreement between Yengeni and Hoening dated 11th August 1995 was seized. According to that document, Yengeni was promised a commission of 2.5m DM.
79. Yengeni's relationship with Georgiades and ThyssenKrupp, and the existence of the consultancy agreement, has profound implications for the legality and rationality of the Arms Deal. Defenders of the Arms Deal have long claimed that the Deal was approved by Parliament. Putting aside that this is clearly incorrect, the existence of payments to Yengeni further undermines this argument. This is because from 9 September 1994 to November 1998, Yengeni chaired Parliament's Joint Standing on Defence; and from November 1998 onwards, he served as the ANC's Chief Whip.⁹⁵ The Joint Standing Committee on Defence was the Parliamentary body that was empowered to oversee all matters related to defence – including, amongst other things, the formulation and passing of the 1997 Defence Review and monitoring the Arms Deal.
80. In other words, the single most important Parliamentary body overseeing the formation of defence policy that led to the Arms Deal, and which was supposed to, once the Deal was initiated, monitor its progress, was chaired by an individual who was, simultaneously, acting as a paid consultant to ThyssenKrupp. Therefore, there was an obvious conflict of interest in which Yengeni would not have been able to exercise objective oversight. It is hard to believe that, under these circumstances, the

⁹² 'Mbeki, Chippy ant eh Greek Lobbyist' Mail & Guardian 9 February 2002 available from <https://mg.co.za/article/2007-02-09-mbeki-chippy-and-the-greek-lobbyist> For further details on this please refer to the joint submission annexed as "AD1" at p 46.

⁹³ German Police Report, attached hereto as "AD8". See further, the joint submission annexed as "AD1" at p 46 – 49 where the German Police Report is quoted in full.

⁹⁴ German Police Report, annexed hereto as "AD8". See further, the joint submission annexed as "AD1" at pp 47 – 49 where the German Police Report is quoted in full.

⁹⁵ Judgment in the Matter between S v Yengeni (A1079/03) [2005] ZAGPHC 117(11 November 2005), <http://www.saflii.org/za/cases/ZAGPHC/2005/117.html>.

deliberations of the Joint Standing Committee on Defence, and its monitoring of the processes that led to and included the Arms Deal, were not irredeemably tainted.

The Selection Process and Allegations of Corruption

81. The selection process for three of the four primary contracts in the Arms Deal, and at least four of the subcontracts, were subject to gross manipulation by South African officials. In particular, this submission interrogates the gross procedural irregularities that impacted on the selection of the preferred contractors for the ALFA/LIFT component(s), the submarine and corvette contracts. It is submitted that the unidirectional nature of these irregularities was motivated by corruption.
82. It must be noted that when the Arms Deal package was announced, one of the major incentives offered to ensure its approval was the amount of money that South Africa would get in return for signing the contracts. This was because the arms contractors made commitments to offset the cost of the purchases. The way this would be fulfilled would be in numerous ways: arms companies could directly invest in the country, thereby promoting new economic growth; or they could agree to purchase other goods from South Africa to balance the country's terms of trade. Offsets were often presented as incontrovertible proof that the Arms Deal made sense.⁹⁶
83. However, offsets are not the economic panacea that they were argued to be. In fact, they are a particularly controversial way of engaging in trade, and are usually prohibited by the World Trade Organisations (WTO), except in relation to developing countries. Even then, there are strict rules governing how offsets are to be used.⁹⁷ According to the WTO Agreement on Government Procurement, a developing country's government may require that an arms company includes offsets in its tender offers in order to be considered. However, offsets may not be used as the basis for a decision. This makes sense if you consider that, if a country signed a deal purely on the basis of an offset agreement and not on the necessity of the goods purchased, it would be tantamount to legal bribery.

The LIFT/ALFA contracts

84. The selection of the Hawk and Gripen aircraft as the preferred supplier of the Lead-in Fighter Trainers (LIFT) and Advanced Light Fighter Aircraft (ALFA) was beset by numerous procedural irregularities and the repeated intervention of acquisition staff to the benefit of BAE/SAAB.
85. In 1994, the South African Air Force (SAAF) started to investigate a plan to re-equip its aging complement of jet fighters. The SAAF had long used, and would continue to use, a three-tiered system (trainer to sub-sonic trainer to supersonic fighter).⁹⁸ In short, this system entailed the following: pilots would first train on the newly acquired

⁹⁶ Paul Holden, *The Arms Deal in Your Pocket*, 2008 at p 22.

⁹⁷ World Trade Organisation Agreement on Government Procurement, Article XVI. Available at: www.wto.org. South Africa joined WTO on 1 January 1995.

⁹⁸ For further details on this system see annexure "AD1" at p 64.

Pilatus Astra Trainer, after which they would move to train on the slightly faster and more sophisticated Impala MKI and MKII aircraft. After the pilot completed these two phases of training, they would move to the third 'tier', namely the supersonic Cheetah jet fighter that was the war-time combat fighter.⁹⁹

86. As of 1994, it was only considered necessary to replace a single 'tier' of this system: the Impala trainers. The Impala's were rapidly becoming obsolete and the SAAF wanted this tier to be replaced with an aircraft that could be used for training and combat. The weaponry used in the other two 'tiers' was considered to have a considerable operational life-span remaining. The SAAF had 50 Cheetahs that would continue to be operational until 2012, with the possibility of upgrading them instead of replacing them. The Pilatus Astra trainers were newly acquired and the SAAF did not want to replace them. These needs were outlined in 1995 by the completion of a 'staff target', which stated what was needed by the SAAF in terms of the equipment to be purchased. According to the 'staff target', only the Impala trainers had to be replaced in the short to medium term. The 'staff target' also stipulated that the aircraft that was bought had to be able to fulfil two roles. In other words, the training aircraft needed to fulfil both the roles of training and fighting. Thus, the SAAF would move to a two-tiered system. This was a smart system that would see the SAAF acquiring two functions out of buying one set of planes, which would have noticeably reduced acquisition and life-cycle costs for the SAAF.¹⁰⁰
87. Once these needs had been set out, the SAAF embarked on a Request for Information (RFI) process, inviting a series of international companies to tender for the provision of the aircraft. A total of 23 potential bidders responded, and were narrowed down to four preferred suppliers by March 1997. Although BAE had submitted information about the Hawk and the Gripen, neither made this original shortlist. The Hawk, it was argued, did not meet all the basic operational requirements of the SAAF, and was more expensive than other options. The Gripen was rejected as 'unaffordable'. BAE, despite submitting two separate aircraft, were thus completely out of the running at this stage, neither of their offerings considered to be suitable for the SAAF's needs.¹⁰¹
88. What followed was an intensive lobbying process by BAE to secure contracts in the Arms Deal.¹⁰² An acquisition package was presented to the South African government, which saw BAE supplying Hawks and Gripens (including other military material) in return for substantial investment in South Africa. Part of the lobbying effort was BAE's decision to invest in a number of ANC-linked projects. These lobbying efforts were met with considerable concern from some members of the SAAF and other arms of service. They were worried that South African politicians were being lobbied to get its proposal through, even though the SAAF and SANDF did not want either the Gripen or the Hawk.
89. In 1997, after receiving all the information from various bidders, it was decided that the cost of purchasing all this equipment was simply too high. As a result, the SANDF decided to switch from a three-tiered system to a two-tiered system.

⁹⁹ 'BAE and the Arms Deal: Part 1', *Moneyweb*, 14 August 2007. Available at: www.moneyweb.co.za.

¹⁰⁰ 'BAE and the Arms Deal: Part 1', *Moneyweb*, 14 August 2007. Available at: www.moneyweb.co.za.

¹⁰¹ *Strategic Defence Packages: Joint Report*, 2001, Chapter 4, paragraphs 4.1.12–4.1.13. Available at: www.info.gov.za.

¹⁰² See annexure "AD1" at pp 64 – 65 for further details on the British lobbying efforts.

90. At a meeting in November 1997, the SAAF Command Council, busy overseeing the selection of preferred bidders, met to discuss the tiered system once again. The Minister of Defence, Joe Modise, intervened to change the SAAF's operational structure from a two-tier back to a three-tier system. This was done shortly after the BAE Gripen received a lower score than the Daimler-Benz AT2000 following an evaluation of RFI responses under the two-tier system. The three-tier training structure ultimately benefited BAE as it allowed BAE to submit both Hawk and Gripen aircraft for consideration under the SDP process.
91. The three-tier system was adopted despite all suppliers confirming that pilots could move directly from the Astra Pilatus in the SAAF's possession to using ALFAs. The middle-tier included at the insistence of Joe Modise was thus unnecessary and illogical. If the two-tiered system was used, South Africa would have saved considerable amounts of money as only one class of plane would have had to be purchased.
92. The Gripen's selection was plagued with irregularities and inconsistencies. However, in the end the ALFA contract was awarded to BAE/Saab after the bids were evaluated across three domains: technical, financing and offsets. However, it was claimed that two of the three shortlisted finalists failed to submit financing information. As a result the Gripen won the SOFCOM evaluation largely on the basis of the fact that it was claimed that its competitors had failed to submit adequate financing information despite 'repeated requests.' It does not seem plausible that the two losing bidders failed to offer financing information. It is simply not credible that two multinational competitors who were competing for multi-billion dollar contracts would 'fail' to submit information that would be crucial for their victory. Financing accounted for 33% of the final score awarded by SOFCOM. It was therefore largely on this basis that the Gripen emerged as the preferred bidder. In fact, members of the Department of Finance, as well as representatives of the two losing bidders, allegedly noted that no attempt was ever made to approach them for additional information regarding their bids.¹⁰³
93. This was a profound failure. It meant that the decision-makers in the Arms Deal would not have been able to ascertain the terms of the financing deals on offer by the other two bidders. These terms would have had a major impact on the ultimate cost of these contracts as they determined the manner and conditions under which the loans would have been repaid; or, more simply, how much the South African government would be required to pay to settle the loans taken out to pay the capital acquisition costs.
94. Thus, there was no competitive assessment of the costs between the three shortlisted bidders, and there was no way for the State to be certain that it chose a best-value proposition. Consequently, the Gripen, had been chosen on a technicality. South Africa would get the Gripen regardless of the fact that it was neither the cheapest nor the technically preferred option.
95. The Hawk only emerged as the preferred bidder after a series of manipulations.¹⁰⁴ Initially, the Hawk was considered to be one of the least desirable planes. During the

¹⁰³ 'BAE and the Arms Deal: Part 1', *Moneyweb*, 14 August 2007. Available at: www.moneyweb.co.za.

¹⁰⁴ For further information refer to annexure "AD1" at pp 67 – 76.

technical evaluation of the various aircrafts, which was combined with the price to determine the cost-effectiveness, the Hawk was placed in third position. The Aeromacchi MB339FD was considered to be twice as suitable as the Hawk with regard to technical competence, and was roughly half the cost of the Hawk.¹⁰⁵

96. BAE's Hawk ultimately won the contract after the direct intervention of the Minister of Defence, Joe Modise. Modise's intervention comprised of an instruction to remove cost as a criterion in the competitive evaluation of the bids for the LIFT contract. Even after this had been done, the Hawk was unable to emerge entirely victorious: the MB339FD still emerged as the preferred bidder as it was simply the best plane for the job.¹⁰⁶ Nevertheless, the Hawk now came in second place, and was given a score that would ensure that, once other factors had been evaluated (the offsets and financing terms), it could be considered a contender.
97. BAE submitted an offsets proposal that was roughly ten times larger than that of any of their competitors. What was notable was that the offsets offer submitted in support of the Hawk was considered by the South African Department of Trade and Industry (DTI) to be considerably less value than declared to Cabinet.
98. In July 1999, the DTI confirmed that it had miscalculated the offset benefits offered by BAE under the Hawk contract. The DTI had informed Cabinet that the offset offer was R10bn, when it was actually R1.5bn.¹⁰⁷ The Hawk was thus selected on the basis of egregiously wrong information, while Cabinet took no action to request a re-evaluation despite this finding.
99. A further review by the DTI found that the two major projects that formed the bulk of the BAE Hawk offset offer were likely never to materialise.¹⁰⁸
100. In August 1998, after considerable contestation about whether the Hawk should be selected, a special Ministerial briefing was held. Those present at the meeting were briefed by Chippy Shaik, who told the government of the two options available in terms of the LIFT contract (the costed and non-costed evaluations).
101. After the meeting, Chippy Shaik drew up a set of minutes of the meeting. The minutes of the meeting were clear: the Hawk and the Gripen would be chosen as a result of national strategic imperatives, including the role that partnering with BAE could play in salvaging the struggling local aerospace industry.¹⁰⁹
102. Only days later, however, the Secretary of Defence, General Pierre Steyn, attempted to set the matter straight. According to Steyn, the meeting that these minutes reflected was not formally constituted and had no official decision-making powers. Even more importantly, he was of the opinion, along with HD Esterhuyse, that no decision had been reached at all, despite what the minutes reflected. On 7

¹⁰⁵ 'BAE and the Arms Deal: Part 2', *Moneyweb*, 15 August 2007. Available at: www.moneyweb.co.za.

¹⁰⁶ 'Strategic Defence Packages: Joint Report', 2001, Chapter 4, paragraphs 4.5.3.6–4.5.3.7. Available at: www.info.gov.za

¹⁰⁷ *Strategic Defence Packages: Joint Report*, 2001, Chapter 4, paragraph 4.5.5.2. Available at: www.info.gov.za.

¹⁰⁸ For further information refer to annexure "AD1" at pp 69 – 70.

¹⁰⁹ 'Strategic Defence Packages: Draft Report of the Auditor-General', Annex B, Chapter 5, para 5.9.12, p. 125. See further annexure "AD1" at p 70.

September 1998, Steyn wrote a long memorandum to Chippy Shaik where he questioned the completeness and accuracy of the minutes.¹¹⁰

103. Attached to Steyn's memorandum was a new version of the minutes that Llew Swan and HD Esterhuysen had drafted, and which they thought accurately captured the contents of the meeting. Although it is unclear what happened to the new minutes, it is clear that they were ignored. Indeed, only two months later, on 18 November 1998, the Hawk and Gripen were presented to the full Cabinet as the preferred options, and their selection was confirmed. Steyn resigned shortly thereafter in protest at the decision to exclude cost as a criterion. He stated that he resigned 'because, as secretary of defence, I was going to have to account for costs to Parliament, which I couldn't do.'¹¹¹ Esterhuysen, meanwhile, urged Armscor's internal auditors to investigate, which it failed to do by the time Esterhuysen resigned from Armscor.
104. To sum up, the Hawks were chosen despite them not being the favoured military option of the SAAF, the very organisation they were being bought for. Second, the Hawks were considerably more expensive than their closest competitors and were only kept in the running after cost had been excluded as a criterion. Third, the Hawks were chosen even though the SAAF still favoured the Aeromacchi after cost had been excluded. Lastly, they were chosen largely on the basis of BAE's offset proposals – proposals which the DTI later pointed out were largely radically inflated and unfeasible.
105. Once Cabinet had approved the Hawk and Gripen, permission was given to the International Offers Negotiating Team (IONT) to begin the negotiations towards a final contract, the outcome of which would be the final terms and conditions that were eventually signed in December 1999.¹¹² The IONT found that the purchase of Hawk and Gripen aircraft was likely to carry great financial risk and cost more than initially budgeted for. Moreover, the IONT pointed out that the SAAF only had nine pilots, meaning that if the full complement of Gripens was acquired, there would be no one to fly them.¹¹³ The IONT recommended either deferring the purchase of the Gripen or requesting that offset obligations forming part of the Gripen bid be delivered early. Cabinet ignored these suggestions and ordered the IONT to continue negotiating.
106. BAE offered to resolve the impasse by suggesting that the aircraft be bought in tranches. The offer was investigated by the IONT and Affordability Team, who highlighted that the tranching system was illogical and carried substantial potential risks.
107. A few days after this picture had been painted by the Affordability Team (responsible for the Affordability Report), a recommendation was sent by the Chief of the SANDF and the Acting Secretary of Defence (who had replaced Pierre Steyn after his resignation in 1998) to Joe Modise. The recommendations completely ignored the findings of the Affordability Report, and instead outlined a series of purchase options that could be pursued.¹¹⁴

¹¹⁰ 'Strategic Defence Packages: Draft Report of the Auditor-General', Annex B, Chapter 5, para 5.9.14, p. 125. See further annexure "AD1" at p 70.

¹¹¹ 'Pierre Steyn speaks out about the Arms Deal', *Mail & Guardian*, 2 February 2007.

¹¹² For further information see annexure "AD1" at p 71.

¹¹³ For further information see annexure "AD1" at p 71 – 72 where the briefing of the IONT is quoted in full.

¹¹⁴ For further information see annexure "AD1" at pp 73 – 74.

108. In direct defiance of the Affordability Report, on 31 August Cabinet opted for the tranching approach.¹¹⁵ The South African government would purchase the Hawks and Gripen in three tranches, with the last two capable of being cancelled if the government so chose. However, this ‘tranching’ system was illogical: if South Africa did not adopt tranches two and three, the country would have been without any single-seater Gripen fighters, leaving it without any airspace combat capability. In addition, BAE and SAAB had frontloaded the costs into the first tranche, meaning that if South Africa cancelled tranches two and three it would pay a massive financial penalty as the planes bought in the first tranche would, on a plane-by-plane basis, be over 30 per cent more expensive than if all of the planes were bought in a single go.
109. After the tranching system was approved, it was discovered that the Arms Deal would still cost too much, requiring a reduction in cost. To resolve further issues of affordability, it was decided to reduce the number of Light Utility Helicopters (LUH) purchased from 40 to 30. However, the cost of the Hawks and Gripens were so considerable that the reduction of helicopters still did not bring the Arms Deal within the approved expenditure limits. Moreover, the purchase of LUH was arguably more rational than the purchase of the Hawk, which the SAAF had already discovered was unnecessary.

The LIFT/ALFA Contracts and Corruption

110. The Hawk and Gripen contracts have been subject to numerous allegations of corruption.
111. The first set of allegations related to the conflicts of interest involving major players in the selection process. The most well-reported of these conflicts of interest relates to Joe Modise’s connections to Conlog. Joe Modise, along with his business partners Major-General Ian Deetlefs (then head of Denel) and Ron Haywood (head of Armscor), acquired shares in Conlog in a manner that earned all parties significant income. During the Arms Deal selection process, Conlog was selected by BAE as a company that would form a joint venture with ABB-SA and would enjoy increased export sales as a result of the offsets programme. In other words, Conlog was due to receive lucrative business via BAE/SAAB’s NIP program. This meant that not only did Modise, Haywood and Deetlefs act on confidential information for their pecuniary gain, but would also stand to benefit financially should BAE/SAAB win the LIFT/ALFA contract and incur NIP obligations.
112. Evidence presented before the Seriti Commission of Inquiry indicated that South African authorities had reached an advanced stage in their investigation of the Conlog matter. This leg was eventually dropped after the death of Joe Modise. A key part of the evidence presented to the Seriti Commission (and seemingly ignored by it) was attached to the evidence bundle of Col. Johan Du Plooy. It consisted a Request for International Assistance directed to authorities in the Channel Islands submitted by the Scorpions. The document painted a deeply disturbing picture of double-dealing and massive conflicts of interest that showed that Modise had received shares in

¹¹⁵ For further information see annexure “AD1” at pp 73 - 75.

Conlog for nothing at the very time that he was overseeing the Arms Deal selection process.¹¹⁶

113. Joe Modise was reported to have been thoroughly investigated by members of South African law enforcement, who were said to have uncovered a substantial money trail linking payments from BAE/Saab to Joe Modise.
114. This was not the only instance of Modise's potential conflicts of interest. Modise also had business dealings with Marvotech and its board. Marvotech was in the business of upgrading various airplanes – most importantly, the engine upgrades to the SAAF's old Cheetahs and Mirage fighters. As previously indicated, engines were to be fitted to the Cheetahs and Mirages, providing them with a new lease on life. One of the major problems of both the SAAF's Cheetah and Mirage airplanes was their lack of speed due to outdated engine technology, which would have been resolved by these upgrades. If the Arms Deal was pursued the upgraded airplanes would then be available to be sold on to various countries, earning whoever was responsible for the upgrades and the sales a considerable amount of money.¹¹⁷
115. In 2000 the companies who would be involved in the upgrading project were announced: Armscor, Denel Aviation, Aerosud, Advance Technologies Engendering (ATE) and Marvol. ATE and Marvol were both companies which had strong ties to the ANC. Marvol included Joe Modise and Alfred Nzo as board members. ATE was part-owned by BAE, which held a 20 per cent share, and featured as directors Diliza Mji and Richard Charter: the latter was alleged in documents from the UK's Serious Fraud Office to be one of BAE's major 'covert' agents for the payment of bribes. Mji was the former chairperson of the ANC in KwaZulu-Natal, and was involved in a number of BAE-related enterprises following his stint as a board member of Armscor.¹¹⁸
116. In order for the upgrading project to go ahead the companies needed a cheap flow of Cheetahs and Mirage fighters – fighters that would become available as soon as the Gripen and Hawk had been delivered. This may be why, despite consistent warning that the Gripens should not be purchased as part of the Arms Deal as the Cheetahs were effective until 2012, the decision to pursue the Gripens was taken. What is evident is that once the BAE deal had been signed, a number of companies and individuals would be able to benefit from the availability of cheap second hand fighters.¹¹⁹
117. Joe Modise may have operated under other inducements. Andrew Feinstein, as the ranking ANC member on Parliament's Standing Committee on Public Accounts (Scopa), together with Gavin Woods (the chairperson of Scopa), before a meeting in Pretoria were shown by key Auditor-General staff members a series of bank statements, signed letters, deposit and withdrawal slips. They were told that these documents formed "a substantial part of the paper trail linking money from a number of the successful bidders to Joe Modise." In response to the question of how much of this trail was still outstanding they were told: "Not much. With the resources and legal

¹¹⁶ The document is attached to the joint submission ("AD1") as Annex CCC. See further the joint submission annexed as "AD1" at pp 77 – 79.

¹¹⁷ For further details on this please refer to the joint submission annexed as "AD1" at p 80 – 81.

¹¹⁸ For further details on this please refer to the joint submission annexed as "AD1" at p 80 – 81.

¹¹⁹ For further details on this please refer to the joint submission annexed as "AD1" at p 81.

powers of the investigating team upstairs, we will complete it in a couple of weeks.”¹²⁰

118. Further allegations emerged in November 2008 when the Scorpions raided the properties of Fana Hlongwane, John Bredenkamp and BAE Systems South Africa. In order to secure the search warrants necessary for the raids to take place, the Scorpions relied heavily on an affidavit from the UK’s Serious Fraud Office: an affidavit that outlined, in detail, how BAE had allegedly run a system of agents in South Africa in an effort to secure contracts in the Arms Deal.¹²¹ This system operated to facilitate the payment of massive ‘commissions’ by BAE to various agents: commissions that, according to SFO records, have reached a total of £115m, or just over R1.5bn at 2009 exchange rates.
119. In the early 1990s, BAE became increasingly worried about the audit trail of the payments made to the different agents that they contracted. In response, as shown by the documents seized by the SFO from BAE offices, BAE executives decided to investigate how to make their advisor and agent system as opaque as possible.¹²²
120. BAE decided to make use of a highly secretive payment system operating from the British Virgin Islands by which covert and overt agents in South Africa were paid for ‘consulting’ work by the BAE controlled Red Diamond Trading. Using Red Diamond Trading, BAE allegedly entered into agreements and paid substantial sums to a number of companies.¹²³
121. In total, BAE, via Red Diamond Trading, transferred £115 million to various agents for work on the South African deal. Amongst the largest recipients of funds from Red Diamond Trading were Fana Hlongwane (the special advisor to Joe Modise), Kayswell Services (majority owned by Rhodesian sanctions-buster John Bredenkamp), Huderfield Enterprises (majority owned by the now-deceased Richard Charter, who was also employed as an overt advisor to BAE via his company Osprey Aerospace). None of these recipients could provide evidence to investigators of meaningful work done to justify such large payments.
122. A further company contracted by Red Diamond was Arstow Commercial Corporation, which received roughly £15m via accounts in Liechtenstein and China.¹²⁴ Most notably, Arstow received three large payments from Red Diamond Trading (£75 000, £30 000 and £100 000) just prior to the signing of the contracts between South Africa and BAE.
123. It is further claimed that Astrow was explicitly used to make payments to both Hlongwane and Stella Sigcau, a member of the Cabinet sub-Committee overseeing the Arms Deal. BAE, via Red Diamond Trading, intended to distribute funds to Stella

¹²⁰ Feinstein, A. *After the Party*, pp. 177-8.

¹²¹ For further details on this refer to the joint submission annexed as “AD1” at p 81.

¹²² Murphy, G. 2008. Affidavit submitted as Annexure JDP-SW12 in the High Court of South Africa (Transvaal Provincial Division) in the matter of *Ex Parte* the National Director of Public Prosecutions (applicant) in re: an application for issue of search warrants in terms of Section 29(5) and 29(6) of the National Prosecuting Authority Act, No. 32 of 1998, as amended, para 10-11. This is attached as Annex S to the joint submission attached hereto as “AD1”.

¹²³ For further details refer to the joint submission annexed as “AD1” at p 82.

¹²⁴ For further detail regarding the role of Astrow see annexure “AD1” attached hereto at pp 83 – 85.

Sigcau via Arstow. According to SFO documents, these funds were transferred although the amounts were not stated. SFO investigators privately confirmed to Paul Holden that the SFO had found a substantial trail of funds being made available to Stella Sigcau by BAE in cash and kind. SFO investigators specifically noted that BAE had paid for the school fees of Stella Sigcau's daughter at a top British school. This claim has been vindicated by documents submitted by Col Johan Du Plooy to the Seriti Commission, which appears to have been ignored them. The documents include letters and memos proving that BAE Systems paid for the UK costs of Stella Sigcau, and that Sigcau was particularly supportive of the bid.¹²⁵

124. The largest South African recipient of funds directly from Red Diamond was Fana Hlongwane. Hlongwane was special advisor to Joe Modise from 1994 until Modise's resignation from the SANDF.¹²⁶ He was also appointed as a Board Member of Denel by Modise in the early 1990s, and, was a consultant involved in what was known as the MODAC workgroup: a body that was convened by Joe Modise before the Arms Deal to draw up the content of the SANDF's future acquisition policy.¹²⁷
125. In 2010, South African authorities attempted to seek a preservation order over assets stored by Hlongwane abroad. This followed a notification sent by authorities in Lichtenstein that indicated that funds belonging to Hlongwane had been frozen there by an order of the High Court due to concerns over money laundering. The National Prosecuting Authority (NPA) sought to have an order issued freezing the assets as, unless South African authorities did so, Lichtenstein would be forced to relinquish the freeze and allow the dispersal of the assets. Lichtenstein was hoping to have the investigation ultimately transferred to South Africa. The NPA submitted the application to the High Court, which granted a temporary preservation order over the funds.
126. The documents provided to the NPA, and the documents the NPA submitted to the High Court, indicated that Hlongwane had received funds as early as 1999, when the Arms Deal was being negotiated. These funds were received through offshore vehicles that Hlongwane had established.¹²⁸
127. In March 2010, Menzi Simelane, then serving as the National Director of Public Prosecutions, withdrew the preservation order after receiving a submission from Hlongwane and his lawyers. Simelane came to the conclusion that the existence of consultancy agreements between Hlongwane and BAE had the effect of clearing them of any criminal wrongdoing.¹²⁹ Simelane's attitude was clearly at odds with the majority of NPA investigators and the Asset Forfeiture Unit. Not long after, Simelane was removed by the Constitutional Court from his position as NDPP as it ruled that he was not a 'fit and proper' person for the role.

¹²⁵ For further details on these documents refer to the joint submission annexed hereto as "AD1" at pp 84 – 85.

¹²⁶ That this was publicly advertised is confirmed by Hlongwane's business card, attached as Annex T to the Joint submission annexed hereto as "AD1".

¹²⁷ MODAC Investigation: Frontispiece showing Fana Hlongwane authorship, attached as Annex U to the Joint submission attached hereto marked as "AD1".

¹²⁸ For further information refer to the joint submission annexed hereto as "AD1" at pp 87 - 88.

¹²⁹ RE: NDPP's Decision to Abandon the Preservation Order Against Mr Fana Hlongwane, <http://www.politicsweb.co.za/documents/why-i-let-fana-hlongwane-off-the-hook--simelane>.

128. Returning to the disclosures in the SFO documents: On 9 September 2003, Hlongwane Consulting, entered into a contractual agreement with BAE, which was backdated to 1 January 2002. According to the agreement, Hlongwane Consulting (of which Fana Hlongwane was the sole owner and director), received a retainer of £250 000 per quarter, which equated to £1m per year. This agreement was often changed to allow for ‘ex gratia’ payments: one of £250 000, for example, was made on 3 March 2005, while a further \$8m was paid on 8 September 2005 ‘in full and final settlement for all additional work regarding Gripen tranche 3’.¹³⁰ In total, between September 2003 and January 2007, Hlongwane Consulting was paid £10m, even though, as the SFO notes, ‘BAE has not provided the SFO with any written report to justify the size of these payments’.¹³¹
129. BAE intended to pay a further \$10m to Fana Hlongwane, which never materialized. The payment was to be effected with the help of Count Alfons Mensdorff-Pouilly, a BAE agent working on contracts in Eastern Europe. Mensdorff-Pouilly was indicted in Austria for money laundering and perjury relating to payments he had received from BAE while acting as the company’s agent in Austria and Eastern Europe. Austrian prosecutors alleged that he had laundered funds for BAE.¹³²
130. BAE signed a further consulting agreement with Fana Hlongwane via BAE/Saab’s South African vehicle, SANIP.¹³³ Recent disclosures from BAE’s long-term parent Saab provide additional support to claims of wrongdoing against BAE. In 2011, Sweden’s TV4 ran a series of explosive prime time mini-documentaries on the role of Saab in the Arms Deal. The documentary highlighted the relationship between SANIP and Hlongwane. The central document utilised by the Swedish journalist was the consultancy agreement entered into between SANIP and Fana Hlongwane.
131. In response to the programmes, Saab announced that it would begin its own internal investigation.¹³⁴ In June 2011 Saab released a statement indicating that their investigation revealed that approximately 24 million rand was paid from BAE Systems to SANIP. These payments were then transferred to the South African consultant.¹³⁵ Saab claimed that the company was run by BAE for the period in which Hlongwane was a consultant. Saab also confirmed that the amounts were paid to Hlongwane via SANIP and that this may be tantamount to bribery.
132. Despite Saab distancing itself from Fana Hlongwane and SANIP in 2011, it emerged in May 2017 that Saab had, in fact, entered into a separate consultancy agreement directly with Hlongwane Consulting. The consultancy agreement ran from October 2003 to December 2004. Hlongwane Consulting was due to receive €270 000 in total from the agreement, made up of monthly payments of €18 000. The

¹³⁰ Murphy, G. *op Cit*, paragraph 26

¹³¹ *Ibid*

¹³² For further information refer to the joint submission annexed hereto as “AD1” at pp 89 – 90.

¹³³ For further information refer to the joint submission annexed hereto as “AD1” at p 89.

¹³⁴ ‘Result of Saab’s ongoing internal investigation regarding South African consultant contract’, Press Statement, 20 May 2011, www.saabgroup.com. Attached as Annex X to the joint submission attached hereto as “AD1”.

¹³⁵ ‘Saab completes internal investigation regarding consultant contract in South Africa’, Press Statement, 16 June 2011, www.saabgroup.com. Attached as Annex Y to the joint statement annexed hereto as “AD1”.

agreement paid Hlongwane Consulting for vaguely worded advice on political, economic and security policy.¹³⁶

133. It is worth pointing out at this point that Hlongwane was one of the only two people who have been accused of receiving corrupt money from the Arms Deal to appear before the Seriti Commission. The other was Chippy Shaik. Hlongwane's testimony before the Commission was entirely untested.¹³⁷ Hlongwane was not asked a single question in cross-examination by any interested parties. He was also not asked a single question by any of the Commissioners. Indeed, Hlongwane was only asked about the corruption allegations in the broadest terms. The failure of the Commission to test this evidence in any meaningful way is one of the many examples put forward by Corruption Watch and R2K in their current High Court challenge indicating that the Commission failed to meaningfully investigate the Arms Deal.
134. The failure of the Commission to ask any questions was particularly inexcusable considering the paucity of the Hlongwane's testimony and witness statement, which according to Paul Holden and Andrew Feinstein was materially wrong on a number of accounts.¹³⁸ Hlongwane's witness statement was only 13 pages long and addressed Hlongwane's involvement with BAE Systems in three brief paragraphs.
135. Hlongwane's witness statement appears to be clearly contradicted by the very substantial and voluminous evidence gathered by the SFO, the NPA and authorities in Lichtenstein. This is addressed in detail in the Corruption Watch and R2K challenge to the Seriti Commission at paragraph 495 which is annexed hereto and marked as "AD7".¹³⁹
136. Hlongwane's witness statement was also entirely silent on the content of two plea agreements entered into between BAE and the US Department of Justice and State in 2010 and 2011 respectively. Reading both plea bargain agreements together, it clearly confirms that BAE made use of Red Diamond to make payments to hundreds of brokers and advisors; that the payments were made explicitly in order to secure sales in South Africa and around the world, and that these payments 'would be used to ensure BAE was favored in foreign government decisions regarding the sale of defense articles.'¹⁴⁰
- ^{137.} In October 2017, further evidence emerged that Saab had contracted directly with another entity related to the Arms Deal: Mayekiso Labour and Community Services. This company was owned by Moses Mayekiso. Mayekiso was a well-connected union leader who served in a leadership role in the National Union of Metalworkers of South Africa (NUMSA) as its general-secretary during the Arms Deal negotiation process. Mayekiso was part of NUMSA when the union allegedly received money from a Swedish Union linked to Saab, IF Metall, to support the Arms Deal. Mayekiso

¹³⁶ For further information refer to the joint submission annexed hereto as "AD1" at pp 96 – 97. Moreover, the consultancy agreement is annexed to the joint submission "AD1" and marked as Annexure EEE.

¹³⁷ Hlongwane's testimony before the Seriti Commission took place on 11th of December 2014 and formed pages 8939 to 8984 of the Seriti Commission's transcribed record.

¹³⁸ For further information in this regard refer to the joint submission annexed hereto as "AD1" at pp 91 – 93. See further the annexure (**Annex GGG**) attached to the joint submission "AD1".

¹³⁹ The contents of paragraph 495 are set out in the joint submission "AD1" at p 92 – 93.

¹⁴⁰ For further information on the plea bargain refer to the joint submission "AD1" at pp 93 – 96.

was contracted in January 2000, only weeks after the Arms Deal was signed. Mayekiso was due to receive 5 million Kroner, equal to just under R4m from the contract. In terms of the consultancy agreement between Saab and Mayekiso, Mayekiso was contracted under the agreement to ‘provide the activities necessary to support the offset obligations regarding Gripen in South Africa.’¹⁴¹

138. As previously indicated, Saab tried to distance itself from SANIP. To prove this fact, Saab released an ‘Operational Transfer Agreement’, a legal contract entered into between Saab/ SANIP and BAE describing the transfer of SANIP’s business over to the BAE operational team. Attached to this was an appendix that listed all of the contractual obligations SANIP had entered into by the date of transfer of SANIP’s business over to the BAE operational team.

139. One such agreement was with a company by the name of Veriytech CC. According to an agreement signed on 19 February 2002, Veriytech CC was granted a considerable loan by SANIP.¹⁴²

140. SANIP financial statements released by Saab indicate that one Viktor Verichenko, as sole director of Veriytech CC, was granted a loan of R750 000 by SANIP on extremely favourable terms. The loan was written off two years later without any repayments being made. Viktor Verichenko was close to Chippy Shaik, including acting as Shaik’s PhD supervisor. Shaik’s PhD was later invalidated after it was discovered that the PhD had plagiarised extensively from the work of Verichenko himself.

The Corvette Contract

141. The decision to purchase the corvettes had a long history, much of which was described previously in these papers. To briefly recap: Shortly after the 1994 elections, the acquisition to purchase the corvettes was approved. In 1995, after a media furore, the resistance of some ANC MPs and student protests, the corvette deal was placed on hold until the Defence Review had been completed. Finally, in 1997, the Defence Review was approved, and moves were made towards the purchase of four new corvettes for the Navy.

142. On 23 September 1997 the Minister of Defence sent out Requests for Information to 11 different countries. These RFIs referred to one ‘phase’ in the procurement of the corvettes, namely, the purchase of the ship ‘platform.’ A second ‘phase’ was the selection of the supplier for the ‘combat suite’, which would be added to the ship ‘platform’ to create a fully fledged corvette. In total, 37 different responses were received by the end of October 1997. From October 1997 to February 1998 the RFIs were examined, and a shortlist of four potential suppliers was decided upon: Bazan from Spain, the German Frigate Consortium (GFC) from Germany, GEC from the UK and DCN from France. As a result of this shortlisting, the companies were asked to provide information in fulfilment of the Requests for Offers (RFOs), which were to

¹⁴¹ For further information on NUMSA and Moses Mayekiso refer to the joint statement marked “AD1” at pp 97 & 179 – 180.

¹⁴² Operational transfer agreement’ between Saab Aerospace, SANIP and BAE Systems (Gripen Overseas), September 2004. Available from www.saabgroup.com and attached as Annex Z to the joint submission “AD1”.

be examined by SOFCOM. By 12 May 1998, all the RFOs had been received by the Ministry of Defence, and were to be reviewed by SOFCOM.¹⁴³

143. It is important to note that the RFOs were supposed to be the ‘best and final’ offer: an irrevocable statement that could not be revised, changed or edited at a later stage without invalidating the entire selection process.¹⁴⁴ This notwithstanding, SOFCOM continued to evaluate the offer of all bidders despite none of the bidders conforming to the minimum bidding requirements by failing to submit the required financing information in their RFOs. This was highly irregular. If bidders failed to submit the requisite information, the bidders were either supposed to be disqualified or the bid process started anew with new requests for offers.
144. A second decision to proceed with the bids despite material problems with the offers related to the evaluation of the Defence Industrial Participation (DIP) offers. In particular, GFC, which was later to win the contract, had failed to supply all the necessary documentation. They were the only bidder who did not conform to this minimum requirement. Despite this, the GFC continued to be evaluated, when it should have been disqualified from the bidding altogether.
145. The decision to allow the GFC to remain in the evaluation was made without due process being followed. In fact the decision was taken exclusively by Llew Swan and Chippy Shaik and was not discussed with other members of SOFCOM.¹⁴⁵
146. All bidders, excepting Bazan, failed to conform to minimum bidding requirements by failing to submit the required technical information in their RFOs. Bazan should thus have remained as the lone bidder in the evaluation process, or the process started anew. However, the decision was made to allow all bidders to continue despite this failing.¹⁴⁶
147. In addition to the decisions allowing bidders to be evaluated despite failing to meet minimum criteria, the manner in which the points were awarded to the various bidding companies was irregular.¹⁴⁷
148. During the selection process, GFC and Bazan were scored closely with regard to two of the selection criteria: the financing evaluation and the technical suitability of the vessels proposed. In fact, after the financial evaluation Bazan and GFC were considered to be amongst the worst on offer (GFC scoring the lowest).
149. Similarly, in the technical evaluation, notwithstanding the fact that GFC had failed to meet the minimum requirements stipulated, Bazan and GFC were scored closely, with GFC slightly preferred to Bazan.
150. The real determinant of the outcome of the corvette contract would be the evaluation of the offsets proposals presented. Without these evaluations, GEC would have won on the basis of their scores for financing and technical evaluation.

¹⁴³ Refer to the joint submission annexed as “AD1” at p 100 for further details.

¹⁴⁴ See: Squires, J. 2005. Judgment in the High Court of South Africa (Durban and Coastal Local Division) in the Matter Between The State and Schabir Shaik et al., Case no. CC27/04, 31 March.

¹⁴⁵ For further information refer to annexure “AD1” at p 101.

¹⁴⁶ For further information refer to annexure “AD1” at p 102.

¹⁴⁷ For a breakdown of the different scores refer to annexure “AD1” at pp 103 – 105.

151. The GFC emerged as the winner of the SOFCOM evaluation process largely due to the combined score it received for its National Industrial Participation (NIP) and Defence Industrial Participation (DIP) proposals (the former being offsets for civilian industry and the latter being offsets for the defence industry).
152. In the category of DIP, Bazan was the outright leader, while GFC was the clear frontrunner in the NIP category. It was later acknowledged in the Affordability Report that NIP was inherently more risky and less likely to come to fruition than DIP obligations, for a host of reasons. Even the Joint Investigation Report, later edited substantially, commented that GFC was ‘nominated the preferred bidder on the basis of the NIP offer ... despite the fact that the NIP is not ascertainable in terms of achievability’.¹⁴⁸
153. A series of ‘calculation errors’ in the DIP evaluation meant that the GFC received a DIP score that was larger than its ‘true value’. This clearly benefited the GFC over all other bidders. GFC had been awarded more DIP offset points per rand than any other bidder in the corvette process; they were given a score that was actually 10 points too much in their favour as a result of a series of calculation errors, and they were granted DIP credits for the combat suite when they had failed to submit business plans on this project in time.¹⁴⁹ In addition, all of this was done despite the fact that GFC had failed to meet two of the minimum criteria in their DIP proposals, which should have seen them disqualified from any further evaluation. In two key instances, GFC’s survival depended on the intervention of Chippy Shaik and Llew Swan, who gave the go-ahead for these deviations to be ignored, with no evidence that this was discussed with other members of SOFCOM. In this way, GFC, reliant as it was on a decent offset score to win the bid, would achieve a DIP score that would help to keep it in the race for the position of preferred bidder in the corvette contract.
154. A similar series of errors seem to have applied in the NIP component. The GFC received an NIP score nearly twice the value of its nearest competitor, Bazan, despite both bidders offering virtually the same Rand value of NIP commitments.
155. Scores for NIP and DIP commitments were calculated by adding the evaluation scores of both domains following SOFCOM’s analysis.¹⁵⁰ This was done despite Armscor’s legal services stating that the combined NIP and DIP scores should be calculated by adding together the Rand amounts offered. By adding scores rather than Rand amounts, GFC’s combined DIP and NIP score was valued much higher than its competitors. If the scores were derived from adding rand values, Bazan would have won the offset domain in the SOFCOM evaluation.

¹⁴⁸ *Strategic Defence Packages: Joint Report*, 2001, Chapter 7, paragraph 7.3.5.4 (i). Available for download from www.info.gov.za

¹⁴⁹ In their business plans, each bidder had to submit details as to how they were going to contract local businesses to build the combat suite (the weapons systems, along with other products). Here, it was required that the combat suite would include a DIP value of 60 per cent of the combat suite contract: in other words, 60 per cent of the combat suite contract would go to a local bidder, for which the primary contractors (Bazan *et al.*) would receive DIP credits to that value. GFC failed to provide any business plans indicating that a full 60 per cent of the combat suite would go to a local contractor. Nevertheless, GFC were given DIP credits as if they had, in fact, submitted the correct business plans. In addition, they were given credits equal to the value of Bazan, the supplier who had offered the best DIP deal.

¹⁵⁰ For further information on how the scores were combined refer to annexure “AD1” at pp 107 - 108.

156. The authors of the joint submission (annexure “AD1”) reran the calculations in order to determine what the outcome would have been had all the errors and deviations from standard policy not been made. Their calculations indicate that if all the errors referred to above were corrected, Bazan emerged as the best bidder, with GFC being relegated to second place.¹⁵¹

Irregularities in the Selection of Subcontractors for the Corvette Combat Suite

157. Two key subcontracts in the corvette contract were in violation of good procurement practice: the Information Management Suite (IMS) and the System Management System (SMS). In both instances, African Defence Systems (ADS) were selected as the preferred subcontractors over C²I².

158. The corvette contract was entered into by South Africa for two separate ‘parts’ of the corvette: the ship platform (which GFC won, as described above) and the combat suite. The combat suite provided offensive and defensive weapons systems to complement the ship platform.

159. The eventual winners of the contract to supply the combat suite were ADS and Thomson-CSF, both of whom thus became an official component of the GFC’s bid as part of a newly created consortium called the European South African Corvette Consortium. What this effectively meant was that Thomson-CSF and ADS formed part of the main body of companies contracted by South Africa to build the corvettes, and were thus what were known as ‘primary contractors’. The final contract for the delivery of the full and final corvettes (the ship platform and combat suite), was signed by the German Frigate Consortium, ADS and Thomson-CSF.

160. Different subcontractors would be employed by Thomson-CSF and ADS to supply different components of the combat suite. In certain instances, ADS and Thomson-CSF were to bid for subcontracts on the combat suite. Thus, Thomson-CSF and ADS would, as the main contractor, be responsible for awarding subcontracts.¹⁵²

161. Naturally, it would be beneficial to both Thomson-CSF and ADS if they received the greatest number of subcontracts possible. They would have a major hand in deciding this as they were the main contracting party, despite having to interface with Armscor on the decisions..

162. Thomson-CSF and ADS had a close business relationship with cross-ownership. In April 1998, Thomson-CSF purchased 50 per cent of Altech Defence Systems (the predecessor company to African Defence Systems); the remainder of the shares were purchased in February 1999.

163. Nkobi Holdings, a company owned by Schabir Shaik (the brother of Chippy Shaik), was later granted a share in ADS when Thomson transferred shares in ADS to Thomson-CSF (Pty), which was part-owned by Shaik’s Nkobi group. Combined with

¹⁵¹ For a breakdown of how they recalculated the scores refer to p 108 of their joint submission (“AD1”).

¹⁵² For further information refer to the joint submission “AD1” at p 110.

the fact that the Arms Deal negotiation team, which notably included Chippy Shaik, would be deeply involved in the selection of ‘nominated’ subcontractors for the combat suite, this all meant that Thomson-CSF and ADS would be managing a tendering process in which they, themselves, were trying to secure subcontracts, and which would be subject to the oversight and input of Chippy Shaik, whose brother had an interest in ensuring that ADS received as large a part of the corvette contract as possible. The conflicts of interest were manifold..

164. One of the major subcontracts in the combat suite contract was the IMS which was essentially the ‘brain’ of the ship. When the initial RFO was sent out to the various bidders for the corvettes, it was decided to include a list of ‘candidate suppliers’. That the list was drawn up in the first place was surprising: normally, these sorts of matters would be subject to a tender process. Instead, the list was compiled without any tender procedures, and there was no invitation to various companies to submit offers to be included in the ‘candidate suppliers’ list. The State (in particular the corvette Joint Project Team), had nominated C²I² as the candidate supplier to provide the IMS as C²I² offered a technically suitable solution, was South African owned, and had received considerable skill and technology retention funding from the South African government.¹⁵³

165. In total, C²I² received roughly R22m from 1994 to 1999 to develop the IMS and the company’s MD, Dr Richard Young, invested R10m of his own money as well as reinvesting all operating profits. As a result, C²I² was then partly owned by the South African military service.¹⁵⁴ In essence: C²I² was listed as the ‘candidate supplier’ to provide the IMS for the corvettes, and would thus have expected to have received this contract.

166. Once the list had been compiled it was then handed over to the main contractor, GFC. GFC would then be responsible for approaching the suppliers on the list and asking them to submit their tender offers. In this way, GFC effectively acted as the main tender board for the ‘combat suite’. This suggested that the purchase of the combat suite, which would eventually cost R2.6bn, was arranged by a company that did not have to abide by South Africa’s own tender procedures.¹⁵⁵

167. As noted above, C²I² was listed as the original ‘candidate supplier’ to provide this particular product. However, GFC, upon receiving C²I²’s offer, decided that they would rather make use of a different system provided by the French company Detexis. Vitaly, Detexis was a subsidiary of Thomson-CSF.

168. GFC secured the selection of the Detexis system by claiming that the product offered by C²I² was risky, thus attracting a risk abatement fee. Without the risk fee, C²I² would have won the evaluation. The decision to add a risk premium to the C²I² product was unjustified as the Joint Project Team had conducted its own evaluation of the product. The comparative study that the JPT conducted, ‘found that the C²I² was

¹⁵³ Strategic Defence Packages: Draft Report of the Auditor-General’, Chapter 12 – Non Selection of Sub-contractor: C²I², para 12.1.3.3, p. 574 – 576. Attached as Annex B to the joint submission attached hereto as “AD1”.

¹⁵⁴ *Ibid*, para 12.1.9.1, p. 584

¹⁵⁵ Strategic Defence Packages: Draft Report of the Auditor-General’, Chapter 12 – Non Selection of Sub-contractor: C²I², para 12.7.6, p. 603 and para 12.7.17, p. 605. Attached as Annex B to the joint submission attached hereto as “AD1”

considerably more suitable than that of Detexis. The Report concluded that it was the Detexis system that carried significant risks, while both Thomson and GFC had confided to the Joint Project Team that the C²I² 'IMS is a superior product.'¹⁵⁶

169. In certain instances the South African government was willing to cover some of the risks of using selected contractors. This was a risk-sharing exercise that would allow South African companies to enter the contract, without GFC having to worry about penalties caused by delays flowing from the use of these South African companies. During the negotiation process it was decided to categorise subcontractors according to various risk profiles. 'Category C' contractors were supplying non-essential subcontracting services, and their failure to deliver would not devastatingly impact on the function of the corvettes; as such, they were to be covered by this risk-sharing scheme. 'Category B' contractors were subcontractors who were supplying elements that were considered 'subsystems that have a critical effect on the overall vessel delivery, and for which the prime contractor retains full responsibility'. In other words, if a particular element of the corvettes was considered a 'Category B' product, the state would not enter into any risk-sharing agreement, and, if the product failed, it would be GFC and Thomson that would be responsible for paying the penalties for the delay, as well covering the cost of replacing this system
170. Considering the JPT Report had found that C²I² system was no more risky than the system offered by Detexis, it is confusing that C²I² was classified as a 'Category B' subcontractor for whom the state would assume no risk. Similarly, the fact that the state had already paid for C²I²'s technology development made it odd that it refused to back C²I².
171. There is an insufficient audit trail to identify who in the State categorised C²I²'s system as a Category B product.¹⁵⁷ Later testimony by officials claimed that an unminuted meeting was held by the Project Control Board to confirm the decision. This would have been highly unusual as the meeting did not constitute a quorum, was not minuted and not reflected in any other minutes. In addition, it was claimed that the JPT was not forwarded from the Joint Project Team to the Project Control Board, which would have unfairly prejudiced C²I². One of the key individuals involved here was Rear-Admiral Kamerman, a member of both the Joint Project Team and the Project Control Board. When questioned about the Report, a number of members of the Joint Project Team claimed that the Report had been given to Kamerman, amongst other members of the Joint Project Team, with the intention that it should be submitted to the Project Control Board. However, this central report was not forwarded or submitted to the Project Control Board at all. The claims to the contrary by Rear Admiral Johnny Kamerman and Chippy Shaik were found by the Office of the Auditor General to be false.¹⁵⁸
172. A May 1999 briefing by Chippy Shaik to the Cabinet sub-Committee overseeing the Arms Deal claimed that the C²I² product was risky. This could not have been reliably relayed as the JPT Report had not yet been compiled and C²I²'s system evaluated by the Joint Project Team. This indicates that the decision to

¹⁵⁶ *Ibid*, para 12.8.6.7, p. 619 and para. 12.8.6.9, p. 620.

¹⁵⁷ For further information refer to annexure "AD1" at p 115.

¹⁵⁸ For further information on these irregularities refer to annexure "AD1" at pp 115 – 116.

irregularly categorise C²I²'s product as risky was made long before any meaningful technical evaluation was completed and potentially with suspicious motives.

173. Turning to the selection of the System Management System (SMS), ADS was listed as the original candidate supplier for the SMS. ADS submitted a grossly inflated bid for the supply of the SMS as it seemed to believe that it was a foregone conclusion.
174. As a result of this overvaluation, the Joint Project Team requested GFC go out to competitive tender, which included asking C²I² for a quotation. Here, what was notable that, while ADS was given nearly a month to submit various tenders, C²I² was given no more than two days, suggesting that ADS was offered preferential treatment. Even so, C²I² offered its SMS product at a price considerably less than ADS. However, Thomson-CSF and ADS added a series of costs (handling and integration fees as well as a warranty) that increased the cost of the C²I² system.¹⁵⁹ These additional costs added 12.05 per cent to C²I²'s price, which made it fractionally more expensive than ADS's SMS system.¹⁶⁰
175. Interestingly ADS was allowed to resubmit its bid following C²I²'s competitive offer. ADS offered its SMS at a new cost only fractionally less than C²I²'s bid after the application of fees to C²I²'s bid. This suggests that ADS was allowed to review C²I²'s bid documents, which would be believable as Thomson-CSF and ADS acted as the tender board. This significantly prejudiced C²I².
176. Moreover, C²I² had made an even cheaper offer for the SMS that would have been more affordable than ADS's system even with the added 12.05 per cent fee. In their initial proposal C²I² noted that the SMS could be cheaper if they used their own systems console instead of the ADS system console. However, C²I² was demanded by Thomson-CSF and ADS to make use of the ADS consoles. If C²I² had been allowed to use its own consoles, it would have won the competitive bid.

The Sub-contract for the Supply of Gearboxes to be used in the Corvettes

177. Irregularities were also found by the Auditor General in the selection of RENK instead of MAAG to provide gearboxes for the corvette. The details of this were entirely excluded from the Joint Investigation Report.
178. The primary contractor, the German Frigate Consortium, had reached the final stages of appointing MAAG as the preferred supplier. Representatives from Armscor preferred the use of RENK as the preferred supplier and requested GFC consider this.¹⁶¹ In fact one of the members of GFC, in a letter to Mr Johan Van Dyk (the head of Armscor's DIP section), informed him that MAAG had been chosen for technical reasons.
179. Armscor's Johan Van Dyk wrote a memorandum to Chippy Shaik and Llew Swan requesting that RENK be selected as the preferred supplier due to the business

¹⁵⁹ For further information refer to annexure "AD1" at pp 116 – 117.

¹⁶⁰ 'Strategic Defence Packages: Draft Report of the Auditor-General', Chapter 12 – Non Selection of Sub-contractor: C²I², para 12.9.4, p. 648. Attached as Annex B to the joint submission annexed hereto as "AD1".

¹⁶¹ For further details refer to annexure "AD1" at p 172.

it would generate for the South African company, Gear Ratio. A note on the document handed to Shaik and Swan indicated that the decision would be approved by the Project Control Board shortly thereafter. Reaching a unilateral decision prior to the sitting of the Project Control Board was highly suspicious and clearly irregular.

180. An October 1999 Project Control Board meeting confirmed the selection of RENK as the preferred supplier, despite MAAG agreeing to review DIP commitments that would provide additional business for a South African business.
181. At the same meeting, it was noted that Gear Ratio had been bought by Vickers OMC. This means that the strategic imperative of ensuring business flowed to South African companies no longer applied and that the selection of RENK was unjustified. In fact, when RENK was chosen to support Gear Ratio, the latter company had been bought out by Vickers OMC, which in turn was a BAE subsidiary.

The Corvette Contract & Corruption

182. The first instance of unethical and corrupt activity, related to the position of Chippy Shaik in the acquisition process, and that of his brother, Schabir – who was closely affiliated with the future Deputy President, and current President, Jacob Zuma. As became clear in the Schabir Shaik trial, Schabir, who had formed the company Nkobi Holdings in the early 1990s, was keen to win Arms Deal contracts. The judgment of the Schabir Shaik trial is annexed hereto and marked as “AD9”. It is important to keep in mind that as Chief of Acquisitions, Chippy Shaik participated in meetings in which the selection of Thomson-CSF/African Defence Systems to provide the corvette combat suite were approved.
183. In order to get a full picture of this web of corrupt activity it is necessary to set out the companies involved. Thomson-CSF of France (the later recipient of the combat suite contract) became a joint venture partner with Schabir Shaik’s company, Nkobi Holdings. This arrangement was solidified by the creation of a company called Thomson-CSF (Pty) Limited. As of 1996 there were two companies – Thomson-CSF Holdings (Southern Africa) Pty Limited, in which Nkobi held 10% of the shares and Thomson-CSF (Pty) Limited, in which Nkobi held 30% of the shares - the difference being that Thomson-CSF (Pty) Limited was the company through which deals would be done – it was the active contracting partner. The rest of the shareholdings were beneficially held by Thomson-CSF (France). Thus, if Thomson-CSF were to receive a contract in the Arms Deal, Nkobi would be set to benefit from the transaction.
184. Thomson-CSF and Nkobi Holdings entered into a relationship in which both parties gained differential shares in Altech Defence Systems (the predecessor company to African Defence Systems). By 22 September 1997, Thomson-CSF announced to Schabir Shaik that it had purchased 50 per cent of ADS; the remainder of the shares were purchased in February 1999. Initially, Thomson-CSF were wary of cutting Shaik’s Nkobi company into ADS. In fact initially they had transferred the ADS shares not to the South African company Thomson-CSF (Pty) Ltd in which Nkobi had shares, but to Thomson-CSF in France. This meant that, in effect, although

Thomson had bought ADS and were joint partners with Nkobi, Nkobi and Shaik would not benefit from any work flowing to ADS.¹⁶²

185. Thomson-CSF were alerted by French intelligence services to the fact that Nkobi Holdings were considered politically unpalatable to a number of high profile South African government officials. Thomson-CSF thus sought and achieved at least one meeting with Thabo Mbeki, where it is alleged such matters were discussed.
186. Consequently, Shaik acted swiftly in order to remedy this exclusion. He organised a meeting in London in July 1998 between the head of Thomson, Jean-Paul Perrier, and Jacob Zuma, for whom Shaik operated as a ‘financial advisor’. In addition, it is alleged that a meeting was held on 9 July 1998 between Chippy Shaik and representatives of Thomson. Thomson were informed by Chippy that they needed to resolve the situation with his brother to his brother’s convenience: failure to do so, he is alleged to have noted, would mean that he would ‘make things difficult’ for Thomson.¹⁶³
187. Thereafter, Nkobi Holdings was granted a share in ADS when Thomson-CSF transferred shares in ADS to Thomson-CSF (Pty), which was part-owned by Shaik’s Nkobi group. Ultimately, Nkobi’s share of ADS would be a full 20 per cent. Therefore, once this transfer took place Nkobi sought to benefit if Thomson-CSF were to receive a contract in the Arms Deal and if contracts went to ADS.¹⁶⁴
188. Interestingly, Thomson did not, according to this arrangement, list Nkobi as a black empowerment partner. Instead, they sought another black empowerment partner to fulfil this role in ADS – Futuristic Business Solutions (FBS), which similarly received a 20 per cent stake in ADS. Futuristic Business Solutions showed up in nearly every contract signed in the Arms Deal. Most importantly, Futuristic Business Solutions was owned and directed by relatives of Joe Modise and was reported to have little to no capacity to conduct work related to the defence trade.
189. All of this suggested that Nkobi and FBS’s inclusion in the combat suite bid had relied on targeted political lobbying that ensured key individuals would receive any moneys flowing from this contract. It also illustrated that key individuals had an interest in ensuring that Thomson and ADS, and therefore the German Frigate Consortium, would emerge from the acquisition and selection process as the preferred supplier for this multi-billion rand contract.

¹⁶² Squires, J. 2005. Judgment in the High Court of South Africa (Durban and Coastal Local Division) in the Matter Between The State and Schabir Shaik et al., Case no. CC27/04, 31 March. Available for download from www.saflii.org.za

¹⁶³ In the High Court of South Africa (Durban Coastal and Local Division) in the Matter Between The State and Schabir Shaik and Others: Summary of Substantial Facts in terms of Section 144(3)(a) of Act 51 of 1977. Available for download from www.armsdeal-vpo.co.za and attached as Annex BB to the joint submission “AD1”.

¹⁶⁴ For further details on these companies as well as Schabir Shaik’s involvement refer to the joint submission annexure “AD1” at pp 118 – 121.

190. A further matter was that Schabir Shaik arranged for a payment of R500 000 a year from Thomson-CSF to the benefit of Jacob Zuma.¹⁶⁵ In return for the R500 000, Zuma agreed to protect Thomson-CSF from the then unfolding investigations into the Arms Deal. He also agreed to support the business interests of Thomson-CSF going forward. Schabir Shaik was found guilty of soliciting the bribe; the courts, too, found that the bribe had been paid and that Zuma had signalled his acknowledgment of the bribe. According to the fixer Ajay Sooklal, who testified in an arbitration proceeding related to unpaid fees he claimed were owed to him by the company, Jacob Zuma was told to use the code word ‘Eiffel Tower’ to signal his acceptance of the bribe. Zuma allegedly did so, according to Sooklal, using the now infamous phrase ‘I see the Eiffel Tower lights are shining today’ in a meeting in March 2000 between Zuma, Shaik and Thomson-CSF executive Alain Thetard.¹⁶⁶
191. The second avenue of alleged corruption in the corvette deal involved the payment of bribes by the GFC to various political players.¹⁶⁷ Investigators in Germany probed the payment of \$25m in bribes from ThyssenKrupp (a member of the German Frigate Consortium) to South African officials. Documents drawn up by the investigators indicated that \$22m was paid to a company owned by Tony Georgiades, who was known to be close to former Deputy President FW De Klerk and a number of high-level ANC politicians. The funds were paid to a company by the name of Mallar Inc in Liberia, from where it was suspected that funds were transferred onwards to South African officials and people of influence.
192. The German Police Report described in detail how Georgiades became a consultant to ThyssenKrupp. According to the Report, Georgiades became a consultant to ThyssenKrupp in 1995 and renewed this agreement throughout the selection process for the Arms Deal.
193. Among documents uncovered by the German investigators were two separate sets of minutes written by an executive of ThyssenKrupp (Christoph Hoenings). The minutes indicate that ThyssenKrupp negotiated the payment of a \$3m bribe to Chippy Shaik, and that this payment was executed by ThyssenKrupp.¹⁶⁸
194. Documents submitted by Col. Johan Du Plooy to the Seriti Commission of Inquiry, and ignored by the Commission, provide further details of payments made by ThyssenKrupp to win the corvette contract. These include substantive new details about payments to South African officials including Vice-Admiral Robert Simpson-Anderson and to Futuristic Business Solutions. Simpson-Anderson was, at the time of the selection process, one of the most senior Navy officials, and participated in the selection process for the corvettes. Further compelling detail was also provided about the means by which Chippy Shaik solicited a payment from ThyssenKrupp and how the payment was made via a highly secretive banking arrangement in the UK.
195. Thabo Mbeki has also been mentioned as an alleged recipient of bribe payments. Mbeki was intimately involved in the abortive 1995 attempt to purchase

¹⁶⁵ For further information refer to annexure “AD1” at pp 120 – 121.

¹⁶⁶ ‘Exposed: How Arms Dealer Bankrolled Zuma’, *Sunday Times*, 28 September 2014

¹⁶⁷ For an in depth discussion on this matter refer to annexure “AD1” at pp 122 – 137.

¹⁶⁸ For further information refer to annexure “AD1” at p 125 – 130.

corvettes, allegedly informing German companies that, despite the selection of Bazan and Yarrow as preferred suppliers, the door was still open for further tenders.¹⁶⁹

196. It should be noted that Chippy Shaik was called to testify before the Seriti Commission of Inquiry. Along with Advocate Hlongwane, he was one of only two people who have been alleged to have directly received money to appear before the Commission. Shaik's witness statement, however, focused almost entirely on the LIFT/Hawk deal, and did not address numerous allegations of corruption against him in any meaningful detail.

197. The only time that these were addressed were during his oral testimony. Upon completion of his main oral evidence, he was asked a handful of questions about the allegations by the Commissioners. The exchange was designed, it appears, to enable Shaik to issue general denials of the corruption allegations against him. The questioning by Commissioner Musi, in particular, appears to not only clearly side with Shaik's version of events, but also casts aspersions on the character of both Holden and Feinstein, claiming that they were 'not brave enough' to testify before the Commission and support their evidence. The further comments of the chairperson, that appeared to openly and uncritically agree with all of Shaik's evidence, are very concerning – especially in the context of such detailed and well-evidence allegations against Shaik.¹⁷⁰ It is submitted that this is another example of the Commission failing to perform its duties fairly or fully because it failed to test the evidence of Shaik in any meaningful way.

198. A third avenue of potential inducements provided by a corvette-linked contractor was the provision of discounted luxury vehicles. A raft of South African government officials and individuals of influence were provided with discounts on luxury vehicles by Daimler Chrysler Aerospace, a subsidiary of EADS. EADS was bidding for sub-contracts in the corvette deal. Tony Yengeni (chair of the Joint Standing Committee on Defence) is the most well known official who received a luxury car. While Yengeni admitted to charges of fraud relating to his receipt of a luxury vehicle, others who may have received luxury cars via the same channels have not, as yet, faced any censure. When the story first broke about Yengeni, Daimler-Chrysler provided a list of officials and VIPs who had received discounted vehicles.¹⁷¹ These included, amongst other people, Sipiwe Nyanda (chief of the SANDF), Llew Swan (a participant in the SOFCOM evaluation process and later negotiations phase who sat on the Corvette Project Control Board, who had earlier been appointed to the board of Armscor by Joe Modise) and Vanan Pillay (a DTI official who formed part of the IONT team).

199. It is submitted that the above evidence clearly indicates that the selection of primary and secondary contractors in the corvette contract was heavily tainted by corruption. The two individuals most clearly implicated in actively engaging in

¹⁶⁹ 'On German kickbacks and the corvette contract', *politicsweb*, 7 April 2008. Available at: www.politicsweb.co.za; 'Corvettes "bias" claim probed', *The Argus*, 14 June 1995; 'Corvettes – Thabo all at sea', *Weekend Argus*, 20 May 1995.

¹⁷⁰ In the joint submission annexure "AD1" the authors set out an exchange between the commissioner and Shaik. Refer to pp 135 – 137.

¹⁷¹ 'The full list of vehicles supplied by EADS', *Cape Times*, 2 July 2001. Attached as Annex FF to the joint submission annexed hereto as "AD1".

decisions that prejudiced the selection in favour of the German Frigate Consortium were Llew Swan and Chippy Shaik. Rear-Admiral Jonny Kamerman is implicated in failing to submit a vitally important document to a selection institution (the Project Control Board) that may have had a material impact on the selection of the subcontractor to provide the Information Management Suite.

The Corvette Contract & Corruption

200. The selection of the German Submarine Consortium (GSC) as the preferred bidder for the supply of submarines to the South African Navy featured a range of irregularities. Without these irregularities and ‘calculation errors’, a different bidder, DCN International of France, would have been selected.
201. In the early 1970s South Africa had acquired Daphne class submarines from France. They were approaching obsolescence, and previous attempts to purchase submarines had been prevented by the UN arms embargo.
202. As with all other Arms Deal acquisition processes, the purchasing cycle began with the issuing of Requests for Information. By January 1998, the RFI submissions had been analysed, and in February 1998 the Arms Deal team send out Requests for Offers. In total, four bidders submitted confirmed offers: DCN International of France with the Scorpène; the German Submarine Consortium offering the Type 209 1400 Mod; Italy’s Fincantieri suggesting the S1600; and, finally, Celsius Kockums Naval Systems of Sweden pitching the Type 192.¹⁷²
203. On receiving the RFOs, the SOFCOM began their evaluation of the various proposals, which took place from 18 to 29 May 1998. The official scores arrived at by SOFCOM suggested that the GSC’s bid was considerably better than the others on offer.¹⁷³ However, when the Auditor-General’s Office examined the working documents that were generated in evaluating the submarines, they found a number of major errors that had a direct bearing on the selection of the preferred bidder.
204. The first problem related to the manner in which GSC’s offsets scores had been calculated. A series of calculation errors and oversights significantly inflated the NIP score granted to the GSC. GSC’s NIP offer was given a score substantially larger than its competitors, despite the fact that its largest offer – a steel mill in the Coega Industrial Development Zone – was found by independent economists contracted by the IONT, to be an unsustainable business proposition that could never come to fruition. In fact, a number of months after the contracts were signed the steel mill project was cancelled, and replaced with a series of substitute projects.
205. GSC also ran into other problems regarding ‘local content’. A key part of the evaluation process was evaluating how the different offset programmes would be financed. A much higher score was given to elements of offset projects if they were to

¹⁷² ‘Strategic Defence Packages: Draft Report of the Auditor-General’, Chapter 7, para 7.2.7 – 7.2.8.2, p. 272 – 274. Attached as Annex B to the joint submission annexed hereto as “AD1”.

¹⁷³ Refer to annexure “AD1” at p 138 – 139 to see the breakdown of SOFCOM’s calculations.

be entirely financed outside of South Africa: if the financing came from South Africa, it could be argued that this was not foreign direct investment, and wouldn't attract points for investment. In the GSC business plans for the Coega project, it was acknowledged that only a maximum of 40 per cent of the financing would be from foreign investors. As such only 40 per cent should have been counted as offset credits. However, when the DTI evaluated the Coega project, this wasn't taken into account. Instead, the credits had been awarded as if 100 per cent of the financing was from overseas, thus considerably inflating the valuation attached to the Coega project.¹⁷⁴

206. At the same time as GSC's various offset projects were being valued in a way that inflated their scores, other bidders were experiencing the exact opposite, namely, arbitrary decisions that reduced their score. This was most evident with regard to DCN's bid, which had its NIP and DIP scores halved as it had submitted similar business plans in its bid for the corvette contract. This meant that SOFCOM were unwilling to provide full credits for all of these offsets. The Auditor General's office believed that this was unfair as it would have been simple to request clarification from DCN. According to minutes of a SOFCOM meeting on 20 May 1998, a system was established whereby bidders could be approached to clarify information in their bids.¹⁷⁵ Thus, DCN should have been contacted and asked which project they wanted their offsets tied to: either the bid for the submarines or the corvettes. It was unclear who had made this decision: investigators could find no record of the decision in the SOFCOM minutes. However, when the same decision was made with regard to DCN's DIP commitments (also halved due to overlap with their corvette bid), it was recorded that the order had been given by Chippy Shaik. Only one document was found recording the decision: a note attached to an evaluation sheet that indicated that the halving of DCN's DIP score was ordered by Chippy Shaik. Thus, in the case of both NIP and DIP evaluations, the decisions were made without due process being followed.
207. When the errors in the calculation of DIP and NIP scores were corrected by the Auditor General's office, GSC came in second place while DCN was in first place. Only GSC's scores had been inflated due to errors; in all other cases, bidders scores either remained the same or were reduced.¹⁷⁶
208. What needs to be stressed is that the decision was made to allow GSC to proceed in the SOFCOM evaluation despite the fact that GSC failed to meet the minimum bidding standards by failing to submit the required information regarding its DIP commitments. GSC should have been disqualified or the entire evaluation process started anew.
209. One final problem with GSC's offset score should be noted. When the Auditor-General reviewed the final contracts that were signed in 1999, it turned out that GSC were suddenly contractually obligated to provide considerably less in offsets than they had committed to in their bid. This was important, as Cabinet had been provided with the original offset figures, suggesting that they had not had all the

¹⁷⁴ 'Strategic Defence Packages: Draft Report of the Auditor-General', Chapter 7, para 7.2.11.8 (e), p. 302 – 303. Attached as Annex B to the joint submission annexed hereto as "AD1".

¹⁷⁵ 'Strategic Defence Packages: Draft Report of the Auditor-General', Chapter 7, para 7.2.11.8 (c), p. 298. Attached as Annex B to the joint submission annexed hereto as "AD1".

¹⁷⁶ For a break down of the calculations of the offsets, refer to the joint submission annexed hereto as "AD1" at pp 138 – 142.

information at their disposal. In other words: prior to the approval of GSC as a preferred bidder, Cabinet were given inflated values as to the offsets that would eventually be delivered.¹⁷⁷

210. The evaluation of the technical suitability of the various submarines was similarly beset with problematic choices and decisions. GSC won the technical evaluation largely due to it quoting a cost for its Integrated Logistics Support (ILS) Segment (a measure of how effectively the bidder could provide logistic support during and after delivery of the submarines) that was so low as to be unbelievable. The scores awarded for the evaluation of the ILS Segment were found by the Auditor-General's office to have a disproportionate impact on the technical evaluation as it was accorded a weighting of 67.5%. Thus, in effect a very high score in the ILS evaluation would almost automatically mean a victory in this evaluation. Even more importantly, if a bidder submitted a terrible technical bid for the ILS section, but submitted a very low cost for this element, it would have been hugely boosted in the final analysis because of the much lower cost.¹⁷⁸

211. This might not have been a problem if the three different domains each cost the same amount, or if the weighting they were given reflected the amount they actually cost. In other words, it would have made sense to give the ILS component a score of 67.5 per cent if this element of the contract actually cost 67.5 per cent. However, in reality, the ILS component was the cheapest of all of the domains, despite being weighted at the highest figure. The result was that a bidder could submit a high cost for the other domains, which cost so much more than the ILS, but still win if it offered a much lower cost for the ILS. Despite coming last in terms of technical suitability and ILS criteria, GSC's price was so low it allowed GSC to win the evaluation of this domain. In fact, all evaluators concurred that it seemed too low to believe, which resulted in the evaluation team doubling the price. However, even after the price was doubled, GSC's price for the ILS component was considerably lower than competing bidders.

212. When the Auditor-General's Office recalculated the scores in the technical evaluation by using a more equitable weighting system, GSC was relegated from first to second position.¹⁷⁹

213. The Auditor-General's office was perturbed by the fact that the formula that had been used for this part of the evaluation was not part of any approved documentation. It appeared that the decision had been decided extemporaneously. During the SOFCOM process, the original formula (which saw GSC emerge as the winner) was approved by Chippy Shaik, Rear-Admiral AN Howell and Vice-Admiral Robert Simpson-Anderson. The fact that Chippy Shaik was involved in drawing up this formula was a concern to the Office of the Auditor-General: "Given the perceived conflict of interest surrounding Mr. S Shaik, his involvement in and access to the value system does not constitute good procurement practice."¹⁸⁰

¹⁷⁷ For further information in this regard refer to annexure "AD1" at p 142.

¹⁷⁸ 'Strategic Defence Packages: Draft Report of the Auditor-General', Chapter 7, para 7.5.1, p. 390 and para 7.5.5.2, p. 394. Attached as Annex B to the joint submission annexed hereto as "AD1".

¹⁷⁹ For further details on this refer to annexure "AD1" at pp 142 – 145.

¹⁸⁰ For further details on this refer to annexure "AD1" at pp 144 – 145.

214. The last problem with regard to the submarine calculation was found in the evaluation of the financing proposals. A series of errors in the calculation of scores for the evaluation of the financing domain led GSC to receive an inflated score for its financing proposals. All other bidders either had their scores unaltered or reduced. When the errors were corrected by the Auditor-General's Office, GSC was relegated from first to third position in the financing evaluation.¹⁸¹
215. Moreover, the Auditor General's Office found that the evaluation sheets used in the evaluation of the financing segment were corrected with Tippex, despite this being explicitly forbidden by acquisition regulations. The Auditor General's Office stated that this meant that the scores could have been unduly edited and manipulated.¹⁸²
216. In light of the above problems in the scoring of the offsets, financing and technical evaluations, it is obvious that, if all the various errors in the scoring process had been rectified, GSC would not have emerged as the preferred bidder. In fact, the bidder that achieved the lowest bid according to the SOFCOM evaluation, DCN of France, emerged as the true best bidder on offer when the Auditor-General's Office recalculated the scores after correcting the various errors and irregularities.¹⁸³

The Submarines, Corruption & the Debevoise & Plimpton Report

217. The most substantial account of alleged corruption and abuse of influence in the submarine contract is provided by a report into Ferrostaal's international activities by the US law firm Debevoise & Plimpton.¹⁸⁴ The law firm was appointed by Ferrostaal to undertake an internal review of the company's criminal liability. The Debevoise & Plimpton Report's (DP Report) title is *Ferrostaal: Final Report Compliance Investigation*. It is dated 13 April 2011 and is annexed here as **AD10**.
218. The DP Report was leaked to the international media in late 2011. It was the subject of numerous media reports in South Africa and abroad. The media reported on various aspects of the DP Report's account of Ferrostaal's activities in South Africa, which could be construed as demonstrating that Ferrostaal had engaged in corruption to secure contracts in South Africa. The DP Report is still freely available on the internet. Ferrostaal does not appear to have instituted any legal proceedings to have the Report removed from the internet, or to take any other action against media outlets which reported on the content of the Report.
219. It is important at this point to indicate that the Seriti Commission ruled that the DP Report, was inadmissible due to legal privilege. The Commission noted that attempts were made to introduce the DP Report as evidence, and that the legal representatives of Ferrostaal and of Fana Hlongwane objected to this on the grounds that the Report was privileged. The Chairperson on two occasions held that the DP Report was inadmissible, and the Commission repeated that conclusion in its Report. The Commission compounded its refusal to admit the DP Report into evidence. It

¹⁸¹ For a detailed explanation about how GSC's financial proposal was scored refer to annexure "AD1" at pp 145 – 146.

¹⁸² For further details refer to annexure "AD1" at p 146.

¹⁸³ The recalculated scores are set out in annexure "AD1" at p 146 – 147.

¹⁸⁴ The Debevoise & Plimpton Report is attached as Annex M to the joint submission annexed hereto as "AD1".

stated, in Volume 1 of its Report, that ‘the Debevoise report had been made available to us on a confidential basis for the purpose of assisting us in our investigation and for that reason we have perused it.’ The Commission stated that after reading the DP Report, it had come to the conclusion that if the DP Report had been admitted, this would not have materially altered the findings of the Commission. It stated that it found that no substantive allegations of corruption were included in it.

220. It is submitted that this finding of the Commission was fundamentally flawed and in fact inexplicable. It is submitted that any open-minded person who was aware of the content of the DP Report would conclude that it raised serious concerns that Ferrostaal may have used illegal or unethical means to secure influence in order to win the submarine contract, and that these claims warranted thorough investigation. Moreover, any open-minded person reading the DP Report would conclude that it raised serious questions as to whether the offsets programs attached to the Arms Deal generated any meaningful economic benefit. It had the result that the Commission did not investigate very material issues raised by the DP Report.¹⁸⁵
221. Turning to the content of the DP Report. The Report identified problematic relationships with three consultants – Tony Georgiades, Tony Ellingford and Jeremy Mathers – as well as an inappropriately close business relationship between Ferrostaal and Chippy Shaik.¹⁸⁶
222. Ferrostaal (a member of the German Submarine Consortium) were found to have paid €16.5m to two companies controlled by Tony Georgiades. Investigators from Debevoise & Plimpton were told by senior Ferrostaal executives that Georgiades was paid as he provided a conduit to South African officials, politicians and other individuals of influence. These contacts were claimed to be ‘decisive’ in securing the contract for the German Submarine Consortium.¹⁸⁷
223. Ferrostaal were found to have paid €16.5m to Tony Ellingford between 2000 and 2003. Ellingford was appointed as Ferrostaal executives wanted to employ an individual with ‘political connections’ that could be used to secure the submarine contract. Ellingford was recommended to Ferrostaal by Jeremy Mathers who, in turn, was acting on the advice of Llew Swan (CEO of Armscor from late 1998 until late 1999). Ellingford was particularly close to Defence Minister Joe Modise. Ellingford served as a trustee for the Letaba Trust, Modise’s major listed asset.
224. Ferrostaal were found to have entered into a consultancy agreement with Jeremy Mathers to secure advice relating to the submarine contract. Mathers was employed by the DoD as a permanent force member until January 1998, where after he entered the reserve force in 2000. Mathers was contracted shortly after leaving the DoD as a permanent employee and was paid an estimated €1 million for his services. According to the draft versions of the Auditor-General’s report, Mathers continued to draw a salary until 30 April 2000 as a member of the reserve force. In other words, it appears that Mathers had entered into a consultancy agreement with Ferrostaal while

¹⁸⁵ For further detail on the Commissions handling of the DP Report refer to the R2K and Corruption Watch High Court application annexed hereto and marked as “AD7”.

¹⁸⁶ The Joint Submission (annexure “AD1”) quotes extensively from the Debevoise & Plimpton Report at pp 148 – 159.

¹⁸⁷ Ferrostaal: Final Report, Compliance Investigation, Debevoise & Plimpton LLP, 13 April 2011, p. 59 - 61, Attached as Annex M to the joint submission annexed hereto as “AD1”.

still drawing a salary from the Department of Defence. In addition, the draft versions of the Auditor-General's report indicate that he may have used his contacts in the South African Navy to access information regarding technical aspects of the submarine bid, which could be provided to the GSC. Moreover, he was found to have been actively involved in assisting the DoD develop the value system to be used in the selection process for the submarines.¹⁸⁸

225. The DP Report found that Llew Swan had been providing consulting services to Ferrostaal indirectly via his company Moist CC only three months after the final Arms Deal contracts were signed. In November 1999 – weeks before the submarine contract was awarded – Swan resigned from Armscor. The Report indicates that no later than March 2000, he was working for Ferrostaal, albeit indirectly. According to the Report, this may not have been Swan's first involvement with Ferrostaal. In fact, Swan may have worked for Ferrostaal both before and after he was in charge of arms procurement in South Africa.

226. Ferrostaal were found to have entered into a range of business deals with Chippy Shaik following the selection of primary contractors in the Arms Deal. Scarcely five years after the contracts were signed, he was appointed as a director of a Ferrostaal company, TAN Mining and Exploration (Pty) Ltd.¹⁸⁹ TAN Mining was jointly owned by Ferrostaal and an empowerment company, Enable Mining.¹⁹⁰ One of the major deals included a joint-venture in a mine in Mozambique in which Ferrostaal invested \$1.5m. Not only did Chippy Shaik appear as a director of TAN Mining; he was listed, too, as one of the directors of Enable Mining, which, as noted above, was listed as the empowerment partner of TAN Mining.¹⁹¹ Other directors of Enable Mining were Julekha Mohamed, one-time attorney for Jacob Zuma, Yunis Shaik (brother of Chippy) and Rafique Bagus, who, until May 2005, was the special adviser to the former head of the DTI, and later to the Department of Public Enterprises, Minister Alec Erwin.¹⁹²

227. All of these claims have focused on issues that arose after the contracts were signed. But evidence has emerged that a considerable amount of questionable activity was going on during the submarine negotiations.

228. In minutes from a meeting of the South African Submarine Industrial Cluster (SASUBCLUB), an informal alliance of different contractors who could do work on the submarine contract suggest that Chippy Shaik and Admiral A.N. Howell actively intervened with members of the SASUBCLUB to ensure that African Defence Systems secured subcontracts from the submarine deal. In addition, a further meeting, held on 19 August 1998, seemed to suggest that ADS was already considered a certainty for the combat suite contract.¹⁹³ Remarkably, all of these meetings took

¹⁸⁸ For further details refer to annexure "AD1" at pp 151 – 153.

¹⁸⁹ According to information accessed via the Companies and Intellectual Properties Registration Office (CIPRO), South Africa

¹⁹⁰ 'TAN and the Muiane Project', *Mining Review Africa*, Issue 1, 2005, www.miningreview.com

¹⁹¹ According to information accessed via the Companies and Intellectual Properties Registration Office (CIPRO), South Africa.

¹⁹² These details were confirmed in the Debevoise & Plimpton Report. Annexure "AD1" at pp 153 – 154 quotes from the Report in this regard.

¹⁹³ 'Strategic Defence Packages: Draft Report of the Auditor-General', Chapter 7 – Selection of Prime Contractors: Submarines, para 7.6.2, p. 405. Attached as Annex B to the Joint Submission annexed hereto as

place long before the submarine contracts had been selected, suggesting that Shaik and Howell knew, or strongly suspected, that the GSC would win, and that this would entail the involvement of ADS.

229. Chippy Shaik also sat in on meetings relating to the award of the submarine combat suite. Shaik chaired a Project Control Board meeting in which GSC were forced to invite a competitive quote from African Defence Systems, even though GSC had indicated their preference for STN Atlas. When STN Atlas was found to be the cheaper system, Llew Swan and Chippy Shaik ‘engaged’ GSC to achieve greater ‘visibility’ as to the cost calculations. African Defence Systems was partially owned by Schabir Shaik, Chippy Shaik’s brother, as well as Futuristic Business Solutions, directed and owned by relatives of Joe Modise.
230. It should be noted in support of the above supposition that an employee of the GSC interviewed by Debevoise & Plimpton’s investigators claimed that Chippy Shaik had directly demanded that ADS be selected as the subcontractor to supply the combat suite on the submarines.¹⁹⁴
231. It seems that Chippy Shaik’s intervention in the matter could not secure the involvement of ADS as the key partner in the combat suite contract. This notwithstanding, ADS did receive certain subcontracts in the submarine contract from the STN Atlas Group. Indeed, when the Auditor-General’s office reviewed who was included in STN Atlas’s list of subcontractors, it was ‘observed that ADS had been awarded a contract to the value of €2.5 million.’¹⁹⁵
232. Another notable recipient of large contracts in the submarine selection was Futuristic Business Solutions (FBS). FBS established a joint venture with Logtek (called Applied Logistics Engineering, or ALE) with a view to securing contracts in the submarine contract. ALE were able to sign cooperation agreements with both GSC and GFC with the aim of entering into subcontracts related to logistics services. Suspiciously, FBS were granted 70 per cent of the shares in ALE while only being contractually obliged to perform 10 per cent of the work. This may suggest that FBS was included due to their political connections.

The Light Utility Helicopter Contract

233. At a total cost of just under R500m, the contract to purchase 30 Light Utility Helicopters (LUH) was the smallest acquisition of the entire Arms Deal.
234. When the Auditor-General’s office examined the documents used in the selection of the LUH there did not seem to be any overt problem, except for the selection of one of the subcontractors, which is dealt with in the next section. The

“AD1”. Also see the later draft of Chapter 7 that included Chippy Shaik’s response to questions arising from the SASUBCLUB minutes. This is attached as annex XX to annexure “AD1” attached hereto. See, in particular, para 7.7.2, p. 411 – 413.

¹⁹⁴ Ferrostaal: Final Report, Compliance Investigation, Debevoise & Plimpton LLP, 13 April 2011, p. 65 - 66, Attached as Annex M to the Joint Submission annexed hereto as “AD1”.

¹⁹⁵ Strategic Defence Packages: Draft Report of the Auditor-General’, Chapter 7 – Selection of Prime Contractors: Submarines, para 7.3.15.2, p. 370, Attached as Annex B to the Joint Submission annexed hereto as “AD1”.

selection of the prime contractor, in this case Italy's Augusta, had been concluded without any notable irregularities.

235. However, one of the bidders, Bell-Textron, a US company, believed that the selection process was not conducted fairly. A number of figures attached to the Bell bid have indicated that not only were the figures manipulated in ensuring that Augusta emerged the preferred bidder, but that this was done by means of inducements offered by Augusta to connected political individuals.

236. Representatives of Bell Helicopters claimed that they were informed by Chippy Shaik that they could only win the contract if they contracted Futuristic Business Solutions as a consultant. Bell Helicopters refused to do so.¹⁹⁶

237. It was found by Scorpions investigators that the winning contractor, Augusta SpA, had entered into contracts with Futuristic Business Solutions only three weeks after the signing of the final contracts between the South African government and Augusta. On the 19th of January 2000, FBS were contracted for the supply of integrated logistic support services to Augusta with a contract value of R17m. This despite the fact that the business capacity of FBS was reported to be almost non-existent.

The Sub-contract for the Supply of Engines to be used in the Light Utility Helicopters

238. Notwithstanding that the Auditor-General's office could not find any manipulation in the award of the primary helicopter contract, they stumbled across one instance of gross abuse of process in the selection of subcontractors.

239. The primary contractor, Augusta, favoured the use of Pratt & Whitney engines. Armscor preferred the use of Turbomeca engines, despite Augusta confirming that the Pratt & Whitney engines were cheaper, more technically suitable, and offered a better industrial participation package. In addition, Augusta had already used the Pratt & Whitney engines in previous versions of the LUH. Turbomeca's engine was still in the prototype and design phase, suggesting that it might not meet the eventual technical requirements of the process.¹⁹⁷

240. According to the draft version of the Auditor-General's Report, FBS and Augusta had signed a memorandum of understanding that included a stipulation regarding the involvement of the local defence industry. The draft report indicated that a representative of FBS had explained that they were introduced to Augusta by ACS International (Aviation Consultancy Services). ACS International was reported by the UK's Serious Fraud Office (SFO) to be part owned by John Bredenkamp – a recipient of considerable moneys from Red Diamond Trading. Independent investigations – one by the UN – confirmed that ACS International represented Augusta in Africa, as well as BAE and Dornier of France. This suggests that a company that was deeply involved in the allegations of corruption in the BAE deal was acting as a key intermediary for FBS in their interactions with Augusta.

241. The Pratt & Whitney and Turbomeca engines were re-evaluated in four separate reviews. It was only in the last review in which Turbomeca was nominated

¹⁹⁶ For further information refer to annexure "AD1" at pp 160 – 163.

¹⁹⁷ Strategic Defence Packages: Draft Report of the Auditor-General', Chapter 11: The Selection of Sub Contractors and Conflicts of Interest, para 11.5.5.2, p. 519 - 520. Attached as Annex B to the Joint submission annexed hereto as "AD1".

the best bidder. This was only possible as the NIP and DIP value system was significantly modified, benefitting Turbomeca.

242. A Helicopter Control Board meeting could not make a final decision as to the best bidder and recommended both options be presented to Cabinet. However, Cabinet was not informed of this indecision, as a later meeting merely reflected that Turbomeca was the best option. The meeting was chaired by Chippy Shaik.
243. What is remarkable is the extent to which Chippy Shaik and Llew Swan were willing to intervene to ensure that Turbomeca got the contract. Later drafts of the Auditor-General's report noted that it had been alleged that Swan and Chippy Shaik had intimidated certain staff members who had opposed to the awarding of the contract to Turbomeca. The staff members concerned had been threatened with dismissal if they dared to openly oppose the said persons.¹⁹⁸
244. A representative of Pratt & Whitney lodged a formal complaint about irregularities in the evaluation process. These complaints appear to have a basis as later documents discovered by the Auditor General's Office indicated an irregularly close relationship between Turbomeca and Denel. So close had the relationship become between Denel and Turbomeca that letters with Turbomeca's signature were, in fact, faxed from Denel itself. This suggests, of course that Denel had used its position in the acquisition process to force through a selection that was against the wishes of nearly everyone involved, including Agusta.
245. Less than a year after the Arms Deal was completed, Turbomeca was announced as the strategic equity partner with Denel Airmotive, which had played such a key role in getting Turbomeca selected over Pratt & Whitney.

The Sub-contract for the Supply of Gearboxes to be used in the Corvettes

246. Irregularities were also found by the Auditor General in the selection of RENK instead of MAAG to provide gearboxes for the corvette. The details of this were entirely excluded from the Joint Investigation Report.
247. The primary contractor, the German Frigate Consortium, had reached the final stages of appointing MAAG as the preferred supplier. Representatives from Armscor preferred the use of RENK as the preferred supplier and requested GFC consider this.¹⁹⁹ In fact one of the members of GFC consortium, in a letter to Mr Johan Van Dyk (the head of Armscor's DIP section), informed him that MAAG had been chosen for technical reasons.
248. Armscor's Johan Van Dyk wrote a memorandum to Chippy Shaik and Llew Swan requesting that RENK be selected as the preferred supplier due to the business it would generate for the South African company, Gear Ratio. A note on the document handed to Shaik and Swan indicated that the decision would be approved by the Project Control Board shortly thereafter. Reaching a unilateral decision prior to the sitting of the Project Control Board was highly suspicious and clearly irregular.

¹⁹⁸ For further details refer to annexure "AD1" at p 170.

¹⁹⁹ For further details refer to annexure "AD1" at p 172.

249. An October 1999 Project Control Board meeting confirmed the selection of RENK as the preferred supplier, despite MAAG agreeing to review DIP commitments that would provide additional business for South African business.
250. At the same meeting, it was noted that Gear Ratio had been bought by Vickers OMC. This means that the strategic imperative of ensuring business flowed to South African companies no longer applied and that the selection of RENK was unjustified. In fact, when RENK was chosen to support Gear Ratio, the latter company had been bought out by Vickers OMC, which in turn was a BAE subsidiary.

The Arms Deal and ANC Party Funding

251. It is submitted that there is a strong possibility that illicit transactions from winning Arms Deal bidders were paid to the ANC.
252. While Andrew Feinstein was an MP and in the midst of attempting to investigate the Arms Deal as part of his brief as the ranking ANC member of Parliament's Scopa, he was informed by a senior and well-known member of the ANC's National Executive Committee that he was never going to achieve agreement for an unfetters investigation into the deal, or even get any support for such a proposal within the ANC. When Feinstein inquired as to why this was the case, he was informed that the ANC received money from some of the winning companies. In fact, he was told that the ANC 1999 election was funded by this money. These allegations were confirmed to Feinstein by three other senior members of the party.
253. In November 2007 the UK's Serious Fraud Office raided the offices of Tony Georgiades' Alandis Company as part of an investigation into Arms Deal corruption by both UK and German authorities.²⁰⁰ According to the search warrants that were filed in support of the raids, Georgiades had met with representatives of ThyssenKrupp from 1994, and would become a consultant for ThyssenKrupp in 1995. The agency agreement stipulated that Georgiades would be paid \$22 million into an offshore account. Subsequently, significant portions of the funds were transferred 'to South African government officials and Cabinet ministers'.²⁰¹
254. It is alleged that three 'charitable' cheque deposits were made by Georgiades in 1999, each totalling R500 000. The deposits were made to the Nelson Mandela's Children's Fund, to the Foundation for Community Development, a Mozambican charity set up by Mandela's wife, Graca Machel, and to the ANC.²⁰² It is not clear as to what undue influence was illicitly by these donations.²⁰³
255. In the early 1990s BAE donated to various ANC-aligned organisations, including the MK Military Veterans Association. One such donation was a payment of roughly

²⁰⁰ 'Arms broker did give cash to the ANC', *Mail & Guardian*, 14 March 2008. For further details refer to annexure "AD1" at p 177.

²⁰¹ 'Arms broker did give cash to the ANC', *Mail & Guardian*, 14 March 2008. For further details refer to the annexure "AD1" at p 177.

²⁰² 'Arms broker did give cash to the ANC', *Mail & Guardian*, 14 March 2008. For further details refer to the joint submission annexed as "AD1" at p 177.

²⁰³ For further details on this refer to the joint submission annexed as "AD1" at p 178.

£30 000 made in May 1998 to enable the ANC archives to run a scholarship programme.²⁰⁴

256. The fund supplied by BAE was to be managed by one Osprey Aerospace through their employer Richard Charter, the agent of BAE in South Africa. Charter would later be implicated in the UK investigation for bribery. It is suggested that this donation gave Charter the opportunity to meet with ANC top executive members.²⁰⁵
257. BAE had allegedly made donations to shop stewards who led the National Union of Mineworkers (NUMSA) in order to secure support for the Arms Deal.²⁰⁶ Although, these claims have been rejected by NUMSA and BAE.²⁰⁷
258. NUMSA had allegedly been persuaded to provide political support for the purchase of the Gripen aircraft in return NUMSA would receive funding for the establishment of a training school from Saab and the Swedish union IF Metall. However, it emerged that the senior leadership of NUMSA had not approved of the agreement. Instead the agreement was only signed by Moses Mayekiso who had already resigned from NUMSA and was thus unable to sign in any official capacity.²⁰⁸
259. Following the airing of corruption allegations linking NUMSA, Saab and the Arms Deal, NUMSA decided to initiate an investigation into the agreement. They travelled to Sweden on a fact-finding mission. After speaking to Saab and IF Metall, they were given a copy of the agreement signed by Mayekiso. According to NUMSA's investigators, the agreement specifically linked the training school with political support from NUMSA for the Gripen deal.
260. Upon reviewing the agreement, the NUMSA investigators found that a page of the agreement was missing. Indeed, when the agreements had been delivered to NUMSA's steering committee for review, sections of the agreement had been redacted.²⁰⁹
261. A further allegation was that an amount of roughly R40m was transferred from BAE/Saab to South African decision-makers in the Arms Deal and in other positions of influence. The funds were allegedly routed via IF Metall and NUMSA.²¹⁰
262. Following the visit to Sweden by NUMSA's investigators, there was an additional visit to South Africa by IF Metall. The IF Metall representatives offered to

²⁰⁴ 'Bursary to research ANC history awarded', *Daily Dispatch*, 7 May 1998

²⁰⁵ Letter from Richard Charter (Osprey Group) to Ms Narissa Ramdhani (ANC Archives), 12 March 1996, Nelson Mandela Papers (BAE Scholarship 1996 – 1997 folder), ANC Archives, University of Fort Hare. Attached as Annex OO to the joint submission annexed hereto as "AD1". For further details on this please refer to annexure "AD1" at p 178.

²⁰⁶ Memorandum submitted by the Campaign Against Arms Trade to the Select Committee on International Development (Appendix 3), September 2000, available for download from www.publications.parliament.uk. For further details on this please refer to the joint submission annexed as "AD1" at p 179.

²⁰⁷ 'Numsa Denies Funding from Swedish Union', *IOL/IFS*, 18 November 2003. For further details on this please refer to the joint submission annexed as "AD1" at p 179.

²⁰⁸ *Kalla Fakta 5 – The JAS Gripen Arms Deal with South Africa*, broadcast on TV4, Sweden, 21 November 2012. For further details refer to annexure "AD1" at p 180.

²⁰⁹ For further details refer to annexure "AD1" at p 180.

²¹⁰ For further details on this please refer to annexure "AD1" at p 180.

provide funding for an HIV/Aids project run by NUMSA in return for NUMSA agreeing to drop any investigation into the training school and other allegations. NUMSA agreed to the deal and ceased its investigation.²¹¹

263. What is certain is that BAE made donations to both NUMSA and the South African National Civics Organisation (SANCO), in exchange for their political capital and influence.²¹²
264. Holden and Feinstein believe that evidence produced in the Schabir Shaik corruption trial indicated that Shaik's company, Nkobi Holdings, may have been considered an ANC 'partner' company. The company Floryn Investments was created by Schabir Shaik to keep track of the donations to the ANC.²¹³
265. In the same month that the final signatures were applied to the Arms Deal agreements, Schabir Shaik instructed his accountant to send the ANC Treasury-General a full schedule of payments that had been made to Floryn Investments.²¹⁴ What the schedule reflects, among other things, is the manner in which donations were made: on an ad hoc basis, often in cash, and sometimes to host events specifically to assist the ANC in its electioneering.²¹⁵
266. It was suggested at the Schabir Shaik trial²¹⁶ by the lead KPMG auditor that the use of Floryn in these circumstances suggested that it was perhaps considered not just as an accounting vehicle, but as a means of arranging for the ANC to receive a share of Nkobi Holdings. It was argued that it was completely unnecessary to set up such an accounting mechanism, and such an account, when it would have been easier just to hand over the cheques to the ANC itself.²¹⁷
267. New evidence emerging in 2014 from Ajay Sooklal, an attorney who worked for Thales as a 'fixer', suggests that payments from Arms Deal Contractors to the ANC continued long after the agreements were signed. The services that Sooklal had performed included working behind the scenes to ensure, amongst other things, that the Arms Deal was not properly investigated or wrongdoers prosecuted.²¹⁸ He was in a position to do so because he had close connections to numerous people in government due to his previous stint in government and through his social circles. Put

²¹¹ *Kalla Fakta 6 – The JAS Gripen Arms Deal with South Africa*, broadcast on TV4, Sweden, 28 November 2012. Available to view at www.tv4.se.

²¹² For further details on this please refer to annexure "AD1" at p 182.

²¹³ For further details on this please refer to annexure "AD1" at pp 181 – 182.

²¹⁴ Seen pp 182 – 183 of annexure "AD1" for quotations from the schedule.

²¹⁵ 'Nkobi Holdings: Payments to Floryn Investments (Pty) Ltd in Letter from Colin Isaacs (Nkobi Holdings) to Mendi Msimang, 3 December 1999, submitted as evidence in the Matter of The State Versus Schabir Shaik et al. in the High Court of South Africa (Durban and Local Coastal Division), Case Number CC27/04. Attached as Annex SS of the joint submission annexed hereto as "AD1".

²¹⁶ Judgment attached as annexure "AD9"

²¹⁷ Testimony of Stephanus Johannes Roelof Van Der Walt in the Matter of The State Versus Schabir Shaik et al. in the High Court of South Africa (Durban and Local Coastal Division), Case Number CC27/04, 8 November 2004. Attached as Annex TT to the joint submission "AD1". For further details on this refer to annexure "AD1" at p 183 - 184.

²¹⁸ 'Exposed; How Arms Dealer Bankrolled Zuma', *Sunday Times*, 28 September 2014,

<https://www.timeslive.co.za/sunday-times/investigations/2014-09-28-exposed-how-arms-dealer-bankrolled-zuma/> For further information refer to "AD1" at p 185.

bluntly, Sooklal was hired to use his connections to prevent the charging of Thint and the cancellation of the arrest warrants against Thint employees.

268. According to Sooklal, Thales was involved in bankrolling Zuma and the ANC in order to prevent the corruption trial involving Zuma, in which Thales' South African subsidiary Thint was a co-accused, from reaching court. This included a €1 million donation to the ANC, equivalent to around R14m at the time. The donation was made by means of a cheque to be paid from a secret Dubai account into an 'ANC-aligned trust.' When Pierre Moynot, an executive of Thint, admitted that the company had both bankrolled Zuma after his corruption indictment, and that the company had made the payment to the ANC. Moynot defended the donation by stating that 'a lot of companies want to have good relations with the ANC and give them money from time to time.'²¹⁹

ANC Efforts to Conceal Corruption

269. The allegations of corruption in the Arms Deal have never been properly investigated, and, in fact, have been actively undermined through political pressure or designed incompetence. This supports the thesis that the Arms Deal is corrupt, as there is no other reason why it would not have been investigated to date. In other words, these actions suggest that the ANC and a number of its senior members have something to hide, which this submission argues, is clearly corruption in the Arms Deal. It also undermines the arguments of Arms Deal defenders, who point to the lack of effective prosecution (ignoring, of course, the convictions of Tony Yengeni and Schabir Shaik) as evidence that there was no wrongdoing in the Arms Deal. Instances of political interference include:

- i. The pressure brought to bear by senior ANC members on the Standing Committee on Public Accounts (SCOPA) to prevent a full and unfettered investigation of the Arms Deal that would include the so-called Heath Unit. The pressure placed on the ANC component of Scopa led Andrew Feinstein to resign in protest;
- ii. The Joint Investigation Report, drafts of which were provided under an old apartheid law to members of the Ministerial sub-Committee overseeing the Arms Deal prior to publication – this despite the fact that the Joint Investigation Report was investigating, *inter alia*, their conduct. The release of drafts of the Auditor-General's report in 2005 confirmed that large sections of the report, which showed massive irregularities in the selection processes in the Arms Deal, had been excised, and that paragraphs clearing the sub-Committee of wrongdoing were added in after the report had been showed to senior politicians;
- iii. The decision by DIPCI/Hawks, following the closure of the Scorpions, to assign a single full-time investigator to the Arms Deal, and, thereafter, to close the investigation on flimsy and unsupported grounds;

²¹⁹ Exposed; How Arms Dealer Bankrolled Zuma', *Sunday Times*, 28 September 2014, <https://www.timeslive.co.za/sunday-times/investigations/2014-09-28-exposed-how-arms-dealer-bankrolled-zuma/>. For further details on this refer to the annexure "AD1" at p 185.

- iv. The Seriti Commission of Inquiry, which is currently under challenge by Corruption Watch and R2K for failing to meaningfully and fully investigate the Arms Deal.

270. It is important to note that in 2017 Ajay Sooklal (discussed in the previous section) sought to become a party to the Corruption Watch/R2K application to set aside the Seriti Commission of Inquiry.²²⁰ It is understood that Sooklal made two key allegations in his affidavit:

- i. He was directly approach by President Jacob Zuma and asked not to testify before the Seriti Commission.²²¹
- ii. He alleged that he decided to approach the Seriti Commission in late 2015 to give evidence, but that his attempt to do so went unanswered.²²² Although this was very late in the Commission’s life, it is surprising that the Commission failed to call him after a 2014 *Sunday Times* article had revealed details of arbitration proceedings between Sooklal and Thales.

271. In the Joint Submission of Paul Holden and Andrew Feinstein (annexure “AD1”), Andrew Feinstein provides a detailed account of the nefarious lengths to which the party went to suppress any independent investigation. He draws on his own experience as the ranking ANC member on Parliament’s Scopa at the time the issue came to Parliament.²²³

272. It is submitted that the evidence set out in these papers illustrate that the primary contracts entered into in the Arms Deal were tainted by corruption. As a result, the South African government would be allowed to levy fines on the primary contractors as well as contemplate contract cancellations. This notwithstanding, fines and contract cancellations can only be undertaken, according to the underlying sales agreements between the South African government and the primary contractors, following successful convictions of individuals or entities shown to be related to the primary contractors. Accordingly, it is submitted that exhaustive and unfettered criminal investigations need to be instituted against a range of individuals and entities with the aim of securing speedy convictions.

²²⁰ For a more detailed discussion about the allegations made by Ajay Sooklal refer to annexure “AD1” at pp 208 – 2010.

²²¹ <https://www.dailymaverick.co.za/article/2017-05-03-zuma-corruption-and-the-arms-deal-the-gift-that-just-keeps-on-giving/#.WgOeoNBI9dg>

²²² <https://www.dailymaverick.co.za/article/2017-05-03-zuma-corruption-and-the-arms-deal-the-gift-that-just-keeps-on-giving/#.WgOeoNBI9dg>

²²³ Feinstein’s account of his experience can be found at pp 190 – 207.

The Cost of the Arms Deal

273. Over the last twenty years, South African citizens have been subject to a range of different statements about the real cost of the Arms Deal, with pertinent information withheld from the public for years. When the Arms Deal was first announced, the South African public was told that it was going to cost R30bn. Since then, the cost of the Arms Deal has substantially increased due to currency fluctuations, inflation and the cost of financing. Feinstein and Holden have attempted to calculate the real cost of the Arms Deal. They have estimated that the Deal will cost between R61.50bn and R71.685bn between 2000 and 2020. Their estimate do not include any of the maintenance or life-cycle costs of the equipment bought in the Arms Deal. Assuming their estimates are correct, the country could have bought the following with the money that was spent: Installation and connection of a wide range of sanitation units; paid salaries of at least 42 624 state doctors for six years; paid salaries of at least 52 977 state educators for six years; and paid salaries of at least 52 977 state nurses for six years. Moreover, R71.6bn is more than the total planned budget for the National Student Financial Aid Scheme bursaries from 2016 - 2020.
274. Payment on the Arms Deal will continue until 2020. The remaining payments are to settle the outstanding loans taken out to finance the Arms Deal. The Affordability Report indicated that, if the full economic benefit of the Arms Deal offsets were not realised, the macroeconomic impact would be profound, with over 100 000 job losses predicted.
275. It is imperative to understand that the offsets were absolutely central to the selection process, forming one third of the total score granted to bidders for primary contracts. They were also important in selling the Arms Deal to the public: the promise of R100bn in economic activity and the creation of 65 000 jobs were fundamental to counter allegations that the Arms Deal was irrational at the time of extreme poverty and socio-economic need. Evidence presented before the Seriti Commission, but ignored by it, suggests that the actual economic impact of the offset programme was massively overinflated. Amazingly, the Seriti Commission found that the offset program was an unqualified success, generating economic benefits and jobs as promised.

Conclusion

276. The Arms Deal was not a single event, but rather a series of corruption scandals and cover-ups. In order to understand this deal in all its complexity requires analysing copious amounts of details and keeping track of a large array of characters in different parts of the world. Despite this, it is of vital importance to understand the Arms Deal and the detrimental ripple effect that it has had on South Africa's emerging democracy. The Arms Deal uniquely straddles South Africa's old and new dispensations and highlights the continuities of corruption that flourish in the shadows of the arms industry. In so doing it reminds us that if we do not address the culture of

secrecy and impunity then our country will continue to be bedevilled by economic crime at the expense of the majority of citizens.