

THE ARMS PROCUREMENT COMMISSION OF INQUIRY
(THE STRATEGIC DEFENCE PROCUREMENT PACKAGES)

INQUIRY INTO ALLEGATIONS OF FRAUD

**SUPPLEMENTARY SUBMISSION OF THE INTER-MINISTERIAL
COMMITTEE ON MATTERS RELATING TO PHASE ONE OF THE
INQUIRY BY THE ARMS PROCUREMENT COMMISSION INTO THE
STRATEGIC DEFENCE PROCUREMENT PACKAGES**

Introduction and context

1. The primary closing submissions of the members of the Inter-Ministerial Committee (“IMC”) were filed on 10 June 2015. The directive of the Arms Procurement Commission (“the Commission”) requires parties to file supplementary submissions on or before 17 June 2015.
2. We have received the closing submissions of the Department of Defence (“DoD”), the National Treasury, the DTI, those of the Thales Group and the submissions of Mr. Terry Crawford-Browne. Though we have not had sight of the closing submissions of the Evidence Leaders to the APC, we have deemed it prudent that we comply with the directive of the APC. In this context, we hereby file brief supplementary closing submissions.

3. In highlighting the rationality of the decision to enter into the contracts pertaining to the SDPP the first point we emphasise is recorded in the testimony of President Mbeki where he stated that in terms of the process of procurement, the two critical decision-making committees were the IMC and Cabinet¹. They were the two committees that had to be corrupted for the decision on the SDPP to be considered to have been influenced by corrupt interventions.
4. President Mbeki's evidence was that no corruption of the process at IMC or Cabinet level took place. He stated with respect to the IMC that if one member had been corrupt (a fact that he had no knowledge of), then such member would have had to corrupt four other members because the decision of the IMC was a collective one.
5. As a further safeguard, the recommendations from the IMC were debated at Cabinet, prior to the final decisions being taken by Cabinet. This in itself was a check and balance against any irrationality, arbitrary decision-making, or impropriety of any kind.
6. We stand by our earlier submissions, therefore that no evidence of any malfeasance, fraud, corruption or impropriety has been established

¹ APC Public Hearings 18 July 2014 at p. 7578 – Evidence of President Mbeki.

with respect to the members of the IMC or the Cabinet that took the decisions on the SDPPs.

The closing submissions of other parties

7. At the outset we point out that the submissions of the DoD, National Treasury and the DTI on the rationale for the procurement of the strategic defence procurement packages (“SDPP”) accord with, and give substance to, the general tenor of the evidence given by the members of the IMC.
8. In particular, we note the detailed analysis by the DoD of the evidence presented by various witnesses, which analysis bears a direct relationship to the testimony of the members of the IMC. We align ourselves fully with the material set out in this analysis.
9. We specifically endorse the facts set out in support of the rationale for the acquisition of the SDPP, with particular emphasis on the DoD’s

reliance on the testimony of Minister R Kasrils² who at the time of the acquisitions was Deputy Minister of Defence.

10. We also note and support the submission by the DoD that despite the weighty consideration that the 1996 White Paper on Defence and the 1998 Defence Review traversed in relation to the constitutional mandate of the South African National Defence Force, less equipment than was recommended was acquired under the SDPP³. This is consonant with President Thabo Mbeki's testimony that the decision to re-equip the SANDF:

10.1. was a national one, not a party one⁴;

10.2. was a matter that was looked at in as detailed a manner as possible, as rationally as possible and "*within the context of overall government policy, described then as the Reconstruction and Development Programme, the RDP*"⁵.

² In particular paragraphs 158.9, 160.1 and 161 of the Heads of Argument of the DoD and Minister Kasrils' submissions on the rationale for the acquisition of the Hawk dual functionality aircraft and the Gripen JAS39 jet fighter aircraft

³ Paragraph 25 of the Heads of Argument of the DoD

⁴ APC Public Hearings 17 July 2014 at p. 7301 – 7302; 7388 – Evidence of President Mbeki.

⁵ APC Public Hearings 18 July 2014 at p. 7574 – Evidence of President Mbeki.

- 10.3. took cost into account⁶;
- 10.4. took into account expenditure by Government in other State departments⁷;
- 10.5. intended to promote the objectives of the National Industrialisation Policy using the SDPP's; and
- 10.6. was not influenced by corrupt interventions⁸.
11. In the result the SDPP acquisition was intended to promote economic growth and development initiatives, hence the introduction of the NIPs and the DIPs.

The final submission of Mr. Crawford-Browne

12. Mr. Crawford-Browne makes some scurrilous remarks about the Commission⁹, President Mbeki, Minister Erwin, Minister Modise and

⁶ APC Public Hearings 17 July 2014 *inter alia* at p. 7401 - 7402 – Evidence of President Mbeki.

⁷ APC Public Hearings 17 July 2014 at p. 7303 – Evidence of President Mbeki.

⁸ APC Public Hearings 17 July 2014 at p. 7490, 7491 – Evidence of President Mbeki.

Minister Manuel¹⁰, amongst others. He also erroneously states, “...President Zuma’s legal counsel, Advocate Marumo Moerane SC, was unable in the Constitutional Court (Case 103/2010) to rebut the massive volume of evidence of corruption regarding the arms deal acquisitions”¹¹.

13. With respect to Mr. Crawford-Browne’s remarks concerning the Commission, we submit that these ought to be dismissed without further ado, as they lack merit.

14. The remark made in relation to Advocate Moerane SC should also be dismissed out of hand as the very issue that Mr. Crawford-Browne traverses was debated during the taking of President Mbeki’s evidence. During the hearing it was established that Advocate Moerane SC was not President Zuma’s counsel in the latter part of the litigation in the Constitutional Court and, in any event, that Court did not adjudicate the matters brought before it¹².

15. With respect to the remarks made about President Mbeki, Minister Modise, Minister Erwin and Minister Manuel, we submit that there is no

⁹ In, for example, paragraph 1 of Mr. Crawford-Browne’s submission he states that “...the Commission has proved a shameless waste of time and public resources, and to be part of a continuing cover-up”.

¹⁰ Closing Arguments of Mr. T Crawford-Browne paragraph 25, 42, 50, 51, 64, 77, 86

¹¹ Closing Arguments of Mr. T Crawford-Browne paragraph 10

¹² APC Public Hearings 17 July 2014 at p. 7463 – 7470.

evidence before the Commission that supports any of the slanderous comments made. We submit that given Mr. Crawford-Browne's failure to prove any wrongdoing on the part of the members of the IMC and these closing remarks constitute an abuse of process for which he ought to be censured.

Conclusion

16. We reiterate that the Commission has not been presented with cogent evidence that contradicts the evidence of the members of the IMC. We reserve the right to address any other adverse comments made against the members of the IMC should these be brought to our attention later.

MTK MOERANE SC & L GCABASHE

CHAMBERS, DURBAN & SANDTON.

17 JUNE 2015.