

Appendix A

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Title : ***Our Country Needs Facts, Not Groundless Allegations***
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Notes : Mbeki - black text, Young - blue text indented

The same stereotypical conviction about our **government being corrupt**, unless it proves itself innocent, has **re-surfaced with regard to the defence procurement** decided by our government in 2000. The fishermen (and women?) have recast their fishing nets, convinced that they will bring in a rich haul of **corrupt government luminaries**.

This epistle was authored in 2003 and refers to recasting of fishing nets; the very fact that it is now 2015 and the net is being recast yet again has, in my view, substantial significance.

If the defence procurement to which reference is made had been entirely above board then a dozen years later it would not be subject to a three-year commission of enquiry.

So convinced are they of the outcome of their fishing expedition that they regularly describe the defence procurement as "the arms deal scandal" or "debacle". They say "a deepening shadow of allegations is threatening to engulf the highest reaches of government".

Triumphantly, they proclaim that "the publication of **details of an earlier (investigative) draft confirmed long-held suspicions by opponents of the arms procurement exercise that changes were made before publication, possibly at the instance of senior members of government**".

Without doubt on the documentary evidence substantial changes were indeed made to this draft investigation report, both in terms of deletions and inclusions, both of which without any doubt whatsoever to the substantial advantage of the audited parties, that being the government itself, as well as senior members of government.

They say "there was a crucial 'nondisclosure of facts' to a body tasked with evaluating products", and that "draft reports released in court show evidence that **passages detailing possible corruption were edited** from the report before it was presented to parliament".

It is beyond any doubt whatsoever that these passages detailing possible corruption were edited from the report before it was presented to Parliament.

The fishers of corrupt men happily construct doom scenarios that serve their purposes. They speculate about the possibility of **a senior official being shown to be corrupt**, and how this might lead to the conclusion that **the whole procurement process was corrupted**, resulting in the "the whole edifice of the arms procurement exercise" crumbling. The reality is that the wish is father to the thought.

My evidence above presented in this witness statement shows conclusively that Chippy Shaik who was the government's Appointed Chief of Acquisitions was corrupt. Additionally, the investigation reports of the German investigating authorities indicates that the elected official of the governing party to the all-powerful position of chairman of the Joint Standing Committee on Defence, Tony Yengeni, was equally corrupt. Both these officials swung the award of the corvette contract from the Spanish bidder to the German bidder.

The Auditor-General's own draft report provides a strong inference of corruption if not, undue interference in the acquisition process by the Ministry of Defence, Joe Modise, in the award of the Lead-In Fighter Trainer contract to British Aerospace.

My evidence above, as well as documents emanating from the only successful prosecution of someone in the Strategic Defence Package, show in the clearest terms undue interference in the acquisition process by the Vice President of the country, Thabo Mbeki himself, in the award of the corvette combat suite contract to Thomson-CSF of France.

But it all sounds terribly dramatic and pregnant with the potential to expose horrifying facts about massive corruption by our government, involving billions of rands To prepare the public mind, words such as "scandal" and "debacle" must be, and are used!

To add to the sense of impending horror, "senior members of government" must be implicated, including **"the highest reaches of government"**, which means the **President**. Further to whet the appetite for the expected catch that will be brought in by the fishers, the threat is made that a "shadow of allegations might engulf" these "highest reaches".

The highest reaches of government indeed means the Vice President from 1995 to 1999 and the president from 1999 onwards.

Quite how shadows rather than substance, and allegations rather than facts might engulf the President, or anybody else for that matter, is somewhat difficult to fathom. The point however is that **neither substance nor facts are important to the fishers of corrupt men** in terms of their project to substantiate the stereotype of which the ANC spoke, when it made its presentation at the HRC hearings on racism in the media.

Just as then in the 2002 to 2003 era when these allegations were first made and this article written, to now in this evidence of my before the commission, both substance and facts have been important and indeed

formally presented in every manner possible, from the 2001 Joint Investigation, to a particulars of claim in a directly related damages action in the High Court, to formal complaints to the Directorate for Special Operations, to formal complaints to the Directorate for Priority Crime Investigation and finally to this Arms Procurement Commission. Other than nuances evolving through the passage of time and access to information by various legitimate means, the substance of both the allegations and the facts has remained essentially the same in a period of one and a half decades.

What is central is that the stereotype must be sustained and entrenched. For this purpose, precisely because of this entrenched stereotype, shadows and allegations will serve as well as anything else. Carefully chosen words with no factual information to substantiate them, such as "scandal" and "debacle", also come in as useful devices, to give the shadows and allegations the appearance of substance.

In this no-holds-barred campaign, anything and anybody who **stands in the way** of the fishers, including and **especially the truth**, must give way. In the current fishing expedition, the **Auditor General (AG) has been targeted as one of the possible big fish** that the fishers hope to catch.

The evidence proves that despite a raft of bona fide concerns and allegations culminating in firstly a Special Review and later in a full-blown joint investigation, Auditor-General proved himself to stand in the way of the truth. It is clear he changed his report, that he lied to Parliament and did his utmost to prevent access to information regarding this matter, so much so that they was even a High Court contempt of court finding and suspended jail sentence against him (albeit the latter overturned by the Supreme Court of Appeals, but only with regard to court process and not materiality of the issue).

Accordingly, they accuse the **AG of doctoring the report** he presented to Parliament, by omitting some details contained in an earlier draft. The AG has taken strong exception to this **charge of fraud**. In barely disguised language, the fishers have said that they are **convinced that the AG is lying**. Naturally, they will not bother to supply facts to disprove what the AG said.

As part of this campaign against the AG, they charge him with having "sanitised" and "heavily edited" the final report, "possibly at the instance of senior members of government". They say nothing of the fact that the AG is required by the law to show his draft reports to any institution he may be auditing, for **any comments it may wish to make. The AG is free to accept or reject any comments made by those he has audited.**

This is not quite so, firstly input made by those being audited can only be rejected by those doing the auditing based on reasonableness and application of mind. In this instance it was clearly not reasonable to change the findings as there are no explanations whatsoever for such changes other than they were at the behest of the audited party. Secondly

the Auditor-General clearly stated that the only changes that were made were in respect of readability of the JIT Report and not as regards the findings themselves, as well as that the only input that the government was allowed to make was in respect of issues of national security and the confidentiality of Cabinet proceedings, neither of which were applicable.

This happens regularly, is required by law, and carries no imputation whatsoever of corrupt behaviour on the part of the AG. Precisely because he had absolutely nothing to hide by following this procedure, the AG attached an official letter to the draft report he gave the Cabinet sub-committee that approved the primary contracts, citing the provisions in the law requiring him to abide by this procedure.

The fishers have focused especially on the Thomson (Thales) element of the prime contract entered into by the government with the **suppliers of the corvettes, the German Frigate Consortium (GFC)**. The government has explained this very clearly before, that it entered into a contract with the GFC to supply the required number of corvettes, meeting all the stipulated specifications.

The government did not enter into a prime Contract with the German Frigate Consortium, it entered into a prime contract with the European South African Corvette Consortium (ESACC), which included both Thomson-CSF of France and ADS as prime contract. All of the government and representatives of these parties signed the Umbrella Agreement regulating the corvette contract.

The government has no contracts with the companies retained by the GFC to supply the various component parts of the corvettes. **Similarly, it never had occasion or need to determine who the partners of the GFC should or should not be, including Thomson (Thales).**

The DoD, representing the government, directed in its very initial Request for Information, its subsequent Request for Offer and request for final offer (RFFO) that the GFC should include ADS as the supplier and system integrator of the corvette combat suite.

The proposition that the **government influenced the choice of Thomson by the GFC as one of its sub-contractors is both a blatant falsity concocted** by the fishers, and a logical absurdity. In its statement of 15 September 2000, the government announced those with whom it had entered into contracts. These are British Aerospace/SAAB, the **German Frigate Consortium** and Augusta. **It had no primary contract with Thomson (Thales)**, as the supplier of the electronic combat suite of the corvettes, which matter, of the supplier of this suite, **remained in the exclusive domain of the GFC.**

The point above applies equally.

Additionally, the author of this epistle was Vice President of the country and chairman of its Ministers Committee responsible for the SDPs personally promised Thomson-CSF the award of the contract to supply the

corvettes combat suite and its senses nearly two years before the final contract was signed and one year before negotiations in this regard commenced.

In the Background Notes issued on **12 January, 2001**, the government said: "**It should be pointed out that the Procurement does not deal with subcontractors.** This has to be the contractual obligation of the prime contractor as it is they who must deliver reliable equipment and undertake the performance and delivery obligations. This is standard practice in major contracts. To insist that the Government must be held to account for minor subcontracts is to misunderstand procurement. The prime contractors are major international corporations and we are confident that they would ensure the quality of the subcontractors and this is their responsibility."

This myth that the government's procurement did not deal with subcontractors is a lie repeatedly propagated by the author of this epistle as well as his ministers and the Government Communication Information Service (GCIS). The evidence that I have provided above clearly proves that in respect of at least the corvettes and its combat suite the acquisition authorities representing the government clearly not only dealt at the sub-system level, were involved with all the details of the contract negotiations in this respect as well as formally (albeit irregularly) made the supplier selections in this regard.

But of course this does not matter to the fishers, who are intent to prove or otherwise entrench the stereotype of a corrupt African government. This is why **their fond scenario visualises a determination that an official acted corruptly**, leading, according to them, to the collapse of the "arms procurement exercise", even as they exclude the fact that the final recommendations to the deciding authority, the Cabinet, had to be, and were made by a Cabinet sub-committee, and not officials.

The evidence I have given clearly shows that more than one very important official acted and unduly and irregularly. Indeed it shows the inescapable conclusion that such undue and irregular influence was for corrupt motive and that such conduct started at the top.

An **aggrieved potential and unsuccessful sub-contractor** has taken his grievance to our courts. For this reason, we will not comment on the matters he raises, which the fishers nevertheless use triumphantly and wilfully to justify their campaign. But this gentleman decided to raise, in the media, **the matter of an earlier process to acquire corvettes for our Navy.**

This aggrieved potential and unsuccessful subcontractor is clearly me - I accept that.

An extremely interesting point the author brings up is in respect of this earlier process to acquire corvettes for our Navy.

The gentleman concerned makes the **false allegation** that during the life of the Government of National Unity, formed in 1994, a **contract** for four corvettes to be built

by Bazan of Spain "**was cancelled after being awarded**". This is not true. The preceding apartheid Cabinet had not approved this contract. **The GNU Cabinet decided not to enter into this contract.**

It is not a false allegation that I made that Bazan received a contract that was cancelled after being awarded. I never made such a allegation. What I alleged was that after due acquisition process Bazan won the evaluation that should have led to a contract being awarded.

Bazan entered the later competition to supply the four corvettes, and lost to the GFC. This issue is of relevance and interest only because of the controversy that some have brought into the current defence procurement. **It is an interesting coincidence that this controversy has focused so intensely on the corvettes.**

There is no coincidence whatsoever that the controversy has focussed so intensely on the corvettes. It is the intensity of my personal focus after 15 years that this should be so. This intensity and this focus only arise out of what I believed to be irregular acquisition processes and unlawful competition that led to the failure of some of my company's products from being awarded certain subcontracts for both the corvette platform and corvette combat suite and my consequent investigation in this regard which has yielded a raft of corrupt and irregular conduct.

In time the details of the truth will come out about how the controversy concerning the 2000 defence procurement emerged and persisted. **The gentleman litigant, who has raised the matter of Bazan of Spain, may be proved to have been justified in raising this issue,** even if he made false claims about a Bazan contract that never was.

It is now a dozen years since this epistle was written and in the meantime the controversy has emerged and persisted to such a degree that a multi-million Rand commission of enquiry has resulted.

Regrettably, it would seem that despite the opportunity for the truth eventually coming out, that many of the witnesses representing the government have not only persisted in the truth not coming out, but far worse have actively lied and misled this commission.

This detailed truthful account would tell our country interesting things about such matters as defence procurement during the apartheid years, and the promotion of political careers and fortunes in contemporary South Africa. It would tell a story about the political uses of the racist stereotypes that are part of our daily menu of information and perception, and the formation of popular consciousness.

Despite that this commission of enquiry is not about defence procurement during the apartheid years, this epistle touches on it in that it refers to and makes aspersions regarding the corvette acquisition, which started in 1993 which was indeed in the death throes of the apartheid years, but at the same time makes it relevant to this commission of enquiry. Yet the

author of this epistle elected to share nothing with either the commission or the country in giving such a detailed and truthful account, this despite having every opportunity in doing so both in the last dozen years and his own appearance before the commission.

It would inform us about the impact or otherwise of the domestic and international apartheid networks on our democratic order, and the moral integrity of those who correctly claim that they fought for the victory of this order, and therefore seek to position themselves as its true representatives.

The sooner this fascinating story is told the better, so that we can improve our performance with regard to the achievement of the critical objective of building a truly people-centred society.

I would wholeheartedly agree with this.

But personally I know nothing about that particular fascinating story. What I do know about is a little what transpired in rounds one and two of the corvette acquisition process and tried to share that fascinating story with the country via my evidence before the commission.

As an important part of the struggle to realise this objective, we should not, and will not abandon the offensive to defeat the **insulting campaigns further to entrench a stereotype that has, for centuries, sought to portray Africans as a people that is corrupt, given to telling lies, prone to theft and self-enrichment by immoral means**, a people that is otherwise contemptible in the eyes of the "civilised". We must expect that, as usual, our opponents will accuse us of "**playing the race card**", to stop us confronting the challenge of racism.

It is equally insulting to be accused of limiting one's allegations of corruption to Africans. I am an African myself. As insulting is being accused of playing the race card, because races simply got nothing to do with it. Presumably the author means Black Africans, but my allegations include White Africans as well as Black Africans and Indian Africans who I allege to be telling lies and whose conduct is that of self-enrichment by immoral means.

The fishers of corrupt men are determined to prove everything in the anti-African stereotype. They rely on their capacity to produce long shadows and innumerable allegations around the effort of our government to supply the South African National Defence Force with the **means to discharge its constitutional and continental obligations**. They are confident that these long shadows and allegations without number will engulf and suffocate the forces that fought for and lead our process of democratisation, reconstruction and development.

However, what our country needs is substance and not shadows, facts instead of allegations, and the eradication of racism. The struggle continues.

Thabo Mbedi.

Hopefully the evidence that I've given is indeed substance and not shadows and is credibly backed up not only by allegations, but by facts. While I support the eradication of racism, my investigations that have led to my evidence before commission stem from my own views of personal loss, as well as ones of right and wrong and have nothing whatsoever to do with race. This country is acknowledged by almost all and sundry to be confronted with the scourge of corruption. I also subscribe to this position and believe that if this is not substantially checked will eventually lead to the failure of our democracy and indeed to anarchy.

Having been faced with what I saw and endured I actually had no alternative either moral or legal, but, as it is said, to blow the whistle on corruption.

I hope now after first being confronted with this situation nearly 17 years ago that my own struggle is now over.



Appendix B

Shaik's Evidence to the APC

776. I turn now to respond to Shaik's evidence to the APC.

DoD Policy MD 4/147

[\[01_1997.pdf\]](#)

777. In the proceedings of this commission Chippy Shaik testified as follows :

“Adv Sello : In this paragraph, in this paragraph at 31, you state:

“This request resulted in the approval of a MOD policy, by the Council of Defence, COD, on the 8th of August 1997, in dealing with these defence strategic partnerships. During this period Lieutenant General PO Du Preez was the Chief of Staff Logistic, reporting to the SANDF.”

Then, you refer to the annexure at page 200, ANNEXURE F. Is that so?

Mr Shaik : Yes, I do.

Adv Sello : Just so you are aware, there is, this policy has been referred to previously, by other witnesses. But, we will deal with it, in so far as, it relates to you. For the record, could you describe this policy, as you understood it?

Mr Shaik : It was my understanding that **this policy gave rise to the work group that was established to deal with the defence acquisition packages and it was formalised**, by being submitted to the Minister, in the Ministry, in the COD. It has an origin and a date and a planning directive number on page 200. It says CL that is Chief of Logistics/Director Weapon Systems S/R/302/B. That number will then be carried through in the subsequent documents that you will see. So, you sort of have an idea of the origins of it. Thank you.

Adv Sello : Now, at the second page of that document, 201, it is signed by General Meiring and Mr Steyn, the Secretary of Defence. Is that right?

- Mr Shaik : Yes, it is.
- Adv Sello : Were, at the time, you were the Chief of Acquisition, did you become aware of this policy? If so, under what circumstances?
- Mr Shaik : Yes. **This policy document was the one that the group took as a reference point, to formulise its existence and ultimately resulted in drafting up a constitution to assist the, the management work group**, which was known by many names. Thanks.
- Adv Sello : Was a copy or, yes, a copy of this policy, 5 or was this policy ever formally presented to you?
- Mr Shaik : Yes. Under page 202, under Chief of Policy and Planning, I am listed as Chief of Acquisition.
- Adv Sello : So, is it your testimony that, as Chief of Acquisition, **you used or you relied on this policy to discharge in part, your, your obligations, as set out in this policy?**
- Mr Shaik : Yes. I and the rest of the work group did.**
- Adv Sello : Now, there is the evidence before this Commission, no, before I say that. Please refer to page 201. You will see the handwritten note there, after the signatures of General Meiring and Mr Steyn and it reads: "Approved in Council of Defence 8 August 1997." Do you see that?
- Mr Shaik : Yes, I do.
- Adv Sello : Now, it has been established, through one of the authors and in particular, the Secretary of Defence, Mr Steyn that notwithstanding the encryption there, this was, in fact, never approved by the Council of Defence or at least on the 8th of August 1997. Were you aware of that?
- Mr Shaik : No, I was not." (Pages 8723 to 8724)

[\[sdpp-transcript-20141110-11_Shaik.pdf\]](#)

778. Yet regarding DoD policy used for the acquisition process of the SDPs, the positions of Chippy Shaik are on record during the JIT investigation as follow :

“1.3 VB1000 in its full intended and applicable scope applied during the acquisition of the SDP's. Reference to an "acquisition phase" is often misused to refer either to the full acquisition process or specifically to the production (sometimes also including the industrialisation phase). It is to be understood that there are primary phases like planning, acquisition, operational and establishment of technology (see VB1 000 chapter 2 para 3.1) that refers to a weapon system life cycle rather than its acquisition and there are higher level acquisition phases like requirements definition phase with sub phases namely concept and definition phases (refer VB 1000 chapter 3 para 3.1) and systems acquisition which broadly comprises the other sub phases (operational related phases excluded) namely system development, qualification, industrialisation, manufacturing commissioning etc. Again it must be emphasised that it would be at total variance with the intention of the policy to try and force these concepts into a set of step by step mandatory, mutually exclusive activities to be strictly adhered to independent of project to project specifics. Broadly speaking, the Defence Review, which covered the MODAC documents, was to a large extent followed. The higher-level policy process that was followed was explained in the DOD official response to SCOPA in October 2000. **The DOD directive No 4/147 to my knowledge was not approved by the COD on 8 August 1997.** The CSANDF tabled a draft policy document at the COD meeting. The meeting referred the document back to the Department for further inputs. The decision of the meeting is reflected in the minutes of the COD meeting in paragraph 6:

Para 6.1.3 "The Minister was of the opinion that a policy of listening without Committing oneself should be adopted at present. Decision.

The draft policy must be studied further and inputs made by all concerned".

This MOD policy was issued with a DOD policy directive 4/147, both the CSANDF (Gen G.L. Meiring) and the Secretary for Defence (Mr P.D. Steyn) signed this directive on 8 August 1997. However, the Minister of Defence did not sign this directive. Mr P.D. Steyn signed the effect that this policy was approved in the COD on 8 August 1997. **This statement is not reflected in the COD minutes** and the signing of this directive is on the same day of the COD meeting. (Pages 40 to 41) (my emphasis in bold)

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779. I understand that the minutes of 8 August 1997 is a classified document. However, it is available in the DoD/Armscor database of relevant documents.

The Effects of Superseding MODAC by MD 4/147

780. Elimination of AACB and AASB in Formal Acquisition Process

“Adv Sibeko : Now at the end of that discussion there is a decision recorded there that:

“All efforts must be made to achieve the original date of July”.

Now would this be consistent with the elimination of the processes before the AACB and the AASB on the acquisition process regarding these capabilities?

Mr Esterhuysen : Chairman, I can only give a personal view here. I would not have supported an elimination of those two committees, they are cardinal to the process of acquisition but that's a personal view. (Page 5635)

[\[sdpp-transcript-20140422-25 Esterhuysen.pdf\]](#)

781. This narrative provides a clear indication that two cardinal bodies, being the AACB and AASB, in the formal acquisition process as defined by MODAC with superseded, it would seem ostensibly by the PCB and SOFCOM.

782. Shaik continues in his Section 38 interview :

“12.2 I was a member of the management team and the Co-chair of the SOFCOM. Both C Acq and A/CEO Armscor then briefed the Acquisition forums AASB, AAC and the Minister's Committee and the Cabinet.” (Page 24)

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783. Yet it would seem clear from the documentary evidence that at least more often than not that the AACB, AASB and AAC were mainly omitted from the process and it was the body SOFCOM which dealt directly with MINCOM.

Neither SOFCOM nor MINCOM were part of the MODAC process.

784. On role of the PCB Shaik testifies as follows :

“Yes. From my recollection and I have explained this in detail in my Section 28 to the joint investigative team, the project control board was an idea thought about before cabinet took a decision on what to do. So the first PCB will be traced back to [indistinct], but the cabinet subcommittee took a decision in early 99 to appoint a negotiating team.

So PCB became in many ways a [indistinct] body in the sense that there was no roles spelt out for the PCB in the terms of reference of point. You merely had the Armscor CEO who was given that task. In discussion with the CEO of Armscor and the arms of service chief, it was felt that we should keep the PCB as an oversight function to assist the chief of [indistinct], to assist the CEO of Armscor.

So this was not a mandated body, but is merely a body to assist the CEO of Armscor and contract negotiations.”
(Page 8869)

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“Therefore the role of the PCB was to apply an oversight role over the Project Team during the contract negotiation phase. This phase was directed by the Cabinet Sub-committee and the Negotiation Team (IONT), which included to a large extent an affordability study. The PCB was therefore not a mandatory requirement of the Armscor Act, or in the terms of reference of the Minister's Committee or IONT; it was to add on

to the process to ensure greater transparency in the technical domain and greater Navy and Specialist Armscor participation in the final technical outcomes.” (Para. 4.1.1 Page 11)

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“The Project Team briefed and received guidance and direction from their respective Navy or Air Force Boards, their immediate Directing superiors, the SOFCOM, and later the PCB. (Para. 12.2 Page 24)

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BAeSEMA / ASM

785. On the BAeSEMA / ASM issue Shaik testifies as follows :

“Mr Shaik : That was my understanding because at some point as well Mr Richard Young formed the consortium to offer an alternative Combat Suite.

So he formed the consortium with British Aero Space to offer an alternative competing Combat Suite. So he himself became a competitor in a competitor.” (Pages 8890 to 8891)

Conflict of Interest

Shaik

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Modise

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Simpson-Anderson

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IMS Risk - The Letter of 1999-07-29

“Other than to say it was a letter submitted to the Chief Executive Officer of ADS and it is at page 589. It is letter from C²I². It is a letter distributed to the Navy Admiral Simpson, Admiral Howal and the whole distribution list at the bottom. The point that I thought was important is that the date of the letter was 29/07/1999. So it is in July before any final decision is claimed to have been made on the Combat Suite.”
(Page 8884)

[\[DT1-0507.pdf\]](#)

Higgs's Evidence to the APC

775. I turn now to respond to RAdm Higgs's evidence to the APC.

786. In respect of *rationale*, he testified as follows :

“.....and the reality is if we don't patrol we don't control, we've got to be out there.....” (Page 241)

"So it is very, very important that people who have interests at sea, are able to patrol what they have interest in and there is an average (sic - addage) which says if you do not patrol, you do not control." (Page 248)

[\[sdpp-transcript-20130820-01Higgs.pdf\]](#)

Shoultz's Evidence to the APC

787. I turn now to respond to RAdm Shoultz's evidence to the APC.

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788. In respect of *rationale*, he testified as follows :

“Adv Lebala: So, if the critics were to come and say we see these capabilities at the dockyard, they are not moving, they are static, would it be fair because those are the conclusions that come in that they are inoperable and they are not being utilised?

RAdm Schoultz: Chairperson I don't believe that would be fair because as I've indicated operational available can also be lying alongside awaiting an assignment, and **if there was no assignment to go and do then just to steam around outside would be pointless quite frankly.** (Page 485)

789. Now that position just cannot be congruent with RAdm Higgs's position that the Say's has got to be out there patrolling.

790. In respect of *utilisation*, RAdm Shoultz testified as follows :

“Adv Lebala: The vernacular of what we see from paragraph 14 goes to the nub of your testimony, you will note that there are critics who will come at a later stage or may not come at a later stage, they have already positively addressed their criticism that we are not utilising this equipment or going into the technical aspects of utilisation, but from paragraph 14 you are laying a foundation to what's the real statistics and formulas and ratios of utilisation. May I read from paragraph 10 14:

“In addressing the utilisation of the frigates and submarines a number of general comments need to be made prior to addressing specifics”.

Paragraph 15 page 5 Commissioners:

“Firstly as early as November 2002 it was already recognised that the frigate

utilisation as defined in Naval Staff Requirement 6-80 ...”.

Let’s pause there. It’s Naval Staff Requirement 6-80 still applicable and explain why.

RAdm Schoultz: Chairperson, it certainly is still applicable because it was the source document or the document of origin where the requirement was first set out in 1980" (Page 468)

“Adv Lebala: Let’s read further.....

“Firstly as early as November 2002 it was already recognised that the frigate utilisation as defined in Naval Staff Requirement 6-80 would not be possible under the South African Navy’s then-budget allocation. As a result a new operational profile was proposed for basing, sparing and hence future utilisation on”“. (Page 469)

791. NSR states :

“89. Operational Availability. The vessels shall be designed for a maintenance cycle which will ensure the full operational availability of least two of four vessels simultaneously, allowing for one vessel under maintenance (AMP, OED) and one under refit. Within every 12 month cycle, each vessel not under refit shall be operationally available for at least 260 days in total.” (Page 24)

[\[NSR V2-1993-05-24.pdf\]](#)

RMY-26

792. RAdm Shoultz continues as follows :

RAdm Schoultz: Now the data that they used is the, is found on page 72 which was an extract of the Naval Staff Requirement. In the table there Chairperson where it says: “Naval Staff Requirement 6-80”, that Staff Requirement said that these ships should be available 260 days of the year for operational utilisation. That does not imply that they must be utilised 260 days each, it implies they must be ready to be utilised each, if I can draw that distinction Sir.

Secondly it said that each of these ships should spend some 180 days per annum at

sea and in terms of going away on missions each ship should do a 28 day mission and then it carries on to give dependability figures and reliability figures.” (Page 474)

793. But if we look at the actual utilisation figures achieved , these are :

“Adv Lebala: Now below we see a number 1932, what does it denote?

RAdm Schoultz: That would then be the total sea days in which the four frigates have been operationally utilised during the period indicated Chair.” (Page 525)

794. Simple arithmetic shows that in terms of actual time in service the achieved utilisation for the four frigates up until 23 August 2013 is 19,2% which is 70 days per year.

The actual duty hours are or 46 368 hours for all four vessels over the period.

This is substantially lower than the planned utilisation of 180 days per vessel per year which equates to 49,3%.

Frigate Utilisation					
Achieved					
	In Service Date	Date	Ship Years in Service	Ship Days in Service	Ship Hours in Service
SAS Amatola	2006-02-16	2013-08-23	7,5	2 745	65 880
SAS Isandlwana	2006-07-27	2013-08-23	7,1	2 584	62 016
SAS Spioenkop	2007-02-16	2013-08-23	6,5	2 380	57 120
SAS Mendi	2007-03-20	2013-08-23	6,4	2 348	56 352
Total			27,5	10 057	241 368
Shoultz					
Actual Duty Days		1 932		19,2%	
				70	
Planned					
260 Days per Year		260		71,2%	
180 Days per Year		180		49,3%	
Actual Duty Hours					46 368
					19,2%
Green					
Planned Duty Hours					87 584
					36,3%
Actual Duty Hours					38 647
					16,0%

795. If one notes the achieved utilisation figures given by RAdm Allan Green, these are even lower, with the actual duty hours being 38 647 hours for all four vessels over the period.
796. Also according to RAdm Allan Green the planned duty hours were 87 584 hours for all four vessels over the period.

[\[ws-Admiral-Alan-Green-SupStatement.pdf\]](#)

797. This has to indicate that the vessels are being utilised both far less than originally planned and substantially less even with replanning.
798. In my view, the utilisation has substantially decreased since 23 August 2013 when RAdm Shoultz calculated these figures.
799. If one is mindful of the frigates total usage days (refer PDF Page 76 of RAdm Shoultz's witness statement) then only about 250 days were spent on operations in South African waters. This is in comparison to the total number of ships' service days of over 10 000.

[\[ws-RearAdmiral-PhilipSchoultz.pdf\]](#)

800. In my view I would concur with RAdm Higgs that, as a major maritime nation with some 3 300 kilometres of national coastline and a very large maritime Exclusive Economic Zone (EEZ), that these patrol corvettes are not doing sufficient patrol tasks, especially for their not insubstantial acquisition price and running costs.

Grobler's Evidence to the APC

801. I turn now to respond to Grobler's evidence to the APC.

[\[sdpp-transcript-20140401_Grobler.pdf\]](#)

[\[ws-GroblerJG-page_all-01.pdf\]](#)

802. Erich Esterhuysen's letter :

“AUDIT REQUEST -INTERNATIONAL DEFENCE EQUIPMENT OFFERS

Since the evaluation of the different offers have been completed and the results communicated via the SOFCOM to the MC, I hereby request that an audit be performed to ensure that the recommendation to the MC is based on an accountable tender evaluation process. (Bundle 21, PDF 23)”

803. Frits Nortje Response to the Audit Team Regarding the SMS

“Subsequent to the announcement of the preferred offeror the German Consortium granted ADS the status of full member of the consortium with responsibility for the weapons suite. This placed ADS in the position where they had to adjudicate tenders from subcontractors offering equipment in competition to their own or their main shareholder's equipment (Thomson CSF). This situation can not be considered totally transparent, unless very strict tendering procedures are followed. There have been some complaints from local industry regarding this arrangement.

The programme team, consisting of Armscor and SAN personnel, had become closely involved with the selection and evaluation of equipment and subcontractors for the combat suite to address value for money and affordability. At the time of the audit a final decision on the mission critical, and potentially most problematic subsystem (from a contracting point of view), the data bus, had not been finalised.

The programme manager indicated during the interview that the team had refused to accept modified offers submitted after the closing date for tenders.” (Page 13 of 29, Bundle 316, PDF 319)

804. Armscor's Standard Evaluation Processes Were Not Followed

“3.17 Below are just a few examples of instances where Armscor's standard evaluation processes were not followed, and the observations and recommendations which the audit team made.”
(Bundle 10, PDF 12)

803. Conclusion of Armscor's First Audit Report

2 EXECUTIVE SUMMARY AND RECOMMENDATIONS

2. 1 During execution of the audit no evidence of improper conduct was found on the part of any Armscor employees involved in the evaluation of the various proposals. (Page 5 of 29, Bundle 273, PDF 276)

805. Conclusion of Armscor's Second Audit Report

4 CONCLUSION

Even though a number of concerns exist regarding procedures followed; the role of programme teams, accountability and actions by parties outside of Armscor, no evidence was found that would indicate misconduct within Armscor with regard to the execution of work to this stage. It is the auditors' opinion that negotiations were conducted professionally and with integrity. Complaints raised by local contractors were essentially due to foreign main contractors not following tendering procedures as strictly as normal Armscor practice, or perceived bias on the part of local contractors who had been appointed as "main subcontractor" for local procurement by the overseas principals.(Page 21 of 21, Bundle 324, PDF 327)

806. The reports were authored by Mr W. van der Walt, Dr B.J.E. van Tonder and Mr J.G. Grobler.

The names van der Walt, van Tonder and Grobler do not appear in the final JIT Report.

The only valid conclusion that can be drawn from this fact is that these critical reports, authored in January 1999 and August 1999 wee not provided to the JIT.

807. There is no mention in either of the two reports of Johan van Dyk and Armscor's internal legal opinion concerning the GFC's DIP offer.

Hlongwane's Evidence to the APC

808. I turn now to respond to Hlongwane's evidence to the APC.

[\[sdpp-transcript-20141211-Hlongwane.pdf\]](#)

[\[ws-Hlongwane-Statement-all.pdf\]](#)

809. The essence of my evidence is that Hlongwane did not only conclude certain consultancy agreements with BAE during 2003. He did so prior to that as early as 1998 and received substantial payments via BAE Systems Red Diamond Trading Ltd and other even more indirect routes.

810. I shall address his evidence that he gave to the commission in respect of reference to the following documents :

[\[227565 SFO Julia Aldridge 16.07.07 Tape aLL of 17 checked.pdf\]](#)

[\[257418 SFO H DICKINSON 20.02.08 Tape All CHECKED.pdf\]](#)

[\[242582 SFO NIALL IRVING INTERVIEW 09 11 07 - tape All Checked.pdf\]](#)

[\[CHECKED 237778 SFO Kevin Smith 04.10.07 Tape All.pdf\]](#)

[\[243714 SFO J MACBEATH interview 16 11 07 tape All.pdf\]](#)

[\[MacDonald 140807 Tape All Corrected.pdf\]](#)

[\[244134 SFO S McIntyre 22.11.07 Tape all \(Corrected\).pdf\]](#)

[\[Transcript Alex Roberts.pdf\]](#)

[\[Leonard Day-All-01.pdf\]](#)

[\[050000_Valurex corresp re route \\$10m to Hlongwane.pdf\]](#)

[\[050930_BAE payments to Kayswell \(Bredenkamp company\).pdf\]](#)

[\[981021_BAE agreement with Arstow \(Roberts, Thurston, Matt\).pdf\]](#)

[\[990902_Arstow contract with Westunity \(Hlongwane\).pdf\]](#)

[\[990902_Westunity back-to-back contract with Hlongwane.pdf\]](#)

[\[991111_Red Diamond contract with CIC \(Thurston, Chapman, Day\).pdf\]](#)

[\[x960000_BAE plans covert offshore payment system.pdf\]](#)

[BAR_Policy_Advisors-01.pdf]

[CIC file note - for Director draft 2.pdf]



Richard Michael Moberly Young
2015-03-18