

**Media statement by the Minister of Justice and Constitutional Development,
Mr. Jeff Radebe, MP**

**Announcement of the details of the Commission of Inquiry into allegations of
fraud, corruption, impropriety or irregularity in the Strategic Defence
Procurement Packages**

Cape Town, 27 October 2011

It is my honour and privilege to announce the terms of reference and the Regulations for the Commission of Inquiry into allegations of fraud, corruption, impropriety or irregularity in the Strategic Defence Procurement Packages (SDPP), commonly referred to as the Arms Deal. On behalf of the Executive, I hereby make these further announcements to give effect to the decision taken by the President as head of the State, pursuant to section 84(2)(f) of the Constitution of the Republic of South Africa, 1996.

On Monday, 24 October 2011 the President announced the Commission chaired by Judge Seriti, a judge of the Supreme Court of Appeal. All of them are senior judges of high standing and integrity, who have impeccable track records in the legal and judicial work. They are judges of independent minds, who command respect from their peers and have exhibited leadership attributes in their added responsibilities other than presiding in court.

The Commission will be assisted by a team of astute and seasoned legal practitioners in leading and assessing evidence presented before the Commission. These practitioners are Adv. Vas Soni SC, Adv. Sthembiso Mdladla, and Adv. Mahlape Sello, who were chosen by the Justice Seriti as he is empowered by the Regulations to do so. Under the guidance of Adv. Soni, who is one of the leading Senior Counsel and a member of the Judicial Service Commission, the Evidence leaders will form an important fortress for the Commission.

The establishment of this Commission and the commencement of its work, represent a watershed moment in the history of democratic South Africa, in a quest to rid our nation of what has become an albatross that must now cease to blemish the reputation of our government and the image of our country. As we cross the Arms

Deal Rubicon, we wish to assure all South Africans that this Commission will work independently of everyone, including the Executive.

Its credibility remains paramount as it is about to undertake an all important national duty. The impact of its work will be significant even beyond the borders of our shores.

It should be borne in mind that this Commission has been instituted as a consequence of allegations that have persistently been in the public domain for a long time. The allegations surfaced soon after the dawn of democracy, following the procurement of multi-billion rand armoury that was intended to address the needs identified by the South African National Defence Force during 1996 – 1998. This culminated in the Cabinet decision to purchase aircraft, corvettes and submarines at the cost of R29billion over 12 years. The allegations were probed by the different State institutions and were also a matter public debate in Parliament. Every time an end appeared in sight, new allegations would emerge. It is our conviction that the Inquiry will enable us collectively as a nation to reach closure on this otherwise contentious matter. We are hopeful that we will emerge from the Commission as a stronger nation glued together by values of social cohesion and nation building in a common endeavour to build a united and prosperous South Africa.

We believe that the work of the Commission will ensure that we sustain the momentum on the integrity of our national democratic transformation. In contrast, the seriousness of these allegations threaten to undermine this hard earned integrity of our constitutional democracy which is perceived as exemplary to be emulated even on the international scene.

I now turn to the specific aspects of the business of the Commission:

Powers of the Commission

The Commission derives its power from the Constitution [section 84(2)(f) read with the Commissions Act, 1947]. The practical operation of the Commission, such as matters relating to evidence and other matters on the conduct of members and persons appearing before the Commission, is provided for in the Commissions Act, 1947. The President has made Regulations which prescribe the powers and procedure.

The Terms of Reference for the Commission

The terms of reference must be seen to be sound, fair and consistent with the principles of justice as enshrined in our laws. The Commission of Inquiry shall inquire into, make findings, report on and make recommendations concerning the following, taking into consideration the Constitution and relevant legislation, policies and guidelines:

- 1.1. The rationale for the Strategic Defence Procurement Packages.
- 1.2. Whether the arms and equipment acquired in terms of the Strategic Defence Procurement Packages are underutilised or not utilised at all.
- 1.3. Whether job opportunities anticipated to flow from the Strategic Defence Procurement Packages have materialised at all and:

if they have, the extent to which they have materialised; and

if they have not, the steps that ought to be taken to realise them.

- 1.4. Whether off-sets anticipated to flow from the SDPP have materialised at all and:

if they have, the extent to which they have materialised; and

if they have not, the steps that ought to be taken to realise them.

- 1.5. Whether any person/s, within and/or outside the Government of South Africa, improperly influenced the award or conclusion of any of the contracts awarded and concluded in the SDPP procurement process and, if so:

Whether legal proceedings should be instituted against such persons, and the nature of such legal proceedings; and

Whether, in particular, there is any basis to pursue such persons for the recovery of any losses that the State might have suffered as a result of their conduct.

- 1.6. Whether any contract concluded pursuant to the SDPP procurement process is tainted by any fraud or corruption capable of proof, such as to justify its cancellation, and the ramifications of such cancellation.
2. These terms of reference may be added to, varied or amended from time to time.
3. The Commissions Act, 1947 (Act No. 8 of 1947) shall apply to the Commission, subject to such amendments and exemptions as may be specified by proclamation from time to time.
4. The Commission shall submit interim reports and recommendations to the President from time to time and at least every six months prior to the finalisation of its report for presentation to the President. The Commission shall complete its work within a period of two years from date hereof and shall submit its final report to the President within a period of six months after the date on which the Commission completes its work.

Procedure of the Commission

The procedure of the Commission is outlined in the regulations made by the President in terms of section 1 of the Commissions Act, 1947, and which will be published in the Gazette soon. The regulations, amongst others:

- Gives the Commission the power to subpoena witnesses
- Compel witnesses to answer questions
- Power of search and seizure

Non co-operation with the Commission constitute an offence punishable by a fine or imprisonment for a period between 6 to 12 months.

Seat of the Commission

The main seat of the Commission will be in Johannesburg, where it will conduct its primary business. Due to security considerations, the actual location of the premises will not be disclosed at this stage. An announcement regarding the actual location and the first public hearings will be made in due course.

The Commission's Chairperson will determine the seat of the hearings which may take place at any other place than its principal place of business. This is so in order to enhance easy access to the witnesses and other people who wish to make attend the hearings.

The security of the premises, information and personal security will be a high priority.

Funding and resourcing of the Commission

A total budget in the amount of R40 million has been set aside by the Department of Justice and Constitutional Development to fund the costs of the Commission. The expenses to be covered by this budget allocation will include:

- Remuneration of personnel appointed on a fulltime basis for the duration of the Commission;
- Operational cost of the commission including administrative support, translation and transcription services, document management, public hearings, travelling and telecommunication; and
- Accommodation and equipment required for the Commission to carry out its business.

The Secretary and staff of the Commission

The Commission has appointed Mr Mvuseni Ngubane, a practicing attorney, and a former member of the Judicial Service Commission, as the Secretary of the Commission. The Secretariat will provide the necessary administrative support to the Commission to ensure that it delivers on its mandate.

Appropriate number of staff and researchers will be appointed to constitute the Secretariat of the Commission.

Conclusion

In conclusion, I want to reassure all South Africans of our unwavering commitment towards fighting crime and eradicating corruption. We all must fold sleeves and work towards creating a conducive climate for sound and fair competition in business.

In addition this must promote and attract foreign investment towards South Africa. This is a course which corruption simply cannot advance.

The establishment of this Commission is yet another expression of our government's commitment towards accountability, transparency and the rule of law as values that underpin our constitutional democracy.

We look forward to the outcomes of the Commission, which will be considered in the context of our constitutional and legal framework.

Statement ends.

Enquiries:

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SCHEDULE
REGULATIONS

1. In these regulations, unless the context otherwise indicates -
 “Chairperson” means the Chairperson of the Commission;
 “Commission” means the Commission of Inquiry to conduct an inquiry into allegations of fraud, corruption, impropriety or irregularity in the Strategic Defence Procurement Package;
 “document” includes, whether in electronic form or otherwise, any book, pamphlet, record, list, circular, plan, poster, publication, drawing, photograph, picture, data, disc, harddrive or recording;
 “inquiry” means the inquiry conducted by the Commission;
 “member” means a member of the Commission;
 “officer” means a person in the full-time service of the State who has been appointed or designated to assist the Commission in the execution of its functions;
 “premises” includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft.

2. The Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of some of its functions, in a capacity other than that of a member. The Commission shall, where necessary, be assisted by officers of any Department of State seconded to its service, or persons in the service of any public or other body

who are by arrangement with the body concerned seconded to the service of the Commission.

3. Any officer or person designated thereto by the Chairperson may be present at any stage or aspect of the inquiry or the gathering of information or the hearing of evidence at the inquiry.
4. Any person appearing before the Commission may be assisted by an advocate or an attorney.
5. The Chairperson or an officer generally or specifically authorised thereto by the Chairperson may, if necessary, administer an oath to or accept an affirmation from any person appearing before the Commission.
6. (1) No person appearing before the Commission may refuse to answer any question on any grounds other than those contemplated in section 3(4) of the Commissions Act, 1947 (Act No. 8 of 1947).

(2) No evidence regarding questions and answers contemplated in sub-regulation (1), and no evidence regarding any fact or information that comes to light in consequence of any such questions or answers, shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned is charged with

an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947), or regulation 15.

7. Where, at the time of any person appearing during or at any aspect or stage of the inquiry, or presenting information to or giving evidence to or before the Commission, members of the general public are or have been excluded from attendance at any stage or aspect of the inquiry or at the proceedings of the Commission, the Chairperson may, on the request of such a person, direct that no person shall disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.
8. Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's inquiry may adversely affect any existing, instituted or pending legal proceedings or any inquiry instituted in terms of any law, evidence which is relevant to such legal proceedings or inquiry shall be dealt with by the Commission in such a manner as not to affect adversely such legal proceedings or inquiry.
9. (1) The Chairperson, any member or any officer may, with a warrant, for the purposes of the inquiry, at all reasonable times and without prior notice or with such notice as he or she may deem appropriate enter and inspect any premises and demand and seize any document or article which is on such premises.

- (2) Any entry upon or search of any premises or person thereon in terms of this regulation, shall be conducted with strict regard to decency and order including -
 - (i) a person's right to, respect for and the protection of his or her dignity;
 - (ii) the right of a person to freedom and security; and
 - (iii) the right of a person to his or her personal privacy.
- (3) Subject to sub-regulation (4), the premises referred to in sub-regulation (1) may be entered only by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises are situated.
- (4) A warrant referred to in sub-regulation (1) may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.
- (5) A warrant referred to in sub-regulation (1) may be issued only if it appears to the magistrate, regional magistrate or judge from information revealed under oath or affirmation, stating the need, in regard to the inquiry, for a search and seizure in terms of this regulation that there are

reasonable grounds to believe that any document or article referred to in sub-regulation (1) is on or at such premises or suspected to be on or at such premises.

10. Every person employed in the execution of the functions of the Commission shall help to preserve secrecy with regard to any matter or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the publication of such matter or information is necessary for the purposes of the report of the Commission, and every such person, except the Chairperson, any member or any officer, shall, before performing any duty in connection with the Commission, take and subscribe before the Chairperson an oath of fidelity or secrecy in the following form:

I, A.B., declare under oath/affirm and declare that, except in so far as it is necessary in the performance of my duties in connection with the functions of the Commission or by order of a competent court, I shall not communicate to any person any matter or information which comes to my knowledge in connection with the inquiry, or allow or permit any person to have access to any records of the Commission, including any notes, record or transcription of the proceedings of the said Commission in my possession or custody of the said Commission or any officer.

11. No person shall communicate to any other person any matter or information which may have come to his or her knowledge in connection with the inquiry, or allow or permit any other person to have access to any records of the Commission, except in so far as it is necessary in the performance of his or her duties in connection with the functions of the Commission or by order of a competent court.
12. No person shall without the written permission of the Chairperson -
 - (1) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
 - (2) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.
13. No person shall, except in so far as shall be necessary in the execution of the terms of reference of the Commission, publish or furnish any other person with the report or any interim report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission.

14. No person shall insult, disparage or belittle the Chairperson or any member of the Commission or prejudice the inquiry or proceedings or findings of the Commission.

15. Any person who -
 - (a) wilfully hinders, resists or obstructs the Chairperson, any member or any officer in the exercise of any power contemplated in regulation 9; or
 - (b) contravenes a provision of regulation 7, 11, 12 or 13; or
 - (c) contravenes a provision of regulation 14,shall be guilty of an offence and liable on conviction -
 - (i) in the case of an offence referred to in paragraph (a) or (b), to a fine, or to imprisonment for a period not exceeding six months; and
 - (ii) in the case of an offence referred to in paragraph (c), to a fine, or to imprisonment for a period not exceeding 12 months.

16. These regulations may be added to, varied or amended from time to time.