

The Chairperson

Sandown Crescent E105, Royal Ascot,

Arms Procurement Commission

Milnerton, Cape Town

Pretoria

August 19, 2013

For attention: **LW Seriti JA**

Dear Seriti JA

Re: Arms Procurement Commission/Terry Crawford-Browne

1. I herewith lodge my objection to the closure of today's afternoon session. The Minister of Justice assured the people of South Africa in October 2011 that the Commission would be an open and transparent process. More pertinently, the closure is in contempt of the Constitutional Court which in November 2011 gave its consent to the Commission's process and terms of reference, whereupon I agreed to withdraw my case CCT103/10.
2. The chief of the "Hawks," General Anwar Dramat confirmed in Parliament in September 2010 that the "Hawks" had inherited in 2009 from the Scorpions 460 boxes and 4.7 million computer pages of evidence in respect of the BAE contracts, plus also the files relating to the German Frigate and Submarine Consortia. Dramat told the Standing Committee on Public Accounts (Scopa) that there was so much evidence that it would take up to ten years to analyse it.
3. Dramat announced two weeks later that the "Hawks" had abandoned the arms deal investigation, whereupon I lodged my application CCT103/10 to the Constitutional Court that, given this huge volume of evidence, it was irrational and therefore unconstitutional for President Jacob Zuma to refuse to appoint a Commission of Inquiry into the arms deal.
4. The President's legal counsel was unable to refute these arguments plus other evidence that I submitted to the Constitutional Court. Consequently, President Zuma announced in September 2011 that he would appoint a Commission of Inquiry into the arms deal, and thus finally acceded to demands which Archbishop-Emeritus Ndungane, Patricia de Lille, Archbishop-Emeritus Tutu, former President FW de Klerk, Dr Mamphela Ramphele, the late Helen Suzman and I, plus many other South Africans, have been making since August 1999.
5. One of the first actions of my legal representatives was to write to the Commission to request that the documentation referred to in paragraph 2 should be secured. Being the documentation of the arms deal contractors and not of the Department of Defence, it is not classified material.
6. In recent days it has been reported that this documentation is, in fact, stored in two containers in the "Hawks" parking lot. It is also reported, notwithstanding the experiences at the Constitutional Court in 2011, that the Commission does not deem this evidence to be significant to its investigation.

7. I am concerned that objections by the Department of Defence to the Commission's use of reportedly classified documentation is a merely a ploy to further prolong and obfuscate the Commission's work. Indeed, there was no need to use classified documentation given the huge volume of unclassified documentation already held by the "Hawks," and inherited from the "Scorpions."
8. I made my written submission to the Commission in June 2012 now well over a year ago, and supported by a legal opinion by Advocate Geoff Budlender SC, that the arms deal acquisitions were unconstitutional and illegal in terms of section 217 (1) of the Constitutional, and also fraudulent.
9. I made a supplementary submission in December 2012 reminding the Commission that section 237 requires that "all constitutional obligations must be performed diligently and without delay."
10. The Commission has still, after fourteen months, been unable to rebut my contentions that the arms deal was unconstitutional and illegal right from inception.
11. Nor has the Commission contested Budlender's findings that the internationally accepted remedy for fraud is cancellation of the contracts, return of the equipment and recovery of the monies.
12. In addition, the "remedies in case of bribes" clauses in the arms deal supply contracts gives the South African government the right summarily to cancel the contracts and to claim compensation.
13. It is public knowledge that ThyssenKrupp, on behalf of the German Frigate Consortium, paid a plea bargain fine in Germany of Euros 46 million after German tax authorities rejected claims that bribes paid to secure the frigate contracts were "useful business expenditures" and thus tax deductible.
14. It is public knowledge that the new management of MAN Ferrostaal acknowledges that offsets were simply vehicles to pay bribes, and that the company's old management had no intention of complying with offset commitments.
15. It is public knowledge that the Department of Trade and Industry informed Parliament that the offset commitments did not materialise.
16. It is public knowledge that the new management of SAAB acknowledges that BAE misused its accounting system to launder bribes to secure the BAE/Saab Gripen fighter aircraft contracts, and that some of these bribes were paid to Fana Hlongwane.
17. It is public knowledge that the former National Director of Public Prosecutions in March 2010 refused to seize an estimated R200 million's worth of bribes paid by BAE to Hlongwane, which authorities in Liechtenstein had frozen pending seizure by South Africa. He gave the spurious excuse of insufficient evidence, whereupon Judge Willem van der

Merwe placed about 500 pages of documentation into the public register in the North Gauteng High Court.

18. It is public knowledge that authorities in the United States in 2010 and 2011 fined BAE a total of US\$479 million for “accounting irregularities” for numerous cases in several countries, including South Africa.
19. The South African Air Force as early as July 1997 rejected the BAE proposals as both too expensive and unsuited to South African requirements. The former Secretary for Defence resigned in 1998 rather than be held accountable for such blatant tendering irregularities as the late Minister of Defence’s “visionary approach” to exclude price from consideration.
20. Amongst the documentation that I submitted to the Constitutional Court is 160 pages of affidavits by the “Scorpions” and the British Serious Fraud Office which detail how and why BAE laundered bribes of £ 115 million to secure its BAE Hawk and BAE/Saab Gripen fighter aircraft contracts, to whom those bribes were paid, and which bank accounts were credited.
21. Instead of confining itself to the six terms of reference established by the President and the Minister of Justice, the Commission is reported by two former staff members to have pursued a “second agenda” to “silence the Terry Crawford-Brownes of this world.” In addition, Judge Francis Legodi has also resigned.
22. Given the evident inability of the Commission to deal with its terms of reference within the time allocated to it, I suggest that you immediately and without delay write to President Zuma recommending to him:
 - a) That the arms deal contracts were unconstitutional and illegal right from inception because the offsets failed the requirements of section 217 (1),
 - b) That it is public knowledge confirmed by the Minister of Defence and Veterans Affairs that the frigates and submarines are inoperable, and that almost half of the BAE/Saab Gripens have been placed in long-term storage because South Africa lacks the pilots to fly them, the mechanics to maintain them, and even the money to fuel them,
 - c) That in terms of 1.6 of the terms of reference, South Africa has the right to cancel the contracts and to recover the monies,
 - d) That the foreign loans incurred to finance the arms deal contracts were underwritten by the German government’s Hermes Export Credit Agency and by the British government’s Export Credit Guarantee Department. Thus repudiation by South Africa of these contracts and their loans because of bribery and fraud would mean that the financial consequences would fall to British and German taxpayers, and not to South Africans,
 - e) That in recovering the monies, the South African taxpayers would also recover the bribes since, obviously, these were built into the prices of the arms deal acquisitions,
 - f) That the arms deal contracting companies should be blacklisted both in South Africa and internationally in terms of the OECD Conventions Against Bribery Of Foreign Officials,

- g) That you withdraw the Commission's request for extension of its mandate and for additional public funding,
- h) That you advise the President to appoint retired judges to ascertain from former President Thabo Mbeki, former Minister Alec Erwin and Minister Trevor Manuel what pressures and threats were exerted upon them by European governments and arms companies, and also why they abused their powers of public office to block meaningful investigation of the corruption that followed.

23. It is estimated the arms deal debacle has cost about R70 billion. I respectfully suggest that these funds could be far more beneficially applied towards social upliftment in keeping with the commitments of the Constitution, including section 198 regarding the principles which govern national security.

Yours faithfully

Terry Crawford-Browne