

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

Case No:

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **APPLICANT**

and

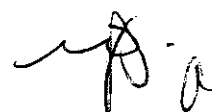
FANA HLONGWANE **RESPONDENT**

**For an ex parte order in terms of section 38(1) of the Prevention of
Organised Crime Act 121 of 1998**

FOUNDING AFFIDAVIT

I, the undersigned

WILLIAM JOHN DOWNER



do hereby make oath and say the following:

- 1 I am a Deputy Director of Public Prosecutions of the Republic of South Africa, and I have been duly appointed as such in terms of section 15 of the National Prosecuting Authority Act 32 of 1998 ("the NPA Act").
- 2 I have been duly authorised by the National Director of Public Prosecutions ("NDPP") to act in all proceedings brought pursuant to, arising from and in connection with the provisions of the Prevention of Organised Crime Act 121 of 1998 ("POCA") and to take all such steps as may be necessary to give effect thereto. I am accordingly authorised to bring this application and to depose to this affidavit.
- 3 The facts deposed to herein are derived mainly from the documentation at my disposal. These facts are, to the best of my knowledge and belief, both true and correct.

A. THE PARTIES

- 4 The applicant is the NDPP, appointed in terms of section 10 of the NPA Act read together with section 5(2)(a) of that Act and section 179(1)(a) of the Constitution of the Republic of South Africa Act, 1996 (the Constitution), with his principal place of administration at 123 Westlake Avenue, Weavind Park, Silverton, Pretoria.

- 5 The respondent is Fana Hlongwane, an adult male businessman residing at 111 Fourth Road, Hyde Park, Johannesburg. He is referred to as Hlongwane in this affidavit. By arrangement with the respondent's attorneys, Stockenström Fouché Inc, service of this application will be effected at their offices at 78 Tijger Vallei Office Park, Silverlakes, Pretoria.

B. THE APPLICATION

- 6 This is an urgent application for a preservation order under section 38(1) of POCA in respect of the funds in a bank account held in the name of the Gamari Trust, at Bank Pasche (Liechtenstein) S.A. Vaduz in account number 30.450767.7("the property").
- 7 The property currently is subject to a judicial freezing order handed down on 11 September 2009 by the Court of Justice of the Principality of Liechtenstein ("Liechtenstein"). The freezing order will expire on 14 March 2010 and unless the NPA obtains an order in South Africa preserving the property prior to that date, there will be no legal obstacle to the property being withdrawn and dissipated or clandestinely moved elsewhere. Moreover sufficient time (preferably ten business days) must be provided between the obtaining of a preservation order and the expiry date of 14 March 2010 so as to allow the Liechtenstein authorities to enforce the preservation order against the property. Accordingly, the NDPP seeks (on an urgent

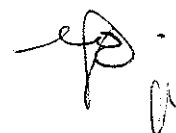


basis) a rule *nisi* operating as an interim preservation order, pending the determination of the application for a preservation order.

8 In addition, and contingent upon the interim preservation order being granted, the NDPP seeks the issue of a letter of request in terms of section 23(1) of the International Co-operation in Criminal Matters Act 75 of 1996 ("ICCMA") requesting the assistance of the Principality of Liechtenstein ("Liechtenstein"), to enforce the interim preservation order and the final preservation order, should it be granted.

9 The application has its genesis in an ongoing investigation, conducted initially by the Directorate of Special Operations ("DSO") in the National Prosecuting Authority ("NPA") and currently by the Directorate of Priority Crime Investigation in the South African Police Service ("SAPS"), into alleged irregularities and possible offences committed during the course of a strategic arms acquisition programme ("the Arms Deal") that was initiated by the South African government during the 1990s. The initiation and scope of the investigation is explained in more detail in section E of this affidavit. At this stage, the following is relevant.

9.1 Hlongwane is a suspect in the investigation. There are reasonable grounds to believe that he has committed the offences of corruption, fraud, money laundering and/or

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racketeering in the context of the Arms Deal. Moreover, there are reasonable grounds to believe that he derived financial reward in connection with the commission of the specified offences and that he was paid funds (directly and indirectly) to facilitate the commission of such offences.

9.2 During the course of the investigation, the authorities in Liechtenstein informed the NPA that, on the strength of information and evidence at their disposal, they had commenced an investigation into the suspected commission of the offence of money laundering in respect of the funds contained in the bank account described in paragraph 4 above. Requests for mutual legal assistance in the respective investigations were exchanged between Liechtenstein and South Africa.

9.3 Subsequently, the criminal investigation conducted by Liechtenstein was referred to South Africa together with the material documents in the criminal docket due to the fact that, in the opinion of the Liechtenstein authorities, the main suspect is resident in South Africa and the primary offence(s) appear to have been committed wholly or partly in South Africa. The documentation is discussed in the accompanying affidavit of Karla Susanne Saller. For present purposes, it is evident from

those documents that the property forming the subject of this application was restrained by Liechtenstein pursuant to its investigation and that Hlongwane is the beneficial owner of the property.

10 Although I was not a member of the DSO (prior to its disbandment), I was co-opted in my capacity as a prosecutor onto the team assigned the investigation. Consequently, I have acquired knowledge of the investigation and access to the documentary evidence referred to in this affidavit.

11 In this affidavit, I address the following issues:

11.1 First, I provide an outline of Armscor acquisition policy and process.

11.2 Second, I provide an overview of the Arms Deal. In doing so, I pay particular attention to certain aspects of the Deal that relate to the acquisition of fighter trainer and advanced fighter aircraft.

11.3 Next, I provide a brief overview of the review conducted by the Auditor-General and the investigation conducted by a joint investigation team (known as "JIT"), comprising members of the DSO, the Auditor-General's office and the

Public Protector. I also refer to the findings of the report published by the JIT in November 2001 ("the JIT report").

11.4 Thereafter, I refer briefly to the mutual legal assistance between Liechtenstein and South Africa and the referral of Liechtenstein's criminal investigation to South Africa.

11.5 I then outline the correspondence exchanged between the NPA and the attorneys representing both Hlongwane and entities associated with Hlongwane.

11.6 Finally, I summarise the reasons why there are reasonable grounds for believing that the property is the proceeds and/or the instrumentalities of corruption, fraud and money-laundering related offences.

12 I rely on many documents, which are referred to where applicable. So as not to overburden the papers, I have not attached the documentation but it will be made available at the hearing of this matter.

C. ARMSCOR ACQUISITION POLICY AND PROCESS

Introduction

13 A key allegation made in relation to the Arms Deal is that there was deviation from established policies and processes for the acquisition

of armaments and that this deviation affected the selection process for the preferred bidder in respect of certain categories of armaments.

- 14 In light of this, I consider it helpful to highlight the acquisition policies and processes that were applicable at the time of the Arms Deal, before providing a factual overview of the Deal itself. In doing so, I rely in part on documentary evidence and in part on oral evidence provided by two past employees of the Armaments Corporation of South Africa Limited ("Armcor"), namely Mr David Griesel ("Griesel") and Mr Heinrich de Waal Esterhuyse ("Esterhuyse"), and the former Secretary for Defence General Pierre Steyn ("Steyn").

14.1 Griesel gave evidence on 13 June 2001 at the public phase of an investigation into the Arms Deal, conducted by the JIT. I refer to his evidence as the "Griesel 2001 interview" in this affidavit.

14.2 In addition, Griesel gave evidence on 23 November 2004 as a state witness in the matter of S v Schabir Shaik and others (DCLD case number CC27/04). I refer to his evidence as the "Griesel 2004 interview" in this affidavit.

14.3 Griesel joined Armcor in 1979 and worked as the manager of various acquisition programmes before becoming the Senior Manager of the Telecommunications Division, the position he

held in 1998 during his involvement in the Arms Deal. At the time of his 2004 interview, Griesel was the Assistant General Manager of Acquisitions at Armscor. (Griesel 2004 interview: p 2813) He has had considerable involvement with acquisition policy in Armscor. He led the work group that formulated the armaments acquisition policy for Armscor and co-authored a version of the acquisition policy that was current in 2004, titled "Department of Defence and Armscor Acquisition Policy". (Griesel 2004 interview: p 2814) Moreover, he has in-depth knowledge of the acquisition process followed in the Arms Deal, having served as the co-secretary of the Strategic Offers Committee ("SOFCOM") during the relevant period. The role of SOFCOM is outlined in paragraph 100 below.

14.4 Esterhuyse gave evidence on 8 August 2001 as part of an inquiry conducted in terms of section 28 of the NPA Act. I refer to his evidence as "Esterhuyse interview" in this affidavit. Esterhuyse joined Armscor in 1971 and was mainly involved in project management until the date of his departure in December 1998. He has in-depth knowledge of the acquisition process generally and as applied during the Arms Deal. At the time of the deal, he held the position of General Manager for the Acquisition of Aeronautics and Maritime Projects at Armscor. (Esterhuyse interview: p 1961)

14.5 Steyn gave evidence on 14 August 2001 also as part of the section 28 inquiry in which Esterhuyse participated. I refer to his evidence as "Steyn interview" in this affidavit. Steyn was employed in the Department of Defence between April 1995 and November 1998 and, at the time of the Arms Deal, held the position of Secretary for Defence.

The MODAC report

- 15 On 5 August 1994 the then Minister of Defence Mr J Modise ("Modise") issued an instruction that the acquisition function in the Department of Defence be investigated. A steering committee was established under Modise's chairmanship and a departmental project team was appointed. (*"The MODAC Investigation of Technology and Armament Acquisition in the Department of Defense"* report ("MODAC report"): p 4)
- 16 The steering committee included Modise, Mr R Kasrils (the then Deputy Minister of Defence) ("Kasrils"), Gen. G Meiring (the then Chief of the SANDF) ("Meiring"), and Steyn. (MODAC report: p 4-5)
- 17 The project team comprised members of the South African National Defence Force ("SANDF"), the Defence Secretariat, the Ministry of Defence and Armscor; and included Esterhuyse, Mr Shamin ("Chippy") Shaik, Chief of Acquisitions at the Department of Defence

("Shaik"), as well as Hlongwane from the Ministry of Defence, who was at that time the legal adviser to Minister Modise.

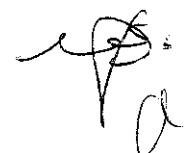
18 The workgroup became known as the MODAC (Ministry of Defence Acquisition) workgroup. It was mandated to investigate and make proposals with respect to the management, execution and structure of the acquisition function in the Department of Defence.

19 The workgroup produced three reports that were presented to the steering committee and approved by it as departmental policies. The composite MODAC report was signed by Modise on 8 August 1996. In the foreword to the report, he stated the following:

"The White Paper (on Defence) states that management expertise for the specialised procurement function be located within the Department of Defence (DOD)." (MODAC report: p 2)

20 The MODAC 1 report is entitled "Technology and Armament Acquisition Management in the Department of Defence". It contains the following description of the roles of the four main role players in the acquisition of armaments:

20.1 The Minister of Defence is "[t]he ultimate political authority and responsibility for the acquisition function rests with the Minister";

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20.2 The SANDF *"is responsible for the determination of armaments requirements..."* and, during the execution of armament acquisition programmes is furthermore responsible for *"overall project management and to ensure that stated requirements are satisfied through the acquisition of optimised user systems and for final acceptance of these systems against the stated needs";*

20.3 The Secretary for Defence is responsible for ensuring *"that all acquisition activities are executed within national objectives, policies and constraints"*, and is *"primarily responsible for high level programming and budgeting and in year control and auditing of Defence expenditure"*. The Secretary for Defence was, and still is, the accounting officer of the Department of Defence.

20.4 Armscor is responsible for *"professional program management and contracting of industry during the execution of armament acquisition programmes"* and, during the execution of such programmes, *"ensures that technical, financial and legal integrity are in accordance with MOD requirements"*.

(MODAC 1 report: p 7)

- 21 As noted above, Armscor is responsible for professional program management and contracting of industry during the execution of armament acquisition programmes. Griesel describes acquisition

programmes as a joint initiative between Armscor and the Department of Defence. It begins with defining the requirements of the Defence Force and ends with contracting for the procurement of those requirements or the development of equipment that will meet those requirements. (Griesel 2004 interview: p 2813)

Decision-making structures

22 The MODAC 1 report also describes the various levels of approval and decision-making in respect of armaments acquisition.

22.1 The highest level of approval for acquisition is the Armaments Acquisition Council ("AAC"), chaired by the Minister of Defence, and also referred to as the Council on Defence. The terms of reference for the AAC include the approval of acquisition policy, the approval of armament acquisition budgets and the approval of cardinal projects. (MODAC 1 report: p 25; para 7.3.4)

22.2 The second level of approval for acquisition is the Armament Acquisition Steering Board ("AASB") under the Chairmanship of the Secretary for Defence. The AASB approves non-cardinal projects and screens cardinal projects. (MODAC 1 report: p 25; para 7.3.5)

22.3 The third level of control below the AASB is the Armament Acquisition Control Board ("AACB") chaired by the Chief of

Staff, Logistics. The AACB mainly screens all projects in terms of requirements. (MODAC 1 report: p 25; para 7.3.6)

22.4 All of these bodies are supported by an Executive Committee that is responsible for the maintenance of integrity. (MODAC 1 report: p 25; para 7.3.7)

22.5 The other role player is the Armscor Board which is the tender board. (Griesel 2004 interview: p 2816)

Acquisition policy: the determination of best value

23 At the time of the Arms Deal, Armscor had in place an acquisition policy that was followed for all acquisition processes. The purpose and importance of the policy was to ensure that the acquisition process is fair, transparent and accountable in every respect. It served to ensure that Armscor acquires best value for money for the user (Department of Defence). (Griesel 2004 interview: p 2815).

24 The process of selecting "best-value-for-money" is described in the Armscor procedural document 097 (which is supported by a handbook). Best value is defined as the performance or utility being acquired over cost. According to Esterhuyse *"you generate a value system and...you divide that value you obtained by cost. And that gives you best-value-for-money."* He emphasises that cost is an

independent variable not an element in the value system.
(Esterhuyse interview: p 1970).

25 Griesel expands on what is meant by a "*value system*". It is a document containing criteria that are used to evaluate a product. The value system indicates the values or the weights that are to be accorded to each of the criteria and the method for calculating the value of money. A potential bidder would be told which criteria are used to evaluate a particular product but would not be advised of the value or weighting attached to each criteria. (Griesel 2001 interview: p 251) By way of example, the technical elements of a fighter trainer aircraft would include training aircraft functionality; whereas this element would not appear in the value system for evaluating a submarine. (Griesel 2001 interview: p 247).

26 To summarise these explanations, the value system for specific defence equipment is used to generate a performance-related score. That score is divided by the cost of the product and the outcome is known as the best value for money score. From a mathematical point of view, the formula would be as follows:

$$\text{best value} = \frac{\text{performance value (derived from a value system)}}{\text{cost}}$$

27 The proposed value systems for specific equipment are approved by the Armscor Board. (Esterhuyse interview: p 1969)

28 All tenders are evaluated against the value systems. (Griesel 2004 interview: p 2890) The need to finalise and approve a value system prior to commencement of tender evaluations is emphasised repeatedly.

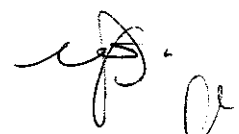
28.1 At the time when potential bidders are invited to submit proposals, the value system for those products would have been lodged with the procurement secretariat. (Griesel 2001 interview: p 251)

28.2 "[The] *value system against which the evaluations were done, had to be completed and finalised and approved prior to the commencement of the evaluation.*" The reason for this "is to ensure that no manipulation of the value system can happen after the project team had seen the offers." (Griesel 2004 interview: p 2877)

Determining user requirements

29 Value systems are drawn up with reference to the user requirements. (Griesel 2001 interview: p 248) I point out that the user is the Department of Defence in most cases. The process for determining user requirements has specific stages:

29.1 The first stage is to identify operational requirements in consultation with the Department of Defence. These

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requirements are captured in a document referred to as the staff target. It is a general expression of operational need.

29.2 Thereafter, a feasibility study is conducted in order to generate specifications in operation and technical terms that will satisfy the operational need. The results of the study are contained in a document referred to as the staff requirement. This is more detailed than the staff target and takes into account the financial and physical consequences of acquiring a particular armaments system.

29.3 The next step is a project study conducted by a team composed of air force, defence department and Armscor personnel. The purpose is to generate various options of acquiring the system intended. The final project report is called the acquisition plan.

29.4 Each of the documents generated in the process is considered and approved at each level, by the AACB, AASB and finally the AAC.

29.5 At each point in the process, the financial implications and budget requirements are refined. If this is not done, the affordability of the equipment cannot be considered.

(Steyn interview: p 2009-2011) (My underlining)

Competitive tendering process

- 30 Once the user requirements are determined, a request for information ("RFI") may be sent to suppliers of equipment types. An RFI requests information regarding the type of equipment that suppliers can provide that may meet the user requirements. The response is not a binding offer but merely provides sufficient information to decide whether the specified equipment types will meet the user requirements. (Griesel 2004 interview: p 2822 and 2861)
- 31 The information provided in response to RFIs is evaluated against a value system to draw up a short list of the equipment types that could potentially meet the user requirements. (Griesel 2004 interview: p 2826-2827 and 2861)
- 32 Historically, the RFI process was not used much. This is because, while the armaments embargo was in place during apartheid, Armscor only had access to products within the local industry and knew what products were available or could be developed. Once the embargo was lifted, international markets were opened up and Armscor could source products from foreign companies. As there was not the same familiarity with those products and suppliers, the RFI process was put in place. (Griesel 2004 interview: p 2890)

- 33 Since RFIs were not required generally as a means of information gathering during the embargo, I assume that the short list would have been drawn up on the basis of existing knowledge about available products in the South African market. This assumption is implicit in Griesel's evidence although he does not state it as a fact.
- 34 The purpose of the short list is to indicate the list of equipment that would be acceptable to the Department of Defence because it meets its requirements. The short list is presented to the AASB and, in respect of cardinal projects, to the AAC and forms part of the project documentation. These bodies are not required to ratify the list but merely to accept it as a list of products that the Department could live with, should any one of them be accepted pursuant to the normal tendering process that follows the short listing. (Griesel 2004 interview: p 2861-2862)
- 35 The next step after short listing is a request for offers ("RFO") from short listed suppliers. (Griesel 2004 interview: p 2862) An RFO is a solicitation for the best and final offer for each of the specific equipment types. The offer constitutes a binding offer from the supplier and a basis on which to contract. (Griesel 2004 interview: p 2827)

- 36 Upon receipt, offers are evaluated by project teams against the technical value system and the costs of the offers are also evaluated. (Griesel 2004 interview: p 2862)
- 37 After the evaluation has been done, a submission is made to the Armscor tender board and it authorises the recommended supplier or, if necessary, authorises the entry into negotiations with a preferred supplier in a multi-source tendering process. (Griesel 2004 interview: p 2863)
- 38 From the point of receipt of offers, the information provided and the outcome of the negotiations would determine which equipment would be acquired by the Defence Force, based on which of them provided best value for money. Potentially any of the short listed equipment could meet those requirements. (Griesel 2004 interview: p 2837) (My underlining)

D. OVERVIEW OF ARMS DEAL

- 39 What follows is a broad overview of certain key events in the Arms Deal, with specific emphasis on aspects relevant to the fighter trainer and advanced fighter aircraft. Whilst it is not intended to be an exhaustive summary of all relevant facts, I have endeavoured to present the facts as objectively as possible based on the information at my disposal.

Origin of strategic defence packages

- 40 The Arms Deal relates to the acquisition of what are termed 'the strategic defence packages or projects'. It flowed from the process of defining the requirements of the Defence Force, which was marked by two important events. First, Parliament adopted a White Paper on Defence in May 1996 and second, Parliament approved the South African Defence Review in April 1998. I refer briefly to aspects of both highlighted by Griesel and Steyn in their oral evidence.
- 41 The White Paper on Defence was a very broad document describing the missions of the Defence Force and, flowing from that, the Defence Review focused on the capabilities required by the Defence Force in order to accomplish those missions. Specifically, the Defence Review identified seven capabilities and the equipment types that would be required to execute those capabilities. Many of the equipment types identified were already in use by the Defence Force but, in many cases, they were obsolete or almost obsolete. (Griesel 2004 interview: p 2817-2818)
- 42 Each of the equipment types was categorised either as one that could be sourced locally or one that would need to be acquired from foreign suppliers. The following equipment fell in the latter category:
- 42.1 corvettes;

42.2 maritime helicopters;

42.3 light utility helicopters;

42.4 submarines;

42.5 advanced light fighter aircraft ("ALFA");

42.6 lead in fighter trainer aircraft ("LIFT");

42.7 battle tanks.

(Griesel 2001 interview: p 199)

43 These seven equipment types or projects became known as the strategic defence packages. (Griesel 2001 interview: p 197). The process of acquiring these equipment types is now termed the Arms Deal.

44 For present purposes, the two projects of relevance are the lead in fighter trainer aircraft or LIFT and the advanced light fighter aircraft or ALFA.

45 In relation to "Tender Adjudication Value Analysis", the Defence Review stated the following:

"All tender adjudication for armaments will be based on a value analysis methodology and procedure. This value analysis methodology and procedure will be formulated jointly by the

members of the DOD, DOD Acquisition Division, including ARMSCOR and organised industry. The value analysis system for the project must be approved and supported by the Secretary of Defence. The value analysis system should not be used to exclude previously disadvantaged contractors and should not limit national strategic considerations which can override technical performance parameters. This value analysis system must be above reproach and should not be a subjective analysis."

(Steyn interview: p 2047)

3-tier system: Projects Ukhozi and Kambro

- 46 Before describing the acquisition process, it is helpful to provide some background information on the aircraft training philosophy in the South African Air Force ("the SAAF") so as to contextualise the LIFT and ALFA projects.
- 47 During the early 1990s the SAAF had a 3-tier fighter training philosophy: the three tiers comprised the Pilatus PC7 Mk II Astra trainer ("the Astra") (first tier); the Impala Mk I and Mk II fighter trainers (second tier); and the Cheetah C and D fighters and the Mirage F1AZ (all third tier). (JIT report: para 4.1.1)
- 48 In a 3-tier system an aspiring fighter pilot starts his career on a basic aircraft. He then spends a number of formative years in a lead-in

fighter before finally transferring to the top of the line fighter in the third tier of the system. In a 2-tier system, the young pilot accomplishes his flying proficiency on the basic training aircraft and then continues his career on the second level. The aircraft chosen for the second level must therefore be one that can perform a number of roles – it serves to grow the young pilot to maturity and having done that, it must also be suitable for use in combat. Many developing countries have come to realise that a 3-tier system is prohibitively expensive and have adopted a 2-tier system. (Steyn interview: p 2005)

49 The SAAF strategy in the early nineties for the long-term replacement of its air combat capability made provision for an advanced fighter trainer ("the AFT") to be acquired in the short term and a medium fighter to be acquired in the future (in other words, a 3-tier system). The SAAF fighter programme comprised two sub-programmes, namely Project Ukhozi and Project Kambro. (JIT report: para 4.1.2)

50 Project Ukhozi was established to satisfy the AFT requirement – it focused on the replacement of Impala. The constitution of the Ukhozi Control Council was approved on 3 November 1995. (JIT report: para 4.1.3) It appears from minutes of meetings of the Ukhozi Control Council that it comprised predominantly senior members of

the SAAF and Armscor, including Esterhuysen (who was the chairperson). It also included a representative from the Ministry of Defence and Shaik in his capacity as Chief of Acquisitions.

- 51 Project Kambro was established to satisfy the future medium fighter requirement. It focused on the replacement of the Cheetah and Mirage aircraft. (JIT report: para 4.1.4)
- 52 A request for information or RFI for the AFT was forwarded to 30 suppliers and 23 aircraft proposals and service proposals were received in response from, amongst others, British Aerospace ("BAE") (in respect of the Hawk 100) and SAAB (in respect of the JAS 39 Gripen). (JIT report: paras 4.1.6-4.1.7)
- 53 The responses were evaluated in accordance with an AFT value system. Values were allocated to technical aspects (such as airframe performance and avionic systems) as well as cost (including acquisition cost and operating supporting cost). The evaluation results ranked the SAAB JAS 39 Gripen first out of seventeen and the BAE Hawk 100 fifteenth out of seventeen. (JIT report para 4.1.8)
The proposed value system results were presented to the Ukhozi Control Council on 13 May 1996, and additional criteria for the first level contender short list selection were approved. Each contender on the short list of seventeen was evaluated against the criteria and any contender that did not comply with any one of these criteria was

recommended for elimination from the short list. The submission by the AASB in respect of contender elimination was approved by the AAC on 31 July 1996. The result of the evaluation left nine contenders. These included the SAAB JAS 39 Gripen and the BAE Hawk 100. The nine suppliers were all visited during September and October 1996. (JIT report: para 4.1.9-4.1.10)

- 54 After visits to the suppliers had been conducted, an interim project study report, dated February 1997, was compiled. The objective of the report was to recommend a short list of aircraft types that could satisfy the requirement for the AFT and to obtain approval to issue requests for proposals (another term for RFO) to the suppliers of these aircraft. The nine contenders were evaluated against a value system and, as a result of this process, the Hawk 100 was eliminated from the shortlist for the following reason: *'High cost. Does not satisfy SAAF operational requirement'*. The JAS 39 Gripen was removed as being *"Unaffordable"*. (JIT report: paras 4.1.11-4.1.12)
- 55 As appears from paragraph 62 below, the AASB resolved in March 1997 to defer project Ukhozi for twelve months.

Strategic defence package offered by British government (DESO)

- 56 At or around the beginning of 1997, (as part of a parallel process) Minister Modise invited several representatives of Armscor, including Esterhuysen, to an informal meeting with representatives of the

Defence Export Service Organisation ("DESO"). (DESO is a United Kingdom government department within the Ministry of Defence which promotes arms exports by arms companies based in Britain.) There are no minutes of the meeting. (Esterhuysen interview: p 1962)

- 57 At the meeting DESO presented a scheme for re-equipping the SANDF under a memorandum of understanding with the South African Government, in exchange for a very complex financial model that was based on the South African gold reserves. Esterhuysen observed at the meeting that it appeared that DESO had been in prior discussions with certain South African government officials, including Modise. (Esterhuysen interview: p 1962)
- 58 The first formal meeting with DESO was held on 14 February 1997. The UK delegation was informed that a management committee consisting of Lieutenant-Genl Du Preez, Mr De Jager and Esterhuysen had been established within the Department of Defence and that a co-ordinating committee, including Shaik, was established to support it. (Minutes: paragraph 7; Esterhuysen interview: p 1963)
- 59 According to Griesel, the management committee was initially an informal body set up to co-ordinate the activities of the project teams as the different projects (in the strategic defence packages) were running concurrently and there was a need to ensure that the teams followed the same procedures and used the same norms for

evaluation. Subsequently, the committee was formalised and became known as SOFCOM. (Griesel 2004 interview: p 2823-2824)

60 During the February 1997 meeting, the UK delegation was also informed about the actions of DESO and British companies in relation to South African politicians and parliamentarians. The minutes of the meeting record that "Concern about spurious external involvement in the Strategic Defence Package, eg. lobbying of ministers/parliamentarians was expressed". (Minutes: para 9) According to Esterhuyse, the companies implicated were BAE, V-Cell and Vicars Defence System. (Esterhuyse interview: p 1964)

61 At the meeting, Esterhuyse tabled the specifications of the value system – the broad term value system used in the SANDF for assessment of projects. He emphasised the principle of tendering and competitive bids. Esterhuyse observed as follows: "*This was probably not what the British expected. It was my impression, my personal impression that they were under the understanding [sic] that they could structure a deal where they are the exclusive suppliers to the South African Defence Force*". (Esterhuyse interview: p 1965)

62 On 17 March 1997 the Ukhozi Control Council resolved to recommend to the AASB that project Ukhozi be delayed by 12 months. This was *inter alia* because there were insufficient funds on the approved Force Design Steering Committee plan to initiate

Project Ukhozi before the year 2000; and the British strategic defence package offer could affect the course of the project. On 20 March 1997, the AASB approved the recommendation (JIT report: para 4.1.17)

- 63 On 26 March 1997, a second DESO strategic defence package meeting took place. The minutes reflect discussion in relation to "package content" and the following is recorded: *"DESO indicated the need to include an aircraft proposal to continue with the package; however DESO will have to take stock of the situation regarding BAE involvement, for which discussion with the SAAF may be required"*. (Minutes: para 4.1.a)

- 64 In his interview, Esterhuyse explained that at the meeting DESO was asked whether the package would still be "valid" if the aircraft component were to be excluded, to which the UK team responded that it would not. In relation to this Esterhuyse said the following: *"What we sensed and I sensed in broad terms, [was] that we were being pushed into an arms procurement for which the Department of Defence was not fully prepared at that stage."* As regards levels of preparation, Esterhuyse explained during his interview that it would take a year to prepare a baseline requirement for the AFT and that many of "the staff documents" being prepared by the SAAF, South African Navy and South African Army were not ready for major

systems procurement. The March meeting concluded the phase involving DESO and it was then decided, although Esterhuyse cannot recall at which forum, that a strategic package procurement process would be entered into. (Esterhuyse interview: p 1966-1967) Implicit in this is that it would be a process of competitive tendering.

- 65 It appears from the JIT report that the DESO strategic defence package proposal had been intended to involve the replacement of the Impala (second tier) with the Hawk 100 or a combination of the Hawk 100 and the JAS 39 Gripen through BAE. (JIT report: para 4.1.13) After careful scrutiny of the proposal, the chairperson of the Ukhozi Control Council indicated in July 1997, *"that it was evident that this advanced training system could be acquired far more cost-effectively outside the British Package Proposal of the Hawk 100. However, the SAAF would include this requirement in the RSA/UK SDP only in the event of it being politically obliged to accept the training system on offer. The operational shortcomings of the training system on offer could be overcome at an affordable cost in terms of acquisition as well as life-cycle support. According to the chairperson, the aircraft systems on offer in the British proposal did not comply with the defined operational and logistical requirements of either the fighter or fighter trainer replacement programmes."* (JIT report: para 4.1.14) (My underlining)

66 It appears from the JIT report that neither the Hawk nor Gripen systems, as offered by BAE and SAAB in their formal response to the Project Ukhozi acquisition, satisfied the full requirement specifications. In terms of quoted acquisition and life cycle support costs, both aircraft systems were by far the most expensive options in their respective classes. In order to satisfy the requirement for these two systems, the SAAF would have preferred not to participate in the stated fighter component of the DESO strategic defence package as there were aircraft systems that were operationally far more acceptable and available at substantially lower acquisition and operating costs. Such systems formed part of package proposals received from other countries. (JIT report: para 4.1.14)

67 In July 1997 the President was advised by the Department of Defence and the SANDF of the reasons why the DESO strategic defence package proposal was not acceptable. (JIT report: para 4.1.15)

Change from 3-tier to 2-tier

68 On 7 July 1997 the SAAF Command Council decided that project Ukhozi had to redefine its staff requirement to that of an ALFA concept that would meet the requirements of both project Ukhozi and project Kambro. This was because the projects were too costly – the budgetary implications for projects Ukhozi and Kambro were R5.2

billion and R8 billion respectively. This effectively meant a change from a 3-tier to a 2-tier fighter strategy. The 2-tier fighter strategy would include the Astra that would be used for basic fighter orientation training. This would be followed by jet conversion, operational conversion and operations on the ALFA. The ALFA would therefore take over the operational roles of the Impala, Mirage and Cheetah as the only front line fighter with precision air defence and ground attack capabilities. (JIT report: para 4.2.1)

- 69 On 5 August 1997, the Ukhozi Control Council agreed that the SANDF Command Council should be informed of the new 2-tier strategy and that the user requirement statement should be changed accordingly. (JIT report: para 4.2.2)

Issue of RFIs and RFOs

- 70 On 1 August 1997, the management committee (set up in or about March 1997) met in relation to the strategic defence package procurement process. The meeting was attended by, among others, Esterhuyse and Captain DC Dewey ("Dewey"). According to the minutes, it was agreed that individual project teams would prepare a matrix to be used for the analysis of proposals against the following criteria: military compliance (*"an assessment of the level of compliance of the offer to all the relevant project considerations"*); acquisition cost/affordability (an assessment of the budgetary cost of

the offer, including cash flow considerations), industrial participation (an assessment of the commitment and undertaking for industrial participation "*as per the policies and procedures*"), strategic importance ("*an assessment of the strategic importance of being aligned with a particular country/supplier*") and economic advantages/benefits ("*an assessment of the economic advantages of each aspect/offer*"). (Minutes: para 3.1)

- 71 On 23 September 1997, requests for information or RFIs were sent to the embassies of nine countries. (Griesel 2004 interview: p 2833-2834) In respect of the aircraft the RFIs were based on a 2-tier system. Accordingly, they included only the ALFA project, not the LIFT. (Griesel 2001 interview: p 200-201)
- 72 Although RFIs are typically sent to suppliers, in this case, they were sent to countries, requesting them to solicit information from industries within their countries to supply the equipment types falling within the strategic defence packages. (Griesel 2004 interview: p 2822) The intention behind sending the RFIs to countries was that the supply should be provided in terms of government to government agreements. Thus, it was left open to each country to decide which products from relevant industries they would like to offer. (Griesel 2004 interview: p 2834)

73 The RFI included a request for information on cost but that would have been a rough figure and not a basis for concluding a contract. (Griesel 2004 interview: p 2835-2836)

74 On 7 October 1997, the revised user requirement statement for the ALFA (within the 2-tier system) was presented at a meeting of the Ukhozi Control Council. According to the JIT report, the minutes of the meeting record the following: *"the URS [user requirement statement] is in its final stages of completion, and that it should be finalised by the end of October 1997. In parallel to the update of the URS to reflect the new requirement, the Staff Target as well as the Staff Requirement are also updated and should be finished together with the URS"*. (JIT report: para 4.2.3)

75 On 31 October 1997 the AAC met. The following things, amongst others, appear from the minutes :

75.1 The fifth item for discussion was a new matter – *'International offers: Contender Evaluation'*.

75.2 Mr R Haywood, the Executive Chairman of Armscor ("Haywood") introduced the item by saying that there were three aspects which were important to ensure best value for South Africa – *'military value (what the Arm (sic) of Service wanted)'*, *'offsets (industrial participation)'* and *'overall financial*

considerations'. (Minutes: para 5.5.2) The arms of service is a reference to the army, air force and navy collectively.

75.3 Dewey described the value system and explained the various components. The value system was depicted in appendix C to the minutes, and comprised a formula (*'best value' equals 'military value' plus 'industrial participation' divided by 'financing considerations'*). (Minutes: para 5.5.3; appendix: p 1)

75.4 Annexure C contained the following further information in relation to the respective components: *"Military value"* comprised of three parts, namely *"Military Operational Functionality"*, *"Sustainability Strategic Industrial"*, and *"Total Life Cycle Costs"* and would *"be evaluated by the Technical Project teams in accordance with the approved evaluation criteria as applicable per project element"* (the three component parts *"must feature in the value systems per project element"*). (Appendix to minutes: p 2)

75.5 *"Industrial Participation"* would *"be evaluated by a combined Department of Trade and Industries and Armscor Industrial Participation team"*. (Appendix to minutes: p 2)

75.6 *"Financing Consideration"* would *"be determined and evaluated by a combined CSF, Armscor and Department of Finance team"*. (Appendix to minutes: p 2)

75.7 After a lengthy discussion about the value system, Steyn said that *"the [value] system was only a decision support mechanism. The politicians have the final say when selecting the best offer."* (Minutes: para 5.5.15)

76 As explained in paragraph 24 above, the evaluation of offers in the normal acquisition process was directed at identifying the best-value-for-money product. Offers were evaluated against a technical value system and the result was then divided by cost.

77 In the context of the Arms Deal, the process of arriving at best-value-for-money was modified in light of the fact that the projects would be procured mainly from overseas sources and this would damage the South African defence industry which was traditionally the supplier and developer of such equipment. Consequently, Esterhuyse generated a model that included the element of industrial participation to compensate for the loss of work and income:

best value =
$$\frac{\text{(military value + industrial participation)}}{\text{financial considerations}}$$

(Esterhuyse interview: p 1970)

78 Esterhuyse explains the model in his interview.

78.1 The financial considerations part of the model represented the net present cost of the project discounted by 13.5% to build in the time value of money. Esterhuyse indicated that "This is a very crucial parameter because this factor can swing decisions between one supplier or the other." (My underlining)

78.2 The military value divided by the financial considerations figure resulted in a military value index. Similarly, the industrial participation value divided by the financial considerations figure resulted in an industrial participation index.

78.3 Esterhuyse also recommended to the Armscor Board that military value and industrial value be given equal weight with the result that industrial considerations could swing the outcome whereas traditionally the military value had dominated the outcome.

78.4 Finally, other minor financial considerations had to be factored in, such as risk represented by financial institutions. These considerations were factored in through a separate "*financial index*" by which the outcome of the rest of the formula was to be multiplied. This resulted in the following formula:

$$\text{best value} = (\text{MV index} + \text{IP index}) \times \text{FIN index}$$

78.5 According to Esterhuyse, the Armscor Board approved this formula for determining best value.

(Esterhuyse interview: p 1971-1973; p 1976)

- 79 Returning to the sequence of events, the cut-off date for receipt of RFIs was 31 October 1997. Of the nine countries to which RFIs were addressed, eight responded and unsolicited information was received from an additional three countries, bringing the total response to eleven. (Griesel 2004 interview: p 2833-2835)
- 80 The ALFA project team presented the RFI evaluation results to a SAAF Command Council meeting held on 17 November 1997. According to the JIT report, the project team had identified the need for another type of aircraft as an interim trainer, between the Astra and the ALFA. The minutes of the SAAF meeting indicate that a workshop was held (prior to the meeting of 17 November) to address this need. Workshop documentation attached to the minutes indicates that a 2-tier system was not acceptable to the Minister of Defence. The SAAF Command Council concluded that a 3-tier system incorporating both an ALFA and a LIFT was essential to satisfy the requirements of the SAAF in relation to fighter training and fighter consolidation in a cost-effective manner. This marked a turning point in the SAAF strategy. (JIT report: para 4.3.1.3-4.3.1.4)

- 81 The RFI process was followed in November 1997 by short list selection. Information received pursuant to the RFIs was evaluated by the project teams against the value system to draw up a short list of the equipment types that could potentially meet the requirements of the Defence Force. (Griesel 2004 interview: p 2826-2827; Griesel 2001 interview: p 202)
- 82 In respect of the ALFA, the approved short list of 3 contenders included the JAS 39 Gripen with the supplier reflected as BAE/SAAB. Motivation for selection was as follows: "*Capable modern fighter with low development risk but high cost.*" (JIT report: para 4.3.1.6)
- 83 The short list was referred to the AASB and the AAC by Shaik on behalf of the management committee (later SOFCOM) and it was approved by both structures. (Griesel 2004 interview: p 2827 and 2838)
- 84 On 19 January 1998, the Ukhozi Control Council held a meeting. It appears from the minutes that the user requirement statement reflecting the SAAF's requirement for an ALFA had been completed and signed. (Minutes: para 5.1) It was decided that the reviewed Project Ukhozi staff requirement and staff target would be circulated for review and approval. (Minutes: para 7.2)

85 An AAC meeting was held on 9 February 1998. Attendees included Ministers Modise and Kasrils, Steyn, Haywood and Meiring. The following appears from the minutes of the meeting:

85.1 Steyn raised his concerns regarding funding of the acquisition in light of the budgetary constraints of the Department of Defence. (Minutes: para 5.4.10)

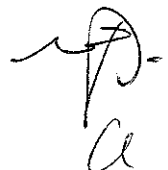
85.2 Minister Modise sought to allay his concerns, saying that funding of the package will come from outside the Defence budget and that Government will find the funds. The Minister said the following:

... "we must not be in a hurry and it is wrong for us to let people know that we cannot pay for the packages. Government has a strategy – it is more of a business strategy – and that is why there is so much emphasis on a business plan. If the business plan is not attractive, there will be no funding." (Minutes: para 5.4.16-5.4.17)

85.3 Hlongwane joined the meeting after the discussion about funding had taken place. (Minutes: para 5.3.1)

86 In his interview, Steyn elaborates on his concerns regarding the budget for the strategic defence packages:

"if you follow the trend of budgetary allocations to the Department of Defence, there was a downward trend for the last three years at least for that time under consideration. I was also in contact with my counterpart, the Director-General of Finance and was brought under the impression that it was not in their vision to readjust the appropriations to the Department of Defence so substantially that it could finance the acquisition of a package of this scope and content. So I was concerned with this conflict of fact, where on the one hand we are vigorously pursuing the acquisition of a broad based acquisition plan, yet no apparent support from the Director General of Finance, nor by implication, the Minister of Finance was apparent and I warned my minister [Modise] on numerous occasions regarding this matter. I was told however that this will be addressed in future by the fact that they had adopted a new approach, off-setting the obligations of such a large acquisition program, by inducing those countries that sell the equipment to us, to make investments far in excess in value to the cost of the acquisitions. I was concerned that the flow of investment money had no technical channel to create a source of funding the acquisitions. The only way of sourcing acquisitions is by voting a budget for that purpose and these decisions were, these decisions were, were progressively made throughout the course of 1998 without an apparent attempt to provide the necessary appropriated

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revenue for the purpose." (Steyn interview: p2013-2014) (My underlining)

- 87 In February 1998, requests for offers or RFOs were sent out to the short-listed suppliers. As in the case of the RFIs, the RFOs were addressed to the ambassadors of the various countries, indicating the product types for which South Africa required best and final offers from the industries in their countries. The offers were required to be submitted in three separate sections: one section dealing with technical or military hardware specifications; another pertaining to industrial participation programmes and the third part pertaining to the financing arrangements that they were prepared to offer South Africa. (Griesel 2004 interview: p 2838-2840)
- 88 I point out that the RFO's included the ALFA but not the LIFT; the latter was only to be issued later.
- 89 The closing date for the offers was in May 1998, affording a period of three months to submit the offers. (Griesel 2004 interview: p 2838-2840)
- 90 On 6 March 1998 the AAC met. Attendees included Ministers Modise and Kasrils, as well as Steyn, Haywood and Meiring. As appears from the minutes, the following further people were welcomed by Kasrils to the meeting: Hechter (the Chief of the SAAF) and his team including Shaik, Brigadier Viviers (from the SAAF) and

Colonel Bayne (from the SAAF) ("Bayne") – these were all members of the Ukhozi Control Council. (Minutes: para 6.8.1) The following things, amongst others, appear from the minutes:

90.1 Shaik stated that the projects to be presented were Ukhozi (ALFA) and Winchester (LIFT) and that the former was already included in the 'Government-to-Government offers'. (Minutes: para 6.8.2)

90.2 Hechter explained that projects Kambro and Ukhozi had been combined because they were too costly individually. The two-tier fighter training system would have to be replaced with a three-tier system using the ASTRA for initial training; and a new light lead-in fighter trainer (LIFT) for weapons training onto the advanced light fighter aircraft (ALFA) because the jump was too great from Astra to ALFA and it would be too expensive to do weapon training on the ALFA. (Minutes: para 6.8.5-6.8.6)

90.3 Bayne said that "*The LIFT needed to be a dual (sic) seater, modern, sub-sonic aircraft capable of cost-effectively bridging the gap between the ASTRA and the ALFA. It will only have collateral capabilities and no operational capabilities. It would have to carry out a wide spectrum of fighter training missions...*". (My underlining) (Minutes: para 6.8.8)

90.4 Bayne presented the acquisition costs for 38 ALFA as being R11 billion in 1998 rand value terms, and for 24 LIFT aircraft as being R2,2 billion in 1998 rand value terms. (Minutes: para 6.8.10-6.8.11)

90.5 Approvals were requested in respect of, amongst other things, the revised combined staff target and the staff requirement for project Ukhozi and staff target and staff requirement for project Winchester. (Minutes: para 6.8.12)

90.6 Steyn said that a 3-tier system "makes sense" and recommended that the AAC support Hechter. He also said that *"the requirement is to a very large extent influenced by the initiative to secure a broad investment base. That is a strategic and political decision. There is general recognition of the Minister's initiative in this particular manner, and whether we like it or not the acquisition process is now heavily influenced by political, economic and other social considerations from a national strategic point of view".* (My underlining) (Minutes: para 6.8.17-6.8.18)

90.7 Steyn also expressed the view that *"our participation in the acquisition programme will need to be supported by an official vote either to expand our present budget vote or be given additional funding"*. He recommended that money should be

spent on a project study and that the team would then be ready by September the following year (ie 1999) to put together an acquisition plan (he later explained to the meeting that a project study advances one from the staff requirement stage to an acquisition plan). (Minutes: para 6.8.18-6.8.19; para 6.8.21)

90.8 He expressed his hope that by that stage Cabinet would have formally considered the way in which it would be funded and he pleaded that the financial strategy to support whatever choice was going to be made in the future be done as soon as possible. (Minutes: para 6.8.19-6.8.20)

- 91 On 9 March 1998 RFIs in respect of the LIFT programme were issued to twenty suppliers. (JIT report: para 4.5.1.1)
- 92 On 16 March 1998 the AAC approved the revised staff requirement and staff target for project Ukhozi (the ALFA). (JIT report: paras 4.3.1.7 and 4.3.2.2) I point out this was after the ALFA RFOs had been issued in November 1997. The total acquisition cost for 38 ALFA aircraft was expected to be in the order of R11 billion (1998 rand value, i.e. US\$1=R5.10) including the initial logistic package for two years, taxes, mission equipment, mission simulator and programme management cost. (JIT report: para 4.3.2.2)
- 93 Also on 16 March 1998, the AAC approved the revised staff requirement and staff target for project Winchester (the LIFT). I point

out that this was after the LIFT RFIs had been issued. The total acquisition cost for 24 LIFT aircraft was expected to be in the order of R2,2 billion (1998 rand value, i.e. US\$1=R5.10). (JIT report: para 4.4.2-4.4.3)

- 94 Thus, the total acquisition cost for ALFA and LIFT at this stage amounted to R13,2 billion. As appears from paragraph 68 above, eight months prior to this, projects Ukhozi and Kambro amounting to R13,2 billion had been cancelled due to unaffordability.
- 95 On 6 April 1998, responses to the LIFT RFIs were received from all twenty suppliers. (JIT report: para 4.5.1.1)
- 96 On 7 and 8 April 1998, the Ukhozi Control Council approved the value system for the evaluation of the replies to the LIFT RFI's. The JIT report notes that this was done after the replies had been received and that although a decision was taken at the meeting on 7 April 1998 that replies would not be opened until after a final value system had been adopted, there existed the risk that manipulation of the value system could have taken place. JIT did not however find any evidence of such manipulation. (JIT report: para 4.5.1.2)
- 97 On 24 April 1998 during a work session of the LIFT project team, it was decided to recommend to the Ukhozi Control Council not to use acquisition cost as a limiting factor, as no firm acquisition budget allocation existed, but rather to base the short list on a military value

of 60 and higher and life-cycle cost-effectiveness (military value divided by life-cycle cost) of above 8.0. The resulting short list to the Ukhozi Control Council included the Hawk 100 and the Aermacchi MB339FD ("MB339"). (JIT report: para 4.5.1.7) On military value and cost effectiveness, the two scored as follows:

Aircraft	Military Value	Life cycle cost (US\$ m)	Cost effectiveness
MB339	69 (rank: 5 th out of 14)	544.1	12.7 (rank: 2 nd out of 13)
Hawk 100	82 (rank: 1 st out of 14)	979.0	8.3 (rank: 7 th out of 13)

(JIT report: para 4.5.1.5-4.5.1.6)

- 98 On 30 April 1998, a special Ukhozi Control Council meeting was held to prepare for the presentation of evaluation results for the LIFT RFIs. The meeting decided that the short list should be determined on the military value alone and that the cost impact be deferred for discussion at the AAC. The Council approved a recommendation to be tabled to the AAC for the suppliers of five aircraft, including the MB339 and the Hawk 100, to receive a request for RFO's based on a military value result of more than 68. (JIT report: para 4.5.1.8)

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99 On 30 April 1998 the AAC and AASB held a combined meeting to consider the short list for the LIFT project. It appears from the minutes that attendees included Ministers Modise (as chairperson) and Kasrils as well as Steyn, Haywood, Meiring, Esterhuysen and Shaik. The following, amongst other things, appears from the minutes:

99.1 The meeting upheld a recommendation to exclude from the short list all contenders with a military value score below 69.
(Minutes: para 3)

99.2 Representatives of the (LIFT) project team presented the meeting with an affordability analysis of the LIFT contenders: without cost considerations, the selection process would be biased towards the higher performance category of aircraft, which are significantly more expensive to acquire, operate and maintain. Thus it was suggested that *"unless additional funding could be found to support the acquisition of a more superior aircraft, the Air Force would have to take cognisance of budgetary constraints in the selection process"*. (Minutes: para 8)

99.3 Minister Modise cautioned the meeting that *"a visionary approach should not be excluded, as the decision on the acquisition of a new fighter trainer aircraft would impact on the*

RSA defence industry's chances to be part of the Global Defence market through partnership with major international Defence companies, in this case European companies". The Minister further added that "with this vision the most inexpensive option may not necessarily be the best option". He requested the Department of Defence acquisition staff to bear this vision in mind during the selection process. (Minutes: para 9)

100 Also in April, the management committee of which Griesel was a member was formalised by the drawing up of a constitution and it was re-named SOFCOM (Strategic Offers Committee). (Griesel 2004 interview: p 2823-2825) The SOFCOM members were drawn from various constituencies: representatives from the arms of service; and personnel from defence headquarters, Armscor, the Department of Finance, and the Department of Trade and Industry. The co-chairpersons were Esterhuyse and Shaik and the co-secretaries were Griesel and Dewey. According to Griesel, the aim of SOFCOM was as follows: *"to support the minister of defence in the management and execution of the department of defence involvement in the international government to government strategic partnership of reliance proposals in which defence equipment is offered".* (Griesel 2001 interview: 211-212)

101 On 5 May 1998, the short list recommended by the combined AASB/AAC meeting was presented to the Ukhozi Control Council. At the meeting it was minuted that the reason why the recommendation to the combined AASB/AAC had not been based on cost-effectiveness was because it was thought that the cost constraint for the inclusion of the LIFT into the strategic defence package should be determined by the AAC. (JIT report: para 4.5.1.11)

102 On 12 May 1998, the RFOs for the LIFT programme were issued to BAE (Hawk 100), Aero Vodochody (L159) and Aermacchi (Yak130 and MB339). The final offers for the LIFT closed on 15 June 1998 and the evaluation started thereafter. (JIT report: para 4.5.2.1)

Evaluation of LIFT offers

103 According to the JIT report, the following is noted in paragraph 2.10 of an (un-identified) internal audit report:

"Value systems used during the evaluation process had all been finalised, formally approved and registered prior to the start of evaluation of the best and final offers. Extensive input from the SANDF user community had been incorporated in the value systems. However, in at least some cases the content of the value system, and specifically the value of the relative weighs, were known to the evaluators. This is undesirable as evaluators may be influenced by knowledge of the relative importance of parameters,

or could manipulate the results through knowledge of relative weights." The JIT report however did not find evidence that such manipulation had taken place. (JIT report: para 4.5.2.2)

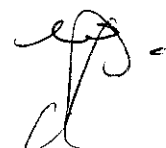
Inclusion of non-costed option for LIFT only

104 On 29 June 1998, a SAAF Command Council meeting was held. According to the minutes, the objective of the meeting was to inform the Council on the results of the evaluation of the LIFT offers and to formulate a recommendation to SOFCOM on the SAAF preferred option. Decisions reflected in the minutes include the following:

104.1 "A separate recommendation is required where cost is not taken into account, as per the request from the Minister of Defence" (and the project team would action this). (Minutes: para 3.3)

104.2 According to the JIT report, the Director: Air Force Acquisitions testified that this decision was included after Hechter, upon being presented with a single finding of a costed option by the project team, said that there had been a request from the AAC to consider a non-costed option. (JIT report: para 4.5.1.12)

104.3 The above decision resulted in the following recommendation to SOFCOM: "The final recommendation gives



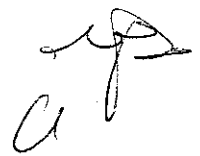
two alternatives, the first alternative (A) being the most cost-effective solution based on the achieved Military Value for the aircraft, taken (sic) into account the associated risk and the cost of the aircraft system. The second alternative (B) does not take the cost of the aircraft system into account and is therefor (sic) the recommended aircraft based on the achieved Military Value with its associated risk.

	Alternative A:	Alternative B:
1.	Preferred option: MB339	MB339
2.	Alternative option: L159	Hawk 100
3.	Second alternative: Hawk 100	L159
4.	Unacceptable offer: YAK 130	YAK 130

(Minutes: para 3.6) (My underlining)

105 Thus, the effect of removing programme cost was to re-position the Hawk 100 from third to second place in respect of military value. Moreover, the score of the Hawk 100 improved dramatically - the normalised military value score of the Hawk 100 went from 44.2 on the costed option to 90.2 when cost was removed.

106 In his interview, Steyn says that it was on Minister Modise's instructions that a non-costed option was considered and that the

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instructions was issued at one of the AAC meetings at which they were both present. (Steyn interview: p 2034)

107 SOFCOM held a work session on 1 and 2 July 1998 to consolidate the evaluation results of the project teams in respect of all the programmes. Attendees included Shaik and Mr K.P. Hanafey (as chairperson and acting chairperson respectively) and Griesel. The confirmation notes of the work session record that:

107.1 Under the heading "*Consolidation*" the following was recorded: "*The Chairman emphasises the importance of showing the values of the three evaluation domains in a progression which culminates in a best value of military value + IP value + financing value*". (Confirmation notes: para 31) Griesel explains that this change to the formula resulted from a decision that the three indices (MV, IV and FIN) should carry equal weight. (Griesel 2001 interview: p 216 and 218) According to Esterhuyse, the change in formula did not make sense to him because a multiplier (financing value) became a plus factor. He said it was never approved by the Armscor Board. However, he noted that, although it certainly made some products look more favourable, he could not find a case where it changed

the outcome of the ranking. (Esterhuysen interview: p 1975-1976)

107.2 In respect of the LIFT programme, *"The two options that must be provided are (a) an option including acquisition cost; and (b) an option excluding acquisition cost"*. This appears to be a reference to the exclusion of cost from the determination of the military value index in respect of LIFT. (Confirmation notes: para 29)

108 Griesel explains the consolidation process as follows: the scores from the evaluation of military performance, industrial participation and financing are all "normalised" and then added together (in accordance with the revised formula) to give an indication of the preferred supplier. (Griesel 2004 interview: p 2880) "Normalisation" refers to the process of adjusting the results of the evaluations in each category to a maximum of 100. The highest score is divided by itself and multiplied by 100 while the other scores are all divided by the highest score and multiplied by 100. (Griesel 2001 interview: p 215)

109 On 8 July 1998, the AASB held a special meeting. The table of consolidated scores was presented to the meeting. The following appears from the minutes and the annexures thereto:

109.1 An explanation was provided for the revised formula: "*Due to the disproportionate influence of the financing result in the top level value system, the SOFCOM accepted a modified equation prior to integration ie. RANKING = TECHNICAL + IP + FINANCING. (Each evaluation contributing one third to the final ranking)*". (Minutes: para 2)

109.2 The specific results of SOMFCOM's evaluation presented to the AASB in respect of LIFT were as follows:

109.2.1 The "*cost option ranking*" presented at the meeting was as follows:

- | | |
|---------------------|--------|
| 1. Italian MB339 FD | (100) |
| 2. British Hawk | (96.5) |
| 3. Czech L159 | (84.3) |
| 4. Italian Yak 130 | (77.5) |

109.2.2 The "*non cost option ranking*" presented at the meeting was as follows:

- | | |
|---------------------|--------|
| 1. British Hawk | (100) |
| 2. Italian MB339 FD | (87.5) |
| 3. Czech L159 | (86.3) |

4. Italian Yak 130 (74.6)

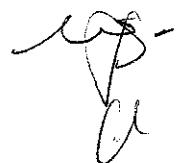
(Minutes: para 26)

109.3 It was recorded that certain issues regarding the evaluation needed resolution including the following: "*Considering the spread of offers across the cost/performance spectrum, the fairness (integrity) of the evaluation must be confirmed*".

(Minutes: para 27.a) Steyn said he raised this issue because he was extremely unhappy about the method adopted to arrive at a ranking (the non cost option method) in respect of the LIFT. (Steyn interview: p 2035)

109.4 The AASB noted the progress and resolved "*not to make any pronouncement on what was presented; however the Minister of Defence and the members of the AAC must be advised of the progress*". (Minutes: para 30) Steyn explained this resolution on the basis that he, as chair, refused to make a decision because he was unhappy about what he regarded as manipulation of the system to arrive at a predetermined outcome. (Steyn interview: p 2035-2036)

110 There is a further, noteworthy, aspect of the evaluation that does not appear from the minutes. The JIT report found that the NIP offer of

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BAE was not properly evaluated during the RFO phase. (JIT report: para 4.5.5.5) The JIT report says the following in this regard:

110.1 *"The NIP project proposals of each contender, as submitted in the RFO phase, were evaluated against an approved NIP value system. The normalised scores regarding the final NIP recommendation presented to SOFCOM were the following:*

Bidder	Normalised rating
UK – Hawk	100
Italy – MB339FD	25
Italy – Yak 130	25
Czech – L159	97

(JIT report: para 4.5.5.1)

110.2 *"According to the records of DTI, a view was expressed in June 1999, that a report that was submitted to the Minister's Committee on the proposed package for the LIFT programme had a radically inflated Hawk NIP offer. This view held that a 'breakdown' in communication within DTI meant that the Ministers were provided with an incorrect impression of the quality of the offer."* (JIT report: para 4.5.5.2)

110.3 *Furthermore, data derived from an assessment provided by DTI as indicated in the table below [table not included in this affidavit], showed that the power procurement project as proposed by BAE was old (rejected) National Power project in another form...The only other NIP of significance was the titanium plant, which they expected Ti-Met to establish, but they subsequently withdrew due to the oversupply of titanium sponge from the ex-USSR countries. Without these two projects, BAE, had virtually no NIP package. (JIT report: para 4.5.5.3-4.5.5.4)*

110.4 *"The above situation led to negotiations with the supplier in order to replace certain projects. This is indicative of the fact that the NIP offer of BAE was not properly evaluated during the RFO phase. (JIT report: para 4.5.5.5)*

111 These findings are significant because BAE scored extremely highly in the IP category. Indeed, based on my calculations using the IP scores, if Italy's MB339 and Britain's Hawk 100 IP indices had been reversed, even on the non-costed option, the MB339 would have ranked first.

112 On 13 July 1998, the AAC held a meeting. Minister Modise and Kasrils were both present at the meeting as well as Mr. A Erwin (Minister of Trade and Industry) ("Erwin"), Gen. S Nyanda (Chief of

the SANDF) ("Nyanda"), Steyn, Shaik, Esterhuyse, Griesel and Haywood. It appears from the minutes that the same results were presented in respect of the cost option ranking and the non cost ranking as those presented to the AASB on 8 July 1998. The need for a non-costed option was queried and the Chief of SAAF highlighted "*the limited operational capability of the more expensive cluster compared to that of the cheaper cluster; and the relatively cheaper SAAF preference for a training aircraft which will meet the minimum SAAF pilot qualification requirements, starting with the ASTRA and stepping up from there.*" (Minutes: para 10) (My underlining)

- 113 With reference to what was stated by the Chief of SAAF, Esterhuyse explained in his interview that the choice between a costed and non costed option was relevant in the context of a choice between a 2-tier system or a 3-tier system. In a 2-tier system, it is important for the second tier aircraft to have advanced capabilities and the higher cost option such as the Hawk 100 would be appropriate. However, in the 3-tier system, one simply looked for the aircraft that met the training requirements at lowest possible cost. Esterhuyse adds that the MB339 came closest to this requirement. (Esterhuyse interview: p 1997-1998 and 2000-2001)

114 On 16 July 1998, the AASB held a meeting where the LIFT evaluation was again discussed. Attendees included Steyn (chairman), Shaik, Esterhuyse, Hechter, Dewey and Nyanda. The following appears from the minutes:

114.1 Shaik contended that *"the AAC instruction to adopt a visionary approach that involve[d] major international Defence companies in the LIFT acquisition, resulted in the generation of two options in the evaluation team and SOFCOM recommendations"*. (Minutes: para 6) I point out that this appears to be a reference to Minister Modise's comment at the combined AAC and AASB meeting of 30 April 1998.

114.2 Steyn stressed that the minutes of the AASB meeting on 8 July 1998 did not reflect a preferred option and that SOFCOM had made two recommendations in relation to the LIFT programme to the AAC on 13 July 1998. The first recommendation (A) was an option taking cost into consideration and the second (B) was an option excluding cost. (Minutes: para 7.b)

114.3 Steyn advised that from the perspective of the Department of Defence *"only the costed option could be considered; and*

that the AASB thus support the first recommendation (A)".

(Minutes: para 7.b)

114.4. Steyn ruled that *"the AASB recommendation is the MB 339 FD as evaluated"*, and noted that *"this result is the SAAF preference within the envisaged 'SAAF fighter training system' required by the SAAF"*. (Minutes: para 7.d)

115 In his interview, Esterhuyse said in relation to this meeting that a heated debate arose regarding the proposed recommendation on the LIFT. His recollection is that it was the consensus at the meeting, with the possible exception of one or two people, that the result of the costed option should be the one recommended to the AAC. (Esterhuyse interview: p 1986)

116 On 21 August 1998, the AAC held a meeting at which it was briefed by the AASB. I do not have a copy of the minutes of that meeting. According to the JIT report, the minutes reveal that Shaik purported to explain the difference in the procurement costs between the MB339 and the Hawk 100. Steyn remarked that the cost of the Hawk 100 would be twice that of the MB339, for an increase in performance of approximately only 15%, hence the recommendation of the AASB that the cheaper option be selected. It appears from the minutes that the Hawk 100 was more expensive because it has operational capabilities not offered by the MB339. According to the

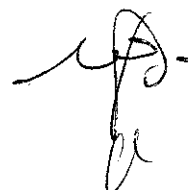
minutes, Modise held the view that the operational qualities of the aircraft was only part of the consideration and that the Government had to decide whether or not to enter the European market, and if so, through which partner. (JIT report: para 4.6.5)

Selection of Hawk 100 as preferred LIFT supplier

117 The AAC meeting was followed by a special briefing to the Deputy President, Thabo Mbeki ("Mbeki") on 31 August 1998. The following people were present: Mbeki, Modise, Erwin, Ms. S Sigcau (Minister of Public Enterprise) ("Sigcau"), Kasrils, Steyn, Mr Z Rustomjee (DG Trade and Industry), Haywood, Shaik, Mr. L Swan, the CEO of Armscor at the time ("Swan"), Esterhuyse and Mr V Pillay (Acting Director Trade and Industry). The meeting was chaired by Mbeki.

118 This grouping became known as the Cabinet Sub-Committee or the Ministers' Committee. According to Griesel, it was formed especially for the purposes of the strategic defence packages. The AAC presented the final offers, the results of the evaluation and the list of preferred suppliers to the Committee, which took note of that and made a recommendation to full Cabinet. (Griesel 2004 interview: p 2829-2830)

119 There appear to be at least four versions of minutes of the meeting:

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119.1 A version signed by Shaik with place for a second signature by Mbeki ("the Shaik version");

119.2 A version signed by Esterhuyse with place for a second signature by Mbeki ("the Esterhuyse version");

119.3 An unsigned version with place for signature by Shaik and Mbeki ("the unsigned version");

119.4 A portion of a version quoted in the JIT report ("the JIT version");

120 The following aspects of the meeting are all recorded in the Esterhuyse, Shaik and JIT versions (the fourth version is incomplete):

120.1 Shaik made a slide presentation of the SOFCOM findings of the RFOs received from the bidding countries and *"indicated to the members that the successful bidders were determined by taking the highest scores obtained from the total scores received per programme. The total score was obtained by adding the three independent group scores (i.e. IP=100, Mil/Tech=100, Financing=100, Total score=300)".* (All minutes: paras 2 and 7)

120.2 *"The recommendations for the successful [preferred] bidders as approved by the Armament Acquisition Council (dd 21*

August 1998) was supported and approved by the members present". (All minutes: para 9)

120.3 *"The short fall of funds towards the SDP [strategic defence packages] as indicated in the DoD planning deficit will be funded from outside the present Defence allocated budget". (All minutes: para 12)*

120.4 *"Two options were proposed in the SOFCOM presentations for the LIFT Programme Option A, considered a military value system including Programme Cost and, Option B considered a military value system excluding Programme Cost. Option A, considered and selected an aircraft from the lower cost cluster while Option B, considered and selected an aircraft from the higher cost cluster." (All minutes: para 8)*

121 A material variation arises in clause 11 of the various versions of the minutes:

121.1 The Shaik version states that *"After lengthy discussion by the Ministers it was decided that Option B (HAWK) should be recommended as the best option to meet all Military and National Economic Strategic requirements for South Africa".*

121.2 The Esterhuyse version states that *"After a discussion it was decided that both the HAWK (Option B) and the MB339*

(Option A) should be investigated further with the view of structuring an industrial alliance between the country supplying the aircraft and the South African Aerospace Industries. Both countries will be requested to submit further information in this regard".

121.3 The unsigned and the JIT versions state that "After a discussion it was decided by the Ministers present that the HAWK (Option B) should be recommended as the preferred Option. This decision to recommend the HAWK was based on National Strategic considerations for the future survival of the Defence Aviation Sector and the best teaming up arrangements offered by the respective bidders. Strategically important Industrial Participation programmes offered with the best advantage to the State and local Industries was also a determining factor in the final recommendations for the preferred bidders per programme".

(My underlining)

122 A further material variation arises in clause 13 of the minutes:

122.1 The Shaik and unsigned versions both state that "The following bidders per programme were recommended for further consideration:

LIFT - BAE HAWK (United Kingdom)".

122.2 The Esterhuyse version states that "*The following bidders per programme were recommended for final consideration:*

LIFT - BAE HAWK (United Kingdom) and MB339 (Italy)". (My underlining)

122.3 It is not apparent what the fourth version says.

123 On 7 September 1998 Steyn wrote a letter to Shaik in which he said that Esterhuyse had handed him a copy of the minutes and that he questioned the accuracy of paragraph 11 and could not recall that a decision had been made – "*The merits of either the Hawk and the MB339 were discussed. The fact that the MB339 meets the SAAF lift requirements adequately (with reference to the pre-determined criteria) is not reflected*". As far as he could recall the choice between the Hawk 100 and the MB339 would be made later "*in Cabinet*". He added that "*The Hawk is not the 'best' option from a military point of view – the fact that its acquisition cost would solicit substantially more IP apparently carries the day. The SAAF however will have to absorb considerably higher operating costs during its life cycle*". (Letter: para 2-3)

124 In his interview, Steyn said the following in relation to the meeting and the Shaik and Esterhuyse versions of the minutes:

- 124.1 That in the *"normal chain of events prescribed by an acquisition process"* this meeting had no purpose;
- 124.2 He assumed that the purpose of the meeting *"was to influence Mr Mbeki, Mr Owen [Erwin], Ms Sigao [Sigcau] and other officials such as Mr Rastome...to prime them for formal decisions that would be made later on"*. It was a lobby which is *"quite an accepted procedure in political circles"*;
- 124.3 It is significant that the Minister of Finance was not present despite the importance of this *"run-up to decisions"*;
- 124.4 He and others had been requested by Modise to be present at the meeting but *"not to influence decision making"*. At some point there was a break for refreshments and he and Esterhuysen were told *"that the Deputy President and the Cabinet Ministers would continue to discuss the matter, without some or all of the officials"*. He and Esterhuysen left (Swan and Haywood stayed at the meeting).
- 124.5 In relation to his letter to Shaik, Steyn said that he had not realised at the time that there had been decisions made after he had left the meeting and that this probably explained why he did not recall the decision reflected in the minutes as having been made. He added that he never received an answer to his letter addressed to Shaik.

(Steyn interview: p 2050-2055)

125 In his interview, Esterhuyse said the following in relation to the meeting and the Shaik and Esterhuyse versions of the minutes:

125.1 During the procurement process he had been told by Modise that a Ministerial Committee had been structured "*to review progress on these projects*" and that he was unaware of any mandate or terms of reference for this committee – he understood that it was an information gathering and processing committee, and "*that the AAC is the highest level of a departmental decision making body and contracts can only be awarded by the Board of ARMSCOR*".

125.2 The presentation by Shaik had been prepared by Griesel and contained the same information presented to the AAC;

125.3 There was a very brief discussion regarding the Hawk 100. The attitude of the AASB was not brought to the attention of the meeting. There was no active minute taking at the meeting as far as he can recall and the meeting ended without any firm decision on selected options.

125.4 A few days after the meeting Shaik gave him the Shaik version of the minutes, and told him that these were the minutes he wanted Esterhuyse to finalise and take to

Modise's office so they could go to Mbeki's office for signature. When Esterhuyse read through the draft minutes, he disagreed with clause 11 as he did not recall that such a decision was taken. He raised this with Shaik who informed him that the decision was taken during further discussions after Esterhuyse left the meeting. Shaik left the minutes with Esterhuyse because he had to go overseas, and Esterhuyse went to Swan who agreed that they should modify the paragraph "*to reflect the sense of [the] meeting*".

125.5 Esterhuyse admitted that his version of the minutes did not accurately reflect what had been decided at the meeting and that he had altered the Shaik version because he wanted to prevent a decision in favour of the Hawk 100, as he did not believe that it had gone through a proper assessment. He wanted to delay the process and "*come back to a proper tender process*" to find out whether there were industrial (participation) concerns which had not been taken into account. He wanted to give the other bidders a fair opportunity to tender.

125.6 Swan agreed with his approach and took the Esterhuyse version to Modise but returned saying that "*the decision is in favour of the Hawk*".

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(Esterhuyse interview: p 1990-1995)

126 In light of this, it appears that the Esterhuyse version of the minutes must be rejected and that there probably was a decision taken at the Ministers' Committee meeting of 31 August 1998 to support the Hawk 100. (The JIT report assumes this to be so: para 4.6.11.)

127 The JIT report records the following in respect of the meeting of 31 August 1998:

127.1 *"During the public phase of the investigation it was explained by witnesses that the Ministers' Committee decided on and prepared final recommendations in respect of the procurement, to Cabinet. It was contended by Government that the nature of the structure of the acquisition process was such that any corruption in the awarding of the tenders would have had to infiltrate effectively up to ministerial level, which was theoretically impossible. The committee dealt with the selection of the preferred bidders on the basis of the evaluation that was done in the other forums discussed above. (JIT report: para 4.6.7)*

127.2 Erwin *"explained in his testimony that the initiative to consider a non-costed option in the case of the LIFT came from the Ministers' Committee and not from AAC". (JIT report: para 4.6.8)*

127.3 Erwin also stated that *"The Ministers' Committee considered very carefully any possible prejudice to tenderers should a non-costed option be considered. It was decided that the consideration of the different option did not amount to moving beyond the parameters of evaluation criteria, but that it was rather a qualitative assessment about the precise value of a weighting figure. The Ministers' Committee was confident that the manner in which the consideration of the different options was done did not require any further bidding process. None of the unsuccessful bidders complained in this regard as might have been expected had the conduct of the Ministers' Committee been improper."* (JIT report: para 4.6.9).

127.4 The decision to accept the Hawk/Gripen combination was, according to Erwin, made by the Cabinet Sub-Committee (or Ministers' Committee) for the following reasons:

127.4.1 *"When considering the two groups of possibilities with regard to the links between trainers, advanced trainers and advanced fighters, the combination of the Hawk/Gripen procurement option offered a more effective overall possibility of achieving technologically advanced NIP projects and achieving a package of*

NIP projects that was more favourable than the original offers.

127.4.2 *The fact that the procurement could be packaged through a single export credit agency was beneficial.*

127.4.3 *The considerable structural changes in the European defence industry and the resultant longer-term trajectory of that industry that Government would have to deal with in future.*

127.4.4 *The fact that the design of the selected option was seen as beneficial to DoD."*

(JIT report: para 4.6.10)

128 I point out that the statement by Erwin that the initiative to consider a non-costed option in the case of the LIFT came from the Ministers' Committee is not supported by the documents referred to above. On the contrary it appears to have originated with Modise at AAC level. The statements by Erwin in paragraph 127.4 are not supported by any of the versions of the minutes of the meeting.

129 On 21 October 1998 Cabinet held a meeting. It appears from the minutes that the meeting was attended by Deputy Ministers A.T. Didiza, Kasrils and P. Mlambo-Nguka, as well as Swan and Shaik. Modise and Shaik *"briefed ... Cabinet on the procurement offer*

details..". Cabinet discussed the presentation and resolved as follows:

129.1 "(a) the Committee dealing with the procurement must further consult on the recommendations with the Minister of Finance after which the matter must be resubmitted to the Cabinet; and

129.2 (b) the Committee must also consider the implication of the procurement in real terms for the budgets of other government departments, must give a clear indication of the benefits of the procurement for the social sector and indicate which areas of industry will benefit most".

(Minutes: para 6.1.3)

130 On 18 November 1998 Cabinet held another meeting. The following appears from the record of decisions taken at the meeting and a report (presented at the meeting).

130.1 The purpose of the meeting was to inform Cabinet of the results of offers received and to obtain approval for the Department of Defence recommendations regarding the preferred bidders. (Report: para 2)

130.2 The report stated that "After a recommendation per program was compiled by the SOFCOM, the normal DoD acquisition

procedures as defined in the Defence Review and the White Paper on Defence were followed. This resulted in briefings to the Armament Acquisition Steering Board (AASB) and the Armaments Acquisition Council (AAC)". (Report: para 4.6)

130.3 The report recommended as preferred bidders the SAAB-JAS 39 Gripen (Sweden/UK) for the ALFA programme and the BAE-Hawk 100 (UK) for the LIFT programme. (Report: para 8.1)

130.4 Cabinet resolved to accept the recommendations on the preferred suppliers and mandated the Departments of Defence Finance, Public Enterprises and Trade and Industry to proceed with further detailed negotiations with the preferred bidders "*with a view to achieve affordable agreements*". (Record of decision: para 6.1.4)

Negotiation with preferred suppliers

131 In the absence of source documents, I rely entirely on the JIT report in respect of this phase of the Arms Deal.

132 Following on Cabinet's approval of the preferred suppliers, an International Offers Negotiating Team ("IONT") was constituted by Cabinet on 18 November 1998. It comprised members of the Departments of Defence, Finance, Trade and Industry, and Armscor

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and it was led by a chief negotiator appointed by Mbeki. Its brief was to negotiate an achievable funding arrangement and an affordable package with the preferred suppliers. (JIT report: para 4.7.1)

- 133 According to an air combat programmes status report for the period February 1999 to April 1999, the programme management cost which was not included in the cabinet figures of 1998 for ALFA and LIFT was the following (calculated at an exchange rate of R6.25 to US\$1):

ALFA	<i>R156,25 million</i>
<u>LIFT</u>	<u><i>R93,75 million</i></u>
TOTAL	<i>R250, million</i>

(JIT report: para 4.7.3)

- 134 On 26 May 1999, IONT met with the Ministers' Committee and recommended that the procurement of the ALFA be deferred. This recommendation was made on the basis of, among other things, the requirement of an affordable package; the currency risks of procuring equipment in advance; and the fact that the financing cost of the procurement would be higher than if it took place later. (JIT report: para 4.7.4)

- 135 Effectively, this recommendation amounted to a proposal to negotiate with the suppliers for a deferment of the procurement on a practical and favourable basis, failing which the tender should be scrapped for

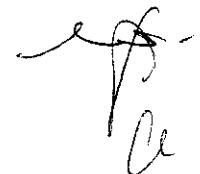


the present moment. The Ministers' Committee decided to defer the decision regarding the procurement of the JAS 39 Gripen and to allow IONT to endeavour to conclude a single contract with BAE for both the Hawk 100 and JAS 39 Gripen. (JIT report: para 4.7.6-4.7.7)

136 Consequently, BAE/SAAB was approached by the negotiating team to explore the possibility of their supplying the JAS 39 Gripen at a time in the future. BAE proposed, as an alternative, a combination transaction for the supply of 24 Hawk 100 and 28 JAS 39 Gripen aircraft in three tranches. This offer, however, front-loaded the non-recurring expenditure into the first tranche of payments. This resulted in a large implicit cost of cancellation of the second and third tranches and would result in a premium of some 34% being paid per aircraft delivered in the event of cancellation. (JIT report: para 4.7.8.3-4.7.8.4)

137 On 18 August 1999, the Chief of SAAF indicated that without the delivery of the second and third tranches, the operational fighter capability of the SANDF will be severely limited after 2010. (JIT report: para 4.7.8)

138 An Affordability Team was established as part of IONT. The team conducted a comprehensive analysis of the economic, fiscal and financial impact of the procurements on the country. Paragraph 4.4.2 of the report, compiled in August 1999 included the following:

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"Adverse Rand: forex movements

The South African government is fully exposed to the depreciation of the Rand against foreign currencies, which accounts for about 75% of the total purchase amount. There is no effective means hedging the currency risk inherent in the procurements. .. there is clearly a possibility that currency depreciation could be even more rapid. Should this occur, ... the costs of the packages and their financing could be considerably higher than expected." (JIT report: para 4.7.8)

139 Cabinet approved the three tranche offer at a meeting held on 15 September 1999, as follows:

"(a) The total price for the military equipment should amount to R29 992 million. This total amount will consist of two options to cancel decisions to be taken by the government in 2002 and 2004. The South African Government is committed to the respective suppliers for tranche one only at this stage at a cost of R21 330 million." (JIT report: para 4.9.1)

140 On 1 December 1999, Cabinet provided the necessary authorisation required by the Department of Defence to sign the final contracts. (JIT report: para 4.9.2)

141 On 3 December 1999 the umbrella agreement incorporating the LIFT supply terms as well as the associated NIP and DIP agreements was

signed. It linked the LIFT and ALFA projects into a combined programme. (JIT report: para 4.9.3)

142 After Cabinet approved the conclusion of the contracts, it was still necessary to obtain ratification by the Armscor Board (as the tender board for defence acquisition). Ratification took place in February 2000. (Griesel 2004 interview: p 2833)

Deviations from normal acquisition policy and process

143 In his 2004 interview, Griesel notes that the Armscor acquisition and tendering processes did not provide for acquisitions such as those made during the Arms Deal because they were formulated during the embargo period when it was not possible for South Africa to obtain armaments from other countries. Accordingly, the acquisition process deviated from the "*normal process*". (Griesel 2004 interview: p 2860)

144 According to Griesel, in the Arms Deal "*the (acquisition) process was, to a very large extent, determined by the Chief of Acquisitions at that point in time*", being Shaik. (Griesel 2004 interview: p 2863)

145 The ways in which the acquisition process deviated from standard policy and procedure include the following:

145.1 The authorisation of contracts and decisions regarding the appointment of preferred suppliers is made ordinarily by the Armscor Board as the tender board. In the Arms Deal, these

decisions were made by Cabinet and subsequently ratified by the Armscor Board. (Griesel 2004 interview: p 2860)

145.2 No policy existed for a Ministers' Committee to form any part of the decision-making process. (Griesel 2004 interview: p 2864)

145.3 The consolidated evaluation results were referred up to the AASB and the AAC. This would not happen in the normal acquisition process: after evaluation, a submission would be made to the Armscor tender board which would authorise the preferred supplier. (Griesel 2004 interview: p 2862-2863)

145.4 The value system had to be lodged with Armscor's Procurement Secretariat prior to offers being distributed to the evaluators. In the case of the LIFT program (uniquely) the predetermined value system was amended during the SOFCOM meeting of 1 and 2 July 1998. Once the value system had been finally approved and lodged with the Secretariat, it was not permissible to change the value system at a later stage in the process. (Griesel 2001 interview: p 204; 231-232)

E. THE AUDITOR-GENERAL'S REVIEW OF THE ARMS DEAL

146 In July 2000, the Auditor-General finalised a regularity audit concerning the Arms Deal and on 15 September 2000 issued his "Special Review of the selection process of strategic packages for the acquisition of armaments at the Department of Defence" ("A-G review").

147 Section 3 of the A-G review sets out the material findings, which include the following:

3.2 *Technical evaluation: Lead in Fighter Training (LIFT)*

....

"All programmes included a cost factor as part of the technical evaluation. In respect of the evaluation a value system was adopted whereby the technical score would be calculated by dividing the military value of the equipment by the life cycle cost. However, in the case of the LIFT programme the Armaments Acquisition Council (AAC), after the adoption and implementation of the value system, requested that cost should not be a limiting factor. The fact that a non-costed option was used to determine the successful bidder, is in my opinion a material deviation from the originally adopted value system. This ultimately had the effect that a different bidder ("C"), at a significantly higher cost, was eventually chosen on the overall evaluation."

3.3 Adequacy of performance guarantees: National industrial participation (NIP)

All bidders with whom contracts had been finalised had to sign performance guarantees regarding their NIP commitments. The guarantees were on average approximately 10% of the contract price. I am of the opinion that the guarantees, in case of nonperformance, may be inadequate to ensure delivery of the NIP commitments. This could undermine one of the major objectives of the strategic defence packages which was the counter-trade element of the armaments package deal.

....

3.5 Armaments acquisition policy

The following sequence of events was not in line with the procedures laid down for armaments acquisition:

- 3.5.1 *The Advanced Light Fighter Aircraft (ALFA) project did not have a prior approved staff target and staff requirement. These approvals were only obtained for the Advanced Fighter Trainer (AFT) project, which was later changed to ALFA.*
-

3.5.4 The Lead In Fighter Trainer (LIFT) programme did not have a prior approved staff target and staff requirement as required by the armaments acquisition policy.

...

3.8 Budget

No formal budget was compiled as required by governmental financial regulations at the request for information (RFI) stage. The total cost of the military equipment was approved by Cabinet only during the negotiation phase.

(My underlining) (A-G review: paras 3.2, 3.3, 3.5 and 3.8)

148 The Auditor-General noted that all these findings were "material".

(A-G review: para 4)

149 The conclusions of the A-G report include the following:

"As mentioned in paragraphs 3.1 and 3.2 material deviations from generally accepted procurement practice were discovered. The explanation provided by DoD for this material deviation does not appear to be satisfactory." (A-G review: para 4) (My underlining)

150 The Auditor-General referred the Special Review to the Investigating Directorate: Serious Economic Offences (as it then was) ("IDSEO") on 31 October 2000.



F. INVESTIGATIONS: JIT AND DSO (NOW SAPS)

JIT investigation and report

151 As a result of growing allegations of possible irregularities and corruption in relation to the Arms Deal, the President commissioned a joint investigation by the JIT team. The investigation commenced in November 2000 and culminated in the JIT report.

152 Chapter 4 of the JIT report is headed "*Selection of prime contractors – ALFA & LIFT*". It evaluates the evidence that was available to the JIT team at the time of preparing the report. Some of its findings are discussed briefly below.

152.1 The JIT report indicates that, even on the non-costed alternative, the MB339 remained the preferred option in terms of the military performance index, although the Hawk was placed in a far more advantageous position under this option. (JIT report: para 4.6.2)

152.2 The JIT report found that the NIP offer of BAE was not properly evaluated during the RFO phase. (JIT report: para 4.5.5.5) This finding is significant since the NIP value score awarded to the BAE bid far outstripped the score awarded to any of the competing bids, including Aermacchi's, and it was the overall industrial participation

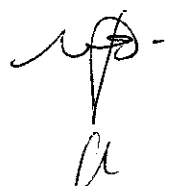
value accorded to the BAE bid that placed the Hawk 100 in first position under the non-costed option.

153 The conclusions in Chapter 4 of the report include the following:

"4.12.1 The decision that the evaluation criteria in respect of the LIFT had to be expanded to include a non-costed option and that eventually resulted in a different bidder being selected, was taken by the Ministers' Committee, a subcommittee of Cabinet. Although unusual in terms of normal procurement practice, this decision was neither unlawful, nor irregular in terms of the procurement process as it evolved during the SDP acquisition. As the ultimate decision-maker, Cabinet was entitled to select the preferred bidder, taking into account the recommendations of the evaluating bodies as well as other factors, such as strategic considerations.

4.12.2 The decision to recommend the Hawk/Gripen combination to Cabinet as the preferred selection for the LIFT/ALFA was taken by the Minister's Committee for strategical (sic) reasons, including the total benefit to the country in terms of counter trade and the operational capabilities of the SANDF ".

154 This statement appears to be drawn from Erwin's testimony in the JIT investigation. As noted in paragraph 128 above, the statement by Erwin that the initiative to consider a non-costed option in the case of the LIFT came from the Ministers' Committee is not supported by the

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documents referred to above. On the contrary it appears to have originated with Modise at AAC level.

155 Chapter 4 of the JIT report concludes with recommendations regarding the acquisition process. By implication, the following recommendations highlight some of the irregularities in the process that was followed (for the LIFT and ALFA programmes).

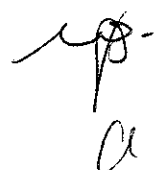
"4.13.3 During cardinal acquisitions, sufficient time should be made available to determine needs properly, compile acquisition plans, evaluate offers and finalise contracting.

4.13.4 Changes to approved value systems should only take place in exceptional cases. Such changes should be properly motivated, approved and documented. It should also be ensured that such changes are not to the advantage/prejudice of a specific bidder.

4.13.6 The NIP offers during RFO stage should be properly evaluated. This will ensure that only feasible projects are accepted and negotiations with bidders to replace projects at a later stage will not be necessary."

DSO (now SAPS) investigation

156 As part of the JIT investigation, the Director of IDSEO instituted a preparatory investigation on 6 November 2000 in terms of section

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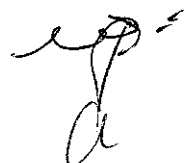
28(13) of the NPA Act. Section 28(13) empowers the Investigating Director to hear evidence in order to enable him to determine if there are reasonable grounds to conduct an investigation in terms of section 28(1)(a) of the NPA Act. The preparatory investigation, in summary, related to allegations of corruption and fraud in connection with the acquisition of the strategic defence packages.

157 Both the preparatory investigation and the full-scale investigations conducted by the DSO (successor to IDSEO) continued after the publication of the report. I point out that the DSO criminal investigation process is distinct from the JIT process. The findings of the JIT report are not findings reached by way of criminal investigation.

158 On 14 February 2008, as a result of new evidence received concerning the LIFT and ALFA programmes, the Investigating Director of the DSO instituted an investigation contemplated in terms of section 28(1)(a) of the NPA Act. The terms of the investigation included the suspected commission of specified offences as intended by the NPA Act, namely:

158.1 Racketeering in contravention of section 2 of POCA;

158.2 Corruption in contravention of section 1 of the Corruption Act 94 of 1992 (now repealed) and section 3 of its successor, the

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Prevention and Combating of Corrupt Activities Act 12 of 2004;

158.3 Money laundering in contravention of section 4 of POCA;
and

158.4 The common law offence of fraud.

159 It is alleged that these offences have been committed in an organised fashion or that attempts were made or are being made to commit such offences arising out of the armaments acquisition involving the following:

159.1 BAE Systems PLC ("BAE plc") as prime bidder/contractor for the supply of aircraft for the LIFT and/or ALFA programmes;

159.2 The advisers, consultants and/or nominees appointed, utilized employed or paid by BAE plc, directly or indirectly in relation to these programmes, including Red Diamond Ltd; Kayswell Services Ltd; Osprey Aerospace (Pty) Ltd; Huderfield Enterprises Inc; Hlongwane Consulting (Pty) Ltd;

159.3 Officials of the South African government and its agencies involved in the acquisition process for the said programmes

160 Furthermore, it is alleged that BAE devised a system of payments to its said advisers, consultants and/or nominees in order to disguise

the true nature of the payments, being designed as bribes in order to achieve success in the said programmes and to seek to obtain undue advantage over its competitors in the bidding process relating to the said programmes.

161 As noted above, Hlongwane is a suspect in the investigation.

162 A team of investigators and prosecutors was designated by the Investigating Director to conduct such investigation in terms of section 28(2)(a) of the NPA Act. Senior Supt J du Plooy ("Du Plooy") was designated as the lead investigator and entrusted with command of the investigation. As mentioned above, I was part of the team whilst it resided within the DSO.

163 On 1 October 2008 the investigation was extended to include the suspected making and receiving of corrupt payments by officials of BAE plc; SANIP (Pty) Ltd; the Department of Trade and Industry; and/or any other related entity or individual for the benefit of such officials in relation to the counter trade obligations by BAE plc regarding its NIP and DIP agreement with the South Africa government.

164 After the disbandment of the DSO, Du Plooy transferred to the South African Police Service ("SAPS") and remains the lead investigator in the continuing investigation.

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G. MUTUAL LEGAL ASSISTANCE BETWEEN SOUTH AFRICA AND LIECHTENSTEIN

Liechtenstein LOR

165 On 6 October 2008, a letter of request or "LOR" was issued out the Liechtenstein Court of Justice to the Acting National Director of Public Prosecutions. It was a request from the office of the Liechtenstein Public Prosecutor for assistance in relation to criminal proceedings in progress in Liechtenstein against Hlongwane on account of suspected money laundering. A copy of the Liechtenstein LOR is attached marked "WD1".

166 The following is stated in the Liechtenstein LOR:

"In terms of the investigation, it is suspected that frozen assets belonging to Fana Hlongwane in the Principality of Liechtenstein are linked with active and passive bribery and corruption by the company operating as BAE Systems PLC ("BAE"), using a system of international representatives. In concrete terms, it must be assumed that the circumstances under suspicion are as follows."

(LOR: p 1)

167 In broad terms, the Liechtenstein LOR seeks the following assistance:

- 167.1 information on whether criminal proceedings are pending at the NPA against Hlongwane and, if so, what the subject matter of the proceedings is and the stage that the proceedings have reached;
- 167.2 information regarding Hlongwane's function in relation to the supply of fighter aircraft from BAE, with particular regard to his status as an adviser to Modise, civil servant or otherwise;
- 167.3 assistance from the South African authorities in the interrogation of Hlongwane as a suspect in the circumstances of the Liechtenstein investigation. (LOR: p 7)
- 168 On the instructions of the NDPP, a copy of the LOR was handed to the Asset Forfeiture Unit ("AFU") on 28 October 2008.
- 169 A response to the Liechtenstein LOR was drafted by Ms Elize le Roux, one of the prosecutors in the DSO team. It was sent informally to the Liechtenstein authorities on 4 August 2009. A copy of the response is attached marked "WD2".
- 170 Before a formal version of the response had been sent via diplomatic channels, Ms Le Roux was contacted telephonically during September 2009 by Dr R Wallner (Chief State Prosecutor in the office of the Liechtenstein Public Prosecutor). He advised her that the Liechtenstein authorities were considering transferring their criminal

investigation in respect of Hlongwane to South Africa. Accordingly, it was agreed that the execution of the Liechtenstein LOR by South Africa should be put on hold, pending a decision on the referral of the investigation.

171 The investigation was subsequently referred to South Africa and accordingly the Liechtenstein LOR has not been executed as at the date of signature of this affidavit.

South African LOR

172 On 5 December 2008, the High Court of South Africa (Transvaal Provincial Division) authorised the issuing of an LOR to Liechtenstein in terms of section 2(2) of ICCMA. The authorisation was granted pursuant to an *ex parte* application brought by the NDPP. I shall not attach a copy of this LOR. Instead, the Court file will be made available to the Judge hearing this matter and/or Hlongwane, if requested.

173 The LOR requested assistance in the criminal investigation conducted by the DSO. The scope of the investigation is outlined in section E of this affidavit.

174 After the despatch of the LOR, the South African team of investigators and prosecutors was advised by the Liechtenstein authorities that the office of the Liechtenstein Public Prosecutor was

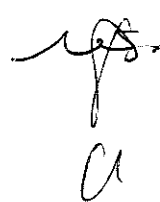
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considering referring their criminal investigation to South Africa. In light of this, the South African team was advised that the execution of the LOR had been deferred.

175 It is now unlikely that the LOR will be executed because on 14 October 2009 the South African Embassy, acting on the instructions of the South African Department of Justice and Constitutional Development, directed a written request to the Liechtenstein Embassy for the return of all documentation "*relating to BAE/Hlongwe* [sic]" (a reference to Hlongwane). A copy of the request is attached marked "**WD3**". I am not sure what motivated this request.

176 On 29 October 2009, Dr R Wallner (Chief State Prosecutor in the office of the Liechtenstein Public Prosecutor) ("Wallner") wrote an email to the investigators and prosecutors in the DSO team, advising of the request by the South African Embassy. A copy of the email is attached marked "**WD4**". I am one of the persons to whom the email was addressed. In his email, Wallner advised that the request had been interpreted by the Liechtenstein Court of Justice as a demand for the return of the original LOR addressed to Liechtenstein by South Africa.

177 On 25 November 2009, Magistrate Harald Oberdorfer ("Oberdorfer") of the Liechtenstein Justice Department addressed a letter to the

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NDPP's office for the attention of Ms Le Roux, requesting her to indicate whether the NDPP wished to uphold or withdraw the request for mutual legal assistance in the criminal case against Hlongwane and others. A copy of the letter is attached marked "WD5".

178 On 5 February 2010, Oberdorfer addressed a letter to Mrs N.D Malotana of the South African Embassy, enclosing his earlier correspondence and requesting Mrs Malotana to advise whether South Africa will withdraw its LOR definitely or whether the request is now to be executed in Liechtenstein. A copy of the letter is attached marked "WD6".

179 As far as I know, no response to the letters has been sent to Oberdorfer.

Referral of Liechtenstein criminal prosecution to South Africa

180 On 28 October 2009, Wallner directed a request to the NDPP headed "Request for the takeover of the criminal prosecution of the South African citizen Fana Hlongwane". A copy of the request is attached marked "WD7".

181 The takeover request contained information regarding the criminal proceedings underway in Liechtenstein. Moreover, the request stated that *"certified copies of the crucial items from criminal file 11 UR 2008.283 at the Court of Justice of the Principality of*

Liechtenstein are attached". (Referral: p 8) I refer to the certified copies as "the takeover documentation" in this affidavit.

182 Wallner sent a copy of the takeover request by email to Ms Le Roux on 29 October 2009 and she forwarded a copy to me on the same date. The takeover documentation was not included in the emailed version of the request.

183 On 17 November 2009, I was advised by Ms T Matzke of the NDPP's office that the takeover request had been received by the NDPP's office, together with a box of documents (which was the takeover documentation). Ms Matzke suggested to me that the Department of Justice & Constitutional Development ("DoJ&CD") be advised of the request and she arranged a meeting to discuss the takeover request.

184 The meeting was held on 3 December 2009 at the Pretoria office of Commissioner Meiring of the SAPS Directorate of Priority Crime Investigation ("Meiring"). Meiring is responsible for the South African criminal investigation into the Arms Deal since the investigation was transferred from the DSO to SAPS. I was present at the meeting as were Meiring, Du Plooy and other representatives of the NPA, including Johan Kruger ("Kruger") and SAPS. Representatives from DoJ&CD were invited to attend but tendered apologies.

185 At the meeting, Kruger advised those of us present that he would report back to the NDPP on the outcome of the meeting, as the NDPP was unable to attend.

186 The status of the investigation was discussed and it was agreed by all present that, since the NPA no longer had investigating powers, the takeover request together with the takeover documentation should be handed over to SAPS by the NPA with a view to SAPS investigating the matter. Accordingly, the original request, including the takeover documentation, was handed to Meiring at the meeting. He indicated that, in accordance with SAPS' project-management approach in this matter, it would be appropriate to make copies of the takeover documentation available to the NPA prosecutors and the AFU for possible asset forfeiture proceedings. Du Plooy was mandated by Meiring to arrange for copies to be made available.

187 Due to the volume of the takeover documentation and the fact that Meiring and Du Plooy are based in Pretoria, copies of the documents were only delivered to the Cape Town office of the NPA on Friday 11 December 2009. The documentation runs to approximately 800 pages, much of which is in German without any English translation. On Monday 14 December 2009, enquiries were made to various German translators but none were available to assist with translation

until mid January 2010 due to the volume of documentation and the festive season.

188 Subsequently, in January 2010, Ms Saller commenced working in the Asset Forfeiture Unit, Cape Town in the position of Senior State Advocate and was requested to consider the takeover documentation, as she is fluent in English and German. In a parallel process, translations of the pertinent documentation into English were obtained during the course of February 2010. The takeover documentation is discussed in more detail in the accompanying affidavit of Ms Saller.

Proposed application for second South African LOR

189 As appears from the accompanying affidavit of Ms Saller, the takeover documentation includes two broad categories of documents emanating from the criminal investigation instituted by the Liechtenstein authorities. The first category is official documentation generated by the Liechtenstein authorities, such as court orders and charge sheets ("official documents"). The second category is documentation from third parties that has come into the possession of the Liechtenstein authorities ("third party documents").

190 In addition, it is evident from Ms Saller's affidavit that there are additional documents that the Liechtenstein authorities had sight of

and which are referred to but not included in the takeover documentation itself ("omitted documents").

191 Accordingly, if the present application succeeds, the NDPP will bring a separate *ex parte* application before a judge in chambers for the issuing of an LOR to Liechtenstein in terms of section 2(2) of ICCMA. The purpose of that LOR will be to obtain the following assistance from Liechtenstein in relation to the documentation described immediately above:

191.1 the originals wherever possible or, alternatively, certified copies of the omitted documents;

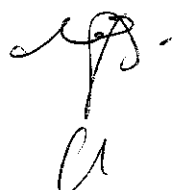
191.2 duly authenticated copies of all official documents (including any that form part of the omitted documents);

191.3 the originals wherever possible or, alternatively, certified copies of all third party documents (including any that form part of the omitted documents).

H. CORRESPONDENCE BETWEEN AFU AND HLONGWANE'S ATTORNEYS

192 Hlongwane is represented by Mr C Stockenström of Stockenström Fouché Inc ("Stockenström").

193 On 20 January 2009, Stockenström wrote to Mr W Hofmeyr ("Hofmeyr"), the national head of the AFU, stating that he

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represented Hlongwane, Hlongwane Consulting (Pty) Ltd, Tsebe Properties (Pty) Ltd and Hlongwane Aerospace (Pty) Ltd; and that it had come to his attention that the NPA possibly was going to take steps to seize the assets of his clients. He advised that his instructions were to confirm that his clients were aware of the DSO's investigations and that the DSO had a detailed register of his clients' assets. In addition, he advised that his instructions were that his clients undertook not to dispose of their assets and accordingly, there was no reason to proceed with the seizure of their assets. Lastly, he requested notice of any application to seize his clients' assets, should the NPA decide to proceed with such an application. A copy of this letter is attached marked "**WD8**".

194 On 30 January 2009, Hofmeyr responded briefly, confirming receipt of the letter and advising that he would respond in due course. A copy of this letter is attached marked "**WD9**".

195 On 4 May 2009, Hofmeyr responded in full to the letter from Stockenström. A copy of this letter is attached marked "**WD10**". In particular Hofmeyr advised as follows:

195.1 *"It is contrary to the policy and practice of the National Director to confirm or to deny that preservation or restraint proceedings are being considered in connection with any particular case."*

195.2 If a decision is made to institute an application, it will be approached in the usual way, which means that *"consideration will, as normal, be given to issues such as whether or not to proceed ex parte"*.

195.3 Hofmeyr advised that neither the DSO nor the AFU were in possession of a register of the clients' assets and consequently, the National Director was not in a position to consider the undertaking not to alienate assets, in the absence of information regarding the assets to which the undertaking relates and the terms of the undertaking.

195.4 He invited Stockenström to provide any information or evidence, under oath, that might influence the National Director as to whether or not to act in terms of POCA.

195.5 Lastly, Hofmeyr advised that, should the National Director decide to proceed *ex parte*, a copy of the correspondence and any information provided by Stockenström would be placed before the court and that the court then had the discretion to require the National Director to proceed on notice.

196 Neither Stockenström nor his clients responded to this letter.

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197 On 11 February 2010, Hofmeyr wrote to Stockenström again. A copy of this letter is attached marked "**WD11**". He advised that the NPA had recently obtained information from the Liechtenstein authorities regarding the freezing of the property that is the subject of this application and that Hlongwane is believed to be the beneficial owner thereof. He advised that, in the view of the NPA, there are reasonable grounds to believe that the funds are the proceeds of unlawful activity and/or the instrumentality of corruption and money-laundering related offences and that the NDPP intends to apply for a preservation order in terms of section 38 of POCA. Hofmeyr invited Hlongwane to answer certain questions (by close of business on 17 February 2010) and indicated that the answers might impact on the NDPP's final decision as to whether to proceed with the application. The questions included the following:

- 197.1 whether Hlongwane has a direct or indirect interest in the frozen funds and if so, what the nature of that interest is and when it was acquired;
- 197.2 whether Hlongwane rendered a service or product that led to the payment of the funds into the account and if so, what service or product was rendered; when and to whom it was rendered; whether the service or product was rendered in terms of an agreement and if so, the details of the

contracting parties, as well as the date and place of conclusion of the agreement and the terms thereof.

- 198 Hofmeyr emphasised that Hlongwane was not compelled to answer the questions and that his answers could be used in both asset forfeiture proceedings and possible criminal proceedings. In that regard, Hofmeyr confirmed that the investigation instituted by the DSO has been transferred to SAPS and that Hlongwane remains a suspect in that continuing investigation.
- 199 Lastly, Hofmeyr advised that any responses from Hlongwane would be placed before the court hearing the preservation application.
- 200 On 15 February 2010, Stockenström wrote to Hofmeyr requesting an extension until 22 February 2010 to respond. A copy of this letter is attached marked "**WD12**". (This letter was only faxed to Hofmeyr on 17 February 2010.)
- 201 On 22 February 2010, Hofmeyr replied, agreeing to the extension. A copy of this letter is attached marked "**WD13**".
- 202 No response from Stockenström has been received as at the date of signature of this affidavit.

I. REASONABLE GROUNDS

203 In this section I use the abbreviations in the earlier part of my affidavit and in the accompanying affidavit of Ms Saller.

204 I submit that when the affidavit of Ms Saller is read together with this affidavit, there are reasonable grounds for believing that the funds in the Gamari bank account in Liechtenstein are the proceeds and/or the instrumentalities of corruption, fraud, racketeering and money-laundering offences related to the Arms Deal. The facts on which such grounds are based include the following:

204.1 The selection by the SA Government of the combination of BAE and SAAB as the preferred suppliers of the LIFT and ALFA aircraft was surprising because they did not offer the best value for money, when measured against a pre-determined system for assessing technical capability and cost. This followed an instruction from Modise that a separate recommendation be formulated where the acquisition cost of the LIFT aircraft left out of account.

204.2 Hlongwane was Modise's special advisor until April 1999 and consequently able to influence and/or pay off people who were able to influence the selection of BAE/SAAB as the preferred supplier of the aircraft and the terms of the contract negotiated with the SA Government.

- 204.3 Westunity was established in January 1999, i.e. at a time when Hlongwane was still Modise's special advisor and less than two months after BAE/SAAB had been selected by Cabinet as the preferred supplier of the aircraft. At the time of its establishment, BAE/SAAB was negotiating the terms of the contract with the SA Government.
- 204.4 Westunity was owned by Hlongwane, initially personally and later through Meltec (which was established for that purpose). Westunity's purpose was to contract with Arstow for the provision of Hlongwane's services to Arstow. Westunity and Meltec were dissolved in 2004. Upon Meltec's dissolution, its assets were transferred to Gamari.
- 204.5 Arstow's purpose was to facilitate payments by BAE and (after April 1999) Red Diamond of commission on the sales of BAE's products. Roberts, the beneficial owner of Arstow, had contracts with BAE and Red Diamond which entitled him to commission of, initially, 1.5% of the total value of aircraft delivered to SA, possibly reduced later to 0,5%.
- 204.6 Between 5 May 1999 and 15 July 2001 about GPB 9,9 million was paid by Red Diamond into Arstow's accounts with Liechtenstein banks.

204.7 Between 5 October 1999 and 30 July 2001 Arstow paid Hlongwane GBP 4 903 000, including the following: In June and July 2001 GBP 4 050 000 was paid from Arstow's accounts with Liechtenstein banks to Westunity's account with a Liechtenstein bank (two payments totalling GBP 3 455 000) and to a Hong Kong bank account of a Hong Kong company Shun Hing which may be beneficially owned by Hlongwane and is used to channel funds to Hlongwane (one payment of about GBP 590 000). The payments from Arstow to Westunity, including the GBP 4 050 000, totalled GBP 4 305 000.

204.8 Roberts's explanation to the Liechtenstein authorities is that he paid Hlongwane the GBP 4 903 000 because of Hlongwane's contacts to the new black economic business establishment.

204.9 In a statement to the Liechtenstein authorities Hlongwane denies being bribed, saying that while he acted as consultant to Arstow as well as to Modise, he was never a civil servant and accordingly he could not have been bribed.

204.10 In addition to the payment of about GBP 590 000 directly from Arstow, Westunity paid Shun Hing two further payments totalling GBP 600 006,35. Westunity also paid: Meltec a

total of GBP 1 501 180,66 in two transactions; Commercial International Corporation Ltd, a company incorporated in Jersey whose beneficial owner was Hlongwane until its de-registration on 3 July 2003, a total of GBP 165 009,38 in three transactions; and Hlongwane himself a total of GBP 151 400,98 in 6 transactions.

204.11 Meltec paid Gamari a total of GBP 438 654,92, CHF 78 914,90 and EUR 104 301,30 in four transactions and Hlongwane himself a total of GBP 133 920,49 in six transactions. As at 15 September 2009, the balance in Gamari's account with Banque Pasche (Liechtenstein) S.A., Vaduz stood at GBP 437 594.00.

204.12 The complex contractual matrix, namely BAE, Red Diamond, Arstow, Westunity and Meltec, and the complex payment matrix, namely BAE, Red Diamond, Arstow, Shun Hing and Gamari, were designed to hide the involvement of Hlongwane and others in the contracting with the SA Government for the supply of the aircraft.

J. URGENCY

205 I submit that this matter is urgent and that the application was instituted without unreasonable delay. In this regard, I refer to section G of this affidavit, which sets out the timeline regarding the receipt

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from Lichtenstein of substantial documentation relied up on in this application and the translation of the documentation from German to English.

206 Moreover, I submit that the *modus operandi* for dealing with the application, as set out in the notice of motion, is feasible and fair to Hlongwane.

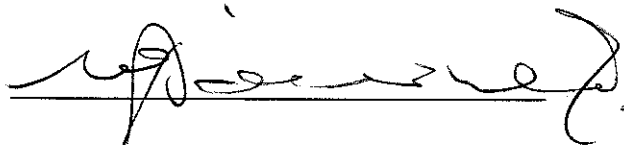
207 If on the return day of the rule *nisi* the Court refuses to confirm the interim preservation order (i.e. make a final preservation order), I confirm that the NDPP will immediately notify the Liechtenstein authorities that the interim preservation order has been lifted so that they may take such steps as are necessary to lift the embargo on the use or movement of the funds (i.e. the property) based on the interim preservation order.

208 I submit Hlongwane will not be prejudiced if an interim preservation order is issued. The property has been subject to judicial freezing orders in Liechtenstein for several years, and an extension of the status quo for a few more weeks while papers are exchanged in this matter and this Court decides whether or not to confirm the interim preservation order will not materially further prejudice Hlongwane.

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K. PRAYER

209 The applicant accordingly asks for relief in terms of the notice of motion.



WILLIAM JOHN DOWNER

I certify that on this 2nd day of March 2010, the deponent signed the affidavit in my presence and declared that he knows and understands its contents, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.



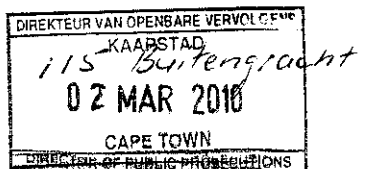
Commissioner of Oaths

Full Names: ANITA LOTZ

Designation: CHIEF CLERK TO THE DIRECTOR OF
PUBLIC PROSECUTIONS

Area: RSA
CAPE TOWN

Address:

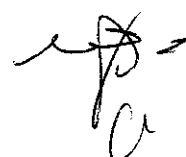


NDPP V FANA HLONGWANE

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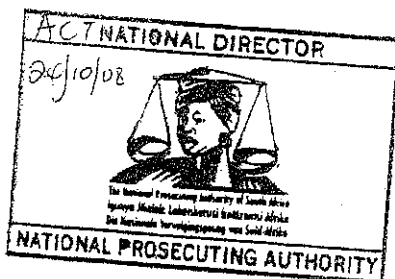
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FORSTENTUM LIECHTENSTEIN
FÜRSTLICHES
LANDGERICHT

Court of Justice of the Principality of Liechtenstein



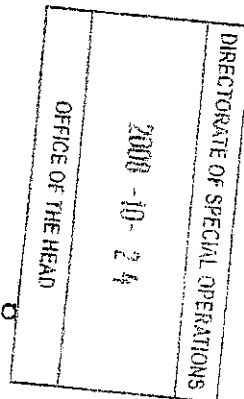
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Acting National Director
National Prosecuting
Authority of South Africa
P.O. Box 752
ZA-0001 Pretoria/South Africa

By fax: 0027 / 12 845 71 30
(original to follow by post)



Vaduz, 6 October 2008/HAKE

International legal assistance in criminal proceedings

Criminal proceedings against Fana Hlongwane et al. on account of suspected money laundering pursuant to Article 165 (1), (2) and (3) of Liechtenstein Criminal Code (StGB)

Request for information on the subject-matter and status of proceedings, and on interrogation of the suspect Fana Hlongwane

Dear Sir/Madam,

Via an application from the Office of the Liechtenstein public prosecutor, criminal proceedings are in progress at the Court of Justice of the Principality of Liechtenstein in Vaduz against Fana Hlongwane et al., d.o.b. 5 March 1959, South African citizen, resident at 128 Cambeboo Road, Fourways Garden, Johannesburg, South Africa, on account of suspected money laundering pursuant to Article 165 (1) (2) and (3) of Liechtenstein Criminal Code (copy of the applicable law is attached).

In terms of the investigation, it is suspected that frozen assets belonging to Fana Hlongwane in the Principality of Liechtenstein are linked with active and passive bribery and corruption by the company operating as BAE Systems PLC ("BAE"), using a system of international representatives. In concrete terms, it must be assumed that the circumstances under suspicion are as follows

BAE maintains a network of representatives (or "advisers" as BAE prefers to call them) to support the marketing of its products. BAE has a department by the name of "Head Quarters Marketing" (HQ Marketing), which coordinates all the

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agreements and contracts with representatives employed by BAE.

On 19 January 2004, the *Guardian* broadsheet contacted the Serious Fraud Office in London ("SFO") and presented them with information, which implied that BAE were making illegal payments via a company with its registered office in the British Virgin Islands by the name of Red Diamond Trading Ltd ("Red Diamond").

Investigations by the SFO produced the fact that BAE was not sending amounts of money to representatives abroad directly through HQ Marketing, but was making payments of this kind through foreign front companies. One of these front companies is Red Diamond. BAE demands that representatives enter into contractual agreements either with BAE or Red Diamond. The representatives themselves tend to operate through front companies and seldom appear personally.

Within the context of its investigations the SFO procured details about the account of Red Diamond at Lloyds Bank. Lloyds TSB expressed its concern with regard to money laundering, since the bank had not been informed about who Red Diamond was represented by. BAE later confirmed that it was the beneficiary of Red Diamond. BAE has online banking at Lloyds through which payments can be transferred direct to Red Diamond (by means of a computer controlled by BAE), and from there they can be transferred abroad. Automatic [credit] transfers ensue from BAE accounts to Red Diamond, and from there abroad. This results in the fact that only a minimum amount of bank data remains at the bank. Furthermore, clearly the only purpose for these transfers within the British banking system was to conceal BAE's involvement in foreign transfers.

Material made available to the SFO by the Foreign Corrupt Practices Act (FCPA) division of the U.S. Department of Justice confirms the existence of „open“ and „concealed“ agreements between BAE and its advisers, as well as the origin of Red Diamond. Clearly BAE, through Sir Richard Evans, decided during the second half of the 1990s to conceal the payment system from its „hidden“ advisers. After different options had been considered in this respect, BAE decided that the least transparent system consisted of setting up a foreign organisation as a front. The material disclosed also contains details on the setting up of Novelmight Ltd. The purpose of this company was exclusively to store abroad filed material relating to representatives.

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Furthermore, it was used for meetings with representatives. The documents submitted to the FCPA reveal that the company allegedly had a registered rented office next to Lloyds Bank in Geneva, and in this respect the alarm system was allegedly linked with that of Lloyds.

The documentation makes it clear that the main aim of BAE from start to finish consisted of proceeding as surreptitiously as possible and of making the system as non-transparent as possible. The primary target consisted in particular of making the infiltration of an investigator as difficult as possible. The SFO served an Order on BAE, requesting it to disclose material on its marketing representatives. BAE has so far partially interpreted this Order, but in a way which excludes disclosure of the documents kept in Switzerland.

Points of reference to South Africa ensue as follows:

In 1999, BAE concluded a contract in accordance with the South African Defence Programme to supply 52 Hawk Training Aircraft and Saab Gripen Fighter Aircraft to the government of South Africa. Other foreign arms manufacturers also received contracts emanating from this Programme.

Internal parliamentary inquiries and later investigations by the Office of the Auditor General produced the fact that there was bribery and corruption linked with the BAE contract. The report particularly emphasized the role of the amounts made available for "side projects". The former had been earmarked for the internal social and infrastructural development of Trusts (Schattenfirmen) connected with Shamin ("Chippy") Sheik, the ANC Chairman of the Parliamentary Procurement Committee.

In May 2001, investigators in South Africa started an inquiry into claims that there was a link between the contract and the financing of Cabinet Ministers' foreign trips by BAE. It was publicly asserted that Chippy Sheik had moreover received jewellery as presents from BAE. Schabir Sheik too, the brother of Chippy Sheik, was recently sentenced to 15 years' imprisonment after prosecution by the South African authorities on account of bribery by the French arms manufacturer Thomson CSF. This case includes an accusation against Jacob Zuma, the former Vice President of South Africa, which is being dealt with at a judicial hearing.

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In 2003, BAE confirmed that its representative in South Africa was a company by the name of Osprey Aviation (Osprey). A BAE spokesperson confirmed in a South African newspaper that Osprey had been appointed in 1994 as an "external advisory organisation" to support legal tendering and commercial processes. The full extent of the amounts pouring into Osprey has not been confirmed. Richard Charter, the now deceased head of Osprey, was also chairman of South African BAE Systems Holdings (South Africa), an affiliated company of BAE.

Other accusations in South Africa relate to a donation of approx. GBP 500,000.00 to "The Airborne Trust" in March 1998. This Trust was founded in 1995 to support former ANC veterans of the MK Military Veterans Association (MKMVA). Its chairman was also Richard Charter. Significantly, the now deceased Joe Modise, the Defence Minister for South Africa at the time, was a founder member of the Trust and a member of the steering committee of the MKMVA, and received from the Airborne Trust at least a one-off payment to enable him to make a trip to the United Kingdom. Furthermore, this payment ensued just one month before Modise personally intervened in the procurement process, in order to change the conditions of the tender in a way that would ultimately lead to BAE being awarded the contract. These changes in tendering excluded price as being the relevant factor in the awarding of the contract. The BAE tender was substantially higher than the tenders from the competition.

In 2005, Charter (together with Chippy Sheik) was suspected of corruption in the National Assembly of South Africa by Patricia De Lille, the leader of the Independent Democratic Party. She furthermore requested an independent inquiry into the matter of why the South African Government paid USD 17 million over the market price for the Hawk machines.

The payments to representatives in connection with the South African BAE Contract began in May 1999 through Red Diamond, and amounted to GBP 81 million at the end of 2004. Since the introduction of British law in December 2001 to combat terrorism and criminality, and protect safety, around GBP 38 million has been paid to South African representatives from a Red Diamond account. Some of these payments were made at Swiss banks in Geneva:

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A company by the name of Arstow Commercial Corporation ("Arstow") was paid through Red Diamond and received more than GBP 20 million between May 1999 and December 2004. In this connection more than GBP 9 million was paid into accounts at different banks in the Principality of Liechtenstein. In Documents subsequently received from the SFO in this respect concern payments with regard to the Hawk and Gripen Contract.

A company by the name of Kayswell Services Ltd. (Kayswell) received payments of more than GBP 37 million through Red Diamond between December 2000 and September 2005. It emerges from documents disclosed by BAE that Kayswell was founded in 1994 and signed an advisory agreement with BAE with regard to the Hawk Contract in the same year; furthermore, the Gripen Contract was added later. In 2000, the advisory agreement with Kayswell was transferred by BAE to Red Diamond, and in 2005, the agreement was terminated, whereby Kayswell received more than GBP 19 million in compensation.

The documents disclosed by BAE show evidence of a certain Jules Pelissier as the contact at Kayswell. However, the file also contains correspondence from Pelissier on headed paper from another company by the name of Aviation Consultancy Services Ltd. (ACS). According to a UNO report, John Bredenkamp (born in 1940 in South Africa, is, however, a citizen of Zimbabwe) is connected with Aviation Consultancy Services. Bredenkamp is domiciled in the United Kingdom, and in 2002 was the 33rd richest person in Great Britain. The same UNO report describes him as a key figure in the arms trade and as a man who earned millions with the illegal exploitation of natural treasures in the Congo, and with the negotiation of sales of military equipment from BAE to the country through ACS. Furthermore, the report lists claims (which are disputed both by BAE and Bredenkamp) that BAE, with the involvement of ACS, infringed EU sanctions by selling spare parts for Hawk fighter planes to Zimbabwe in 2002.

Approx. GBP 6.5 million of the amounts paid to Kayswell were transferred through Red Diamond into an account at LGT Bank in Liechtenstein AG, Vaduz.

It must be assumed that the public accusations with regard to the corrupt relations and the misuse of power between BAE representatives and persons of high standing within the ANC Government, in conjunction with the extent of payments and their relevance to the successful signing of contracts, is not

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compatible with legitimate commercial transactions and requires a more thorough investigation.

There are convincing accusations – whether as a result of the relevance to the payments or the sheer amount of commission payments – that funds flowing through BAE, or rather HQ Marketing and Red Diamond, are being used for the purposes of bribery and corruption. Furthermore, the entire system is operated under a shroud of secrecy, so that the suspicion with regard to the purpose of these payments is justified.

Various different companies have been/ are being managed at Liechtenstein Trust company Tremaco Trust Enterprise reg., for the suspect Fana Hlongwane and the other suspect Alexander Roberts. Alexander Roberts pretended to be the financial beneficiary of Arstow towards the foregoing Trust company. Fana Hlongwane appears as the financial beneficiary of the companies Westunity Business Limited, Meltec Foundation and Gamary Trust reg. Westunity Business Limited was funded by the above-mentioned Arstow. In this connection Arstow, as already mentioned, received assets from Red Diamond. Payments were subsequently made in turn by Westunity Business Limited to the Meltec Foundation and, after its liquidation, to its successor Gamary Trust reg. During the course of these criminal proceedings, assets belonging to the Gamari Trust held by Bank Pasche (Liechtenstein) S.A., Vaduz, have been frozen. They amounted to over GBP 400,000.00. It has furthermore become known that the suspect Hlongwane was allegedly an adviser to the former South African Defence Minister Joe Modise, and at the same time was allegedly an adviser to the Airbus Company.

As a result of the suspicion under investigation, assets held at Swisspartners Versicherung AG, Vaduz amounting to over EUR 3 million, of which Fana Hlongwane is the financial beneficiary, have been frozen. Currently, it must be assumed that the foregoing frozen assets at Swisspartners Versicherung AG originate from an account in the name of Preordain Holdings Ltd., Panama at Bank Credit Agricole, Geneva, Switzerland. Preordain Holdings Ltd is a holding company of the suspect Hlongwane.

It ensues from the investigation proceedings at SFO that according to information from the suspect Roberts, "at some point during the course of activities with South Africa, it was agreed between Roberts and BAE that around two-thirds of the commission to which Roberts was entitled would be transferred at the appropriate time from the Arstow account to accounts, which are controlled by Mr Hlongwane". According to Roberts, this was

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remuneration for "balancing work" performed by Hlongwane in the wake of activities in South Africa.

With reference to the above, I now therefore courteously submit the following

REQUEST

that you inform the Court of Justice of the Principality of Liechtenstein whether criminal proceedings are pending at the National Prosecuting Authority of South Africa against Fana Hlongwane, in connection with his advisory activity for BAE and Airbus, and in the affirmative, what is the subject-matter of these proceedings and what stage have the proceedings reached?

Furthermore, you are kindly requested for information in terms of what was Fana Hlongwane's function in connection with the supply of fighter aircraft from BAE and, if applicable, the Airbus to the South African Government, whether he actually was an adviser at the time to the now deceased South African Defence Minister Joe Modise, whether there are indications that Fana Hlongwane abused his official power and actively intervened in the procurement processes, so that BAE and Airbus were awarded the contracts, and whether Fana Hlongwane was publicly a civil servant of the Republic of South Africa and/or was working as an officer of a company in the public sector.

Finally, you are kindly requested to interrogate Fana Hlongwane as a suspect on the circumstances outlined above.

At the outset, please ask the suspect about his personal circumstances and generally specify the criminal offence of which he is suspected. Then please draw his attention to the fact that it is left to his own discretion to make a statement. If he refuses to make a statement, please point out to him that this will not delay the investigation, but it could result in him being deprived of his defence rights. Prior to the interrogation, please hand the suspect in addition the enclosed leaflet entitled "Rights and duties in criminal proceedings" and record the fact that it has been received.

In particular, the suspect should be asked to comment on the questions already raised above concerning his work for BAE and the Government of South Africa.

Furthermore, kindly ask the suspect whether he was or is the financial beneficiary of Meltec Foundation, Gamari Trust reg., Westunity Business Limited, and an insurance at Swisspartners Versicherung AG, 9490 Vaduz. In the affirmative, he should state in detail, where the assets of the foregoing companies/ insurance company originate. In this connection, with regard to the insurance, the suspect should indicate where and why the assets originate at the outset from Preordain Holdings Ltd. Kindly ask the witness to name witnesses/ evidence that backs up his information. Furthermore, please ask the suspect to explain what Alexander Roberts means by "balancing work" in the above sense, and why or for what activities he (the suspect) received commission amounts transferred by BAE/Arstow. Finally, please ask the suspect, whether he is willing to appear at the Court of Justice of Liechtenstein and give a testimony.

If you have any further questions, please do not hesitate to contact me at any time.

Tel.: +423 236 63 04
Fax: +423 236 65 69
E-mail: martin.nigg@lg.llv.li).

In the event that you are not the party responsible for providing the international legal assistance requested, I kindly ask you to forward this letter to the competent authority.

Please accept my sincere thanks in anticipation for the provision of legal assistance in this matter.

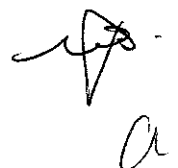
Yours sincerely,

Court of Justice of Liechtenstein

Martin Nigg
Judge at the Court of Justice of Liechtenstein

Enclosures:

Art. 165 (1) to (3) StGB
Leaflet: "Rights and duties in criminal proceedings"

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Article 165
Money laundering

- 1) Any person who conceals or disguises the origin of assets emanating from a crime, an offence under Articles 278, 278d or 304 to 308, an offence under Article 23 (1) and (2) of the Federal Act governing the Residence and Establishment of Foreign Citizens, or an offence under the Narcotic Drugs Act, in particular by making false statements in legal transactions as to the source or real nature of these assets, the ownership or other rights in them, the powers of disposition over them, their transfer or in respect of where they are located, shall be sentenced to a term of imprisonment of up to three years or to pay a fine of up to 360 daily rates.
- 2) Any person who acquires or takes possession of assets emanating from a crime, an offence under Articles 278, 278d or 304 to 308, an offence under Article 23 (1) and (2) of the Federal Act governing the Residence and Establishment of Foreign Citizens, or an offence under the Narcotic Drugs Act, whether merely to hold these assets in safekeeping, to invest or to manage them, who converts, exploits or transfers such assets to a third party, shall be sentenced to a term of imprisonment of up to two years or to pay a fine of up to 360 daily rates.
- 3) Any person who commits an offence pursuant to the above 1) or 2) relating to a value exceeding 75,000 Swiss francs or as a member of a gang, which has joined together for the purpose of repeated money laundering, shall be sentenced to a term of imprisonment of between six months and five years.

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RIGHTS AND OBLIGATIONS IN CRIMINAL PROCEEDINGS
Leaflet for suspects and defendants in criminal proceedings

Attorney: Suspects and defendants involved in criminal proceedings have the right to make use of an attorney during the entire proceedings (refer to Articles 24 et al of the Code of Criminal Procedure [StPO]).

The attorney or other persons are not permitted to be present during the examination before the judge (Art. 145 of StPO).

Obligation to be represented by an attorney: During the key hearing in a criminal court, the defendant must be represented by an attorney. This applies also for the duration of any custody imposed pending trial (Art. 26 (3) StPO).

If no attorney is appointed before the start of the key hearing or at the time of the imposing of any custody pending trial, the court will then appoint ex officio an attorney for the defendant at the defendant's cost.

There is no obligation to be represented by an attorney during the final hearing before the Individual judge, or in the court of lay assessor.

Legal Aid Attorney: If the suspect / defendant is not in a position to bear the defence costs without negatively affecting the payments necessary to maintain a simple lifestyle for himself and his family (his duty being to provide for them), and if the suspect/ defendant applies to the court, the court must then order that the suspect/ defendant is assigned an attorney and does not have to bear the costs of this attorney, if and insofar as this is necessary in the interests of the administration of justice, and notably in the interests of an appropriate defence (Art. 26 (2) StPO).

Refusal of testimony: It is at the suspect's / defendant's own discretion as to whether they comment or not on the matter. Any statement made can be used by the defence, but can also be used against them as evidence.

A summons by the court, despite the intention to refuse to give a testimony, must nevertheless be complied with, otherwise a [warrant] to appear will be served by Liechtenstein National Police; refusal to give testimony will be recorded at the time of the examination.

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Inspection of the files: Inspection at court of the criminal file and the requesting of copies is at the suspect's / defendant's own discretion. The right to inspect the file can, however, be restricted by the examining judge for investigative and tactical reasons (refer to Art. 30 (2) StPO).

Right of appeal: Suspects / defendants are given the respective information concerning right of appeal orally or in writing at the time the court passes judgement.

The most fundamental appeal within the framework of preliminary judicial investigations, however, is the legal remedy of appeal; all judicial decisions, judgements and rulings, which are not convictions can be challenged, unless they are legitimate exceptions, by means of the legal remedy of appeal to the Court of Appeal of Liechtenstein on account of unlawfulness or unreasonableness. An appeal can be lodged by any individuals who are entitled to lodge an appeal, or whose rights are rejected by a judgement or ruling, or whose obligations arise. The legal remedy of appeal must be lodged with the examining judge within 14 days following notification or service (refer to Articles 238 et al of StPO).

Juvenile criminal cases: In juvenile criminal cases - i.e. criminal proceedings against individuals who at the time of the first judicial prosecution proceedings had not yet reached the end of their eighteenth year of age, and criminal proceedings which fall due at court two years at the latest after reaching the end of their eighteenth year of age, on account of a juvenile crime, the suspect / defendant is entitled to call in his legal representative as a person in a position of trust for the examination, unless the latter is involved in the investigation proceedings himself in some form or other (Art. 22 "JGG" in conjunction with Art. 115 (2) sentence 2 of StPO).

The legal representative is legally entitled to participate in the examination proceedings and hence it is imperative that he is informed. He can also assert the claim against the will of the juvenile, or appoint an attorney for the latter.

During investigation proceedings on account of crimes, the suspect / defendant must be represented by an attorney by the time of the final hearing at the latest; if deemed necessary, an attorney must be appointed ex officio.

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FÜRSTENTUM LIECHTENSTEIN

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LANDGERICHT

Aktenzeichen bitte immer anführen

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Acting National Director
National Prosecuting
Authority of South Africa
P.O. Box 752
ZA-0001 Pretoria/South Africa

vorab per Fax: 0027/12 845 71 30

Vaduz, 06. Oktober 2008 /HAKE

Internationale Rechtshilfe in Strafsachen**Strafverfahren gegen Fana Hlongwane u.a. wegen des Verdachtes
der Geldwäscherei nach § 165 Abs 1, 2 und 3 StGB****Ersuchen um Mitteilung zum Gegenstand und Stand eines
Verfahrens und um Vernehmung des Verdächtigen Fana
Hlongwane**

Sehr geehrte Damen und Herren

Über Antrag der Liechtensteinischen Staatsanwaltschaft wird beim Fürstlichen Landgericht in Vaduz ein Strafverfahren unter anderem gegen Fana Hlongwane, geboren am 05. März 1959, südafrikanischer Staatsangehöriger, wohnhaft Cambeboo Road, Fourways Garden 128, Johannesburg, Südafrika, wegen des Verdachtes der Geldwäscherei nach § 165 Abs 1, 2 und 3 des liechtensteinischen Strafgesetzbuches (Kopie der Gesetzesbestimmung beiliegend) geführt.

Gegenständlich besteht der Verdacht, dass im Fürstentum Liechtenstein gesperrte Vermögenswerte des Fana Hlongwane im Zusammenhang mit aktiver und passiver Bestechung durch die Gesellschaft BAE Systems PLC („BAE“) mittels eines internationalen Vertretersystems stehen. Konkret ist von folgendem Verdächtigen Sachverhalt auszugehen:

BAE unterhält ein Netz von Vertretern (von BAE vorzugsweise als „Berater“ bezeichnet), zur Unterstützung der Vermarktung seiner Produkte. Bei BAE besteht eine Abteilung namens „Head Quarters Marketing“ (HQ Marketing), die

sämtliche Vereinbarungen und Verträge mit von BAE beschäftigten Vertretern koordiniert.

Am 19. Januar 2004 wandte sich die Tageszeitung The Guardian an den Serious Fraud Office in London („SFO“) und unterbreitete Informationen, die nahe legten, dass BAE über eine auf den British Virgin Islands ansässige Gesellschaft namens Red Diamond Trading Ltd („Red Diamond“) illegale Zahlungen leistete.

Die Ermittlungen des SFO haben ergeben, dass BAE keine Geldbeträge unmittelbar über HQ Marketing an Vertreter ins Ausland übermittelt, sondern solche Zahlungen über ausländische Strohfirmen erledigt. Eine dieser Strohfirmen ist Red Diamond. BAE verlangt, dass Vertreter vertragliche Vereinbarungen entweder mit BAE oder mit Red Diamond eingehen. Die Vertreter selbst tendieren dazu, über Strohfirmen zu operieren und treten nur selten persönlich in Erscheinung.

Im Rahmen seiner Ermittlungen hat das SFO Einzelheiten über das Konto von Red Diamond bei der Lloyds Bank erlangt. Lloyds TSB äußerte Bedenken wegen Geldwäscherei, da der Bank nicht mitgeteilt worden war, von wem Red Diamond repräsentiert wurde. BAE bestätigte später, der nuiznießerische Eigentümer von Red Diamond zu sein. BAE unterhält eine Online-Einrichtung bei Lloyds, über die Zahlungen mittels eines von BAE kontrollierten Computers direkt an Red Diamond und von dort aus ins Ausland überwiesen werden können. Automatisierte Überweisungen erfolgen von BAE-Konten an Red Diamond und von dort ins Ausland. Dies mit dem Ergebnis, dass nur ein Mindestmaß an Bankinformationen bei der Bank verbleibt. Des Weiteren bestand der einzige Zweck dieser Überweisungen innerhalb des britischen Banksystems offenbar darin, die Beteiligung von BAE an Auslandsüberweisungen zu verschleiern.

Material, welches dem SFO von der Abteilung FCPA des US-Justizministeriums zur Verfügung gestellt wurde, bestätigt die Existenz von „offenen“ und „verdeckten“ Vereinbarungen zwischen BAE und seinen Beratern sowie die Entstehung von Red Diamond. Offenbar beschloss BAE in der zweiten Hälfte der 1990-er Jahre über Sir Richard Evans, das Zahlungssystem an seine „verdeckten“ Berater zu verschleiern. Nachdem diesbezüglich verschiedene Optionen erwägt wurden, entschied BAE, dass das am wenigsten transparente System in der Einrichtung einer ausländischen Körperschaft als Strohfirma besteht. Das offen gelegte Material enthält auch Einzelheiten über die Einrichtung der Novelmight Ltd. Diese Gesellschaft hatte ausschliesslich den Zweck, Aktenmaterial, welches die Vertreter betraf, im Ausland zu lagern.

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Darüber hinaus wurde sie für Treffen mit Vertretern genutzt. Die vor der FCPA vorgelegten Dokumente offenbaren, dass die Gesellschaft in einem gemieteten Büro neben der Lloyds Bank in Genf angesiedelt werden sollte, wobei die Alarmanlage mit der von Lloyds verbunden werden sollte.

Die Dokumentation verdeutlicht, dass das Hauptziel von BAE von Anfang bis Ende darin bestand, so heimlich wie möglich vorzugehen und das System möglichst undurchsichtig zu gestalten. Das primäre Ziel bestand insbesondere darin, die Einschleusung eines Ermittlers so schwierig wie möglich zu gestalten. Das SFO hat BAE eine Verfügung mit der Aufforderung zur Offenlegung der Materialien über seine Marketingvertreter zugestellt. Bisher hat BAE diese Verfügung einseitig in einer Weise ausgelegt, welche die Offenlegung der in der Schweiz verwahren Dokumente ausschließt.

Zu Südafrika ergeben sich folgende Bezugspunkte:

1999 schloss BAE einen Vertrag gemäß dem südafrikanischen Verteidigungsprogramm zur Lieferung von 52 Hawk-Ausbildungsflugzeugen und Saab-Gripen-Kampfflugzeugen an die Regierung von Südafrika. Andere ausländische Waffenhersteller erhielten ebenfalls Aufträge aus diesem Programm.

Interne parlamentarische Untersuchungen und spätere Ermittlungen seitens des Rechnungshofs (Office of the Auditor General) ergaben, dass es im Zusammenhang mit dem BAE-Vertrag zu Bestechungen kam. Der Bericht hob insbesondere die Rolle der für „Nebenprojekte“ verfügbar gemachten Beträge hervor, die für die interne soziale und infrastrukturelle Entwicklung der mit Shamin („Chippy“) Sheik, dem ANC-Vorsitzenden des Parlamentarischen Beschaffungskomitees, im Zusammenhang stehenden Schattenfirmen vorgemerkt waren.

Im Mai 2001 begannen Ermittler in Südafrika mit der Untersuchung von Behauptungen, dass eine Verbindung zwischen dem Vertrag und der Finanzierung der Auslandsreisen von Kabinettsmitgliedern durch BAE bestand. Es wurde öffentlich behauptet, dass Chippy Sheik darüber hinaus von BAE Schmuckgeschenke erhalten hat. Auch Schabir Sheik, der Bruder von Chippy Sheik, wurde nach einer von den südafrikanischen Behörden angestrebten Strafverfolgung wegen Bestechung durch den französischen Waffenhersteller Thomson-CSF, kürzlich zu einer 15-jährigen Freiheitsstrafe verurteilt. Dieser Fall umfasst eine zur gerichtlichen Verhandlung anstehende Anschuldigung gegen Jacob Zuma, den ehemaligen stellvertretenden Präsidenten von Südafrika.

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Im Jahr 2003 bestätigte BAE, dass es sich bei ihrem Vertreter in Südafrika um eine Gesellschaft namens Osprey Aviation (Osprey) handelte. Ein BAE-Sprecher bestätigte einer südafrikanischen Tageszeitung gegenüber, dass Osprey im Jahr 1994 als „externe Beratungskörperschaft“ zur Unterstützung von gesetzlichen, Ausschreibungs- und kommerziellen Verfahren engagiert wurde. Die Höhe der an Osprey geflossenen Beträge wurde nicht bestätigt. Richard Charter, der mittlerweile verstorbene Leiter von Osprey, war außerdem Vorsitzender der südafrikanischen BAE Systems Holdings (South Africa), einer Tochtergesellschaft von BAE.

Weitere Anschuldigungen in Südafrika betreffen eine Schenkung von ungefähr GBP 500'000.00 an den „The Airborne Trust“ im März 1998. Dieser Trust wurde 1995 zur Unterstützung ehemaliger ANC-Veteranen der MK Military Veterans Association (MKMVA) gegründet. Sein Vorsitzender war ebenfalls Richard Charter. Bezeichnenderweise war der mittlerweile verstorbene Joe Modise, damals Verteidigungsminister von Südafrika, Gründungsmitglied des Trusts und Mitglied des Lenkungskomitees der MKMVA und erhielt seitens des Airborne Trusts zumindest eine einmalige Zahlung, um ihm eine Reise in das Vereinigte Königreich zu ermöglichen. Außerdem erfolgte diese Zahlung nur einen Monat, bevor Modise persönlich in das Beschaffungsverfahren eingriff, um die Ausschreibungsbedingungen in einer Weise zu ändern, die letztlich dazu führten, dass BAE den Auftrag erhielt. Diese Änderungen des Ausschreibungsverfahrens schlossen den Preis als einschlägigen Faktor beim Zuschlag des Vertrags aus. Das BAE-Angebot lag beträchtlich höher als die Konkurrenzangebote.

Im Jahr 2005 wurde Charter (zusammen mit Chippy Sheik) in der Nationalversammlung von Südafrika von Patricia De Lille, der Vorsitzenden der Unabhängigen Demokratischen Partei, der Korruption verdächtigt. Sie forderte außerdem eine unabhängige Untersuchung der Frage, warum die südafrikanische Regierung USD 17 Mio. über dem Marktpreis für die Hawk-Maschinen gezahlt hatte.

Die Zahlungen an Vertreter in Zusammenhang mit dem südafrikanischen BAE-Vertrag begannen im Mai 1999 über Red Diamond und beliefen sich Ende 2004 auf GBP 81 Mio. Seit der Einführung des britischen Gesetzes zur Bekämpfung von Terrorismus und Kriminalität und zum Schutz der Sicherheit vom Dezember 2001 wurden rund GBP 38 Mio. von einem Konto von Red Diamond an südafrikanische Vertreter gezahlt. Einige dieser Zahlungen erfolgten an Schweizer Banken in Genf:

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Einer Gesellschaft namens Arstow Commercial Corporation („Arstow“) wurde über Red Diamond bezahlt und erhielt zwischen Mai 1999 und Dezember 2004 mehr als GBP 20 Mio. Mehr als GBP 9 Mio. wurden dabei auf Konten bei verschiedenen Banken im Fürstentum Liechtenstein einbezahlt. Dokumenten des SFO zur Folge ging es dabei um Zahlungen bezüglich des Hawk- sowie des Gripenvertrages.

Eine Gesellschaft namens Kayswell Services Ltd. („Kayswell“) hat zwischen Dezember 2000 und September 2005 über Red Diamond Zahlungen von mehr als GBP 37 Mio. erhalten. Aus Dokumenten die vom BAE offen gelegt wurden, geht hervor, dass Kayswell 1994 gegründet wurde und im selben Jahr eine Beratervereinbarung mit BAE bezüglich des Hawk-Vertrages abschloss, zudem der Gripenvertrag später hinzugefügt wurde. Im Jahr 2000 wurde die Beratervereinbarung mit Kayswell von BAE auf Red Diamond übertragen und im Jahr 2005 wurde die Vereinbarung beendet, wobei Kayswell mehr als GBP 19 Mio. als Abfindung erhielt.

Die von BAE offen gelegten Dokumente weisen einen gewissen Jules Pelissier als Kontaktperson bei Kayswell aus. Die Akte enthält jedoch auch Korrespondenz von Pelissier auf dem Briefpapier einer anderen Gesellschaft namens Aviation Consultancy Services Ltd. (ACS). Einem UNO-Bericht zufolge steht John Bredenkamp (1940 in Südafrika geboren, jedoch Staatsbürger von Zimbabwe) in Verbindung mit Aviation Consultancy Services. Bredenkamp ist im Vereinigten Königreich ansässig und befand sich im Jahr 2002 auf Platz Nr. 33 der reichsten Personen in Großbritannien. Derselbe UNO-Bericht beschreibt ihn als Schlüsselfigur im Waffenhandel und als einen Mann, der Millionen mit der gesetzwidrigen Ausbeutung von Naturschätzen im Kongo und über ACS mit der Vermittlung von Verkäufen von militärischem Gerät von BAE an das Land verdient hat. Außerdem stellt der Bericht Behauptungen auf (die sowohl von BAE als auch von Bredenkamp bestritten werden), dass BAE unter Beteiligung von ACS durch den Verkauf von Ersatzteilen für Hawk-Kampfflugzeuge an Zimbabwe im Jahr 2002 gegen EU-Sanktionen verstoßen hat.

Ungefähr GBP 6.5 Mio. der an Kayswell gezahlten Beträge wurde über Red Diamond auf ein Konto bei der LGT Bank in Liechtenstein AG, Vaduz, überwiesen.

Es ist zu vermuten, dass die öffentlichen Anschuldigungen betreffend die korrupten Beziehungen und des Machtmissbrauchs zwischen BAE-Vertretern und hoch stehenden Persönlichkeiten innerhalb der ANC-Regierung im Verein mit dem Umfang der Zahlungen und ihrer Zeitnähe zum erfolgreichen Abschluss

der Verträge, nicht im Einklang mit legitimen kommerziellen Transaktionen stehen und eine genauere Untersuchung erfordern.

Es liegen - sei es aufgrund der Zeitnähe zu den Zahlungen oder der schieren Höhe der Provisionszahlungen - glaubwürdige Anschuldigungen vor, dass Mittel, die über BAE bzw. HQ Marketing und Red Diamond fließen, für Bestechungszwecke verwendet werden. Außerdem wird das gesamte System unter Geheimhaltung betrieben, so dass der Verdacht bezüglich des tatsächlichen Verwendungszwecks dieser Zahlungen berechtigt ist.

Bei der liechtensteinischen Treuhandgesellschaft Tremaco Treuunternehmen reg. wurden/ werden für den Verdächtigen Fana Hlongwane und den weiteren Verdächtigen Alexander Roberts verschiedene Gesellschaften verwaltet. Alexander Roberts gab sich gegenüber der genannten Treuhandgesellschaft als wirtschaftlich Berechtigter der Arstow aus. Fana Hlongwane scheint als wirtschaftlich Berechtigter bei den Gesellschaften Westunity Business Limited, Meltec Foundation und Gamary Trust reg. auf. Die Westunity Business Ltd. wurde über die oben genannte Arstow gesperrt, wobei Arstow wie bereits gesagt von der Red Diamond Vermögenswerte erhielt. Bei der Westunity Business Ltd. wurden in der Folge wiederum Zahlungen an die Meltec Foundation bzw. nach deren Liquidation an deren Nachfolger Gamary Trust reg. ausgeführt. Im gegenständlichen Strafverfahren wurden die Vermögenswerte des Gamary Trust bei der Banque Pasche (Liechtenstein) S.A., Vaduz, im Umfang von über GBP 400'000.00 gesperrt. Weiters wurde bekannt, dass der Verdächtige Hlongwane Berater des früheren südafrikanischen Verteidigungsministers Joe Modise gewesen sein soll und gleichzeitig die Firma Airbus beraten haben soll.

Aufgrund des gegenständlichen Verdachtes wurden auch Vermögenswerte, an welchen Fana Hlongwane wirtschaftlich berechtigt ist, bei der Swisspartners Versicherung AG, Vaduz, im Umfang von über EUR 3 Mio. gesperrt. Derzeit ist davon auszugehen, dass die genannten gesperrten Vermögenswerte bei der Swisspartners Versicherung AG von einem Konto lautend auf Preordain Holdings Ltd., Panama, bei der Bank Credit Agricole, Genf/Schweiz, stammt. Bei der Preordain Holdings Ltd. handle es sich um eine Holdinggesellschaft des Verdächtigen Hlongwane.

Aus dem Verfahren beim SFO ergibt sich, dass nach den Angaben des Verdächtigen Roberts „irgendwann im Laufe der Aktivitäten mit Südafrika zwischen Roberts und BAE vereinbart wurde, dass etwa zwei Drittel der Roberts zustehenden Provisionen zu gegebener Zeit vom Konto Arstow an Konten überwiesen würden, die von Herrn Hlongwane kontrolliert werden“. Laut

Robert's war dies eine Vergütung der „Ausgleichsarbeiten“, die von Hlongwane im Zuge der Aktivitäten in Südafrika geleistet worden waren.

Bezugnehmend auf die obigen Ausführungen ergeht nunmehr das höfliche

ERSUCHEN,

dem Fürstlichen Landgericht mitzuteilen, ob bei der National Prosecuting Authority of South Africa gegen Fana Hlongwane im Zusammenhang mit seiner Beratungstätigkeit für BAE und Airbus ein Strafverfahren anhängig ist und bejahendenfalls mitzuteilen, was der Gegenstand des dortigen Verfahrens ist und in welchem Stadium sich das Verfahren befindet.

Weiters werden Sie um Mitteilung dahingehend ersucht in welcher Funktion Fana Hlongwane im Zusammenhang mit der Lieferung von Kampfflugzeugen von BAE und allenfalls Airbus an die südafrikanische Regierung tätig und befasst war, ob er damals tatsächlich Berater des damaligen mittlerweile verstorbenen südafrikanischen Verteidigungsministers Joe Modise war, ob es Anzeichen dafür gibt, dass Fana Hlongwane amtsmissbräuchlich in den Beschaffungsprozesse aktiv eingegriffen hat, sodass BAE und Airbus die Aufträge zugesprochen erhielten und ob Fana Hlongwane damals öffentlich Beamter der Republik Südafrika bzw. als leitender Angestellter eines öffentlichen Unternehmens tätig war.

Schliesslich werden Sie ersucht, Fana Hlongwane als Verdächtigen zum oben dargestellten Sachverhalt zu vernehmen.

Eingangs möge der Verdächtige zu seine persönlichen Verhältnissen befragt werden und ihm die strafbare Handlung, wegen der er verdächtigt wird, allgemein bezeichnet werden. Anschliessend soll darauf aufmerksam gemacht werden, dass es ihm freisteht eine Aussage zu machen. Im Falle der Verweigerung der Aussage soll er darauf hingewiesen werden, dass die Untersuchung dadurch aber nicht gehemmt werde und dass er sich dadurch seiner Verteidigungsrechte berauben könne. Vor der Vernehmung möge dem Verdächtigen zusätzlich das beiliegende Merkblatt „Rechte und Pflichten im Strafverfahren“ ausgehändigt und der Erhalt protokolliert werden.

Insbesondere möge der Verdächtige zu den oben bereits aufgeworfenen Fragen zu seiner Tätigkeit für BAE und die Regierung von Südafrika Stellung nehmen.

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Weiters wolle der Verdächtige gefragt werden, ob er wirtschaftlich Berechtigter der Meltec Foundation, des Gamary Trust reg., der Westunity Business Ltd. und einer Versicherung bei der Swisspartners Versicherung AG, 9490 Vaduz, war/ist. Bejahendenfalls wolle er detailliert aufzeigen, woher die Vermögenswerte der genannten Gesellschaften/Versicherung genau stammen, wobei bezüglich der Versicherung der Verdächtige angeben wolle, woher und wofür ursprünglich die Vermögenswerte bei der Preordain Holdings Ltd. stammen. Der Zeuge wolle Zeugen/Beweismittel nennen, welche seine Angaben stützen. Weiters wolle der Verdächtige erklären, was Alexander Roberts mit „Ausgleichsarbeiten“ im obigen Sinne meint und warum bzw. für welche Tätigkeiten er (der Verdächtige) von BAE/Arstow Provisionsbeträge überwiesen erhielt. Schliesslich wolle der Verdächtige gefragt werden, ob er bereit ist, für eine Aussage vor dem Fürstlichen Landgericht in Vaduz zu erscheinen.

Für allfällige Fragen stehe ich Ihnen jederzeit gerne zur Verfügung:

Tel: +423 / 236 63 04
Fax: +423 / 236 65 69
E-Mail: Martin.Nigg@la.liv.li

Sollten Sie für die ersuchte internationale Rechtshilfe in Strafsachen nicht zuständig sein, so ersuche ich Sie, dieses Schreiben an die zuständige Behörde weiterzuleiten.

Mit bestem Dank im Voraus für Die Gewährung der Rechtshilfe verbleibe ich

mit vorzüglicher Hochachtung



Fürstliches Landgericht

Martin Nigg

Fürstlicher Landrichter

Beilagen:

§ 165 Abs 1 bis 3 StGB

Merkblatt „Rechte und Pflichten im Strafverfahren“

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§ 165
Geldwäscherei

1) Wer Vermögensbestandteile, die aus einem Verbrechen, einem Vergehen nach den §§ 278, 278d oder 304 bis 308, einem Vergehen nach Art. 23 Abs. 1 und 2 des Bundesgesetzes über Aufenthalt und Niederlassung der Ausländer oder einem Vergehen nach dem Betäubungsmittelgesetz herühren, verbirgt oder ihre Herkunft verschleiert, insbesondere indem er im Rechtsverkehr über den Ursprung oder die wahre Beschaffenheit dieser Vermögensbestandteile, das Eigentum oder sonstige Rechte an ihnen, die Verfügungsbefugnisse über sie, ihre Übertragung oder darüber, wo sie sich befinden, falsche Angaben macht, ist mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.

2) Wer Vermögensbestandteile, die aus einem Verbrechen, einem Vergehen nach den §§ 278, 278d oder 304 bis 308, einem Vergehen nach Art. 23 Abs. 1 und 2 des Bundesgesetzes über Aufenthalt und Niederlassung der Ausländer oder einem Vergehen nach dem Betäubungsmittelgesetz eines anderen herühren, an sich bringt, in Verwahrung nimmt, sei es, um diese Bestandteile lediglich zu verwahren, diese anzulegen oder zu verwalten, solche Vermögensbestandteile umwandelt, verwertet oder einem Dritten überträgt, ist mit Freiheitsstrafe bis zu zwei Jahren oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen.

3) Wer die Tat nach Abs. 1 oder 2 in Bezug auf einen 75 000 Franken übersteigenden Wert oder als Mitglied einer kriminellen Vereinigung begeht, die sich zur fortgesetzten Geldwäscherei verbunden hat, ist mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.

a. f.

RECHTE UND PFLICHTEN IM STRAFVERFAHREN

Merkblatt für Verdächtige/Beschuldigte/Angeklagte im Strafverfahren

Verteidiger: Verdächtige/Beschuldigte/Angeklagte im Strafverfahren haben das Recht, sich während des gesamten Verfahrens eines Verteidigers zu bedienen (s. §§ 24 ff. StPO).

Während der Einvernahme vor dem Untersuchungsrichter ist die Anwesenheit des Verteidigers oder weiterer Personen nicht gestattet (§ 145 StPO).

Verteidigerzwang: In der Schlussverhandlung vor dem Kriminalgericht muss der Angeklagte durch einen Verteidiger vertreten sein. Dies gilt ebenso für die Dauer der allfällig verhängten Untersuchungshaft (§ 26 Abs 3 StPO).

Wird vor Beginn der Schlussverhandlung oder anlässlich der Verhängung der Untersuchungshaft kein Verteidiger benannt, so wird durch das Gericht von Amts wegen und auf Kosten des Beschuldigten /Angeklagten ein Verteidiger bestellt.

In der Schlussverhandlung vor dem Einzelrichter oder dem Schöffengericht besteht kein Verteidigerzwang.

Verfahrenshelfer: Ist der Verdächtige/Beschuldigte/Angeklagte ausser Stande, ohne Beeinträchtigung des für ihn und seine Familie, für deren Unterhalt er zu sorgen hat, zu einer einfachen Lebensführung notwendigen Unterhalts die Kosten der Verteidigung zu tragen, so hat das Gericht auf Antrag des Verdächtigen/Beschuldigten/Angeklagten zu beschliessen, dass diesem ein Verteidiger beigegeben wird, dessen Kosten er nicht zu tragen hat, wenn und soweit dies im Interesse der Rechtspflege, vor allem im Interesse einer zweckentsprechenden Verteidigung, erforderlich ist (§ 26 Abs 2 StPO).

Aussageverweigerung: Verdächtigen/Beschuldigten/Angeklagten steht es frei, sich zu äussern oder nicht zur Sache auszusagen. Die getätigte Aussage kann dabei der Verteidigung dienen, aber auch als Beweis gegen sie verwendet werden.

Ladungen des Gerichts ist trotz beabsichtigter Aussageverweigerung dennoch Folge zu leisten, andernfalls die Vorführung durch die Landespolizei erfolgt; die Aussageverweigerung wird anlässlich der Einvernahme zu Protokoll genommen.



Akteneinsicht: Verdächtigen/Beschuldigten/Angeklagten oder deren Verteidiger steht es frei, bei Gericht Einsicht in den Strafakt zu nehmen und Kopien anfertigen zu lassen. Dieses Akteneinsichtsrecht kann jedoch aus ermittlungstaktischen Gründen durch den Untersuchungsrichter eingeschränkt werden (s. § 30 Abs 2 StPO).

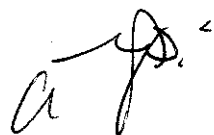
Rechtsmittel: Über die bestehenden Rechtsmittelmöglichkeiten werden Verdächtige/Beschuldigte/Angeklagte jeweils anlässlich der Beschlussfassung mündlich oder schriftlich belehrt.

Das wesentlichste Rechtsmittel im Rahmen der gerichtlichen Vorerhebungen bzw. der Untersuchung stellt jedoch die Beschwerde dar. Alle richterlichen Entscheide, Beschlüsse und Verfügungen, die nicht Urteile sind, können, soweit nicht gesetzliche Ausnahmen bestehen, mittels Beschwerde beim Fürstlichen Obergericht wegen Ungesetzlichkeit oder Unangemessenheit angefochten werden. Beschwerde kann von allen Personen erhoben werden, die berechtigt sind, Berufung einzulegen, oder welchen durch einen Beschluss oder eine Verfügung Rechte verweigert werden oder Pflichten entstehen. Die Beschwerde ist binnen 14 Tagen ab Bekanntgabe/Zustellung beim Untersuchungsrichter einzureichen (s. §§ 238 ff StPO).

Jugendstrafsachen: In Jugendstrafsachen – d.h. Strafverfahren gegen Personen, die zur Zeit der ersten gerichtlichen Verfolgungshandlung das achtzehnte Lebensjahr noch nicht vollendet hatten, und Strafverfahren, die spätestens zwei Jahre nach der Vollendung des achtzehnten Lebensjahres wegen einer Jugendstraftat bei Gericht anfallen – hat der Verdächtige/Beschuldigte/Angeklagte das Recht, seinen gesetzlichen Vertreter zur Einvernahme als Vertrauensperson hinzuzuziehen, sofern dieser nicht selbst in irgendeiner Form in das Verfahren involviert ist (§ 22 JGG in Verbindung mit § 115 Abs 2 zweiter Satz StPO).

Der gesetzliche Vertreter hat einen gesetzlichen Anspruch auf die Teilnahme an den Untersuchungshandlungen und ist daher zwingend zu informieren. Er kann auch gegen den Willen des Jugendlichen den Anspruch durchsetzen oder für diesen einen Verteidiger bestellen.

In Verfahren wegen Verbrechen muss der Verdächtige/Beschuldigte/Angeklagte spätestens anlässlich der Schlussverhandlung durch einen Verteidiger vertreten sein; allenfalls ist ein Verteidiger von Amts wegen zu bestellen.



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17 Apr 2009 224

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Nigg Martin, lic. iur., Landrichter

Von: Elizabeth HF. Le Roux [efhleroux@npa.gov.za]
Gesendet: Dienstag, 4. August 2009 14:17
An: Nigg Martin, lic. iur., Landrichter
Betreff: FW: Letter of Request from Liechtenstein, Fana Hlongwane/BAE

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Dear Mr. Nigg,

Herewith the informal response on your Letter of Request sent to South Africa in October 2008. The delayed response is deeply regretted. The formal response will reach you in due course through the proper diplomatic channels, and although the format will change, the gist of the information will remain unchanged.

Please do not hesitate to make contact with me if there are any further enquiries.

kindest regards,

Elize le Roux

EHF le ROUX
SENIOR STATE ADVOCATE
GAUTENG
SOUTH AFRICA

tel : 12 842 1528
fax : 12 804 6353
cell : 79 874 6100
e-mail: efhleroux@npa.gov.za

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www.npa.gov.za/ReadContent458.aspx

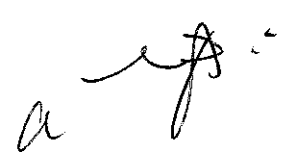
22 Aug 2009

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Kindly receive herewith our response to your Request referenced
11 UR.2006.284 ON 85.

Introductory note:

1. Before I proceed with a response to your Request for assistance, it would be prudent to allude to the fact that this investigation initially resided with the now defunct Directorate of Special Operations ("DSO" - colloquially known as the "Scorpions") under the auspices of the National Prosecuting Authority. In terms of the provisions of the National Prosecuting Amendment Act, 2008 as well as the South African Police Service Amendment Act, 2008 the DSO ceased to exist as of 06 July 2009 (being referred to as the "fixed date").
2. As from the fixed date, all the powers exercised and functions performed by the former DSO are to be exercised and performed by the Directorate for Priority Crime Investigations ("DPCI"), a division of the South African police Service ("SAPS").
3. The DPCI have the legislative mandate to deal with all former DSO investigations, as well as to investigate all future offences that fall within the function and mandate of the DPCI.
4. However, due to the fact that your Request for assistance was directed to the NPA, it is deemed appropriate for me to respond rather than SAPS.
5. I turn now to our response to the various questions contained in your request for international legal assistance:



6. First Question:

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Inform the Court of Justice of the Principality of Liechtenstein whether criminal proceedings are pending with the National Prosecuting Authority ("NPA") in South Africa against Fana Hlongwane, with reference to his advisory role vis-à-vis BAE and Airbus, and, if so, what is the subject matter as well as the status of these proceedings.

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7. Answer:

- a. In South African law, "criminal proceedings" only commence upon the arrest, summons or indictment of an accused. There are at present no criminal proceedings pending against Fana Hlongwane ("Hlongwane"),
- b. It can be confirmed, however, that a criminal investigation is pending in South Africa against, inter alia, Hlongwane, not only regarding his advisory role in relation to BAE, but also regarding the extent of his influence on the outcome of the bidding process whilst he was the personal advisor to the late Minister of Defence (as he was then), Mr. Joe Modise.
- c. The subject matter of the investigation can be defined as the investigation into allegations of fraud, corruption, racketeering and/or money-laundering in the period before, during and after the acquisition of armaments by the Department of Defence's Strategic Arms Acquisition Programme (the "Arms Deal"), in respect of negotiations and or contracts concluded regarding the purchase of aircraft.
- d. We presently have no pending investigation involving Hlongwane and Airbus. Although I am aware of the purchase of airbus aircraft

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by the South African Air Force, this was a separate transaction which did not form part of the Arms Deal.

- e. As explained in the Introductory Note, this investigation no longer falls under the control of the NPA. At the moment, however, it will be lead by the same investigating officer, S/Supt. Johan du Plooy, but under management of the SAPS. The NPA has been informed that no arrests have yet been made, and that the investigation is still at a fairly early stage.
- f. As such 4 (four) Letters of Request ("LoR") have been directed In November 2008 at the request of the NPA to Switzerland, the United Kingdom, Jersey and, as you maybe aware, the Principality of Liechtenstein. For more detail as to information in our possession you are kindly referred to the detailed discussion in our LoR to Liechtenstein in the name of our Investigating Director (as he then was) Adv. AT Mngwenge,.
- g. Furthermore, around the same time, a search and seizure operation was carried out on 7 premises, during which several hundred thousand (mostly financial) documents were seized. These documents are now under the control of S/Supt. du Plooy at the SAPS. He is busy with a laborious process of motivating for the appointment of forensic auditors to peruse and analyse these documents, the outcome which might still take quite a few months.

8. Second Question:

Information is requested regarding Hlongwane's function in connection with the supply of fighter aircraft from BAE and, if applicable, the Airbus to the South African Government, as well as

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whether he actually was an adviser at the time to the late Mr. Joe Modise. Are there indications that Hlongwane abused his official power and actively intervened in the process, so that BAE and Airbus were awarded contracts? Was Hlongwane publicly(?) a civil servant and/ or was he working as an officer of a company in the public sector?

9. Answer:

- a. No direct evidence exist at this stage that he influenced the outcome of the bidding process. There is however strong circumstantial evidence to points towards this.
- b. What can be confirmed, however, is that he was particularly close to one of the main decision makers, the then Minister of Defence Mr Joe Modise, at a crucial time of the procurement process. This could have given him access to valuable information pertaining to the bidding process and possibly also enabled him to influence the process. Indications are that he was employed as a Special Advisor to the late Minister from 1994 - January 1999. Investigations to confirm this are ongoing.
- c. Exactly what his function was with regard to the supply of fighter aircraft is vis-à-vis BAE is not clear at this stage. However, the information and evidence at our disposal at present reveal that he received vast sums of money from BAE over several; years following the award of the aircraft contract to BAE, both directly to his local companies and more covertly via certain overseas entities, which were apparently used by BAE for making secret payments. The manner in which the latter payments were made is in itself cause for suspicion and call for further investigation. In particular, whether any of the monies received were paid to any of the persons involved in the decision making process.

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- d. Although we do not have any evidence under oath stating that a person in the position of Hlongwane at the time, being the advisor to Joe Modise, on a contract-basis, would be considered to be a civil servant, all indications are that in South African law he would in all probability be regarded as a civil servant. What can also be stated is that he also held, and still holds various directorships in various private companies, amongst others DENEL, the biggest arms manufacturer in South Africa. DENEL, although a private company, is wholly owned by the South African government. His directorship dates back from the late 1990's until as recently as about 2 (two) years ago.

10. Third Question:

Kindly interrogate Hlongwane as a suspect on the facts outlined above.

11. Answer:

- a. Having regard to the fact that our investigation is at such an early stage, and bearing in mind that during communicating with Dr. Robert Wallner (Leitender Staatsanwalt, Liechtenstein) it was indicated that the Liechtenstein authorities might consider transferring their investigation to the South African authorities, it is not considered in the best interest of the South African investigation to approach Hlongwane at this stage as a suspect.
- b. One of the reasons in particular is that the right to self-incrimination is very strongly entrenched in the South African law, and despite the explanation contained in your document of "Rights

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and Obligations in Criminal Proceedings", Hlongwane will in all probability decline to make any statement.

- c. Although certain mechanisms exist in terms of which he may be compelled to make a statement, this may not later be used as evidence against him at any future criminal proceedings.
- d. We are accordingly regrettably unable to assist with this request at the present time.



KOPIE

Nachfolgend erhalten Sie unsere Antwort auf Ihr Rechtshilfeersuchen mit dem Aktenzeichen **11.UR.205.284 ON 85**.

Einleitende Erläuterungen:

1. Bevor ich auf Ihr Rechtshilfeersuchen eingehe, wäre es sinnvoll, auf die Tatsache hinzuweisen, dass die Ermittlungen ursprünglich von dem mittlerweile nicht mehr bestehenden Direktorat für Sonderoperationen (Directorate of Special Operations/DSO – umgangssprachlich die „Skorpione“ genannt) unter Aufsicht der südafrikanischen Bundesstaatsanwaltschaft (National Prosecuting Authority/NPA) geführt wurden. Gemäss den Bestimmungen des Änderungsgesetzes zur staatlichen Strafverfolgung (National Prosecuting Amendment Act) von 2008 sowie dem Änderungsgesetz zur südafrikanischen Polizei (South African Police Service Amendment Act) von 2008, gibt es das DSO seit 6. Juli 2009 (nachstehend der „Stichtag“ genannt) nicht mehr.
2. Ab dem Stichtag gehen sämtliche Befugnisse und Funktionen, die von dem früheren DSO ausgeübt wurden, auf das Direktorat für Ermittlungen in Strafsachen mit vorrangiger Priorität (Directorate for Priority Crime Investigations/DPCI), einer Abteilung der südafrikanischen Polizei SAPS über.
3. Das DPCI ist gesetzlich ermächtigt, alle früheren Ermittlungen des DSO zu übernehmen und Ermittlungen bei allen künftigen Straftaten aufzunehmen, die in den Aufgaben- und Funktionsbereich des DPCI fallen.
4. Aufgrund der Tatsache, dass Ihr Rechtshilfeersuchen jedoch an die südafrikanische Bundesstaatsanwaltschaft NPA gerichtet war, erschien es mir angemessener, Ihnen anstelle der SAPS selbst zu antworten.
5. Nun möchte ich auf die verschiedenen Fragen in Ihrem internationalen Rechtshilfeersuchen eingehen:

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6. Erste Frage:

Bitte teilen Sie dem Fürstlichen Landgericht mit, ob bei der südafrikanischen Bundesanwaltschaft (NPA) ein Strafverfahren gegen Fana Hlongwane im Hinblick auf seine Beratungstätigkeit für BAE und Airbus anhängig ist und falls ja, was der Gegenstand des Verfahrens ist und in welchem Stadium sich das Verfahren befindet.

7. Antwort:

a. Nach südafrikanischem Recht beginnt ein Strafverfahren erst mit der Verhaftung, der Vorladung oder der Anklage gegen einen Angeklagten. Derzeit ist kein Strafverfahren gegen Fana Hlongwane (nachstehend „Hlongwane“ genannt) anhängig.

b. Wir können jedoch bestätigen, dass derzeit strafrechtliche Ermittlungen in Südafrika unter anderem gegen Hlongwane nicht nur im Hinblick auf seine Beraterrolle für BAE, aber auch in Bezug auf den Umfang seines Einflusses auf das Ergebnis der Ausschreibung im Rahmen seiner Tätigkeit als persönlicher Berater des verstorbenen Verteidigungsministers Joe Madise durchgeführt werden.

c. Bei den Ermittlungen geht es um den Vorwurf des Betrugs, der Korruption, krimineller Geschäfte und Machenschaften und/oder der Geldwäscherei vor, während und nach dem Kauf von Rüstungswaffen durch das südafrikanische Verteidigungsministerium im Rahmen des Programms zum Kauf strategischer Waffen (nachstehend das „Waffengeschäft“ genannt) und zwar in Bezug auf Verhandlungen und/oder Verträge, die in Zusammenhang mit den Kauf von Flugzeugen geschlossen wurden.

d. Derzeit gibt es keine laufenden Ermittlungen gegen Hlongwane in Zusammenhang mit Airbus. Auch wenn mir bekannt ist,

dass die südafrikanische Luftwaffe Airbus-Flugzeuge gekauft hat, ging es dabei um ein gesondertes Geschäft, das mit dem vorgenannten Waffengeschäft nichts zu tun hatte.

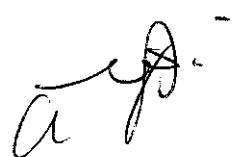
e. Wie ich in meinen einleitenden Erläuterungen erwähnt hatte, fallen diese Ermittlungen nicht mehr in den Kompetenzbereich der NPA. Derzeit werden diese von dem gleichen Ermittlungsbeamten, Herrn S/Supt. Johan du Plooy, jedoch unter Leitung der SAPS geführt. Die NPA wurde darüber informiert, dass es bislang noch zu keinen Verhaftungen kam und dass sich die Ermittlungen noch in einem relativ frühen Stadium befinden.

f. Daher wurden im November 2008 vier Rechtshilfeersuchen im Auftrag der NPA in die Schweiz, nach Grossbritannien, Jersey und – wie Ihnen bekannt sein dürfte – an das Fürstentum Liechtenstein gestellt. Weitere detaillierte Einzelheiten hinsichtlich der Informationen, über die wir verfügen, entnehmen Sie bitte unserem Rechtshilfeersuchen, das unser damaliger Ermittlungsleiter Adv. AT Mngwengwe an die Behörden in Liechtenstein gestellt hatte.

g. Darüber hinaus fanden etwa zur gleichen Zeit Durchsuchungen und Beschlagnahmen an sieben verschiedenen Orten statt, bei denen mehrere 100.000 Dokumente (zumeist Finanzdokumente) sichergestellt wurden. Diese Dokumente befinden sich derzeit in der Obhut von S/Supt. du Plooy bei der SAPS. Er ist momentan mit der arbeitsintensiven Ernennung forensischer Sachverständigen beschäftigt, die diese Dokumente prüfen und analysieren sollen. Das Ergebnis dieser Untersuchungen wird sicher noch einige Monate auf sich warten lassen.

8. Zweite Frage:

Es werden Informationen über die Funktion von Hlongwane in Zusammenhang mit der Lieferung von Kampfflugzeugen von BAE und gegebenenfalls von Airbus an die südafrikanische Regierung



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sowie darüber benötigt, ob Hlongwane damals tatsächlich Berater des verstorbenen Joe Madise war. Gibt es Anzeichen dafür, dass Hlongwane aktiv und amtsmissbräulich in den Beschaffungsprozess eingriff, so dass BAE und Airbus die Aufträge erhielten? War Hlongwane öffentlich(?) Beamter bzw. leitender Angestellter eines öffentlichen Unternehmens?

9. Antwort:

a. Nach derzeitigem Stand gibt es keinen unmittelbaren Beweis dafür, dass er den Ausgang der Ausschreibung beeinflusste. Es gibt jedoch erdrückende Indizienbeweise, die in diese Richtung deuten.

b. Allerdings können wir bestätigen, dass er in einem ganz besonders engen Verhältnis zu einem der Hauptentscheidungsträger, dem damaligen Verteidigungsminister Joe Madise stand und zwar in einer entscheidenden Phase des Beschaffungsprozesses. Somit könnte er Zugang zu wertvollen Informationen über die Ausschreibung gehabt haben, die ihm die Möglichkeit gegeben haben könnten, Einfluss auf den Prozess zu nehmen. Wir haben Hinweise darauf, dass er von 1994 bis Januar 1999 als Sonderberater des verstorbenen Ministers tätig war. Die entsprechenden Ermittlungen in diese Richtung dauern derzeit noch an.

c. Derzeit ist noch nicht klar, welche Funktion er genau im Hinblick auf die Lieferung von Kampfflugzeugen gegenüber BAE hatte. Aus den uns derzeit vorliegenden Informationen und Beweisen geht jedoch hervor, dass er einige Jahre lang hohe Summen von BAE erhielt, nachdem BAE den Zuschlag für die Lieferung von Flugzeugen erhalten hatte, und zwar sowohl direkt an seine Gesellschaften vor Ort als auch verdeckt über gewisse Unternehmen in Übersee, die von BAE augenscheinlich für geheime Geldtransaktionen genutzt wurden. Die Art und Weise, wie diese letztgenannten Zahlungen erfolgten, ist an sich schon verdächtig und wird noch Gegenstand weiterer Ermittlungen sein. Insbesondere die Frage, ob Gelder auch an Personen flossen, die am Entscheidungsprozess beteiligt waren.

d. Auch wenn uns keine eidlichen Aussagen dahingehend vorliegen, dass eine Person in der Position von Hlongwane damals als Berater von Joe Madise auf vertraglicher Basis als Beamter angesehen wurde, deutet alles darauf hin, dass er nach südafrikanischem Recht aller Wahrscheinlichkeit nach als Beamter eingestuft würde. Ebenso ist darauf hinzuweisen, dass er Chef verschiedener privater Unternehmen war und immer noch ist, darunter von DENEL, dem grössten Waffenproduzenten in Südafrika. Auch wenn es sich bei DENEL um ein privates Unternehmen handelt, so hält die südafrikanische Regierung dennoch 100 % aller Anteile an diesem Unternehmen. Er leitete dieses Unternehmen seit den späten 1990er Jahren bis vor etwas zwei Jahren.

10. Dritte Frage:

Bitte vernehmen Sie Hlongwane als Verdächtigen im Rahmen des vorgenannten Sachverhalts.

11. Antwort

a. Angesichts dessen, dass sich unsere Ermittlungen noch in einem recht frühen Stadium bewegen und unter Berücksichtigung der Tatsache, dass im Rahmen des Schriftwechsels mit Dr. Robert Wallner (Leitender Staatsanwalt, Liechtenstein) angegeben wurde, dass die Liechtensteiner Behörden in Erwägung ziehen könnten, ihre Ermittlungen auf die südafrikanischen Behörden zu übertragen, wird es als nicht im Interesse der Ermittlungen in Südafrika liegend angesehen, Hlongwane gegenwärtig als Verdächtigen zu vernehmen.

b. Einer der Gründe hierfür ist insbesondere, dass das Selbstbelastungsverbot sehr vehement im südafrikanischen Recht verankert ist und trotz der in Ihrem Merkblatt „Rechte

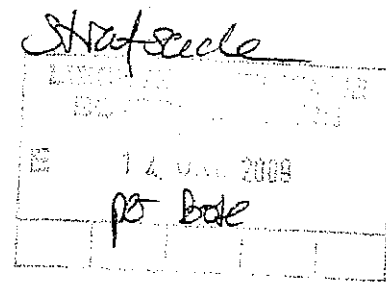
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und Pflichten im Strafverfahren" genannten Erläuterung wird Hlongwane höchstwahrscheinlich die Aussage verweigern.

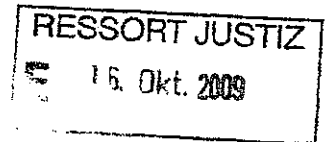
c. Auch wenn es bestimmte Mittel und Wege gibt, ihn zu einer Aussage zu zwingen, kann diese dann im Rahmen eines künftigen Strafverfahrens nicht mehr als Beweismittel verwendet werden.

d. Daher bedauern wir, Ihnen in dieser Sache derzeit nicht behilflich sein zu können.

af



"WD 3"
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96/2009

The Embassy of the Republic of South Africa presents its compliments to the Embassy of the Principality of Liechtenstein and has the honour to refer to this Embassy's Note no 12/2009 dated 2 February 2009.

The South African Department of Justice and Constitutional Development have requested this Embassy to retrieve the documents relating to **BAE/Hlongwe**.

The Embassy would be grateful if the Embassy of the Principality of Liechtenstein could request the competent authorities to return them to this Embassy.

The Embassy of the Republic of South Africa avails itself of this opportunity to renew to the Embassy of the Principality of Liechtenstein the assurance of its highest consideration.



Berne, 14 October 2009

Embassy of the Principality of Liechtenstein
Willadingweg 65
Postfach CH-3000 Berne

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" WD 4 "

36

From: Robert.Wallner@sta.llv.li [mailto:Robert.Wallner@sta.llv.li]
Sent: Thursday, October 29, 2009 7:08 PM

Handwritten signature

To: Elizabeth HF. Le Roux
Cc: Anton LJ. Steynberg; Billy WJ. Downer; jcduplooy@telkomsa.net; Thomas.Patterer@sta.llv.li
Subject: AW: Hlongwane
Importance: High

Dear Ms. Le Roux

I have now received a copy of the Note dated October 14th 2009 of the SA Embassy in Berne via our Embassy in Bern and our Ministry of Justice.

It reads:

"The embassy of the Republic of South Africa presents its compliments to the Embassy of the Principality of Liechtenstein and has the honour to refer to this Embassy's Note no 12/2009 dated 2 February 2009.

The South African Department of Justice and Constitutional Development have requested this Embassy to retrieve the documents relating to BAE/Hlongwane.

The Embassy would be grateful if the Embassy of the Principality of Liechtenstein could request the competent authorities to return them to this Embassy.

The Embassy of the Republic of South Africa avails itself of this opportunity to renew to the embassy of the Liechtenstein the assurance of its highest consideration.

Berne, 14 October 2009"

Attached to the Note were the original Note and a copy of the DOJ & CD letter of January 15th 2009 (signed by Mandla Lingwati) as well as the request. No new letter from the DOJ&CD was attached.

Judge Nigg - I think rightly- understood the Note in the sense that the original request and cover letter are demanded back. In a letter dated October 23rd 2009 he sent all these documents to our Ministry and asked for them to be forwarded to the SA embassy in Bern. He also asked our Ministry to clarify with the SA authorities whether the request is hereby withdrawn, which I think is the case.



Your request was issued by a judge. However the counterpart for us as the requested country is the SA government, which sent the original letter. If the SA government withdraws the request we are bound by that. It is an internal SA question whether the government has authority to withdraw the request or not.

Please note that my today's draft request will be followed up by the original which will have a large attachment of certified copies of relevant documents. This will be sent through the diplomatic channels via Berne.

Best regards

Robert Wallner

Leitender Staatsanwalt/Prosecutor General

Liechtensteinische Staatsanwaltschaft/Liechtenstein Prosecutors Office

Heiligkreuz 49, Postfach 684

9490 Vaduz

Fürstentum Liechtenstein/Principality of Liechtenstein

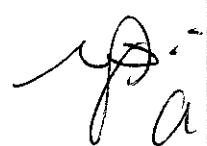
robert.wallner@sta.llv.li

236-6794 (T)

236-6799 (F)

www.gesetze.li

www.liechtenstein.li



REGIERUNG
DES FÜRSTENTUMS LIECHTENSTEIN

RESSORT JUSTIZ

1/1

"WD 5"

39

National Director of Public Prosecutions
Elize Le Roux
Directorate of Special Operations
Gauteng
Promat Building
Cnr Cresswell & Morlets str.
Weavind Park
Pretoria
South Africa

Our Reference
11 RS.2008.258
RHS 2008/695

Contact
HO/kaad

Vaduz
November 25th 2009

**Request for mutual legal assistance in the criminal case against HLONGWANE Fana,
ROBERTS Alexander and others**

Dear Ms. Le Roux

The Ministry of Justice of the Principality of Liechtenstein presents its complements to the National Director of Public Prosecutions of South Africa and would like to refer to the previous correspondence in this matter.

We shall be grateful if you will let us know whether you wish to uphold or withdraw your request for mutual legal assistance in the criminal case against Fana Hlongwane and others. We will expect a short response of your competent authority in this case till December 31st 2009.

The Ministry of Justice takes this opportunity of renewing to the National Director of Public Prosecutions of South Africa the assurance of its highest regard.

Mag. Harald Oberdorfer
government officer

Copy - Princely Court (11 RS.2008.258)
 - Prosecution Service, Dr. Robert Wallner

REGIERUNG
DES FÜRSTENTUMS LIECHTENSTEIN

RESSORT JUSTIZ

1/1

40

Botschaft des Fürstentums Liechtenstein
Willadingweg 65
Postfach
3000 Bern 15

Unser Aktenzeichen
11 RS.2008.258
RHS 2008/695

Sachbearbeitung
HO/kaad

Vaduz
3. November 2009

HLONGWANE Fana, ROBERTS Alexander u.a. - Internationale Rechtshilfe in Strafsachen

Das Ressort Justiz des Fürstentums Liechtenstein beehrt sich, in Entsprechung der Note 96/2009 der Botschaft der Republik Südafrika in Bern der Botschaft des Fürstentums Liechtenstein das Originalrechtshilfeersuchen des Department of Justice and Constitutional Development der Republik Südafrika zu übermitteln und ersucht, dieses Rechtshilfeersuchen der Botschaft der Republik Südafrika in Bern weiterzuleiten.

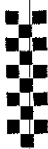
Gleichzeitig möge die für dieses Rechtshilfeersuchen zuständige Behörde angefragt werden, ob mit der Retournierung der Original-Unterlagen das gegenständliche Rechtshilfeersuchen als erledigt bzw. als zurück gezogen betrachtet werden könne. Für eine umgehende Antwort wären wir sehr dankbar.

Das Ressort Justiz des Fürstentums Liechtenstein benützt auch diesen Anlass, um die Botschaft des Fürstentums Liechtenstein seiner ausgezeichneten Hochachtung zu versichern.

Mit freundlichen Grüßen

Mag. Harald Oberdorfer
Mitarbeiter der Regierung

Beilage erwähnt
Kopie an - Fürstliches Landgericht (11 RS.2008.258)



REGIERUNG
DES FÜRSTENTUMS LIECHTENSTEIN

RESSORT JUSTIZ

"WD 6"

41

telefax

If there any problem occur while receiving this fax please contact:

FL-9490 Vaduz

00423/236 6590;

mail: Harald.Oberdorfer@rfl.llv.li

From:

Ministry of Justice of the Principality of
Liechtenstein
Harald Oberdorfer
government officer

Date:

February 5th 2010

To:

Embassy of the Republic of South Africa
Mrs. N.D. Malotana

Fax-Number:

031-351 3944

Following Pages:

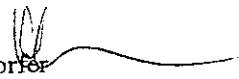
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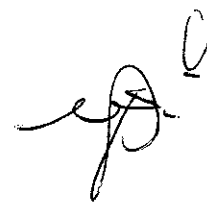
Dear Mrs. Malotana

Enclosed please find the two letters I mentioned in our previous conversation of today. Please inform me at about 15th of February, whether the competent authority of your country will withdraw the request definitely or the request has now to be executed in Liechtenstein.

Thank you very much for your efforts.

Best regards

Harald Oberdorfer 





LIECHTENSTEINISCHE
STAATSANWALTSCHAFT
FÜRSTENTUM LIECHTENSTEIN

1/8 "WOT"

42

Acting National Director
National Prosecuting Authority of South Africa
P.O. Box 752
ZA-0001 Pretoria/South Africa

Ihr Schreiben

Aktenzeichen
03 ST.2006.283

Sachbearbeitung
taco

Vaduz
28.10.2009

Request for the takeover of the criminal prosecution of the South African citizen Fana Hlongwane

Dear Sir/Madam,

Criminal proceedings are pending at the Court of Justice of the Principality of Liechtenstein in Vaduz, case number 11 UR 2006.283, against South African citizen

Fana Hlongwane et al.,

d.o.b. 5 March 1959, businessman,

resident at 128 Cambeboo Road, Fourways Garden,

Johannesburg, South Africa,

on account of the suspected crime of money laundering pursuant to Article 165 (1) (2) and (3) of Liechtenstein Criminal Code. A summary of the underlying facts and circumstances to these criminal proceedings is as follows:

As a result of several requests for mutual legal assistance from the British Serious Fraud Office ("SFO"), and subsequent associated investigations in Liechtenstein, it is suspected that frozen assets belonging to Fana Hlongwane in the Principality of Liechtenstein are linked with active and passive bribery and corruption by the company operating as BAE Systems PLC ("BAE"),

using a system of international representatives. In concrete terms, it must be assumed that the circumstances are as follows:

BAE maintains a network of representatives (or "advisers" as BAE prefers to call them) to support the marketing of its products. BAE has a department by the name of "Head Quarters Marketing" (HQ Marketing), which coordinates all the agreements and contracts with representatives employed by BAE.

On 19 January 2004, the *Guardian* broadsheet contacted the Serious Fraud Office in London ("SFO") and presented them with information, which implied that BAE were making illegal payments via a company with its registered office in the British Virgin Islands by the name of Red Diamond Trading Ltd ("Red Diamond").

Investigations by the SFO produced the fact that BAE was not sending amounts of money to representatives abroad directly through HQ Marketing, but was making payments of this kind through foreign front companies. One of these front companies is Red Diamond. BAE demands that representatives enter into contractual agreements either with BAE or Red Diamond. The representatives themselves tend to operate through front companies and seldom appear personally.

Within the context of its investigations the SFO procured details about the account of Red Diamond at Lloyds Bank. Lloyds TSB expressed concern about money laundering, since the bank had not been informed about whom Red Diamond was represented by. BAE later confirmed that it was the "beneficial owner" of Red Diamond. BAE has online banking at Lloyds through which payments can be transferred direct to Red Diamond (by means of a computer controlled by BAE), from where they can be transferred abroad. Automated [credit] transfers ensue from BAE accounts to Red Diamond, and from there abroad. This results in the fact that only a minimum amount of bank data remains at the bank. Furthermore, the only purpose for these transfers within the British banking system was clearly to conceal BAE's involvement in foreign transfers.

Material made available to the SFO by the Foreign Corrupt Practices Act (FCPA) division of the U.S. Department of Justice confirms the existence of "open" and "concealed" agreements between BAE and its advisers, as well as the origin of Red Diamond. Evidently BAE, through Sir Richard Evans, decided during the second half of the 1990s to conceal the payment system to its "hidden" advisers. After different options had been considered in this respect, BAE decided that the least transparent system consisted of setting up a foreign entity as a front. The material disclosed also contains details on the setting up of Novelmight Ltd. The purpose of this company was exclusively to store abroad filed material relating to representatives.

Furthermore, it was used for meetings with representatives. The documents submitted to the FCPA reveal that the company allegedly had a registered rented office next to Lloyds Bank in Geneva, though the alarm system was allegedly linked with that of Lloyds.

The documentation makes it clear that the main aim of BAE from start to finish consisted of proceeding as surreptitiously as possible and of making the system as non-transparent as possible. The primary aim consisted in particular of making the infiltration of an investigator as difficult as possible. The SFO served an Order on BAE, requesting it to disclose material on its marketing representatives. BAE has so far partially interpreted this Order, but in a way which excludes disclosure of the documents kept in Switzerland.

Points of reference to South Africa ensue as follows:

Up to 1999, BAE negotiated with the South African Ministry of Defence within the framework of a South African Defence Programme with regard to the supply of 52 Hawk Training Aircraft and Saab Gripen Fighter Aircraft to the government of South Africa. According to the inquiries made by the British SFO, BAE was awarded a part of the contract for 2 million GBP concerning the supply of 24 Hawk Training Aircraft as part of the South African "1999 Arms Procurement Programm". According to the findings of the SFO, the now deceased Joe Modise, who was the Defence Minister for South Africa at the time, personally intervened in the procurement process so that BAE would be awarded the contract, although the BAE tender was significantly higher than the tenders from the competition.

According to information from the British SFO, BAE developed a system with various different agents, who negotiated illegal contracts with South Africa for the purchase of munition. In connection with South Africa, it is also suspected that BAE concealed payments it had received from bribery and corruption transactions by transferring "commission" to its advisers. These sums of money were allegedly then used actively again for bribery and corruption. In documents seized up to now in England they are referred to in this connection as "third-party payments".

Internal parliamentary inquiries and later investigations by the Office of the Auditor General also produced the fact that there was bribery and corruption linked with the BAE contract. The report particularly emphasized the role of the amounts made available for "side projects"; these amounts had been earmarked for the internal social and infrastructural development of Trusts (Schattenfirmen) connected with Shamin ("Chippy") Sheik, the ANC Chairman of the Parliamentary Procurement Committee.

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In May 2001, investigators in South Africa started an inquiry into claims that there was a link between the contract and the financing of Cabinet Ministers' foreign trips by BAE. It was publicly asserted that Chippy Sheik had moreover received jewellery as presents from BAE. Schabir Sheik too, the brother of Chippy Sheik, was recently sentenced to 15 years' imprisonment after a criminal prosecution brought by the South African authorities on account of bribery by the French arms manufacturer Thomson CSF. This case includes an accusation against Jacob Zuma, the former Vice President of South Africa, which is being dealt with at a judicial hearing.

In 2003, BAE confirmed that its representative in South Africa was a company by the name of Osprey Aviation ("Osprey"). A BAE spokesperson confirmed in a South African newspaper that Osprey had been appointed in 1994 as an "external advisory entity" to support legal tendering and commercial processes. The full extent of the amounts pouring into Osprey has not been confirmed. Richard Charter, the now deceased head of Osprey, was also chairman of South African BAE Systems Holdings (South Africa), an affiliated company of BAE.

Other accusations in South Africa relate to a donation of approx. GBP 500,000 to "The Airborne Trust" in March 1998. This Trust was founded in 1995 to support former ANC veterans of the MK Military Veterans Association (MKMVA). Its chairman was also Richard Charter. Significantly, the now deceased Joe Modise, the Defence Minister for South Africa at the time, was a founder member of the Trust and a member of the steering committee of the MKMVA, and received from the Airborne Trust at least one one-off payment to enable him to make a trip to the United Kingdom. Furthermore, this payment ensued just one month before Modise personally intervened in the procurement process, in order to change the conditions of the tender in a way that would ultimately lead to BAE being awarded the contract. These changes in tendering excluded price as being the relevant factor in the awarding of the contract. As already stated, the BAE tender was substantially higher than the tenders from the competition.

In 2005, Charter (together with Chippy Sheik) was suspected of corruption in the National Assembly of South Africa by Patricia De Lille, the leader of the Independent Democratic Party. She furthermore requested an independent inquiry into the matter of why the South African Government paid USD 17 million over the market price for the Hawk Training Aircraft.

The payments to representatives in connection with the South African BAE Contract began in May 1999 through Red Diamond, and amounted to GBP 81 million at the end of 2004. Since the introduction of British law in December 2001 to combat terrorism and criminality, and protect safety, around GBP 38 million has been paid to South African representatives from a Red Diamond account. Some of these payments were made at Swiss banks in Geneva:

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A company by the name of Arstow Commercial Corporation ("Arstow") was paid through Red Diamond and received more than GBP 20 million between May 1999 and December 2004. In this connection, more than GBP 9 million was paid into accounts at different banks in the Principality of Liechtenstein. Documents subsequently received from the SFO in this respect concern payments with regard to the Hawk and Gripen Contract(s).

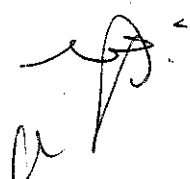
Another company by the name of Kayswell Services Ltd. ("Kayswell") received payments of more than GBP 37 million through Red Diamond between December 2000 and September 2005. It emerges from documents disclosed by BAE that Kayswell was formed in 1994 and concluded a consultancy agreement with BAE with regard to the Hawk Contract in the same year; furthermore, the Gripen Contract was added later. In 2000, the consultancy agreement with Kayswell was transferred by BAE to Red Diamond, and in 2005, the agreement was terminated, though Kayswell received more than GBP 19 million in compensation.

The documents disclosed by BAE show evidence of a certain Jules Pelissier as the contact at Kayswell. However, the file also contains correspondence from Pelissier on the headed paper from another company by the name of Aviation Consultancy Services Ltd. (ACS). According to a UN report, John Bredenkamp (born in 1940 in South Africa, but a citizen of Zimbabwe) is connected with Aviation Consultancy Services. Bredenkamp is domiciled in the United Kingdom, and in 2002 was the 33rd richest person in Great Britain. The same UN report describes him as a key figure in the arms trade and as a man who earned millions with the illegal exploitation of natural treasures in the Congo, and with the negotiation of sales of military equipment from BAE to the country through ACS. Furthermore, the report lists claims (which are disputed both by BAE and Bredenkamp) that BAE, with the involvement of ACS, violated EU sanctions by selling spare parts for Hawk Fighter Aircraft to Zimbabwe in 2002.

Approx. GBP 6.5 million of the amounts paid to Kayswell was transferred through Red Diamond into an account at LGT Bank in Liechtenstein AG, Vaduz.

It must be assumed that the public accusations concerning the corrupt relations and the misuse of power between BAE representatives and persons of high standing within the ANC Government, together with the extent of payments and their relevance to the successful signing of contracts, are not compatible with legitimate commercial transactions and require a more thorough investigation.

There are convincing accusations – whether as a result of their relevance in time to the payments or the sheer amount of commission payments – that funds flowing through BAE, or rather through HQ Marketing and Red Diamond, are being used for the purposes of bribery



and corruption. Furthermore, the entire system is operated under a shroud of secrecy, so that the suspicion with regard to the actual purpose of these payments is justified.

On the concrete accusations of crimes concerning Fana Hlongwane in Liechtenstein

From 1994 right to the process phase for the procurement of Fighter Aircraft by the South African Government in 1999, Fana Hlongwane had a particularly close link to the then main decision-maker, Joe Modise, and acted as his personal adviser. In this role he had access within the context of the procurement process to valuable information concerning the tender, which enabled him to influence the decision-making process. On 06.10.2008, a request for mutual legal assistance was issued in this criminal case under investigation to the South African criminal prosecution authorities. It ensues from the response dated 4.8.2009 that criminal investigations against Hlongwane et al are in progress there not only with regard to his adviser role for BAE, but also in relation to the degree of influence on the result of the tender within the context of his work as personal adviser to the deceased Defence Minister Joe Modise. The investigations concern accusations of fraud, corruption, criminal business and machinations and/or money-laundering before, during and after the purchase of armaments by the South African Defence Ministry within the context of a programme for the purchase of strategic weapons. According to South African criminal prosecution authorities, the proceedings are still at a relatively early stage. Searches and seizures have taken place at seven different locations, during the course of which several hundred thousand documents, mostly financial documents, have been secured. The results of evaluations, which have been carried out by forensic experts, will take months. Although there is not direct proof of the fact that Fana Hlongwane influenced the outcome of the tender, there is nevertheless damning indication and evidence, which would point in this direction. It clearly emerges from the information and evidence available that Hlongwane received high sums of money for several years after BAE had been awarded the contract for the supply of aircraft, both directly to his local company as well as concealed via certain companies abroad, which were evidently being used for secret money transactions. Everything points to the fact that according to South African law, Hlongwane was in all probability classed as a civil servant.

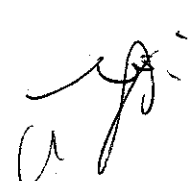
But it also ensues from the proceedings in progress at the British SFO that Fana Hlongwane is suspected of a concrete crime in the direction of receipt of bribery and corruption monies and money-laundering, though it is not ruled out that sums of money flowed via Fana Hlongwane and/or his company structures to persons, who were involved in the decision-making process. According to information from the suspect Alexander Roberts, "at some point during the course of activities with South Africa, it was agreed between Roberts and BAE that around two-thirds of the commission to which Roberts was entitled would be transferred at the

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appropriate time from the Arstow account to accounts, which are controlled by Mr Hlongwane". According to Roberts, this was remuneration for "balancing work", which Hlongwane had performed in the wake of the activities in South Africa. It has also been ascertained there that Hlongwane at the time was an adviser and close confidant of the South African Defence Minister Joe Modise, in the wake of the process by the Republic of South Africa for the procurement of the Hawk Training Aircraft, and at the same time was allegedly an adviser to the Airbus Company.

Various different companies have been/are being managed at the Liechtenstein Trust company Tremaco Treuunternehmen (Trust Enterprise) reg., for the suspect Fana Hlongwane and Alexander Roberts. Alexander Roberts claimed to the foregoing Trust company that he was the financial beneficiary of Arstow. Fana Hlongwane appears as the financial beneficiary of the companies Westunity Business Limited, Meltec Foundation and Gamary Trust reg. Westunity Business Limited was funded by the above-mentioned Arstow, though Arstow, as already mentioned, received assets from Red Diamond. Payments were subsequently made in turn by Westunity Business Limited to the Meltec Foundation and, after its liquidation, to its successor Gamary Trust reg. According to the current state of investigations, there is the strong suspicion with all these financial transactions that they are monies from bribery and corruption in connection with the purchase of Fighter Aircraft by the South African Government. The most recent Decision handed down by the Court of Justice of the Principality of Liechtenstein during criminal proceedings dated 11.9.2009, 11 UR 2006.284-148, was to judicially freeze the assets belonging to the Gamari Trust at Bank Pasche (Liechtenstein) S.A., Vaduz (formerly swissfirst Bank in Liechtenstein AG), in Account Number 30.450767.7 until 14.3.2010, as a result of this suspicion of money laundering. They amount currently to GBP 437,594.00.

As a result of present suspicion, other assets in Liechtenstein of which Fana Hlongwane is the financial beneficiary, i.e. assets held at Swisspartners Versicherung AG, Vaduz, have had a judicial Freezing Order imposed on them. In concrete terms, Swisspartners Versicherung AG have been banned pursuant to §97a (1) line 3 of the Code of Criminal Procedure (StPO) from having control over the assets attributed to Fana Hlongwane, amounting to approximately CHF 3 million in Account Number 151.831.88 at Liechtensteinische Landesbank AG Zurich, though this arrangement by the Court of Justice of the Principality of Liechtenstein ends on 20.5.2010. Currently, it must be assumed that the said frozen assets at Swisspartners Versicherungs AG originate from an account in the name of Preordain Holdings Ltd., Panama at Bank Credit Agricole, Geneva, Switzerland. Preordain Holdings Ltd is allegedly also a holding company of the suspect Hlongwane.



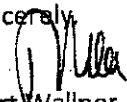
Hence, Fana Hlongwane is strongly suspected of the crime of money-laundering pursuant to § 165 (1), (2) and (3) of the Criminal Code (StGB). Since criminal proceedings against Fana Hlongwane have already been instigated at your authority, and it can be assumed that the criminal proceedings in South Africa against Fana Hlongwane can also be conducted on account of the crimes committed in Liechtenstein in his presence, it is requested that you take into account the facts and circumstances outlined in this request in your criminal investigation and that you also prosecute him in the event that that crimes of which he is suspected are corroborated as a result of these facts and circumstances.

With regard to the assets attributed to Fana Hlongwane in this country at the Banque Pasche and/or Swisspartners Versicherung AG (see page 7 of the takeover request), it is suggested that you arrange for these to be frozen or have a Freezing Order imposed on them by means of a request for mutual legal assistance sent to the Court of Justice of the Principality of Liechtenstein within the framework of the South African criminal proceedings.

* Certified copies of the crucial items from criminal file 11 UR 2008.283 at the Court of Justice of the Principality of Liechtenstein are attached, as are copies of the relevant legal provisions.

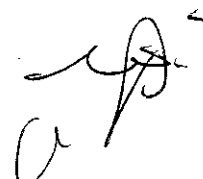
I am requesting you to send information on whether the South African criminal prosecution authorities have made the present foregoing facts and circumstances the object of your criminal investigations, also in terms of the crimes committed in Liechtenstein, and whether, in the event that the crimes of which he is suspected are corroborated according to your law, they have prosecuted Fana Hlongwane, also on account of the crimes committed by him in Liechtenstein. Furthermore, at the appropriate time, we request the sending of the Decision when the proceedings are complete.

Yours sincerely,


Dr. Robert Wallner
Chief State Prosecutor

Enclosures mentioned

Processed by:
Public Prosecutor Mag. Thomas Patterer
Tel: +423 236 67 97
Fax: +423 236 67 99
Email: thomas.patterer@sta.li.li





STOCKENSTRÖM FOUCHÉ INC.

Prokureurs & Aklavervvaardigers / Attorneys & Conveyancers

78 Tiger Valley Office Park, Silverlakes, Pretoria, 0002
PO Box 288, Garfontein, 0042

Tel: +27 (0)82 7657 / +27 (0)82 881 1736

Fax: +27 (0)86 631 4883

E-mail: sfincilaw@gmail.com

Reg No: 2007/015371/21

MNR WILLIE HOFMEYER
BATEBESLAGLEGGING EENHEID
NATIONALE VERVOLGINGSGESAG
VICTORIA & GRIFFITHS MXENG BUILDING
123 WESTLAKE AVENUE
WEAVIND PARK
PRETORIA

20 Januarie 2009

"W08"
50

Ons verw: C Stockenström/F2

PER HAND

Geagte Mnr;

I/S: HLONGWANE CONSLUTING (PTY) LTD, TSEBE PROPERTIES (PTY) LTD, HLONGWANE
AEROSPACE (PTY) LTD en Adv. FANA HLONGWANE.

Die bogemeide aangeleentheid verwys. Ons wens hiermee te bevestig dat ons optree namens ons
kliënte hierbo vermeld.

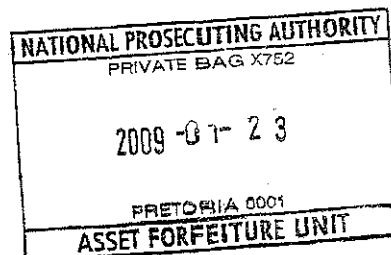
Dit het tot ons aandag gekom dat die Nasionale Vervolgingsgesag moontlik stappe gaan neem om beslag
te lê op ons kliënte se bates. Dit is ons instruksies om te bevestig dat ons kliënte bewus is van die
Direktoraat Spesiale Operasies (DSO) se ondersoek en dat die DSO 'n volledige bateregister het van
ons kliënte se bates.

Dit is verder ons instruksies dat ons kliënte onderneem om nie enige van die bates te vervreem nie en om
verder ook te verseker dat die bates onderhou word in die kondisie en toestand wat dit tans is. Daar is
dus geen rede om beslag te lê op enige bates nie.

Sou die Nasionale Vervolgingsgesag egter voort gaan om om 'n aansoek te lods vir die beslaglegging
van ons kliënte se bates versoek ons u om die hofstukke op ons te beteken sodat ons dienooreenkomstig
ons kliënte kan adviseer en hul belange kan beskerm.

Die uwe


STOCKENSTRÖM FOUCHÉ ING.



⑤
"W09"
51

Asset Forfeiture Unit



The National Prosecuting Authority of South Africa
Igunya Jikelele Labetsutshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

HEAD OFFICE

Tel : +27 12 845 6000
Fax: +27 12 804 7335

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Silverton
Pretoria
0184

P/Bag X752
Pretoria
0001
South Africa

Docex:
DX 207
Pretoria

Email:
wh@npa.gov.za
www.npa.gov.za



Our ref: WH
Your ref: C Stockenström/F2

30 January 2009

Stockenström Fouché Inc.
78 Tijger Vallei Office Park
Silverlakes
Pretoria 0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

Re: Hlongwane Consulting (Pty) Ltd, Tsebe Properties (Pty) Ltd,
Hlongwane Aerospace (Pty) Ltd and Adv. Fana Hlongwane

We acknowledge receipt of your letter dated 20 January 2009, which was delivered by hand to our offices on 23 January 2009.

We will respond to your letter in due course once we have had the opportunity to consider the contents thereof.

Yours faithfully

W Hofmeyr
Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit

Justice in our society, so that people can live in freedom and security

Asset Forfeiture Unit



HEAD OFFICE

Tel: +27 12 845 6000
Fax: +27 12 804 7336

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Silverton
Pretoria
0154

P/Bag X752
Pretoria
0001
South Africa

Docex:
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Pretoria

Email:
wh@nps.gov.za
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Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit

TX RESULT REPORT

NAME : AAFU
TEL : 30128047335
DATE : 03.FEB.2009 14:00

SESSION	FUNCTION	NO.	DESTINATION STATION	DATE	TIME	PAGE	DURATION	MODE	RESULT
3677	TX	001	0866314883	03.FEB	14:00	001	00h00min43s	ECM	OK

"WD 10"

53

Asset Forfeiture Unit



The National Prosecuting Authority of South Africa
Igonyo Jikelele Labetsutshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

HEAD OFFICE

Tel : +27 12 845 6000

Fax: +27 12 804 7335

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Silverton
Pretoria
0184

P/Bag X752
Pretoria
0001
South Africa

Docex:
DX 207
Pretoria

Email:
wh@npa.gov.za
www.npa.gov.za



Our ref: WH
Your ref: C Stockenström/F2

4 May 2009

Stockenström Fouché Inc.
78 Tijger Vallei Office Park
Silverlakes
Pretoria 0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

**Re: Hlongwane Consulting (Pty) Ltd, Tsebe Properties (Pty) Ltd,
Hlongwane Aerospace (Pty) Ltd and Adv. Fana Hlongwane**

We refer to your letter dated 20 January 2009 and our reply dated 30 January 2009.

In terms of the provisions of the Prevention of Organised Crime Act, 1998 ("POCA"), an application for the freezing of property may be made *ex parte* and therefore the National Director of Public Prosecutions ("the National Director") is under no obligation to give prior notice any person affected thereby.

It is contrary to the policy and practice of the National Director to confirm or to deny that preservation or restraint proceedings are being considered in connection with any particular case.

Such confirmation or denial generally would undermine the objectives of the asset forfeiture provisions of POCA, particularly at an early stage of a criminal investigation. It would encourage subjects of investigation to engage in fishing expeditions to obtain information from the National Director, and bog the administration of justice down in endless correspondence. It may cover many matters where no action is contemplated at the time, but where further developments in the matter may result in a decision to institute proceedings.

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We advise that should a decision indeed be made in the future to institute an application for freezing any property of your clients, the National Director will approach the matter in the normal way. Thus, in such event, consideration will, as normal, be given to issues such as whether or not to proceed *ex parte*, against whom an order should be sought, and the particular form that any freezing order should take.

As with any case, these considerations would be guided by the facts available to the National Director at the appropriate time.

If your clients are of the view that they are in possession of any information or evidence which might influence the National Director in a decision whether action should be taken, they are welcome to supply the National Director with such information. Any information provided should be in the form of evidence under oath, as unsubstantiated claims and allegations cannot be considered by the National Director in exercising his discretion under POCA.

In this regard, your letter refers to an undertaking by your clients not to alienate assets listed in a register of assets held by the Directorate of Special Operations (DSO). Neither the DSO nor the Asset Forfeiture Unit has such a register and therefore the National Director is not in a position to consider the undertaking without further information regarding the assets to which it relates and the exact terms of the undertaking.

The National Director reserves his rights to proceed with the institution of proceedings under POCA against your clients or their property should he be satisfied that there are sufficient grounds for such action. We wish to point out that POCA makes full provision for anyone with a legitimate interest in property to state his or her case to the court. Your clients' rights to protect their interests from any order that may be made under POCA are accordingly safeguarded.

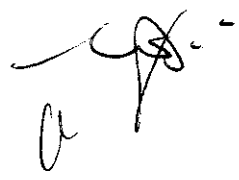
You have our assurance that the Asset Forfeiture Unit makes every attempt to act as fairly and accurately as possible when action is taken in terms of POCA, and that it will do whatever is necessary and required in law to be frank to the court and fair to any party.

In any event, should the National Director decide to proceed *ex parte*, the court will certainly be made aware of this correspondence and any information that you may supply, and it has a discretion to require the National Director to proceed on notice.

Yours faithfully



W Hofmeyr
Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit



Asset Forfeiture Unit



Our ref: WH
Your ref: C Stockenström/F2

HEAD OFFICE

Tel: +27 12 845 6000
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0184

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4 May 2009

Stockenström Fouché Inc.
78 Tiger Valley Office Park
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For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

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Hlongwane Aerospace (Pty) Ltd and Adv. Fana Hlongwane

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TX RESULT REPORT

NAME : AAFU
TEL : 30128047335
DATE : 11.MAY.2009 15:28

SESSION	FUNCTION	NO.	DESTINATION STATION	DATE	TIME	PAGE	DURATION	MODE	RESULT
3831	TX	001	0866314883	11.MAY	15:27	002	00h01min44s	ECM	OK

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Asset Forfeiture Unit



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Pretoria
0001
South Africa

Docex:
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Pretoria

Email:
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Our ref:
Your ref: C Stockenström/F2

11 February 2010

Stockenström Fouché Inc.
78 Tijger Vallei Office Park
Silverlakes
Pretoria
0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

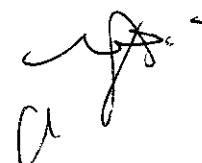
Your client: Mr Fana Hlongwana

1. We refer to your letter dated 20 January 2009 as well as to our response dated 4 May 2009. We assume that you still act for Mr Fana Hlongwane, and request that you immediately indicate to us should this no longer be the case.
2. I record that we have to date not yet received a response to our last letter, and in particular that Mr Hlongwane has not responded to the request to provide the National Prosecuting Authority with information that might impact on its decision whether or not to institute preservation or restraint proceedings in relation to property in which he has an interest.
3. As was indicated in my previous letter, it is not the practice or policy of the NPA to afford persons who will or may be adversely affected by an impending application for a preservation or restraint order an opportunity to make representations to the NPA as to why it should not be launched or why their property should be excluded from the ambit of the application. However, the NDPP is of the view that it would be appropriate to again request Mr Hlongwane to supply the

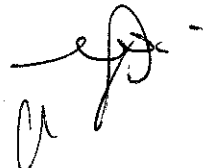
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information referred to in paragraph 2 above in relation to the assets described below.

4. As Mr Hlongwane may know, the Lichtenstein authorities have been conducting a criminal investigation in which Mr Hlongwane has been identified a suspect, having allegedly committed the offence of money laundering. The money laundering charges in turn relate to alleged corruption offences pertaining to the purchase by the South African government of lead-in fighter trainer aircraft and advanced light fighter aircraft from a United Kingdom based arms manufacturing company, called BAE Systems Plc ("BAE").
5. The NPA has recently been placed in possession of certain documents from the Lichtenstein authorities. In what follows I refer to these documents as "the Lichtenstein documents".
6. It appears from the Lichtenstein documents that as a result of the criminal investigation, since about September 2006 Lichtenstein courts have made orders which currently have the effect of freezing firstly, the funds in a bank account held in the name of the Gamari Trust, at Bank Pasche (Lichtenstein) S.A. Vaduz in account number 30.450767.7, and secondly the funds in an account with number 151.831.88 held at the Lichtenstein Landesbank AG Zurich by an insurance company Swisspartners Versicherung AG.
7. It further appears from the Lichtenstein documents that Mr Hlongwane is the beneficial owner of the funds. We believe that Mr Hlongwane is aware of the freezing of the funds.
8. We are informed by the Lichtenstein authorities that the current Lichtenstein order freezing the funds of the Gamari Trust account will expire on 14 March 2010 and unless the NPA obtains an order in South Africa preserving or restraining the funds in the account, there will be no legal obstacle to the funds being withdrawn and dissipated or clandestinely moved elsewhere. The order freezing the funds in the Swisspartners Versicherung account will expire on 20 May 2010.
9. The NPA is of the view that there are reasonable grounds to believe that the funds in the Lichtenstein accounts are the proceeds of unlawful activity and/or the instrumentality of corruption and money-laundering related offences.
10. In the circumstances which have now arisen the NPA accordingly intends to applying for an order in terms of section 38 of the Prevention of Organised Crime Act 121 of 1998 ("POCA") preserving the funds in the Lichtenstein accounts, which order, if granted, will be transmitted to the Lichtenstein authorities with a request that it be implemented there.



11. We intend to move the application for a preservation order (and the concomitant application for a letter requesting mutual legal assistance under the International Co-operation in Criminal Matters Act 75 of 1996 ("ICCMA")) on an urgent basis within the next two weeks.
12. When doing so we intend seeking a rule *nisi* operating as an interim preservation order, which will provide Mr Hlongwane with sufficient opportunity to protect his interests.
13. As stated, however, the NDPP believes it appropriate to ask Mr Hlongwane beforehand to provide the NPA with information that might impact on its final decision whether or not to institute the preservation proceedings.
14. Mr Hlongwane's answers to the following questions will assist the NPA in reaching a final decision:
 - a. Does Mr Hlongwane have a direct or indirect interest in the funds in either or both the Lichtenstein accounts?
 - b. If so, what is the nature of that interest?
 - c. If Mr Hlongwane holds a direct or indirect interest in the funds in the accounts, is this interest held personally or through a legal entity? If the latter, provide details of the entity including incorporation details, if applicable, as well as nature and manner in which the interest is exercised through the legal entity.
 - d. If Mr Hlongwane holds any such interest, when did he acquire the interest?
 - e. Who established the entities that are the account holders?
 - f. Did Mr Hlongwane render a service or product that directly or indirectly lead to the payment of funds into those accounts?
 - g. What was the exact nature of the service rendered or goods provided and when did that occur?
 - h. To whom the services or goods rendered?
 - i. Were such services rendered or products provided pursuant to an agreement? If so, please provide details of the contracting parties, the date and place at which the agreements were concluded and the terms thereof.
 - j. By whom was payment or payments made into the account?

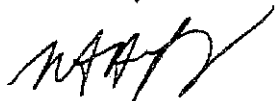


- k. On whose instructions were the payments made into the accounts?
 - l. If Mr Hlongwane did not render a service or goods but he has an interest in the funds in the two bank accounts referred to above, why were the funds paid into those accounts?
15. Mr Hlongwane is also free to provide any other information or raise any other issue he may wish to bring to our attention.
 16. Due to the time constraints under which the intended application is perforce being prepared, we request that Mr Hlongwane, should he wish to do so, respond in writing by close of business on Wednesday 17 February 2010.
 17. Apart from any written responses, should he so request, we are also willing to afford your client a personal interview at the NPA Head Office in Pretoria at 11h00 on 19 February 2010, in order that he may clarify or elaborate on his written response and during which he may be asked questions to clarify aspects of his written response or his oral input. He will not be compelled to answer any such questions. The interview will be recorded.
 18. We must stress, however, that Mr Hlongwane is not compelled to answer the above questions or provide any other information in response to this letter. Anything Mr Hlongwane says will be with prejudice, i.e. his written response and what he says at the interview may be used against him in future, not only in the intended preservation or forfeiture proceedings, but also in other such proceedings in relation to other assets in which he may be interested, as well as possible criminal proceedings and ancillary proceedings for restraint and confiscation orders. Any responses received from Mr Hlongwane will accordingly not only be made available to the SAPS investigating officer, but also placed before the court to which application will be made for the preservation order should the NPA continue with such application.
 19. Further in this regard Mr Hlongwane has previously been placed in possession of the application for search warrants, which were executed in November 2008. The application and supporting affidavit make it clear that Mr Hlongwane is the subject of a criminal investigation into racketeering offences (in terms of section 2 of the POCA), corruption offences (in terms of section 1 of the Corruption Act 94 of 1992, and section 3 of the Prevention and Combating of Corrupt Activities Act 12 of 2004) money laundering offences (in terms of section 4 of POCA) and fraud. At the time the searches were conducted, the criminal investigation was under the aegis of the Directorate of Special Operations within the NPA. That investigation has subsequently been transferred to the South African Police Service, and I confirm that Mr Hlongwane remains a suspect in that investigation.


[Handwritten signature]
A

20. The investigation into Mr Hlongwane also gave rise to applications for the issuing, under section 2(2) of the ICCMA, of four separate but related letters of request to the United Kingdom, Switzerland, Jersey and Lichtenstein.
21. The grounds upon which the preservation application is intended to be made are materially similar to those used in the application for the search warrants and the letters of request.
22. In the final version of any papers that may be presented to court we will mention and attach this letter, as well and the contents of any response he might make. We intend to communicate same to the Lichtenstein authorities too.
23. We look forward to receiving your prompt response to this letter.

Yours faithfully



W Hofmeyr
Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit



Asset Forfeiture Unit



HEAD OFFICE

Tel : +27 12 845 6000
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Victoria & Griffiths
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Your ref: C Stockenström/F2

11 February 2010

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For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

Your client: Mr Fana Hlongwana

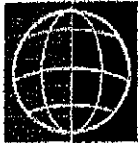
1. We refer to your letter dated 20 January 2009 as well as to our response dated 4 May 2009. We assume that you still act for Mr Fana Hlongwane, and request that you immediately indicate to us should this no longer be the case.
2. I record that we have to date not yet received a response to our last letter, and in particular that Mr Hlongwane has not responded to the request to provide the National Prosecuting Authority with information that might impact on its decision whether or not to institute preservation or restraint proceedings in relation to property in which he has an interest.
3. As was indicated in my previous letter, it is not the practice or policy of the NPA to afford persons who will or may be adversely affected by an impending application for a preservation or restraint order an opportunity to make representations to the NPA as to why it should not be launched or why their property should be excluded from the ambit of the application. However, the NDPP is of the view that it would be appropriate to again request Mr Hlongwane to supply the

TX RESULT REPORT

NAME : AAFU
TEL : 30128047335
DATE : 11.FEB.2010 09:13

SESSION	FUNCTION	NO.	DESTINATION STATION	DATE	TIME	PAGE	DURATION	MODE	RESULT
4277	TX	001	0866314883	11.FEB	09:09	005	00h03min40s	ECM	OK

Handwritten signature/initials



STOCKENSTRÖM FOUCHÉ INC.

Prokureurs & Advokatsverordigere / Attorneys & Conveyancers

78 Tiger Valley Office Park, Silverlakes, Pretoria 0002
PO Box 288, Garfontein, 0042

Tel: +27 (0)82 782 7867 / +27 (0)82 881 1738

Fax: +27 (0)82 631 4868

E-mail: stfinciw@gmail.com

Reg No: 2007/015371/21

ASSET FORFEITURE UNIT

15 FEBRUARY 2010

BY FAX: 012 804 7335

FOR ATTENTION: MR WILLIE HOFMEYR

Dear Mr Hofmyer:

RE: FORFEITURE UNIT // MR. FANA HLONGWANE

With reference to your letter dated the 11th of February 2010 we wish to record the following:

1. Unfortunately writer was in Europe at the time when your letter was received by this office and he only returned from Europe on Friday afternoon the 12th of February 2010.
2. Writer did not have the opportunity as yet to discuss the contents of your letter with client in view of the fact that client is out of town presently and he will only be available for consultation at best by Friday the 19th of February 2010.
3. Our Counsel in this matter, Advocate Olliers SC is also unavailable at present to consult in view of the fact that he is appearing in the SCA on the 16th of February 2010. He will only be available as from Thursday the 18th of February 2010 to consult with us.
4. We, however, wish to request you on an urgent basis to afford us the opportunity to properly respond to your letter and the requests contained in the letter. We undertake to provide you with a proper response by Monday the 22nd of February 2010.
5. We would appreciate it if you will respond on an urgent basis to our request and inform us whether you will afford us the opportunity as requested.

Yours sincerely

STOCKENSTRÖM FOUCHÉ INC.

Directors/Direkteure: Christo Stockenström BA SPRQC • Gert Fouché BCOMM LLB

100/100 P. 8029#

RIIPPEL EFFECT

FEB. 17. 2010 16:43 0123628557

Handwritten signature/initials

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"WD 13"

Asset Forfeiture Unit



The National Prosecuting Authority of South Africa
Igunya Jikelele Labeishutshisi boMizansi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

HEAD OFFICE

Tel : +27 12 845 6000
Fax: +27 12 804 7335

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue

Weavind Park
Silverton
Pretoria
0184

P/Bag X752
Pretoria
0001
South Africa

Docex:
DX 207
Pretoria

Email:
wh@npa.gov.za
www.npa.gov.za



Our ref:
Your ref: C Stockenström/F2

22 February 2010

Stockenström Fouché Inc.
78 Tijger Vallei Office Park
Silverlakes
Pretoria
0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

Your client: Mr Fana Hlongwana

1. We refer to your letter dated 15 February 2010 as faxed to our offices on 17 February 2010.
2. We have noted the content thereof and look forward receiving your substantive reply by close of business today.

Yours faithfully

W Hofmeyr
Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit

Justice in our society, so that people can live in freedom and security

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Asset Forfeiture Unit



HEAD OFFICE

Tel : +27 12 845 6000
Fax: +27 12 804 7335

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Waavind Park
Silverton
Pretoria
0184

P/Bag X752
Pretoria
0001
South Africa

Dosax:
DX 207
Pretoria

Email:
wh@npa.gov.za
www.npa.gov.za



Our ref:
Your ref: C Stockenström/F2

22 February 2010

Stockenström Fouché Inc.
78 Tilger Valley Office Park
Silverton
Pretoria
0002

For attention: Mr Christo Stockenström

By telefax: 086 631 4883

Dear Sir

Your client: Mr Fana Hlongwana

1. We refer to your letter dated 15 February 2010 as faxed to our offices on 17 February 2010.
2. We have noted the content thereof and look forward receiving your substantive reply by close of business today.

Yours faithfully

W Hofmeyr

W Hofmeyr
Deputy National Director of Public Prosecutions
Head: Asset Forfeiture Unit

TX RESULT REPORT

NAME : AAFU
TEL : 30128047335
DATE : 22.FEB.2010 12:15

SESSION	FUNCTION	NO.	DESTINATION STATION	DATE	TIME	PAGE	DURATION	MODE	RESULT
4288	TX	001	0866314883	22.FEB	12:15	001	00h00min42s	ECM	OK

a p.